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10 families file Malak complaints

Question examiner's handling of relatives' autopsies

BY RACHEL O'NEAL
Democrat Capitol Bureau

Ten families have officially lodged complaints against Dr. Fahmy Malak, alleging that the state medical examiner has mishandled the autopsies of their relatives, the state Crime Laboratory director said Thursday.

Director Jim Clark said half the complaints were filed after the newly restructured state Crime Laboratory Board held its first meeting July 15. At that meeting, five other families complained that Malak had botched autopsies.

"I think - I don't want to call it hysteria - but I think it's getting to that point," Clark said.

The complaints filed since the July meeting include:

- The first-degree murder conviction of Greg Larimore of Blytheville, who was found guilty in January of the 1990 stabbing death of his wife. Lar-

imore contends that he wasn't home when his wife, June, was stabbed more than 130 times. Malak's testimony helped convict Larimore.

'I think - I don't want to call it hysteria - but I think it's getting to that point.'

- The 1988 death of Larran C. Carlton of Cleveland County. Malak ruled that Carlton died after inhaling Freon gas. The family thinks Carlton may have been murdered.

- The 1985 shooting death of Raymond Allbright of Mountain Home. Malak ruled the death a suicide. His family suspects foul play.

- The shooting death of Jerry McCool of East End (Saline County). Malak ruled the death a suicide, but the family thinks it was an accident.

- The 1987 death of Randy Brady of Little Rock, which

Malak ruled as a suicide.

At the Sept. 13 meeting, Clark said the board will discuss the cases brought to its attention during the July meeting. The other five cases may be discussed by the board at a later date, he said.

The five cases that will be discussed include the highly publicized 1987 deaths of Kevin Ives, 17, and Don Henry, 16, of Bryant. Malak ruled that the teenagers were hit by a train after they smoked marijuana and laid down on the tracks. A Saline County grand jury determined that the boys were murdered.

These four deaths not or ones questioned

By Joe Nabbefeld
Gazette Staff

The families of four people whose deaths were ruled suicides by Arkansas Medical Examiner Fahmy Malak have asked a state panel to include their cases in its review of Malak's performance.

Among those making the request is Maggie Hall, whose ex-husband, Raymond P. Allbright of Mountain View, died in 1985 of five close-range shots to his chest from a high-powered pistol. The Stone County Sheriff's Office called it suicide. After conducting an autopsy three months later, Malak agreed.

The State Crime Laboratory Board, which is already scrutinizing five disputed cause-of-death rulings by Malak, will finish looking at those five before discussing whether to take on the other cases, said Dr. I. Dodd Wilson, board chairman.

"We may look at these," said Wilson, dean of the School of Medicine at the University of Arkansas at Little Rock. "That will be a board decision, not mine."

The four that have contacted the board aren't the only families wanting their cases added to the list. One of Malak's lead critics, Linda Ives of Bryant, said she has received calls from about eight families contesting even more cases — some of them well-known, some unpublicized.

Ives directed them to contact Crime Lab Director Jim Clark, but most haven't yet. Several more have called the *Arkansas Gazette* to ask what they can do to get their cases reviewed.

—And the five the board agreed to review weren't selected because they're the most controversial ones in the long trail of disputed cases that has grown behind Malak in his 12 years on the job.

Rather, the board chose them on

the purely random basis that somebody mentioned them at the board's first meeting in July. People contesting at least two more cases attended that meeting but didn't speak up because, they said, Kathy Goss, who chaired the meeting, instructed Malak critics to keep their comments to a minimum.

The situation highlights some of the difficulties in assessing Malak's performance, Crime Lab director Clark said. According to Clark:

❑ The board simply wouldn't have the time to research every criticism of Malak. Its next meeting, devoted entirely to discussing the first five cases, is scheduled to run from 9 a.m. to 4 p.m. Sept. 13.

❑ Some alleged mishandling of cases may be the fault of sheriffs, coroners or others who investigated the cases, not Malak. "He's only one part of the equation," Clark said.

❑ Many cases can be handled competently and a family still refuse to accept the cause-of-death ruling because the outcome costs them insurance money, is embarrassing or simply doesn't fit with their theory of the events. The board's first chore would be to sort through for criticisms that could have merit.

"If you think about it, every body that comes here is involved in controversy, or it wouldn't be here in the first place," said Clark. "So the chances of making everybody happy are 50-50 at best."

❑ Should the board decide to terminate Malak after reviewing the first five cases, or after the ensuing four, or not at all, some of the other families may still deserve having their cases looked at, too.

"I think there ought to be a mechanism available for people to be able to ask these kinds of questions and get some kind of response. Whether it be under the governor's office or the attorney general's, I don't know."

The four cases that have been brought to the board's attention, all of them ruled suicides by Malak,

are:

❑ Allbright's death on June 28, 1985, in the yard of his Mountain View home. Allbright, 50, had just returned home after being arrested the night before on theft charges. Hall, his ex-wife, says she still doesn't believe that he was able fire successive shots into himself from such a lethal gun, and has other unresolved questions.

❑ The 1988 Cleveland County death of Larran C. Carlton, a teen-ager. The sheriff's office and Malak ruled Carlton died of inhaling an overdose of Freon gas and called it suicide. His mother, Wilene Carlton, still asks if it was murder or accidental.

❑ The shooting death last year of 17-year-old Jerry McCool of East End in Saline County. McCool shot himself in the head at home with the family's .22-caliber pistol. Malak ruled it suicide, one of three in the area in a short period of time. Family members say McCool often played with guns and want the death declared an accident.

❑ The 1987 shooting death of Randy Brady in Pulaski County. Clark said Brady's age was between 25-30. He died of a shot from a pistol and Malak ruled it suicide. Clark declined to release further details without permission from the family.

Ives' son and his friend died on some railroad tracks in Saline County in 1987. Malak ruled the deaths accidental but a grand jury

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review of original 5 first

called it homicide. Since then, Ives has actively pushed for Malak's ouster.

Ives noted four more cases she has been contacted about since the board's first meeting in July and she will ask the board to review these, as well. Those four are:

■ The 1983 death of David Michel in Little Rock. William Horne went to prison for allegedly beating Michel but still claims he didn't do it. A Crime Lab photographer several years later alleged that during Horne's trial, Malak used a falsified photo as the key piece of evidence to convict Horne.

■ The May 1987 death of James Dewey Milam, 72, of Searcy County. Malak ruled the cause was a perforated ulcer. Malak said Milam's small dog then ate the dead man's head.

Milam's daughter-in-law, Lynetta Milam, insists he was murdered. She said Malak showed her photographs of the headless corpse and the neck was cut clean.

■ The September 1988 death of 5-month-old Amanda Travis of Perry County. Malak's autopsy report said she appeared to have been sexually molested and suffocated. Another pathologist who assisted on the autopsy disputed whether there was sexual molestation.

■ The October 1990 deaths of Clara Sue and Gerald Jumper, an elderly couple in Lee County. The sheriff's office and Malak ruled that Gerald Jumper shot his wife and then himself but family members continue to question whether somebody else shot both of them.

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State hires Kansas doctor to become 10th assistant in Malak's 12-year tenure

BY RACHEL O'NEAL
Democrat Capitol Bureau

A Kansas pathologist has accepted a job with the state Crime Laboratory — marking him the 10th assistant in 12 years to state Medical Examiner Fahmy Malak.

Dr. David DeJong, a pathologist in private practice in Wichita, Kan., is expected to join Malak's staff Oct. 1, Crime Laboratory Director Jim Clark said Tuesday.

"After looking at several other applications, and interviewing one other pathologist in Little Rock, we decided to offer Dr. DeJong the job," Clark said.

Although Clark said he interviewed only two people for the \$85,000-a-year job, he talked to three other pathologists on the telephone about the position.

DeJong will replace Dr. Violette Hnilica, who resigned in May to take a teaching position at the University of Ten-

nessee at Memphis.

DeJong has been in private practice since 1983. Before that, he served as a general medical officer in the Army, Clark said.

Malak is the target of recent criticism by several families who charge he has botched autopsies and given inaccurate testimony.

Those complaints will be discussed by the recently restructured state Crime Laboratory Board at a meeting scheduled tentatively for Sept. 13, Clark said.

At the board's first meeting July 15, five families complained that Malak mishandled the autopsies of their relatives. The families were asked to supply documents to support their allegations, but Clark said only two of the families have responded.

The people who have responded are Ron Ward of Marshall (Searcy County), who said

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Malak erred in the case of his daughter, Olivia "Janie" Ward. Malak ruled the girl died of a broken neck suffered in a fall from a porch about 13 inches high.

Also, documents were submitted by the family of Martin Lee Walt III of Dumas, who was acquitted in the 1990 shooting death of Kimberly Schwartz.

During the trial, Walt contended he shot Schwartz twice in self-defense. But Malak testified the shots were fired five minutes apart.

Lab hires assistant for Malak

Kansas pathologist accepts position

By Joe Nabbefeld
Gazette Staff

A Wichita, Kan., pathologist on Monday accepted the vacant job of assistant to state medical examiner Dr. Fahmy Malak.

Dr. David DeJong (pronounced like 'DeYoung'), who gave his age in a brief interview Monday only as "in my late 50s," will likely take the job Oct. 1, said Jim Clark, director of the State Crime Laboratory. DeJong will start at a salary of \$85,000 per year.

DeJong replaces Dr. Violette Hnilica, who resigned in May after a year as Malak's assistant to take a teaching post at the University of Tennessee at Memphis. DeJong will become Malak's 10th assistant in 12 years.

Meanwhile, the reconfigured State Crime Laboratory Board has tentatively scheduled its second meeting to review Malak's performance for Sept. 13. The meeting will begin at 9 a.m., and participants should be prepared to stay to 4 p.m., Clark said.

Clark has gathered documentation about five contested cause-of-death determinations by Malak, which the board will begin reviewing at the Sept. 13 meeting.

The medical examiner's office, a

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Malak

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division of the Crime Lab, performs autopsies to determine the causes of suspicious deaths: homicide, suicide, accident or natural.

The office has averaged around 700 autopsies a year, far too many for one or even two pathologists to perform with a minimum of mistakes, according to guidelines established by the National Association of Medical Examiners. The association recommends a maximum of 250 autopsies per year per pathologist. Clark said he had no funding to fill a second assistant position.

DeJong received his medical degree from the University of Michigan in 1955, then worked as a pathologist for the U.S. Army until 1971, including three years as chief of laboratory services at Gorgas Hospital in the Panama Canal Zone.

Since 1971 he has worked as a pathologist in Wichita, first at St. Francis Regional Medical Center

for 12 years, then as a private pathologist since 1983. He moved into forensic pathology, the specialized form of pathology in which the doctor helps determine if a crime has occurred, last year via a one-year fellowship under Dr. Fred Jordan, chief medical examiner for Oklahoma. DeJong received certification in forensic pathology from the American Board of Pathology after the fellowship.

Clark said Jordan recommended DeJong when Clark was calling around looking for someone to replace Hnilica early this summer.

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Malak's competence

The latest in Medical Examiner Fahmy Malak's string of disputed autopsy rulings that have kept him and the question of his competence on the tightrope for so long may be the one to help settle his future.

Not only has Garland County Prosecutor Paul R. Bosson accused Malak of blundering, he has also accused the medical examiner's boss, Crime Laboratory Director Jim Clark, of covering up for him. Malak's testimony, you'll recall, conflicted with other evidence the state was to present in a murder trial back in April and it derailed the state's case.

At a news conference Wednesday, Bosson said, "It's time for Mr. Clark to leave and take his friend with him" — alluding of course to Malak.

Clark's response was to scoff at Bosson's accusations and lay them to politics, noting that Bosson has to run for re-election.

But how about the findings of three independent pathologists? All of them concluded that the gunshot that killed Gregory Stephens of Hot Springs had been fired from a considerable distance; that the gun had not been pressed against Stephens' head as the good doctor had testified.

It should be noted that one of the three pathologists may have had an ax to grind — Dr. Lee Beamer, the former assistant medical examiner whom Malak fired some years back. He volunteered his services to Bosson after the aborted trial of Ernest Lemons, a prison parolee, in Stephens' death.

But we don't think that fact taints Beamer's conclusion in the least, for Beamer's was the same as those drawn by two out-of-state forensic experts — one in San Antonio and the other in St. Louis.

Bosson, meanwhile, has sent a letter and the three independent autopsy reports to members of the state Crime Laboratory board, which is in the process of reviewing five of Malak's disputed rulings with an eye to his future.

We won't get into the medical details of the Stephens case here, but in his strongly worded letter, Bosson accused Clark of not being interested in learning the truth — only in protecting the Crime Lab — and he cautioned the board members against believing everything they're told. Bosson went even further by suggesting that the Crime Lab may have switched physical evidence.

If Bosson's claims have any substance at all, the integrity of the Crime Lab would be so shaken as to cast a long shadow over all of the murder cases which have turned on testimony by Malak and the Crime Lab's findings.

But even if those claims are baseless, any malfeasance or misfeasance on Malak's part would have the same result, so hopefully, this case will finally settle the question of Malak's competence once and for all.

HOT SPRINGS - State medical examiner Fahmy Malak blundered in the Gregory Stephens murder case and state Crime Laboratory director Jim Clark covered up for him, Garland County's prosecuting attorney said Wednesday.

"It's time for Mr. Clark to leave and take his friend with him," prosecutor Paul Bosson of Hot Springs said at a news conference Wednesday. There he released copies of the letter he mailed Wednesday to all state Crime Laboratory board members, along with reports from three pathologists disputing Malak's findings.

Clark's reaction Wednesday was that he "in no way tried to pass total blame" to Bosson's office "for the breakdown in this case, but I'd expect him to accuse me of that because he has to run for re-election." Malak was testifying in another case and could not be reached for comment Wednesday.

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

Bosson's deputy prosecutor dropped the case in mid-trial after Malak testified the murder weapon's muzzle was "in tight contact" with Stephens' head. The prosecution's case was that Lemons fired from the middle of the street at Stephens, who was on the front porch of his house - a distance of 50 feet.

After the Lemons trial, Bosson questioned Malak's accuracy. Clark conducted his own investigation and concluded Malak was correct. Bosson criticized Clark on Wednesday for not consulting independent experts. Clark, a former state police officer, "doesn't have the qualifications to investigate anything but a minor traffic accident," Bosson said.

In his letter to the board, Bosson said Clark "is not interested in learning the truth but in only protecting the Crime Lab. ... I would caution you not to believe everything you are told. Look for factual evidence

when Bosson displayed the X-rays of her son's head.

Lee Beamer of Garland County, a fired former assistant of Malak's, contacted Bosson after the Lemons trial and "volunteered his services," Bosson said. Bosson contacted two other medical examiners, one in St. Louis and the other in San Antonio, about the case.

All agreed the wound does not appear to be a contact wound. No visible gunpowder surrounds the wound. For all the gunpowder to have gone inside, the consulting pathologists agreed, the gun would have to have been pressed against Stephens' head so tightly the scalp would have a bruise.

"Now I'm just a layman, but I think if somebody was pressing a gun against my head, I'd move away some," Bosson said. There was no evidence of other wounds, Malak's report said.

The only evidence of a con-

begin has the undated, handwritten notation, "Powder inside."

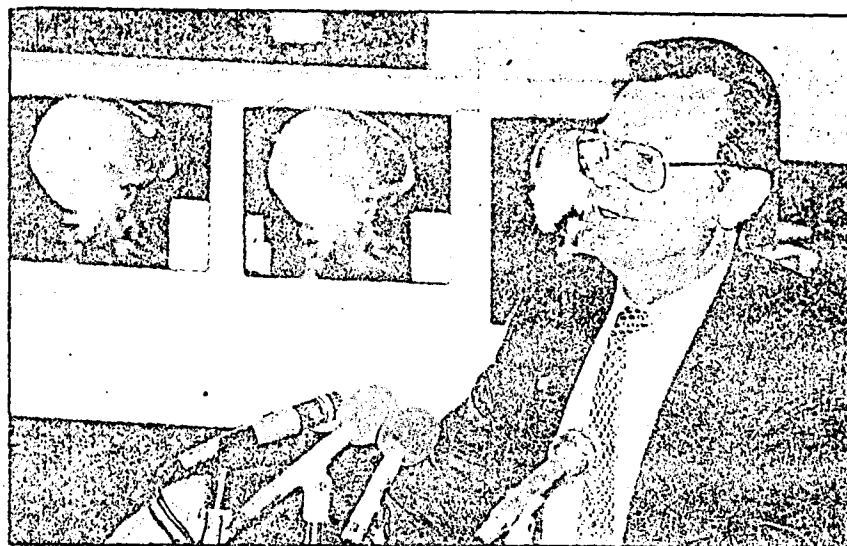
One of the consulting pathologists, Dr. Michael Graham of St. Louis, questioned whether the right tissue samples were used, the ones with the gunpowder flake. Clark said Wednesday he will ask Forensic Associates, a California laboratory, to conduct DNA tests to verify the tissues are Stephens', matching them with a blood sample from Stephens body still in the Crime Laboratory.

The bullet apparently traveled in a straight line after it entered the left rear of Stephens' skull, Bosson said. The X-rays of Stephens show the bullet stopped inside the skull beneath the hairline.

"Malak testified the bullet traveled along the same plane. There was a little tilt up, but very little," Bosson said.

If Malak was correct, Bosson said, the bullet would have gone toward the nasal area - never causing the massive damage to the cerebrum in the brain's front, which Malak graphically describes in the Aug. 20, 1990, autopsy report.

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The Sentinel-Record

PATH OF THE BULLET - Paul R. Bosson, Garland County prosecuting attorney, displays X-rays of the skull of shooting victim Gregory Stephens during a news conference Wednesday. Bosson said State Medical Examiner Fahmy Malak blundered the investigation of the Stephens murder case.

disputed Malak

Grand jury to study '85 Malvern death

By Karen Rafinski
Gazette Staff

The state police officer who investigated the 1985 death of a Malvern man questioned the state medical examiner's ruling of suicide, and a Hot Spring County grand jury has decided to review the case.

Don Birdsong, who investigated the death of Robert Bennett after the family told authorities they suspected that Bennett was murdered, wrote in his report that evidence at the crime scene contradicted the autopsy report of Dr. Fahmy Malak on how the fatal shot was fired.

The *Arkansas Gazette* obtained the state police investigative file, which included Birdsong's report.

"It could have went either way real easy ... suicide or homicide," Birdsong said Wednesday.

Six years ago, he closed the case as unfounded, meaning that it could be opened again if new evidence was found.

"If he [Malak] had said this was a homicide, I would have pressed forward and touched every base," Birdsong said. "But it's not my place to overrule the medical examiner."

Bennett, 27, died in February 1985 at his home of a shotgun wound in the left side of his chest. The Hot Spring County coroner and Malvern Police Department determined that his death was a suicide and did not investigate or send his body to the state medical examiner's office for an autopsy.

The county sheriff intervened, however, and sent the shotgun and Bennett's clothing to the state Crime Laboratory for testing. The clothing had to be retrieved from the garbage at a Malvern funeral home, according to the state police report.

handwriting. But Bennett's father, Bobby Bennett of Malvern, said the note was not his son's writing.

Bobby Bennett told police he believed that his son had been murdered because he knew too much about a burglary in which Theresa Bennett was involved.

The father also told police that Robert Bennett knew that a Malvern police officer had been involved in the burglary, in which 62 guns were taken from a Western Auto store in Malvern.

Raymond Sanders, who was Theresa Bennett's boyfriend and is now on Arkansas's death row, also participated in the burglary and had been making threatening phone calls to Robert Bennett, Bobby Bennett said at the time.

Joe Kelly Hardin, then-7th District prosecuting attorney, asked the state police to investigate and had Bennett's body exhumed in September 1985 so Malak could perform an autopsy.

By the time the state police investigation began, Bennett's house had been cleaned. Birdsong had to rely mostly on photographs of the crime scene.

"It may have been too late at that point," Birdsong said Wednesday. "It's real hard to work a case after the fact."

Birdsong said, however, that he never found any evidence in his investigation to support Robert Bennett's allegations.

He did take issue with Malak's autopsy report, which indicated that Bennett had shot himself with a shotgun that was tilted downward and resting on his rib cage, causing the "bullet" to move downward through his body. Birdsong's examination of the crime scene, however, indicated that "bullets" had ricocheted off a wall into the ceiling and would have to have been moving upward through the body.

Birdsong said he informed Malak of the contradictions but Malak did not change his findings. He also reported the contradictions to Hardin.

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Officers found a trail of blood leading into the bathroom, kitchen and hallway. His body was found in the living room near the front door.

Bobby Bennett contended that someone had dragged his son's body through the house.

Malak's autopsy report said Bennett could have lived for up to an hour and created the blood stains by walking or crawling through the house. That was consistent with the view of the local authorities.

Birdsong said he did not question Malak's finding at the time because he did not have the medical knowledge. He also did not call in an outside medical expert to verify what Malak had found.

The investigation was stopped before Theresa Bennett or the police officer who was allegedly involved in the burglary were interviewed. Sanders was interviewed and denied involvement in Bennett's death but he failed a polygraph test, according to the state police report.

Sanders is on death row for the November 1989 murders of a Malvern couple. He also is serving a sentence of life without parole for the murder of another Malvern man. All three of his victims were robbed.

Robert Bennett had filed for divorce from Theresa Bennett because she had moved in with Sanders, but he dropped the divorce action in January 1985 when she agreed to testify against Sanders in the burglary of the Western Auto and she moved back in with Bennett, according to the state police report.

Hardin said Theresa Bennett's testimony against Sanders in his April 1985 trial for the burglary was contradictory and Sanders was acquitted.

The police officer accused of being involved with the theft later was fired from the Malvern Police Department for allegedly buying alcohol for two underage women. His alleged involvement in the burglary never was investigated, Malvern Police Chief Linden Davis said Wednesday.

Hardin said that once Malak ruled that Bennett had committed suicide, there was little point to investigate further.

"No one was questioning Malak at that time," Hardin said. "He was our medical examiner and he did the autopsy. ... When Malak

ratory, said it was the responsibility of the prosecuting attorney to reconcile any differences between the medical examiner's report and the police investigation.

He also said Malak's autopsy might have been hampered by the lack of information about the original crime scene provided by the local authorities.

Davis defended his department's handling of the case, saying investigators had to make a judgment call based on the evidence at the scene.

The case has been dormant since Malak's ruling in October 1985, but Bobby Bennett continued to investigate. Last week, Dan Harmon of Benton, the current 7th District prosecuting attorney, announced that the grand jury would re-examine the case.

Harmon said Wednesday that he first heard of Birdsong's differences with Malak's findings in 1988 when he was a special prosecutor handling a grand jury investigating Malak's ruling of suicide in the deaths of two Saline County teen-agers.

After Harmon was elected as prosecutor, he said, Bobby Bennett approached him and he agreed to put the matter before a grand jury when he had the time.

— Joe Nabbefeld and Elizabeth Lowry Narramore of the Gazette staff contributed to this report.

FROM PAGE ONE

Prosecutor criticizes Malak for testimony

By Elizabeth Lowry Narramore
Gazette Hot Springs Bureau

HOT SPRINGS — The state medical examiner should have looked at a tissue sample of a slain Hot Springs man long before the morning of a murder trial, Prosecuting Attorney Paul Bosson of Hot Springs said Wednesday.

Had Dr. Fahmy Malak done so, Bosson said, he might not have made a mistake when he determined that Gregory Stephens was shot from close range. Three pathologists have since determined that Stephens was shot from a distance.

In April, Malak testified during the trial of Ernest Lemons that Stephens was killed by a near-contact gunshot wound. His testimony appeared to differ from what he had written in an autopsy report, and led a deputy prosecutor to drop second-degree murder charges against Lemons.

"Dr. Malak, in his own testimony and statements to the press, said it was our fault we didn't talk [to

him] before the trial," Bosson said at a news conference Wednesday. "He said he didn't look at the [tissue] slides until the morning of the trial. I don't know what good an interview would have done."

Bosson called the media to present the findings of three forensic pathologists who studied Stephens's case. All determined that Stephens was shot from a distance.

Bosson said he would present the findings to the state Crime Laboratory Board, which is reviewing Malak's job performance in five separate cases. Bosson also wants the board to require the state Crime Laboratory to get outside opinions whenever the medical examiner's findings are challenged.

Malak told the *Arkansas Gazette* last week that he had not seen the slides until the morning of Lemons' trial. Dr. Michael Graham of St. Louis said in a report to Bosson that Malak was looking at another person's skin sample when he determined Stephens was killed by a near-contact gunshot wound.

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Evidence may conflict, officer says

MALVERN (AP) — A state police officer is questioning the state medical examiner's ruling of suicide in a fatal shooting, a Little Rock newspaper reported Thursday.

A Hot Spring County grand jury has agreed to review the 1985 death of Robert Bennett, 27, of Malvern. His death was ruled a suicide by Dr. Fahmy Malak, the state medical examiner.

The *Arkansas Gazette* reported that Don Birdsong, the state police officer who investigated Bennett's death, wrote in his police report that some evidence contradicted Malak's autopsy report.

The *Gazette* obtained the state police investigative file, which included Birdsong's

report.

Birdsong investigated Bennett's death after the family told police they believed Bennett was murdered.

"It could have went either way real easy — suicide or homicide," Birdsong told the *Gazette* on Wednesday.

"If (Malak) had said this was a homicide, I would have pressed forward and touched every base. But it's not my place to overrule the medical examiner," he said.

Birdsong closed the case in 1985 as unfounded, which means the case could be reopened if new evidence surfaced.

Bennett died at home of a shotgun wound to the chest. The Hot Spring County coroner and

Malvern Police Department determined the death was suicide, but the *Gazette* said the Hot Spring County sheriff intervened and sent the shotgun and Bennett's clothes to the state Crime Lab for tests.

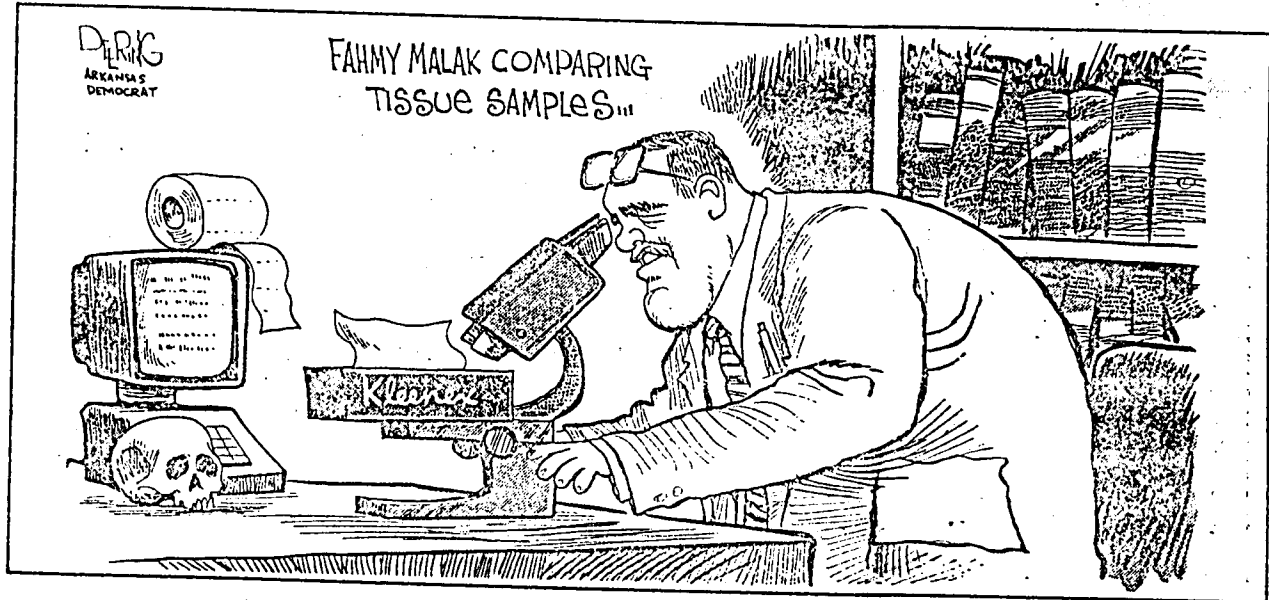
Malvern police said they found a suicide note, and Bennett's wife, Theresa, identified the handwriting as her husband's. But Bennett's father, Bobby Bennett of Malvern, said the note wasn't in his son's handwriting.

"This is based on information from the police party," Malak's lawyer, Larry Carpenter of North Little Rock, said Thursday.

"(Malak) concurred that it

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Public Servants



Arkansas Democrat/John Deering

under review

BY DOUG THOMPSON
Democrat Benton Bureau

MALVERN - A Hot Spring County grand jury decided Friday to investigate the 1985 death of a man who was ruled a case of suicide by local authorities and Dr. Fahmy Malak, state medical examiner.

If the ruling is overturned, it would be the third time in three years that a grand jury reversed a Malak decision. Another ruling was reversed after a coroner's inquest.

The Hot Spring County grand jury made its decision after interviewing the victim's father, who has spent six years trying to reverse the suicide ruling.

The grand jury will meet again on either Aug. 20 or Aug. 27 to begin its investigation of Robert Wayne Bennett's death on Feb. 28, 1985, Prosecuting Attorney Dan Harmon of Benton said.

Bennett, 27, died at his Malvern home of a single shotgun blast that entered his upper chest and came out his lower back. Shotgun pellets were found in the bedroom's ceiling tile.

Malak confirmed local authorities' finding of suicide after Bobby Bennett, the victim's father, raised enough questions to convince then-Prosecuting Attorney Joe Kelly Hardin of Benton to have

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the body exhumed on June 19, 1985.

After the June 20, 1985, autopsy "old Quincy (Malak) told me my son held the shotgun above his head and the pellets bounced off the floor and into the ceiling," Bennett said Friday. "Quincy" was the name of a crime-fighting pathologist on television.

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

Neither Malak nor his supervisor, Jim Clark, the state Crime Laboratory director, could be reached at their offices early Friday afternoon.

In police photographs, a bloody track with what appeared to be drag marks in it led down Robert Bennett's hall from the bedroom to the home's front door. Malak told Bennett that his son bled to death as he went to the door after the 12-gauge blast tore away the lower half his left lung, Bennett said.

At the time of the death, Robert was divorcing his wife, Teresa. The estranged wife, Bennett said, had moved out to live with Raymond C. Sanders Jr. of Malvern, at the time a burglary suspect.

Sanders, 30, is now on death row with two death sentences and one sentence of life without parole for capital murder convictions for crimes committed in 1989.

Sanders was sentenced to life without parole last year for the murder of Frederick M. LaSalle, 33, of Malvern on Dec. 31, 1989. Later last year, Sanders was sentenced to death twice in the November 1989 murders of a Malvern couple, Charles and Nancy Brannon. Robbery was the alleged motive in all three capital murder convictions.

For six years after Malak's findings ended the Arkansas State Police investigation into his son's death, Bennett has conducted his own. He collected more than 1,400 docu-

ing, the shotgun-damaged ceiling tile and other evidence.

Bennett asked Harmon for permission to speak to the grand jury. He testified for about an hour Friday morning. After another hour's deliberation, Harmon came out and told Bennett, "They're going to do it."

The 1985 autopsy report said Robert could walk, talk and even run from the time of the shot until his death. The report was released by Hardin on Sept. 20, 1985, after the family was notified of the results. This was the first exhumation of a body for criminal investigation in Hot Spring County history, county Coroner Ernie Cox said at the time.

Since 1988, two grand juries and one coroner's jury have reversed findings by Malak. One was the much-publicized 1988 Saline County grand jury investigation led by Harmon; then a special prosecutor, into the deaths of Kevin Ives and Don Henry, two Saline County teen-agers whose bodies were found after they were hit by a train in 1987.

The other grand jury case involved a death in Little River County. Malak ruled the death an accident; the jury decided the victim was strangled. No arrest resulted in that case. And a Pulaski County coroner's inquest reversed a Malak ruling that a nursing home patient died of pneumonia. The coroner's jury determined the patient died of a severe beating. A suspect in the case pleaded innocent by reason of insanity.

The newly formed state Crime Laboratory Board has taken five of Malak's most controversial cases to review in its evaluation of him. Clark has said in earlier interviews that now might be a good time for

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tunities elsewhere.

In one of the cases under review, Prosecuting Attorney Paul Bosson has scheduled a news conference for 1 p.m. Wednesday at the Garland County Courthouse. There Bosson will reveal studies by three other pathologists who disputed Malak's findings in the 1990 shooting death of Gregory Stephens of Hot Springs.

Clark said he will order DNA testing of tissue samples in Stephens' case because one of the three pathologists consulted by Bosson has questioned whether the tissue examined is from Stephens' body.

The Hot Spring County grand jury began meeting in February at Harmon's request to discuss a variety of topics.

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Ar Murcut 8-10-91

Crime Lab to pay for gene testing of slides

Will tell if tissue was Stephens'

By Joe Nabbefeld
Gazette Staff

The State Crime Laboratory will pay between \$450 and \$1,500 for genetic tests to see if Dr. Fahmy Malak used the correct body tissue to make a cause-of-death ruling that led to dismissal of murder charges against a suspect.

"I don't personally think we made a mistake on the slides, but it does happen, so I don't mind sending them out to clear this up," said Crime Lab director Jim Clark Thursday.

Clark decided to get the tests, which will take between three and six weeks, after the *Arkansas Gazette* reported Thursday that an outside medical examiner found it "most likely" that the wrong slides were used.

Clark expects to hire Forensic Science Associates in California to perform DNA tests, he said.



Malak

The tissues in question are from Gregory Stephens of Hot Springs, who died of a gunshot wound to the back of his head in Hot Springs on Aug. 18, 1990. Ernest D. Lemons of Hot Springs went on trial for murder in the shooting in March.

Witnesses said Lemons was standing in the street some 40 yards from Stephens when two shots were fired. Malak autopsied Stephens' body and his official report gave no indication that the shot could have been fired from any closer than that.

Then at trial, State Medical Examiner Malak testified that slides he viewed the morning of the testimony, as well as lead traces in Stephens' hair, indicated that the shot was fired from point-blank.

The prosecutor in the case reacted by having the charges against Lemons dismissed. Lemons can't be retried for the crime.

Angered at losing the suspect, Garland County Prosecutor Paul Bosson set out to prove Malak erred. He distributed Malak's report to three other medical examiners for their opinions.

The case

Garland County prosecutor thinks State Medical Examiner Dr. Fahmy Malak may have testified in a murder trial based on mix-up slides.

The State Crime Lab will pay between \$450 and \$1,500 to have genetic testing performed on the slides to determine if the tissue in the slides matches the bodies.

The testing will take three to six weeks.

The St. Louis examiner, Dr. Michael Graham, also reviewed the slides and photos of Stephens' wound. He reported back to Bosson on Monday that the slides looked so different from the photos that they're "most likely" from a body other than Stephens'.

No one disputes that Graham received the same slides as Malak used, and that they are tagged with Stephens' autopsy number — which is 443-90. The question is whether the wrong tissues were tagged 443-90 before they were

See MALAK/7B

Malak

Continued from Page 1B

returned to Malak to review the day of the trial.

Graham and the other two examiners all said the evidence in Malak's report describes a wound from a long-range gunshot.

Graham recommended genetic tests of the tissues to prove whether they are from Stephens.

Malak said in an interview Wednesday that he thinks the slides contained Stephens' tissue, but that errors in labeling slides can happen.

Bosson plans to hold a press conference in Hot Springs Wednesday to discuss his three medical examiners' opinions. He

paid Graham \$750 for his service, as Graham requested, while the other two charged no fee.

If asked, Bosson said he will personally present the findings to the State Crime Laboratory Board, which is reviewing Malak's performance.

Bosson has called for the firing of both Malak and Clark, who read Malak's autopsy report after Lemons' trial and then issued a statement to Gov. Bill Clinton that he found Malak hadn't erred.

"My fuss with Clark is that he never made any attempt to do what I did — bring in these outside experts to get to the bottom of this," Bosson said Thursday. "I don't know if these were the wrong slides or not, but he should find out."

Autopsy finding to be weighed by DNA tests

Murder case were correct. The findings were challenged by all three pathologists consulted by Prosecuting Attorney Paul Bosson of Hot Springs. Bosson will present the reports of the three pathologists at a news conference at the Garland County Courthouse at 1 p.m. Wednesday. Bosson announced Thursday.

One of those pathologists, Dr. Michael Graham of St. Louis, has told Bosson by let-

ter that the tissue samples sent to him by the Crime Laboratory did not look like the tissue surrounding the gunshot wound as shown in close-up pictures. Graham recommended the DNA test, which will be used to make sure the tissues came from the victim.

"I'm going to do it," Clark said about ordering the tests. "It's just a matter of finding a laboratory able to do it." The Crime Laboratory does not perform the test, he said, which compares genetic substances found in all body tissue.

Bosson ordered the review by other pathologists after his deputy prosecutor had to dismiss a murder case in mid-trial because Malak surprised him by testifying the shot was fired at short range. The prosecution was contending the defendant, Ernest D. Lemons of Hot Springs, fired a shot from

the middle of the street in front of Stephens' home while Stephens was on the porch on Aug. 18, 1990.

Clark does not know if he will have DNA test results in time for the Crime Laboratory Board's next meeting, he said. The board is reviewing five controversial cases in its evaluation of Malak. One of those cases concerns Stephens.

"The next regular meeting of the board is not until Octo-

ber, but they're indicating to me they'll probably have a special called meeting sometime around the end of this month," Clark said. Clark has been gathering information on the five cases, he said, and board members want to look at it before October.

If the DNA in the disputed tissue samples matches the DNA in a vial of Stephens' blood at the Crime Laboratory, See MALAK, Page 5B

Clark said, investigators can be certain they have the right tissue sample.

If Malak viewed the right tissue sample, Clark said, he concluded the shot that killed Stephens was fired with the gun muzzle pressed against Stephens' head. All three pathologists consulted by Bosson have reported the shot was probably fired from a distance.

"The tissue sample taken shows a considerable amount of gunpowder flake, not gunpowder residue," Clark said. Flak, he said, is unburned portions of gunpowder. Residue is the chemical substance left from burned gunpowder.

"The two criminologists who work here that have seen this have both told me it is extremely unlikely that gunpowder flake followed the bullet into the wound from a distance," Clark said. "They are striking their reputation on it. There are other clues besides the DNA test, Clark said. He is reasonably certain, Clark said, that if a mixup occurred in labeling the tissue samples, it occurred Aug. 20, 1990, the day of Stephens' autopsy.

Three autopsies involving gunshot wounds were done that day, Clark said. One was a 13-year-old boy shot in the cheek. Because the tissue sample in question has head hair mixed in it, Clark said, the possibility that the sample originated from the boy's wound can be ruled out.

That leaves two other autopsies, Clark said. One victim was a white male. The other was Stephens, a black male.

Malak

Continued from Arkansas Page

They may have examined wrong tissue

Experts say mix-up likely occurred

day to Garland County Prosecutor Paul Bosson, who hired the St. Louis pathologist to review the Stephens case. Graham recommended that the State Crime Laboratory conduct genetic testing to determine if the tissue samples actually are Stephens'.

Bosson sought the opinion of Graham and two other outside medical examiners, he said, because he wanted to prove that Malak had erred. Lemons can't be retried because of the legal prohibition against double jeopardy, but Bosson said he plans to submit the new findings to a state panel that is reviewing Malak's competence. In a rare interview, Malak told the Arkansas Gazette on Wednesday

day that he thinks he used the correct tissue samples. But if there was a mistake, it was committed by co-workers in the State Crime Laboratory who are responsible for labeling tissue samples, he said.

He said he stands by his finding that Stephens died of a shot from a gun fired while it was held against the back of his head, creating a contact wound.

But Bosson also has received reports from a San Antonio, Texas, medical examiner and from a former assistant to Malak who agreed with Graham that Malak's official autopsy report indicates that the bullet was fired from a distance. Only Graham, not the other two pathologists, examined slides that hold slices of the tissue along the channel that the .22-caliber bullet created through Stephens' skin,

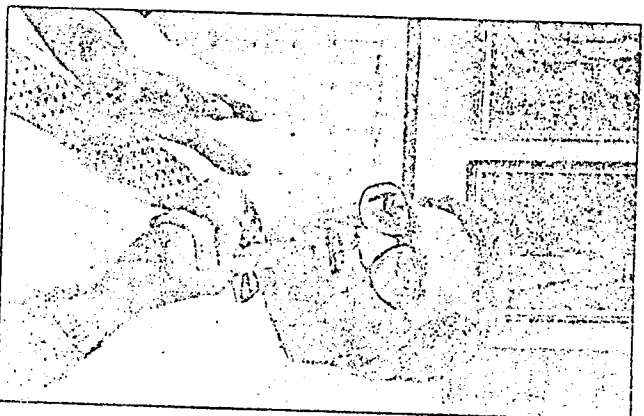
skull and brain.

The Stephens case is one of five Malak has handled that are under review by the new State Crime Laboratory Board. The board is evaluating Malak's performance to determine whether he should continue in his job.

Lemons was accused of shooting Stephens on Aug. 18, 1990, during a dispute involving Stephens' former girlfriend. Witnesses said Lemons was standing in the street and Stephens was on his porch about 40 feet away when the shot was fired.

Bosson's deputy prosecutor, Bruce MacPhee, handled the case and had read Malak's autopsy report before the trial. MacPhee said he was surprised when Malak testi-

See MALAK/4A



File Photo
Dr. Fahmy Malak: Says he used correct tissue in murder trial.

August 8, 1991

Malak says co-workers gave him samples

Continued from Page 1A

fied that the shot was fired point-blank because the autopsy report did not indicate that.

Upon hearing Malak's testimony, the deputy prosecutor requested and received dismissal of the murder charge against Lemons.

Malak has repeatedly said the problem arose because MacPhee didn't hold a pretrial conference with him to find out what he planned to say.

Wednesday, Malak said that he looked at the tissue samples for the first time earlier on the same morning he testified. He told the court that the samples showed amounts of gun powder.

"I was called the afternoon before to be to the court at 10 a.m." Malak said. "I asked for the slides. They [crime lab workers] brought them to me... I can't swear which is which. Things could happen, I can't explain."

Malak also told the *Gazette* that a laboratory analysis of Stephens' hair that he received just before testifying showed lead on the hair, also indicating the shot was fired at close range. Gunshot residue on Stephens' hands leaves open the possibility that Stephens fired the

shot himself, Malak said.

But Graham, the St. Louis medical examiner, said crime lab photographs of Stephens' wound show no gunpowder, ash, burns or other evidence of a contact wound. The tissue samples, meanwhile, showed substantial amounts of these, "to such an extent that it can be seen with the naked eye," Graham wrote in his statement to Bosson.

"At this point, I think the most likely explanation accounting for the... discrepancy is that the wound in the photograph is from a different individual than the wound depicted in the microscopic slides," Graham wrote.

Malak countered that no ashes or soot are visible on the photos because bleeding and cleaning of the wound at the hospital washed them away.

"You have to remember, with any small-caliber wound, the most common mistake a medical examiner can make is to determine the distance from a photograph. You've got to see the wound," Malak said.

Malak said he found some gunpowder inside the wound. His autopsy report made no mention of that, but some handwritten notations in an accompanying note file contained two references to "gun-

powder in wound."

Dr. Robert Brux of San Antonio, a medical examiner in the Bexar County Medical Examiner's office, said in a 1½-page statement to Bosson, "My opinion is that this gunshot wound to the head is a distant gunshot wound as there is no evidence of close-range firing."

Brux stated he found it "troublesome" that "nothing in the autopsy report" supported a finding of a contact wound.

"Handwritten notes describe 'powder inside wound' with no description as to the quantity. ... This obviously is of paramount importance and should have been described in the autopsy report," Brux wrote.

Dr. Lee Beamer of Hot Springs, who was fired by Malak in the mid-1980s, was the third medical examiner who submitted a report to Bosson.

The State Crime Lab Board last month began a formal review of Malak's performance in response to numerous complaints about Malak's competency. The board has solicited documents about five cases and is expected to hold its second meeting near the end of August, said Jim Clark, crime lab director.

Says faulty testimony caused case dismissal

BY R.L. JACKSON
The Sentinel-Record

HOT SPRINGS - Garland County Prosecutor Paul R. Bosson wants the Arkansas Crime Laboratory Board to act on what he believes to be poor job performance by the state medical examiner and the director of the state Crime Laboratory.

Bosson said testimony by state Medical Examiner Fahmy Malak in a March 28 murder trial resulted in charges against the accused being dropped. Bosson also said that James T. Clark, director of the state Crime Laboratory, provided slides of the wrong victim to independent forensic specialists, who questioned Malak's version of the victim's death in that same trial.

Malak testified in the murder trial of Ernest Lemons, 21, of Hot Springs, who was accused of shooting to death Gregory Stephens, 25, also of Hot Springs, the night of Aug. 18, 1990.

Testimony by witnesses during the trial indicated two "pops," possibly gunshots, sounded from an area about 50 feet from where Stephens' body was found.

Malak testified the fatal shot was fired with the muzzle placed "tightly against the skin" in the lower part of the victim's skull.

Because Malak's testimony and the testimony of the witnesses differed drastically, the prosecution dismissed the charge against Lemons.

Bosson said responses from the independent pathologists who reviewed the evidence concluded the fatal shot was fired from a distance.

Bosson's anger over the testimony spurred his complaint to Clark.

On July 15, the State Crime Laboratory Board instructed Clark to obtain the investigative file in the Stephens murder to reveal any information "which might have been used to determine the cause and manner of death."

Clark refused to comply with

See MALAK, Page 10B

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Malak

• Continued from Arkansas Page

the request and said: "This office nor the various law enforcement agencies in my jurisdiction are in a position to speculate as to what materials might have been used to determine the cause and manner of death in this case."

Clark could not be reached Wednesday for comment.

Bosson said he would be happy to meet with the board to discuss materials he has received from independent medical examiners.

"I would like to point out that the inquiry of the board should be directed toward whether or not this office was provided full, complete, accurate and truthful information concerning this case," Bosson said of the Lemons murder trial.

To support his claims, Bosson said he has collected forensic

reports from Dr. Lee F. Beamer, a consultant in forensic pathology from Hot Springs; Dr. Robert C. Bux, a forensic pathologist in San Antonio; and Dr. Michael Graham, associate professor in the School of Medicine at Saint Louis University at St. Louis.

David S. Clinger, prosecuting attorney for the 19th Judicial District including Benton and Carroll counties and a member of the Crime Laboratory Board, has written all prosecutors in Arkansas inviting comments about Malak's job performance.

Bosson said he responded by telling Clinger about the Stephens killing and Malak's testimony.

"I am concerned that there appears to be a serious problem in the office of the medical examiner," Bosson wrote in his letter to Clinger. "My only purpose in appearing before the Crime Lab Board would be to show the information I have developed."

Judge's ruling acquits pair in Monticello murder trial

By Toya Hill
Arkansas Gazette Staff

MONTECELLO — A circuit judge Friday morning acquitted a pair of men, Kenneth McFalls and Buddy Kelley, and



McFalls, 46, of Bastrop, La., and Kelley, 43, of Crossett. They were accused of plotting and carrying out the murder of Kelley's wife, Shirley Kelley, on Aug. 12, 1989. I wasn't surprised whatsoever,"

said the juror, Kenneth McFalls of Monticello. "The prosecution had shown us absolutely nothing in the 20 witnesses that they brought forward."

A stunned silence broken by faint sounds of crying and sighs of relief permeated the Drew County courtroom after Circuit Judge Stark Ligon announced that he had approved a defense motion for a directed verdict of acquittal.

About five armed law enforcement officials were in the courtroom at the time, and Ligon encouraged people to leave the courtroom before becoming emotional. After Glenda Long left the courtroom, screams were heard from the hallway.

The state had sought a sentence of life in prison without parole for Kelley, 46, of Bastrop, La., and Long, 43, of Crossett. They were accused of plotting and carrying out the murder of Kelley's wife, Shirley Kelley, on Aug. 12, 1989.

"I don't know what to say," William Kelley said Friday, as he tearfully embraced family members. "I knew I wasn't guilty of anything."

Long, after re-entering the courtroom, said the first thing she wanted to do was cross the state line.

"I'm glad that it's over," she said. Long, who said she lost everything she had after being jailed for 65 days, said she would look for a job. Kelley, who used vacation days from his job at International Paper Co. in Bastrop while being tried, said he probably will take another week off and then go back to work. Kelley also was charged with hindering prosecution in his wife's death.

The defense contended that Shirley Kelley committed suicide when she jumped from a pickup truck her husband was driving on state Highway 133 south of Crossett.

"The truth prevails in the end,"

Kelley's attorney, Robert Bridwell, said through tears. "We've lived this case, we've breathed this case for two years. I was convinced he was innocent."

"I feel wonderful," said Gayle Zimmerman, Long's attorney. "Now maybe she can get on with her life."

Special Prosecutor John Frank Gibson said that despite the acquittal, he was satisfied he proved what had happened.

On Thursday, he argued before Ligon that all he had to prove was cause. He said that although the testimony of state witnesses conflicted, it still substantiated a number of different theories that could support charges ranging from capital murder to manslaughter to negligent homicide.

Ligon issued his ruling in a 10-page opinion that said the state had failed to show any evidence without resorting to speculation that a crime had been committed.

Louisiana man, ex-lover acquitted of murder

BY JOE FARMER

Democrat Pine Bluff Bureau

MONTICELLO - Willard "Buddy" Kelley, 46, of Bastrop, La., and Glenda Long, 43, of Crossett (Ashley County), were acquitted Friday morning of capital murder in the death of Kelley's wife, Shirley.

A Drew County Circuit Court judge also acquitted Kelley, hindering apprehension in the Aug. 12, 1989 death.

Robert Bridewell of Lake Village (Chicot County), attorney for Kelley, and Gayle Zimmerman of Crossett, who represented Long, asked for

directed verdicts in the case in a two-hour hearing Thursday.

Circuit Judge Stak Ligon of Warren (Bradley County) granted their motion at 9 a.m. Friday morning - two years too late, said the defendants and their attorneys.

The state sought a sentence of life in prison without parole. The trial was moved here from Ashley County because of pretrial publicity.

Long originally was indicted by an Ashley County grand jury called to investigate wrongdoing in the county, especially the Crossett Municipi-

pal Court.

John Frank Gibson, who acted as special prosecutor in the eight-day trial, was prosecuting attorney for the 10th Judicial District at the time. He quashed the indictment and filed direct charges against the two, saying they plotted Shirley Kelley's death because they were having an affair.

The defense said the entire investigation had been mishandled and that Mrs. Kelley stepped from the family pickup that night and was killed by a truck that was fol-

lowing them. They said the Kelleys were driving down the rural stretch of Arkansas 133 trying to settle their differences after she had been told of the affair between her husband and Long.

Neither Kelley nor Long showed any emotion during a long series of hearings, motions and scientific tests on a hair found under Long's car by investigators trying to prove she ran over Shirley Kelley.

But they sobbed after the acquittals were announced.

See ACQUITTED, Page 9B

Acquitted

• Continued from Arkansas Page

and Kelley was hugged by family members and flanked by his daughter Tami, 19, and son, Wade, 15.

"I just can't talk," he said. "I just don't know what to say."

Mascara streamed down Long's cheeks as she hugged Zimmerman and Bridewell.

"Two long years," she said.

The case hit legal snags from its inception as the defense challenged searches of Long's house and car made by deputies who weren't properly certified to do so. Ligon had just written a memorandum to sheriffs in the district telling

them any case filed on investigations by uncertified officers would be dismissed on the spot.

About two months ago, defense attorneys and family members located a 1976 red Ford pickup at Huttig (Union County) and found hairs identified as those of Shirley Kelley beneath it, supporting their contention that another vehicle, not Long's, ran over Mrs. Kelley.

On Tuesday, Dr. Fahmy Malak, state medical examiner, after saying since the death that Mrs. Kelley was run over "multiple times" and probably laying down at the time, testified that he now believed she was standing when she was hit, and her body was all but destroyed by a single,

heavy vehicle. The numerous marks were made by the passing of more than one set of tires over her body, he testified.

Bridewell said after Malak's testimony that the failure to support the state's contention that more than one vehicle had run over Shirley Kelley had killed Gibson's case.

Gibson said Friday morning that the Malak testimony had nothing to do with the ruling. He had argued in the Thursday hearing that the jury at least should be allowed to decide if the conduct of the affair between the two had caused Shirley Kelley to commit suicide, thus leaving them liable for negligent homicide or manslaughter convictions.

Judge declines to play tape of Malak's testimony

By Tamara Mohawk
Gazette Staff

MONTICELLO — Circuit Judge Stark Ligon declined Wednesday to replay a tape recording of court proceedings for the *Arkansas Gazette* to clear up uncertainty about the state medical examiner's testimony Tuesday about the death of Shirley Kelley.

At issue was whether Dr. Fahmy Malak said at one point in the murder trial of Willard "Buddy" Kelley and Glenda Long that more than one vehicle had run over the victim, while adamantly stating later that just one heavy vehicle, such as a pickup truck, had run over her.

Reporters for the *Arkansas Ga-*

zette, *Arkansas Democrat* and a Crossett radio station all agreed Tuesday that they thought they heard the conflicting testimony from Malak.

However, attorneys for the state and defense said later that day they did not think Malak — who is from Egypt and speaks with a thick accent — cited another vehicle, but rather had referred to passage over the body by more than one "wheel" of one vehicle.

The prosecution is expected to conclude its case today. Special Prosecutor John Frank Gibson concentrated his case Wednesday on the Long and Buddy Kelley's affair.

The *Democrat* reported that

Malak had said at one point that more than one vehicle had run over Shirley Kelley, and that his testimony had resulted in three versions of how Shirley Kelley died.

Ligon said he decided it was prudent not to replay the tape unless requested by the jury or the attorneys. Special Prosecutor John Frank Gibson agreed that it should not be replayed at this point. Gayle Zimmerman, representing co-defendant Glenda Long in the murder trial, said she would consider asking the judge to replay the testimony tape.

The defense has contended Shirley Kelley was struck by a pickup that belonged to a Huttig (Union County) man.

of victim's death

BY JOE FARMER
Democrat Pine Bluff Bureau

MONTICELLO - Nearly three hours of testimony Tuesday by Dr. Fahmy Malak, the state medical examiner, in the capital murder trial of Willard "Buddy" Kelley and Glenda Long resulted in three different versions of how Shirley Kelley died.

Kelley, 46, of Bastrop, La., and Long, 43, of Crossett (Ashley County), are charged with plotting his wife's death the night of Aug. 12, 1989, on Arkansas 133 just north of the Louisiana state line in Ashley County. The state is seeking a sentence of life in prison without the possibility of parole.

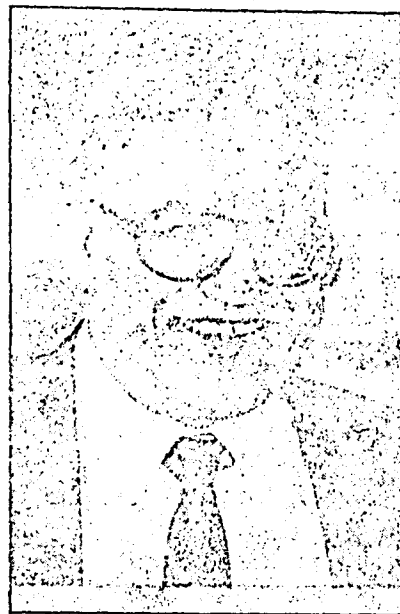
Malak testified in Drew County Circuit Court that Shirley Kelley was face-down when she was hit, she could have been run over more than once by a single vehicle, and she could have been hit by more than one vehicle.

But on cross-examination by Kelley's lawyer, Robert Bridewell of Lake Village (Chicot County), Malak said she was standing when she was hit and was run over by a single heavy vehicle, such as a Ford pickup truck found about two months ago by defense attorneys at Huttig (Union County).

"This is consistent with being run over by a vehicle more than once," Malak testified after detailing Mrs. Kelley's injuries. John Frank Gibson, special prosecutor in the case, said that matches Malak's written autopsy report and led investigators to believe Shirley Kelley was run over more than once by the same vehicle.

Malak testified she was face down when she was hit from the rear, "then run over by more than one vehicle."

But during cross-examination, Malak was asked to give one opinion about the death. He said injuries to Shirley Kelley's right thigh were consistent with being hit by a headlight, and he believed she was hit by a single heavy vehi-



Fahmy Malak

cle one time while standing.

Gibson has said the Kelleys were in their pickup on the highway when he pushed her into the path of Long's car. He contends Shirley Kelley also was hit by another vehicle.

The defense contends Shirley Kelley jumped from her husband's truck during an argument.

Gibson, questioning Malak again, asked if he was saying she was run over by the same vehicle more than once.

"No, sir," Malak replied. "The evidence indicates that Shirley Kelley was run over by one large, heavy vehicle, and I'm here to testify to the truth whether it helps the defense or the prosecution."

"The state's case is deteriorating," Bridewell said after Malak left. "Where's the murder? How could there have been another car?"

Bridewell said Malak had been consistent in his dealings with defense attorneys. However, Gibson said the Malak testimony differed almost every time he'd been questioned about the death, but he was expecting that.

"Did you hear anything that

amazed you? Gibson replied when asked about the effects of the testimony. "I knew what was going to say."

Gibson said the Malak turnaround should open the door for him to show photographs of the body to members of the jury - something the defense has tried to block.

"Then the jury can decide," Gibson said.

Donald E. Smith of the state Crime Laboratory testified Tuesday afternoon that he examined a hair found in a search of Long's car more than a week after the incident and hairs from the truck located last June.

In both instances, Smith said, the hairs matched those from Shirley Kelley's head.

Gayle Zimmerman of Cros-

sett, who represents Long, hammered away at how much damage a hair would sustain in an accident or when being removed from underneath a vehicle. Bridewell tried to get Smith to say evidence from the truck was more conclusive than that from Long's car.

Asked to compare the two sets of hairs and possible involvement of vehicles, Smith replied it was like having two "full glasses of water."

That, said Gibson, keeps alive his theory of two vehicles being involved in the death.

Malak's job performance

has been under fire for some months. At a July 15 meeting, the state Crime Laboratory Board refused to fire Malak, despite calls for his termination from the relatives of some people on whom he has performed autopsies. The board instead promised to investigate several of Malak's conclusions.

After the meeting, Jim Clark, director of the state Crime Laboratory, said Malak had "a 50-50 chance" of keeping his job. "It's a crap shoot from here."

Arkansas Democrat

WEDNESDAY, JULY 31, 1991

One vehicle involved in death, Malak says

By Tamara Mohawk
Gazette Pine Bluff Bureau

MONTICELLO — The state medical examiner said Tuesday he believed Shirley Kelley was run over once by a single vehicle, in testimony that defense attorneys claimed shot down the capital murder case against Willard "Buddy" Kelley and Glenda Long.

Dr. Fahmy Malak's testimony appeared to conflict with his autopsy report, which said the victim was run over "more than once," but Special Prosecutor John Frank Gibson said he could still prove the Aug. 12, 1989, death was no accident.

"I didn't hear anything damaging to my case," Gibson said in an interview after Malak testified. The medical examiner has come under fire for his rulings and testimony in other criminal cases.

The state is seeking life in prison without parole for Long, 43, of Crossett, and Willard Kelley, 46, of Bastrop, La. The prosecution has said a torrid love affair between the two led them to plot and carry out the slaying of Shirley Kelley, 42. Willard Kelley brought the mangled body of his wife to a Bastrop hospital about 10 p.m. the night

See VEHICLE/3D

Vehicle

Continued from Page 1B

she died.

Two vehicles have become an issue in the case, and defense attorneys said Malak's testimony that only one vehicle had struck Shirley Kelley was to their clients' advantage.

Police investigators pulled a single hair from Long's Mercury Tracer a week after the death, and Don Smith of the state crime laboratory testified Tuesday that the strand was "microscopically similar" to Shirley Kelley's hair.

The defense has contended, however, that Shirley Kelley was struck by a truck after jumping out of her husband's pickup in a suicidal leap onto state Highway 133 south of Crossett.

Smith also testified, however, that several hairs and clothing fibers from a pickup once owned by a Huttig man appeared to match the victim's. Robert Bridewell, Willard Kelley's attorney, and Gayle Zimmerman, Long's attorney, reported two months ago that they had located that truck.

Bridewell and Zimmerman, who have suggested a hair sample could have been planted on Long's car, maintained Tuesday that the state had failed to prove its case after three days of testimony.

"Malak's testimony today merely emphasized the fact that this was an automobile accident," said Bridewell.

"It killed the state's case," he said during a break in testimony.

Malak testified that his autopsy had indicated Shirley Kelley was run over by a "large, heavy vehicle." He said he never had intended to imply that she had been run over more than once or by more than one vehicle, but rather by more than one tire of the same vehicle.

"One single, large, heavy vehicle," Malak said when pressed by Gibson, "and I am here to testify to the truth." Malak also testified that the victim was alive when she was run over, that her body received numerous crushing blows, and that it appeared she was standing up when first struck from the right in the back.

Maw
Brantley

Word of advice to the state
Crime Laboratory Board:
Give Springdale lawyer John
Lisle a call.

The Crime Laboratory Board is
reviewing some of the disputed
cases handled by state medical ex-
aminer Dr. Fahmy Malak.

Lisle is familiar with a case in
which he claims Malak manipu-
lated evidence, possibly to the det-
riment of a Little Rock man ac-
cused in a fatal shooting. Lisle
caught Malak on a videotaped de-
position.

The Crime Laboratory Board
also should do more than review
medical findings. It should read
transcripts of Malak's sworn court
testimony. His changes in position
and misstatements about creden-
tials are worth a look.

Controversial rulings by Malak to be studied

BY RACHEL O'NEAL
Democrat Capitol Bureau

The state Crime Laboratory Board will limit its review of the state medical examiner to five controversial cases, Crime Lab Director Jim Clark said Friday.

The new board decided at its first meeting Monday to investigate complaints by five people who said Medical Examiner Dr. Fahmy Malak mishandled autopsies of their relatives.

"At this point in time, I believe the board plans to only look at those five cases presented before us," Clark said. "But just looking at these five may or may not be the close of this thing."

Clark said he is aware that other Arkansans have complained that Malak has botched autopsies and given false testimony. But, he said, the board will concentrate on the five cases for the meantime.

The board probably will conduct most of its reviews in open meetings. But personnel matters will be discussed in closed session. The meeting probably will be held in six weeks, Clark said.

Dr. Annette Landrum, a Fort Smith pathologist who holds a seat on the commission, said Friday she briefly has reviewed one of the cases.

"It's hard to explain some of the marks on the body, but there may be some explanations that I'm not aware of," Landrum said.

Landrum looked at photographs of the body of Olivia "Janie" Ward of Marshall (Searcy County). Malak pronounced Ward dead from a fall from a 13-inch-high porch. Ward's father, Ron Ward, contends his daughter was beaten to death.

The other disputed cases are:

- The 1987 deaths of Bryant teen-agers Kevin Ives and Don Henry on railroad tracks in Saline County. Malak concluded the boys were hit by a train after they had smoked marijuana and lay down on the tracks. A grand jury ruled the deaths as homicides.

- The 1990 shooting of Kimberly Iron Schwartz in the Dumas (Desha County) home of

Martin Lee Walt III, who was acquitted in the case. Walt said he shot Schwartz in self-defense. Malak concluded the two shots were fired five minutes apart.

- The 1990 shooting of Gregory Stephens of Hot Springs. The case against Ernest Lemons in the death of Stephens

was dismissed after Malak testified the shot was fired at point-blank range. Witnesses said the shot was fired from 40 feet away.

- The 1985 drowning of Jimmie Seigrist of North Little Rock. Malak ruled the death accidental. The family contends the death was a homicide.

ARKANSAS DEMOCRAT • FRIDAY, JULY 19, 1991

Clark: Malak review to be open

LITTLE ROCK (AP) — The state Crime Laboratory Board's review of five disputed cases handled by the state medical examiner will be handled in open meetings, the Crime Lab's director says.

At its first meeting on Monday, the board decided to review the medical examiner's performance, but didn't decide if it would be open or not.

Crime Lab Director Jim Clark said Wednesday that he would solicit in writing the documents on the five cases and notify board chairman Dr. I. Dodd Wilson when he received them. Clark said Wilson probably

would call a public meeting in six weeks to review the cases.

Clark also said it's possible that the board would eventually hire out-of-state pathologists to conduct a review of Malak's performance. That has not been authorized by the board.

Board Vice Chairman Kathy Goss of Lonoke said at Monday's meeting that the documents would come from family members, law enforcement agencies and the state Crime Lab, she said.

Ms. Goss said the board also would look at reports by outside experts who reviewed Malak's work in 1985 and 1988.

A 1988 report by two out-of-state pathologists said problems at the medical examiner's office stemmed from lack of funding and staffing. The report resulted in a \$14,000 raise for Malak.

Clark said documents in cases still under investigation are closed to the public, and the board could go into executive session to discuss them.

The cases are:

—The 1987 deaths of Bryant teen-agers Kevin Ives and Don Henry on railroad tracks in Saline County. Malak ruled the deaths accidental. A grand jury ruled the deaths as homicides. It is the only one of the five cases still under investigation.

—The late 1989 death of Olivia Jane Ward in Searcy County. Malak ruled the death accidental. Ms. Ward's father, Ron Ward, has said she was beaten to death. Ms. Ward fell off a porch. No charges were filed.

