

RIOTS, CIVIL AND CRIMINAL DISORDERS

1949-5

HEARINGS
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-FIRST CONGRESS
FIRST SESSION

PURSUANT TO SENATE RESOLUTION 26, 91ST CONGRESS

MARCH 4, 1969

PART 15

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(On March 4, 1969, Alan and Margaret McSurely testified in executive session before the Senate Permanent Subcommittee on Investigations. The record of that executive session was, by vote of the Permanent Subcommittee on Investigations, on March 24, 1969, ordered to be made public and follows:)

RIOTS, CIVIL AND CRIMINAL DISORDERS

TUESDAY, MARCH 4, 1969

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10:30 a.m., in room 3302, New Senate Office Building, pursuant to Senate Resolution 26, agreed to February 17, 1969, as amended, Senator John L. McClellan (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator John L. McClellan, Democrat, Arkansas; Senator Henry M. Jackson, Democrat, Washington; Senator Sam J. Ervin, Jr., Democrat, North Carolina; Senator Karl E. Mundt, Republican, South Dakota; Senator Charles H. Percy, Republican, Illinois; and Senator Robert P. Griffin, Republican, Michigan.

Members of the professional staff present: Jerome S. Adlerman, general counsel; John Brick, investigator; Lt. John E. Drass, Detective Bureau, Metropolitan Police Department; Philip W. Morgan, chief counsel to the minority; and Ruth Young Watt, chief clerk.

Others present: Jane Fenderson, of the staff of Senator Muskie; Carol Khosrovi, of the staff of Senator Percy; Taggart Adams, of the staff of Senator Ribicoff; Lawrence G. Meyer, of the staff of Senator Griffin; and Dennison Young, of the staff of Senator Javits.

Members of the subcommittee present at the time of convening of the session: Senators McClellan, Ervin, Mundt, and Griffin.

The CHAIRMAN. The subcommittee will come to order.

I would like to ascertain if Mr. Alan McSurely is present and if Mrs. Margaret McSurely is present.

Mr. WILLIAM M. KUNSTLER (of counsel to Alan McSurely and Margaret McSurely). They are, Senator.

The CHAIRMAN. Thank you very much. If you care to, you may come around now and take the witness stand.

Mr. Counsel, will you identify the other party with you and identify yourself for the record?

Mr. KUNSTLER. Senator, my name is William M. Kunstler, 511 Fifth Avenue, New York, N.Y., attorney for the subpoenaed witnesses,

and I have a staff assistant here, Miss Carole Rosenzweig, who is behind me. There is one other attorney, Philip J. Hirschkop, of Alexandria, but we will not wait for him. He is testifying before another committee, and we will not wait for him.

The CHAIRMAN. Will you give the names to the staff here?

Mr. KUNSTLER. It has been done.

The CHAIRMAN. Before we proceed further, and before swearing the witnesses and proceeding, the Chair wishes to make a brief statement. I will make an opening statement for the record.

During the past several years, the cities of the United States have been plagued with a substantial number of riots and civil disorders, vandalism, and similar crimes. According to studies made by the subcommittee's staff, approximately 166 riots and major civil disturbances occurred between the beginning of 1965 and mid-1968, in which 189 persons were killed, including 16 law enforcement officers. There were 7,615 injuries reported, of which 1,817 were suffered by police and other municipal officials. Our studies indicate property damage totaling at least \$158 million. Economic losses to the cities will probably never be determined accurately, but certainly they reach a figure equal to and possibly many times that of property damage.

The grave concern of the U.S. Senate with the alarming recurrences of riots and disorders was expressed in Senate Resolution 150 of the 90th Congress, first session, dated August 11, 1967, which was passed by unanimous vote of the Senate. The authority to study and investigate riots contained in that resolution was continued in Senate Resolution 216, dated March 15, 1968, for the 90th Congress, second session, and in Senate Resolution 26, dated February 17, 1969, for the 91st Congress, first session.

All these resolutions authorized and directed the Senate Committee on Government Operations or any duly authorized subcommittee thereof "to make a full and complete study and investigation of riots, violent disturbances of the peace, vandalism, civil and criminal disorders, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquillity within the United States.

(At this point Senator Jackson entered the hearing room.)

The CHAIRMAN. The Senate further authorized and directed the Committee on Government Operations or any duly authorized subcommittee thereof "to make a full and complete study and investigation of all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety."

The duties, responsibilities and obligations of the Committee on Government Operations under each of the three resolutions were delegated to the Senate Permanent Subcommittee on Investigations. They are, in summary, to make the necessary study and investigation and thereafter to determine whether new or amended legislation should be recommended by the subcommittee to the Congress for the purpose of correcting the conditions disclosed by the study and investigation, preventing their recurrence and eliminating the circumstances and situations which brought them about.

A primary task in the subcommittee's investigation has been to determine whether the outbreaks of violence were spontaneous or if they were instigated and precipitated by the calculated design of agitators, militant organizations, or lawless elements and whether such instigation or precipitation was organized on a national level, on a local level, or if it was attributable to immediate incidents.

Will you identify yourself, and I assume you are the other counsel.

Mr. HIRSCHKOP. Philip Hirschkop, member of the Virginia bar, and one of the counsel. I am counsel for both McSurelys.

The CHAIRMAN. The subcommittee has, throughout the investigation, endeavored to obtain as much information as possible about major riots which occurred in urban areas. Disturbances in many cities have been the subjects of extensive inquiry by the staff, and of hearings by the subcommittee in 1967 and 1968. The riot which occurred in Nashville, Tenn., on April 8-9, 1967, is important to the subcommittee's investigation and the duties with which it is charged.

In our hearing on the Nashville riot, we had the benefit of the record of prior hearings on the antiriot bill, held by the Senate Committee on the Judiciary during August of 1967. We also had the benefit of the transcript of a civil suit in Federal district court in the city of Nashville in May of 1967, an action in which certain members of the Student Non-Violent Coordinating Committee and others sued certain officials of the city for misconduct during the riot in April.

Testimony in the subcommittee's hearings and in those held by the Judiciary Committee disclosed that officials, employees, and members of the Student Non-Violent Coordinating Committee (SNCC) were deeply involved in the precipitation and instigation of the riot. Other apparent contributing factors were inflammatory speeches by Stokely Carmichael, in Nashville, during the 2 days immediately preceding the riot.

Carmichael, the former national chairman of SNCC, was then "field secretary" of SNCC, and is now the so-called prime minister of the Black Panther Party, an extremely militant organization which advocates violence, insurrection, and the "use of any means necessary" to accomplish its objectives. Carmichael made his speeches in Nashville shortly before he left the United States to visit Cuba, North Vietnam, and other world centers of Communist operations.

