stronger public interest in protecting the mediation process, and the impartiality and acceptability of our professional staff.

I might add that the National Labor Relations Board and the courts agree with us as to which is the stronger public interest in these situations. The NLRB has, in a number of cases, had occasion to consider whether or not to try to enforce a subpena against a Federal mediator, and invariably they quash those subpenas and do not insist that they testify, and this has also been our record in the rather smaller number of cases in which mediators have been subpenaed in either court proceedings or in some States in arbitration proceedings.

Mr. GRIFFIN. In the eight cases you referred to, none was required to testify?

Mr. HERRICK. That is correct, sir.

Mr. MONAGAN. Excuse me, was that in the courts or in the NLRB?

Mr. HERRICK. I think four of them were NLRB cases, three of them were court cases, and one was an arbitration proceeding in a State where the arbitrator had power to subpena.

I might say that in one of the cases the mediator had testified some years ago before a joint committee of the Congress about a transaction which he was later asked to testify about in a court proceeding and we have some reason to think that we might not have been successful in that case.

Unfortunately, the mediator was very ill at the time of the court proceeding, and was in the hospital on the day of the hearing, and died within several weeks after that, so that it was never tested. In all of the other cases the subpenas have been quashed.

Mr. GRIFFIN. What do they use in their reasoning? There is no statute to point to, is there, to give them——

Mr. HERRICK. No, sir; there is not. We have our own regulations which I will refer to, which prohibit mediators from testifying concerning information which they have acquired in the performance of their official duties.

We rely primarily upon the public policy which we feel justifies our holding this kind of information confidential.

This classification, of course, has been imposed under the Administrative Procedure Act, and we feel that we have met the standard of good cause shown because of the peculiar nature of the work that the Federal Mediation Services does.

This overriding interest has long been recognized by the National Labor Relations Board—the agency chiefly responsible for adjudicating disputes that arise between employers and the representatives of their employees. The Board agrees with our appraisal of these conflicting policies. It does not compel testimony of mediators or production of their records. Its reasons were stated almost 20 years ago in *Tomlinson of High Point*, 74 NLRB 681, 685 (1947):

> However useful the testimony of a conciliator might be * * * to execute successfully their function of assisting in the settlement of labor disputes, the conciliators must maintain a reputation for impartiality, and the parties to conciliation conferences must feel free to talk without any fear that the conciliator may subsequently make disclosures as a witness in some other proceeding, to the possible disadvantage of a party to the conference * * *. The inevitable result would be that the usefulness of the Conciliation Service in the settlement of future disputes would be seriously impaired, if not destroyed. The resultant injury to the public interest would clearly outweigh the benefit to be derived