Mr. President, neither the 9/11 Commission nor the Senate

Intelligence Committee, nor anyone else that I am aware of, has said

the problem leading up to the attack of 9/11 was due to too much

intelligence. The problem, obviously, arose because we didn't have

enough intelligence. We could not gather enough information in a timely

way to put together all of the possibilities--some say connect the

dots--in order to predict that a particular kind of attack was going to

occur on that day.

We have had a lot of good, constructive suggestions from the 9/11

Commission, from the Senate Intelligence Committee, from the

administration, from the work of the Governmental Affairs Committee,

and from other commissions in trying to understand why we didn't have

enough intelligence and why we could not put all of this together. Many

of the recommendations of the Commission and the legislative solutions

in the proposed bill try to correct that problem of not having enough

good intelligence.

None of the problems identified suggested that we had too much

intelligence and the problem was that people's civil liberties were

somehow being jeopardized, or that their privacy rights were being

jeopardized. Nobody has ever said that was a problem.

Subsequent to 9/11, we passed the PATRIOT Act. It has been signed

into law and most law enforcement officials, the administration, and

others argue persuasively, I think, that it has done a lot to help them

win the war on terror by collecting additional intelligence. Some have

concerns about some of the provisions of the PATRIOT Act with respect

to civil liberties or privacy rights. But those are issues that have

come up subsequent to 9/11.

My point is that the problem before 9/11 was not having too much

intelligence and that jeopardized people's privacy or civil rights.

Therefore, it comes as a great surprise to me that there is such a huge

emphasis in the committee bill on privacy, civil rights, on having an

ombudsman to protect people's rights, on having such an emphasis within

the national intelligence directorate on these subjects, having a

special board that would look into it, with subpoena powers, outside

the intelligence community, and so on. It is my considered judgment,

having served on the committee for 8 years, and having heard testimony

from a great many people, including Richard Clark, by the way, who

testified that risk aversion was one of the key problems leading up to

9/11--it is my judgment that the overkill of all of these provisions in

the bill is a fatal flaw in this legislation, which must be corrected,

or else what we would have done is to rearrange the bureaucracy here,

putting a person in charge as the national intelligence director and

making some other changes but crippling his effort and the efforts of

the intelligence collection gatherers, analysts, and others in their

ability to protect us by gathering intelligence.

Risk aversion, which is a big problem today, will be a huge problem

in the future because, in addition to the people today who are looking

over the shoulders of the intelligence community, we will have a whole

array of new entities with great powers looking over their shoulder;

and all of the effort that we are going through to try to begin saying

that people should think outside the box, should be bold, innovative,

and imaginative, that we need more human intelligence, and that those

human intelligence agents are going to do things to gather more

intelligence--we should have people who are willing to think outside

the box. All of that is going to be significantly jeopardized because

of the risk aversion that will be blanketed over all of the community

with all of these different entities saying, wait a minute, we

understand you are trying to collect intelligence, but we have people's

civil rights and privacy rights and all the rest to be concerned about

as well.

Of course those are legitimate concerns. That is why we have entities

today that help to ensure that privacy and civil rights are not

jeopardized. It is enough. This bill creates so many new opportunities

for people who object to intelligence gathering and analysis in the way

we know it needs to be done that they are going to be able to ball up

forever any ability to get meaningful intelligence if we are not

careful about how we construct this bill.

Let me tell you a little bit about what I am talking about. Here is a

bit of background. Risk aversion--we understand what it means. It was

testified to by people such as Richard Clark and others before the

Intelligence Committee as the mindset which exists if you do anything

out of the ordinary, if you go against the grain, if you collect by

unorthodox measures, if you analyze intelligence in a way that might be

contrary to the superiors above you in the organization, or to what

somebody in Congress or somebody else wants to see, or if the actions

that you take have some degree of risk associated with them--either

political risk or legal risk, or certainly operational risk in terms of

casualties and the like--therefore, because of all of these things

there is an aversion to taking those risks.

