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Mr. Flanigan's Silence . . .

With respect to the Senate Judiciary Committee's desire to hear the testimony of White House aide Peter Flanigan in the I.T.T. inquiry, the Administration seems determined to elevate a small embarrassment into an issue of principle. In refusing to permit Mr. Flanigan to testify, it has formally invoked the doctrine of "executive privilege."

The concept of executive privilege, which protects the President's subordinates from questioning by a committee of Congress, was developed in a nearlier age when the circumstances of Government were far different. As recently as the early nineteen-thirties, a President's office work could be taken care of by an Appointments Secretary, a Correspondence Secretary and a few lesser functionaries. Naturally, the Chief Executive in those days could not permit any Congressional interrogation of his immediate associates.

With the growth of the institutionalized Presidency, however, there are now assistants to the President each of whom has layers of assistants and deputy assistants beneath him. Some of these lesser officials hardly see the President from one end of the year to the next. Yet the protective doctrine of executive privilege blankets them all. In this complex hierarchy, Mr. Flanigan stands near the top; yet even in his case, it is highly unlikely that President Nixon is always aware of the business which Mr. Flanigan transacts in his name.

It is impossible to draw a line and assert that executive privilege should protect some Presidential aides and not others. There may well be instances in which a President would be justified in refusing a Congressional committee access to any of his subordinates. Each case has to be judged on its merits and in its own context. That is exactly what the Administration refuses to do in the case of Mr. Flanigan. Yet as long as he avoids an appearance, critics are sure to draw unfavorable inferences from his silence.

. . . Mrs. Beard's Health

As Alice in Wonderland might say, the case of Mrs. Dita Beard, the I.T.T. lobbyist, gets curiouser and curiouser.

When Mrs. Beard and her much-disputed memorandum first broke into the news, she was discovered recuperating in a Denver hospital from what was said to be a heart condition. Her personal physician testified to the Senate Judiciary Committee that her condition was so severe she was sometimes irrational, a diagnosis which puzzled many heart specialists.

After elaborate arrangements were made, a group of Senators flew to Denver to take Mrs. Beard's testimony at her bedside. Before the testimony had proceeded very far, she collapsed. Her Denver physician said she could not testify for at least six months.

Yet a few days later, the patient was well enough to tape an extended television interview. She subsequently signed herself out of the hospital.

In an effort to determine if or when it might be able to take further testimony from Mrs. Beard, the Senate Judiciary Committee commissioned two experienced cardiologists to examine her. These doctors have now reached the astonishing conclusion that they can find no objective evidence of heart disease.

The absence of positive evidence does not rule out the possibility that Mrs. Beard does suffer from some variety of heart ailment. It is likewise inconclusive—though certainly an odd coincidence—that both her personal physician in Virginia and her doctor in Denver are under Federal investigation for alleged Medicare frauds. Certainly the need for Mrs. Beard's testimony is not so compelling that she should run any risk to her health. There are other witnesses who could probably cast more light on the substantive issues in the I.T.T.-Justice Department inquiry.

Yet there are serious conflicts between the testimony of Mrs. Beard and that of William Merriam, her nominal superior in I.T.T.'s Washington office, which have to be cleared up. Her unusual medical history adds a bizarre dimension to an already complicated story.