Testimony also showed that the Southern Conference Educational Fund (SCEF) held meetings of its staff and its board of directors in Nashville during the 3 days immediately preceding the riot in that city. The meetings were held, according to testimony, in conjunction with staff members of the Southern Students Organizing Committee (SSOC), and certain sessions were held at the SSOC headquarters at 1708 Portland Street, in Nashville. Members and employees of SNCC also participated in these meetings. The Southern Conference Educational Fund gave financial support to SNCC during the early 1960's, according to evidence presented in our hearings, and one of the executive directors of SCEF, Anne Braden, was formerly a member of the SNCC advisory board.

According to testimony, the Student Non-Violent Coordinating Committee began, in 1966, to depart from its previous position of "nonviolence" to endorse publicly the use of violence and the attainment of its objectives "by any means necessary." At that time, Stokely

Carmichael was the principal spokesman for the "Black Power" philosophy.

The record of the subcommittee's hearings discloses that Carl and Anne Braden, executive directors of the Southern Conference Educational Fund, with headquarters in Louisville, Ky., were present at the meetings in Nashville. They have been identified as members of the Communist Party by the testimony of an FBI informant in Kentucky courts and before congressional committees. The Southern Conference Educational Fund has been identified by the Senate Internal Security Subcommittee as a Communist-front organization.

The subcommittee also determined that a secret meeting was conducted by the Southern Conference Educational Fund on Friday, April 7, 1967, the day before the Nashville riot. Among those attending were SCEF officials Carl and Anne Braden, Alan and Margaret McSurely, Don and Carol Boner, and Jack Minnis. Certain members of SNCC were present: Carmichael, George Washington Ware, then national campus organizer for SNCC and now affiliated with the Black Panthers, and P. C. Onwauchi, faculty adviser to the SNCC chapter at Fisk University in Nashville. Carmichael made a speech at the meeting, from which the public and the press were barred. Evidence in the record shows that a press release disseminated before the meeting gave the title of Carmichael's speech as: "SNCC—Black Power for Communism."

At the time of the SCEF meeting, Margaret McSurely was a staff member of the Southern Conference Educational Fund. She formerly was a staff member of the Student Non-Violent Coordinating Committee. Alan McSurely was then an employee of the Appalachian Volunteers, an OEO-funded organization. Later he became a staff member of SCEF.

In the course of its investigation into rioting in our cities, the subcommittee has sought to obtain information about organizations which have been known to be advocates of the "Black Power" philosophy and the use of violence, insurrectionary tactics, and criminal practices to forward their aims and objectives.

During its investigation of the riot in Nashville, the subcommittee received information that documents, records, correspondence, and other papers belonging to the McSurelys, which were in the custody of Thomas B. Ratliff, commonwealth's attorney for Pike County, Ky., would be pertinent to the investigation.

Subsequently, a subcommittee staff member traveled to Pikeville, Ky., where Mr. Ratliff and the assistant commonwealth's attorney, Herman G. Dotson, confirmed that books, records, documents, correspondence, and other papers in Mr. Ratliff's possession by order of the U.S. District Court for the Eastern District of Kentucky, would be of value to the subcommittee's investigation of the riot in Nashville and other matters relating to organizations which were then engaged in instigating or fomenting unrest and outbreaks of violence in urban areas.

The subcommittee's staff received copies of some of the documents and other material. After discussion in Washington, D.C., relating to the nature of the material, I authorized and directed the service of subpoenas for the production of certain categories of documents from the material held by Commonwealth's Attorney Thomas B. Ratliff.

These subpoenas were served upon Mr. Ratliff on October 17, 1967, upon U.S. Marshal Archie Craft, in Lexington, Ky., on October 17, 1967, and upon Alan McSurely and Margaret McSurely, on October 18, 1967, in Pikeville, Ky. I will let all of those subpoenas be made a part of the record following my remarks.

A subpoena was served upon Mr. Ratliff because the U.S. District Court for the Eastern District of Kentucky had directed him to take custody of the documents, and upon Mr. Craft, because the subcommittee was given to understand that the Federal court verbally had directed him to share the custody of the documents.

Mr. and Mrs. McSurely contested the subcommittee's subpoenas in the Federal courts. Between October of 1967 and July of 1968 there were a number of decisions in the courts affecting the disposition of the documents. These judicial actions culminated on July 29, 1968, in a decision by the U.S. Circuit Court of Appeals for the Sixth District, in Cincinnati, Ohio, directing that Mr. Ratliff should return the documents to Mr. and Mrs. McSurely. In part, the order stated as follows:

The single issue now before this Court is whether the District Court erred in refusing to return to their owners documents which were seized in aid of a prosecution under an unconstitutional statute, now that the time for appeal has expired. We conclude that this question must be answered in the affirmative. The business of the District Court in this case has been completed. The right of the Court to retain possession of the seized documents, which include no contraband, has expired.

Appellants undertake to raise numerous questions concerning the validity and interpretation of the Senate Resolution and the breadth of the investigation authorized thereby. They also assert that the subpoenas violate their rights under the First and Fourth Amendments. These questions may be adjudicated under the appropriate procedure for challenging subpoenas of Congressional Committees. We decline to render an advisory opinion on these issues.

An order will be entered reversing the judgment of the District Court, without prejudice to the right of the Senate Committee to proceed with the enforcement of the subpoenas against Mr. and Mrs. McSurely.

The subcommittee staff member who had custody of the copies of documents given to him by the office of the Commonwealth's Attorney for Pike County, Ky., in October of 1967, and who had sole custody of them in the interim, traveled to Pikeville, Ky., on August 14, 1968, and returned the documents to the representative of the Commonwealth's Attorney's office from whom he had originally received them.

The U.S. District Court for the Eastern District of Kentucky ordered on October 23, 1968, that Mr. Ratliff return the materials to the McSurelys on November 8, 1968, at the U.S. Marshal's Office in Pikeville, Ky.

(At this point Senator Percy entered the hearing room.)

The CHAIRMAN. On November 8, 1968, the materials were returned to Mr. and Mrs. McSurely, and immediately thereafter the McSurelys were served with new subpoenas calling for them to appear before the subcommittee on January 14, 1969, and to produce the documents, papers and other materials specified in the subpoenas. By direction of the Chairman, the date of their appearances as witnesses before this subcommittee was postponed until February 25, 1969.

