

# Malak confronted, picketed at new job

## V.O.M.I.T. members vow not to let up pressure

by David

Dr. Rahmy Malak started his new state Health Department job Monday the same way he ended his last: as state medical examiner a week ago: hounded by members of V.O.M.I.T.

Eleven members of the group picketed the entrance of the Health Department building in Little Rock for an hour Monday morning. Then they entered the building and waited an additional half-hour before briefly confront-

ing Malak outside his new office in the department's sexually transmitted disease division.

Malak told reporters later that he was happy to be in the new job but had nothing to say to the pickets, who displayed large signs such as "Rahmy Whammy" and "Clinton for president, Malak for surgeon general?"

V.O.M.I.T. stands for "Victims of Malak's Incredible Testimony." Its members are people who contend that Malak botched autopsies of their loved ones.

Malak has denied the charges, saying all medical examiners face some upset family members who simply won't accept the examiners' opinions on cause of death.

Malak resigned Sept. 10 after 12 years on the job and transferred to his new job at the Health Department.

That was a week after Gov. Bill Clinton said he thought the time had come for Malak to leave the examiner's job and four days before the State Crime Laboratory Board was to review five disputed

Malak cases.

It was the same day that results arrived at the crime lab showing Malak had viewed the wrong tissue samples as the basis for testimony, which consequently was incorrect. That error led to dismissal of murder charges against a suspect in Hot Springs.

V.O.M.I.T. members call the new job a deal arranged by Clinton to avoid an embarrassing situation as he considers a run for the presidency. "They say the switch is too lenient for Malak, whom they claim should be prosecuted for falsifying evidence and perjury.

Monday's confrontation ended

when a picket, Elizabeth Diminskas, became distraught as Malak answered a reporter's question about his new job.

"You're dishonest," Diminskas cried as she walked toward Malak. "Dr. Malak, you are not an honest man."

"I have work to do," he said as he moved briskly down a hallway, shielded by a Health Department employee, ending the confrontation.

Diminskas is the mother-in-law of Dr. Lee Beamer, whom Malak fired as his assistant medical ex-

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aminer several years ago.

The pickets, organized by Linda Ives of Benton, said they didn't have time to return to the Health Department during workdays but planned to demonstrate at the state Capitol on Saturday. They said they don't expect to let up until Malak holds no state job.

Health Department employees who passed the pickets on their way to work Monday morning said they didn't want to make any comment because, as several put it, "I work for the department."

Meanwhile, members of the State Crime Laboratory Board said Monday that an effort to set up a forum for citizen complaints likely would include reviews of disputed Malak rulings, not just future rulings.

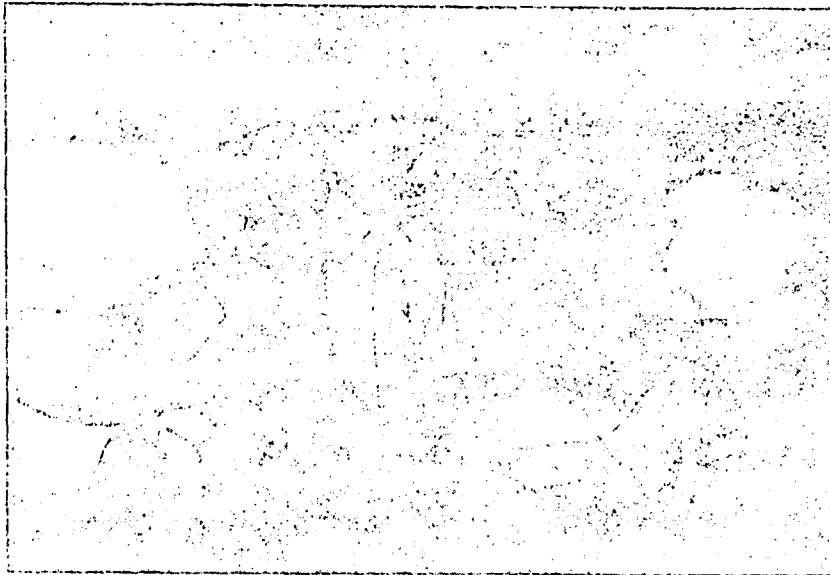
Dr. Annette Landrum, a board

member, and crime lab director Jim Clark will meet with Dr. Aubrey Hough, head of pathology at the University of Arkansas, to design the review mechanism. She said it might be a small standing subcommittee of board members who would review all complaints and possibly hire outside experts to review certain cases.

"I think [family members] deserve answers to their questions," Landrum said.

—Photo on Page 1A.

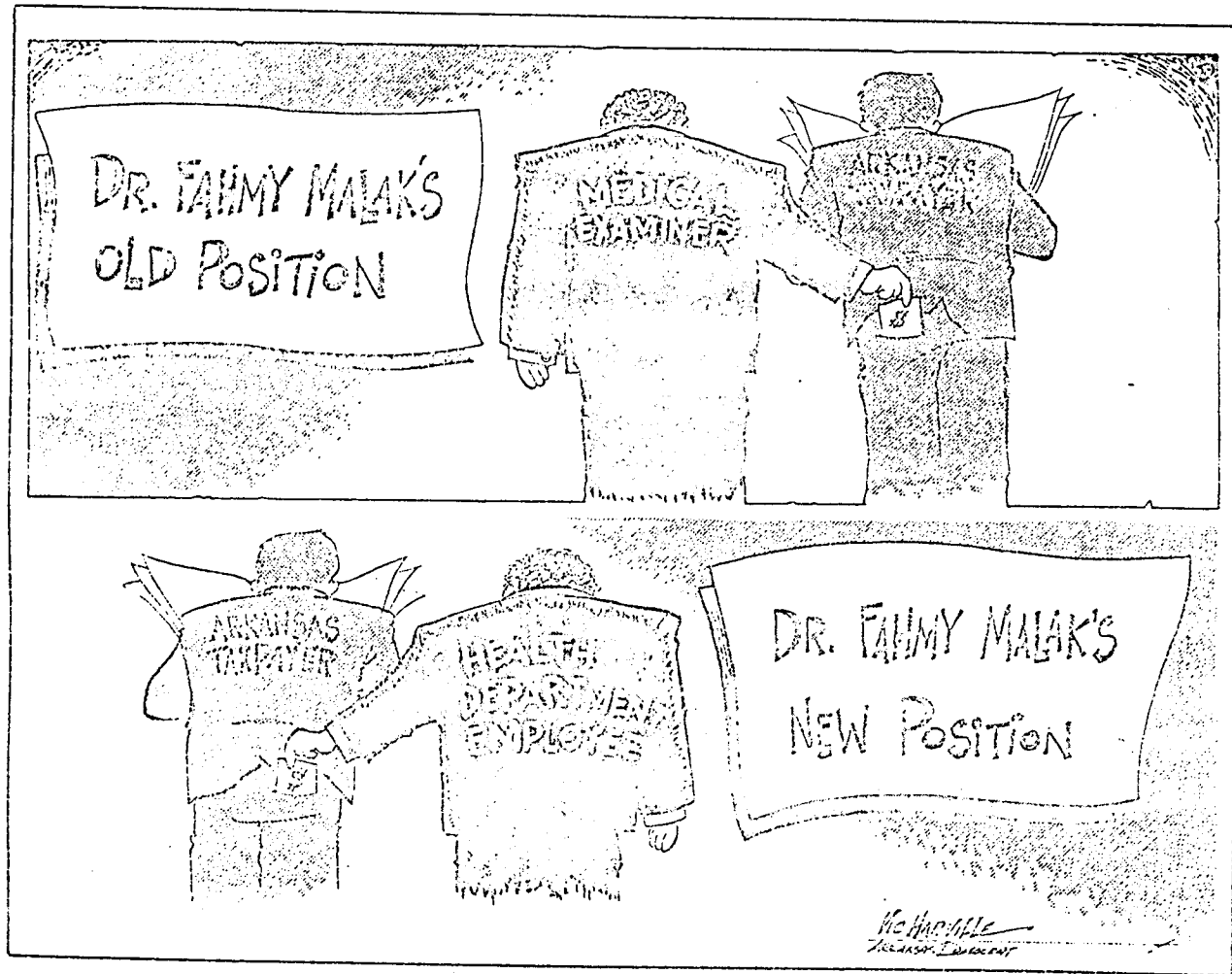
9-17-91  
Gazette



Spencer Tirey/Gazette Staff

### Malak confronted at new job

Dr. Fahmy Malak is confronted by Elizabeth Diminskis, mother-in-law of a former assistant medical examiner he fired, in the reception area outside Malak's new office at the state Health Department. Donnie Smith (middle), a Health Department employee, ushered Malak away. Article on Page 13.



# Crime lab mixed labels in shooting

## DNA tests reveal confusion

By Valeria Smith  
Gazette Staff

Former state medical examiner Dr. Fahmy Malak gave erroneous testimony in a March murder trial because of a mix-up in evidence at the State Crime Laboratory, the lab's executive director said Friday.

A second-degree murder charge against Ernest Lemons of Hot Springs was dropped after Malak testified.

Lemons was charged with the Aug. 18, 1990, slaying of Gregory Stephens of Hot Springs. He cannot be retried in the murder case, but currently is serving a total of 35 years in prison on several theft convictions.

Jim Clark, the crime lab's executive director, acknowledged the error at a meeting of the State Crime Laboratory Board on Friday morning.

In a telephone interview Friday afternoon, he said the mistake could have been made because "it's just too damn busy" in the crime lab. One pathologist performed 13 autopsies on the day Stephens' body was autopsied, Clark said.

Clark gave the board a copy of a letter mailed to Prosecuting Attorney Paul Bosson of Hot Springs in which he "apologize[d] to the citizens of Garland County for the confusion that this error has cause[d] in the prosecution of your case."

"It does appear an error was made at the Crime Laboratory in the Gregory Stephens case. Either the tissue sample labeled Gregory Stephens or the blood tubes labeled Gregory Stephens were inadvertently switched at autopsy time," Clark said in the letter, dated Sept. 12.

"I was convinced all along that we were right," Bosson said after reviewing the letter Friday afternoon.

Malak, testifying from slides of tissue samples, told a Garland County jury that Stephens was shot in the head at close range, while witnesses said Lemons was

See MALAK/7A.

Crime lab board declares review of cases moot/7A.

Continued from Page 1A

standing in the street about 40 yards away when the fatal shots were fired.

The testimony appeared to differ from what Malak had written in an autopsy report.

"We were dead in the water" when Malak testified, recalled Bosson, who said he believed he could have gotten a conviction with testimony from the correct tissue samples.

The Stephens samples were sent to Dr. Darryl Shibata at the University of Southern California on Aug. 28, and a report of the results was received on Tuesday.

Clark denied that Malak was notified of the mix-up before his resignation, despite the fact that the report was returned to Clark on the same day.

He said Malak was out sick on Monday and Tuesday, and when he last spoke to Malak — on Tuesday — Clark had not gone through the mail to find the results.

But others, including Bosson and the victim's family, suspected the timing of Malak's resignation was not coincidental.

"It's just a whole lot of cover-up," John Stephens, the father of Gregory Stephens, said Friday afternoon.

Bosson, who called on three forensic pathologists to study the case, has criticized both Malak and Clark for the error.

Friday he renewed the charge, maintaining that Clark did nothing to correct the mistake. Clark read Malak's autopsy report after the trial, then issued a statement to Gov. Bill Clinton that he found Malak hadn't erred.

Because Clark requested an outside opinion only after the *Arkansas Gazette* reported the results of one of Bosson's pathologists, Bosson contends that without the media pressure, no action would have ever been taken.

"As long as [Clark's] there, I have to worry about anything that comes out of the Crime Lab," Bosson said.

Among the pathologists called in by Bosson was Dr. Michael Graham of St. Louis, who gave the opinion that Malak was looking at another person's skin sample when he gave his sworn testimony. Graham recommended genetic tests of the tissues to determine whether they were from Stephens.

# Editorial

## No deal for Malak?

So Bill Clinton denies the obvious, that a deal was struck for Dr. Fahmy Malak, who resigned as medical examiner Tuesday.

He's no doubt trying to skirt the political fallout as time draws near for him to announce whether or not he'll seek the Democratic presidential nomination.

Clinton flatly says, "We didn't make any deal," but you would have to be totally disinterested to swallow that.

Malak's new job was indisputedly crafted especially for him at the state Health Department, where a hiring freeze has been under way since June — never mind that taxpayers will be shelling out \$70,000 a year for a job that previously didn't exist.

Moreover, Malak's lawyer and others have said enough for a convincing chronology of negotiations for the deal to be published.

While fending off reporters, Clinton was candid enough to say that the fact that another state job was made available for Malak meant "less fallout" — and the avoidance of potential lawsuits.

Did he mean less fallout from Malak?

You can't blame Clinton for not wanting to lug Malak's baggage around on the presidential trail, but what's this business about potential lawsuits? From all that's been published about Malak's rulings and the medical examiner's office, why would Malak even want to go to court?

When a reporter asked if avoiding lawsuits meant that Malak was about to be fired, since his lawyer had previously said that Malak would sue only if he got terminated, Clinton ducked that question, too, by saying, "I've said all I'm going to say about this."

We don't blame Clinton for wanting the issue to blow over, but his remarks have been contradictory.

For instance, he said on Wednesday that it was "almost coincidental" that Malak's new job had opened up as he resigned. There were negotiations, the governor conceded, "but my office wasn't involved in them." Later that day, however, his aide Mike Gauldin confirmed that an unnamed member of Clinton's staff had indeed helped bring together Malak's lawyer, Health Department officials — including Director Joycelyn Elders — and others.

Though Gauldin refused to name the aide, an Associated Press story said it was Clinton's chief legal counsel Field Wasson.

Well, Clinton can say what he wants to about no deal being cut, but it won't change the public's perception the governor took care of Malak, even if he didn't personally participate in the negotiations. And there's bound to be even more of the fallout Clinton has tried to dodge.

# Crime lab board halts Malak probe

## Victims' families vow to fight decision

By Valeria Smith  
Gazette Staff

In a meeting punctuated by angry outbursts from the audience, the State Crime Laboratory Board gave mixed signals Friday on what to do with five controversial death cases.

The members voted to declare review of the cases moot, but pledged to find a way to address citizen complaints and assigned someone to devise such a procedure for discussion at the next board meeting.

"They did not close the door on those five cases," said Jim Clark, executive director of the State Crime Laboratory, who will devise the procedure.

But the compromise wasn't enough for more than 40 people, including family members of victims in five disputed cases, who loudly complained that the board had not done enough to ensure integrity in the Medical Examiner's Office.

"There's nothing you can do but keep fighting," said John Stephens, the father of Gregory Stephens of Hot Springs, who died last year of a gunshot wound to the head.

The Stephens case was one of five scheduled for review during a performance evaluation of former state medical examiner Dr. Fahmy Malak, who resigned Tuesday.

Also on Friday:

■ A six-member search committee was appointed to find a replacement for Malak, who was paid \$106,000. Clark will serve as an unofficial committee member.

■ The group V.O.M.I.T. — Victims of Malak's Incredible Testimony — said it would stage a protest Monday at the state Health Department, where Malak will begin work as a department head in the communicable diseases division.

The five cases scheduled for review were: The 1987 deaths of teen-agers Kevin Ives and Don Henry on railroad tracks in Saline County; the 1989 death of Olivia Jane Ward in Searcy County; the

1990 shooting of Kimberly Iron Schwartz in Martin Lee Walt III's Dumas home; the 1990 shooting of Gregory Stephens in Hot Springs; and the 1985 death of Jimmie Seigrist in Pulaski County.

Early in Friday's meeting, the Crime Laboratory Board chairman, Dr. I. Dodd Wilson, tried to dismiss review of the five cases.

"My sense of this ... is that this review was undertaken as a review of Dr. Malak, and now we don't have to do this," Wilson said, citing state law on the board's charter. "It's not the responsibility of this board to review every controversial case in Arkansas."

"I feel like we've done everything we were asked to do," added board vice chairman Kathy Goss, an attorney from Lonoke.

"I don't believe you did," shouted Shirley Banks of North Little Rock, the sister of Jimmie Seigrist. Malak said Seigrist's drowning was an accident, but his family believes he was murdered.

The board refused to recognize the heckling spectators, but allowed an hour-long question-and-answer session after the meeting. Family members demanded to know what would happen to their cases and what punishment awaited Malak, whom they accused of incompetence and malfeasance.

"If the medical examiner had perjured himself, something should be done with this man," said Buster Schmidt, the brother-in-law of William Horne, who was convicted of murder after Malak's testimony.

Because Malak no longer works for the crime lab, responsibility for his actions is outside the board's jurisdiction, and any allegations of perjury must be pursued through a prosecuting attorney's office, Wilson responded.

"That's not right!" Schmidt said, arguing that the board should have authority if Malak continues to work for the agency. According to Clark, Malak has 124 unfinished cases that he must complete, on a part-time basis.

# Board won't review

## Disputed Malak cases

By JEL O'NEAL  
Democrat Capitol Bureau

The state Crime Laboratory Board refused Friday to review cases where family members have questioned autopsy rulings by former state Medical Examiner Dr. Fahmy Malak.

Instead, the board agreed to set up an appeals process for family members who want to contest an autopsy finding.

"My sense of this is the review was undertaken as an evaluation of Dr. Malak. Now Dr. Malak is no longer in the office and we don't have to do that," Chairman Dr. I. Dodd said during the board's meeting.

