

crimefighting, and other essential services. This online-commerce loophole in sales tax collection results in an unfair situation for South Dakota merchants, and threatens the treasuries of State and local governments with the loss of millions of dollars in revenue. There is a great need for State tax laws to be applied to all sales regardless of whether the sales are made at a local store, over the Internet, or by any other means.

H.R. 3709 does not foreclose the possibility of collecting sales tax on products purchased over the Internet. In fact, it is silent on this issue. That silence, however, is almost as dangerous to State and local government as an explicit rejection of equal treatment for brick and mortar stores. By filing this amendment to H.R. 3709, I want it made clear that I will oppose this legislation moving forward until it establishes a comprehensive review of Internet-related tax policy.

I remain absolutely opposed to any new tax on the Internet. Internet usage ought to be encouraged and kept affordable. Public policy ought to promote tax-free Internet access, but it makes no sense that some sales are subject to sales tax while others are not. We need a level playing field for everyone. It is up to each individual State and municipality to decide for itself whether it wants to have a sales tax—but once that decision is made, it ought to apply uniformly to sales without regard to the particular technology utilized in making the sale. This correction must be considered in the context of any effort to extend the ongoing Internet tax moratorium.

Although there are many pieces of critical legislation which would serve to highlight the tax fairness issues raised by H.R. 3709, I want to focus on S. 2097, the local-into-local television act.

Under legislation we passed this past year, satellite companies are for the first time free to broadcast local network programming into local markets. That ability has already benefited thousands of viewers and promoted competition in the broadcast delivery industry. What S. 2097 seeks to accomplish is to make that benefit a reality for Americans who live outside the largest 40 television markets.

Like many of my colleagues, I represent a State, South Dakota, with rural viewers that should not be left out of the information age. South Dakota is one of the 16 States that do not have a single city among the top 70 markets. Sixteen States have no television markets within the top 70. Without this loan guarantee, markets such as Sioux Falls and Rapid City will never get local-into-local service, and rural South Dakotans will not have an opportunity to receive their local networks over the satellite signals.

This proposal is more than just getting sports or entertainment programming over your local channels. It is a critical way to receive important local

news, storm information, road reports, school closing information, and civic affairs information.

Rural Americans need the same opportunity to access their local networks as do our urban friends. This legislation will provide that opportunity.

We have worked very hard in the Banking Committee and on the floor to achieve strong bipartisan legislation. Senators SARBANES, BAUCUS, GRAMM, BURNS, and others worked diligently to find the accommodations to satisfy everyone's concerns. We have a final product which will ultimately result in local-into-local broadcasting for rural America, and it does so in a fiscally responsible manner that limits the taxpayer exposure.

The overwhelming vote in both the House and Senate demonstrates the soundness of this legislation. It is absolutely critical for the millions of Americans who live outside our major urban areas. It is the promised missing component of last year's Satellite Home Viewer Improvements Act.

This issue has aroused the greatest level of constituent concern in many States in quite some time. S. 2097 provides a fiscally responsible and prudent response to the concerns raised by thousands of our constituents, protecting the taxpayer interests while at the same time helping to provide this service. I intend to offer this legislation to every vehicle possible this year until we have the opportunity to finish what we started and provide this essential service to all Americans.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### VICTIMS OF GUN VIOLENCE

Mr. LEVIN. Mr. President, since Columbine, thousands of Americans have been killed by gunfire, and yet Congress is refusing to act on sensible gun legislation. Until we act, one of us who is trying to get legislation passed will read the names of those who lost their lives through gun violence in the past year and will continue to do so every day while the Senate is in session. In this way, we hope to remember those who have died and to bring closer the day when fewer die from gun violence.

Following are the names of some of the Americans who were killed by gunfire 1 year ago today, on June 12, 1999:

Tyrand Baxter, 24, Atlanta, GA;  
D'Ante Bonds, 18, Oakland, CA;  
Kenneth Davis, 17, Chicago, IL;  
Moises Moctezuma, 49, Charlotte, NC;  
Kevin Parks, 26, Chicago, IL;  
Cornell Rogers, 31, Washington, DC;  
Reginald Rogers, 21, St. Paul, MN;  
David Sapp, 42, Charlotte, NC;

Joseph Shrug, 69, Detroit, MI;  
Yong S. Suoh, 44, Chicago, IL;  
Javier Velasquez, 23, San Antonio, TX;  
Joel Vives, 27, Miami-Dade County, FL;  
Charles Wachholtz, 80, Dallas, TX;  
Antwan Wimberly, 24, Atlanta, GA; and  
Timothy Young, 21, Charlotte, NC.

Mr. President, I ask unanimous consent to have printed in the RECORD the names of those who were killed by gunfire last year on the days June 10 and June 11, which was last weekend when the Senate was not in session.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNE 10, 1999

Vincent Bolden, 32, Minneapolis, MN;  
Sandy Curtis, 37, Gary, IN;  
Bynum Gordon, 44, Atlanta, GA;  
Dimetrio Hernandez, 33, Houston, TX;  
Marvin E. Jordan, 18, Chicago, IL;  
Adam Lawrence, 48, New Orleans, LA;  
Benjamin Matthews, 36, Kansas City, MO;  
Terrance McLeod, Jr., 25, Detroit, MI;  
Hayde Montalbo-Valdes, Minneapolis, MN;  
Dolores Mueller, 64, St. Louis, MO;  
Nicholas Osborne, 20, Bloomington, IN;  
Raphael Rivera, 14, Harrisburg, PA;  
Brandy Sessions, 20, Rochester, NY;  
Stymie Thomas, 20, Chicago, IL;  
Unidentified male, 37, Long Beach, CA;  
Unidentified male, 26, Long Beach, CA; and  
Unidentified male, 28, Long Beach, CA.

