We do not feel that the mediator-party privilege stands on the same legal or historical foundation as those of the doctor-patient or attorney-client relationships.The art of mediation, as practiced by the Service, is relatively new. It is a product of our industrial society. But within our limited field of operations, we think a mediator-party privilege is as important as the ancient and honorable privileges extended by common law to the doctor, the lawyer, or the clergyman. Unfortunately, we do not believe that the statement of legislative intent in Senate Report 1219 is sufficiently clear to protect this new privilege any more than it would protect a newspaper reporter-source privilege, which is also a product of relatively modern times.

In order to clarify the status of information obtained by mediators in the performance of their duties, we have proposed, in our letter of March 23, 1965, that exception (4) be changed to read as follows:

Trade secrets and other information obtained from the public and customarily privileged or confidential, or *information acquired during mediation or conciliation of labor disputes.* (Italic indicated new material.)

We would like to see the bill make this explicit so that nothing will be left to interpretation and the need to consult the legislative history.

Nevertheless, we also recognize that the committee may have reasons for not wishing to change the language of the proposed bill. If the committee decides to report the bill with exception (4) in its present form: we ask it to give the most serious consideration to insertion of appropriate language in the committee report which will make it abundantly clear that the present exception is intended to be broad enough to give Mediation Service files and records the protection necessary to enable us to fulfill the congressional mandate that we provide full and adequate governmental facilities for conciliation and mediation in collective bargaining disputes. Accordingly, we have suggested that the following language be incorporated in the legislative history at an appropriate place:

The exception would also include information given to Federal mediators in the regular performance of their duties in mediating and concilating labor disputes.

In conclusion, let me thank you again for the privilege of presenting the views of the Federal Mediation and Conciliation Service on this important piece of legislation. Now, if there are any questions, Mr. Seldin and I will be happy to answer them to the best of our ability.

Mr. MONAGAN. Thank you very much, Mr. Herrick.

It seems to me that we have three areas that we are potentially dealing with here. First of all, we have the area that exists while a dispute is actively going on, and it would seem to me that there would not be much question about the fact that communications of the sort that you mentioned should be kept protected at that time.

Now then, you move into another area; the area, as you say—the first would be negotiation, the second would be litigation or arbitration; in other words, a formal proceding that would be subsequent to negotiation but immediately connected with it.

It is your position, I take it, that there is or should be a privilege comparable to the lawyer-client or husband-wife or the other accepted privileges; is that so?