Malak resigned Tuesday from his post amid allegations he had botched autopsies and given inaccurate testimony.

"It's not the job for this board to review every controversial case in the state of Arkansas," Wilson said.

After the meeting, the board did allow some family members to speak about problems within the Crime Laboratory, but the families were barred

from discussing specific cases.

"The problems we have still remain, and I don't think we should sweep them under the rug and start over with a new medical examiner," said Carolyn Browning of Little Rock, who said a relative was examined at the Crime Laboratory.

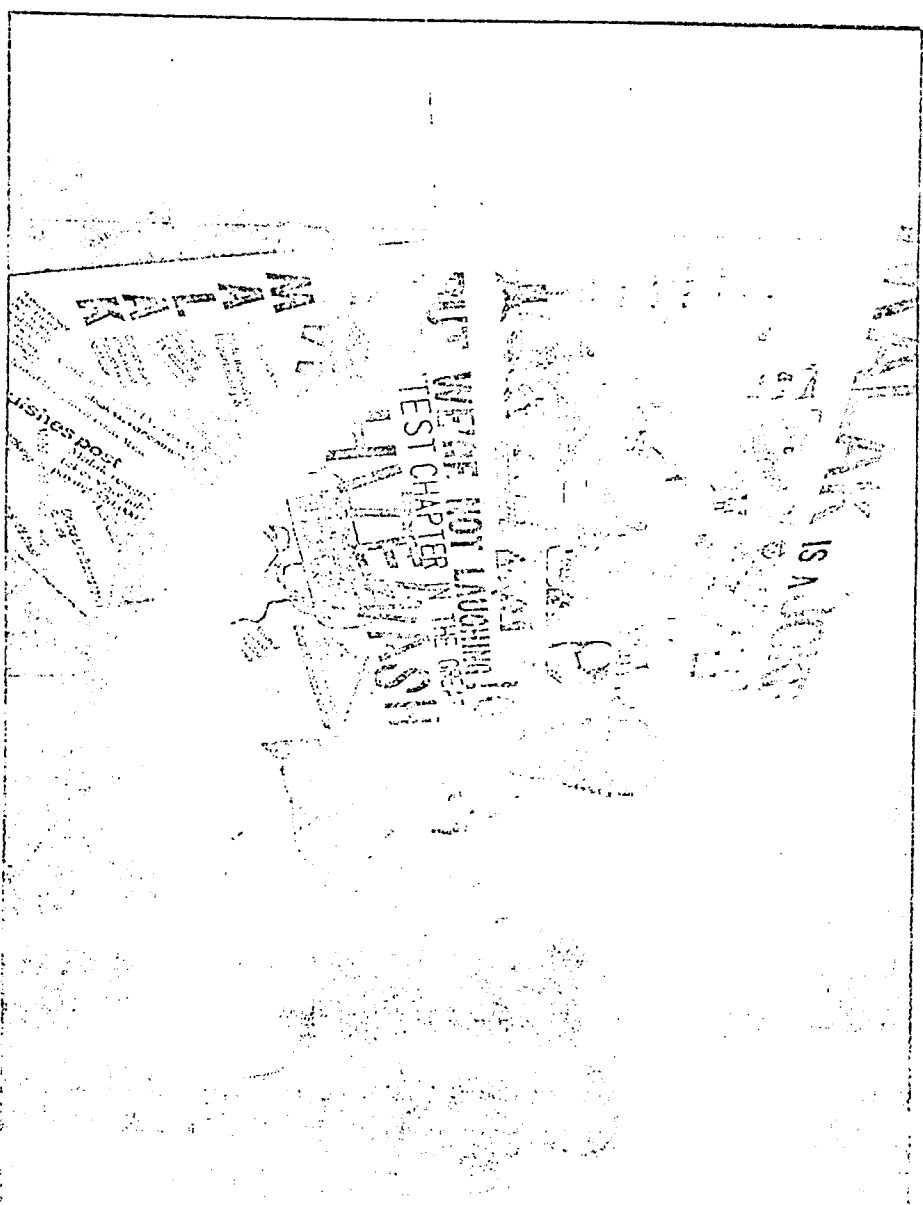
During the meeting, the board agreed to create a search committee to find Malak's replacement.

In the interim, Dr. Joseph Halka, an Orange County, Calif., pathologist, will temporarily replace Malak.

"The search committee is going to have to come up with a package of salary and benefits ... to offer an enticement to bring in a quality person," Crime Laboratory Director Jim Clark said.

The system now in place features one chief medical examiner and one assistant.

Clark said he is going to lobby the state Legislature during a special session this fall for money to hire at least two more assistant medical examiners.



**SIGN OF ANGER** - Linda Ives places a sign blasting Dr. Fahmy Malak, former state medical examiner, on an easel before the start of the state Crime Laboratory Board's meeting Friday morning in Little Rock. Malak

had ruled that Ives' 17-year-old son, Kevin, and other youth were lying in a marijuana-induced stupor when they were run over by a train near Alexander in August 1987.

*Dr. Malak*  
9-13-91

The state Health Department did not have hiring freeze when it hired former state medical examiner Dr. Fahmy Malak for a new job early this week, according to department records.

The department is currently advertising to fill 29 positions, five of them in administration, according to its most recent job Vacancy and Promotional Opportunity list."

"So that's not a freeze," said Tom Butler, the department's director of administration. The department circulated a memo on Jan. 2 announcing a "temporary freeze on

A "hard freeze" comes from an order by Gov. Bill Clinton, who then has to formally approve any exceptions to that freeze, Butler said.

He will review statistics about a rise in syphilis cases in the state. He'll also act as a consultant to the department's laboratory, which is without a director.

Critics have called the resignation a deal offered to Malak to get him out of office quietly as Clinton prepares to run for presi-

Clinton's staff has acknowledged that it helped negotiate the new job for Malak via Malak's lawyer. And Clinton said Wednesday that the availability of the Health Department job would mean "less fallout" and avoid potential lawsuits. But Clinton has denied that the resignation was related to his presidential aspirations.

Meanwhile, State Crime Laboratory director Jim Clark said Thursday it was all but finalized that Malak will receive \$10,000 from the Crime Lab in the next six months to complete 124 cases he had begun before his resignation.

That will be in addition to Malak's \$70,000 Health Department salary, Clark said.



# Grand jury to investigate 1985 Malvern death

MALVERN (AP) — A man convinced that authorities were wrong to rule his son's death a suicide has persuaded a grand jury to investigate the 1985 death.

After Bobby Bennett finished testifying Friday, the Hot Spring County grand jury decided to investigate the 1985 death of Robert Wayne Bennett. Prosecutor Dan Harmon of Benton said the grand jury would meet later this month to

begin its investigation.

Bennett's son was 27 when he died at his Malvern home on Feb. 28, 1985. He was shot in the upper chest with a shotgun. Pellets were found in the ceiling tile of the bedroom.

Authorities ruled suicide.

The elder Bennett raised enough questions to persuade then-Prosecutor Joe Kelly Hardin of Benton to have the body exhumed on June 19, 1985. Local authorities again called the

death a suicide. Dr. Fahmy Malak, the state medical examiner, agreed.

Bennett said Friday that after the autopsy Malak "told me my son held the shotgun above his head and the pellets bounced off the floor and into the ceiling."

"I've been over every inch of the soft floor tile in that bedroom," Bennett said. "Nothing bounced."

Bennett said Malak told him that his son bled to death as he

went to the front door of the home.

During the last six years, Bennett has conducted his own investigation. He has collected more than 1,400 documents and photographs and has kept other evidence.

In the last three years, three Malak rulings have been reversed — two by grand juries and one after a coroner's inquest.

FRIDAY, SEPTEMBER 13, 1991

# Crime lab may change appeals procedure

BY DOUG THOMPSON  
Democrat-Benton Bureau

Bereaved families who are questioning past rulings of the medical examiner's office should be able to appeal, but not to the state Crime Laboratory Board, the panel's chairman said Thursday.

"I can't speak for the board, but my personal inclination is

not to pursue it any further," chairman Dr. I. Dodd Wilson said. He was asked about the possibility of a review of five cases despite the resignation this week of Fahmy Malak as state medical examiner. However, Wilson said he would support an appeals procedure for contesting medical examiner findings.

"Two times, I've been told to

gather up all the information on my son's death and present it to a state board. Nothing happened the first time, now nothing's going to happen the second if Wilson has his way," said Linda Ives, spokesman for families wanting the review. "Why should I believe anything's going to be done on the third try?"

Ives' son, Kevin Ives, died

with friend Don Henry in 1987. Malak ruled the deaths accidental. A Saline County grand jury ruled in 1988 that the deaths were homicides.

Malak resigned Tuesday. The newly formed board meets today. Its agenda before Malak resigned was to consider his continued employment. It had selected five of Malak's deci-

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# Malak used wrong sample, lab chief says

BY RACHEL O'NEAL  
Democrat Capitol Bureau

Dr. Fahmy Malak, former state medical examiner, apparently used the wrong tissue samples in arriving at findings that doomed a murder case, according to a report completed the day he resigned, the state Crime Laboratory director said Friday.

Director Jim Clark told the agency's board of directors that either the blood or tissue samples from Gregory Stephens' body "were inadvertently switched at autopsy time" with those from another body.

Malak's testimony in the murder trial forced the Garland County prosecuting attorney's office to drop charges against defendant Ernest Lemons of Hot Springs.

"They are now admitting what I said all along and that is that they are wrong and they are the cause of us losing that case," Prosecuting Attorney Paul R. Bosson of Hot Springs said Friday.

Bosson's deputy prosecutor dropped the case in midtrial after Malak testified that the murder weapon's muzzle was "in tight contact" with Stephens' head. Malak used tissue samples to make that finding.

The prosecution contended that Lemons fired from the middle of the street at Stephens, who was on the front porch of his home - a distance of 50 feet.

Stephens, 25, of Hot Springs was fatally shot Aug. 18, 1990. Bosson charged Lemons, a parolee, with Stephens' murder.

"We don't like losing even when we're supposed to. But we especially don't like losing when the state Crime Laboratory botches up the thing and blames us for their shortcomings," Bosson said.

"I'll never get justice. Ernest is a free man because of him (Malak)," Stephens' mother, Ruby Stephens, said Friday.

See MALAK, Page 11A

## Malak

Continued from Page One

Restrictions against double jeopardy - or trying a person twice for the same crime - prevent Lemons from being tried again in the Stephens case, Bosson said.

"As a prosecuting attorney, I had access to funds and experts and had the ability to seek the truth. Poor people around the state don't have the expertise and funds to do something like this," Bosson said.

After the trial, Bosson sent the tissue samples to another medical examiner in St. Louis, who advised him the tissue and the photograph of the wound didn't match.

Clark said he received the report Tuesday, the same day Malak resigned from his \$105,000-a-year job as chief medical examiner amid allegations he botched autopsies and gave inaccurate testimony.

"I haven't seen the report so I can't comment on it. This is history," Malak said Friday.

Malak told a reporter who went to his west Little Rock home that he didn't plan to respond to further questions about his 12-year tenure as medical examiner.

"I'm no longer an employee so I'm not going to comment any more," he said.

Clark said the report didn't lead to Malak's resignation.

"Dr. Malak was off Monday and Tuesday with sick leave. He has not been contacted. He does not know about it and has not even seen a copy of the report," Clark said.

"We do not know positively for sure that the tissue block that was examined by Dr. Malak at the time of autopsy - and where he says he sees gunshot and powder residue - is that of Gregory Stephens," Clark said.

The tests were requested Aug. 28, two weeks after Bosson held a news conference to announce that three pathologists had disputed Malak's findings.

"I think if the tissue sample is incorrect, then Dr. Malak would not have testified that he saw gunshot powder residue in the tissue block of Gregory Stephens," Clark said.

Stephens' blood and tissue samples were sent to Dr. Darryl Shibata, a DNA expert at the University of Southern California at Los Angeles, Clark said.

Shibata found that the blood and tissue samples didn't belong to the same person. The test can't be used to determine which sample actually came from Stephens' body, Clark said.

"I almost made a \$5 bet that when we got the results back, they would tell us the blood and tissue were from the same body," Clark said.

"I was very disappointed, and we immediately began to start slowing down our autopsies," he said.

Clark said the only way to determine which sample was Stephens' is to exhumate the body and take new samples.

Later, though, he said the laboratory keeps "back-up" samples that could be used to make that determination.

"We could send it to California, but the test costs \$550, so I don't know if I'm willing to spend the money since this particular case is over and there is nothing Mr. Bosson can do," Clark said.

The same day as the Stephens autopsy, Malak examined the body of a 14-year-old black male. Both men were shooting victims and had the same blood type, Clark said.

"This issue could have been resolved months ago if Jim Clark had been interested in what the truth is instead of protecting Dr. Malak," Bosson, who has called for Clark's resignation, said.

Malak will start his new \$70,000-a-year job Monday with the state Health Department. He was offered the position before resigning as chief medical examiner. In his new job, Malak will conduct research on sexually transmitted diseases.

ARKANSAS DEMOCRAT • FRIDAY, SEPTEMBER 13, 1991

# Sheltering Malak raw deal for state's taxpayers

The check is in the mail. I'll still respect you in the morning.  
I'm from the government and I'm here to help you.  
*No deal was made.*

You can add to the blarney list that italicized comment from Gov. Bill Clinton about Fahmy Malak's latest good fortune.

No one believes for one second that no deal was cut so that Arkansas' erstwhile medical examiner can remain on the state payroll until he can begin drawing his state pension.

We couldn't just be rid of this bungler.

Public opinion be damned. The Clinton administration takes care of its own.

If Joycelyn Elders hadn't created a make-work job for Malak, someone else in Clinton's cabinet would have.

If these people would take as much care of the public as they do one another, it's doubtful we would ever be in court over our prison system, our mental health system, our education system, our public health system or our child welfare system.

When I think back over the many embarrassments of the Clinton years, including his first term, I cannot help but wonder at his brand of loyalty.

The people who disappoint and embarrass his administration the most, who prove time and time again to be incompetent or abusive or otherwise unworthy of the public trust, are the ones he steadfastly refuses to disenfranchise.

In a decade of bureaucratic embarrassments, Fahmy Malak was perhaps this administration's keenest embarrassment. He didn't know a marijuana high from a stab wound. Before his scalpel, suicides looked like accidents and murderers looked like natural causes.

He couldn't keep his testimony straight from one minute to the next. He treated evidence like a 4-year-old treats a jigsaw puzzle: when the pieces didn't fit, he tried to pound, push and mold them into place.

Malak's tenure in the state Crime Laboratory was one fiasco after another, undermining public confidence not only in the system but in the administration.

Yet by his refusal to confront the obvious, Clinton remained Malak's staunchest defender.

For reasons known only to him, the governor chose to ig-

nore the criticism of Malak's abilities as a forensic pathologist, criticism leveled by colleagues in the field as well as by citizens.

And when, after years of denial, Clinton finally accepted that Malak had to go, he could not face the truth: that the state, and even Malak, would be better served by a clean break.

He could not muster the nerve to relieve Malak of his duties as medical examiner. He hemmed and hawed and hinted, suggesting that he sure would appreciate it if Malak would get him off the hook by resigning.

Malak may not have been happy to comply — no one would be happy with a 33 percent pay cut — but the notion was made more palatable by a new state job and the opportunity to do a little contract work for the state on the side.

Malak's resignation came just in time to thwart a job review that perhaps even patronage could not have glossed over, but some type of review is inevitable if Clinton has the nerve — some would call it the audacity — to run for president in 1992.

Such a review will not stop with Malak. The political strategists and commentators will revisit Terry Yamauchi's

Human Services Department and Dave Harrington's AIDC and Martin Borchert's State Building Services and Paul Levy's Energy Department and Peggy O'Neal's Purchasing Office and — well, you get the idea.

It is not merely that Clinton often displays poor judgment in employment and appointment matters, it is that he refuses to shoulder responsibility for those mistakes.

Associate Editor Meredith Oakley's column appears every Wednesday, Friday and Sunday.



Fahmy Malak

# Elders' 'bull' resounds right on cue

## Players deny doctor's exit staged to silence critics

As of now, our esteemed but not always truthful governor continues to deny that a deal was cut to get Fahmy Malak out of the medical examiner's office, where he was a potential embarrassment to Gullible Guilliver's presidential campaign.

Malak and Dr. Joycelyn Elders, the state Health Department director, who just happened to have a \$70,000-a-year job available for Malak, have joined him in the denial.

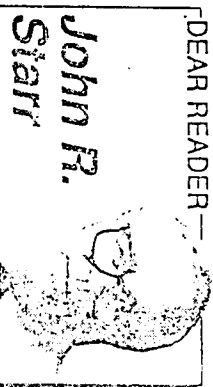
Elders went so far as to use Clinton's word — bull — to describe accusations that a deal was cut to make sure Malak left more quietly than he had served for 12 years.

The denials fly in the face of common sense and powerful evidence that a deal was, indeed, struck.

Ron Fournier of the Associated Press put together a damning story about meetings involving Malak, his lawyer and members of the governor's staff.

If, as Malak says, he resigned of his own free will for the good of the state, why did he think he needed a lawyer?

To paraphrase something once said about statistics, there are lies, damned lies and what politicians say after they cut deals at taxpayers' expense to avoid embarrassing situations.