JUNE 11, 1999

Wallace Brumfield, San Francisco, CA;  
Jerry Joseph Dawson, 47, Detroit, MI;  
Kimani Evans, 25, Miami-Dade County, FL;  
Majjo Hanna, 40, Detroit, MI;  
Kevin James, 29, Baltimore, MD;  
David M. Jones, 26, Madison, WI;  
Isaac Maldonado, 22, Holyoke, MA;  
John Morrison, 34, Miami-Dade County, FL;  
Michael Northington, Detroit, MI;  
Harvey J. Pierce, 45, Madison, WI;  
David L. Shaw, 18, Memphis, TN;  
Robert L. Turner, 78, Oklahoma City, OK;  
Lajon Wright, 25, New Orleans, LA;  
Unidentified male, 57, Norfolk, VA; and  
Unidentified male, 31, San Jose, CA.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

The Senator is recognized for 20 minutes.

#### PRIVACY ACT VIOLATION

Mr. INHOFE. Mr. President, I have not a speech but a story to tell. The name of that story could very well be "What Would Have Happened To Frankie Vee?" Now, they say confession is good for the soul. I confess that during the Memorial Day recess a couple weeks ago I did not work during the whole recess. I spent some time with my family, with my wife, with my daughter Katie, her husband Brad, their baby, and some of the other kids, and we went to south Texas where we own some property. There is a little

town down there called Port Isabel. There is a restaurant there that none of the tourists go to. It is just the local people who go there. It is right there on the channel that goes out ultimately to the gulf.

There is a guy down there who sings. You sit down and you have dinner. He has these machines he turns on; they make music. He has a microphone, and he sings. He has a beautiful voice. The reason I like it is he sings the kind of songs I know such as "Your Cheatin Heart" and "Lord, Help Me, Jesus," and songs like that. While he is singing, his wife sways to the music with her eyes closed. It is just a beautiful setting there.

This was going on when all of a sudden a light went on, and I do not know how this happened, but I was looking at this guy, who is just an ordinary person—he is about my age. He has gone through tough times in his life like I have. He has made money; he has lost money; but he is just a very typical American. He is someone who has to obey the laws, has to work hard, and has to pay taxes. What occurred to me was that if Frankie Vee had blatantly and knowingly and wrongfully committed a crime like Kenneth Bacon, blatantly and knowingly and willingly committed a crime, he would not be singing there and spreading joy in the hearts of many while his wife is swaying. He would be serving time in a Federal penitentiary.

I am not outraged; I am not mad; and I am not feeling any anxiety about this. I guess the best way to characterize my feelings after the last 7½ years of this administration using the Justice Department to protect its friends and to punish its enemies is just something that I feel numb about. I am proud of two of the mainstream media—only two—that have been willing to write about these things. And that is Fox News and the Washington Times.

So in this case, we have talked about comparing the crime that was committed by Kenneth Bacon with other crimes that were committed—and I am going to talk about that in just a minute—by other people in other administrations. But what occurred to me was that every citizen out here, whether in Wyoming or Oklahoma, has to obey the law and has to be punished under the law if that person disobeys the law, and that he would be prosecuted if there was justification for prosecution and then would be punished accordingly—except in this administration.

On Thursday, May 25, which was the eve of the Memorial Day recess when we left for about a week, the Clinton administration perpetrated another outrage to add to its long trail of operations, I guess you would say. In the face of the Pentagon inspector general's firm conclusion that Kenneth Bacon and Clifford Bernath violated the Privacy Act and broke the law and committed a crime, the Secretary of

Defense announced that he would do nothing to hold these men accountable for their actions. And this neatly follows the earlier decision of the Justice Department not to prosecute after engaging in a 2-year coverup.

Now, as I have said before, this case has broad implications for what has been done to the rule of law and to the concept of honesty and integrity in Government over the past 7½ years. Above all else, the systemic undermining of these time-honored principles constitutes the true and lasting legacy of the Clinton and Gore administration. Time after time after time, again and again, the Justice Department and Janet Reno have used that Department to protect the President's political friends and to punish the President's political enemies.

Today, as a result of this case, there are millions of Federal employees who are on notice that the information contained in their confidential Government personnel records cannot be protected from politically motivated disclosures. They are on notice that the Privacy Act can be violated with impunity even when the perpetrators are caught redhanded.

In an additional outrage, we find that the administration now wants the taxpayers to pay the legal bills for those two individuals during this process.

This is a letter we have uncovered, after it had been covered up, that the Office of the General Counsel is writing to Mr. Kaser, U.S. Department of Justice, requesting that the taxpayers pay the legal fees of Kenneth Bacon and Clifford Bernath. I ask unanimous consent that at the conclusion of my remarks this letter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. INHOFE. Let's quickly recap what happened. In March of 1998, about 8 weeks into the Monica Lewinsky scandal, the Pentagon public affairs director, Kenneth Bacon, got a phone call from Jane Mayer, who Jane Mayer was a long-time Clinton supporter and friend of the Clinton administration. She was an old friend of Kenneth Bacon. They worked together on the Wall Street Journal for years before. And she got a letter. She was then working on a story for the New Yorker magazine. Mayer informed Bacon that she had evidence that a key witness in this Presidential scandal, Linda Tripp, had been arrested for larceny as a teenager. Tripp was and still is a civilian employee of the Federal Government at the Pentagon. Mayer wanted to know how Tripp had replied to question No. 21 on her security clearance form, asking if she had ever been arrested. If she had answered no, which Linda Tripp did, then public disclosure of this information in conjunction with the new evidence that Mayer said she had would have been clearly damaging to Tripp's credibility and her reputation and would discredit her as some-

one who was bringing charges against the President.

