

"I feel like these boys may have seen something they shouldn't have seen," Davis said Wednesday night. "They might have been at the wrong place at the wrong time."

# Grand jury disbands; no new indictments

BY DOUG THOMPSON  
Democrat Benton Bureau

**BENTON** — The Saline County grand jury investigating the deaths of two teenagers ended eight months of session Wednesday night, but did not release any murder indictments.

The much-edited final report the grand jury exhorted law enforcement agencies and the prosecuting attorney's office "to continue the investigation into the deaths of Don Henry and Kevin Ives and into the drug problem in Saline County."

On Sept. 9, the grand jury ruled the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, and Don George Henry, 16, were homicides.

"While the case is not solved, we're a long way from where we were a year ago," said Curtis Henry, Don's father. "A lot of possibilities have been checked out. A lot in. I think the grand jury did all that was humanly possible with the information they had to work with. I respect each and every grand juror."

Larry Ives, Kevin's father, said he believes an explanation of his son's death is "much closer. I think the grand jury has looked into a lot of possibilities. We are now much further down towards the nuts and bolts of an investigation."

Circuit Judge John Cole of Sheridan said he has been assured by newly elected officials that the investigation will continue.

By law, the grand jury had to disband by Saturday. Cole said he would not impanel another grand jury on the case after Jan. 1, 1989. He also dismissed Dan Harmon as special deputy prosecuting attorney. Deputy Prosecuting Attorney Richard Garrett, who requested the panel on behalf of the victims' parents, leaves office Saturday.

"I believe this investigation, if it has done nothing else, has made all the residents and citizens of Saline County aware that there is a body, there is a way, and there are people with the perseverance and dedication to see that justice is served," Cole said.

The teen-agers were struck by a train about 4:25 a.m. after spending the night hunting in woods near Alexander. Both boys lay motionless on the tracks while the train approached. Whether they were still alive when the train hit them became controversial after the parents contested an accidental death ruling.

The accidental death finding was issued by Dr. Fahmy Malak, the state medical examiner who has appeared before the grand jury three times. He has declined public comment, citing a gag order on jury witnesses. The grand jury could not legally release copies of Malak's testimony.

Initially, Malak said the boys were asleep while under the influence of marijuana, but that view was publicly challenged by Dr. Joseph Bur-

ton, an Atlanta pathologist consulted by the grand jury, said both boys were almost certainly incapacitated or dead when the train hit them. The grand jury then ruled the deaths definite homicides.

Videotapes of Burton's testimony were part of the grand jury's report and were played on a Benton cable access channel Wednesday, including one never released before. It showed Burton testifying before the grand jury in May, saying that there was more than enough evidence for a homicide investigation.

Burton's tape could be legally released because he gave his permission, Cole said. But Cole deleted portions of the grand jury report, including a transcript of Malak's testimony.

"When he testified, Dr. Malak had no reason to suspect that his testimony would ever be made public record," Cole said. "If it was made public record, Dr. Malak could file legal charges against the person who released it."

Henry said he accepted the restrictions enforced by Cole. "I trust Judge Cole and his decision," Henry said. "He knows the law. I appreciate his patience and support in this investigation."

Cole told jurors he knew restrictions on their reports left them "somewhat frustrated," but it was his responsibility to see the law was followed.

Besides omitting an estimated 200 pages of transcripts, the final report was edited further after conferring with Cole, Garrett said.

Malak could release the tes-

timony if he so desired, and is now free to comment on his findings, Cole said. Harmon said Malak was contacted Wednesday and refused permission to release his testimony.

Among 125 witnesses, the grand jury has also heard testimony from at least eight other state Crime Laboratory employees and a former assistant of Malak's.

The panel is forbidden by a prior state Supreme Court ruling from criticizing Malak unless it issues some indictment against him. Harmon confirmed that the report would have criticized the medical examiner if law had allowed.

Harmon told The Associated Press he was disappointed that no murder charges were brought, but predicted that whoever killed the boys would be brought to justice if Saline County authorities increase their war on drugs.

"It was a disappointment in the final analysis the way it turned out," grand jury foreman Carl Allen told the Associated Press.

While praising the grand jury and prosecutors for their work, Linda Ives, Kevin's mother, said, "We are naturally disappointed."

"We are not giving up," Mrs. Ives said. "I suppose now we will have to wait and see how things are handled by the new prosecutor and the new sheriff and by the state police. We're very hopeful they will pursue this."

Sheriff-elect Larry Davis said he planned to meet with the Arkansas State Police and the federal Drug Enforcement Administration about Saline County's drug problem, which he described as "probably the worst in the state."



Dolores Hickman, with Buddy Gordon: 'They found no powder burns at all on his hands or arms.' —Staff Photo by Tony Pitt

# Death of Pope County man not a suicide, family says

By Anthony Hicks  
GAZETTE CONWAY BUREAU

**HECTOR** — Officials have determined that Larry Todd Hickman's death was a suicide, but family members do not believe it.

Hickman's family is offering a \$5,000 reward for information about the death.

Larry and Dolores Hickman, Hickman's father and stepmother, are offering the reward. Hickman, 20, died May 17 at the family's home on Granny's Gap Road, north of Hector (Pope County) of a gunshot wound to the chest.

Dolores Hickman said she thinks someone else came to the family's

home the day of the shooting while her stepson was alone at the house.

He had recently come from visiting his mother in Georgia and appeared to be feeling confident about his future, Hickman said.

The Pope County sheriff's office concluded the death was a suicide. The finding was based on a sheriff's office investigation and an autopsy performed by the state medical examiner's office. The state medical examiner's office also has ruled the death a suicide.

## County coroner has doubts

However, Dale Brown, Pope County coroner, said the case

should be investigated further because evidence to support claims that Hickman fired the gun is insufficient.

Hickman was found lying dead on the family's kitchen floor with a bullet wound on the right side of the chest.

Hickman said her stepson was in his room asleep when she and her husband left about 11:30 a.m. on a fishing trip to a lake near Hector.

"It was about 6 p.m. when we got home that evening. I came in first. I could hear a noise, so I walked straight on through the house following the noise," she said.

The sound was the hum of an electric hair dryer that was lying

*Page 1 of 2 pages*



**LARRY TODD HICKMAN**

in a pool of blood in a bathroom, she said. She said she noticed both bathtub faucets were turned on, but there was no blood on the faucet handles. She then looked around the house for her stepson.

"I looked into the kitchen. The icebox door was open. I saw his feet laying out in the floor. I went around and screamed, 'Todd,' and picked him up. He was dead. Then I noticed the bullet hole in his chest," she said.

#### **Shot outside house**

Authorities said the gunshot occurred outside the house. The gun was found about seven feet from the house. Investigators said Hickman apparently came back inside the house after receiving the fatal wound.

"Why would a guy go outside, shoot himself, then come back inside and run all over the house?" Buddy Gordon, Dolores Hickman's brother, who also lives at the house, asked. The family notes that there was no blood found on door handles leading into the house.

The .38-caliber pistol used in the shooting belonged to the family.

Hickman said she had handled the gun the day before the shooting and had loaded it the previous day, so she did not understand how the only fingerprints found on the gun belonged to her stepson.

"I don't believe it was suicide. They found no powder burns at all on his hands or arms. I believe somebody was here with him," she said.

She also noted that there was no suicide note and that Hickman was right-handed, saying that would make it difficult for him to shoot himself in the right side of the chest.

#### **Not depressed**

Hickman said her stepson had shown no signs of depression or despondency.

Pope County Sheriff Jim Bolin defended the investigation, saying there was no indication that anyone else had been in the house with Hickman. He said the investigation also found that people said to have been at the house were not there.

Todd Hickman's fingerprints on the gun also indicated suicide, Bolin said.

However, whether powder burns were found on Hickman's body is a matter of some question.

"My report shows there was coloration on his right hand," Bolin said. "I would assume it would have been powder, but [the medical examiner's report] didn't say it."

The absence of powder residue led Brown to conclude the case should be investigated further, but he has been unable to get approval for a coroner's inquest to do so.

"There was no powder residue at all," Brown said. "Absence of powder residue indicates he didn't discharge the gun."

Deputy Coroner Doug Sullens said the Pope County Quorum Court would have to allocate money for an inquest. He said he did not know whether the quorum court had plans to authorize an inquest.

*Page 2 of 2 Pages  
Ar. Gazette 12-17-82*



VOL. LXXXII NO. 118

## Deadly Job

### Local Coroners' Lack Of Forensic Training Raises Issue of Fitness

#### Low Pay and Small Budgets Help Compound Problem Of Botched Murder Cases

#### The Dual-Role Undertakers

By FRANK E. JAMES

Staff Reporter of THE WALL STREET JOURNAL

Shortly after examining Sarah Heider in Monticello, Ill., County Coroner Dwight Mackay ruled her death a suicide. The special-education teacher had been found dead in a car in her garage, an apparent victim of carbon monoxide poisoning.

But police were puzzled by the dead woman's clean socks. They wondered how Ms. Heider could have walked shoeless across her muddy yard and garage floor without getting even a speck of dirt on her bleached white socks. Did someone carry her to the car? Was she murdered?

The police never found out. When they asked for an autopsy, Mr. Mackay, also the town undertaker, disclosed he had already embalmed the body. As a result, any autopsy would be inconclusive. The police dropped the case. Mr. Mackay declines to comment on his actions.

#### Mechanical Practitioners

This took place in 1982, and many incidents like it have occurred before and since. Coroners and medical examiners play a critical role in criminal cases and insurance proceedings, but they frequently lack training in forensics—the scientific investigation of crime.

Although individual coroners such as Thomas Noguchi of Los Angeles and the late Milton Helpern of New York City have had reputations as outstanding forensic pathologists, county coroners are usually elected officials without specific training in the field. They have backgrounds as anything from auto mechanics to ear, nose and throat specialists. They are often poorly paid part-timers.

Part of the problem is a nationwide shortage of true forensic pathologists. It isn't exactly a glamour profession in terms of pay or working conditions. Examining decomposing or dismembered bodies isn't for everyone. The American Board of Pathology estimates that there are fewer than 500 of these expert investigators practicing in the U.S., and many are swamped with cases.

Charles S. Hirsch, the medical examiner in Suffolk County, N.Y. (who is to become New York City's medical examiner early next year), says the maximum load for a forensic pathologist should be 300 autopsies a year. Yet, he says, some are forced to do 450 to 500 annually. It would probably take three times the number of forensic pathologists now working to handle the 400,000 deaths each year in the U.S. that are considered unexplained, violent, accidental or possible suicides.

#### Dire Consequences

The inadequate system for death investigations means that countless murders go undetected or unresolved, innocent people are sent to jail, and death certificates, important for public-health monitoring, often list the wrong cause of death.

"No industrial nation has the degree and extent of ineptitude involved in medico-legal death investigations that we have in the U.S.," asserts Cyril Wecht, a forensic pathologist and lawyer in Pittsburgh. In Europe and Japan, nearly every medical student is required to have some form of forensic training. But in the U.S., fewer than a third of all medical schools even offer a forensic course, and none of them make it a required course.

Steve Nawojczyk, a reform-minded coroner in Pulaski County, Ark., declares: "The only reason there hasn't been an uproar is because people don't know how bad the situation is." As others have observed, the dead don't vote.

Coroners frequently are powerful in local politics and exercise this power at statehouses when reforms are suggested and they see the source of their power threatened. Coroners in rural areas usually know the families and friends of the victims and hesitate to conduct autopsies or tough investigations for fear of offending these constituents.

#### Schenectady Case

Aside from a scandal in the New York medical examiner's office two years ago, the problems associated with death investigations have received little attention.

Schenectady, N.Y., learned the hard way last year what can happen when things slip through the cracks at the medical examiner's office.

MaryBeth Tinning, a school-bus and ambulance driver in nearby Duanesburg, had nine children, all of whom died over a 10-year period. Several of the cases were referred to the county medical examiner in Schenectady, and some of those deaths were attributed to sudden infant-death syndrome.

Police finally began an investigation after receiving an anonymous phone call. Last year, a jury convicted Mrs. Tinning of killing her ninth child, and authorities say she admitted responsibility in the deaths of at least three.

The deaths of those children "will haunt me for the rest of my life," says Robert Sullivan, the internist and cardiologist who has served as the county medical examiner in Schenectady for 20 years. He says lapses in procedure included the failure to perform an autopsy on the second child to die, a two-year-old. "The connection should have been made," says Mr. Sullivan.

Please Turn to Page A2, Column 4

## Deadly Job: Many Coroners Lack Training in Forensics

Continued From First Page

van, who hasn't any forensic training. "The buck stops here."

Death investigations are handled in a variety of ways in the U.S. At the top of the profession are medical examiners with training as forensic pathologists, usually in big cities. Next come medical examiners who are doctors but have no forensic training. Last come coroners, who frequently are lay people. Hospital pathologists also sometimes conduct autopsies for medical examiners and coroners.

In areas that rely on coroners, the law normally requires little more than that the officeholder be 21 years old and a county resident. In Sebastian County, Ark., Lyle Johnston became a coroner simply because he figured it meshed well with his tow-truck business. Though he didn't have any medical training, he felt that as long as he had to go to a lot of crash scenes, he might as well pick up the bodies as well as the cars. He joked about this dual role by answering the phone "body shop," a practice the police asked him to stop. Nevertheless, he continued to win local elections and has served as coroner for eight years, but will retire this year.

#### Budgetary Factors

Because an autopsy can cost as much as \$700, coroners often think twice before proceeding. With a budget of just a few thousand dollars a year, Jeffrey Campiche, a former coroner in Raymond, Wash., says he "got real restrictive" on autopsies. He adds, "I am sure because of that I probably missed something."

Irwin Sonnenberg, the president of the Idaho Coroners Association, complains, "No one wants to do our job for all the money in the world, yet we don't even get the funds to do what we need to do."

#### Mystery in Wyoming

Yet incompetence is also rife, and the consequences can be disastrous, as in a case in Wheatland, Wyo. In July 1984, Ernestine Jean Kerea, 28, was found dead in her bedroom of a gunshot wound. Police suspected suicide, but Harvey Prell, the local coroner, noticed that the woman had a small wound in her back but a gaping one in her abdomen, suggesting the bullet entered from the back. Mr. Prell declared that it wasn't a suicide, according to a police report taken at the time.

Suspicion fell on Miss Kerea's live-in boyfriend, Martin Frias. Mr. Frias said he was home at the time of the shooting but was asleep in another room. Mr. Frias was eventually convicted of murder. His sentence: 25 to 35 years in prison.

was asleep in another room. Mr. Frias was

## TIP OFF

### Medical examiner rumors

It was *deja vu* when supporters of Medical Examiner Fahmy Malak questioned the credentials of the out-of-state pathologist who has contradicted Malak in the celebrated Saline County rail deaths case. Malak supporters said the out-of-stater isn't certified in pathology. Remember when it came out that Malak was medical examiner for six years before he was board certified in forensic pathology? The stumbling block for Malak was the forensic pathology portion of the certification requirements. The out-of-stater *has* passed the forensic pathology portion of the exam.

ARKANSAS DEMOCRAT • TUESDAY, NOVEMBER 1, 1988

## Malak should be looking for a job

A Voices letter from  
LINDA MILLER  
Alexander

I think it is interesting that the governor wants to give Dr. Fahmy Malak a raise. Considering all the cases he has made mistakes on lately, I would think he would be looking for other employment.

In most cases when you make several errors in a short time in your work, you are either demoted or fired. And considering the importance of the job Malak is *supposed* to be doing, I think he should be seeking employment elsewhere.

I sat in a hearing where Malak testified on his findings concerning the two boys killed in Alexander. I found the man to be extremely arrogant, rude, unsympathetic and cruel, not to mention unprofessional and not too knowledgeable on the effects of marijuana.

I am not a pathologist or a drug user, but even I know that it would be close to impossible to smoke 20 joints in a few hours and lay my body neatly beside my friend on a railroad track. If I had smoked that much I doubt I could even find

the tracks, let alone lay down straight between the rails in such a manner.

He also stated that if anyone was responsible for the boys death, it was the engineer for not stopping the train in time - as if that were within the realm of possibility. I thought that statement was not only cruel but stupid.

There are several other cases in question that the almighty Malak has made rulings in error: the man at the rest home and two children who were killed, all ruled as accidental or natural causes. So by all means, let's give this great man a raise. You always reward employees for not doing their jobs.

I think the governor needs to read the papers and review the facts a little more before he starts handing out raises. If he wants to give someone a raise, give it to someone who deserves it - like our teachers who bravely go into the classroom to teach our children or the families of victims who have to fight to find out the truth about their loved one's death.

# Proposal would raise Malak's pay Worth of position would rise \$14,000

BY BETH DEMPSEY  
Democrat Staff Writer

The director of the state Crime Laboratory said Saturday a \$14,000 raise has been recommended for the state's chief medical examiner to allow Arkansas to be competitive with other states.

"The raise was for the chief (medical examiner's) position," said Bill Cauthron, the Crime Laboratory director. "It was an objective decision based upon what we need to be competitive with what other states pay. If the position is worth that much and Dr. (Fahmy) Malak is in that position, then that's what he should be paid."

Malak, the chief medical examiner, has been criticized recently for discrepancies in autopsies in two major cases. In both instances, Malak's findings were disputed by Dr. Joseph Burton, an Atlanta pathologist.

The raise is part of the Crime Laboratory's budget for the two-year fiscal period beginning July 1, 1989. Cauthron said the proposal was prepared before he joined the staff Aug. 1, although he sought additional raises for the medical examiners. The proposal was presented to Gov. Bill Clinton and his staff Aug. 25, he said, and will be considered in the 1989 legislative session.

Cauthron said there were no budget objections from the Crime Laboratory board during its meeting Friday. Cauthron said the Legislature should "remove personalities" when considering the proposal.

"I would hope they would be objective," he said. "This is what the state will have to have, regardless of who is in the position. We did an objective evaluation based upon what other states pay. That (the proposal) includes raising the assistant medical examiner's pay."

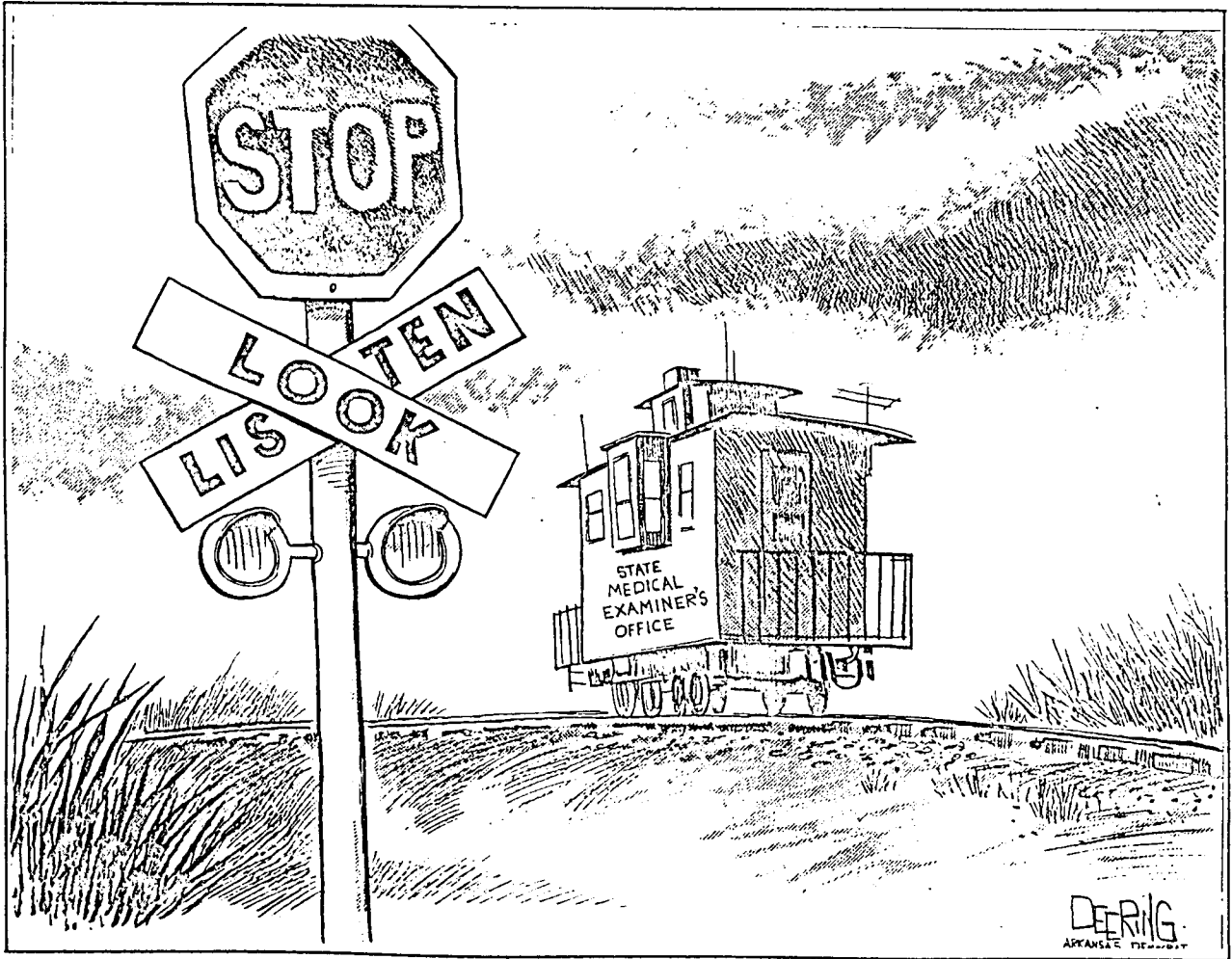
"That (money) is the problem we're running into in trying to recruit (an assistant). We have assistants coming in here that are drawing as much as our chief examiner, more including fringe benefits. That's what we made the recommendation from. The position needs to be competitive. It's void of personalities."

The Crime Lab has had just one pathologist — Malak — since the resignation of the assistant medical examiner, Dr. Bennett Preston, in June. Cauthron also is seeking funding for 13 new positions, including a third pathologist.

Cauthron said he backed the vote of support the Crime Laboratory board gave Malak on Friday.

After the board's vote, a Pulaski County coroner's jury decided unanimously that a beating suffered by Peter Robinson, 75, contributed to his death. Malak had earlier ruled Robinson died of natural causes.

ARKANSAS DEMOCRAT • WEDNESDAY, SEPTEMBER 21, 1988



## Malak retains support, in line for \$14,000 raise

By Mark Oswald  
GAZETTE STAFF

Dr. Fahmy Malak, the state medical examiner, has the support of the state Crime Laboratory Board, despite controversy over his ruling in the deaths of two Saline County teen-agers.

The Crime Lab director is even recommending a \$14,000 raise for Malak.

"Until he's proven wrong, the jury's still out," Dr. Malcolm Moore, the board chairman, said after a board meeting Friday.

The board met in executive ses-

sion for about an hour. In answering questions afterward, Dr. Moore said the board discussed "the medical examiner situation" and other matters.

### Autopsy findings questioned

Newspaper articles have raised questions about Malak's autopsy findings and discrepancies in his sworn testimony in several cases.

Recently, attention has focused on Malak's findings in the deaths last year of two Saline County teen-agers who were run over by a

(See MALAK on Page 13A.)

## Malak

Continued from Page 1A.

train. Malak said the boys had smoked a large amount of marijuana, laid down on the tracks and fell asleep.

A grand jury decided last week that the deaths instead were homicides. Dr. Joe Burton, an Atlanta pathologist who presented testimony to the jury, rejected Malak's findings and told the jury that congestion in the boys' lungs showed they were "injured, rendered unconscious or even killed" before they were hit by the train.

"It's not unusual to have a difference of opinion among medical experts," Moore said Friday. "We don't know where the truth lies."

(The board's action came before a Pulaski County coroner's jury took sharp exception to a Malak ruling in another case. The Crime Lab Board meeting was scheduled before the coroner's jury was called.)

Friday's meeting was the board's first with former Sebastian County Sheriff Bill Cauthron, who became director of the Crime Lab Aug. 1.

Cauthron recommended a raise for Dr. Malak in each of the next two years — his salary would go from \$81,000 now to \$95,000 in 1990.

Cauthron said he has confidence in Dr. Malak. "The only accusations against him have been in the media," Cauthron said. Of Burton's findings in the Saline County case, Cauthron said, "That's an opinion. The grand jury can rule anything it wants. In the final analysis, something's got to be proven in a court of law."

"If the grand jury chooses to believe one expert over another, is the one they didn't believe incompetent?"

The proposed pay raise for Malak is part of an increase in the Crime Lab budget that Cauthron will be seeking in the 1989 legislative session.

He said that before he agreed to accept Gov. Bill Clinton's appointment as Crime Lab director, he got a commitment from Clinton and Betsey Wright, the governor's chief of staff, that they were "going to help this agency and bring it up to standards."

Cauthron wants to add 15 new positions, to bring the total to about 75, but didn't have a dollar amount.

The new positions would include a third pathologist. Cauthron said the medical examiner's office will do about 600 autopsies this year. Since the end of June, when Dr. Bennett Preston resigned from the Lab's associate medical examiner's position, Malak has been the only pathologist.

# Beating led to death, coroner's jury decides

Arkansas Democrat

SATURDAY, SEPTEMBER 17, 1988

Y NOEL OMAN  
Democrat Staff Writer

A Pulaski County coroner's jury took four minutes Friday to decide unanimously that in 1987, Peter Robinson, 75, suffered a June 12 beating at a nursing home contributed to his death two months later.

Pulaski County Coroner Steve Nawojczyk immediately ordered the arrest of Jimmy Webb, the suspect in the beating. Robinson and Webb were residents at Jean's Nursing Home at College Station at the time of the assault.

Webb has been at the State Hospital since the beating, and Nawojczyk said the order would keep him there until the prosecuting attorney's office considers whether to file charges. State law gives coroners arrest powers in such instances.

Nawojczyk impaneled the jury Friday after learning that Fanny A. Malak, state medical examiner, had ruled that the cause of Robinson's death was pneumonia and cardiovascular disease and the manner of death was natural. The coroner's jury has no authority to overrule Malak's finding, but can make its own statement about the manner of death. This could pose a dilemma for the prosecuting attorney's office, which normally relies on the medical examiner's ruling in potential criminal cases.

Also on Friday:

Prosecuting Attorney Chris Piazza declined com-

## At a glance

- A Pulaski County coroner's jury took four minutes Friday to decide unanimously that the beating suffered by an elderly nursing home resident contributed to his death two months later.

- Peter Robinson, 75, was attacked June 12 at Jean's Nursing Home in College Station. He died July 31.

- Pulaski County Coroner Steve Nawojczyk immediately ordered the arrest of Jimmy Webb, who also was a resident at the nursing home at the time of the attack.

ment on the coroner's jury findings other than to say his office will study them and conduct its own investigation.

- The state Crime Laboratory Board voiced its support for Malak, but took no vote at a meeting Friday. El Dorado Police Chief John D. Morgan Jr., a board member, said the board was waiting for the results of an independent review of Malak's office.

Among the 11 witnesses who testified at the three-hour coroner's hearing was Dr. Joe Burton of Marietta, Ga., chief medical examiner for north metropolitan Atlanta. It is the second time in two weeks he has disagreed publicly with Malak.

Burton's videotaped testimony before a Saline County grand jury last week differed from Malak's opinion in his findings in the deaths of Donald George Henry and Larry Kevin Ives, two Bryant teen-

agers who were run over by a train Aug. 23, 1987.

"I would have no question, no hesitancy, about signing this a homicide," Burton said of Robinson's death in testimony to the 20-member coroner's jury.

He said Malak's findings in his autopsy were correct - Robinson died of pneumonia - but Robinson would not have contracted it had he not been beaten and subsequently hospitalized, Burton said.

Robinson was suffering from dehydration and malnutrition when he was admitted to the nursing home in June 1987, Burton said. However, Robinson's health had improved and stabilized by the time of the beating.

After the beating, his "life goes down to worse than when he was admitted to the home," Burton said.

Burton's trip to Arkansas cost the county \$1,600 in airfare, payment for Burton's time and other expenses, Nawojczyk said.

After the attack, Robinson was hospitalized at St. Vincent Infirmary Medical Center for head trauma and remained there until July 7. He was released to the custody of his daughter, but returned to the hospital July 26. He died July 31.

The daughter, Joyce A. Robinson Orsualla, also testified. She has a \$100,000 lawsuit pending against the nursing home.



# Death of patient declared homicide

James Scudder

STAFF

The coroner's jury took less than 10 minutes Friday to decide that the death of Peter Robinson, who died of pneumonia two months after he was beaten in a nursing home, was a homicide.

The decision differs from a ruling by Dr. Fahmy Malak, the state medical examiner, who has ruled Robinson, 75, died of natural causes.

Shortly after the jury's decision, Judge Nawojczyk, the Pulaski County coroner, delivered a warrant to the State Hospital ordering hospital officials to retain custody of Jimmy Webb, 48, who allegedly beat Robinson while both men were patients at Jean's Nursing Home in College Station.

Malak refused to discuss the findings Friday afternoon, but agreed to it. He said the decision was reached "without hearing the evidence."

## Prosecutor in a bind

The jury decision obviously puts prosecuting Attorney Chris Piazza in a bind because Piazza, who normally depends on the medical examiner to declare HOMICIDE on Page 13A.)

aminer's rulings, must decide whether to go against Malak's ruling and file a criminal charge or simply ignore the coroner's jury. The jury's ruling isn't binding.

Piazza refused to discuss the ruling Friday. He said it would be unethical to discuss a "possible filing of charges." He said he would review the complete transcript of the proceedings Friday before deciding what to do, if anything.

The coroner's jury — a first in Pulaski County — was impaneled by Nawojczyk because he disagreed with Malak's ruling. The jurors heard testimony from employees of the nursing home and two physicians who attended Robinson when he was a nursing home patient and when he was a patient at St. Vincent Infirmary Medical Center after the beating.

## Doctor agrees with decision

Friday afternoon, Dr. Joseph Burton, an Atlanta pathologist, told the jury that after reviewing all the evidence Malak had before him, including Malak's own autopsy report, "I would have no question and no hesitation that this was a homicide." Malak wasn't subpoenaed and didn't tes-



—Staff Photo by W. L. 'Pal' Patterson  
**DR. JOSEPH BURTON**

tify.

Burton agreed with Malak that Robinson had several chronic diseases at the time he was beaten, and he agreed that Robinson died of pneumonia.

But the pneumonia was a direct result of respiratory and other problems brought on by the beat-

ing, Burton said. Robinson had been able to walk, communicate and feed himself before the beating occurred, he said.

## Was comatose

From the time he was brought to St. Vincent June 12, when the beating occurred, until he died July 31, Robinson was comatose and developed pneumonia because he couldn't clear his lungs or move about, Burton.

Burton is medical examiner for five counties in the north metropolitan area of Atlanta. He recently testified before a Saline County grand jury about the manner of death of two teenagers who were run over by a train last year. Malak had ruled that two boys were in a deep, marijuana-induced sleep when they lay side-by-side on the railroad tracks and were struck by the train.

The parents of the boys got a court order, had the bodies exhumed, and had a second autopsy performed by Burton, who testified that he found evidence of wounds not consistent with those that could be caused by a train. His testimony led the grand jury to conclude that the deaths were homicides.

## History of violence noted

Also Friday, the coroner's jury learned that Webb, who was sent to Jean's Nursing Home by the

State Hospital, had a history of violence and had been admitted to the hospital 11 times since 1969.

Eunice Reed, administrator of the nursing home, said State Hospital officials didn't tell her about Webb's history when he was brought to the home. Webb was returned to the State Hospital after the beating.

Dr. M. A. Jackson, a family practice physician who attends Jean's patients, was at the nursing home the day of the beating. He examined Robinson and sent him by ambulance to St. Vincent.

He said Robinson had come to the home in June 1987 and was malnourished and dehydrated, weighing 97 pounds. At the time of the beating, Robinson weighed 115 pounds and "was able to walk with some assistance," Jackson said. He said he hadn't treated Robinson for respiratory problems before the beating and that it is "rather common" for older people who are immobilized in the hospital to develop pneumonia.

Dr. Robert Abraham, a neurosurgeon who treated Robinson at St. Vincent, said Robinson was "breathing on his own" when he was admitted to the hospital but later developed pneumonia.

Robinson was discharged from the hospital July 7 but was readmitted July 26.

# Expert aids state officials for 2nd time

## Pathologist called one of 'country's most distinguished'

BY MAX PARKER  
Democrat State Desk

Dr. Joseph Burton, a Georgia pathologist, has for the second time in three years assisted Arkansas authorities in their investigation of suspicious deaths.

On Friday, the 43-year-old chief medical examiner for north metropolitan Atlanta offered evidence in a 13-minute videotape that disputed a ruling that last summer's deaths of two Saline County youths were accidental.

It was announced Friday that a Saline County grand jury investigating the case believes the deaths of Larry Kevin Ives, 17, and Don George Henry 16, were homicides.

In April, Burton, at the request of Deputy Prosecuting Attorney Richard Garrett of Benton, examined the exhumed bodies of the youths, who were hit by a Union Pacific train Aug. 23, 1987.