Malak's credibility, if anything, is lower than Clinton's. I hope Elders does not become known by the company she is currently keeping.

### Cries prejudice

In the end, Malak, whose incompetence became legend, kissed his critics off by contending that they oppose him because he is an Egyptian.

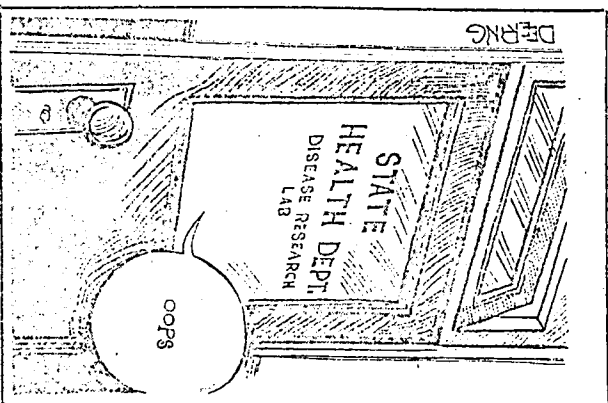
That lame assertion demeaned him, perhaps more than the negative publicity he has received in the last few years.

### Color her gone

Whether he likes it or not, Clinton is head of the Democratic Party in Arkansas.

Hence, it is as much his fault as it is Betsy Wright's that the party is broke and that Wright, who has been its chairman and executive secretary since June of 1990, is leaving, ostensibly in search of green pastures.

Please note that I said *green* pastures, not *greener* pastures. Wright told party leaders in



her resignation letter that she had not been paid since April because she had been unable to raise the money for her salary.

I could not find a clipping in the file saying what she was supposed to be paid. I found one that said she was suggesting \$75,000 a year.

Wright indicated when she was hired that she understood that she would have to raise the money to pay herself.

Clinton, busy running for president, neglected the party as he has neglected his own

office. His failure to keep the party propped up is another scar on a badly injured presidential resume.

### Batter up

Clinton said Tuesday that he will not consider seeking the Democratic nomination for president unless he can give favorable answers to three questions he has asked himself.

They are:

1. Can he really make a difference in the election and make a contribution to the campaign that is worth the risks of running?
2. Can he make sure that things will be all right in Arkansas during a campaign?
3. Can he put together a first-class campaign, one that "would make the state proud?"

In my role as resident oracle, I predict that Clinton will come up with "yes" answers to all three questions.

My answer to No. 1 would be no. My answer to No. 2 would be no. My answer to No. 3 would be maybe, if he is willing to peddle himself to special interests at the national level the way he has peddled himself to special interests at the state level.

Managing Editor John R. Starr's column appears every day.

## Letter from Crime Laboratory

This is the text of a letter sent from Crime Laboratory Director Jim Clark to Prosecuting Attorney Paul Bosson of Hot Springs:

Mr. Paul Bosson, Prosecuting Attorney  
18E Judicial District  
501 Ouachita Ave.  
Hot Springs, AR 71901

Dear Mr. Bosson:

It does appear an error was made at the Crime Laboratory in the Gregory Stephens case. Either the tissue sample labeled Gregory Stephens or the blood tubes labeled Gregory Stephens were inadvertently switched at autopsy time.

After reading the newspaper about the reports that you received from the pathologist you contacted to examine the autopsy report prepared by Dr. F.A. Malak, my serology staff checked with the FBI laboratory to see if they could perform DNA testing on the tissue sample labeled Gregory Stephens comparing it to liquid and dried blood samples labeled Gregory Stephens. The FBI advised that they did not do any procedure for DNA that involved tissue samples already imbedded in paraffin or formaldehyde. Checking produced Dr. Darryl Shibata, who is employed at the University of Southern California and has

co-published an article, *Fixed Human Tissues: A Resource for the Identification of Individuals*.

The Gregory Stephens samples were sent to Dr. Shibata on Aug. 28, 1991, with a request to examine and determine if, by his process of DNA examination, the tissue in the block and blood samples matched.

On Sept. 10, I received a report stating that, in his opinion based on the test he had conducted, the blood samples, liquid and dried, did not match with the tissue found in the paraffin block.

However, as you concluded in an interview with the news media after learning of our decision to send the samples out, the report is inconclusive. We do not know whether it was the tissue sample that was mislabeled or if it was the blood sample that was mislabeled.

The protocols involved in labeling are being reviewed and the necessary steps to ensure that this type of error is eliminated will be instituted. I apologize to the citizens of Garland County for the confusion that this error has caused in the prosecution of your case.

Sincerely,  
James T. Clark  
Executive Director

*Ar Newerat*  
*9-13-91*

## Board won't review 5 cases

LITTLE ROCK (AP) — The state Crime Lab Board today decided not to review five disputed cases involving former state Medical Examiner Dr. Fahmy Malak.

The board had been reviewing the cause-of-death rulings in

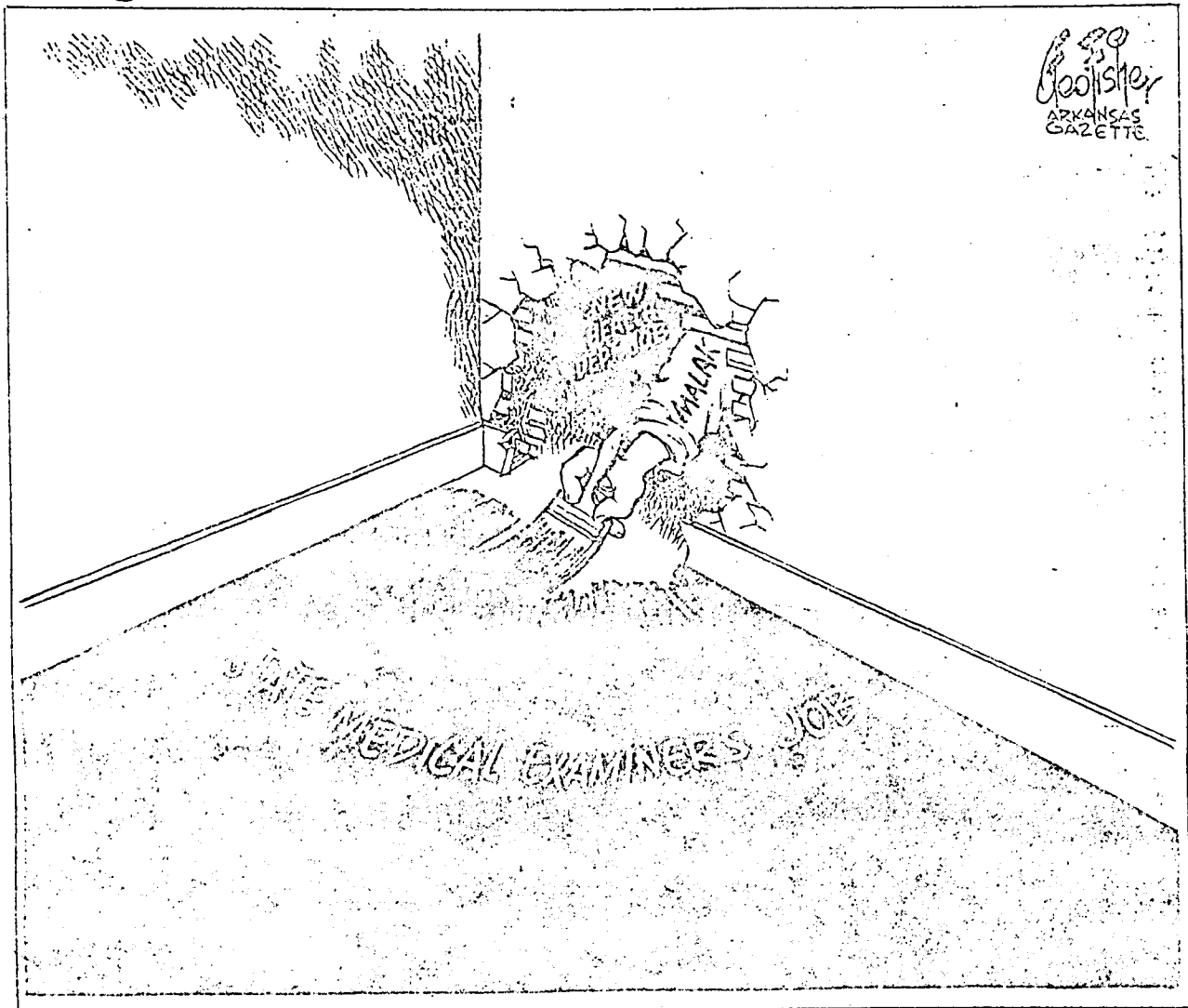
determining Malak's competence. Malak resigned Tuesday.

"My sense is that this was undertaken as an evaluation of Dr. Malak," Wilson said. "Since Dr. Malak is no longer on the job, we don't have to do this."

Linda Ives of Bryant said

Malak's resignation did nothing to satisfy the concerns of those questioning his rulings. Malak ruled that her teen-age son, Kevin Ives, and his friend Don Henry died accidentally. A grand jury ruled the 1988 deaths were homicides.

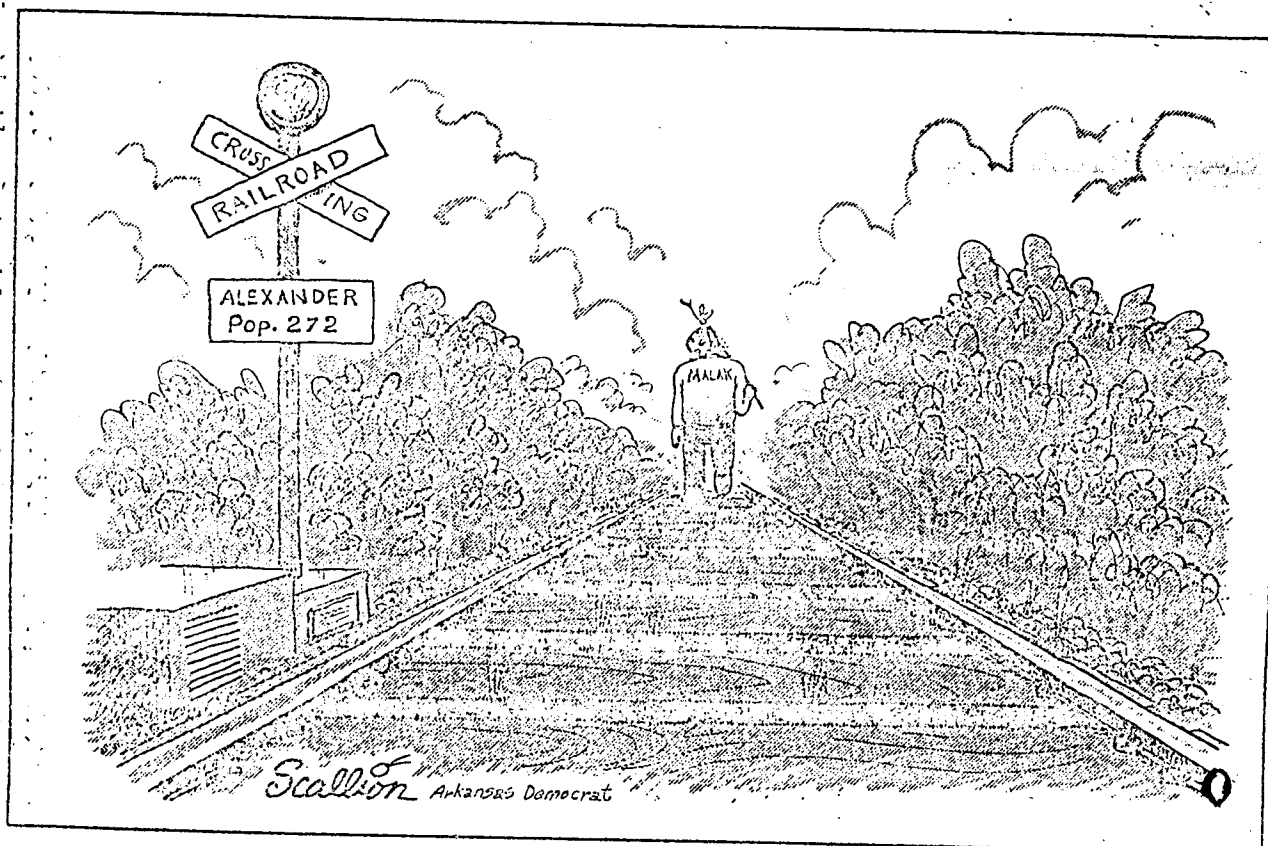
George Fisher







Arkansas Democrat  
THURSDAY, SEPTEMBER 12, 1991



Arkansas Democrat/Steve Scallion

## Malak's Teflon

Someone twitched a political wand late Tuesday afternoon and the embattled medical examiner, Dr. Fahmy Malak, suddenly became a state researcher for sexually transmitted diseases.

Coming as it did only three days ahead of Malak's almost certain removal by the state Medical Examiner Board for botching autopsies, does anyone doubt Malak's status as a political untouchable — even though he took a pay cut from \$106,000 to \$70,000? His new job didn't even exist until the surprise disclosure.

Talk about Ronald Reagan's Teflon. It's obvious that Malak couldn't have landed on his feet without someone greasing the way for him to be placed under Dr. Joycelyn Elders, the Health Department director, who has staunchly defended him. "If you don't make mistakes, you're not doing anything ..." said Elders in 1989 after Malak misinterpreted a medical chart and wrongly accused a deputy county coroner of murder.

Though Gov. Bill Clinton had recently called for Malak to resign, noting his tarnished credibility as a state witness in murder trials, he praised Malak:

"I think this is the correct decision," the governor said, "but I want to make it clear that I appreciate the many years of hard work he's given to that job. I doubt very seriously if any other person in the United States has carried as heavy a workload this long."

No doubt that's true, but no one has questioned Malak's heavy workload — some 600 to 700 autopsies a year — or his hard work of having personally performed an estimated 71 percent of the 5,000 or so post-mortems the examiner's office processed during his 12-year tenure. But how many resulted in errors?

It was Malak's competency that had been under fire since 1985, along with other problems besetting the examiner's office, none of which can be dismissed by simply shifting Malak to a new make-work position in the Health Department. Murder cases rise or fall on the medical examiner's findings.

Malak aside, problems in the examiner's office still remain, not to mention the five disputed autopsies the Medical Examiner Board was to review Friday. Families of those victims are livid over Tuesday's developments and are certainly due some kind of explanation from the state.

# Clinton once again shows penchant for expediency

So how does a governor without guts who is running for president deal with a potential embarrassing situation in his administration?

We have an example in the way Gov. Bill Clinton handled the Fahmy Malak situation, another in the way the Department of Human Services is dealing with a lawsuit against its child welfare division.

Until Tuesday, Malak was the state medical examiner at a salary of \$106,000 a year. He held the job for 12 years, but in the last several years he had become increasingly controversial. Critics claimed that he botched autopsies and changed his testimony on the witness stand.

Last week Gov. Gullible Gulliver, a.k.a. Bill Clinton, fully aware that the furor over Malak might impact negatively on his presidential campaign, went so far as to suggest that well, just maybe, the time had come for Malak to resign.

Some of Clinton's critics suggested that a real governor, one with a spine, would have reacted a little more forcefully, like, perhaps telling the Medical Examiner's Board, which is staffed by his appointees, to fire Malak.

Direct action is not Clinton's way, not when a deal can be struck. Behind the scenes, he persuaded Malak to quit by causing to be created for him in the state Health Department a brand new, make-work job that pays \$70,000 a year.

Malak's critics screamed foul and criticized the deal. Gov. Gullible just grinned and patted himself on the back. Asked if Malak's resignation was related to his national ambitions, Clinton replied, "Absolutely not."

Absolutely yes.

Never mind that the state's taxpayers will be coughing up \$70,000 a year for a job the state obviously doesn't need. Gov. Gullible doesn't care. He

DEAR READER

John R. Starr



doesn't plan to be around to sign the checks. He plans to be president.

Fortunately, the voters of the United States will have something to say about that. Since 1976, they have established a pattern of electing presidents several cuts above our esteemed governor.

Our governor, by the way, is still hedging about making a formal announcement that he is a candidate for president.

At first, he said he would tell us by Labor Day if he was going to run. Then he said, well, maybe he'd share that information with us by the end of September.

Now he's saying that he may make up his mind by the end of this month, but he will not necessarily tell us or the rest of the world what he has decided.

I can understand his not

making up his mind. He is notoriously indecisive, a character flaw that will certainly doom his presidency.

However, it is hard to understand how, once he has decided, he would benefit from not sharing his little secret with us.

While the Malak deal was being finalized, the governor reacted vigorously on Tuesday to questions about whether he had anything to do with DHS asking that information filed in the child welfare suit be withheld from the public.

Assertions that he had anything to do with seeking what the press calls a gag order are, he said, "a load of bull." He declared that he had asked DHS officials to reconsider their request for a protective order in the suit.

There he goes again - requesting when, if he genuinely feels the way he says he does, he should be ordering.

I will confess, however, that he should recognize a load of bull when he sees one. He's dumped enough loads of same on the people of Arkansas in the 10 years and eight months that he has been governor.

The DHS lawsuit poses a potential threat to his presidential candidacy far more dangerous than incompetence in the medical examiner's office. That is why the suit is going to be settled *before* damaging information is presented on the witness stand.