—The 1990 shooting of Kimberly Irons Schwartz in the Dumas home of Martin Lee Walt III, who was acquitted in the case. Walt said he shot Ms. Schwartz in self defense. Malak had ruled that two shots were fired five minutes apart.

—The 1990 shooting of Gregory Stephens in Hot Springs. Ernest Lemons went on trial, but the case was dismissed.

See MALAK, page 3

Malak

Continued from page 1

Malak testified that the shot was fired at point-blank range, contradicting witnesses who said the shot was fired from 40 feet away.

—The 1985 drowning of Jimmie Seigrist in Pulaski County. Malak ruled the death acciden-

tal. The family contends the death was a homicide.

Representatives of families involved in the five cases attended Monday's meeting.

Clark said he didn't know if the board would look at other cases, but said the review couldn't become "a Pandora's box."

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Crime Laboratory Board prob-
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es handled by state medical
Fahmy Malak in open meet-
Lab director Jim Clark said

stituted board agreed at its
Monday to review Malak's
but didn't outline how the
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ny will begin with soliciting
at least five controversial
family members, law enforce-
s and the Crime Lab, board
Kathy Goss of Lonoke said

meet

also will look at reports by
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and 1988, she said.

report by two out-of-state
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eters soliciting the docu-
five cases then notify board
L. Dodd Wilson after he has
documents.

in about six weeks, Wilson

will convene another public meeting to
review the cases, Clark said.

Documents in cases still are under inves-
tigation are closed to the public, so the
board could go into executive session to
discuss those cases, he said.

The five cases are ones mentioned by
family members who attended Monday's
meeting to lodge criticisms of Malak. They
are:

■ The 1987 deaths of teen-agers Kevin
Ives and Don Henry on railroad tracks in
Saline County. Malak ruled the deaths
accidental but a grand jury called them
murder. That is the only one of the five
cases still under investigation.

■ The late-1989 death of Olivia Jane

-Ward in Searcy County. Malak called it an
accident when she fell off a porch, so no
charges were brought. Her father, Ron
Ward, contends that she was beaten to
death.

■ The 1990 shooting of Kimberly Iron
Schwartz in Martin Lee Walt III's Dumas
home. Walt said he shot Schwartz in self
defense. He was acquitted of murder de-
spite Malak's testimony that the two shots
were five minutes apart, as if Walt fired
the second to finish Schwartz off.

■ The 1990 shooting of Gregory Ste-
phens in Hot Springs. Ernest Lemons
went on trial for murder but the case was
dismissed when Malak testified that the
shot was from point-blank, contradicting
witnesses who said it was from 40 feet

away.

■ The 1985 drowning of Jimmie Seigrist
in Pulaski County. Malak ruled it an
accident but family members contend that
it was murder.

Other families have criticized Malak's
cause-of-death rulings but didn't speak at
Monday's meeting. Clark said he didn't
know if the board would agree to look at
other cases, but said some line has to be
drawn to avoid it becoming "a Pandora's
box."

He also didn't rule out the board's even-
tually hiring out-of-state pathologists to
conduct an expert review of Malak's per-
formance, but the board didn't authorize
that Monday.

Malak takes verbal bashing, clings to job

BY RACHEL ONEAL
Democrat Capitol Bureau

Dr. Fahmy Malak held onto his job Monday despite pleas from Arkansans who said the state's medical examiner has botched autopsies and given false testimony.

About 50 people, many wearing orange stickers that said "Fire Malak," attended the first meeting of the restructured state Crime Laboratory Board. Five people told board that Malak has mishandled the autopsies of their relatives.

The board didn't fire Malak but agreed to investigate the complaints.

"They weren't going to be ramrodded into a type of situation without reviewing all of the information," Jim Clark, Crime Laboratory director, said after the board spent an hour and 20 minutes in executive session discussing the complaints against Malak.

After the executive session, the board asked the victims' relatives to supply documents to support their allegations. board also agreed to re-

view the police reports and Crime Laboratory records on each of the cases.

"It's a 50-50 chance," Clark said of Malak's odds of remaining in office. "It's a crap shoot from here."

Malak - who has held the office for 12 years - didn't attend the meeting but said during a telephone interview later that he is pleased the board plans to review his work.

"I hope the truth will come out," Malak said. "I welcome



DISPUTED FINDINGS - Ron Ward of Marshall (Searcy County) on Monday shows photographs of his daughter, Olivia "Janie" Ward, to Dr. Annette Landrum.

any professional person who wishes to look at my cases. My conclusions were the most reasonable conclusions. I am not committing crimes. I am not a rubber stamp who is going to say what pleases people."

Legislation this year abolished the old Crime Laboratory.

Arkansas Democrat/John Sykes Jr.
drum of Fort Smith, a member of the state Crime Laboratory Board. Ward disputes the autopsy findings of Dr. Fahmy Malak in the death of his daughter.

tory Board and the Medical Examiner's Board and created the state Crime Laboratory Board. The new eight-member board has the power to fire Malak.

The old boards were criticized for not having the technical expertise to judge Malak's

work. The new board includes I. Dodd Wilson, dean of the University of Arkansas for Medical Sciences College of Medicine in Little Rock, and Dr. Annette Landrum, a Fort Smith pathologist.

Linda Ives, founder of Vic-See MALAK, Page 9A

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Malak

• Continued from Page One

tims of Malak's Incredible Testimony, headed the group of about 20 who asked for Malak to be fired.

"Our case is not an isolated example. There are lots of families out there just like mine. Families who have been thrust into a nightmare beyond their control whose only desire is for truth and justice for our dead loved ones. That is the only thing left in this world that we can do for them," Ives said.

The bodies of Ives' son, Kevin, 17, and his friend, Don Henry, 16, were found on railroad tracks near Bryant in 1987. After performing an autopsy, Malak concluded the boys were hit by a train after they had smoked marijuana and reclined on the tracks.

A special grand jury found the boys were slain after further medical testimony suggested Henry was stabbed before the train hit him.

But not all of the people

On the board

The eight members of the state Crime Laboratory Board are:

- David Clinger of Bentonville, prosecuting attorney for the 19th Judicial District.
- Alphonzo Dixon III of McGehee (Desha County), an accountant for Pollatch Corp.
- Kathy Goss, a Lonoke lawyer.
- I. Dodd Wilson, dean of the University of Arkansas for Medical Sciences College of Medicine in Little Rock.
- 12th Judicial District Circuit Judge John Holland of Fort Smith.
- Dr. Annette Landrum, a Fort Smith pathologist.
- Kenneth McKee, Washington County sheriff.
- Montie Sims, chief of the Dardanelle (Yell County) Police Department.

who attended the standing-room-only meeting were critical of Malak's work.

"Dr. Malak is probably one of the most competent pathologists I have every seen," said Kenneth King, a fingerprint examiner at the Crime Laboratory.

Another laboratory employee, John Smith, called

Malak demanding but said the medical examiner is an expert in his field.

"I am not a politician who should have to be subjected to this. The medical examiner's job is a scientific job that should not be subject to politics," Malak said.

Another relative who addressed the board was Ron Ward of Marshall (Searcy County), who said Malak erred in the case of his daughter, Olivia "Janie" Ward.

Janie Ward was pronounced dead from a fall from a porch that was 13 inches at its highest point. Malak's report said Ward died of a broken neck. The report said the injury was caused by hyperextension, or that Ward's head was jerked backward.

But Ron Ward said he showed the board photographs of his daughter's body which he said indicated her injuries could not have resulted from falling from a porch. The photographs showed Janie Ward had a black eye, bruises on different parts of her body and a scratch from her upper left breast to her head.

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Jeff Thompson/Gazette Staff

CRIME LAB BOARD: Ronald Ward talks Monday with State Crime Laboratory Board member Dr. Annette Landrum about state medical examiner Dr. Fahmy Malak's report on the death of his daughter, Olivia Jane Ward.

Malak's work faces evaluation

New Crime Lab Board to review performance

By Joe Nabbefeld
Gazette Staff

The new State Crime Laboratory Board, after hearing both critical and favorable testimony about Dr. Fahmy Malak, agreed Monday to conduct a review of his performance as state medical examiner.

The review will last at least six weeks, said Jim Clark, Crime Lab director. The board, which met for the first time Monday, set no completion date for the review.

The state medical examiner conducts autopsies to determine the causes of suspicious deaths then testifies as the state's expert witness in homicide trials. Malak, 57, has held the job for 12 years.

The eight-member governor-appointed board heard presentations by six critics of Malak and two supporters, both of whom work for Malak. About 50 people attended the 2½-hour meeting.

After hearing the presentations,

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Malak critics not surprised

Continued from Page 1A

the board held an 80-minute executive session to discuss Malak before reconvening to announce it will review documentation on any disputed rulings by Malak. The panel will also read reports of reviews of Malak by out-of-state physicians conducted in 1985 and 1988, according to Kathy Goss, a Lonoke lawyer who presided over the meeting as the board's new vice chairman.

The 1988 review included a recommendation that he receive more help and state funding for his office.

Malak's critics wore "Victims of Malak's Incredible Testimony" — or "V.O.M.I.T." — T-shirts and bright-orange "Fire Malak" stickers the size of silver dollars.

They charged Malak with a now well-known litany of supposed failings, from allegedly altering evidence and lying under oath to incompetence and abusive treatment of his employees.

Malak's supporters described Malak as highly competent, professional and dedicated and said his critics dealt in "half-truths." His critics are mostly upset and frustrated by the loss of loved ones, the supporters said.

Malak didn't attend the meeting, held in the Crime Lab building.

"No court of law has overturned one of Malak's rulings [as to cause of death]."

—Larry Carpenter,
Fahmy Malak's lawyer

But he has said he doesn't deserve the criticism and is the target of bigotry and hatred because he's Egyptian.

Malak's lawyer, Larry Carpenter of North Little Rock, sat through the meeting. He took notes as Malak's critics and the media spoke and waited in a hallway during the 80-minute executive session.

"No court of law has overturned one of Malak's rulings [as to cause of death]," Carpenter said. Two grand juries and at least two coroner's juries have overturned his findings, but such juries don't hear all sides and act on emotion, Carpenter claimed.

Linda Ives of Bryant (Saline County) said critics of Malak weren't surprised by the board's action.

Ives' 17-year-old son, Kevin, was found dead with another youth on railroad tracks near Alexander in August 1987. Malak ruled the deaths accidental, saying the boys smoked so much marijuana that they fell asleep on the tracks then

were hit by a train. An Atlanta pathologist told a 1988 grand jury that the boys had been beaten, and one stabbed, then placed on the tracks. The jury ruled the deaths homicides.

Dr. Annette Landrum, a board member and pathologist from Fort Smith, agreed to review all the disputed cases to provide the panel with her opinion as to the competency of Malak's work.

Goss told the critics to submit to the board all documentation they have about disputed cases. The board will also solicit documentation on the cases from law enforcement officials and from the Crime Lab, she said.

The board is required by law to meet at least once every three months. Clark said it will probably meet again in about six weeks. It may at that time decide to hire an outside pathologist to conduct a review of Malak's work, he said.

Malak's office is one of eight offices in the Crime Lab. However, until Monday only a dormant governor-appointed commission supervised Malak, while the old Crime Lab Board supervised Clark and the rest of the Crime Lab.

A law signed this spring dissolved the commission, reconstituted the Crime Lab Board and transferred authority over Malak to the new board. The law took effect Monday.

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Malak given 50% chance of keeping job

Revamped board to review medical examiner's work

BY RACHEL O'NEAL
Democrat Capitol Bureau

The state's medical examiner has a 50 percent chance of keeping his job after the revamped Crime Laboratory Board reviews his qualifications, the department's director said Thursday.

But Jim Clark, crime laboratory director, said the board probably won't take action on the controversy surrounding examiner Dr. Fahmy Malak at his first meeting Monday.

"Personally, I think he's got a 50-50 chance. That's all I'm going to say," Clark said.

Linda Ives, founder of Victims of Malak's Incredible Testimony, said Thursday that members of her organization will attend the meeting to protest the way Malak has handled some autopsies.

"The thing is the damage has already been done in my case and others, but there are families that could be spared the same ordeal," Ives said.

Malak performed autopsies on Ives' son, Kevin Ives, 17, and his friend, Don Henry, 16, in 1989. The two boys' bodies were found on railroad tracks near Bryant. After the autopsy, Malak concluded the boys were hit by a train after they had smoked marijuana and laid down on the tracks.

But a special grand jury found the boys were murdered because medical testimony showed Henry was stabbed before the train hit him. No charges have been filed in the case.

"His rulings are devastating. It's not anything that can be rectified at a later date," Ives said.

Recent controversies surrounding the medical examiner, such as his court testimony that conflicted with the prosecution's version of a shooting in Hot Springs, have led to speculation about Malak's future.

In addition, grand juries have reversed two other Malak rulings on deaths since 1988.

Legislation this year abolishing this year abol-

See MALAK, Page 7B

Malak

• Continued from Arkansas Page

ished the old Crime Laboratory Board and the Medical Examiner's Board and transferred all of their powers to the State Crime Laboratory Board.

The old boards were abolished after members admitted they lacked the technical expertise to judge Malak's work, Clark said.

But Clark said the new board should have the expertise to judge Malak's work because it includes Dr. Annette Landrum, a Fort Smith pathologist, and Dodd Wilson, dean of the College of Medicine at the University of Arkansas for Medical Sciences in Little Rock.

"The board is going to have to listen to the criticism and review the complaints that have been aired in the media concerning Dr. Malak to determine whether his performance was lacking," Clark said.

The other six board members are David Clinger of Bentonville, Alphonzo Dixon III of McGehee (Desha County), Kathy Goss of Lonoke (Lonoke County), 12th Judicial Circuit Judge John Holland of Fort Smith, Washington County Sheriff Kenneth McKee and Dardanelle (Yell County) Police Chief Montie Sims.

Metro/State

'Good possibility' Malak to be fired, supporter says

Gazette Staff and AP

A staunch supporter of Dr. Fahmy Malak, who brought the embattled medical examiner to Arkansas in 1978, says "it's a very good possibility" that Malak will be fired.

"And it's a crying shame," Garland County Sheriff Clay White said Thursday. He said politics and unwarranted bad publicity could cost Malak his job.

White, a former head of the state Crime Laboratory, promoted Malak to state medical examiner in 1979, a year after he hired the native of Egypt away from Cook County, Ill.

By a 36-1 vote on Wednesday, the Arkansas Sheriffs Association approved White's resolution in support of Malak. White said Thursday he was upset with media reports that focused on the 13 sheriffs who abstained and the sole negative vote, cast by Independence County Sheriff Dave Hunter.

Hunter said he voted "no" because about six controversial Malak rulings in his county led more than two dozen residents to call him the past couple weeks to ask him to vote for Malak's ouster.

"Yes, I think it's in danger," White said of Malak's job. "But I don't think he should be because I don't think he's done as bad of a job as the media says."

Larry Carpenter, Malak's attorney from North Little Rock, said the medical examiner was upset with reports of the sheriffs meeting. He said Malak didn't want to comment publicly.

The revamped state Crime Lab Board will meet for the first time July 15 and the problems with Malak are expected to be on the agenda. The board has the power to fire the medical examiner. White isn't a member of the board.

Malak, 58, has made several controversial rulings and insists the media are persecuting him. He said recently that he won't resign.

7-9/ Reader: Malak's an embarrasment

A Voices letter from
LISA KAPTEIN
Hot Springs

Dr. Malak's strategy has worked, at least until now. He has always managed to portray himself as the overworked, underpaid, extremely dedicated and misunderstood chief medical examiner of Arkansas.

He has managed this for the past 12 years by intimidating his associates, by making their working conditions intolerable, forcing them to resign or, after seeing that they had no intention of resigning, by firing them.

Malak controlled the number of autopsies each physician could perform. He forced them to change or delete information from autopsy reports, and he accused them of incompetence, even though the associates were better qualified than he was.

Malak has even managed to get sympathy from the Legislature and has obtained a raise of \$12,000 to \$13,000, which brings his total salary to approximately \$106,000 per year.

The Arkansas chief medical examiner is one of the best paying positions in the state, for which the budget provides a healthy salary for assistants. Why is it, then, that Dr. Malak simply cannot seem to maintain a full staff of at least two pathologists or assistants?

According to Jim Clark's statement, the Crime Lab performed 5,281 autopsies in 12 years, with 71 percent being performed by Malak - a number that is truly impressive until it is broken down into working days.

It computes into the following: 71 percent of 5,281 is 3,749.5 autopsies performed by Malak in a period of 624 weeks (12 years), which equals six autopsies per five-day work week, or 1.2 autopsies per day.

There are, of course, days that there are no autopsies to perform; therefore, the job is not overwhelming, as it is not unusual for a competent pathologist to perform three or more autopsies per day.

I urge the newly appointed commission to contact Malak's former assistants and associates, because they are the ones who can better inform them of Malak's qualifications as a forensic pathologist and about his integrity.

The Arkansas chief medical examiner is one of the best paying positions in the state, for which the budget provides a healthy salary for assistants.

The cases brought out in the media are only a few which have broken the camel's (citizen's) back with evidence of Malak's manipulation, incompetence and dishonesty.

Will the new commission have the professional and moral integrity to do their job? Will they bring the medical examiner's office into the 20th century?

We will wait and see. But in

the meantime, the state cal examiner is a person ashamed of and one who barrasses himself and the payers.

36 of 75 sheriffs back Malak

Support declines from unanimous '88 approval

By Joe Nabbefeld
Gazette Staff

Thirty-six of the state's 75 sheriffs voted Wednesday to support Dr. Fahmy Malak, the embattled state medical examiner, while one voted for Malak's ouster and 13 cast "abstain" votes.

An endorsement from the sheriffs is considered politically significant to Malak's future. The medical examiner — the state's expert in determining causes of suspicious deaths — works closely with sheriffs, who can influence local officials and the governor.

Twenty-five sheriffs didn't vote, either because they decided not to at a less meeting of the Arkansas Sheriffs Association's three-day summer convention in Hot Springs.

More than 50 people attended the meeting.

The vote was by voice roll call, so it couldn't be determined how many sheriffs were present. One sheriff, Darvin Stow of Clay County, voted after the meeting.

Wednesday's vote came in advance of the first meeting of the new State Crime Laboratory Board, scheduled July 15 in Little Rock. The governor-appointed board will assume supervision of Malak from a dormant commission that has been disbanded.

How they voted

Here's how the state's 75 sheriffs voted on Dr. Fahmy Malak:

- 36 supported him.
- 1 opposed him.
- 13 abstained.
- 25 did not vote.

One of the board's first points of business will be to examine the controversy that has surrounded

Malak, board members have said. Chief among the criticisms of Malak are charges that he tailors his rulings to curry support from prosecutors and sheriffs. Malak has declined to comment, but his attorney has denied such claims saying the job Malak holds will always draw controversy no matter how competent the medical examiner.

Independence County Sheriff David Hunter cast the lone "no" vote. Afterward, Hunter said he feared reprisals from Malak, and planned to call him after the meeting to explain his vote.

"I voted the way my constituents wanted," said Hunter, who said he had received many phone calls from people who wanted Malak out. "I have nothing, personally, against him."

Hunter said more than two dozen residents of his county, unhappy with "five or six or seven" cause-of-death rulings by Malak, had called within the past two weeks.

Hunter recounted one case in which Malak called the death of a girl who fell and hit her head on a toilet during a seizure a homicide. Hunter said his office disagreed and closed the case without seeking a suspect.

One sheriff, Washington County's Kenneth McKee, sits on the Crime Lab Board. He attended Wednesday's meeting and voted to abstain. He said he would relay the sheriffs' sentiments to the board.

In 1988, amid a swell of controversy surrounding Malak, the Sheriffs Association called a news conference to announce its unanimous support for Malak. Wednesday's vote showed a decline from that level of support.

One of the abstain votes Wednesday came from Howard County Sheriff Dick Wakefield, the association president. Wakefield had said in a June 18 interview that he thought Malak should leave because publicity about mistakes he has made had cost him too much credibility.

"I'm going to live by what I said," Wakefield told the sheriffs before Wednesday's meeting. But, he added, "It's not my wish to ax him. I have no personal vendetta."

After the meeting, Wakefield said, "I don't feel strongly enough to vote no. At the same time, I have some reservations."

Garland County Sheriff Clay White, who hired Malak as medical examiner in 1979 when White was director of the state Crime Laboratory, led Wednesday's move to endorse Malak.

"You can't find a more conscientious and dedicated individual than Dr. Malak," White said in opening the discussion. "He's capable and qualified. He has made his share of mistakes, no doubt, but

let's take into consideration what his responsibilities are."

White, and several other sheriffs, said the Crime Lab suffered from too little funding, leaving it understaffed and poorly equipped. They called for the state legislature to provide more funding, though they didn't vote to make that request from the association.

In the three years since the sheriffs unanimously endorsed Malak, two grand juries and at least two coroner's juries have overturned Malak rulings in which he said deaths weren't homicides and the juries said they were.

White discarded those events, saying juries consist of people "like my wife who don't know anything about anything, and she'll tell you that. She's sat on grand juries."

Malak's salary is almost \$106,000, making him the second highest-paid state official.

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Sheriffs support Malak 6-27-91

From staff and wire reports

Dr. Fahmy Malak, the controversial state medical examiner, has the support of the Arkansas Sheriffs Association, if not its president.

The association's executive director, Cary Gaines, said the group voted Wednesday 35-1 for a resolution supporting the embattled state official, with 13 sheriffs abstaining on the roll call.

Saline County Sheriff Larry Davis officially abstained from the vote, according to Capt. Lenard Lewis, Davis' chief deputy.

Several of Malak's rulings have come under fire during his 12 years as medical examiner, but his ruling in the 1987 deaths of two Bryant teen-agers is perhaps one of the most controversial.

Malak ruled that 17-year-old Kevin Ives and 16-year-old Don Henry lost consciousness after smoking too much marijuana and passed out on railroad tracks near the Shobe Road crossing in Saline County. A Union Pacific train passed over the boys' lifeless bodies at 4:25 a.m. after the train engineer unsuccessfully attempted to alert the boys with whistles and warning sounds.

Members of the train crew testified in a prosecutor's hearing and later before a Saline County grand jury that eventually rejected Malak's ruling. An out-of-state forensic pathologist autopsied the boys' exhumed bodies and determined one had been stabbed and the other

Malak

Continued from page 1

beaten prior to sustaining the multiple injuries inflicted by the train.

Malak has never conceded the deaths were anything but accidental, but recently said he regretted saying anything about the boys smoking marijuana.

During the investigative procedures in Saline County, several expert witnesses said the use of marijuana alone will not cause a person to lose consciousness.

Kevin Ives' mother, Linda Ives, who was a strong supporter of Davis' candidacy when he initially ran for sheriff in 1988, said today she is outraged by Davis' stance in not voting against support of Malak.

"Larry Davis has either lied to me about his feelings on Malak, or he's just like those other gutless wonders who abstained and are playing political games," Ives said. "They lack the courage to voice their convictions and are apparently torn between stroking Malak and pleasing constituents."

Shortly after Davis announced that he was a candidate for sheriff, he held a press conference at the railroad crossing in Alexander, near the scene of the boys' deaths. Ives was present at that event as a show of support for Davis, who said solving the Ives-Henry murders would be a priority if he were elected sheriff.

No one has ever been charged with the deaths.

The state medical examiner's job is to conduct autopsies in deaths that occur under questionable circumstances and to serve as an expert witness for the prosecution in murder trials.

Independence County Sheriff David Hunter cast the lone vote

against the resolution supporting Malak, according to Gaines.

"He thought the controversy surrounding the medical examiner's office and Malak, in particular, was too much, and it hurt the credibility of the office," Gaines said.

Malak, declined comment Wednesday.

Approximately 50 of the state's 75 sheriffs are holding their annual summer convention at a Hot Spring hotel this week.

The Malak vote

Results of a roll-call vote of county sheriffs in Arkansas on the question of whether Dr. Fahmy Malak should remain as state medical examiner.

Arkansas	X	Garland	Y	Newton	Y
Ashley	X	Grant	X	Ouachita	Y
Baxter	X	Greene	Y	Perry	X
Benton	Y	Hempstead	Y	Phillips	X
Boone	X	Hot Spring	Y	Pike	Y
Bradley	H	Howard	H	Poinsett	Y
Calhoun	X	Independence	N	Polk	H
Carroll	Y	Izard	X	Pope	Y
Chicot	Y	Jackson	X	Prairie	X
Clark	Y	Jefferson	X	Pulaski	H
Clay	Y	Johnson	Y	Randolph	X
Cleburne	X	Lafayette	Y	St. Francis	X
Cleveland	Y	Lawrence	H	Saline	H
Columbia	Y	Lee	X	Scott	X
Conway	Y	Lincoln	H	Searcy	Y
Craighead	Y	Little River	X	Sebastian	Y
Crawford	Y	Logan	X	Sevier	H
Crittenden	Y	Lonoke	Y	Sharp	Y
Cross	Y	Madison	H	Stone	H
Dallas	Y	Marion	Y	Union	Y
Desha	Y	Miller	Y	Van Buren	Y
Drew	X	Mississippi	Y	Washington	H
Faulkner	X	Monroe	Y	White	X
Franklin	X	Montgomery	H	Woodruff	H
Fulton	X	Nevada	Y	Yell	H

Y Voted to support Malak

N Voted against Malak

H Abstained from voting

X Did not respond

Gazette Staff

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Sheriffs association endorses Malak 36-1; 13 absta

6-27-91

BY KEVIN FREKING
Democrat Staff Writer

HOT SPRINGS - The Arkansas Sheriffs' Association may have given the future of Dr. Fahmy Malak, state medical examiner, a boost Wednesday.

A discussion about whether to support Malak turned into a testimonial for him at the association's yearly meeting here.

A resolution of support was then passed, 36 to 1, with sheriffs from 13 counties abstaining. In the resolution, the sheriffs also asked the state Legislature to properly fund the examiner's office and state Crime Laboratory.

Malak could not be reached for comment. An employee at his office said he was not in late Wednesday afternoon and not expected back before closing time.

The one negative vote came from Independence County Sheriff David Hunter, who said he believes Malak has lost credibility with the public because of media reports.

Malak has been criticized for some of his autopsy findings, including those involving two Saline County teen-agers who were struck by a freight train. Malak ruled the deaths accidental, saying they had passed out on the tracks from a marijuana-induced stupor. A grand jury ruled the deaths homicides.

"I didn't make a personal vote," the Independence County sheriff said. "I had several calls from people in my county who wanted me to do a no vote. I had no personal vendetta with Dr. Malak.

"He's had a lot of bad publicity, he's short-handed and he needs more help," Hunter said. "As far as Dr. Malak being good or bad, I don't know. He's had cases overturned, which leaves a question in the public's mind."

Among those abstaining was the association's president, Howard County Sheriff Dick Wakefield, who said last week Malak should consider resigning because he had lost credibility.

Also abstaining were Washington County Sheriff Kenneth McKee, who recently was appointed to the state Crime Laboratory Board that oversees the medical examiner's office, and Saline County Sheriff Larry Davis, who originally voted for the resolution, but decided not to just before the votes were tallied.

Other sheriffs abstaining included Jodie Roper of Bradley County; Ralph Baker of Madison County; Gerald Dutton of Lincoln County; Waymond Hutton of Lawrence County; James Roy Carmack of Montgomery County; Mike Oglesby of Polk County; Howard Jones of Sevier County; Billy Don Long of Stone County; Jack Caperton III of Woodruff County; and Mike May of Yell County.

Questionable deaths

Malak is in charge of autopsies performed in questionable deaths and testifies in trials about the cause of death.

About 10 sheriffs and the Garland County coroner spoke in favor of supporting Malak, who received a similar show of support from the sheriffs association three years ago.

Perhaps the top supporter was Garland County Sheriff Clay White, who, as the state's first Crime Laboratory director in the late 1970s, hired Malak as an assistant medical examiner.

White blamed most of the problems with the medical examiner's office on the lack of funding by the state and an overwhelming workload.

"You won't find - and I know this from personal experience - a more conscientious and dedicated individual than Dr. Malak," White said.

Blames prosecutors

White said a recent Garland County case where murder charges were dropped after Malak's testimony should be blamed on the prosecuting attorneys in the case and not on Malak.

White said Malak's autopsy report did not indicate the distance of the shooting and prosecutors should have questioned him on his opinion of the distance before putting him on the witness stand.

He also said state grand juries that have made different rulings on causes of death do not make Malak wrong and the grand juries right.

White called the use of grand juries outdated and said the grand jury members were not as qualified to rule on causes of a death as Malak.

Garland County Coroner William Mashburn told the sheriffs they were not qualified to judge Malak's work.

Who's qualified?

"When we start trying to judge him, who of us is qualified to judge this man?" Mashburn said. "Is there a board-certified pathologist in this room? If they are, let them stand and make a criticism. If you're not, if you're upset because the man didn't tell you on a report what you wanted to hear or what you needed to get a conviction, that's entirely different from what the facts are."

Mashburn said he heard recently that discussions about Malak were on Wednesday's agenda for the sheriffs association and he wanted to attend the meeting to give his opinion of Malak. About seven sheriffs then spoke briefly in favor of Malak.

Cross County Sheriff Ronny Huey said there have been disagreements with Malak about the cause of death, but they did not prove Malak wrong.

"Has any of them really proved he was wrong?" Huey said. "It's just that they disagreed with him."

Wakefield said after the meeting he still believes that Malak's credibility has been hurt.

Page 1 of 2 pages

Independence cited

"The sheriffs are very independent people and I didn't go around to talk to any of them and try to change their mind," Wakefield said. "Until they were called upon to make a public statement, I think they would rather not have involved themselves, but when the resolution came up, a majority voted their conviction. I'm happy with that and I'll live with that."

The sheriffs were asked to rate Malak's performance from poor to excellent. The sheriffs also were asked whether Malak should remain as medical examiner. The polls had not been completed Wednesday.

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On Hand out 6-27-91

Director of sheriffs group cites support for Malak

HOT SPRINGS (AP) — The director of the Arkansas Sheriffs Association says he thinks his

ship will back Dr. Fahmy Malak, the embattled state examiner.

"What is they're going to vote for a show of support," Gary Gaines said Tuesday.

"But I could be wrong," he said. Gaines noted that the association's president, Howard County Sheriff Dick Wakefield, has said Malak has lost too much credibility and should resign.

The state's 75 sheriffs are holding their annual summer

convention at a hotel here this week.

Gaines said members were being polled about Malak as they arrived at the convention Tuesday.

The sheriffs were asked to rate Malak's job performance from "poor" to "excellent," Gaines said. They also were asked to answer "yes," "no," or "don't know" about whether Malak should remain medical examiner, he said. The informal poll also asked sheriffs for other comments on the medical examiner's office, he said.

The association was also scheduled to vote today on a resolu-

tion from Garland County Sheriff Clay White in support of Malak, Gaines said. When Malak became medical examiner in 1979, White was director of the state Crime Lab.

The sheriffs probably will support Malak, Gaines said, "if for no other reason (than) he's a tremendous worker and sheriffs are bottom-line people. They can forgive mistakes as long as people are making a good-faith effort to do a good job and are hard workers."

The medical examiner conducts autopsies in deaths that occur under questionable circumstances and serves as the

state's expert witness in murder trials. Several of Malak's rulings have come under fire during his 12 years in the job.

In particular, Malak's ruling in the 1987 train deaths of two teen-agers in Saline County has damaged his standing among some sheriffs, Gaines said. At the time, Malak ruled the deaths were accidental and the teen-agers were in a marijuana-induced sleep when a train ran over them.

But Gaines recalled that, in 1988, the association gave Malak an 88 percent approval rating.

"That's the highest-rated person we've ever had and we do surveys periodically of the state agencies and their interaction with the sheriffs, how positive or negative that is," he said.

"Now there's been slippage because of his tenure on the job if nothing else," Gaines said.

And in recent years, Gaines said, "Perhaps he's been slower to make a decision" in some cases, "and (sheriffs) have to have a decision, no matter who's in that job, they have to have a decision." The longer the delay, he said, "the least likely you are to solve it, if it is a crime."

Sheriffs polled about Malak at convention

Medical examiner's performance rated

Associated Press

HOT SPRINGS — Arkansas sheriffs were polled on the job performance of embattled state medical examiner Dr. Fahmy Malak as they arrived here Tuesday for the annual summer convention of the Arkansas Sheriffs Association.

The sheriffs were asked to rate Malak's job performance from "poor" to "excellent," Cary Gaines, the association's executive director, said.

Sheriffs also were asked to answer "yes," "no," or "don't know" to the question of whether Malak should remain medical examiner, he said. The informal poll also asked sheriffs for other comments on the medical examiner's office, he said.

Gaines said he planned to tabulate the results of the informal poll late Tuesday. In 1988, the association gave Malak an 88 percent approval rating, he said.

The association also is scheduled

to vote today on a resolution from Garland County Sheriff Clay White supporting Malak, Gaines said Tuesday. White was director of the state Crime Lab in 1979, when Malak became medical examiner.

Gaines said he thought the sheriffs probably would vote to support Malak.

"My feeling is they're going to vote for a show of support," Gaines said. "But I could be wrong."

Gaines noted that the association's president, Howard County Sheriff Dick Wakefield, told the *Arkansas Gazette* that Malak had lost too much credibility and should resign.

The medical examiner conducts autopsies in questionable deaths and serves as the state's expert witness in murder trials. Several of Malak's rulings have come under fire during his 12 years in the job.

The sheriffs probably will continue to support Malak "if for no other reason [than] he's a tremendous worker and sheriffs are bottom-line people," Gaines said.

Sheriffs expected to support Malak in convention vote this week

The Associated Press

HOT SPRINGS — Arkansas sheriffs will probably vote to support the embattled state medical examiner at their annual summer convention this week, an Arkansas Sheriffs Association official says.

"It could be wrong," said Gary Gaines, executive director of the association. The group represents the state's 75 sheriffs.

The association was scheduled to vote today on a resolution from Garland County Sheriff Clay White supporting Dr. Fahmy Malak, the medical examiner, Gaines said Tuesday. White was director of the state Crime Laboratory in 1979 when Malak became medical examiner.

"My feeling is they're going to vote for a show of support," Gaines said. But he noted the association's president, Howard County Sheriff Dick Wakefield, has said Malak has lost too much credibility and should resign.

The medical examiner conducts autopsies in questionable deaths and serves as the state's expert witness in murder trials. Several of Malak's rulings have come under fire during his 12 years in the job. Gaines said members were also being polled about Malak as they arrived at the convention Tuesday at a Hot Springs hotel.

The sheriffs were asked to rate Malak's job performance from "poor" to "excellent," Gaines said.

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Also, Gaines said, "Perhaps he's been slower to make a decision" in some cases, "and (sheriffs) have to have a decision, no matter who's in that job, they have to have a decision."

The longer the delay, he said, "the less likely you are to solve it, if it is a crime."

Dad plans to ask board for autopsy

Insists Marshall girl killed by foul play

BY DON JOHNSON
Democrat Staff Writer

The father of Olivia "Janie" Ward says he will ask the newly restructured state Crime Laboratory Board next month for another autopsy of his daughter to find the real cause of her death.

Ron Ward of Marshall (Searcy County) has stated on numerous occasions that he suspects foul play in the 1989 death of his 16-year-old daughter and doubts the accuracy of the initial autopsy results of state medical examiner Dr. Fahmy Malak.

Malak declined comment on the case Thursday.

Malak's work is expected to be one of the topics discussed by the board at its tentatively scheduled meeting July 15. Malak has had several of his autopsy results in other cases disputed by family members.

Janie Ward was pronounced dead of a fall from a porch that was 13 inches at its highest point.

The state medical examiner's report said Ward died from a broken neck. The report said the injury was caused by hyperextension, or that Ward's head was jerked backward.

The report stated the impact from falling backward off the porch caused the injuries.

Ward said he wants to show the board members photos taken of his daughter's body showing that the injuries she sustained could not have been received by falling from a porch.

He said the photos show his daughter had a black eye, the side of her head was purple and she had bruises on other parts of her body. She also had a scratch from her upper left breast to her head.

Ward places some of the blame on Malak for the authorities' failure to find the true cause of his daughter's death.

"I hope they fire him and hire somebody who is honest and truthful," Ward said.

Although authorities have deemed the case closed, Ward said he believes a federal grand jury should be empaneled to investigate. He reiterated his accusations that local and state officials have covered up the cause of his daughter's death.

In November 1990, Ward presented a petition with 1,500 signatures to prosecutors calling for a grand jury investigation.

Malak should resign, sheriff says

Credibility loss may be weakening support

By Joe Nabbefeld

The president of the Arkansas Association said Tuesday that Johnny Malak should resign as the state medical examiner because he has lost too much credibility. "I think with the publicity he has received in the last year or so, his credibility has been damaged,"

said Howard County Sheriff Dick Wakefield in an interview. "I'm not sure it might not be a good time for him to help himself and perhaps save Arkansas by possibly looking for some other employment. That's a pretty harsh statement in one sense, but I think that's the attitude of some sheriffs around the state."

Support from the sheriffs is con-

Malak

Continued from Page 1A

the association's executive director.

If unanimity isn't apparent during the discussion, then the group might not even vote and would issue no statement, Gaines said.

Wakefield said it was doubtful that Malak had unanimous support in the association. He named other southwest Arkansas sheriffs who at a regional association meeting this spring were "slightly critical" of Malak because he had become cautious to the point of slowness about issuing his findings.

"There's no doubt about it, he's lost some support in the sheriffs association, but I can't tell you how much," Wakefield said.

Garland County Sheriff Clay White, who hired Malak as the medical examiner in 1979 when White was director of the crime

laboratory, said he still supported Malak and would argue for a vote in support of Malak at the association's meeting next week.

"I've always been a strong supporter of Dr. Malak," White said. "I think he's capable and qualified. My personal opinion is if Dr. Malak made any mistakes, it's the state of Arkansas's fault for not providing him with the personnel and assistance to take the pressure off him."

Dr. Annette Landrum of Fort Smith, a pathologist who is among the new Crime Lab Board members, said she would be interested in what the sheriffs do.

"If [Malak] has good credibility with them, I'd want to know," she said.

Landrum said she was "reasonably sure" that the board would discuss Malak at its first meeting, tentatively scheduled July 15. She has begun preparing for that by surveying how medical examiner offices in other states function.

autopsies in questionable deaths, working with sheriffs, and serves as the state's expert witness in murder trials.

During heavy controversy surrounding Malak and a formal review of his performance in 1988, the association held a press conference to express unanimous support for Malak. The association represents sheriffs in the state's 75 counties.

A newly reconstituted state Crime Laboratory Board is to meet

"I think we need to move with reasonable speed but not precipitous haste," she said. "I'm sure one of the problems is money. I'm as reluctant as anyone else to ask for tax money, but there are some other options."

The Arkansas Prosecuting Attorneys Association won't make a statement for or against Malak, prosecutor coordinator Caram Curry said.

"Since he appears as the expert witness for the state, we think it wouldn't be proper," she said.

To endorse him would be to allow defense attorneys to charge that he would mold his testimony because he was beholden to prosecutors. To oppose him would be to discredit their own expert, she said.

The Arkansas Association of Chiefs of Police has a statewide meeting today in Hot Springs and director Jim Scott said he would bring up the possibility of taking a position on Malak.

for the first time and discuss Malak next month.

Clark agreed that if the sheriffs didn't come out with a similar statement of support this time, board members might view that as a loss of support for Malak.

The association's annual meeting is scheduled next week in Hot Springs and the agenda includes discussing whether to vote on endorsing Malak, said Cary Gaines,

See MALAK/13A

6-15-91

An Democrat

Editorial

Crime lab's load

Members of the new state Crime Laboratory Board are in a lull waiting for the board's legally effective date of July 15 to roll around, but the interim is a good time for all of them to ponder the problems they'll soon encounter – aside from the controversy surrounding State Medical Examiner Dr. Fahmy Malak.

That means facing some of the options for dealing with the Crime Lab's heavy caseload, which Crime Lab Director Jim Clark mentioned during an interview with *Democrat* staffer Doug Thompson earlier in the week. It's that load that may well account for much of Malak's professional problems.

It's hard to imagine one man performing 38 autopsies in a single week, but Clark nevertheless says that Malak actually did that many himself last week – which amounts to more than five a day if Malak worked all seven days.

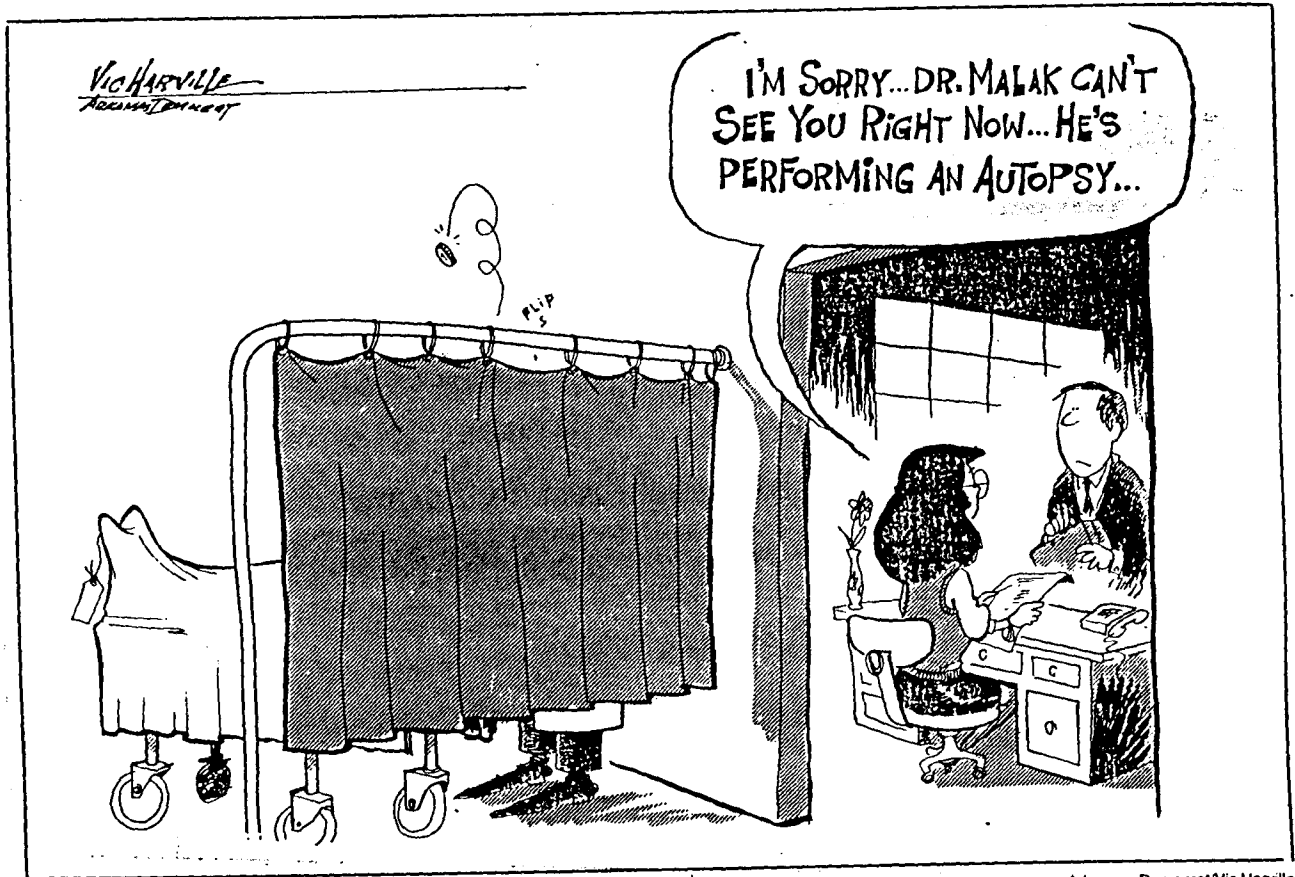
So if he's suffering burnout, it's no small wonder, considering the fact that the Crime Lab expects to perform more than 850 post-mortems before the year is out.

So what are Clark's and the board's options?

One of them is to limit the number of autopsies by restricting them to certain types of cases. Another is to hire more pathologists. Yet another is for the Crime Lab to associate itself with University Medical Center.

But all of those prospects go straight to the heart of the issue, which is resources – or rather, the lack of them. So if the Crime Lab doesn't have the money in its own budget, it's obvious that the board will probably have to look to Gov. Bill Clinton's emergency fund for whatever changes the board may ultimately decide upon.

But one thing the board can't afford to do, as sensitive as its mission is, and that's to begin limiting autopsies. When a sheriff, police chief, prosecutor or coroner asks for an autopsy, you can be certain that one is needed. The state shouldn't even consider restricting autopsies.



Legal mix-up delays crime lab board meeting

Medical examiner likely topic of first gathering

Gazette Staff

6-12-91
The first meeting of the new state Crime Laboratory Board, originally scheduled Friday, will be delayed about a month because of a legal mix-up.

A new law reconstituting the board takes effect 90 days after the legislative session adjourned, or July 15, not 90 days after it was signed, or June 6, as previously thought, said crime lab director Jim Clark on Tuesday.

The meeting probably will be July 15, he said, but he wouldn't know for sure until he had queried more of the board's eight newly appointed members.

Under the new law, the board will assume supervision of the state medical examiner, Dr. Fahmy Malak. Previously, Malak reported to a dormant board, the Medical Examiner Commission.

Malak's 15-employee office performs autopsies in suspicious deaths as one of six divisions of the crime lab. Clark runs the lab and will assume more direct authority over Malak under the law.

Controversy surrounding Malak

likely will be a topic of discussion at the first meeting, Clark and one board member, Dr. I. Dodd Wilson, have said. Low funding and too few employees to keep up with the work load in Malak's office and the entire crime lab also will be discussed, Clark said.

Malak's only assistant examiner took a new job last month, leaving Malak to perform all the autopsies. That means he's doing about three times as many as the National Association of Medical Examiners recommends to minimize mistakes. Clark is looking for a new assistant.

The Crime Laboratory Board by law must meet every three months and hasn't met since mid-March, leaving it in line to meet Friday. Gov. Bill Clinton on June 6 appointed four new members and reappointed four previous members to the board.

Clark said some members of the previous board told him that they prefer to wait for the new board to become official before meeting "unless there was something urgent."

1st meeting of Crime Laboratory Board delayed

DOUG THOMPSON
crat Benton Bureau

The revamped state Crime Laboratory Board - which would deal with ongoing controversy concerning the state medical examiner - had its first meeting delayed for at least a month Monday.

This could postpone major changes in the medical examiner's office, which must come whether the new board believes examiner Dr. Fahmy Malak is qualified or not, said Jim Clark, crime laboratory director.

He did 38 autopsies last week," Clark said of Malak, "I'm looking at an estimated 3 autopsies this year. He cannot keep up. I don't doubt he'll try, but it has become impossible for anyone."

The law creating the new board will not take effect 90 days after the governor signed the law creating it, but 90 days

after the legislative session that passed the law ended, Clark said. "That's what the state attorney general's office called me and told me."

"The board cannot meet until after July 15. I've polled the members of the old board, and they don't see a need in meeting before the new board takes over."

Clark has advised Malak "as a friend that because of the pressure on his own health, his family and his children" that he should consider leaving. Grand juries have reversed three Malak rulings on deaths since 1988 and Prosecuting Attorney Paul Bosson of Hot Springs seeks to discredit another.

The new board could fire Malak, Clark said Monday, or demote or discipline him - for cause.

"I'm not going to try and tell the board what to do, but

somebody's going to have to define the term 'for cause,'" Clark said.

The Crime Laboratory Board was expanded from five to eight members and given authority over the medical examiner in the last legislative session. Before that, Malak was under a state medical examiner's board. That board was abolished after its members admitted they lacked the "technical expertise" to judge

Malak's work.

Any route the board takes will cost money, Clark said. Hiring more pathologists to help Malak will cost more. Associating with the University of Arkansas for Medical Sciences will cost more.

If the board discharges Malak or if he leaves, Clark said, they will have to hire somebody to do autopsies until a replacement is found and

See MALAK, Page 4B

Malak

• Continued from Arkansas Page
pay expenses for them to come back and testify - and for Malak to come back and testify on cases he's already done that have not come to trial.

Another option is to "limit the number of autopsies we do," restricting them to certain types of cases, Clark said. "Right now, if a sheriff, police chief, coroner or prosecuting attorney wants an autopsy performed, we have to take it."

Several or all of those options - limiting autopsies, hiring more examiners, associating with the U of A Medical Center - could be tried at once, Clark said. "But we'll have to have more resources for any of them," he said.

"He's not entitled to any benefits until he's 62, and not to full benefits until he's 65," Clark said. Malak is 58.

Court needs, politics may save his job

By Joe Nabbefeld
Gazette Staff

Any decision to remove Dr. Fahmy Malak as the state's medical examiner would not be made quickly, say people who would be involved in such a decision. Such a move would play out slowly and methodically, State Crime Laboratory Director Jim Clark explained in a recent interview.

The new Crime Laboratory Board — appointed Thursday by Gov. Bill Clinton and scheduled to meet this Friday — would first conduct a review of Malak's performance, including hiring outside experts and holding hearings, to establish cause, said Clark. That could take months, he said.

The board, Clark and Clinton would also wade carefully through other complications, Clark said, such as:

■ County prosecutors around the state would need Malak to return to testify in murder trials a year or more after leaving the job. If Malak chose to, he could charge prosecutors, and thus taxpayers, high expert-witness fees for that,

Clark said. The only alternative would be to have a new medical examiner read from Malak's written report, he said.

Dr. Vincent DiMaio of San Antonio, chief medical examiner for Bexar County, Texas, said he has returned to court to testify about autopsies he conducted in a different job more than 10 years before.

■ A firing could prompt people convicted of murder based on testimony or evidence gathered by Malak to ask courts to retry their cases, creating another taxpayer expense, said Springdale lawyer John Lisle.

■ Any such decision would involve heavy politics, said both Sheffield Nelson, Clinton's Republican gubernatorial opponent last year, and Paul Bosson, the Garland County prosecutor.

The politics range from Clinton gauging how powerful sheriffs and prosecutors around the state would react, to Clinton considering how such a decision would affect any presidential aspirations he may have, they said.

Crime board member expects Malak review

Continued from Page 1A

Clinton also would have to weigh the political benefits versus liabilities of the publicity that would surround hearings about Malak, Nelson said.

Lisle, who was a state representative in the 1980s, said Clinton could view it as an opportunity to be portrayed as the man who "cleaned up" the situation. Nelson said he would portray it as "a day late and a dollar short."

The most politically palatable method would be for Malak to "walk away quietly," said Nelson, a Malak critic. During his campaign last year, Nelson said he would fire Malak if elected.

Malak, who has held the job for 12 years, said in an Associated Press interview published today that he would resist any efforts to remove him. He said he hopes to remain on the job until he retires; he's 58.

Meanwhile, though, two medical examiner offices in other parts of the country last month confirmed Malak had contacted them about job openings.

Last month, Clark confirmed for the *Gazette* that in April he personally suggested to Malak that he consider looking for another job to avoid being fired. Clark said it was a colleague-to-colleague suggestion out of concern for Malak's health, family and future, and that he wasn't acting on Clinton's behalf.

Malak has referred all questions from the *Gazette* to his lawyer, Larry Carpenter of North Little Rock.

In the Associated Press interview, Malak blamed his problems on mishandling by the media and bigotry. He was born and raised in Egypt.

"We have a saying: 'Do your job and let the dogs bark,'" he recently said in a TV interview.

The appointees to the new Crime Laboratory Board have given no indication that they will conduct a full review of Malak, saying mostly that they intend to wait and see what happens.

One member, Dr. I. Dodd Wilson of Little Rock, has said some sort of review is automatic because the board has just assumed authority over Malak.

A new law signed last spring disbanded a dormant commission that had the sole authority to supervise Malak and transferred that job to the Crime Lab Board. It reshuffled that board's membership.

The new board's members are Wilson; Fort Smith pathologist Dr. Annette Landrum; 12th Circuit Judge John Holland of Fort Smith; Benton County Prosecutor David Clinger; Potlatch Corp. accountant Alphonzo Dixon III of McGehee; Lonoke lawyer Kathy Goss; and Washington County Sheriff Kenneth McKee.

Expectations that the board will act on Malak, however, have risen the past couple of months.

"I sure don't have the sense that anything is imminent," Carpenter said. "I assume these people [the new board members] will be appointed to review his professional conduct, and do so accordingly, from a professional standpoint."

Malak say inquiry on shot proximity not made until trial

ARKANSAS DEMOCRAT • MONDAY, JUNE 10, 1991

The Associated Press

Dr. Fahmy Malak said he determined the day before a murder trial began last March that the victim was shot at close range. Malak, Arkansas' medical examiner, didn't tell prosecutors because they didn't ask, he said.

Malak's bombshell testimony forced prosecutors to drop charges against Ernest Lemons.

Prosecution witnesses were going to testify in the Hot Springs courtroom that the gun was fired from far away.

The case was the latest in a series of incidents that have brought calls for Malak's dismissal from the office he has held for 12 years.

Malak said he is being attacked unfairly in the Hot Springs case because prosecutors in Garland County did not do their pre-trial homework.

He said nobody asked him about the shooting distance until he took the stand.

"A rule in court is, don't ask a question you don't know the answer to," Malak said.

The medical examiner said Bruce MacPhee, a deputy prosecutor for Garland County, called him the day before the trial and told him to be in court the next day at 10 a.m.

"I swear to you on the Bible that he didn't ask me about it," Malak said of the close-range ruling. "If I'm not asked, I don't volunteer information."

Paul Bosson, the Garland County prosecutor, said Malak should have offered his office the new data.

"I'm entitled to complete and accurate information from the crime lab and I didn't get it," Bosson said last month.

Bosson has sent Malak's autopsy file to three out-of-state experts and plans to call a news conference this month when he said he will refute Malak's findings.

Malak's supervisor, Director Jim Clark of the state Crime Laboratory, said he reviewed Malak's report and supported it.

The autopsy report given prosecutors weeks before the trial didn't say how far the bullet traveled. It noted, though, that tissue samples were sent for testing.

Malak said he didn't review the tissue samples until the day before the trial, when he normally makes a final review of the data. He determined then that the wound contained an excessive amount of gun powder. That meant the gun was held tight against the victim's neck, forcing all the powder inside, Malak said.

Malak said he isn't intended to make sure his testimony matches prosecution witnesses' statements. Prosecutors should have realized

there might be conflicting testimony, he said, because his autopsy report showed that gunshot residue was found on the victim's hands. That would indicate the victim, Greg Stephens, 21, of Hot Springs, struggled for the gun at close range, Malak said.

"The guy could have fired a gun that afternoon. I don't know what he did that afternoon," Bosson said of the victim. "I may go out later today and do some shooting, and I'll have it all over me. Don't be telling me when I turn up dead that I was in a gunfight."

Bosson said he can't understand how the killer could have held a gun to Stephens' neck tight enough to keep residue off the victim's hair.

"Dumb Arkansas common sense tells you that can't happen," Bosson said.

Lemons, 21, of Hot Springs, cannot be charged again in the Stephens murder because the U.S. Constitution protects him from double jeopardy. His 20-year probation on two felony theft convictions was revoked, however, because of the murder charge. He remains in state prison while appealing the decision to revoke his probation.

6-19-91



Controversy commonplace in Malak's rulings

FOURNIER
Assoc. Press Writer

Dr. Fahmy Malak, Arkansas' medical examiner, has watched outside medical examiners contradict his rulings at least 17 times since 1984.

Three grand juries have overruled his findings.

The mother of a youth run over by a train wants Malak fired because he said the boy and a friend fell asleep on the tracks after smoking marijuana. Malak's critics pounced on that 1987 ruling and haven't let up.

Trouble lately doesn't seem to stop for the man who has been Arkansas' medical examiner since 1979. He knows that his jury could be on the line when the state Crime Laboratory Board meets Friday with new powers to monitor and evaluate his office.

In his most recent flap, Malak's testimony at a murder trial in Hot Springs forced prosecutors to drop their case. Prosecution witnesses were to testify that the gun was fired from far away. Malak told the jury the gun was fired at close range. He says prosecutors ne-

glected to ask him his opinion on the shooting's distance before he took the stand.

Some other cases that have drawn fire:

- Malak said James Dewey Millam, 72, found decapitated outside his Searcy County home in 1987, died from a perforated ulcer. The man's family insisted Millam was murdered. Malak ruled that a dog chewed the man's head and said the man's pocket held \$5,000. He said police don't expect to find money on the bodies of murder victims. He used photos in a textbook to show other examples of pets chewing on their dead owners.

- A former Malak aide said the medical examiner doctor photographed evidence of a rifle butt to link the weapon to the prosecution's suspect. Malak said the staff member lied.

- A grand jury in Little Rock said 75-year-old Peter Robinson was killed by a fellow nursing home patient who beat Robinson in the face and broke his jaw. Malak had ruled that Robinson died of pneumonia after recovering from the beating.

- William Garrett, 32, died of strangulation. Malak said he termed the death a murder because the rope or cord used to strangle Garrett was missing. Police a few months later told him that Garrett's sister found the cord around Garrett's neck. He said the sister told police the man was masturbating while cutting off oxygen to himself, sometimes called autoerotic asphyxiation. Malak changed his ruling to accident. He said the sister later recanted her story.

- He ruled the strangulation death of Chester S. Cadwallader II a suicide because the man had sought treatment for depression. Malak was accused of changing the cause during a civil trial to autoerotic asphyxiation. Malak said he testified that it could have been autoerotic asphyxiation after the man's father said the victim sometimes masturbated. The death certificate still terms the death a suicide.

The case that brought him the most criticism began in 1987, when two teen-agers from Saline County were hit by a train. Malak ruled that Kevin See MALAK, Page 5B

Malak

- Continued from Arkansas Page 1
- Ives, 17, and Don Henry, 16, died by accident after they smoked marijuana and fell asleep on the tracks in the Central Arkansas county.

The marijuana ruling was criticized by a medical examiner from Georgia and overturned by a local grand jury. The grand jury said someone beat the boys unconscious and placed them on the tracks, but no one has been charged.

In his first interview on the topic in three years, Malak said medical examiner Joseph Burton of Atlanta "will testify any way you want him to" and that a prosecutor misinformed the grand jury.

Malak conceded a mistake in the case: he said he wouldn't link the deaths to marijuana if he could do it over again.

"Retrospectively now ... I

thought that this was the effect of marijuana plus being fatigued," Malak said. "If I had known the social structure of the state - they don't like to say somebody was using marijuana and hit by a train - I would not care. I would not do it. I would not keep it. I would not say a word. I would not lose anything if I said the cause was undetermined. But here I give a courtesy to the family..."

"He didn't do my family any courtesy," said Linda Ives, the mother of one of the youths. "This change of mind doesn't surprise me one bit. He knew from the very beginning."

She organized a group called Victims of Malak's Incredible Testimony that has gathered petitions for his dismissal.

Malak, however, said two outside experts a state board brought in to examine his office in 1988 told him they agreed that the incident was an accident, but they

disagreed with him about the marijuana.

"My answer to them was, 'Well, that's debatable.' Period," Malak said.

Malak said he made clear to the grand jury that there was room for debate on the marijuana issue.

He said he had a difficult time ruling the manner of death.

"Is it natural? This was not natural. So is it suicide? The possibility exists. Was it a homicide? The answer is no - according to the investigation they were hit by a train. So was it an accident or a suicide? ... I gave them the benefit of the doubt - that it might be an accident because they were tired."

While his critics are many, Malak believes he's misunderstood by the public and persecuted by the news media. He has no plans to quit.

"As long as my conscience is clear about what I am doing," he said, "I'll keep doing it."

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Ar Democrat 6-10-91

Monday Evening, June 10, 1991

Malak: Medical examiner, Garland County prosecutor at odds

LITTLE ROCK (AP) — Dr. Fahmy Malak said he determined the day before a murder trial began last March that the victim was shot at close range. Malak, Arkansas' state medical examiner, didn't tell prosecutors because they didn't ask.

Malak's bombshell testimony forced prosecutors to drop charges against Ernest Lemons.

Prosecution witnesses were going to testify in the Hot Springs courtroom that the gun was fired from far away.

The case was the latest in a series of incidents that have brought calls for Malak's dismissal from the office he has held for 12 years.

Malak said he is being attacked unfairly in the Hot Springs case because prosecutors in Garland County did not do their pre-trial homework.

He said nobody asked him about the shooting distance until he took the stand.

"A rule in court is, don't ask a question you don't know the answer to," Malak said.

The medical examiner said Bruce MacPhee, a deputy prosecutor for Garland County, called him the day before the trial and told him to be in court the next day at 10 a.m.

"I swear to you on the Bible that he didn't ask me about it," Malak said of the close-range ruling. "If I'm not asked, I don't volunteer information."

Paul Bosson, the Garland County prosecutor, said Malak should have offered his office the new data.

"I'm entitled to complete and accurate information from the crime lab and I didn't get it," Bosson said last month.

Bosson has sent Malak's autopsy file to three out-of-state experts, and plans to call a news conference this month in which he said he will refute Malak's findings.

Malak's supervisor, Crime Lab Director Jim Clark, said he reviewed Malak's report and supported it.

The autopsy report given prosecutors weeks before the trial didn't say how far the bullet travelled. It noted, though, that tissue samples were sent for testing.

Malak said he didn't review the tissue samples until the day before the trial, when he normally makes a final review of the data. He determined then that the wound contained an excessive amount of gun powder.

That meant the gun was held tightly against the victim's neck, forcing all the powder inside, Malak said.

Malak said he isn't supposed to make sure his testimony matches prosecution witnesses' statements. Prosecutors should have realized there might be conflicting testimony, he said, because his autopsy report showed that gunshot residue was found on the victim's hands. That would indicate the victim, Greg Stephens, 21, of Hot Springs, struggled for the gun at close range, Malak said.

"The guy could have fired a gun that afternoon. I don't know

what he did that afternoon," Bosson said of the victim. "I may go out later today and do some shooting, and I'll have it all over me. Don't be telling me when I turn up dead that I was in a gun fight."

Bosson said he can't understand how the killer could have held a gun to Stephens' neck tightly enough to keep residue off the victim's hair.

"Dumb Arkansas common sense tells you that can't happen," Bosson said.

Lemons, 21, of Hot Springs, cannot be charged again in the Stephens murder because the U.S. Constitution protects him from double jeopardy. His 20-year probation on two felony theft convictions was revoked, however, because of the murder charge. He remains in state prison while appealing the decision to revoke his probation.

Editorial

Splitting hairs

Wasn't Crime Lab Director Jim Clark splitting hairs Wednesday when he confirmed embattled Medical Examiner Fahmy Malak's televised denial of media reports — aired in April and since — that he had asked Malak to resign?

How would you take it if your own boss suggested that you might want to start looking at other job possibilities? That's what Clark did.

Clark says that published reports about him having told Malak to "resign or be fired" got "twisted around." Maybe they did, but that's easy to understand, for Clark's message seemed plain enough at the time and it's no wonder that, in paraphrasing, it came out that way.

Nevertheless, Clark now says that he only suggested that Malak look for other job prospects and that he did so for three reasons: health, family and reputation — Malak's continuing to be cast in news stories in a negative light.

OK, so Malak is overworked; as are probably all of the other Crime Lab employees. And it's easy to see how that could strain a person's personal life. But Clark's third reason is the one that says the most, for Malak's professional reputation has indeed been on the line for several years. It dates back, we recall, to his ruling in the Saline County case in which he found that two teen-agers who had been run over by a freight train had been in a drug-induced state. Hard evidence to the contrary that came out later made Malak's official opinion sound like a flight of fantasy.

Among Malak's disputed opinions, the most recent one involved his testimony in March in a Hot Springs murder trial. It disputed the prosecution's case to the extent that the defendant had to be set free.

But there's a fourth and more likely reason to explain why Clark gave Malak an advance nod on job-hunting, and that's the new law passed last session establishing an eight-member board to supervise the medical examiner's office. It became effective Wednesday and Gov. Bill Clinton named the board members Thursday.

It's our guess that the new board members will probably want to put Malak's controversies at the very top of their agenda. All things considered, Clark's suggestion to Malak about considering other job prospects seems now to have been too timely — perhaps even prophetic.

Malak's words weigh heavily on his image

Examiner says not keeping quiet a political mistake

By Ron Fournier
Associated Press

If he could do it over again, Arkansas's embattled medical examiner says he wouldn't have reported that marijuana caused two youths to fall asleep and get hit by a train.

Dr. Fahmy Malak's marijuana theory became the butt of jokes after a grand jury ruled that someone murdered the two Saline County teen-agers in 1987.

The case only added to a persistent image problem and a string of controversies that could cost him his job after the state Crime Lab Board meets this week. It will be the board's first meeting since the General Assembly this spring gave it new power to oversee the medical examiner.

Malak, 58, has been the state's medical examiner for 12 years. The Egyptian-born doctor has been accused of slanting testimony for prosecutors, changing rulings without explanation, running off assistants with a quirky, arrogant manner and making strange forensic conclusions.

In a recent interview with The

Associated Press, Malak blamed his problems on the news media, restrictive state laws, a heavy workload, and second-guessing by police, the public and families of the deceased.

"When your door breaks, you call a carpenter. When the electricity breaks, you call an electrician. But when somebody dies, everybody becomes a medical examiner," he said.