Government employees who have a career, who have their retirement in

mind, and who want to continue to work with the agency want to be sure

they are able to continue their careers, do their jobs, and not,

because they perhaps work outside of the box, be penalized for doing

that.

Agent Rowling of the FBI talked about this in her inability to get

the FBI to act on a warrant request she

sought to look into Zacarias Moussaoui's computers. One of the reasons

they didn't act was out of a ``political correctness''--their term, not

mine--that concerned them about the view that it would look like they

were going after somebody on the basis of racial profiling, or some

kind of profiling, rather than because they were under suspicion of

committing a crime.

This is the kind of risk aversion that everybody agreed was part of

the problem with the intelligence gathering and analysis prior to

September 11. How do you make that situation worse? You do it by adding

new layers of people who are second-guessing these intelligence agents

and analysts. There are enough people second-guessing them already,

imposing the legal and political layer or filter of approval of the

actions of the people in the field. But what the bill does is to create

whole new layers.

First, it follows a recommendation of the 9/11 Commission to create

some kind of outside board, but goes far beyond the 9/11 Commission

recommendations in empowering this board with subpoena power, literally

the authority of this outside board, that is not within the

intelligence community at all, a citizen board, to haul in any agent

anywhere in the world and grill him about what he did or did not do or

what he concluded or did not conclude, with no guidance whatsoever.

This is a recipe for disaster.

In addition, as if that were not enough, of the six assistant

directors of the national intelligence directorate, fully a third of

them, two out of the six, have nothing to do with intelligence

collection or analysis; they are the privacy and civil rights division.

First, one wonders why those are not the same thing and, second, why

you would have to have two out of the six directorates specifically

charged with this responsibility. We already have an inspector general

whose responsibilities include any situation in which an agent or

agency went beyond legal authority or beyond other appropriate

authority in the conduct of his or her business. But in addition to the

inspector general, in addition to the officers who currently exist in

each of the agencies of the intelligence community--virtually all of

them--to deal with privacy and civil rights concerns--these already

exist--we create two new directorates with this legislation: this

outside civilian board and an ombudsman.

In looking through the ombudsman's responsibilities, for example,

pity the poor intelligence agent who raises a question that causes this

ombudsman to have to question him.

This is not even to get into the congressional oversight which we

want to enhance. Our working group, which is developing the

improvements to the Intelligence Committee operation, will be soon, I

think, be making a recommendation to the body, either in conjunction

with the underlying bill or as an amendment to it, that will also fold

in enhanced congressional oversight.

We want enhanced congressional oversight, but it is a double-edged

sword because it has been abused in the past and can be abused in the

future.

When Members have not intelligence as their first priority but

questioning somebody within the intelligence community, they can be

pretty hard on the intelligence community. We can go all the way to the

Church Commission in 1976 to see what kind of damage that can do. So we

need to be careful about this congressional oversight, but it is going

to be enhanced. We are going to improve our ability to oversee the

intelligence community.

In addition to the offices that exist today, and in addition to the

inspector general, and in addition to the enhanced congressional

oversight, we are creating two more directorates, an outside board, and

an ombudsman, all of whom have essentially the same general

responsibility of questioning whether the intelligence agents,

agencies, analysts, and others are doing their job properly. Then we

will ask ourselves why we could not get anybody to think outside the

box, to be forward leaning, to try to be aggressive in collecting

intelligence, why everybody was meekly following a very single straight

line.

The fact that we are creating a national intelligence director

creates a bit of a problem in this regard in the first place because

instead of having a wider array of entities involved, each with their

own points of view, sort of the devil's advocate concept recommended by

many, including the 9/11 Commission, to get out of a single-channel

orientation group-think, we are making the problem worse, in my view,

by creating this single national intelligence director.

If you want a career in the agency, you better not run afoul of what

the director wants and what his views are. That is the reality of

bureaucracy, and it exists in every agency of the Government, not just

the intelligence community. But in the intelligence community, it is

particularly important because we want people who are willing to

question, to go against the grain, to disagree with their boss, to take

a risk.

