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MEMORANDUM FOR THE RECORD

SUBJECT: Charter Legislation Hearings

1. The Senate Select Committee on Intelligence (SSCI) today held the first of two days of hearings on S. 2525, the intelligence charter legislation, concerning relationships between the news media and intelligence agencies. News media witnesses were: Daniel Schorr (columnist and free-lance correspondent), Jack Nelson (Los Angeles Times), and Nicholas Daniloff (United Press International Correspondent). SSCI members present for all or part of the hearing were Senators Birch Bayh and Walter Huddleston. [redacted] Assistant General Counsel, accompanied the undersigned as an observer.

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2. All three of the witnesses endorsed S. 2525 insofar as it attempted to come to grips with the alleged problem of media-intelligence agency relationships. The witnesses concurred in endorsing a statutory prohibition on use of journalists for cover purposes, and Mr. Schorr urged that such a restriction be extended to cover all persons employed by U.S. media organizations. Mr. Schorr, while endorsing the need for legislation to make clear to the U.S. public--as opposed to other countries--that the media is free of manipulation by U.S. intelligence agencies, expressed firm opposition to any law that could be construed to prevent or hinder access to intelligence agencies by the media for "information-gathering purposes." To guard against news media use of information provided by intelligence agencies, Mr. Schorr urged media "self-discipline" rather than legislation. Generally, Mr. Schorr expressed concern that, in restricting relationships between the media and intelligence agencies, the legislation could improperly infringe on the media's First Amendment rights. On the issue of restricting intelligence agencies' access to or "use" of foreign media, Mr. Schorr expressed skepticism that a U.S. law should or could address the matter.

3. Mr. Nelson, as did Mr. Schorr, argued against any legislation that would have the effect of limiting purely voluntary exchanges of information between the media and intelligence agencies; he limited his endorsement of restrictive legislation to the use of the media for cover and to paid relationships. Mr. Daniloff limited his endorsement of "permissible" media-intelligence agency relationships to "public information exchange[s]" and "extraordinary service" (i.e., use of the media as "intermediary ... in times of crisis"). The witnesses attempted to draw a distinction between exchanges of "news" questions--which would be permissible--and "intelligence" questions--which are improper; the distinction did not become clear, however.

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4. The matter of Government efforts to have the media refrain from publicizing certain sensitive information--the "Glomar Explorer" case was mentioned--was addressed. Mr. Nelson said it was up to the Government to prevent disclosures of its secrets and that the media should be free to publish whatever it desired. Mr. Schorr, on the other hand, indicated the question was not so simple, and that such decisions should be addressed on an ad hoc basis rather than by general statutory or regulatory edict.

5. Senator Huddleston seemed to agree with Mr. Schorr on the point of ad hoc determinations, rather than a law, as to whether the Government should be able to keep the media from publicizing particular sensitive information. Without expressly indicating his views on the matter of a media "code" to "regulate" relationships with intelligence agencies, Senator Huddleston questioned the witnesses on this point. Similarly, the Senator probed the witnesses on the matter of CIA briefings of journalists traveling abroad to look for certain information.

6. Senator Bayh questioned the witnesses on the matter of defining with some precision the range of "permissible" exchanges of information between the media and intelligence agencies. The Senator also expressed an interest, via questions to the witnesses, in the ability of the U.S. to "compete" with "un-free" foreign media if the U.S. Government were prohibited from "using" foreign journalists. Finally, Senator Bayh queried the witnesses on how to resolve the "dilemma" of being able to deal with the news media and the oversight committee's responsibility to keep information secret. In response, Mr. Schorr said the SSCI should provide "retrospective" reports to the public; Mr. Nelson opined that the best the SSCI can do is to release as much information as possible; and Mr. Daniloff said the SSCI had released much--perhaps too much--information already and said he did not know why the Committee should feel under fire to do even more.

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Chief, Legislation Staff
Office of Legislative Counsel

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