and foremost because it very much demonstrates the bipartisanship, working together, not having roadblock after roadblock after roadblock placed in front of good ideas; working together. That serves real people, those seniors who are out there today.

Let me close and say the one other thing the leader mentioned, which is critically important—there can be all sorts of solutions proposed, whether for prescription drugs or to save Medicare long term. The one answer that was clear after a year of work on this bipartisan Medicare commission, one idea that repeatedly came forward from the experts all over the United States of America, and even people coming in from other countries, was that a one-size-fits-all system, dictated by Washington, DC, the beltway mentality, is the one thing that will be destructive to me delivering health care; whether it is BILL FRIST as a heart transplant surgeon or my father who practiced for 55 years, initially down in Mississippi and then back up in Tennessee. The one thing that will destroy quality is one-size-fits-all, which inevitably results in price controls, which destroy creativity, research, innovation, the hope for cures for Alzheimer's, for stroke, for heart disease.

One last component. There are things we can do now, now in the next 6 months, on prescription drugs. We don't have to wait forever. We don't have to wait for 8 years to have a program. The Gore proposal or Clinton proposal takes 8 years to phase in. We can act now and get prescription drugs to the people who need it most within 6 months, 8 months, or 9 months.

Mr. LOTT. I thank the Senator for his work. He is right. What we need is reform that provides results now, prescription drugs now for those who really need it. We don't need more roadblocks. We are going to work together to see if we can make that happen.

I thank him for yielding.

Now, I believe, Mr. President, I ask for the floor on my own time.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

GENE C. ''PETE'' O'BRIEN RETIRES

Mr. LOTT. Mr. President, Pete O'Brien, who has served the Senate community for 32 years, plans to retire. This loss will be felt by all offices of the Senate and the Sergeant at Arms as he completes his final day as Manager of Parking, I.D., and Fleet Operations on September 11, 2000.

Pete started his career with the U.S. Capitol Police in 1968 and worked his way up to Sergeant in the Patrol Division. During his training at the Federal Law Enforcement Training Center he was nicknamed ''100%'' after earning the first perfect score in the class on an examination.

In 1980 he moved to the Senate Sergeant at Arms office as Supervisor of Administrative Operations. In 1985 he became Manager of Senate Parking. The challenge of managing limited parking with ever increasing needs has been skillfully maintained during the years under his watch. His institutional knowledge of the Senate's history and operations will be surely missed in this great institution.

Both Pete and his wife Jeanie are native Washingtonians. Pete attended P.G. Community College and the University of Maryland where he studied Political Science. Pete and Jeanie recently moved to Springfield, Virginia, after 20 years in Clinton, Maryland. He plans to spend his retirement enjoying his hobbies of photography, downhill skiing and electronics. His elder daughter Kelly and her husband Colman Andrews have brought something new to Pete's life, grandson Connor Shawn Andrews, born in April. Pete is also looking forward to the upcoming marriage of his younger daughter Erin.

So on behalf of the Senate, I want to thank Pete for his dedicated, selfless service and wish him many years of happiness with the new joy of his life, Connor, and with all of his family.

INDEPENDENT COUNSEL ROBERT RAY'S INTENTION TO RELEASE HIS CONCLUSIONS IN THE WHITEWATER MATTER

Mr. LEVIN. Mr. President, I come to the floor today to express my shock at the recent statement of independent counsel Robert Ray in last week's New York Times that he will shortly be releasing findings and conclusions in the Whitewater matter. Only the special court has the authority to release the final report of an independent counsel or any portion of a final report, and the only authority the law gives an independent counsel is to prepare a final report and file it with the special court. Mr. Ray has no legal authority to unilaterally release results of his investigation, and if he does so, he is defying the law.

Section 594 of the independent counsel law lists the authority and duties of an independent counsel. And, although this law has expired with respect to the appointment of new independent counsels, it is still the applicable law with respect to already existing independent counsels like Mr. Ray. And here's what the law says with respect to reports by independent counsels.