If we look back at President Clinton's directives to the intelligence

community, he tried to be forward leaning, especially with regard to

al-Qaida and Osama bin Laden. To paraphrase, in effect what he said is

we have to do everything we can to try to get these guys. Repeatedly,

efforts were made to bring to his attention operations that would

either improve our intelligence or operationally deal with al-Qaida and

Osama bin Laden. They were shot down by the Pentagon, by the Secretary

of State, by the National Security Adviser, by the lawyers, by the

intelligence community itself, the Director of the CIA. Every time we

tried to do something, almost, somebody said this is too risky; we

cannot do it. That was why the 9/11 Commission, the Senate Intelligence

Committee, and many other observers have said we have to get out of

this stultifying risk-aversion environment where people are afraid that

somebody is looking over their shoulder and is going to jump on them if

they do anything that is the least bit out of the ordinary or risky. We

have to have the out of the ordinary and risky if we are ever going to

defeat this very unconventional enemy.

What does the bill do? It does not try to solve the problem; it makes

it far worse. The purpose of our amendment is to say we will follow the

9/11 Commission recommendation and set up this outside commission, but

for Heaven's sake, let's not give it the kind of subpoena power--

Congress already has that, the inspector general already has the

ability to look into all of these things. We do not need an outside

board of five, or whatever, people accountable to nobody with the

ability to totally disrupt what the intelligence community is doing.

It is fine to report to Congress, to analyze what they think the

situation is and let us know what their concerns are. But that is far

different from operationally getting right down into the bowels of the

organization with hands that can extract anything, classified or not,

subpoena anybody, whether in Afghanistan or Langley or wherever, and

publicly question what is being done.

That is the first part of the amendment.

The second part of the amendment is to say we do not need all these

new entities given the fact we already have existing civil rights and

privacy controls. I do not want to be misunderstood. It would be very

easy to characterize or mischaracterize what we are trying to do by

saying these are people who do not care anything about civil rights;

these are people who want the agency to run roughshod over American

civil rights, and people can get pretty revved up about that very

quickly.

Nothing could be further from the truth. The folks who are

understandably going to put a high priority on protecting civil rights

need to balance their legitimate concerns about civil rights with a

concern about the lives of American citizens, to balance the

legislation that is supposed to help fix the problem in such a way that

we do not put so many constraints on our intelligence community that it

can't do its job.

One of the biggest problems identified, this problem of risk

aversion, will be horribly exacerbated if we simply blindly follow the

recommendation of those who brought this bill to the floor--and I

understand there were a lot of compromises made in order to get

unanimous approval out of the committee, but sometimes getting

unanimous approval is the wrong goal.

Sometimes you need to make tough choices and you need to reject

proposals that are offered by people who then agree to vote for the

overall bill if they get their amendment in the bill. That is what

happened with this bill, and there are too many little amendments that

got in which, when added up, are going to create a huge problem with

our intelligence community with respect to this issue of risk aversion.

I cannot stress strongly enough, and this will be my final point, our

goal ought to be to improve our intelligence collection, to improve

human intelligence, to improve analysis, to foster a sense within this

community that they do not have to just follow the narrow channel of

group-think that was criticized so strongly by the 9/11 Commission,

that they do not have to feel risk averse, that they can take a chance

sometimes because we need people to be imaginative and innovative and

think about possibilities that before 9/11 we could not have even

dreamed of.

I know now some people like to go back and ask: Why did you not think

up the fact that people could fly planes into these buildings? Well,

one reason was because as soon as one starts thinking about those kinds

of things, somebody is going to come down on them like a ton of bricks

and say: Get back to your job and stay within the channel here. We do

not have time for that kind of fantasizing. You are living in a fantasy

world.

We have to have people who are willing to ask these tough questions

and think in ways that they are not going to get slapped down when they

do. The sure recipe, the prescription for that occurring is by piling

on layer upon layer of outside groups, ombudsmen, civil rights, privacy

divisions, all of these groups that are duplicative of what we already

have, to call into question what our agents and analysts are doing.