Subsequently, because of the necessity for accomplishing other business of the U.S. Senate, the subcommittee Chairman further postponed the appearances of Mr. and Mrs. McSurely as witnesses until today, March 4, 1969. The subpoenas with proof of service requiring

Alan McSurely and Margaret McSurely to appear and produce certain books, records and other papers are made part of this record.

(They are as follows:)

B 611

UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To Commonwealth Attorney Thomas B. Ratliff, 35th Judicial District, Pike County, Kentucky, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on _____ forthwith _____, 1967, at _____ o'clock ____m., at their committee room 161 Old Senate Office Building, Washington 25, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To _____ to serve and return.

Given under my hand, by order of the committee, this 16th day of October, in the year of our Lord one thousand nine hundred and sixty-seven.

(Signed) John L. McClellan, Chairman, Senate Permanent Subcommittee on Investigations of the Committee on Government operations.

October 17, 1967.

I made service of the within subpoena by service in hand, the within-named Commonwealth Attorney Thomas B. Ratliff, at Louisville, Kentucky, at 11:25 o'clock a.m., on the 17th day of October, 1967.

(Signed) JOHN BRICK.

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers in your possession which belong to or were subpoenaed from Alan McSurely, Margaret McSurely, and Joseph Molloy, which are in the possession of the Commonwealth's Attorney of the 35th Judicial District, Pike County, Kentucky, as designated in Order 1146 of the United States District Court, Eastern District of Kentucky, Pikeville, dated September 14, 1967, which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

(2) All books, records, correspondence, documents, and other papers which relate to or are concerned with present or former membership in or employment by the Student Non-Violent Coordinating Committee for the period January 1, 1964, to date;

(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by Marxist-Leninist organizations and/or the Communist Party, of Alan McSurely and/or Margaret McSurely;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of the Progressive Labor Party, Students for a Democratic Society, Southern Students Organizing Committee, the Freedom Democratic Party of Mississippi, ACC'ESS, and JOIN, for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(8) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

B 639

UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To Archie Craft, U.S. Marshal, Eastern District of Kentucky, Lexington, Kentucky, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on ----- forthwith -----, 1967, at ----- o'clock ---m., at their committee room 161 Old Senate Office Building, Washington 25, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To ----- to serve and return.

Given under my hand, by order of the committee, this 16th day of October, in the year of our Lord one thousand nine hundred and sixty-seven.

(Signed) John L. McClellan, Chairman, Senate, Permanent Subcommittee on Investigations of the Committee on Government Operations.

October 17, 1967.

I made service of the within subpoena by service in hand the within-named Archie Craft, at Lexington, Kentucky, at 2:25 o'clock p.m., on the 17th day of October 1967.

(Signed) JOHN BRICK.

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers in your possession which belong to or were subpoenaed from Alan McSurely, Margaret McSurely, and Joseph Molloy, which are in the possession of the Commonwealth's Attorney of the 35th Judicial District, Pike County, Kentucky, as designated in Order 1146 of the United States District Court, Eastern District of Kentucky, Pikeville, dated September 14, 1967, which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

(2) All books, records, correspondence, documents, and other papers which relate to or are concerned with present or former membership in or employment by the Student Non-Violent Coordinating Committee for the period January 1, 1964, to date;

(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by Marxist-Leninist organizations and/or the Communist Party, of Alan McSurely and/or Margaret McSurely;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of the Progressive Labor Party, Students for a Democratic Society, Southern Students Organizing

Committee, the Freedom Democratic Party of Mississippi, ACCESS, and JOIN, for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(8) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

B 642

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To Alan McSurely, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on ----- forthwith -----, 1967, at ----- o'clock --m., at their committee room 161 Old Senate Office Building, Washington, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To ----- to serve and return.

Given under my hand, by order of the committee, this 16th day of October, in the year of our Lord one thousand nine hundred and sixty-seven.

(Signed) John L. McClellan, Chairman, Senate Permanent Subcommittee on Investigations of the Committee on Government Operations.

October 18, 1967.

I made service of the within subpoena by service in hand the within-named Alan McSurely, at Pikeville, Kentucky, at 8:25 o'clock a.m., on the 18th day of October, 1967.

(Signed) John Brick.

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers which belong to or were subpoenaed from Alan McSurely, Margaret McSurely, and Joseph Molloy, which are in the possession of the Commonwealth's Attorney of the 35th Judicial District, Pike County, Kentucky, as designated in Order 1146 of the United States District Court, Eastern District of Kentucky, Pikeville, dated September 14, 1967, which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

(2) All books, records, correspondence, documents, and other papers which relate to or are concerned with present or former membership in or employment by the Student Non-Violent Coordinating Committee for the period January 1, 1964, to date;

(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by Marxist-Leninist organizations and/or the Communist Party, of Alan McSurely and/or Margaret McSurely;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of the Progressive Labor Party, Students for a Democratic Society, Southern Students Organizing Committee, the Freedom Democratic Party of Mississippi, ACCESS, and JOIN, for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(8) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

B 640

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To Margaret McSurely, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on _____ forthwith _____, 1967, at _____ o'clock __ m., at their committee room 161 Old Senate Office Building, Washington, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To _____ to serve and return.

Given under my hand, by order of the committee, this 16th day of October, in the year of our Lord one thousand nine hundred and sixty-seven.

(Signed) John L. McClellan, Chairman, Senate Permanent Subcommittee on Investigations of the Committee on Government Operations.

October 18, 1967.

I made service of the within subpoena by service in hand the within-named Margaret McSurely, at Pikeville, Kentucky, at 8:25 o'clock a.m., on the 18th day of October, 1967.

(Signed) John Brick.

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers which belong to or were subpoenaed from Alan McSurely, Margaret McSurely, and Joseph Molloy, which are in the possession of the Commonwealth's Attorney of the 35th Judicial District, Pike County, Kentucky, as designated in Order 1146 of the United States District Court, Eastern District of Kentucky, Pikeville, dated September 14, 1967, which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

(2) All books, records, correspondence, documents, and other papers which relate to or are concerned with present or former membership in or employment by the Student Non-Violent Coordinating Committee for the period January 1, 1964, to date;

(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which

relate to or are concerned with the membership in or employment by Marxist-Leninist organizations and/or the Communist Party, of Alan McSurely and/or Margaret McSurely;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of the Progressive Labor Party, Students for a Democratic Society, Southern Students Organizing Committee, the Freedom Democratic Party of Mississippi, ACCBSS, and JOIN, for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(8) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

UNITED STATES OF AMERICA

B 971

CONGRESS OF THE UNITED STATES

To Alan McSurely, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear and attend before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on January 14, 1969, at 10:30 o'clock a.m., at their committee room 3302 New Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and to bring with you and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To ----- to serve and return.