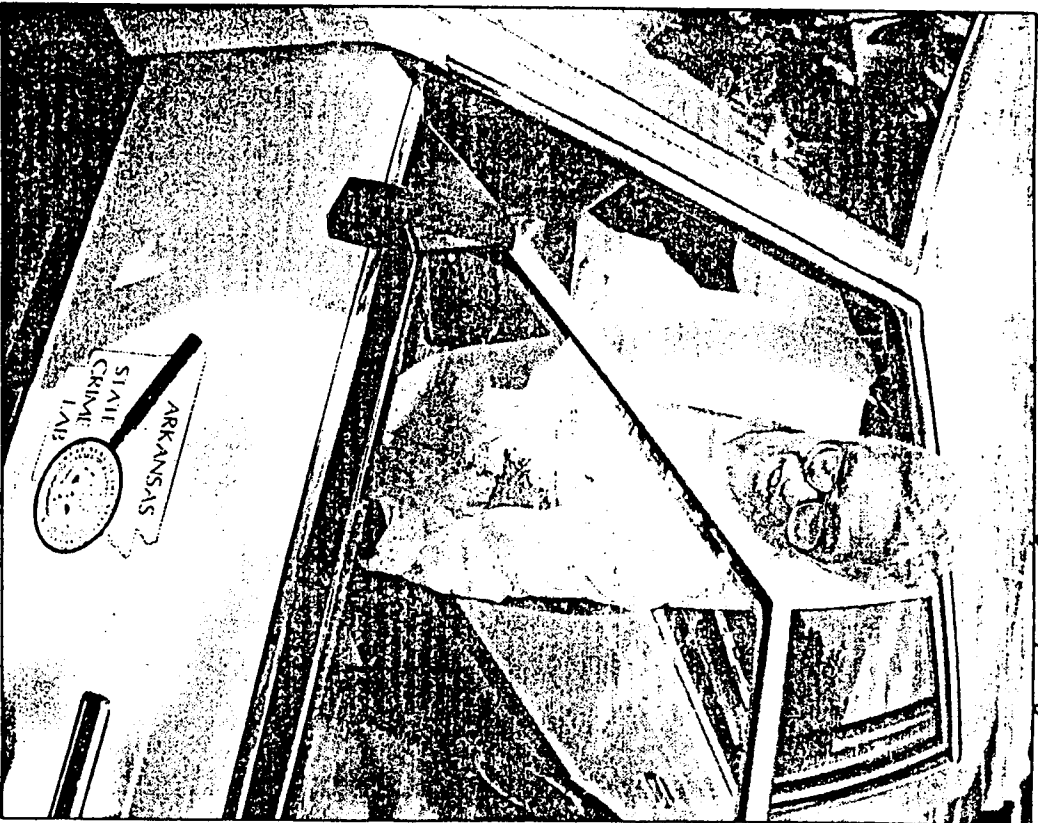
He stuck by his scientific conclusions, but conceded at least one political mistake.

"If I had known the social structure of the state — they don't like to say somebody was using marijuana and hit by a train — I would not care," Malak said. "I would not do it. I would not keep it. I would not say a word. I would not lose anything if I said the cause was undetermined."

Malak said he still thinks the train track deaths of Larry Ives, 17, and Don Henry, 16, were accidental, but that perhaps he tried too hard to explain them.

The state medical examiner is

See MALAK/18A



LEAVING WORK: Dr. Fahmy Malak, the state's medical examiner for 12 years, leaves his office Thursday.

Spencer Treay/Gazette Staff

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METRO/STATE

Malak says criticism won't make him quit

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required by state law and state Crime Lab policy to determine the cause and manner of death. Malak said he receives too much credit or blame for determining the manner of death. Calling the manner of death suicidal, homicidal or accidental depends heavily on police investigations, he said.

"If they find me at the bottom of this window and they say, 'Oh, Malak was depressed and the news media was after him. He jumped.' It would be suicide," Malak said, standing at a body-length window in his office. "One month later, they say, 'The reporter was here and he pushed him from the window.' It would be homicide."

In the Saline County case, he said the cause appeared simple: A train hit the youths. Malak said the deaths were accidental if marijuana made them fall asleep.

Yet he also says the marijuana

theory is "debatable." A grand jury decided that an assailant or assailants placed the youths unconscious on the tracks.

No one disputes that Malak has a heavy work load. He is the only pathologist on the 12-member staff because an assistant left for a new job last month. Malak conducted 71 percent of the 5,281 autopsies his office has performed since he joined the staff in 1978.

Jim Clark, head of the state Crime Laboratory and Malak's supervisor, said Malak often starts work before dawn.

"I think the guy is horribly overburdened," said Garland County Prosecutor Paul Bosson, who is trying to get Malak fired over a recent ruling. Malak surprised Bosson's deputy at a murder trial this year when he testified that the victim was shot at close range. Witnesses had testified that the shots came from far away.

Support of prosecutors, police and many defense attorneys keeps

"I think the guy [Malak] is horribly overburdened."

—Paul Bosson,
Garland County prosecutor

him going, Malak said. He accused the news media of persecuting him, possibly because he is from Egypt and speaks with an accent.

"I pledged for four years that I wouldn't talk to the media because they twist and they don't tell the truth," Malak said. "You try to tell the truth and they don't listen."

Malak said his office should have a public relations expert to create a buffer between him and reporters. Another problem, Malak said, is he can't provide full explanations because autopsy records are closed by law, unless released by the prosecutor.

Gov. Bill Clinton has long stood by Malak, who came to the medical

examiner's office from Chicago during Clinton's first term in 1979. The governor last month said it is getting tougher for the medical examiner to weather criticism.

"We don't fire people for bad press," Clinton said. "But what I've told Clark is... if the credibility issue keeps coming up, maybe it's time we call it quits."

Malak got some bad press in the 1990 gubernatorial campaign when Republican candidates Sheffield Nelson and Tommy Robinson promised to fire Malak if elected. Malak disagreed with critics who say he tends to side with prosecutors at the expense of the defense. But Bosson, a prosecutor and former juvenile judge, said the label fits.

"They just don't say that for the heck of it. He gets up there and he just... he knows we're trying to put a bad guy in jail," Bosson said.

Malak said he won't quit, despite the almost constant barrage of criticism.

"It hurts," Malak said, "but I go on."

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Impolitic to note marijuana swoon of 2, Malak says

BY RON FOURNIER
Associated Press Writer

If he could do it over again, Arkansas' embattled medical examiner says he wouldn't have reported that marijuana caused two youths to fall asleep and get hit by a train.

Dr. Fahmy Malak's marijuana theory became the butt of jokes after a grand jury ruled that someone murdered the two Saline County teenagers in 1987.

The case only added to a persistent image problem and a string of controversies that could cost him his job after the state Crime Laboratory Board meets this week. It will be the board's first meeting since the Legislature this spring gave it new power to oversee the medical examiner.

Malak, 58, has been the state's medical examiner for 12 years. The Egyptian-born doctor has been accused of slanting testimony for prosecutors, changing rulings without explanation, running off assistants with a quirky, arrogant manner and making strange forensic conclusions.

In a recent interview with The Associated Press, Malak took advantage of what might be his last chance to defend himself publicly.

Malak blames his problems on the news media, restrictive state laws, a heavy workload, and second-guessing by police, the public and families of the deceased.

"When your door breaks, you call a carpenter. When the electricity breaks, you call an electrician. But when somebody dies, everybody becomes a medical examiner," he said.

He stuck by his scientific conclusions, but conceded at least one political mistake.



Dr. Fahmy Malak

"If I had known the social structure of the state — they don't like to say somebody was using marijuana and hit by a train — I would not care," Malak said. "I would not do it. I would not keep it. I would not say a word. I would not lose anything if I said the cause was undetermined."

Malak said he still believes the train track deaths of Larry Ives, 17, and Don Henry, 16, were accidental, but that perhaps he tried too hard to explain them.

The state medical examiner is required by state law, state Crime Laboratory policy and, often, public pressure to determine the cause and manner of death. Malak said he receives too much credit or blame for determining the manner of death. Calling the manner of death suicide, homicide or accidental depends heavily on police investigations, he said.

If they find me at the bottom of this window and they say, 'Oh, Malak was depressed and the news media was after him. He jumped.' It would be suicide," Malak said, standing at a body-length window in his office. "One month later, they say, 'The reporter was here and he pushed him from the window.' It would be homicide."

In the Saline County case in Central Arkansas, he said the cause appeared simple: A train hit the youths. Malak said the manner of death was accidental if marijuana made them fall asleep.

Yet he also says the marijuana theory is "debatable." A grand jury decided that an assailant or assailants placed the youths unconscious on the tracks.

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"I think the guy is horribly overburdened," said Garland County Prosecuting Attorney Paul Bosson, who is trying to get Malak fired over a recent ruling. Malak surprised Bosson's deputy at a murder trial this year when he testified that the victim was shot at close range. Witnesses had testified that the shots came from far away.

Support of prosecutors, police and many defense attorneys keeps him going, Malak said. He accused the news media of persecuting him.

"I pledged for four years that I wouldn't talk to the media because they twist and they don't tell the truth," Malak said.

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Politicos' vows to fire him hurt, Malak says

BY RON FOURNIER
Associated Press Writer

He was lumped in with the state budget, higher taxes, clear-cutting in the Ouachita National Forest and other issues of the 1990 gubernatorial campaign.

And Dr. Fahmy Malak says he still resents the fact that Republican candidates Sheffield Nelson and Tommy Robinson promised to fire him if elected governor.

"It hurt my feelings from

one point: that I have been singled out in a campaign by eminent people wanting to run the state," Malak said.

He said of Nelson: "An attorney at law who knows the laws to single out one man to say, 'If I am elected, I'll fire that man,' without knowing any background ... it's dangerous."

Malak worked for Robinson in the 1970s when Robinson headed the state Public Safety Department. Robinson, a former sheriff and congressman,

lost the primary to Nelson, who was beaten easily by Clinton, a Democrat.

"I do believe in my mind also that Mr. Robinson never meant to fire Dr. Malak simply because I worked with Mr. Robinson," Malak said.

A more subtle issue in the Clinton campaign was rumors that Clinton and his supporters protected the medical examiner. Malak and Clinton say the rumors aren't true.

Q: The governor recently said you can't fire somebody for bad press ...

A: That's true.

Q: But he did tell Crime Lab Director Jim Clark that if your credibility keeps being questioned, it might be time to call it quits. Are you afraid that's what's about to happen?

A: The objective of establishing a medical examiner system is to be scientific and away from politics. I am living with this premise that we are scientists. We are not politicians. So I am not worried about politics. The politics will be taken care of by the politicians.

Q: By granting this interview, are you saying, 'I need to get my side out there because if I don't start doing some damage control the bad publicity will hurt me, get me fired'?

A: These things can happen. In actual life, strange things happen. Sometimes politics has the upper hand. This is not in my control and I don't know.

Q: If Clark came in your office today and said, 'You're fired.' Could he fire you in your opinion?

A: He's the director of the lab. Yes, he could. But I have an employment book in my desk ... Once you pass probation, this employee must have due process to be fired. If the director came in here and told me, 'Well, Dr. Malak, you are terminated.' I'd say, 'OK, Mr. Clark, I'll just pack and leave and let my lawyer do my job.'

Q: Do you stay up nights worrying about your job?

A: No. I'm not worried about my job.

Q: Do you plan to resign?

A: No.

Q: You won't resign?

A: No.

Q: Would you like to retire from here?

A: I'm 58. Yes, I'd like to retire from this job.

Malak said his office should have a public relations expert to create a buffer between him and news reporters. Another problem, Malak said, is he can't provide full explanations because autopsy records are closed by law, unless released by the prosecutor.

Gov. Bill Clinton has long stood by Malak, who came to the medical examiner's office from Chicago during Clinton's first term in 1979. The governor last month said it is getting tougher for the medical examiner to weather criticism.

"We don't fire people for bad press," Clinton said. "But what I've told Clark is ... if the credibility issue keeps coming up, maybe it's time we call it quits."

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Malak disagreed with critics who say he tends to side with prosecutors at the expense of the defense.

But Bosson, a prosecutor and former juvenile judge, said the label fits.

"They just don't say that for the heck of it. He gets up there and he just ... he knows we're trying to put a bad guy in jail," Bosson said.

Media neither hires nor fires, Malak says

The Associated Press

Dr. Fahmy Malak says he won't resign, and he won't be fired without a fight.

Here is an excerpt from a recent interview with the beleaguered medical examiner.

Q: You've weathered an enormous amount of bad publicity - whether it's justified or not - why do you think you have weathered it?

A: The news media doesn't hire an employee. The news media shouldn't fire an employee. The agency in which the employee works will evaluate that person. There are guidelines. The state will not terminate somebody unfairly.

guidelines. The state will not

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Crime Lab board of 8 appointed

1st meeting June 14

By Joe Nabbefeld
Gazette Staff

Gov. Bill Clinton appointed eight people from throughout the state, including a forensic pathologist from Fort Smith, to the new state Crime Laboratory Board on Thursday.

Under a law signed this spring, the new board Thursday assumed authority over the state medical examiner, Dr. Fahmy Malak.

The medical examiner previously reported to the dormant State Medical Examiner Commission. The new law dissolved the dormant commission as of Thursday.

The new board will hold its first meeting June 14, and Crime Laboratory director Jim Clark said Thursday that he suspected that the board would discuss controversy that has surrounded Malak.

The appointees are:

■ Dr. Annette Landrum, a forensic pathologist in Fort Smith;

■ Dardanelle police chief Montie Sims;

■ Dr. I. Dodd Wilson, dean of the University of Arkansas for Medical Sciences College of Medicine;

■ 12th Circuit Judge John Hol-

land of Fort Smith;

■ Benton County Prosecutor David Clinger;

■ Potlatch Corp. accountant Alfonso Dixon III of McGehee;

■ Lonoke lawyer Kathy Goss;

■ Washington County Sheriff Kenneth McKee.

Landrum couldn't be reached to comment Thursday. Her husband, Dr. Samuel Landrum, is also a pathologist. The state medical examiner practices forensic pathology, performing autopsies to determine if suspicious deaths were homicides, suicides, accidents or by natural causes.

Sims said Thursday that a state Police Chiefs Association submitted his name to Clinton and he accepted the post because he would like to serve the state. He said he would reserve comment on Malak until the board meeting. Three other appointees told the *Arkansas Gazette* the same thing last week.

Malak has been medical examiner for 12 years, much of them marked by a variety of criticisms of his work, including charges that he tampered with evidence, tailored his findings to help prosecutors or friends, lied under oath and performed incompetently.

Malak declined to comment outside his office Thursday afternoon.

Meanwhile, the National Association of Medical Examiners has renewed its two-year accreditation of Malak's office.

"I did not find any deficiencies," stated a May 1 letter from Dr. Roberto J. Bayardo of Austin, Texas, announcing the reaccreditation.

Didn't ask Malak to resign, official says

BY KEVIN FREKING
Democrat Staff Writer

Crime Laboratory Executive Director Jim Clark said Wednesday that Dr. Fahmy Malak, state medical examiner, is right when he says Clark didn't ask him to resign.

"Somehow, it's gotten twisted around that I told him to resign or be fired," Clark said. "And I never made that statement."

In a television interview Tuesday, Malak denied media reports that Clark asked him to

resign. Attempts to reach Malak for an interview Wednesday were unsuccessful.

The media reports about Malak's future as medical examiner surfaced after he testified in a Hot Springs murder trial. The prosecutor in the case, Paul Bosson, dismissed charges when Malak's findings disputed the prosecution's case. The trial took place in late March.

Clark said he did have a conversation with Malak around April 2, suggesting to him that he might want to look

at other job possibilities for three reasons: health, family and reputation.

Clark said Malak's continually being in the news in a negative light was taking its toll in all three areas.

Although Clark said he had not asked Malak to resign, a new eight-member board that will be given control of the medical examiner's office today may have something to say about Malak's tenure.

The governor's office said last week it expected to name the board today, but spokes-

man Suzie Whitacre said Wednesday officials were still working on the appointments.

"We're hoping to be able to name them Thursday, but we're still trying to get in touch with some of those people," Whitacre said.

Seats on the board are reserved for the dean of the University of Arkansas for Medical Sciences College of Medicine and an active member of the judiciary. Groups each getting a seat are the legal profession, sheriffs, police chiefs, prosecuting attorneys, physicians and citizens at large.

Revamped lab board may speed Malak exit

By Joan I. Duffy
The Commercial Appeal
Little Rock Bureau

LITTLE ROCK — He has been accused of playing into the hands of prosecutors, running off assistants and reaching goof-ball forensic conclusions.

Now a change in the panel that oversees operations of the State Crime Lab may spell the beginning of the end for Egyptian-born Dr. Fahmy Malak, Arkansas's controversial medical examiner.

On Thursday, a reconstituted board governing the State Crime Lab comes into existence with clear authority to hire and fire the medical examiner, control that has been ill-defined since he was hired 12 years ago.

Although no immediate attack on him is expected, Crime Lab director Jim Clark suggested to Dr. Malak several weeks ago that it may be time he start looking for another job.

"There was no pressure from me to force him," Clark said. "But if we're going to have to investigate every case he does an autopsy on ... I can't afford to spend my time confirming what his conclusions are."

Dr. Malak has refused for four years to grant interviews, despite growing public clamor about his performance. Clark and other state officials blame Dr. Malak's problems in part on bad publicity and overwork — his office performed 755 autopsies last year and expects to reach 800 to 850 this year.

In the 12 years he has held the job performing autopsies on victims of all unnatural deaths, Dr. Malak's results have been contradicted in court 17 times by other medical examiners — a rate they said would be unacceptable in their offices.

He has been accused by defense attorneys of coloring his testimony to favor the prosecution and his conclusions have been rejected by grand juries in three cases.

In more and more criminal cases in which Dr. Malak testi-

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Malak

fies, defense attorneys are hiring outside medical examiners to review, and often cast reasonable doubts on, the state examiner's conclusions.

The most celebrated case involved the deaths of two teenage boys run over by a train near Benton in August 1989. The train's engineer said the bodies were lying next to each other across the tracks and they failed to move despite repeated soundings of the train's whistle and the jostling of tracks from the oncoming locomotive.

Dr. Malak said the boys were in a marijuana-induced stupor and were not aware of the oncoming train. Private detectives hired by the youths' families led to a Saline County grand jury probe in which an outside medical examiner testified one victim had been beaten and the other stabbed before the train hit them.

Linda Ives, the mother of one of the victims, began looking into Dr. Malak's record and formed a group to work for his ouster — Victims of Dr. Malak's Incredible Testimony. The VOMIT group says it has collected signatures from more than 4,000 people demanding Dr. Malak be fired.

During the controversy, members of the Medical Examiner Commission, which had been dormant for years, asked two experts from out of state to study the operations of Dr. Malak's office. They said Dr. Malak was overworked, underpaid and his office underfunded.

Clark and Gov. Bill Clinton, Dr. Malak's ultimate boss, acknowledge growing public sentiment against the 58-year-old pathologist. But they said it should take more than public sentiment to oust a man from his

job.

"Should I call the Medical Board or the Crime Lab Board and say, 'Get rid of this man, I've got 4,000 signatures and a newspaper article and never mind the merits,'?" asked Clinton. "I am very sympathetic to Mrs. Ives and my heart goes out to her. But I am still going to defer (to the Crime Lab Board)."



Fahmy Malak

Hiring and firing authority for the medical examiner's job became blurred during government reorganization in the late 1970s that abolished the Public Safety Commission and created the State Crime Lab without specific mention of who controls the medical examiner. The fuzzy lines have been credited with Dr. Malak's ability to hang onto his job despite his critics.

"The responsibility will plainly be on their shoulders then to evaluate these charges and to act on them, either to dismiss them or to act on them," said Clinton, who has taken significant political heat for Dr. Malak's continued employment.

Dr. Malak, who has refused interviews as criticism escalated, earns \$105,000 a year. His office is authorized two assistants, but rarely have both positions been filled at one time. In the last 12 years, he has had 10 assistants.

Dr. Violet Hnilica, the latest assistant to leave, resigned effective last month to accept a teaching position at the University of Tennessee, Memphis.

She denied the controversy surrounding her boss was to blame for her decision to quit, but acknowledged her yearlong tenure in the job "has been stressful."

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4 old, 4 new to fill board of Crime Lab

Clinton has most names ready

By Joe Nabbefeld
Gazette Staff

Gov. Bill Clinton plans to appoint four members of the old State Crime Laboratory Board to the new board and has identified at least seven of the eight appointees, according to information obtained Thursday.

The reconstituted board comes into existence June 6 under a law signed this spring.

It will assume authority over state medical examiner Dr. Fahmy Malak. Until then, Malak reports solely to the dormant State Medical Examiner Commission, which has met just three times in the past 12 years and will be abolished June 6.

The new board will hold its first meeting June 14 in Little Rock, at which it is expected to discuss how to respond to controversy surrounding Malak. State Crime Lab director Jim Clark last month suggested to Malak that he look for another job to avoid being fired. Clark said he was not speaking for Clinton but rather as one colleague to another.

The four members of the old board who Clinton expects to name to the new one are:

■ Lonoke attorney Kathy Goss, who has been on the old board for about three years. Goss said Thursday that she has been contacted by the crime lab to confirm that she could attend the June 14 meeting.

The new law designates that some seats be held by experts in various fields. Goss would take the new

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Crime Lab

Continued from Page 1B

board's "legal profession" seat.

■ 12th Circuit Judge John Holland of Fort Smith, who has served on the board since its creation in about 1976. Holland told the *Gazette* on Thursday he did not know whether he was chosen for the new board but that he would serve if asked. He said he has "no thoughts" on Malak. He would fill the "active judiciary" seat.

■ Benton County Prosecutor David Clinger, who would take the "active prosecuting attorney" seat. He could not be reached to comment Thursday.

■ Potlatch Corp. accountant Alfonso Dixon of McGehee, who began serving on the board in 1988 as an at-large citizen member. He would fill that position on the new board. He could not be reached to comment Thursday.

To fill the board's "active county sheriff" seat, Clinton has tabbed Washington County Sheriff Kenneth McKee, McKee confirmed Thursday. The existing board's "sheriff" position was filled by Fulton County Sheriff Earl Hurtt, but he left office in December.

Asked if these are the people who will sit on the board, Clark said, "This is what I heard from the governor's office, but I do not have any confirmation yet."

Craig Smith, Clinton's appointments secretary, said Thursday that he could not confirm any names but that he is close to having all the positions filled and will make an announcement soon.

Dr. I. Dodd Wilson, dean of the University of Arkansas for Medical Sciences College of Medicine, automatically will serve on the board because the new law calls for the dean to be a member.

Hot Springs prosecutor ready for Malak's return

By Elizabeth Lowry
Gazette Hot Springs Bureau

HOT SPRINGS — The prosecution doesn't intend to give the state medical examiner much rein when Dr. Fahmy Malak testifies in a murder trial this week.

Ray Carl Smith, 37, of Hot Springs goes on trial Thursday in Garland County Circuit Court on charges that he murdered Alfred Atkinson, 34, last summer. The police say that Smith also shot his ex-girlfriend, Nathaniel Neal, in the abdomen and the face. When neighbors ignored her cries for help, she walked about a half-mile to a nearby hospital.

Neal survived the shooting and will testify at the trial, Prosecuting Attorney Paul Bosson of Hot Springs said last week.

Malak, the state medical examiner, will testify that bullets were found in Atkinson's body, Bosson said. He said other witnesses will say that those bullets were made by the same manufacturer as bullets found at Smith's home.

Bosson said he will keep a close watch on what Malak says, in light of a case in late March in which Malak's testimony appeared to differ from the medical examiner's autopsy report. That case involved the Aug. 18 shooting death of Gregory Stephens, 25, of Hot Springs. Ernest D. Lemons, 21, was arrested and charged with murder.

Prosecutors later amended the charge to second-degree murder, and were prepared to argue their case based on testimony that Lemons had shot Stephens from as far as 50 feet away.

At the March 28 trial, however, Malak testified that Stephens was shot from point-blank range. That differed from accounts of other witnesses who said Stephens, who was standing in the doorway of his house, was shot from the street.

Because Malak's testimony did not mesh with other witnesses' statements, prosecutors dropped the charge.

Bosson and a deputy prosecutor complained afterward that the autopsy report gave no indication that the fatal bullet was fired from point-blank range, nor did Malak tell them that prior to taking the witness stand.

Jim Clark, director of the State



File Photo

Fahmy Malak: Medical examiner's testimony at murder trial will be closely watched.

Crime Laboratory, conducted his own investigation of the matter and determined that Stephens was shot at close range and that Malak had done nothing wrong. Clark said the information about the distance from which Stephens was shot was included in the autopsy report, and prosecutors should have asked Malak what that range was.

In April, Bosson sent information on the case to four out-of-state pathologists who will determine the range from which Stephens was shot. He plans to call a news conference and release the findings of those pathologists after the Smith trial, Bosson said.

"I intend to ask that both Clark and the medical examiner resign," Bosson said. "The basis for that is they have had approximately one month to review their evidence and retract their statements and apologize for all the trouble they've caused."

Bosson has said one of the reports indicated that Stephens was shot from a distance.

The prosecutor said he realized Malak was overworked.

"It would be very easy to get this stuff confused," he said. "My attitude is, if you make a mistake, belly

up to the bar and say 'I made a mistake.'"

In the Smith trial, Bosson said he had a strong case and prosecutors would seek a life sentence. The trial judge has placed a gag order on Smith's murder case.

Evidence will include testimony from Neal recounting the events of Aug. 16, when she walked into the St. Joseph's Regional Health Center emergency room in Hot Springs, bloody from one gunshot wound to her mouth and another to her stomach. She told police, in writing, that her attacker was Smith and that he also had shot Atkinson at her apartment at 128-A Terrace, according to court documents.

She had to walk to the hospital because — although one neighbor heard gunshots and another saw her walking — nobody called for or offered her help.

Police went to 128-A Terrace where they found Atkinson dead of gunshot wounds from a .38-caliber revolver, according to court documents.

Smith was arrested at 9:15 a.m. Aug. 16 at Hot Springs Municipal Court, where he was already scheduled to be arraigned that day on two previous charges of aggravated assault.

According to police, Neal and Smith had fought often. At one point, Smith faced two first-degree battery charges, forgery charges, disorderly conduct charges, terroristic threatening charge and two aggravated assault charges. Those charges have been dropped except for an aggravated assault charge for allegedly threatening Neal with a gun and shooting at Willie Hall's car last summer.

Smith is scheduled for trial June 12 on that charge.

In the murder trial, the prosecution has withdrawn a plea bargain offer, Bosson said. The state had offered Smith 40 years in prison in exchange for a guilty plea, but Smith turned it down.

At the time the offer was made, Bosson said the state didn't know if Neal, the star witness, would live. She had agreed to the plea bargain.

"Now the old girl has toughened up. She says 'I can testify. Let's go get him,'" Bosson said.

Medical examiner's job hunt 12 years overdue

It seems too good to be true, but it is certainly years overdue.

Fahmy Malak is job hunting. He was reported Tuesday in the state medical examiner has made at least two inquiries about possible job openings, one in Philadelphia, the other in San Antonio.

Maybe after we wrap up the latest Voices poll — the one about whether Gov. Bill Clinton should run for president in 1992 — I'll invite readers to write letters of reference in Malak's behalf.

Maybe we'll even hold a contest for the best letter. The winner could have my slightly used copy — read only once — of Thomas Noguchi's "Coroner's Handbook."

Hey, whatever it takes. Arkansas' loss will be our gain. Soon as we rid ourselves of this bungling incompetent. His departure would do more for the advancement of forensic pathology in Arkansas than any single thing I can think of.

His ignominious record would fill a good-sized book. The man doesn't appear to be able to get an autopsy, a written report or even simple courtroom testimony straight. The man has been the state

POLITICS 1991

Meredith Oakley



medical examiner for 12 years. That's 12 too many.

If Malak leaves, and it can't be too soon, we have Jim Clark to thank.

Clark, director of the state Crime Laboratory, told Malak earlier this month that he might want to find another job or risk being fired if disputes over his job performance continue interfering with the lab's work.

I had to laugh when I read Clark's statement that he wasn't acting on behalf of Clinton in this matter.

The thought that he was never entered my head. Having been in office for 10 of the past 12 years, Clinton has had ample opportunity to sack Malak, and he has always had the ability to do so.

It's absurd to think that after all these years of defending Malak, after all the controversy and all the disputed findings, Clinton would suddenly decide that Malak has to go.

Besides that, Clinton doesn't have a very good record of telling department heads what to do. They pretty much do as they please, and if he doesn't like it, he can go suck eggs.

Clark is to be commended for holding the sword of Damocles over Malak's head.

And if Malak takes more than a few weeks to write his letter of resignation, I hope Clark lets it fall.

★ ★ ★

Staff loss may hurt crime lab

By John Reinan
Gazette Staff

The state medical examiner's office may have to temporarily rely on outside pathologists to help handle the work load when the assistant medical examiner leaves May 31.

Jim Clark, director of the state Crime Laboratory, said Tuesday that he expected delays in performing autopsies and in returning the bodies to police agencies after Dr. Violette Hnilica leaves her job.

"I do expect a slowdown," Clark said.

He has not lined up a replacement for Hnilica, an associate medical examiner who is the ninth assistant to leave the state medical examiner's office during the 12-year tenure of Dr. Fahmy A. Malak as chief medical examiner.

Clark said he had identified three or four "attractive" candidates and hoped to fill Hnilica's job by mid-July, a timetable he acknowledged was optimistic.

In the meantime, he said, the medical examiner's office might have to rely on help from fill-in pathologists hired through temporary agencies.

Hnilica's departure for a teaching post at the medical school of the University of Tennessee at Memphis means that the state medical examiner's office, which is authorized by state law to have three pathologists performing autopsies, soon will have only one.

And that one is Malak, whom

See CRIME LAB/6A

Crime laboratory departments

The state Crime Laboratory is organized into a number of sections, each having different duties. The sections and the number of staff members are as follows:

- Administration
 - Director
 - Executive secretary
 - Management information systems manager
- Accountant
 - 7 clerks
- Evidence Receiving
 - Supervisor
 - Two evidence technicians
- Firearms and Tool Marks
 - Supervisor
 - Two mark analysts
- Questioned Documents
 - Supervisor
 - Document analyst
- Latent Fingerprints
 - Supervisor
 - Two fingerprint examiners
- Serology (analysis of blood and body fluids)
 - Supervisor
 - Four serologists

Trace Evidence (analysis of fibers, hair, soil, paint chips, etc.)

- Supervisor
 - Four criminalists
- Drug Analysis (identification of suspected drug samples)

- Supervisor
- Nine chemists

Toxicology (analysis of body tissues and fluids for poisons or drugs)

- Supervisor
- Three toxicologists

Photography (shoots and develops photos for use as court evidence)

- Supervisor
- Forensic photographer
- Medical Examiner
- Chief medical examiner
- Associate medical examiner
- Morgue
- Three autopsy technicians
- Others:
 - Four field investigators
 - Laboratory supervisor (over serology, toxicology, drug analysis and trace evidence)

Crime lab

Continued from Page 1A

Clark recently suggested should resign. Two other medical examiners' offices, in Philadelphia and San Antonio, told the *Gazette* this week that Malak has contacted them about possible job openings.

Malak has refused repeated requests for interviews by the *Gazette*. However, he told KTHV, Channel 11, Tuesday that he "has no plans to move anywhere."

"My family is here, my children are in school here," Malak said. He blamed "bigotry and hatred" for the storm of criticism that has mounted against him. His findings have been challenged numerous times; his rulings on causes of death have been overturned in court at least three times.

"If I were a native Arkansan, I would be a hero," said Malak, a native of Egypt. "We have a saying: 'Do your job and let the dogs bark.'"

The medical examiner's office performed 653 autopsies in 1989 and 755 autopsies in 1990. Medical authorities say that about 250 to 300 autopsies in a year is the maximum volume that one pathologist can reasonably handle.

Until some help for Malak is obtained, it appears he will be forced to perform more than double the recommended number of autopsies.

In addition to Malak and Hnilica, the medical examiner's office is authorized to have a third pathologist on its staff. Clark said, however, that he didn't have enough money in his budget to fill the third position.

The Crime Laboratory's authorized budget for the state budget year beginning July 1 is \$3.129 million, Clark said. But because state appropriations are adjusted to meet actual revenues, he said, the crime lab actually will wind up with about \$200,000 less than is budgeted.

Clark also said that the entire 64-person crime lab staff was stretched thin, not just the medical examiner's office.

"We desperately need 10 or 20 more employees," he said. "People tend to think of Dr. Malak as the crime lab, but the medical examiner's office is only a small part of what we do."

Clark said the crime lab handled 12,004 non-autopsy cases in 1990, adding that the caseload was up 28 percent in the first four years of 1991.

The cases handled by the crime lab range widely. They include examining fingerprints on suspected murder weapons, testing urine samples of state prisoners for illegal drugs and even examining hacksaw marks to find the culprit who sawed off the heads of parking meters in a small northern Arkansas town.

Malak checking job openings

By Joe Nabbefeld
Gazette Staff

State Medical Examiner Dr. Fahmy Malak has made inquiries to at least two medical examiner offices in other parts of the country about job openings, those offices confirmed Monday.

Malak inquired of the Philadelphia medical examiner's office about three weeks ago, said Dr. Hareesh Mirchandani, head of that office. He inquired to the San Antonio medical examiner's office more than a month ago, said Dr. Vincent DiMaio, chief medical examiner for Bexar County, Texas.

The inquiries came after Jim Clark, director of the State Crime Laboratory, suggested to Malak in early May that he find another job or risk being fired. Malak would have to go if disputes over his performance continued hampering operation of the Crime Laboratory, Clark told the *Arkansas Gazette* at that time. Clark said he wasn't acting on behalf of Gov. Bill Clinton when he had the conversation with Malak.

Malak, who is paid \$106,000 a year, said through his lawyer at the time that he didn't go out and look for work. Monday's disclosures show he at least checked around to see what was available.

Malak declined Monday, through his lawyer, to confirm or deny that he talked with the Philadelphia office. "He doesn't want to say anything," Larry Carpenter, his attorney, said.

Clark said Monday that he didn't know about Malak's inquiring anywhere else. He said he hadn't discussed the matter with Malak since their early May meeting.

Mirchandani said Malak spoke about three weeks ago with an assistant to Mirchandani, Dr. Bennett Preston. Before going to Philadelphia, Preston worked in Arkansas as Malak's assistant between July 1987 and July 1988.

"He did talk with my associate," Mirchandani said. "We have no openings. I could use one more pathologist, but [with Philadelphia's financial crisis] nobody's be-

"[Malak] inquired as to whether there were any openings in my office."

—Vincent DiMaio,
chief medical examiner for Bexar
County, Texas

ing hired."

Preston couldn't be reached for comment Monday.

Malak checked with DiMaio in San Antonio in mid-May, DiMaio said.

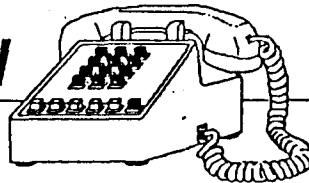
"He inquired as to whether there were any openings in my office," DiMaio said. "He expressed dissatisfaction with his current position. He felt he was being unjustly harassed. That's about it."

Medical examiners conduct autopsies to determine the cause of any suspicious death: homicide, suicide, accident or natural causes. Malak has worked as Arkansas's chief medical examiner for 12 years. Controversy has marked his tenure, growing to the extent that,

since 1988, two grand juries and one Pulaski County coroner's jury have reversed three rulings in which Malak said deaths weren't homicides.

Clark doesn't have legal authority to hire or fire the medical examiner, but could have that power some time after June 6, when a new law takes effect. That law will transfer supervision of the medical examiner from a dormant Medical Examiner Commission to a reshuffled State Crime Laboratory Board. That new board will hold its first meeting in mid-June.

The *Democrat Poll* Weekly recap



Sunday, May 12

Is the "tax and spend" image a fair one for Democrats?

The response: 292 votes

Yes 76.7 percent
No 23.3 percent

Monday, May 13

Should police records at state colleges be a matter of public record?

The response: 70 votes

Yes 75.7 percent
No 24.3 percent

Tuesday, May 14

Do you think voting against military action will hurt incumbent Democrats in 1992?

The response: 76 votes

Yes 84.2 percent
No 15.8 percent

Wednesday, May 15

How does Gov. Clinton's absence affect Arkansas: (A)Hurts; (B)Helps; (C)Doesn't matter?

The response: 124 votes

Hurts 37.9 percent
Helps 35.5 percent
Doesn't matter 26.6 percent

Thursday, May 16

Would you support riverboat gambling to boost the sagging Delta economy?

The response: 140 votes

Yes 40 percent
No 60 percent

Friday, May 17

Do you support a sales tax increase to finance the Diamond Center and other projects?

The response: 603 votes

Yes 36.3 percent
No 63.7 percent

Saturday, May 18

Should Dr. Fahmy Malak resign or be fired?

The response: 253

Yes 71.9
No 28.1

Prosecutor says review to rip Malak's murder testimony

BY DOUG THOMPSON
Memorial Benton Bureau

HOT SPRINGS — Prosecutor Attorney Paul Bosson of Hot Springs expects the results of an independent review of a murder case will contradict the testimony of state Medical Examiner Fahmy Malak.

"When I have my little dog and pony show, I'll have a packet that includes the autopsy report, a copy of Dr. Fahmy Malak's court testimony, the independent reports of four pathologists and an X-ray that will blow Dr. Malak's courtroom testimony to hell," Bosson said Thursday.

Bosson's office was forced to dismiss a second-degree murder charge against Ernest Lyons of Hot Springs during trial because Malak's findings disputed the prosecution's case. Bosson said he will find out today when the independent reviews will be complete. He said one pathologist in Arkansas, another in Missouri and two in Texas have agreed to look at the evidence.

Malak testified that the gun used to kill Gregory Stephens, 25, of Hot Springs on April 19, 1990, was pressed against the victim's head. Bosson had argued that the fatal shot was fired from the street while Stephens was on the porch of his home.

The X-ray, Bosson said, will show the course of the bullet after it hit Stephens in the lower rear of his skull. "Dr. Malak testified that the bullet was level, with a very slight upward tilt," Bosson said.

"Now I'm not a pathologist. I'm a lawyer, and I'm not very smart. But I would think that if it had traveled level it would have come out somewhere in the nose area.

"The bullet came out at the hairline, with a lot more than a 'slight upward tilt.' This is consistent with what we've always said, that the shot was fired from a lower level while the victim was up on his porch."

Larry Carpenter of North Little Rock, Malak's attorney, said Bosson's office has not asked his client for any evidence and that any review must be only of reports.

"There are lab slides and other evidence, but nobody's asked Dr. Malak for them," Carpenter said. "We read in the papers a week ago that Mr. Bosson was going to ask for a review, but no one's contacted Dr. Malak for anything."

Source says sword hangs over Malak

BY ROD LORENZEN
Special to the Democrat

6-22-91
5-77-91

The state's controversial medical examiner, Dr. Fahmy Malak, soon • Prosecutor expects review to be placed — un-contradict Malak less he re-testimony in mur-sigs first — a der case. 8A source close to the state Crime Laboratory Board told the Arkansas Democrat.

As of June 6, new legislation will give control of the medical examiner's office to the eight-member board.

The source said the board is likely to take action on Malak at its next meeting on June 16.

Malak, in his 13th year at the job, already has been asked to resign by Jim Clark, Malak's boss and executive director of the Crime Laboratory. Clark said recently that he would fire Malak if disputes over autopsy rulings continue to disrupt daily operations at the agency.

As medical examiner, Malak is responsible for deciding the cause and manner of suspicious deaths in Arkansas. His office handles 600 to 700 autopsies each year.

Malak's current assistant, Dr. Violette Hnilica, has resigned to accept a teaching position in Tennessee and will leave at the end of the month.

Other sources who have followed recent developments in the examiner's office say that Malak has lost credibility and that Clark, as well as the governor's office, are eager for him to leave.

"He's out of here," a legislative aide at the state Capitol declared Wednesday. "The word is that the governor's tired of him."

However, another source, citing the workload in the examiner's office, said: "I'm not sure it's wise to move (Malak) out right now. We need to try to have an interim period first."

Until recently, Clark and the state have defended Malak through several controversial autopsy decisions. In the latest incident, a murder case in Hot Springs was dismissed last March after Malak testified.

An angry prosecutor later claimed that Malak's testimony about a gunshot wound conflicted with his autopsy report.

In a subsequent inquiry into the incident, Clark defended Malak. Two weeks later, however, Clark told a newspaper reporter that he was tired of the controversy surrounding the medical examiner's office and had asked Malak to find another job in order to avoid being fired.

While Clark cleared Malak of any irregularities in the incident at Hot Springs, his report to Gov. Bill Clinton contained information that was misrepresented and also failed to include a second opinion of Malak's autopsy finding by a doctor trained in forensic medicine — the study of non-natural death.

Articles, not books

In his report to the governor, Clark listed the titles of three books dealing with gunshot wounds that he claimed to have read in order to help him assess Malak's autopsy finding. When questioned later, Clark said that he had read "three or four articles," not books.

Clark, a former sheriff who was appointed by Clinton, is not trained as a criminal investigator, yet he has maintained that he is qualified to evaluate Malak's work.

Clark also lacks the authority to fire Malak. Until recently, the Medical Examiner Commission had that authority but met only three times in the past twelve years.

Senate Bill 103 from the last legislative session abolishes the commission and gives its authority to the Crime Laboratory Board. Dr. Malcolm Moore, a Little Rock urologist, resigned recently as chairman of the board.

Purpose unclear

The exact purpose of the bill, however, apparently wasn't made clear, even to some legislators.

"I'm going to guess it was to get rid of Malak," said Sen. Stanley Russ of Conway, vice chairman of the Senate State Agencies and Governmental Affairs Committee. However, Sen. Wayne Dowd of Texarkana, committee chairman, offered a different explanation:

"Periodically, we get a committee together to look at those boards that aren't functioning. The boards have to come up before the committee and justify their existence."

Dowd, a Texarkana lawyer, said he didn't feel the new legislation was targeted at Malak.

"I tried a couple of criminal cases where he testified. I don't think he was untruthful but he definitely tailored the cases for the prosecution."

Accused of lying

Although Malak has never been formally charged or reprimanded by the state, he has been accused of lying while under oath, tampering with evidence and tailoring testimony for the prosecution.

Mike Gauldin, a spokesman for Gov. Clinton's office, said that until 1988, there was confusion about who had the authority to hire and fire the state medical examiner.

"Everybody here thought that (the medical examiner's office) was part of the Department of Public Safety."

A reporter for the Arkansas Democrat uncovered 10-year-old legislation showing that the Medical Examiner Commission was responsible for Malak.

1988 review

In 1988, the board met for the first time in more than 10 years to review Malak's performance in the face of mounting public criticism. The commission decided it did not have sufficient evidence to relieve Malak of his duties.

Page 1 of 2 pages

The commission chairman, Dr. Joycelyn Elders, director of the state Health Department, later told the press that the members didn't have the skill to judge Malak, a complaint shared by at least one former Crime Laboratory director.

According to Gauldin, the new legislation should clarify how the medical examiner is hired or fired.

"We thought we ought to clear everything out and recreate (the panel) to erase any ambiguity about its authority," Gauldin explained.

The new Crime Laboratory Board will have eight members representing the active judiciary, the legal profession, sheriffs, chiefs of police, prosecuting attorneys and physicians, and a member-at-large. One seat also will go to the dean of the College of Medicine at the University of Arkansas for Medical Sciences — now Dr. I. Dodd Wilson.

Major topic

Wilson said he was informed on recent developments in the examiner's office and expects that the examiner's job will be a major topic of discussion when the new board convenes June 16.

"I think it's a difficult job and I'm not sure it's optimally structured for the person who holds it," Wilson said.

Cary Gaines, executive director of the Arkansas Sheriffs Association, believes that the ongoing controversy around Malak has undermined confidence in the Crime Laboratory.

tory.

"Certainly, since he has been so controversial," Gaines said, "the board should be mandated to evaluate everything that's going on in the Crime Lab."

Gaines said that there had been a loss of confidence in the examiner's office among Arkansas sheriffs, who have voiced support for Malak in the past.

'Too cautious'

"Because of this adverse publicity, it's been difficult to get Mr. Malak to make a decision" on autopsy findings, Gaines said. "The sheriffs need straight, logical information. My perception from what the sheriffs tell me is that he's being too cautious."

Clark said recently that he is developing a contingency plan to handle autopsies in the event that Malak decides to vacate his position or is fired.

"I've talked with the Med Center (UAMS) to provide autopsy support," Clark noted. He also said he would advertise for additional help through the College of American Pathology until a new medical examiner is hired.

Dr. Aubry Hough, chief of pathology at the University of Arkansas for Medical Sciences, said he hadn't talked with Clark in regard to a contingency plan but that his department would not be able to help out with autopsies.

"We don't have anyone who is not committed to other duties," Hough explained.

Malak history

Malak, 58, has been state medical examiner since May of 1979. During that year, former Medical Examiner Dr. Stephen Marx was under investigation by Department of Public Safety Director Tommy Robinson for "burning internal organs after the completion of the autopsy and allowing field agents to rule on the manner of death in numerous cases."

After Marx resigned, Crime Laboratory Director Clay White promoted Malak, who was Marx's assistant, to the examiner's job. White had hired Malak the previous year as deputy medical examiner.

Malak had come to Little Rock from the examiner's office in Chicago, where he was one of many assistants. A native of Egypt, Malak is a graduate of Cairo University of Science and Medicine.

He came to the United States in 1970 for an internship and residency in anatomical and clinical pathology at South Bend, Ind., and later received training in forensic pathology during a fellowship with the Allegheny County, Pa., coroner at Pittsburgh.

On his third try, Malak passed his certification test in forensic medicine with the American Board of Pathology in 1985. Malak had earned a primary certificate in anatomic pathology from the ABP in 1982. While this certificate recognizes a certain level of competence, doctors who aren't fully board-certified — as Malak was not — generally can't get staff privileges at any major hospitals.

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ARKANSAS PRESS

SPRINGDALE

Morning News

Malak may follow old sports rule

Politics works a lot like sports. When the people in the know start denying that something is about to happen, it's about to happen. You know, the famous football coach adamantly denies he's looking at another job, right up to the moment he announces he's found this great new opportunity.

We suspect that rule can be applied to the political future of Dr. Fahmy Malak, the state's controversial medical examiner and second highest paid official (\$106,000 a year).

A news report out of Little Rock last week quoted Jim Clark, director of the state Crime Laboratory, as saying he has been urging Dr. Malak to find another job, thereby avoiding his dismissal. "I personally suggested to Dr. Malak that it might be time to look for other options."

Clark was referring to a growing list of complaints about Malak's performance as a medical examiner, both in the autopsy room and the courtroom. The latest complaint came from prosecutors in Hot Springs who contended Malak gave different testimony in a murder trial than was reflected in his report.

Now Malak's lawyer says he's not leaving. "I don't think he has any plans to look for another job. I think he's doing his job as medical examiner well."

Is this the old sports rule taking shape?

MALVERN

Daily Record

Malak should take his boss' advice

State Medical Examiner Dr. Fahmy Malak has been shown the exit door, but so far, there are no signs he is ready to leave.

State Crime Lab chief Jim Clark, Malak's boss, says he told the state's top medical examiner to hit the job-hunting trail. Malak's attorney, Larry Carpenter of North Little Rock, says his client isn't scanning the "Help Wanted" ads.

Malak has been the center of a controversial storm that has stalled over the State Crime Lab for some time. Malak's job performance has drawn criticism from the relatives of victims and attorneys.

Rulings that have been challenged and overturned, such as his 1987 ruling that two Saline County teen-agers were accidentally run over by a train while in a drug-induced sleep, have severely damaged his credibility. A Saline County grand jury later determined the teens had been murdered. The case remains unsolved.

Malak's testimony is often a critical peg in a prosecutor's case against a defendant. The state and those on trial deserve a reliable expert to provide forensic evidence in a consistent and credible manner.

In Malak's defense, the growing case-load of autopsies that must be handled by the medical examiner's office every year automatically creates an environment for error. Ignoring the problem of understaffing and overextended personnel won't make the problem go away even if Malak resigns.

Dr. Malak should take his boss' advice and dust off his resume.

SUNDAY, MAY 5, 1991

Cases turned on testimony of Malak

BY ROD LORENZEN
Special Writer

On March 30, 1991, Ernest Lemons, 21, unemployed and subject of a murder investigation, walked out of a Garland County courtroom ready to trade his prison outfit for street clothes.

Lemons was a free man. He was also lucky.

Minutes before - after Dr. Fahmy Malak, state medical examiner, testified - the case was dismissed even though witnesses were prepared to say that Lemons had shot and killed Gregory Stephens in August 1990 at a Hot Springs apartment building.

After the dismissal, Ruby Stephens, the victim's mother, found herself taking the courthouse elevator with Malak. She was angry and hurt. Within two months last summer, Stephens lost her grandmother, mother and son.

She confronted Malak and let him know what she thought about his testimony.

"I can't tell you what I said to him," Stephens said. "But, he just smiled. He's always smiling. On the stand, on the TV.

"I'm hoping I can be the one who wipes that smile off his face."

Stephens has a lot of questions that she wants answered about the death of her son. Prosecution witnesses were going to say that Gregory Stephens had been shot from a distance. While his autopsy report makes no specific men-

See MALAK, Page 20A

Malak

Continued from Page One
tion of it, Malak surprised the prosecution in court by saying that the shot was fired at point-blank range.

"Even if he is right, that means he kept information from the prosecution. And if that's right, then the prosecutor didn't do his job," she said.

Stephens believes that her son's former girlfriend also may have been involved in her son's death, but was not called to testify. She claims the prosecutor's office also failed to keep her informed of developments in the case.

"I'm going to get in touch with my attorney about how we are going to go about having (my son's) body exhumed," Stephens said. "We'll just go from there. I'll never have peace of mind until I find out what happened to him."

Not unusual

That testimony from Malak wasn't so unusual, however, considering the mystery and controversy that have shrouded him through his 13 years in office.

Although he has never been formally charged or reprimanded by the state, Malak has been accused of lying while under oath, tampering with evidence and manufacturing convictions for the prosecution. Malak also remains the target of a citizen action group that believes he is incompetent and wants him removed from office.

The case at Hot Springs is only the latest in a number of incidents where Malak's credibility has been challenged in recent years. As medical examiner, he is the sole authority on deciding the causes and manner of all suspicious deaths that occur in Arkansas.

Routinely supported

Although Malak has been routinely supported by his bosses - various directors at the state Crime Laboratory, including current director Jim Clark - his days in office now appear to be numbered.

Shortly after defending Malak's testimony in the case at Hot Springs, Clark told Malak that he needed to find another job or risk being fired.

"It was mainly a personal sup- Clark explained la- I was under no pressure from the governor to get rid of him."

Still, the news shocked some of Malak's critics, who have thought of him as untouchable.

"It (the state) has gone to the wall for Malak," said Springdale attorney John Lisle. "This looks like a complete about-face."

Lisle, a former state legislator, believes that one of his clients was falsely convicted of murder in 1983 and later accused Malak of tampering with evidence in order to help the prosecution. Former employees of the Crime Laboratory later affirmed Lisle's assertion.

Lisle and others believe that Malak's removal is only the first step toward restoring confidence in the Crime Laboratory. Curiously enough, Malak has been supported through most of his career by the Clinton administration, the medical examiner's board and two job reviews.

In the past three years, however, three of Malak's autopsy findings have been overturned. In each case, he had ruled that the deaths were not homicides.

"Somewhere down the line," Clark said recently, "enough is going to be enough."

Abuses in office

However, critics claim that the state's longstanding defense of Malak actually has allowed alleged abuses to occur in the examiner's office.

"What in hell does it (the state) consider enough?" asked Linda Ives of Benton, who heads a group called Victims of Malak's Infuriating Testimony (VOMIT). "How many people will have to go through what we did?"

Ives and her husband successfully challenged Malak's autopsy finding in the case of their teen-age son Larry Kevin Ives and his friend Don Henry, both of whom died August 23, 1987.

Malak first said the boys, who had been run over by a train in a remote part of Saline County, committed suicide. Later, in his autopsy report, he ruled their deaths accidental and claimed that the two had smoked marijuana and gone to sleep on the railroad tracks.

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Declared homicide

However, a grand jury in Benton later heard the testimony of a forensic pathologist from Atlanta who said the boys were murdered, then placed on the tracks. The grand jury overturned Malak's finding and ordered police to treat the case as a double homicide.

"Does it have to be somebody influential before it matters?" Ives asked. "We certainly think it was 'enough' a long time ago."

Since early 1988, Malak has refused to talk to reporters about his work, deferring instead to the Crime Laboratory director. Former employees claim that Malak is overly cautious and protective of his position and his unwillingness to share information with other sections of the lab - trace evidence, ballistics, histology, etc. - has caused him to err on autopsy findings.

While a subsequent investigation by Clark of Malak's testimony and autopsy finding cleared him of error in the Hot Springs case, apparently no one with any credentials in forensic medicine looked at his work.

In his report to Gov. Bill Clinton, Clark states that he read three books on gunshot wounds and interviewed several people connected to the case for a second opinion. Clark also consulted with Dr. Aubrey Hough Jr., head of the Pathology Department for the University of Arkansas for Medical Sciences.

After the inquiry, the official word from Clark was that Malak did nothing wrong and that his testimony agreed with his autopsy finding.

Malak's critics, however, claim that he has been routinely protected by Clark and that there are no professional checks and balances on the office of the medical examiner, where autopsy findings can have a profound affect on the workings of the judicial system as well as on family members and insurance companies.

Malak is one of only three pathologists in Arkansas with certification from the board of the American Medical Association to practice forensic pathology: the study of non-natural death.

Board-certified forensic pathologists receive an additional one to two years of study in assessing the cause and manner of non-natural death and have extensive training in looking at gunshot and stab wounds.

Hough, however, is a bone pathologist with only general anatomic training and has had no extensive training in forensic medicine. Dr. Linda Perrot, a member of the UAMS Pathology Department who is board-certified in forensic pathology, works for Hough but was not asked to give her opinion in Clark's inquiry.

"The reason I took it to Hough," Clark explained, "is that he's the chief and he has assisted in the lab when Malak's on vacation."

Hough refused to discuss the case, but did say that he had never assisted in the Crime Laboratory. Asked why he wouldn't want the opinion of a forensic pathologist in such a case, Hough said, "It would depend on the situation. Mr. Clark would have the say on who he would want to look at it."

Clark said that Hough had examined tissue slides taken from the victim's wound, looked at an X-ray and consulted with a radiologist.

There are a number of board-certified forensic pathologists in the region who could have checked Malak's work.

Clark also could have taken his inquiry to the American Academy of Forensic Sciences, the National Association of Medical Examiners or the Southwest Institute of Forensic Medicine in Dallas.

Second opinions

Dr. Jerry Francisco, chief medical examiner for Shelby County, Tenn., said that his office generally is available to render second opinions on controversial autopsy reports. "Personally, my consultations with the Arkansas state Crime Lab have been rather few," Francisco said recently from his office in Memphis.

Friday, Garland County Prosecuting Attorney Paul R. Bosson said he has sent the autopsy report and other materials to four forensic pathologists for independent

view. He expects to have reports back within two or three weeks.

Clark, a former sheriff with no credentials in forensic medicine, said he feels that he is qualified to evaluate autopsy reports. In his report to Gov. Clinton, Clark said, he read three books on gunshot wounds before supporting Malak's autopsy finding. Last week, however, Clark amended that to "three or four articles that I use for reference."

'The way to go'

Dr. Charles Petty, former chief medical examiner in Dallas and now professor of forensic medicine at the University of Texas Southwestern Medical School, said he thought a forensic pathologist should be asked for a second opinion in such a case.

"I think this would be the way to go," said Petty, after hearing the details of Clark's inquiry. "It would also seem that, if a second opinion was indicated, that Dr. Malak would ask for it."

Petty said that, in such cases, viewing slides necessarily was not the best way to obtain an accurate opinion about a gunshot wound.

"You'd do better to look at photographs," he explained. Petty said he also would want to have a description of the appearance of the wound and the victim's clothing. "Slides would be the last thing I'd want to look at," he said.

'Doesn't matter'

Linda Ives, founder of the VOMIT group, said she was not surprised by the results of Clark's inquiry or the manner in which it was conducted.

"It doesn't matter what Malak does," Ives said. "The state just says he's underpaid or he's stressed out or something."

There are a number of other cases in Arkansas where family members believe Malak has erred on autopsy findings. Since 1988, Ives has served as a consultant to many of them.

"They all call me and want to know what to do," Ives explained. "I don't have any answers for them except to tell them to keep complaining."

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An investigator for a police agency in Central Arkansas said he and his colleagues have been wary of some of Malak's autopsy findings as well as the work of the Crime Laboratory.

"An honest cop just wants an honest opinion on the cause and manner of death," said the investigator, who requested anonymity. "We have witnesses who sometimes lie to us."

Outside agency

In regard to Clark's review of Malak's testimony in the case at Hot Springs, the investigator said, "The Crime Lab should let an outside agency look at it. That way, they could say, 'Here's what we've got. What's your opinion?'"

In an article last year for *Arkansas Times* magazine, former Crime Laboratory employees detailed a number of abuses in the examiner's office. Trace evidence expert Steve Cox claimed that on more than twenty occasions during his six years with the Crime Laboratory, Malak had erred in rendering opinions on trace analysis, which involves assessing how guns were used in crimes.

Others said that weapons used in crimes were routinely mishandled for years, that they were misplaced or weren't tagged properly. The "chain of evidence" - security measures used to handle evidence until it is received for analysis by various sections of the lab - was broken in other ways.

Bags opened

Bags containing evidence gathered at a crime scene are supposed to be sealed until they are received by various sections of the lab for analysis. Breaking the seal might contaminate the evidence.

Former employees of the examiner's office have said that, if the bags are sent to the examiner's office with the body, the bags have been routinely opened, the contents dumped out and photographed. Then, the material is placed back in a bag and sealed again.

The Crime Laboratory in Arkansas has never been accredited by the board of the American Society of Crime Lab Directors. About half the states have such accreditation.

Accredited labs are subject to periodic review by ASCLD field inspectors who check to make sure that lab employees receive ongoing training and have the basic competence for the job.

In addition, the ASCLD requires periodic peer reviews of the medical examiner's work.

Not lost confidence

Clark said recently that, in spite of the controversy surrounding Malak, he had not lost confidence in him.

"From my individual point of view, I see nothing wrong with his work," Clark said. "Me being a layperson and looking at it from an administrative view, everything looks up to snuff. But this controversy is what the public perceives."

Malak, according to Clark, has not indicated that he would resign his position.

"If the allegations of conflicting testimony from prosecutors or defense attorneys continue," Clark said, "to where it disrupts the day-to-day operations of the lab, yes, something will have to be done."

Currently, however, Clark doesn't have the authority to fire Malak. The Medical Examiner Commission has that power, but has met only three times in the past 12 years. The commission will be abolished June 6 and authority over the medical examiner will be held by the Crime Laboratory board.

After its last meeting in 1988, several members of the Medical Examiners' Commission said no one on the commission had the knowledge or credentials to oversee Malak's work.

Malak's current assistant - Dr. Violette Hnilica, his ninth assistant during his 13 years as medical examiner - has resigned to accept a teaching position at the University of Tennessee at Memphis.

Clark said that, in the event Malak also decides to vacate his position or is fired, he is developing a contingency plan to handle autopsies. The examiner's office performs about 700 autopsies each year.

"I've talked with the Med Center to provide autopsy support," Clark said.



Fahmy Malak

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Serial 5591

Prosecutor hires experts to check Malak report

Bosson doubts lab director's review

By Joe Nabbefeld
Gazette Staff

Prosecuting Attorney Paul Bosson of the state Crime Laboratory, reviewed Malak's autopsy and reported to Gov. Bill Clinton that Malak proceeded properly. Pathologists to review independently a disputed autopsy report by Dr. Fahmy Handwritten notes purportedly from the Malak, state medical examiner, on a Hot Springs shooting victim, Bosson said Friday.

One of the pathologists already has told Bosson the report implies that Greer Stephens died Aug. 18 of a shot in the head from a distance, Bosson said. In a report, Malak testified in court that the shot was fired from a .22-caliber gun held in the victim's head, contradicting witnesses and the shot came from 40 feet away.

Angered by Malak's testimony, Deputy Prosecuting Attorney Bruce MacPhee asked Circuit Judge Walter G. Wright to dismiss charges against Ernest Lemons, who was being tried in the shooting.

After the incident, Jim Clark, director of the state Crime Laboratory, reviewed Malak's autopsy and reported to Gov. Bill Clinton that Malak proceeded properly. Handwritten notes purportedly from the autopsy showed that Malak had found gunpowder in the wound, Clark said.

In a prepared statement Friday, Bosson challenged Clark's qualifications to review such a matter.

"It is obvious he is not qualified to conduct an investigation of this nature," Bosson said. "I have reviewed his resume. He spent two years as a patrolman with the North Little Rock police, and some time on the governor's security detail with the state police. His resume does not show any training as a criminal investigator."

Clark responded Friday afternoon, saying, "I didn't realize that I had to be a criminal investigator to check into the allegation that one of my employees had done wrong."

Clark also said that although Malak arrived for court at 9 a.m. on the day of the trial and was there until 2 p.m., when he took the stand, the deputy prosecutor "never visited with Dr. Malak to talk to him about what he would testify to."

Bosson said he hired the other pathologists "to determine once and for all whether the new board [that oversees the Crime Lab] needs to attend to the Crime Lab and the medical examiner."

Clark said, "The allegation was Malak's testimony in his autopsy report. It was my job to investigate that. I didn't know you had to be a criminal investigator in order to read and form an opinion. My interpretation of what I read was that Malak did not alter his testimony from the report."

Switch Malak to a new job

To the Editor:

It's difficult to understand this strange love affair between Gov. Clinton and state Medical Examiner Fahmy Malak. I doubt if there is a medical examiner in the country who has had so many opinions challenged and reversed by the courts, plus numerous controversial rulings.

Despite all this, every time he comes out with an outrageous ruling, Gov. Bill runs to his rescue, claiming he is overworked and underpaid. Now that they have his salary up to \$105,000 per year, perhaps his judgment will improve.

There is a solution to this problem. It looks like we may lose Secretary of State Bill McCuen. He was last seen heading south for the border on his Harley-Davidson motorcycle. Rumors have it he may detour through Hollywood where he could be discovered.

Why don't we switch Malak to secretary of state? In that position, blunders don't seem to matter.

Dave Richards.

Hot Springs.

Forensics experts to check Malak's testimony

The Sentinel-Record

HOT SPRINGS — Garland County Prosecuting Attorney Paul R. Bosson said Friday he has packaged evidence from a recent murder trial in which the state medical examiner testified and sent it to four independent forensic pathologists.

Bosson said he is worried that Dr. Fahmy Malak's testimony was so inaccurate that future homicide cases could be jeopardized.

The challenge to Malak's testimony on autopsies follows his appearance March 28 in Garland County Circuit Court. He testified in the second-degree murder trial of Ernest Lemons, charged in the Aug. 18, 1990, shooting death of Greg Stephens, 25.

Several witnesses testified at the trial that they heard two "pops" but nobody saw a gun and nobody saw the shooting although at least five people were present.

Testimony of the witnesses indicated shots were fired some 50 feet from where the body was found.

Malak testified the gunshot was fired at close range. He said the muzzle of the small caliber weapon was placed "tightly" against the victim's skull when the fatal shot was fired, a direct contradiction of witnesses' testimony.

After a brief recess, prosecutors entered a motion to dismiss the charges against Lemons, saying Malak's testimony "made it impossible for the state to prove its case beyond reasonable doubt."

Bosson would not identify the forensic pathologists to whom the evidence was sent, but he anticipates having their conclusions back in two or

three weeks.

"When those results are returned to me, I intend to make them public," he said.

Official seeks 2nd opinion in shooting

Democrat Staff

HOT SPRINGS — Garland County Prosecuting Attorney Paul Bosson said this week he will seek a professional medical opinion on whether Gregory Stephens of Hot Springs died of a close-range gunshot wound, as Dr. Fahmy Malak, state medical examiner, contends.

Referring to the same evidence Malak examined, Bosson said, "I intend to submit this to someone. If Malak is correct, he's entitled to be exonerated. If he's not, he'll have to answer for that."

Ernest Lemons, 21, of Hot Springs was charged with second-degree murder in Stephens' death Aug. 18, 1990, but the charge was dismissed after Malak's testimony at Lemons' trial conflicted with witness statements for the prosecution.

Deputy Prosecuting Attorney Bruce MacPhee planned to base the charge on witness statements that Stephens was shot from a distance. He said he was startled when Malak testified Lemons' wound was caused by a tight contact gunshot.

Jim Clark, director of the state Crime Laboratory, later said Malak's testimony agreed with information in Malak's autopsy report about gunpowder flake found inside the wound.

Meanwhile, Stephens' parents want the case pursued.

"Even if (Malak) is right, that means he kept information from the prosecutor, and if that's right, then the prosecutor didn't do his job," Ruby Stephens, the victim's mother, said Thursday.

Malak assistant resigns to take teaching position

The Associated Press

An aide to the state medical examiner has resigned.

The departure of Dr. Violet Hnilica could leave Dr. Fahmy Malak handling the autopsy load by himself. The office conducts up to 700 autopsies a year.

Hnilica will leave May 31 to take a teaching post in the pathology department of the University of Tennessee at Memphis. Hnilica, 51, has worked for the state medical examiner's office since June 1990, said Jim Clark, director of the state Crime Laboratory.