Soon thereafter, it was discovered that Tripp's teenage arrest was the result of a juvenile prank perpetrated against her. The judge in the case told her in a laughing way that it was a funny trick and her record would be clear. Nevertheless, Mayer's story was published and the damage to Tripp was done. She was discredited forever.

I would characterize that as saying Mr. Bacon had conspired with Ms. Mayer to implement "a scheme to defame and destroy the public image of Linda Tripp with the intent to influence, obstruct, and impede the conduct and outcome of pending investigations and prosecutions." That is exactly what the two of them did to Linda Tripp.

The reason I am reading this is because that is the exact language of 20 years ago when Chuck Colson committed this same crime at the beginning of the Watergate era. The court said Colson implemented "a scheme to defame and destroy the public image of Daniel Ellsberg with the intent to influence, obstruct, and impede the conduct and outcome of pending investigations and prosecutions."

That is exactly the same thing Kenneth Bacon did. The actions of Bacon and Bernath immediately became the subject of the Pentagon IG investigation to determine if they had violated the Privacy Act which is designed to prevent the disclosure of confidential information on Government employees.

The IG quickly concluded that, yes, indeed, they did violate the Privacy Act. In July of 1998, the IG made a criminal referral to the Justice Department so the case could be prosecuted, but nobody knew it. The fact the IG had concluded the report was covered up by the Justice Department for 2 years. The Justice Department sat on the case for 2 years doing nothing—a classic foot-dragging, stonewalling Clinton coverup.

Finally, in March of this year, they quietly announced no one would be prosecuted in this case. And they call it a Department of Justice. The Department said it concluded Bacon and Bernath "didn't intend to break the law" when they made the disclosure of the Tripp information, as if that is ever a legitimate excuse for anything.

I suggest if the Senator who is occupying the chair were driving down a Wyoming highway at 100 miles an hour and were pulled over by a highway patrol and he said, "I didn't intend to break the law," that everything would be fine.

This is how the process works. Once the Justice Department refuses to prosecute, even after a criminal referral for prosecution has taken place, the very least that can happen to a person is the boss of the individual who is offending may take some kind of personnel action.

It was turned over to the Secretary of Defense, William Cohen. He was

charged with evaluating the conclusions of the IG report and taking any action he deemed appropriate, such as firing both of them. Keep in mind, this should not even have happened. This should not have taken place because by this time, there should have been a criminal prosecution.

This brings us to 2 weeks ago, Thursday, when Cohen announced what he deemed appropriate. He sent Bacon and Bernath personal letters expressing disappointment in their actions, making a clear point they were not letters of reprimand and will not be placed in their personnel records. It is not even a slap on the wrist. In other words, he did nothing. He did not fire anyone. He did not fine anyone. He did not suspend anyone. He took the IG's conclusion that the Privacy Act was broken and walked away without exacting any measure of accountability or justice. It is unbelievable.

He did, however, publicly release the IG report and related documents, and these clearly show the inspector general unhesitatingly concluded that Tripp's privacy was compromised, that the Privacy Act was violated, and that the law was broken. This was in the IG report. The IG totally rejected Bacon's and Bernath's contorted arguments to the contrary.

In addition, the IG report clearly shows that no serious investigation was ever conducted into the involvement of other Clinton administration officials or friends outside the Pentagon, such as those in the White House who may have been involved in orchestrating this smear of Linda Tripp.

I urge my colleagues to read an article that was in the Washington Times on Saturday, May 27, 2000. It lays out clear evidence that Bacon and Bernath did not act alone in this matter, as they claim. There is evidence the IG did not adequately follow up. Yet it is the kind of evidence that, as Clinton friend Dick Morris has said, would lead to a conclusion any 6 year old could understand; namely, that Bacon and Bernath most certainly did not act alone.

I ask unanimous consent this article from the Washington Times to which I just referred be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. INHOFE. Mr. President, I will chronologically reconstruct what happened in this case. It is important I be redundant so that people will understand and that it will not be forgotten and covered up.

On March 12, 1998, New Yorker magazine writer Jane Mayer, a former Wall Street Journal reporter, called Kenneth Bacon who used to work with Mayer at the Wall Street Journal, asking him about a question on Linda Tripp's personnel file for a story she was writing.

On March 13, the very next day, Bacon tasks Clifford Bernath, then a

Pentagon public affairs deputy, with answering Mayer's question. Bernath writes in his journal: "Ken has made clear it's a priority."

Further, in March of that same year, the New Yorker story claims Tripp violated the law.

In March, Defense Secretary William Cohen calls the disclosure "certainly inappropriate, if not illegal." Cohen continued: Tripp's file "was supposed to be protected by the privacy rules." The DOD inspector general's investigation is initiated.

An investigation was initiated in March of 1998.

In April of 1998, Cliff Bernath was deposed by Judicial Watch. Bernath was accompanied by a battery of Government lawyers from the Justice Department, the Defense Department, and the White House, in addition to one from Williams & Connolly appearing on behalf of the First Lady who was then a defendant in the FBI file suit.

Over the next 6 hours, Bernath proceeded to change his story. He had previously insisted the request was handled in a routine way. In this deposition, he concedes that it was a high-priority issue by Ken Bacon.

On May 21, 1998, at a Pentagon press conference, Ken Bacon declined comment—as he has since repeatedly—to the press, including refusing to deny whether the White House directed him to release that information on the grounds that the IG was still investigating.