You may produce the records specified in Schedule A and transfer them to the Subcommittee's staff representative in Kentucky, instead of bringing them to Washington, D. C. When you come to Washington, D. C., to testify, your transportation will be paid for by the Subcommittee.

Given under my hand, by order of the committee, this 4th day of November, in the year of our Lord one thousand nine hundred and sixty-eight.

(Signed) John L. McClellan, Chairman, Senate Permanent Subcommittee on Investigations of the Committee on Government Operations.

November 8, 1968.

I made service of the within subpoena by delivering a copy the within-named Alan McSurely, at Pikeville, Ky., at 3:15 o'clock p.m., on the Nov. 8 day of -----, 1968.

(Signed) ARCHIE CRAFT.
By JOE C. MULLINS,
Deputy U.S. Marshal.

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers which are in the possession and control of Alan McSurely or Margaret McSurely or their agents and which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

(2) All books, records, correspondence, documents, and other papers which relate to or are concerned with present or former membership in or employment by the Student Non-Violent Coordinating Committee for the period January 1, 1964, to date;

(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of Students for a Democratic Society and/or Southern Students Organizing Committee, for the period January 1, 1964, to date;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

B 972

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To Margaret McSurely, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear and attend before the SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS of the Senate of the United States, on January 14, 1969, at 10:30 o'clock a.m., at their committee room 3302 New Senate Office Building, Washington, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee, and to bring with you and produce the records set forth in Schedule A, attached hereto and made a part hereof.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To ----- to serve and return.

You may produce the records specified in Schedule A and transfer them to the Subcommittee's staff representative in Kentucky, instead of bringing them to Washington, D.C. When you come to Washington, D.C., to testify, your transportation will be paid for by the Subcommittee.

Given under my hand, by order of the committee, this 4th day of November, in the year of our Lord one thousand nine hundred and sixty-eight.

(Signed) John L. McClellan, Chairman, Senate Permanent Subcommittee on Investigations of the Committee on Government Operations.

November 8, 1968.

I made service of the within subpoena by delivering a copy the within-named Margaret McSurely, at Pikeville, Ky., at 3:15 o'clock p.m., on the 8th day of Nov., 1968.

(Signed) ARCHIE CRAFT.
JOE C. MULLINS, *Deputy U.S. Marshal.*

SCHEDULE A

And produce all books, records, correspondence, documents, and other papers which are in the possession and control of Alan McSurely or Margaret McSurely or their agents and which relate to or pertain to:

(1) Meetings, from April 5 through April 8, 1967, attended by Alan McSurely and Margaret McSurely as individuals or as members or employees of Southern Conference Educational Fund or the Southern Students Organizing Committee held at Nashville, Tennessee, with members of or employees of the Student Non-

Violent Coordinating Committee and/or Stokely Carmichael, prior to the civil disturbances (riots) which occurred in Nashville, Tennessee, on or about April 8, 1967;

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(3) All books, records, correspondence, documents, and other papers which relate to or are concerned with the membership in or employment by the Southern Conference Educational Fund of Alan McSurely and/or Margaret McSurely;

(4) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in and the activities of Students for a Democratic Society and/or Southern Students Organizing Committee, for the period January 1, 1964, to date;

(5) All books, records, correspondence, documents, and other papers which relate to or are concerned with membership in or employment by the National Conference for New Politics and Vietnam Summer, of Alan McSurely and/or Margaret McSurely for the period January 1, 1964, to date;

(6) All books, records, correspondence, documents, and other papers which relate to or are concerned with Alan McSurely's employment by Appalachian Volunteers;

(7) All books, records, correspondence, documents, and other papers which relate to or are concerned with the employment of Alan McSurely and/or Margaret McSurely by the United Planning Organization (UPO) in Washington, D.C., for the period January 1, 1964, to date.

The CHAIRMAN. Before I swear the witnesses, do any of my colleagues wish to make any comments?

Senator MUNDT. No; I think you have summarized the case very adequately, Mr. Chairman. I have no comment.

Senator PERCY. I have nothing.

Senator JACKSON. I have no comment.

Senator ERVIN. I have no comment.

Mr. KUNSTLER. Before the witnesses are sworn, I would like to cover a few preliminary matters.

The CHAIRMAN. I would like to have the witnesses sworn first, and then we will have a brief statement from you.

Let the witnesses stand.

Do you and each of you solemnly swear that the evidence you shall give before this Senate subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ALAN McSURELY. I do.

Mrs. MARGARET McSURELY. I do.

**TESTIMONY OF ALAN McSURELY AND MARGARET McSURELY,
ACCOMPANIED BY THEIR COUNSEL, WILLIAM M. KUNSTLER,
PHILIP J. HIRSCHKOP, AND CAROLE ROSENZWEIG**

The CHAIRMAN. We will be glad to hear from you briefly.

Mr. KUNSTLER. Thank you, Mr. Chairman.

I would like to move the committee for an open hearing. Not only are there many people outside who wish to hear the proceedings, but I think the nature of the proceeding militates an open hearing. We have this morning filed a Federal complaint in the U.S. District Court for the District of Columbia which names as defendants all the members of this committee as well as the chief counsel and the general counsel. I would like to offer that complaint into the record of this hearing.

It is civil action No. 51669.

The CHAIRMAN. That may be received, but I will not place it in the record at this time. I have official notice of it.

Mr. KUNSTLER. The reason I mention it at this time is the reason I am asking for an open hearing. The complaint spells out the story behind the subpoenas that are presently before this committee. Since the complaint contains very specific contentions of unconstitutional, illegal, and unlawful action on the part of this committee in connection with the authorities of Pike County, it is our feeling that the executive session hides from the public the situation that is delineated in that complaint and that the public should be admitted to this hearing.

The subpoenaed witnesses waive any protection of an executive session that may be intended or desired in this situation and are perfectly willing to have people witness the hearings in this committee room. We see no reason for any secrecy.

The complaint, which is now a public record, as well as the numerous court proceedings in the litigation that preceded this complaint, two times to the U.S. Supreme Court, the sixth circuit, at least four times in the District Court of Kentucky, have made this whole matter a matter of public record everywhere in the United States.

The article on Sunday in the New York Times of course does that as well. We see no reason whatsoever why this should not be an open public hearing before this subcommittee. That is my first motion.