Clark said last week that he met with Malak on April 10 and suggested the medical examiner find another job to avoid being fired. Clark said that Malak's work performance threatened the operation of the office. Malak's attorney, Larry Carpenter, has said Malak has no plans to resign.

Malak's findings have been

challenged more than a dozen times during his 12-year tenure.

Clark said Hnilica "did a real good job" and wanted to return to an academic position. She held teaching posts in at least two universities before coming to Arkansas.

Hnilica said her resignation was not directly related to the controversy surrounding Malak.

She would be the ninth Malak assistant to leave in 12 years.

Hnilica said her resignation was not directly related to the controversy surrounding Malak. She said the University of Tennessee will allow her to combine her interests in teaching and forensics. p "It's a better match for my inter-

ests," Hnilica said.

Malak could not be reached for comment.

In the most recent challenge of a case involving Malak, a second-degree murder charge was dismissed in Garland County Circuit Court after the medical examiner's testimony conflicted with testimony from prosecution witnesses.

Meanwhile, Dr. J. Malcolm Moore Jr. of Little Rock said he had resigned as chairman of the state Crime Laboratory Board, which oversees the laboratory.

Malak reports to the Medical Examiner Commission. A new law will dissolve that commission June 6 and shift authority over the medical examiner to a new board, which must meet every three months.

Gov. Bill Clinton's office is working on naming the eight members of the new board, said Susie Whitacre, a Clinton representative.

5-2-91

Malak's assistant says love of teaching led her to resign

By Joe Nabbefeld
Gazette Staff

Dr. Violette Hnilica said Wednesday that the current turmoil surrounding state Medical Examiner Dr. Fahmy A. Malak is not what led her to resign as Malak's only assistant.

She will leave May 31 to become a professor in the University of Tennessee at Memphis medical school's pathology department because "I like teaching best," said Hnilica, 51, in a phone interview. Much of her career as a physician has involved teaching, she said.

"My leaving is not based on any of this current problem at all," she

said. "In fact, my first interview [at the Memphis university] was Jan. 31. I did my first seminar Feb. 22, so I committed to taking it then and had to work out a contract after that."

She signed a contract April 24 and submitted her resignation April 25, effective May 31, she said.

The *Gazette* reported Hnilica's pending resignation Wednesday, but Hnilica had not been available to say why she is leaving the \$85,000-a-year position after less than a year on the job. Her pay would have increased to \$96,000 in June.

It's past time for Malak to go

Years late comes the welcome news that Dr. Fahmy Malak's 12-year stint as state medical examiner may be drawing to an end.



Max Brantley

Jim Clark, director of the state Crime Laboratory, has suggested to Malak that he look for other work.

Clark's statement suggests that, when a legally reconstituted board takes over supervision of the medical examiner's office in June, Malak could be forced to leave.

Clark's willingness to relate his conversation with Malak is significant. Clark is an appointee of Gov. Bill Clinton.

Clinton has been a staunch supporter of Malak through the years. He has often brought the might of his office to the task of defending Malak. Powerful state Sen. Max Howell of Jacksonville has also been a Malak ally.

Now, it would seem, they are ready to let him go.

It takes no genius to figure out why.

Malak's record is littered with disputed findings, misleading and untruthful court testimony, angry prosecutors, and angry crime victims. His name has become synonymous with incredibility, a liability for a man who can make or break a criminal case.

The *Gazette's* Joe Nabbefeld detailed Malak's record in comprehensive articles last month. The *Gazette's* Bob Wells covered some of the same ground in a series of articles in 1988.

Nabbefeld reported that Malak had seen his rulings overturned by special juries three times and contradicted in court by outside medical examiners at least 17 times. The record is, apparently, unprecedented among state medical examiners.

Wells reported that Malak had not told the truth in court testimony about his medical qualifications and had not been legally qualified for the job for the first six years he held it.

More controversial than Malak's qualifications are his findings, which are distinguished by a troublesome penchant to fit ambiguous evidence into a neat pattern.

An associate medical examiner autopsied a Little Rock youth who died after a parking lot confrontation in Little Rock in 1982. The associate examiner couldn't determine the cause of death.

Inspired by a friendly newspaper reporter and the local coroner, who was working privately for the dead youth's family, Malak turned up a new finding a year later. He testified in criminal trials and a civil trial that a bruise on the youth was a perfect match, down to a tiny nick, for the butt of a rifle owned by a man eventually convicted of clubbing the youth to death. Later, it was shown that Malak had manipulated the photographic evidence in a way that buttressed his theory.

Malak also testified he had performed that autopsy, when he had not. Looking back on the incident, the associate who actually performed the autopsy commented: "Sometimes in forensic pathology, you just don't know," she said. "Only God and the dead man know. And you can't play God."

Malak also made headlines for his testimony that two Saline County youths had smoked so much marijuana that an onrushing freight train couldn't wake them as they lay in a stupor on the tracks. Other examiners found the youths had been killed before being placed on the tracks.

We may never know why Malak has enjoyed such strong support.

Critics will note, accurately, that Malak has made an autopsy finding helpful to Clinton's mother, a former nurse anesthetist. Defense attorneys will contend that he has tailored testimony to suit prosecutors. Malak's outspoken support from the Arkansas Sheriffs Association lends support to the latter criticism.

But these explanations are too simple for a complex man, who, by all accounts, labors long hours in an office that gets miserly financial support.

The real Fahmy Malak may remain an enigma. But he may at least become another state's enigma.

Attorney: Malak not looking for job

LITTLE ROCK (AP) — Dr. Fahmy Malak's attorney says the medical examiner isn't job hunting, even though Malak's boss says that might be in order.

State Crime Laboratory chief Jim Clark says he told Malak this month to consider a job change in light of steady criticism Malak gets as medical examiner.

"I felt like because of stress on him and his family and his career it might be a good time for him to look elsewhere for a career," Clark said Saturday.

Malak couldn't be reached for comment, but his attorney, Larry Carpenter of North Little Rock, spoke for his client. "I don't think he has any plans to look for another job. I think he's doing his job as medical examiner well."

The medical examiner's post, which pays \$106,000 a year, is controversial in any state, Carpenter said.

Clark said Malak hasn't said whether he is job hunting, but Malak knows that "politics is politics and this is the real world."

One of Malak's leading opponents said Saturday that Malak should have been forced out long ago. "I think it's way past time," said Linda Ives of Bryant. Her son, Larry Kevin Ives, 17, and another teen-ager were run over by a train in August 1987. Malak ruled the deaths an accident. A grand jury later said the youths were murdered.

Gov. Bill Clinton, who appointed Clark, remained removed from the flap Saturday. He has deferred to the Crime Lab staff and commission on questions concerning Malak's job performance. "That's a decision that only the Crime Lab director can make," Clinton said through a spokesman Saturday.

Clark said he talked to Malak

about resigning April 10 or 11, following Clark's announcement supporting Malak's findings in a Hot Springs murder investigation. The findings, like several involving Malak in the last few years, were the subject of controversy.

Malak testified the victim was shot at close range. The prosecutor dismissed the charge because his witnesses said the shot was fired from a distance. The prosecutor said he was surprised by Malak's testimony.

Clark said disputes over Malak's finding have prompted Crime Lab employees to double check his work. "I can't waste any more time, so to speak," Clark said. "That's a poor choice of words, but I've got other things to do and need to preserve the integrity of the Crime Lab."

But Clark said he still respects Malak's abilities.

Malak isn't looking for work

State medical examiner disregards boss' suggestion

BY JANE FULLERTON
Democrat Staff Writer

Dr. Fahmy Malak, the state's controversial medical examiner, is not seeking a new job despite his boss's encouragement to do so, Malak's attorney said Saturday.

"I don't think he has any plans to look for another job," said Larry Carpenter, a North Little Rock attorney. "I think he's doing his job as medical examiner well."

Jim Clark, executive director of the state Crime Laboratory, confirmed Saturday that he told Malak earlier this month that a career change might be in order.

"I felt like because of stress on him and his family and his career it might be a good time for him to look elsewhere for a career," Clark said.

Clark said they have not discussed the matter further and Malak has not indicated whether he is job hunting.

But Clark added that Malak realized that "politics is politics and this is the real world."

"I wouldn't say he resigned himself to anything. But he said, 'We'll let the chips fall where they may.'"

Carpenter, who said he talks with Malak frequently, said he saw no reason for Malak to leave his current post. The medical examiner is the second-highest paid job in state government at \$106,000.

"It's always a controversial job anywhere you go," Carpenter said.

Malak, whose telephone number is unlisted, could not be reached for comment.

Gov. Bill Clinton, who appointed Clark to his position, has deferred to the Crime Laboratory staff and commission that oversees it on questions concerning Malak's job performance. He took that position Saturday in responding to Clark's urging Malak to leave.

"That's a decision that only the Crime Lab director can make," the governor said through his spokesman, Mike Gauldin.

The discussion between Clark and Malak took place April 10 or 11, following Clark's announcement supporting Malak's findings in a Hot Springs murder investigation, Clark said.

Double-checking

In that case, Malak testified the victim was shot at close range. The prosecutor dismissed the charge because his witnesses said the shot was fired from a distance.

Similar questions about Malak's findings and court testimony have plagued him throughout his tenure as medical examiner.

As a result, Crime Laboratory employees spend a significant amount of time double-checking Malak's work — time that could be spent on the thousands of other cases the office handles each year, Clark said.

Those interruptions of the lab's routine work are what led him to encourage Malak to leave, he said.

"I can't waste any more time, so to speak," Clark said. "That's a poor choice of words, but I've got other things to do and need to preserve the integrity of the Crime Lab."

But Clark added that he continues to support Malak's professional abilities, rating him a "9" as medical examiner on a 1-to-10 scale.

"He's human just like the rest of us, and he's going to make mistakes," Clark said. "But some of the mistakes have been credited to him because he's the name people recognize."

Controversy has surrounded several Malak cases, spawning public opposition and a petition drive to remove Malak from his post.

"It doesn't appear it's ever going to get any better," Clark said. "There's always going to be that vocal opposition."



Fahmy Malak Jim Clark

One of Malak's leading opponents said Saturday the medical examiner should have been forced to leave long ago.

"I think it's way past time," said Linda Ives of Bryant (Saline County).

Her son, Larry Kevin Ives, 17, and another teen-ager were run over by a train in August 1987. Malak ruled the deaths were accidental, but a 1988 grand jury said they were homicides. No one has been charged.

Ives blames Malak for anguish her family went through as they sought to prove her son's death was not accidental.

"How many families and how many lives have to be ruined before enough is enough?" she asked.

Who can fire him?

While Clark may urge Malak to leave, there is disagreement about whether he could force him to leave.

"I feel like if I decided to fire him or felt like I needed to do so, I have the authority," Clark said. "But it may end up in court."

A 1988 attorney general's opinion said the sole power to remove the medical examiner rests with the Medical Examiner Commission. But a new law that takes effect June 6 will abolish that commission, giving its authority to the Crime Lab Board.

Clark said if Malak leaves, he has no one in mind to replace him: "We're really going to be hard pressed to find anyone to work who will keep the kind of hours he does and do the kind of work he does."

METRO/STATE

Malak's boss urges him to find new job

Tenure marked by controversy

By Joe Nabbefeld
Gazette Staff

Dr. Fahmy Malak, the state medical examiner, has been urged to find another job to avoid getting fired, state Crime Laboratory director Jim Clark confirmed in an interview Friday.

"I personally suggested to Dr. Malak that it might be time to look for other options," said Clark. He said the conversation occurred April 10.

"I told him, 'There may be a time down the line when you may be asked to leave. It may be in your best interest to leave on a good note.'"



Malak

Malak, 58, couldn't be reached for comment Friday. He has held the job since 1979.

The medical examiner heads a 15-employee office within the crime lab that conducts autopsies in suspicious deaths to determine if they were caused by accident, homicide, suicide or natural causes. The office does 600 to 700 autopsies a year. The job pays \$106,000 per year, second highest for a state official.

Malak's tenure has been marked by a steady stream of controversy. The tumult includes claims by at least one peer that Malak has tailored some of his findings to help prosecutors and other politically powerful people and that he is protected by politicians as high as Gov. Bill Clinton.

Clinton has denied that, saying he would seek action against Malak if it became needed.

Two grand juries and a coroner's jury have overturned three rulings in the past three years in which Malak said deaths weren't homicides. No suspects have been charged in two of the homicides. Five medical examiners in other states told the *Gazette* they've never even had a ruling challenged before a grand jury.

"Somewhere down the line, enough is going to be enough," Clark said Friday.

Clark said he made his suggestion to Malak in a private meeting in Clark's office the day Clark held a press conference to defend Malak in one of the latest

See MALAK/6A

Malak

Continued from Page 1A

controversies. That case concerned a shooting in Hot Springs in which witnesses say the suspect shot the man from 40 feet away. Malak testified in trial that the shot was from close range, causing angry prosecutors to have the case dismissed and call for an investigation of Malak.

Clark always has defended Malak in public, but said Friday, "If it's going to come down to where you're going to have to do an investigation on every case he goes to trial on, then that would interrupt the day-to-day operations of the crime lab."

Clark said he wasn't speaking for Clinton, who appointed Clark, but just for himself. "I told [Malak], 'I just want you to be thinking about this,'" Clark said.

The meeting was short, Clark said. He primarily conveyed concern for Malak's health and family amid the stress of all the controversy, he said. Malak's "reaction was that he came to Arkansas to live and raise his children, and try to make the medical examiner's office the best he could," Clark said. "Then he kind of shrugged his shoulders" and left the office.

As Crime Lab director, Clark technically doesn't have constitutional authority to remove Malak, but Clark claims to have practical authority to do so, and would try to if he thought it was necessary.

A commission controlled by the governor that has met only three times in the past 12 years has the sole power to hire or fire Malak, according to a 1988 attorney general's opinion. That commission is called the Medical Examiner Commission. Another governor-controlled commission, the Crime Laboratory Board, controls the rest of the Crime Lab.

That will change June 6 when a law Clinton signed March 6 takes effect. The law will reorganize the Crime Lab Board to assume the Medical Examiner Commission's authority over Malak and the Medical Examiner Commission will cease to exist.

Dr. Joycelyn Elders, chairman of the Medical Examiner Commission by virtue of being director of the state Health Department, couldn't be reached to comment Friday about Clark's action. She has said she doesn't want to be involved with the commission.

Friday about Clark's action. She

Guilty by coincidence?

How could it possibly serve justice for Saline County authorities to pursue the case against two teen-age house burglary suspects, who have been charged with manslaughter – simply because a helicopter participating in a manhunt for them happened to crash killing two Garland County deputy sheriffs?

Like everyone else, we mourn the tragic deaths of Capt. Al Riley and Sgt. Bill Baruday Tuesday night, and grieve for their families. But blaming these youths for the fatal *accident* is a ludicrous non sequitur at best.

Merely making the charge seems to heap opprobrium upon the basic tenet of criminal justice – proving guilt. In our opinion, it's enough to make the blindfolded lady weep.

Prosecutor Dan Harmon says he decided to file two manslaughter charges each against 15-year-old Brady Ray Wilson of Traskwood and 16-year-old Jeremy Lee Sutton of Benton after a careful reading of a 1979 statute.

That law says in effect that if a suspect "negligently causes" the death of another person while committing or fleeing from a felony, he can be charged with manslaughter.

Another section of the law says, generally, that manslaughter can be charged if someone dies while "resisting such offense or flight." And there's a legal definition of causation wide enough to drive a tank through.

But does "negligent" fit the facts here? Though Wilson and Sutton were indeed fleeing from an alleged house burglary – and Sutton was also an escapee from the Pine Bluff Youth Services Center, they could not by any stretch of a reasonable imagination have *caused* the crash – or contributed to it other than having committed the burglary that set off the air search that subsequently brought in the helicopter.

These charges seem to stretch the 1979 statute beyond what its sponsors may have intended.

Yes, the helicopter was searching for them, but the youths may not in fact have been aware of its involvement in the search for them – or even of its crash, until afterwards.

It's not known whether mechanical failure or human error caused the accident, but it was an accident. And the FAA says it will take six months to determine what caused it.

But whatever the cause, Wilson and Sutton certainly aren't directly to blame. If they had been, you can be certain that they'd be facing a capital-murder charge instead of only one for manslaughter.

They shouldn't have to stand trial for something with which they had nothing to do.

Harmon seems to be carrying criminal justice beyond reasonable limits by filing charges that seem so unwarranted in view of what was said to have happened.

He should consider dismissing them. Does Harmon really want to send these youths to prison for the accidental deaths of the deputies, which were only coincidental to the manhunt involving them?

accidental deaths of the deputies, which were only

4-25-91

Friend testifies in murder trial

Witness says Harper told him he was going to kill his wife

By Nancy Pfister
Gazette Camden Bureau

RISON — A friend of John Harper Jr., who is charged with first-degree murder in the death of his wife, testified Wednesday in Cleveland County Circuit Court that Harper had told him he was going to kill his wife.

Leonard "Tip" Finley testified that he had asked Harper how his family was before Gayle Harper was reported missing.

"He said, 'Joe Chris [his son] was all right, but Gayle, I'm going to kill her,'" Finley testified.

Finley was one of five state witnesses to testify Wednesday, the third day of Harper's trial. The trial, which was scheduled to begin at 9 a.m., was postponed until 1 p.m. because the defendant was sick.

Harper, 43, on trial for the 1989 death of his paraplegic wife, Gayle, was at his El Dorado home, sick with diarrhea, explained defense attorney Bob Compton.

"We'll have him here if we have to do it by ambulance," Circuit Judge Harry Barnes told the jury before he recessed until 1 p.m.

Compton had offered to let the trial continue without Harper, but

Barnes said that the defendant had a basic constitutional right to face the witnesses at his trial.

Prosecuting Attorney Tom Wynne of Fordyce said Harper killed his wife, who was confined to a wheelchair, sometime after her disappearance on Jan. 7, 1989. He said Harper killed his wife because he wanted to protect his trust fund and get custody of the couple's child, Joe Christopher.

Gayle Harper's body was found April 28, 1989, in the Ouachita River, a 35-pound weight tied to her ankle. Dr. Fahmy Malak, state medical examiner, said she drowned.

In other testimony Wednesday, John Norman Warnock, a Camden lawyer who represented Gayle Harper during her attempt to get a divorce in 1989, testified that she was terrified of her husband.

Warnock said Gayle Harper wanted a part of her husband's trust fund. But Warnock said he later signed an agreement on her behalf that made no mention of the trust fund.

Most of the testimony Wednesday focused on the Harpers' lifestyle, their pending divorce and then apparent reconciliation. Both

Joy Pugh, Gayle Harper's sister, and Jackie Adams of Strong, a friend and relative of the victim by marriage, testified that Harper had given a set of rings to his wife before Christmas 1989 in an apparent attempt to rescue their stormy marriage.

During a 1987 divorce proceeding, Pugh said, "John decided he'd get custody of Chris and put her (Gayle) in a nursing home." Gayle Harper had obtained temporary custody of their son before the proceedings.

Adams said that after Gayle Harper was reported missing she visited Harper and his friend, Sonya Trammel, at Harper's lakehouse in Farmerville, La. She said she saw the same set of rings on Trammel, who later married Harper.

"I felt the best thing to do was keep my mouth shut because I might come up missing," Adams said, prompting laughter from courtroom spectators.

Pugh said that after she learned from Harper that Gayle had been missing for 10 days, "My mother and I were upset. We knew something had happened because she'd never leave Chris."

Murder trial witness denies victim got into her car

BY JOE FARMER
Democratic Pine Bluff Bureau

4-25-91

RISON - A woman accused of taking Gayle Harper from her El Dorado home the last day she was seen alive testified Wednesday that she did no such thing.

Harper, 32, was found April 28, 1989, in the Ouachita River near El Dorado, her body weighted with a 35-pound section of pipe tied to her ankle with a piece of rope. She was

last seen at her home January 7 and reported missing January 17.

Her husband, John Harper, 43, who owns properties in Arkansas and Louisiana, is charged with first-degree murder in her death.

Harper's trial entered its third day in Cleveland County Circuit Court on Wednesday. Initial reports to the El Dorado Police Department on the disappearance indicate

John Harper told officers he saw his wife getting into a dark brown car with a woman on January 7.

That woman - Jackie Ward, now living at Strong - testified Wednesday that she and her husband, Michael, were staying in a lake house owned by Harper near Farmerville, La., in Union Parish at the time and were friends with the couple.

Ward also testified she saw

Sonya Trammell, a friend of John Harper and now his wife, wearing a set of rings he'd given Gayle Harper during a reconciliation. Trammell told her John Harper said he'd never given them to Gayle Harper.

"What did you do?" asked Prosecuting Attorney Tom Wynne of El Dorado.

"I kept my mouth shut," Ward said. "I didn't want to

See TRIAL, Page 10B

Trial

• Continued from Arkansas Page

come up missing, too."

Other testimony during the day indicated the couple had a stormy nine-year relationship, with frequent arguments, fights, separations and reconciliations.

Gayle Harper's sister, Evelyn "Joy" Pugh, 38, of near Moro Bay, said her sister had been hot-tempered all her life. Until she was paralyzed in a 1986 automobile accident, Pugh said, Gayle Harper could hold her own in fights with her husband.

She said both Harpers used illegal drugs and it was "common knowledge" that her sister sold marijuana. Ward said she, her husband

and another couple were in El Dorado the night of January 6 and stayed with the Harpers.

The Harpers had been involved in divorce proceedings almost all of 1988, testimony showed, but were trying to get back together. Pugh and Ward testified Gayle Harper showed them the set of rings purchased for the reconciliation.

Ward said the two got into another argument the night of January 6 and John Harper left to go to an El Dorado nightspot. She said she had driven Gayle Harper on several errands that day, including several stops for her to collect money owed on drug sales.

Ward said she slept on the floor that night and saw Gayle Harper in bed about 11:30 a.m. January 7 before she and her husband headed back to the lake house.

"We were supposed to cook that night," Ward said. "I told her I'd see her there, I needed to get started."

She said Gayle Harper was wearing a pink sweatshirt and had the rings on her finger.

After John Harper gave his statement to the police, Ward said, he asked her and her husband to come to El Dorado and babysit their son, Chris, then 5. That was the first time Ward met Trammell, she said. Harper and Trammell went to the lake house, Ward said.

Shortly after that, John Harper came to the El Dorado house drunk and asked her what she'd done with Gayle, Ward testified.

"I didn't take her anywhere," Ward said. "We didn't report her missing. I didn't really know what was going on."

METRO/STATE

Defense lawyer says the state lacks evidence

Husband on trial for murder in Rison

By Nancy Pfister
Gazette Camden Bureau

RISON — John Harper Jr.'s defense attorney hammered away at state witnesses Tuesday in his first-degree murder trial, arguing that the prosecution lacked the physical evidence needed to link his client to the death of his paraplegic wife in 1989.

Bob Compton also pushed witnesses in Cleveland County Circuit Court to establish the time of Gayle Harper's death and what drugs were in her system when she died. He also implied that the victim, Gayle Harper, 32, may have been killed by drug dealers.

Harper, 43, of El Dorado is charged in the death of Gayle Harper, who disappeared Jan. 7, 1989. Her body, tied to a 35-pound weight, was pulled from the Ouachita River April 28, 1989, at Romeo's Shoals on property owned by Harper's family.

Lt. Charles Ellis, an El Dorado police officer, testified that he talked to John Harper several times after Joy Pugh reported her sister missing.

Ellis said Harper told him that he last saw his wife at 1 p.m. Jan. 7, that she ripped three pages out of a notebook and said she planned to straighten out some matters. He said his wife wheeled herself to a large beige car and left with a short, dark-haired woman.

Harper told Ellis that he thought his wife returned to get the purse, an old wheelchair, marijuana, all

her jewelry, four jumpsuits, medicine and \$400 in cash.

Ellis said Harper became a suspect early in the investigation after a relative of Mrs. Harper's told police that her older wheelchair didn't work.

"He become somewhat defensive after I told him about the wheelchair," Ellis said.

Among the items entered by Prosecuting Attorney Tom Wynne of Fordyce as evidence Tuesday were the pipe and rope tied to the body, a map of the northeast corner of Union County and a map of Gayle Harper's El Dorado home.

During cross-examination, Compton asked Ellis if there was one single piece of evidence that "matches in any way" to anything belonging to John Harper. Ellis said no.

Other state witnesses said it could not be determined where the body entered the lake. Fahmy Malak, state medical examiner, said Gayle Harper had been dead at least three months before her body was found and that she drowned.

Compton has raised the possibility that she could have died of a drug overdose or a lethal combination of drugs. Dr. William Dwight Hemphill, a former state toxicologist, testified that Gayle Harper's liver contained "an upper-level therapeutic" amount of Valium after her body was found.

The trial will continue at 9 a.m. today.

Malak says woman died of drowning

Husband on trial in paraplegic's death

Democrat State Desk

RISON — Drowning was the only possible cause of death of Gayle Harper, who had large amounts of muddy water in her lungs, Dr. Fahmy Malak, state medical examiner, testified Tuesday.

Harper's gown-clad body was found April 28, 1989, in the Ouachita River near El Dorado with a 35-pound section of pipe tied to her ankle. Harper, 32, a paraplegic because of a car accident, was reported missing from her El Dorado home Jan. 7, 1989.

Her husband, John Harper, 43, a landowner in Arkansas and Louisiana who stayed at their El Dorado home and at a lake house near Farmerville, La., has been charged with first-degree murder in her death.

A jury of nine men and three women was seated Monday in Cleveland County Circuit Court and testimony opened Tuesday morning. The trial resumes at 9 a.m. today.

The morning was spent on testimony from the state's expert witnesses, including Malak.

Defense attorney Robert C. Compton of El Dorado spent much of Tuesday afternoon questioning Lt. Charles Ellis of the El Dorado Police Department, who investigated the case.

Ellis said he interviewed John Harper several times after Harper's wife was reported missing.

Ellis said Harper told officers he had last seen his wife Jan. 7, 1989, getting into a large car with a heavyset woman.

Sonya Trammell, then a friend of John Harper and now his wife, was present during several interviews in El Dorado and Louisiana, Ellis said.

"Do you have any evidence of where Gayle Harper died?" Compton asked Ellis in cross-examination.

"No, sir," Ellis replied.

Ellis also testified that investigators don't know when she died, no one saw her killed and no one can determine where or when her body was put into the river.

John Harper reported early in the investigation that his wife had been involved in drug sales and might have been the victim of a professional killing by a hit man.

Testimony from experts at the state Crime Laboratory showed Mrs. Harper had the prescription drug Valium in her system when she was found, but the amounts were within the high range of a prescription for the drug.

Circuit Judge Harry Barnes of El Dorado is hearing the case, which is being presented by Prosecuting Attorney Tom Wynne of the 13th Judicial District. A gag rule is in place.

ARKANSAS PRESS

EL DORADO

News Times

Malak's lab coat made of Teflon

Our Teflon state medical examiner has done it again. And, the more controversy seems to slide off of him, the more we question whether the state is being served best by the man who has the job.

An investigation by the executive director of the state Crime Laboratory has ruled that testimony by Medical Examiner Dr. Fahmy Malak in a recent murder trial did not conflict with the results of an autopsy performed for the case.

The prosecutor in the case, which involved a murder charge against a Hot Springs man, claims Malak's trial testimony conflicted with the results of autopsy of the murder victim. It resulted in the case being dismissed.

The crime lab executive director said an investigation concluded Malak's trial testimony did not differ from the autopsy report.

We do not question the technical results of the investigation. We do question why such controversies involving Malak arise again and again.

Week in Review

Around Arkansas

THE STATE MEDICAL EXAMINER's testimony in a recent murder trial did not conflict with the results of an autopsy performed for the case, an investigation has concluded.

The executive director of the state Crime Laboratory, Jim Clark, conducted the investigation into Dr. Fahmy Malak's disputed testimony and delivered the results to the governor Wednesday morning.

"After seven days of interviews, reading, intense chemical and microscopic examination of evidence, my conclusion is that Malak's trial testimony does not differ from the autopsy report," Clark said to reporters.

Later, Gov. Bill Clinton said that based on his reading of the report, "it cleared up the irregularities," but left any further action to the state Medical Examiner Board.

Prosecuting Attorney Paul Bossom of Hot Springs, briefed by a reporter on the results of the investigation, blasted the report and said that in future cases he would treat experts from the Crime Laboratory as "hostile witnesses."

Bossom's office was forced to dismiss a charge of second-degree murder against Ernest Lemons, 21, of Hot Springs in the Aug. 19, 1990, death of 25-year-old Gregory Stephens, also of Hot Springs, after Malak testified.

8C Sunday, April 14, 1991 Arkansas Gazette

ARKANSAS PRESS

STUTT GART

Daily Leader

Time to put Malak under scrutiny

It's time for the state and Gov. Bill Clinton to take a hard look at the infamous Dr. Fahmy Malak, the state medical examiner whose past has been clouded by controversy.

Dr. Malak's most famous case to date involved two teen-agers whose mutilated bodies were discovered near some railroad tracks.

Dr. Malak ruled the two boys died after falling asleep on the railroad tracks in a marijuana induced sleep.

However, a grand jury ruled the boys' deaths a homicide after hearing another medical examiner from another state testify that one of the boys had been stabbed and probably died before being struck by the train.

The case of the two teen-age boys is just one of a number of controversial cases surrounding Dr. Malak.

Now comes the case of a Hot Springs man found fatally shot Aug. 18. Another man was placed on trial, accused of killing the man.

However, Dr. Malak testified that the man died from a close-contact gunshot wound, conflicting with eyewitness testimony that he was shot from a distance of as much as 50 feet away.

The case illustrates once again the sorry shape of the state medical examiner's office.

Why is Dr. Malak still working for the taxpayers of Arkansas? It's time to retire Dr. Malak from state government and let him make a living in private practice.

Report to governor says Malak's findings correct though murder case lost

BY NOEL OMAN
Democrat Capitol Bureau

The state medical examiner's testimony in a recent murder trial did not conflict with the results of an autopsy performed for the case, an investigation has concluded.

The executive director of the state Crime Laboratory, Jim Clark, conducted the investigation into Dr. Fahmy Malak's disputed testimony and delivered the results to the governor Wednesday morning.

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Prosecuting Attorney Paul Bossom of Hot Springs, briefed by a reporter on the results of the investigation, blasted the report and said that in future cases he would treat experts from the Crime Laboratory as "hostile witnesses."

"I expect the state Crime Lab to examine bodies, tie together evidence and draw conclusions, based on their training," he said Wednesday. "Prosecutors are not forensic pathologists."

Clark investigated the inconsistency between Malak's testimony in the March 30 trial and the prosecution's case at Bossom's request.

Bossom's office was forced to dismiss a charge of second-degree murder against Ernest Lemons, 21, of Hot Springs in the Aug. 19, 1990, death of 25-

See MALAK, Page 10B

Malak

• Continued from Arkansas Page

year-old Gregory Stephens, also of Hot Springs, after Malak testified.

Malak had testified that Stephens had died of a shot from a gun placed tightly to his head. The deputy prosecuting attorney who handled the case, Bruce MacPhee, had witnesses who were to testify that Stephens was shot from a distance.

Clark said in the report that "microscopic and chemical analysis of the debris found imbedded in tissue inside the wound entrance shows the presence of gunpowder flake which confirms Dr. Malak's trial testimony, that he did examine the inside of the wound by microscope and in his opinion, that the wound was caused by a tight contact gunshot."

The report dismissed Bossom and MacPhee's contention that it was Malak's job to make them aware of that evidence.

"It is my opinion that the information was provided and it is the duty of the prosecution and the defense to formulate and ask questions concerning the examination of findings," he wrote.

Clark based that conclusion on an interview in which he asked what was the normal practice with Prosecuting Attorney David Clinger of Bentonville, who is a member of the state Medical Examiners Board.

Bossom, in the interview, contended that the "magic words" - close contact wound - were never mentioned by Malak or in his report.

"It's ridiculous for a lawyer to assume something a pathologist would assume," Bossom said.

Clark also said that the first face-to-face meeting MacPhee had with Malak was when Malak took the witness stand, but Bossom countered that they had spoken to each other on the telephone.

Malak autopsy and testimony said to agree

By Elizabeth Lowry
Gazette Hot Springs Bureau

State Medical Examiner Fahmy Malak did not give testimony that conflicted with his autopsy findings on how a Hot Springs man died, the State Crime Laboratory director has concluded.

Jim Clark, lab director, investigated after Malak testified at a March 28 trial the man died of a close-range gunshot wound, which conflicted with eyewitness testimony in the case. The prosecution dropped the charges and lambasted Malak for what it saw as an inconsistency.

Clark presented his report to Gov. Clinton on Wednesday in Little Rock.

"I concluded the trial testimony Dr. Malak gave on the 28th [of March] did not differ from his autopsy done Aug. 20, 1990," Clark said. "I feel like the information was presented in the report. Everything he testified in court can be backed up by the autopsy report."

Clinton said Wednesday that he had read the report and Clark's letter.

"I want the crime lab board to review it, too, but if that's what they [find] then apparently there's no irregularity," Clinton said.

After Malak testified, a second-degree murder charge against Ernest Lemons, 21, of Hot Springs in the Aug. 18 shooting of Gregory Stephens, 25, was dropped by Prosecutor Paul Bosson.

Bosson charged that the range of the gunshot was not included in the autopsy report. However, Clark said the autopsy, by reporting that traces of lead, probably gunpowder, were found in Stephens' hair, did indicate range.

Other medical examiner's records, that the prosecution did not see, also indicate there was gunpowder inside Stephens' wound, Clark said.

Governor to get word on Malak

Lawyer complains dispute hurts client

BY DOUG THOMPSON
Democrat Benton Bureau

HOT SPRINGS — Jim Clark, State Crime Laboratory director, expects to file a report this morning with Gov. Bill Clinton on recent controversial testimony by the state medical examiner, Dr. Fahmy Malak.

The controversy, said defense attorney J. Sky Tapp of Hot Springs, unjustly depicts Ernest Lemons, 21, of Hot Springs as the murderer who got away from a proven case because of Malak's testimony. He said the prosecution's case wasn't that good, and people now view Lemons as being freed by mistake. Lemons, however, remains in the Garland County Jail on a parole revocation, which is being appealed.

Clark investigated the inconsistency between Malak's testimony and the prosecution's case at the request of the Garland County prosecuting attorney. Malak's testimony in the March 28 second-degree murder trial of Lemons contradicted the state's case, based on witnesses' accounts.

The case against Lemons was dismissed after Malak testified the gun used in the slaying was pressed tightly against Greg Stephens' scalp. The shooting occurred Aug. 18, 1990, in Hot Springs.

The prosecution's case was based on two witnesses who said they heard shots while Lemons was in the street and Stephens, 25, was on the doorstep of his house.

"If Dr. Malak is right, the witnesses are lying," said Paul Bosson, Garland County prosecuting attorney. "Now, granted, the witnesses were in
See MALAK, Page 7B

Malak

• Continued from Arkansas Page
a car wandering around at 4 a.m. and they were not on their way to a sunrise service. But they were the only evidence we had."

Tapp said in a recent interview that "there were a lot of holes in the case against Ernest Lemons. That sounds like a defense attorney's opinion, but the truth is seven people there that night — my client, four girls in a car, Stephens and a girl in Stephen's house.

"No one ever saw my client with a gun in his hand. One prosecution witness testified Stephens was standing on his porch alive when they (the four witnesses in the car) left.

In a related issue, Tapp said he was not Lemons' attorney or in negotiations to become Lemons' attorney when he served as special municipal judge at a hearing that reduced Lemons' charge and bail.

Hot Springs man's death at issue

Malak, eyewitness testimony conflicting on range of gunshot

By Elizabeth Lowry
Gazette Hot Springs Bureau

A University of Arkansas for Medical Sciences pathologist will examine tissues from a Hot Springs homicide victim to determine whether the man died of a gunshot fired at close range or from a distance, the director of the state Crime Laboratory said Monday.

Jim Clark has been investigating the Crime Lab's handling of second-degree murder case in Garland County for the last week. He said he should complete a report on the case for Gov. Bill Clinton today.

Gregory Stephens, 25, of Hot Springs, was fatally shot Aug. 18. The state dropped second-degree murder charges against Ernest Lemons, 21, after his trial began

March 28 in Garland County Circuit Court.

Dr. Fahmy Malak, the state medical examiner, testified that Stephens had died of a close-contact gunshot wound, conflicting with eyewitness testimony that he was shot from a distance of as much as 50 feet.

Prosecutors have said Malak did not tell them before the trial that Stephens had died of a close-range gunshot wound. If he had, Prosecuting Attorney Paul Bosson of Hot Springs said last week, he probably would not have taken the case to court but, instead, re-investigated it.

Clark said Friday that it appeared Malak was not at fault because his autopsy did not state the range of the gunshot that killed

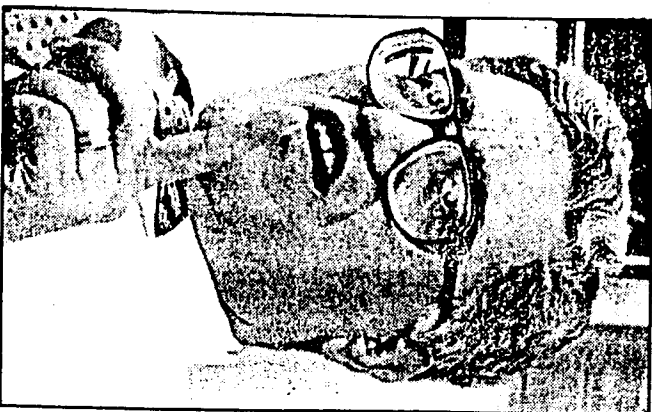
Stephens, and, thus, did not conflict with his testimony.

Clark said prosecutors should have had a pre-trial conference with Malak.

Bosson replied that, in the future, he would demand copies of the medical examiner's entire file in each case and have pre-trial conferences.

Bosson added that pre-trial conferences were time-consuming and could be avoided if Malak would include his conclusions about a death in his autopsies.

Clark said drawings Malak did in the Stephens case indicated the presence of residue in the bullet wound that Malak testified in court was from gunpowder from a close-range gunshot.



File Photo

Dr. Fahmy Malak, State medical examiner, testified that the victim died from a close-contact gunshot wound.



METRO/STATE

Malak testimony in case investigated

State could have asked for file, official says

By Elizabeth Lowry
Gazette Hot Springs Bureau

HOT SPRINGS — Garland County prosecutors should have asked Fahmy Malak, the state medical examiner, whether a Hot Springs man died from a close-range gunshot wound, the State Crime Laboratory director Jim Clark said Friday.

But Prosecuting Attorney Paul Bosson of Hot Springs said he and his deputies shouldn't have to ask Malak such questions.

"You would think [the range of the gunshot] would be a relevant item that ... would be provided to you," Bosson said Friday.

Clark, who is investigating the case, said information on the gunshot wound is in Dr. Fahmy Malak's file, but that prosecutors never asked for it. The director is preparing a report for Gov. Bill Clinton's office and should have it ready by Tuesday.

Gregory Stephens, 25, of Hot Springs, was fatally shot Aug. 18. The state dropped second-degree murder charges March 28 against Ernest Lemons, 21, of Hot Springs during his trial. Malak's testimony at the trial that Stephens was shot

"I don't see anything in the transcript of Dr. Malak's testimony that differs from his autopsy."

—Jim Clark,
crime lab director

from close range conflicted with eyewitness accounts that he was shot from a distance, the prosecution has said.

It appears the first time Malak was questioned about the distance of the gunshot was by defense attorney Sky Tapp when Malak was on the stand, Clark said.

"So far, I don't see anything in the transcript of Dr. Malak's testimony that differs from his autopsy," Clark said.

The autopsy does not say whether Stephens was shot from a distance or at close range. The results of trace evidence tests indicate lead was found in the victim's hair, probably from gunpowder, Clark said. According to Malak's testimony, the residue was from



File Photo

Jim Clark: He said information on the gunshot wound is in Dr. Fahmy Malak's file, but that prosecutors never asked for it.

gunpowder.

Deputy Prosecutor Bruce MacPhee has said he was shocked by Malak's testimony because he was not aware the gun had been placed tightly against Stephens' head. MacPhee said he told Malak what questions he would ask prior to the trial and that he expected witnesses to say Stephens was shot from a distance.

"He didn't say anything to dispel what I was saying," MacPhee said earlier this week.

However, if the prosecutors and Malak had had a pretrial conference, which is standard procedure, this case might not have gone to trial yet, Clark said.

The nagging Malak saga

Certainly, forensic pathology is a complicated and persnickety discipline — in part, a science of approximation. Few, therefore, are qualified to challenge a medical examiner's procedures or findings.

But one need not be skilled at playing the tuba to know when it's being played wrong. Even the layman can tell *something* is wrong with the way the state medical examiner, Fahmy Malak, does his job.

For years, Malak's office has been shrouded in controversy over his handling of autopsies. Repeatedly, his findings have been contradicted or questioned by other forensic experts, coroners and law enforcement officials. Twice, the challenges have resulted in the convening of grand juries that concluded other evidence in the cases rendered Malak's rulings implausible if not outrageous.

Somehow, Malak has survived the notoriety and it is a wonder. It's his style to go silent; it's his luck that the heat just seems to fade away.

The public is rarely so forgiving (or forgetful).

Possibly, the medical examiner has a guardian angel or a friend in places somewhat lower. Either way, it's time now for the defenders to step aside and allow a serious investigation of Malak's office; the camel's back has been broken.

The crushing load came during a murder trial a few days ago when Malak testified and contradicted his own original report. The prosecution claims the confusion foiled its case and has dropped the charges against a man accused of second-degree murder.

It may be careless record-keeping or a bad memory that account for the repeated conflicts emanating from Malak's office. Or some other factor, perhaps legitimate.

The fact is that the public has no way of knowing, given the confidential nature of Malak's job. But in light of the widespread suspicions, the people of Arkansas have a right to demand an accounting.

Letters

Clinton to blame for Malak

To the Editor:

It certainly is nice to see the *Gazette* continue to investigate our medical examiner, Dr. Fahmy Malak. I'm sure if you keep investigating you will keep uncovering "works" of the "overworked and underpaid" medical examiner, just as you have in the past.

But didn't he get a \$14,000 raise and a new assistant, thanks to Gov. Clinton? Therefore, incidents such as the one in Hot Springs, where he was a little confused about his "sets" of notes, basically blowing the case for the prosecution, should not continue to happen, should they? I thought he normally testified for the prosecution. What is Gov. Clinton's excuse now?

If Clinton has the authority to pass supervision of the medical examiner's office to the Crime Laboratory Board, why wouldn't he have the same authority to fire Malak?

As stated by Max Brantley, "It's not what you know, it's who you know in state government."

The situation with Dr. Malak is Arkansas politics at its finest. The article in the *Gazette* of March 24 explains a lot, "10-year-old case still raises questions in death." Clinton can't afford to get rid of Malak, can he?

It's a crying shame the people of Arkansas can't get outraged enough to do something about Dr. Malak. It is a shame this man can get away with what he has and has affected so many people, but not one thing is done to him. Only one man is to blame, and that is Bill Clinton.

Keep up the good work, *Arkansas Gazette* and staff. Thanks to Joe Nabbefeld for a job well done. There is more. Just keep digging!

Buster Schmidt.

Little Rock.

Murder inquiry 'screwed-up deal'

Victim's parents say Malak flap just tip of iceberg

BY DOUG THOMPSON
Democrat-Benton Bureau

HOT SPRINGS - There's more wrong with the investigation of their son's shooting death than confusion over the state medical examiner's testimony, the parents of Greg Stephens say.

Stephens, 25, of Hot Springs, is killed Aug. 18, 1990. The murder trial of Ernest Lemons, 21, of Hot Springs stopped after Dr. Fahmy Malak, state medical examiner, surprised authorities by testifying that the gunshot came at close range. This contradicted the case as presented by the prosecuting attorney's office.

"The prosecuting attorney blew that case before it ever came to trial," Ruby Stephens, the victim's mother, said Wednesday. She said she

wanted a grand jury to investigate.

Paul Bosson, Garland County prosecuting attorney, and Jim Clark, director of the state Crime Laboratory, met Wednesday afternoon to discuss how the case came all the way to trial, months after the original autopsy, without Malak fully informing Bosson of his findings.

Bruce MacPhee, a deputy of Bosson's who was presenting the case, will meet with Clark today.

"It's been a screwed-up deal from beginning to end," John A. Stephens, the victim's father and Ruby Stephens' ex-husband, said Wednesday. "The shooting was in August and they didn't talk to his neighbor lady, the best witness, until February.

"The whole shooting was over his old girlfriend. She was there, but they didn't call her as a witness. They called the people who worked with her, but not her. I'd like to know if it's because her brother used to be a Hot Springs policeman and is a state trooper now."

While serving as special municipal judge on Sept. 13, 1990, Hot Springs lawyer J. Sky Tapp reduced Lemons' charge from first-to-second-degree murder and lowered his bond from \$100,000 to \$50,000, court records show. He later became Lemons' attorney.

The victim's parents said they also were suspicious about that.

Bosson was in Little Rock on Wednesday for the meeting

See MALAK, Page 10B

Malak

• Continued from Arkansas Page with Clark and could not be reached for comment. A message was left for Tapp at his Hot Springs office, but it was not returned.

Greg Stephens and Sheila Annette Briggs of Hot Springs had an argument at a Hot Springs nightclub the night of the shooting, witnesses told police. Later that night, Briggs allegedly went to Greg Stephens' home while he was there and broke out several windows with a hammer.

Police said Greg Stephens chased Briggs to a waiting car driven by Lemons. He was believed to have turned and run back toward his house, but was shot in the back of the head before he could enter.

Malak's original autopsy report did not mention the distance from which the shot was fired. His testimony at the trial was that the shot was fired with the muzzle of the small-caliber gun placed "tightly" against the victim's head.

"We never saw Paul Bosson from the time we first met with him after the shooting until now," John Stephens said. "He told us at that meeting he'd

keep us informed about what was going on. We never heard from him again. I'll bet I called his office 15 times and never had a call returned.

"I showed up at court on the 26th and asked if the trial was still scheduled. The people there told me it had been changed to the 28th. I wouldn't have known if I hadn't found out myself.

"Then, the next thing I know, I'm subpoenaed as a witness. I didn't see anything. All I did was identify my son at the hospital, but I'm subpoenaed. All that did was keep me out of the courtroom."

Arkansas Democrat
THURSDAY, APRIL 4, 1991

Malak gives conflicting testimony

Medical examiner under investigation after murder charge dropped

BY JAMIE WISE
Democrat State Desk

Conflicting testimony by the state medical examiner during a March 28 murder trial led to the charge being dropped against a Hot Springs man — and to an investigation of Dr. Fahmy Malak.

"At this point in time, I don't know what happened," Jim Clark, director of the state Crime Laboratory and Malak's supervisor, said Tuesday morning. "I'm in the investigation mode right now and I'm trying to contact those involved to find out exactly what's going on."

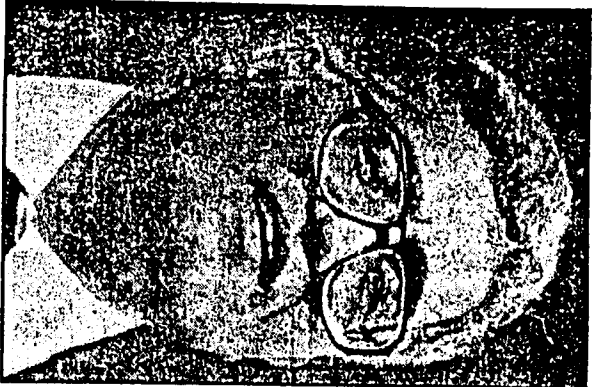
Prosecutors dropped a first-degree murder charge in Garland County Circuit Court against Ernest Dewayne Lemons, 20, of Hot Springs.

Lemons — whose arrest record dates to 1988 and includes theft, disorderly conduct and battery charges — was accused of shooting Greg Stephens, 25, in the head at least once with a small-caliber revolver Aug. 16, 1990.

Witnesses told police that Stephens and an ex-girlfriend, Sheila Annette Briggs, had an altercation at a Hot Springs nightclub a few hours before the shooting.

Stephens then went home, and a short time later Briggs reportedly arrived at his residence and broke out several windows with a hammer.

Stephens chased Briggs to a waiting car allegedly driven by Lemons. As Stephens turned and ran back toward his house, he was shot in the head as he tried to enter.



Dr. Fahmy Malak

The prosecutors, Bruce MacPhee and Paul Bosson, expected Malak to testify that Stephens died after being shot in the head from a distance, which would have supported his autopsy findings and statements by witnesses.

Instead, Malak testified that Stephens was shot and killed at point-blank range.

"It came out of the blue," MacPhee said. "I don't know what he did. You'd have to ask Dr. Malak that. I don't know if he read the wrong file or what."

Reached at his office Tuesday morning, Malak, through his secretary, refused to speak to a reporter.

"He said he has no comment," the secretary said. "He said you can talk to his supervisor if you'd like to."

The Stephens autopsy report did not specifically say the gun was shot from a distance nor at close range, Clark said. It said trace levels of lead were discovered in his hair.

"Dr. Malak testified he took a hair sample from the victim and submitted it to our trace evidence department," Clark said. "They found trace levels of lead in his hair, which is a major element of gunshot residue."

"If (Malak's testimony) came out of the blue. I don't know what he did."

An angry Bosson said he plans to send a copy of the autopsy and the court transcript to Gov. Bill Clinton's office, in hopes that Clinton will look into the case.

He also said that in future cases, he will ask Malak for copies of his handwritten notes as well as copies of the autopsy report.

According to reports, when MacPhee asked Malak in court if he had confused the Stephens case with another, Malak said he had not. MacPhee then showed Malak a copy of the autopsy report and asked him to show where he had stated that the gun was fired at close range.

Malak said it wasn't in the autopsy report and that it must have been in his handwritten notes he had reviewed at his Little Rock office the morning of his court appearance.

"That means he's keeping two sets of books," Bosson was

reported as saying, adding that Malak had withheld information from the prosecutor's office.

Clark disagreed.

"There were two drawings in Dr. Malak's autopsy file that the prosecuting attorneys would not have seen," he said, explaining that the drawings were of the wounds in Stephens' head in which gunpowder was shown. "These were in the files that he took to court with him that morning. I think that's what he was talking about when he spoke of handwritten notes."

In the meantime, Lemons will remain a free man, MacPhee said.

"No, we can't charge him with murder again because jeopardy is attached," he said. "Even if he (Malak) changes his story, a defense attorney would tear the prosecution up."

State had not seen Malak drawings supporting close-range shot testimony

By Elizabeth Lowry
Gazette Hot Springs Bureau

Drawings by the state medical examiner indicating the presence of gunshot residue in a bullet wound that killed a Hot Springs man were not available to the prosecution before the start of a murder trial last week, officials said Tuesday.

Jim Clark, director of the state Crime Laboratory, said he was looking into circumstances surrounding the case, which was dismissed Thursday in Garland County Circuit Court.

Gregory Stephens, 25, was fatally shot Aug. 18, the police said. The state Thursday dropped second-degree murder charges against Ernest Lemons, 21, also of Hot Springs.

Testimony at the trial by Dr. Fahmy Malak, the state medical examiner, conflicted with his autopsy report and eyewitness ac-

counts of the shooting, the prosecution has said.

Deputy Prosecutor Bruce MacPhee has professed shock at Malak's testimony that Stephens had died of a shot from a gun placed tightly against his head. Witnesses said Stephens was shot from a distance as he was fleeing the gunman.

MacPhee said Tuesday afternoon that he had never seen any drawings by Malak.

"He [Malak] never mentioned them," MacPhee said. "That's news to me."

Clark said that two drawings Malak made before performing the autopsy fit with his testimony that Stephens died of a gunshot wound at close range or a contact wound. The drawings were in the medical examiner's file and such information is not normally made available to prosecutors unless they request it, he said.

Two drawings of the victim's head show he died of a .22-caliber gunshot wound to the back of the head, Clark said. One drawing shows four views of the head — facial, rear and left and right sides — with a handwritten note stating "residue inside wound," Clark said.

The autopsy and lab reports did not state whether the gun was fired from a distance or at close range.

The reports indicated that trace levels of lead were found in Stephens' hair, but that no gunpowder flakes were found in or around the contact wound. One report noted a high probability that the lead was from gunshot residue, Clark said.

Gary Lawrence, who works in the crime lab's trace evidence section, testified Thursday that, because there were no gunshot flakes in Stephens' hair, he could have been shot either from close range or from a distance.

Lemons' defense attorney, Sky



File Photo

Jim Clark: Investigating circumstances of Hot Springs case.

Tapp, said Tuesday that Lawrence had confirmed what Malak had said. "When you say Dr. Malak just turned everything around, that's just not true."

Clark said he planned to make a report on the case to Gov. Bill Clinton's office.

Malak received \$400 for testimony

By Joe Nabbefeld
Gazette Staff

Dr. Fahmy A. Malak, state medical examiner, in August 1987 kept \$400 in fees for his testimony in a civil trial despite a state policy requiring him to give the money to the state, records show.

Jim Clark, director of the state Crime Laboratory, said in an interview Monday that he suspended the policy to allow Malak to keep the \$400. Clark said Malak didn't want to testify in the trial because he would be on vacation, so he granted a policy exemption to compensate Malak for testifying.

The policy was set by the State Crime Laboratory Board, a seven-member commission that oversees Clark and the facility. The policy states that any fees generated by activities related to work done for the crime lab should be paid to the lab.

Asked under what authority he suspended the policy, Clark said, "There's nothing that says I can't." Malak couldn't be reached Monday for comment.

Two crime lab board directors said in interviews Monday that they knew nothing about the policy exemption.

"I don't remember hearing it discussed," said Circuit Judge John Holland of Fort Smith, a board member since its creation in the mid-1970s. "I'd rather talk with [Clark] about it before the board before talking about it [publicly]."

"To my knowledge, Jim has never made any exceptions to our policies," said Alfonso Dixon, a

technical service representative for Potlatch Corp. and board member since 1988.

Clark said he never informed the board because "they never asked. If they want me to do something specific, they'll tell me. If they want me to run the crime lab the way I think best, I will."

Clark recalled granting "a couple" of other exemptions, once to chemist Roy Adams, who drove his own car to Oklahoma to testify and kept \$40 in fees.

The \$400 in fees kept by Malak were for testimony in a civil lawsuit filed by the family of the late Dr. Chester S. Cadwallader III of North Little Rock.

Cadwallader's family put him in the care of The Bridgeway, a psychiatric hospital, in March 1985 to prevent him from committing suicide, according to the family's lawsuit. Two days later Cadwallader was found hanged in a shower and Malak ruled the death a suicide. The family then sued the hospital.

While on the stand as an expert witness called by the family's attorney, Gary E. Alexander of Baton Rouge, La., Malak changed his finding to accidental death. The family lost the lawsuit, but Alexander mailed Malak a \$400 check made out to the crime lab.

Malak mailed the check back with a letter on crime lab stationery asking that it be made out to him personally, according to a copy of the Aug. 7, 1987, letter obtained by the *Arkansas Gazette*. Malak deposited the new check in his personal account at Superior Federal Savings, a copy of the check indicates.

John Lisle, a Springdale lawyer upset with Malak about his testimony of another case, heard about how upset Alexander was and learned of the second check after contacting Alexander.

Lisle reviewed crime lab records last summer under the state Freedom of Information Act to determine if Malak had returned the \$400 to the lab. Clark assisted Lisle then but did not say anything about the exemption, Clark and Lisle both said Monday.

Malak autopsy, testimony differ

State drops charges in slaying

By Elizabeth Lowry
Gazette Hot Springs Bureau

HOT SPRINGS — The prosecution had expected the state medical examiner to testify in court last week that a 25-year-old Hot Springs man died after being shot in the back of the head from a distance.

Instead, Dr. Fahmy Malak said on the witness stand Thursday that Gregory Stephens, 25, was shot and killed at point-blank range last summer.

The testimony conflicted with an autopsy report by Malak and with the statements of other prosecution witnesses. As a result, the state dropped second-degree murder charges against Ernest D. Lemons, 21, in the Aug. 18 shooting.

Deputy Prosecuting Attorney Bruce MacPhee said

See CHARGES/6A

■ Crime lab head let examiner keep \$400 fee/7A

Page 1 of 2 pages

Charges against suspect dropped

Continued from Page 1A

Monday that Malak's testimony was a shock to him. "It came out of the blue," MacPhee said. "I don't know what he did. You'd have to ask Dr. Malak that. I don't know if he read the wrong file."

Eyewitness reports, the autopsy and Malak's comments before the trial gave no indication that the weapon involved was fired at point-blank range.

"I had discussed the case with Dr. Malak before the trial... what questions I expected to ask," MacPhee said. "He gave no indication whatsoever until the day of the trial that there was a contact [wound]."

Malak testified that the gun had been placed against the back of Stephens' head and fired, MacPhee said.

Stephens' parents said Monday that they, too, were shocked when Malak said their son died of a gunshot wound at close range.

"It was just like a total shock... he had the case mixed up with another case," Ruby Stephens said. "He can't get on the stand and change it like that."

"Something is not right," John

Stephens said. "Nothing can be done about it. [Prosecutors] dropped the charges just because of what that fellow said. It's nerve-racking."

When MacPhee asked Malak in court Thursday if he had confused the case with another, Malak said he had not. Then MacPhee showed Malak a copy of the autopsy report and asked him to show where he had stated on it that the gun was fired at close range.

Malak said it wasn't in the autopsy report and that it must have been in his handwritten notes he had reviewed at his office in Little Rock the morning of his court appearance, Prosecuting Attorney Paul Bosson said Monday.

"That means he's keeping two sets of books," Bosson said, adding that the medical examiner had withheld information from prosecutors.

"Malak has no credibility whatsoever now in this case," MacPhee said.

Malak could not be reached for comment Monday. A secretary in his office said Malak was not in Monday.

Lemons was initially charged with first-degree murder in the

death. Stephens was home alone at 124 Linwood when his ex-girlfriend, Sheila Briggs, arrived about 4:30 a.m. and broke out some windows at the residence, the police said.

Stephens chased her as she fled to a car that Lemons was driving, the police said. Lemons reportedly left the car and Stephens ran back toward the house. Stephens was shot once in the back of the head with a small-caliber gun, the police said.

"Eyewitnesses say Ernest Lemons was in the street and this fellow, the victim, was up on the porch," Bosson said.

Because it is difficult to shoot something from that distance with a small-caliber gun, hitting Stephens could have been a fluke, Bosson said. So prosecutors tried Lemons on a charge of second-degree murder, he said.

After Malak's testimony, MacPhee filed a motion to dismiss the murder case "due to the fact the state medical examiner's testimony at the trial was not consistent with information previously furnished by the examiner."

The state could not prove Lem-

ons' guilt beyond a reasonable doubt, the motion stated.

The case against Lemons is now void, Bosson said.

Even if Malak changes his story, a defense attorney would tear up the prosecution, Bosson said. And prosecutors can't pursue the case as it is, he said.

The case has angered Bosson, who plans to send a copy of the autopsy and the transcript of Malak's testimony to Gov. Bill Clinton's office. He's hoping Clinton will look into the case.

In the future cases, Bosson said he planned to ask Malak for copies of his handwritten notes, as well as copies of his autopsy reports.

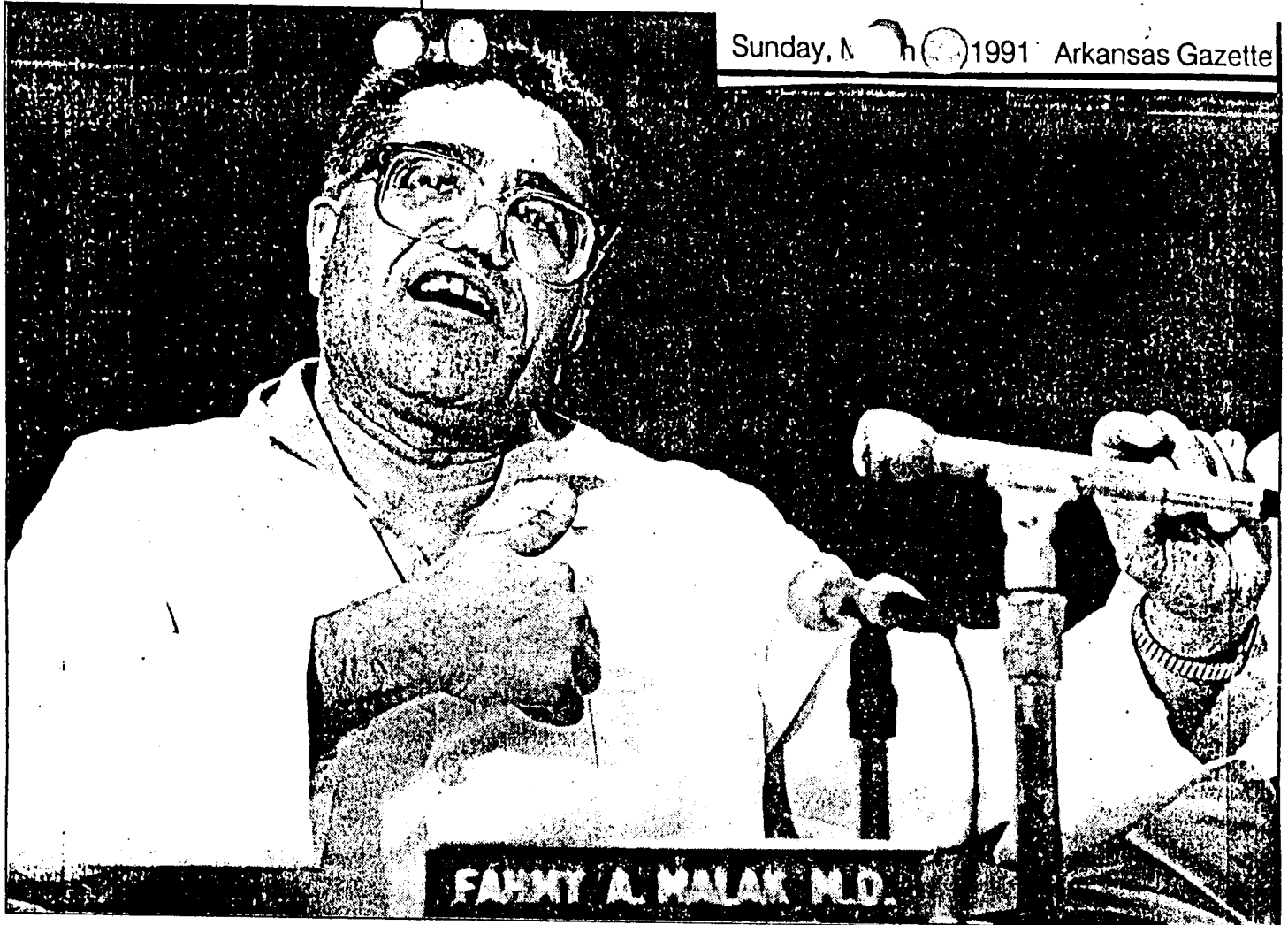
The autopsy report on Stephens does not specifically say the gun was shot from a distance, or at close range. It states, however, that a study of the hair from the back of his head would indicate range. The report states that traces of lead were discovered in the hair, but no gunpowder flakes were found.

Malak testified Thursday that gunpowder residue was found in Stephens' hair.

"Quite frankly, based on my review of that file, I don't believe that was a contact gunshot wound," Bosson said.

"This certainly puts [Malak's] credibility to the test. I'm sure my brothers and sisters on the defense side will test him."

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FAHMY A. MALAK M.D.

Gazette Staff

As the state's appointed expert on suspicious deaths, Fahmy Malak spends many hours explaining his rulings in court. Those rulings have been challenged at least 17 times by outside medical examiners.

THE CONTROVERSIAL DOCTOR MALAK

Page 2 of 3 pages

Disputes trail medical examiner

Fore Nabbefeld
DOCTOR
MALAK

In his 12 years as the state's official expert on the causes of unnatural deaths, Malak has:

■ Been accused by defense attorneys and former employees of altering and concealing evidence in autopsies and under oath during court testimony.

■ Been challenged in court by outside medical examiners who contradicted his findings at least 17 times since 1984, a total that five outside medical examiners said is exceptionally high and would be intolerable in their states.

■ Been overruled by special juries in three cases, including Garrett's. In each case the juries said the deaths were homicides. During interviews with the five outside medical examiners, each said they had never been challenged before a grand jury.

■ Survived all of this. In fact, Malak received a \$14,000 raise at the height of the first grand jury investigation, a highly publicized case of two Saline County boys who were struck by a train in 1987.

The raise made Malak the state's 13th-

SPECIAL REPORT

■ Controversial cases/16A
 ■ Malak toes want him out/17A

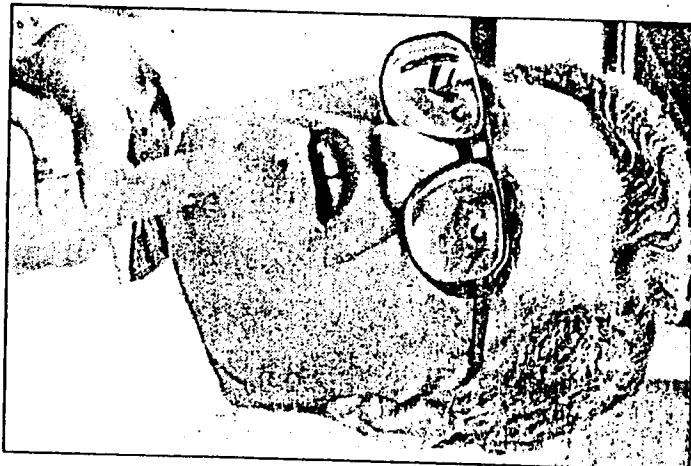
est-paid official at the time; today he's the second-highest paid, at \$105,000 a year. Only Terry Yamauchi — a physician who is director of the state Department of Human Services — makes more, \$115,000 annually.