Dr. Joe Burton

State Medical Examiner Fahmy Malak had said the boys were under the influence of marijuana when they were struck and ruled their deaths

accidental.

In August 1985, Burton was used by the prosecution as an expert witness in the Faulkner County Circuit Court first-degree murder trial of two men accused in the 1960 death of Marvin Williams.

Williams died while in police custody at the Faulkner County Jail in Conway. Burton testified Williams died from massive head trauma and said it was homicide. The two men were acquitted.

Burton's work also has gained him national recognition.

The National Law Enforcement Institute Inc. at Santa Rosa, Calif., cited Burton as "one of the country's most distinguished medical examiners."

He was used as a consultant

by officials in Tallahassee, Fla., during an investigation of the 1978 strangulation murders of two Florida State University sorority sisters.

Theodore R. Bundy was convicted of the killings after bite marks found on one of the victims matched impressions that had been taken of Bundy's teeth.

At Atlanta, Burton was a coordinating consultant to both the FBI and the Georgia Bureau of Investigation during the investigation of 28 slain black children and young adults. Wayne B. Williams was subsequently convicted in 1982 of two of the murders.

Burton has held his current position since 1978. From 1981 to 1984, he was director of the Forensic Pathology Training Program at Emory University School of Medicine at Atlanta.

Since 1979, he has been a regional pathologist for the Federal Aviation Administration. And since 1978, Burton has been a pathologist for the U.S. Federal Penitentiary and a consultant for the National Transportation Safety Board.



# Coroner calls for jury in beating of patient

## He says it contributed to man's death

By James Scudder  
GAZETTE STAFF

A rare coroner's jury will be convened at 9 a.m. September 16 to determine whether a beating a man received in a nursing home two months before he died contributed to his death.

Dr. Fahmy Malak, state medical examiner, has ruled that the death of Peter Robinson, 75, who died July 31 at St. Vincent Infirmary Medical Center, was of natural causes — pneumonia and cardiovascular disease.

Pulaski County Coroner Steve Nawojczyk has disagreed with Malak's ruling. He said the injuries Robinson received when he was beaten by another patient in Jean's Nursing Home in College Station contributed to his death. No charges have been filed in the beating.

Nawojczyk called for the jury Thursday and issued subpoenas to nine witnesses. He refused to divulge the names of the persons subpoenaed.

Malak was reached at his home Thursday afternoon and said of Nawojczyk's action, "He does what he wants to do. I have no comment."

### Coroner retains attorney

Nawojczyk said he had retained John W. Hall as his attorney in the proceeding and that 16 jurors would be called to hear testimony

and decide about the manner of Robinson's death.

State law allows a coroner to choose from 12 to 23 jurors. Nawojczyk arbitrarily settled on 16. Their names will be drawn from the pool from which Circuit Judge Tom Digby draws jurors.

The jury's decision won't affect Malak's ruling. But if the jury should decide that the beating contributed to Robinson's death, the decision would create a dilemma for the prosecuting attorney, who normally relies on the medical examiner's ruling in potential criminal cases.

Nawojczyk said a coroner's jury had never been called in Pulaski County.

Robinson was attacked by another patient June 12 while he was a resident of the nursing home. He was hospitalized at St. Vincent for head trauma and remained there until July 7. He was released to the custody of his daughter but returned to the hospital July 26 and died July 31.

Malak performed an autopsy Aug. 2 and released a summary of his findings to the Pulaski County sheriff's office, Prosecuting Attorney Chris Piazza and Nawojczyk Aug. 24. Malak listed the cause of death as 'pneumonia associated with pericarditis and arteriosclerotic cardiovascular disease.'

The coroner's jury will hear testimony in Judge Digby's courtroom in the County Courthouse.

# New head of crime laboratory faces tough task

JUDY GALLMAN  
Staff Writer

Bill Cauthron, new director of the state Crime Laboratory, likes to think of himself as a problem solver.

He knows he is up against the tough ones, including a shortage of forensic pathologists. Currently, Dr. Fahmy Malak, the state medical examiner, is the sole pathologist.

Cauthron, 61, began his duties Monday, spending his first days of work getting acquainted with the 59 employees and familiarizing himself with all divisions of the laboratory. Today is his first day on payroll for the \$39,000-a-year job.

Now getting organized Tuesday, meeting informally with employees, many of whom he knows through his former job as Sebastian County sheriff. He also interviewed an applicant for a pathologist job.

Right now, we're up into

the red zone on getting a forensic pathologist. We need to get one on board," Cauthron said. Malak works up to 18 hours a day to keep up, Cauthron said.

Cauthron's main priority will be recruiting, training and retaining a pathologist, a difficult task because of low pay, he said. He also wants to add a third pathologist so the laboratory can operate seven days a week and eliminate backlogs.

Cauthron retired as sheriff in January, opting for early retirement because of family and health reasons. In March, he received six bypasses in open heart surgery — his second since 1979. However, he said Tuesday he is capable of handling the director's job.

"It presented a new challenge, and it gave me an opportunity to work in a field where I have some expertise," he said.

He enjoys the administrative aspect of the job, and is



**NEW DIRECTOR** — Bill Cauthron, new director of the state Crime Laboratory, informally met with employees Tuesday. He officially starts work today.

satisfied to see projects completed and employees working

as a team, he added.

"I miss being out in the

field, but I'm not 23, 24 years old," he said.

Cauthron has taken over the crime laboratory after two outside pathologists reviewed the medical examiner's office and raised questions about several of Malak's rulings. Cauthron said he has an open mind about the crime laboratory and its employees.

"They're going through a tough time right now," Cauthron said. However, he said, "adversity either does one of two things. It either beats you or it makes you stronger, and we're hoping it will make the department stronger."

Cauthron, the seventh director, replaces Howard "Bear" Chandler, who had been acting director. Chandler will return as chief of the questioned documents section.

Chandler replaced James Clark, who resigned to become director of the state Transportation Safety Agency.

# Rare coroner's jury may review death

## Nawojczyk criticizes role of examiner

By James Scudder  
GAZETTE STAFF

Pulaski County Coroner Steve Nawojczyk is considering impaneling a coroner's jury — rarely, if ever, done in Pulaski County — to investigate the death of a beating victim.

Nawojczyk said Tuesday that he was considering the action after learning that Dr. Fahmy Malak, the state medical examiner, had ruled that the cause of the man's death was pneumonia and the manner of death was natural.

Peter Robinson, 75, was attacked by another patient June 12 while he was a resident of Jean's Nurs-

ing Home at College Station. He was hospitalized at St. Vincent Infirmary Medical Center for head trauma and remained there until July 7. He was released to the custody of his daughter but returned to the hospital July 26 and died July 31.

### 'Natural' death

Malak performed an autopsy Aug. 2 and released a summary of his findings to the Pulaski County sheriff's office, Prosecuting Attorney Chris Piazza and Nawojczyk Aug. 24. Malak listed the cause of death as "pneumonia associated

(See JURY on Page 4B.)

## Jury

Continued from Page 1B.

with pericarditis and arteriosclerotic cardiovascular disease" and the manner of death as "natural."

Malak said in a brief telephone conversation Tuesday afternoon that the full autopsy report was 11 pages, but he refused to discuss the contents, saying he had released the report to the sheriff's office and prosecuting attorney.

But Sherry Rainey, a sheriff's spokesman, said the full report couldn't be released until "the case is closed" by Piazza. Deputy Prosecutor Lloyd King said later that he couldn't release the report either, because he had not yet received it or the sheriff's investigative file.

### Doesn't question cause

Nawojczyk said a coroner's jury would have no authority to overrule Malak's finding but would make its own final statement about the manner of death. He said he couldn't and wouldn't question Malak's finding that the cause of death was pneumonia associated with the other complications.

Nawojczyk said, "My problem isn't with him [Dr. Malak]. My problem is with the system." He said current state law gave the medical examiner the authority to rule on both the cause and manner of death and that a ruling on the manner of death should be left to the coroner.

### Releases coroner's report

Nawojczyk released his own coroner's report Tuesday, adding that it also would be submitted to the sheriff's office and to Piazza.

He said in his report that when Robinson was readmitted to St. Vincent Infirmary Medical Center July 26, his condition was diagnosed as "dementia secondary to past trauma and respiratory distress."

He also noted that medical records from St. Vincent said Robinson's initial admission diagnosis June 12 was that he had a "closed head injury with coma" and "lacerations of the face and lip, right side." When Robinson was dismissed, medical records showed that he suffered from "respiratory distress, secondary to No. 1," meaning secondary to the "closed head injury with coma."

Nawojczyk said in his report that he had talked with Dr. Robert Abraham, a physician who attended Robinson at St. Vincent, and that Abraham "advised me that if the beating took place and if the decedent [Robinson] was ambulatory and able to care for his own secretions, Dr. Abraham felt the beating could have contributed to the death of this patient."

Nawojczyk said Robinson apparently had been pushing a wheelchair or walker, using it for support, "and apparently did something to upset another patient and the other patient allegedly pushed Robinson in a room and began beating on him."

A 25-year employee in the coroner's office who has worked for Nawojczyk and his predecessor, Dr. Gordon Holt, said she knew of no coroner's inquest that had ever been conducted in Pulaski County.

ARKANSAS GAZETTE Wednesday, August 31, 1988

# Long-dormant panel meets, opts to review Malak's office

BY MAX PARKER  
Democrat State Desk

The state Medical Examiner Commission on Thursday met for the first time in more than a decade and decided to proceed with a review of the state medical examiner's office.

The five-member panel also agreed to find an outside pathologist to replace a New Mexico expert who asked to be relieved of his participation after learning a Saline County grand jury tried to serve him with a subpoena.

The review had been initiated by the state Crime Laboratory board which, in March, hired as consultants Dr. David Wiecking, chief medical examiner of the Virginia medical examiner's office at Richmond, and Dr. Russell Zumwalt, assistant chief medical investigator of the New Mexico medical examiner's office at Albuquerque.

Commission members, who just recently were acquainted with their duties, looked to Dr. Malcolm Moore, chairman of the Crime Laboratory board, and to Betsey Wright, Gov. Bill Clinton's chief of staff, for guidance during their meeting at the state Department of Health.

In April, Attorney General Steve Clark said the commission, created nearly 20 years ago, was never abolished and should continue to function.

State law specifically gives the commission power to appoint and employ a state medical examiner.

## At a glance

- The state Medical Examiner Commission met Thursday for the first time in more than a decade.
- The five-member panel decided to continue a review of the state medical examiner's office and to replace an outside pathologist who asked to be relieved from the review.
- State law specifically gives the commission power to appoint the state medical examiner.
- The review will consist of a job performance evaluation of Dr. Fahmy Malak, the state medical examiner, and an evaluation of the working environment at the state Crime Laboratory.

The commission members include Dr. Joycelyn Elders, director of the state Department of Health, who was elected to chair the panel; Union County Sheriff August Pieroni of El Dorado, representing the Arkansas Sheriffs' Association, who was elected vice-chairman; State Police Director Col. Tommy Goodwin; Dr. Dodd Wilson, dean of the University of Arkansas for Medical Sciences; and Hamburg Police Chief Richard Thomas, representing the association of the Chiefs of Police of Arkansas.

Ms. Wright told the commission the review had been "put on hold depending on what this group decides."

Citing the possibility the commission may only be functioning short-term, Goodwin suggested the group work in

conjunction with Moore and the Crime Laboratory board.

Moore said the outside experts would not conduct a peer review with "the idea they would have to review every controversial case Dr. Malak has been involved with in 9½ years."

"It's hard to get a peer review in an area where it might lead to litigation," Moore said.

"I think the difficulty is clarifying the difference between a job performance evaluation and second opinions on cases," Ms. Wright said.

The review would consist of a job performance evaluation of Dr. Fahmy Malak, state medical examiner, and an evaluation of the working environment at the Crime Laboratory, Moore said.

On June 13, Wiecking informed the state he no longer wanted to be involved with the review. Ms. Wright said he resigned because "there was no way to provide him with a guarantee that he wouldn't be subpoenaed."

In May, a Saline County grand jury investigating the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, and Don George Henry, 16, issued subpoenas for Wiecking and Zumwalt while the two had been in the state beginning their review.

"I think he was feeling fairly harassed ... being subpoenaed in a case they weren't working on," Ms. Wright said.

# Medical Examiner Commission to continue review of office

By Carla Johnson-Kimbrough  
GAZETTE STAFF

In its first meeting in several years, the state Medical Examiner Commission decided Thursday to proceed with a review of the state medical examiner's office.

The commission also decided to hire another pathologist to join Dr. Russell Zumwalt of the New Mexico Office of Medical Investigator in conducting the review.

In March, the state Crime Laboratory Board hired two forensic pathologists — Zumwalt and Dr. David Wiecking, the Virginia state medical examiner — to review the performance of Dr. Fahmy Malak, the state medical examiner, and the operation of the medical examiner's office.

Wiecking resigned June 13. Zumwalt has agreed to continue the review.

## Could be called as witness

Dr. Malcolm Moore Jr. of Little Rock, the Crime Lab Board chairman, said Wiecking resigned because there was no guarantee that he would not be called as an expert witness in another investigation concerning Malak's findings.

After finding another patholo-

gist, the review will probably take several weeks, Moore said.

Attorney General Steve Clark concluded in April that the Medical Examiner Commission, created in 1969, had not been abolished by the creation of the state Crime Laboratory Board, which hired Malak in 1979. The Crime Lab Board had been operating under the assumption that it was responsible for the medical examiner's office, a division of the Crime Lab.

## Review postponed

The review had been postponed until the Medical Examiner Commission could take action on it. Moore told the commission Thursday that it was responsible for, among other things, hiring and firing the state medical examiner.

The commission members are Dr. Joycelyn Elders, state Health Department director; Union County Sheriff August Pieroni; Hamburg Police Chief Richard Thomas; Dr. I. Dodd Wilson, dean of the College of Medicine at the University of Arkansas for Medical Sciences, and Col. Tommy Goodwin, director of the State Police. Elders was elected chairman and Pieroni was elected vice-chairman.

The commission members indicated Thursday that the commission would be short-term.

Gov. Bill Clinton's office has allotted \$10,000 for the review.

Betsey Wright, the governor's chief of staff, told the commission that a "codification error left it [commission] on the books," but that she expected that the commission's future may be re-examined by the legislature.

## Crime Lab's new chief: Shake-up not on agenda

BY JOAN I. DUFFY  
Democrat Capitol Bureau

The new director of the state Crime Laboratory said Thursday he hopes to bring administrative skills to the job but will leave the forensic duties to experts already in place.

"I'm not coming into the job with a new-broom mentality. Most of the people I know down there are real competent people. I'm not a scientist," said Sebastian County Sheriff Bill Cauthron, who assumes his new duties in August.

Cauthron, 61, who will retire from the sheriff's office to take the job, said he will work to cut the time in which a law enforcement agency receives a Crime Laboratory report on submitted evidence.

Cauthron said he was aware of controversy surrounding the operations of Dr. Fahmy Malak, state medical examiner, but knew no more than what he has read in the newspapers.

Malak has come under criti-

cism for opinions he has delivered in some deaths, including his report that two boys run over by a train in Saline County last summer were in a marijuana-induced stupor and failed to hear the approaching train.

"I'll go in with an open mind," Cauthron said. "I'll try to work with everyone."

Cauthron will have no power to hire or fire the medical examiner or the directors of the other Crime Laboratory divisions. A commission handles those personnel decisions.

The director of the Crime Laboratory earns \$39,000 annually and serves at the pleasure of the governor.

Cauthron said he will take advantage of an extended early retirement program to leave the sheriff's office. He was a deputy from 1955-61, then returned as the elected sheriff in 1973.

## LR man, 27, charged in '86 death of woman

Democrat Staff

A 27-year-old Little Rock man was arrested Tuesday and charged with first-degree murder in the 1986 death of Hazel James, 82, who lived at 918 Battery St., Little Rock police said.

Earnest Green, an inmate at the Cummins Unit of the Arkansas Department of Correction, was charged Tuesday in Pulaski County Circuit Court.

Detective Lt. Richard Fulks said Green, who is serving a five-year sentence for first-degree sexual abuse and attempted rape, confessed to the murder in a letter received April 27 in U.S. District court in Little Rock. Fulks said Green admitted striking the

woman with an object during a burglary of her home.

Dr. Fahmy Malak, state medical examiner, determined in 1986 that Ms. James died from a ruptured internal artery, but said further investigation was needed to rule on the manner of her death, Fulks said.

Fulks said detectives and prosecuting attorneys interviewed Green on May 4, and Green gave them a sworn statement about the slaying.

Police spokesman R.L. "Bert" Jenkins said May 16 that authorities had first speculated that Ms. James hit her head in a fall, returned to bed and died.

Ms. James' body was found in her bed June 19, 1986.

*Arkansas Democrat*  
6-1-88

# Pathologist 'outraged' by jury's subpoena attempt

BY KING THOMPSON  
Democrat-Benton Bureau

ON — An "outraged" Dr. David K. Wiecking said Thursday he was told a Saline County grand jury had issued a subpoena for him while he was in Arkansas on Tuesday to review the state medical examiner's office.

But state authorities never told Saline County investigators the whereabouts of Wiecking, a Richmond, Va., pathologist, or his colleague in the review, Dr. Ross E. Zumwalt of

Albuquerque, N.M.

The review is being paid for with \$20,000 from Gov. Bill Clinton's emergency fund. Both pathologists stayed in Arkansas one day, and Wiecking said Thursday, "I may never come back."

The grand jury is investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. The two youths were killed Aug. 23, 1987. They were struck by a train, but in a preliminary report Wednesday, the grand jury ruled the

deaths "probable homicide."

Deputy Prosecuting Attorney Richard Garrett of Benton said Thursday that the grand jury thinks the boys died by some force other than the train.

"The grand jury meant by the statement of probable homicide that they probably suffered death as a result, or in connection with, some force other than the train," Garrett said.

In regards to the subpoenas, Wiecking said Thursday he

was "disgusted by the whole affair."

He said he was most "outraged at the grand jury and the prosecutors leading it for issuing the subpoenas." He also said he did not appreciate being invited into a controversy by the governor's office without any warning of what to expect.

There was no good cause for him to appear before the grand jury, Wiecking said. "There's nothing I could tell them about that case," he said.

Dr. Fahmy Malak, the state medical examiner, declined Thursday to comment on the case, which is under a court gag order. Malak earlier ruled the deaths accidental. The grand jury tried to subpoena the two pathologists reviewing Malak's office.

Wiecking is Virginia's chief medical examiner. He came to Arkansas on Tuesday to begin the state-sponsored review with Zumwalt, assistant chief

See SUBPOENA, Page 3B

*Page 1 of 2*



## Malak review won't judge specific cases

### Pathologists visit lab

By Mark Oswald  
GAZETTE STAFF

Two out-of-state pathologists reviewing the performance of Dr. Fahmy Malak as state medical examiner won't pass judgment on specific rulings and court testimony that have sparked controversy.

"That is not our function," Dr. Ross E. Zumwalt, assistant chief medical investigator for New Mexico, said Tuesday.

■ Review team, Wright subpoenaed to testify, 8A.

Dr. Zumwalt and Dr. David K. Wiecking, Virginia's chief medical examiner, spent the morning at the state Crime Laboratory. They later interviewed legal, medical and law enforcement professionals who deal with the medical examiner's office.

Dr. Zumwalt said he and Dr. Wiecking agreed in discussions

(See MALAK on Page 8A.)



—Staff Photo by Steve Keese

Dr. Zumwalt (left) and Dr. Wiecking are reviewing Dr. Malak.

## Malak

Continued from Page 1A.

with state officials — including Betsey Wright, chief of staff for Governor Bill Clinton — not to review specific cases. "Someone else can be retained to do that," he said.

Dr. Zumwalt said the reviewers had no intention of checking court testimony. The *Arkansas Gazette* has reported discrepancies in Dr. Malak's testimony in several cases.

Tuesday evening, Wright said Dr. Zumwalt and Dr. Wiecking had been hired by the state Crime Laboratory Board "to conduct a job performance evaluation of the state medical examiner — they weren't employed to be a second opinion on cases which have been litigated."

Wright said her "assumption" was that the reviewing pathologists could evaluate Dr. Malak "without going through" every case he had worked on. She said the pathologists can "review the procedures he has used in the cases and look at files in sporadic cases."

The governor's emergency fund has provided \$20,000 for the review.

Dr. Wiecking said the purpose was to check how well the medical examiner's office was functioning and to "recommend any improvements that are needed."

"We're just trying to find out what the hell is going on," he said.

Dr. Zumwalt said files in specific cases — including those that have raised controversy — may be examined, but he and Dr. Wiecking wouldn't comment on Dr. Malak's findings.

He said he and Dr. Wiecking were impressed with the Crime Lab's physical facilities and the "enthusiasm" of the staff and they were told that the Lab needs more money and staff.

# Peer review won't resolve questions about Malak

Members of the state's law enforcement community last week gave a clear show of support for Dr. Fahmy Malak, the state medical examiner.



Capitol Bureau  
Bob Wells

In testimony before a legislative committee reviewing the medical examiner's office, representatives of the associations of sheriffs, chiefs of police and prosecuting attorneys all offered high praise for Dr. Malak.

It was a friendly forum for such tributes. The committee chairman, Senator Max Howell of Jacksonville,

made clear his opinion of Dr. Malak weeks earlier. At that initial committee meeting, Howell said he'd heard nothing but good things about Dr. Malak and labeled the much publicized complaints about Dr. Malak's work "politics."

(Howell showed his sentiments again at the meeting last week, when after the outpouring of support for Dr. Malak, an uninited speaker showed up to voice his grievances about the medical examiner's work. John Burrow, an attorney serving his first term as Washington County coroner, told the committee about three cases in which he questioned Dr. Malak's findings or his refusal to conduct an autopsy.

(In one of those, Burrow said, Dr. Malak told him not to send a body for autopsy despite suspicions the death was drug-re-

lated. Over the telephone, Dr. Malak said it was obvious the boy, who had been found with a plastic bag over his head, had been inhaling freon.

("But do you have any specific complaints?" Howell said.)

To the public, it probably seems natural that law enforcement would offer its support for Dr. Malak in his time for crisis. After all, he's one of their own, right?

Wrong.

Despite every episode of "Quincy" you ever watched on television, a medical examiner is not a cop. He's not a detective. He is not a member of law enforcement.

It's an important point to remember, one that's probably been overlooked in all the controversy regarding Dr. Malak.

The medical examiner's job is to be the impartial determiner of the cause and manner of death in cases of death by suspicious or unnatural causes. His job is to autopsy the victim, make his findings and let the chips fall where they may.

In the vast majority of cases that make their way into court, the medical examiner's task is fairly simple and his testimony is not critical. In those cases, the basic facts are well established through witnesses or other evidence. The medical examiner merely corroborates those facts and offers in evidence what's obvious: For example, that a bullet went in here and went out there; that the victim died of a wound to the head or wherever, that the death was a homicide.

But in rare instances, the decision to file

charges and indeed the state's entire case can ride on the medical examiner's findings. And in those cases, the medical examiner's position is a powerful one and his testimony carries great weight.

Of all the witnesses in a criminal trial, the medical examiner is the only one who cannot be cross-examined for bias. He's the only witness who's not related to or a friend of the defendant or the victim; who's not trying to make a case, or who's not being paid for his testimony.

And the point of all this controversy over Dr. Malak is that, in some cases, he has apparently been something less than an impartial determiner of the facts.

This week, two forensic pathologists hired by the state Crime Lab will arrive in Little Rock to conduct a review of Dr. Malak and the operations of his office. So far, it's not clear either from the crime lab board or the governor's office what will be the scope of the pathologists' review.

While the board originally talked about having the two look into the specific cases raised by the media, it's been sounding recently as though the two are only going to conduct a peer review of the office, studying the office's structure, function and procedures and examining some case files.

Such a review will be beneficial, in that it will clearly establish what's already known: The medical examiner's office and the whole crime laboratory is seriously underfunded and understaffed.

But none of that justifies what has apparently occurred in those cases in which Dr. Malak has either claimed to have performed autopsies he never really performed, or misstated the amount of time he had a critical piece of evidence or testified contrary to his own pretrial statements or simply offered opinions that strike the layman as somewhat bizarre.

Those kinds of things can't be found by looking through the files at the medical examiner's office. They can be found only by examining court transcripts.

And unless either the two pathologists or the Crime Lab board takes a hard look at Dr. Malak's testimony, then the issue of his credibility will go unresolved.

# Legislators hear about rulings

## *Witness: Office leans toward suicide when in doubt*

BY MAX PARKER  
Democrat State Desk

If there is a question of whether a death should be ruled a suicide or homicide, the state medical examiner's office tends to call it a suicide, the Washington County coroner said Wednesday.

John Burrow of Fayetteville was one of several officials who testified before a special legislative committee created in April to review the functions of the state medical examiner's office.

Much of Wednesday's 3½-hour meeting consisted of favorable testimony about the state Crime Laboratory and the medical examiner's office.

Burrow said he was told by acting state Crime Laboratory Director Howard "Bear" Chandler that the two doctors in the office each spent an average of two days a week in court testifying. Burrow said he believed the tendency is to rule borderline cases as suicides.

"I honestly do believe in my terribly suspicious, paranoid mind, that if they have a bal-

ance between suicide and homicide ... it will be suicide," Burrow said.

Burrow cited a case from his county in which Dr. Fahmy Malak, state medical examiner, ruled a death a suicide based on a telephone conversation with another physician and not on physical evidence.

"They looked for and they found an out from testifying in court," he said.

Testimony also was offered by Buster Schmidt, the brother-in-law of William Horne, who is in prison for the death of David Michel. Discrepancies in Malak's testimony during Horne's original trial for first-degree murder recently have been reported.

A small group of citizens applauded after Schmidt finished reading a short statement that said, in part, that families who questioned some of Malak's rulings have been classified as being on a witch hunt. He did not say who said that about the families.

Other witnesses included

Chandler, Clark County Sheriff Al Harris, Faulkner County Sheriff Bob Blankenship and Prosecuting Attorney Chris Raff of Searcy.

Sen. Mike Kinard of Magnolia asked many witnesses whether they believed it is important to list the manner of death on death certificates. The manner of death can be categorized as homicide, suicide, accident or undetermined.

Dick Pace, Arkansas Coroners Association president, said no single person should rule on the manner of death. He said the investigating law enforcement agency, the coroner and the state medical examiner all should have input into that ruling.

"I think it should be a team effort," he said.

He also said there needs to be a procedure outlined to deal with instances in which a dispute arises in determining the manner of death.

Chandler said he could not

answer why it is important for the medical examiner to determine the manner of death.

Raff, speaking as president of the Prosecuting Attorneys Association, said it really is not important that the manner of death be listed.

"It's not all that important in a homicide case," he said. "It's only his (Malak's) opinion. I still have to prove that."

After the meeting, Sen. Max Howell of Jacksonville said he did not see any reason to ask Malak to testify before the committee.

Blankenship and Harris said they never have disputed Malak's opinion on a case. Raff said Malak was "highly professional and highly competent."

Harris and other witnesses agreed that a problem sometimes exists with the length of time it takes for evidence to be analyzed at other divisions of the state Crime Laboratory. They agreed a shortage of money and labor contributes to the problem.

## Examiner's office lauded

### Needs money, people, lawmakers told

Nothing is wrong with the state medical examiner's office that more money and personnel would not solve.

That is what representatives of sheriff, prosecutor and police chief organizations told legislators Wednesday.

Speaking to a special legislative committee reviewing the functions of the medical examiner's office, they praised the office and the medical examiner, Dr. Fahmy Malak.

But, at the close of the three-hour meeting, members of the public urged the committee to broaden its inquiry beyond a study of the office's function and organization.

Howard (Bear) Chandler, acting director of the Crime Laboratory, said additional staffing and personnel were the office's greatest need.

Clark County Sheriff Al Harris, Faulkner County Sheriff Bob Blankenship and Garland County Sheriff Clay White, speaking for the state Sheriffs Association, said the Crime Lab always has been understaffed and underfunded.

Prosecuting Attorney Chris Raff of Searcy, president of the state Prosecuting Attorneys Association, said the office's only problem is that "they're spread a little thin" and that he had always

found Dr. Malak "highly professional and highly competent."

#### Effect of workload a concern

At the close of the committee's regular agenda, Washington County Coroner John Burrow said he feared the office's workload may be influencing its conclusions in many cases. He told the committee about several cases in which he either disagreed with the office's conclusions or was unable to get the office to conduct an autopsy.

Buster Schmidt, the brother-in-law of William Horne, who is in prison for a Little Rock slaying, told committee members they should examine discrepancies in Dr. Malak's testimony in Horne's case and others.

State Senator Max Howell of Jacksonville told Schmidt he was happy to have his comments. "We don't want to sweep anything under the rug," he said.

Naioli Beamer of Hot Springs, the wife of Dr. Lee Beamer, also urged the committee to look into Dr. Malak's findings in specific cases and said her husband would testify. Dr. Beamer was the associate medical examiner for 14 months, but was fired by Dr. Malak and currently has a lawsuit pending in federal court.

# Malak is 'excellent,' say 64% of sheriffs in survey

BY MAX PARKER  
Democrat State Desk

Cary Gaines, executive director of the Arkansas Sheriffs' Association, announced Monday that 64 percent of the group think Dr. Fahmy Malak, the controversial state medical examiner, is doing an excellent job.

During a morning news conference held at the headquarters of the Arkansas Association of Counties, Gaines released the results of a "confidential" survey sent to the state's 75 sheriffs.

The survey, which consisted of three questions, was answered by 53 sheriffs, Gaines said. The names of the responding sheriffs were not listed, and Gaines said he did not contact those who did not respond.

During a March meeting of the state Crime Laboratory Board, Gaines — in speaking on Malak's behalf — said the survey had revealed 90 percent of the sheriffs thought Malak was doing an excellent job, with 10 percent of the sheriffs saying he was doing a very poor job. At that time, 45 sheriffs had responded to the survey.

The figures released Monday revealed 64 percent of the sheriffs thought the state medical examiner's office provided excellent service, 19 percent said the service was good, 11 percent had no opinion, 2 percent said the office needed improvement and 4 percent said they received unsatisfac-

See MALAK, Page 3B



Arkansas Democrat/Barry D. Arthur

**MALAK SUPPORTERS** — Cary Gaines, executive director of the Arkansas Sheriffs' Association, Monday announces the group's support of Dr. Fahmy Malak, state medical examiner.

# Malak

• Continued from Arkansas Page  
tory service.

In rating Malak's performance, 49 percent said he was doing an excellent job, 32 percent said he was doing a good job, 9 percent listed his performance as fair, 4 percent had no opinion, 4 percent said he needed improvement and 2 percent rated his performance as poor.

The sheriffs were also asked if they wanted Malak to retain his position as state medical examiner.

Eighty-three percent said yes, 8 percent said no and 9 percent said they had no opinion.

Recent media reports have raised questions about Malak's findings and testimony in several cases. The state Crime Laboratory Board hired two outside pathologists to conduct a review of the state medical examiner's office.

The experts are scheduled to arrive May 24 and will be paid with money from the governor's emergency fund.

A legislative subcommittee also has been created to review the functions of the office. It is scheduled to meet again Wednesday to hear testimony from members of the Arkansas Sheriffs' Association and other state groups.

"Anyone is going to make some mistakes," Gaines said. "We keep a comprehensive file (of newspaper articles) and there have been about 12 cases that are newsworthy and controversial since 1983. Out of the number of cases that he has the opportunity to make mistakes with, there just aren't that many."

Gaines said sheriffs across the state believe Malak's controversy stems from the nature of his job, the visibility of the position, the fallibility of the

## At a glance

• Cary Gaines, executive director of the Arkansas Sheriffs' Association, said Monday most sheriffs supported Dr. Fahmy Malak, state medical examiner.

• A three-question survey was answered by 53 sheriffs, Gaines said.

• The survey showed 64 percent thought the state medical examiner's office provided excellent service, while 4 percent said they received unsatisfactory service.

• The survey also showed that 49 percent said Malak was doing an excellent job, while 2 percent rated his performance as poor.

• Eighty-three percent said they wanted Malak to stay as state medical examiner, while 8 percent said no.

occupation, the personalities of the people involved and politics.

He said many of the sheriffs who had contacted him believed Malak was being persecuted and that the ongoing Saline County grand jury was a witch hunt.

The grand jury has been investigating the Aug. 23, 1987, deaths of two Saline County youths hit by a train while lying on railroad tracks near Alexander.

Malak ruled the deaths accidental, saying the boys were unconscious at the time of death from the "psychedelic influence" of marijuana. Independent experts have disputed that finding.

Gaines said many sheriffs have also questioned the credentials of Dr. Joseph Burton, an Atlanta pathologist who exhumed the boys' bodies for a second autopsy, and why it has taken so long for him to release his findings.

Another survey, the results of which will be released within the next couple of weeks, asked the sheriffs to rate all the state agencies.

*Page 2 of 2  
in amount 5-17-88*

## '86 death ruled slaying; arrest is expected soon

Nearly two years after the fact, authorities have decided that Hazel James, 82, was killed.