I will make all of them if you want, Senator McClellan, and then you may want to rule seriatim.

The CHAIRMAN. I think we can dispose of them as you make them.

Does anyone on the committee want to make such a motion, to let these hearings be adjourned?

I hear no such request. Therefore the Chair would rule that the committee unanimously rejects the request of the counsel.

Mr. KUNSTLER. Secondly, Senator McClellan, in view of the filing of the lawsuit which raises the most serious questions and which I think fits directly into the opinion of the sixth circuit in which it indicated, as you have read correctly into the record, that these questions may be adjudicated under the appropriate procedure for challenging subpoenas of congressional committees, one of which of course is a District Court lawsuit, I would request and ask for the subcommittee to adjourn these hearings and vacate these subpoenas or adjourn them sine die until the District Court has had a chance to litigate the issues raised in the complaint. That would be my second motion.

The CHAIRMAN. When was your suit filed?

Mr. KUNSTLER. It is filed. It bears filing No. 51669 in the U.S. District Court for the District of Columbia. It was filed this morning. The marshals are presumably—it was filed today.

The CHAIRMAN. The Chair would make this observation. I think the subpoenas were served on the eighth day of November, 1968, almost 4 months ago. If counsel had been interested in trying to resolve this question before the committee met and before the return today of the subpoena, I think he could have proceeded with more diligence. However, that is his prerogative, to proceed as he wishes.

I do not know what the complaint contains or what the issues are. You may have raised issues there that will ultimately resolve the validity of the subpoena.

Since this committee is not enjoined and is not restrained, I see no reason why we cannot proceed with our mandate under the resolutions of the Senate and the rules under which the committee operates.

This is not a hearing. This is merely an opportunity to give the witnesses the opportunity to comply with the subpoena. They are given that opportunity today and whether they will comply I don't know.

Counsel, of course, is advised, I am sure. But this is not a hearing. All we wish to ascertain is whether the subpoena is going to be honored or if it is going to be rejected and compliance refused. That is the only purpose of this meeting today.

Mr. KUNSTLER. I might indicate in light of what you have said that—

The CHAIRMAN. I might defer to the committee. I call the attention of the committee to the Chair's statement. Is there any disagreement with the statement which I have made? If so, speak up, gentlemen.

The Chair is making this ruling on the face of the facts before us. If any Senator disagrees with the sense of the Chair's ruling, I would like to have him so indicate.

I hear no dissent, and that will be the ruling of the committee.

Mr. KUNSTLER. I was going to indicate for the record that there had been two adjournments of the subpoena here, which explains why the lawsuit was not filed.

The CHAIRMAN. All of which gave you more time, and not less.

Mr. KUNSTLER. We weren't quite sure that the committee was going to go ahead until I spoke with Mr. Adlerman, I think 3 or 4 days ago.

Mr. HIRSCHKOP has just been in the hall, and there are apparently going to be mass arrests in this hallway.

The CHAIRMAN. I don't know what is going on. I know apparently you invited demonstrations here today.

Mr. KUNSTLER. Not demonstrations, sir.

The CHAIRMAN. It is possible.

Mr. KUNSTLER. We invited people to what we hoped would be an open hearing of the committee. They are standing quietly outside.

The CHAIRMAN. You were advised that this would be an executive session and all we wanted was to receive the documents from the witnesses, or ascertain whether the witnesses would comply with the subpoenas.

Mr. HIRSCHKOP. I have spoken to the chief police officer in the hall. He informs me that he is acting on your direction out there.

The CHAIRMAN. He is not acting under my direction with regard to arrests. He is acting under my direction to keep the crowd from making a disturbance here to interfere with these proceedings.

Mr. HIRSCHKOP. There is no interference that I know of. There are about 100 people standing in a very orderly manner.

The CHAIRMAN. They can stand there as far as I am concerned.

Mr. HIRSCHKOP. I think he is under the impression he is going to arrest these people under your direction.

The CHAIRMAN. I gave no orders to arrest anyone under any circumstances. The hallway is under the control of the Rules Committee and not of this committee. I did suggest that they keep this corridor clear so that we can come and go without interruption.

Mr. HIRSCHKOP. I am bringing to your attention there are about 100 citizens of this country standing there.

The CHAIRMAN. I am not responsible for that. I have ordered no arrests under any conditions and not even suggested one to anybody.

Mr. HIRSCHKOP. If there is a misunderstanding, I think it would be proper if you would at least indicate what your position was. "Loitering" is what he is saying.

The CHAIRMAN. I am sure that they are not going to arrest anyone for loitering.

You can tell them it is a closed hearing, and we just don't want to have this hallway congested to interfere with the work of the committee. That is all. As to the rest of it, I don't care whether they stay here all day.

Mr. KUNSTLER. My third motion, Senator McClellan, in light of the second, is to quash these subpoenas for all of the reasons which are set forth in the complaint which we have offered for the record here today, all of which go to the question of violations of various segments of the Constitution, and in particular the first, fourth, fifth, 13th, 14th, and 15th amendments, all of which are set forth in the complaint.

We ask the committee to quash these subpoenas for the reasons set forth in that complaint. In general that has to do with the original illegal seizure of all of these documents and the participation of this committee in the fruit of the poisoned tree doctrine of subpoenaing those documents originally, after the Federal court had declared the statute under which they were seized unconstitutional, and the persisting with the fruit of the poisoned tree until we are here today.

That is in essence the motion. It is all contained and incorporated and all of the grounds set forth in civil action 51669, *McSurly, et al., v. McClellan, et al.*, which I have offered for the record here. I ask for the quashing of the subpoenas.

The CHAIRMAN. I think most of those issues were involved in the case to which we have referred, in the opinion, were they not?

Mr. KUNSTLER. That is correct.

The CHAIRMAN. They were involved there, and the court reversed the case and ruled that the committee could proceed without prejudice to its rights, and that the order was without prejudice to the rights of the committee to proceed to enforce this subpoena.

I think we all understand that it is to become and will become a court issue and the counsel and the witnesses have the right to raise the issue in court, which you have already done in one fashion, and possibly the proceedings here, I don't know. It depends upon of course what we get from the witnesses, how they honor the subpoena. Another issue could be raised here or the validity of the subpoenas could be later adjudicated in court.

Mr. KUNSTLER. I have asked for the polling of the committee on the question of that motion.

The CHAIRMAN. I am going to ask: Is any member of the committee in favor of the request of counsel to quash the subpoenas?

Let us note the membership present, which is a majority of the subcommittee. The committee is composed of nine, and six members are present.

