THE WHITE HOUSE

WASHINGTON

September 26, 1973

Dear Mr. Connolly:

Thank you for your letter of September 18, 1973.

I have talked with Mr. Buzhardt concerning your request for certain files and documents. As I previously stated to you on the telephone, he advised me that these documents were all official White House files and could not be removed without the specific permission of the office of the White House Counsel. As I also further stated, Mr. Buzhardt requested me to advise you that application for any such files should be made directly to him. Mr. Buzhardt further informed me that materials relating to ITT obtained from a prior search of the White House files have already been turned over to the Special Prosecutor.

With regard to Mr. Flanigan's personal appointment and telephone logs, your request covered all such materials beginning with his appointment to the White House staff on April 15, 1969 through 1972. Thus, your request necessarily involves the introduction of every person with whom Mr. Flanigan met or talked during that time into this investigation. I stated that familiar Fourth Amendment principles would seem to bar such a sweeping request without some showing by you that the material furnished would be in some manner relevant to a possible criminal case. With all deference, the recent cases you cite, United States v. Dionisio, 410 U.S. 1 (1973) and United States v. Mara, 410 U.S. 19 (1973) seem inapposite. They involve somewhat novel questions of voice exemplars and handwriting samples, and certainly would not serve as authority for the type of sweeping request which you have made. Nor in my judgment does the statement of evidence in your letter support a request for a record of every appointment or telephone call of Mr. Flanigan during the past four years.

The principles which govern the situation before us were stated by Justice Holmes about 40 years ago in the Federal Trade Commission v. American Tobacco Company, 264 U.S. 298 (1923). He there said in pertinent part:

> "Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loathe to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire . . . and to direct fishing expeditions into private papers on the possibility they may disclose evidence of crime…. It is contrary to the first principles of justice to allow a search through all the respondent's papers relevant or irrelevant in the hope that something will turn up….

> ….A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded, must be produced. Hale v. Hinkel, 201 U.S. 43, 77….
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> ….For all that appears, the [respondents] would have been willing to produce such papers, as they conceived to be relevant to the matter at hand…. If their judgment upon that matter was not final, at least some evidence must be offered to show that it was wrong. No such evidence is shown….
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> ….The investigation and complaints seem to have been only on hearsay or suspicion -- but, even if they were adduced by substantial evidence under oath, the rudimentary principles of justice that we have laid down would apply. We cannot attribute to Congress an intent to defy the Fourth Amendment, or even to come so near to doing so as to raise a serious question of constitutional law…. (264 U.S. 298 at 305-307)"

You have indicated that you are interested in Mr. Flanigan's involvement in the following ITT matters: (1) the antitrust proceedings against ITT: (2) the securities proceedings concerning ITT; (3) foreign economic relations of the U.S. involving ITT. From our telephone conversation I understand that this latter phrase refers to the involvement of ITT in Chile.

With regard to items (2) and (3) Mr. Flanigan recalls no meetings or telephone calls with other Government officials or officers or representatives of ITT on these subjects nor do his records reflect any such calls or meetings. With regard to the settlement of the ITT anti-trust cases, Mr. Flanigan recalls only that involvement to which he testified under oath before the Senate Judiciary Committee supplemented by his answers to written interrogatories propounded by the Committee. I attach a copy of his testimony, the interrogatories and his answers for your reference.

I have also attached a list of all additional meetings or telephone calls involving officers or representatives of ITT which we have been able to find in Mr. Flanigan's records. In addition, we have included in the list any entries in these logs involving other persons where any reference to ITT appears. We have unfortunately been unable to find Mr. Flanigan's telephone logs for the period January to September, 1970 but are continuing the search for them. The attached list does reflect a review of his appointment log during that period.

As the testimony during the confirmation hearings on Attorney General Kleindienst indicates, there is no basis for your conclusion that "Mr. Flanigan was interested in the subject matter of ITT proceedings in connection with his business liaison activities." Mr. Flanigan was simply requested to procure a financial analysis of certain divestiture consequences by Assistant Attorney General McLaren.

Mr. Flanigan has every desire to cooperate with your inquiry. This fact is amply evidenced by his plans to meet with you on October 3. However, as is bound to happen in

situations of this kind, the investigations of the Special Prosecutor have given rise to a spate of reports. One of these reports is that plans are under consideration by the Special Prosecutor's office to write a report on these various investigations which could go well beyond any criminal prosecutions ultimately brought. With such a possibility in mind, Mr. Flanigan is unwilling to inject totally uninvolved third parties with whom he had contact over the past four years into this particular investigation without some showing by you that they are relevant to it.

We, of course, understand your assertion of your ultimate right to invoke compulsory process. In turn, we are certain you understand that such process can be met, if appropriate, by a motion to quash for unreasonableness, over-breadth, or lack of probable cause. As your production request is made in the name of the Special Prosecutor, we would very much appreciate an opportunity to review with him personally the factual and legal situation surrounding your request for all of Mr. Flanigan's telephone and appointment logs during the First Administration prior to any resort to compulsory process. We would, of course, be hopeful that some mutually satisfactory arrangement could be worked out, having in mind the concerns I have outlined above.

With regard to my advising Mr. Flanigan, I should point out that for the past several years he has relied on my legal advice in his official capacity and wishes to continue to do so in this situation. Since you have informed me that he is not a target of this inquiry, his discussion with you would seem to arise solely from the fact that he is an officer of the Federal Government. Therefore, for me to accompany him would seem to present no conflict with my responsibilities to the Federal Government. I have discussed and confirmed this with other lawyers in the White House. On the other hand, if you have some specific reason why you believe a conflict is present, I would very much appreciate your so informing me immediately and before October 3. If such a conflict is in fact present, I would of course advise Mr. Flanigan to obtain private counsel.

With best wishes,

Sincerely yours,

Jonathan C. Rose

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