If DHS is successful in getting a protective order on information filed with the court before the settlement, taxpayers will never know how bad things were in the child welfare division.

The manipulations to make sure we never know tell me that things are a lot worse than we thought they were and that the blame rests squarely on the shoulders of the governor.

Managing Editor John R. Starr's column appears every day.

# Health Department thawed hiring freeze to take Malak

BY RACHEL O'NEAL  
Democrat Capitol Bureau

Former state Medical Examiner Dr. Fahmy Malak managed to obtain a job at the state Health Department despite a hiring freeze that went into effect in late June.

"We're under a freeze, but it's not a total freeze. We are hiring, but it's very pick-and-choose right now," Tom S. Butler, director of administration for the department, said Wednesday.

Malak, the state's medical examiner since May 16, 1979, resigned from his \$106,000-a-year job Tuesday after being criticized for mishandling autopsies.

Health Department Director Dr. Joycelyn Elders has hired Malak to conduct research on sexually transmitted diseases and acquired-immune deficiency syndrome. Malak begins his new \$70,000-a-year job Monday.

Butler said the position wasn't advertised and Malak was the only applicant.

"Rarely do we get a number of applicants beating down our door for a job," Butler said. "We do some advertising for positions, but we did not advertise this one and that's not unusual."

Gov. Bill Clinton said Wednesday that Malak's resignation and transfer to another state department had nothing to do with Clinton's presiden-

See MALAK, Page 5A

## Malak

Continued from Page One  
tial ambitions. Clinton is expected to announce later this month whether he plans to seek the Democratic nomination.

"We didn't make any deal. I think Dr. Elders really wanted him to come over there for the reasons she said. And I think he concluded that it was time for him to step aside," Clinton said.

Also, Clinton said the hiring freeze was put in place because most of the department's 2,500 employees received a 2 percent pay increase in July.

Elders said Wednesday that Malak called her in June or July and said he was considering resigning. He also asked if a position was available at the Health Department, she said.

"He was saying he was just so tired. I told him he should not resign. I told him that he was a very competent pathologist and he shouldn't buckle under the pressure," Elders said.

Elders, who defended Malak when she chaired the now-defunct state Medical Examiner's Commission, said she later offered Malak the research job. She said she wasn't pressured by anyone to hire Malak.

Malak, 58, is a "very bright man" who is a dedicated and competent physician, Elders said. "It's almost like the heavens opened up and dropped him on me."

Malak's new supervisor, Dr. Henry Masters, said he isn't concerned about Malak's reputation. Several of Malak's autopsy reports have been criticized, including three that were contradicted by grand jurors and one by a coroner's report.

"To me, it seems the activity we propose for him to do is so unrelated that it doesn't worry me," Masters said, comparing Malak's old job with the new one. Malak's new job includes compiling data on syphilis and AIDS.

His resignation came one week after Clinton said on a television talk show that Malak should step down because his credibility had become an issue during criminal trials.

"I think that it was just something where it had gotten to the point where everytime anyone wanted to make it an issue in any criminal trial, it became a question ... for the jurors. And I just thought at that point we were at an impasse, and I think the best decision was made for everybody concerned," Clinton said Wednesday.

The state Crime Laboratory Board had planned to meet Friday to discuss Malak's job performance. The board was going to review five cases. Relatives of the deceased have said that Malak botched the autopsies.

"The board really was looking at those five cases in its responsibility to evaluate and possibly remove the medical examiner," said board chairman I. Dodd Wilson of Little Rock, who is dean of medicine for the University of Arkansas for Medical Sciences.

Wilson said he didn't know whether the board still plans to review those cases. It is the only agency that handles autopsies complaints.

Malak declined Wednesday to discuss his resignation with an Arkansas Democrat reporter.

Crime Laboratory Director Jim Clark said Wednesday that one of the board's top priorities will be hiring Malak's permanent replacement. During the next two weeks, Dr. Joseph Halka of Orange County, Calif., will fill in as Malak's temporary replacement.

On Oct. 1, Dr. David DeJong of Wichita, Kan., will start work as the state's assistant medical examiner.

"If I can't talk Dr. DeJong into starting a week early, then I guess we'll have to put the bodies in the morgue and wait until we get somebody on board," Clark said.

Clark said there are about 400 forensic pathologists in the country and the average pay is between \$125,000 and \$150,000 annually. He said the Arkansas job currently pays between \$50,000 and \$106,000.

"It's a low salary and that's something the board is going to have to consider and present to the governor and the Legislature," Clark said.

# Deals sealed Malak's fate, sources say

BY RON FOURNIER  
Associated Press Writer

A flurry of negotiations took place between Dr. Fahmy Malak's lawyer and at least three key members of Gov. Bill Clinton's administration before the state's medical examiner resigned to take another state job, sources said Wednesday.

The final detail settled was a joint working agreement that will pay Malak \$10,000 over six months for testimony and some cleanup work in the medical examiner's office, Larry Carpenter, Malak's attorney, said. Malak's new job as head of an AIDS program at the state Department of Health will pay \$70,000 a year. He begins Monday.

The governor said Tuesday that Malak's resignation wasn't related to Clinton's plans to run for the Democratic presidential nomination. Carpenter said he didn't know whether national politics played a role in pressure by Clinton for Malak's resignation.

Wednesday, Clinton said it was "almost coincidental" that

the Health Department job opened up as Malak resigned. He also said there were negotiations before the resignation, "but my office wasn't involved in them."

Later in the day, spokesman Mike Gaudin confirmed that a member of Clinton's staff, whom Gaudin wouldn't name, had helped bring Malak's lawyer and Health Department officials together.

Also, the Health Department director - Dr. Joycelyn Elders, a Clinton appointee - said she had discussed with Malak the possibility of a job in her department months ago, and offered him a job one or two weeks ago. The state Crime Laboratory director - Clinton appointee Jim Clark - was at the meeting Tuesday that sealed the resignation, Carpenter said.

Clinton also said Wednesday that the availability of another state job for Malak would mean "less fallout" and avoid potential lawsuits. The governor was asked if that meant Malak was about to be fired because Carpenter said a suit would be filed

only if his client was terminated. Clinton answered: "I've said all I'm going to say about this."

Here is a summary of the negotiations leading up to Malak's resignation:

- According to Carpenter and Elders, Malak talked to the Health Department director in June or July about the possibility of getting a job under her.

- Elders said she offered Malak a job in the last week or two, although she urged him to stick to his guns and remain medical examiner.

- "Appalled" by Clinton's comments Sept. 3 on the Arkansas Education Television Network, Carpenter said he wrote Clinton a letter "telling him he didn't have the whole story."

- An aide on Clinton's staff, who Carpenter and Gaudin refused to name, called Carpenter the next day. "I told him I was appalled at the statements and I wondered if he knew all the facts and I wondered if he knew a way we could work it out," Carpenter said. He said he told the aide that Malak "was

tired. It was time to resign." The aide promised to get back with the attorney. A source later said F. Lee Wason, Clinton's chief legal counsel, was the aide involved. Wason declined comment.

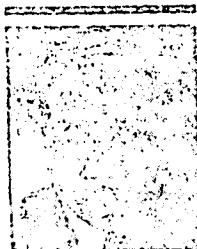
- Friday, the aide called Carpenter back and, according to Carpenter, said "he knew that Dr. Malak had talked to Dr. Elders before and they had been trying to get the position going so we talked about it and Dr. Malak said this is something I might like to do."

- Monday, the Clinton aide and Carpenter discussed the joint working agreement for the first time, Carpenter said. Clinton's staff wanted a "clean break" with Malak only testifying on autopsies that he had performed, Carpenter said. He said Malak told him Monday night that there were reports and paperwork pending on many autopsies and that it would hurt prosecution cases if one man did an autopsy and another man compiled a report and testified.

# Malak's resigning adds up

Reasonable conclusions:

Gov. Bill Clinton gave Dr. Fahmy Malak two options — re-



Max  
Brantley

sign as state medical examiner or be fired.

Malak's attorney gave the governor two options — find Malak a soft spot to land or Malak would sue.

They compromised.

Malak, dogged by controversy through 12 years as medical examiner, resigned Tuesday.

But Malak left with the promise of a \$70,000-a-year job with the state Health Department. That's less than the medical examiner's \$106,000 salary. But his new job, heading a program to treat sexually transmitted diseases, should be easier. Plus, he will take away \$11,000 in unused vacation time. Plus, he will be employed part time to wrap up some pending cases. Plus, he will stay on the state retirement system.

This is known as a golden parachute.

The solution was a reasonable compromise, in context.

Clinton didn't want the Malak controversy dogging his presidential campaign.

Malak leaves with his head held high.

In a typical pronouncement, Malak proclaimed: "I was never pressured by anyone. I did this of my own volition."

Baloney.

Vocal critics of Malak are unhappy. They don't like the golden parachute. They don't like the fact that his resignation probably will short-circuit a planned review of several controversial cases by the State Crime Laboratory Board.

The review is pointless. It wasn't intended to change any case outcomes. It was intended as a review of Malak.

The governor normally forced the issue because of a developing split on the crime laboratory board.

The review may have ended in another vote of confidence, even though Malak's credibility had been damaged to the point that no vote of confidence would have salvaged it.

Remember that Malak had been praised by reviewers before. Those outside consultants paid little attention to evidence of poor judgment on Malak's part. They merely blamed the stupid press for the bad publicity and went home.

But Malak seemed to keep on screwing up.

Malak has observed, correctly, that his office will always be controversial because it deals with emotional matters.

Malak also has said, correctly, that he has been the subject of bigotry because he is a native of Egypt. At least one Arkansas lawyer referred to Malak by a racially offensive term while taking a statement from the doctor. His heavily accented English has caused some communication difficulties.

But don't buy any suggestion that Malak came to grief because of his national origin. Criticism is fair of any medical examiner — white man, Egyptian or Martian — who gives misleading answers about his credentials during sworn court testimony. Criticism is fair of any medical examiner whose manipulation of a piece of critical photographic testimony helped put a Little Rock man in prison.

Finally, Malak fell because he wanted so badly to do well. Too often, his efforts to solve the mystery of an unexplained death only caused confusion.

Some cases are beyond the ability of any medical examiner to explain. Yet Malak wanted to tie them up in tidy bundles.

Malak, for example, wanted us to believe that two Saline County teen-agers would choose a railroad track as a bed after smoking themselves into a pot-induced stupor. A stupor so deep, Malak said, that a blaring locomotive couldn't waken them. Other experts found other causes of death, questioned some of his tests and doubted that marijuana could cause such a sleep. Experts aside, Malak's notion just didn't make sense.

His resignation does.

You may write Max Brantley at P.O. Box 1821, Little Rock, 72203.

# Elders calls Malak an asset

By Joe Nabbefeld  
Gazette Staff

Dr. Joycelyn Elders, director of the state Health Department, said Wednesday that she didn't hire Dr. Fahmy Malak just to give him a job but because she considers him "a true asset."

"I have a great need for several physicians," Elders said. "Dr. Malak is trained in clinical and anatomical pathology, as well as forensic pathology, and he has been a public health officer, so he has a lot of good things that we need in a person."

Elders had been looking for a physician to work in the department's expanding sexual diseases division and Malak was willing to take the job for a salary that most doctors reject as too low, she said.

Malak resigned Tuesday as the state's chief medical examiner.

Some critics charged that Elders had provided Malak the new job in a political deal to get him out of controversy while providing him a place to "park."

"That's bull," Elders responded in an interview Wednesday upon returning from out of town.

Malak's first project in the sexual diseases division will be to look at data about cases of syphilis across the state to spot trends, said the division's medical director, Dr. Henry Masters.

Syphilis cases have risen dramatically the past couple of years, apparently because drug addicts won't get treatment for it, Masters said. The department has been enlarging its AIDS and sexually transmitted diseases division to try to stop the increase, Elders said.

Malak will also be a consultant to the department's laboratory, which would like to hire a clinical pathologist as its director but doesn't have more than \$40,000 in its budget for that, Elders said.

The previous lab director, the late Robert Howell, received the lower salary because he had a

Ph.D. but not a medical degree. Masters won't hire for it because he isn't board certified in clinical pathology, Elders said.

Malak starts the new job Monday. His \$70,000 salary is down from almost \$106,000 as medical examiner.

The \$70,000 makes him the fifth-highest-paid Health Department official when excluding pay from grants, according to state records.

Elders said most doctors would ask for \$150,000 to take the job. Masters, 34, is Malak's supervisor but said he didn't know if he makes more than Malak. He declined to reveal his pay.

By moving into a new state job instead of a private one, Malak, 58, assured himself of a higher state pension when he retires. He's a member of the Public Employee Retirement System and has 13 years with the state so far, so he's entitled to about \$20,000 a year in pension payments if he resigns now, according to the PERS formula.

But if he stays until he's 65 at roughly the salary he gets now, his pension would increase to about \$30,000.

A check of state and health department hiring policies reveals the department complied with those policies in hiring Malak.

The job opening didn't have to be posted to give others a chance to apply, according to Ken Garner, personnel chief for the legislature's personnel subcommittee. And the legislature approved funding for the position as part of the department's two-year budget, Garner said.

Masters said he wasn't asked if he wanted to have Malak work for him, but that he's glad to have Malak and feels he could have turned Malak down if he wanted to.

Elders said Malak approached her about a job a couple of months ago and she told him she would like to hire him. Malak contacted her again 10 days ago, she said.

"He said he was tired of all the things going on with the press, living under a microscope," Elders said.



## For once, everybody agrees with Malak

Friends and foes alike of Dr. Fahmy Malak probably were pleased by his resignation Tuesday. Indeed, the entire state has reason to be glad.

His foes are gratified, of course, because they considered him incompetent, a man who impeded the path to truth and justice in Arkansas. As state medical examiner, Malak made a number of highly controversial rulings. The job inherently attracts criticism, no doubt, but Malak surely must have been the most criticized state medical examiner in the country; he was never out of the headlines for long. Fellow pathologists were among those who challenged his findings. An organization called Victims of Malak's Incredible Testimony (VOMIT) was formed to seek his removal from office.

Friends, family and supporters in the criminal justice system (he still had some) must be pleased that Malak finally is released from what must have become a terrible strain. He will accept a lower-paying and lower-anxiety administrative position in the state Health Department.

Interestingly, Malak — who had previously resisted calls for his resignation — stepped down a week after Gov. Clinton said on a television program that Malak probably

should resign because his credibility was badly damaged. Many had considered Clinton a protector of Malak. Cynics might suggest that Clinton had come to see Malak as a political liability to a governor considering a presidential race. The resignation came also just a few days before the state Crime Laboratory Board was to meet and review five disputed cause-of-death rulings by Malak. (Apparently, only the board can fire Malak. Here is another example of how the state's numerous boards and commissions get in the way of efficient government.)

Clinton said that his political ambitions had nothing to do with Malak's resignation and Malak said that Clinton hadn't pressured him to quit. Whatever motivated the governor to speak out last week, he was undeniably correct in his conclusion — the level of public trust in Malak had dropped so low that he could no longer fill his office effectively. His alleged lack of credibility was made an issue in virtually every case that came before him. It was past time to let someone else try to restore faith in the state medical examiner. Let us hope that such a person can be found, and that the state's criminal justice system can resume more orderly operation.

### Crime lab board may not review disputed cases

Gazette Staff

The State Crime Laboratory Board probably will not review five disputed rulings by former state Medical Examiner Dr. Fahmy Malak when it meets Friday, the board's chairman said Wednesday.

Dr. I. Dodd Wilson said such a review was within the board's responsibilities when it was deciding whether to retain Malak. But Malak resigned Tuesday and Wilson said he doesn't think the board is charged with reviewing cases without a reason like determining Malak's competence.

He said the decision will be up to the full board when it meets 9 a.m. Friday at the crime lab. Other board members expressed similar sentiments.

Wilson said he recognizes families involved in the cases would feel let down. He and crime lab director Jim Clark both said they think the board ought to establish a mechanism by which families can challenge a medical examiner's ruling.

Paul Bosson, prosecuting attorney for Garland County and a participant in one of the disputed cases, agreed.

The board needs "some type of rules so anytime the medical examiner is called into question [there is] some process to determine whether or not the medical examiner is right or wrong," he said. "How can a layman fight a forensic pathologist? They lose every time."



Wednesday, September 11, 1991 - 11A

# Malak action surprises Clinger

By KENT MARTS  
Daily Record Staff

BENTONVILLE — The resignation of the state's embattled medical examiner caught Benton County prosecuting attorney David Clinger by surprise.

"He's a tough old bird who's withstood a great deal of criticism and attack — I really didn't look for him to hang it up," Clinger said Wednesday. Clinger is a member of the Arkansas Crime Laboratory board of directors, the body that oversees Fahmy Malak and his office as state medical examiner.

"He has testified in numerous homicide cases we've had in all the years since he was hired (May 1979)," Clinger said. "Often times his testimony has been countered by pathologists offered by defense. But up here, the jury has always accepted Dr. Malak's testimony. That says a lot for his professionalism and thoroughness.

"I remember a case in Eureka Springs, in 1988. At the time he testified I was concerned about his impact with the jury because that's when there was a great deal of coverage in Little Rock papers about the Saline County deaths (in which Malak ruled two boys were in a drug-induced stupor when run over by a train. Family of the boys countered that they were murdered.). The defense brought in a pathologist who provided contradictory testimony, but the jurors had no

*66 The true test of his work is not who can holler loudest to a TV reporter or a Little Rock newspaper reporter, but what the jury decided around specific deaths."*

— David Clinger

problem accepting what Dr. Malak said.