Does any member favor the request of counsel to quash the subpoenas? I hear no support for the request. Therefore the Chair will overrule it with the approval of the committee.

Mr. KUNSTLER. Lastly, Senator, I am making a request for the furnishing to counsel for the subpoenaed witnesses of your opening statement, as well as the proceedings, a transcript of the proceedings today in this chamber, to be furnished as soon as practicable at the conclusion of the hearing.

I might indicate that I listened with great interest to your opening statement, and since I participated in a great many of the events which you covered, including the Federal lawsuit, I was rather startled to hear the characterization of most of the events to which you referred.

I think the statement itself is a gross distortion of many events, and represents, I think, a preconception because, having been on the spot in many of the instances concerned, I could hardly recognize the episodes to which you referred.

The Stokely Carmichael speech to which you referred was delivered at Vanderbilt University before 5,000 people. Since I read the speech and heard portions, I could hardly even understand your characterization of it. But I am not going to bother to try to refute all of it because it is obvious it would serve no purpose.

The CHAIRMAN. I wouldn't be able to understand your characterizations, possibly, of some things.

Mr. KUNSTLER. Except the difference is I was there and you were not, you see.

The CHAIRMAN. I am entitled to an opinion even though I wasn't there.

Mr. KUNSTLER. Of course.

The CHAIRMAN. And whether that is factual or whether it will be sustained is a matter that might be raised. But that isn't the crux of this matter.

Mr. KUNSTLER. It has become a part of the record here.

The CHAIRMAN. I might say to you that the statements I have made have come from sworn testimony, and that is all I need to say about it.

Mr. KUNSTLER. There was also, of course, in that Federal lawsuit other sworn testimony, which you have not alluded to, by many witnesses.

The CHAIRMAN. I am sure that counsel was aware of the testimony when he was making his position. You know as a lawyer that I have made a presentation here of information that the committee has, that is sworn testimony. I haven't said every word of it is true. We are still investigating, and we would like to have the cooperation of your clients. We seek it. We seek it with the due process of subpoena. We would like to have their cooperation. Maybe we can't get it; I don't know.

Mr. KUNSTLER. All I am indicating is that the reason I wanted a copy of the statement is that I do think it is a distortion.

The CHAIRMAN. A copy of the record will be supplied to you if there is no objection to that. That is our practice. You may have a copy of the opening statement now. We will make a copy available to you.

As to the request about the transcript, I would like to be accommodating. I am a little bit in error. Before this transcript can be released, in executive session, it must be by a vote of the subcommittee, and that matter will be presented to them in due time.

Mr. KUNSTLER. As long as my request is a part of the record, that is fine.

The CHAIRMAN. That is true, but the opening statement, you may have that now.

Mr. KUNSTLER. Now, Senator, I have a few more things and I am done. They probably will bring this hearing to an end as well.

My clients wish to say something, but I would indicate for the record for all of the reasons which I have indicated in my motions, the lack of an open hearing, the pendency of the lawsuit, and the reasons underlying the lawsuit, I believe that my clients are going to take the position that they are neither going to testify nor going to turn over to this committee any of the records involved in the subpoena. They wish to make their statement to the committee as to their reasons why they are taking this step.

Therefore, I would request permission for both Mr. and Mrs. McCSurely to address the committee on the issue which I have just raised.

The CHAIRMAN. Counsel, of course, is no doubt fully advised as to what his clients intend to do, and they may of course follow his advice, and that is what you would expect them to do, I assume. But the committee will proceed to the administering of the oath and the effort to ascertain whether the documents are here, whether the subpoena has been complied with, or if there is a refusal to comply with the subpoena.

As to statements of why, after we ascertain these facts, I might hear a brief statement from them. But this is not a hearing. I simply want to know why they are not going to produce the records if they are not, and you have made your statement as to why they are not. They can make a brief statement in addition to that if they would like.

First I will ask Mr. McCSurely.

Mr. McCSURELY. Mr. Chairman.

The CHAIRMAN. Just a minute. I will ask you a question, if you have complied with the subpoena that was served on you on the 8th day of November, 1968, which has been placed in the record, if you have complied with that subpoena or if you are now prepared to comply with it and ready to comply with it by producing the records which the subpoena calls for in schedule A, listed under titles, or seven numbers, from 1 to 7, inclusive?

Mr. McCSURELY. I would like to correct Mr. Counselor. He is wrong for the first time in his life. We are not going to take any position on whether we bring in the records or not until this hearing is open.

The CHAIRMAN. I can't understand you.

Mr. McCSURELY. We are not going to take any position on whether we will bring the records and documents until this hearing is opened. The issue before this committee today is whether the public has a right to hear what is going on in this committee, and I would like to read our statement about that, which is a short statement.

The CHAIRMAN. I take it that you challenge the right of the Senate of the United States and its committees to hold executive hearings?

Mr. McCSURELY. In this case, right. And I would like to read a statement.

The CHAIRMAN. Let me ask you some questions first, and you answer my questions, and then I will hear you. But I want my questions answered, and then we will talk about any statement that you wish to make.

I ask you the question if you have complied with, or if you are now ready and prepared to comply with, the subpoena served on you on the 8th day of November, 1968, which has been placed in the record as a part of these proceedings?

Are you ready and prepared to make available to the committee the documents, the records—the books, records, correspondence, documents, and other papers which are identified in schedule A of the subpoena that was served on you?

(The witness conferred with his counsel.)

Mr. McSURELY. Mr. McClellan, we represent two distinct classes, you and I—

The CHAIRMAN. I don't ask who we represent. Answer my question.

Are you prepared to do it; yes or no?

Mr. McSURELY. This is an answer to that question.

The CHAIRMAN. All right, answer the question.

Mr. McSURELY. You are a product of the southern planters class—

The CHAIRMAN. Just a moment. I don't have to hear your views. Answer the question. Are you prepared to comply with it or are you going to comply with it or not?

Mr. McSURELY. This is answering your question about what we are going to do.

The CHAIRMAN. What I am a product of, according to your opinion, is not an issue.

Mr. McSURELY. It is at issue because it is at the basis of why we feel that this hearing should be open.

The CHAIRMAN. The question is, and I will ask you again, and let you answer it if you will, and I will give you the opportunity to answer it, whether you have complied or you are now ready and prepared to comply with the subpoena served on you on the 8th day of November, 1968, with respect to delivering or producing for the committee the books, records, correspondence, documents, and other papers which are identified in schedule A attached to the subpoena and a part of it?

Mr. McSURELY. I would discuss that with you when we have an open hearing. That is the issue before us.