On July 10, 1998, Federal Judge Royce Lamberth ordered the Defense Department to seize the computer of a Pentagon staffer who admits releasing information on Tripp's security clearance form. Lamberth ruled that the Department's inspector general should check the computer because the Pentagon aide, Clifford Bernath, deleted documents, although Bernath claimed none of the deleted documents concerned Tripp.

Jumping forward to February 9, 2000, at a House Armed Services Committee hearing, Secretary Cohen had no answer to the question from Representative BUYER on where the DOD report was, in what stage it was. We found out the report was concluded almost 2 years before that question was asked.

I have to add a personal note in defense of Bill Cohen. I do not believe he knew. I think the White House covered that up and the Justice Department covered up the fact that the report was concluded almost 2 years before that hearing. I do not believe Cohen actually was aware of that.

On March 6, 2000—this brings the Federal court back in—Federal Judge Lamberth signed an order requiring DOD to produce records concerning the release of information in Tripp's DOD files and information on any attempts to withhold information from the public and/or investigators about the details of that release.

Then on March 13, 2000, Judge Royce Lamberth stated:

The Tripp release presents such a clear violation of the Privacy Act.

Lambert said:

The court finds it impossible to fathom how an internal investigation into such a simple matter could take so long to conclude.

In fact, even though that statement was made by the judge in the court records on March 13, 2000, that internal investigation had been concluded in July 1998, nearly 2 years before.

In previous talks on the floor, I have had occasion to compare this crime with a crime that was committed 20 years before. I have done so because when you talk about what President Clinton and Vice President GORE have allegedly done in terms of getting foreign contributions, which are a violation of law, there is nothing really unprecedented about that that we can go back and compare with someone else who was prosecuted.

In this case, the crime that was committed by Kenneth Bacon, and perhaps more people with him, is a crime exactly like the crime that was committed 20 years before by Chuck Colson.

Let's go back and see just what Chuck Colson did. This is what he said and did, in his own words. This is going back to 1971:

... I got hold of derogatory FBI reports about Ellsberg and leaked them to the press.

He said further, in 1976:

I happily gave an inquiring reporter damaging information compiled from secret personnel files.

I know, again, this is exactly the same thing that we now have a confession by Kenneth Bacon that he did. He got ahold of derogatory reports about Linda Tripp. And then he happily gave them to an inquiring reporter—the same thing.

So what happened to Colson? Colson was sentenced by U.S. District Court Judge Gerhard Gesell to a prison term. On April 7, 2000, in a deposition, he provided the New Yorker writer Jane Mayer with Tripp information. In other words, he admitted it. He admitted that. There is no question about whether or not he committed this crime. There is no doubt about it, no dispute about it.

Bacon said: I am sorry that I did not check with our lawyers or check with Linda Tripp's attorneys about this.

Sorry? Sorry really didn't cut it for Chuck Colson. Chuck Colson ended up in a Federal penitentiary. Colson committed the crime in July 1971. He admitted his guilt and pleaded on June 3, 1974, and was sentenced to the Federal penitentiary on June 21, 1974.

Bacon committed his crime in March of 1998. He admitted what he had done in June of 1998. The Pentagon inspector general referred the matter for criminal prosecution in July of 1998. So now 2 years later, in April, May, and June of 2000, the Clinton Justice Department says it is going to take a pass, hoping nobody will see or hear about this at this late date. After all, 2 full years

had transpired since the report was concluded.

So Colson went to jail and served time in prison. If there were justice and equal application of the law, Bacon would go to jail and serve time in prison.

Is this the first time the Clinton administration has been involved in lawbreaking and corruption? Not hardly. It has almost become a way of life—Travelgate, Filegate, Buddhist Temple fundraisers, illegal foreign campaign contributions, the compromise of high-technology nuclear secrets to the Chinese, not to mention perjury and obstruction of justice. The list goes on and on.

Why is this important? It is all about a concept. It is as basic to America as the concept of going to church on Sunday. That concept is: Equal application of the law.

Chuck Colson realized he did the wrong thing. Chuck Colson, in a book that he wrote in 1976, called "Born Again," stated:

I happily gave an inquiring reporter damaging information about Ellsberg's attorney, compiled from secret FBI dossiers.

He said:

... I pleaded guilty after being told by Watergate prosecutor Leon Jaworski that my conviction would deter such a thing from [ever] happening again.

That is a quote.

I suggest that it has happened again, and they are hoping no one will notice.

I refer to an article that was written on June 12—a current article—in the Weekly Standard by Jay Nordlinger. The question is: "Why Didn't Bacon Get Fried?" That is the name of the article. I will quote a few things from it. Jay Nordlinger wrote:

It's just a small matter, in all the Clinton grossness, but it counts. Linda Tripp was the victim of a dirty, and illegal, trick. It was played on her by her own bosses at the Pentagon. And now those men—Kenneth Bacon and Clifford Bernath—have escaped with the wispiest slaps on the wrist. This is ho-hum for the Clinton administration; but it is a reminder of how unlawful and indecent this administration has been.

Further in the article he talks about Joseph diGenova, who is a former U.S. attorney with long experience in this area.

Quoting from the same article, diGenova is quoted as saying:

The treatment of Bacon and Bernath suggests that the Privacy Act will be enforceable only in civil lawsuits filed by the victims. If there's no adverse action—not even a letter that goes into somebody's file—there's no deterrence here. None whatsoever.

The article by Jay Nordlinger further states:

The president and his men have a bit of history with the Privacy Act. You perhaps remember Passportgate. Toward the end of the 1992 presidential campaign, it was learned that political appointees in the Bush State Department had rifled through candidate Clinton's passport files and those of his mother. Democrats demanded an independent-counsel investigation. They got one—led by diGenova. One of the officials involved, Elizabeth Tamposi, was dismissed.