And the police, who received new information about a week ago, expect to make an arrest soon, they said Monday.

James was found dead in her bed at home at 918 Battery Street about 3:10 p.m. June 19, 1986. State Medical Examiner Fahmy Malak didn't rule on the cause of death then, he said Monday, "pending an investigation."

Acting Police Chief James Vandiver said Monday that detectives received information more than a week ago that James had been

killed.

"They have something important they've found and they called me," Dr. Malak said. "I made my final ruling of homicide a week ago."

Lt. R. L. (Bert) Jenkins, police public information officer, said James was hit in the head with a fist by someone who broke into her residence. Nothing was missing from her house.

Detectives said at the time that the woman had been dead eight to 15 hours before she was found. The body had bruises and facial cuts and a large bruise was also found on the left side of the head.

## New evidence leads to suspect in '86 death

BY NOEL OMAN  
Democrat Staff Writer

Little Rock police have a suspect in the suspicious death of an 82-year-old woman almost two years ago at her South Battery Street home, a police spokesman said Monday.

The suspect could be charged soon in the death of Hazel James of 819 S. Battery St., Lt. R.L. "Bert" Jenkins of the Little Rock police said.

"We always knew how she died, but we did not know the circumstances," Jenkins said. He declined to elaborate on how police got information that led to the new developments in the case.

Because of the woman's advanced age, authorities had speculated she may have hit her head in a fall, returned to bed and died there, Jenkins said. Detectives now believe the suspect broke into her home and fatally beat her.

Officers found Ms. James dead in her bed on the afternoon of June 19, 1986. She was dressed in nightclothes. A bruise on the left side of Ms. James' face was the only initial sign that she may have been the victim of foul play.

Three employees of a roofing company doing work on her home called police about 3:30 p.m. that day after they became concerned when Ms. James did not answer knocks to her door. They also noticed a front window open.

Ms. James, who lived alone, was last seen alive two days before in her back yard by a resident of a neighboring apartment complex.

Detectives at the time said they were not certain the circumstances of her death, but were treating it as a homicide. But an autopsy done a short time later could not determine the exact circumstances either, so the case remained open, Jenkins said.

Authorities knew she died from a blow to the head, but did not know how the blow was inflicted, Jenkins said. However, the new information detectives got earlier this month about James' death was enough to have her death ruled a homicide.

A warrant charging the suspect probably will be obtained through Pulaski County Circuit Court, Jenkins said.

## Malak gets good news from sheriffs

Approval rating high

Dr. Fahmy Malak, the state medical examiner, got a public pat on the back Monday from the Arkansas Sheriffs Association.

The organization said 43 of the state's 75 sheriffs thought Dr. Malak was doing a good job.

Of the 43 sheriffs who said they liked Dr. Malak's performance in a survey by the Association, 26 said he was doing an "excellent" job and 17 said he was doing a good job.

A total of 53 responded to the survey.

Others had these opinions of Dr. Malak's job performance: Two, fair; five, no opinion; two, needs improvement, and one, poor.

### Requested survey

Cary Gaines, executive director of the Association, announced the survey results at a press conference, saying several sheriffs who believed Dr. Malak was being "persecuted" had requested the survey.

The *Arkansas Gazette* has published articles raising questions about Dr. Malak's credibility as an expert witness in murder trials. Richard Garrett, a Saline County deputy prosecuting attorney, also has questioned Dr. Ma-



—Staff Photo by Steve Keesee

Gaines listens to reporters' questions Monday.

lak's findings in the deaths last summer of two Bryant teen-agers. The youths were run over by a train while they were lying side-by-side on the tracks. Malak ruled the deaths accidental and said the two were in a marijuana-induced sleep.



# Wright: 'Peer review' of medical examiner could take 2 months

BY MAX PARKER  
Democrat State Desk

The first information from an outside evaluation of the state medical examiner's office will not be received until the end of the month, Betsy Wright, gubernatorial chief of staff, said Wednesday.

Ms. Wright also told a special legislative committee that it could be two months before Dr. David Wiecking and Dr. Russell Zumwalt complete both a "peer review" of Dr. Fahmy Malak, state medical examiner, and his office.

Wiecking, chief medical examiner at the Virginia medical examiner's office in Richmond, and Zumwalt, assistant chief medical examiner at the New Mexico medical examiner's office in Albuquerque, were hired in March by Dr. J. Malcolm Moore, Jr., chairman of the state Crime Laboratory Board.

Ms. Wright said up to \$20,000 from the governor's emergency fund would be provided for the independent review. She also announced that Gov. Bill Clinton had just released \$55,000 from the emergency fund for the maintenance and operation of the medical examiner's office.

"It was the only agency that absolutely could not make it to the end of the fiscal year doing its daily job," she said.

Moore had said the two experts would conduct a broad review of the system and

would also study specific cases questioned by the media. News reports had raised questions about specific rulings and testimony rendered by Malak.

Ms. Wright said the experts would be looking at the "procedures and methodology" of the medical examiner's office, "rather than evaluating cases." She said specifics of cases would be studied only as part of the peer review to determine how the department functions.

Sen. Mike Beebe, of Searcy, who attended the meeting in place of Sen. Tom Watson of Monette, agreed that peer review was needed to study the area of forensic pathology. He also asked the governor's office to consider how it will use the information received from the experts review.

The statements came during the first meeting of a special six-member legislative committee which was created April 8 to review the functions of the medical examiner's office and the laws relating to the authority and responsibility of the medical examiner.

Sen. Max Howell of Jacksonville, who said he had sponsored legislation putting the medical examiner's office under the state Crime Laboratory, was elected the board's chairman.

Howell also said he wanted the committee to be totally objective in their work.

KANSAS DEMOCRAT • THURSDAY, MAY 5, 1988

EXAMINING THE EXAMINER - Sen. Mike Beebe of Searcy and Sen. W.D. "Bill" Moore Jr. of El Dorado talk Wednesday during a meeting of a legislative committee formed to study the medical examiner's office.

Arkansas Democrat-Gazette



## Review chairman says he supports Malak

State Senator Max Howell of Jacksonville, chairman of a legislative committee that is to review the state Medical Examiner's office, expressed support for Dr. Fahmy Malak Wednesday, but said it was important that such a review be made.

In the committee's first meeting, Howell said that complaints about Dr. Malak's work that he had read in newspapers were "political" and not "substantive."

He said he had heard nothing but good things about Dr. Malak, except where the medical examiner's results weren't what people wanted in a particular case.

Dr. Malak has been the subject of controversy recently, after his findings in the deaths of two Saline County teen-agers were questioned by other authorities.

The state Crime Laboratory

board has hired two out-of-state pathologists to review Dr. Malak's work. In addition, a separate task force on death scene investigations has been meeting for the past year, studying the role of various law enforcement agencies, coroners and the medical examiner in death investigations.

At the request of state Representative Mike Todd of Paragould, the Legislative Council recently created a special committee to review the office.

# Arkansas Gazette.

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Saturday, April 16, 1988 ..

## Panel to review office of medical examiner

### To decide if 'needs of state' being met

The Legislative Council Friday voted to establish a special committee to review the state medical examiner's office.

Under a resolution by Representative Mike Todd of Paragould, the committee would review the overall operation of the medical examiner's office and relevant state laws to determine if the office "is functioning and serving the needs of the state as was intended."

The committee will have six members, two each from the Joint Interim Committees on Public Health, Welfare and Labor, Judiciary and City, County and Local Affairs.

The office and the current state medical examiner, Dr. Fahmy Malak, recently have been the subject of controversy stemming from Dr. Malak's findings in several cases.

Also, it isn't clear under state law what state board has oversight authority for the office.

The office is a part of the state Crime Laboratory, which operates under the state Crime Laboratory Board. But Attorney General Steve Clark has said that a separate board, the state Medical Examiner Commission, is still legally in existence. The Crime Lab board has been operating under the assumption that the law establishing the Medical Examiner Commission had been repealed.

In other business, the Council approved a subcommittee recommendation that the state, and not the Council members, cover the Council's legal fees in a lawsuit challenging the Council's authority to review state contracts.

## *Malak's office scheduled for legislative scrutiny*

BY JOAN I. DUFFY  
Democrat Capitol Bureau

A select committee of legislators was assigned Friday to review the functions and duties of the state medical examiner, an office now held by embattled Dr. Fahmy Malak.

Rep. Mike Todd of Paragould asked the Legislative Council to establish the panel of lawmakers to review the operations of the office and compare the duties and functions with operations in other states.

Lawmakers from three committees — City, County and Local Affairs; Judiciary; and Public Health — will form the new panel.

"We are all aware of the controversies, but we want to see how (the examiner's office) is established in comparison with other states and see if there is a need for the Legislature to consider changes in the upcoming session," Todd said.

In February, Todd requested an attorney general's opinion to clarify the medical examiner's duties in determining the cause and manner of death. He said he expects the office to confirm Malak has the authority to rule on both issues. If that is the case, Todd said, he expects the Legislature to act in 1989 to

limit the powers of the medical examiner's office.

Recent media reports have raised numerous questions about specific rulings and testimony rendered by Malak.

In March, the state Crime Laboratory Board hired two outside pathologists to conduct a review of the medical examiner's office.

Among the specific cases the experts will study is the Aug. 23, 1987, deaths of two Saline County teens hit by a train while lying on railroad tracks near Alexander. That case has resulted in a recent prosecutor's hearing and the exhumation of the boys' bodies.

Dr. Joseph Burton, a medical examiner from Atlanta conducted new autopsies at the request of Deputy Prosecuting Attorney Richard Garrett of Benton and his results are expected to be released in about two weeks.

Malak ruled the deaths of Don George Henry, 16, of Bryant and Larry Kevin Ives, 17, of Benton were accidental, saying the boys were in a marijuana-induced sleep at the time of death.

Garrett disagreed with both the ruling and the methods used by the state Crime Laboratory in testing the marijuana level in the boys' systems.

## 2d ruling shows woman died of malnutrition

The December 31 death of Edna Murphy, 61, who was mentally retarded, was a result of malnutrition and neglect, although it first was ruled a natural death, the police said Thursday.

Catherine Ann Hensley, 35, Murphy's niece, and her husband, Allen T. Hensley, 34, of 7715 Nolen Drive were charged Thursday with abuse of an adult, a felony. Murphy died in the Hensleys' home.

Dr. Fahmy Malak, the state medical examiner, initially ruled that the bed-ridden, 42-pound woman died a natural death. But the police and prosecuting attorney's office urged him to reconsider, which he did, ruling that she died of starvation, a police officer said. Murphy's body was covered with bed sores, a police report said.

Dr. Malak couldn't be reached by

telephone at his home Thursday night.

Mrs. Hensley told officers December 31 that Murphy had been living with her several months. Murphy hadn't seen a physician in more than a year because doctors wouldn't examine her without the "paperwork" showing Mrs. Hensley as the legal guardian, Mrs. Hensley said. She told the police the papers had been stolen and hadn't been replaced.

The Hensleys couldn't be reached at their home by telephone.

# Clark: Forgotten medical panel should continue function

ARKANSAS DEMOCRAT • FRIDAY, APRIL 15, 1988

BY MAX PARKER  
Democrat State Desk

The state Medical Examiner Commission, created nearly 20 years ago, was never disbanded and should continue to function, Attorney General Steve Clark said.

In an opinion dated April 11, Clark said Act 321 of 1969, which created the commission, was not repealed by any subsequent act passed by the state Legislature.

The opinion had been requested by Gov. Bill Clinton after his legal counsel could not confirm the commission's status.

State law specifically gives the commission power to appoint and employ a state medical examiner, Clark's office said. It also empowers the commission to remove the state medical examiner "only for cause."

The commission is composed of the dean of the College of Medicine at the University of Arkansas for Medical Sciences, the director of the Arkansas State Police, the director of the state Board of

Health, a representative named by the association of the Chiefs of Police of Arkansas and a member named by the Arkansas Sheriffs' Association.

On Feb. 18, the *Arkansas Democrat* reported a majority of the commission's five members were unaware of its existence.

Mike Gauldin, spokesman for Gov. Bill Clinton, said Thursday the governor would inform the commission members to start meeting.

"Right now, we're trying to figure out how to weave it in with all the other boards of authority," Gauldin said Thursday.

A 1979 legislative act resulted in the office of the state medical examiner being "transferred to and merged into" the state Crime Laboratory, which was located within the state Department of Public Safety. In 1981, the Public Safety Department was abolished and the state Crime Laboratory became an independent state agency.

Dr. Fahmy Malak was hired May 16, 1979, as state medical examiner by then state Crime Laboratory Director Clay White. The appointment was approved by the director of the state Department of Public Safety. Malak had previously been an associate medical examiner.

Clark said while the 1979 law superceded certain provisions of the 1969 law, it did not address the method of appointing the state medical examiner. That method was specifically outlined in state law on the commission's powers, the opinion stated.

He also said the merger of the medical examiner's office into the state Crime Laboratory did not automatically mandate the employment of the medical examiner by the public safety director.

James Lee, spokesman for Clark, said although Malak wasn't hired by the commission, he was "hired under the process which they thought

was in effect at the time."

"While anything could be challenged in a court of law, it's a well-recognized defense if you followed the color of the law," Lee said.

In the three-page opinion, Clark also cited part of a 1983 act which names the state agencies that are supposed to continue "in their present form and under their present names ... to function and shall perform the respective powers, functions, and duties assigned to them by law from and after June 30, 1983."

The state Medical Examiner Commission is listed in that section.

## At a glance

- The state Medical Examiner Commission, created nearly 20 years ago, was never disbanded and should continue to function, Attorney General Steve Clark said.
- The opinion had been requested by Gov. Bill Clinton after his legal counsel could not confirm the commission's status.
- State law specifically gives the commission power to appoint and employ a state medical examiner, Clark's office said. It also empowers the commission to remove the state medical examiner "only for cause."
- Mike Gauldin, spokesman for Gov. Bill Clinton, said Thursday the governor would tell the commission members to start meeting.

# LR couple faces charge in death of 62-year-old from starvation

BY LINDA SATTER  
Democrat Staff Writer

A Little Rock couple arrested Thursday at the restaurant where they are employed are accused of allowing a 62-year-old woman to starve to death in December 1987, Little Rock police said.

Allen Ted Hensley, 34, and his wife, Catherine Ann, 35, both of 7715 Nolen Drive, were charged with abuse of an adult, a class D felony. They were being held without bond Thursday night in the Little Rock Jail. They are scheduled to be arraigned this morning.

Police said Hensley manages the Sonic Drive Inn restaurant at 7123 Geyer Springs Road, where his wife is also employed.

Mrs. Hensley's aunt, Edna Murphy, was found dead Dec.

31, 1987, in the Hensleys' home, where she had apparently lived for several years.

Photographs taken by police showed Ms. Murphy was extremely thin and had large, open sores on her body.

On the recommendation of Malcolm and detectives, an autopsy was performed. Police said Dr. Fahmy Malak, the state medical examiner, ruled Ms. Murphy died of pneumonia caused by malnutrition and dehydration. She had been bedridden and was unable to take care of herself, police said.

Detective Lt. Fred Hensley said the Hensleys were not arrested until Thursday because "the ruling of the manner of death created a temporary stumbling block."

According to reports, Malak

first ruled only on the manner of Ms. Murphy's death, deeming it "natural." Malak later added the cause of death, which substantiated a charge.

According to a police report, Mrs. Hensley called police Dec. 31, 1987, and said Ms. Murphy had died during the night. She told police her aunt was mentally retarded and had been under her care for several years.

Police said that according to Mrs. Hensley, Ms. Murphy had not seen a doctor or been under any medical supervision for more than a year.

Police said Thursday that the Hensleys claimed they had tried to take Ms. Murphy to a physician, but were denied service because they were not her legal guardian.

# Dormant but still alive: Medical examiner group

By Bob Wells  
GAZETTE STAFF

The state Medical Examiner Commission has been dormant many years but was not abolished by the creation of the state Crime Laboratory Board, Attorney General Steve Clark has concluded.

The Medical Examiner Commission, created in 1969, is empowered, among things, to hire and fire the state medical examiner.

But in 1979, the medical examiner's office and several other agencies such as the firearms section of the State Police were merged into a Crime Laboratory under the direction of the Crime Laboratory Board. The Board has been operating under the assumption that it is responsible for the medical examiner's office, a division of the Crime Lab.

In an April 11 opinion requested by Governor Bill Clinton and re-

leased Thursday, Clark said the 1979 law creating the Crime Laboratory Board contained a general repealer clause but no language explicitly repealing any existing law.

Clark said a court would reconcile the seemingly contradictory provisions by concluding that the Medical Examiner Commission continues to exist. A 1983 state law listed the Medical Examiner Commission as one of several state

agencies that continue in existence despite a law that had scheduled them for termination June 30, 1983.

Dr. Fahmy Malak, state medical examiner, was hired by the Crime Laboratory Board in 1979 and never was hired by the Medical Examiner Commission. Mr. Clinton requested Clark's opinion after Dr. Malak's findings in several cases came under criticism and questions were raised about the valid-

ity of his appointment.

Clark's opinion did not address the status of Dr. Malak's appointment and tenure. James Lee, a spokesman for Clark, said Dr. Malak clearly had been operating "under color of state law" since his hiring in 1979.

Because of the recent criticism of Dr. Malak's work, the Crime Lab Board voted last month to hire two independent forensic pathologists to review the Medical Examiner's

Office and several of Dr. Malak's cases. Lee said the opinion should have no impact on that review.

The Crime Laboratory Board apparently would not have the power to remove Dr. Malak from office, as that power is granted by law to the Medical Examiner Commission, Lee said.

Dr. Malcolm Moore Jr. of Little Rock, Crime Laboratory Board chairman, said Thursday that he had not been apprised of Clark's

opinion. "I would just say that the governor or the legislature would have to let me or the Board know whether we're to proceed with being responsible for the medical examiner's office or whether we're to step aside," he said.

He said he didn't know if Clark's opinion would affect the Board's plan for the review by outside pathologists the third week of May, but thought it probably would not.



# Independent experts hired to review Malak's office

BY MAX PARKER  
Democrat State Desk

Two independent pathologists have been hired to review the state medical examiner's office and its rulings in some cases, Dr. J. Malcolm Moore, state Crime Laboratory Board chairman, said Friday.

Also Friday, The Associated Press reported that Rep. Mike Todd of Paragould said he would meet with the Legislative Council and propose that a resolution be drafted calling for a joint House-Senate subcommittee to study the medical examiner's office.

The selection of the two pathologists, which Moore said was made Thursday, came less than a week after the board, at its March 18 meeting, unanimously voted to have Moore hire a consultant.

Moore said Dr. David Wiecking, chief medical examiner at the Virginia medical examiner's office in Richmond, and Dr. Russell Zumwalt, assistant chief medical investigator at the New Mexico medical examiner's office in Albuquerque, were hired as consultants, Moore said.

Citing the busy schedules of both doctors, Moore said the in-depth review probably wouldn't occur until the middle of May. He said he was trying to arrange for both to be

See MALAK, Page 11A

## Malak

• Continued from Page One  
in Arkansas at the same time. Neither expert was available Friday for comment.

The review would cost an estimated \$14,000, Moore said.

The decision for the review was prompted by recent media reports that raised numerous questions about specific rulings and testimony rendered by the state medical examiner, Dr. Fahmy Malak.

Support for the evaluation came from Gov. Bill Clinton, who has been gathering information about Malak's qualifications, and the state Medical Examiner Commission, Moore said. The governor's emergency fund will pay for the review.

The experts, who will conduct a broad review of the system, also will look at specific cases that have been the subject of recent news reports.

Those cases include the Aug. 23, 1987, deaths of two Saline County teen-agers hit by a train while lying on railroad tracks near Alexander. That case recently resulted in a prosecutor's hearing to further investigate the deaths and in court orders for the exhumation

## At a glance

• Two independent pathologists have been hired to review the state medical examiner's office, Dr. J. Malcolm Moore, state Crime Laboratory Board chairman, said Friday.

• Dr. David Wiecking, chief medical examiner in Virginia, and Dr. Russell Zumwalt, assistant chief medical investigator in New Mexico, will conduct the review in mid-May.

• Rep. Mike Todd of Paragould said he ask the Legislative Council to appoint a subcommittee to study the office.

tion of the boys' bodies.

Malak ruled the deaths of Don George Henry, 16, of Bryant and Larry Kevin Ives, 17, of Benton accidental, saying the boys were unconscious at the time of death from the "psychedelic influence of marijuana."

Independent experts who were asked by the youths' parents to review Malak's findings disagreed with both the ruling and the methods used by the state Crime Laboratory in testing the marijuana level in the youths' systems.

Moore said he decided to hire more than one expert after consulting with Dr. Martin Cherkasky, chairman of the advisory board for the office of the medical examiner's office in New York.

"They have just completed an extensive exam of their own office and Dr. Cherkasky was able to give us some guidance on how to proceed," Moore said. "The fact of life is the position of medical examiner in any area will be one of controversy. In a specific case you can get as many opinions as there are apples on a tree. The team concept is more preferable to a single consultant."

Both experts were among a list of names submitted to Moore by the American Board of Forensic Pathology and were recommended by the New York advisory board, he said.

Moore said Cherkasky was "most impressed and pleased with our choices."

"He knows Dr. Zumwalt personally and has worked with him," Moore said. "He knows the other doctor by reputation."

In an effort to provide the doctors with "some continuity," Moore said he is trying to schedule a one-day visit for them to meet with himself, a representative of the governor's office, acting state Crime Laboratory Director Howard "Bear" Chandler and one or two former lab directors.

# Arkansas Gazette.

EDITORIAL

## A second opinion on the crime lab

Research by an *Arkansas Gazette* reporter and an investigation pushed by the parents of two youngsters who died on a railroad track in Saline County have raised troubling questions about the performance of the state medical examiner. They need to be answered, and the state Crime Laboratory Board and Governor Clinton have taken a step toward it by seeking a review of the examiner's office by nationally recognized forensic pathologists.

After the example of the television dramas, clamor seems to follow crime pathologists, and Dr. Fahmy Malak has gotten his share of attention in celebrated criminal cases. He hasn't shrunk from it, that is, not until the questions were raised this winter about his judgment. Even now, he seems to have more stout defenders than detractors among prosecutors and law enforcement officials.

★ ★ ★

And why not? Forensic scientists are the most powerful agents for prosecution. A recent Justice Department study found that jurors tended to believe medical and scientific experts even more readily than they believed the first-hand testimony of the victims of

crimes. People have a mystical faith in science, in its exactness.

That is why the government's forensic scientists must have an absolute commitment to the truth — not to conviction or exoneration, but to truth. Fidelity to the truth means impartiality and painstaking carefulness. In a series of cases, reporters have raised what seems in our opinion to be serious questions about Dr. Malak's complete fidelity to those principles. In most of the cases, he testified for the successful prosecution, but in the most recently celebrated case he concluded with finality that two teenagers who were run over by a train had positioned themselves symmetrically on the tracks and drugged themselves with marijuana into such deep slumber that they could not move when the train roared upon them. The *Gazette's* Bob Wells found instances in which Dr. Malak had not been fully accurate about his professional background.

Justice cannot abide a government that is rash or careless in the investigation or prosecution of crime. The state owes society its best effort to resolve the critical questions that have been raised.

# 2 pathologists to visit state, review Malak

## Legislator to seek study of office

By Bob Wells  
GAZETTE STAFF

Two out-of-state forensic pathologists have agreed to review the performance of Dr. Fahmy Malak, the state medical examiner, and the operation of the medical examiner's office.

The two are Dr. David Wiecking, the Virginia state medical examiner, and Dr. Russell Zumwalt of the New Mexico Office of Medical Investigator, according to Dr. Malcolm Moore Jr., chairman of the state Crime Laboratory Board.

The Board voted last week to hire an independent forensic pathologist to evaluate Dr. Malak's work and findings in several cases. Dr. Moore said Friday he had decided it would be best to bring in two consultants.

### Wants complementary review

In a related matter, state Representative Mike Todd of Paragould has said he will ask that a legislative committee review the medical examiner's office. Todd said that review would complement the Board's review.

Dr. Malak's findings have been disputed recently in several cases, including the summer deaths of two Saline County teen-agers, Don Henry, 16, and Larry Ives, 17. Also, the *Arkansas Gazette* has published articles about contradictory testimony Dr. Malak has given in other cases.

Dr. Moore said Dr. Wiecking and Dr. Zumwalt were recommended by the chairman of the advisory board of the medical examiner of New York. That office underwent a similar peer review a few years ago.

Dr. Moore said he called the New York board chairman, Dr. Martin Cherkasky, to learn from his experience.

It probably will be mid-May before Dr. Wiecking and Dr. Zumwalt will be able to come to Little Rock,

Dr. Moore said. He added, however, that he was hoping to "work out a preliminary visit where we can talk about what we're interested in."

He said he planned to schedule a meeting soon so the two pathologists could meet with him; Howard Chandler, the Crime Lab director; a representative of the governor's office, and possibly two former lab directors, Jim Clark and Henry Oliver.

### 'Not on witch-hunt'

Dr. Moore said the two doctors would not be coming to Arkansas to look at a specific case. "They're coming down here, not on a witch-hunt, but on a responsible, sensitive overview of the entire operation," he said. He said the Crime Lab Board wants to know "whether our man is doing a competent job and whether he is discharging his duties in a competent, forthright manner."

That overview will require reviewing some cases, he said.

Dr. Moore said he was planning to send the two pathologists background information about the medical examiner's office and clippings of recent newspaper articles about Dr. Malak's findings in several cases.

The doctors suggested that more than one pathologist participate in the review, Dr. Moore said. "They said that on any particular case, you may get as many opinions as there are apples on a tree."

### Wants ruling on scope

On the legislative proposal, Todd was quoted by the Associated Press as saying he would meet with the Legislative Council staff to draft a resolution calling for a joint subcommittee to study the medical examiner's office. Todd asked Attorney General Steve Clark last month for an official

(See MALAK on Page 9A.)

ARKANSAS GAZETTE Saturday, March 26, 1988

## Malak

Continued from Page 7A.

opinion on Dr. Malak's duties, after Greene County officials complained that the medical examiner was going beyond the law in ruling on the manner of deaths, not just the causes.

"This is not a head-hunting expedition for Dr. Malak," Todd said. "But there is some question \*\*\* that the medical examiner's office has not performed as it should."

Todd mentioned the recent newspaper articles about Dr. Malak's findings in various cases and said a study of the office is needed because of its importance. Its findings often become key evidence in criminal trials or deciding factors in rulings on insurance claims.

His impression is that the review authorized by the Crime Laboratory Board would focus on Dr. Malak, Todd said, while the subcommittee's review would be "a probe of the office, not of Malak," and a study of whether changes need to be made by the legislature.

Todd said he expected the attorney general to confirm that Dr. Malak has the authority to rule on both cause and manner of death. If that is the case, he said, he would expect the legislature to act in 1989 to limit the medical examiner's role.

### 'We have to be careful'

"We have to be careful. \*\*\* He needs to be able to express some opinion," Todd said. But the final authority in such investigations, he added, should be local authorities who have all the facts of an investigation.

Dr. Moore said he didn't have any problem with Todd's proposal. "I would welcome clarification from the legislature about everybody's responsibilities and duties."

# Lawmaker seeks study of ME's office

JONESBORO (AP) — A freshman legislator wants the state's Legislative Council to approve a review of the state medical examiner's office.

State Rep. Mike Todd of Paragould said Thursday he would meet with the council staff to draft a resolution calling for a joint subcommittee to study the office occupied by Dr. Fahmy Malak.

Last month, Todd asked Attorney General Steve Clark for his opinion about Malak's duties.

"This is not a head-hunting expedition for Dr. Malak," Todd said. "But there is some question ... that the medical examiner's office has not performed as it should."

Todd mentioned recent stories in state newspapers questioning Malak's findings in deaths. Greene County officials also

have questioned Malak's findings in two cases.

Last week, the state's Crime Laboratory Board authorized an independent review of the medical examiner's office and of the office's findings in several cases.

Todd said a study of the office is needed because of its importance. Its findings often become key testimony in criminal trials or deciding factors in rulings regarding insurance claims.

He said it is his impression that the review authorized by the Crime Laboratory Board would focus on Malak, while the legislative subcommittee's review would be "a probe of the office, not of Malak."

Todd said he is working closely with Greene County Coroner Dick Pace, who heads the Arkansas Coroners' Association. "We both have construed in our

thoughts that there is a problem with the system," Todd said.

The purpose of the subcommittee, he said, would be to review the role of the medical examiner's office, to look at the performance of the office and to decide what, if any, legislative reform is needed.

Concerning his request for an opinion from the attorney general's office, Todd said Thursday he expects the opinion to confirm that Malak has the authority to rule on both cause and manner of death.

In that case, Todd said, he would expect the legislature to act in 1989 to limit the medical examiner's role.

"We have to be careful ... He needs to be able to express some opinion," Todd said. But local authorities equipped with all the facts of the investigation should be the final authority in

such investigations, he added.

Todd requested the attorney general's opinion in behalf of Pace, who said Malak's rulings on two Greene County deaths were inconsistent with the findings of local investigators.

The two cases at issue in Greene County are the Jan. 17 death of 29-year-old Ricky Boozar of Paragould, who was asphyxiated in his car, and the Jan. 10 shooting death of 16-year-old Donnie Long of Paragould. Malak said the deaths were suicides. Local officials wanted to rule the deaths accidents.

Earlier this week, a chancery judge ordered the exhumation of the body of one of two Saline County teenagers struck by a train near Alexander Aug. 23. Parents of the boys are challenging Malak's ruling that the deaths were accidental.

Bob Wells  
ZETTE STAFF

# Malak testimony, earlier statements differ

both eyes was caused by the shooting. His autopsy report said the bruise around the left eye was caused by the gunshot.

55, Dr. Fahmy Malak, the state medical examiner, gave testimony it conflicted with statements he made before the trials. The changes concerned relation of minor aspects of Dr. Malak's interview with defense attorneys six months earlier, he gave no specific causes for those and other marks on the victim's body.

The *Arkansas Gazette* previously has detailed other cases in which Dr. Malak's trial testimony has been at variance with other statements. Friday, the state Crime Laboratory Board voted to bring in an expert in forensic pathology to review Dr. Malak's work.

## Jonesboro death at issue

In the manslaughter and battery cases, prosecutors were trying to prove in January 1985 that John

those cases, Dr. Malak testified in a manslaughter and case in Craighead Circuit Court that bruising around left eye occurred by a her death and was caused by a bruise from a fist. Similar bruising and the right eye occurred as a result of a self-inflicted gunshot, he said. In earlier testimony before a Grand Jury, Dr. Malak said the bruising around

In each instance the prosecution's case, attorneys for the defendants said.

E. Hinson of Jonesboro had pushed his wife to the point of suicide by beating and mentally abusing her for two days after discovering that she was having an extramarital affair.

Dr. Malak testified that Catherine Hinson had died from a self-inflicted gunshot wound to her right temple and that she had been beaten. The bullet and the expanding gases from the gunshot caused the roof of the right eye socket in Mrs. Hinson's skull to fracture, allowing blood to seep into the tissue

surrounding the eye, Dr. Malak testified. The blackening around her left eye, though, was an old bruise, consistent with being caused by a fist, he testified. In his autopsy report, Dr. Malak did not mention the right eye. But he wrote in two separate sections of the report that the condition of the left eye was caused by gravitation of blood into the tissue surrounding the eye, which occurred as a result of the gunshot fracture of the eye socket.

## Asked to explain conflict

Two days after his initial testimony at the Hinson trial, Dr. Malak was called back to the witness stand to explain the discrepancy. He said the autopsy report contained a typing error and that it should have said "right" rather than "left" eye. Under cross-examination by defense attorney Bobby McDaniel of

Jonesboro, Dr. Malak conceded that he had testified before a Grand Jury that the bruising around both eyes was caused by the gunshot. But Dr. Malak said that particular sentence from his Grand Jury testimony "was not absolutely accurate" and that it had been a slip of the tongue when he said "eyes" and not "eye."

In a recent interview, McDaniel said Dr. Malak's trial testimony was potentially damaging to his client. While there was no doubt that Hinson had beaten his wife, the bruises were confined largely to her torso, buttocks and legs, McDaniel said. Dr. Malak's testimony that Mrs. Hinson had been struck in the eye could have supported a jury verdict for first-degree battery, he said. Jurors found Hinson guilty of

(See MALAK on Page 9A.)

Page 182

# Malak

Continued from Page 5A.

two counts of third-degree battery, a lesser charge.

In an interview Friday, Dr. Malak said he couldn't recall the Hinson case.

## Rape alleged

In the capital murder case in Baxter County, prosecutors were trying to prove that the victim, a 14-year-old boy, had died while being raped by the defendant, Edward Oliver Sunwall.

The boy, a neighbor's son, was spending the night with Sunwall. About 5 a.m., Sunwall drove up to the neighbor's house in his pickup truck, with the boy collapsed in the front seat.