There is simply no need to have so many people performing the same

task, which, in any event, does not add to intelligence, but, by its

very nature, is designed to restrict intelligence activity. Surely, we

can protect civil liberties and privacy without setting up a situation

in which it is going to be incredibly difficult for the intelligence

community to effectively perform its mission.

After all, our chief objective is to make it easier to predict and

prevent a terrorist attack, not more difficult.

Excessive oversight will result in our intelligence officers being

more cautious than they should be, and deter them from taking the risks

that may be necessary to keep our country safe.

Indeed, an aversion to taking risks, even when they should be taken,

already plagues our intelligence community. Time and time again, this

has contributed to intelligence failures, most recently, of course, 9/

11 and the intelligence community's claims about Saddam's weapons of

mass destruction.

There are numerous reasons for this culture of risk aversion--unclear

authorities, legal restrictions, and excessive oversight are among

them.

The deterioration of our intelligence community's clandestine service

offers a good example.

According to the 9/11 Commission's report, James Pavitt, the head of

the CIA's Directorate of Operations, recalled that covert action had

gotten the clandestine service into trouble in the past, and he had no

desire to see it happen again.

The ``trouble'' he referred to was at least partly the result of the

1973 Church Committee hearings in Congress. Added to that were the

restrictive guidelines promulgated by then-CIA Director John Deutch in

1995, which severely limited the ability of CIA case officers to meet

with and recruit foreign nationals who may have been involved in

dubious activities or have blood on their hands.

The end result was out intelligence community's inability to

penetrate al-Qaida's command structure. Before 9/11, we had not one

source inside that command structure. Unclear authorities, excessive

oversight, and burdensome restrictions prevented our people on the

ground from being effective.

I recognize that privacy and civil liberties are substantively

entirely different matters. However, the end result of unnecessary

bureaucracy, restrictions, and excessive oversight will be the same. We

will cultivate a culture within the intelligence community that makes

it less likely that people will be willing to do the jobs we are asking

them to do, and more likely that they will want to ``play it safe.''

My amendment would very simply delete sections 126 and 127, which

require officers for privacy and civil liberties with the National

Intelligence Authority; it would strike section 212, requiring privacy

and civil liberties officers with a long list of Executive Branch

departments and agencies; and it would modify the Privacy and Civil

Liberties Oversight Board established by section 211.

The National Intelligence Authority does not need three individuals

assigned to the same task. The IG of the National Intelligence

Authority will be in place to ensure privacy and civil liberties

receive adequate attention and oversight.

Similarly, it is redundant to require privacy and civil liberties

officers within almost every national-security related department and

agency.

My amendment would retain the Privacy and Civil Liberties Oversight

Board, as the 9/11 Commission recommended. However, it would limit

Board's ability to interfere in the activities of relevant departments

and agencies.

I hope that Members will support this amendment. It follows the 9/11

Commission's recommendations with respect to privacy and civil

liberties, and ensures adequate oversight and protections, but does so

without hamstringing the community.

I urge my colleagues when we debate this amendment further tomorrow

to please read the bill, look at the relevant portions of the 9/11

Commission recommendations, look at the testimony of those who have

raised this kind of question and ask whether the bill as presented is

not a little bit out of balance--I contend a great deal out of balance.

I do not cast any aspersions on the people who worked so hard to

bring this bill to the Senate floor. There are not enough compliments

for the Senator from Maine and the Senator from Connecticut for the

hard work they have done and all of the others who have worked so hard

on it. This is not in any way meant as personal criticism, but I fear

if we do not very carefully analyze this and try to correct it--and

remember, that was part of what this was all about: let's get the bill

to the floor; we can always make corrections here. This is the time to

do it. We have not written a bill on the floor for a long time, but

this is too important not to take the time to do right.

I urge my colleagues, let us not make the mistake of rushing forward

with this, putting a rubberstamp on the committee's bill because we

have to do something before we leave on October 8. We will spend years

ruing the day we took this kind of action if we are not careful about

what we do.