

decision. We make no recommendation as to whether there is a prosecutable state murder charge. Such decision is properly the exclusive province of state prosecuting authorities.

This report summarizes the information learned during this investigation, as well as relevant information from prior investigative and prosecutive work conducted by both federal and Mississippi authorities during the intervening fifty years since the murders. We trust that our work will allow for state authorities to make a fully informed decision. And, under the mandate of the Emmett Till Act, the Department and the FBI would continue to assist the state if it decides that the evidence is sufficient to support a state murder or other criminal prosecution.

II. Factual Summary: 1964 Murders

The following summary of facts is provided to assist in understanding the remainder of the report. It relies heavily, but not exclusively, upon the public records of the *Price* and *Killen* trials, particularly the detailed confessions of convicted defendants Jordan and H.D. Barnette, and Jordan's subsequent testimony in *Price*. It should be noted that certain information related in this summary and elsewhere in this report, while instructive and illuminating, would be inadmissible in a future criminal trial, such as when a witness is deceased or is a protected confidential source,⁴ and therefore unavailable to testify. Additionally, where necessary in this report, certain facts are presented in a manner so as not to reveal the identity of a protected confidential source.

In the summer of 1964, promoted as "The Freedom Summer," the Congress of Federated Organizations (COFO), one of the most active civil rights groups in Mississippi, planned a concentrated effort to register African Americans to vote. Michael Schwerner, a twenty-four-year-old former New York social worker, was an established civil rights organizer with COFO working in and around Meridian and Philadelphia. In 1964, Schwerner teamed up with James Chaney, a twenty-one-year-old African-American COFO volunteer from Meridian. Together with Schwerner's wife, Rita, they established a community center and organizing headquarters in Meridian.

A Mississippi white supremacist organization, the White Knights of the Ku Klux Klan (Klan), was fiercely opposed to all forms of desegregation, especially voter registration efforts. The Klan adopted violence to achieve its ends.

Schwerner was particularly reviled by the Klan for his work. Indeed, the killing of Schwerner was a routine topic discussed at Klan meetings attended by both Meridian and Philadelphia Klansmen, but Klan orthodoxy prevented such action unless authorized by the state Klan leader. Several weeks before the murders, state Klan leader Sam Bowers gave that authorization.

⁴ While the identity of certain FBI protected confidential sources cannot publicly be released to protect against possible harm to these elderly individuals, the information that each witness provided to a past or to the current investigation has been shared with the Mississippi Attorney General for his assessment of its prosecutive value.

But we cannot agree that the Second, Third or Fourth Counts may be dismissed as against the nonofficial defendants. Section 242 applies only where a person indicted has acted "under color" of law. Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.⁷

⁷ "Under color" of law means the same thing in § 242 that it does in the civil counterpart of § 242, 42 U. S. C. § 1983 (1964 ed.). *Monroe v. Pape*, 365 U. S. 167, 185 (majority opinion), 212 (Frankfurter, J., dissenting). In cases under § 1983, "under color" of law has consistently been treated as the same thing as the "state action" required under the Fourteenth Amendment. See, e. g., *Smith v. Allwright*, 321 U. S. 649; *Terry v. Adams*, 345 U. S. 461; *Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (C. A. 4th Cir.), cert. denied, 376 U. S. 938; *Smith v. Holiday Inns*, 336 F. 2d 630 (C. A. 6th Cir.); *Hampton v. City of Jacksonville*, 304 F. 2d 320 (C. A. 5th Cir.), cert. denied, 371 U. S. 911; *Boman v. Birmingham Transit Co.*, 280 F. 2d 531 (C. A. 5th Cir.); *Kerr v. Enoch Pratt Free Library*, 149 F. 2d 212 (C. A. 4th Cir.), cert. denied, 326 U. S. 721.

The contrary view in a § 242 context was expressed by the dissenters in *Screws*, 325 U. S., at 147-149, and was rejected then, later in *Williams II*, and finally—in a § 1983 case—in *Monroe v. Pape*, *supra*. Cf. *Peterson v. City of Greenville*, 373 U. S. 244, 250 (separate opinion of HARLAN, J.). Recent decisions of this Court which have given form to the "state action" doctrine make it clear that the indictments in this case allege conduct on the part of the "private" defendants which constitutes "state action," and hence action "under color" of law within § 242. In *Burton v. Wilmington Parking Authority*, 365 U. S. 715, we held that there is "state action" whenever the "State has so far insinuated itself into a position of interdependence [with the otherwise 'private' person whose conduct is said to violate the Fourteenth Amendment] . . . that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth

The 1967 federal prosecution trial team focused its evidentiary presentation on those defendants who participated in the shooting deaths of the three victims and on the top Klan leadership, Mississippi Klan leader Bowers and Philadelphia Klan leader Killen. All of the primary targeted defendants were convicted except for Killen. Accordingly, the prosecution team concentrated less on the secondary defendants, who had helped arrange, facilitate, and organize the murders and the burials, but had not actually participated in the killing. Given the available evidence and the political climate surrounding the trial, this strategy can hardly be faulted and proved largely successful.

A mix of witnesses – civilians, local law enforcement officers and officials, FBI agents, and forensic experts – portrayed the victims and their activities for the jury, described the recovery of their vehicle and bodies, and identified the bodies. Also among this first group of government witnesses were civilians, highway patrol officers, and jail personnel who established that Deputy Price arrested the three civil rights workers on the afternoon of June 21, 1964, detained them in the Philadelphia jail, and released them that evening. African-American colleagues and the victims' family members established that Schwerner and Chaney were in Mississippi working with the African-American community on voter registration efforts and were planning on using the Mt. Zion Methodist Church as a Freedom School. After the church burned, the civil rights workers returned to investigate the burning, speaking with African-American victims. Highway Patrol and Neshoba County jail personnel witnesses recalled the arrest, detention in the Philadelphia jail, and the release of the three civil rights workers on June 21, 1964. Highway Patrolman Earl Robert Poe (deceased) testified that, sometime after 10 p.m. on Highway 19 just south of Philadelphia, Posey approached his patrol car and asked where Price was.