Efforts to revive the boy were unsuccessful. Sunwall told officers he had awakened in the middle of the night to go the bathroom and found the boy passed out in his underwear on the bathroom floor, with an open bottle of chloroform and a chloroform-soaked rag beside him. The chloroform had been kept in an empty rum bottle and Sunwall said he had used it to kill rats.

After an autopsy the next day, Dr. Malak concluded that the boy had been smothered, subjected to chloroform poisoning and sodomized by Sunwall.

July 7, 1983, six months before the trial, Sunwall's attorneys, William B. Howard of Jonesboro and the late James Atkins of Mountain Home, met at the state Crime Laboratory with Dr. Malak to discuss his autopsy findings. Prosecuting Attorney Gordon Webb of Harrison also attended.

At the beginning of the discussion, Dr. Malak denied the defense attorneys' request to tape-record the meeting. But unknown to Dr. Malak, Howard taped him with a hidden recorder. Howard said he

did it to protect his client.

According to the tape recording, Dr. Malak went over the autopsy report line by line.

## Scratches observed

Not far into the conversation, Dr. Malak read from a section of the autopsy report on the body's appearance and noted that he had observed several scratch marks on the left lower part of the chest and an abrasion on the right shoulder blade.

"Doctor, what do the scratch marks mean?" Howard asked.

"It means there are scratch marks, abrasions," Dr. Malak replied.

"I mean, does that give you any clue how it happened, how these marks could get on there?" Howard asked.

"Any friction of an object with the skin causes this mark," Dr. Malak said.

Asked later about the significance of a bruise on the boy's right knee, Dr. Malak said, "It is there. It is a bruise."

"You just made an observation of the bruise?" Atkins asked.

"It is an observation of the bruise and there are many explanations for it, but I am not going to

volunteer any information to you, to him, to anybody," Dr. Malak said. He explained that he was not a witness for the defense or the prosecution but was instead an investigator and witness for the Court and would explain his findings only in Court.

Moments later, Howard interjected: "All I'm wanting to know is, do you have a theory as to how this boy met his death?"

"When you ask me this on the witness stand, I may answer this question," Dr. Malak said.

"But you won't now?" Howard asked.

"I don't think I would," Dr. Malak said, adding later that "in the presence of the jury, I will explain my opinion to a jury, but not to you."

In January 1984, Dr. Malak explained his findings to jurors. The mark or abrasion on the boy's right shoulder was "consistent with a thumbprint or a fist print, consisting of the thumb, mainly" and the scratch marks on the chest were "consistent with fingernail marks," he said.

The bruised knee occurred when the boy collapsed to the floor from chloroform inhalation, Dr. Malak said. Dr. Malak said Sunwall had

held a chloroform-soaked rag over the boy's face while raping him and the boy suffocated.

## 'It's not his function'

Howard said Dr. Malak's refusal to discuss his theory of the case before trial disturbed him. "If he doesn't have an ax to grind, it's not his function to conceal things from me," Howard said.

In a recent interview, Webb said he did not believe Dr. Malak misled the defense attorneys or withheld information. He said Dr. Malak told him about the significance of the scratch marks and bruises the day he called with the autopsy results.

In a recent interview, Dr. Malak said he declined to tell the defense his specific theory before trial because defense attorneys were asking him to speculate. He said he did not call the scratches "fingernail marks" and the abrasion a "fist print" before trial because he probably did not have an opinion at that time.

Experts for the defense testified there was no evidence the boy had been sodomized. The jury convicted Sunwall of manslaughter and sentenced him to 10 years in prison.

*Page 2 of 2*

# Malak's office to be evaluated by pathologist

BY MAX PARKER  
Democrat State Desk

The state Crime Laboratory Board unanimously voted Friday to have an outside pathological expert conduct a review of the state medical examiner's office.

Dr. Fahmy Malak, the state medical examiner, said he would mind the independent review. Malak did not attend the board meeting.

"The truth of the matter is there are many quacks dealing with death investigations," he said. "There are some zealous reporters too. They don't confront the truth. The truth means nothing to them."

Gov. Bill Clinton, who has been gathering information on questions recently raised about Malak's qualifications and the Medical Examiner Commission, was "supportive and desirous" that an evaluation be conducted, said Dr. J. Malcolm Moore, board chair-

Gauldin, spokesman for Clinton, said a meeting occurred "a couple of weeks ago" between Moore and Betsey Wright, the governor's chief of staff.

Moore said Clinton advocated having a specialized evaluation by a credible, independent, outside expert. The pathologist, who will be chosen by Moore, will be selected from nationally recognized experts recommended by the American Board of Forensic Pathology and will be paid

with money from the governor's emergency fund.

Moore, who said the review would take about 10 days and cost about \$7,000, stressed the procedure was not unprecedented, adding that three years ago an entire team was hired to do an independent evaluation of the state Crime Laboratory. He said he didn't know how soon the evaluation would start, but hoped to make the selection very soon.

The expert will not only conduct a broad review of the system, but will also look at specific cases recently questioned in the media — "especially the case in Benton," Moore said.

The Aug. 23, 1987, deaths of two Saline County youths hit by a train while lying on railroad tracks near Alexander has recently resulted in a prosecutor's hearing and a court order approving exhumation of the bodies for a second autopsy.

Malak ruled the deaths accidental, saying the boys were unconscious at the time of death from the "psychedelic influence" of marijuana.

Independent experts who reviewed Malak's findings at the request of the youths' parents have disagreed with both the ruling and the methods used by the state Crime Laboratory in testing the marijuana level in the teen's systems.

The parents of Don George Henry, 16, of Bryant and the father of Larry Kevin Ives, 17, of Benton were present during part of Friday's board meeting.

"My question is: Are they going to check the credibility and honesty of Dr. Malak?" Henry said after the meeting.

"My personal opinion is I think Dr. Malak saw the negative results of all the other drug tests and decided to have a crusade against marijuana," Ives said.

Before board members voted on Moore's motion to hire the expert, comments were heard from those attending the meeting at the state Crime Laboratory at Little Rock.

Moore commented that Malak had provided "very excellent, professional service" to the laboratory and that Malak's job threw him in areas of controversy.

Jim Clark, former state Crime Laboratory director, spoke on Malak's behalf.

Clark, who since January has been director of the state Transportation/Safety Agency, said in the 3½ years he was at the laboratory, he never had a single complaint from a prosecutor or law enforcement official about Malak's performance.

"I think Dr. Malak has done an excellent job," said Clark, who after the meeting added no one had asked him to speak on Malak's behalf.

"On a personal note, I think the state of Arkansas needs a lot more people like Dr. Malak," he said. "Dr. Malak is not perfect. He knows that and I know that."



Malcolm Moore

Cary Gaines, executive director of the Arkansas Sheriffs' Association, said he had been asked to speak to the board by sheriffs throughout the state on Malak's behalf.

A survey conducted by the organization revealed 90 percent of the sheriffs thought Malak was doing an excellent job with 10 percent of the sheriffs saying he was doing a very poor job, Gaines said. Only 45 of the 75 sheriffs had responded to the survey.

Buster Schmidt of Little Rock, brother-in-law of William C. Horne, cited discrepancies in testimony offered by Malak and told the board he didn't understand how they could keep letting Malak do what he's been doing.

Horne was convicted in November 1983 of first-degree murder in the Nov. 18, 1982, death of David Michel. After that conviction was reversed, he later pleaded no contest to second-degree murder and was sentenced to 20 years in prison.

During a civil lawsuit filed against Horne and his father Joe Horne by the Michel family, a Little Rock lawyer discovered that a photographic transparency used by Malak to link a rifle butt to Michel's wounds apparently was applied incorrectly.

During a telephone interview, Schmidt said he was not pleased with the board's action.

"I think that something more than an independent expert needs to be brought in by the state to review a state employee," Schmidt said. "I always thought that perjury was a pretty serious offense. Where is the justice? This man has ruined a lot of families' lives and cost them a lot of pain and money in retrials."



**REVIEW SET:** The state Crime Laboratory Board agreed Friday to hire a nationally recognized forensic pathologist to review the state medical examiner's office and Dr. Fahmy Malak's findings in several recently publicized cases. Dr. Malak said he welcomed the review. (Article on Page 9A.)

# Review

Continued from Page 9A.

service to the Crime Lab, but said the Board wanted to be responsive to concerns that have been raised regarding Dr. Malak's credibility and other matters.

Jim Clark, a former Crime Lab director, also praised Dr. Malak, saying he had done an "exceptional" job. Cary Gaines, director of the Arkansas Sheriffs Association, told the Board 90 per cent of 45 county sheriffs responding to an Association survey said Dr. Malak was doing an "excellent to very good" job and 10 per cent said he was doing a "poor to very poor" job. None of the sheriffs who responded was neutral, he said.

Mike Gauldin, the governor's press secretary, said the idea of hiring an independent forensic pathologist to conduct a review had originated from a meeting between Dr. Moore and Betsey Wright, the governor's chief of staff.

Dr. Moore said he didn't know when the review would take place but estimated that it would take about 10 days for a pathologist to review the office and the cases raised in recent media accounts.

## To include train deaths

He said the review would include Dr. Malak's findings in the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. The two Saline County teen-agers were run over by a freight train as they lay on a railroad trestle about 4:25 a.m. August 23. Dr. Malak held that the two boys were unconscious in a marijuana induced sleep when they were struck by the train. Other toxicologists and pathologists have disagreed with Dr. Malak's findings.

In addition, the *Arkansas Gazette* has written numerous articles recently regarding discrepancies in Dr. Malak's testimony in several cases, including the 1983 murder trial of William Horne. The *Arkansas Democrat* has written articles about other cases in which Dr. Malak's findings are in dispute.

Dr. Moore said after the review that he expected the review cost less than \$10,000 and estimated that the consulting pathologist would be paid \$500 a day and expenses. Mr. Clinton has agreed to provide an appropriation from the governor's emergency fund.

Dr. Moore said he didn't know if the consulting pathologist would review every case that has been written about in recent newspaper articles, but that he wants the consultant to "look at a broad enough area to make himself comfortable" in reaching a conclusion.

## Reports to be provided

He said copies of the newspaper articles would be given to the reviewing pathologist. In addition, the outside pathologist will be asked to review other matters, such as Dr. Malak's board certification and a question raised by some coroners — whether the medical examiner should determine whether a death is homicide, suicide or an accident or merely state the medical cause of death.

Dr. Moore noted that Attorney General Steve Clark has already been asked to determine another issue, whether the state Medical Examiner's Board is still legally in existence or whether it was repealed by the creation of the state Crime Laboratory Board in 1979.

Jim Clark, who worked at the Crime Lab for 3 1/4 years as both assistant director and director, told the board he had never received a complaint about Dr. Malak from a prosecutor, defense attorney or judge and said the state "needs more people like Dr. Malak."

Buster Schmidt, the brother-in-law of William Horne, also addressed the Board and said he couldn't understand how the judicial system could continue allowing Dr. Malak to testify in court after recent articles about discrepancies in his testimony at Horne's trial and in other cases.

The parents of Ives and Henry also attended the meeting. They said afterward that they were pleased with the Board's decision.

In addition to Dr. Moore, other

Commission members are Circuit Judge John Holland of Fort Smith, Chief John Morgan of the El Dorado Police Department, Prosecuting Attorney David Clinger of Bentonville, Fulton County Sheriff Earl Hurtt, Kathy Goss of Little Rock and Alfonso Dixon of McGehee.

## Obtained list

Before the board vote, Dr. Moore said he had obtained a list of nationally recognized forensic pathologists from the American Board of Pathology and would select one of those persons to conduct the review.

Dr. Moore said he is still compiling a list, but that the names recommended to him by Dr. M. R. Abell, director of the American Board of Pathology, include Dr. Charles Hirsch, the New York medical examiner; Dr. Joe Davis of Miami; Dr. Gary Peterson of Minnesota; Dr. Russell Zumwalt of New Mexico; Dr. David Wiecking, the Virginia medical examiner; Dr. Charles Wetli of Miami; and Dr. Charles Petty, the Dallas medical examiner.

# Review of office is voted Malak welcomes it

By Bob Wells  
GAZETTE STAFF

The state Crime Laboratory Board agreed Friday to hire a nationally recognized forensic pathologist to review the state medical examiner's office and Dr. Fahmy Malak's findings in several recently publicized cases.

Dr. Malcolm Moore of Little Rock, Board chairman, said Governor Bill Clinton supported hiring an outside expert to evaluate the office and Dr. Malak's performance. The governor has agreed to provide financing to pay for the outside pathologist's fees and expenses.

Dr. Malak did not attend the board meeting, but in a brief interview later said he welcomed the review of his work.

Dr. Moore praised Dr. Malak as an excellent employee who has provided 9 1/4 years of professional

(See REVIEW on Page 10A.)



# Manslaughter charge filed in death

Son chased father into woods where he died, sheriff says

CLARKSVILLE (AP) — A manslaughter charge has been filed against Carl Woodard of Clarksville, whose father died of a heart attack after an altercation with Woodard, authorities said.

Sheriff Eddie King said Tuesday the felony charge was filed against Woodard, 41, following the death Friday of Woodard's father, Ward Woodard, 76, also of Clarksville.

King said the elder Woodard died in some woods near his home. The sheriff said Dr. Fahmy Malak, the

state medical examiner, said the death could be considered a homicide because it was attributable to an altercation with the younger Woodard.

## Three shots fired

King said three shots from a .38-caliber pistol were fired during the argument, but no one was wounded.

The younger Woodard also was charged with public intoxication, King said. The son and father had argued and the father was chased out of his home by the son, the sheriff said. King said the son "chased him quite a ways, and he just fell over."

Woodard is being held in the Johnson County Jail at Clarksville in lieu of \$10,000 bond.

# Clinton queries status of medical examiner panel

BY MAX PARKER  
Democrat State Desk

Gov. Bill Clinton has asked the state attorney general's office for an official opinion on whether the state Medical Examiner Commission exists, James Lee, an office spokesman, said Monday.

Lee said the governor made the formal request late last week. The current wait for an official opinion is between 30 and 40 days.

Feb. 18, the *Arkansas Democrat* reported that a majority of members of the state Medical Examiner Commis-

sion said they were unaware they were on it.

Arkansas Statute 12-12-306 specifically gives the commission power to appoint and employ a state medical examiner. It also empowers the commission to remove the state medical examiner "only for cause."

Dr. Fahmy Malak was hired Oct. 1, 1978, as an associate medical examiner by then-state Crime Laboratory Director Clay White. In March 1979, Malak became acting state medical examiner and was officially hired May 16, 1979, as state medical examiner.

Bob Fisher, ombudsman in the attorney general's office, had said it was possible for someone to challenge Malak's appointment in a court of law by citing the fact the commission was never consulted.

The panel, created nearly 20 years ago by a 1969 legislative act, calls for five members to serve: the dean of the College of Medicine at the University of Arkansas for Medical Sciences; the director of the Arkansas State Police; the chairman of the state Board of Health; a member named by the Arkansas Sheriffs' Associa-

tion; and a member named by the Association of the Chiefs of Police of Arkansas.

On Friday, Mike Gauldin, spokesman for Clinton, said the governor was still gathering information on recent questions that have arisen about the state medical examiner's office.

Those questions include whether the state medical examiner can legally rule on the manner of death in addition to the cause of death. (*Causes of death include gunshot wounds, stabbings and heart attack. The manner would include*

how those causes occurred: homicide, suicide, natural, accidental or undetermined.)

In a letter dated Feb. 16 from state Rep. Mike Todd of Paragould, the attorney general's office was asked to clarify the duties of the state medical examiner.

Dick Pace, Greene County coroner and president of the Arkansas Coroner's Association, said he asked Todd to request the opinion on whether the medical examiner is authorized to determine the manner of death.

## Letters

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### Dr. Malak performs duties efficiently with devotion to truth

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To the Editor:

I have taken the *Gazette* for over 45 years and for the most part I have felt your reporting was not biased, but I cannot say the same for what has been printed about Dr. Fahmy Malak, the state medical examiner. I know this man is very conscientious. There have been misleading statements and innuendos that would imply that he is not qualified for his job or is not truthful.

I have been licensed to practice in this state since 1943, when I came as Arkansas director for

crippled children. I have been both a private practitioner and a professor of pediatric allergy in the Arkansas School of Medicine. In fact I received an honorary doctor of science degree from this institution in 1986. I say these things because I want you to know that I know the progress this state has made in the field of good medicine over 45 years.

When I came to Arkansas in 1943 there were only politically appointed lay coroners, with the serious criminal cases being autopsied at the medical school, where the

pathologists were overloaded with teaching, research and autopsies on patients who died at the University Hospital.

A state medical examiner was badly needed in 1943 and for a good many years after that. I have kept in touch with medicine ever since that date and know that Dr. Malak has fulfilled his position forthrightly and conscientiously. Any board-eligible or board-certified physician in pathology should be able to fulfill this position. Dr. Malak's qualifications satisfy these requirements. He has performed his duties efficiently and with devotion to the truth after reviewing the facts. I hope that you, as editor, will control the apparent viciousness of some of your reporters.

Dr. Vida H. Gordon.  
Little Rock.

# Medical examiner responds



—Staff Photo

Dr. Malak: 'You have to remember the language barrier.'

## Malak says he has met law governing pathology

By Bob Wells  
GAZETTE STAFF

Since becoming state medical examiner in 1979, he has met the requirements of state law regarding the medical examiner's board certification in forensic pathology, Dr. Fahmy Malak said.

A 1979 state statute requires the medical examiner to be either board certified or eligible for board certification in forensic pathology as recognized by the American Board of Pathology.

Dr. Malak did not become

board certified in forensic pathology until 1985. The board recognizes no such category as "eligible for board certification."

### Says he was qualified

But Dr. Malak said he was qualified to take the Board examination in forensic pathology since 1978 and thus was eligible for board certification.

The American Board of Pathology stopped recognizing the phrase "board eligible" sometime before 1980, and attaches no meaning to it, Dr. M. R. Abell, the board's executive director,

said last week.

Dr. Malak's board certification was discussed in a series of articles last week in the *Arkansas Gazette*. Dr. Malak had denied repeated requests for interviews for those articles, but agreed to an interview last week on the condition that another *Gazette* staff member be present with the reporter working on the articles.

Among other responses to points in the articles, Dr. Malak said that he had never testified that he was "board certified"

(See MALAK on Page 13A.)

Page 1 of 2

# Malak

Continued from Page 1A.

since 1978 and had not meant to give that impression.

In the William Horne murder trial in 1983, Dr. Malak was asked on cross-examination "How long have you been board certified?"

"I passed the board in 1978," Dr. Malak replied.

Dr. Malak said he had not been trying to evade the defense attorney's question and added that "you have to remember the language barrier, things of that nature."

Dr. Malak is a native of Egypt who became a naturalized citizen in 1976.

Dr. Malak said he passed the anatomic pathology examination in 1978 but didn't bother getting the actual certificate until 1982 because he was busy bringing the state medical examiner's office up to standards and did not need the certificate to perform his job.

In a telephone interview, Dr. Abell confirmed that Dr. Malak passed the anatomic examination in 1978. But Dr. Malak didn't receive the certificate until 1982 because he had applied for a combined certificate in anatomic and forensic pathology and did not pass the forensic portion of the examination, Dr. Abell said.

Under board rules, an applicant for combined certification has to pass both examinations. After a few years, Dr. Malak said he no longer wanted a combined certificate and wanted instead to be certified in anatomic pathology only. The board allowed that in 1982. Dr. Malak later submitted a new application for the forensic pathology certificate that he received in 1985.

After the *Gazette* articles appeared, Governor Bill Clinton asked for information concerning Dr. Malak and issues in the articles. A spokesman said Friday the governor would have no further comment until he had a chance to look at the information. The spokesman wouldn't say if the governor had received or reviewed any information. Attorney General Steve Clark is also reviewing the certification question, a spokesman said Friday.

In response to other points in the articles, Dr. Malak said:

★ At the William Horne murder trial in 1983, he interpreted the question "Dr. Malak, how long have you had that transparency?" to mean how long had he had his theory that the butt of Horne's rifle matched a bruise on the victim, David Michel. His response to the question was: "For so long, several months." The transparency wasn't made until six days before Dr. Malak testified. The photograph was admitted into evidence after Dr. Malak's answer, although the defense had objected because they were not aware of the transparency's existence. The transparent photograph was used to illustrate Dr. Malak's contention that the rifle butt matched a bruise on Michel down to a tiny nick.

★ He made a mistake when he applied the transparency backward during a civil trial stemming from Michel's death a year and a half after the criminal trial. "I did it wrong and I have no sweat with that," he said. "I reversed it." Only by reversing the transparency and placing it over a picture of the bruise did the rifle butt and the bruise precisely match up according to Dr. Malak's theory. During last week's interview, Dr. Malak stood by his general theory that the bruise was caused by the rifle butt.

★ He was not present at the actual dissection of Michel's body, but he reviewed Michel's medical records, examined bruises on the body and instructed an assistant medical examiner about the case prior to the autopsy and later dissected the brain. At the criminal trial in 1983, Dr. Malak said "yes" when asked if he was present at the autopsy. At the civil trial, he said "definitely, certainly, absolutely I was present and I participated actually in the autopsy of the head and the chest." Asked Monday about his testimony at the civil trial, Dr. Malak said "I said that? No, if I said this, it is wrong. It would be a mistake."

★ He made it clear to jurors at the 1986 murder trial of Ozzie Wilson that his former assistant, Dr. Lee Beamer, had conducted the autopsy on the victim, Alton Wesson. Dr. Malak testified at the trial that he had participated in the dissection, took autopsy photographs

*Dr. Gazette 3-13-88*  
*Page 2 of 2*

# Head criminologist told to stop inquiry into '87 shooting

Arkansas Democrat

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BY MAX PARKER  
Democrat State Desk

The chief criminologist at the state Crime Laboratory was ordered by an agency official to cease conducting further tests into a Springdale shooting death, according to documents obtained by the *Arkansas Democrat*.

Steve Cox, chief criminologist in the trace evidence section of the lab, said he thought the order was odd. However, Jim Clark, who was executive director of the lab when he issued the order, said it was based on policy.

Brenda Stewart, 33, was found Oct. 13, 1987, at her Springdale home with a gunshot wound in her left temple. She died less than two hours later.

Police arrested her estranged husband, James H. Stewart, on a charge of murder. In an Oct. 14, 1987, autopsy report, state Medical Examiner Fahmy Malak ruled the death a suicide. Stewart was released.

Despite Malak's ruling, the case still is considered open by the Springdale police and local officials last week decided to seek the opinion of an independent pathologist.

After Mrs. Stewart died, the local police also had sought assistance from other sections of the Crime Laboratory in investigating the death.

In a statement taken by Arkansas State Police on Jan. 25, Cox said he told the Springdale police he would help.

That effort ended Oct. 21, 1987, when Clark issued a memorandum to Cox.

The memorandum said it was neither Cox's nor the laboratory's function to reconstruct the crime scene on a particular case, according to statements obtained in state police interviews conducted in January.

"From the information I have, (it) looks to be a waste of time. Before starting any project of this type, please see me," Clark wrote.

Cox said Friday he had rendered such assistance before to local law enforcement agencies and found Clark's directive unusual.

## At a glance

- Brenda Sue Stewart, 33, was found Oct. 13, 1987, with a gunshot wound to her head and her estranged husband was arrested on murder charges.

- Mrs. Stewart's husband was released after state Medical Examiner Fahmy Malak ruled the death a suicide.

- On Oct. 21, 1987, Jim Clark, then the executive director of the state Crime Laboratory, issued a memorandum to Steve Cox, chief toxicologist in the lab's trace evidence section. Clark directed Cox to stop further testing in the case, saying he believed it was a waste of time.

"It was the first time I have ever been given such a memo," said Cox, who has been with the lab 5½ years. "It is something that is done nationally in other crime labs."

Clark, who became the director of the state Transportation/Safety Agency in January, said the memo was issued for several reasons.

Clark said he believed the lab's function was to be an "impartial interloper," to look at evidence collected by agencies and then testify impartially.

He also cited the heavy caseload facing the lab.

Before his memo to Cox, Clark said he had directed the staff to have police agencies contact him directly when such assistance was requested.

Clark said neither Cox nor the Springdale Police Department contacted him.

Cox said the only policy he knew of was to receive the director's approval prior to leaving the building to conduct a crime scene search.

"It got nipped in the bud before we got that far," Cox said.

Lt. Dennis Upton, a criminal investigator with the Springdale police, said he has never contacted the Crime Laboratory director for any assistance. He said most requests are directly made to the appropriate section.

"All we wanted was assistance with blood splatter interpretation," Upton said. "Why it wasn't done, I don't know."

## At a glance

- The Nov. 25, 1987, death of William Edwards was investigated by police as a possible child abuse case after hospital personnel noted the infant had fractured ribs.

- The police investigation was closed after Dr. Fahmy Malak, state medical examiner, ruled the infant's death natural, attributing the cause to Reye's syndrome.

- On Aug. 13, 1987, another infant died. Hospital personnel noted the child had lacerations inside the rectum. The death was ruled natural.

- Both children had been under the same baby sitter's care just prior to their deaths.

- Malak asked the Armed Forces Institute of Pathology in Washington, D.C., for a consultation on the Edwards case. The doctor said he would bet against the child dying from Reye's syndrome. He also said the fractured ribs were evidence of previous child abuse.

were at least 3 months old" – the age of the child – according to a Nov. 30, 1987, note included in police file. The note also said Malak stated the child had not been abused over the past three months.

The institute also said that while a fatty liver is indeed a feature of Reye's syndrome, the institute could not make such a diagnosis solely based on microscopic analysis.

Reye's syndrome is a rare disease that usually afflicts children, doctors said. It is characterized by neurological disorders, swelling of the brain and enlargement of the liver. While the cause is unknown, the disease most frequently occurs after a viral illness.

Dr. Richard C. Wahl of the institute's department of pediatric pathology said recently the reports submitted by Malak could be consistent with Reye's syndrome. He also said fractured ribs in a child the age of William Edwards were most commonly the result of abuse.

*Page 2 of 2 Pages  
Democrat 3-11-88*

# Malak ruled infant deaths were natural

## Injuries spur look into child abuse

BY MAX PARKER  
Democrat State Desk

Less than three months apart in 1987, two infants who had difficulty breathing while under the care of the same baby sitter were brought to Arkansas Children's Hospital.

Both died and Dr. Fahmy Malak, state medical examiner, ruled their deaths natural.

In each case, the baby sitter had called the child's mother and told her to take her child to the hospital.

Resuscitation efforts failed when 2-month-old Kinnita Taylor was brought to the hospital Aug. 13, 1987. The hospital reported the death to the Pulaski County coroner's office, which notified Malak's office.

The infant had injuries in her rectum, hospital personnel noted. In his report of the Aug. 14 autopsy, Malak said the rectal injury was a small superficial tear "due to stretch during trial of resuscitating the infant."

However, according to records, Malak told police on Aug. 17 the redness in the rectum was caused by irritation from feces.

Little Rock police took statements from hospital personnel, the mother and the baby sitter, but closed the case after Malak ruled the cause of death as collapse of both lungs and the manner of death as natural.

In the second case, Little Rock police conducted an in-depth investigation into whether child abuse was involved in the Nov. 25, 1987, death of 3-month-old William Edwards. Police closed the case after Malak listed the cause of death as Reye's syndrome and the manner of death as natural.

Emergency room doctors at Children's Hospital noted William had several fractured ribs when he was brought there Nov. 23, 1987.

A radiology report contained in police records said the baby had "multiple fractures on both sides, consistent with child abuse."

The child's mother told police she had noticed a bruise on her son's chest and one on the inside of his leg just a few weeks before his death. Those observations were confirmed by the child's grandmother.

Hospital personnel called police when the Edwards baby was admitted because they suspected child abuse. When the baby died, police called the Pulaski County coroner's office, which notified Malak's office.

"When the medical examiner rules it a natural death or says that no foul play was involved, our hands are tied," said Lt. Bobby Thomas of the Little Rock Police Department. "There's no way to make a case. We work on what the medical examiner says."

The Edwards investigation was closed even though the baby sitter had given "deceptive" answers during a polygraph examination to questions regarding her care of the child, police records show.

Police also learned that the mother of a girl nearly 2 years old had stopped using the baby sitter after noticing "first-degree burns to (the child's) face in a crisscross pattern," a report said. The mother had previously noticed 18 switch marks on her daughter's back while in the baby sitter's care.

Another memorandum in the police file said state welfare workers had, on several occasions, removed children from the custody of women living with the baby sitter.

Malak forwarded the autopsy report, photographs and tissue slides of the Edwards case to the Armed Forces Institute of Pathology at Washington, D.C., for a consultation report.

"I asked for a consultation to prove that I was 100 percent right," Malak said, and "to prove that allegations from Children's Hospital and the coroner were wrong."

The institute's report, dated Dec. 18, stated it agreed with Malak's findings. It also confirmed Malak's autopsy findings that the rib fractures were about 3½ to 5 weeks old.

However, during a meeting with a police officer, Malak said, "The baby had broken ribs on both sides, but they

Wahl said the information forwarded to him lacked certain medical history that he would have needed to make a positive diagnosis on the cause of the infant's death. He said the material was reviewed to determine its consistency with Malak's finding.

"If I were to be betting, I would bet against Reye's syndrome, just on statistics," Wahl said.

Wahl said the fatty liver noted by Malak could be attributed to diseases other than Reye's syndrome.

"The microscopic finding of small droplet fatty change in the liver could be due to stress after resuscitation," Wahl said in the report.

When asked by Malak to review the case, Wahl said he was unaware of an ongoing police investigation into the child's death.

He said if he knew the incident could have led to criminal charges, the file would have been forwarded to the institute's forensic pathology division.

Dr. Don Foster, who treated William Edwards in the hospital emergency room, said he was surprised by the ruling of Reye's syndrome.

"It may occur during a recovery period of another illness," Foster said. "But this is not a classical presentation per se of Reye's syndrome."

While the fractured ribs did not cause the infant's death, Foster said, it was probable William Edwards had been abused at some point.

"There are some disturbing aspects in this case," he said.

*Continued next page*



# Arkansas Gazette.

Thursday, March 10, 1988

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## State medical examiner deserves respect, not criticism

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To the Editor:

I am writing in response to several articles in the *Gazette* concerning Dr. Fahmy A. Malak, state medical examiner.

I am a graduate of Elon College in North Carolina with a degree in biology-premed. I came to Arkansas in September to work for the state medical examiner's office as a forensic technician under Dr. Malak. For the six months that I worked as a forensic tech we performed many forensic autopsies.

These cases ranged from homicide, suicide and accidental deaths to deaths of natural causes.

All cases on which Dr. Malak works are done in a professional way. There is no single case that is more important than another and each case is handled by Dr. Malak in a professional manner.

Dr. Malak has the respect of all the employees at the state Crime Laboratory, and as a servant of the state of Arkansas and its people Dr. Malak deserves respect. Those

who ridicule him know little about his job and the many responsibilities that fall under his office.

Forensic scientists like Dr. Malak are in a way guardians of society. Their mission is to protect life through the lessons we learn from death. The job Dr. Malak performs is not made any easier when he has to defend himself against meaningless rumors spread by the press and the public.

Kermit B. Channell.  
Poughkeepsie, N.Y.

# Outside expert to review death ruled a suicide

BY MAX PARKER  
Democrat State Desk

SPRINGDALE — An independent pathologist will be asked to review the October 1987 death of Brenda Stewart, which was ruled a suicide by the state medical examiner, Dr. Fahmy Malak.

The decision to consult an outside expert was made Thursday by local officials, including Washington County Coroner John Burrow and Prosecuting Attorney Andrew Ziser of Fayetteville, said Lt. Dennis Upton of the Springdale Police Department.

Mrs. Stewart, 33, was found Oct. 13 at her home with a gunshot wound to her left temple, Upton said. About two hours later, her estranged husband, James H. Stewart, was arrested.

The night before her death, Mrs. Stewart had filed a police report saying her husband was trying to kill her, Upton said.

It had not yet been decided who would review the case, Burrow said.

"We made this decision because of the fact we have problems with the conclusion that Dr. Malak gave us," Burrow said. "He left more questions unanswered than he settled."

The case has been considered open by local police, despite Malak's ruling and Ziser's decision not to file formal charges against Stewart, Upton said.

Ziser said Monday he was satisfied with Malak's ruling.

He said Malak had been used as an expert witness numerous times in cases he had prosecuted and that to pursue the Stewart case, despite the medical examiner's findings, would place an even larger burden on the prosecutor.

Upton said the decision to seek an independent opinion coincided, but otherwise had nothing to do, with recent news articles about some of Malak's rulings.

"This has nothing to do with the ongoing controversy about Dr. Malak," Upton said. "It's just ironic that this happened at this time. It's just a matter of answering some unanswered questions as a result of Dr. Malak's ruling."

Mrs. Stewart's sister, Vella Reagor, of Memphis, Tenn., said she hoped the family would finally get some answers to their lingering questions.

"I'm thrilled to death that they're finally doing something after all this time," she said.

A prosecutor's hearing was called in February to look into the Aug. 23, 1987, deaths of two Saline County youths who were struck by a train. Malak had said the boys were in a marijuana-induced sleep and ruled the deaths accidental.