(h)(1) An independent counsel shall—

(A) [file 6 month expense reports with the special court] and

(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

That section of the law then goes on to prescribe the process for disclosing information in the final report, and here's what it says:

(h)(2) The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

As anyone can see from the plain language of the statute, we placed the full responsibility for disclosure of the final report —or any portion of a final report—exclusively in the hands of the special court. We did this, in significant part, out of the concerns we had that individuals named in the report be given an opportunity, out of a sense of fairness, to provide their comments to the public at the time the report is released. That's why we gave the special court the authority to make ''any portion of the final report . . . available to any individual named in'' the report prior to any release to the public — so such individual could file comments or factual information for the court to consider in deciding whether to make such report or portion of the report public and if so, to append such comments or factual information to the report for distribution. Any public release of findings and conclusions would deny individuals named in the report the opportunity to comment on the report prior to release as expressly intended by Congress.

Mr. Ray's statement that he intends to release findings and conclusions of his investigation into the Whitewater matter when he sends his final report to the special court is contrary to the requirements of the law. Mr. Ray should reverse his stated course and comply with the law. I have written to Mr. Ray to urge him to withhold releasing findings and conclusions about the Whitewater matter until permitted to do so by the special court. I have also notified the Attorney General of my concerns and urged her, as the only one with supervisory authority over independent counsels, to take the appropriate action to keep Mr. Ray's conduct within the parameters of the independent counsel law. And finally, I have written to the special court to bring this to the court's attention and to urge the special court to enforce the law and their exclusive prerogative under the law to control any public release of the independent counsel's findings and conclusions.

I ask unanimous consent that the New York Times article of August 29, 2000, appear in the RECORD immediately following my remarks as well as copies of my letters to the Attorney General, the special court and Mr. Ray.

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

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, September 7, 2000.

Hon. DAVID B. SENTELLE,
United States Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, Special Division, Washington, DC.

DEAR JUDGE SENTELLE: The New York Times published an article on August 29, 2000, (copy enclosed) which reported that independent counsel Robert Ray is planning to release to the public the findings and conclusions of his investigation into the Whitewater matter at the same time he files the final report on the Whitewater matter with the special court. Such action would, in my opinion, be in violation of the independent counsel law, and I urge you and your colleagues on the court to take whatever action may be appropriate.

Only the special court has the authority to release the final report or any portion of a final report of an independent counsel, and the only authority the law gives an independent counsel is to prepare a final report and file it with the special court. Section 594(h)(2) of the law provides:

''The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.''

The law places the full responsibility for disclosure of the final report—or any portion of a final report—in the hands of the court.

I have enclosed a copy of the statement I delivered to the Senate on this matter as well as copies of the letters I sent to the Attorney General and to Mr. Ray.

I hope you will respond promptly to this matter, since Mr. Ray apparently plans to be releasing his findings and conclusions in the next few weeks. Thank you for your attention to my concerns.

Sincerely,

CARL LEVIN.

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, September 7, 2000.

ROBERT RAY, Esquire,
Office of Independent Counsel, Washington, DC.

DEAR MR. RAY: The New York Times published an article on August 29, 2000, (copy enclosed) which reported that you are planning ''to issue [the] findings and conclusions'' of your investigation into the Whitewater matter to the public at the same time you file your final report on that matter with the special court. If that is true, it would, in my opinion, violate the requirements of the independent counsel law. I urge you, therefore, to comply with the law and keep your findings and conclusions nonpublic until, as the law requires, the special court decides whether and, if so, when to make the final report or any portion thereof available to the public.