Malak's supporters, led by Gov. Bill Clinton, have dismissed each controversy by insisting that Malak is overworked and underpaid.

Indeed, the medical examiner's budget is low compared to those of five other medical examiners surveyed by the *Arkansas Gazette*. They said optimum funding would be \$1.25 to \$1.50 per year for each person living in the area served by the medical examiner. Malak's \$442,653 budget last year amounted to 17 cents per capita.

"If you think of the hundreds of cases he's testified in, do you expect perfect-

See MALAK/16A



Fahmy Malak, the state's chief medical examiner, is shown in his office in 1988. He refused recent requests for an interview or photograph.

Garrett, 32, was murdered by an assailant who has eluded police, if you believe a Little River County grand jury that last month overturned Malak's official ruling.

Mamie McIntosh, Garrett's mother, never believed her son's death was an accident, so she was relieved by the grand jury's ruling. But she has not recovered from the pain, expense and humiliation that she said Malak's ruling rained on her family.

"I just feel like leaving this place. I want to go as far away as I can get," McIntosh said.

Malak's dubious Garrett ruling is the latest incident in a career marred by controversy, including a trail of challenges by many who claim they were wronged by his decisions.

*Filed 9 3 1988
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Malak

Continued from Page 1A

tion?" said state Sen. Max. Howell of Jacksonville. "To me, he's almost perfect."

When Malak accused a deputy Pulaski County coroner of murder in 1988, Clinton issued a public statement saying Malak was "obviously stressed out." Clinton ordered Malak to write an apology to the coroner.

Malak's critics have their own explanations for his performance.

Dr. Joseph Burton, the Atlanta chief medical examiner who has testified against Malak five times in Arkansas as a paid expert witness, said in a recent interview that he thinks Malak has abandoned the neutrality essential to his job and instead tailors his findings to help prosecutors.

As a result, the medical examiner earns political "invincibility," Burton said.

"His opinions support law enforcement. They're not unbiased evaluations of the case," Burton said. "They're not consistent with the evidence. Many times they're consistent with the prosecution."

Burton has critics too, including at least one who says Burton hasn't been neutral.

Dr. Larry Howard, retired director of forensic sciences for the Georgia Bureau of Investigation, claimed Burton "heavily favored" the defense in a case "several years ago."

However, even prosecutors don't always agree with or even understand Malak's findings.

"I have to work with him in the future, so I don't want to say that I'm upset. But I was confused" by Malak's ruling in the Garrett case, said Tom Cooper, the assistant prosecutor who took the case to the grand jury.

Malak, 58, declined several requests to be interviewed for this article.

During the race for governor last year, Republican candidates Sheffield Nelson and Tommy Robinson both promised to fire Malak if elected over Clinton.

But the clamor has resulted in little action.

Just one entity, the State Medical Examiner Commission, has the power to fire Malak, according to a 1988 state attorney general's ruling. However, Clinton's administration insists that another commission, the State Crime Laboratory Board, has some authority over Malak.

Crime lab Director Jim Clark said he



Steve Keesee/Gazette Staff

"I have not asked a single soul to keep him (Dr. Malak) in office. I have asked them (medical examiner commissioners) on several occasions why they did. I said, 'You know, if you want to bring all this heat down on the governor's office, you better have a good reason. You ought to believe in the decision you're making.'"

—Gov. Bill Clinton

would initiate action against Malak if he considered it necessary, though he acknowledged he might not have that power.

The medical examiner commission has met only three times in the past 12 years. And it has never interviewed Malak, nor reviewed any of his cases.

All three meetings were in 1988, amid the controversy over the Saline County boys' deaths and the charges against the deputy coroner. The commission — headed by Dr. Joycelyn Elders, the Clinton-appointed director of the state Health Department —

bro... in two experts from out of state to conduct a study on the operations of the State Crime Laboratory, which houses Malak's office.

The experts spent roughly 30 minutes at the crime lab. Their study concluded Malak was overworked. An earlier study by two other experts, initiated by Clinton in 1985, generated the same result.

Supervision to change

After the 1988 study, Clinton requested that the legislature raise the salary for Malak's position so that the salary for an assistant medical examiner could also be raised to an amount that would attract a candidate.

The Medical Examiner Commission hasn't met since. Elders and Col. Tommy Goodwin, another commission member and head of the State Police, said in recent interviews that they don't feel qualified to supervise Malak and don't want to sit on the commission.

A new law, passed this session by the legislature and signed March 6 by Clinton, will increase supervision of Malak.

The law will dismantle the Medical Examiner Commission and transfer its power to the State Crime Laboratory Board, whose membership will be slightly changed.

The board, by law, must meet at least once every three months to set policy for the crime lab, which has eight divisions and 64 employees. The medical examiner's office is one of those eight divisions.

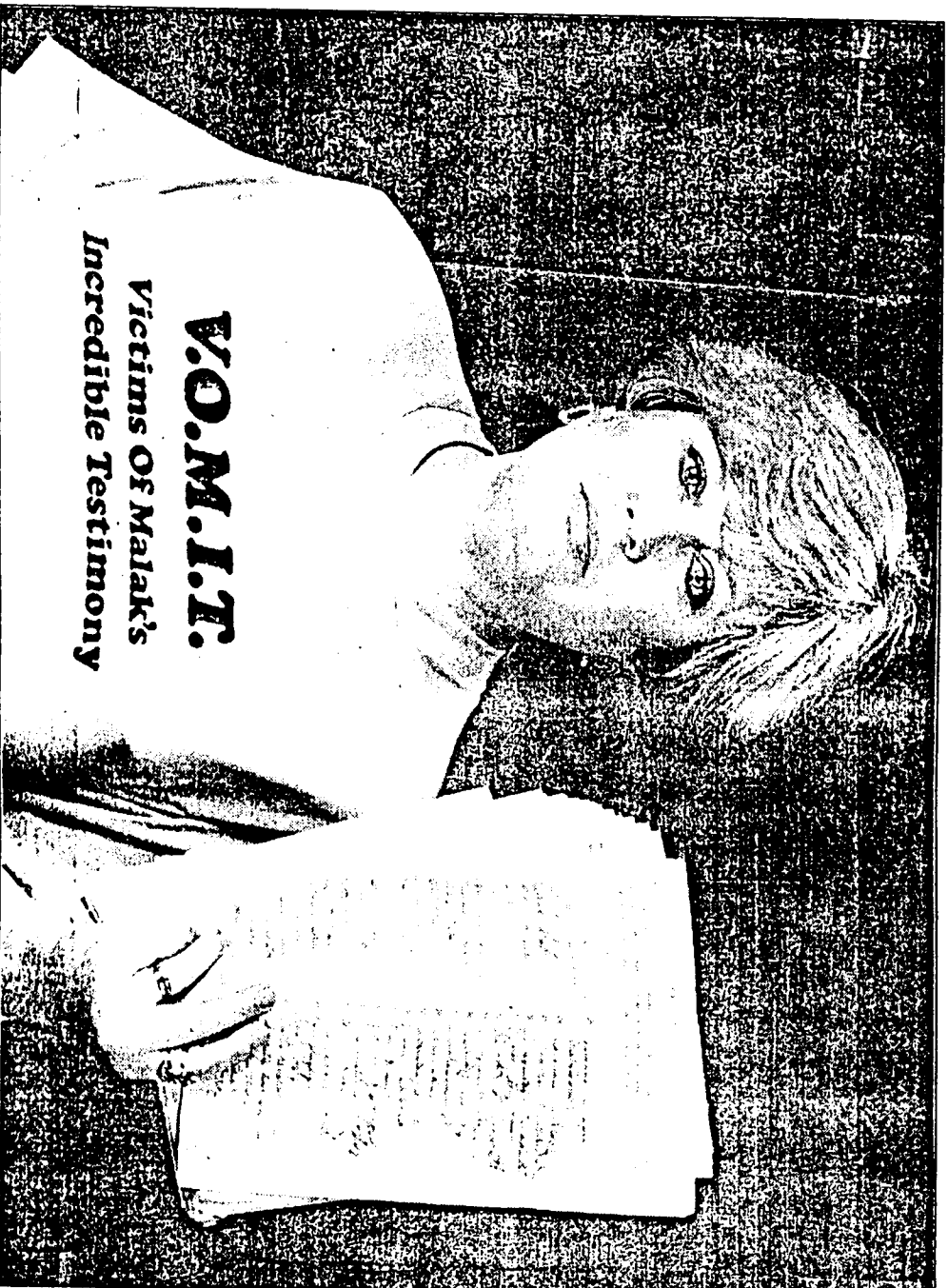
When the law takes effect in about three months, Clinton said in a recent interview, "The responsibility will plainly be on their [crime lab board members'] shoulders then to evaluate these charges and act on them."

But Malak's critics say they have little hope that the new set-up will make any difference because Clinton has expressed a reluctance to remove Malak.

"I have tried to take the position that I should, in the absence of evidence to the contrary, defer to the people who have more medical experience and more day-to-day experience with that operation than I do," Clinton said in an interview two weeks ago.

"I have not asked a single soul to keep him in office. Not one," he said. "I have asked them [medical examiner commissioners] on several occasions why they did. I said, 'You know, if you want to bring all this heat down on the governor's office, you better have a good reason. You ought to believe in the decision you're making.'"

Malak's foes want him out



Linda Ives and some other Arkansans started a group called VOMIT — Victims of Malak's Incredible Testimony. They have collected petitions demanding that state Medical Examiner Fahmy Malak be fired.

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3-24-91

By Joe Nabbefeld

Gazette Staff

Arkansas's chief medical examiner has his own opposition group.

VOMIT is its name. To be more precise, Victims of Malak's Incredible Testimony.

The group was started by Linda Ives, whose son's body was found, along with a friend's, in August 1987 on railroad tracks near his home in Bryant. Malak ruled — in what has become a highly publicized case — that Kevin Ives, 17, and his friend Don Henry, 16, were killed by a train after they smoked a lot of marijuana and laid down on the tracks.

He ruled the deaths accidental.

Ives believes the boys saw something somebody didn't want them to see and were beaten, then placed on the tracks for the train to hit them.

That would be murder.

A special grand jury later agreed that the boys were murdered, after further medical testimony showed Henry was stabbed before the train hit him. No one has been charged in the deaths.

The battle to change Malak's ruling was an ordeal that Ives said she shouldn't have had to endure.

"I started requesting reports, from the crime lab [site of Malak's office], ambulance service, wherever we could get them," Ives recalled in a recent interview. "Everybody refused to give them. So I hired a private detective, Ray Love."

Love got a court to order the agencies to provide the documents. They defied the orders, according to Ives. "We thought the only thing they would understand was public pressure. So we called a press conference."

After the publicity, the agencies "couldn't give it to us fast enough," she said.

Eventually, the special grand jury took the case.

In reaction to the jury's finding, a governor-appointed commission hired two consultants to review Malak's office. They issued a report that said Malak was overworked.

Ives refers to the commission's ac-

tion as "The Great Malak White-wash."

A legislative committee headed by state Sen. Max Howell then met and raised Malak's salary, as Gov. Bill Clinton requested. That allowed the state to offer a high enough salary to attract an assistant for Malak to ease his load.

VOMIT was born at that committee's hearings. Ives and others who believed they had been wronged by Malak's decisions began exchanging their accounts in the back of the meeting room. They agreed to stay in touch.

They all showed up in VOMIT T-shirts for the ensuing committee hearings.

They also collected signatures on petitions calling for Malak's ouster. But the governor's staff has refused for two years to provide Ives an opportunity to present the petitions to him, Ives said.

Clinton said in a recent interview that he feels "very sympathetic" toward Ives.

He added, "But let me ask you this: Should I call the Medical Examiner Commission or the Crime Lab Board and say 'Get rid of this man, I've got 4,000 signatures and a newspaper article and never mind the merits'?"

Ives — who was assistant manager of Benton Alcoa Employees Federal Credit Union when her son was killed but hasn't worked since — said she has begun writing a book about her case and several others involving Malak, with the help of another writer.

"The underlying story is," she said, "They're getting away with murder in Arkansas."

The ME's work

Arkansas's medical examiner performs autopsies on people who died of unnatural causes — accidents, suicides and homicides. The examiner's ruling becomes the official cause of death.

If the examiner rules suicide or accidental death, that means no crime occurred. If the medical examiner rules homicide, law enforcement agencies attempt to charge and convict the assailant.

If a murder trial ensues, the medical examiner is the public authority on the cause of death and so is usually a key witness for the prosecution. As a result, medical examiners spend a substantial amount of time testifying in court.

A medical examiner's findings also may affect civil cases. For instance, if the examiner calls a death a suicide, the deceased's family may not be able to collect on life insurance policies.

In accidental deaths, suicides and homicides, the families may sometimes file wrongful death or malpractice suits. The medical examiner may testify for either party in those cases.

When this system breaks down, many people can suffer. Innocent people may face murder charges and could even go to prison. Guilty people may go free.

If the Little River County grand jury was right, William Garrett's murderer remains free. No one has been charged in that case.

The courts become further clogged when trials slow because defense attorneys recruit experts to dispute the medical examiner.

Clark, the crime lab director, said that has happened in Arkansas 17 times during his two stints as director — from 1984 to 1987 and from late 1989 to today.

Aside from Clark's count, there are no records showing the number of times Malak has been challenged in court.

Record of disputes

Malak grew up in Egypt and received his degree in medicine from Cairo University School of Medicine in 1962. He immigrated to the United States on Dec. 27, 1969.

After working in South Bend, Ind., Pittsburgh and Chicago, Malak came to Arkansas in 1978 as assistant to chief medical examiner Dr. Stephen Marx.

Dr. Robert Stein, chief medical examiner for Cook County, Ill., was Malak's boss in 1978.

"He was average," Stein said. "He was not my favorite, so actually I don't want to say anything more."

Malak replaced Marx on May 16, 1979. Marx "resigned" his position from Clinton, news reports reported then, for allegedly altering autopsy evidence to help prison officials cover up the September 1988 death of an inmate that was caused by a prison guard. Two of Marx's deputies also were fired.

The Marx ouster case started Malak's job as state medical examiner in a storm and the clouds have never broken.

■ In the 1985 manslaughter and battery case against John E. Hinson, prosecutors charged that Hinson abused his wife, Catherine Hinson, to the point of suicide.

Defense attorney Bobby McDaniel of Jonesboro said Malak changed his testimony under oath to bolster the prosecution's case.

Malak testified that bruising around Catherine Hinson's left eye occurred before her death and was caused by a blow from a fist. Similar bruising around the right eye occurred as a result of a self-inflicted gunshot wound, he said.

In earlier testimony before a grand jury, Malak said the bruising around both eyes was caused by the shooting. Asked about McDaniel's charge, Malak said in a 1988 interview that he couldn't remember the case.

■ Concerning a 1982 murder case, Mike Vowell, a crime lab photographer for six years, claimed Malak ordered him to manipulate photographs to create evidence.

Vowell said Malak ordered him to photograph the butt of a gun allegedly used by William C. Horne to beat David Michel to death in Little Rock in 1982.

In court, Malak matched a transparency of the photo with one of the bruises on Michel's shoulder to show that the gun caused the bruise. However, the transparency had to be reversed to make such a match, meaning the gun butt didn't cause the bruise, Vowell said.

Horne contended that Michel landed on his shoulder and head when he dove off a truck onto asphalt. Horne spent seven years in prison before being paroled last month. He still denies killing Michel.

Malak testified in an earlier trial of Horne that he performed the autopsy on Michel. However, his assistant at the time of the autopsy, Dr. Raj Nanduri, testified at an earlier court hearing, and repeated to the *Gazette*, that she, not Malak, performed the autopsy. Nanduri's autopsy listed Michel's cause of death as "undetermined."

Horne's lawyers say his father spent his life's savings and died without any money after trying to show Malak erred.

■ Concerning a 1986 murder case, Vowell said Malak ordered him to enlarge or reduce — whichever would

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until it matched a wound on Donald Sakall, who died in 1986. Malak wanted the photo for the 1987 trial of Connor Spickes, who was charged with Sakall's murder. Spickes admitted killing Sakall and received a prison sentence.

Vowell made the claims in a newspaper interview in 1989. Then-crime lab director Bill Cauthron denied the charges, saying he found no wrongdoing. He fired Vowell a month later for having made them.

■ In 1987, Malak ruled that Larry Kevin Ives, 17, and Don George Henry, 16, died after they smoked so much marijuana that they fell asleep on some railroad tracks and a train hit them. Malak ruled the deaths accidental.

The Ives family hired a private detective to dig up documents. Both families then persuaded officials to convene a special grand jury to investigate the deaths. The grand jury in 1988 ruled the deaths homicides based on the testimony of Atlanta's medical examiner, Dr. Burton.

■ In 1988, Malak ruled that Peter Robinson, 75, died of natural causes, saying pneumonia killed him. Pulaski County Coroner Steve Nawojczyk convened a coroner's jury to review the death, which occurred two months after Robinson was beaten by a fellow patient in a nursing home.

The jury took less than 10 minutes to overrule Malak's finding.

■ In 1989, Malak ruled 32-year-old William Garrett's death as a homicide. He later changed that to accidental death by "autoerotic asphyxiation" during masturbation.

In this act, people try to achieve intensified satisfaction during masturbation by hanging themselves to decrease their oxygen intake.

Garrett was found strangled in his Ashdown home amid a collection of sexual items and devil symbols.

Prodded by the *Little River News*, prosecutors conducted a grand jury investigation into the death. The jury ruled it a homicide on Feb. 18.

High challenge rate

Any medical examiner will face some controversy, other medical examiners said. It comes with the job: Some families will be upset to be told a loved one committed suicide, or that a suspicious death wasn't a murder, the experts said.

But the five medical examiners contacted by the *Gazette* from various parts of the country all said they have faced nowhere near the challenges Malak has.

"Very rarely have I had an expert witness contradict me in a criminal case," said Dr. Irvin Sopher, chief medical examiner for West Virginia for the past 16 years.

He medical examiners including himself — performs about 1,000 autopsies per year, he said.

He added, "We've never had a grand jury, never a problem with that."

Dr. John Butts, chief medical examiner for North Carolina for four years, said, "In most criminal matters it's rather unusual for the other side to provide contradictory opinions."

Butts added, "We've had none where an accidental-death ruling was found to be a homicide."

His office employs five medical examiners, including himself, and performs about 1,200 autopsies per year.

Burton, in Atlanta, said his staff has never faced a grand jury investigation and that criminal defense lawyers have challenged his staff's findings in court

only twice in the last seven years.

A medical examiner who had been overturned by a grand jury "wouldn't stay on my staff, no matter how competent he would be," Burton said. Burton's staff of four medical examiners, including himself, performs about 1,200 autopsies per year.

Dr. Vincent DiMaio, chief medical examiner in San Antonio the last 10 years after nine years as such in Dallas, said he has faced one court challenge.

DiMaio's office is averaging about 1,100 autopsies per year, done by four medical examiners, including himself.

Staff and load

In his 12 years on the job, Malak has had 10 different assistants.

Between assistants, Malak handled his office's caseload himself, including the entire year between the summers of 1988 and 1989.

With his office averaging more than 600 autopsies per year, the lack of an assistant has left Malak performing more than twice the maximum 250 autopsies recommended by the National Association of Medical Examiners. The five medical examiners interviewed for this story said the chance for errors rises precipitously after 300.

Some who know Malak blame the high work load for any mistakes he has made.

"I'm sure he has made mistakes, but he has not made one deliberately, intentionally or maliciously in the years that I have known him," said Clark, the crime lab director.

10-year-old case still raises questions in death

By Joe Nabbefeld
Gazette Staff

On a summer day in 1981, Susie Deer of Dierks, a small southwest Arkansas town, begged her aunt to take the 17-year-old along for a night in the "big town" of Hot Springs.

"She said she dreamed of going 'if it's the last thing I do,'" recalled Diane Brown Cox, now 34. Deer had never been anywhere much larger than Dierks, which has a population of less than 2,000.

That trip was Deer's last.

After a night of dancing and drinking, Deer, Cox and three others, all white, were cruising the 400 block of east Grand Avenue in Hot Springs, police records show. They got in a shouting match with two black people on the street. Someone in the car threw a can of beer out. One of the people on the street threw a rock at the car. It went through an open window of the moving car and hit Deer on the right side of her face.

Deer died at about noon June 27, 1981. She was in an operating room at the then-Ouachita Memorial Hospital in Hot Springs, under anesthesia administered by nurse anesthetist Virginia Dwire Kelly, the mother of Gov. Bill Clinton, according to hospital records contained in the police file.

State medical examiner Dr. Fahmy A. Malak conducted an autopsy on Deer's body and ruled that her death was a homicide.

Ten years later, some people still raise questions about the Deer case when they discuss Malak's ability to ride out controversy after controversy as the state's chief medical examiner.

"I still wonder what happened," said J. Sky Tapp, the Hot Springs lawyer who represented Billy Ray Washington, the man who received six months in jail for pleading no contest to throwing the rock.

"We have a lot of questions," said Bill Hodge, a De Queen lawyer for some members of Deer's family, including her then-8-month-old son,

now 10.

The *Arkansas Gazette* provided Malak's autopsy report and other details of the case to three medical examiners from outside the state and each said they too would have ruled Deer's death a homicide.

But they also said a lack of oxygen during Kelly's efforts to reinsert Deer's breathing tube during surgery could have been a contributing cause of death. They said they couldn't make that judgment without seeing complete hospital records.

The hospital, now AMI Medical Center, declined to release the records to the *Gazette*. It agreed three weeks ago to mail them to the family, but the family did not receive them until two days ago. The delay prevented the outside medical examiners and the *Gazette* from reviewing the hospital's records.

Clinton, who was between terms in 1981, said he never so much as heard about Deer's death until KARK-TV reporter Mel Hanks asked the governor about it a year ago. Hanks was researching a story on the Deer case, but the story was never aired.

Clinton said neither he nor anyone representing him had any contact with Malak about the Deer case.

"I think I would remember that," Clinton said. "I just don't have any memory of anything like that."

Malak declined repeated requests for an interview. Jim Clark, director of the State Crime Laboratory where Malak works, relayed questions to Malak. Malak "indicated he didn't talk to anybody before the autopsy," Clark said.

Kelly also declined to be interviewed.

Hospital records in the police file state that Deer died after her heart stopped while Kelly was moving Deer's breathing tube from her nose to her mouth during the surgery.

One of the surgeons in the room at the time, Dr. William Schuelte, said in a recent interview that Kelly tried "at least two times, maybe more" to get the tube back into Deer's lungs.



Susie Deer was 17 and the mother of 8-month-old Robbie when she died in a Hot Springs Hospital.

Amid the tries, another surgeon, Dr. James Griffin, told Kelly to force air into Deer because she showed signs of having too little oxygen, Schuelte said.

Griffin then put the tube into Deer, but by then her heart had stopped, said Schuelte, who has since retired.

Schuelte said he and the other doctors left the operating room believing the tube problem caused the death. Schuelte said he still thinks that was the case.

Griffin, who still is practicing, declined to be interviewed for this story, as did a third surgeon, Dr. William Johnson, who Schuelte said was in the room. Johnson is still practicing.

Before the surgery to repair Deer's broken jaw, nose and sinus cavity, the doctors told Deer's family and friends she would be fine, said Cox, Deer's aunt and guardian.

Deer died on a Saturday. Malak conducted the autopsy the following Monday. His autopsy report says she died of "blunt trauma" to the head. It notes that the left side of her brain was bruised.

The three out-of-state medical ex-

aminers who reviewed the autopsy report agreed brain damage could have occurred if the force of the rock "jiggled" the brain and banged it against the inside of Deer's skull.

Schuelte said he did not suspect Deer had brain damage. Hospital records showed Deer was talking and sitting up just prior to surgery.

However, Dr. Vincent DiMaio, chief medical examiner in San Antonio, said brain damage could be expected in a case such as Deer's. He said that the combined velocity of the rock and the forward movement of the car could have created enough force to make the brain jiggle when her head was hit.

Brain damage, shock and loss of blood could have made Deer less able to try a couple of times to get the tube in, DiMaio said. The other two out-of-state examiners were Dr. Mike Graham of St. Louis and Dr. Irvin Sopher of West Virginia. None of the three has testified in Arkansas in cases involving Malak, they said.

Malak's office declined to release its records on Deer.

But a copy of Malak's autopsy report contains no mention of the breathing tube or why Deer's heart stopped.

Billy Ray Washington, the man who threw the rock that hit Deer, pleaded no contest to negligent homicide charges on Sept. 21, 1981.

Then on Oct. 15, 1981, Tapp, Washington's lawyer, filed a motion to remove that plea because, the filing stated, "this matter involves a death which conceivably was not caused by the defendant's negligence and caused by other intervening circumstances."

Tapp then issued subpoenas to all the doctors, nurses, police and others involved in the Deer case. He said they all indicated they would not be

readily cooperative, so it would cost a substantial amount of money to compel them to provide information and to hire an outside medical examiner.

Washington didn't have that kind of money, Tapp said. And Tapp was just three years into his practice and well aware that it would cause him "a lot of problems" to take on such powerful people, he said. So Washington pleaded no contest again and served the six months, said Tapp, now a successful criminal defense lawyer in Hot Springs.

Deer's death became the last straw for some doctors who already were uncomfortable working with Kelly, Schuelte said.

Kelly was sued in 1980 because of the 1978 death of Laura Lee Slayton, and in a 1983 court settlement paid Slayton's estate \$90,000, according to court records. Slayton, 22, went into a coma and then died after abdominal surgery in which Kelly was the nurse anesthetist.

After Deer's death, some doctors pressured the hospital to stop using Kelly's anesthesia service, Schuelte said.

The hospital hired Dr. Robert Humphries from St. Joseph's Hospital in Hot Springs to take over anesthesiology, Schuelte said.

Kelly responded by filing a federal antitrust lawsuit claiming that action created a monopoly. That suit was dismissed in 1984 with each side paying their own legal fees. Kelly let her nurse anesthetist license lapse in 1984 and now holds a registered nurse license, state nursing records show.

Deer's stepmother, now the adoptive mother of Deer's son, considered possible legal action because of Deer's death in the past. But Hodge said he advised Betty Deer, the step-mother, that no legal action could be taken because of the statute of limitations.

Hodge said he only recently learned Susie Deer had a child. That may mean the statute of limitations may no longer apply, he said.

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Disputed cases

Here are some of the cases in which state Medical Examiner Dr. Fahmy Malak's rulings have been questioned:

■ **The body of Dr. Chester S. Cadwallader III** was found hanged in 1985 in the shower at a psychiatric facility. Cadwallader, 42, of North Little Rock, had been threatening suicide, so his family placed him in the psychiatric facility to prevent him from killing himself, the family claimed in a lawsuit against the facility.

Malak originally ruled the death a suicide. However, when the civil case went to trial in 1987, Malak changed his ruling on the witness stand. He said Cadwallader's death resulted from autoerotic asphyxiation. In this act, people try to achieve intensified satisfaction during masturbation by hanging themselves to decrease their oxygen intake.

Panicked plaintiff lawyers quickly brought in the nation's only published expert on autoeroticism to dispute Malak.

The jury ultimately ruled that the facility was not liable for Cadwallader's death, said Gary Alexander Jr. of Baton Rouge, La., one of the family's lawyers.

Malak later billed the family \$400 for his testimony.

■ **The body of William Garrett, 32,** was found strangled in his Ash-down home in August 1989, amid a collection of sexual items and devil symbols.

Malak originally ruled Garrett's death a homicide. But he later changed the ruling, saying Garrett died accidentally because of autoerotic asphyxiation.

Prodded by the local newspaper, prosecutors conducted a grand jury investigation into the death. The jury ruled it a homicide on Feb. 18. No one has been charged.

■ **The bodies of Larry Kevin Ives, 17, and Don George Henry, 16,** were found in August 1987 after they had been run over by a train near their Bryant homes.

Malak ruled that the young men's deaths were accidental. He said they smoked so much marijuana that they fell asleep on the railroad tracks and a train hit them.

The Ives family hired a private detective to dig up documents. Both families then persuaded officials to convene a special grand jury to investigate the deaths. An outside medical examiner testified that one young man had been beaten, the other stabbed before the train struck them.

The grand jury in 1988 ruled the deaths homicides. No one has been charged.

■ **Peter Robinson, 75,** died in 1988, two months after he was beaten by a fellow patient in a nursing home.

Malak ruled the death natural, saying pneumonia had killed Robinson.

Pulaski County Coroner Steve Nawojczyk convened a coroner's jury to review the death. The jury took less than 10 minutes to decide that the beating had led to pneumonia and that Robinson's death was a homicide.

Jimmy Webb was charged with manslaughter in the case. In January 1990, a jury acquitted Webb by reason of mental disease or defect.

■ **Pulaski County Assistant Coroner Mark Malcolm** was accused by Malak of murdering a hospital patient in 1988. Malak called for police to investigate.

Malak had misread a standard medical symbol, concluding it said Malcolm had ordered a hospital nurse to remove life support from the brain-dead patient without the family's permission.

Gov. Bill Clinton ordered Malak to apologize, saying Malak "was obviously stressed out."

■ **James Dewey Milam, 72,** of Searcy County, died in May 1987.

Malak ruled the cause was a perforated ulcer. Malak said Milam's small dog then ate the dead man's head.

Milam's daughter-in-law, Lynetta Milam, insists he was murdered. She said Malak showed her photographs of the headless corpse and the neck was cut clean, not like a dog had chewed it. And "any farmer knows a dog would eat the buttocks and the stomach, not the head."

Malak declined several requests for interviews.

The family has not attempted to legally challenge the ruling because of the expense, Lynetta Milam said.

■ **Olive Jane Ward, 16,** of Searcy County, died in September 1989.

Malak said the death was accidental, caused when she banged her head as she fell from a 9¾-inch-high porch during a party.

The girl's father, Ron Ward, said he's still convinced his daughter was murdered.

He said his suspicions arise from the fact that after she allegedly fell, other party-goers placed his daughter's body in the back of a truck and drove 5½ miles. They drove past the sheriff's office, to a bank parking lot and then called the sheriff to report the incident, he said.

Ward said he has discussed the matter with an attorney, but has not decided whether to proceed with a legal challenge.

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Walt jurors defend murder acquittal

BY JOE FARMER
Democrat-Pine Bluff Bureau

ARKANSAS CITY — The jury in the capital murder trial of Martin Lee Walt III of Dumas was influenced only by the evidence in the case, the jury foreman and another member said Wednesday.

Walt, 24, was acquitted Monday night by the jury of eight women and four men. Eight of the jurors were black.

Walt, who is white, was charged with the May 31 shotgun slaying of Kimberly Irons Schwartz, 24, of McGehee at his house. Schwartz was married and pregnant at the time and worked at a Dumas radio station while living at McGehee. She was shot twice.

There were complaints about the jury throughout the trial and afterward. Jury foreman Doug Weatherford of Dumas said the decision, which came after a 15-day trial and almost six hours of deliberation, was not influenced by who Walt is or any other factor.

"All the talk about that is what's wrong," Weatherford said. "I was not influenced by anything. Beyond that, I don't want to talk about it."

Juror Carol Strother said the panel considered notes and testimony, not anyone's position in either community.

"Money and power mean nothing to me," Strother said.

"It was strictly evidence. I was impartial. I knew neither side."

She said the jurors pulled notes together and studied them at length before reaching the verdict.

Prosecuting Attorney John Frank Gibson of Monticello, who prosecuted the case, said he doesn't think the matter was settled between the two families involved.

"We're not going to put up with anyone taking the law into their own hands," Gibson said of the matter. "The verdict is the verdict, and we're going to live with it."

Gibson's term expires Dec. 31. He said Prosecutor-elect

Sam Pope of Crossett would feel the same way he does.

"The jury did not let him go because he's a little rich kid," Gibson said. "They (the Walts) have a reputation of being good people. I'm not going to fault those people (the jurors)."

Gibson said the state spent seven months, three weeks of that at trial, trying to convince people that Walt was guilty.

"We did convince some people, but not the jury," Gibson said.

Despite the acquittal, Walt will face problems from the trial, Gibson said.

"He has to prove his innocence the rest of his life," the prosecutor said.

Metro/State

SECTION B

Killing victim's mother vows to find 'justice'

By
Hill
Staff

mother of Kimberly Irons Schwartz Wednesday that she will continue seek justice for her daughter's murder, even if she's not going to let this die," Sherry said.

She still have faith that one day there's to be justice."

Martin Lee Walt III, 24, of Dumas was indicted of capital murder Monday night in

the shooting death of Schwartz, 24, of McGehee.

Schwartz was killed by Walt on May 31 inside Walt's Dumas home. The defense contended that it was self-defense.

After more than five hours of deliberations, the eight-woman, four-man jury found Walt not guilty.

Morgan, who had to be helped from the courtroom following the verdict, said Wednesday that she and her family plan to file information with a grand jury by the end

of the week regarding misconduct by the judge, perjury and a conflict of interest with one juror.

"Right now we're in the process of asking for a grand jury to review the trial on the actions of the judge and one of the jurors," she said, adding that she is consulting Little Rock and McGehee attorneys. "We're checking on any legal action that we can take."

Morgan said among other things, they want Circuit Judge Stark Ligon's actions

regarding a possible conflict of interest with one of the jurors investigated.

She said there was a conflict because one of the jurors, Doug Weatherford of Dumas, is on the the Desha County Farm Bureau Board with Walt's uncle, and that the judge denied a motion by the prosecution that he be dismissed.

"He (Weatherford) did not tell the prosecution

See JUSTICE/G3

Justice

Continued from Page 1B

cutting attorney this," Morgan said.

Weatherford said, however, that he hasn't attended a board meeting in more than two years and doesn't even know if he's still on the board.

"I felt like I could be fair and impartial, and I still feel like we were," he said. "When you live in this small town, you knew everybody that was called [to testify]."

"I just wish all this was over with," Weatherford said. "I was

chosen, I done what I thought was right."

An employee with the the Farm Bureau could not confirm if Weatherford was a member of the board. Ligon also couldn't be reached for comment Wednesday.

Morgan also said several witnesses in the trial perjured themselves, and they are collecting other information about misconduct.

"This whole trial has been a one-sided affair," she said. "This is not over."

"My daughter has been on trial,

not him," Morgan said. "She's been the guilty party."

Prosecuting attorney John Frank Gibson Jr. said he had not heard anything about going to a grand jury, and that he doesn't think it is necessary.

"I felt like that the jury was possibly biased, but I have no evidence of it," he said. "I don't feel that a grand jury is necessary."

Gibson also said if there is any evidence of misconduct by Ligon it would not be handled by the judicial discipline committee and that evidence of perjury would be re-

viewed by the prosecutor.

"I would not recommended [going to a grand jury] at this time," Gibson said.

Defense attorney Kenneth Johnson of Dumas said he's sympathetic of how Morgan and her family feels, but any investigative information should have been brought out during the trial and not now.

"Once you're acquitted, you're acquitted," he said. "I don't think you can bring it up again."

"I really don't foresee anything else," Johnson said.

Jury in murder trial *Democrat. Nov 20 1960* saw papers in error, prosecutor tells judge

The Associated Press

JONESBORO - A mix-up that gave jurors in a murder trial documents they shouldn't have seen was revealed when a juror called the prosecutor a few hours after the guilty verdict was read.

Greg Larimore, 28, was convicted Friday for the Jan. 11 stabbing death of his wife, June, 24. Her body was discovered by her sister in the home the Larimores shared in their yearlong marriage. Mrs. Larimore had been stabbed 134 times.

Prosecutor Scott Hunter of Jonesboro said Tuesday that a juror called him about 10 p.m. Friday and asked about one of Larimore's relatives who developed heart trouble after the trial.

The juror mentioned some materials that were brought to the jury room but weren't disclosed during the trial. Hunter said he was obligated as an of-

ficer of the court to inform the judge about the mistake.

"The jurors are blameless," Hunter said.

He said the materials were mistakenly carried to the jury along with other evidence. He said such a mixup has never happened in the more than 100 homicide cases he has tried.

Hunter said a new trial would be held in three or four months if a mistrial is declared.

Defense attorney Bill Bristow said Tuesday he would file a motion for retrial. He said the trial could be moved again if it's determined that the case received too much publicity in Jonesboro.

A Craighead County Circuit Court jury found Larimore guilty of first-degree murder. The jury recommended a sentence of life in prison for the Blytheville man.

Walt 12-18-90 acquitted of capital murder

By Tamara Mohawk
Gazette Pine Bluff Bureau

ARKANSAS CITY — Martin Lee Walt III was acquitted of capital murder Monday night in the shotgun slaying of Kimberly Irons Schwartz.

Walt was quiet and calm and dropped his head lightly into his hands when the verdict was read about 9 p.m. He was swarmed moments later by family and friends after Circuit Judge Stark Ligon dismissed the eight-woman, four-man jury.

The jury, which began deliberations at 3:10 p.m., appeared to be at an impasse just before 8 p.m. when it sent out a note asking the judge what it should do if it couldn't reach a decision. The judge sent back instructions on what constitutes a hung jury. In all, the jury took about 5 hours and 45 minutes to reach a verdict.

Walt, 24, of Dumas, was charged in connection with the May 31 shooting death of Schwartz, 24, a McGehee radio station sales representative, inside Walt's Dumas home.

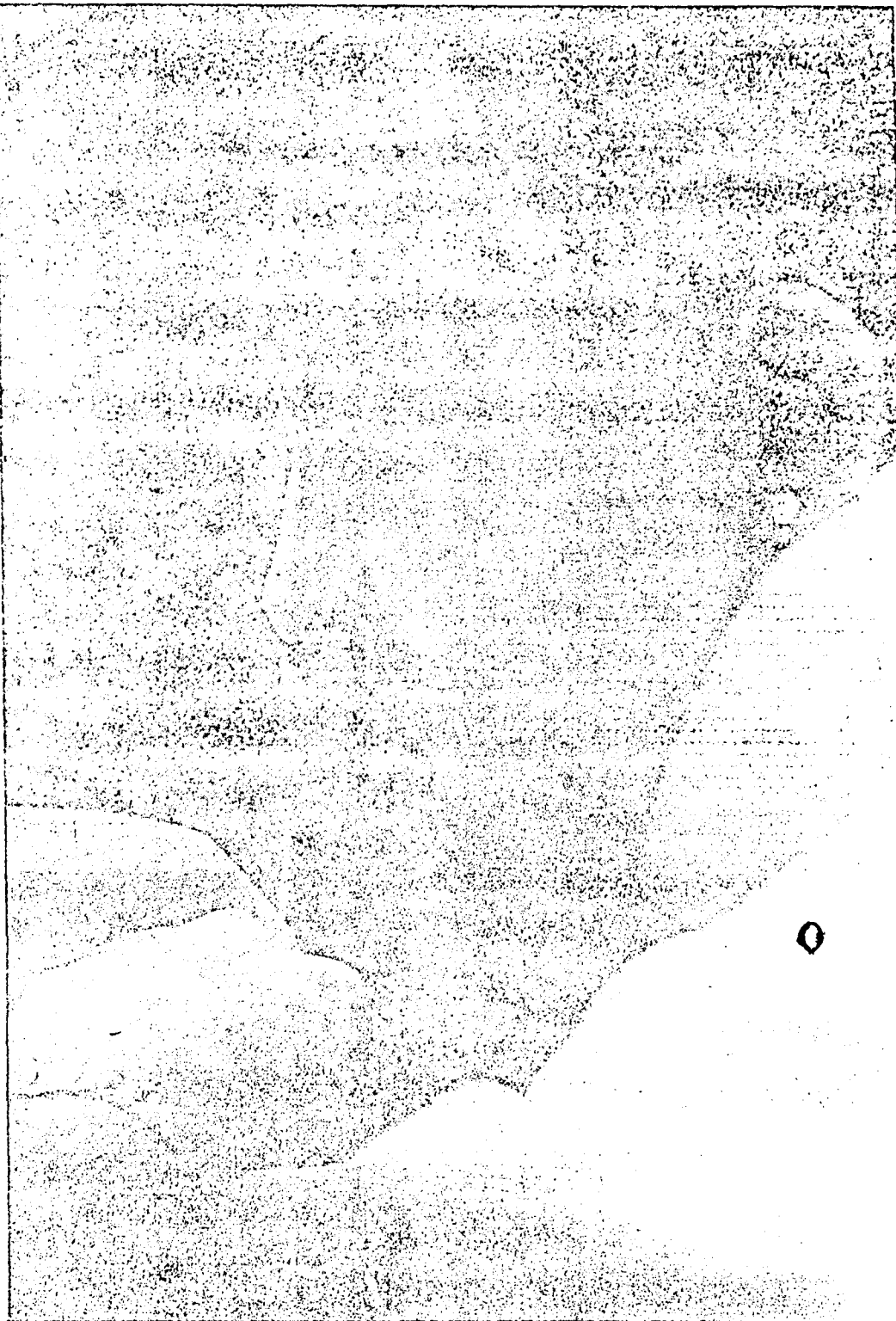
A sobbing Sherry Morgan, 41, the victim's mother, was helped down the stairs leading away from the courtroom after the verdict.

"Oh, God, tell me they didn't do that. Please, tell me ..." Morgan said.

Lee Walt said, "You can't put it into words," when asked about his feelings after the verdict. "It was scary," he said of the trial that lasted more than two weeks.

"I'm glad this is over," said prosecutor John Frank Gibson Jr. of Monticello. "... it's whether the

See ACQUIT/3A



Lori McElroy/Gazette Staff

TEARS IN DELIBERATION: Sherry Morgan, the mother of shooting victim Kimberly Irons Schwartz, sheds a tear while the jurors were deliberating Monday in the Martin Lee Walt III trial. Walt was accused of murdering Schwartz in his Dumas home May 31. Walt was acquitted of the charges Monday.

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Lori McElroy/Gazette Staff

HUG OF ENCOURAGEMENT: Linda Walt gives her son Martin Lee Walt III a hug after the closing arguments were given Monday afternoon. Walt was accused of murdering Kimberly Irons Schwartz in Walt's home May 31. Walt was acquitted of the charges Monday.

Acquit

Continued from Page 1A

community will ever get over it, I don't see that happening in the near future."

He indicated the position of the Walt family, which runs a large farming operation in Desha County, might have had an influence on the jury. He noted that he had tried just Monday morning to strike two jurors who he said had not adequately divulged their connections to the Walt family.

One woman works at a bank where the defendant's uncle served on the board. The other was a man who was on the board of the local Farm Bureau on which the same uncle served.

"I feel like this has been a whole one-sided affair," Morgan said, complaining prior to the verdict that Walt had been allowed several character witnesses.

"All they're wanting to do is make her look like a bad person," she said of her daughter. "She's not here to defend herself."

Linda Walt, 48, Walt's mother, also choked back tears while discussing the case as the jury deliberated the fate of the son she described as civically active and an honors student in college.

"There are two victims in this," she said. "Kim and my son, Kim

and Lee. ... We hurt so deeply for that family — we do."

"I feel like it's waiting for the outcome of surgery," Linda Walt said. "You trust your doctors and you give it to God and that's all you can do — and he is innocent."

If convicted, Walt could have been sentenced to life in prison because the prosecution waived the death penalty. Jurors also could have convicted him of a lesser offense of first- or second-degree murder, manslaughter or negligent homicide.

The defendant testified during the trial that he shot Schwartz twice. But he said he didn't know who he shot. He said he heard noises in his darkened home that night and fired at an unknown intruder who stabbed him twice in his right arm. The defense, led by attorney Kenneth Johnson of Dumas, has contended that Schwartz, who was married and pregnant, was obsessed with Walt, who is single, and angered that he had called off their affair.

Gibson argued that the murder was deliberate and premeditated. Walt's stab wounds were self-inflicted, he argued.

Schwartz, whose body was found in Walt's bedroom near the bathroom door, was shot once in the abdomen and again in the head with a 12-gauge shotgun. State Medical Examiner Fahmy Malak

testified that autopsy tests showed there apparently was a five-minute lapse between the first shot and the fatal blow to the head.

Dr. Joseph L. Burton, a pathologist and chief medical examiner for metropolitan Atlanta, testified for the defense, however, that a time lapse was not evident. Johnson also contended that the timing of witnesses' reports of seeing comings and goings at the house and the time of reporting the shooting did not leave time for a five-minute lapse between shots.

In closing arguments Monday afternoon, Gibson noted a Wal-Mart employee had seen Walt shopping for buckshot not long before May 31. Store officials called in rebuttal by Johnson Monday morning, though, testified they could not find cash register records showing such a purchase.

Gibson's other arguments referred to angles of the gunshots; blood patterns on Walt's floor and other evidence he said contradicted Walt's account of the incident.

Gibson depicted Walt as having acted in a "crime of passion," planning the shooting to get him out of the "fix" of his involvement with Schwartz. There had been testimony that Schwartz was pregnant with his child.

"He let his desire overcome his best judgment," Gibson said.

McGehee woman's death re-created at murder trial

By Valerie Smith 12-4-78
Gazette Staff

ARKANSAS CITY — A Desha County Jury heard expert testimony Monday that Kim Irons Schwartz may have lain wounded for five minutes before receiving a second shot that killed her.

The jury also viewed a videotape of the murder scene during the first day of the capital murder trial of Martin Lee Walt III. Walt, 24, son of a well-known Desha County farm family, is accused of slaying Schwartz in his home in Dumas on May 31.

Prosecuting Attorney John Frank Gibson of Monticello called to the stand three witnesses Monday.

Schwartz, 24, of McGehee, an account executive for radio station KDDA in Dumas, was found dead on the floor in Walt's bedroom around 10:30 p.m. She had been shot in the stomach and head by a 12-gauge shotgun. Walt has maintained that he shot at an unknown intruder who stabbed him in the dark of his bedroom.

Dr. Fahmy L. Malak, state medical examiner, said both shots were fired into her body at an

upward angle and that she was shot in the stomach first. The shot damaged her liver, lungs, spine and other vital organs. The doctor said the amount of blood that accumulated in her stomach indicated that she lived several minutes before she died.

She was killed by the shot to the head, which entered the left side of her face and left a tear in her skin 5 inches long, Malak said.

He said he recovered 20 pellets from her abdomen and 26 from her head. The body

See TRIAL/7B

Trial

Continued from Page 1B

showed no trauma other than the gunshot wounds, he said. The autopsy also revealed that the woman was in the first three or four weeks of pregnancy, but because of a defective ovum, she would've aborted the child, the medical examiner testified.

Defense Attorney Kenneth Johnson of Dumas quickly attacked Malak's testimony and alleged that it conflicted with his early assessment of the slaying, which he had provided to Johnson over the telephone.

Johnson said he would call an independent medical examiner, Dr. Joseph Burton of Atlanta, to dispute the medical examiner's testimony. He also charged Dr. Malak with "throwing out opinions with-

out all the facts."

Sgt. James Herrington of the Dumas Police Department, who led the investigation, played the crime-scene tape made just over an hour after the shooting.

The tape showed the location of the gun, the body, blood stains and droplets and other physical evidence. It showed the placement of two long-handled knives, two spent shotgun casings, soiled towels and paper fragments, which will be key points of argument for both sides.

Gibson said the state would prove that the shooting was planned and that Walt's stab wounds were superficial and self-inflicted.

Johnson said he would prove that Schwartz, a married woman, was obsessed with Walt and was under "severe pressure" on the night of the shooting.

Little River grand jury ruling sought in 2 unrelated deaths

By Nancy Pfister
Gazette Camden Bureau

12-1-90

ASHDOWN — Prosecuting Attorney Jim Bob Steel is asking a Little River County grand jury to investigate two unrelated deaths.

One death was caused by an act of sexual self-gratification and another from alcohol poisoning and neck injuries, according to the state medical examiner.

William Garrett, 32, was found dead at his Ashdown home Aug. 19, 1988, and Rebecca Dellinger Sellers, 38, found at her home east of Ashdown on June 17.

"No new evidence has come to light but both cases still disturb me," Steel said.

Garrett was found clothed in underwear, lying next to a water bed.

Dr. F. A. Malak, state medical examiner, originally ruled Garrett was killed by "padded strangulation or choking arm lock" but later ruled the death "accidental death due to autoeroticism." He found no alcohol or drugs in his system, according to Malak's reports obtained by the *Little River News*.

Malak's report doesn't explain how the

man performed the sexual act which killed him. Police found pornographic tapes and a fourth-pound of marijuana in the house Garrett shared with roommates.

Sellers was found lying face down on a bed. The alcohol level found in Sellers' blood was 0.70 percent, according to Malak's report. The level between 0.30 to 0.40 causes unconsciousness and 0.50 is fatal.

But Malak recommended further investigation because he discovered spinal cord damage and a neck fracture.

"If alcohol alone, the manner of death would be classifiable as an accident, but because of the bruise and the non-dislocated fractured neck, the manner of death would be left undetermined," the report states.

Steel said, "We're dealing with the loss of human life and we've had an investigation on-going by the Ashdown Police Department and the Sheriff's Office."

Steel expects a 16-member grand jury to be impaneled in January by 9th Circuit Court Judge Ted Capeheart.

Gap between fatal shots, Malak says

12-4-90

BY JOE FARMER
Democrat Pine Bluff Bureau

ARKANSAS CITY — Dr. Fahmy Malak, state medical examiner, said Monday that there was "a minimum of at least five minutes" between the firing of the first and second shotgun blasts that killed Kimberly Irons Schwartz.

Malak was the first witness in the 5-day-old trial of Martin Lee Walt III, 24, of Dumas (Desha County), who is charged in the murder of Schwartz, 24, in Dumas on May 31.

Malak said Schwartz's body was found in Walt's bedroom with her head facing north. There were two wounds from a 12-gauge shotgun — one to her abdomen and the second to her head. The first wound did not kill her, he said. There were massive internal injuries, but blood in the bladder showed that she lived at least

Desha County

five minutes before suffering the second wound, which Malak said killed her instantly.

Prosecuting Attorney John Frank Gibson of Monticello said the married Schwartz was having an affair with Walt and became pregnant. She told him and he shot her, Gibson contended.

Defense attorney Ken Johnson of Dumas says Schwartz went unannounced to Walt's house at 508 Van Gill Drive and stabbed him twice, and he shot her in self-defense.

Malak said the wounds showed that the shots had to be fired from "very close range. No more than five to nine feet."

Malak had said in an earlier report that the shots were at

point-blank range, meaning the barrel of the weapon was almost against the skin, but was later told that an empty cardboard cylinder for paper towels and a regular towel were used to muffle the shots.

"That would change the distance by a few feet," Malak said. "Not by more than five, though. There was gunpowder in the wounds, and it only carries five feet."

Johnson tried to challenge Malak's qualifications based on an error he made in a case involving two youths who died on a railroad track in Saline County, but Circuit Judge Stark Ligon of Warren moved quickly to block that.

"Do you have more than one incident, and can you cite it?" he asked Johnson before having the jury removed from the courtroom.

Johnson said he did, and Ligon agreed to hear about them. However, after the jury left, Johnson admitted that was the only case he was talking about.

"That involved no court overruling Mr. Malak," Ligon said. "I just can't allow that to be introduced."

The jury saw a videotape of the initial investigation of the crime and heard limited testimony from Sgt. James Herrington, head of the criminal investigation unit of the Dumas Police Department. He is to continue his testimony at 9 a.m. today.

Malak said Schwartz was pregnant when she was killed, but she would have had a miscarriage.

"It was not a false pregnancy," Malak said. "She would have shown positive on an over-the-counter test."

11 jurors picked in Walt murder trial

11-30-80

BY JOE FARMER
Democrat Pine Bluff Bureau

ARKANSAS CITY - Things were quieter at the Desha County Courthouse here Thursday, the third day of jury selection in the capital murder trial of Martin Lee Walt III, 24, of Dumas (Desha County).

When court recessed at 5:15 p.m. Wednesday, 11 jurors had been selected, and the process is to resume at 9 a.m. today. Circuit Judge Stark Ligon of Warren was telling jurors they would be called an hour before they are needed for opening arguments.

Walt is charged with the May 31 shotgun slaying of Kimberly Irons Schwartz, 24, of McGehee.

Desha County

The state contends that Schwartz, who was married, and Walt were having an affair, she told him she was pregnant, and he shot her.

The defense says she went unannounced to his home and stabbed him twice, and he shot her.

Defense attorney Ken Johnson of Dumas asked that the trial site be changed because of problems with jury selection, but no other courtroom was available. Potential jurors are being questioned individually in the courtroom on the second floor.

Notices were posted on the outside entrances to the courthouse on Thursday morning warning trial participants that they would be held in contempt of court for violating the court's order in any substantial manner.

"All jurors and potential jurors are to have no contact with anyone else who may be a potential witness in this case (names are listed on the sheets posted with this order), or any contact with anyone who may be a member of the Walt or Schwartz/Irons/Calvert families or their friends," the order read.

It instructed witnesses to stay out of the courtroom. Walt

family members to stay in the county treasurer's office, and Schwartz family members to stay in the judge's chambers.

Dr. Fahmy Malak, state medical examiner and a key prosecution witness, sent a message saying he could not testify unless his appearance is today. Prosecuting Attorney John Frank Gibson of Monticello said Malak has business in other areas of the state and then is going on vacation.

"We can get his testimony if we can get him in here before dark," Gibson said. "We need a jury seated by noon Friday."

A total of 52 potential jurors has been questioned since the trial opened Tuesday morning.

Murder investigation troubling

11-26-90

Dumas, McGehee embroiled over coming trial in woman's shooting

By Valerie Smith
Gazette Staff

DUMAS — It's been nearly six months since Kim Schwartz of McGehee was found shot to death in the home of Dumas farmer Martin Lee Walt III, and authorities still are puzzling over circumstances in the bizarre killing.

Schwartz, 24, an account executive at KDDA radio station, was found dead May 31 on the bedroom floor of Walt's house in the Meadowview subdivision. She had been shot in the head and abdomen with a 12-gauge automatic shotgun fired by Walt, then 23. She was married and was pregnant at the time of the shooting. Walt was single.

Though Walt has maintained that the shots were fired in self-defense at an unknown intruder who stabbed him in his darkened bedroom between 10 and 10:30 p.m., he was charged in June with capital murder, when investigators suspected the slaying was premeditated.

Last week, during preparations for a jury trial to decide the issue, it was apparent that people in McGehee and Dumas remain troubled by the incident.

Some examples:

□ A person or people visited the crime scene at 508 Dan Gill Drive, cut out a section of bloodied carpeting, carved it into the shape of a person and threw it into Walt's truck one night, according to Walt's attorney. Though the police were notified, and some of Schwartz's friends were questioned, the vandal was never caught.

□ Sherry Morgan, Schwartz's mother and a county employee, was overheard remarking, in the presence of a roomful of potential jurors, that she didn't know what she'd do if Walt was acquitted, since he "blew her baby's brains

Continued from Page 1A

out." Among the witnesses to her comment, made at the Desha County courthouse, was another county employee, Susan Walt, the defendant's aunt.

□ Teresa French, the McGehee deputy prosecuting attorney who has spent months preparing the case for trial, was surprised last week to find herself subpoenaed by the defense. French, a close friend of the victim and her husband, will be isolated with the rest of the witnesses and unable to participate in the trial. Defense attorney Kenneth Johnson said French and other Schwartz supporters possess knowledge that is "beneficial" to the defense.

"I'll be real glad when it's all over," said Craig Eastham, general manager of KDDA AM/KXFE FM radio station in Dumas. Eastham, who was Schwartz's boss and a personal friend, is one of the more than 150 people subpoenaed to testify in the trial.

Among the list of potential witnesses are members of Schwartz's family, Walt's family, and dozens of friends and acquaintances. Eastham and others suspect the volume of subpoenas was aimed at clearing the courtroom of spectators.

In response, Prosecuting Attorney John Frank Gibson of Monticello has sought to videotape the proceedings, for the benefit of relatives and other witnesses who will not be able to watch the trial. Circuit Judge Stark Ligon had not ruled on the request by Wednesday.

The Dumas police, led in the investigation by Sgt. James Herrington, are confident in their case against Walt, the son of a farm family well-known in the area.

Armed with a wealth of physical evidence, including ballistic reports and autopsy records, the police believe Schwartz was shot once while standing, a second time while lying on the floor.

They also believe Walt may have tried to muffle the sound of the shots, which were never reported to the Dumas police. (At first, the police believed a gunshot fired in the neighborhood 40 minutes earlier was related to the slaying, but that theory was quickly disproved. Municipal Judge David Stubbs of Dumas volunteered that he fired the earlier shot at a dog from his residence several blocks away.)

"I feel good about everything we've got," said Herrington, 28, who gathered evidence at the crime scene until noon the morning after the shooting. "We haven't found anything, and the defense hasn't produced anything, that would change my mind about that."

Though the police have not determined a motive, Herrington said the slaying may have been prompted by Schwartz's pregnancy and that Walt may have feared the embarrassment of his family over the question of the child's paternity.

But the defense is also confident, with a formidable argument and list of witnesses of its own. Included on the witness list is Dr. Joseph Burton, medical examiner for metropolitan Atlanta, who will testify that the physical evidence wholly supports an argument of self-defense.

Burton will go head to head against state Medical Examiner Dr. Fahmy Malak, and it won't be the first time for the Georgia pathologist. He contradicted Malak's ruling in the cause of death of two Saline County teen-agers, Kevin Ives and Don Henry, who were hit by a train in August 1987. Malak said the boys fell asleep on the tracks; Burton said the boys were murdered.

See DUMAS/7A

Page 1 of 2 Pages

Johnson, who is Dumas' city attorney, will seek to prove that Walt was asleep in his water bed until abruptly awakened and forced into a terrifying series of events that left him with no options but to fight for his life.

According to Johnson, the entire incident took place in a house that was completely dark except for illumination from a small light nestled beneath a curtain above the kitchen window. Police have said the lights were off in the master bedroom and bathroom when they arrived.

For the first time since the shooting, Johnson agreed to give Walt's account of the night of May 31. On a tour of the house at 508 Dan Gill Drive last week, Johnson said this is what happened:

Walt, exhausted from working all day on the family farm, retired early, before 10 p.m., and took the bedroom phone off the hook so he could sleep.

Some time later, he was awakened by a noise in the house, which he had moved into a few days earlier. He looked down the darkened hallway, but saw nothing and believed the strange sound may have been the air-conditioning unit kicking on. He went to the master bathroom before trying to sleep again.

As he exited the bathroom, he was stabbed in the upper right arm by a person who mumbled something in the dark, Johnson said. Walt reached for his rifle, which was leaned against a small dresser near the bathroom door, and retreated to the bathroom, where he crouched defensively between the toilet and wall.

Unable to see or hear his attacker because of the flushing toilet and a non-working bathroom light, he fired two shots in rapid succession into the bedroom, and heard a body fall.

Bleeding from the arm wound, he stumbled down the hallway in search of a phone. But the phone was off the hook in the bedroom, and Walt was unable to make an outgoing call from the kitchen extension. Without returning to the

bedroom, he fled the house and sought help from neighbors, who called the police.

"This whole thing happened," said Johnson, who paused to snap his fingers for effect, "just like that."

"Can you think of one reason why he would want to kill her?" Johnson added. "If he wanted to hide the pregnancy, like the police believe, what would be the ONLY way to guarantee that that very information was revealed to everyone? To kill her, of course."

The trial is scheduled to last two weeks, and much of the time will be spent dissecting the reputation of Kim Schwartz, a former cheerleader and Desha County Horse Show Queen.

Schwartz, who was married to a prison guard who worked nights, dated Walt on several occasions, and also dated other men outside the marriage, Johnson said. The mother of a 3-year-old child, she frequently left the child with her grandmother, Lucille Calvert, with whom she and her husband lived.

On the day of the shooting, Walt canceled an evening meeting with Schwartz and spent time with an old girlfriend instead, Johnson said. The defense may pose this question in court: Could Schwartz have learned about the date and set out after Walt in a jealous rage?

Telephone records have been subpoenaed for 16 pay phones in Dumas, in order to determine whether or not Schwartz was summoned to the Dumas residence on May 31. According to witnesses, she received a call at her McGehee home an hour before the shooting, though it has not been determined who made the call.

As officials prepared for the trial last week, the families apparently coped as best they could. Walt, free on \$100,000 bond, "is dying inside" and needs counseling, Johnson said.

Jury selection begins Tuesday in Arkansas City. Two jury pools of 100 people each will be called to ensure that an impartial jury of 12 is seated.

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Exzette 11-26-90

Unnatural cause?

Unnatural Cause
Unnatural Cause
Unnatural Cause

Doctor says baby developed gangrene; autopsy says natural death with SIDS

Despite a De Queen doctor's opinion of gangrene in the scrotum area of a two-month-old baby which died Dec. 14, 1988, the state's Medical Examiner ruled the death of the infant as natural and the cause of death as Sudden Infant Death Syndrome.

Aaron Dunson, a two-month-old baby, was pronounced dead on-

pital indicated pneumonia in the infant's left lung.

Dr. Malak said there was no pneumonia present in a letter to Deputy Prosecuting Atty. Randy Wright of De Queen. The letter was dated May 2, 1989.

The conflicts of the autopsy findings and the initial investigation by law enforcement agencies and mem-

However, in another new development, Dr. Malak changed the ruling on Mrs. Sellers to suggest the cause of death is undetermined and the case needs additional investigation.

In the death of the baby Aaron Dunson, Sevier County law enforcement officers, the deputy prosecutor and state human services personnel who investigate child neglect and abuse wanted felony charges filed against the parents. But the ruling of Malak stopped the possibility of the more serious charges and made it difficult for officials to remove the other children from the custody of the parents.

In Sevier County Circuit Court testimony by Dr. Ridlon during a hearing to remove the other children from the custody of the parents, the physician questioned Dr. Malak's autopsy findings. Dr. Ridlon examined the baby at the De Queen hospital when the infant arrived by Southern Ambulance dead-on-arrival.

Dr. Ridlon was questioned by De Queen attorney H. Morris representing the state for the removal of the other children. Morris asked Dr. Ridlon about the autopsy ruling.

See Unnatural, Page 5

Deputy prosecutor's letter refers to infant's death as a crime.

State police investigator's report says crime unfounded.

On Dec. 14, 1988 and while the attending physician, Dr. Richard Ridlon, who was on duty at the De Queen Community Hospital, testified about how a diaper rash had developed into an infection on the skin "is just rotted," the state medical examiner ruled the death natural through Sudden Infant Death Syndrome.

Dr. Ridlon testified on Jan. 5, 1989, at a hearing to remove the other two surviving children from the parents.

The Chief Medical Examiner, A. Malak, M.D., termed the infant's medical problem as "a severe case of diaper rash."

An x-ray at the De Queen hos-

pital indicated pneumonia in the infant's left lung.

Dr. Malak said there was no pneumonia present in a letter to Deputy Prosecuting Atty. Randy Wright of De Queen. The letter was dated May 2, 1989. The conflicts of the autopsy findings and the initial investigation by law enforcement agencies and members of the medical profession are part of three questionable deaths in Little River and Sevier counties within the last two years. The two deaths in Little River County concerning questionable deaths and the changes in the autopsy report involve the death of William Garrett in August, 1989 and the death of Rebecca Dellinger Sellers in June, 1990. In the deaths of both Garrett and Sellers, the preliminary reports ruled homicide. However, after conferring with the Arkansas State Police, Dr. Malak changed his preliminary reports to accidental in the Garrett case without discussing the changes with Little River County Coroner Dr. Jim Armstrong.

- LITTLE RIVER NEWS, ASHDOWN, AR, OCT. 18, 1990

Unnatural causes

Continued from page one

saying the infant died from Sudden Infant Death Syndrome (SID).

Dr. Ridlon explained in his testimony that SID would be a diagnosis when an infant suddenly dies and there's no cause found. "With an infection of that magnitude as well as what appeared to be pneumonia on x-ray, I don't understand this at all," he said.

in the margin saying "Suspicious Infant Death" made him decide to write the letter to Dr. Malak about the ruling. Suspicious Infant Death and Sudden Infant Death Syndrome basically carries the same initials except for the word syndrome.

Wright said in his letter, "After reviewing the photographs taken of the dead infant, it is readily apparent from his condition that his parents were grossly negligent in

The state police good ole boy network isn't real thorough in their investigation.

Case worker investigation.

The case worker said, Wright wanted to file felony charges, but the ruling by Dr. Malak and the state police report saying the crime was unfounded virtually eliminated felony charges.

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Unnatural causes

Continued from page one

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Dr. Ridlon explained in his testimony that SID would be a diagnosis when an infant suddenly dies and there's no cause found. "With an infection of that magnitude as well as what appeared to be pneumonia on x-ray, I don't understand this at all," he said.

Dr. Ridlon had no explanation for the autopsy ruling. He testified saying, "I thought about calling Dr. Malak, but he's had trouble lately, and I didn't think it was my place to get into that."

Dr. Ridlon testified the baby possibly died from pneumonia and no infection. "I think a combination of those things would be fatal," said Dr. Ridlon.

The court record shows Dr. Ridlon specifically saying the infection in the scrotum area would have been fatal. Morris said photos taken of the baby at the hospital and from statements from hospital personnel show the scrotum area appeared to have gangrene.