The acting secretary of state, Lawrence Eagleburger, offered to resign over the matter. (President Bush refused). Said Clinton, in his first press conference [after he had been elected President of the United States], "If I catch anybody doing [what the passport-file offenders did], I will fire them the next day. You won't have to have an inquiry or rigmorale or anything else."

About a year later, Passportgate had something of a reprise, this time featuring appointees in Clinton's own State Department. A few of them got hold of Bush-administration personnel files and leaked them to Al Kamen of the Washington Post.

Mr. President, I ask unanimous consent this article be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.  
(See Exhibit 3.)

Mr. INHOFE. Finally, I guess it begs the question, What can be done now? I mentioned that the media, the mainstream media, has pretty much ignored this. They like Kenneth Bacon. He was a member of the media. They are not going to do anything about it, I have decided.

Fortunately, the Washington Times has done something about it. Fortunately, Fox News has done something about it. But there is something that can be done. When the new administration takes office, and a new Attorney General comes in, the Bacon-Bernath lawbreaking should be referred again for criminal prosecution. A professional Justice Department, freed from corrupt partisan influences, should prosecute this case and uphold the law.

Such a referral can easily be added to a list of such referrals on other matters which are already being contemplated, as Representative DAN BURTON, who is the chairman of the appropriate House committee, mentioned yesterday.

For example, these, as mentioned, would include criminal referrals related to:

No. 1, evidence that the President broke campaign finance laws, was aware of illegal foreign contributions, and changed policies in return for campaign contributions;

No. 2, evidence that the Vice President broke the law when he made the illegal fundraising phone calls from the White House;

No. 3, evidence that the Vice President committed a felony by lying to the FBI investigators about his knowledge of illegal fundraising activities;

No. 4, that Janet Reno committed obstruction of justice when she refused to appoint an independent counsel;

And now we add this to the list: Evidence that Ken Bacon and Clifford Bernath broke the law when they violated the Privacy Act in the Linda Tripp matter.

It is obvious if the next President of the United States happens to be AL GORE that very likely we will have the same type of Justice Department. I don't think our forefathers ever anticipated, when they were constructing these documents, our Constitution and our statutes, that we would have some-

one in the President's office who would use the Justice Department to protect his friends and punish his enemies. I have come to the conclusion that if this had been Frankie Vee who had done this, he would currently be serving time in the Federal penitentiary.

I yield the floor.

EXHIBIT 1

DEPARTMENT OF DEFENSE,  
OFFICE OF GENERAL COUNSEL,  
Washington, DC, December 3, 1999.

Re Request for Representation of Clifford H. Bernath in *Tripp v. Executive Office of the President* (D.D.C. No 99-2254).

SYLVIA KASAR, Esq.,  
U.S. Department of Justice,  
Civil Division—Federal Programs Branch,  
Washington, DC.

DEAR MS. KASAR: I am writing to request that the Department of Justice authorize private counsel at federal expense for Mr. Clifford H. Bernath in connection with the above-captioned litigation, pursuant to 28 C.F.R. §5015.

We believe that this lawsuit concerns matters within this scope of Mr. Bernath's employment at the Department of Defense. Based on the information now available to us—which has also been made available to your office—we believe that providing Mr. Bernath with private counsel at federal expense is appropriate and in the interest of the United States.

Thank you for your consideration of this matter.

Sincerely,

BRAD WIEGNAM.

EXHIBIT 2

[From the Washington Times, May 27, 2000]

CLINTON ACCUSED IN 'SMEAR'—TRIPP  
LAWYERS BLAME WHITE HOUSE FOR LEAK  
(By Jerry Seper)

Attorneys for Linda R. Tripp yesterday said the release of information from her confidential personnel file was "wrong and illegal," and part of a "smear campaign" by the White House to damage her reputation.

The attorneys said the campaign was engineered by President Clinton and his senior advisers, who "turned their public relations machine against Mrs. Tripp" to divert attention from the president's conduct with former White House intern Monica Lewinsky.

"The campaign worked, and Mrs. Tripp was publicly humiliated on numerous occasions," attorneys Stephen M. Kohn, David K. Colapinto and Michael D. Kohn said in a statement. "Her reputation was poisoned, her motives questioned and even her personal appearance became fair game for ridicule."

They said the leak of the Tripp file by Pentagon spokesman Kenneth Bacon to a reporter looking to write a critical story of Mrs. Tripp was part of that scheme, and that the file's disclosure was prohibited under the federal Privacy Act.

The Defense Department's Office of Inspector General concluded that Mr. Bacon and his former top deputy, Clifford H. Bernath, violated Mrs. Tripp's privacy rights by providing information from her confidential personnel file to a reporter for the New Yorker magazine.

But the two men received only mild reprimands Thursday from Defense Secretary William S. Cohen.

Mr. Cohen criticized Mr. Bacon and Mr. Bernath in letters for what he called a "serious lapse of judgment," although neither letter was made part of the men's personnel files and no further disciplinary action was recommended. The case is closed.

Mr. Clinton, through a spokesman, yesterday said he had "full confidence" in the Cohen decision.

"The president has full confidence in the secretary of defense's management of his staff and the Pentagon and supports the judgment of the secretary of defense to take the actions appropriate," said P.J. Crowley, chief spokesman for the White House National Security Council. Mr. Crowley formerly worked for Mr. Bacon.

Mrs. Tripp is the Pentagon official who blew the whistle on Mr. Clinton's affair with Miss Lewinsky. Both Mrs. Tripp and Miss Lewinsky worked for Mr. Bacon.

Mrs. Tripp has since filed a lawsuit accusing the White House and the Defense Department of using her confidential file to smear her reputation.

