MISSISSIPPI REPORT Aug. 4 7:15 p.m.

About one hour ago the first news came over the AP wire that three bodies have been found near Philadelphia, Mississippi. 44 days ago Michael Schwerner, James Chaney, and Andrew Goodman left Meridian to investigate the burning of a church near Philadelphia. Workers in the Mississippi Summer Project familiar with the mores of that state where "ordinary conversation reeks of manslaughter" have long been convinced that the three young men were dead. It appears now that the only real mystery in the case, the location of the bodies, has been dissolved. The culprits, or some of them, are almost certainly known to the federal authorities.

The July 13 issue of Newsweek said unequivocally that the search for the bodies "amounted principally to a show of urgency to keep the pressure on." The article said that "the feeling"--without specifying whose feeling--is that a dozen men took part in the kidnapping and murders. Newsweek quotes an unidentified federal agent: "We haven't even started leaning on suspects yet. When we do, we're going to lean real hard. I feel like somebody will break."

Then, on July 25, the New Republic carried an article by Christopher Jencks entitled "Mississippi--When Law Collides with Custom." Mr. Jencks point is the not-too-startling revelation that Mississippi law enforcement agencies are a part of the structure of white supremacy, and are instruments of repression on Negro protest. Near the end of his article, Mr. Jencks drops the following piece of information: "On July 9...when Mississippi agents of the FBI thought they were about to break the case of the three

'missing' civil rights workers, they told newsmen that four law enforcement officers would be among those arrested."

Jencks does not mention that the day after this report to the press, J. Edgar Hoover himself went to Jackson. The speculation this aroused quickly faded when Hoover said that all he came for was to dedicate a new FBI office. It could well be that Hoover only wished to display the Administration's concern for civil rights with one of his almost-never departures from Washington. But one is entitled to wonder if that is the full explanation.

Then, yesterday evening, the KPFA news reported, from an AP dispatch, that the FBI has been closely questioning Sheriff Rainey of Neshoba County, in which the disappearance took place. The sheriff indicated to news media his displeasure at this unaccustomed attention, and is quoted as telling the FBI to bring around some compulsory process the next time they want him to talk. He is well within his rights in doing this; if the Sheriff persists, and the FBI wants to hear him talk, the only was to force him to talk is to call him before a federal grand jury.

Why all the silence by the FBI. The three million dollars which the agents claim to have spent in investigation can't all have gone for shoe leather and helicopters. Why, within two weeks, should two magazines commonly regarded as Administration insiders carry articles about the difficulties inherent in prosecuting law enforcement officers?

I have no wish to see Sheriff Rainey railroaded into a murder charge. But I will lay a small wager that he at least knows somebody who could tell us who killed Chaney, Goodman, and Schwerner.

Let us suppose law enforcement officers are involved in the

disappearance, as seems to be the underlying assumption of the Newsweek and New Republic pieces. Let us then look at the objections of doing something about it.

The first is a general objection in Mississippi cases involving whits defendants. In Marech 1963, Assistant Attorney General Burke Marshall replied to a letter from Lawrence Speiser of the Washington D.C. office of the ACLU. Mr. Speiser had pointed out that while federal authorities had lodged 102 complaints alleging criminal violation of the civil rights of Negroes in the fourteen preceding months, only 8 cases were presented to the federal grand jury. Six times the grand jury refused to indict. Of the 2 indictments returned, one resulted in a judgment of acquittal after jury trial. The other was then awaiting trial. Mr. Marshall wrote "But I will not permit the filing of a criminal information where I am not convicted evidence will support a conviction and sustain the judgment on appeal, for to do so it seems to me would involve a gross violation of the rights of the defendant. I do not believe that such use of prosecutive authority is permissible even where the altimate purpose is to effect a desirable sociological change." That is certainly an unexceptionable statement, but it is singularly unresponsive.

First, on the refusal to indict. The Grand Jury occupies an historic place in our jurisprudence as a guardian of the rights of the citizen from unjust and oppressive charges brought by the government. But it must first be observed that racial discrimination in the selection and proceedings of the federal grand jury in the Middle District of Georgia have been revealed; it Mr. Marshall would investigate this matter, he might find that the refusal of

the grand jury in Mississippi to indict result from something other than solicitous concern for the defendant's freedom from arbitrary and oppressive charges.

And besides, it is not the Justice Department's job to whigh the evidence and determine guilt. The job of the prosecutor is in good faith to determine if he has a prima facie case--enough to get to the jury. Then, he must exercise his discretion to prosecute or not. That is his role in our system of government. His discretion to prosecute or not may permissibly rest on his view of the prevailing desire of the people to emphasize one aspeet of the law enforcement more than another.