A prosecutor's hearing is similar to a grand jury investigation but is open to the public. The prosecutor who holds the hearing decides whether to issue indictments.

# County coroner requests second opinion on death

By Rodney Bowers  
GAZETTE FORT SMITH BUREAU

FAYETTEVILLE — Washington County Coroner John Burrow said Thursday he has asked that the state medical examiner's office be ordered to release its records in the death of Brenda Sue Stewart. Burrow said he wants an independent forensic pathologist to look at the findings.

Stewart, 33, a Rogers native, died of a gunshot wound October 13 while in the Springdale home of her estranged husband, James H. Stewart. The Springdale Police Department arrested Stewart that day on suspicion of murder.

He was released after Dr. Fahmy Malak, the state medical examiner, ruled Mrs. Stewart's death was a suicide.

## Still investigated as homicide

Authorities said this week that the case is still being investigated as a homicide.

They said Mrs. Stewart had filed a complaint October 12, alleging

her husband had threatened to kill her.

Burrow had earlier told the *Arkansas Gazette* he might hold a coroner's inquest to determine the cause of death. But he said Thursday that he and Lt. Dennis Upton had talked to Washington County Prosecuting Attorney Andrew Ziser, who decided that a prosecuting attorney's hearing would be more economical and efficient. Upton is a Springdale police investigator.

Ziser was attending a political function Thursday afternoon and was unavailable for comment.

Joel Higgins, a deputy prosecuting attorney, said he was not told of Ziser's decision, but the prosecuting attorney has the power to subpoena witnesses and conduct an independent investigation.

Upton said, "Right now, that's what we're looking at — something similar to the thing that happened in Saline County. It's no reflection on Dr. Malak, as far as we're concerned. There's just some unanswered questions."

A prosecutor's investigation recently was held in Saline County to investigate the deaths of two youths who had been hit by a train.

Burrow said he and the others want the medical examiner's reports and findings turned over to an independent forensic pathologist for a second opinion. "If he [the second pathologist] disagrees with Dr. Malak, then Andrew Ziser \*\*\* will continue his investigation," Burrow said.

Burrow said Ziser plans to file a motion "in a matter of days" with Circuit Judge Mahlon Gibson seeking a court order to release the material.

An independent pathologist should be able to determine the cause of death from the available information, Burrow said, but probably wouldn't involve the exhumation of Mrs. Stewart's body, he said.

Burrows said he has not ruled out the possibility of a coroner's inquest should the prosecutor be unable to obtain the state records.

# Malak didn't assist at Michel autopsy, ex-associate says

By Bob Wells  
GAZETTE STAFF

Despite his testimony to the contrary, Dr. Fahmy Malak wasn't present at the autopsy of David Michel, a former associate of Dr. Malak says.

Dr. Raj Nanduri, former associate state medical examiner, performed the Michel autopsy. She testified at the 1983 murder trial of William Horne, who was charged with killing Michel, that Dr. Malak wasn't present. She reaffirmed that testimony, which was little noted at the time, in an *Arkansas Gazette* interview Wednesday. Another Crime Lab employee also said Wednesday that Dr. Malak wasn't there.

## Testimony more doubtful

If Dr. Malak was not present at the Michel autopsy, then his testimony linking a bruise on the body with a rifle owned by Horne is more doubtful, according to John Lisle, a Little Rock lawyer. Lisle represented Horne's father in a civil suit arising from the criminal case.

After Dr. Malak found that Michel's death was a homicide, Horne was charged. Dr. Nanduri had found the cause of death "undetermined." Horne was convicted; won a reversal on appeal and finally pleaded no contest. He was sentenced to 20 years.

The Michel case is the second the *Gazette* has found in an examination of Dr. Malak's work in which Dr. Malak testified about the condition of a body during an autopsy done when others have said he wasn't present. In the other case, Dr. Malak testified that he had helped dissect a homicide victim's body at a time in 1985 when he was on vacation.

Dr. Malak declined a request Wednesday to discuss these and other cases. He has declined numerous other requests from the *Gazette*.

Dr. Nanduri said in a telephone interview Wednesday that Dr. Malak never discussed the Michel case with her when he reversed her findings nine months after the autopsy. She said such a discussion is customary when one foren-

sic pathologist disagrees with another.

At Horne's 1983 murder trial, Dr. Malak testified that, while the autopsy was primarily performed by Dr. Nanduri and that she had written the autopsy report, he had participated in the autopsy and had later dissected the brain.

"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," Dr. Malak said. "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."

But Dr. Nanduri testified that she performed Michel's autopsy, assisted only by three crime lab employees. She also insisted that she had dissected Michel's brain.

A document from the medical examiner's office was introduced in evidence, which indicated that Michel's body arrived at the lab at 5:40 a.m. November 18.

The sheet lists the person who actually performed the dissection as R. Nanduri and then lists the initials "R. G. M." as witnesses. Dr. Nanduri testified that the initials stood for the first names of the three lab employees who assisted in the autopsy: Rusty Dillon, Gene Peacock and Mike Vowell.

On cross-examination, Dr. Nanduri rejected the prosecution's suggestion that the "M" stood for "Malak" and repeated that Dr. Malak was not present and did not dissect the brain. Mike Vowell, who was not called to testify at the trial, said Wednesday in a telephone interview that he was there and Dr. Malak was not. Dillon said he didn't have time to talk to a reporter. Peacock said he couldn't remember the autopsy.

Dr. Nanduri testified that Michel's injuries could have been sustained either in a beating or a fall and that, while she initially thought the death may have been a homicide, she never received any evidence from the police to support that conclusion.

In a telephone interview Wednesday, Dr. Nanduri, who now practices pathology in the St. Louis area, said she stood by her trial testimony.

"Sometimes in forensic pathol-

or "I just don't know," she said. "God and the dead man know. You can't play God. You have to give the benefit of the doubt to the living and let them get on with their lives."

Dr. Jerry Francisco, the Tennessee state medical examiner, also testified for Horne's defense that Michel's injuries were suffered in a fall and classified the death as an accident. Dr. Malak held that the injuries were caused by a beating and that the death was a homicide. The fatal injury, all agreed, was a fractured skull.

Dr. Malak contended that a bruise on Michel's broken left collarbone and the butt of Horne's .30-30 rifle matched perfectly, right down to a tiny nick in the butt. He illustrated the match for jurors at the criminal trial by placing a transparent photograph of the rifle butt over the bruised area in a life-sized autopsy photograph.

The *Gazette* has reported that at the civil trial, a year and a half later, it was discovered that Dr. Malak had the transparency backward. When it was properly applied, the nick in the rifle butt and a tiny irregularity in the bruise no longer matched.

Lisle, the lawyer who discovered Dr. Malak's error with the transparency, said Wednesday that the medical examiner's theory linking the bruise and the rifle butt would be even further weakened if Dr. Malak was not at the autopsy.

It would mean that Dr. Malak linked a bruise on Michel's broken collarbone and the butt of Horne's rifle solely on the basis of photographs.

# Fifty-Six mayor questions suicide ruling in son's death

BY MAX PARKER  
Democrat State Desk

The mayor of Fifty-Six, a small Stone County town, is one of several people who have recently questioned autopsy rulings by Dr. Fahmy Malak, state medical examiner.

Mayor Jerry King has compiled a stack of documents more than 3 inches thick while attempting to prove his son's 1986 death was not a suicide.

Gary Neal King, 29, was found with a gunshot wound to his chest about 6:30 p.m. July 18, 1986, along the road at the edge of the woods near Arkansas 87.

Dr. Joseph J. Halka, an associate medical examiner, performed an autopsy on July 21, 1986, and ruled King's death a suicide.

The elder King says he still questions the ruling.

"You should have seen him that day," King said Wednesday. "He was on his way to Memphis to see his mother."

The younger King, along with his twin brother, Barry, had arrived at his father and stepmother's home from Springfield, Mo., earlier that day. He later borrowed his father's pickup truck to go meet friends before traveling on to his mother's home in Memphis, Tenn.

Gary King, along with J.M. "Junior" and Janie Joy Mingues, drove that day to the wooded area where King's body was later found, accord-

## At a glance

- Fifty Six Mayor Jerry King said Wednesday he still does not believe the July 1986 death of his son, Gary Neal King, was a suicide.

- Gary King, 29, was found shot in the chest July 18, 1986. Two people with King that evening left the scene on foot before his body was found.

- An autopsy revealed Gary King had a 0.22 alcohol level when he died. Police listed the case as suspicious.

- Trace metal tests on Gary King's hands concluded the residues could be the result of either discharging a firearm or being in close proximity to the discharge.

ing to police reports.

The Mingueses left the scene on foot. Mingues told police he heard a shot and saw King lying on the ground, but thought he was asleep and didn't want to wake him.

The autopsy report states Gary King had been depressed, having family and marital problems and had recently mentioned suicide.

Jerry King said his son hadn't seen his ex-wife in two years. He said his son's depression was only noted by the Mingueses, who were cited as suspects in police reports which listed Gary King's death as "suspicious."

The state Crime Laboratory toxicology report stated Gary King had a 0.22 percent alcohol level at the time of his death. Halka reported: "The manner of death is suicide."

An Aug. 12, 1986, report from the Crime Laboratory, signed by Steve J. Cox, listed the results of tests on gunshot residues on the victim and the two suspects.

Cox said the residues on Gary King's hands "could be the result of either discharging a firearm or being in close proximity to the discharge of a firearm."

He said samples from both suspects were "unrevealing for gunshot residues." The possibility of their discharging a firearm was inconclusive, he said.

Jerry King also questioned conflicting statements given by the Mingueses, with Mingues disputing his wife's claim that she was with him when Gary King was shot.

An Oct. 16, 1986, memo from Malak, state medical examiner, noted that Sam Heuer, then the Stone County prosecuting attorney, telephoned to say the manner of death should be homicide and not suicide because of the trace evidence report and the circumstances of death.

Malak noted in the memo he told Heuer that if he sent a written report and the investigators' report to confirm the findings, the manner of death would be changed.

On Oct. 23, 1986, a handwritten notation appears on the memo saying no reports had been received.

# Malak's sworn testimony 3-3-88 conflicts in three cases

By Bob Wells  
GAZETTE STAFF

In three previously unpublicized cases, Dr. Fahmy Malak, the state medical examiner, has given sworn testimony at variance with either his own pretrial statements

under oath, state Crime Laboratory records or the testimony of others.

In a lengthy review of several of Dr. Malak's cases, the *Arkansas Gazette* has learned:

★ In a 1986 murder trial, Dr. Malak said he had participated in the

dissection of the victim, took autopsy photographs of the body and compared the victim's wounds with the alleged murder weapon. A former assistant testified that Dr. Malak had not performed those acts and was out of state when the autopsy was performed.

★ Dr. Malak gave sworn pretrial testimony that the 1979 deaths of a husband and wife were murder-suicide, with the husband shooting his wife four times before turning the gun on himself, making a total of five shots fired. Dr. Malak apparently was unaware that a six-

shot revolver had been found at the crime scene with two live rounds and four spent hulls in it. At the trial, he testified that the wife was shot only three times.

★ At a murder trial in the summer, Dr. Malak testified about firearms matters. When challenged by the defense, he said he had discussed the case with a Crime Lab firearms examiner. The firearms examiner testified he had never discussed the case with Dr. Malak.

The discoveries in the three cases follow previous *Gazette* reports detailing discrepancies between Dr. Malak's court testimony and records in other cases. He has declined six requests for inter-

views to discuss the cases.

In the first of the three cases examined, Dr. Malak testified in Hot Spring Circuit Court at Malvern April 24, 1986, as a witness in the slaying case against Ozzie Wilson. Wilson was charged in the beating of Alton Wesson.

Asked by Prosecuting Attorney Joe Hardin whether he had performed that autopsy August 5, 1985, Dr. Malak said, "On August 5, 1985, yes, an autopsy has been done in our lab, yes."

Dr. Malak never specifically said he performed the autopsy. But, in response to questions, Dr. Malak answered in the affirmative when asked whether he had taken a photograph of a fatal wound to Wesson's head and whether the photograph accurately reflected the nature of the wound the day of the autopsy.

Dr. Malak also said he compared a laceration on Wesson's scalp with an automobile jack that had been submitted to the Crime Lab as a possible slaying weapon. He said the two matched.

On cross-examination, Wilson's attorney, Fenton Stanley of Malvern, asked Dr. Malak about an injury to Wesson's back.

"We dissected that and it has been documented in the hospital," Dr. Malak said. On further questioning, he added that he was assisted by Dr. Lee Beamer, a former assistant.

"Truth of the matter, you weren't even in Arkansas when the autopsy was made, were you, Doctor?" Stanley asked.

"Who said so?" Dr. Malak asked.

After saying he couldn't remember whether he was at the Lab August 5, 1985, Dr. Malak eventually said he had reviewed Dr. Beamer's autopsy report and had personally dissected Wesson's brain.

Dr. Beamer testified that he performed the autopsy and that Dr. Malak was on vacation that day. Dr. Malak and Dr. Beamer did not have any significant disagreement as to the cause or manner of Wesson's death and Dr. Beamer was called primarily to impeach Dr. Malak's testimony on his presence at the autopsy.

Wesson was convicted of second-degree murder and sentenced to 20 years in prison.

Howard (Bear) Chandler, Crime Lab director, confirmed Tuesday that Dr. Malak was on compensatory time off from Monday, August 5, 1985, through Friday, August 9, 1985.

In the second of the cases, Dr. Malak gave a sworn pretrial deposition December 4, 1984, in a lawsuit brought by the survivors of Dale and Eunice Brown, who were found shot to death May 19, 1979.

Dr. Malak testified that Mrs. Brown was shot four times: Once in the head, with the bullet entering in the front and exiting at the back; once in the right shoulder, entering in the front and exiting in the back; once in the left side of the breast, piercing the breast and re-entering the left forearm and then re-exiting from the forearm, and

once in the back, through the chest and exiting just below the left breast.

Dale Brown was shot once, a contact wound to the chest, Dr. Malak said.

The plaintiffs' attorney, Sam Perroni, asked Dr. Malak whether, "based upon all the information you have available to you, would it be your opinion that Dale Brown shot Eunice Brown four times and then shot himself?"

"Based upon the information I have, the answer is yes," Dr. Malak said. The gun found at the scene contained four spent rounds, but it couldn't be determined whether Dr. Malak knew that then.

But at the trial, Dr. Malak said Mrs. Brown was shot only three times. The difference was that Dr. Malak said the wounds to the head and shoulder were caused by the same bullet, which entered and then exited the right shoulder and then re-entered and exited through the head.

In both the original autopsy report and in his pretrial testimony, Dr. Malak indicated the wounds in Mrs. Brown's body were caused by four shots.

Asked by Perroni about the discrepancy between his testimony at trial and his statements in both the deposition and the autopsy report, Dr. Malak said, "These are wounds, Mr. Perroni, wounds. You can translate them any way you want."

# Attorney wants new trial, says Malak erred before

BY MAX PARKER  
Democrat State Desk

A Little Rock attorney said Tuesday he would like convicted murderer William Horne to get a new trial because of an apparently critical error in the testimony of Dr. Fahmy Malak, state medical examiner.

William Horne was convicted in November 1983 of first-degree murder in the death of David Michel. Michel, 21, of Little Rock, died Nov. 18, 1982, of massive head injuries allegedly inflicted by a rifle butt owned by Horne. After that conviction was reversed, Horne pleaded no contest to second-degree murder and was sentenced to 20 years in prison.

A lawsuit seeking \$3.8 million was filed against Horne and his father, Joe Horne of England, by the Michel family. During the trial, more than a year after Horne's conviction, John Lisle, a Little Rock lawyer, discovered that a photographic transparency used by Malak to link a rifle butt to Horne's wounds apparently was applied incorrectly.

"What was obvious was the fact that the negative had been reversed to fit the wound," Lisle said, adding Malak attempted to match a nick in the .30-30 rifle butt with a tiny irre-

## At a glance

- John Lisle, a Little Rock attorney, said he would like convicted murderer William Horne to get a new trial because of an apparent error in the testimony of Dr. Fahmy Malak, state medical examiner.

- Lisle, who represented Joe Horne, Horne's father, in a lawsuit by the victim's family, said the negative of a transparency was used incorrectly by Malak to link the victim's wounds to the butt of a rifle owned by Horne.

- Malak used the transparency during Horne's criminal trial in the death of David Michel. During the lawsuit, Lisle portrayed the victim in a demonstration and Malak was unable to match the rifle butt to the victim's wound.

- Gov. Bill Clinton said he was looking into Malak's board certification.

gularity in a bruise on the victim's shoulder.

"I'd like to see him (Horne) get a new trial because of all this," Lisle said, adding he was not involved in the criminal trial.

During Horne's criminal trial, Malak exemplified the weapon match for jurors by placing the transparent photograph of the rifle butt over the bruise as shown in a life-sized autopsy photograph of Michel.

During the lawsuit, Malak was unable to illustrate the

match, Lisle said.

"As a practical matter, you can't see the notch (on the body)," Lisle said. "Only Dr. Malak can see it."

Lisle said testimony by Dr. Raj Nanduri, a former medical examiner who performed Michel's autopsy, revealed Malak was not present during the exam.

When Malak couldn't fit the transparency of the autopsy photo during the lawsuit, Lisle said that he volunteered to be the victim.

"He tried to turn the gun to fit the notch and it was physically impossible," Lisle said. "He became frustrated in trying to make it fit."

Lisle said Horne's attorney during the murder trial apparently didn't ask Malak to illustrate the match.

"Everybody watches Quincy on TV," he said. "He is portrayed as being credible and as knowing what he's doing. The jury believes what he says."

During the criminal trial, Malak testified he had the transparency for several months. The *Arkansas Gazette* reported Tuesday that state Crime Laboratory records showed a transparent photograph of a rifle butt was made only six days before the trial

See MALAK, Page 3B

*Page 1 of 2 Pages*

# Malak

• Continued from Arkansas Page began.

"Frankly, it appears from what I've read that Dr. Malak did not tell the truth to the judge," Lisle said. He said he had no opinion on why Malak would not be truthful.

"If a medical examiner gives incorrect testimony it will have a heavy weight with a jury and with a judge because of his official position," Lisle said.

Malak could not be reached at his office for comment at press time.

Meanwhile, Mike Gauldin, spokesman for Gov. Bill Clinton, said Monday morning that a news article in the *Arkansas Gazette* on Tuesday was "not accurate."

The article has Clinton saying he would look into Malak's board certification and his testimony during Horne's 1983 murder trial regarding the date the transparency was made.

"All he's done is asked for some information about it because we expected at some point to be asked for a comment," Gauldin said. "I wouldn't call it a review."

Before speaking to the Governor's State Housing Conference Monday afternoon at the Excelsior Hotel, Clinton stated his position on the issue.

"We're looking into it," he said. "We have to look at the whole board certification thing. It's more complicated than meets the eye. We've frankly had a lot of people calling in in support of Dr. Malak and pointing out that he's worked there long hours under a lot of stress over many years and it would be surprising if there was no errors made. As soon as we reach some kind of a determination, we'll be glad to let you know."

*Page 2 of 2 Lisle  
Democrat 3-2-83*



# Coroner questions Malak's authority

## Death case reviewed despite ruling

Three developments concerning the state medical examiner's office occurred Tuesday:

★ Pulaski County Coroner Steve Nawojczyk requested that the county attorney's office determine whether the findings of a coroner's inquest can overrule the state medical examiner's opinion in death cases.

★ An investigator said the October shooting death at Springdale of Brenda Sue Stewart is being investigated as a homicide despite a ruling by Dr. Fahmy Malak, the state medical examiner, that it was a suicide.

★ The mayor of Fifty-six (Stone County) and his family are upset over aruling that their son's death a suicide and say they have statements from people saying their son was murdered.

Nawojczyk said he had asked for the opinion because coroner's juries could be a method of providing immediate relief to families who cannot afford to go to court to challenge the state medical examiner's rulings.

Nawojczyk said that, under existing law, the medical examiner has the final decision in determining cause and manner of death and that decision can only be changed on a death certificate by filing a suit in Circuit Court.

In the Stone County case, Mayor Jerry King of Fifty-six said Dr. Malak in July of 1986 said his son, Gary King of Memphis, died of a self-inflicted gunshot wound. King and his former wife, Jo Anne Dolan of Memphis, are seeking to get their son's death certificate changed to a homicide and are continuing to investigate his death.

"We disagree with Malak's ruling and we were certainly dissatisfied with the law enforcement in it," King said Tuesday.

At Springdale, Lt. Dennis Upton said of the Stewart case: "As far as I'm concerned, it's still an open case." Upton is a criminal investi-

gator with the Springdale Police Department.

Stewart, 33, died October 13 after she was shot once in the head with a .22-caliber pistol in the Springdale home of her estranged husband, James H. Stewart. Upton said James Stewart called the police at 3:24 a.m. October 13 and reported his wife had shot herself. "He was there at the home at the time," Upton said.

He said Stewart was arrested on suspicion of first-degree murder. "At that particular time we had reason to believe or suspect he killed her," Upton said.

Upton said several things pointed to that conclusion, but primarily because Mrs. Stewart had filed a complaint with the police October 12 saying her husband had threatened to kill her.

Prosecuting Attorney Andrew Ziser said Stewart was released on bond pending his arraignment, but that the bond was later revoked after he allegedly threatened Mrs. Stewart's relatives.

Stewart was released from the Washington County Jail after Dr. Malak ruled Mrs. Stewart had died of a self-inflicted gunshot wound, Ziser said.

Ziser said it would be impossible to prove in court that Mrs. Stewart was a homicide victim, based on Dr. Malak's conclusion, noting, "He's the expert, not me."

State Police Maj. Douglas Stevens said State Police investigators had interviewed members of the medical examiner's office at the request of Mrs. Stewart's relatives and that the results of that investigation were turned over to the Springdale Police Department. He declined to disclose the information.

Washington County Coroner John Burrow said he will hold a coroner's inquest into Stewart's death if asked.

"If the investigation continues and Dr. Malak won't reverse his findings, then I will pick up the ball on this and call an inquest."

# Physician surprised at Malak's findings in autopsy

BY MAX PARKER  
Democrat State Desk

A physician whose patient died Jan. 17 has written of his surprise that symptoms of multiple sclerosis were not found during an autopsy by Dr. Fahmy Malak, the state medical examiner.

Greene County Coroner Dick Pace said Tuesday that Dr. Gary Goza expressed surprise in a Jan. 20 letter that evidence of the disease was not found in the body of his patient, Ricky Joe Boozer, 29, of Paragould, who was found dead in a car in a closed garage. The car's engine was running.

After interviewing family members and further investigation, officials believed Boozer's death was accidental, Pace said. Malak ruled the death a suicide and said he found no signs of multiple sclerosis, a neurological disorder which damages the central nervous system and which Boozer had been diagnosed as having nearly six years ago.

Pace said he had indicated in a report to Malak that Boozer suffered from multiple sclerosis. Surprised the autopsy results indicated no evidence of Boozer having the disease, Pace contacted Goza, the victim's physician.

"I am quite surprised that these lesions were not seen at the time of autopsy," Goza said.

• Lawyer says Malak made errors in Horne trial. 1B

in his letter to Pace dated Jan. 20. "In any case, Mr. Boozer unquestionably met all the diagnostic criteria for the diagnosis of definite multiple sclerosis."

Goza was at University Hospital in Little Rock when Boozer was diagnosed. Now a neurologist at the Northeast Arkansas Medicine Clinic at Jonesboro, Goza sent Pace a letter in response to the coroner's inquiries about Boozer's condition.

"Mr. Boozer was a patient of mine who was followed with a diagnosis of multiple sclerosis," Goza said. "This diagnosis was made at University Hospital in May of 1982. The degree of Mr. Boozer's impairment ... would be rated as moderate to severe."

Pace said family members told him Boozer was supposed to be in a wheelchair most of the time. He said several wheelchairs were found at the home.

Goza said Boozer had undergone several tests confirming the diagnosis.

On Sept. 29, 1987, Boozer underwent a Magnetic Resonance Imaging scan, Goza said. Pace said a copy of the scan was enclosed.

Teresa Luneau, a representative for Children's Hospital and who has multiple sclerosis, said this type of test is a "finer tool for diagnosing the disease."

"It comes as close as anyone can get to a positive or nega-

tive diagnosis," she said.

In the report, Goza cited "multiple focal areas of abnormalities involving the white matter which in his case was diagnostic of multiple sclerosis."

Ms. Luneau, who in 1985 won the award for education from the National Multiple Sclerosis Society, said such results indicated Boozer had a lot of areas on his brain that were plaque covered and affected by the disease. This means signals from the brain to the nerves were not being received.

## At a glance

- A Jonesboro neurologist said he was surprised symptoms of multiple sclerosis were not found in his patient during a January autopsy by Dr. Fahmy Malak, the state medical examiner.

- Ricky Joe Boozer, 29, of Paragould was found dead in a car in a closed garage with the engine running. Malak ruled it suicide, saying he found no evidence of the neurological disease.

- Dr. Gary Goza, Boozer's physician, said he diagnosed Boozer having the disease in 1982.

## Malak coming under review by Clinton

### Two issues noted

By Bob Wells  
GAZETTE STAFF

Governor Bill Clinton says he will look into both Dr. Fahmy Malak's board certification and his testimony in a 1983 murder trial regarding the date a State Crime Laboratory exhibit was made.

The *Arkansas Gazette* reported Sunday that Dr. Malak, the state medical examiner, wasn't certified in forensic pathology by the American Board of Pathology until 1985. State law requires that the medical examiner be board-certified in forensic pathology or eligible for certification "as recognized by the American Board of Pathology."

#### Objection to exhibit made

The *Gazette* reported Monday that, in a 1983 murder trial, defense attorneys objected to an exhibit Dr. Malak was offering on the ground that it had been withheld

from them despite pretrial discovery rules.

After Dr. Malak testified that he had had the exhibit "for several months," it was admitted in evidence. Crime Lab records indicate the exhibit, a transparent photograph of a rifle butt, was made only six days before the trial.

Mr. Clinton was at Williamsburg, Va., Monday addressing the Democratic Leadership Council, but his press secretary, Mike Gauldin, said the governor had been apprised of the *Gazette* articles.

Gauldin said Mr. Clinton had asked that information about Dr. Malak's board certification and his testimony in the 1983 trial be gathered.

Howard (Bear) Chandler, acting director of the Crime Lab, said Monday that Crime Lab staff had rechecked the Lab's photography records and confirmed that the exhibit was made only six days before the trial.

The medical examiner's office is a division of the Crime Lab.

Chandler said he was going to study the matter. "Any time we make a mistake it's serious," he said. "We make mistakes. We're human. A mistake by a member of the Crime Lab is more serious than other witnesses."

He said he had not been able to talk with Dr. Malak about the matter, as Dr. Malak was testifying in court Monday. The *Gazette* reached Dr. Malak by telephone but he declined to be interviewed about the articles.

Chris Raff of Searcy, president of the Arkansas Prosecutors Association, didn't have any comment in his capacity as head of the Association. "All I can speak of is my personal experience with Dr. Malak," he said. "He has testified for me in murder cases and I have always found him highly professional and competent."

Dr. Malcolm Moore Jr. of Little Rock, chairman of the State Crime Laboratory Board, had similar comments about Dr. Malak. He said Dr. Malak "has always through the years given us top-notch professional service. He has been an extremely hard-working state employe, who has worked with a high degree of professionalism."

Ark. Democrat 3-1-88

## Lawman questions suicide ruling

BY MAX PARKER  
Democrat State Desk

SPRINGDALE - The Oct. 13, 1987, shooting death of Brenda Sue Stewart is an open case, despite state Medical Examiner Fahmy Malak's ruling of suicide, a local police investigator said Monday.

But Prosecuting Attorney Andrew Ziser of Fayetteville said if he tried to prosecute the case and discredit Malak's findings, the burden would be even "more extraordinary on the prosecutor."

Ziser, like other prosecuting attorneys, depends on Malak's findings when trying criminal cases.

"The analogy would be if

the State Hospital rules someone is crazy, we let a jury decide in a case if that person is sane," Ziser said.

The body of Mrs. Stewart, 33, was found Oct. 13 at her home with a .22-caliber gunshot wound to the left temple, said Lt. Dennis Upton, a criminal investigator with the Springdale Police Department.

About two hours later, Upton said he arrested her estranged husband, James H. Stewart. Upton said Mrs. Stewart had filed for divorce and been verbally granted one but court papers were never filed.

Ziser said formal charges were never filed.

After Malak ruled Mrs. Stewart's death a suicide, Upton said, Ziser made the decision not to pursue the case.

"The ironic thing on this was that she had filed a report with us the night before (Oct. 12) saying her husband was trying to kill her," Upton said, adding this information had been forwarded with information on the crime scene investigation to the state medical examiner's office.

Mrs. Stewart's family has asked the Arkansas State Police to review the case, Upton said.

## Coroner wants ruling on inquest's use

BY MAX PARKER  
Democrat State Desk

Pulaski County Coroner Steve Nawojczyk said Monday he wants a legal opinion on whether a coroner's inquest can be held when someone disagrees with a state medical examiner's opinion.

The opinion was requested by Nawojczyk four weeks ago. Steve Curry, a Pulaski County civil attorney, is handling the matter, he said. Curry was unavailable Monday for comment.

Nawojczyk, director of the state Crime Laboratory from March 1980 until October 1981, said the opinion was prompted by "a couple of cases that I currently am still involved in." He declined to be specific.

"Family members had contacted me and asked what recourse they had when they didn't have any money to hire a private investigator or hire an attorney to litigate the matter in court," he said. "Taking a case to court is not possible for people in the lower socioeconomic class, and there should be some recourse."

Nawojczyk, who has more than six years' combined experience as a coroner in Pulaski and Garland counties, said he doesn't believe a coroner's inquest is the answer to challenging rulings from the state medical examiner's office.

"I think a coroner's inquest could be used as a stopgap measure until a reorganization

of the system occurs," he said.

He compared the role of a coroner's inquest with that of a recent Saline County prosecutor's hearing called to hear evidence in the Aug. 23, 1987, deaths of two teen-agers.

That hearing was called after the boys' parents publicly voiced dissatisfaction with state Medical Examiner Fahmy Malak's ruling.

A coroner's inquest would have 12-23 people selected from the regular jury list, Nawojczyk said.

"They review the case and hear testimony from witnesses and the medical examiner, and render an opinion on the manner of death," he said.

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# Editorial

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## Malak's status

Talk about bureaucratic confusion. A request for an attorney general's opinion on whether the state medical examiner's responsibility includes detecting the *manner* of death as well as the *cause* has opened Pandora's box for Dr. Fahmy Malak. He and the two previous medical examiners may have been appointed improperly.

Spokesman Bob Fisher says a 1969 law requires the medical examiner to be appointed by the state Medical Examiner Commission.

Where does that put Malak who was appointed in 1978 by the state Crime Laboratory director and confirmed by the director of the no-longer-existing Department of Public Safety? And what about the commission? Officials who are supposed to be serving on it were unaware of its existence until last week.

If that's not trouble enough for Malak, whose rulings often seem to invite controversy, another cloud has been raised over his certification as required by state law. It turns out that Malak wasn't certified in forensic pathology by the American Board of Pathology until 1985, though state law required him to be certified or "eligible for board certification" when he was appointed. Wouldn't being eligible suffice?

What a gray area Malak finds himself in. Fisher says that any of Malak's rulings could be challenged in court simply by citing the fact that the commission was never consulted on his appointment.

Dick Pace, president of the Arkansas Coroners' Association, says he asked for the opinion on the examiner's responsibilities because he questions Malak's conclusions concerning the manner of death in a couple of cases he is investigating.

Malak has also been under fire for his ruling of marijuana-induced sleep in the deaths of two teen-aged boys who were killed by a train while laying on tracks in Alexander last August. The Saline County prosecuting attorney's office plans to keep that investigation active despite Malak's ruling.

But isn't it the state's fault if Malak was improperly appointed? No one involved in his 1978 hiring realized then that the law existed.

If Malak's record is being called to an accounting, that's one thing. But it's something else if the state's oversight of the law is to be used as an excuse to go after him. He should be judged on his performance.

# Malak testimony raises questions

## Remark in '83 trial appears to conflict with Crime Lab records

By Bob Wells  
GAZETTE STAFF

At a murder trial in 1983, Dr. Fahmy Malak testified under oath that he had had a particular prosecution exhibit in his possession for "several months."

State Crime Laboratory records indicate, however, that the exhibit was less than a week old when Dr. Malak, the state medical examiner, testified. The defense contends the exhibit was crucial in the conviction and should not have been admitted as evidence.

During the last two weeks, Dr. Malak has declined five requests for interviews. The *Arkansas Gazette* has been unable to ask him if there is an explanation for the apparent discrepancy between his testimony and Crime Lab records.

The exhibit — a transparent photograph of a rifle butt — was being offered by Dr. Malak to illustrate his contention that a bruise on the victim's body matched perfectly with the rifle butt. The state was trying to prove that the defendant beat the victim to death with the rifle.