In a five-page statement, her attorneys noted that the leak to Jane Mayer, a reporter for the New Yorker, came after Mr. Bacon met privately over dinner with former White House Deputy Chief of Staff Harold Ickes—who "volunteered" to help Mr. Clinton in damage control after the Lewinsky accusations surfaced. They said Mr. Ickes also had met with Miss Mayer before the information was released.

"This was simply not an innocent release of information in response to an inquiry by a reporter," they said. "It is well-established that Mr. Bacon and his associate who was involved in the illegal leak knew that the information requested from Mrs. Tripp's security file would be used in a derogatory manner to smear Mrs. Tripp and question her credibility."

They also said Mr. Bacon and Mr. Bernath had been told the information from the file was covered by the Privacy Act and could not be released without Mrs. Tripp's consent.

Mr. Ickes, now coordinating first lady Hillary Rodham Clinton's run for a U.S. Senate seat in New York, did not return calls to his office for comment. He previously denied any wrongdoing, saying that while he met with Mr. Bacon and Miss Mayer before the file was leaked, he denied the discussions were part of a conspiracy.

The White House also has denied any involvement in the leak, and Mr. Bacon, in a statement on Thursday, said he did not believe he violated Mrs. Tripp's privacy rights and that "ultimately my conduct will be found lawful."

Sen. James M. Inhofe, Oklahoma Republican who denounced a Justice Department decision last month not to seek an indictment of Mr. Bacon or Mr. Bernath, despite concerns outlined in a July 1998 report by the inspector general, called the Cohen reprimand "a travesty."

"At a minimum, Bacon and Bernath should have been fired," said Mr. Inhofe. "This is what happened to the Bush administration official who misused candidate Bill Clinton's passport file in 1992. It is what Bill Clinton said would happen to anyone in his administration found guilty of a similar invasion of privacy."

Mr. Cohen yesterday denied that he whitewashed the release of information from Mrs. Tripp's confidential file, saying there was "no attempt to injure Miss Tripp's credibility or her reputation."

He told reporters at Morristown Airport after touring nearby Picatinny Arsenal that Mr. Bacon and Mr. Bernath were seeking to respond to pressure from the media and that there was no attempt to orchestrate any campaign to discredit Mrs. Tripp.

"I don't intend to fire him," Mr. Cohen said of Mr. Bacon.

In a final report made public yesterday, acting Inspector General Donald Mancuso said the harm to Mrs. Tripp's privacy interests caused by the release of her confidential personnel file outweighed any public benefit.

"Accordingly, the release constituted a clearly unwarranted invasion of her privacy," the report said. The report said the actions of Mr. Bacon and Mr. Bernath constituted a violation of the federal Privacy Act.

The documents leaked showed that Mrs. Tripp had said she never had been arrested, when in fact she had—in what later was described as a teen-age prank that occurred more than 30 years ago.

#### EXHIBIT NO. 3

[From the The Weekly Standard, June 12, 2000]

WHY DIDN'T BACON GET FRIED?—THE PENTAGON'S ANTI-TRIPP LEAKERS GET A SLAP ON THE WRIST, AND THE PRIVACY ACT A SLAP IN THE FACE

(By Jay Nordlinger)

It's just a small matter, in all the Clinton grossness, but it counts. Linda Tripp was the victim of a dirty, and illegal, trick. It was played on her by her own bosses at the Pentagon. And now those men—Kenneth Bacon and Clifford Bernath—have escaped with the wispiest slaps on the wrist. This is ho-hum for the Clinton administration; but it is a reminder of how unlawful and indecent this administration has been.

Before this little affair slides all the way down the memory hole, recall the essential facts: In January 1998, the Lewinsky scandal exploded on Bill Clinton's head. From the point of view of the White House, Linda Tripp was the major villain. It was therefore a matter of urgency to discredit her. In March, Jane Mayer, a Clinton-friendly reporter for the New Yorker, acquired what seemed a valuable piece of information: Tripp, as a teenager, had been arrested for larceny. Mayer put in a call to Ken Bacon, assistant secretary of defense for public affairs. He was an old friend; the two had worked together at the Wall Street Journal. Mayer had an amazingly specific question for him: How had Tripp responded to Question 21, parts a and b, on Form 398? This was a highly sensitive national-security questionnaire, under the eye of the Privacy Act Branch of the Defense Security Service; Question 21 dealt with arrests and detentions.

Bacon quickly swung into action. He ordered his deputy, Cliff Bernath, to get Mayer her answer. Hours before the reporter's deadline, Bernath told her not to worry: "Ken has made clear it's priority." Moving heaven and earth, and alarming career officers as he went, Bernath delivered—right on time.

It looked like bad news for Tripp: She had not, in fact, disclosed on Form 398 her 1969 arrest. Bernath told the New York Times that Tripp faced the "very serious charge" of lying to the government. Defense secretary William Cohen declared on CNN that Tripp was "guilty of a contradiction of the truth," which would be "looked into." It soon emerged, however, that Tripp's arrest had been the result of a juvenile prank, perpetrated against her. The judge had reduced the charge to one count of loitering, telling her, as she recalled it, that her record would be clear. The Pentagon, rather sheepishly, dropped its investigation of Tripp. Instead, Congress demanded that the department investigate Bacon and Bernath—for violating the Privacy Act. In their attempt to help Mayer nail Tripp, the two men seemed to have nailed themselves.