The CHAIRMAN. I understand then you are refusing to answer the question?

Mr. McSURELY. I am trying to answer the question, and you cut me off.

The CHAIRMAN. You are not trying to answer the question. If you do, then I will let you make your statement. Answer the question of whether you are complying with the subpoena and whether you are prepared to or not. If you want to answer that, then we will talk about any other statement you want to make.

I am not denying you, but the committee has a right to have an answer to this question. That is the purpose of this hearing, of this executive meeting of the committee.

Mr. McSURELY. Our counsel, Mr. Kunstler, listed several reasons why we will resist you on getting the records until it is legally possible. But I would like to talk about the basic reason why I don't even want to talk about it with just you, and I want to talk about it with the public at large.

The CHAIRMAN. You will have that opportunity. You will get the press and you have your meetings and you speak every day or two, and your counsel speaks for you.

Mr. McSURELY. You have the same opportunity as I do.

The CHAIRMAN. You can give all of that to the press you want to. This is the Senate through this committee and through regular procedures seeking to get documents and information that are pertinent to an investigation which this committee is directed to make for the Senate.

Mr. McSURELY. Senator McClellan, as you know, there are people in Arkansas, people in North Carolina, and people in Kentucky that are concerned about what is going on here today.

The CHAIRMAN. Listen to me. Are you going to be respectful and answer? You can say you don't want to answer or whatever you want to.

Mr. McSURELY. I am trying to answer. I have a statement to read, which I would like to put in the record, and you have cut me off three times.

Senator MUNDT. This question is subject to a yes or no answer, and I insist that he answer the question.

The CHAIRMAN. You can give us an answer and then I will let you make your explanation, but I want the question answered.

Mr. McSURELY. The reasons that Mr. Kunstler mentioned are the reasons why, at this point, we are not producing the records and also the reason that we will not produce the records or even talk about producing the records in a closed hearing. People have a right to know what is going on in the U.S. Senate. It is as simple as that. It is a basic right. I understand this is a free country.

The CHAIRMAN. I will ask you: Did you bring the records with you?

Mr. McSURELY. We will not talk about that until we have an open hearing.

The CHAIRMAN. Are the records physically present here in Washington?

Mr. McSURELY. I say we will not talk about that until we have an open hearing.

The CHAIRMAN. Well, with the permission of the committee, I order and direct you to answer that question and see whether you are sincere with respect to what you said, that you would have produced them in public.

Did you bring the records with you?

Mr. McSURELY. We would be very happy to talk about what we think are causes of urban disorders, which I understand this committee is investigating.

Mr. KUNSTLER. Could I have one moment?

(The witness conferred with his counsel.)

The CHAIRMAN. Let the record show that the witness is conferring with counsel.

Mr. McSURELY. I hope our position is clear to you.

The CHAIRMAN. I think it is, but I want you to say it so that there will be no doubt about it. You are refusing to make the records available to the committee, am I correct?

Mr. McSURELY. What I said, and I will say it again, for the third time, is that we will not discuss——

The CHAIRMAN. Let the record show that he wants to repeat his previous statement. If you want to make any other statement, all right. You say you are going to say for the third time. Proceed with any other statement that you want to make.

Mr. McSURELY. We are not going to produce the records for the reason that Mr. Kunstler enunciated, and we will not talk about the records until we have an open hearing.

The CHAIRMAN. Very well. Now, will you answer the question? Did you bring the records with you so that you could present them at an open hearing?

Mr. McSURELY. We are not going to produce the records for the reason that Mr. Kunstler—

The CHAIRMAN. I asked you a question, and your answer is not responsive to it. Did you bring the records with you? Do you have them here? Are you prepared to present them in an open hearing now?

Mr. McSURELY. No.

The CHAIRMAN. Thank you very much.

So you don't intend to present them.

I will ask the other witness, Mrs. McSurely, the same question with respect to the subpoena. Are you now prepared and are you willing to comply with, or have you complied with, or are you now prepared to comply with the subpoena served on you on the eighth day of November 1968, with respect to all books, records, correspondence, documents and other papers which are identified therein in schedule "A"?

Mrs. McSURELY. For all of the reasons which Mr. Kunstler told you, we are not going to produce the documents, and I don't want to talk about it in a closed session.

The CHAIRMAN. You have no intention of producing them?

Mrs. McSURELY. No.

The CHAIRMAN. Very well.

Are there any other questions?

Senator GRIFFIN. The record should show that she shook her head.

The CHAIRMAN. You have no intention?

Mrs. McSURELY. For all of the reasons that Mr. Kunstler told you—

The CHAIRMAN. For the reasons he told you, you have no intention of producing the records?

Mrs. McSURELY. That is right.

The CHAIRMAN. Did you bring the records with you to Washington so that they could be produced?

Mrs. McSURELY. We don't want to discuss that in a closed hearing. We do not wish to discuss that in a closed hearing.

The CHAIRMAN. I know you don't wish to. There are a lot of things that I don't even wish to do, many duties that I perform, but I ask you the question if you are prepared or did you bring them and are you prepared now to produce them in a public hearing?

Mrs. McSURELY. No. N-o, no.

The CHAIRMAN. Thank you very much.

Are there any other questions?

Are there any other questions, Senators?

Very well. Let the record show that the committee has remained in session for almost an hour, or 55 minutes, and during this time we

have sought to ascertain whether the witnesses have complied or would comply with the subpoenas issued and served on them.

They admit that they did not bring their records to produce them, and even if a public hearing was granted, they wouldn't have been prepared to produce the records. That is one of the reasons which they gave for not bringing them, one of the reasons they give for not producing them, but they couldn't produce them if this hearing was opened up to the public at this minute.

Let the record so reflect, according to their own testimony.

Is there anything else now?

I need not, of course, warn you of any possible consequences of your refusal. I am sure that counsel has fully advised you about that. You may do what you want. You may want such a proceeding. I am not sure about it. But are there any other questions?

There is one other thing.

The Chair, with the approval of the committee, will further order and direct you in committee session at this time to produce forthwith at the earliest convenient time all of the records produced for the committee, to make available to the committee and its staff all of the records that were covered and included in the subpoena served on each of you. That is an order. With the approval of the committee. You are still under orders to produce them when the committee recesses. I will say "forthwith." As I said in my original order, today is March 4, and this is Tuesday, and I will set the time limit on that to give you further opportunity, if you choose to do so, until noon Friday. That is March 7. That is until noon Friday, March 7.

In the meantime we will withhold further action of the committee until you are given this further opportunity to comply with the subpoenas by making the documents available.