When the exhibit first appeared at the trial, the defense objected to its admissibility, arguing that it had been withheld from them before trial despite "discovery" rules. The rules compel the state to disclose its evidence to the defense before the trial.

### Admitted into evidence

After Dr. Malak testified November 21, 1983, that he had had the transparency for "several months," it was admitted into evidence.

But a *Gazette* review of the case shows it was made November 15. And that was too late to be part of the discovery period allowed by the judge. The judge had directed that discovery be completed by November 10.

The trial was one of the most publicized Little Rock murder cases of the decade: The trial of William Horne, charged with the beating death of David Michel almost a year earlier.

Michel, 21, died November 18, 1982, of massive head injuries he received in a late-night altercation on a Kmart parking lot in west Little Rock.

In the spring of 1983, Horne was tried and convicted of shooting and seriously wounding a friend of Michel's in the same parking lot incident. But, for more than nine months, police officers were unable to develop any evidence linking Horne to Michel's death. The assistant medical examiner who performed the Michel autopsy had ruled the manner of death as "undetermined."

In August 1983, after reviewing the case at the urging of the Michel family, Dr. Malak reversed the assistant's ruling and declared the death a homicide. From autopsy photographs and other matters, Dr. Malak concluded that a bruise on Michel's broken left collarbone matched perfectly with the butt of a .30-30-caliber rifle owned by Horne.

At the trial, Dr. Malak illustrated the match for jurors by placing the transparency over the bruised collarbone as depicted in a life-sized autopsy photograph of Michel's upper body.

The photographic transparency is a clear sheet of plastic, with the butt-plate of the rifle in black. It was made by taking a photograph of the rifle butt as viewed directly from the rear.

At the trial, the life-sized autopsy photograph was introduced into evidence first, with no objection from the defense. Dr. Malak used it to illustrate the bruised

area on Michel's left collarbone.

Moments later, the rifle butt transparency was offered into evidence, prompting Horne's attorney, Wayne Lee, to object. He said he had never seen nor heard of the transparency despite filing pre-trial motions seeking disclosure of the state's evidence.

In a whispered huddle at the judge's bench, Lee and then-Deputy Prosecuting Attorney Chris Piazza argued whether the rifle butt transparency had been made available to the defense.

Piazza argued that Lee had met with Dr. Malak at the Crime Laboratory before the trial to discuss the case and had had every opportunity to see the transparency.

### Asks when it was made

Lee insisted he had never seen the transparency and asked when it was made.

"You have the affirmative duty to provide me with things and I haven't had them," Lee said, according to the trial transcript. "I've never seen that. Are you saying that it's been in his possession, Dr. Malak's possession?"

"Dr. Malak, how long have you had that transparency?" Piazza said.

"For so long, several months," Dr. Malak replied.

The transparency eventually was admitted into evidence. The state won a first-degree murder conviction. Lee, who has since lost his law license because of a conviction in a kickback scheme, says today that the piece of evidence was crucial. Lee does not believe the jury would have convicted Horne without it.

(The conviction later was reversed for unrelated reasons.)

Dr. Malak testified that the transparency had been in his possession for "several months," but a review of the case shows that it was less than a week old at the time.

*Page 1 of 2 Pages*

Horne subsequently entered a no-contest plea to a reduced charge and was given a 20-year prison sentence. Just last week, Horne was denied a request for parole.)

A Crime Lab photo work order contained in the Little Rock Police Department's file of the Michel case says the transparency was made November 15, six days before the trial.

#### Only photograph

The Crime Lab last week confirmed that the transparency offered in evidence was made on that date. Howard (Bear) Chandler, acting Crime Lab director, also said it was the only time that a transparency was made of the rifle butt before the criminal trial. November 15, 1983, was the first and only time the rifle was ever photographed, either for a transparency or a regular photograph, by the Crime Lab, he said.

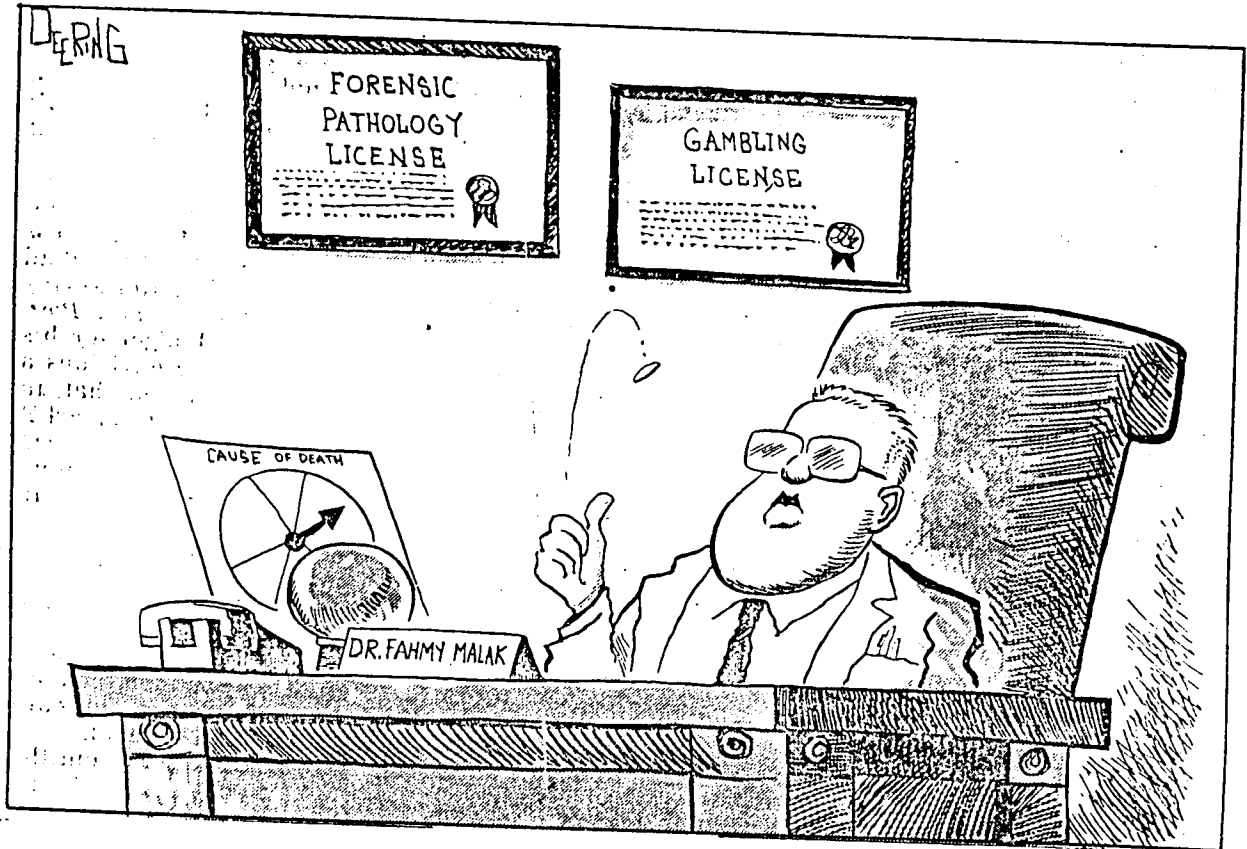
Dr. Malak declined to be interviewed Sunday. Chandler said Sunday he would recheck records this week, but that he had no reason to doubt the accuracy of what he had said earlier.

Asked his reaction to the apparent discrepancy between Dr. Malak's testimony and Crime Lab records, Chandler said: "I have no reaction at this time. I would have to study it and give it some thought. My reaction is nothing right now."

Piazza, now the prosecuting attorney, said Sunday he saw the transparency the week before the trial. He said "Wayne Lee had plenty of time to prepare" and that "Horne got a fair trial. He was guilty and should have gotten more than 20 years." On the question of the apparent discrepancy between Dr. Malak's testimony and Crime Lab records, Piazza said he would "have to go back and research" before commenting further.

The Gazette discovered the apparent discrepancy during a lengthy review of Dr. Malak's work in several cases. An article in Sunday's Gazette detailed how Dr. Malak had testified in court that he was certified by the American Board of Pathology before he actually earned the certificate.

*Page 2 of 2 Pages*  
*Ar. Democrat 2-29-88*



Arkansas Democrat/John Deering



# Malak

Continued from Page 1A.

Malak had met the statute's requirements before 1985, but said, "I intend to dig into it when I get back." Clark was reached by telephone at Washington, where he is to argue a case before the Supreme Court this week.

## Requests denied

Dr. Malak has denied a request for an interview with the *Arkansas Gazette* four times in the last week and a half and Friday specifically refused to discuss his board certification. But, he has been cross-examined about that subject in various trials in recent years. The *Gazette* obtained the following information from trial transcripts:

★ In a September 1983 federal court trial at Hot Springs, Dr. Malak said he had been board certified in forensic pathology since 1961, but under additional questioning he said he was referring to a certificate he received from Cairo University in 1962.

★ In a murder trial in 1983, Dr. Malak said he "passed the board in 1978."

★ In a 1984 murder trial, Dr. Malak said he "passed the American Board of Pathology in 1978."

But according to the American Board of Pathology, which responded to a written request from the *Gazette*, Dr. Malak did not receive a certificate of any sort from the Board until December 1982, when he obtained his primary certificate in anatomic pathology. His forensic pathology certificate came in May 1985.

Howard (Bear) Chandler, acting director of the Crime Laboratory, in which Dr. Malak works, said Friday he knew nothing about Dr. Malak's certification.

The state statute gives no definition for "eligible for board certification" other than the phrase "as recognized by the American Board of Pathology." The Board of Pathology several years ago used the phrase "board eligibility" to refer to those applicants who had met the requisite residency training and other criteria and who were eligible to take the board examinations.

But the Board no longer recognizes that phrase and does not attach any meaning to it, according to the Board's published material on the certification process. A Board spokesman declined to say in a telephone interview when the Board ceased using the phrase. A local pathologist said Saturday he believed the change came "five or six years ago."

## Many never apply

Board certification is not a prerequisite to medical practice or specialization and many qualified physicians never apply for board certification in their fields. The certificates recognize the attainment of a certain level of competence in the field.

Generally, the American Board of Pathology issues two types of certificates:

★ Primary certification in the fields of anatomic pathology and clinical pathology, which are the two main branches of pathology. Generally, a clinical pathologist consults with a patient's primary physician in interpreting laboratory tests. Anatomic pathology, of which forensic pathology is a subspecialty, includes conducting autopsies and studying body tissues to determine causes of disease and death.

Under Board policies, the primary certification entails an evaluation process including residency training and objective written and

practical examinations.

★ Special certification indicates expertise in a particular field of pathology such as forensic pathology, hematology, neuropathology and other specialties. These certificates require additional training and examination.

Chandler became acting Crime Lab director January 1, after his predecessor, Jim Clark, was appointed director of the state Transportation Safety Agency by Governor Bill Clinton.

## Aware of status

In an interview Saturday, Jim Clark said he and previous Crime Lab directors had been aware of Dr. Malak's certification status and that it had never been a cause for concern. He said he and "everybody before me" interpreted the statute's language regarding "board eligibility" to require only that Dr. Malak be eligible to take the forensic board examination.

He said he believed that Dr. Malak passed the forensic examination on his third try, but that he was not absolutely certain of that.

He said he was never aware that the American Board of Pathology had stopped recognizing the term "board eligible."

In the telephone interview Saturday, Attorney General Clark noted that he took office in 1979 and said he was certain that neither the State Crime Laboratory board nor the Crime Laboratory director had ever asked him for an opinion on whether Dr. Malak met the statute's requirements.

Board certification is usually required in order to have staff privileges at most hospitals, according to two Little Rock physicians.

Dr. Harry Ward, chancellor of the University of Arkansas for Medical Sciences, said Saturday that the hospital's staff pathologists must be board certified. He

said that, generally, most hospitals, except small-town hospitals, require physicians to be board certified in their particular area of practice in order to have staff privileges. Dr. Richard Johnson, chairman of the Pathology Department at Baptist Medical Center, said Saturday that all the Center's staff pathologists must be board certified.

The only exception is that pathologists who have just completed their training may have staff privileges, conditioned on their passing the board examinations.

## Common 20-30 years ago

Dr. Johnson said that, 20 to 30 years ago, when American medicine began moving to the board certification process, it was common for physicians not to be board certified in their particular field of medical practice.

"But that's becoming less and less true," he said.

Dr. Johnson said the primary certificates in anatomic and clinical pathology do not signify that the pathologist who holds the certificate has a superior level of skill and knowledge. Rather, it is only evidence that the pathologist has passed the examination and has the level of skill and knowledge that any qualified pathologist should possess.

The American Board of Pathology dropped the "board eligible" phrase about five or six years ago, Dr. Johnson said. He said the phrase had meant that the applicant had submitted the required credentials and was qualified to take the examination.

But various hospitals and licensing organizations began using the same phrase to cover different situations and, because of the diverse meanings, the Board dropped the phrase, he said.

# Certification or Malak came in 1985

By Bob Wells  
GAZETTE STAFF

Dr. Fahmy Malak, who became state medical examiner in 1979, didn't become "board certified" in forensic pathology until May 1985, according to the American Board of Pathology at Tampa, Fla.

But in two trials, Dr. Malak has testified that he was "board certified" as early as 1978.

from the discrepancy between Malak's testimony and

Malak's tenure often controversial, 6A. the Board's records, the certification question figures in Dr. Malak's eligibility to hold the job before 1985.

Since 1979, state law has required that the medical examiner be board certified in forensic pathology or "eligible for board certification as recognized by the American Board of Pathology in forensic pathology."

Attorney General Steve Clark declined to give an informal opinion Saturday on whether Dr. Ma-

# Malak always complex and frequently controversial

By Bob Wells  
GAZETTE STAFF

In his ninth year as state medical examiner, Dr. Fahmy Malak has been under fire recently for his findings in the deaths of two Saline County teen-agers.

It's not the first time that Dr. Malak, the medical examiner's office or the state Crime Laboratory has been controversial.

Indeed, controversy seems to be a part of the job.

Only a few months after being hired as an assistant medical examiner in September 1978, Dr. Malak took a front-row seat to the job's pressures. The medical examiner then, Dr. Stephen Marx, resigned in March 1979 after his findings in two controversial cases came under attack.

## Took job in 1979

Dr. Malak was elevated to the medical examiner's post in May 1979, becoming only the third state medical examiner since the office was created in 1969. Before that, the medical examiner's duties were assigned to the head of the pathology department at the University of Arkansas Medical School.

Until the last few years, Dr. Malak received mostly favorable publicity. In the William Horne murder trial in November 1983, for example, Dr. Malak played a major role in the state's successful prosecution of Horne.

Horne was convicted in Pulaski County of the November 1982 beating death of David Michel. For more than nine months after Michel's death, the police were unable to find sufficient evidence to charge Horne. In August 1983, though, Dr. Malak reversed an assistant's ruling that the manner of death was "undetermined" and declared it a "homicide."

Even at that trial, however, Dr. Malak's findings were contested by expert witnesses for the defense, including Dr. Raj Nanduri, the former assistant who performed the Michel autopsy, and Dr. Jerry Francisco, the Tennessee medical examiner.

The controversy over the Saline County deaths is the third con-



—Gazette File Photo  
DR. FAHMY MALAK

cerning Dr. Malak's findings in 18 months.

## The cases:

★ In the Saline County case, Dr. Malak ruled that two teen-agers, Larry Kevin Ives, 17, and Don George Henry, 16, were run over by a train after they fell asleep on the train tracks and became unconscious while under the "psychedelic influence" of marijuana.

Other pathologists have said it is highly unlikely that marijuana could make a person unconscious. At a public investigation of the deaths last week, Dr. Malak refused to back away from his opinion and said others were merely speculating about the boys' deaths.

★ In August 1986, controversy arose over Dr. Malak's findings in the death of Kevin Appleyard, a 31-year-old mentally retarded man who died in a state facility while being restrained by four attendants. Dr. Malak concluded that the pressure of the attendants' restraint suffocated Appleyard.

Appleyard's autopsy was conducted by staff pathologists at University Hospital, who concluded, because Appleyard's lungs were filled with vomit, that he died from aspirating his stomach contents. The pathologists were unaware that Appleyard had been

restrained at the time of his death and when they were advised of that fact, the case was turned over to Dr. Malak.

By that time, though, Appleyard's body had been cremated. Dr. Malak based his findings on the original autopsy report, body organs saved from the autopsy and autopsy photographs.

University pathologists said the photographs Dr. Malak used were "grossly overexposed" and not of sufficient quality to make a medical determination. In addition, pathologists interviewed later by the *Arkansas Gazette* indicated that Dr. Malak may have given insufficient consideration to the possible side effects of Thorazine, an antipsychotic medication that Appleyard had been taking for several years.

Since the mid-1950s, shortly after Thorazine began being widely used in the United States, medical journals have repeatedly noted a phenomenon of sudden death in patients taking Thorazine or other antipsychotic drugs.

Dr. Malak's findings led to a political controversy that ended with the firing of several state employees. The attendants who restrained Appleyard contended they had applied proper restraining holds allowed for use on unruly patients.

★ In another case, reported in the *Arkansas Democrat* last fall, several pathologists disagreed with Dr. Malak about the cause of an infant's death in Lonoke County.

The child, Terry Yearwood, 2, died August 23, 1986, in his parents' mobile home. Dr. Malak ruled the death a homicide by "forced drowning" and rejected any contention that the child's death may have stemmed from a heart condition.

In all capital letters, Dr. Malak's autopsy report on the Yearwood death says "NO MYOCARDITIS IS PRESENT." Myocarditis is an inflammation of the muscular walls of the heart.

But two other pathologists, one hired by the family and another hired by the prosecution for a third opinion, found that the baby had died from myocarditis. As a result, a murder charge against the child's mother was dropped and

the father, who had admitted striking the child the night of the death but disputed that the child had been drowned, pleaded guilty to a reduced charge of second-degree murder. Proof of a premeditated forced drowning could have supported a first-degree murder charge, which carries heavier penalties.

After the case was closed, Dr. Malak submitted the case file and tissue samples to the Armed Forces Institute of Pathology at Washington. Although its report did not contain the word "myocarditis," the institute concluded that there was evidence of damaged heart tissue, similar to that found in cases reported in medical journals of deaths from prolonged child abuse. The condition could cause spasms in the heart, according to the institute's report.

(Dr. Malak has declined repeated requests from the *Gazette* for interviews.)

## Differences with staff

Dr. Malak has had differences with his own staff.

In his nine years as medical examiner, Dr. Malak has had nine different assistant medical examiners, many of whom left after only a few months to a year.

One of those former assistants, Dr. Lee Beamer, has filed a lawsuit in federal court seeking reinstatement. He frequently appears as a defense witness challenging Dr. Malak's autopsy findings.

Jesse Chandler, a former field investigator with the medical examiner's office, said he had a standing bet with other employees at the Crime Lab. Every time a new assistant came, Chandler said, he would have a \$10 bet to all takers that the new assistant would be gone in six months.

"Sometimes I lost, because they'd stay a little longer than six months," he said. "And it wasn't because they may not be good or couldn't do their job. I just didn't think they could put up with Malak."

Chandler worked for Dr. Malak for six years before resigning in June 1986. Interviews with him and other laboratory employees who would not speak for attrib-

ution portray Dr. Malak as hard working, almost driven.

## Suffered heart attack

In 1982, while attending a conference in Florida, Dr. Malak suffered a heart attack, but took great care to conceal that fact and get back to work as soon as possible, Chandler said.

"He got real upset when he got back from Florida," Chandler said. "He saw the newspaper articles that said he had a heart attack. He called the newspapers and television stations and bitterly complained."

A series of short *Gazette* articles in February and March 1982 tend to confirm Chandler's account. After two short articles reported that Dr. Malak had suffered a heart attack in Florida and was in intensive care, a third article was published February 19 in which Dr. Malak's wife said he had not suffered a heart attack, but merely an incorrectly diagnosed stomach problem.

March 29, 1982, the *Gazette* reported that Dr. Malak underwent open heart surgery at St. Vincent Infirmary at Little Rock.

Chandler said that, soon after his surgery, Dr. Malak was working three or four hours a day and gradually built up to his full strength after six months. Chandler said he tried to suggest to Dr. Malak that he not push himself so hard.

Chandler said Dr. Malak told him that if the governor's office, the news media and prosecutors around the state thought he had been laid low by a heart attack, they would lose confidence in him and think he couldn't perform his job.

Chandler described Dr. Malak as a complex man, who would be strict with employees one minute and then "turn around and do something that would make you forget how bad to you he had been."

Dr. Malak always made sure the secretaries had flowers on Valentine's Day and Secretaries Day and, on his many trips to trials around the state, would often clip roses from a courthouse flower

garden and give them to his secretaries, he said.

## Worked at Chicago

Before coming to Arkansas in 1978, Dr. Malak worked from December 1977 to September 1978 for the Cook County medical examiner at Chicago. He has testified occasionally that he was the "deputy chief medical examiner" in that office. The office said he was one of many assistant medical examiners.

In his testimony in various trials, Dr. Malak has said he is licensed to practice medicine in Arkansas, Illinois and Pennsylvania. At least once, at a civil lawsuit at Hot Springs in 1983, Dr. Malak added Indiana to that list.

In fact, his license expired in 1978 in Pennsylvania and in 1982 in Illinois, though he would need only pay past-due licensing fees to be back in good standing, agencies in those states said. Spokesmen for the agencies said it would be technically correct for Dr. Malak to say he is licensed in those states.

However, the Indiana Health Professions Bureau said Dr. Malak was never licensed to practice medicine in that state and had a temporary educational permit that expired December 31, 1976. He participated in internship and residency programs in Indiana from 1971 to 1975.

After that, Dr. Malak received his forensic pathology training on a one-year fellowship with the Allegheny County coroner's office at Pittsburgh. After his fellowship, he worked as a staff pathologist in the same office for another year, before moving to Chicago. There, he worked as a staff pathologist at Edgewater Hospital for eight months before joining the Cook County medical examiner's office in December 1977.

A native of Egypt, Dr. Malak graduated from the Cairo University medical school in 1962. After an internship with the Egyptian Ministry of Health, he was in general practice with the Ministry of Public Health and the Pan American Oil Company.

He came to the United States in 1969 and became a naturalized citizen in 1970.

In an interview Saturday, Jim Clark said he and previous Crime Lab directors had been aware

# 19-year-old law could challenge Malak's position

BY MAX PARKER  
Democrat State Desk

There may be some question as to the legality of Dr. Fahmy Malak's appointment as state medical examiner, due to a law that says a non-functioning commission should make appointments to the position.

"If someone wanted to challenge his appointment and challenge the things he's said and done, it's possible they could go to court and cite the fact the commission was never consulted ...," said Bob Fisher, a spokesman with the attorney general's office.

The state Medical Examiner Commission, according to Arkansas statute 12-12-306, resulted from a 1969 legislative act.

"The commission shall appoint and employ a state medical examiner," the statute says. "The commission may remove the state medical examiner only for cause."

On Feb. 18, the Arkansas Democrat reported a majority of the commission's five members were unaware of its existence.

The commission is composed of the dean of the College of Medicine at the University of Arkansas for Medical Sciences, the director of the Arkansas State Police, the director of the Arkansas State Board of Health, a representative named by the Association of the Chiefs of Police of Arkansas and a member named by the Arkansas Sheriff's Association.

"I don't see any evidence it's been repealed," Fisher said of the law, adding the statute revision commission probably would have noted it when changes were made in November 1987.

"If it's on the books it should have the same force and validity that every other law should have."

Malak was hired Oct. 1, 1978, as an associate medical examiner by then-state Crime Laboratory Director Clay White. In March 1979, Malak became acting state medical examiner and was officially hired May 16, 1979, as state medical examiner.

"I hired Dr. Malak," said White, now the Garland County sheriff. "The Department of Public Safety director approved the appointment."

The state Department of Public Safety was created in 1979 to serve as an umbrella organization over 10 agencies with safety and law enforcement functions.

Rep. Tommy Robinson, D-Ark., was director of the public safety department when Malak became the state medical examiner.

"I basically approved it (Malak's appointment) and sought the governor's approval," Robinson said Thurs-



Dr. Fahmy Malak

## Deputy prosecutor to report findings on youths' deaths

BENTON — Deputy Prosecutor Richard Garrett will announce at 8:30 a.m. today the findings of his prosecutor's investigation into the deaths of two Saline County youths.

Kevin Ives, 17, and Don Henry, 16, were hit by a train Aug. 23, 1987, in Saline County. The boys lay motionless on the tracks as the train approached.

Garrett conducted an investigative hearing on the deaths on Feb. 18-19 and this past Monday. The hearing was called after the boys' parents publicly requested a grand jury investigation.

day.

Robinson said he, too, was unaware of the medical examiner commission and its duties.

"I didn't know we had one. I've never been aware of it."

The state crime lab became a separate agency on July 1, 1981, after the public safety department was abolished by former Gov. Frank White.


Mike Gaudin, spokesman for Gov. Bill Clinton, said Wednesday the governor's legal counsel could not confirm the commission's status.

"From what we know about it, it's just a very cloudy issue," he said.

"The governor's office has operated under the assumption that as an employee of the crime lab, the medical examiner operates under the function of the director of the crime lab."

The statute governing the executive director of the crime lab does not assign the duty of hiring the state medical examiner.

# Legislator requests opinion on duties of medical examiner

Arkansas  Gazette.

Friday, February 26, 1988 • •

By Lamar James  
GAZETTE STAFF

**PARAGOULD** — State Representative Mike Todd of Paragould has asked the state attorney general's office for an opinion spelling out the duties of the state medical examiner.

Todd said Thursday that he made the request last week on behalf of Dick Pace, president of the Arkansas Coroners' Association and Greene County coroner.

Todd said the request was prompted by two recent deaths in Greene County in which Dr. Fahmy Malak, the state medical examiner, made rulings on the manner and cause of death. He said the rulings on the manner of death "tend to limit any other investigation" by local authorities. Todd said the medical examiner should rule on the cause of death and leave the determination of the manner of death up to local authorities.



—Gazette File Photo

**MIKE TODD**

## Not stated in code

Section 12-12-318 of the new Arkansas code states in part that "the state Crime Laboratory shall make such examinations or investigations or perform such autopsies to determine the cause of death." The medical examiner's office is part of the Crime Lab. That section does not state who shall determine, for instance, if a death is a homicide or suicide.

Jim Clark, former director of the state Crime Lab, said that the medical examiner has the authority to determine the manner of death and that the words "and manner" apparently were dropped from the section through a publishing error.

He said another section of the new codification — section 12-12-305 — which deals with the functions of the Crime Lab, says in part that "pathology and biology ... shall investigate and make a determination of the cause and manner of deaths which become subject to the jurisdiction of the state medical examiner."

Dr. Malak contends that "the cause of death is two causes — a medical cause and a legal cause" and that "the manner of death is a part of the cause."

## Notes contradictory rulings

Pace noted two cases where Dr. Malak contradicted a coroner

ruling.

In one case, Pace said, a 16-year-old boy was found shot in the head and all local investigation "pointed that it was an accidental shooting, yet the medical examiner ruled it a suicide."

In another case a man who had had multiple sclerosis for six years was found dead in a car in a closed garage with the engine running. Pace said it appeared that it was an accidental carbon monoxide poisoning and that the man's physical disability contributed to the accident, but Dr. Malak ruled it a suicide and found no evidence of multiple sclerosis.

## Defends findings

Dr. Malak said that Pace did not mention that the boy who was found shot in the head had tried to commit suicide in the past. He said the man found in the car "doesn't have multiple sclerosis. This is a suicide. If I rule it an accident I will lose credibility. I am making a ruling the way it is."

Todd and Pace said the timing of the request had nothing to do with the recent investigation into the deaths of two Saline County youths who were run over by a train. Dr. Malak's conclusion that the youths were in an unconscious state because they had smoked marijuana has been challenged by their families.

# Ruling sought to clarify Malak's duties

BY MAX PARKER  
Democrat State Desk

An attorney general's opinion was requested last week to clarify the duties of the state medical examiner, said Dick Pace, president of the Arkansas Coroners' Association.

The question has taken new relevance in light of a controversial ruling by Dr. Fahmy Malak, state medical examiner, involving the case of two Saline County boys run over by a train Aug. 23, 1987, while under the influence of marijuana.

However, Pace, who is also Greene County coroner, said that incident was not the reason the opinion was sought. It was requested in a letter dated Feb. 16 by state Rep. Mike Todd of Paragould.

"I think my request is only coincidental with that (Saline County incident) coming to the forefront," Todd said during a telephone interview Wednesday. "There were some disagreements on some autopsies in our county."

"Is it the duty of the state crime lab and/or the state medical examiner to detect the manner of death as well as the cause of death when conducting an autopsy?" the request asked.

Malak said Monday he was authorized by state law to determine the cause and man-

ner of death. His statement came during the third and final day of a prosecutor's hearing into the early morning deaths of Larry Kevin Ives, 17, and Don George Henry, 16, who were hit by a Union Pacific train in Saline County.

"It may not be his place to make that determination," Todd said.

Deputy Prosecuting Attorney Richard Garrett called the hearing after the boys' parents questioned Malak's ruling that the youths were lying side by side on the tracks and unconscious from the effects of marijuana when the train ran over them.

Arkansas statute 12-12-318 specifically outlines the authority and restrictions of the state Crime Laboratory in performing autopsies.

"The state Crime Laboratory shall make such examinations or investigations or perform such autopsies to determine the cause of death," the statute says in part. The law does not specifically state who shall determine the manner of death.

"The state crime lab is to determine the cause of death," Pace said during a recent interview. "Nowhere do I see anything in the statute where it mentions the medical examiner can determine the manner of death."

Pace said he spoke with Attorney General Steve Clark on Monday and was assured the opinion would be ready in about 10 days.

There are three possible manners of death, Pace said. A person's death can be ruled suicide, accidental or homicide. At times it is ruled undetermined.

"I'm involved in a couple of investigations now where I'm questioning the manner of death ruled by the medical examiner," said Pace, who has been a coroner for four years.

Pace said the request for an official opinion was "not a personal attack on Malak."

"The first and foremost concern is to get coroners in the state trained," he said. "Then we want to give them a good set of laws to work with. Now they're too vague and too ambiguous. Things just aren't being done consistently."

Pace, who is also a member of the attorney general's task force on death scene investigations, said a reorganization of county coroners occurred when the task force was formed last June.

"We finally realized coroners needed to be better educated and better trained," Pace said.

# Malak's decision on railroad deaths not first dispute

BY MAX PARKER  
Democrat State Desk

The autopsy ruling on two Saline County youths killed last summer is not the only instance where others have disagreed with the state medical examiner's decision.

A prosecutor's hearing into the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant was called after the boys' parents contacted the media to voice displeasure with Dr. Fahmy Malak's ruling.

Police investigators and a county coroner told the *Arkansas Democrat* on Wednesday they had also been involved in cases where their findings countered Malak's rulings.

Malak ruled the January death of Donnie Long, 16, of Paragould a suicide. Long died from a self-inflicted gunshot wound to the right temple of his head, said Ted Dortch, a criminal investigator with the Greene County sheriff's office.

"I have closed out my case as an accident," Dortch said Wednesday. "He rules on the cause of death. As far as the investigation goes, I felt like that was our determination down here."

In an article called "Suicide" written by Malak and published in the 1982-1983 issue of *Arkansas Municipal Police* magazine, he said the following:

"The Medical Examiner's findings together with the results ... of the evidence and the investigation will produce a proper conclusion."

Dortch said Long and a cousin had been hunting Jan. 10. The boys had returned to Long's home later that day and were cleaning their weapons.

Long's cousin had placed a 22-caliber pistol on a table, Dortch said, adding the cousin said he thought all the cartridges had been fired and the pistol was empty.

## At a glance

- Police investigators and a county coroner say they have disagreed with autopsy rulings by Dr. Fahmy Malak, state medical examiner.

- Malak ruled the January shooting death of a Paragould youth a suicide. An investigator with the sheriff's office and the county coroner believe it was an accident.

- Malak ruled the March 20, 1985, death of Dr. Chester Cadwallader III of North Little Rock a suicide. He was found hanged in a shower at the BridgeWay psychiatric hospital.

- During a trial of the Cadwallader case, resulting from a lawsuit against the hospital and its staff, Malak said he did a further investigation. If the information he received was factual, Malak said it would have been an accidental death.

The youths' had been discussing Long's future after his high school graduation, Dortch said.

He said the cousin was busy cleaning a rifle and didn't know Long had picked up the pistol until he heard the gunshot.

"A kid talking about his future just doesn't commit suicide," Dortch said. "This boy showed no tendencies of being suicidal. My investigation shows the boy had a happy home life and had no problems at school. It was just an accident."

Based on his own investigation, Greene County Coroner Dick Pace said he also believed the shooting was an accident, adding he didn't think the state medical examiner was authorized to determine the manner of death.

Pace, who is also president of the Arkansas Coroners Association, said an attorney general's opinion has been requested to clarify Malak's authority on autopsy rulings.

"If they have any problem with my ruling, I suggested to them to file a petition in a court of law," Malak said Wednesday. "If the court finds it was an accident, fine with me. If they find it was a suicide, fine with me."