Dr. Ridlon said, "When an infection like that gets in the blood stream, even in an adult, it's an extreme medical emergency. In a child, sepsis (bacterial invasion of the body through a wound which has rotted) or bacteria in the blood stream is generally fatal without treatment."

"I was appalled at the overall condition, but the condition of the scrotum area. I've been in practice for

in the margin saying "Suspicious Infant Death" made him decide to write the letter to Dr. Malak about the ruling. Suspicious Infant Death and Sudden Infant Death Syndrome basically carries the same initials except for the word syndrome.

Wright said in his letter, "After reviewing the photographs taken of the dead infant, it is readily apparent from this condition that his parents were grossly negligent in his care. Therefore, based on the great difference in your opinion and that of Dr. Ridlon, I am respectfully requesting that you review the transcript of Dr. Ridlon and your findings. A crime such as this, against such a small victim, should not go unpunished."

Dr. Malak replied back to Wright in a letter dated May 2, 1989 saying the blue color cyanosis is a finding associated with any sudden death. He also said external examination showed no injuries (bruises, cuts, abrasions, whipmarks, etc.).

"There is no pathologic disease to explain the death. The changes in the lungs were the usual findings in sudden infant death syndrome. There is no pneumonia present," said Dr. Malak in the letter.

Dr. Malak also said there is no necrosis or dermal infarcts. "This severe case of diaper rash might be considered negligent or non-negligent based upon circumstances and social structure," he said.

In the letter, Dr. Malak said, "In conclusion, the findings are total-ly consistent with SIDS by exclu-

The state police good ole boy network isn't real thorough in their investigation.

Case worker investigator

The case worker said Wright wanted to file felony charges, but the ruling by Dr. Malak and the state police report saying the crime was unfounded virtually eliminated felony charges.

"You can look at Dr. Malak's statements in the letter as saying, 'If you are poor, you can neglect a child or abuse the child. I still get a knot in my stomach thinking about the baby. When does it all stop and what does it take?'" said the investigator who is now a foster care specialist/activity coordinator for the Southwest Arkansas Counseling & Mental Health Center, Inc. in Texarkana, Ark.

Wright did eventually file misdemeanor charges against the parents for endangering the welfare of a minor. The Municipal Court found the parents guilty, but they've filed an appeal in Circuit Court on the ruling.

Morris also reported a hearing on the parents in testimony on page three, paragraph 12, dated March 12, 1990, the state is working with a rehabilitation program with the mother, but urged earlier conserving visitation of the two surviving children. The court record shows another baby the woman had in Oklahoma prior to 1988 had died of unknown causes.

Morris also said the court record

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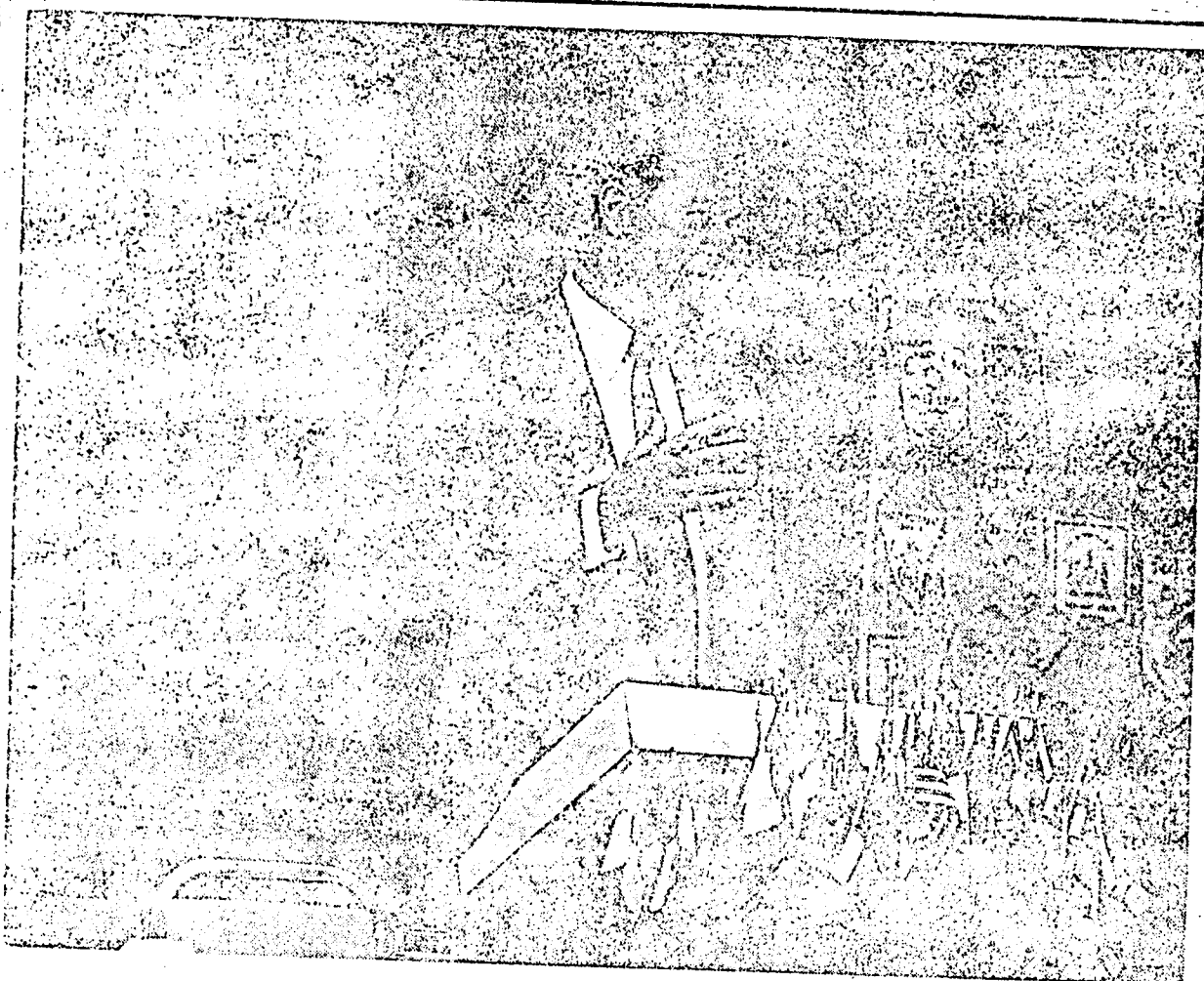
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Courier photo by Suzanne Brown

Republican gubernatorial nominee Sheffield Nelson addresses the Tuesday meeting of the Benton-Bauxite Rotary Club.

Nelson stops short of dam support

By SUZANNE BROWN
Courier Staff Writer

Republican gubernatorial candidate Sheffield Nelson pledged his support in Saline County's search for a water supply Tuesday, but stopped short of saying he would help with the effort to dam the Saline River's North Fork.

He also blamed Gov. Bill Clinton's administration for a shortage of state Highway Department funds affecting two Saline County projects.

In a speech before the Benton-Bauxite Rotary Club here, Nelson said Saline County has been "essentially held hostage by Little Rock" and commended the county for approving a special 1 percent sales tax to pay for a new reservoir.

Nelson added, however, that environmental issues in the state need to be addressed, and said how Saline County develops a new water supply will depend on decisions by the federal

Environmental Protection Agency and the U.S. Army Corps of Engineers.

Passing the tax "gives you an avenue to at least start working toward a water supply," Nelson said. "My personal goal would be in helping you get a water supply."

In response to a question from N.C. "Mack" McManus, Benton alderman from Ward 2, Nelson initially said he supported Saline County's proposal for a lake developed by damming the North Fork.

Opposition to the dam and lake has been received from environmental groups and some state and federal agencies because the North Fork is protected for environmental reasons.

On the subject of Saline County highway projects put on hold by a lack of state funds, Nelson said the Arkansas Highway and Transportation

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Department ran out of money because it tried to take on too many projects throughout the state in a political year.

"I see their barrels (indicating road construction) in every part of the state," he said.

Although the Highway Department is constitutionally separated from the governor, the governor still has a lot to say about the department's budget, Nelson said.

The candidate said he does not favor an increase in gasoline taxes now due to the rise in prices triggered by the Middle East crisis.

He referred to another Saline County issue when he reiterated a statement made during an earlier Benton visit. "Malak would be the first one to go," he said, speaking of the state's controversial medical examiner, Dr. Fahmy Malak.

Malak's credibility was questioned when he ruled that two Saline County teen-agers run over by a train in 1987 were unconscious from the effects of smoking marijuana. Another forensic pathologist, Dr. Joe Burton of Atlanta, later determined that Kevin Ives had sustained a facial beating and Don Henry had been stabbed in the back prior to being placed on the railroad track near the Shobe Road crossing.

Malak has never publicly con-

ceded that the boys' deaths were anything other than accidental.

"A lot of people in state government are not competent," Nelson said. "They are serving on a political basis I think you'll see a lot of them leave automatically when I go in."

The candidate said he favors reducing the number of state employees by attrition rather than firing, and said he believes the "political stooges" would leave voluntarily.

Saline County's concerns over many state issues boil down to the same worries expressed by voters throughout Arkansas, he said. "It's amazing how much alike people are," he said. "What concerns them most is education, jobs and taxes."

Nelson admitted that his opponent, incumbent Gov. Bill Clinton, has made improvements in Arkansas' education system, but said some of Clinton's advances have been "overdone."

Among those he included teacher testing, revised state standards and the Minimum Performance Test given to third-, sixth- and eighth-graders.

The GOP contender said he favors giving the MPT at the beginning of the fourth and seventh grades to eliminate the pressure of teaching specifically for the test in Grades 3 and 6.

Nelson's suggestion for educational change that would most directly affect jobs in Arkansas is the development of additional vocational-technical programs.

More than 50 percent of Arkansas students will not continue their educations beyond high school, and vocational-technical programs are needed to operate in conjunction with high schools, he said.

"Any additional advantage we can give them toward life is a good way to spend money and a good effort to undertake," Nelson said.

Nelson also recommended that the state's colleges and universities be encouraged to operate more like businesses than they are now, a suggestion he also applied to state government.

State government, which has grown by 5,000 employees in the last five years, can be run on the

revenues coming in, he said.

The state has an annual growth in revenue of \$100 million, with an annual budget in the \$2 billion range, Nelson said.

"There's a lot of fat in state government," he said. "With extra people goes bureaucracy; goes red tape." Nelson attacked Clinton's statement that eliminating 1,000 employees would give only a 1 percent savings.

"One percent of \$2 billion is \$20 million," he said. "That amounts to a \$750-a-year increase for teachers." Arkansas teachers make less than their counterparts in every other state in the U.S.

He also criticized state financial officials who failed to accurately predict the state's needs for its Medicaid program. The state recently experienced a \$29 million shortfall in state matching money for that program, resulting in drastic cuts in the number of recipients eligible for state medical aid.

"There's not a way on earth anybody in business could justify that kind of mis-estimate," Nelson said. "Yet, I haven't heard of a single head rolling." If anyone at the Arkansas-Louisiana Gas Co. had missed an estimate by that much during Nelson's days at the helm of that utility, "somebody would have been gone," he said.

Asked by Dr. Don Brashears, Benton alderman from Ward 5, if he favors a lottery as a way to bring in additional state revenues, Nelson replied "no."

"I'm personally against the lottery," he said. "I think it would be counterproductive for the state to encourage people to spend money that can't afford to spend money."

Nelson, who earlier opposed an effort to bring casino gambling to Hot Springs, said Tuesday he believes that a moralistic society should not encourage gambling.

"I believe it's wrong, and I'm against it," he said. The candidate added that in other states besides those with fairly high average incomes, the lottery has not produced the amount of revenue its promoters promised.

"I don't think it does what it's said it will do," he said.

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METRO/STATE

Larimore death time disputed

Ohio coroner disagrees with Malak's autopsy finding

By Jennifer Gordon
Gazette Jonesboro Bureau

JONESBORO — While defense witnesses laid into state Medical Examiner Dr. Fahmy Malak's autopsy of June Larimore on Tuesday, prosecuting attorney Scott Hunter was delving into the cost of bringing expert witnesses to help defend her husband, Greg Larimore, at his capital murder trial.

Dr. Frank Cleveland, coroner for the city of Cincinnati, Ohio, said Malak made a "gross error in the estimation of the time of death" in his autopsy report. Malak said in his testimony last week that he believed June Larimore died 10 to 12 hours before she was found.

Cleveland said June Larimore may have died only four to five hours before her body was found in the couple's Blytheville home around 11:30 a.m. Jan. 11. He told the jury that June Larimore's petite size, along with the fact that she was nude and had lost considerable amounts of blood after a violent struggle, could have sped up the pace at which rigor mortis, or the stiffening of the body, set in.

The time of June Larimore's death is crucial in determining whether Greg Larimore was home when she was stabbed 134 times in the couple's bedroom. Greg Larimore arrived at work around 6:45 in the morning, almost five hours before his wife's body was discovered.

Malak testified earlier that people who suffer from stab wounds will experience an increase in temperature before dying as the body tries to replace fluid. He told the jury that a body drained of blood will cool slower than normal. But Cleveland said he was unaware of any pathologist or reference that supported Malak's statement. In fact, he said, loss of blood can bring on shock, which is known to cause cooling of the body.

Cleveland said the degree of rigor mortis that was found in the body is typical of bodies that have gone through a struggle and should not have been used as a

factor in determining the time of June Larimore's death.

Under cross-examination, Cleveland told Hunter that he was being paid \$125 an hour as a consultant by the defense, including \$625 as reimbursement for a round-trip air ticket.

Steve Cox, a former criminologist with the Arkansas State Crime Lab, said he was being paid \$500 a day for his work as a consultant and Dr. Robert Briner, director of the Southeast Missouri Crime Lab in Cape Girardeau, said he was paid \$300 a day as a consultant in the case. All three defense witnesses said that the money was not an issue and did not influence their testimonies.

Cox said he would have investigated the crime scene more cautiously than the Blytheville Police Department investigators. He said there was the possibility that latent fingerprints, if bloodied, could have remained on the body and the sheets. Cox said that before he removed the bedclothes he would have examined the fitted bed sheet for hairs that might have fallen from the killer.

Donald Smith, a criminologist with the state crime lab who testified Monday, said he did not have a chance to examine the fitted sheet for hairs because it was being examined by serologists.

Briner, whose specialty is serology, or body fluids, said that a cigarette found in the kitchen sink was likely smoked by a "non-secretor," someone who does not have blood cells in their saliva. The cigarette was of the same brand that June Larimore normally smoked, but June and Greg Larimore were both found to be secretors.

Hunter pointed out that the cigarette had been doused with water and asked if the water could interfere with testing. Briner said it could, but if there was enough saliva on the cigarette then the blood-grouping should have remained on the cigarette as well. Hunter pointed out that the cigarette may not have any relevance in the trial.

says he'd

dismiss

Malak

aturday, July 7, 1990 Arkansas Gazette 11B

BENTON (AP) — Republican gubernatorial nominee Sheffield Nelson said Friday that he would fire state Medical Examiner Fahmy Malak if he is elected, and he criticized Gov. Bill Clinton for not dismissing Malak.

Nelson, who faces Clinton in the November general election, spoke at a meeting sponsored by the Saline County Republican Party.

Malak has come under criticism for some of his rulings, including his finding in the deaths of two Bryant teen-agers. He said Kevin Ives, 17, and Don Henry, 16, died accidentally in a marijuana-induced sleep when they were run over by a Union Pacific train while lying side by side on some tracks near Alexander in August 1987.

A Saline County grand jury ruled that the deaths were homicides after a Georgia forensic pathologist testified that he found evidence that the boys were beaten and stabbed before the train hit them. The death certificates were subsequently changed to reflect the grand jury ruling, but Malak has not backed down from his original finding.

"When one goes, the other goes," Nelson said of Clinton and Malak.

Based on a visit last week with President Bush, Nelson said he believes the president's change of mind about tax increases will not have a significant impact on most citizens. "My gut reaction is that they will be 'sin' or excise taxes," he said.

Nelson reiterated his conviction that Clinton, who is seeking a fifth term, has been governor too long.

"I believe Bill Clinton is vulnerable," Nelson said. "He's been in office too long and people in Arkansas are ready for a change."

An advocate of the death penalty all of his adult life, Nelson noted he would not back away from that stand if he wins the governor's seat. He said Clinton is lukewarm about the death penalty and said he didn't think John Swindler or Ronald Gene Simmons would have been executed last month if the "sentences had not come due in an election year."

Swindler's execution on June 18 was the first in Arkansas in 24 years. Simmons was executed a week later.

Nelson: Malak 'gone' after election

The Associated Press

BENTON — Republican gubernatorial nominee Sheffield Nelson said Friday he would fire state Medical Examiner Fahmy Malak if he is elected, and he criticized Gov. Bill Clinton for not dismissing Malak.

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Issues at breakfast

Nelson

By LYNDA HOLLENBECK
Courier Staff Writer

Republican gubernatorial candidate Sheffield Nelson was in Benton today to garner support for his campaign and to express his views on topics ranging from teacher salaries to the death penalty and a lot of others in between.

Speaking at a breakfast meeting sponsored by the Saline County Republican Party, the Republican nominee reiterated his conviction that Gov. Bill Clinton has held the state's chief executive post too long.

"I believe Bill Clinton is vulnerable," Nelson said. "He's been in office too long and people in Arkansas are ready for a change."

An advocate of the death penalty all of his adult life, Nelson noted he would not back away from that stance if he wins the governor's seat. "I assure you that I will set more executions than Bill Clinton," whom he called "lukewarm" in regard to the ultimate deterrent to crime.

Mentioning the recent executions of John Swindler and Gene Simmons, Nelson speculated that neither would likely have been executed if the "sentences had not come due in an election year."

If he proves victorious in November, among the changes Nelson said he will implement would include the firing of the

See NELSON, page 5

Continued from page 1

state medical examiner, whose controversial status has escalated since the 1987 deaths of two Bryant teen-agers.

When asked if he had "ever heard of Dr. Fahmy Malak," Nelson replied, "Yes, I have. And in government and business sometimes your time (for leaving) comes, and his time has come. He'll be gone when I become governor."

Coupling Malak with Clinton, who has refused to fire Malak despite public and private demands to terminate Malak from his position, Nelson said, "When one goes, the other goes."

The gubernatorial hopeful promised to take steps to move Arkansas teacher salaries out of their current rating of 50th among the 50 states and the District of Columbia. He pointed out that the state ranked 47th four years ago when Clinton was re-elected governor.

Nelson also contended there are ways to bring about pay raises for state employees whose salaries have remained at status quo for several years.

Comparing state government to business, the candidate referred to cutting out some "fat" in state governmental levels and allowing it to filter down to the employees. "When you streamline your employees, you need to raise the salaries of those remaining to promote good relations."

Explaining what he meant by "fat," Nelson said he was referring to excess employees, all of whom are Clinton appointees.

Nelson expressed optimism about his chances in November, but said he could not succeed without the help of Saline Countians and other supporters throughout the state. He voiced his gratitude for the promise of support he has received by people previously in the Tommy Robinson camp.

Mentioning the importance of

candidates standing on their own merit, Nelson said, "Someone else coming in is not going to anoint you."

That comment was in reference to the Thursday visit Vice President Dan Quayle made to the state.

"This was a positive event for my campaign, but we have to make our own way as politicians," he added.

Based on a visit last week with President George Bush, Nelson said he believes the president's so-called "reneging" on a campaign promise of "Read my lips: no new taxes" will not have a significant impact on most citizens. "My gut reaction is that they will be 'sin' or excise taxes."

According to Nelson, Clinton has raised more taxes in Arkansas than any prior governor. He contended there have been 86 individual tax increases during Clinton's tenure.

With the general election only four months away, Nelson contended the time has come to set aside the "bitterness" of the primary campaign. He believes the Republican party has the "best lineup of candidates" than in previous years and plans to continue traveling throughout the state to encourage a unified front.

"Bill Clinton is not the governor of the future, the one to bring changes about," Nelson said. "If we come up short in 1990, we will be missing an opportunity."

"We're not running as a ticket; we're running individual campaigns, but we do have a common interest," he added.

Other Republican candidates in attendance at the event were Asa Huchingson, who hopes to be elected Arkansas attorney general; Saline County Sheriff Larry Davis, who is seeking reelection; Blake Robertson, candidate for Saline County judge; Mike Woodall, a candidate for justice of the peace; JP Doyle Webb, who is seeking reelection; and Dolores Webb, candidate for county assessor.

Today's meeting was held at Brown's Country Restaurant.

Forum

Tip-off

Make no mistake, Malak

Defense attorney R.S. McCullough tried to get in his licks last week at state Medical Examiner Fahmy Malak. McCullough, at the manslaughter trial of Vincent Don Lewis, suggested that a fatal head wound could have been caused by a fall rather than a beating, but Malak was emphatic. "But you've been wrong before, haven't you?" McCullough asked. "Give me an example," Malak replied. McCullough mentioned Malak's widely publicized finding that two Bryant boys died accidentally in a marijuana-induced sleep on train tracks, a finding rejected by a grand jury that heard a report that one boy was stabbed and the other beaten. Malak said his finding "was disputed, but it is still correct."

Suicide of doctor set for state job reported

From Democrat News Services

A doctor hired to fill a year-long vacancy in the state medical examiner's office committed suicide Thursday at his home in St. Augustine, Fla., four days before he was to leave his job as medical examiner there, police said.

Robert McConaghie's body was found about 3 p.m. on the floor of the garage of his home, said Tom Cushman, deputy state attorney in charge of the St. Augustine office. McConaghie, 58, was the medical examiner for Putnam, St. Johns and Flagler counties in Florida.

The garage door was closed and his car's engine was running. The cause of death appeared to be carbon monoxide poisoning, Cushman said. McConaghie was reportedly upset over the loss of his Florida job, the breakup of his marriage and financial difficulties.

He was expected to start work in Arkansas about Feb. 15 as an associate medical examiner, said Jim Clark, interim director of the state Crime Laboratory. The position pays \$90,000 annually.

See BODY, Page 5B

Body

• Continued from Arkansas Page

Clark said he and McConaghie "openly discussed" problems he had with his Florida job and wife's drug abuse.

Steve Alexander, former Florida assistant state attorney, said McConaghie had told him he was forced to resign.

"He said he resigned because that's what the powers-that-be wanted," Alexander said.

State Attorney John Tanner said McConaghie made the decision to resign, adding, "We just discussed some problems with his office."

"His life was crumbling in front of him. He had an incredible amount of personal crisis," said St. Augustine attorney Robert McLeod, who stayed with McConaghie for an hour Wednesday to prevent him from committing suicide.

"He's a very orderly man, and his life was in disarray."

"We knew of the situation and were satisfied that Dr. McConaghie's professional and personal involvement with his wife's problem were not of his doing," Clark said. "His credentials checked out."

1-5-90

1990 • • •

Walt's attorney challenges Malak

BY JOE FARMER
Democrat Fine Bluff Bureau

ARKANSAS CITY - The credibility of testimony by Dr. Fahmy Malak, state medical examiner, was again questioned Tuesday in Desha County Circuit Court in the capital murder trial of Martin Lee Walt III, 24, of Dumas.

Walt's trial entered its sixth day Tuesday in the Desha County Courthouse here. Defense attorney Ken Johnson of Dumas on Monday tried to undermine testimony by Malak that at least five minutes elapsed between two shotgun blasts that killed Kimberly Irons Schwartz, 24, of McGehee.

Walt is charged with shooting Schwartz once in the abdomen and once in the face at very close range at his Dumas

Desha County



house on May 31. While the prosecution contends Walt shot Schwartz after she told him she was pregnant, the defense maintains he shot her in self-defense.

It was during testimony from state's witness Erwin Monroe, a firearms expert at the state Crime Laboratory, that Johnson again attacked Malak's testimony concerning the shooting.

Malak said in his initial autopsy report that the shots were fired from point-blank range, but he testified Monday that they were fired from "very close range" after being told by authorities that a homemade silencer made of

towels and a cardboard cylinder was used in the shooting.

Monroe said the 12-gauge automatic shotgun used in the slaying was tested with and without a similar homemade silencer. Differences in results of the two kinds of test firings weren't significant enough to note, Monroe said.

Monroe testified the first shot, in the abdomen, was fired from two to five feet away, while the second shot, which Malak said was the fatal shot in the head, came from two to nine feet.

Johnson read Malak's original report to Monroe on Tuesday afternoon. "Would you say that is different from what you're saying?" he asked Monroe.

"It depends on your definition of point-blank range,"

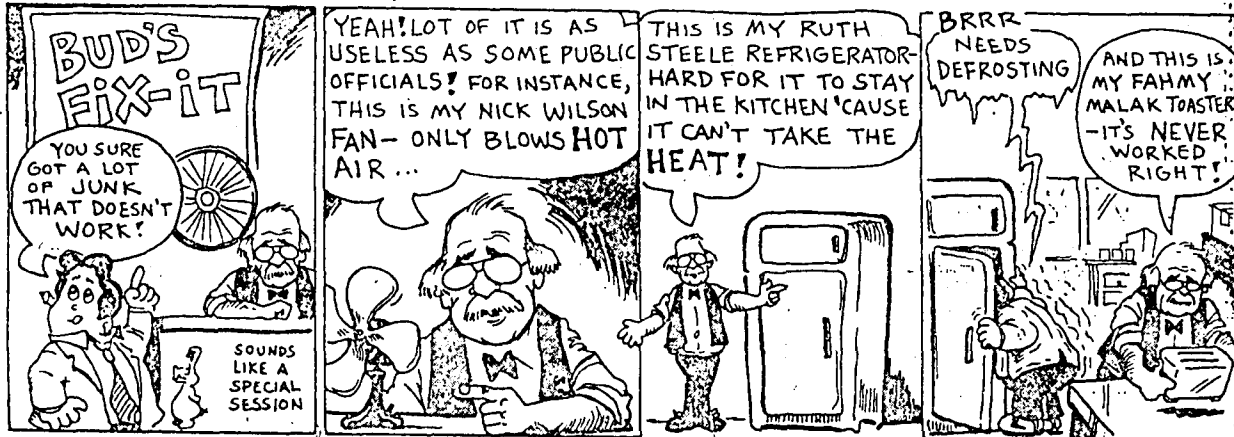
Monroe replied. "I can't say what Dr. Malak said or meant."

Prosecuting Attorney John Frank Gibon II of Monticello said his case should end today and the trial should carry into early next week.

Testimony on Tuesday showed that Schwartz, under the name of Irons, had made an appointment for an abortion at a Little Rock clinic the day before the killing. Clinic records showed that, under the name Schwartz, she had another abortion in 1985 and was listed as single.

Circuit Judge Stark Ligon of Warren allowed Johnson to introduce hearsay evidence that Mississippi telephone numbers found in her purse at the time of her death were those of a drug dealer.

Spanks



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Why pass over Dr. Malak for richly deserved barbs?

Dear Mr. Starr:

I must have wondered at least a million times during the last year and a half where your mouth has been regarding the controversy surrounding Dr. Malak. There is no other public official who is more deserving of your dreaded barbed tongue.

I thought your column of Nov. 2 with the usual bashing of Clinton (not that I don't think he is also a very deserving fellow) contained a very enlightening statement made in regard to Clinton's proposed taxes to fund the drug war: "But the deal that I made and the deal I stayed hitched to ..."

After all, he has done his very best in demonstrating his total lack of honesty and integrity ...'

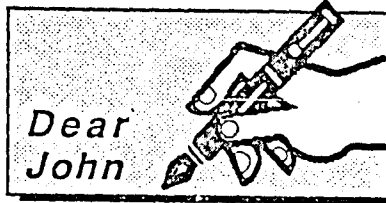
I found it very interesting that you admitted publicly that a deal had been struck between you and Clinton. It was very plain, however, that the terms of the deal had been violated - Clinton did not remain hitched.

Now, in looking back at some of your past favorites, I am absolutely intrigued at what exact criteria must be met to draw your ire. I can't help but feel that my favorite candidate for this position, Malak, has been unfairly passed over for this promotion.

After all, he has done his very best in demonstrating his total lack of honesty and integrity, and time after time has gone above and beyond the call of duty to make sure that everyone who tried to blow the whistle on him was duly recognized by the appropriate superiors.

Why, even Billion \$ Bill has recognized his outstanding job performance by recommending a \$34,000 yearly increase in his salary.

Won't you please be so kind as to heap the recognition on Malak that he so richly deserves? And if you do not see fit to bestow the honor on him based on his own professional attributes, please know that there are a great many of us



out here that might be willing to make a deal - and we promise to remain hitched!

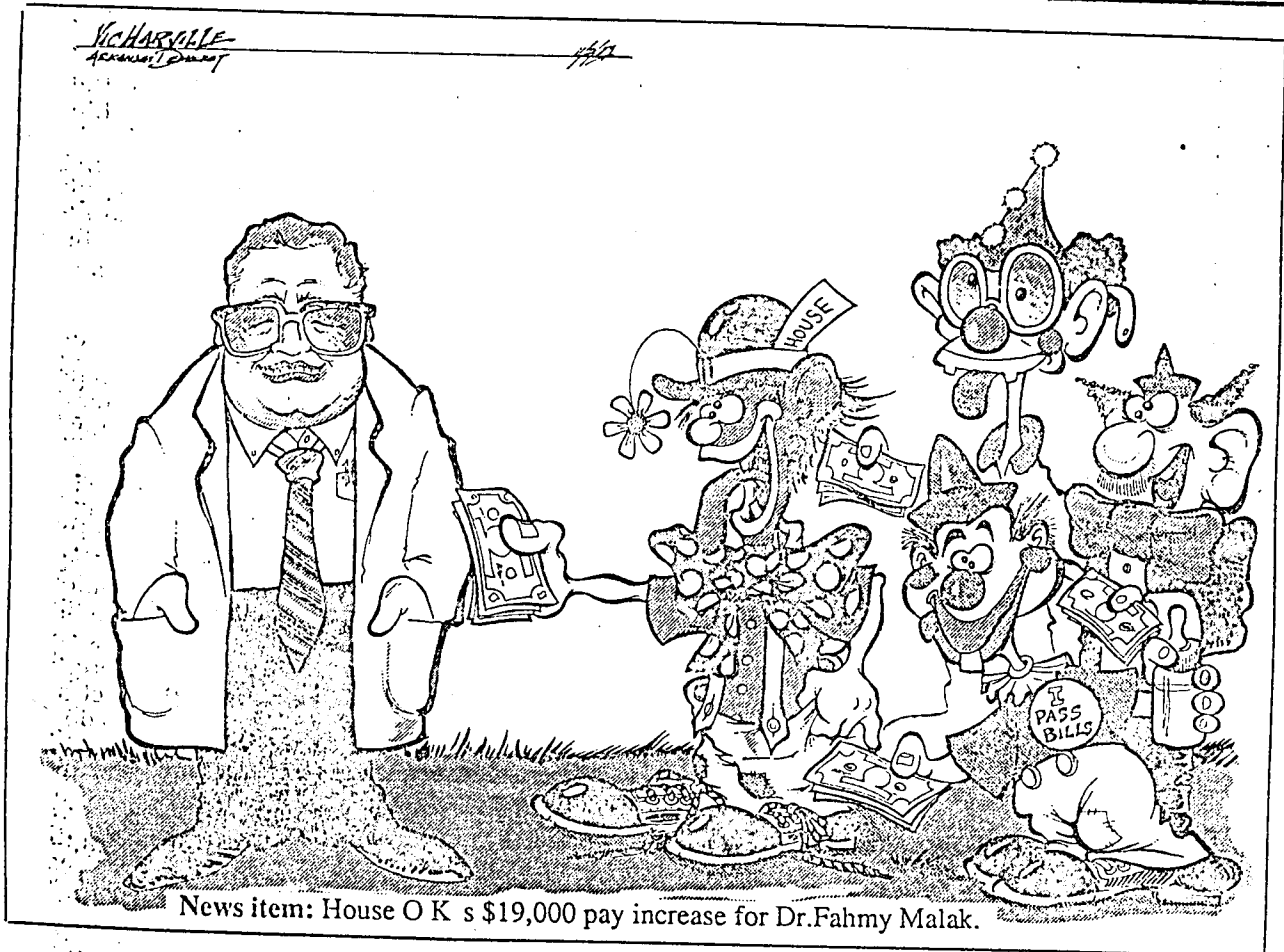
If we do not hear from you soon, we will assume that you, too, are a part of the great Malak whitewash deals that have been going on for so long. In that case, I would like to recommend Vic Harville for your job!

LINDA IVES
Benton

★ ★ ★

ARKANSAS DEMOCRAT • FRIDAY, NOVEMBER 17, 1989

Voices



Arkansas Democrat/Vic Harville

Special Session

House refuses twice to give Malak \$19,000 raise

BY JOANI L. DUFFY
Democrat-Capitol Bureau

The House refused on two separate votes Monday to raise the salary of controversial State Medical Examiner Fahmy Malak.

"We ought to fire him, not give him a raise," said Rep. Hubert Hankins of Pine Bluff. Malak currently receives \$81,000. Joint Budget Committee's House Bill 1021 would raise it to \$100,000 this year and \$102,750 next year. Two assistant medical examiner slots, which currently are vacant, would carry salaries of \$90,000 this year and \$92,500 next year.

Malak came under fire last year after a Saline County grand jury overturned his ruling of accidental death in the case of two youths run over by a train. Malak said the teenagers were in a marijuana-induced stupor and failed to hear the train approach.

A Georgia pathologist told the grand jury he had found wounds on the bodies that had not been caused by the train. The grand jury ruled the

The House initially voted 60-15 in favor of raising Malak's salary, but the bill needed 75 votes to pass.

"I don't think we can establish a salary based on the person who holds the office," said Rep. John Miller of Melbourne, chairman of the budget committee. He asked the House to erase the initial vote. On a second try, the salary bill drew a few more supporters but still fell short, 72-12.

Miller acknowledged the salaries were high, but he contended that without that level of pay the state will be unable to fill two assistant medical examiner positions. He also said it would be impossible to find another medical examiner, if Malak quits or is fired, for \$81,000.

"I realize, just like everyone of you, this was a big salary," Miller said. "But to a lot of professional people, that \$100,000

just isn't anything. If we want to run him off, you sure better pass this because we can't replace him with the salary we are paying him now."

Miller will be able to bring the pay raise bill back for another try before the special session ends.

In other action Monday, the House accepted a rewritten version of a bill designed to keep young drivers off alcohol and drugs by threatening them with revocation of their driver's licenses.

Initially, House Bill 1039 by Rep. Doug Wood of North Little Rock would have revoked the license of any driver between 16 and 20 convicted of possessing drugs or driving under the influence of alcohol until the driver reached 21.

The measure was blasted as being unfair and probably unconstitutional, since it punished the 16-year-old more harshly than a 20-year-old. The rewritten version, approved 82-7, would establish a minimum six-month suspension of driver's licenses for people under the age of 21 who are convicted of such offenses, but the licenses could be reinstated early for good behavior, such as successful completion of a substance abuse treatment program.

Rep. Patrick Flanagan of Forrest City won approval of HB 1036, permitting the disclosure of a juvenile's identity once he has been ruled a delinquent by a court. Reps. Bill Mills of Kensett and Jim Lendall of Little Rock voted against the measure.

Rep. Jodie Mahony of El Dorado won approval of HB 1042, rewriting school truancy laws so children could not drop out of school by accumulating unexcused absences.

"They are plenty smart enough to know if they want out of school, all they have to do is run up excessive absences," Mahony said.

Committee slices 41% raise for Malak

BY MAX PARKER
Democrat Capitol Bureau

A pay raise may be in order for state Medical Examiner Fahmy Malak, but it won't be the 41 percent increase proposed by Gov. Bill Clinton.

A legislative committee on Wednesday slashed the proposed increase in half.

The governor introduced a bill Tuesday that would have increased Malak's salary from \$83,272 to \$115,000 for the current budget year. The bill would have raised the salary to \$117,875 for the 1990-91 fiscal year.

The subcommittee of uniform personnel classification and compensation of the Joint Budget Committee voted Wednesday to raise the salary to \$100,000 this fiscal year and to \$102,500 for the 1990-91 budget year.

The raise would mark a 20 percent increase the first year.

Despite controversy surrounding some of Malak's rul-

ings, the pay raise was requested to make the state competitive in hiring forensic pathologists.

Clinton's proposal to increase pay for two vacant assistant medical examiner slots from \$80,058 to \$105,000 this year and \$107,625 in 1990-91 also was voted down by committee members.

The lawmakers, on recommendations from legislative staff, endorsed a raise to \$90,000 for this year and \$92,500 for 1990-91.

Clinton said Wednesday his salary figures were based on recommendations by Bill Cauthron, the former director of the state Crime Laboratory who died earlier this year.

Interim Director Jim Clark could not be reached Wednesday to determine whether the revised salary increases would bring the state in line with surrounding states.

The committee's recommendations will be heard today by the Joint Budget Committee.

Tuesday, October 31, 1989 Arkansas Gazette . .

TAKES A STAND: Rep. John Miller of Melbourne (above) refused after controversial medical examiner Fahmy Malak is gone. The bill Monday to amend a bill to put a pay raise authorization into place only failed to pass in the House.

Bill to raise examiner's pay fails

By James Merriweather
Gazette Staff

A big pay raise for the state medical examiner was blocked Monday by House members, some of whom said they wouldn't go along until Dr. Fahmy Malak quits.

Rep. John Miller of Melbourne, handling the bill for the Joint Budget Committee, refused to amend it to put the pay raise authorization into place only after the controversial Malak is gone. With 75 votes needed for passage, the House then rejected the proposal, House Bill 1021, on a 60-15 tally, and later fell three votes short of passing it on a 72-12 vote.

The bill may be brought up again.

Gov. Bill Clinton proposed raising Malak's salary from a level of \$81,249 to \$115,000 for the current budget year and to \$117,875 for the budget year that begins July 1. The Joint Personnel Committee last week cut the requests to \$100,000 and \$102,500.

Miller noted that the amended bill also would raise the salary authorizations for two associate medical examiner positions from \$78,113 to \$90,000 in the current budget year. The authorization would go to \$92,250 as of July 1.

"Whether you think Dr. Malak is the best or the worst, it's hard to find these kind of specialists," Miller said, noting that both associate positions were unfilled because of the low salaries.

"If we want to run him off, you sure enough better pass this because we can't replace him with the salary we're paying."

Rep. Hubert Hankins of Pine Bluff said the wrong signal would be sent out by improving the salary of Malak, saying some House members questioned his competence. When he said that Malak was "not the most liked person in the state of Arkansas," somebody said, "You're not, either."

Malak, always controversial, came under increased scrutiny last summer when he accused a deputy Pulaski County coroner of murdering a Little Rock man by ordering life-support systems disconnected. A police investigation turned up nothing to support the allegation, and, at the urging of Clinton, Malak later apologized.

Clinton said the incident reflected that Malak was overworked because of the work load of his office. He has not had an assistant since June

1988.

In other action, the House:

■ Passed, 82-7, HB 1039 by Rep. Doug Wood of Sherwood, which provides for the suspension of driver's licenses of minors convicted of drunken driving or possessing drugs or liquor while driving a vehicle. The bill was rejected last week, but later amended to allow reinstatement of driving privileges after a year of good behavior.

■ Passed, 90-1, HB 1007 by Reps. Ed Thicksten of Alma and Jodie Mahony of El Dorado, which is intended to buffer school districts against the sudden loss of money under provisions of the school financing formula.

■ Passed, 80-0, HB 1042 by Mahony, intended to allow school districts to decide when to count an absence against a student. Mahony said students had learned how to abuse the fact that only "unexcused" absences were being held against them.

■ Unanimously endorsed HB 1065, which would appropriate \$3,245,000 this budget year and next to match federal money expected to become available for enforcing drug laws.

Death ruled accident, not homicide, by Malak

By Scott Bowles
Gazette Staff

William Garrett, found strangled in his Ashdown home among a collection of bizarre sexual items and devil symbols, died by accident and not murder, State Medical Examiner Dr. Fahmy Malak has ruled.

Malak initially classified Garrett's Aug. 19 death as a homicide, but in a letter to Prosecuting Attorney Jim Bob Steel of Nashville, Malak wrote he had reconsidered his decision.

Malak said in the Oct. 2 letter that Garrett, 32, apparently chained himself around the neck and masturbated, unintentionally choking himself to death.

Lack of oxygen to the brain intensifies sexual stimulation, but the dangerous act annually claims lives throughout the country. People performing the act can lose consciousness and suffocate.

Ashdown police officers discovered Garrett's partially clothed body on the floor behind his bed the morning of Aug. 19. He had nothing around his neck when he was found. Steel said the case was

incorrectly classified a murder because of "inadvertent tampering" of the crime scene by a witness.

The turning point in the case apparently came in late September, when a relative of Garrett's explained to authorities that she removed a dog chain from Garrett's hand.

The relative, who was with two friends when she discovered the body, "was only trying to aid the victim," when she removed the collar, Steel said.

"I don't think she was intentionally trying to hide that fact," he said. "She was distraught. After thinking things over, she said she had taken it from his hand."

Steel said she was not suspected of any wrongdoing whatsoever.

Testimony from another witness corroborated the relative's account.

"Bill was on the floor with something green in his right hand," one of the relative's friends told state police investigators. "He was holding onto it real tight."

Police believe that moments before dying, Garrett slipped the collar off his neck, Steel said.

"He was on the brink of consciousness when he took it off and lapsed into unconsciousness once it was off," Steel said. "Then he died. That's the only way I know how to explain it. We concur with Dr. Malak's findings."

Items in the home sent police on the trail of several leads when they thought they were investigating a murder, but none of which bore fruit, Steel said.

Police discovered a four-foot painting of the devil above Garrett's fireplace. The eyes had been shot out with a small caliber weapon, allowing light to filter through from outside. They also found five small red stuffed devils standing in a row on the floor.

Two dozen pornographic videotapes, three of them homemade with actors from Ashdown and Texarkana, were found in the home, too. Steel said that the few participants who could be identified on tape provided no concrete information in Garrett's death.

"None of the leads panned out," Steel said. "And then Dr. Malak's report closed the case."

Cont. 10-4-89

Defense gains 2nd autopsy

El Dorado News-Times

EL DORADO - An order issued by Circuit Judge John Graves of Camden will allow a suspected murder victim's body to be exhumed for a second autopsy.

Robert Compton, attorney for John Harper, filed a motion Sept. 25 for the second autopsy of Harper's wife, Gayle Harper. The body of Mrs. Harper, a 32-year-old paraplegic, was found April 28 in the Ouachita River near Moro Bay with a 35-pound steel pipe tied to one ankle.

A grand jury July 19 returned a first-degree murder indictment against Harper.

The order to exhume Mrs. Harper's body was granted Friday after the Union County prosecuting attorney's office did not object to the motion.

"We do not object to the motion, but we do not concur with the motion," Pat Jackson Compton, Union County chief deputy prosecuting attorney, said Monday. "We don't feel (the second autopsy) will have any detrimental effect on our case."

Compton said in his motion that the exact cause, time and place of the death (are) vital to the defense. He said he wanted to double-check the findings of Dr. Fahmy Malak, state medical examiner. Compton has asked that the second autopsy be performed the last week in October by Dr. George Millsaps McCormick II, a forensic pathologist in Bossier City, La.

Malak ruled in May that Mrs. Harper was murdered by forcible drowning around Jan. 7, the day she disappeared from her Houston Street home.

Joy Pugh, Mrs. Harper's sister, reported her missing Jan. 17.

If found guilty, Harper could face 10 years to 40 years to life in prison.

Compton may request that Harper's trial be moved to another location within the 13th Judicial District.

"I'm not discounting a motion for a change of venue," he said Friday.

"We would object and respond to a change in venue," Compton said Monday, adding that the defense must prove such a move is necessary. "I'm going to move for an excluded period of time."

Malak can't escape furor of Saline case

The Associated Press

BOONEVILLE — The credibility of the state medical examiner has been questioned in a Logan County case on the basis of a controversy over his findings in the deaths of two Saline County boys.

Dr. Fahmy Malak was the state's first witness Wednesday in the first-degree murder trial of Scott Porter, 24, of Booneville for the Feb. 4 death of Porter's 18-month-old stepson, Keith Richardson.

In the Saline County case, two boys were run over by a train. Malak said the train killed them while they were in a marijuana-induced sleep.

But last year, a Saline County grand jury came to a different conclusion. The jury said the boys were murdered.

No one was indicted.

Coy Rush, attorney for Porter, tried to use that disparity in conclusions to show Wednesday that if Malak was wrong in the Saline County case, he could be wrong in the Porter case.

Malak, in a hearing before Circuit Judge Charles Eddy, attorneys and Porter — but away from the jury — vigorously defended his conclusion that the Saline County boys died accidentally.

He said two nationally known medical examiners independently confirmed his findings. He also said he was told the grand jury investigation was not objective and was politically motivated, he said.

No one touched those children," Malak said. "I still believe they were accidental deaths."

When Malak, under questioning by Rush, said he had no direct knowledge of the grand jury's findings, Eddy said he had to limit Rush's questioning about the Saline County incident.

A Little Rock newspaper article Rush was referring to in court didn't constitute proof of the grand jury's findings on which Rush could base his line of questioning, Eddy said.

Malak said that the person who led the grand jury was politically motivated and that he had no reason to change his conclusions. He said the boys' deaths still are listed in his records as accidental.

In the Logan County Circuit Court trial, Malak said the death of the infant was the result of vigorous shaking.

"In my opinion, the manner of death was homicidal," he said. "The cause of death was a head injury compatible with shaking."

Malak, who conducted the autopsy Feb. 6, said he found that the back of the boy's scalp had been torn free from the skull. He concluded the boy had been grabbed by the hair and shaken.

Rush told the jury there was no direct evidence that Porter killed his stepson. "There is nothing in his background that would suggest he would commit such a heinous crime," he said.

The boy was active, Rush said, and apt to get bumps and bruises.

*Coy Rush 474-0466
Jo (Linda) Lady etc.*

Lawyer assails Malak's credibility

BOONEVILLE (AP) — The controversy over the state medical examiner's ruling in a case involving two Saline County boys has re-emerged in a Logan County case.

Dr. Fahmy Malak was the state's first witness in the first-degree murder trial of Scott Porter, 24, of Booneville. Porter was being tried in the death of his 18-month-old stepson, Keith Richardson, Feb. 4.

In the Saline County case, Malak ruled as accidental the deaths of two teens who were run over by a train. Malak said the two boys were in a marijuana-induced sleep. But last year, a Saline County grand jury concluded the boys were murdered, though no indictments were issued.

On Wednesday, Porter's attorney, Coy Rush, tried to use the Saline County case to show that, if Malak was wrong in that case, he could be wrong in Porter's case.

Malak defended his conclusion in the Saline County case in a hearing before Circuit Judge Charles Eddy. Attorneys and Porter were included in the hearing, but the jury was not.

Malak said his conclusion was supported by two nationally

known medical examiners. He also said he was told the grand jury investigation was not objective and was politically motivated, he said.

"No one touched those children," Malak said. "I still believe they were accidental deaths."

Under questioning by Rush, Malak said he had no direct knowledge of the grand jury's finding. Eddy then said he had to limit Rush's questioning about the Saline County incident and said that a Little Rock newspaper article about the grand jury's findings wasn't sufficient proof on which Rush could base his questioning.

Malak, saying he had no reason to change his conclusions,

said that the person who led the grand jury was politically motivated. He said the boys' deaths still are listed in his records as accidental.

In the Logan County Circuit Court trial, Malak said the death of the infant was the result of vigorous shaking.

"In my opinion, the manner of death was homicidal," he said. "The cause of death was a head injury compatible with shaking."

Malak, who conducted the autopsy Feb. 6, said he found that the back of the boy's scalp had been torn free from the skull. He concluded the boy had been grabbed by the hair and shaken.



WANTED: INVESTIGATORS FOR STATE CRIME LABORATORY.
SHOULD ALSO BE ABLE TO DRIVE SCHOOL BUS.
APPLY: DR FAHMY MALAK, STATE MEDICAL
EXAMINER, LITTLE ROCK, ARKANSAS,

'Policeman at heart' heeds call to run crime laboratory

BY MAX PARKER
Democrat Capitol Bureau

Despite his professed love for hands-on police work, Jim Clark has given it up for the third time so that he can heed the call of Gov. Bill Clinton.

Last Monday, Clark began an unpaid leave of absence from the Arkansas State Police to serve as interim director of the state Crime Laboratory.

"The governor's a silver-tongued devil," Clark said during a recent interview. "It's a little bit of an ego thing to me to know the governor of Arkansas respects my ability ... to contribute. I guess I have a reputation of being able to come in and work with varied groups of people and administer whatever group of people I have to."

The third-floor director's office at the state Crime Laboratory has been occupied before by Clark, 43, when he served as head of the agency from 1985-87, and for a short time before that as assistant to the director.

His current stint stems from the recent death of former Sebastian County Sheriff Bill Cauthron, who served as crime lab director since August 1988 and who filled the vacancy created by Clark's departure.

"It feels comfortable," Clark said. "I walked into it with my eyes open this time. I think the crime lab is like any other state agency, we're going to have problems."

Clark disputes contentions that the crime lab has suffered irreparable credibility problems, mostly due to controversies involving state Medical Examiner Fahmy Malak.

"I don't think our credibility has been damaged that much."



Jim Clark

Clark said. "We've had bad press, but we've had bad press before."

But Clark's preference for more hands-on police work is obvious, as he is among those who have applied for the job of North Little Rock police chief. That position has been vacant since the April 30 retirement of former Police Chief Dale

Bruce.

"I'm still a policeman at heart," Clark said, adding that he applied for the position before his recent crime lab appointment. "I don't know if it's the fast cars or turning on the blue lights and getting that adrenalin pumping, but I like being a police officer."

Clark began working for the state in 1968 as a budgeting finance analyst for what now is the Department of Finance and Administration. He later worked for the North Little Rock Police Department and his more than a decade in police work has included a stint as a state trooper.

Clark said he has been given no indication how long he will serve in his present capacity or whether Clinton is considering offering to him a second stint as permanent head of the crime lab.

"What I'd really like to get into is white collar crime investigative work," Clark said. "But if I was asked by the governor, I'd have to really think about it and sit down and talk with my wife. She's always been very supportive of me."

Malak, ex-aide face off in court

By George Wells
Gazette Staff

Two former friends squared off in federal court this week because one had fired the other.

The pictures they painted of one another were not pretty.

Dr. Lee F. Beamer, former assistant state medical examiner, depicted his former boss, Dr. Fahmy Malak, as an intimidating autocrat who had warned him not to play poker with employees of other offices in the State Crime Laboratory because "they are the enemies of the medical examiner's section."

Malak, the state medical examiner, described Beamer as an "in-

competent" who couldn't or wouldn't learn from his mistakes, which Malak said were many.

Both came to Arkansas from the Cook County medical examiner's office in Chicago, where they met in the 1970s and became friends.

About a year after Beamer came to Arkansas as Malak's assistant, he was fired by Jim Clark, director of the crime laboratory, at Malak's suggestion.

Beamer sued Malak, saying he was fired because he had associated with people Malak didn't like — namely employees of other crime lab offices. The dismissal was a violation of his First Amend-



File Photo

Dr. Fahmy Malak: Called Beamer an "incompetent."

ment rights, Beamer said in the suit.

U.S. District Judge George How-

See MALAK/2B

Malak

Continued from Page 1B

ard Jr. said he considered Beamer's case weak, but will allow the case to go to the jury. He indicated, however, that he might set aside any large jury award. The trial will resume at 8:30 a.m. today. Beamer testified Tuesday that employees of the crime lab play poker every Thursday and that he had joined the game several times. Malak warned him about the games and, later, began "nitpicking" his work, Beamer said.

Philip E. Kaplan of Little Rock, Beamer's attorney, told the jury that Malak's criticisms of Beamer were a pretext to hide his true motive: to prevent Beamer from associating with other lab employees.

The proof of this, Kaplan contended, was that Malak had committed more serious errors in his practice than Beamer allegedly had.

Beamer insisted that many of the criticisms made by Malak of his autopsies and other work were unimportant or not actually done by anyone in the medical examiner's

office while he was there in 1984 and 1985.

He testified that when he first came to Arkansas he and Malak were very friendly.

But it wasn't long before Malak began to "lie about me" and harass him with repetitious criticism and ridicule in front of other office employees, Beamer said. By February 1985, Beamer said, "For me, it became pure hell."

He said he had seen Malak do things far outside the boundaries of accepted practices in doing autopsies, such as having technicians open bodies and remove all the organs without a doctor present.

Beamer also said Malak had circulated rumors that he had a drinking problem.

Donald Wayne Younts of Little Rock, a former investigator with Malak's office, testified that Malak had ordered him to pick up Malak's children from school on several occasions, to deliver pizza to Malak's house and do other errands in a state car while on duty.

Malak denied most of the testimony, but admitted that he had asked Younts and others to pick up his children from school in a state car "two or three times" when they became sick and he couldn't go himself.

Malak also said he had sound reasons for each of the criticisms he had made of Beamer's work, such as ruling too often that the cause or manner of death was "undetermined."

Louisiana orders tests to determine if woman was shot

BY DOUG THOMPSON
Democrat State Desk

HAMBURG — Louisiana authorities have ordered laboratory tests to determine if there was a gunshot wound on the body of Shirley Kelley, Ashley County officials said Wednesday.

Mrs. Kelley, 42, who lived with her husband in Bastrop, La., died Aug. 12. The victim's husband, Willard "Buddy" Kelley, told police his wife jumped out of his truck just after they left a cemetery in Arkansas. A Crossett woman has been charged in the death.

Louisiana authorities became involved because it is possible the woman died in that state.

An autopsy performed by Dr. Fahmy Malak, Arkansas' controversial state medical examiner, found no evidence of wounds other than those caused by being hit by a car. Cause of death, he determined, was crushing injuries to the head and neck.

Prosecuting Attorney John Frank Gibson of Monticello confirmed Wednesday that tissue samples were sent to a pathology laboratory in Dallas soon after a Louisiana medical examiner conducted a second autopsy on Mrs. Kelley's body.

Neither Gibson nor Ashley County Sheriff James Robinson, chief investigator on the case, knew when the Dallas laboratory will have results. Neither would elaborate on what led Louisiana authorities to believe there was a gunshot wound.

"They're being very closed-mouthed about this thing," Gibson said of Louisiana authorities. "If they've found something, I need to know and I need to know now."

Without a gunshot wound or some other additional evidence, Gibson said, he will

have to recommend freeing Glenda Long of Crossett. Because of evidence found in Long's car during a police search, Long was arrested Aug. 22 and charged with first-degree murder in Mrs. Kelley's death.

Robinson said Willard Kelley had a relationship with Long.

"I'm not criticizing the decision to arrest her. There is plenty of evidence for probable cause," Gibson said. "I just don't feel that I have enough evidence to go to trial on a murder charge."

"The only reason for keeping someone in jail is to wait for trial. I either have to take this before the grand jury in Ashley County, or recommend her release. I'll probably take it before the grand jury as soon as it can be arranged."

Long's attorney, Sam Pope of Crossett, said he will make a request that his client's \$75,000 bond be reduced. Long is in the Ashley County Jail awaiting formal charges.

Pope said she could be held in the jail for up to nine months while Gibson decides whether to formally charge her.

Willard Kelley had no comment Wednesday.

A county grand jury was convened June 20 in Ashley County to investigate allegations that Robinson beat a prisoner. The jury, which remained in session after indicting the sheriff on a misdemeanor charge, has looked at other matters in the county. It will review the Kelley case next week.

Willard Kelley told police he and his wife had a confrontation with Long about 5 p.m. Aug. 12 at the Kelleys' home in Bastrop.

"Willard Kelley and Glenda Long been seeing each other about five or six months," Robinson said. "After the three of them met, Long left while the Kelleys got into his truck. He said they were going to take a long ride, talk and sort their problems out."

Willard Kelley told police he took his wife to a cemetery south of Crossett, less than five miles from the Louisiana border. Long and Willard Kelley had used the site as a rendezvous, Robinson said.

"He said he showed his wife where Long had written 'G+B' and 'Glenda loves Buddy' and other such sayings on a tree with spray paint," Robinson said. "Long had grown up in that area."

Shortly after leaving the cemetery and while on their way home, Willard Kelley told police, his wife jumped out of the truck, which was traveling at 40 miles an hour.

"He said he turned around and went back. When he got there, he said, he saw that his wife had been hit by a red 1986 Ford pickup truck," Robinson said.

"The man supposedly stopped and Kelley supposedly said he'd take care of her, she was his wife, but Kelley can't even tell us if the man was white or black," Robinson said. "Nothing he's told us makes sense."

"Then, instead of driving six miles to the hospital in Crossett, he drives 22 miles to the hospital in Bastrop," Robinson said.

Malak's report says Mrs. Kelley was hit "multiple times — at least twice" by a car, Gibson said.

There were no serious injuries below the waist, Gibson said. That indicates Mrs. Kelley was not standing when she was hit by the car, he said. There were no skid marks at the scene.

"It is not beyond the realm of possibility that it happened just as the husband said it did — but I don't believe it," Gibson said.

"I never would have believed we'd get a case so similar to the Saline County train deaths," Gibson said.

In that case, Malak ruled as accidental the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, and Don George Henry, 16.

Malak autopsy says victim died after struck by vehicle

BY DOUG THOMPSON
Democrat State Desk

HAMBURG - Dr. Fahmy Malak, Arkansas medical examiner, has concluded in an autopsy report that Shirley Kelley, 42, of Bastrop, La., died Aug. 12 of injuries she received when she was hit by a vehicle.

'We decided a second look would help, that it was possible a second examination could find something Dr. Malak missed. Two heads are better than one.'

Kelley, an alleged murder victim, died of crushing injuries to her head and neck, torso and extremities, said Ashley County Sheriff James Robinson, who read from Malak's report.

Robinson complained about the length of time it took to get Malak's report. The autopsy was done Aug. 14, and the results were not received until Saturday, he said.

"I know they're overworked and underfed, but who's not?" Robinson said.

Results of a second, independent autopsy are expected soon, Robinson said Tuesday. The second autopsy was performed before the sheriff's office received Malak's autopsy results.

"We were not questioning Dr. Malak's professional ability when we asked for a second opinion," Robinson said.

Kelley's injuries were so severe and numerous, Robinson said, "that we decided a second look would help, that it was possible a second examination could find something Dr. Malak missed. Two heads are better than one."

"Because there is some question about whether the murder occurred in Arkansas or Louisiana, we could get a second opinion for free, so why not?" he said.

The second autopsy was performed by Dr. George McCormick of Shreveport, La., a state pathologist assigned to northern Louisiana. Robinson said he discussed the case with Louisiana authorities and they agreed to request a second autopsy by McCormick.

Kelley was already dead, police said, when her husband

brought her to Morehouse General Hospital in Bastrop.

Louisiana authorities are assisting in the investigation because it is possible the woman died in Louisiana even though her husband said she jumped from a moving truck on Arkansas 133.

'I know they're overworked and underfed, but who's not?'

Glenda Long (incorrectly identified in earlier reports as Linda Long) of Crossett, who police describe as a "friend" of Kelley's husband, was arrested Aug. 22 on first-degree murder charges. She is being held in the Ashley County Jail in Hamburg in lieu of a \$75,000 bond.

Kelley's husband, Willard, told emergency room workers and police that his wife jumped from his moving truck on Arkansas 133 between Crossett and Bastrop, and was hit by another car.

Mrs. Kelley's body was taken to the state Crime Laboratory on Aug. 13 for an autopsy. Malak performed the autopsy the next morning.

editorial

arkansas comment

Another symptom

Seemingly every few weeks, there's a new charge that State Medical Examiner Dr. Fahmy Malak has botched an autopsy and come up with the wrong cause of death. The most ridiculous one came when the medical examiner misread notations on a death certificate and told the press that the chief deputy coroner of Pulaski County had, in effect, killed a man who apparently committed suicide by firing two bullets into his head.

The actual story was that the man had been admitted to a hospital after shooting himself and was disconnected from life support equipment when it was determined by physicians that he was brain dead. That's very different, and Dr. Malak, at the insistence of Gov. Bill Clinton, sent a letter of apology to the deputy coroner he had so maligned.

What's the story here? Is Malak incompetent? If so, why didn't a special committee set up to investigate his office so decide? The answer is simple, and it's sympto-

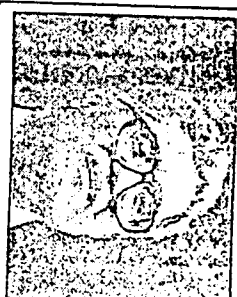
matic of what's wrong with most everything in Arkansas. We don't think we can afford to go first class so we have to settle for what we can get.

The symptom of which we speak is that of cutting too many corners in everything undertaken by state government and, therefore, not being able to get anything done as well as it should be done.

If Dr. Malak had a couple of assistants, he would surely make fewer mistakes. But those assistants come high. And Henderson State University recently lost four choice dean candidates because it couldn't pay comparably to other states. And the University of Arkansas for Medical Sciences keeps two major teaching physicians by compensating them from clinical work, not in the state budget.

It is a symptom that won't go away. Sooner or later, we have to face the cost of maintaining the services all of us want and need.

Searcy Daily Citizen



**Robinson says
credibility low,
Malak must go**

— Arkansas Page

Firing Malak will aid credibility, Robinson says

By MAX PARKER
Democratic Capitol Bureau

State Medical Examiner Fahmy Malak needs to be replaced before credibility can be restored to that office, Rep. Tommy Robinson, R-Ark., said Friday.

"Something needs to be done," Robinson said in an interview. "This is hurting the credibility of our criminal justice system. It's time for a change."

Ashley County Sheriff James Robinson recently

sought a second opinion in the 12 death of a Louisiana n. James Robinson said he was asked for the other opinion while waiting for Malak's ruling.

Bill Cauthron, director of the state Crime Laboratory, said the autopsy results were sent to local authorities Thursday. He said Malak had given a verbal finding to investigators. He declined to state what the cause of death was. Ashley County authorities declined to comment.

Since Malak's autopsy, first-degree murder charges were filed in Ashley County against Linda Long of Crossett in the death of Shirley Kelley of Bastrop, La.

"There's no way of painting this (Malak's employment) over and putting a positive brush on it," said Tommy Robinson, a potential gubernatorial candidate. "I think he (Malak) ought to take a look at his career after spending a decade in office. I think he understands he's probably got to leave."

The state Medical Examiner Commission, which has the authority to hire and remove the state medical examiner, has declined to take any action during the previous controversies involving Malak.

The commission met last month after Malak wrongly accused a Pulaski County deputy coroner of murder. Malak made the allegation after misinterpreting a symbol on a medical chart.

The commission said it would make no recommendation.

tions — other than better communication was needed between the medical examiner's and coroner's offices — on the matter.

In 1988, a Saline County grand jury overruled Malak's finding in the 1987 deaths of two Bryant teens. Malak ruled the deaths accidental but the grand jury ruled it murder. No one was indicted.

Gov. Bill Clinton has said Malak, who has been without an assistant for more than a year, was overworked and stressed out.

He said more money would help attract assistants, who would help ease the work load. Cauthron said he couldn't hire assistants without being able to offer salaries competitive with those offered in other states.

"I don't accept the notion you can't hire," said Attorney General Steve Clark, who has announced his 1990 Democratic candidacy for governor. He also was asked for his comment.

See MALAK, Page 10B.

Malak

Continued from Arkansas Page
ments on Malak. "There are lots of people looking for jobs. If you want to get it done, you get it done."

"More money is not going to re-establish his credibility," Robinson said. "It's not just an isolated incident. It's a pattern that has developed over the past decade. I certainly don't dislike Dr. Malak but it's gotten to the point to bring someone in."

Clark said he thought more staff "would boost confidence all around."

Robinson was a police chief, state public safety director and county sheriff before his election to Congress. Although considered a potential gubernatorial candidate, Robinson said he wouldn't want his comments on the issue perceived as political.

"I think the governor's going to have to talk to the governing board and say, 'Do something right now,'" Robinson said.

"The governor has spent considerable time reviewing that issue in the last couple of weeks, but because it is a personnel matter, it's not appropriate to comment publicly," Mike Gaudin, Clinton's press secretary said Friday.

Malak's work again in doubt; police seek second opinion

BY DOUG THOMPSON
Democrat State Desk

CROSSETT — The quality of work by Dr. Fahmy Malak, the controversial state medical examiner, is being questioned again as the investigation into a Louisiana woman's death continues.

Ashley County Sheriff James Robinson said Thursday he began looking for a second opinion in the recent murder case while waiting for Malak to render his first opinion.

"We had a lot of questions that were unanswered, and we needed a second opinion," Robinson told Little Rock sta-

Malak

• Continued from Page One
tion KARK-TV, Channel 4.

A sheriff's office spokesman told the *Arkansas Democrat* on Thursday that Robinson would not be available for further comment until today.

The case involves the Aug. 12 death of Shirley Kelley, 42, of Bastrop, La., who was already dead when her husband took her to Morehouse General Hospital in Bastrop, police said.

Louisiana authorities are assisting the investigation because it is possible the woman was killed in either Louisiana or Arkansas, the Arkansas State Police and Morehouse Parish sheriff's office confirmed Thursday.

Investigators were still unsure Thursday if Malak ever issued an opinion after an Aug. 14 autopsy. Malak declined comment Thursday. Bill Cauthron, state Crime Laboratory director, said he didn't know if a written opinion was issued, but he was certain an oral one was.