When Robert Jackson was attorney-general of the United States, he informed Senator Millard Tydings that he, Jackson, did not intend to prosecute under the District of Columbia criminal libel statute "until hell freezes over." Jackson took this position because he thought criminal libel statutes, applied to statements about individuals, were unwise laws.

It serves no good at all to invent a constitutional justification for the refusal to prosecute, as Mr. Marshall has done. It ford, infrrf, s fiddrtbivr, got iy ondvutrd yhr trsl iddur--whether and to what extent the federal government should initiate criminal prosecutions under the Civil Rights Laws in Mississippi.

Burke Marshall's fears that he won't get convictions are not related to the quantity of evidence that he has. Neither could they be rationally related to a fear that juries won't convict because the laws are so unjust and oppressive--as happened in criminal libel cases in colonial America. He will not get convictions because most Mississippians do not shed the mantle of

racism in the jury room. So be it. There are other legitimate measons to prosecute when the proof is clear and the presumption great.

As to that issue, there is evidence that hopeful results may eventuate in the context of such prosecutions. P.D. East, a white newspaper editor in Hattiesburg, noted that it was an encouraging sign when five white jurors actually voted to convict a white man for murdering Medgar Evers. The guilt or innocense of Beckwith isn't relevant here. What is interesting is that you can find five white people in Mississippi who actually believe it is a crime to kill a Negro leader of the NAACP.

Equally important is the deterrent effect of prosecutions. The Justice Department Tax Division selects its cases with care for maximum deterrent impact. Surely Mr. Marshall would not intend to draw his colleagues into disrepute by intimating that their tactics are constitutionally impermissible. Yet this is nothing but a discretion closely related to the sort to which Mr. Marshall refers.

The next objection is that propounded by J. Edgar Hoover, who said that the FBI cannot protect people because it is not a police agency. We have commented on that before on this program. It is nonsense. The FBI has, with respect to federal laws, the same power of arrest as a Berkeley policeman has in Berkeley with respect to California state penal statutes and municipal ordinances. I would invite Mr. Hoover to compare the relevant sections of the U.S. Code and the California Penal Code, were it not that the behavor of his agents in other parts of the country amply demonstrate his familiarity with them.

Christopher Jencks, in his New Republic article, says that arrests of local officials might lead to "a complete breakdown of local law enforcement."

If by this it is meant to say that arrest of the sheriff will be the go-ahead for all the local burglars and drunks, and robbers, this conclusion is seriously to be questioned. But I would remind Mr. Jencks that the legislature of Mississippi has just passed an act providing for pooling of resources among local police departments. The law is designed to deal with civil rights demonstrations, but since it does not appear to be unconstitutional on its face, it might help to use it when the FBI screws up the courage to put the local sheriff in the federal jailhouse.

Further, there are federal procedures available to correct a breakdown of local law enforcement.

No, the real objection to arresting a policemena in the Chaney, Goodman, and Schwermer case, as in every other civil rights case, is political.

The white backlash, as the problem is called, means that you don't push too hard on civil rights. Especially when it means ~~kkxk~~ pushing on somebody like the local sheriff, who is of saintly status in the eyes of the local government enthusiasts among the Goldwater supporters.

This mentality is reflected in a call by the NAACP, the SCLC, and the Urban League, for an end to demonstrations.

There are two answers.

First, have not the gentlemen heard of the Negro backlash. What about Harlem, Rochester, Kansas City, Jersey City. Is the answer supposed to be more guns, more dogs, more brutality. To

treat these uprisings as explosions of criminal violence rather than the torrid outburst of a righteous anger is to give credence to the racist myth, not to defeat or answer it.

Second, President Johnson is a very popular man these days among the electorate. Murdering people in Mississippi is horrible enough, and distant enough, from the concerns of men about who lives next door to them, that even a white busily engaged in backlashing can feel that the culprits should be caught and brought to justice. Even Mississippians, in the anonymity of the jury room, thought so--enough to vote to convict Beckwith.

The bodies that have been found may be those of Goodman, Chaney, and Schwermer. We will know tomarrow. And when we know, perhaps the FBI and the Justice Department will do their jobs as the laws command them.

And if they do their job, and do it with courage and with their cogent reasons assembled ready to present to the people, they will strike at the sense of justice and fair play which even at the height of the McCarthy period an encouraging number of Americans were willing to profess to sociologists under the direction of Samuel Stougger.

The office of prosecutor, as the Supreme Judicial Court of Massachusetts said, during its great days, "is a public trust. The office is not private property, but is to be held and administered wholly in the interest of the people at large and with an eye single to their welfare." I commend that sentiment to the Justice Department.