As set forth further below, cooperating Klansmen Carlton Wallace Miller and Delmar Dennis thereafter testified about the defendants' Klan affiliations and their targeting of Michael Schwerner. James Jordan, who pled guilty and cooperated as a government witness, testified from personal knowledge regarding the events of June 21 after the three victims were released from the jail. He also testified to state Klan leader Bowers' approval of the murder. Another witness, Joseph Michael Hatcher, provided testimony that repeated some of what Miller and Dennis provided to the jury and related a key admission by Killen. The government's case ended with H.D. Barnette's confession, which was necessarily redacted to eliminate statements implicating other defendants in order to comply with the Sixth Amendment's right to confront witnesses.

As previously noted, seven defendants – Price, Roberts, H.D. Barnette, Posey, Arledge, Snowden, and Bowers – were convicted of the federal criminal civil rights conspiracy. Eight defendants – Burrage and Harris, as well as Bernard Akin, Travis Barnette, Herndon, Rainey, Tucker, and Willis – were found not guilty. Mistrials were entered by the court after the jury could not agree as to three defendants, Killen, Sharpe and "Hop" Barnette.

B. Carlton Wallace Miller (deceased)

Miller, now deceased, testified that he was a police officer in Meridian in 1964, and also a member of the Klan, sworn in by Killen, whom he had known most of his life. He testified that

Syllabus.

UNITED STATES v. PRICE ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI.

Nos. 59 and 60. Argued November 9, 1965.—

Decided March 28, 1966.

Appellees are three Mississippi law enforcement officials and 15 private individuals who are alleged to have conspired to deprive three individuals of their rights under the Fourteenth Amendment. The alleged conspiracy involved releasing the victims from jail at night; intercepting, assaulting and killing them; and disposing of their bodies. Its purpose was to "punish" the victims summarily. Two indictments were returned. One charged all appellees with a conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 242, which makes it a misdemeanor willfully and under color of law to subject any person to the deprivation of any rights secured or protected by the Constitution. The indictment also charged all appellees with substantive violations of § 242. The District Court sustained the conspiracy count against a motion to dismiss, and sustained the substantive counts as to the three official defendants. It dismissed the substantive counts as to the 15 private defendants on the ground that although the indictment alleged that they had acted "under color" of law, it did not allege that they were acting as officers of the State. This dismissal is here on direct appeal as No. 60. The other indictment charged all appellees with a conspiracy in violation of 18 U. S. C. § 241, making it a felony to conspire to interfere with a citizen in the free exercise or enjoyment of any right secured or protected by the Constitution or laws of the United States. The District Court dismissed this indictment as to all appellees on the ground that § 241 does not include rights protected by the Fourteenth Amendment. This dismissal is here on direct appeal as No. 59. *Held*:

1. The District Court erred in dismissing the indictment in No. 60 insofar as it charged the private defendants with substantive violations of § 242. Pp. 794-796.

(a) "To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents." Pp. 794-795.

Killen and his grandfather. Killen's remaining two witnesses each testified that Killen enjoyed a good reputation in the community.

The jury found Killen guilty on three counts of manslaughter. Thereafter, the court sentenced Killen to twenty years for each count, to be served consecutively for a total of sixty years. Killen remains incarcerated in the Mississippi prison system. The state trial against Killen produced no new evidence against Willis, Burrage, [REDACTED]

VII. Federal "Emmett Till Act" Investigation Summary: 2010 through 2016

A. Emmett Till Act Investigation Overview

Our goal with the federal Emmett Till Act investigation was ultimately to assist the Mississippi Attorney General by seeking additional admissible evidence against persons potentially prosecutable under the state murder statute. Beginning in 2010, we initiated a careful review of the massive federal MIBURN file, particularly its confidential source files. Later, we also reviewed the state's investigative files from the late 1990s/early 2000s, which led to Killen's conviction in 2005. We searched the files with a focus on identifying the universe of known witnesses, as well as other potential witnesses who had not previously been interviewed, or not fully or robustly interviewed. Additionally, we searched for witnesses who might help resolve the credibility of witnesses who might be concealing relevant facts. We further examined potential leads and rumors proffered by non-governmental sources. The FBI thereafter expended considerable effort determining which potential subjects and witnesses were alive and which were deceased. Next, surviving persons had to be physically located.

The FBI determined that only five of the individuals originally identified as participants in the murder conspiracy remained alive in 2010 – Willis (who died in July 2011), Burrage (who died in March 2013), Killen, [REDACTED] As previously indicated, Killen was successfully prosecuted by the state in 2005 for his role in the murders. Regarding the remaining four subjects, we suspected the following: Willis was alleged to have notified the Klan killers that the victims were being released from jail; Burrage owned the land on which the victims were buried and allegedly assisted with their burial and the disposal of the car; [REDACTED]

[REDACTED]

The FBI, often along with Department attorneys, interviewed or attempted to interview every living, competent witness and potential defendant who could be located. Additionally, witnesses who might have information relevant to the credibility of other witnesses were also interviewed. Witnesses who purportedly had competency deficiencies were personally contacted to corroborate the reported mental condition. Some witnesses were re-interviewed several times and vigorously confronted with information that suggested they were not completely forthright. In certain cases, we obtained additional relevant information from reluctant witnesses. We followed every lead to its logical conclusion and queried every potential