"The true test of his work is not who can holler loudest to a TV reporter or a Little Rock newspaper reporter, but what the jury decided around specific deaths. From personal experience, when he was faced by a qualified defense pathologist, he wasn't damaged," Clinger said.

Clinger's familiarity with Malak goes back to the ME's early days in his job. The first time Malak took the stand in a homicide case was in Benton County on a case Clinger prosecuted.

In recent years, Malak has been the focus of a storm of criticism. However, Clinger said that Malak became the focus of many reporters when it wasn't warranted. Two cases in particular were mentioned by Clinger. He noted that the father of a girl contends she was murdered, while Malak said that she fell off a porch at a drinking party.

"The father has also accused the state police and the local sheriff of a cover up. He's accused high school kids of fabricating evidence. He's accused

the whole world of a cover-up, but they (Little Rock media) jumped on Malak," Clinger said.

A recent case involved a murder trial in Hot Springs which fell through when Malak testified that a shooting occurred at close range, while a witness said the shooting happened at 40 feet.

"That was a communication problem," Clinger said. "We always go to Little Rock to talk to experts, including Dr. Malak. That happens long in advance of a trial so we know there are no problems and know what is going to be said. In the Hot Springs case, there had been no prior communication between Malak and the prosecutor. We just don't do that here."

The crime lab board was set to meet Friday to discuss four cases in which people allege Malak was in error.

"I assume now, we'll change the agenda and talk about what we'll do about getting a replacement, and what to do in the mean time. People don't quit dying, so we'll have problems if we don't address a temporary replacement quickly," Clinger said.

## IN-DEPTH REPORT: MEDICAL EXAMINER RESIGNS

# Critics suspect deal struck to get Malak out of office

JOUG THOMPSON

Democrat-Benton Bureau

Malak's severest critics were pleased Tuesday that he is no longer state medical examiner, but called his transfer to the Health Department, some kind of deal.

"Who played Monty Hall?" asked Dan Harmon, referring to the host of television's "Let's Make a Deal" game show.

Harmon was special deputy prosecutor for a 1988 Saline County grand jury that contradicted Malak's findings in the deaths of Kevin Ives and Don Henry, the first of several such

deaths. Harmon, his deputy, Richard Garrett, Garland County Prosecuting Attorney Paul Bosson, and Curtis Henry, father of Don Henry, whose death Malak ruled accidental before the grand jury found it was homicide, all called Malak incompetent and unfit to be on the public payroll.

"I'm glad he's out of there, but the way they did it is disappointing and smells of chicken manure," Harmon said. "At least no more murderers will go free. But what this does is save Fahmy Malak's state retirement. A blind man could

see that."

Harmon, who is being held in the North Little Rock Jail for refusing to take a drug test and submit to other conditions for pretrial release in a federal misdemeanor tax case, made his comments in a telephone interview.

"Looks like the good-old-boy system still works," said Bosson, who has publicly called for dismissal of Malak and state Crime Laboratory Director Jim Clark.

Bosson said in August that Malak blundered in the Gregory Stephens murder case in Hot Springs and that Clark covered up for Malak.

"Things have changed, but they've remained the same," Bosson said. "Hopefully, he won't be able to do as much damage."

Five families from around the state have gone to the state Crime Laboratory Board alleging Malak has bungled autopsies of their relatives. The board is to take up those cases Friday.

"I hope the state Crime Laboratory Board goes ahead and meets" to review the five cases they reopened in their evaluation of Malak, Bosson said. "Those people are entitled to

have their cases heard, and they are entitled to be vindicated."

Malak and his supporters knew the Crime Laboratory Board would have to fire the medical examiner, Garrett said. Garrett called for the grand jury investigation of the deaths of Ives and Henry.

"It's strange, though, that the state spent \$30,000 on outside experts to try and prove Malak was right, then when it was no longer politically expedient to keep him and the governor decides he needs to go, he's gone," Garrett said.

The governor does not have the authority to remove Malak. That power rests with the board.

"Time will tell," Garrett said, if removing Malak alone will restore confidence in the medical examiner's office.

Taxpayers want Malak off the payroll, Henry said. "I don't think the people of Arkansas are so naive they can't see through what the politicians are doing," he said.

"He hasn't any credibility, and if he doesn't have the credibility to be medical examiner, he doesn't have the credibility to hold any position of authority in the state of Arkansas."

# Clinton: My ambitions not a factor

By Mark Ocwold  
Gazette Capitol Bureau

The resignation of controversial state Medical Examiner Fahmy Malak moves a political liability for Gov. Bill Clinton as he's poised on the verge of a campaign for the Democratic presidential nomination.

Clinton, when asked if the resignation was related to his national political ambitions, said, "Absolutely not."

Clinton wouldn't comment on whether he influenced Malak's decision to resign, telling a reporter: "You'll have to ask him that."

Malak said later that he was not pressured to resign.

Malak said later that he was not pressured to resign.

by time for Malak to resign because his credibility had been badly damaged. It had taken Clinton several years to reach that conclusion.

In August 1989, the governor said Malak — under fire then as now for several cause-of-death rulings and other actions — was "stressed out" from overwork, but he saw no reason for Malak to be fired.

A few days later, he acknowledged that support for Malak in the law enforcement community was eroding, but later had a spokesman say that he hadn't intended to suggest that Malak shouldn't keep his job.

Signs that Malak was losing support in the Clinton administration surfaced in April, when state Crime Laboratory Director Jim Clark said he'd urged

Malak to look for another job. In August, Clinton's office asked the lab to outline how it would proceed if Malak left.

Tuesday, Clinton said of Malak's resignation, "I think this is the correct decision, but I want to make it clear that I appreciate the many years of hard work that he's given to that job. I doubt very seriously if any other person in his position in the United States has carried as heavy work load this long."

Prosecuting Attorney Ron Fields of Fort Smith — who was appointed by Clinton to serve briefly as attorney general last year — said, "I wouldn't think it's political" when asked about the resignation.

"I would say there are other problems we need to face — the adequacy of staff

and funding in the Crime Lab," Fields said.

"I don't care who you have in there from 'Quincy' on down, you're always going to have a problem if you don't equip the lab," Fields said. "A lot of labs have other equipment that provides so much more fact-finding and clue-finding that we don't have available."

Clinton said he hoped that additional staffing in the Crime Lab could be arranged to ease the work load. He also said that he wanted a study comparing Arkansas's lab with those in other states to determine if it the Arkansas lab was overburdened with investigations of non-suspicious deaths.

"I'm not sure there won't always be controversy in that office," he said.

## Mother of dead Bryant boy furious that Malak given 'cushy state job'

BY JAKE SANDLIN  
Democrat Staff Writer

Linda Ives of Bryant (Saline County) said Tuesday night that she's "absolutely livid" that Dr. Fahmy Malak has another state job.

Malak resigned Tuesday as state medical examiner after a stormy tenure to join the state Department of Health.

Ives' son, Larry Kevin Ives, 17, was killed along with Don George Henry, 16, also of Bryant, in 1987 when they were run over by a train in Saline County.

Malak ruled the deaths accidental, concluding that the teen-agers had smoked marijuana and were asleep on the tracks when the train hit them.

In April 1988, a special grand jury ruled the deaths homicides, largely based on the findings of Dr. Joseph Burton, an Atlanta medical examiner.

"I'm absolutely livid the guy

is going to be a state employee anywhere," Ives said in a telephone interview from her home, calling the new position a "cushy little state job."

Malak's home telephone number is unlisted and he could not be reached for comment Tuesday.

Monday, Malak starts his new state job, researching sexually transmitted diseases for the Health Department. His salary will be \$70,000 a year, and he could receive at least a portion of his former salary as he finishes work in and testimony for the medical examiner's office.

Ives, who founded a group against Malak called Victims Of Malak's Incredible Testimony (VOMIT), said, "I think the idiot should be prosecuted, not rewarded with another state job."

The Ives-Henry case is one of five cases scheduled to be reviewed Friday during an

evaluation of Malak by the State Crime Laboratory Board.

Other disputed cases that were to be reviewed Friday are:

- The death of Olivia "Janie" Ward, 16, of Marshall (Searcy County). Malak said Ward died of a fall from a 13-inch high porch. Her father, Ron Ward, contends his daughter was beaten.

- The 1990 shooting death of Kimberly Iron Schwartz, 24, of McGehee (Desha County), in the Dumas (Desha County) home of Martin Lee Walt III, 24, who was acquitted in the case. Walt claimed self-defense. Malak concluded the two shots were fired five minutes apart.

- The 1990 shooting death of Gregory Stephens, 25, of Hot Springs. The case against Ernest Lemons of Hot Springs was dismissed after Malak testified the fatal shot was fired at point-blank range. Witnesses said the shot was from at least 40 feet away.

- The 1935 drowning of Jimmie Seigrist of North Little Rock. Malak ruled it an accident. The family believes it was a homicide.

# Malak relinquishes poos

## State medical examiner quits amid criticism

By Joe Nabbefeld  
Gazette Staff

Dr. Fahmy Malak ended 12 stormy years as state medical examiner Tuesday, resigning immediately.

Malak will begin a job Monday in the state Health Department's communicable diseases division, heading a program to help treatment of AIDS and other sexually transmitted diseases throughout the state.

He reportedly will receive a \$70,000 salary for that job, down from almost \$106,000 as medical examiner, which ranked him as the state's second highest-paid public official. His attorney said the job is administrative and won't involve performing autopsies or treating patients.

Malak's resignation comes a week after Gov. Bill Clinton, who is considering a presidential campaign, said Malak should resign because persistent and mounting criticism had ruined his credibility.

It also comes just days before the reconfigured state Crime Laboratory Board was scheduled to review five disputed cause-of-death rulings by Malak.

Two board members said Tuesday they expected that the board would still meet Friday to accept Malak's resignation and appoint a committee to hire a replacement, but didn't know if it would review the cases. They expect a decision on that today by Dr. I. Dodd Wilson of Little Rock, chairman of the board. Wilson couldn't be reached Tuesday night.

The medical examiner performs autopsies in suspicious deaths to determine if they were accidental, suicide, from natural causes or homicide. He then testifies as an expert in trials.

"I was never pressured by anyone," Malak said in an interview at his home Tuesday evening.

He said he resigned because he had accomplished the goals he had set out for the office: to provide

**'I was never  
pressured  
by anyone.  
I did this of  
my own  
volition, my  
own choice.'**

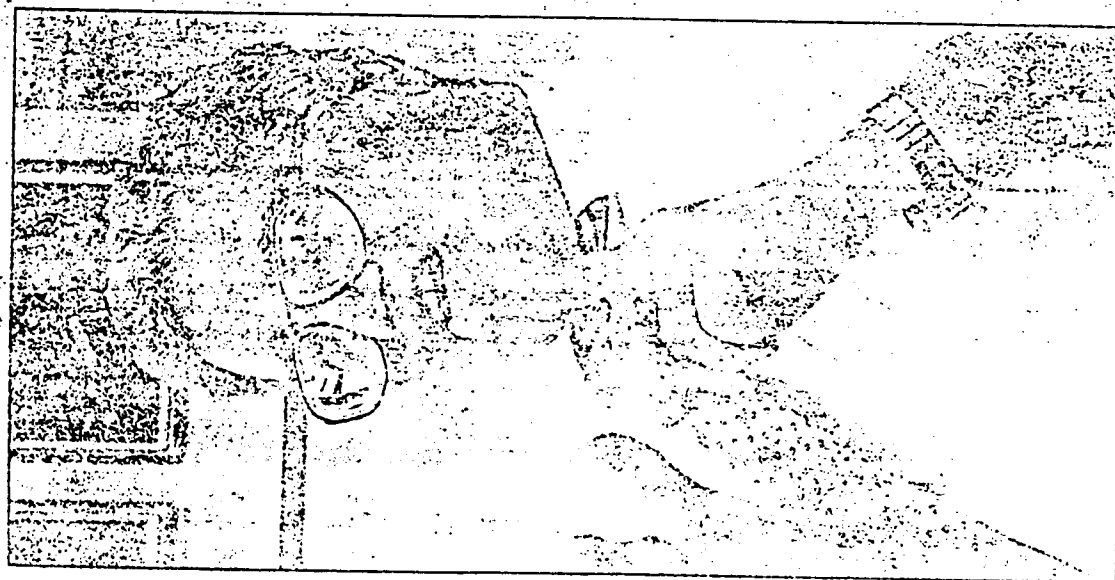
--Dr. Fahmy Malak

**'I certainly think it's a  
political fix. That's all  
they did is make a deal  
with him.'**

--Linda Ives,  
founder of V.O.M.I.T. (Victims of  
Malak's Incredible Testimony)

**'I feel sad. I'm sorry the  
situation came to this  
but it probably will work  
out for the best.'**

--Jim Clark,  
state Crime Laboratory director



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Timeline of Malak's career/9A

# Malak takes new job, cut in salary

Continued from Page 1A

high-quality service to law enforcement and to get the office accredited. The office was accredited in 1983.

Others weren't confident that Malak wasn't pressured.

His supporters and his attorney, Larry Carpenter of North Little Rock, said his resignation resulted from pressure by Clinton — until recently a staunch Malak supporter — press reports, families upset with his rulings, some prosecutors and the public.

"He's been getting all kinds of good letters of support from prosecutors," Carpenter said. "He has gotten them from judges saying if this guy wasn't believable, he wouldn't be testifying in my court. Despite all of this, he seemed to be constantly hit over the head about not being credible.... He just resigned."

When Malak took the job in 1979, his predecessor had been removed for allegedly helping cover up a prison official's killing of an inmate.

The controversy surrounding the office continued through the years, from disputes in the early 1980s over Malak's ruling in the death of radical anti-tax protester Gordon Kahl to two reversals of Malak rulings by grand juries.

A Saline County grand jury overturned a ruling in 1988 and a Little River County grand jury reversed one in January. Both grand juries changed the rulings to homicide but suspects haven't been arrested in either case.

Malak has been accused by his critics of tampering with evidence, lying under oath, changing his sworn testimony, tailoring his rulings to favor prosecutors and sheriffs, and incompetence.

He has denied all of these in rare interviews during the past few years.

He says, instead, that his position always will attract controversy because it deals with emotional matters and that he has been the subject of bigotry because he is a native of Egypt.

His supporters say some of the problems in the controversial cases resulted not from errors by Malak but from poor police work.

"He's just part of the equation," said crime lab director Jim Clark.

His supporters also say Malak has toiled heroically in difficult conditions, working up to 16 hours per day to handle an overload of cases in an underequipped, understaffed and underfunded office.

Malak's resignation letter said only, "Please accept my resignation as state medical examiner to be effective at the close of business on Sept. 10, 1991. I appreciate the opportunity to have served my state in this position. Very truly yours, Fahmy Malak."

Malak called in sick Tuesday.

He and Carpenter personally submitted the resignation letter to Clark at a short meeting at the lab at about 3:45 p.m., Clark said. The letter was addressed to Clark and the chairman of the crime lab board.

"He was disappointed and I think relieved at the same time," said Clark, declining to elaborate on what was said at the meeting.

"I feel sad right now, just sad. I had a close relationship with him and I'm sorry the situation came to this, but it probably will work out for the best for the lab and for Dr. Malak."

Malak has 30 unused vacation days for which he will be paid about \$11,000. And he has 124 cases in various stages of completion that he will finish under an undetermined pay package, Clark said. That will probably take him three to six months, Clark said.

Malak's salary comes to about \$49 per hour and Clark said he didn't know if Malak will receive that much while finishing cases.

Meanwhile, the lab will continue to receive corpses needing prompt autopsies. It receives an average of 4.3 corpses per work day.

A former assistant to Malak, Dr. Joseph Halka, on Saturday agreed to fill in for Malak for two weeks for a total of \$5,000. Halka, who now is with the Orange County, Calif., coroner's office, worked under Malak in 1988 and remains a friend to Malak.

He filled in for two weeks in 1989 when Malak took a vacation.

Clark said he contacted Halka Saturday because the pressure on Malak had become great and Malak needed a vacation.

Halka arrived at the lab Monday and worked there Tuesday, Clark said. Halka isn't considered a candidate to replace Malak because he wants to stay near family members in the West, Clark said.

Clark hasn't advertised for a replacement but said he will soon.

Dr. David DeJong of Wichita, Kan., is scheduled to begin as the assistant Arkansas medical examiner on Oct. 1.

Clark said that he probably will ask DeJong to start the job earlier because the board likely won't find a replacement for Malak before Halka leaves.

"He'd get to jump right into it," said Clark.

DeJong is a long-time pathologist but only recently moved into forensic pathology, the job performed by medical examiners, so he's not considered a candidate to replace Malak as chief medical examiner, Clark said.

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# Malak lived with criticism as state medical examiner

BY JAKE SANDLIN  
Democrat Staff Writer

Four months into his new job as state medical examiner in 1979, Dr. Fahmy A. Malak said in an *Arkansas Democrat* interview that "if a person does a job to the best of his ability, then he will have nothing to fear."

Malak, 58, has lived with the fear of criticism in his job for many of his 12 years as state medical examiner, a position he resigned Tuesday after growing criticisms by state officials and the public.