I write this letter to you for several reasons. First, as one of the senators involved in the oversight and reauthorization of the independent counsel law for these past 20 years I have a strong and longstanding interest in making sure that the law is followed. The requirement for a final report has been a controversial one, since federal prosecutors do not prepare such reports and keep the results of their investigations confidential, unless they proceed with indictments or informations. But the law is clear on an independent counsel's responsibility with respect to the final report. Only the special court has the authority to release the final report of an independent counsel or any portion of a final report, and the only authority the law gives an independent counsel is to prepare a final report and file it with the special court. Section 594 (h)(2) of the independent counsel law provides:

''The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.''

Second, one of our major concerns about making the report public was that individuals named in the report be given an opportunity, out of sense of fairness, to provide their comments to the public at the time the report is released. That's why we gave the special court the authority to make ''any portion of the final report . . . available to any individual named in'' the report prior to any release to the public so such individual could file comments or factual information for the court to consider in deciding whether to make such report or portion of the report public and if so, to append such comments or factual information to the report for distribution. Any public release of your findings and conclusions would deny individuals named in the report the opportunity to comment on the report prior to release as expressly intended by Congress.

As an independent counsel you have been given a tremendous amount of discretion and power. The appropriate exercise of the independent counsel law relies on your ability to exercise such discretion and power in a fair, just and lawful manner. I know of no one who worked on the independent counsel law these past 20 years who contemplated an independent counsel issuing the findings and conclusions of a final report before the special court had reviewed such report, had the opportunity to permit comment by persons named in such report, and released such report to the public on the court's order. I urge you to act in this matter in accordance with both the law and Congressional intent.

On a related matter, during the Senate's consideration of the 1994 reauthorization of the independent counsel law, the Senate adopted an amendment by Senator Robert Dole to limit the scope of the final report required of independent counsels. Senator Dole offered his amendment to remove any requirement that an independent counsel explain in the final report the reasons for not prosecuting any matter within his or her prosecutorial jurisdiction. While the provision not prosecuting any matter within her prosecutorial jurisdiction. While the provision requiring the final report was retained to provide an accounting of the work of the independent counsel, the amendment by Senator Dole was intended to prohibit the expression of opinions in the final report regarding the culpability of people not indicted.

The legislative history on this amendment by Senator Dole, which was enacted into law, is instructive. Senator William Cohen, who floor-managed the reauthorization bill with me, explained the Dole amendment as follows: (November 17, 1993, Congressional Record, page 29618):

''Both Senator Levin and I feel that Senator Dole has raised a valid point. We believe that that final report should be a simple declaration of the work of the independent counsel, obviously pertaining to those cases in which he or she has sought indictments but with respect to cases in which the independent counsel had determined that no such indictment should be brought, to preclude that independent counsel from expressing an opinion or conclusion as to the culpability of any of the individuals involved. * * * So the purpose of the amendment is quite clear, to restrict the nature of the report to the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability or those activities rise to a level of an indictable offense, in which case the independent counsel would be duty bound to seek an indictment.''

The Conference Report for the 1994 reauthorization summarized the purpose and scope of the amendment (Conference Report, may 19, 1994, HR 103–511, page 19):

''The power to damage reputations in the final report is significant, and the conferees want to make it clear that the final report requirement is not intended in any way to authorize independent counsels to make public findings or conclusions that violate normal standards of due process, privacy or simple fairness.''

As you work on the final report, I hope you will pay close attention to the change we made to the law in 1994 with respect to the content of the final report as a result of the Dole amendment.

I am also enclosing for your information copies of the letters I have sent to the special court and the Attorney General concerning the matters I have raised in this letter as well as a copy of the statement I made to the Senate.

Sincerely,

CARL LEVIN.

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, September 7, 2000.

Hon. JANET RENO,
Attorney General,
U.S. Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: The New York Times published an article on August 29, 2000 (copy enclosed) which reported that independent counsel Robert Ray is planning to release to the public the findings and conclusions of his investigations into the Whitewater matter at the same time he files the final report on the Whitewater matter with the special court. Such action would, in my opinion, be in violation of the independent counsel law, and I urge you to take the appropriate action.