The second autopsy was performed by Dr. George McCormick of Shreveport, La., a state pathologist assigned to northern Louisiana. Louisiana authorities, who formally requested the second autopsy, declined comment on their reasons. Robinson told KARK-TV they did it at his request.

Linda Long of Crossett, who

police describe as a friend of Kelley's husband, Phillip, was arrested Aug. 22 on a first-degree murder charge in Kelley's death. She was being held Thursday in the Ashley County Jail in Hamburg in lieu of \$75,000 bond.

Phillip Kelley told emergency room workers and police that his wife jumped out of his moving truck on Arkansas 133 between Crossett and Bastrop.

"He said his wife was then run over by another vehicle which was behind them," said State Police Lt. Jerry Bradshaw, who assisted in the investigation. "Frankly, we didn't believe his story."

No charges are pending against Kelley's husband, although Bradshaw did not rule out the possibility of charges being filed later.

"I can't comment in detail on an ongoing investigation, but the evidence at the scene didn't completely fit," Bradshaw said. "We developed enough information to get a search warrant for Ms. Long's car. We found enough evidence there to charge her."

The evidence that led to the search warrant for the car was not autopsy-related, Bradshaw said.

"The main issue we still want to know from an autopsy is if she was dead prior to being run over," Bradshaw said. "To my knowledge, we've never received a report from Dr. Malak or anyone else on that."

Kelley's body was taken Aug. 13 to the state Crime Laboratory, and Malak performed an autopsy the next morning, Bradshaw said.

When asked what killed Kelley, a spokesman for Malak's office said Thursday that Malak would not answer those questions. The spokesman referred a reporter to the investigating agencies, which contend they never received any results from Malak.

Asked why Malak would refer questions back to investigators if he'd never issued a report, Bradshaw replied, "All I know is I've never been shown anything. It is possible our investigator, Jerry Dig-

mont, has received something verbally. I haven't." Digmont was at state police headquarters in Little Rock on Thursday and could not be reached for comment.

The questions about Malak's ruling in the Kelley death are the most recent involving the medical examiner's reputation.

Malak wrongly accused Pulaski County Deputy Coroner Mark Malcolm of murder after misinterpreting a symbol on a medical chart. Gov. Bill Clinton said the medical examiner was "stressed out" from a very heavy workload when he made the accusation.

It was Malcolm's boss, Pulaski County Coroner Steve Nawojczyk, who convened a rare coroner's jury Sept. 16, 1988. The panel deliberated for four minutes before finding unanimously that Malak was wrong in ruling a nursing home patient's death was not related to a severe beating inflicted by another patient.

In September 1988, a Saline County Grand Jury overturned Malak's finding of accidental death in the case of Larry Kevin Ives and Don George

Henry, two Bryant teen-agers. Malak had said in February 1988 he would "stake his job" on that accidental death ruling. After five months of investigation, the grand jury concluded the boys, whose bodies were found on railroad tracks, were murdered. The grand jury investigation continued for three more months with no indictments.

Malak's counterparts say they work hard, too

James Merriweather

James Merriweather, medical examiner in Tennessee and a spokesman for another in Texas say they're impressed with the workload of Dr. Malak, Arkansas's chief medical examiner.

"Both have only countywide responsibilities and are better paid than Malak, who Bill Clinton described last week as overpaid and 'stressed out' from hard over long hours."

"That's a light week for me," Dr. Charles, chief medical examiner for Davidson County, Tenn., said of reports that Malak works from 70 to 80 hours a week. "I get here about 8:15 or 8:30 every day, stays a week, and I usually leave about 11:00 p.m. I usually work only half a day, but that adds up to 6 1/2 days a week."

Costs \$81,429 a year

Malak is paid \$81,429 a year. Harlan gets \$80,000 from the consolidated government of Davidson County, but he gets an additional \$30,000 a year for keeping and tending to other duties in the state. Each Tennessee county maintains its own medical examiner. Cauthron, director of the state Crime Laboratory, said Malak performed 639 au-

topsies during the year that ended Aug. 1. Dr. Roberto Bayardo performs about 700 autopsies a year as chief county medical examiner for Travis County, Texas, which includes the capital city, Austin.

"It normally only takes about 30 minutes to do an autopsy," Norm Carnack, Bayardo's administrative assistant, said Wednesday. "An autopsy, as far as the pathologist's part is concerned, takes only 45 minutes at the most unless you've got some really unusual circumstances. We do them from 9 o'clock until we finish and if we have three or four, we're usually out of there by noon."

For his work, Bayardo, who, like Malak, has no assistant, pulls down \$118,000 a year. Unlike Malak, he does not travel to the far corners of the state to testify in criminal trials. Harlan, the Tennessee pathologist, testifies in a few trials, but gets \$75 extra for each court appearance.

Salary comparisons for medical examiners in Arkansas, Tennessee and Texas are skewed by wide differences in the way forensic pathology is handled in the three states.

Malak's pay and workload became an issue after he suggested that Mark Malcom, chief deputy Pulaski County coroner, might have killed a Little Rock man by authorizing disconnection of life support systems. He was cleared by the state Medical Examiner's Commission of wrongdoing in the case, but,

At a glance

- Officials in medical examiner's offices in Tennessee and Texas say they're not impressed with Dr. Fahmy Malak's workload.
- But both are better paid than Malak, and they have only countywide responsibilities.
- Salary comparisons for medical examiners in Arkansas, Tennessee and Texas are skewed by wide differences in the way forensic pathology is handled in the three states.

at the urging of Clinton, extended an apology to Malcom last weekend.

'He apologized'

"He was told by the governor to apologize and he apologized," Malcom said of Malak's letter, dated Aug. 8. "As far as I'm concerned, the matter is as resolved as it's going to get."

John Wesley Hall Jr., Malcom's attorney, said there had been no decision on possible legal action against Malak.

Clinton said he would attempt to find money to provide relief to Malak, saying anybody who worked as hard for extended periods was bound to make a few mistakes.

In Texas and Tennessee, medical examiners can review all unexpected and violent deaths in their jurisdictions, but county

coroners certify most such deaths in Arkansas. The workloads in the two border states are swelled by required autopsies in all homicides, suicides, accidents and any deaths caused by unknown or suspicious circumstances.

Malak heads what Carnack referred to as a "state system," compared to "county systems" in Texas and Tennessee.

Other information picked up Wednesday in calls to border states:

★ The Dallas County, Texas, medical examiner may earn up to \$120,000 a year, but he must double as administrator of the Southwest Institute of Forensic Science. That state-owned facility in Dallas "must perform autopsies for any and all who request them for a fee," Carnack said.

★ Oklahoma maintains a chief medical examiner's office with three pathologists at Oklahoma City, but two additional pathologists operate out of an office at Tulsa. The medical examiner pays five independent pathologists \$500 for each autopsy they perform and pays a network of 900 field investigators \$50 for each death scene investigation they perform.

★ A spokesman in Mississippi said Dr. Lloyd White was newly appointed to the medical examiner's office in Jackson. She said she could offer no salary information, but that his work was assisted by an elected coroner, or "county medical examiner's investigator," in each county.

Malak writes apology for murder accusation

BY MAX PARKER
Democrat Capitol Bureau

Mark Malcolm, Pulaski County chief deputy coroner, said Tuesday he had received a letter of apology from state Medical Examiner Fahmy Malak for a recent murder accusation.

Malcolm said he received the letter — ordered by Gov. Bill Clinton — on Saturday. The letter, which Malcolm declined to make public, was dated Aug. 8.

"He was told by the governor to apologize and he apologized," Malcolm said Tuesday. "As far as I'm concerned, the matter is as resolved as it's going to get."

The controversy arose when Malak requested a police investigation of Malcolm because of Malak's misinterpretation of a notation in a patient's medical records. Malak interpreted the notation to mean Malcolm approved the disconnection of life-support systems without first asking members of the patients' family.

The issue was reviewed last week by the state Medical Examiner Commission, the only panel with authority to fire

Malak. The commission declined to take any action, citing communication problems between the two offices as the reason for the controversy.

On Thursday, Clinton said Malak — whom he characterized as overworked and stressed out — had made a mistake, and he ordered that Malak apologize to Malcolm.

Malcolm said he doubted Malak would have apologized had Clinton not requested it.

The misinterpreted notation was in the medical records of Andrew Smith, 50, who was being treated at University Hospital for a reportedly self-inflicted gunshot wound to the head. Smith was pronounced brain dead June 14 and was removed from a life-support system, according to records.

A nurse's notation on the records said the coroner's office had been notified and permission had been given to "disconnect the life support measures. P speaking with family and obtaining information as to their wishes."

Malak told police the symbol P meant "without." The nurse told police that P meant

"after."

When the accusation was made, Malcolm hired Little Rock attorney John Wesley Hall Jr.

'We have a one-year statute of limitation for slander and three years for libel since the allegation was also contained in written reports. I don't know if we'll do anything.'

Malcolm said Tuesday it was up to Hall whether any legal action would be taken.

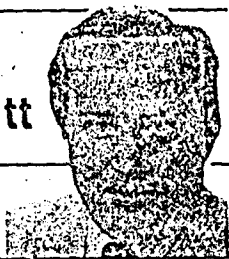
"During the time the investigation was going on, it was hard for police and other law enforcement agencies to work with me," Malcolm said. "But any further action is something John Hall will have to decide."

Hall said he hadn't made a decision in the case.

"We have a one year statute of limitation for slander and three years for libel since the allegation was also contained in written reports. I don't know if we'll do anything."

**John
Brummett**

Gazette
Staff



If Malak's oppressed, why stay?

Dr. Fahmy Malak is the Teflon medical examiner. The man can survive anything, and has.

He declared that the reason two Saline County teen-agers were run over and killed by a train was that they had smoked so much marijuana that they were lying comatose across the tracks.

They tell me this was not a credible finding — that you do not go into a coma from smoking marijuana. Even if you did, the odds would be against your happening to go into it the very moment you were standing on a railroad track.

Two weeks ago Malak misread a medical symbol and casually declared that a deputy coroner for Pulaski County had killed a man who had shot himself twice in the head. Most medical examiners would investigate further before making such a charge. It turned out that the accused deputy coroner did nothing more than take a telephone call from the hospital informing him of the deactivation of life support systems, after the man died from his own hand.

Yet Malak plods along, defended by Gov. Bill Clinton, who calls him stressed out, and state regulatory officials, who remark about how hard he works and explain that perhaps communication needs to improve.

Malak has performed 639 autopsies since last August. Mistakes are bound to happen. That is what they say, anyway.

I believe Malak survives mainly because state officials are worried sick about what the state criminal justice system would do for autopsies if we got rid of him. And you cannot get convictions in death cases without some state authority issuing professional opinions about the causes of death.

Forensic pathologists do not come cheap because they are specially trained surgeons and not everyone enjoys the line of work, understandably. The \$81,429 a year that we pay Malak is one of the top salaries in state government, yet it simply does not meet the market demand.

I asked Bill Cauthron, head of the state Crime Laboratory, to suppose that we needed to hire a new medical examiner and to speculate on how successful we would be with that salary now authorized. He replied, "Like the old saying goes, we would be S-O-L," which, as we all know, stands for "shonuff outa luck."

He gave a recent example: He had been trying to recruit a young forensic pathologist from Indiana University. The young doctor was offered \$75,000 to be Malak's assistant, with a \$4,000 raise in a year. The recruit recently called Cauthron to tell him he had landed a better job — as a county corner in Orlando, Fla. The salary was \$90,000, which was supplemented by a \$17,000-a-year teaching job, which would be supplemented further by permission to do outside consulting.

Most states allow their medical examiners to do outside teaching and consulting. In Arkansas we do not. With Malak, it is no wonder.

★ ★ ★

Shoot, Malak may be a bargain.

"I'll tell you one thing: I've never seen a man work harder," Cauthron said. "I think the governor is about right in his assessment that he is just stressed out. Most of the trouble he gets into is when he is working so fast he runs into himself coming back the other way."

For \$81,429, we get a man who performs nearly two autopsies a day and gives testimony at trials that supports the positions of local law-enforcement officers, who like him for that.

Meanwhile he averages only two or three high-profile outrages a year.

The obvious question we should ask ourselves is why, if Malak is so oppressed and unfairly criticized, he does not take one of these higher-paying jobs elsewhere.

The next question would be whether our current medical examiner has the requisite credibility.

Our solution might be to raise the salary to a competitive level, then give it to someone else.

Editorial

Malak an untouchable?

Fahmy Malak is off the hook again. The commission responsible for hiring, firing and evaluating the state medical examiner said Wednesday that it lacks the technical expertise to evaluate his performance.

But when the commission retained two out-of-state pathologists last year to evaluate the operations of the medical examiner's office, neither Malak nor any of his rulings came under scrutiny.

So if the commission's dodge doesn't stick in the craw, how about Gov. Bill Clinton's? That same day he said the commission lacks the authority to fire Malak — that despite the fact that the 1969 law that established the commission plainly gives it specific authority to remove the medical examiner "for cause." But the next day, the governor said Malak shouldn't be fired without evidence from someone with more expertise than Malak.

Not only did the commission abdicate its authority, the attorney general's office says the commission violated the state Freedom of Information Act by allowing the Crime Laboratory board chairman to sit in on its executive session on Malak.

Why is it that politicians and bureaucrats always seem to do the sidestep shuffle when questions are raised concerning Malak's performance? What is it about Malak that makes them want to shield him from objective scrutiny? He's so autonomous that he didn't even bother to appear before the commission, though his attorney Larry Carpenter waited outside, saying he was there to protect Malak's interests.

The executive session was called to discuss a police investigation for murder that Malak had initiated against Deputy Pulaski County Coroner Mark Malcolm, who had authorized a hospital to disconnect the life-support system from a man who was brain-dead from a bullet wound.

Malak had interpreted a symbol used in a nurse's notation on the medical chart to mean that Malcolm had given permission for the disconnection *before* the family had been consulted when the symbol actually meant *after* they had expressed their desires.

Malak's mistake was in not asking the nurse about the entry before he involved the police, for as the nurse later told police, the symbol did mean *after* the family had been consulted.

Everyone makes mistakes, of course, and Clinton says Malak's was a bad one — caused by being overworked and overstressed — that warrants an apology.

Perhaps that would mollify Malcolm, but how about the disputes over some of Malak's manner-of-death rulings? They have drifted in and out of the news columns for years without official scrutiny. More notably his obviously faulty ruling in the train deaths of the two Saline County teen-agers in 1987.

You'll recall that Malak staked his reputation last year on his ruling that the youngsters had been accidentally killed while lying on the tracks in a marijuana-induced comatose state. But after an extensive investigation, a Saline County grand jury investigation concluded that the deaths were homicides.

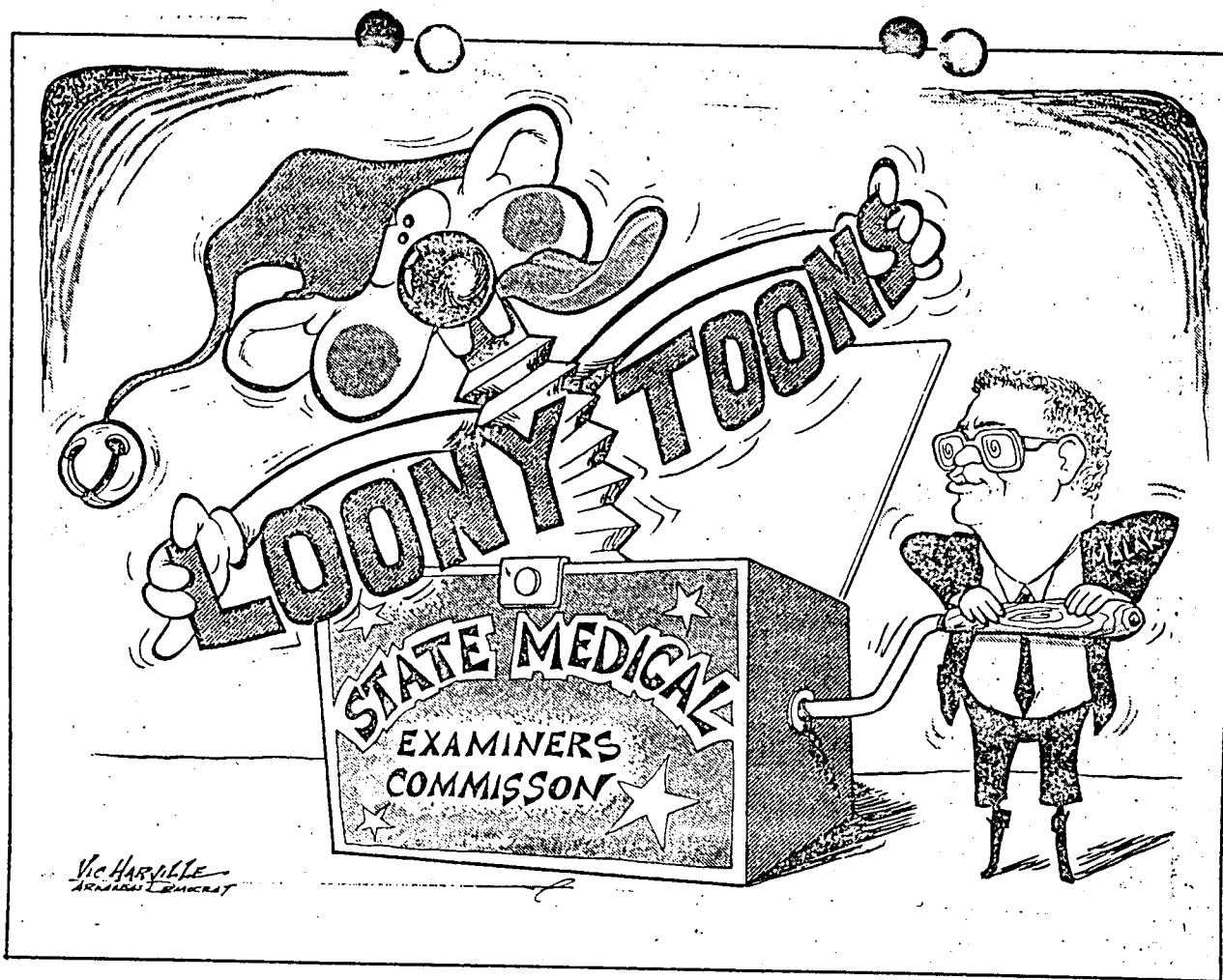
Because of Malak's handling of that case, Linda Ives, the mother of one of the youths, now heads a Saline County group called VOMIT — Victims Of Malak's Incredible Testimony. She says thousands of names on petitions calling for Malak's removal will soon be submitted to Clinton and the commission.

Mrs. Ives' husband, Larry, probably said it best while unwittingly defining Malak's seemingly untouchable status: "There seems to me to have been a political conspiracy to protect Malak's credibility."

Apparently, no one has the ability to tell whether Malak's a good medical examiner or a bad one. But look at the commission itself. It was dormant for years, existing only in the lawbooks, until a *Democrat* article revived it last year by pointing out the fact that the state officials who were supposed to be serving on it didn't even know it existed.

That alone should be reason enough for lawmakers to clarify and strengthen the examiner law. Especially since its revived function seems to serve as little more than a bureaucratic backstop for Malak.

The public doesn't need for its appointed medical examiner to be truly answerable to no one or for the commission that oversees him to be powerless.



Week in review

ARKANSAS DEMOCRAT • SUNDAY, AUGUST 13, 1989

GOV. BILL CLINTON ON Thursday attributed the recent murder accusation of Dr. Fahmy Malak, state medical examiner, against a Pulaski County deputy coroner to a heavy workload that led Malak to become "stressed out."

"I think he is obviously stressed out and did something he shouldn't have done," Clinton said Thursday. "People, as you know, do things when they are tired and stressed out that they shouldn't do. They say things when they're tired and stressed out they shouldn't say. But whether he should be fired or not is not something that I can say right now."

The controversy involving Mark Malcolm, the Pulaski County chief deputy coroner, arose when Malak requested a police investigation of Malcolm after the medical examiner erroneously interpreted a notation in a patient's medical records.

Malak incorrectly thought Malcolm approved the discon-

necting of life support systems to a patient without the family's consent.

...

ily's consent

Clinton says Malak 'stressed out'

Malak

Continued from Page 1B.

Crime Lab to increase salaries and attract medical examiner assistants for Malak.

Nawojczyk cites actions

The governor said nobody "with the requisite professional knowledge has suggested that he be let go," but Nawojczyk said some of Malak's actions were inexcusable. He cited these:

★ Although three police detectives filed reports on the allegation, Malak "later denied making" the accusation against Malcolm. A police report indicated that, after an investigation began, Malak told officers he was not accusing anybody of wrongdoing.

★ Malak's allegation started a "time-consuming and expensive and unnecessary police investigation over an unclear entry into some medical records." Nawojczyk said the matter could have been clarified by a phone call to University Hospital, where Smith died June 14.

★ Malak apparently misinterpreted a "commonly used medical shortcut symbol which would alter the outcome if read as he interpreted it." The reference was to a "p" with a dash above it, which was intended to mean "post or after."

According to police reports, Malak interpreted the symbol as meaning "without." His reading of the medical chart was that Malcolm authorized the disconnecting of life-support systems "without" checking with family members. Clinton said Thursday that Malak "should get better acquainted with medical symbols."

Malcolm said he never was consulted about or authorized the disconnecting of life-support systems, but that he was just notified that the life-support had been disconnected and Smith died.

Nawojczyk said the latest incident was reminiscent of a case in which Malak ruled that Peter Robinson, 75, who died in July 1988 after he was beaten at a College



—Gazette File Photo
DR. FAHMY MALAK

Station nursing home, died of natural causes — pneumonia and cardiovascular disease. In an unprecedented action, a skeptical Nawojczyk convened a coroner's jury, which ruled the death a homicide after four hours of testimony and 10 minutes of deliberation.

Later, Jimmy Webb, 49, of Little Rock, a resident of the same nursing home, was charged with manslaughter and referred to the custody of the State Hospital.

"I wonder if the medical examiner's office may have misread Mr. Robinson's medical records, causing the incorrect ruling," Nawojczyk said.

*7-11-89
Ar. Gazette*

By James Merriweather
GAZETTE STAFF

Gov. Bill Clinton said Thursday that Dr. Fahmy Malak, the state medical examiner, obviously was stressed out from hard work over long hours, but that he saw no reason to fire him.

"I think the big problem is that he's been out there a long time working more or less by himself, and he's obviously stressed out and he did something he shouldn't have," Clinton said. "He did make a mistake, and I think he ought to apologize to the guy for it."

The state Medical Examiner's Commission, meeting Wednesday in special session, found no reason to take disciplinary action against Malak for suggesting that Mark Malcolm, chief deputy Pulaski County coroner, might have killed a Little Rock man by ordering life-support systems disconnected.

Pulaski County Coroner Steve Nawojczyk issued a statement Thursday that expressed amazement that the commission apparently overlooked the issues of "most importance." However, he said later in an interview that he was inclined to drop the matter.

"I think I'll do whatever they want me to do," he said of the governor's office. "The Medical Examiner's Commission has made its decision and, apparently, the governor can live with it, so we'll have to live with it," he said. "We'll just try to do our job the best we can."

Calls to Malak's office were referred Thursday to Bill Cauthron, director of the state Crime Laboratory, who said Malak was not speaking to reporters. "He's just a little bit gun-shy," Cauthron said.

After the commission's decision, Clinton told Cauthron that Malak should apologize for the murder accusation. Nawojczyk said, however, that he had seen no communication from Malak as of late Thursday afternoon.

"Nobody can put in the hours he has and not make mistakes," the governor said. "He has put in unbelievable hours for years and years."

Clinton said Malak "has got to have some more help." The governor said he hoped he could make more money available to the

(See MALAK on Page 2B.)

Lab director says he lacks expertise to supervise Malak

By James Merriweather
GAZETTE STAFF

The director of the state Crime Laboratory said Thursday that he doesn't have the expertise to supervise Dr. Fahmy Malak, the state medical examiner.

The medical examiner's office is part of the crime lab, but the director, Bill Cauthron, said Malak operates independently. According to an attorney general's opinion, the state Medical Examiner's Board has the sole authority to hire and fire the medical examiner.

"My relationship with Dr. Malak is similar to that of a hospital administrator," Cauthron said in an interview. "An administrator doesn't go in there and tell a doctor what to do."

Dr. Joycelyn Elders, the commission chairman and the state Health Department director, said Wednesday that the commission also lacks the expertise to judge Malak's work in forensic pathology. Gov. Bill Clinton said that that acknowledgment might indicate that the commission should be abolished.

"Maybe we've learned one thing, and that's that we ought to change the law, and I don't know if there should be a Medical Examiner's Commission as a separate commission," he said.

Cauthron said a peer review committee of fellow pathologists might be the most effective means of judging Malak's performance.

Cauthron noted that a proposal was introduced during the regular legislative session earlier this year to create a hybrid board by merging the Medical Examiner's Commission with the state Crime Laboratory Board. The proposal grew out of an 18-month investigation

FOI law violation said unintentional

Dr. Joycelyn Elders, chairman of the Medical Examiner's Commission, did not intentionally violate the Freedom of Information Act in inviting an unauthorized visitor to a commission meeting, a spokesman for Attorney General Steve Clark said Thursday.

"She didn't realize she didn't have the authority to do what she did, so it was not intentional," James Lee said.

Dr. Malcolm Moore Jr. of Little Rock sat in Wednesday as the commission considered a complaint filed against Dr. Fahmy Malak, the state medical examiner. Elders said after the meeting that Moore was present because "I invited him."

Lee said Moore's presence violated the FOI law, but Elders' invitation was extended without a check with the attorney general's office and was not intentional.

Moore did not return a reporter's calls Thursday.

by a task force appointed by Attorney General Steve Clark.

Rep. Bob Fairchild of Fayetteville introduced five bills intended to delineate the duties of all individuals and agencies with crime scene investigation responsibilities, including coroners and the medical examiner. But the bills went nowhere, and were referred for study until the 1991 regular session.

"What was felt there at the end

was that we would have a knock-down, drag-out fight over turf," Fairchild said Thursday. "It was readily apparent to me that some of the organizations were not aware of what we were trying to do and thought there might be some hanky-panky going on."

Fairchild said the state Constitution and subsequent statutes had created a confusing hodge-podge of laws on death scene investigation, and his legislative package was intended to clear that up.

James Lee, a spokesman for the attorney general, said one of the bills would have created a "super board" by merging and expanding the two existing panels. Any disputes or questions regarding causes of death would have been submitted by prosecuting attorneys to the new board, which would have been empowered to call in outside experts, if needed, to make determinations.

Lee said it was his recollection that the Arkansas Sheriffs Association raised the most objections to the proposals. Fairchild said he hoped for a consensus that would allow the bills to be enacted in 1991.

Malak and Pulaski County Coroner Steve Nawojczyk, who are at odds, both were members of the attorney general's task force. "But Dr. Malak didn't really come to that many meetings," Fairchild said.

Cauthron said that the controversy surrounding Malak does not hurt the credibility of the state Crime Laboratory.

"Our credibility is challenged every day by defense attorneys," he said. "That's just one of the safeguards."

Clinton defends medical examiner as 'stressed out'

BY MAX PARKER
Democrat Capitol Bureau

State Medical Examiner Fahmy Malak's recent murder accusation against a Pulaski County deputy coroner was due to overwork and excessive stress, Gov. Bill Clinton said Thursday.

"I think he is obviously stressed out and did something he shouldn't have done," Clinton said after a speech Thursday to the state's new juvenile court judges. "People, as you know, do things when they are tired and stressed out that they shouldn't do. They say things when they're tired and stressed out they shouldn't say. But whether he should be fired or not, is not something that I can say right now."

The controversy involving Chief Deputy Coroner Mark Malcolm arose when Malak requested a police investigation of Malcolm after the medical examiner erroneously interpreted a notation in a patient's medical records.

Malak thought the notation in the medical records of Andrew Smith indicated the deputy coroner approved the disconnection of life support systems without first asking Smith's family.

"If he will apologize, acknowledge that he has made a mistake and that he's going to get up to speed on the symbols issue, that on this incident alone I wouldn't think that would be sufficient to let him go," Clinton said. "It was a bad thing he did, a mistake he made, and he ought to apologize for it."

Pulaski County Coroner Steve Nawojczyk called Thursday for Arkansans to "insist that something be done at the state level to restore credibility and confidence" to Malak's office.

The state Medical Examiner Commission on Wednesday

declined to take action against Malak. The group suggested better communication between the two offices.

The commission is the sole body with authority to fire the state medical examiner for cause. Clinton said he would not recommend the commission fire Malak without evidence from someone with more expertise than he has.

"If the governor's office and the Medical Examiner Commission can live with the decision they made, then I guess the rest of us will have to live with that, too," Nawojczyk said Thursday.

Clinton on Wednesday suggested Malak apologize to Malcolm.

"There will be a letter going out to him (Malcolm)," Bill Cauthron, director of the state Crime Laboratory, said Thursday.

Clinton said Malak was overworked. "The guy is basically working time-and-a-half and more a week and is very stressed out," he said. "There hadn't been enough medical examiners there. We haven't had the money to do it."

Cauthron agreed in part with Clinton's assessment but added there had been tension between the two offices since Cauthron became the agency director Aug. 1, 1988.

"I don't think we would have had this problem with any other coroner's office in the state," Cauthron said. "There has been bad feelings between the medical examiner section and the Pulaski County coroner's office since I arrived. I've tried everything to smooth those troubled waters. We all have a job to do and we need to do it as harmonious as we can."

Cauthron said Malak worked 70 to 80 hours a week

See MALAK, Page 4B

Malak

• Continued from Pulaski Page

and has been without an assistant for more than a year. A visiting pathologist from California performed a two-week internship at Malak's office last month, giving Malak his first vacation in more than a year.

Clinton said the manpower problem, caused in part by a lack of money, needs to be addressed in the fall — when the governor has indicated another special session would be called.

The governor's alternatives include more funding, a limit on work hours or allowing the medical examiner and his staff to receive outside compensation.

"We've got to do something to get more competitive with other states here," Clinton said.

Malak didn't request investigation of mom

The Associated Press

There was an eye-catching statement in a police detective's report about an interview with Dr. Fahmy Malak, the state medical examiner: "Dr. Malak requested that we investigate his mother."

Sgt. Eddie Alexander of the Little Rock Police Department, who did the interview with Malak, said it was his report, but that Malak did not request an investigation of his mother.

"That's a mistake," Alexander said. "He must have said investigate this further, or something like that. He did not ask us to investigate his mother."

Malak gets vote of confidence

But Medical Examiner's Commission urges better communication

By James Merriweather
GAZETTE STAFF

The state Medical Examiner's Commission decided Wednesday that there was no need to make any personnel recommendations against Dr. Fahmy Malak, the state medical examiner.

"Our major recommendation is that there be better communications between the medical examiner, the [Pulaski County] coroner's office and the state Crime Lab Board," Dr. Joycelyn Elders, the commission chairman, said after a 40-minute meeting that was closed to reporters.

Apparent FOI violation

In an apparent violation of the state Freedom of Information Act, Dr. Malcolm Moore Jr. of Little Rock, chairman of the state Crime Laboratory Board, sat in on the meeting. "He's the chairman of the Crime Lab Board and I invited him," Elders said, when pressed by reporters.

The FOI law allows public boards and commissions to meet in private only to consider employment, appointment, promotion, demotion, disciplining or resignation of an employee. It states that only the person holding the top administrative position in a public

agency, the supervisor of the employee involved or the employee may be present.

Moore could not be reached by telephone later Wednesday to explain his presence and respond to the apparent violation.

Complaint by coroner

The commission convened to consider a complaint against Malak filed by Steve Nawojczyk, the Pulaski County coroner.

Malak prompted a police investigation in June by suggesting that Nawojczyk's chief deputy, Mark Malcolm, might have killed Andrew Smith, 59, by authorizing the disconnection of a life-support ventilator.

Malak withdrew his complaint after Malcolm and officials at University Hospital, where Smith died June 14, denied the accusation. But Nawojczyk brought his complaint to Gov. Bill Clinton, whose office forwarded it to the commission last week.

Malcolm declined comment Wednesday night. Nawojczyk did not return telephone calls to the *Arkansas Gazette*.

Through a spokesman, Clinton noted an attorney general's opinion that it was the commission's responsibility to hire and fire the medical examiner.

"The governor respects the commission's finding," Mike Gaudin, Clinton's press secretary, said. "However, he has suggested that Dr. Malak write a note of apology for the consequences of his remarks to Mark Malcolm."

Gaudin said the suggestion had been forwarded to Bill Cauthron, director of the state Crime Laboratory, who said he suspected that it would be honored.

"Dr. Malak has a tremendous amount of respect for Governor Clinton and I have the idea that an apology will be extended," Cauthron said. He said Malak was in south Arkansas to testify in a court case and was unavailable for comment.

Finding termed 'whitewash'

Linda Ives of Benton, who has been arguing for Malak's dismissal, described the commission's finding as a whitewash.

"He's dodged the issue from day one," Ives said of Clinton. "That's the reason for this commission, to divert the heat from him."

Ives and her husband, Larry, were among five Malak detractors gathered in a waiting area outside the office of Elders, who is director of the state Health Department. They are the parents of Kevin Ives, 17, one of two teen-agers run over by a train in August 1987 as they lay on a railroad track in Saline County.

Malak ruled that the deaths were accidental, saying the boys were in a deep, marijuana-induced sleep when they were hit by the train. Without naming a suspect, a Saline County grand jury found later that the boys were murdered. Their deaths remain under investigation.

More than 2,000 names

The Iveses and other members of V.O.M.I.T. — "Victims of Malak's Incredible Testimony" — have gathered more than 2,000 signatures on petitions calling for Malak's dismissal.

They want the commission to investigate their complaints about

Malak, but, according to Linda Ives, have been told to provide expensive court transcripts and other information.

A batch of information was turned over to Elders Tuesday, and Elders told the Iveses that a hearing would be called if a review of the documents indicated one was warranted.

"What is it going to take?" Linda Ives asked after Elders announced the commission's decision.

"Facts," Elders replied.

"Facts? The facts are there if somebody would look at them," Linda Ives said.

Elders told reporters that commission members were not competent to judge Malak's work in forensic pathology. She noted that two independent pathologists last year reviewed Malak's work and reported he was a competent, hard-working victim of "unenlightened" news media. She said the commission still had full faith in Malak.

"Everybody in the world makes mistakes," she said. "If you don't make mistakes, you're not doing anything, in my opinion."

Indications were that Malak's allegation about Malcolm was largely attributable to his misreading of a symbol — a 'p' with dash above it — used on Smith's medical chart. Elders, a pediatrician, said a clinician generally would read the symbol to mean "post" or "after." A police report quoted Malak as saying the symbol stood for "without," and that the chart indicated that Malcolm had authorized disconnection of life support "without" notifying family members.

Elders said the misreading of the symbol did not figure in the commission's findings, noting that "there are lot of medical symbols" and that Malak should not be penalized for failing to recognize one of them.

Page 1 & 2 Case

Commission says it can't assess Malak's abilities

BY MAX PARKER
Democrat Capitol Bureau

The state commission with the authority to fire state Medical Examiner Fahmy Malak isn't capable of rating how well Malak does his job, the commission chairman said Wednesday.

"As far as to his abilities, I do not feel this commission feels we have the technical skills to judge Dr. Malak," said Dr. Joycelyn Elders, chairman of the state Medical Examiner's Commission. "For that reason, we hired outside consultants."

The commission met Wednesday to discuss a recent controversy involving Malak and Mark Malcolin, Pulaski County chief deputy coroner. Elders received material on the case from the governor's office.

"We found no reason to make any personnel recommendations," Elders said after the commission met in executive session. "We are going to recommend there be better communication between the medical examiner's office, the coroner's office and the crime commission board."

She said Dr. Malcolin Moore Jr., chairman of the state Crime Laboratory Board who illegally provided the ex-

ecutive session - would help improve communication between the offices.

The controversy involving the Pulaski County coroner's office arose when Malak requested a police investigation of Malcolin because a notation in a patient's medical records appeared to indicate the deputy coroner approved the disconnection of life support systems without asking the family first.

The notation was in the medical records of Andrew Smith, 50, who was being treated at University Hospital for a self-inflicted gunshot wound to the head. Smith was pronounced brain dead June 14 and was removed from a life support system.

A nurse's notation said the coroner's office had been notified and permission had been given to "disconnect the life support measures P speaking with family and obtaining information as to their wishes."

The confusion apparently arose with the interpretation of "P," which appeared with a line over it in Smith's records.

Malak told police the symbol meant "without." The nurse told police he indicated on Smith's records that "P" meant "after."

"We discussed the evi-

dence," Elders said when asked what was done during the commission's executive session.

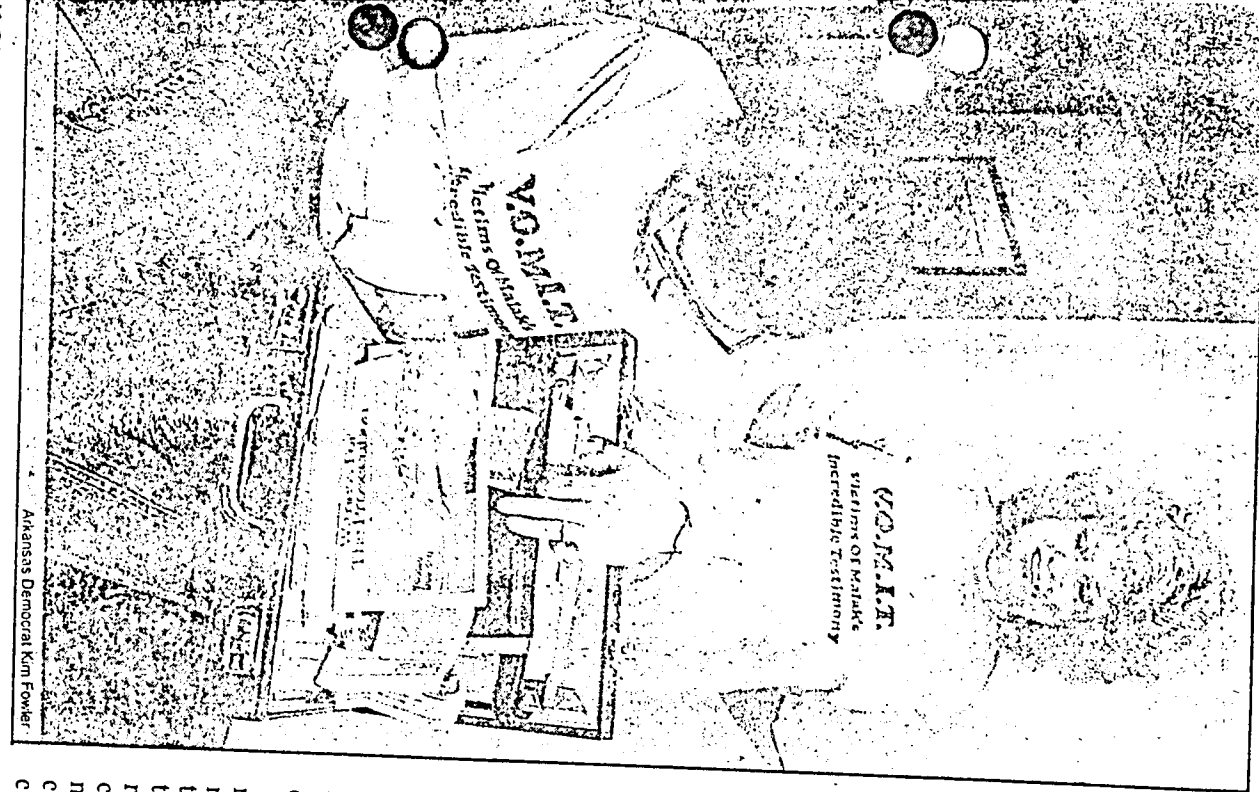
"Everybody in the world makes mistakes. There are no hard facts that Dr. Malak made a technical mistake on specific cases," she said.

Malak did not attend the meeting.

Malcolin's attorney, John W. Hall Jr. of Little Rock, reacted sharply to the commission's stand. "What purpose are they there for?" Hall said Wednesday while in Dallas on his way to California on a business trip. He was unable to attend Wednesday's meeting.

"If they don't think they have the needed abilities, what are they going to do the next time they have to hire or fire a medical examiner?"

A Saline County woman who heads a group that wants Malak fired also said she was frustrated by the commission's stand. "I want to know what it's going to take for someone to take action," asked Linda Ives, the mother of a Saline County youth who was killed in August 1987. The bodies of her son and another youth were struck by a train as they lay on tracks near Alexander.



OPPOSITES - Linda Ives (right), mother of a slain Saline County youth, watches as Busier Schmidt of Little Rock checks a briefcase of artifacts in a controversial findings by Medical Examiner Fahmy Malak.

• Continued from Arkansas Page

Malak had ruled the death of Mrs. Ives' son, Kevin Ives, accidental, saying he and the other youth were in a "coma-tose" state after using marijuana.

A Saline County grand jury, convened to investigate the deaths, released a scathing report late last year about Malak's handling of the case.

Mrs. Ives has since formed VOMIT - Victims of Malak's Incredible Testimony. The group has obtained thousands of signatures on petitions asking that Malak be removed from office.

She said the petitions will eventually be presented to both the commission and to Gov. Bill Clinton.

"Governor Clinton has dodged the issue from day one," Mrs. Ives said.

Clinton declined comment until he received a copy of the commission's findings. He said the commission did not have the authority to fire Malak.

1969, had been dormant several years until an Arkansas Democrat article last year showed a majority of its members did not know of its existence. The commission is the only body with the authority to "remove for cause" the medical examiner.

"We are deeply concerned about the state medical examiner and the manner in which he performs his duties," said Ives, who attended the meeting with her husband, Larry Ives.

"There seems to me to have been a political conspiracy to protect Malak's credibility," said Larry Ives.

Mrs. Ives asked Elders what it would take for the commission to remove Malak.

"It's going to take facts," Elders said.

"The facts are there if someone looks at them," Mrs. Ives said. "I think it's a sad situation when private citizens are forced to make a case."

"We need to be sure the citizens make an appropriate case using the facts," Elders said.

Page 2 of 2 pages

Commission violates state FOI

Unauthorized person at executive session on Malak

BY MAX PARKER
Democrat Capitol Bureau

The Medical Examiner Commission on Wednesday violated the state Freedom of Information Act by allowing an unauthorized person to attend an executive session, an attorney general's office spokesman said.

Dr. Malcolm J. Moore, chairman of the state Crime Laboratory Board, attended the executive session convened by the commission to discuss recent controversy involving Dr. Fahmy Malak, the state medical examiner.

Under the FOI, only an employee being reviewed, his immediate supervisor and the top administrator of the agency of the employee can attend an executive session.

"He attended because I invited him," Joycelyn Elders, director of the state Department of Health and chairman of the Medical Examiner Com-

mission, said after announcing no action would be taken against Malak.

"It was not an intentional violation by Dr. Elders," said James Lee, spokesman for the attorney general's office. "She thought she was working in the purview of the law. But she has assured us it will not happen again."

The session was called by Elders over the recent flap between Malak and Mark Malcolm, Pulaski County chief deputy coroner. Apparent confusion over notations on a patient's medical records prompted Malak to ask police to investigate Malcolm for murder.

After receiving permission from the patient's family, Malcolm asked that the patient be unhooked from a life support system. Malak interpreted the notation to say the removal had been done without the family's permission.

Malak did not attend Wednesday's meeting, but was represented by Larry Carpenter, a North Little Rock lawyer. Carpenter, who remained outside the closed session, said he was there to represent Malak's interests.

Bill Cauthron, director of the state Crime Laboratory, also was not present at the meeting.

Elders later said that she believed Moore could attend the executive session because the commission had appointed him as an ex-officio member at an earlier meeting.

"The medical examiner commission, we thought, technically had been abolished," Elders said during a news conference at the Capitol on the state's infant mortality rate. "I feel he (Moore) should really be doing this and not us."

Parent says she wants Malak to be fired

LITTLE ROCK (AP) — The mother of a 17-year-old Bryant boy run over by a train near Alexander in 1987 says she wants the state medical examiner fired.

Linda Ives, mother of Kevin Ives, who was killed Aug. 23, 1987, with Don Henry, 16, said today that medical examiner Fahmy Malak's testimony in an investigation was full of discrepancies.

Malak ruled the teen-ager's death: accidental, saying the two were in a marijuana-induced sleep.

Ives and Buster Schmidt, both of Bryant, presented the state Medical Examiners Commission with their findings in an investigation into the deaths.

Dr. Joycelyn Elders, the commission chairman and the head of the state Health Department, told those who presented the findings, calling themselves Victims of Malak's Incredible Testimony, that the commission would review the findings.

"What will it take?" Ives asked Elders in a meeting with Larry Carpenter, Malak's attorney, and several media rep-

resentatives. Ives referred to the fact that grand jury investigations into the deaths have ended.

"The facts," Elders said.

A Saline County grand jury finished an investigation into the deaths last year. No indictments were issued, but jury's investigation resulted in several drug arrests in the county.

"I feel that the burden should be on the state and not on private citizens," Ives said of the group's investigation.

She said that over 2,000 people had signed a petition asking

that the investigation be continued.

Ms. Elders said that discrepancies in testimony may have just resulted in a lack of communication between Malak and Dr. Joe Burton, an Atlanta pathologist who performed autopsies on the boys' exhumed bodies in April 1988.

Burton found evidence that one of the boys may have been dead before the train hit him. He testified that the boys had injuries consistent with being injured before the train hit them.

Clinton awaits panel's report on Malak feud

BY JOAN I. DUFFY
Democrat Capitol Bureau

Gov. Bill Clinton refused Thursday to comment on the feud between State Medical Examiner Fahmy Malak and the Pulaski County coroner's office.

Clinton said he asked for a report on the matter to the State Medical Commission, the panel that has the statutory power to remove the medical examiner for cause.

"I think I should refrain from further comments until I get the report back," Clinton said.

On June 20, Malak asked the Little Rock police to investigate Mark Malcolm, Pulaski County chief deputy coroner, after finding a notation on medical reports that appeared to show Malcolm approved the disconnection of a patient's life-support system.

Malak accused Malcolm of murder, Little Rock police files said.

The notation was found in the medical records of Andrew Smith, 50, who was being treated at University Hospital for a self-inflicted gunshot wound to the head. He was pronounced brain-dead June 14 and was removed from a life-support system.

Malak said a medical symbol circled on Smith's medical reports indicated the life support systems were removed without the family's permission.

Nurse Terry Brown told officers he indicated the symbol meant "after", indicating the family had given permission.

Commission to review Malak's murder accusation

BYWARD PINCUS
AND HANNA BARTSCH
Democrat Staff Writers

Little Rock police files indicating the state medical examiner falsely accused a Pulaski County chief deputy coroner of the murder will be reviewed by the state Medical Examiners Commission.

Betsy Wright, Gov. Bill Clinton's chief of staff, recommended the commission "convene immediately" after she received police files on the incident from the Pulaski County coroner, Mike Gaudin, spokesman for the governor, said.

On June 20, Dr. Fahmy Malak, the state medical examiner, requested a police investigation be started against Mark Malcolm after finding a notation on medical reports which appeared to indicate Malcolm approved the dissection of a patient's life support system.

The commission will review the case Wednesday.

Jocelyn Elders, chairman of the commission, said she received the material from Wright and called the meeting because she felt the incident had been "blown out of proportion."

"People have been accused

and we need to know what we are talking about," Elders said. "We need to review the results because it concerns a medical examiner."

A police investigation found Malcolm did not make the decision to have the system removed.

Gaudin said Steve Nawojczyk, Pulaski County coroner, sent Wright "a package of material" on Monday, which she forwarded to the commission.

"She recommended they convene immediately to discuss the documents. Any further action will come from the commission," he said.

Nawojczyk had tried to meet with Wright on Monday to file a formal complaint against Malak, but was told Wright was too busy to see him.

"I sent her a copy of the police files on the incident after she couldn't meet with me," Nawojczyk said.

The confusing notation was in the medical records of Andrew Smith, 50, who was being treated at University Hospital for a self-inflicted gunshot wound to the head. Smith was pronounced brain dead June 14 and was taken off a life support system, reports said.

Police found Smith at his home at 1724 W. 24th St. on June 13. He was critically wounded and was lying next to the body of a woman, reports said.

The notation, written by nurse Terry Brown, said, "3:56 p.m. - Coroner's office notified and permission obtained to disconnect the life support measures P speaking with family and obtaining information as to their wishes. (Deputy Coroner Mark Malcolm) Patient disconnected from ventilator. Pressor agents DC'd at this time."

Confusion apparently concerned the interpretation of "P," which appears with a line over it in the records.

Malak told police the symbol meant "without." Brown told officers he indicated on the medical records "P" meant "after," reports said.

"We need to confirm one way or another for ourselves whether there was a misinterpretation of symbols," Elders said.

"My opinion is that there was perhaps a misinterpretation of the medical symbol used and that is not unusual," she said.

Notation on medical report at root of murder accusation

By HANNA BARTSCH
Democrat Staff Writer

A confusing notation on the medical reports of Andrew Smith led Dr. Fahmy Malak, a medical examiner, to use a Pulaski County chief coroner of murder, police records show.

Malak sought a police investigation June 20 against Mark Malcolm after finding the notation, which indicates Malcolm approved the disconnection of Smith's life support system.

The police investigation found Malcolm did not make the decision to have the system removed. The coroner's office does not make such decisions.

Smith, 50, was being treated at University Hospital for a gunshot wound to the head when he was pronounced dead June 14 and his life support system was disconnected, reports said.

Police found Smith at his home at 1724 W. 24th St. on June 13. He was critically wounded and was lying next to the body of a woman, reports said. Police ruled the incident a murder/suicide.

The notation made by nurse Terry Brown said, "3:56 p.m. - Coroner's office notified and permission obtained to disconnect from life support measures P speaking with family and obtaining information as to their wishes. (Deputy Coroner Mark Malcolm) Patient disconnected from ventilator. Pressor agents DC'd at this time."

Reports indicated the confusion apparently began with the interpretation of "P."

Malak told police the symbol meant "without." Brown told officers he indicated on the medical records "P" meant "after," reports said.

"The notation in the medical records, literally read, indicates that Malcolm made the decision to remove this man from his life support system," Chief Deputy Prosecuting Attorney Lloyd King said Tuesday.

"The literal reading was not exactly correct," King said. "Malcolm didn't do anything wrong." Malcolm referred all questions to his attorney, John Wes-

ley Hall Jr. Hall refused to comment on whether Malcolm would take legal action against Malak.

Malcolm told police during the investigation he was contacted by the hospital after Smith was declared brain dead, but was only told of the death.

A report written by Little Rock Police Sgt. Eddie Alexander after Malak brought the notation to police attention on June 22 to tell him the in-

said, "Dr. Malak advised that vestigation had found that Malak these notes insinuated that colm had not made the decision to turn off Smith's life support, police reports said.

gave the authorization to disconnect the patient from the life support ventilator and advised that if this was true, his medical examination report would indicate that the patient did not die as a result of the gunshot and that Mark Malcolm killed him."

Malak told police he would have been filed in the medical not rule on Smith's death until records, and demanded the investigation was continued, reports said.

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Malak

Continued from Arkansas Page

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support systems without consent from anyone," reports said.

Records show family members were told the system was going to be disconnected, but weren't asked for their consent.

A University Hospital spokesman said Tuesday doctors must discuss with family members the decision to turn off life support if the "patient is of unsound mind." Doctors are not required to get family consent, the spokesman said.

When Alexander informed Malak on June 23 that the investigation was complete and files would be turned over to the prosecuting attorney's office, Malak said "he was not accusing anyone of anything wrong," and denied that he told officers Malcolm had killed Smith, reports said.

The case file on the allegation was turned over to the prosecutor's office as part of the murder/suicide file, King said. He said no legal action will be taken against Malcolm. Pulaski County Coroner Steve Nawojczyk said Tuesday that Malak's accusation against Malcolm was "unfounded" and that the "police reports speak for themselves."

Malak alleges murder

Deputy coroner halts life support to man

Democrat Staff

Dr. Fahmy Malak, the state medical examiner, accused a Pulaski County chief deputy coroner of murder because he approved the disconnection of life-support machinery from an already brain-dead man, a local television station reported Monday.

KARK, Channel 4 in Little Rock, reported Malak was seeking murder charges against Mark Malcolm because Malcolm gave permission June 14 to University Hospital to disconnect life support systems from Andrew Smith.

Smith, 50, of 1724 W. 24th St., was found at his home about 6:30 a.m. June 13 with a .22-caliber bullet wound to the head. Next to him was the body of Vickie Yvonne Jenkins, 28, of 1820 Wolfe St. Police said she had been stabbed to death in an apparent murder-suicide.

According to KARK, Smith was declared brain-dead the next day and family members asked that he be disconnected from life support systems. Hospital officials asked Malcolm, who gave the approval to disconnect Smith.

Malak refused comment on the charges Monday night.

"Sir, we have nothing to say to the *Arkansas Democrat or Gazette* about this matter," Malak said over the telephone before hanging up on a reporter.

Malcolm also declined to comment on Malak's accusations late Monday and referred all questions to his attorney, John Wesley Hall Jr. of Little Rock. Hall was unavailable for comment Monday night.

Hall and Pulaski County Coroner Steve Nawojczyk went to the office of Betsey Wright, Gov. Bill Clinton's chief of staff, Monday to formally complain about Malak's allegations, KARK reported. The two men were told Wright was busy and that they would have to schedule another appointment.

Nawojczyk also declined to comment on the allegations Monday night, but said he was working to schedule an appointment with Wright.

"I want time to present our side of the story to someone on the governor's staff," he said. "After that, I may be able to talk."

KARK reported that Malak asked Little Rock police to open an investigation into the death, but later returned to the police station to deny that he was making any allegations against Malcolm.

Little Rock police detective Lt. Bobby Thomas said the department was not investigating Smith's death as a murder or Malcolm's role in it.

Coroner inquest called

PARAGOULD — Dick Pace, the Greene County coroner, has called for an inquest into the December deaths of a Paragould couple.

Phillip Don Horne, 35, and his wife, Marilyn, 53, were found dead in their home the night of Dec. 26. Both had been shot once in the head, and a small-caliber handgun was found near their bodies.

The police believe that the deaths were a murder-suicide, but have not determined who fired the shots. The couple was apparently having marital problems.

Pace said he was calling the inquest because the report from the state medical examiner's office did not address the manner of death. He said the call should not be taken as criticism of Dr. Fahmy Malak, the medical examiner.

Pace said the inquest would begin at 9:30 a.m. on March 17 at the Greene County Courthouse, and that he expected the jury to come to some conclusion by the end of the day.

Four doubt credibility of Malak

Skipped for jury in murder trial

BY DOUG THOMPSON
Democrat Benton Bureau

MALVERN - Four of 38 prospective jurors were dismissed this week during jury selection in a capital murder trial because they doubted the state medical examiner's credibility.

Roger M. Hammond, 43, of Lawrence, Kan., was convicted Friday of the reduced charge of second-degree murder in the death of Frances Elaine Mouser, 45, of Louisville, Ky.

Mouser disappeared while traveling through Arkansas in April 1988. Her body was found June 15, 1988, near a logging road in rural Hot Spring County.

The six-man, six-woman Hot Spring County Circuit Court jury began deliberations about 4:41 p.m. Friday. The verdict was announced about 6:25 p.m. Hammond was sentenced to the maximum for second-degree murder: 20 years imprisonment and a \$15,000 fine.

Hammond was facing life without parole if convicted of capital murder. The state had waived the death penalty. Prosecuting Attorney Gary Arnold and Deputy Prosecuting Attorney Bob Alsobrook, both of Benton, said afterward that they accepted the jury's decision.

Jury selection began Thursday. The first three potential jurors said they would not believe the testimony of Dr. Fahmy Malak, the state medical examiner, who was a prosecution witness.

"The first juror said she was concerned about what Dr. Malak had said in the death of those two boys in Saline

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Jurors

• Continued from Arkansas Page

County and what he had put their families through," said Ed Scrimshire of Malvern, a court-appointed defense attorney for Hammond.

Malak had ruled as accidental the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. He ruled the boys were asleep on railroad tracks under the influence of marijuana when they were struck by a train near Alexander. A Saline County grand jury has since declared the cause of death as homicide.

"Frankly, I think the issue concerned the first juror most and the next two just followed her lead," Scrimshire said. Later, a fourth potential juror called Malak a "fake," Scrimshire said, and was also excused.

On Friday morning, Hammond said he would not take the stand. Citing biblical verses, Hammond said he would "release the power of God's angels to defend me and set me free."

Hammond had no prior criminal record. Upon being sentenced, he said he had no objection to the verdict.

"Praise God, they did their job," he said.

Mouser was moving to New Mexico. After her disappearance, Hot Spring County authorities found a pistol near where her car was found. The .25-caliber semiautomatic was registered to Hammond.

2-19-85
Adams says he was unable

Malak says he was unable to tell if dead infant molested

By Angela Vanderslice Brown
GAZETTE CONWAY BUREAU

PERRYVILLE — Although a 6½-month-old girl died of suffocation and suffered an injury to her rectum, the state medical examiner said he could not determine whether the child had been molested.

Dr. Fahmy Malak testified Thursday in the trial of John Howard Travis, 25, who is charged with capital murder and rape in the Sept. 21 death of his adopted daughter.

Deputy Prosecuting Attorney Dale Adams alleged that Travis engaged in deviant sexual conduct with Amanda Kay Lynn Travis.

Adams said that on the day of the death, Travis and the baby's mother, Christina Travis, arrived home from work about 11:30 a.m. Both worked at the same factory. Mrs. Travis put the child on a

bed and spread a large quilt around the infant to keep her from falling off the bed, Adams said. She then left the child and fell asleep on a couch.

The prosecution said she was later awakened by her husband, who came out of the bedroom with the infant in his arms.

They took the baby to Conway County Hospital, where they arrived at 6:45 p.m. The physician on duty, Dr. Thomas Hickey, estimated the infant's time of death at about 6 p.m. Blood was found in the baby's diaper and a nurse observed a tear in the rectum, the prosecution said.

Tissue found

Adams said a bloody piece of toilet tissue later was found under the bed. The blood type was that of the infant.

Lou Marczuk of Little Rock, one of Travis' attorneys, said Mrs. Tra-

vis put the child in the bed because they had recently moved into the mobile home and had not set up the baby bed.

Marczuk said the couple fell asleep in the living room. The defense contended Travis later awoke, went to check on Amanda and he found her lying in a box of curtains beside the bed. After realizing the child had fallen into the curtains and had suffocated, Travis and his wife rushed her to the hospital, Marczuk said.

Unable to determine

Malak testified that the child had severe diaper rash, a small bruise to the right side of her head, no broken bones or internal damage, and a tear in the rectum one-sixteenth of an inch long. He said he could not determine that there had been any sexual molestation and that "the conclusion of whether there was sexual molesta-



—Staff Photo by Tony Pitts
JOHN HOWARD TRAVIS

tion should be left up to an investigation."

He ruled the cause of death to be suffocation.

The trial will resume at 9 a.m. today in the Perry County Court-house. Circuit Judge John Langston is presiding.

Malak unsure whether baby sexually abused

BY MARK CARNOPIS
Democrat State Desk

PERRYVILLE — The state medical examiner said Thursday he could not determine whether Amanda Kay Lynn Travis was sexually abused before being suffocated.

Dr. Fahmy Malak also said it was doubtful that the 5½-month-old baby could have fallen from a bed and suffocated in a box of curtains, as claimed by the man charged with capital murder in her death.

"If she landed there, she would have cried, would have moved," Malak said.

The testimony by the medical examiner came during the trial of John Howard Travis, 25, of Harris Brake (Perry County).

Travis is charged with raping and murdering Amanda, daughter of his wife, Christina. If convicted of capital murder, Travis would receive life in prison without parole because the state waived the death penalty at a Jan. 27 hearing.

Travis is named as the father on the baby's birth certificate but is not her biological father, Deputy Prosecuting Attorney Dale Adams has said.

Travis said he found the infant's body Sept. 21, 1988, in the back bedroom of the mobile home the couple was renting on Harris Brake Lake.

Malak said the baby's vagina was dilated and there was a small tear in her anus, but no semen was present. He said a determination of whether she was molested was "left for further investigation" by authorities.

"I can't say it was or wasn't sexual abuse," Malak said.

After finding the baby, the couple brought her to the emergency room at Conway County Hospital in Morrilton.

Dr. Thomas Hickey, a hospital physician, said he and another nurse tried without success to revive the child. He said the child had been dead for less than 30 minutes before arriving at the hospital because the body still was warm.

Hickey and three attending nurses testified they found blood on top of stools in the baby's diaper. While Hickey said he found no external injuries to the child, Malak said he found a small bruise on the child's forehead and some superficial scratches on the back of her neck.

Hickey said he discovered the tear in the infant's rectum and that someone caused the injury by using an object.

Three law enforcement officers testified Travis told them he and his wife got off the night shift at Morrilton Plastics and had picked up Amanda from her parents. He said he played with the baby until about noon, when he fell asleep on the living room floor.

Travis told authorities he woke up about 5 p.m. and could not find the baby. He said he found Amanda lying with her head back in a box of curtains placed next to the baby bed. He said there was a curtain over the baby's face.

In his opening arguments, Adams said Travis "smothered her while engaging in deviate sexual behavior." He also discounted Travis' claim that the baby had smothered in a box of curtains.

'Amanda is 26 inches long and 18 inches around, and the box is 21 inches long and 18 inches wide. There was not a single mark or bruise on that baby (to show) that she fell off the bed into the box.'

"Amanda is 26 inches long and 18 inches around, and the box is 21 inches long and 18 inches wide," he said. "There was not a single mark or bruise on that baby (to show) that she fell off the bed into the box."

Adams added that Mrs. Travis will testify the box was not near the bed when the baby died.

The prosecutor also said that while Travis "made a big show about how much he loved Amanda," around friends, when he was alone with the child he would say "how sexy she was and pinched her on the bottom."

...ARKANSAS GAZETTE Thursday, February 16, 1989

Clinton aid asked in finding Malak help

By Lamar James
GAZETTE STAFF

The state Crime Laboratory Board decided Wednesday to ask Gov. Bill Clinton for help in filling the position of assistant state medical examiner.

The board made the decision after Bill Cauthron, executive director of the Crime Laboratory, explained the problems he had had in hiring an assistant for Dr. Fahmy Malak, the state medical examiner.

The position has been open since last summer.

Cauthron said few doctors specialized in forensics and there had been little interest in the position's salary. The position pays a maximum of \$78,000 a year, which is almost as much as Malak is paid. Cauthron said he had been told by several doctors that the assistant medical examiner's position should pay \$100,000 to \$125,000 to be competitive.

Cauthron said Malak had been

working an average of 70 hours a week and had performed more than 300 autopsies since Aug. 1. He said the national average per medical examiner was about 200. "Malak isn't going to last forever working by himself," John Morgan, a board member from El Dorado, said.

"This is just looking hopeless at this salary," Kathy Goss, another board member, said.

Board to write governor

The board decided to write the governor.

Goss suggested that the letter also should contain a history of the high turnover rate in the assistant's job, a description of the work load and a salary comparison with other similar positions in the country.

Goss said after the meeting that there was a shortage of forensic pathologists and "for sure they're not going to come to Arkansas for what we pay. We need a third position too, but it's not authorized." She also said Malak was paid "well below" what he could make in other states.

The board also met in a closed session and discussed the recent controversy in which Mike Vowell, a lab photographer, complained that Malak ordered him to manipulate a photograph of the wound of a murder victim until it matched the alleged murder weapon.

"I will be taking some action within the next few days," said Cauthron, who has been investigating the incident.

"The board is pleased with the depth of the investigation ... and has the utmost confidence in his ability to resolve the situation," Dr. J. Malcolm Moore, chairman of the board, told reporters after the hearing.

Board seeking pay raise for assistant medical examiner

BY MAX PARKER
Democrat State Desk

Gov. Bill Clinton will be asked to take steps to increase the salary for an assistant medical examiner and make it competitive with salaries in other states, the state Crime Laboratory Board voted Wednesday.

The decision that Dr. Malcolm Moore Jr., board chairman, immediately write Clinton came after a report from Crime Laboratory Director Bill Cauthron on the status of the empty position. Dr. Fahmy Malak, chief medical examiner, has been working without an assistant since July 1988.

Cauthron also said that, within the next few days, he would take some action in the controversy surrounding Malak and Mike Vowell, the agency's chief photographer. His statement came after the board met in executive session for slightly more than an hour.

"The board is pleased with the depth of the investigation and has the utmost confidence in Mr. Cauthron's ability," Moore said.

Vowell told the Arkansas Democrat that Malak ordered

him to work with a photograph until it appeared a wound on a victim's body fit the alleged murder weapon.

Vowell placed a disclaimer on the photo to show it was not a 1-to-1 ratio, but the disclaimer was removed before Vowell received the photo back from the medical examiner's office. An internal investigation revealed the questionable photo was not introduced in court as evidence.

Cauthron has alleged a "personality problem" exists between the men. He has conducted an investigation, assisted by Ken Mischeau, chief toxicologist, and Howard "Bear" Chandler, head of the documents section.

"We did not get a recommendation from the executive committee," Cauthron said at the end of the board's quarterly meeting.

Board members' concern about the vacant assistant medical examiner position was reinforced when Cauthron revealed the maximum salary for the slot was \$78,000 and the starting salary was about \$65,000. The national average is near \$100,000.

Cauthron said the salary offered in Arkansas hampered the agency's ability to fill the position.