The Pentagon's inspector general, Eleanor Hill, duly launched an investigation. The case being clear-cut, it didn't take her long to find that Bacon and Bernath had indeed violated the Privacy Act. In July 1998, she referred the matter to the Justice Department—which then sat on it for almost two

full years. This would have been incomprehensible in any other administration. Only in April 2000 did Justice announce that it would not prosecute. Incredibly, the department claimed that there was "no direct evidence upon which to pursue any violation of the Privacy Act."

It was then left to Secretary Cohen to determine a penalty for Bacon and Bernath—if any. What he decided to do was write a letter expressing his "disappointment" in the men. Each would receive a copy. In this letter, Cohen said that his subordinates' actions had been "hasty and ill-considered." He noted that, at the time of the incident, they and others at the Pentagon were under instruction not to release anything concerning Tripp without first consulting department lawyers. The strongest language he used was "serious lapse of judgment." But this was balanced against "the very high quality of the performance that you have otherwise exhibited." Amazingly, Cohen told the press that "there was no attempt to injure Miss Tripp's credibility or her reputation."

Contemplating this, Dick Morris, the former Clinton adviser, had no choice but to remark, "Generally, it is a good political rule never to say anything that the average 6-year-old knows isn't true."

The most striking thing about the Cohen letter is that it will not even be placed in either Bacon's or Bernath's permanent file. According to the Pentagon, this is not a letter of reprimand. A department spokesman, Craig Quigley, described it as "a personal letter to both Mr. Bernath and Mr. Bacon." Incredulous, a reporter said, "So, it's not a letter of reprimand?" "No," said Quigley, "Well, what would you call it?" Said Quigley, "It's an official letter expressing the secretary's disappointment in the judgment" of the two officials.

Quigley, like his boss, Bacon, also persisted in the fiction that the leak to Mayer was no big deal—a matter of routing, just business as usual. "This information was taken in the normal course of the day." It was "done very clearly and above board." You know how it is at the Pentagon: "A reporter will call with a question or request for data of some sort, and it's provided as best we can." Anyone who has ever covered, or tried to cover, the Defense Department will gladly tell you this is rot. Quigley trotted out another line as well, one that is increasingly becoming the Bacon defense: "You always do a balancing act between the Freedom of Information Act and the Privacy Act." This assertion is absurd: Form 398 is strictly a Privacy Act document.

After Cohen's non-reprimand, a few Republicans properly cried bloody murder. Sen. James Inhofe of Oklahoma accused the Pentagon of "a whitewash and a coverup." He said that "the law was broken, and nothing is being done about it." The failure to punish the leakers would "send a signal to millions of federal civilian and military employees that their private government records can be made public for political purposes, and no one will be held accountable."

For their part, Bacon and Bernath are denying any violation of the Privacy Act. At a press conference, Bacon was asked whether he would apologize to Tripp. "Well," he replied, "I have already issued the apologies that I have to issue." (He didn't specify what those were.) "I don't think that I performed unlawfully," he continued. His only regret was that he had not "checked this with lawyers." In an official statement, Bacon said, "It certainly never occurred to me that the Privacy Act would preclude disclosing how a public figure recorded a public arrest record on a security clearance." And here is more, perhaps Bacon's richest utterance to date: "I obviously knew that this was an issue of considerable public concern and that the public

had an interest in knowing whether Ms. Tripp had accurately acknowledged her arrest record."

Bernath, the junior partner in the enterprise, following orders, although blindly, was similarly unbowed, saying, "My actions were not only legal, but also ethical and correct."

Meanwhile, Tripp is suing both the Pentagon and the White House for Privacy Act violations and witness intimidation. This suit may in fact have been on Cohen's mind when he declined to take serious action against his guys. Cohen gave the game away somewhat on Meet the Press, saying of Bacon, "He is now the subject of a major lawsuit. And so he will continue to be held accountable to the legal process." This is exactly the sort of thinking that worries many observers, including Joseph diGenova, a former U.S. attorney with long experience in this area. Says diGenova, "The treatment of Bacon and Bernath suggests that the Privacy Act will be enforceable only in civil lawsuits filed by the victims. It there's no adverse action—not even a letter that goes into somebody's file—there's no deterrence here. None whatsoever." In other words, "Don't leave it solely to the victim, who has to pay lawyers and so on, to enforce her rights under the Privacy Act. The government should enforce those rights, especially given that it was government people who broke the law."

The president and his men have a bit of a history with the Privacy Act. You perhaps remember Passportgate. Toward the end of the 1992 presidential campaign, it was learned that political appointees in the Bush State Department had rifled through candidate Clinton's passport files and those of his mother. Democrats demanded an independent-counsel investigation. They got one—led by diGenova. One of the officials involved, Elizabeth Tamposi, was dismissed. The acting secretary of state, Lawrence Eagleburger, offered to resign over the matter (President Bush refused). Said Clinton, in his first press conference as president-elect, "If I catch anybody doing [what the passport-file offenders did], I will fire them the next day. You won't have to have an inquiry or rigmarole or anything else."

About a year later, Passportgate had something of a reprise, this time featuring appointees in Clinton's own State Department. A few of them got hold of Bush-administration personnel files and leaked them to Al Kamen of the Washington Post. Kamen thus had the following story: "Guess whose working file was empty? That of very controversial longtime Bush employee Jennifer Fitzgerald." Kamen, of course, was being coy here: Fitzgerald was the woman rumored to have had an affair with President Bush. Damen was also able to report that Elizabeth Tamposi's file included "concerns from very senior State Department types that she was not ready for an assistant secretaryship."

Immediately, the State Department's inspector general, Sherman Funk, began an investigation. He found that two employees—Joseph Tarver and Mark Schulhof—were stone-cold guilty. Funk told Congress that the pair had engaged in "criminal violations of the Privacy Act provable beyond a reasonable doubt." The Justice Department (developing a pattern) refused to prosecute. In November 1993, the department secretary, Warren Christopher, fired Tarver and Schulhof. This must have been one of the last acts of Clinton-administration honor. The contrast with the Bacon-Tripp case—in this last respect—is overwhelming.