Supporters of Malak emphasize his heavy workload in the medical examiner's office. It has been estimated that Malak has personally conducted 71 percent of the more than 5,000 autopsies his office has performed since he joined the off-

ice in 1978.

His rulings have been contradicted 17 times since 1984 by medical examiners from other states, and by two grand juries and a coroner's report.

Malak came to Arkansas with an impressive background. He is a graduate of Cairo University of Science and University of Medicine. He spent 10 years practicing medicine in Egypt until he immigrated to the United States in December 1969 and became an American citizen.

In 1977, Malak became assistant medical examiner for Cook County, Ill., in Chicago. That county's chief medical examiner over Malak at that time was quoted in a newspaper article this year as saying Malak was "average" and "not a favorite" of his.

## Chronology

Here is a chronology of some of the criticisms and controversies surrounding the 12-year career of Dr. Fahmy Malak, who resigned Tuesday as state medical examiner:

- 1985 - Malak testified that the bruising around the eyes of a shooting victim occurred before her death and was caused by a blow from a fist and from a self-inflicted gunshot wound. He later testified that the bruising around both eyes was from the shooting.

- 1988 - A grand jury overrules Malak, saying the deaths of two Bryant teen-agers, Larry Kevin Ives, 17, and Don George Henry, 16, were homicides. Malak had ruled in 1987 that the two were killed by a train after they smoked marijuana and laid on the tracks.

- 1988 - In attempting to link a weapon to a victim's wounds, Malak places a photographic transparency of a rifle butt backwards over an autopsy photograph. When properly applied, the marks on the rifle butt did not match those on the body.

- 1988 - A Pulaski County coroner's jury takes 10 minutes to overrule Malak's finding that Peter Robinson, 75, died of natural causes. The death occurred two months after Robinson was beaten by a fellow nursing home patient.

- 1989 - A grand jury rules the death of William Garrett was a homicide. Malak had changed his

original ruling from homicide to accidental death by "autoerotic asphyxiation."

- 1990 - Malak testifies that two shotgun blasts that killed Kimberly Iron Schwartz of Dumas (Desha County) came five minutes apart. Martin Lee Walt III, who had claimed self-defense in the case, was acquitted.

- April 26, 1991 - State Crime Laboratory Director Jim Clark said he told Malak on April 10 he should find another job to avoid being fired.

- July 15, 1991 - Five families complain at the state Crime Laboratory that Malak bungled autopsies of their relatives. Possibly 10 other similar complaints are lodged within the next two months.

- July 30, 1991 - Malak's testimony in the capital murder trial of Willard "Buddy" Kelley and Glenda Long resulted in three versions of how the victim died.

- Aug. 7, 1991 - The Garland County prosecutor says Malak may have given testimony resulting in the dismissal of murder charges in the March trial of Ernest Lemons based on mixed-up slides of body tissue.

- Aug. 22, 1991 - A Hot Spring County grand jury says it will review Malak's ruling of suicide in the death of Robert Bennett of Malvern because the ruling was inconsistent with the evidence.

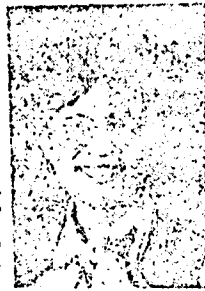
- Sept. 3, 1991 - Gov. Bill Clinton says on a television call-in show that Malak should resign.

# New boss '89 defender of Malak

## Department's Elders headed commission

BY DOUG THOMPSON  
Democrat Benton Bureau

Dr. Fahmy Malak's new boss will be the woman who defended him while chairman of



Elders

the now-defunct state Medical Examiner's Commission.

Dr. Joyce-lynn Elders heads the state Department of Health. That department created a new position that Malak, the resigning state medical examiner, will fill. The announcement of his resignation came three days before the new state Crime Laboratory Board was to meet to consider his future employment.

Elders could not be reached at home Tuesday evening for comment.

"Everybody in the world makes mistakes," Elders said in August 1989 after Malak accused a deputy Pulaski County coroner of murder following Malak's misinterpretation of a medical chart. "If you don't make mistakes, you're not doing anything, in my opinion."

Malak later was ordered by Gov. Bill Clinton to apologize to the deputy coroner.

Malak's new position will involve research on acquired immune deficiency syndrome and other sexually transmitted diseases. In 1988, Elders was reminded by the state attorney general's office that she was chairman of the long-dormant Medical Examiner's Commission. On July 14, 1989 - at its first meeting in more than a decade - the board decided to wait for the report of two out-of-state medical examiners consulted by the state Crime Laboratory Board to review Malak's performance.

ARKANSAS DEMOCRAT • WEDNESDAY, SEPTEMBER 11, 1991

The commission "does not have the expertise to make this determination on its own," Elders said. The experts were paid with \$10,000 from the governor's emergency fund.

Those findings were delayed after one of the pathologists, Dr. David Wiecking of the Virginia medical examiner's office, quit. He left after he and his associate, Dr. Russell Zumwalt of the New Mexico medical examiner's office, were taken out of the state Crime Laboratory when a Saline County sheriff's deputy arrived to try and serve them subpoenas to a grand jury.

A Saline County grand jury later overturned Malak's ruling of accidental death in the case of two teen-agers found dead on railroad tracks.

Dr. Garry Peterson of Minneapolis replaced Wiecking and the report was completed and released July 4, 1989.

It concluded that Malak was a "diligent, dedicated and capable forensic pathologist" who suffered from a loss of confidence in some sectors, "in great part" caused by "unenlightened press coverage of some controversial cases."

The commission concluded Jan. 4, 1990, that there was "insufficient evidence at this time for the dismissal" of Malak, Elders said then.

The commission was eliminated and its duties transferred to the expanded Crime Laboratory Board during the 1991 legislative session.

## Still supports Malak, ex-lab director says

BY MARK GREGORY  
The Sentinel-Record

HOT SPRINGS — Garland County Sheriff Clay White, who appointed Dr. Fahmy Malak as state medical examiner during his tenure as director of the state Crime Laboratory, remained supportive of Malak on Tuesday.

"I think it is a great loss to the state of Arkansas," White said. "He will be difficult to replace. 'You definitely will not get a more dedicated and conscientious person as state medical examiner.'"

Malak resigned the position Tuesday.

White named Malak an assistant medical examiner in 1978 and later appointed him state medical examiner.

Garland County Prosecutor Paul R. Bosson had mixed feelings Tuesday when told of Malak's resignation.

"I'm glad he's no longer in the crime lab ... his credibility was destroyed," Bosson said.

Bosson called for Malak's resignation after three forensic pathologists disputed his findings in the Gregory Stephens murder case.

Malak testified in a Garland County Circuit Court trial that Stephens was shot at close range, in conflict with the testimony of witnesses.

Because of Malak's testimony, a murder charge against Ernest Lemons, the man

accused of shooting Stephens, was dismissed.

Bosson said Malak's resignation still does not satisfy the question "was he right or was he wrong" in the Stephens murder case.

"I'm convinced he was wrong, that (State Crime Lab Director James) Clark was wrong," Bosson said.

Bosson has sent a 46-page report to the State Crime Lab Board, asking its members to take steps to ensure "truthful, accurate and timely reports" from the crime lab in the future.

The board meets in October.

White said the state should be prepared to hire three medical examiners to handle Malak's workload.

He said he could understand why Malak would resign, given speculation and alleged "questionable" rulings. "I certainly haven't lost confidence in him," White said.

White discounted the conflicting findings as a "difference of opinion."

Bosson said he is concerned about who will take Malak's place.

"If we're going to have anybody in there, and the director saying he's right, no matter what, what have we got?" Bosson asked. "All I want is the truth out of the crime lab," regardless of whether it favors the prosecution, Bosson said.

# Malak's reason: 'I fulfilled' job goals

Wednesday, September 11, 1991 Arkansas Gazette

By Jos Crommett  
Gazette Staff

The controversial head of the state medical examiner's office said he resigned Tuesday because his goals have been met, not because of political pressure.

"For me I fulfilled my purpose," Dr. Fahmy Malak said. "I kept the practice to the highest level, you talk to any law enforcement officer. I built an office accredited nationwide. I have nothing left to contribute."

Malak said he was not pressured to resign.

"I was never pressured by anyone. I did this of my own volition, my own choice," he said.

Malak said he prayed before deciding Tuesday that "this is it."

Tuesday evening he seemed relaxed while visiting with a steady stream of supporters trooping through his west Little Rock home.

He leaned back on a couch, arms spread wide, while conducting an interview in a partially buttoned shirt, slacks and no shoes. He declined to have a picture taken because of his casual attire.

Malak has been the center of attention in recent years because of contested rulings in several cases. During Tuesday's interview Malak alluded to problems caused by intense scrutiny of some cases, but said state law prevented him from releasing information on cases at the time. He declined to discuss particular examples.

"I was not in a position to discuss the cases with the news media," he said. "I thought the media would respect that."

"A change of the medical examiner will not change the problems,

make it a rose garden," he said.

Malak said a medical examiner can scientifically determine a cause of death. However, determining the circumstances leading to that death is not as simple. For that reason, he said, a homicide investigation is "made in the field, not from the medical examiner."

Malak claimed that in his time as medical examiner he appeared in court about 1,450 times and never had a case reversed based on his testimony.

He did say chief medical examiners in all states are intensely scrutinized in the media and usually last only about five years on a job. He was medical examiner for 12 years.

Malak said he stayed longer because he likes living in Arkansas, felt a loyalty to Gov. Bill Clinton and thought he could win support by working hard. That was hindered, Malak said, because he couldn't head off criticism because state law would not allow him to talk about particular cases.

Malak said when he became medical examiner his goals were:

- ☐ To provide a high level of service to law enforcement.

- ☐ To get the medical examiner's office accredited. The office was accredited in 1983.

# Malak time line

- 1962 - Malak grows up in Egypt and receives his degree in medicine from Cairo University School of Medicine.
- Dec. 27, 1969 - Malak immigrates to the United States after interning in the Ministry of Public Health. He works on an internship in the Egyptian Public Health until immigrating to the United States.
- 1969 - Begins interning in Gary, Ind., then spends four years training in pathology South Bend Medical Foundation in South Bend, Ind.
- 1976-1977 - He becomes an American citizen in 1976 and spends a year training in forensic medicine in Pittsburgh. At the same time, Malak works as a staff pathologist in the Pittsburgh coroner office.
- 1973 - Works as a staff pathologist at the Cook County medical examiner office in Chicago for about six months before coming to Arkansas as an assistant medical examiner.
- May 16, 1979 - Malak is named chief medical examiner.
- 1982 - Malak performs an autopsy on David Michel of Little Rock. William C. Horne is convicted of using the butt of a gun to beat Michel to death. At trial, Malak matches a transparency of a photo taken of the gun butt with one of the victim's bruises. A crime lab photographer contends the transparency was reversed to match the wound.
- 1983 - Malak fails the national board certification test for forensic pathologists, but passes it in 1985. For several years, Malak claimed he had board certification.
- 1985 - Dr. Chester S. Cadwallader III, 42, of North Little Rock is found hanged in the shower at the Bridgeway Hospital where he was undergoing psychiatric care after suicide threats. The family sues the facility and the case goes to trial in 1987. Malak originally rules the death a suicide but changes the finding to autoerotic asphyxiation while testifying in court.
- August 1987 - The bodies of Larry Kives, 17, and Don George Henry, 16, are found after having been struck by a train near their Bryant homes. Malak rules the deaths accidental, saying the teens smoked so much marijuana that they fell asleep on the tracks and did not hear the train.
- Feb. 18, 1988 - Saline County grand jury rules the deaths of the teens as homicide.
- 1988 - Peter Robinson, 75, dies two months after being beaten by another nursing home patient. Malak rules the death natural, citing pneumonia as the cause. Pulaski County Coroner Steve Nawojczyk calls a coroner jury to review the death. The jury needs less than 10 minutes to rule Robinson's death a homicide.
- June 1989 - Malak accuses Pulaski County Assistant Coroner Mark Malcolm of murdering a hospital patient and calls for a police investigation. Malak had misread a medical symbol and thought Malcolm ordered the removal of life-support systems from the patient without family approval. Gov. Bill Clinton orders Malak to apologize to Malcolm and says the medical examiner was stressed out.
- Aug. 10, 1989 - Malak receives a vote of confidence from the Medical Examiner Commission. The group decides to take no action against Malak for his statements against Malcolm.
- September 1989 - Malak rules as accidental the death of Olive Jane Ward, 16, of Searcy. He says she died when she banged her head as she fell from a 9-inch high porch during a party. The girl's father believes his daughter was murdered.
- Aug. 19, 1990 - William Garrett, 32, is found strangled in his Ashdown home amid a collection of sexual items and satanic symbols. Malak initially classifies Garrett's death as homicide, then on Oct. 2 changes that to accidental death by autoerotic asphyxiation. Prosecutor Jim Bob Steel convenes a grand jury to review the case, and on Feb. 18 it says Garrett was murdered.
- March 1991 - Ernest D. Lemons of Hot Springs goes on trial for the Aug. 18, 1990, shooting of Gregory Stephens of Hot Springs. Witnesses say the shot was fired from 40 yards away. Malak autopsy report gives no indication the shot could have come from any closer; at the trial he says the shot was fired point-blank.

■ July 1991 - The state Crime Laboratory Board announces it will review Malak's controversial cases and the reports by outside experts who reviewed his work in 1985 and 1988.

■ Sept. 10, 1991 - Malak resigns.

SOURCE: Gazette Research

# State medical examiner resigns, takes Health Department job

THE BENTON COURIER, Wednesday Evening, September 11, 1991

LITTLE ROCK (AP) — Dr. Fahmy Malak, the state medical examiner, quit a week after the governor suggested he should consider resigning because his credibility was damaged by controversial rulings.

as never pressured by anyone. I did this of my own volition, my own choice," Malak said after resigning Tuesday.

The 58-year-old Malak had served as medical examiner for 12 years. His resignation was effective Tuesday and he will start a new job Monday with the State Health Department, working in the communicable diseases division. He'll head a program to help treatment of AIDS and other sexually transmitted diseases.

Malak's salary had been \$3,000 a year as medical examiner. In his new job with the Health Department, he is to be paid \$3,000.

"For me I fulfilled my purpose," he told the Arkansas Gazette. "I kept the practice to the highest level. You talk to any law enforcement officer. I

built an office accredited nationwide. I have nothing left to contribute."

Garland County Sheriff Clay White, who hired Malak in 1979 when White was Crime Lab director, praised his former employee.

"I think it is a great loss to the state of Arkansas," White said. "He will be difficult to replace. You definitely will not get a more dedicated and conscientious person as state medical examiner."

In a Hot Springs case, a homicide trial was scuttled recently when Malak said the victim was shot at close range, although witnesses said the assailant fired from 40 feet away.

Garland County Prosecutor Paul Bosson, who had called for Malak's dismissal, said it "looks like the good-old-boy system still works."

Through his press secretary, Mike Gaudin, Clinton issued this statement about Malak's resignation:

"I think this is the correct decision, but I want to make it

clear that I appreciate the many years of hard work he's given to that job. I doubt very seriously if any other person in his position in the United States has carried as heavy a workload this long."

The governor later declined to comment on whether he had influenced Malak's decision. "You'll have to ask him that," Clinton said.

Malak's lawyer, Larry Carpenter of Little Rock, said the governor's office was involved in negotiations that led to Malak's resignation.

"Some of those details had to be worked out ... with the Health Department and the Crime Lab, and the governor's office helped in that," Carpenter told Little Rock television station KATV.

Clinton said last week that Malak has a lot of supporters, but his credibility "becomes an issue at every trial — jurors have to be questioned about it." Carpenter said Malak "wants to continue to work, continue to

See RESIGNS, page 5A

## Resigns

Continued from page 1A

do good work and is proud of his efforts.

"But when you've got everybody from the governor on down you and you don't have any other help, in terms of another pathologist in the lab ... it was time to look elsewhere," Carpenter said.

For the moment, the Crime Lab will use a former Malak assistant, Dr. Joseph Halka of Orange County, Calif., to perform autopsies, according to Crime Lab Director Jim Clark.

Halka will be paid \$2,500 a week, plus expenses, Clark said. Halka arrived Monday morning, Clark said, to fill in in order that Malak could take some vacation days.

The swirl of controversy around Malak created pressures of its own. After reorganization

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of the state Crime Lab Board, each meeting brought speculation that Malak was closer to being fired.

Carpenter said Malak believed he would have been vindicated if an attempt had been made to fire him. But the process, Carpenter said, would have been a difficult one.

"To begin with, under state law, he can only be fired for cause," Carpenter said. Some of the causes, he said, include conviction of certain crimes, not performing his job or unwarranted absences. "They didn't have any of it. I think he would have been validated in that."

However, the lawyer said, "certainly going through that hearing process would put a tremendous amount of pressure on him and his family — in addition to doing the job."

When the opportunity at the Health Department came up,

Malak decided to take it, Carpenter said.

The attorney noted that Malak still has some business to wrap up for the Crime Lab, including some cases in which Malak will have to testify because he performed the autopsies.