Another disparity arose in the March 20, 1985, death of Dr. Chester Cadwallader III of North Little Rock.

Cadwallader, a neurologist, was found hanged with a belt in a shower at the BridgeWay psychiatric hospital in North Little Rock.

Malak ruled the manner of death a suicide.

Cadwallader had admitted himself to the hospital for severe depression, according to investigative records obtained from the Pulaski County Coroner's office under the Arkansas Freedom of Information Act.

Cadwallader's widow, Naomi, filed a lawsuit against the hospital and three of its employees, citing negligence in not preventing her husband's death.

The lawsuit went to trial April 23, 1987. Malak testified he originally ruled the death a suicide, but after further investigation concluded it would be ruled an accidental death if the information he received was factual.

During cross-examination, Malak said Cadwallader's death fit the description of auto-erotic self-asphyxiation, a sexual technique whereby oxygen is deprived to heighten sensations during auto-erotic acts.

"I did not find out about this new opinion until the day of the trial," said Edward Sutherland, a Baton Rouge, La. attorney who represented Mrs. Cadwallader.

Sgt. Carl Beadle, a criminal investigator with the Pulaski County sheriff's office, said Wednesday his investigation revealed Cadwallader told a hospital employee shortly before his death that he felt "worthless and of no use."

"I still believe it was suicide," said Beadle, who has been an investigator for six years.

The jury found the hospital and its employees were not negligent.

Malak  
1987

BY ROGER HEDGES

Democrat Staff Writer  
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**WARD** - Questions linger about last year's death of 2-year-old Terry Yearwood in this small Lonoke County city, even though his father admitted he struck the boy and the boy never regained consciousness.

Claude Yearwood Jr. pleaded guilty Feb. 27 to second-degree murder and was sentenced to 12 years in the state Department of Correction.

However, since Yearwood was accused, the Rev. Steve Westbrook of First Landmark Baptist Church in Ward has told anyone who would listen that Yearwood does not belong in prison.

Westbrook, who became the Yearwoods' minister after the death, but knew them previously, maintains Yearwood pleaded guilty to protect his wife and allow her to regain custody of the couple's other two sons.

"I've fought an uphill battle for a long time to convince people the Yearwoods are not monsters," Westbrook said.

First-degree murder charges were lodged against both parents Aug. 25, 1986. The mother's charge was dismissed after Yearwood entered his plea.

Deneen Yearwood told the *Arkansas Democrat* that her husband pleaded guilty after authorities told him that was the only way she could regain custody of their children.

Armed with conflicting autopsy reports, one of which indicated Terry suffered from a heart condition, Westbrook claimed there is no evidence Terry was murdered - even though the Yearwoods had been investigated for child abuse in the past.

Initially, the Yearwoods, both now 23, told authorities Terry died in his sleep at the family's mobile home early Aug. 23.

But Ward Police Chief Tommy Wilson and Lonoke County Sheriff J.O. Isaac, the first authorities to examine the body, stated the child was

soaking wet and suspected he had drowned.

The body was sent to Little Rock, where Dr. Fahmy Malak, state medical examiner, determined Aug. 25, 1986, that the death was a homicide by forced drowning.

Three days later, a private autopsy requested by the Yearwoods by Dr. Lee F. Beamer of Maumelle indicated the boy did not drown. Beamer, a forensic pathologist who had been fired by Malak, found that Terry was suffering from myocarditis, an inflammation of the muscular wall of the heart.

Malak reported that no myocarditis was present, adding Beamer could not make a valid determination about drowning because the condition of the respiratory system would have been altered by the first autopsy.

Another pathologist who examined both autopsy reports and slides of body samples said he found evidence of myocarditis, again contradicting Malak's finding.

Still another pathologist examined heart tissue samples and found no "significant pathologic process" involved.

Malak said three other pathologists examined the tissues and all agreed with him about the absence of myocarditis.

Under repeated questioning at the Lonoke County Courthouse that day, Yearwood stated he hit his son, with a closed fist, in the chest or abdomen. He said Terry almost immediately lost consciousness and appeared to be dead.

Mrs. Yearwood said recently Terry had attempted to run from a diaper changing. She said she was certain her large, muscular husband had not struck the tot hard, explaining it was more of a grabbing motion to stop him from running away.

The parents said several glasses of water were poured on the child in an attempt to revive him.

Yearwood's sister, Melody Kay Troutman, who Mrs. Yearwood said saw the body almost immediately after Terry was hit, told a reporter last week that the back of Terry's head was not wet. Ms. Troutman said that indicated he was not held under water.

Mrs. Yearwood said the couple initially lied about Terry dying in his sleep because they were afraid. "I don't know what made me say it, but I did."

Locked in the Lonoke County Jail, the Yearwood couple were unable to make bonds reduced from \$100,000 to \$50,000 each, and remained incarcerated for the next six months.

Their two other sons, ages 4 years and 3 weeks, were placed in foster homes.

The older son told one of his foster parents his father had "choked" Terry, and repeated his statement to authorities.

Authorities learned Yearwood was wanted in Hamilton County, Tenn., where the family used to live, on February 1986 charges of burglary and forgery. Yearwood currently is being held in Chattanooga, Tenn., and is scheduled to enter a plea this week. The state offered a three-year sentence in exchange for a guilty plea, according to the county district attorney's office.

Mrs. Yearwood said her husband was owed money by an employer and, in an attempt to get it, broke into a business and wrote himself a check. She said the businessman, Jeff Brown, was willing to drop the charges. The *Democrat* was unable to contact Brown.

Rubin Taylor, Yearwood's court-appointed attorney in Chattanooga, said Mrs. Yearwood's account was his understanding, too, but the charges were standing because they were issued by the state, not the individual.

Authorities also discovered that social service workers in Oklahoma and Arkansas investigated the Yearwood family for child abuse prior to Terry's death.

*Page 18 L Taylor*



## 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. Aubry 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."

*Page 2 of 3 pages*  
*Newport 5-5-91*

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

*Page 3 of 3 pages*  
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# Prosecutor hires experts to check Malak report

## Bosson doubts lab director's review

by Joe Nabbefeld

Gazette Staff

Prosecuting Attorney Paul Bosson of Hot Springs has enlisted four forensic pathologists to review independently a disputed autopsy report by Dr. Fahmy 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 Grezorep died Aug. 18 of a shot in the head from a distance, Bosson said. In Malak's testimony, Malak testified in court that the shot was fired from a .22-caliber gun held in the victim's head, contradicting witnesses who said 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 trial differed with information 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.

## Controversy commonplace in Malak's rulings

By DON FOURNIER  
Associated 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 job 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 doctored photographic 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 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."

*Page 2 of 2 pages*  
*Ar Democrat 6-10-91*

## METRO/STATE

# Malak says criticism won't make him quit

Continued from Page 1A

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."

*Page 2 of 2 pages*  
*Gazette 6-9-91*



# 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.

No one disputes that Malak has a heavy workload. 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 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.

*Page 1 of 2 pages  
Ar Democrat  
6-9-91*

# 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."

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.

## 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.

*Page 2 of 2 pages*  
*Mr. Democrat 6-9-91*

# 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-

THE COMMERCIAL APPEAL MEMPHIS, TUESDAY, JUNE 4, 1991

From Page A1

## 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."

Please see MALAK, Page A7

## 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

See CRIME LAB/11B

## 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.

■ Potlach 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

POLITICS 1991

**Meredith Oakley**



It seems too good to be true, and it is certainly years overdue.

Fahmy Malak is job hunting. He was reported Tuesday that 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. Another state's loss will be our gain as 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

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. Haresh 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.

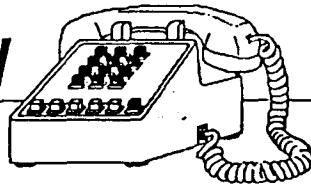
"He inquired as to whether there were any openings in my office," DiMaio said. "He expressed dissatisfaction with his current position. He felt he was being unjustly harassed. That's about it."

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

Democrat 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 Lemons 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

6-23-91  
5-17-91

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-sings 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 142 (Page)

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.

*Page 2 of 2 pages*  
*An Revocat 5-17-9*

## 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 suggestion," Clark explained last week. "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.

Page 1 of 3 Pages



# Despite conviction, issue of guilt raised

## in tot's death

The sheriff of Seminole County, Okla., where the family resided before moving to Ward several months before Terry's death, told investigators the Yearwoods were twice investigated for child abuse by Oklahoma authorities, but said he believed abuse never was substantiated.

A caseworker of the Arkansas Department of Human Services visited the family just days before the death and found a severe burn on Terry's foot. The Yearwoods claimed the boy stuck his foot under scalding tap water in the bathtub. A Beebe physician treated the wound and told investigators the Yearwoods' explanation was plausible.

The caseworker also reported there was little food in the house, even though Yearwood was employed by a local manufacturing company. Ms. Troutman said the children frequently ate at her home.

C.P. Christian, the Yearwoods' attorney, said criminal charges form "sort of a sliding scale" rather than having black-and-white definitions.

Yearwood received a 12-year sentence when the maximum for second-degree murder was 20 years, Christian said. The maximum for penalty for manslaughter, on a first offense, is 10 years.

Christian said had the case gone to trial, Mrs. Yearwood almost certainly would have been acquitted, but Yearwood might have been found guilty as charged — first-degree murder — and sentenced to the maximum of 40 years in prison.

"That jury's full of mamas and papas," said Christian. "The fact is, a young boy is dead and the father said he hit him and this is Lonoke County, Ark."

Westbrook and Mrs. Yearwood said they have been in contact with another attorney, who will attempt to reopen the case "for \$1,000 up front."

Mrs. Yearwood, who works at a pizza parlor, said raising the money would be a problem.

"If the Yearwoods had the money to pursue it, I don't think (Yearwood) would be in jail now," Westbrook said.

*Page 2 of 2 Pages*  
*10-11-87*

# Autopsies come into conflict on how death came to boy

• 1987 Arkansas Democrat  
BY ROGER HEDGES  
Democrat Staff Writer

## Autopsy

• Continued from Page 3B

Barring some unforeseen development, Claude Yearwood Jr. and his wife, Deneen, are likely to remain the only people to know exactly how their 2-year-old son died Aug. 23, 1986, in a mobile home in Ward (Lonoke County).

Two autopsies and a half-dozen other examinations of body tissues resulted in conflicting reports and conclusions about the cause of Terry Yearwood's death.

Considering the nature of the two autopsy findings, the president of the National Association of Medical Examiners told the *Arkansas Democrat*, a disagreement among the pathologists was not surprising.

Dr. Fahmy Malak, Arkansas medical examiner, ruled the case a homicide by forced drowning.

Malak, in his autopsy report issued two days after the death, stated the boy's clothes were wet and his lungs full of frothy fluid.

That same day, first-degree murder charges were filed against the Yearwoods. Six months later, Yearwood pleaded guilty to second-degree murder and the charge against Mrs. Yearwood was dropped.

Although Yearwood stated he hit Terry in the chest or abdomen and the boy never regained consciousness, Malak did not report any bruise that could have resulted from the blow.

Three days after Malak examined Terry's body, a private autopsy was performed at the request of the Yearwoods by Dr. Lee F. Beamer of Mammelle. It indicated the boy did not drown.

Beamer, also a forensic pathologist, found that Terry was suffering from myocarditis, an inflammation of the muscular wall of the heart.

In a letter to the Yearwoods' attorney, C.P. Christian of Jacksonville, Beamer stated the death could have been caused by a cardiac arrhythmia, or excessive fluttering of the heart, due to the myocarditis.

Malak stated in his report that "no myocarditis is present."

Malak recently said Beamer could not make a valid determination about drowning because the condition of the respiratory system would have been altered by the first autopsy.

Beamer has disagreed with a number of Malak's autopsy findings since Malak fired Beamer from the state medical examiner's office in 1985.

Their conflicting opinions on what caused the death of Kevin Appleyard, a mentally handicapped man who died Feb. 18, 1986, while restrained by four attendants at the Benton Services Center, drew media attention in August 1986.

As associate state medical examiner, Beamer had the authority to perform official autopsies without supervision. The official reason for his firing was unsatisfactory performance.

Beamer, who now has a general medical practice in Hot Springs Village (Garland County), filed a federal lawsuit against Malak and his boss, state Crime Laboratory Director Jim Clark, alleging the firing violated Beamer's civil rights.

Beamer also sued Malak for slander in Pulaski County Circuit Court. Malak filed a counterclaim, alleging Beamer had slandered Malak. Both the federal and circuit suits are pending.

Faced with Beamer's findings in the Yearwood case, Prosecuting Attorney Will Feland of Cabot on Feb. 16 asked another pathologist, Dr. Douglas E. Young of Little Rock, to examine the two autopsy reports and some microscopic slides containing samples from Terry's body.

Young reported Feb. 19 that he found evidence of myocarditis, again contradicting Malak's finding.

Furthermore, Young stated he found evidence of degeneration in nerve cells of the brain indicating the boy did not die "outright." He stated the condition appeared to indicate the brain suffered from a lack of oxygen for four to six hours or more while the boy was alive.

Feland, however, recently told the *Democrat* that he learned after receiving Young's report that Young had been contacted by the Yearwood family before agreeing to study the case.

Feland said he was concerned about that contact and asked Malak to obtain other opinions. Records show Malak sent the tissue samples to the Armed Forces Institute of Pathology in Washington, D.C., which did not issue a report until March 26 - weeks after the case was closed.

The Armed Forces Institute report makes no mention of myocarditis, but refers to damaged heart tissue described as similar to conditions found in child abuse-related deaths.

Malak said the report indicates the inflammation was caused by stress over a period of time, not myocarditis.

Feland's file contained another pathologist's report on the case. Dr. Jorge F. Jimenez of the University of Arkansas for Medical Sciences at Little Rock examined heart tissue samples and found no "significant pathologic process" involved. (Myocarditis would be classified as a pathological process.)

Malak told the Demo that three other pathologists examined the tissues and all agreed with him about the absence of myocarditis. He would not divulge who those other pathologists were, and no record of their findings was included in Feland's case files.

Differing reports are not unusual in tough cases, said Dr. Donald Reay, president of the National Association of Medical Examiners and the King County, Wash., medical examiner.

Reay, in a telephone interview, said drowning and myocarditis both are difficult to substantiate pathologically.

He said that in order to reach a conclusion in such cases, a pathologist often relies on reports filed by investigators.

"You have to have an open mind when you do an autopsy ... but you can't ignore the investigative findings," said Reay.

"Don't expect uniformity of opinion among pathologists on a tough case."

Page 2 of 2 Pages  
Dr. Hewer 10-11-87

# State's Crime Lab has improved, say prosecuting attorneys, police

**EDITOR'S NOTE:** *The Arkansas State Crime Laboratory was the subject of a December 1983 Arkansas Democrat investigation that led to a request by Gov. Bill Clinton for an independent study of the lab's operations. This report examines the progress made by the lab since that time.*

BY ROGER HEDGES  
Democrat Staff Writer

Four years ago, two memorandums circulated at the Arkansas State Crime Laboratory called for an end to internal dissension and mistakes. The messages, issued by the fourth man in four years to head the lab, virtually repeated memos issued four years earlier by the lab's original director.

This year, as the lab celebrates its 10th birthday, the sixth director says efficiency and morale have improved.

"What (fifth Director) Henry Oliver brought and I think I continued was a direction for this department to go," Jim Clark, director, said.

A random survey of prosecuting attorneys and law enforcement officials around Arkansas supported Clark's assessment, although the sampling revealed some gripes about the length of time it takes the lab to complete reports on certain types of evidence.

The delays without exception were attributed to the lab's soaring caseload rather than any deficiency in personnel quality. And most of the officials said the delays, which can slow the wheels of justice but more often cause stress among the families of victims, aren't nearly as bad as they used to be.

Clark joined the lab in July 1984 as assistant director shortly after Gov. Bill Clinton appointed Oliver, a former FBI agent and Fort Smith police chief, to the directorship.

According to State Crime Lab Board members Michael Walden, a deputy prosecuting attorney in Jonesboro, and John D. Morgan, El Dorado chief of police, Oliver was responsible for a great forward leap in the lab's capabilities and Clark has continued that momentum.

That was accomplished by molding the various sections into one working unit and using staggered work hours to improve access to equipment, Oliver said.

The 1979 and 1983 memos circulated at the lab, issued respectively by then-Directors Clay White and Dr. Gordon Holt, cited a lack of interdepartmental communications and problems in evidence processing.

Those issues were explored in a December 1983 *Arkansas Democrat* investigative series. Incidents described included two cases of men falsely accused of murder and rape in part due to mistakes or omissions by the crime lab.

Other occurrences noted in the series included the accidental incineration of a slain infant's body by a lab morgue attendant, the disappearance of evidence in the lab, the alteration of drug and alcohol-level findings in some death cases, political pressure from state officials, personality clashes between high-ranking lab employees, and unexplained delays in processing evidence.

Clark said, "I think probably the newspaper articles ...

Clark, previously an administrator at the Arkansas State Police headquarters located in the same building as the crime lab, was named director when Oliver retired in July 1985.

Louis B. Jones Jr., a West Memphis attorney who recently resigned after serving on the Board for nine years, said Oliver and Clark achieved an "esprit de corps" that was previously lacking among lab personnel.

Echoing Jones' comment, Clark said that prior to Oliver's appointment, the lab's 11 sections and approximately 60 employees had little sense of direction and the lab was not performing its mission of providing fair analysis of evidence in a timely manner.

Oliver attributed the aimlessness to the location, scattered around Little Rock, of individual lab sections before the crime lab and Arkansas State Police headquarters moved into a new building in west Little Rock in 1981.

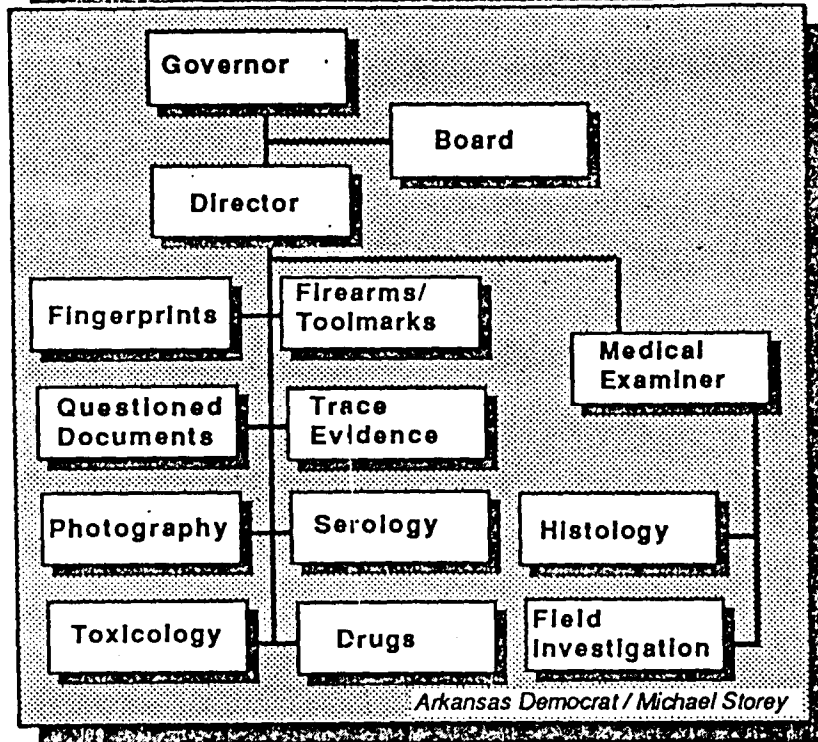
Oliver, now director of the Arkansas Transportation Safety Agency, said his biggest success with the crime lab was reducing a three-year backlog of cases to just three weeks, despite a 22 percent caseload increase during the year he was director.

were accurate to a point."

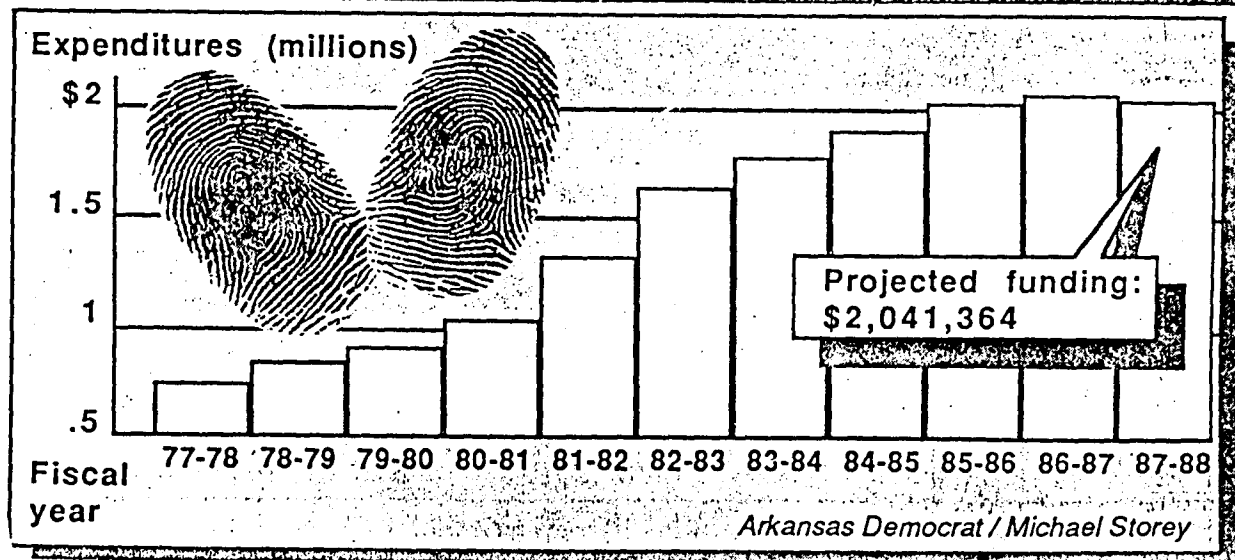
He said any evidence losses probably occurred prior to or during the lab's 1981 consolidation at its present location.

Many of the other miscues described in the series, such as a suicide drowning cause of death finding when a bullet hole was later found in the body of a young woman, were handled by employees no longer with the lab.

## Crime lab organization



## Crime lab expenditures



9-14-87

7-14-81

In the concluding segment of the *Democrat* series, sources including former lab directors, administrators, employees and others familiar with the problems unanimously recommended the following:

- An independent study of the lab by forensic experts.

- An end to political interference in lab operations, including requests for favors from State Crime Lab Board members, prosecutors or other state officials.

- Separation of the Medical Examiner's office from the rest of the lab as is the case in most states. The office, the lab's largest section, has been controversial in part due to conflicting statutes dealing with the role of county coroners in death investigations.

- Appointment of a director knowledgeable in both forensic science and personnel management.

- A sufficient budget to allow staff additions to ease the growing caseload.

Less than three weeks after the series concluded, Gov. Bill Clinton's office contacted Dr. Ralph Turner, a retired forensic science professor at the University of Michigan School of Criminal Justice. Turner agreed to assemble a small team to perform an independent study of the Arkansas crime lab that was made in November 1984.

Oliver said that although the team's report, issued in January 1985, was useful because of the long-range goals suggested, it made no major revelations. In fact, the former director said the out-of-state visitors were impressed with

The report agreed with some of the conclusions published in the *Democrat* series but differed on the major point of a separate medical examiner's office.

"The present organizational structure appears to be very workable and satisfactory," the team stated.

Some of the study recommendations have not been adopted. The report stated it would be ideal to have a forensic scientist as assistant director, particularly if the directorship was considered to be an administrative post.

None of the six lab directors has been a forensic scientist. The assistant directorship has been vacant since Clark was promoted to director more than two years ago.

The team also recommended the purchase of approximately \$400,000 in new lab equipment. Clark said only about \$125,000 in equipment has been purchased since the report was issued.

State budgetary woes have hampered the lab's efforts to keep up with a burgeoning case load.

Lab expenditures in the 1986-87 state fiscal year totaled \$2,065,364, but funding for the current year is expected to total only \$2,041,364 - lower if the state makes any midyear cuts.

The 1986-87 spending was less than 1 percent higher than the previous year despite a 12 percent increase in cases handled by the lab.

Personnel costs are expected to account for approximately \$1,676,000 of this year's spending.

Clark said the lab, to keep up with the increasing caseload, needs to hire two more drug chemists, a fingerprint examiner, a toxicologist and a photographer.

Even if the lab had money to hire more technicians, Clark said he would not know where to put them in the already overcrowded facilities. The lab pays \$176,000 in rent and utilities to the State Building Services agency.

Last year, Clark proposed a \$900,000 annex building near the lab but funding could not be obtained. One function of the new building would be a morgue for decomposed bodies, since unpleasant odors are circulated throughout the lab and state police building from the decomposed body morgue now used.

The lab also spends about \$110,000 per year for examination or analysis kits and supplies, said Clark. That means there is little money left for new equipment.

Continuing education is another area that suffers. Clark said the lab previously budgeted \$9,100 for traveling and attendance at conferences and seminars, but that was reduced to \$5,600 this year.

"You have to keep these people trained," Clark said. "This is a science and it seems to change every 15 minutes or so. A defense attorney knows where the library is. All he has to do is cast that one doubt in one juror's mind."

The issue of political influence raised in the newspaper series was not thoroughly addressed in the independent study. Former lab Directors White, now the Garland County sheriff, and Steve Nawojczyk, currently Pulaski County coroner, both were quoted in the series as saying state officials occasionally sought favors such as expediting a particular analysis.

Clark and Oliver both said they never experienced such pressure. Clark said that if a request is outside the lab's mission or policy, "I'm not going to do it, whether it be Senator So and So or some black family on Granite Mountain."

White and Nawojczyk both said in recent interviews that they didn't see how the political pressure could have disappeared since the system is essentially unchanged.

Nawojczyk said that at the time he was director, he would have felt obliged to say "no" if asked about the existence of political pressure.

Some of the people who might apply pressure could be the same individuals that the director must go before to plead his case for higher funding, said Nawojczyk.

Another criticism leveled at the lab is the lack of certification by the American Society of Crime Lab Directors. A 1981 attempt to obtain that recognition was aborted.

Clark said he believes the lab now meets the requirements and he plans to seek certification in the near future.

*Page 2 of 2 Pages*  
*Ark Democrat*  
*9-14-87*

# Crime lab shows bias, lawyers say

## Coroners upset by lack of autopsies

BY ROGER HEDGES  
Democrat Staff Writer

Two of the most persistent complaints about the Arkansas State Crime Laboratory have been that lab personnel are more inclined to help the prosecution than the accused and that the state Medical Examiner's office should perform more autopsies.

Defense attorneys are generally the ones to voice the former criticism; county coroners the latter.

In a December 1983 *Arkansas Democrat* investigative series which explored problems at the crime lab, two cases were examined in which men were falsely accused of murder and rape due in part to mistakes or omissions by lab personnel.

Little Rock attorney Gene Worsham, the defense attorney in one of those cases, said that although the lab's performance has been "considerably upgraded" in recent years, he believes the facility's employees still consider themselves to be a part of law enforcement.

### 'Slanted testimony'

Attorney Paul Petty of Searcy, who represented the other falsely accused man, said, "They're slanted in their testimony. They're state employees and they help the state's attorneys."

Another lawyer with broad experience in defending persons accused of homicide is Q. Byrum Hurst Jr. of Hot Springs, who says he has witnessed a bias toward the prosecution on the part of certain lab employees.

Hurst said lab officials sometimes fail to relate evidence that helps the defense or downplay the significance of such evidence.

Lab employees should enlighten a defense attorney just as they "whisper in the ear" of prosecutors, Hurst said.

### Some are helpful

He explained it seems to depend on which section of the crime lab is involved. "Some of them have been very helpful," he said, citing the state Medical Examiner's office in particular.

Hurst said he frequently retains private experts to evaluate crime lab findings to determine if some unmentioned fact would help a client.

Private experts often charge fees that a defendant cannot afford, he added.

Jim Clark, crime lab director, denies there is any significant bias toward the prosecution, although he acknowledged he has had to remind his employees that they must be neutral.

For example, he said lab employees sometimes call law enforcement agencies — the only source from which evidence is accepted — and ask that more evidence be sent in for evaluation.

Clark said he wasn't sure that was proper since the lab is supposed to give an impartial evaluation of what was presented.

Former lab Director Steve Nawojczyk, now the Pulaski County Coroner, said he recalled overhearing a lab technician asking a law enforcement officer, "What are we looking for here?"

Nawojczyk said he "chewed out" the lab technician because that question was "backwards" in relation to lab policy.

Some lab employees are former law enforcement officers, but Clark said only three out of his nine primary supervisors have that background.

Arkansas law mandates that prosecuting attorneys must make crime lab results available to defense attorneys, who may seek a court order for the data if not accommodated.

### Frequently subpoenaed

Clark said lab personnel frequently are subpoenaed by defense attorneys who feel testimony concerning lab results will help their clients.

Concerning the autopsies, Greene County Coroner Dick Pace said there are more than 2,000 deaths each year in Arkansas that are unexplained but the bodies are not eligible for autopsy by the state Medical Examiner's office due to crime lab policy.

president of the Arkansas Coroners Association, said that in addition to heavy emotional impact, the difference between rulings of homicide, suicide and accidental or natural death can mean tens of thousands of dollars in insurance benefits for surviving family members.

The state Medical Examiner's office, the largest section of the crime lab, performs 500 to 600 autopsies per year.

Dr. Fahmy Malak, the state medical examiner, referred all policy questions to Clark.

### Needs more funds

Clark said that without significant budget increases, more autopsies cannot be performed. The lab will not perform an autopsy, as opposed to a toxicity test for alcohol or other substances, unless there is a reasonable suspicion that a crime was linked to the death, Clark said.

County coroners can request an autopsy at any time, but since the crime lab was organized 10 years ago, the lab director has claimed the final decision.

Arkansas statutes conflict on that point and the issue is being studied by the state Attorney General's Task Force on Death Scene Investigations, said state Rep. Bob Fairchild of Fayetteville, co-chairman of the group formed earlier this year.

Many families cannot afford the \$1,000 or more required in advance by private pathologists for an autopsy, said Pace.

Nawojczyk said coroners are faced with tasks like telling parents that they will never know why their child died unless they pay for a private autopsy.

*Page 14 7 Pages*

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(Indicate page, name of newspaper, city and state.) Page 1B

Arkansas Democrat-Gazette  
Little Rock, Arkansas

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Edition: AM

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Character: 166C-LR-35380

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Classification: Little Rock  
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# Harmon admits threatening wife, police report says

BY RODNEY BOWERS  
Democrat-Gazette Benton Bureau

BENTON — Police Chief Rick Elmendorf said officers want to talk to Prosecuting Attorney Dan Harmon's estranged wife before acting on her assault complaint, despite Harmon's alleged admission of grabbing her and putting a gun to her head.

"We don't know what we're going to do until we get with Mrs. Harmon and see what

she's going to do," Elmendorf said Tuesday.

Holly Harmon, 26, filed an assault complaint Friday, saying Harmon, 50, came to her apartment about 8 a.m. that day and "told her he was going to kill her."

She also said that he struck her "with his hands and feet."

The officer who took the complaint noted that Holly Harmon had a "large" bump on her head, redness and bruises

on her neck, and a scraped elbow.

He advised her to stay with friends or relatives until the department could ask that a special prosecutor be appointed to review the complaint.

Monday, officers found Harmon, his estranged wife and some of her relatives in a convenience store parking lot and accompanied them to Harmon's apartment, where one of the relatives asked Harmon if

he had held a gun to Holly Harmon's head.

"At this point, Harmon replied: 'Do you want to know why? Because she made a ... drug run ... to Texas,' " an officer, Scott Tripp, wrote in his report.

Tripp also noted that a relative asked Harmon about Holly Harmon's bruises, and whether Harmon had beaten her.

166C-LR-35380, Sub B-23

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FBI - LITTLE ROCK	



# Harmon

• Continued from Page 1B

"Harmon replied that he had grabbed her (Holly Harmon) to keep her from leaving and killing herself," Tripp said in his report.

Asked why the officers hadn't arrested Harmon after his alleged admission, Elmen-dorf said, "We didn't have a warrant."

Warrants are issued by judges, generally at the request of the prosecuting attorney's office.

Asked if officers would have arrested anyone else under similar circumstances, Elmen-dorf said, "More than likely."

But, he said, "Until which time we get ahold of Mrs. Harmon, we're not going to take any action."

Elmendorf also said he hadn't requested that a special prosecutor be appointed to the case.

Harmon, the prosecutor for Saline, Hot Spring and Grant counties, wasn't in his office at 4 p.m. Tuesday and couldn't be reached for comment. He declined to comment Friday when asked about Holly Harmon's complaint.

Efforts to reach Holly Harmon and her attorney, Joe K. Hardin of Benton, also failed Tuesday.

Mayor Mitch McDonald, called to comment on the Police Department's handling of

the case, didn't return telephone calls Tuesday.

Sources told the *Arkansas Democrat-Gazette* that Holly Harmon had filed several police reports, but periodic checks didn't uncover any until Friday's report.

