

Mr. GRIFFIN. I feel confident that some of the committee, if it does enact this legislation, would certainly implement your suggestion in some way to make sure that that is done.

Mr. HERRICK. Thank you very much.

Mr. MONAGAN. Mr. Kass.

Mr. KASS. Mr. Chairman, I have no questions, but I would like to insert the letter dated March 23, 1965.

Mr. MONAGAN. If there is no objection, it will be inserted.
(The document referred to follows:)

FEDERAL MEDIATION AND CONCILIATION SERVICE,
Washington, D.C., March 23, 1965.

Mr. BENNY L. KASS,

Counsel, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. KASS: In accordance with our conversation of March 15, the Federal Mediation and Conciliation Service has considered the problems presented by the proposed legislation which is now under consideration by Congressman Moss' subcommittee of the Government Operations Committee of the House of Representatives.

We have carefully considered exception (4) in the proposed legislation which would except from the public inspection requirement "trade secrets and other information obtained from the public and customarily privileged or confidential." In our view, this exception will not adequately protect the confidentiality of information obtained by Federal mediators during their performance of official duties.

Exception (4) is taken verbatim from S. 1666, which was passed by the Senate at its last session. The exception is discussed in some detail at page 13 of Senate Report No. 1219, July 22, 1964. According to the report, the exception "is necessary to protect the confidentiality of information which is obtained by the Government *through questionnaires or other inquiries*, but which would customarily not be released to the public by the person from whom it was obtained. This would include business sales statistics, inventories, customer lists, and manufacturing processes. It would also include *information customarily subject to the doctor-patient, lawyer-client, and other such privileges*. To the extent that the information is not covered by this or other exceptions, it would be available to public inspection." [Italics added.]

Information received by mediators is never obtained by questionnaires, such as those used by the Bureau of Labor Statistics in collection of Walsh-Healey data. Such information, indeed, is seldom obtained by "inquiry." It usually comes to the mediator in the form of proposals, counterproposals and other discussions by the parties before or with the mediator, either together or in separate sessions with one or another of the parties. Furthermore, the "privileges" referred to in the report are well established, and their origins precede by many years the development of labor mediation as we now know it. For these reasons, we do not believe that the proposed exception, even read in the light of S.R. 1219, is broad enough to protect this agency's confidential case reports.

To protect the confidentiality of these reports, we propose the following change in the language of exception (4):

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 indicates new material.]

In the alternative, we would add to the legislative history of the exception, in an appropriate place, the following sentence:

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

Mr. Abner and I will be available to discuss these proposals at your convenience.
Sincerely yours,

H. T. HERRICK, General Counsel.

Mr. MONAGAN. Thank you very much.