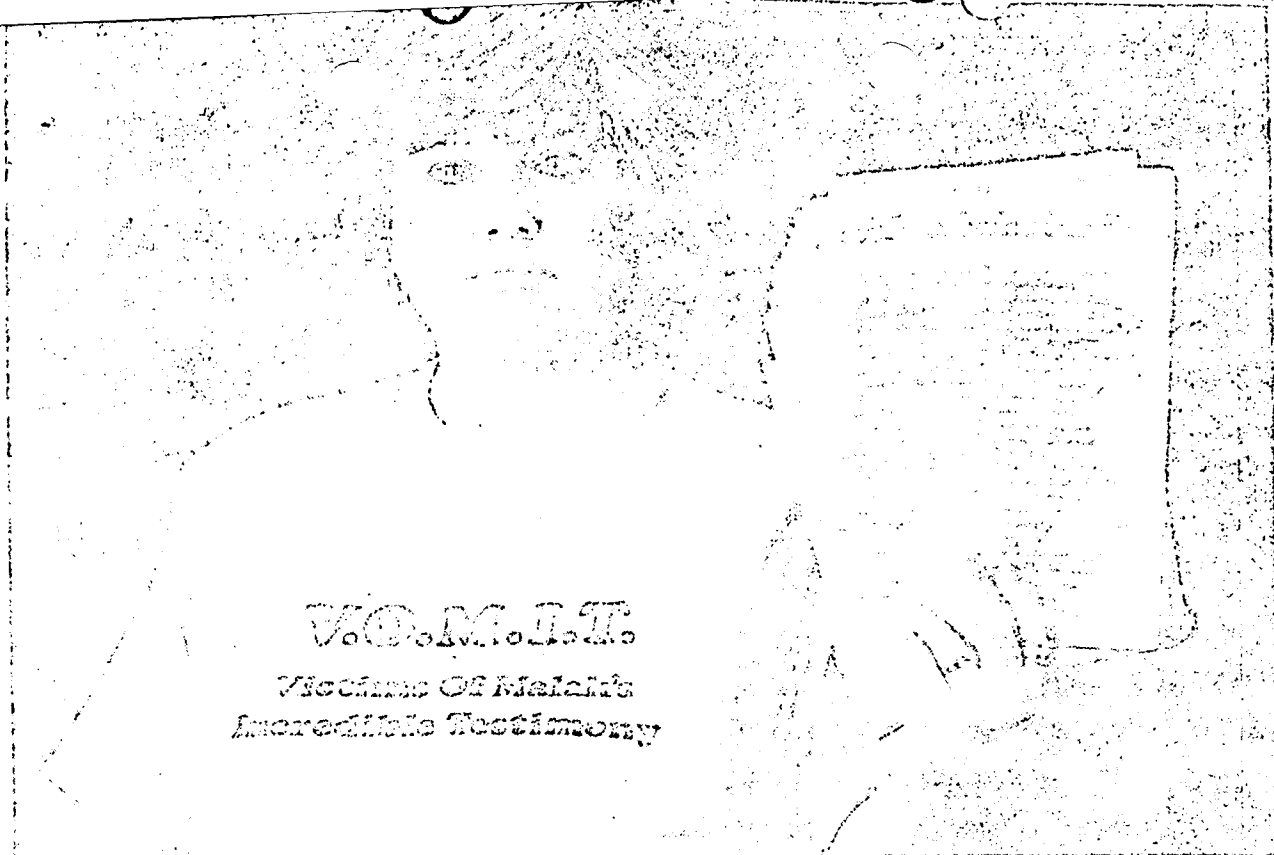
Clark said it would take one to four months to find a permanent replacement for Malak and noted that his office has accumulated several names of possible successors.

According to Clark, the maximum salary for the position under current appropriations is \$112,000 a year. That isn't a salary that makes Arkansas competitive with other states, which pay \$125,000-\$150,000 for a doctor to fill a position such as Malak's.

According to Clark, this was the text of Malak's letter:

"Please accept my resignation as state medical examiner to be effective at the close of business on Sept. 10, 1991. I appreciate the opportunity to have served my state in this position. Very truly yours, Fahmy A. Malak."

*Page 2 of 2 Pages  
9-11-91 Courier*



File Photo

AGAINST MALAK: Linda Ives, in a March photo, holds up petitions gathered against Fahmy Malak.

## Critics, backers still see problems

By Joe Nabbefeld  
Gazette Staff

Critics of Dr. Fahmy Malak reacted with guarded relief to Malak's resignation Tuesday, while supporters warned that it leaves many problems at the state Crime Laboratory still to be addressed.

"Actually, I'm a little disappointed," said Linda Ives, one of Malak's leading detractors since he ruled that her son's 1987 death on Saline County railroad tracks was accidental. A special county grand jury in 1988 overruled Malak and called the death a homicide, though no arrests have followed. Ives is the founder of Victims of Malak's Incredible Testimony (V.O.M.I.T.). The group gathered signatures for a petition attacking Malak's credibility as state medical examiner and calling for his ouster.

"I was looking forward to the meeting [of the state Crime Laboratory Board, which was reviewing Malak's performance and planned to review five disputed rulings by Malak on Friday]," Ives said. "There are a lot of people who need their cases reviewed because there are a lot of rulings that are asinine and murderers who are free."

"I'm certainly glad he's history as far as the medical examiner's office is concerned, but what he has left behind is not going to change a lot of things for a lot of people if they don't review these cases. It's not going to make a difference in my life," she said.

Ives was angry that Malak would continue to be paid by the lab to complete work on 124 cases he has already begun. That work is expected to take three to six months. In the meantime, Malak is to begin a new job at the state Health Department Monday.

"Give me a break," she said. "This is just all about him getting two salaries. Nothing has changed except that they think everybody will shut up and go away. ... All they're doing is pacifying the public, but not me. I don't want to pay his salary anywhere."

Ron Fields, prosecuting attorney for Sebastian County and generally a Malak supporter, said, "I think there needs to be other changes. People shouldn't think this will solve the problems at the crime lab, which are lack of equipment and staffing. Changing one person won't solve that."

"I'm hoping there will be a renovation of that office and care given to staffing to attract well-qualified people, which they haven't done."

Steve Nawojczyk, Pulaski County coroner and a longtime critic of Malak, said "It's probably a great relief for Dr. Malak and his family, regardless of what his reasons are."

Dr. Annette Landrum, a Fort Smith pathologist who was appointed to the crime lab board this summer by Gov. Bill Clinton, said, "I'm not too surprised. I know there was a lot of pressure on him."

"It appears he had a credibility problem that would be hard to overcome," Landrum said. "I've gotten a lot of letters from citizens, from a prosecutor, from various elements of society, asking for him to be fired. There's a lot of feeling out there against him."

Ives still wants a criminal investigation into allegations that Malak altered evidence and lied under oath in court, but said she doubts that will happen.

Malak has denied any wrongdoing and has said he was the victim of bigotry because he's a native of Egypt.



## Former assistant will fill in 2 weeks as medical examiner

By Joe Nabbefeld  
Gazette Staff

For the next two weeks, a former assistant to Dr. Fahmy Malak will perform autopsies for the state Crime Laboratory while it searches for a replacement for Malak, who resigned effective Tuesday.

Dr. Joseph Halka, who works in the Orange County, Calif., coroner's office, has agreed to carry the medical examiner's office work load for two weeks, said Jim Clark, director of the crime lab.

Clark contacted Halka Saturday and Halka arrived at the lab Monday.

Halka will return to his job in Orange County after the two weeks. He is not considered a can-

didate to replace Malak, Clark said.

Halka moved to California in 1988 to be closer to his wife's family in Arizona. In fact, he's a candidate for a chief medical examiner job in Arizona, Clark said.

Halka will receive \$2,500 per week for his temporary service, Clark said.

Halka worked as Malak's assistant in 1988. He replaced Malak for two weeks in 1989 so Malak could take a vacation.

Clark said he has no candidates yet for a permanent replacement.

He has placed a few calls to prospective replacements but found none, he said. The position pays between \$90,000 and \$106,000

### Text of letter

Please accept my resignation as state medical examiner to be effective at the close of business on Sept. 10, 1991.

I appreciate the opportunity to have served my state in this position.

Very truly yours,

Fahmy Malak

per year, which medical examiners elsewhere describe as low for the field.

The office has averaged 600 to 700 autopsies per year, which requires three medical examiners, according to standards by the National Association of Medical Examiners. One assistant examiner is scheduled to begin in the office on Oct. 1 but budgeting prevents hiring a second.

*Gazette*  
*9-11-91*

# Malak resigns, takes state job paying \$70,000

BY RACHEL O'NEAL  
Democrat Capitol Bureau

The state's medical examiner, Dr. Fahmy Malak, resigned Tuesday amid allegations of botching autopsies and giving inaccurate testimony.

◦ In-depth report on Malak's resignation 10A

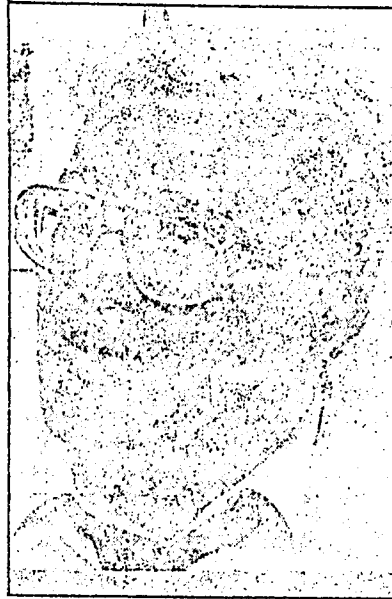
But Malak won't be leaving state government. Instead, he starts his new \$70,000-a-year job Monday conducting research on sexually transmitted diseases for the state Department of Health.

"When the governor says it's time to move on, it certainly creates a lot of pressure," Malak's attorney, Larry Carpenter, said Tuesday.

Gov. Bill Clinton said during a Sept. 2 Arkansas Education Television Network program that Malak should step down because his credibility has become an issue during criminal trials.

"I think this is the correct decision, but I want to make it clear that I appreciate the many years of hard work he's given to that job. I doubt very seriously if any other person in his position in the United States has carried as heavy a workload this long," Clinton said Tuesday through his press secretary, Mike Gauldin.

Malak, who has held the post for 12 years, earned \$106,000 annually. He supervised 15 employees and the



Dr. Fahmy Malak

office performed between 600 and 700 autopsies a year.

Carpenter said Malak doesn't plan to comment on his resignation, which was effective Tuesday.

"When you're dealing with people who ignore what factual information is, it makes it very tough to do your work," Carpenter said.

State Crime Laboratory Director Jim Clark said Tuesday that Malak still has 124 pending autopsies and may be needed to testify in court for the next six months.

Details of Malak's pay have

See MALAK, Page 10A

## Malak

◦ Continued from Page One

not been worked out, Clark said. "We're looking at the possibility of a dual employment role until those cases are cleaned up."

Clark, who has been critical of Malak's performance, said Malak's resignation doesn't necessarily indicate the Crime Laboratory is on the right track.

"I don't think it will help in the way a lot of folks think it will help. Until we look at whole system and make some changes, there's a good possibility that two years from now we could be back in the same situation."

The newly restructured state Crime Laboratory Board had planned to meet Friday to discuss Malak's job performance. The board was going to review five cases where family members have said Malak botched the autopsies of their relatives.

"His attorney called me yesterday or the day before to find out where things were standing, but he gave no clue this was going to happen," board member Dr. Annette Landrum, a Fort Smith pathologist who was reviewing some of those cases, said Tuesday.

Landrum said if Malak hadn't resigned, the board probably would have taken some sort of action Friday. She did not specify what action would have been taken.

Tom S. Butler, director of administration for the Health Department, said Tuesday that Malak will be working in the department's program on acquired immune deficiency syndrome and sexually transmitted diseases.

Butler said Malak didn't have any expertise in that area, but said Dr. Joycelyn Elders, the department director, has been in contact with

*Page 14 & Page 15*

## Panel might review Malak in closed session

By Joe Nabbefeld  
Gazette Staff

The board that is reviewing the performance of state medical examiner Dr. Fahmy Malak plans to conduct most, if not all, of next Friday's day-long meeting in private, the board chairman said Friday.

A number of citizens have planned to attend the meeting and have said they want to observe and participate in the board's examination of five disputed cause-of-death rulings by Malak. While discussion of whether to fire Malak should reasonably be done in private, they said they think discussing the cases should be done in public.

Dr. I. Dodd Wilson, chairman of the state Crime Laboratory Board,

said in his opinion, discussion of the cases would be a "personnel" matter and therefore would be done in executive session. The board would disclose the results of its discussions during a press conference after the meeting, he said.

State open meeting laws call for most public business to be conducted in public, but allow for dealing with personnel matters in private.

Wilson said he had given little thought to how the meeting will proceed and won't until the middle of this week when "the agenda" is more certain.

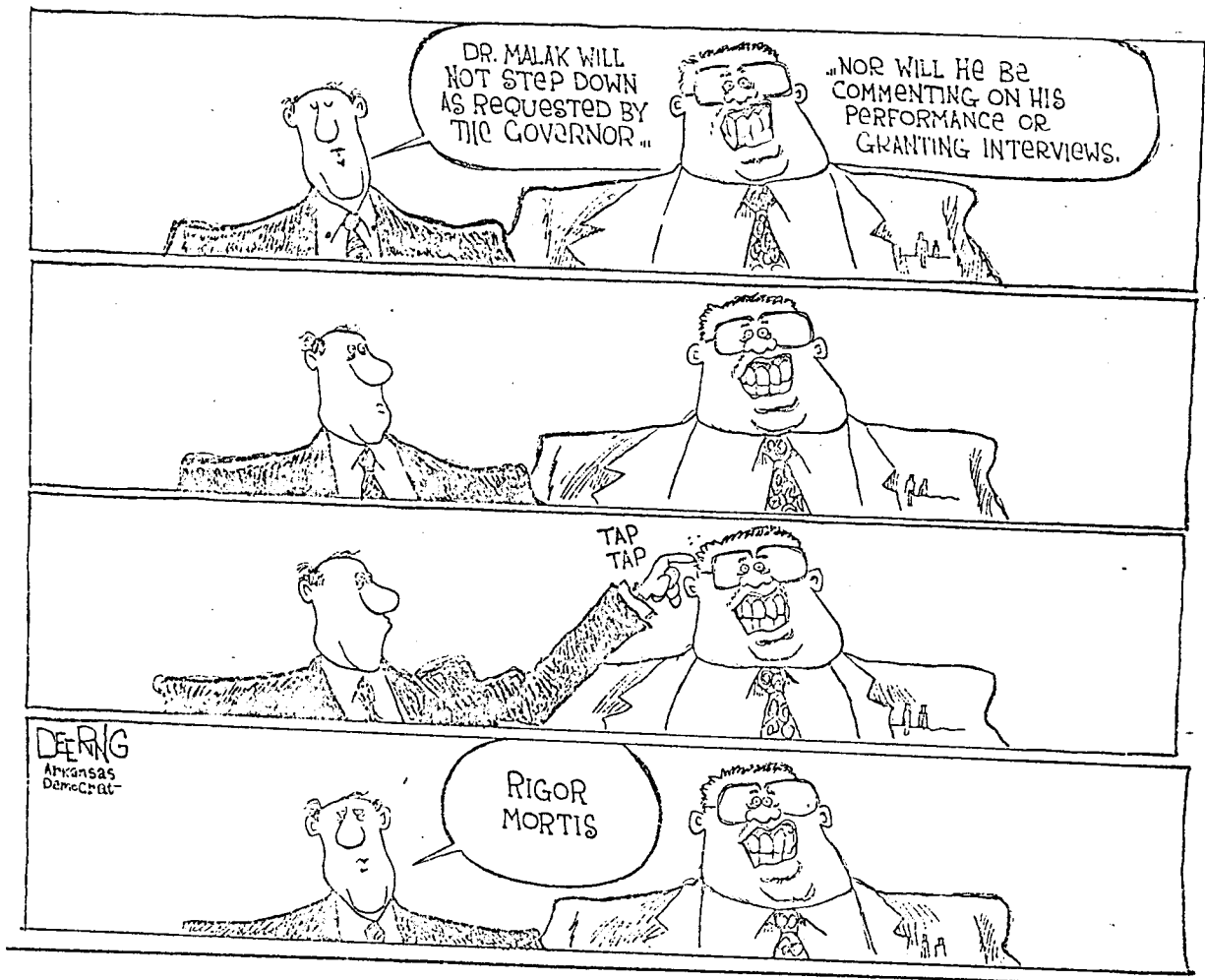
Gov. Bill Clinton last week publicly said Malak should consider resigning because persistent criticisms of his performance and allegations of altering evidence have

eroded Malak's credibility as a state witness in murder trials.

Malak has consistently said the criticism and allegations are unfounded and, through his lawyer, has revealed no intention to resign.

Crime Laboratory director Jim Clark has gathered documentation on the five disputed cases but hasn't distributed it to the board members. Wilson said the likely format would be for board members to receive copies of the documents at the start of the meeting, then study them for as long as they need, then discuss them. Citizens wanting to address the board may get to before it goes into the executive session, he said.

"But I think we're presupposing the agenda," said Wilson. "I don't have it planned yet."



# Attorney for Malak surprised

BY RACHEL O'NEAL  
Democrat Capitol Bureau

The attorney representing the state's medical examiner said Wednesday he was surprised that Gov. Bill Clinton has said Dr. Fahmy Malak should resign.

Clinton said Tuesday during a question and answer program on the Arkansas Educational Television Network that Malak should step down because his credibility has become an issue during criminal trials.