I don't need to warn you. I think you may be subject to contempt. I suggested a while ago that I am sure their counsel has fully advised them of any possible consequences. I think you recognize that you do lay yourselves open by this refusal and by your actions in refusing to comply with these subpoenas, that you are laying yourselves open to a charge of contempt of the U.S. Senate. I am sure that counsel has so advised you.

I would like for the record also to show that a copy of the rules of procedure of this subcommittee and of the resolutions to which I referred in my opening statement, the Senate resolution, have been made available to counsel for the witnesses.

Is there anything further?

Senator ERVIN. I would like to ask a question.

Mr. McSurely, the Southern Conference Educational Fund is a Corporation, isn't it?

Mr. McSURELY. It is what?

Senator ERVIN. The Southern Conference Educational Fund is a corporation?

Mr. McSURELY. Our position, Senator, is that we have asked several people to come to these hearings and to hear what goes on in Senator McClellan's hearings.

Senator ERVIN. That is not a relevant answer to my question.

You filed a complaint in evidence and verified it in the district court this morning in which you swore—

Mr. McSURELY. We would like for these hearings to be public, and we would like people to hear what the Senators are asking us.

The CHAIRMAN. Do you have some respect for the Senator?

Senator ERVIN. In this suit, you stated upon oath that the Southern Conference Educational Fund is a corporation. Now, is that not so?

Mr. McSURELY. As I was saying, if the hearings could be open, we could talk about these things better.

Senator ERVIN. Please answer my question.

Mr. McSURELY. I think the whole country would understand better the causes of the urban disorders, because I think some of the causes are right in this room.

Senator ERVIN. Did you file a complaint or did you authorize your counsel to file a complaint in the court of the District of Columbia in the U.S. District Court for the District of Columbia this morning which was verified by you?

Mr. McSURELY. I would be glad to talk about that complaint and what the Southern Conference Educational Fund is and everything in an open hearing. This is the U.S. Senate.

Senator ERVIN. You are not willing to answer that question?

Mr. KUNSTLER. The complaint speaks for itself. It is a verified complaint.

Senator ERVIN. He stated under oath—

Mr. KUNSTLER. He has sworn to it and he just doesn't want to cooperate in closed session.

Senator ERVIN. Why does he hesitate to answer the question?

Mr. KUNSTLER. Because he thinks it should be an open hearing. You let the public in, and he will answer the question.

Senator ERVIN. Let me ask the question, as you are answering for him, as you have a right to do as his counsel: Does the complaint which you filed in his behalf this morning, setting forth the Southern Conference Educational Fund to be a corporation, state the truth in respect to that matter?

Mr. KUNSTLER. It is the truth.

Senator ERVIN, if you would open these hearings, he would answer all of the questions on that kind of aspect that you wanted to.

The CHAIRMAN. Let the Chair make this observation about open hearings. The Senate has the authority and its committees have the authority to hold executive hearings whenever in their discretion they feel that it is advisable or proper or necessary to expedite the work of the Senate. We have made that decision. There will be open hearings if we get the documents and you can make all of the speeches then you want to make in public in open hearings to the very kind of a crowd that you say you want. You can do that when we get the documents so you can be cross-examined about them in public.

Mr. McSURELY. This is the United States of America, and as citizens—

The CHAIRMAN. If you don't want an open hearing, quit arguing about an open hearing and wanting people to know.

Mr. KUNSTLER. We have a fundamental basic position that you have no right to the documents, with public or private hearings. What he is saying is that if you want to question him as Senator Ervin was doing, on certain aspects, he wants an open hearing to answer those questions.

The CHAIRMAN. You have offered this document that he is questioning him about. You offered it for him as a part of the record this

morning. Senator Ervin is questioning him about a document which you wanted made a part of the record. You don't want to answer about it, and that is all right.

Mr. KUNSTLER. It is a public record as to whether it is a corporation. Senator Ervin knows that, too. It is a matter of public record. SCEP has been investigated by this committee and others on numerous occasions, and it is a matter of complete public record. I think they are a Tennessee corporation, if I am not mistaken. I think it states in the complaint what the origin and domestication of that corporation is.

Senator ERVIN. I know nothing about this matter except what has been brought out here this morning. As I understand, the purpose of the committee is whether the defendant is going to produce the documents. That is all.

Mr. KUNSTLER. That is right. And the answer is "No" for all of the reasons stated.

Mr. McSURELY. What is before this committee is a fundamental question about whether the U.S. public has a chance to hear what is going on here.

The CHAIRMAN. Are you going to be respectful or not?

Again I suggest that if you want a public hearing, you will produce the documents, and we will have public hearings to your heart's content.

If you don't want to produce the documents, you can follow your counsel's advice, of course. You have a right to do that. The court may decide otherwise. I am not trying to press you. I am only trying to make a record here.

Mr. McSURELY. I know that.

The CHAIRMAN. So that you can go to court if you want to or so that this committee can perform its functions and duty as a committee of the U.S. Senate. That is all we are trying to do.

I could inject into the record, if I wanted to, some of your yellow sheets and things like that. But that is not proper in this record, and I am not trying to do it. I am only trying to ascertain here today, as our only purpose, whether the documents would be made available to the committee.

Mr. McSURELY. We wish that yellow sheet would be inserted in the record. It has more facts in it than your—

The CHAIRMAN. I call your attention to section 14 of the rules, a copy of which you have before you, that all testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the subcommittee.

After this time expires, Friday noon, after that, then the subcommittee will be given an opportunity to pass upon your request for a transcript of these proceedings.

My opening statement is not testimony, and therefore I made it available to you.

The transcript can only be made available to you, not by order from me, but by a vote of the subcommittee.

Is there anything further?

Mr. KUNSTLER. I have just one thing further. This statement that Mr. McSurely did not make, I would like to offer for the record. He did prepare a written statement.

The CHAIRMAN. Let it be received but I will not place it in the record at this point.

MR. KUNSTLER. Thank you.

With that, we have nothing further from this end of the table.

The CHAIRMAN. The committee stands in recess, subject to call.

The subpoenas will remain in effect. I might say before I adjourn, that the subpoenas will remain in full force and effect, and the witnesses are under orders and directions of the committee with the approval of the committee, further orders and directions to comply by noon, Friday, March 7.

The committee stands adjourned.

(Whereupon, at 11:30 a.m., the subcommittee recessed, subject to call, with the following members of the subcommittee present at the time of recess: Senators McClellan, Jackson, Ervin, Mundt, Percy, and Griffin.)

