

Mr. HERRICK. If a murder were committed at the bargaining table, for example, a mediator might be a very important witness. Our regulations do permit the Director of the Service to give mediators permission to testify, and I think that we would, as we always do, approach these things on a case-to-case basis. But I cannot—

Mr. MONAGAN. Well, the difficulty is that the application of the standard rests with the executive agency, and I think what we are trying to do is to consider some abstract standards that might apply fairly generally without reference to a more or less objective judgment by the agency that was involved.

Mr. HERRICK. We are conscious of the problem.

I think the example of the murder at the bargaining table is one that I hope will never happen. Mayhem is usually more oral than that at the bargaining table.

I might say, of course, that our judgment—it is not strictly accurate to say that our judgment is not subject to any kind of review. In any situation in which there is a subpoena, let us say, before the National Labor Relations Board, there can be an effort made to enforce the subpoena before a district judge, and, I suppose, this would be appealable to the court of appeals.

Mr. MONAGAN. I was thinging more of making records available to a committee, for example, rather than through subpoena.

Mr. HERRICK. I cannot say; as far as I know we have never been asked for records by any congressional committee, except in that one instance that I gave which was many years ago. I do not know, I am just not familiar with any other illustrations of that.

Mr. MONAGAN. I want to compliment you on your statement and particularly on making a suggestion both as to language by which the bill might be amended, and also in the alternative language that might be used in the report.

I am not sure that your recommendations will be adopted, but it is a good practice and one that I want to compliment you on.

Mr. GRIFFIN. Well, I want to join in that statement of commendation. I think that it is an excellent statement, Mr. Herrick.

So far as I am concerned, I think the Service does an excellent job, and has high standing. It would seem to me that a murder at the collective-bargaining table would not be the type of confidential communication that would normally be considered in a lawyer-client relationship. I think there is that type of relationship that the mediator has with the parties to collective bargaining. Even though they might both be present, they are dealing jointly on a confidential basis within the room where the bargaining is taking place. I do not think that either party would expect that what they are saying within the confines of that room would be made public. If it were going to be made public, they might conduct themselves in a much different way and say different things.

Mr. HERRICK. I think that is correct. I think, of course, one analogy might be discussion of settlement efforts in an ordinary piece of litigation. Yet the fact that there is a give and take and an exploration of each other's minds is not something that would come into a subsequent litigation based on positions that are much harder and much further apart.