Only the special court has the authority to release the final report or any portion of a

final report of an independent counsel, and the only authority the law gives an independent counsel is to prepare a final report and file it with the special court. Section 594(h)(2) of the law provides:

''The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.''

The law clearly places the full responsibility for disclosure of the final report—or any portion of a final report—in the hands of the court.

Moreover, one of our major concerns about making the report public was that individuals named in the report be given an opportunity, out of a sense of fairness, to provide their comments to the public at the time the report is released. That's why we gave the special court the authority to make ''any portion of the final report . . . available to any individual named in'' the report prior to any release to the public so such individual could file comments or factual information for the court to consider in deciding whether to make such report or portion of the report public and if so, to append such comments or factual information to the report for distribution. Any public release of Mr. Ray's findings and conclusions before release by the special court would deny individuals named in the report the opportunity to comment on the report prior to release as expressly intended by Congress.

The independent counsel law also clearly gives you as Attorney General, and you alone, the supervisory responsibility to ensure that the law is faithfully executed. The Supreme Court relied on this authority in upholding the constitutionality of the statute. In *Morrison* versus *Olson* the Court said:

''(B)ecause the independent counsel may be terminated for 'good cause,' the Executive, through the Attorney General, retains ample authority to assure that the counsel is competently performing his or her statutory responsibilities in a manner that comports with the provisions of the Act.'' (At 692)

Later or in the opinion the Court reiterated this view when it said:

''(T)he Act does give the Attorney General several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel. Most importantly, the Attorney General retains the power to remove the counsel for 'good cause,' a power that we have already concluded provides the Executive with substantial ability to ensure that the laws are 'faithfully executed' by an independent counsel.'' (At 696)

Mr. Ray's announced release to the public of his findings and conclusions in the Whitewater case before the special court has ordered such release defies the requirements of the independent counsel law and merits action on your part to stop it. Since Mr. Ray apparently plans to release his findings and conclusions in the next few weeks, I urge your immediate attention to this matter.

I have enclosed a copy of the letters on this matter that I sent to the special court and Mr. Ray as well as a copy of a statement I made to the Senate. Thank you for your attention to my concerns.

Sincerely,

CARL LEVIN.

[From the New York Times, Aug. 29, 2000]

COUNSEL REPORT ON WHITEWATER EXPECTED SOON

(By Neil A. Lewis)

WASHINGTON, AUG. 28.—Robert W. Ray, the Independent counsel, said he expected to issue a statement of his findings and conclusions about the Whitewater investigation a few weeks before New York voters go to the polls to choose between Hillary Rodham Clinton and Representative Rick A. Lazio, her Republican opponent for the United States Senate.

Mr. Ray, whose office has investigated President and Mrs. Clinton on a range of issues for more than four years, also said in an interview that he would announce his decision on whether he would seek an indictment of Mr. Clinton in connection with his affair with a White House intern shortly after the President left office. The prosecutor suggested that the announcement about the possible indictment of Mr. Clinton would come within weeks after a new president is inaugurated on Jan. 20. Mr. Ray has already issued two reports, one essentially clearing the Clintons in the collection of confidential F.B.I. files about Republicans and another critical of Mrs. Clinton's role in the dismissal of longtime employees in the White House travel office.

Setting out for the first time an explicit timetable on those two matters in an interview on Friday and in comments through a spokesman today, Mr. Ray also discussed some considerations about the timing. Any criticism of Mrs. Clinton from Mr. Ray in the final weeks of her campaign could turn into a political issue. But Howard Wolfson, Mrs. Clinton's campaign spokesman, said today in response to Mr. Ray's plans: ''New Yorkers have already made up their minds about this. They know there is nothing here.''