Sources also said Holly Harmon had filed 14 complaints since Oct. 20, 1994, the day Harmon filed for divorce.

Twelve complaints turned up Tuesday in a stack provided to the media, including one predating the couple's separation and one filed by Harmon.

The complaints, which dated from Oct. 1, ranged from assault to death threats, breaking or entering, theft and threatening to burn down Holly Harmon's apartment.

One of the reports, dated Dec. 6, said Harmon had locked himself inside Holly Harmon's apartment and refused a police officer's request to come out. He allegedly told the officer: "F\*\*\* you and f\*\*\* her, too."

The officer left after Harmon reportedly promised not to burn the apartment or scare other residents.

Harmon filed an automobile theft report against his estranged wife, whom he married Dec. 21, 1992.

He said in several of the reports that Holly Harmon has been suicidal, and gave officers a copy of a suicide note she purportedly wrote.

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(Indicate page, name of newspaper, city and state.) Page 1

The Benton Courier  
Benton, ArkansasDate: 3/7/91  
Edition: PM

Title:

Character:

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Classification:

Submitting Office: Little Rock

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# Trial testimony ties dead man to Ives-Henry deaths

By LYNDIA HOLLENBECK  
Courier Staff Writer

While it remains to be seen whether testimony in the robbery conspiracy trial of James Callaway in Saline County Circuit Court today was sufficient to determine his guilt or innocence, statements from two key witnesses appeared to exonerate Deputy Prosecutor Richard Garrett of alleged involvement in drug-trafficking.

Testimony from Tony Mullins, 29, of Faulkner County and Carl Samples, 30, currently an inmate of the state Department of Correction, indicated neither had ever met Garrett, but had believed Garrett to be the man seen with a Mexican man in a white Cadillac at Callaway's car lot. Mullins said drugs were delivered to Callaway in those

meetings.

When Samples testified today, he was asked to identify Garrett in the courtroom and could not do so.

All witnesses in the trial completed testimony before a break was declared at 10:30 a.m. Closing arguments were to be given when the trial resumed at 12:30 p.m. Also expected to be presented then is a joint stipulation from the prosecution and defense that Garrett was incorrectly identified as the man seen at Callaway's car lot.

Callaway, 38, of Saline County has been linked to a federal investigation into Saline County drug trafficking and the accompanying corruption of public officials, according to internal correspondence leaked from the U.S. attorney's office in Little

Rock.

Both Mullins and Samples reportedly implicated Garrett in those alleged dealings, and Mullins said he once overheard Garrett tell Callaway to "do something about those boys."

Mid-way in his testimony, Mullins said he hadn't meant to say Richard Garrett had done that, but had intended to say Richard Winters. However, defense attorney Ray Baxter read from the transcript of Mullins' interview with Saline County Sheriff Larry Davis and Jim Lovett, a former investigator for the 7th Judicial District Task Force, and that document states Mullins identified the man as Garrett.

Recurring testimony in Callaway's trial refers to the Aug. 23, 1987, deaths of Kevin Ives, 17,

and Don Henry, 16, whose bodies were struck by a train on tracks near the Shobe Road crossing. No one has been charged with their deaths.

Samples described a night he, Tony Mullins and Richard Winters were visiting at Callaway's home. At that time, Samples said, Mullins began talking about gambling houses he had robbed.

"Richard then made the statement that that's nothing compared to when me and that other guy went to get those boys and take them rabbit-hunting," Samples said.

Garrett and Prosecutor Dan Harmon led the 1988 Saline County grand jury investigation that revealed the two boys died as the result of foul play. Based on tests conducted by an out-of-

state forensic pathologist, the grand jury rejected the state medical examiner's accidental ruling.

Callaway has previously been convicted of a federal weapons charge connected to the same incident that led to his being charged with conspiracy to commit aggravated robbery at a gambling operation run by Sylvania Peeks in Lonoke County.

In testimony related to the Lonoke County robbery attempt, both Samples and Mullins said Callaway outlined plans for that incident.

Winters was killed in the robbery attempt, and Samples was apprehended a short distance from the incident after fleeing when he heard gunshots, accord-

See TRIAL, page 3

# Trial

*Continued from page 1*

ing to testimony. A third participant, identified only as a short, stocky man named William, also escaped. He threw Samples a sawed-off shotgun that had been taken to the scene, then disappeared, Samples said.

Samples testified that he threw the gun down, but authorities later found it based on information he provided. Samples was charged with attempted aggravated robbery the day following the incident.

The sawed-off shotgun had been purchased by Callaway from Everett Vanderburg of Alexander, according to Vanderburg's testimony today. The purchase price was \$15, he said.

Vanderburg testified that Callaway had previously called him about buying the weapon, which Callaway allegedly said was needed by his stepbrother, Tony Mullins, for protection against relatives.

In opening remarks, Garrett told the jury Wednesday the weapon had been purchased prior to that from Finnis Criswell, who had been an employee of the car lot Callaway operated

on Arkansas 5 at Arkansas 183.

In Mullins and Samples' testimony, they said another shotgun and a pistol belonging to Callaway were also taken to Lonoke County.

Mullins, who was granted immunity from prosecution in exchange for his testimony, said he drove the getaway vehicle and parked near the trailer where Peeks operated the dice games. He testified that he "took off" after hearing gunshots at the scene.

On Wednesday, jurors heard a recorded conversation between Callaway and Mullins. In that conversation, which took place when Mullins was wearing a body microphone, Callaway and Mullins argued about Callaway's alleged involvement in the

Lonoke County robbery attempt.

During that conversation, the two men referred to the Ives-Henry case. Callaway said authorities were trying to implicate him in the murders and that he didn't know anything about what had happened to the teenagers. He said he had known Don Henry for about a year, but made no mention of Kevin Ives.

A witness in a federal drug case regarding Paul Criswell, Finnis Criswell's son, testified that Criswell told her he was involved in the boys' deaths. She said Criswell, whom she had previously dated, told her that he, his father, Callaway and another man who had since died, had placed Ives and Henry on the railroad tracks.

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(Indicate page, name of newspaper, city and state.)  
Arkansas Democrat-Gazette  
Little Rock, Arkansas  
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# Former wife files police report, says Harmon beat, threatened her

BY RODNEY BOWERS  
Democrat-Gazette Benton Bureau

BENTON — Teresa Harmon, 31, the former wife of Prosecuting Attorney Dan Harmon, has filed a report with police claiming he beat her Sunday evening at her Benton home and threatened to kill her if she reported the attack.

Laquada Turner of Benton, a friend of Teresa Harmon, told investigating officer Bryant Dorminey that she witnessed the beating and that Dan Harmon also threatened her.

"Ms. Turner stated that she entered the house (about 5:30 p.m. Sunday) ... and saw Mr. Harmon hitting and kicking Ms. Harmon," Dorminey wrote in his

report. "Ms. Turner said she started yelling at Mr. Harmon to stop hitting Ms. Harmon when Mr. Harmon threatened to kill and beat Ms. Turner also."



Harmon

The alleged assaults came nearly a month after Harmon, 50, reportedly beat and threatened his current wife, Holly Harmon, 26.

Teresa Harmon said in a telephone interview Monday that her former husband came to her house Sunday after she

left a message on his answering machine. She said she told him that she did not want their son to visit him.

She said her son began telling her that he did not want to visit his father after recent incidents between Harmon and his current wife.

Teresa Harmon said she wanted to file charges against her former husband, but added, "I'm afraid he'll set me up and I'll lose my kid. He has that kind of power."

"Dan said, 'God knows your problems. I can get custody ... any day I want to.'"

Teresa Harmon was Dan Harmon's second wife. They

*[Handwritten initials]*  
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SEARCHED	INDEXED
SERIALIZED	FILED
JAN 31 1995	
FBI - LITTLE ROCK	

have a 7-year-old son and have joint custody, with Teresa Harmon the primary custodian. Dan Harmon pays \$600 a month in child support.

Dan Harmon, in court Monday at Malvern, did not return telephone messages left at his offices. He declined last month to discuss Holly Harmon's allegations.

Dan Harmon most recently filed for divorce Oct. 20, 1994, citing "general indignities." He withdrew the divorce complaint Jan. 10, but not before he and Holly Harmon filed 12 police reports that outlined a violent separation.

In one of the reports, Holly Harmon said her husband beat her and threatened to kill her Dec. 30, 1994. The investigating officer said Holly Harmon had a "large bump" on her head, and bruises and redness on her neck.

A police officer said Dan Harmon admitted the next day that he put a gun to Holly Harmon's head because she made "a drug run" to Texas. The officer said Dan Harmon also admitted he grabbed her because he feared she would harm herself.

Police made no arrests in any of the incidents, noting that neither Holly Harmon nor her husband wanted to file charges.

A police official said a special prosecutor would have to be appointed should Holly Harmon wish to file charges. Criminal warrants generally are sought by the prosecutor's office.

Teresa Harmon said she planned to ask for charges to be filed against her former husband today, but she had some doubt after Turner said she changed her mind about seeking a criminal complaint.

"She called me and said there's no way she's going to," Teresa Harmon said. "I'm just numb."

Turner did not return a telephone message left Monday on her answering machine.

Teresa Harmon said her ex-husband's abusiveness led to their divorce.

Officials have said Dan Harmon cannot be removed from office unless he is convicted of a felony or a judicial complaint is filed with and acted upon by the state Supreme Court's Judicial Discipline and Disability Commission.

Dan Harmon is prosecuting attorney for Saline, Grant and Hot Spring counties. He also heads a Saline County citizens' group that is seeking funding to create a shelter for abused children and battered women.

He served a one-year probationary sentence in 1993-94 on a federal misdemeanor conviction for failure to file a 1988 tax return. Last month, he filed for bankruptcy in federal court at Little Rock, citing unpaid taxes as his largest debts. Those records showed he owed \$126,383 and had assets of \$22,670.

(Mount Clipping in Space Below)

# 'Conviction reversed in ice-pick murder of mom'

BY JAKE SANDLIN  
Democrat-Gazette Staff Writer

The Arkansas Supreme Court reversed the murder conviction of a woman charged with stabbing her mother to death with an ice pick.

The court ruled Monday that the trial judge made a mistake when he allowed testimony by Judy Diffie's husband, who alleged she once tried to kill him with an ice pick.

The high court sent the case back to Pulaski County Circuit Court.

Diffie was found guilty of the 1992 murder of her mother, Edith Durham, who was stabbed 22 times in her Little Rock home. Diffie was sentenced to 40 years in prison. She claimed she found her mother's body.

***Eddie Diffie testified that his ex-wife tried to attack him with an ice pick in 1989. They divorced in 1991.***

dressed in a nightgown, on a couch in Durham's living room.

On appeal, Diffie argued that testimony by her ex-husband, Eddie Diffie, should not have been allowed under the state's rules of evidence. Eddie Diffie testified that his ex-wife tried to attack him with an ice pick in 1989. They divorced in 1991.

He testified that he was asleep when he swiped and hit something that fell from his wife's hand to the floor. He said

the object cut three of his fingers and stuck his head. Judy Diffie ran from the room screaming, he said.

The next morning he found an ice pick on the floor next to the bed, he said.

The court said "both acts must be committed with the same or strikingly similar methodology; ... and the methodology must be so unique that both acts can be attributed to one individual." It decided that the Diffie case "fails both requirements" for introducing evidence of an unrelated prior act to show a method of operation.

Associate Justices Robert L. Brown and Tom Glaze wrote dissenting opinions in the 4-3 decision. Justice Donald Corbin

joined in the dissents.

Brown called the circumstances surrounding the Durham murder and the Eddie Diffie assault "strikingly similar."

In another case, the court affirmed the conviction of Farris Eugene Coney for attempted first-degree murder and escape. Coney was sentenced as a habitual offender to 62 years in prison and fined \$25,000.

Coney argued that a Saline County court should not have allowed three pictures of the victim, Deanna Goforth, to be used as evidence. The state sought to introduce five pictures of Goforth, but the court excluded two because they duplicated others.

The Associated Press contributed to this article

(Indicate page, name of newspaper, city and state.) Page 1B

Arkansas Democrat-Gazette  
Little Rock, Arkansas

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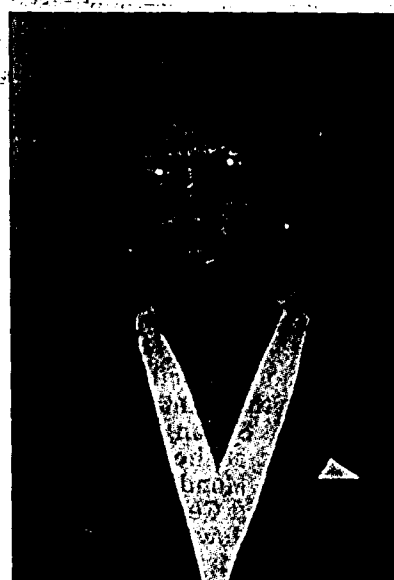
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Submitting Office: LR

Indexing:

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Judy Diffie

25

SEARCHED	INDEXED
SERIALIZED	FILED
MAR 14 1995	
FBI - LITTLE ROCK	

(Mount Clipping in Space Below)

# Harmon admits threatening wife, police report says

(Indicate page, name of newspaper, city and state.)

Arkansas Democrat-Gazette  
Little Rock, ARDate:  
Edition:

Title:

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BY RODNEY BOWERS  
Democrat-Gazette Benton Bureau

BENTON — Police Chief Rick Elmendorf said officers want to talk to Prosecuting Attorney Dan Harmon's estranged wife before acting on her assault complaint, despite Harmon's alleged admission of grabbing her and putting a gun to her head.

"We don't know what we're going to do until we get with Mrs. Harmon and see what

she's going to do," Elmendorf said Tuesday.

Holly Harmon, 26, filed an assault complaint Friday, saying Harmon, 50, came to her apartment about 8 a.m. that day and "told her he was going to kill her."

She also said that he struck her "with his hands and feet."

The officer who took the complaint noted that Holly Harmon had a "large" bump on her head, redness and bruises

on her neck, and a scraped elbow.

He advised her to stay with friends or relatives until the department could ask that a special prosecutor be appointed to review the complaint.

Monday, officers found Harmon, his estranged wife and some of her relatives in a convenience store parking lot and accompanied them to Harmon's apartment, where one of the relatives asked Harmon if

he had held a gun to Holly Harmon's head.

"At this point, Harmon replied: 'Do you want to know why? Because she made a ... drug run ... to Texas,' " an officer, Scott Tripp, wrote in his report.

Tripp also noted that a relative asked Harmon about Holly Harmon's bruises, and whether Harmon had beaten her.

166C-LR-35380, Sub ~~10~~ <sup>B-</sup> 26

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 16 1995	
FBI - LITTLE ROCK	

"Harmon replied that he had grabbed her (Holly Harmon) to keep her from leaving and killing herself," Tripp said in his report.

Asked why the officers hadn't arrested Harmon after his alleged admission, Elmen-dorf said, "We didn't have a warrant."

Warrants are issued by judges, generally at the request of the prosecuting attorney's office.

Asked if officers would have arrested anyone else under similar circumstances, Elmen-dorf said, "More than likely."

But, he said, "Until which time we get ahold of Mrs. Harmon, we're not going to take any action."

Elmendorf also said he hadn't requested that a special prosecutor be appointed to the case.

Harmon, the prosecutor for Saline, Hot Spring and Grant counties, wasn't in his office at 4 p.m. Tuesday and couldn't be reached for comment. He declined to comment Friday when asked about Holly Harmon's complaint.

Efforts to reach Holly Harmon and her attorney, Joe K. Hardin of Benton, also failed Tuesday.

Mayor Mitch McDonald, called to comment on the Police Department's handling of

the case, didn't return telephone calls Tuesday.

Sources told the *Arkansas Democrat-Gazette* that Holly Harmon had filed several police reports, but periodic checks didn't uncover any until Friday's report.

Sources also said Holly Harmon had filed 14 complaints since Oct. 20, 1994, the day Harmon filed for divorce.

Twelve complaints turned up Tuesday in a stack provided to the media, including one predating the couple's separation and one filed by Harmon.

The complaints, which dated from Oct. 1, ranged from assault to death threats, breaking or entering, theft and threatening to burn down Holly Harmon's apartment.

One of the reports, dated Dec. 6, said Harmon had locked himself inside Holly Harmon's apartment and refused a police officer's request to come out. He allegedly told the officer: "F\*\*\* you and f\*\*\* her, too."

The officer left after Harmon reportedly promised not to burn the apartment or scare other residents.

Harmon filed an automobile theft report against his estranged wife, whom he married Dec. 21, 1992.

He said in several of the reports that Holly Harmon has been suicidal, and gave officers a copy of a suicide note she purportedly wrote.



## Synopsis of police reports on Harmon case

*The following is a synopsis of Benton Police Department reports pertaining to Prosecuting Attorney Dan Harmon and his estranged wife, Holly:*

■ Oct. 1, 1994 — Holly Harmon reported an argument with Harmon but told police he did not harm her.

■ Nov. 6, 1994 — Harmon reportedly tried to force his estranged wife to accompany him on a trip 17 days after he filed for divorce.

■ Nov. 7, 1994 — Holly Harmon reported that Harmon removed a screen and entered her apartment. Police said she had a cut lip, but did not know if Harmon or an unidentified girlfriend struck Holly Harmon.

■ 5:45 p.m. Dec. 6, 1994 — Holly Harmon called 911 to report Harmon breaking into her apartment. Police said he jerked a telephone from the wall and took a 9mm pistol from her purse while she hid in a closet. He then reportedly pulled shades from a window and cursed her.

■ 8:59 p.m. Dec. 6, 1994 — Police said Harmon called his estranged wife and threatened to burn her apartment. Officers found Harmon in the apartment and he refused to come out, saying, "F\*\*\* you and f\*\*\* her, too."

■ Thursday — Holly Harmon reported that her estranged husband had been in her apartment. Officers found her rooms "trashed," credit cards and photographs cut up, clothes scattered and a telephone missing.

■ 8:35 a.m. Friday — Harmon re-

portedly came to Holly Harmon's apartment, assaulted her and threatened to kill her. An officer noticed Holly Harmon had a bump on her head, redness and bruises on her neck, and a scraped elbow.

■ 7:46 p.m. Friday — An officer observed Harmon moving furniture from estranged wife's apartment.

■ 10:21 p.m. Friday — Police received a call at Dan Harmon's apartment, where Holly Harmon had gone to retrieve clothing. Harmon didn't allow her inside, and an officer advised her to seek legal assistance.

■ 12:39 p.m. Saturday — Harmon flagged down an officer outside his sister-in-law's house, saying he had arranged for Holly Harmon to be committed because of suicidal tendencies. Holly Harmon's sister, who told police Dan Harmon had come to her house looking for Holly Harmon, said she had not noticed her sister having any suicidal tendencies.

■ 3:50 p.m. Saturday — Harmon reported that Holly Harmon stole his car. He later told police she had returned and did not want to pursue the matter.

■ 5:31 p.m. Saturday — Harmon allegedly admitted in front of police officers that he grabbed Holly Harmon to prevent her from killing herself and that he put a gun to her head because she had made "a drug run" to Texas. Dan Harmon later denied having a gun and produced a suicide note purportedly written by Holly Harmon.

(Mount Clipping in Space Below)

# Investigation denied in Benton man's death

**From staff and wire reports**  
PRESCOTT — Prosecuting Attorney Brent Haltom has refused the coroner's request for a grand jury investigation into 12 deaths in Nevada County over the past five years, including that of a Benton resident.

Coroner Freddie Goodwin made the request through a petition containing the signatures of almost 1,000 county residents.

Haltom announced his decision Tuesday during a news conference attended by friends and relatives of at least three people listed in Goodwin's petition.

One of those listed in the petition was Gregory Allen Collins, 26, who was found shot to death Jan. 22 in a wooded area near Rosston.

Goodwin started his petition drive in December. He said he was working on behalf of sever-

al families who questioned the manner in which officials said their loved ones died.

"These families are still not satisfied," Goodwin said of Haltom's decision Tuesday.

Haltom said he could not find any new evidence that would justify a grand jury investigation in 10 of the 12 cases, some of which date back to 1989. Eight of the 10 closed cases involved apparent suicides or accidental deaths.

Collins' case was ruled a homicide, but authorities dropped murder charges against Joseph Scott Farmer, 29, formerly of Alexander, and Scott Walter Lynn, 34, of Hot Springs because the two were not tried during the time frame specified by the state's speedy trial law, according to Prosecutor Dan Harmon of Benton.

In a hearing last year,  
*See NEVADA, page 7*

(Indicate page, name of newspaper, city and state.)

Benton Courier  
Benton, AR

Date:  
Edition:

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Submitting Office: LR

Indexing:

166C-LR-35380-Sub B -

~~27~~ 27

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 16 1995	
FBI - LITTLE ROCK	

defense attorneys for Farmer and Lynn produced evidence that formal charges were filed when the two were arrested a short time after Collins' body was found.

Witnesses said Farmer and Lynn told them they took Collins from Benton to Nevada County for a third individual to kill him.

That person was never charged.

In another case cited by Goodwin, authorities lacked evidence to support criminal charges, Haltom said.

The other two cases remain open and are being investigated as a double homicide, Haltom said. They involve the May 16, 1992, shooting deaths of Jeff Lewis, 22, and Melissa Clark, 21.

Haltom said he spent two months reviewing the closed cases. He said he examined

investigators' notes, talked to available witnesses and took some of the information to the state Crime Laboratory.

Jim Clark, director of the Crime Laboratory, said Haltom asked Dr. William Sturner, state medical examiner, to re-examine two of the cases in which Dr. Fahmy Malak submitted reports. Malak resigned as the state's medical examiner in September 1991 amid controversy over some of his rulings.

In the Nevada County cases, Sturner came to the same decisions Malak did, Clark said.

Adell Campbell of Prescott said a grand jury investigation should be called anyway.

"We intend to pursue this. Why not allow us to have one?" she pleaded Tuesday.

Her son, Chuck, 29, and Donnie Williams, 36, both of Prescott, died June 19, 1989. An autopsy report, supported

by Sturner, concluded they apparently died from accidental drug overdoses. Mrs. Campbell believes the men were poisoned, and is seeking the opinion of private doctors.

The relatives and friends of Stacy Block, 42, of Prescott who died Aug. 31, 1992, when shot in the head, said they are not satisfied with a ruling that his death was self-inflicted.

Block's sisters asked Haltom to explain why a left-handed person would shoot himself in the right side of his head, as Block's autopsy suggests. Haltom said he does not consider such circumstances suspicious.

In one of the cases determined to be a homicide, the death of William E. McLelland was the result of a gunshot fired by his estranged wife. Haltom said no charges were filed because it appeared the shooting was self-defense.

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(Indicate page, name of newspaper, city and state.) Page 1B

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Little Rock, AR

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Guy Jones

# Lawyer sentenced to 3 years

## Charged in fraud, money laundering

BY JAY MEISEL

Democrat-Gazette Conway Bureau

SEATTLE — A federal judge sentenced disbarred attorney Guy Hamilton Jones Jr. of Conway to three years in prison Friday on money-laundering and bankruptcy-fraud charges.

Jones — the son of a former powerful state legislator, Guy "Mutt" Jones Sr. — sniffed and wavered on crutches as he explained to a federal judge how he messed up his life.

"I don't really know how I could have screwed that up any more than I did," he said. "I don't know if it was a mid-life crisis or what."

Federal prosecutors had recommended in March that Jones be sentenced to no more than two years in prison because of his cooperation with authorities. Jones could have received up to 85 years in prison and a \$2 million fine.

He had pleaded guilty in March to charges of bankruptcy fraud, mail fraud, conspiracy to launder money and money laundering.

U.S. District Judge Thomas S. Zilly of Seattle, however, added another year to the sentence. He said he was concerned that, with a two-year sentence, Jones wouldn't be receiving penalties for both money laundering and bankruptcy fraud.

"I believe three years is the absolute minimum," Zilly said, adding that he recognized Jones had cooperated with the prosecution.

Zilly said he would recommend that Jones be placed in the closest federal prison to his home.

Assistant U.S. Attorney Jim Lord said Jones' cooperation enabled federal authorities to arrest Jay Wallace Smith, who has pleaded guilty to drug-trafficking and money-lau-

166C-LR-35380-B-

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 6 1995	
FBI - LITTLE ROCK	

## Fee request from witness delays trial

BY ELIZABETH CALDWELL  
Democrat-Gazette Staff Writer

A former medical examiner's request for a \$1,200 witness fee prompted the Pulaski County prosecuting attorney's office Tuesday to seek a delay in a capital murder trial.

Deputy prosecutor Mark Fraiser said Dr. Joseph Halka refused to voluntarily testify in the murder trial of Ronald Eugene Jones, scheduled to begin Monday.

Halka, of Orange County, Calif., served as interim medical examiner for two weeks in September 1991 after Dr. Fahmy Malak resigned.

Circuit Judge Floyd J. Lofton accepted the prosecution's request and rescheduled Jones' trial for July 8.

Jones is accused of shooting John Eric Scott, 15, of Little Rock, who died Sept. 12, 1991, after being caught in a street gunfight.

While interim medical examiner, Halka performed Scott's autopsy. Fraiser said a medical examiner's duty includes testifying when needed in criminal trials.

"We've already paid him once," Fraiser said, referring to Halka's salary while working for the state.

Halka worked as Malak's assistant in 1988. He now works for the Orange County coroner's office.

Fraiser said the Pulaski County prosecutor's office will pay for Halka's airfare, motel and meals, but lacks the money to pay a \$1,200 fee as well.

Fraiser said Halka requested the fee before he would accept service of the subpoena for Jones' trial.

Because Halka lives outside Arkansas, the prosecutor's office cannot legally require his presence at a trial, Fraiser said.

## Phone call provided last communication before man's death

By Lynn R. Kutter  
The Sentinel-Record

About 9 p.m., Oct. 11, 1982, Bill A. White Jr., 33, of White Telecommunications, called a business colleague to say he planned to stop by his office to pick up some equipment before meeting him at Arkansas Bank and Trust.

The company was installing a new phone system at the bank.

When White did not arrive with a key to the building, Grover Hall called White's wife, Sherlyn, a bank employee.

She and Hall's son, Tommy, drove to the bank. From there, the Grovers, Sherlyn White and her father-in-law, Bill White Sr., drove to White Telecommunications at 1132 Malvern Ave.

The office was unlocked, the lights on and Bill White Jr.'s truck was backed up in front of the store, opened and partially loaded.

They entered the building. Sherlyn White and Tommy Hall walked to the back part of the office. Sherlyn White was the first to see her husband.

He was in a sitting position with his back to the wall. His legs were crossed at the ankles and his hands were resting on his thighs.

A pistol was lying at his left side.

The Hot Springs Police Department was notified of the shooting and the investigation began.

Files on the case show that Officer Larry Douglas was the first to arrive at the scene.

Douglas' description was slightly different than that remembered by family members.

Douglas reported the body was propped up against a wall with the legs crossed and the head slumped to the left. Blood was present in White's nose and mouth.

The officer reported that he saw a bullet wound to the right side of the head and a .22-caliber Iver Johnson pistol on the floor. The pistol, he noted, was partly covered by the subject's left hand.

Douglas stated he removed the pistol to ensure safety to officers but noted its position so he could return it later for photographs.

The pistol, it turned out, belonged to Bill White Sr. and was kept at the office.

From that first night, the father denied the shooting was self-inflicted and has insisted his son was murdered.

White pointed out that his son was right-handed while the gun was found lying on the left side of the body.

Correspondence in the police file shows where Garland County Sheriff Clay White, then acting coroner, wrote two letters to state Medical Examiner Dr. F.A. Malak with information gathered through investigation.

In one letter, White told of a \$200,000 lawsuit filed against White Telecommunications by an ex-partner and of a complicated phone system the company was installing at Arkansas Bank and Trust Co.

Bill White Jr., reportedly was very worried and concerned about the suit and the bank project, White wrote.

In a second letter, Clay White said he had been contacted by an insurance representative who indicated more than \$200,000 in life insurance was contestable in the suicide.

"It is apparent the family, their attorney and private investigator are making every effort to prove homicide by attempting to build their case on speculation and unfounded theories instead of factual information," Clay White stated.

Malak unofficially declared the death a suicide on Oct. 29, 1982.

The official manner of death, suicide, was released in a document dated Nov. 16, 1982.

Crime lab reports in the police file show the bullet retrieved from Bill White Jr.'s body matched the revolver. Trace metal and gunpowder were found on the right hand and blood was found on the left hand.

No signs of struggle were documented.

The White family's attorney, Carl A. Crow, hired private investigator Steve Nawojczyk of Little Rock, to assist in the investigation.

In a letter to Malak, Nawojczyk pointed out that White Telecommunications had been enjoying a very successful growth rate.

"Bill White Jr. was a very key part of the business because he was the individual who obtained the technical knowledge and ability to design phone systems. It would stand to reason that if anyone wanted to cripple the business, Bill Jr. would be the person to remove."

In a letter to the police department, Crow mentioned other leads which might point to homicide.

A gray Ford truck with a camper shell was seen parked behind the building the night of the incident, Crow wrote. Also, other people knew of the gun kept in the office.

Garland County Chief Deputy Sheriff James Holt, who was acting as a deputy coroner at the time, recalled the death.

Holt said one statement attributed to him by the family is not true. Holt said he did not call the death an execution-style killing.

However, he acknowledged a couple of things bothered him about the incident, such as the fact Bill White Jr. was right-handed but the gun was found on his left side.

Police Detective Gary Ashcraft reported he could find no evidence of homicide and agreed the wound was self-inflicted.

*Note: Malak told the family that death was*

dering charges.

Jones "put himself at great risk" by cooperating with authorities so they could locate Smith in Mexico, Lord said.

Among other things, a federal indictment charged that Jones accepted \$20,000 in cocaine money and delivered it to a courier in San Diego who was supposed to deliver it to Smith. Authorities have said that Smith and others smuggled large amounts of cocaine and marijuana into the United States.

Despite Jones' cooperation with authorities, Lord said, "A lawyer should be held to a higher standard than the public at large. What he had done was inexcusable."

Attorney Jim Rhodes of Little Rock, who represented Jones, ar-

gued for probation on the grounds that Jones has been punished enough. Jones suffered a spinal injury, lost his law license and is bankrupt, Rhodes said.

It wasn't clear what physical problem Jones had experienced to put him on crutches, but he mentioned in court that he had been in a bicycle accident in Florida.

"I have absolutely no excuses or justification for what Mr. Jones has done," Rhodes said. "He has ruined his life."

Jones said he became involved in money laundering after Smith paid him \$25,000 for some legal work. When he was unable to complete the legal work, he agreed to pay off the debt, which was reduced to \$11,000, by laundering the money, Jones said.

"From that time until the time I was arrested, I could not have been any more wrong if I had chosen to consciously hurt people," Jones said. "The hard-

est thing I've ever done in my life was sit down with my son and daughter and explain to them what I had done. I don't think there's anything more that I could do besides killing myself that would hurt my family more."

"Whatever you do to me, I accept," Jones told the judge.

Jones blamed his bankruptcy problems on poor legal advice and lack of knowledge regarding bankruptcy laws.

"You don't have to know anything about bankruptcy law to know you have to be honest," Zilly told Jones.

Last year, a federal judge refused to accept Jones' bankruptcy petition, saying it contained a "clear and unmistakable pattern of untruthfulness."

In March, Jones admitted \$1.1 million liability in a civil malpractice lawsuit.

David Volk, an independent writer in Seattle, contributed to this report.

# FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 05/20/1996

To: Little Rock

From: SA [REDACTED]

Squad 2

Contact: [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #: 166C-LR-35380 (Pending)  
✓166C-LR-35380-B (Pending)

Title: UNSUB(S);  
KEVIN IVES (DECEASED) - VICTIM;  
DON HENRY (DECEASED) - VICTIM;  
ITAR - MURDER FOR HIRE;  
USE OF MINORS TO DISTRIBUTE DRUGS;  
DOMESTIC POLICE COOPERATION

Synopsis: [REDACTED] of victim DON HENRY,  
telephonically expressed his gratitude for the FBI's efforts in  
captioned matter.

Details: On May 17, 1996, [REDACTED] of victim DON  
HENRY, telephonically contacted the Little Rock Office of the  
FBI, and requested to speak with this agent. He told me that he  
was most appreciative of the time and resources provided by the  
Bureau in its attempt to answer the many questions concerning the  
death of his son. He was also angered by the on-going efforts of  
[REDACTED] victim KEVIN IVES, to "hurt the FBI in the  
press," and offered to provide a statement to the media  
expressing his satisfaction with the professionalism displayed,  
and the services provided by the Bureau, if this would be  
acceptable to the FBI.

I thanked [REDACTED] for his complimentary remarks, and  
informed him that, in cases which have not resulted in charges  
being filed, the FBI is precluded from directly or indirectly  
commenting on the matter -- the decision to express his views is  
a matter left solely to his discretion.

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166C-LR-35380-B 29

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FBI - LITTLE ROCK	

I: \DRAFTS\2\ [REDACTED] \14 DJW OLC