Mr. HERRICK. Yes, sir. The problem is that our agency is one which, in essence, must be accepted by the parties, by both parties. In other words, we cannot and never have tried to compel parties who do not want to use our services to accept them, although there is some language in the statute that suggests that if necessary this might be done by obtaining a court order. There is "shall meet with the Mediation Service" language in the statute—nevertheless, this has never been used; never been tested; and, as a practical matter, negotiation taking place under those circumstances would probably be pretty futile.

We do feel that even after a contract is settled and, possibly, there is some subsequent litigation before the NLRB, no mediator could possibly testify in a proceeding of that sort without completely destroying his acceptability to the person whose interests were damaged by his testimony.

Mr. MONAGAN. Well, all right. That is the second situation where there is still some activity going on.

What about the case where final settlement which has been made through negotiation or through litigation, and the file has been closed insofar as its activity is concerned? What is your position on communications of that sort after that point?

Mr. HERRICK. Well, two things, Mr. Chairman: First, a bargaining relationship between two parties is really never closed unless the union is decertified or the employer goes out of business. In other words, even after a contract is completed there is a continuing relationship during the life of the contract, through the grievance procedure, and so on. So that the contract eventually comes up again, and the chances are that the same mediator will be back if a dispute seems imminent; again trying to produce a settlement 1 year or 2 years or 3 years later.

So that, if the frequently very candid observations and comments which he has put into the file as part of the process that I have described earlier were to be released to the parties 2 years later, we still feel that this would jeopardize the mediators acceptability.

Mr. MONAGAN. You feel that it is indefinite in time, in other words?

Mr. HERRICK. They all keep going on and on, except where the company goes out of business or a particular plant is closed or a union is decertified.

It seems only yesterday that——

Mr. SELDIN. May I add a point on that? One of the activities we engage in is what we call our preventive mediation program. Frequently in a situation where relations are pretty bad between parties both subsequent to contract negotiations, the same mediator usually will endeavor to work with the parties to see if he can somehow create a better climate. Now, this would be somewhat poisoned if some of his records indicating his real opinion of the parties at the time of negotiations were public.

Mr. MONAGAN. All right.

What about the scope of the privilege? In this classification under section 1401.3 on page 8. This says—

> All files, reports, letters, memorandums, minutes, documents, or other papers are hereby declared to be confidential.

In other words, that is a very broad, it is practically a blanket classification. Are there any limitations on that?