"It's kind of an interesting situation. If the governor is basing it on what he reads in the newspapers, I'm a little bit surprised, but what can I say? He's entitled to his position," North Little Rock lawyer Larry Carpenter said.

Malak has been accused of botching autopsies and giving inaccurate testimony. Malak didn't return telephone calls Wednesday. Carpenter said Malak wouldn't address Clinton's comments.

The governor told reporters Wednesday: "It's just become clearer and clearer - it seems to me that whether he's right or wrong - instead of having a presumption of accuracy, there's almost a presumption of inaccuracy in the press and when the presumption runs against you, your credibility becomes an issue in every criminal trial."

Clinton refused to answer questions on whether he thinks Malak is doing a poor job.

The recently restructured Crime Laboratory Board will meet Sept. 15 and is expected to discuss Malak's job performance. Clinton appointed the eight-member board.

# Malak won't quit, says his attorney

By Joe Nabbefeld  
and Max Parker  
Gazette Staff

Dr. Fahmy Malak has no plans to resign as state Medical Examiner, his lawyer said Wednesday, despite Gov. Bill Clinton's suggestion on statewide television that "it would be better" if Malak stepped down because of lost credibility.

Malak himself declined an *Arkansas Gazette* request for an interview about Clinton's Tuesday night remark.

His lawyer, Larry Carpenter of North Little Rock, said he met with Malak on Wednesday morning and Malak held to his position that allegations of incompetency and altering evidence were unfounded and said he intended to remain in the job he has held for 12 years.

The Clinton-appointed state Crime Laboratory Board is scheduled to meet all day Sept. 13 to discuss the allegations and review five disputed cases.

Lab director Jim Clark said Wednesday that he didn't know if the board would take any action that day. The board chairman, Dr. I. Dodd Wilson of Little Rock,

couldn't be reached. Dr. Annette Landrum of Fort Smith, a board member, said she had not heard from Clinton and expected to take the matter up in public Sept. 13.

On a viewer call-in show Tuesday on the Arkansas Educational Television Network, Clinton said; "It would be better if [Malak] recognizes that he's worked hard and long for many years and that he probably should not keep trying to do this [serve as medical examiner] anymore."

Not all of the criticism of Malak is valid, Clinton said, "but his credibility has been so strained and his effectiveness so exhausted that I question whether he can go on without causing more difficulties for the [lab] and therefore more anguish and doubt for the families of people who die."

Clinton reiterated those state-

ments in a *Gazette* interview Wednesday.

The statements came about a month after Jim Pledger of Clinton's staff asked Clark to report on how the lab could keep up with its load of about 4.3 autopsies each work day should Malak no longer work there.

Clark said Wednesday that he still had no contingency plan in place. He has ruled out a company that provides temporary doctors at \$500 an hour as too expensive, he said, and scanning old applications has generated nobody he would be hiring soon.

Clark also said that changing medical examiners would fall far short of solving severe problems plaguing the lab and the statewide system of coroners and sheriffs who investigate possible homicides.

"The whole system needs to be revamped," he said, suggesting that the best approach probably would be a system of regional medical examiners instead of county coroners.

Carpenter, Malak's lawyer, said of Clinton's comments, "The governor gets his information from the newspaper or somewhere, so I don't know what his opinion is based on. If his comment is based on his feelings, not whether Malak has done a good job, then there's nothing I can do about that. If it's based on erroneous information, then I could do something about that."

Said Clinton on Wednesday, "It's just become clearer and clearer that whether [Malak] is right or wrong, now instead of having a presumption of accuracy there's almost a presumption of inaccuracy in the press. When the presumption runs against you then your credibility becomes an issue at every criminal trial."

Asked if Malak had lost his credibility with Clinton, the governor said he wanted to keep his opinion on that private.

.. Thursday, September 5, 1991 Arkansas Gazette

# Clinton takes to TV, says Malak's time is up

BY JAY MEISEL  
Democrat-Conway Bureau

CONWAY — Gov. Bill Clinton said Tuesday evening that it's time for besieged state Medical Examiner Fanny Malak to leave.

But he voiced support for Dr. Terry Yamauchi, director of the Arkansas Department of Human Services.

Clinton participated in a question-and-answer program Tuesday evening on the Arkansas Educational Television Network, answering questions called in by viewers. During the program, he also talked

- Media taking cheap shot at Clinton, Bookout says 6B
- Californian running for president 6B
- Clinton adds LR lawyer to exploratory committee 6B
- State pays \$4,249 for Gaudin, Cabe to attend conference 6B

about education, abortion, gun control, what he will do if he runs for president and what he would do if he is elected.

While Clinton said he recognizes Malak's hard work, he believes Malak's credibility is damaged and he fears that will

become an issue in criminal trials.

"Those are the kinds of things that make me question whether he should go on," Clinton said. He lacks the authority to remove Malak from the job, he said.

Another viewer asked whether Yamauchi is on "borrowed time" in light of problems plaguing DHS.

"I don't think so," Clinton responded.

He said DHS has a number of innovative programs that are working well. Many of the problems at DHS involve tough

issues faced by the Division of Children and Family Services, he said.

"For those issues, he (Yamauchi) is going to have to take a more aggressive hands-on approach," Clinton said.

Clinton rejected notions that the problems at DHS should prevent him from running for president.

He smiled when answering a question as to whether his potential candidacy is really for president or vice president on the Democratic ticket.

Instead of selecting one or

See CLINTON, Page 6B

*Page 1 & 2 (Page)*



Arkansas Democrat/Larry Young

**LOOKING FOR INPUT** — Gov. Bill Clinton talks to a group of about 50 business leaders in Jonesboro on Tuesday. Clinton said he would not run for president if he thought the state would not be run correctly while he was gone.

## Clinton

Continued from Arkansas Page the other, Clinton said, he believes a debate on domestic policy is needed. He said as a senior governor, he is well equipped to contribute to the debate.

He reiterated that he will not resign as governor if he runs for president. "No governor in the history of America has resigned" to run for national office, he said.

Clinton said his decision on running depends heavily on whether he feels state business can be taken care of properly during such a campaign.

Asked how long the school year should be, Clinton responded, "I think it's about long enough," but added that good summer programs are needed.

A Paragould viewer asked

## Schedule

Here is Gov. Bill Clinton's public schedule for today:

- Speaking at 9:45 a.m. to the Conference on Child Abuse at the Excelsior Hotel, Little Rock.

- Speaking at 7 p.m. during a Board of Apportionment public hearing at the Old Supreme Court Room at the state Capitol.

whether Clinton should consider that his education programs have failed because 60 percent of college students need remedial classes.

Some 70 percent "are there (in remedial classes) because they did not take the recommended college" courses, Clinton said. "What it shows you is not that the reforms have failed, but that they haven't gone far enough."

*Page 2 of 2 Pages  
Sent at 9-4-91*



# Clinton answers TV callers

## Suggests Malak quit

By Mark Oswald  
Gazette Capitol Bureau

Gov. Bill Clinton suggested to a statewide television audience Tuesday night that it was probably time for state Medical Examiner Dr. Fahmy Malak to resign.

On a viewer call-in show on the Arkansas Educational Television Network, Clinton said of the controversial Malak: "It would be better if he recognizes that he's worked hard and long for many years and that he probably should not keep trying to do this [serve as medical examiner] anymore."

Malak has been under fire for years over several cause-of-death rulings, but only in recent weeks have there been indications that he's losing the support of the Clinton administration.

Clinton said not all of the criticism of Malak is valid, "but his credibility has been so strained and his effectiveness so exhausted that I question whether he can go on without causing more difficulties for the [state Crime Laboratory] and therefore more anguish and doubt for the families of people who die."

He said Malak has a lot of supporters among lawyers, prosecutors and the law enforcement community, but that his "greatly damaged" credibility "becomes an issue in every trial — jurors have to be questioned about it."

"Those are the kinds of things that make me question whether he should go on," Clinton said.

Among the controversial cases

See QUESTIONS/7B

## Questions

Continued from Page 1B

were the 1987 deaths of two teenagers in Saline County who were run over by a train. Malak ruled the deaths accidental, that the boys were on the track because of a drug-induced stupor. A grand jury later determined the cases to be homicides.

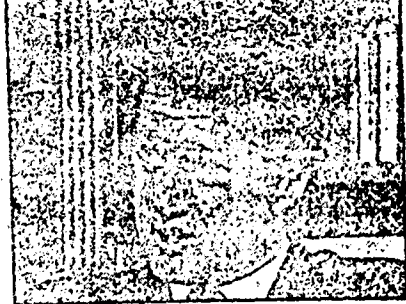
There was also a case in Garland County where Malak said a shooting victim was shot at close range though witnesses said the assailant fired from 40 feet away.

Clinton said removing Malak from office is "not directly" in his power, but noted that the crime lab board is reviewing Malak's performance.

On other issues, Clinton:

☐ Defended his pro-choice stance on abortion, saying "pro-choice doesn't mean being pro-abortion." He added, "I simply don't think we should go back to criminalizing these decisions [about abortion]."

☐ Reiterated that he won't resign as governor if he runs for president, saying no sitting governor has ever stepped down to run



## Clinton talk

☐ Gov. Bill Clinton tells an AETN audience that it could be time for state Medical Examiner Dr. Fahmy Malak to step down./1B

for national office. "Under that theory, no elected official could ever run without resigning," he said.

☐ Said it would be up to the voters to decide whether his lack of military service would be a negative in a national campaign. He said he would just tell voters the truth — that he got a high draft lottery number in the late 1960s and was never drafted.

☐ Said, in response to a question about his lack of foreign policy experience, that his work as governor has given him more experience in that field than Ronald Reagan had when elected president, that he has a college degree in international affairs and that the lesson of recent events in Russia is that domestic failures can reduce a country's foreign influence.

☐ On separation of church and state, he said he could support a "moment of silence" in schools and allowing church groups to use public school buildings after hours.

☐ Said a national health insurance system should be "the top domestic priority of the next president," in part because health costs are about to bankrupt the middle class and small businesses.

## Spanks



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# EL DORADO

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## *The News*

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### Time for change at crime lab

Evidence continues to mount toward one conclusion about the state Crime Laboratory and those in charge: It's time for a change.

The latest incident involving state medical examiner Fahmy Malak came recently when it was suggested that his boss, laboratory director Jim Clark, covered up a serious blunder by Malak in a murder case.

Garland County Prosecutor Paul Bosson, after handing out three pathologists' reports disputing Malak's findings in the murdered case, said, "It's time for Mr. Clark to leave and take his friend (Malak) with him."

Malak's flubs are well documented. When Gregory Stephens, 25, of Hot Springs, was killed, Malak testified on the witness stand that the murder weapon was close to Stephens' head.

Independent examinations have said the opposite — that there is no evidence supporting such a finding.

There have been suggestions samples may have been switched in the Stephens case.

Bosson's office was forced to drop the murder case against Ernest Lemons, a state parolee.

The independent examiners have linked Malak and Clark with inaccuracies in their handling of the case.

In other cases, Malak has misdiagnosed and mishandled evidence from around the state.

A medical examiner's reports — before and during a trial — are often the strongest evidence available to prosecutors.

If there comes a time, even more so than now, that prosecutors no longer have faith in a medical examiner, then the judicial system will suffer.

Examiners from different states have said Malak is careless with his findings, and Bosson wants "some heads to roll."

If the allegations are legitimate and Malak and Clark are found to be running their office in Little Rock in such a shabby fashion, then it truly is time for some housecleaning.

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# Campaigns would look for Clinton weak spots

■ Fahmy Malak. The state medical examiner has been under fire for years for a number of controversial, sometimes curious rulings, on causes of death. An aggressive opponent might hit Clinton with questions about Malak's competence, but there are signs now that the governor is reviewing Malak's role.

# Malak's board review is in 2 weeks

## Scrutiny of 5 cases appears crucial to keeping post

BY RACHEL O'NEAL

Democrat Capitol Bureau

Friday the 13th could mark the demise of the Arkansas career of Dr. Fahmy Malak, state medical examiner. That's the date of next meeting of the Crime Laboratory Board.

On Sept. 13, the board plans to spend at least seven hours evaluating Malak's job performance. In its evaluation, the board will discuss five cases in which Malak's cause-of-death rulings have been challenged or criticized.

Crime Laboratory Director Jim Clark said Thursday he doesn't think Malak will be fired on Sept. 13. Instead, he said, the board will probably decide at a later date whether

to take action.

"But if the board elects to fire him on Friday the 13th, then we need to know what we're going to do," Clark said.

Jim Pledger, director of the state Department of Finance and Administration and a key adviser to Gov. Bill Clinton, also is interested in what the board plans to do if it finds itself without a medical examiner.

Pledger called Clark earlier this month and asked for a report on how Malak would be replaced.

But Pledger said Thursday he asked that question because he was worried about Malak's health.

"The question was if he had

a heart attack or died, what would they do," Pledger said, referring to Malak.

Clark "prepared a paper for me of what the solution would be," Pledger said.

Malak, 58, suffered a heart attack in 1982 and underwent bypass surgery.

In a written response submitted late last week, Clark outlined two possible alternatives: hire a local pathologist to fill in on emergency basis until a permanent chief medical examiner is found or find a qualified person to quickly take over the responsibilities.

Clark estimated between 15 and 18 families have lodged complaints against Malak.

# Clinton Asks what would happen with no Malak

By Joe Nabbefeld  
Gazette Staff

Gov. Bill Clinton's office earlier this month asked the state Crime Laboratory to outline how it would proceed if it found itself without the services of Dr. Fahmy Malak, the state medical examiner, according to lab director Jim Clark.



"I've been Malak asked by the governor's staff to give worst-case scenarios," Clark said. "One is if we need to bring somebody in right away."

"Money was part of it," Clark said. "If the [Crime Laboratory] board should decide Malak should go, what should we do" to pay for somebody to continue performing an average of more than four autopsies per workday?

The board began a formal review of Malak's performance in July and is scheduled to hold its second meeting on that subject Sept. 13. That day, it will meet from 9 a.m.

See MALAK/7A

ARKANSAS DEMOCRAT • THURSDAY, AUGUST 29, 1991

## Malak

Continued from Page 1A

to 4 p.m., ostensibly to discuss five randomly selected cases in which Malak's cause-of-death rulings have been disputed and criticized.

The request to Clark provides the first indication that Clinton is playing a role in the review of Malak and that the review may be coming to a head.

In response to the request from Clinton's office, Clark contacted a Cleveland company that supplies temporary physicians, including forensic pathologists. The company, Locum Medical Group, could provide a temporary medical examiner for \$500 an hour with an additional \$85 an hour for overtime, Clark said.

Clark outlined two other possibilities in his report:

- ☐ Hire a local pathologist to fill in on an emergency basis until a new chief medical examiner can be located and hired. He said he hasn't found a local candidate for that.

- ☐ Find somebody who is qualified and ready to quickly take over as chief medical examiner and hire that person. Clark has received the

names of two forensic pathologists from other states — not submitted by the pathologists themselves, but by others — who are qualified and would be available, one in Colorado and one in Texas. But, he claimed, he has made no effort to contact either one.

A Gazette inquiry Wednesday revealed that the one in Colorado, Dr. George Thomas, is on vacation abroad and expects to be for two more months.

Another alternative would be for pathologists at the University of Arkansas for Medical Sciences to perform autopsies in the absence of a chief medical examiner, but the school has said it can spare none, Clark said.

# 4 families disagree with Malak rulings

LITTLE ROCK (AP) — Maggie Hall doesn't believe her ex-husband could have fired five successive gun blasts into his chest.

Hall is among four families challenging the cause-of-death rulings of the state medical examiner. In each of the four cases, Dr. Fahmy Malak ruled the deaths were suicides.

The families have asked the state Crime Laboratory Board to review the rulings. The board already is looking at five disputed cause-of-death rulings by Malak and will finish those reviews before considering the four new cases, said Dr. I. Todd Wilson, board chairman.

Hall's ex-husband, Raymond P. Albright of Mountain View, died in 1985 of five shots fired into his chest at close-range from a high-powered pistol.

Malak agreed with the opinion of the Stone County sheriff's office that the death was a suicide.

In the other three disputed suicides:

— Willene Carlton wants to know if the 1988 death of her

teen-age son, Larran C. Carlton, from an overdose of Freon gas was murder or accidental.

— Family members of 17-year-old Jerry McCool of East End in Saline County want his death declared accidental. He shot himself in the head at home with the family's .22-caliber pistol. Family members say he often played with guns.

— Family members want a review of the 1987 shooting death of Randy Brady in Pulaski County. The family's reason for wanting the review was not available.

Linda Ives of Bryant said several other families have contacted her to talk about death rulings they want reviewed. Ives has sought Malak's ouster since her son and his friend died on railroad tracks in Saline County in 1987. Malak ruled the deaths accidental, saying the youths fell asleep on the tracks after smoking marijuana. A grand jury called them homicides.

The case in which Kevin Ives and his friend, Don Henry, died

## Malak

*Continued from page 1*

is one of the five cases now under review. The Crime Lab Board is to meet Sept. 13 to look at those cases.

Crime Lab Director Jim Clark said some of the alleged mishandling of cases may be the fault of sheriffs, coroners or other investigators. He said some families refuse to accept rulings, because the outcome costs them insurance money, is embarrassing or does not fit with their theory of events.

*See MALAK, page 5*