Then, of course, there was Filegate, in which the White House gathered into its bosom hundreds of Republican FBI files, including Linda Tripp's. And the president himself was prompt to release letters from Kathleen Willey—a woman who had accused

him of improper sexual conduct—when it was convenient.

If all this didn't begin with Watergate, it was certainly enshrined there. When the Bacon-Tripp story first broke, Charles Colson reminded this magazine that it was to a Bacon-style disclosure that he had pleaded guilty, in 1974. He had released information from Daniel Ellsberg's FBI file to the Copley Press, at a time when Ellsberg was a defendant in the Pentagon Papers case and a thorn in the Nixon administration's side—the parallels to Tripp are neat. Colson went to jail for this. The special prosecutor, Leon Jaworski, rejoiced that Colson's plea had set a precedent: No longer would political appointees so readily smear their foes in this way. Indeed, the Privacy Act was a post-Watergate reform, intended to check Nixonian abuses.

Says diGenova, "The Bacon thing is a facial and obvious violation of the Privacy Act. It is made for it." Bear this in mind: "Linda Tripp was engaged in a very public dispute with the president." His presidency hung in the balance; he, like Nixon before him, was on the road to impeachment. "This is precisely the kind of circumstance that Congress had in mind when it gave us the Privacy Act. And not to punish this conduct is a very serious mistake."

Apart from Tripp's lonely lawsuit, this affair has now reached an end. Yet two questions hang over it. First, Who gave Jane Mayer that promising tidbit from Tripp's past? Mayer says that it was a former wife of Tripp's father. Others—not necessarily full-time conspiracy theorists, either—wonder whether that's the full story. Team Clinton had every reason to dig for dirt on Tripp. The chief recordkeeper in the White House, Terry Good, testified in a deposition that the White House counsel's office had requested "anything and everything that we might have in our files relating to Linda Tripp."

The second question is, Did Bacon act of his own initiative? Or was he prompted by someone—presumably at the White House—to let fly what appeared to be damaging information? Bacon has steadfastly claimed that he acted entirely on his own, with no order, wink, or nod. But this strikes most people familiar with the workings of the Pentagon—and of the Clinton camp generally—as implausible. A veteran Defense Department hand told us, "Couldn't happen, didn't happen, no way, no how. Remember: Everyone who comes into public affairs is told Privacy Act rules. You don't release someone's confidential information—to anyone, much less the media. This is Public Affairs 101. And Bacon is perpetrating a shameful lie. Any professional in the building will tell you the same thing."

So, the Clinton administration lurches to a close, its players going this way and that, its loose ends being tied up, however unsatisfactorily. Jane Mayer, the little lady who started this not-so-great war, was recently a guest at a White House state dinner. She was seated in a place of honor: the first lady's table. As for her friend Bacon, he has waxed philosophical about his humble-gate: "This is an extremely small part of a large and painful national drama."

Yes, but it is significant nonetheless. The rule of law has taken a beating in this administration, not to mention such demands as honesty and trustworthiness. After Cohen flaked out, one of Tripp's lawyers made a somewhat poignant statement: "Despite Linda Tripp's unpopularity, the law should protect her." Such a simple notion. And powerful, even now.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, for purposes of the statement I am about

to give, I ask unanimous consent that I be permitted to display a small safe.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MEDICARE LOCKBOX

Mr. VOINOVICH. Mr. President, according to the latest estimates put forth by the Congressional Budget Office, the United States is projected to achieve an on-budget surplus of \$26 billion in fiscal year 2000, the current fiscal year. What many Americans do not realize is that Medicare Part A, that portion of every person's paycheck that is deducted for hospital insurance, is the largest component of our Nation's on-budget surplus. It accounts for approximately \$22 billion of the \$26 billion fiscal year 2000 surplus. Of the on-budget surplus of \$26 billion, \$22 billion is actually money that has been paid into Medicare that is not being used for Medicare recipients today. It is overpayment.

Of that \$26 billion on-budget surplus, the fiscal year 2001 budget resolution assumed that \$14 billion of that on-budget surplus would be used to pay for military operations in Kosovo, natural disaster relief in the United States, Colombian drug eradication assistance, and other supplemental spending. Fourteen billion of the \$26 billion has been spoken for, and for all intents and purposes, it is off the table. It is gone.

That leaves approximately \$12 billion in on-budget surplus dollars available and unallocated—quite a tempting target.

If we don't use this \$12 billion to pay down the national debt, I am concerned Congress will just spend the money. However, there is another option. In the very near future, Senator ALLARD and I and several of our other colleagues will propose an amendment that will direct the remaining \$12 billion to be used for debt reduction instead of allowing it to be squandered on additional spending. We have given a lot of lipservice to being in favor of reducing the national debt. We have heard it in the House and the Senate. This will be a wonderful opportunity for everybody to vote to put \$12 billion of the on-budget surplus into debt reduction.

In addition, once the CBO releases its revised baseline this summer, we will come back again and propose another amendment that will allocate whatever additional fiscal year 2000 on-budget surplus dollars are achieved towards debt reduction. We know in July we will have new numbers so there will be more money. At that time, we will come back and say: Let us use that additional money to pay down the debt.

Ever since the Congressional Budget Office first projected we would have a budget surplus back in 1998, Congress and the administration have been falling all over themselves to spend our on-budget surplus dollars. Indeed, if we include the supplemental appropriations, fiscal year 2000 discretionary