Mr. Ray refused to discuss what the Whitewater report might contain. While it has long been known there will be no recommendation of any criminal indictment, the statement is almost certain to discuss how his findings compare with Mrs. Clinton's assertions to investigators and to the public about her role as a lawyer in connection with several real estate dealings in Arkansas. ''It's my intention to issue those findings and conclusions prior to the election,'' he said. ''Right now I'm trying for mid-September.'' Mr. Ray said he would issue his Whitewater conclusions the moment they are ready and ''not a second later.'' He said it would be wrong to delay disclosing them. ''Even withholding them could have political repercussions,'' he said, ''and that could be viewed as being manipulative.'' Mr. Ray said he believed that issuing his statement a few weeks before the election would provide enough time for anyone to respond to it and for the public to fully absorb both his views and those of anyone who disputed his findings.

He said that the one situation that might change his plans would be if the statement was not ready until just a few days before the election. If that were the case, he said, he would consider withholding it. With regard to his decision about Mr. Clinton and the possibility of bringing an indictment after he leaves office, Mr. Ray said he had an obligation to conclude the matter as soon as possible. ''It's time this matter was brought to closure,'' he said, ''And it is coming to closure.'' He added: ''I know the country is weary of this. The country needs to get past this.'' Mr. Ray impaneled a new grand jury on July 11 to consider whether Mr. Clinton should be indicted in connection with his denials under oath about whether he had a sexual relationship with Monica Lewinsky, a onetime White House intern. He described the decision-making process as largely ''a deliberative one now, not an investigative one.'' Because the sole issue is whether to charge the president after he leaves office, Mr. Ray said he intended to take full advantage of the time until Mr. Clinton left office to make up his mind. He said his deliberations would require a few months. Mr. Ray also said there were other factors to consider but declined to elaborate.

One possible factor is whether Mr. Clinton is disbarred. A state judge in Arkansas is considering a recommendation from a special bar committee that Mr. Clinton be stripped of his law license because of his denials under oath of a relationship with Ms. Lewinsky. A trial on the matter is likely to be held this fall. Though Mr. Ray is an independent counsel, he is obliged to follow Justice Department guidelines that allow for prosecutors to show discretion and decline to prosecute a case if the subject has already paid a penalty—like disbarment or even suspension from the practice of law. The Whitewater report that Mr. Ray is expected to file with a special three-judge panel at the same time he issues his statement of findings and conclusions will probably be his last investigative report. He has already filed two reports with the panel, one in March on allegations that the White House, and particularly Mrs. Clinton, collected hundreds of confidential F.B.I. files, many of them of prominent Republicans, as part of a political intelligence-gathering scheme. Mr. Ray concluded that the improper acquisition was a bureaucratic foul-up involving midlevel White House officials and that Mrs. Clinton had no involvement, as she had asserted.

But in his second statement of findings and conclusions, issued in June, about whether Mrs. Clinton played a role in the firing of seven longtime White House travel office employees, Mr. Ray was far more critical of her sworn statements. He made a point of saying that despite Mrs. Clinton's strong denials, he concluded that she had played a substantial role in causing the employees to be dismissed. The Whitewater report may well follow that model as it is expected to explore what Mrs. Clinton did as a lawyer for various Arkansas clients, and contentions that she tried to conceal or minimize her role.

For example, one issue is a 1985 telephone call Mrs. Clinton made on behalf of a client, Madison Guaranty and Trust, to a senior Arkansas official who worked for her husband, then the governor. She telephoned Beverly Bassett, the state securities commissioner in Mr. Clinton's administration, to discuss a proposal for Madison to float preferred stock. Mrs. Clinton told investigators that she did not remember whom she spoke with at the agency. She also said she had only been trying to find out the appropriate official for an associate at her firm, Richard Massey, to contact and that she had not discussed the issue.

But the regulator recalled the conversation in detail when she testified before the Senate Whitewater committee. She said that Mrs. Clinton had spoken with her and discussed the substance of the proposal. And Mr. Massey testified he had already known whom to contact.