"Dr. Malak isn't going to last forever the way we're working him," said El Dorado Police Chief John Morgan, a board member, before making the motion to request Clinton's assistance.

"We need to make the Legislature address it. It's ironic that the state's willing to spend \$20,000 for an independent review, yet they're not willing to implement their findings."

Cauthron told board members, "We're heading for disaster."

In other business, the board discussed pending legislation as a result of the Attorney General's Task Force on Death Scene Investigations.

The proposed legislation addresses, in part, who can request an autopsy and also revises the medical examiners' duties. If adopted, the medical examiner would only determine the cause of death, a joint effort would decide the manner of death — homicide, See BOARD, Page 3B.

Board

Continued from Arkansas Page
suicide, accident, natural or undetermined.

"The manner of death is the crux of most of our controversies," Cauthron said. "I suggested that the manner be made in consultation with the prosecuting attorney and the chief executive law enforcement officer. Dr. Malak as a matter of practice consults with the prosecutor and sheriff."

The board also was briefed on the agency's budget for the upcoming biennium — July 1, 1989, to June 30, 1991.

Cauthron said the budget would result in a 20 percent, or a mere \$500,000 increase — over the last biennium. He said he was concerned about the lack of money to replace aging equipment and that a \$313,000 grant — \$235,000 in federal funds and \$78,000 in state matching funds — could be used only for drug-related programs.

"We will probably just have to continue to exist with what we have and keep patching it and patching it," Cauthron said.

Legislator set to question Malak raise

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — Saline County legislators said Friday there is not much they can do to fire the state medical examiner.

But they can question whether the examiner, Dr. Fahmy Malak, should get a \$14,000 a year raise, state Rep. Lacy Landers said.

"I think that raise is in a joint budget bill," Landers said. "That is an astronomical amount. We'll have to look at it."

State Sen. Charlie Cole Chaffin said, "I believe that office is being looked at," but

gave no details.

The lawmakers attended a Friday community breakfast hosted by the Benton and Bryant chambers of commerce.

Landers said only the state Medical Examiner's Commission has the legal authority to hire and fire medical examiners. The commission recently ruled it had "insufficient reason at this time" to dismiss Malak.

The question of removing Malak from his post was posed by Dan Harmon, a former special deputy prosecutor. Harmon and Richard Garrett, a former deputy prosecuting at-

torney, led a grand jury investigation that was critical of Malak's findings in the Aug. 23, 1987, deaths of Don George Henry and Larry Kevin Ives, whose bodies were found on a railroad track. Malak ruled their deaths accidental; the subsequent grand jury probe concluded they were murdered.

"The state medical examiner has displayed incompetence and dishonesty, but the state is not only retaining him but is proposing giving him a \$14,000 raise," said Harmon, who was also at the breakfast. Attending the meet-

ing with him were Larry and Linda Ives, parents of one of the dead teens.

The grand jury wanted to release transcripts of Malak's testimony, but were not allowed to do so under state law. The documents were later leaked to the Arkansas Democrat and revealed what appeared to be inconsistencies in Malak's testimony.

Buzz May, president of the Bryant chamber, has contributed \$5,000 to the \$15,000 reward offered for information leading to a murder conviction in the case.

Vowell says Malak forced manipulation

BY MAX PARKER
Democrat State Desk
• 1989, Arkansas Democrat

Dr. Fahmy Malak, state medical examiner, ordered chief forensic photographer Mike Vowell to work with a photo of murder victim Donald Sakall until a wound on the body fit the alleged murder weapon, Vowell said Tuesday.

The photo was ordered in preparation for the Sept. 23, 1987, first-degree murder trial of Connor Spickes of Perryville. He was charged with the Aug. 31, 1986, beating death of Sakall.

"I was told by Dr. Malak to keep enlarging or decreasing the photo until it fit the alleged weapon," Vowell said Tuesday. "I was told to make it fit. I told him I didn't have the weapon, so I just estimated."

Vowell said he put a disclaimer on the 8-by-10 color photo to indicate that it was

not a fair representation of the wound.

"I put markings on the photo that said it was not a 1-to-1 ratio," Vowell said. "Dr. Malak told me to remove the markings. He said he couldn't use it for trial with the disclaimer. I told him no."

Malak did not return a reporter's telephone inquiries.

Vowell, who has been with the state Crime Laboratory since 1982, said that on Sept. 18, 1987 — one week before the Spickes trial began — the photo was returned to him from the medical examiner's office so he could place it on a gray mounting board for trial purposes.

"When I got the photograph back to mount it for court, over one-fourth of the photo was gone," Vowell said. Someone had cut off the disclaimer. Everything but the body was cut off. It was not a fair and accurate depiction."

Found guilty

Spickes admitted beating Sakall and pleaded not guilty by reason of insanity. A Pulaski County Circuit Court jury found him guilty of second-degree murder and Spickes was sentenced to a 10-year prison term.

The case was not appealed so no transcript of the trial was prepared. Court records were unavailable to determine if the tampered photo was introduced into evidence.

This marked the second time that Vowell said he was ordered to produce photographs for criminal trials without following the proper procedure.

For the first time since the issue arose, Vowell commented on a transparency he prepared that Malak used during the first-degree murder trial of William Horne, accused in the Nov. 10, 1982, beating of David Michel, 21, of Little Rock. Michel died Nov. 18, 1982.

Horne, 36, of Little Rock, is now serving a 20-year sentence at the Arkansas Department of Correction Varner Unit for Michel's death. He is scheduled to appear before the parole board, for the third time, at the end of February, said prison spokesman David White.

Vowell said that neither the autopsy photographs taken of Michel nor the transparency of the alleged murder weapon should have been used in court.

Yet, during Horne's trial, Malak used a photographic transparency to link a rifle butt to a bruise on the victim's collarbone.

Records at the Little Rock Police Department revealed the rifle was confiscated from Horne on Nov. 11, 1982. The transparency was made by Vowell six days before the trial, although Malak testified it had been in his possession for several months.

Disagreement

"Malak ordered me to do it and we didn't agree eye-to-eye about it," said Vowell, who for 10 years was an agent with the Drug Enforcement Administration. "He was kind of upset."

"It bothers me quite a bit that it was used as evidence and an innocent man may be in prison. That's why I've told numerous people about it, attorneys and prosecuting attorneys. You can't just take any photograph of an object and try to match it to a wound."

"There was no way to compare that rifle butt to that photo of the wound. Even stretching the imagination, there was no way to do it. Malak said the photograph wouldn't be used in court."

Pulaski County Prosecuting Attorney Chris Piazza said the transparency played a minor role in obtaining the conviction against Horne.

"The transparency made no difference in the criminal trial when you look at all the other evidence," Piazza said Tuesday.

"When you look at the pattern injury on the body and the fact that Michel's body was struck by forces coming in three different directions, it's obvious he died as a result of the blows. Whether it was from the rifle or another object isn't important."

No contest

Horne was convicted of first-degree murder Nov. 22, 1983. The state Court of Appeals in October 1984 reversed the conviction because Horne's attorneys were not permitted to challenge the credibility of an eye witness.

Page 1 of 2 Pages

based on psychiatric records. Horne pleaded no contest to second-degree murder in January 1985 and was sentenced to 20 years in prison.

The faulty transparency was revealed during a civil lawsuit filed about a year and a half later by the Michel family against Horne and his father, Joe Horne, of England. During that lawsuit Malak was unable to match the weapon to the wound on the life-sized autopsy photo of Michel.

"The photo that was later blown up was just made of the body in general from the right side of the body," Vowell said. "The wound was on the left side at collarbone level and none of our photographs were meant to even show the wound."

Negative reversed

John Lisle of Little Rock, who represented Joe Horne during the lawsuit, said it was evident the negative had been reversed to fit the wound.

Vowell explained events that should have been followed in the above cases.

Procedures used for matching a weapon with a wound require that the photo of an in-

jury be taken "with the camera lens and measuring device - usually a 6-inch ruler - exactly parallel to the wound" Vowell said.

Another photo is taken of the alleged weapon and the transparency, made from a negative of the weapon, is layed over the photo of the wound to see if it matches.

Improper procedure

"Dr. Malak wanted me to do that with a butt of a Marlin .30-30," Vowell said. "I told him at that point that the body wasn't photographed properly for those purposes. The wound was on the left collarbone and the ruler was on the midpoint of the chest. In this case, the wound is distorted on the body due to the angle it was taken from."

Vowell said he mounted the photo so it wouldn't be turned backward and be misconstrued as matching the wound on Michel. But when Malak used the transparency in court for the first-degree murder trial and later for the lawsuit, it was no longer mounted and thus able to be reversed.

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Ar. Democrat 1-25-89

Voices

ARKANSAS DEMOCRAT • SATURDAY, JANUARY 21, 1989

ARKANSAS DEMOCRAT • FRIDAY, JANUARY 20, 1989

A Voices letter from,
RUBY A. PRICE

Rockfield

One never written a letter to editor before, but I am so fed and incensed over the increasing number of inequities being forced upon us daily that I feel I must speak out on this one.

I couldn't believe my ears the other night when, on the news, they reported that Mr. Malak could do a better job if his salary was increased.

Did I hear right? Is the public being duped into believing that if we throw a few more dollars (tax dollars) at a problem it will correct itself? Sorry, Charley! I, for one, can't buy it, and I don't appreciate paying ever-increasing taxes to support that attitude.

What are we when we condemn, even reward, inaccuracies or incompetence? Are we no more than whores who have prostituted our morals and principles? For that almighty dollar and for favor with those in authority, greed is eating us up. And who pays the whore? We, the taxpayers, with our ever-increasing tax dollar.

Where is integrity? What happened to the pride taken in a job done to the best of our ability, whether it be for \$1 or \$100 an hour?

Malak's assistants don't last long

A Voices letter from
LISA KAPTEIN
Hot Springs Village

On Jan. 13, Gov. Clinton complained that the people of Arkansas do not pay enough attention to his request for increased taxes.

The question actually is, "Does the governor pay any attention to the request of the people of Arkansas?"

Dr. Malak is still the chief medical examiner of the state

— and he is depicted as a rare "dedicated, competent and overworked state employee."

Dr. Malak seems to have an excellent method for appearing so alone and by himself, for, in the last 10 years or so, he has had all his associates either fired or has forced them to resign.

I do not think that there is another medical examiner's office in the U.S. in which the "assistants or associates" stay for such a short period. Why is

this?

It is not true that in the Arkansas office there is more work to do or that the salaries are lower than in other medical examiner posts.

And as long as Malak is here, the state will not get another assistant (or medical examiner) that is worth his salt, or if one comes, Malak will not allow him to stay very long.

The governor has another "humongous" problem.

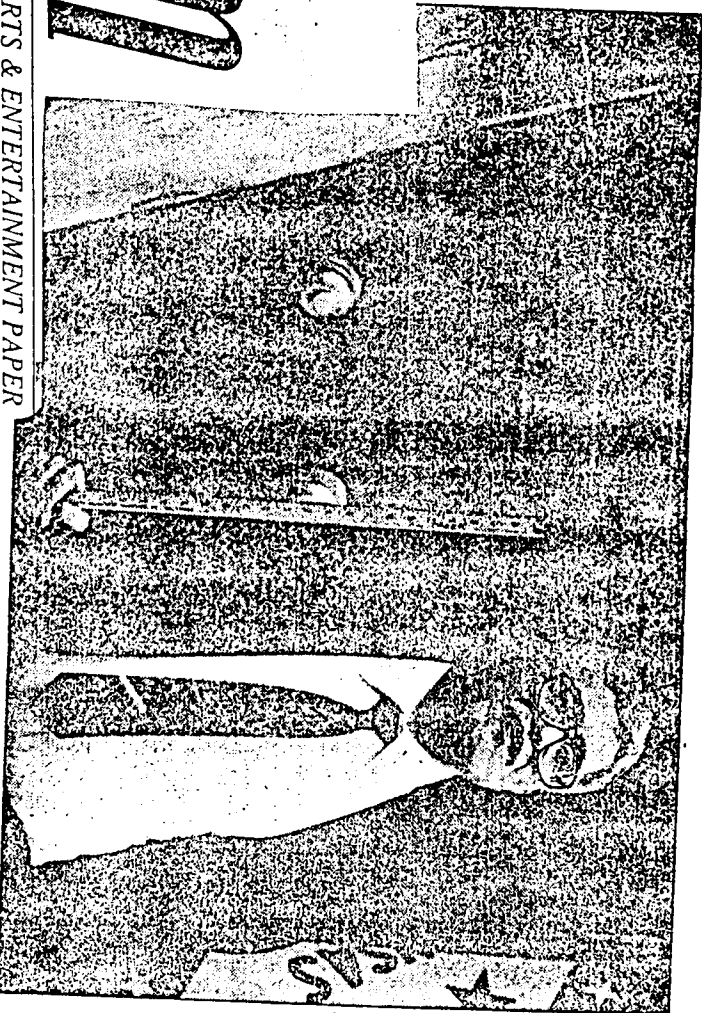
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DEC. 21-JAN. 17, 1989

THE BIWEEKLY NEWS, ARTS & ENTERTAINMENT PAPER

John Sykes/Arkansas Democrat



The Witness For Prosecution

By Doug Blackmon

Two one-time subordinates of state Medical Examiner Dr. Fahmy Malak say that less than a week before Malak used two photographs to help secure the 1982 first-degree murder conviction of William C. Home, he was told by the expert photographer who took them that the photos did not support Malak's testimony.

Eyewitnesses contacted for the first time last week said Malak's chief photographer, Mike Vowell, warned the medical examiner before the trial that certain photographs of David Michel's body and Home's rifle, the

alleged weapon in Michel's beating death, could not legitimately be used in court.

When presented to Malak, a transparency of the rifle butt was bordered in a cardboard frame clearly indicating its front and back, the source said. Yet when the medical examiner presented the photos in court a few days later, the border had been removed, making it possible for Malak to flip the transparency and match the now-backward image of the rifle butt to a bruise shown in a full-size photograph of Michel's body. Vowell, who remains the chief photographer, confirmed last week that he made the transparency, but said he would not con-

ment further.

Malak's testimony in the William Home case, when pieced together with the confidential comments of state prosecutors, defense attorneys, investigators and personal and professional associates of Malak, paints a portrait of the supposedly impartial medical examiner as a witness who has actually favored the prosecution in some cases.

"He's a prosecutor's dream," said one prosecuting attorney.

"I am appalled at his lack of integrity," said a deputy prosecuting attorney.

Witness For The Prosecution

From Page One

One of the new witnesses also flatly refused Malak's sworn testimony given on at least seven occasions in two trials, that he performed the autopsy of Michel and dissected his brain. Malak's former assistant, Dr. Raj Nanduri, also contradicted, under oath, his claim. Crime lab documents appear to support her contention that she conducted the procedure without Malak.

Defense attorneys in Horne's trial were not allowed to see the disputed transparency of the rifle butt until it was produced in the courtroom. Malak swore then that the transparency had been in his possession for "several months." In fact, he had insisted his photographer make it only six days prior.

Asked about the discrepancies by phone last Friday, Malak said only, "Sir, the case went to trial more than once and there were jurors and prosecutors and defense. There were experts and I entered my opinion, and this is all." Asked for further comment, Malak repeated his first statement, declined further questioning and hung up. Reached by telephone Sunday night, Malak again declined to be interviewed for this story and refused to answer questions as to whether he had ever offered to arrange his testimony with a prosecutor prior to a trial.

"That's silly of you to tell me that," he said. "I could sue you for saying that."

Asked if, before the Horne trial, he removed

the transparency from its border, Malak said he would sue Spectrum, then hung up.

BECAUSE THE MEDICAL EXAMINER'S findings and testimony can be crucial in virtually any murder investigation in the state, Malak wields enormous power over prosecutors and law enforcement officials. He has developed intensely strong ties to major state officials, and has in the past enjoyed the support and faith of long-term state legislators and the governor. A survey of the Arkansas Sheriff's Association recently found 64 percent of its members have confidence in Malak's work and testimony.

Malak is almost legendary in law enforcement circles because of his forceful personality, his autocratic operation of the medical examiner's office, his ability to influence the media and other powerful individuals, and his remarkable agility in surviving political storms and controversies.

Sources interviewed last week alleged he has, on occasion, told prosecutors before a trial what to ask or not ask him in court. Malak was also reportedly a close associate and frequent anonymous source of former Arkansas Democratic investigative reporter Mike Masterson. Articles by Masterson generated enormous public pressure leading to the trial of Horne more than a year after Michel's death.

According to one influential prosecuting attorney, "The guy's just invincible."

But Malak's web may be unraveling. Sources close to the Saline County Grand Jury investigation into the deaths of two Bryant boys said that when the jury adjourns early next week, its report will be highly critical of Malak, and that the jury may indict him for perjury.

The grand jury is investigating the 1987 deaths of Don Henry, 16, and Kevin Ives, 17, of Bryant. The boys were hit by a train, and Malak ruled the deaths accidental. But an Atlanta pathologist told the jury the boys were either killed or had been beaten before they were struck by

the train.

Saline County Special Prosecuting Attorney Richard Garnett confirmed that the grand jury heard evidence concerning Malak's testimony in several murder trials, but doubts he will be indicted. The jury will, however, devote considerable attention in its findings to Malak, he said.

"We're going to make the people of Arkansas aware of what the situation is," Garnett said. Sources said that could even mean inviting Governor Bill Clinton or a member of his staff to hear the jury's findings.

Prosecutors and other attorneys say that if Malak is indicted for perjury or otherwise discredited, it could open a floodgate of appeals of convictions which hinged on Malak's testimony. At least nine other cases around the state relied partly on questionable testimony from Malak, sources said.

Little Rock attorney John Lisle, who now represents Horne, said last week that he is likely to file a civil suit against Malak and the state on the basis of discrepancies in the medical examiner's testimony.

HORNE WAS CONVICTED OF FIRST degree murder in the death of Michel and sentenced to 30 years in prison in what was one of the most publicized criminal proceedings in Arkansas during the 1980s. Later, the conviction was overturned on other grounds, and the prosecutor offered to reduce the charge to second-degree murder if Horne pleaded no contest. Faced with the prospect of Malak's damaging testimony again, Horne accepted the advice of his attorney at the time and agreed to the plea-bargain, his current attorney said. Horne was also convicted in a related shooting. He is currently serving a 20-year sentence in the state penitentiary.

In 1985, a jury also awarded the Michel family \$100,000 in a wrongful death action against Horne and his father, though the father was acquitted.

Horne was charged after Masterson's lengthy investigation into the alleged November 18, 1982 bludgeoning death of Michel on a parking lot along Rodney Parham Road. Michel and two friends had left the Wrangler bar to meet Horne for a fight at the parking lot. On the lot, Michel got out of the car, and shortly afterward Horne fired two shots from his .30-30 lever-action rifle into the rear of the car, hitting John Lock, a friend and companion of Michel's, twice.

The driver raced off the parking lot and took Lock to a hospital. He survived, but Michel was later found injured yet conscious on the parking lot with wounds to his head and shoulder. He was taken to a hospital, but doctors didn't realize that his skull was cracked. David Michel died several days later without ever recounting a detailed version of the events of that night.

Defense attorneys argued that Michel sustained his injuries when he leapt from a semi-trailer on the parking lot and hit the back of Horne's truck. The prosecutor argued that Horne beat Michel to death with the same rifle he used to shoot Lock.

Mystery still surrounds the investigation. Malak's former assistant Nanduri first ruled Michel's manner of death as undetermined, and later testified that his injuries were consistent with a fall. But after Masterson's series of articles began, Malak overruled Nanduri, changing it to homicide. Crucial evidence was lost, however, when Horne's rifle was never examined for traces of skin or hair fiber.

Without such conclusive evidence, Malak used two photographs in court to show that the butt of Horne's rifle appeared to perfectly match a large bruise on the right shoulder of Michel — all the way down to a tiny nick on the rifle.

Just a few days before Horne's trial, Malak asked Vowell to make a transparency of the butt of the rifle. Vowell allegedly told him one could not be created which could be accurately compared to Michel's wound, the sources said. Malak insisted, and the transparency was made on

November 15, 1983.

In interviews last week, sources intimately familiar with Malak's activities at the time said the photographer protested that the photos could not be truthfully used to link Horne's rifle and Michel's wound, but Malak demanded that they be made.

On November 21, 1983 then-Deputy Prosecuting Attorney Chris Piazza held the transparency of the rifle butt against the picture of Michel's wound and asked, "Dr. Malak, it does match that particular rifle, does it not?"

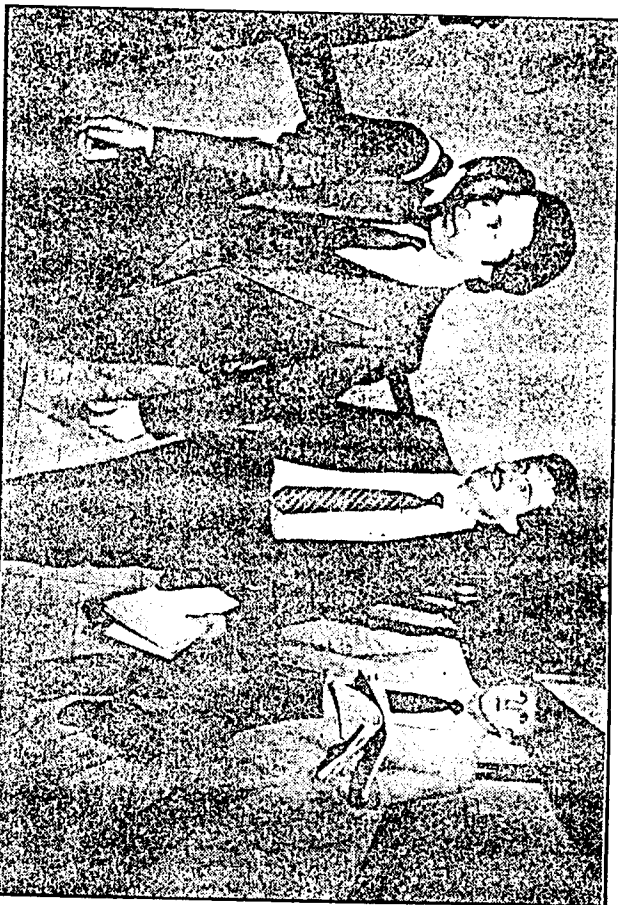
"That's correct," Malak responded under oath. In the civil trial later, Malak testified even more strongly:

"If we compare the butt of the gun to the pattern injury or bruise on the collarbone of David Michel, we find them identical. It is exactly like a rubber stamp," Malak said. "We find the irregularity on the right hand side line, and we find they diverge and they are equal in size, shape and figure."

In fact, the photographs of Michel's upper body and the rifle butt were taken at radically different angles, sources said, and Malak knew they should not be compared. Since the apparent shape of the bruise on his left shoulder at the base of Michel's neck would have been distorted by the camera's angle, any perceived similarity between the transparency of the rifle butt and the wound in the full-size photograph of Michel's body was meaningless, sources said.

Two out-of-state forensic pathologists contacted last week agreed that if the photographs were taken at different angles, findings made on the basis of the photos would be inconclusive.

Malak also testified in both trials that the transparency of the rifle butt matched the wound down to a small nick in the butt which corresponded to a slight irregularity in the bruise. Further, he said the outside lines of the bruise diverged just like the edges of the rifle butt. But at the civil trial, it was discovered that he was placing the transparency backwards on the photograph of Michel. In court, the transparency was no longer in its cardboard border. Properly applied, the nick and irregularity do not match.



William Horne and his former attorney Wayne Lee

Arkansas Democrat

When Malak matched the transparency and the photograph of the bruise in both trials, the brand name "Marlin" could be read correctly on the image of the rifle butt. But looking through the transparency, with it pressed against the wound, the image should have been reversed so that "Marlin" was backward.

Had the transparency not been removed from its border, it would have been virtually impossible to reverse the image without detection.

In the 1985 proceeding, Malak claimed he matched the rifle itself with Michel's bruise in coming to his opinion as to the manner of death.

"In my opinion this wound of the collarbone has been inflicted by the butt of that gun or an identical object to that gun," he said under oath.

After further questioning, Malak was forced to concede that he might have been reversing the transparency. In a videotaped deposition, defense attorney Lisle asked Malak to use him as the victim and demonstrate with the actual rifle

how it fit Michel's bruise.

Malak placed the rifle so that the nick matched where the irregularity in the bruise would have been on the attorney's shoulder, but to do so, Malak had to turn the rifle backwards so that it no longer fit the rest of the bruise.

"You're showing now doctor that if the rifle were in that position you would not have diverging lines but you would have converging lines because you have the point of the rifle down, don't you," Lisle said.

"It corresponds to the notch here," Malak replied, pointing at Lisle's shoulder.

"Yes the notch corresponds to the indentation, but it means the rifle must be turned the wrong way, doesn't it, doctor," said Lisle.

"Possibly," the visibly flustered Malak said quietly. "I was not there when he was struck."

In the 1983 trial, Malak also testified repeatedly that he performed the autopsy on Michel's body and dissected the brain. In the 1985 trial

Malak said he may have only performed the autopsy of the head and chest.

"Yes, I am the one who received the body, and am the one who examined the body, and the one who ordered the x-ray to the body," Malak said when asked in 1983 if he had observed Michel's body. "I am the one who saw all the injuries to the body. I am the one who instructed Dr. Nanduri what to do about the case."

Later in that trial, Nanduri testified that Malak had *not* performed the autopsy or dissected the brain and was *not* present while Nanduri conducted both. Crime lab documents appear to support her statements, and she has publicly reaffirmed her testimony since that trial. Nanduri now practices in O'Fallon, Illinois.

Another former lab employee contacted last week with first-hand knowledge of the case agreed that Nanduri performed the autopsy and dissection.

THE HEAT MAY BE HAVING AN EFFECT ON MALAK

One defense attorney who has represented defendants in several trials in which Malak testified in the past year said the medical examiner has become more specific in his autopsy reports since the controversy over his work erupted.

"His reports used to be very general, then when questioned in court, he says something more specific which can't be rebutted," the attorney said. He said Malak's reports now are more precise and come to conclusions less quickly.

The lawyer said Malak offered different testimony in court than he had discussed with the defense counsel before trial in at least three cases in which the attorney has participated.

Even some prosecutors who benefit from Malak's perceived preference for conviction are disturbed by his testimony.

"Malak is a real strong prosecution witness," said one attorney who has been a prosecutor and a defense attorney in different cases in which the medical examiner testified. "He feels like he works for the state and he feels the state deserves the full benefit of his work," he continued.

"I have seen him use scientific tests page 4

and give them more weight than the scientific community would give them," the prosecutor said.

Published reports have previously documented instances where Malak's pre-trial statements differed from his court testimony. They include another case of disagreement as to whether Malak participated in an autopsy; questions as to his medical and forensic certification; and, in a case where police evidence directly contradicted his autopsy, disagreement regarding the number of bullet wounds in a victim's body.

Not everyone agrees with the negative assessments of Malak, though, and everyone interviewed for this report agreed the medical examiner is underfunded and overworked. Even the prosecutor who questioned Malak's use of scientific tests conceded that in most cases, Malak has been competent.

Even some of his detractors said the apparent errors in testimony could have been honest mistakes.

Chris Piazza, who has become prosecuting attorney for Pulaski and Perry counties since the Horne trial, defended Malak without reservation. In an interview Saturday, Piazza said he has faith in Malak as a highly competent pathologist who will always speak his mind.

"He's going to call it like he sees it," Piazza said, adding that he

has no reason to consider Malak pro-prosecution and has never coached his testimony before a trial.

As far as discrepancies in the Horne case, Piazza said the photo transparencies were not important in the trial.

"The main thing in that case in my opinion was that (Michel's) skull was cracked in a downward motion," supposedly showing that he had been struck with a weapon, Piazza said.

Piazza conceded that without the photographs and testimony, only circumstantial evidence — albeit very strong — connected Horne to the death of Michel, but he remains convinced the jury reached the proper conclusion.

"He got a fair trial," Piazza said.

HORNE WAS FIRST REPRESENTED BY THE FORMER
Little Rock attorney Keith Lee. Lee is now serving a prison sentence for participation in a kickback scheme unrelated to Horne.

Lisle, who successfully defended Horne's father in the 1985 civil trial, now represents Horne and said he is preparing papers for a civil suit against Malak and the state.

If so, Fahmy Malak, his photographs, and the notched rifle will be back in court again, but this time as witness for the defense. ■

Letters

Malak will always get it right if he's just given all the facts

To the Editor:

I would like to thank Dr. Fahmy Malak of the state Crime Laboratory for his recent help in solving a case for me that was most baffling on the surface.

It started out as a death by natural causes, took a turn in the direction of a homicide case and then returned to a case of death by natural causes. This case was investigated by two state investigators, two deputy sheriffs as well as the sheriff and the coroner. It was only the medical examiner's advice as to what to look for in the home — which turned out to be two chain saws — that brought the case to a conclusion.

I believe that Dr. Malak has been given a bum rap by certain news

media. This has the earmarks of a conspiracy to discredit him. I was glad to see the sheriffs organization come to his support and wished that the coroners association had done the same.

This is not the only case on which Dr. Malak or the Crime Laboratory has been of great help to my office. Both the lab and the medical examiner have been a huge success, and with close cooperation with the coroners of the state they can be more beneficial to the public.

Calling outside medical examiners in cases that concern Arkansas is a waste of taxpayers' money. No two doctors have ever had the same opinion on individual cases.

It is only when you have a break-

down in investigative methods, that cases are brought to a wrong conclusion. And grand juries can be misled in a lot of cases when all facts are not in evidence.

After all, the Arkansas State Crime Laboratory to us coroners is the only show in town. We have to be satisfied with the results therefrom, as well as the various law enforcement agencies.

I am proud to be a part of this system and I know what I am saying when I say that Dr. Malak is 100 percent right in all his case finalities when he is given all the facts, which has not been always the case.

Charles L. Teppenpaw,
Dallas County Coroner.
Fordyce.

Malak

• Continued from Page One

said the first autopsy was "grossly inaccurate and improperly certified."

"The cause of death (cited in Marx's autopsy) was improper," Malak said.

Leda Fuller, the inmate's widow, was awarded \$40,000.

Mrs. Fuller and her three children then filed a \$6 million lawsuit in U.S. District Court in September 1980 against Marx, alleging he was negligent when he performed the autopsy on Fuller.

The state and the insurance company for the state medical examiner's office also were named in the lawsuit.

A snag in the case occurred when Mrs. Fuller's Little Rock attorney, A. Wayne Davis, received in the mail from opposing counsel a statement from Malak. Davis said he couldn't remember who the attorney was.

"It is my opinion that Dr. Stephen Marx was not negligent in his performance of the autopsy on Thomas Richard Fuller or in the diagnosis he reached as to the cause of death," Malak said in a sworn affidavit dated Sept. 10, 1981.

"He flip-flopped on us," Davis said during a recent interview. "He said, 'This case was causing me more problems than I can stand.'"

Davis said at the time the lawsuit was filed Malak agreed that Marx was negligent.

"He crawfished on us," Davis said. "I would have been more reluctant to file the lawsuit if Malak told us that in the first place."

In 1983, U.S. District Judge Elsjane T. Roy, now on senior status, dismissed the federal lawsuit because the statute of limitations had expired.

Other than being "an observer" during the second autopsy, Malak denied having any involvement in the case.

"I was not involved in this case at all," Malak said Friday. "Dr. Stein did the autopsy. I was only an observer."

Malak declined comment when asked if he indeed agreed with Stein's findings.

"I am not going to give you my opinion," he said. "Call Dr. Robert Stein."

He also denied ever saying anything other than Marx was a competent pathologist.

Marx, who had been associate medical examiner for three years before being promoted to medical examiner in May 1978, resigned in March 1979. He said at the time he was entering private medical practice, but a May 1979 article indicated he was given a choice of quitting or being fired over excessive vacation leave.

Malak was named medical examiner later in 1979.

Marx's rulings in the Fuller case and in the case of Millicent Lynn of Beebe attracted public scrutiny after his departure.

In the Lynn case, Marx ruled the 30-year-old woman died when hit by a boat propeller while in Lake Ouachita, but a Shelby County, Tenn., medical examiner who performed a second autopsy said she was shot through the head.

Malak has been the center of controversy since a Saline County grand jury was empaneled to investigate the August 1987 deaths of Larry Kevin Ives, 17, and Don George Henry, 16.

The pair were struck by a Union Pacific train as they lay motionless on tracks near Alexander. Malak ruled the deaths accidental, saying the boys were in a marijuana-induced sleep when struck.

Dr. Joseph Burton, a Georgia pathologist who did a second autopsy on the teens, discovered a puncture wound on Henry's back and a wound on the face of Ives.

The grand jury ruled the deaths homicide.

The Arkansas Democrat later published excerpts of Malak's grand jury testimony that revealed several discrepancies.

Yet, officials contend the recent controversies surrounding the office are due to funding problems and staff shortages.

An independent review by two outside pathologists suggested, in part, raising the salaries of both Malak and his assistants to make the positions more competitive.

State Crime Laboratory Director Bill Cauthron said the low salary has contributed to Malak being without an assist-

ant since July 1, 1988.

Stein who heads an office conducts about 5,000 autopsies a year - compared to a yearly average of 600 autopsies performed by the Arkansas medical examiner's office - disputed that suggestion.

"The business of salary is a poor excuse," Stein said. "Our people who have been with me now over 10 years are earning just over \$60,000 a year."

Malak has had at least eight assistants since becoming chief medical examiner in March 1979.

Citing the high turnover, Stein said he wasn't surprised by the recent controversies surrounding the office.

"The fraternity of forensic pathologists is quite small so we hear all these things," Stein said. "Some of the things I've heard weren't very complimentary at all. The proof of the pudding is why did all those other pathologists leave? They went on to find other jobs. A million Frenchmen can't be wrong."

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Ar. Democrat

1-15-89

Autopsy bill criticized by groups

BY MAX PARKER
Democrat State Desk

Legislation that would allow only the prosecuting attorney of each judicial district to request autopsies was criticized Tuesday by the president of the Arkansas Sheriffs' Association and the attorney general's office.

Rep. Mike Wilson of Jacksonville introduced House Bill 1051 on Monday. The bill also revises the duties of the state medical examiner's office. The current head of the office is Dr. Fahmy Malak.

Wilson said he sponsored the legislation because of knowledge obtained as a member of a legislative committee created in April 1988 to review the functions of the state medical examiner's office.

"There are too many problems with everybody and his dog needing autopsies done," Wilson said.

The law currently allows the prosecuting attorney, coroner, sheriff, chief of police, Board of Correction or Department of Correction to request an autopsy.

"In these rural counties, it would be a real problem," said Cleveland County Sheriff Joe Paul King, president of the sheriffs' association. "We've got one prosecutor for six counties and the deputies are part-time and not in town all the time. I plan to ask the association to take some action. I most definitely will see that something is done about it."

James Lee, spokesman for Attorney General Steve Clark, said the office opposes Wilson's legislation.

Lee said five bills, resulting from a yearlong effort by the attorney general's task force on death scene investigations, were "in the hands of Rep. Bob Fairchild" of Fayetteville.

Fairchild said he didn't have any "real tremendous heartburn" about Wilson's legislation.

See AUTOPSIES, Page 3B

Autopsies

• Continued from Arkansas Page

isolation but added he would need to further study the bill and discuss it with Wilson.

Lee said legislation drafted by the task force did not affect those who could request an autopsy, but did affect the ruling of the manner of death.

Currently, the state medical examiner's office can determine both the cause and man-

ner - homicide, suicide, accidental or natural - of death when an autopsy is performed by the office.

Under Wilson's bill, the state medical examiner's office only would determine the cause of death. The legislation does not address the manner of death, which the federal government mandates be recorded on all death certificates.

"The medical examiner is a physician and a scientist," Wilson said. "He needs to confine

himself to scientific issues. He doesn't need to speculate if someone was murdered. That should be left up to the jury and the courts. If a prosecutor believes it was a murder, charges should be filed."

"Mike Wilson's bill caught everybody off guard," Lee said. "It came right out of the blue sky. It's contrary to our findings, our recommendations and to the medical examiner's commission report released last week."

Arkansas' intelligence considered questionable

ARKANSAS DEMOCRAT • TUESDAY, JANUARY 10, 1989 •

A Voices letter from
GARY MCLEHANEY
Benion

About a year ago I read a front page article in the *Democrat* stating that according to an IQ test that was taken of high school students statewide, Arkansas' intelligence was second from the worst in all the 50 states in the country. Arkansas came in 49th and Mississippi came in last. At the time I disagreed with this fact and considered it just didn't reflect the entire state's intelligence. But now reading lately about the controversial case of the Saline County boys that were run over by a train in August 1987 and how our high ranking public officials are reacting toward it, plus the realization of knowing we voters

in Arkansas have put these clowns and jokers in these high ranking positions, has me believing that maybe those IQ tests were accurate concerning Arkansas' intelligence. One sign of proof is that according to the Arkansas Sheriffs' Association, out of the 52 county sheriffs, 48 support and believe Dr. Malak's idiotic autopsy analysis on those two boys, which vastly defies natural common sense. We have one high ranking police official by the name of Larry Dill who thinks the hideous deaths of two teen-age boys is a "dog-and-pony show." How someone with such moronic thinking like that got placed in such a high position is a huge mystery to me. Another joke is that our governor, Bill Clinton, wants to

give a raise to Malak, who must be the most incompetent medical pathologist in the entire United States.

Arkansas, do we want other states to see us as pitifully stupid or as people who think life is so cheap that it isn't worth seeking killers of young kids?

Gary Gaines, of the Arkansas Sheriffs' Association, said that prejudice is why we are running down Dr. Malak, because he's Egyptian, dark skinned and wears thick glasses. Mr. Gaines, this isn't even the principle of the point which is that two boys were incapacitated and were laid on the train tracks to be destroyed and Dr. Malak did either a very lousy autopsy or none at all. He stumbled over his own lie at the trial for

these boys, or to be correct, he refused to answer a question that put him in a very hot seat. Also I wonder if the rest of Arkansas knows that James Steed, Saline County's sheriff at that time, publicly announced exactly what Dr. Malak's autopsy would say before the bodies even arrived at the crime lab? Strange how well he knew.

Malak

Continued from Page 1B.

about the office, case files and Arkansas demographic reports.

They studied more than two dozen case files, five of them about controversial cases, including the Bryant case, Peterson said. They also read a crime lab review conducted several years ago, Zumwalt said.

The review of Malak's office was Zumwalt's first, but Peterson is a coordinator for reviews in his region.

Zumwalt visited Little Rock twice; Peterson visited once. On Oct. 13, both doctors spent the day touring the State Crime Laboratory, interviewing Malak and his staff and watching Malak at work, Peterson said.

"We were impressed with Malak's diligence and dedication," Peterson said. "You know, that guy works pretty hard."

"If the state of Arkansas were to ever give an award for dedication, it would go to Malak," Zumwalt said. "His sincerity would be unquestioned."

"We've all made decisions that have been controversial," Zumwalt said. "We all would make errors in judgment if understaffed." But he added that he was not saying Malak had made such errors in specific cases.

The pathologists were paid \$1,000 each and were reimbursed for their lodging and transportation for trips to Little Rock, Zumwalt said. The governor's office, which set aside up to \$10,000 for the review, has not yet received a total bill for the review, Mike Gaudin, a spokesman for Gov. Bill Clinton, said.

Resumes submitted by the pathologists were not available from the governor's office, the crime lab said, or the commission.

Pathologists

elaborate

on review

By Anne Farris
GAZETTE STAFF

The state Medical Examiner's Commission, lacking the expertise to evaluate Dr. Fahmy Malak, reached out for help.

They found Dr. Garry Freeman Peterson of Minneapolis and Dr. Ross Eugene Zumwalt of Albuquerque, N.M., two pathologists who agreed to conduct a peer review of Malak, the state Medical Examiner, whose findings often have been controversial.

The review, released this week, lauded Malak and recommended expansions in the medical examiner's office's duties, staff and salaries. Both men, in telephone interviews this week, gave details of their review methods, findings and roles and defended their conclusions.

"We also gave Malak some constructive criticism," Peterson said. "I believe we were being objective and realistic. We used a thoughtful and good process with a good sampling of material to look at." The review criticized Malak for merely collecting data in cases, not solving problems.

"If we had not had sufficient time and resources we would have asked for more," Peterson said.

The review was prompted by some of Malak's findings, particularly which Malak concluded that

two Bryant teen-agers were killed by a train near Alexander while lying on railroad tracks in a marijuana-induced sleep. An Atlanta pathologist, hired by a Saline County grand jury, said the boys were killed before they were struck by the train.

Not to judge rulings

But both Zumwalt and Peterson emphasized that the review was not designed to pass judgment on specific rulings by Malak or look into discrepancies in his court testimony about the cases. They both expressed hope the review would improve the office.

Zumwalt began the review last spring with Dr. David K. Wiecking of Richmond, Va., the chief medical examiner of Virginia. But Wiecking quit the review June 13 after one day in Little Rock.

Wiecking said Friday he quit the review when he was asked to testify in the Bryant case. "Most places would say come in and review our offices," Wiecking said. "They wouldn't go around getting you involved in subpoenas and the controversies of local cases. I got out of there as fast as I could."

Peterson was hired in September to replace Wiecking. Zumwalt and Peterson each spent about 40 hours reading newspaper articles

(See MALAK on Page 2B.)

The "Marquis Who's Who Directory of Medical Specialists" included these profiles:

Zumwalt, 46, is the assistant chief medical investigator for the state of New Mexico. He is certified in pathologic anatomy and forensic pathology. He received a medical degree from the University of Illinois College of Medicine in Chicago in 1971 and completed his internship and residency at Mary Imogene Bassett Hospital in Cooperstown, N.Y. He also completed pathological residencies in Dallas at the Texas Health Science Center and the Institute of Forensic Sciences. He has been a deputy coroner in Ohio and taught pathology in Cincinnati and Dallas. He served in the Navy medical corps and is a member of numerous national and international pathology associations.

Peterson, 47, is chief medical examiner for Hennepin County, Minn., which includes Minneapolis. He is certified in pathologic anatomy and forensic and clinical pathology. Peterson earned a medical degree from the University of Minnesota Medical School and a law degree from William Mitchell College. He completed his internship and residency at St. Paul Ramsey Hospital in Minnesota and completed pathology residencies in Hennepin County, where he was also deputy medical examiner and assistant medical examiner. He has been the county's chief medical examiner since 1984.

Dr. Joycelyn Elders, state Health Department director and commission chairman, said Friday the review was a starting point for a continued evaluation of Malak.

But for now, the commission is satisfied with the review, Elders said. "We feel the questions of competence and performance have been answered. Restoring public confidence is something else."

Study calls examiner competent

Elders says Malak won't be dismissed

BY DOUG THOMPSON
Democrat-Benton Bureau

A study by two out-of-state experts released Wednesday by the state Medical Examiner Commission shows "insufficient evidence at this time for dismissal" of Dr. Fahmy Malak, said Joyceelyn Elders, commission chairman.

After her announcement, commission members asked an Arkansas Democrat reporter where they could obtain copies of Malak's testimony to the 1988 Saline County grand jury investigating the deaths of two Bryant teen-agers.

Transcripts of that secret testimony were leaked to the Democrat after state law prevented their public release by the grand jury.

Those transcripts show it appear to be several changes in testimony Malak made in the course of the investigation. Malak had ruled as accidental the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. The grand jury has ruled the deaths homicides.

Elders and commission Vice Chairman August Pieroni said the transcripts would have been helpful and informative, but did not elaborate. They were told to obtain Malak's permission.

See MALAK, Page 10A

Special report: The Malak controversy

Malak

• Continued from Page One
for the release and contact Circuit Judge John Cole of Sheridan, who impanelled the grand jury.

The commission "does not have the expertise to make this determination on its own, so that is why we based our decision on this report from experts," Elders said before releasing the report after a 45-minute executive session Wednesday.

Ross E. Zumwalt, assistant chief medical investigator of New Mexico, and Garry Peterson, chief medical examiner of Hennepin County, Minn., conducted the review.

"Dr. Malak is a diligent, dedicated and capable forensic pathologist who has been making an effective effort within the limits of the resources and the legislative and administrative constraints imposed upon him to carry out the duties of his office," the report said.

"We were most impressed by Dr. Malak's dedication and the personal sacrifices he has made to provide services in spite of shortages on his staff.

We perceived that Dr. Malak has lost the professional confidence of some of the public and private sectors. In great part, this was a result of an unenlightened press coverage of some controversial cases.

"Dr. Malak is a diligent, dedicated and capable forensic pathologist who has been making an effective effort within the limits of the resources and the legislative and administrative constraints imposed upon him to carry out the duties of his office."

"Unfortunately, once lost, such confidence is difficult to repair. Certainly, it would be tempting for the state to recruit a new, vigorous, highly regarded forensic pathologist to take over the medical examiner's office," but recruiting such a person would be difficult under existing conditions.

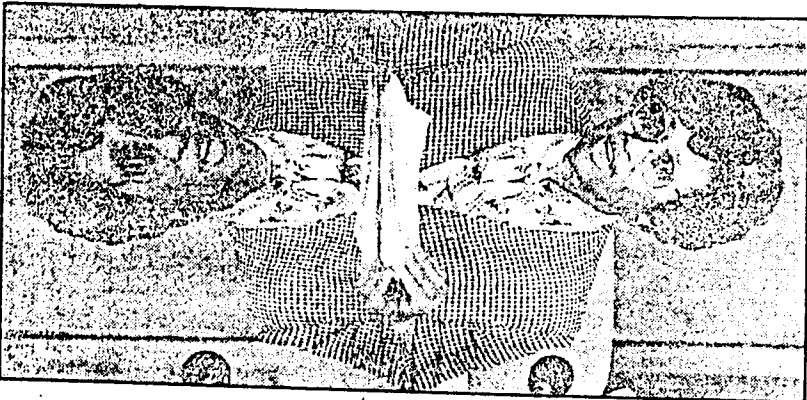
Asked if the medical examiner's office could change existing conditions by getting further appropriations — including a proposed pay raise for Malak — while Malak remained, Pieroni replied, "That's up to the legislature."

Most of the report was released by Elders on Tuesday. The section specifically on the state medical examiner was released Wednesday after Malak gave permission and the commission met and approved its release, Elders said.

It was only the commission's second meeting in more than 10 years. The only other recent meeting was July 14, 1988, when it decided to proceed with the out-of-state medical examiner's review.

The commission's duties are restricted solely to the hiring and firing of the state medical examiner. The commission will meet at least once a year in the future to "review the medical examiner's performance," Elders said.

Zumwalt and Peterson spent 1½ days in Arkansas, Elders



Arkansas Democrat/Alex Brandon
MALAK REPORT — Dr. Joyceelyn Elders, chairman of the state Medical Examiners Commission, discusses a report Wednesday on the performance of Dr. Fahmy Malak, state medical examiner.

Page 19 2 Pages

said. Zumwalt had been to Arkansas before under similar circumstances, but his partner in that study, Dr. David Wiekling of Virginia, dropped out, citing the controversy.

The Zumwalt-Peterson study will cost up to \$10,000 and will be paid out of the governor's emergency fund. It was commissioned after Malak's rulings were criticized in several cases, including the Ives-Henry case. Gov. Bill Clinton declined comment Wednesday until he has a chance to review the written report.

The commission endorsed Malak as a "competent forensic pathologist," Elders said, adding it will not seek Malak's resignation.

Five "controversial and publicized specific cases" were reviewed along with 20 random cases, the report said.

"We found that the conclusions reached were in all cases founded upon a detailed and capably performed autopsy examination. When indicated, appropriate ancillary tests had been performed."

The report did not say if Malak was right in all cases.

Malak testified to the grand jury Nov. 18, 1988, about Zumwalt and Peterson. "They examined these cases. I was not in the office. I was doing autopsies. And I came upstairs, and they are the ones discussing the cases with me. They told me, 'Dr. Malak, we agree 100 percent about the cause of death.'"

The two found no stabs or blunt trauma, Malak testified. "The only thing they disagreed with me, they said, 'We disagree about the marijuana.' My answer was, 'The marijuana is debatable.'" Malak had ruled Ives and Henry were in a deep marijuana-induced sleep when the train struck them.

When asked, none of the commission members said they had talked to Dr. Joseph Burton, the medical examiner for Atlanta who was consulted by the grand jury. Burton claims to have found a stab wound on one of the boys' bodies and signs of a gun-butt bashing on the other.

Sheriffs reaffirm support of Malak in unanimous vote

BY MAX PARKER
Democrat State Desk

For the third time in as many working days, the Arkansas Sheriffs' Association has addressed the issue of offering its support of state Medical Examiner Fahmy Malak.

At a Wednesday meeting of its executive board in Little Rock, 18 county sheriffs voted their unanimous support of Malak.

On Tuesday, Gary Gaines, the group's executive director, said public sentiment had prompted his decision that the association should be "low key" in its support of Malak.

He said news reports in the *Arkansas Democrat* and a Friday news conference before "hostile" members of the press — when Gaines for voiced support for Malak — had contributed to his decision.

"There may be mistakes but he's a human being like everyone else," Gaines said at the start of Wednesday's meeting. "He's overworked and underfunded but very competent."

Before the vote was taken, several sheriffs praised Malak. "The only complaint I would have is the (state crime) Laboratory is slow in returning processed evidence," said Faulkner County Sheriff Bob Blankenship of Conway. "But, we're happy with Dr. Malak."

"When Dr. Malak has been called on, he has delivered," said Clark County Sheriff Al Harris.

"I've always been supportive of Dr. Malak and will remain so."

continue until the news media or others convince me he is guilty of some wrongdoing or malfeasance," said Howard County Sheriff Dick Wakefield.

Despite an investigation by a number of law enforcement agencies and an inquiry by a Saline County grand jury into the 1987 deaths of two Saline County youths, Wakefield said Malak still has not been convicted of any wrongdoing.

"I'm not saying he didn't make a wrong call, but I don't know," Wakefield said.

Pulaski County Sheriff Carroll Gravett offered no praise before the vote was taken.

"I voted to support him," Gravett said during a break in the meeting. "I haven't been directly involved in any of the controversy so it's hard to draw an opinion."

Gravett said he didn't believe the credibility of the medical examiner's office or the state Crime Laboratory had been damaged by the recent controversies surrounding Malak.

"We're all the brunt of rumors," Gravett said. "And rumors can destroy."

The group since March has been a public advocate for Malak, Gaines said.

"He really needs a vote of confidence," Gaines said. "He really is appreciated by law enforcement. We are going to work intensely on getting the legislative session and his budget to be increased."

Dr. Howard Peters 1-5-89
J. H. Peters

Sheriffs soften Malak support after comments

BY MAX PARKER
Democrat State Desk

Public opinion and news reports have prompted the Arkansas Sheriffs' Association to soften its support of the state medical examiner, said Cary Gaines, the group's executive director.

Also Tuesday, a report containing an independent review of Dr. Fahmy Malak's office was released by the state Medical Examiner Commission. It recommended, among other things, better pay for him and his assistants, improved relations with the University of Arkansas for Medical Sciences and severed ties with the state Crime Laboratory.

Gaines held a news conference Friday to reiterate the group's support of Malak and to question the findings of Dr. Joseph Burton, a Georgia pathologist who disputed Malak's findings, that the deaths of two Saline County youths was accidental.

The case was investigated by a Saline County grand jury which, after reviewing Burton's findings, ruled the deaths homicide. However, its final

report, issued Dec. 28, contained no indictments.

Larry Kevin Ives, 17, and Don George Henry, 16, died Aug. 23, 1987. They were struck by a train as they lay on tracks near Alexander. Their parents refused to accept Malak's ruling and they pushed for further investigation. Their efforts led to the establishment of the grand jury.

"In my judgment, I think we need to play a low-key role," Gaines said of the association. "We still continue to support Dr. Malak, but I think our public involvement has become more hurtful to the medical examiner's office and to the Saline County grand jury than helpful."

Gaines said the decision was prompted by recent news articles published by the *Arkansas Democrat*, a public opinion poll by the newspaper and comments he received from the public.

He said one article was published Friday and was on changes in testimony that Malak gave to the Saline County grand jury about the homicide. However, its final

See MALAK, Page 10A

Malak

• Continued from Page One
weight of the boys' lungs. The other was published Saturday and stated that a man selected by the association to review the Saline County case was not a doctor, much less a pathologist.

The *Democrat Poll*, which is a non-scientific telephone poll, stated Sunday that 72.1 percent of respondents believed Malak should be fired.

"Public sentiment has changed since our initial statements last June," Gaines said. "It's become counterproductive for our criminal justice system for us to publicly voice our support. The controversy of Dr. Malak is overshadowing our whole criminal justice system."

'The controversy of Dr. Malak is overshadowing our whole criminal justice system.'

The issue of continuing its public support of Malak was to be addressed today during a meeting of the association's board. Gaines said the issue has been taken off the meeting's agenda.

"The board could change my decision," he said. "But in my judgment, it's time for us to let the dust settle."

Meanwhile, portions of an independent review of the state medical examiner's office were released Tuesday by Dr. Joycelyn Elders, director of the state Department of Health and chairman of the state Medical Examiner Com-

"The segment which deals with the job performance of Malak — which Elders said was "very favorable" — was not released and is considered a personnel matter, and therefore confidential, under the state Freedom of Information Act."

Elders said the commission, which will meet today to discuss the report, may decide to ask Malak that it be released.

"I would say that if I had the same report written about me, I'd be pleased," Elders said. "There is no question as to his competency. Most of the problems dealt with the setup of the office."

The report, compiled by Dr. Ross E. Zumwalt, assistant chief medical investigator in New Mexico, and by Dr. Garry Peterson, chief medical examiner in Hennepin County, Minn., was "not intended for

public release as an independent evaluation separate from the commission's overall evaluation," the cover sheet said.

The consultants will be paid with money from the governor's emergency fund. Mike Gaudin, spokesman for Gov. Bill Clinton, said although the final expenses have not been received, \$10,000 had been allocated for the review.

The evaluation, according to the cover sheet, consisted of a review of the state statutes governing the office, a review of numerous newspaper articles about the office's activities and "a full day at the medical examiner's office interviewing the chief medical examiner and his staff and reviewing case files and autopsy reports."

Bill Cauthron, director of the state Crime Laboratory,

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Review of Malak released

Independence, raise recommended

By John Reed
GAZETTE STAFF

The state medical examiner should earn \$100,000 a year, and his office should be expanded and given more independence, a report by two out-of-state pathologists released Tuesday recommended.

Dr. Fahmy Malak, the state medical examiner, now earns \$81,000 a year, and his office is a division of the state Crime Laboratory.

Malak declined to comment on the report.

The pathologists who wrote the report are Dr. Garry Peterson, the chief medical examiner of Hennepin County, Minn., and Dr. Ross Zumwalt, assistant chief medical investigator for New Mexico. Zumwalt spent a day examining the office in May. They didn't review Malak's findings in any particular case but did check the procedures he used.

The *Arkansas Gazette* has published articles pointing out apparent conflicts in Malak's testimony and questioning whether his credentials were sufficient. Malak was hired in 1979.

The state Medical Examiner Commission hired Zumwalt and Peterson to review the office, as well as Malak's performance. It released only those portions of the

Examiner

Continued from Page 1A.

report recommending changes in the office and kept confidential the evaluation of Malak's performance.

In a 'weak position'

Arkansas law places the medical examiner "in the weak position of being a consultant rather than an independent public official protecting the interest of the citizen," the report said.

In other states medical examiners can review all unexpected and violent deaths, but in Arkansas those deaths are certified by county coroners, many of whom are not medically trained, it said. If coroners disagree with the medical examiner's findings in one death, they can stop referring similar deaths to him, the report said.

Some of Malak's findings have been controversial, particularly his finding that two Bryant teenagers were killed by a train near Alexander and were in a marijuana-induced sleep. A Saline County grand jury hired an Atlanta pathologist, who said the boys were killed before they were struck by the train.

Zumwalt and Peterson's report said "a medical examiner's determination of manner of death will often be at odds with the opinions of other professionals for a variety of reasons." Those reasons include different medical and legal interpretations of what distinguishes a homicide from an accident, the report said.

"The medical examiner's determination of manner of death should be considered an opinion and not the only or final determination," the report said. If a law-enforcement agency abandons a

The examiner's findings "should be considered an opinion and not the only or final determination," the report said.

criminal investigation into a death only because the medical examiner ruled it an accident, it "reflects poorly on the law-enforcement agency, not the medical examiner."

The report recommended that Malak's office be expanded to handle the greater number of autopsies it would have to make if given jurisdiction over suspicious deaths now held by coroners. The office should have two deputy medical examiners, also pathologists, whose salaries should be from \$70,000 to \$75,000. Now the office has two positions for pathologists, but one has been vacant since the end of June, making Malak the only one.

Raise requested

The director of the state Crime Lab, Bill Cauthron, has asked the legislature to give Malak a raise to \$95,000. Cauthron also has asked for a third pathologist.

Cauthron said in a telephone interview that it was up to Malak whether to release the portions evaluating Malak's job performance.

Malak's assistant makes \$60,000 to \$62,000 a year, Cauthron said, adding that the position has been vacant since the end of June. Only one assistant is authorized for the office. Cauthron has asked the legislature for authority to hire two, with raises to a salary consistent with those recommended.

(See EXAMINER on Page 5A.)

Arkansas Gazette 1-4-89

Recommendations listed for examiner's office

An evaluation of the state medical examiner's office made these seven recommendations:

- ★ The office should provide jurisdiction and resources to independently investigate and certify the "cause and manner" of all violent, sudden and unexpected deaths.

- ★ A statewide medical examiner's system should be established by using coroners to investigate deaths at the local level. However, all jurisdictional authority should remain with the medical examiner.

- ★ The legislature should require medical examiner evaluations of all deaths attributed to Sudden Infant Death Syndrome. Autopsies should be mandatory because the syndrome can't be diagnosed and subtle-but-fatal child abuse can't be ruled out except by exclusion of other causes.

- ★ The office of the medical examiner, now a division of the state Crime Laboratory, should be an

independent agency with a budget of its own. The medical examiner should report to the state Medical Examiner Commission, which should be authorized to recruit, hire, reappoint and dismiss the person holding the job.

- ★ Office investigators should be freed from transporting bodies and allowed to "undertake their more crucial role in documenting information surrounding deaths."

- ★ The budget of the medical examiner's office should be increased to provide for a third forensic pathologist and a staff that meets guidelines of the National Association of Medical Examiners.

- ★ Salaries of the chief medical examiner and the deputy should be higher to be "competitive" at national levels. The salary of the chief medical examiner should be \$100,000 — Malak makes about \$81,000 a year — and deputies should make \$70,000 to \$80,000, depending on experience.

The Democrat Poli

Dec. 31, 1988

Today's Issue

Dr. Fahmy Malak, the state medical examiner, is having his performance reviewed by a legislative committee.

Today's Question

Should Dr. Fahmy Malak be fired?

How to Participate

Call 378-7603 between 6 a.m. and 7 p.m. and follow the recorded instructions. Outside Pulaski County, call toll-free (800) 272-4650 between 6 a.m. and 8 a.m.

Yesterday's Response

Yesterday's question was: Should Coach Ken Hatfield reveal what team rule was violated by two suspended players? The response:

Yes 48.6 percent
No 51.4 percent

To vote, call: 378-7603

1988

Evaluation of Malak to be confidential

The results of an evaluation of the state medical examiner's office done by two out-of-state pathologists will be released next week.

The portions of the report that evaluate the job performance of Dr. Fahmy Malak, the state medical examiner, will not be released, a spokesman for the state attorney general said.

The state Crime Laboratory board hired two forensic pathologists in March to review Malak's performance and the operation of the medical examiner's office. The report is complete and in the hands of the state Medical Examiner Commission, which is empowered, among other things, to hire and fire the medical examiner.

Report 'kind of favorable'

Col. Tommy Goodwin, director of the State Police and a member of the Medical Examiner Commission, said Friday that "there's not anything earth-shaking in it" and

that what he has read "looks like kind of a favorable report."

One of the pathologists who wrote the report was Dr. Ross Zumwalt, assistant medical investigator for the state of New Mexico. He said he had reviewed the procedures Malak had used in some cases, but didn't question the conclusions Malak had made.

Asked about the deaths being investigated by a Saline County grand jury, Zumwalt said, "particularly that case I don't want to comment about."

Recommendations made

Zumwalt and Garry Peterson, the chief medical examiner at Minneapolis, made recommendations on how to improve the Arkansas medical examiner's office. Those recommendations will be released Tuesday.

A spokesman for Gov. Bill Clinton said the commission would use the confidential portions to help it evaluate Malak's performance.

Malak slanted testimony, ex-employee claims

By M. PARKER
Desh

Jimmy Malak, the state examiner, at times exaggerated his testimony in favor of the prosecution but was careful to always cover his back, a former employee said Thursday.

"He always walked this very fine line, never doing anything really wrong," said Clint Palmer of Little Rock, a former field investigator at Malak's office. "It may be a little questionable but it's never been wrong. He said he worked for those people, the prosecutors and the sheriffs."

Malak's secretary said Thursday he declined comment.

"He would want to know what they were looking for sometimes before an autopsy was done," Palmer said in an interview with the Arkansas Democrat. "But, I never saw Malak actually do anything

35, was hired as an investigator in June 1979 he became chief field investigator. A car accident during working hours in March 1982 eventually forced Palmer to take medical leave Oct. 1, 1987. He remained an

employee until April, when he resigned.

"My job was to delegate cases when they came in and to assist Dr. Malak in every way possible," Palmer said. "I assisted him during autopsies and went out in the state to investigate the crime scene and transport the bodies back to the (State Crime) Laboratory."

Palmer, who recently testified before a Saline County grand jury investigating the August 1987 deaths of Larry Kevin Ives, 17, and Don George Henry, 16, said Malak was always thorough when performing autopsies.

Malak ruled the deaths accidental and said the boys were in a marijuana-induced sleep when struck by a train. The grand jury ruled it homicide.

"I've seen him practically skin a body in his thoroughness," Palmer said. "Now, why he messed up on the Benton case, I don't know. He was obsessive with trying to do right."

Palmer discussed an order he said Malak gave Mike Vowell, chief photographer at the medical examiner's office, about a transparency of a rifle butt used in the David Michel murder case.

Michel was found in a park-

ing lot unconscious with head and shoulder wounds after a fight. Michel slipped into a coma and died without relaying any information to authorities.

The prosecution argued William Horne beat Michel to death with the same rifle used to shoot Michel's companion that evening.

"Malak called Vowell into his office and told Vowell to take a transparency of the butt of the gun and make it go over the wound on David Michel's body," Palmer said. "Vowell said he couldn't do it because it was not scaled to size. Malak said, 'This is for my use. I am the chief medical examiner and you will do as I say.' But then he takes it into court and tells the jury here's a one-by-one transparency. The butt of the gun fits the wound."

Vowell was unavailable for comment Thursday. Horne was convicted of first-degree murder and later was granted a new trial on other grounds. He pleaded no contest to a reduced charge of second-degree murder and is now serving a 20-year prison sentence.

Malak conceded in 1985 during a lawsuit the Michel family

filed against Horne and his father that he might have been reversing the transparency to make it fit the wound.

Palmer said he never questioned Malak about the transparency.

Additionally, during testimony before the Saline County grand jury, Palmer said he corroborated reports that Malak kept stationery from previous administrations.

"I saw him take old stationery, have something typed by his secretary on it and put it in a file of something that had been done six, seven, eight, or nine months earlier," Palmer said. "I knew that was wrong, so I never got into it with him and I never saw what was actually being typed."

Palmer recalled an argument with Malak during the 1984 exhumation of Marvin Williams of Menifee, who died May 6, 1960, in the Faulkner County Jail. Authorities had said Williams died after sustaining a fatal injury from a fall on the courthouse steps. The family contended that he died at the hands of police.

"I exhumed the body and was the first one to open the casket," Palmer said. "Malak demanded the casket be

brought up. I disagreed and we got into it. I told him he had to examine the skull down here in the hole. When we got back in the truck, Malak was still upset and said, 'If you had brought up the casket, I would not have been put in the hot seat about the crack in the skull. I could have said it happened when the casket was brought up.'"

During a trial against two former Conway police officers charged with Williams' murder, Malak testified the fatal injury — a skull fracture — was from a blunt, thin-edged object such as the tip of a shoe, a flashlight edge or a slapper. He declined to offer an opinion to the jury about whether the death was a homicide. The two men were acquitted.

Palmer said Malak seldom allowed other pathologists to view his autopsies or other Crime Lab experts into the room.

"Sometimes Steve (Cox, Crime Laboratory criminologist) would want to come down and compare clothing with a wound to the body. But, Malak wouldn't let him."

During his employment at the Crime Laboratory, Palmer said he could recall at least two occasions when he took Malak to the office of state Sen. Max Howell of Jacksonville.

"He and Max Howell are very thick," Palmer said. "Why he had a complaint he

would go to Max Howell. I think one time there was a push going on for the Crime Lab to be merged with the (University of Arkansas for Medical Sciences) Malak was totally against that, because he would have someone looking over his shoulder. He wanted Howell to keep the Crime Lab separate."

Howell, who earlier this year chaired a legislative subcommittee empaneled to study the state Crime Laboratory, was unavailable Thursday for comment.

"This system needs to be under the Med Center," Palmer said. "In quality control at J.C. Penney, you've got someone looking over someone's shoulder. Why don't you have it in death and life? (Gov.) Bill Clinton needs to make a decision. An autopsy needs to be done on the entire Crime Lab."