

# Malak backs his ruling in deaths

By LYNDA HOLLENBECK  
Courier Staff Writer

"I did my best ... and have a clear conscience," said the lead witness today in a prosecutor's investigation at the Saline County Courthouse.

Dr. Fahmy Malak, state medical examiner, referred to extensive speculation about the Aug. 23 deaths of Kevin Ives, 17, and Don Henry, 16, and stated: "I forgive everything said superficially ... I forgive them with my heart."

Malak ruled that the boys died during the early morning hours as they lay in identical positions on the Union Pacific tracks near the Alexander crossing. He contended that smoking marijuana had caused both to lose consciousness and that their deaths resulted when they were struck by the train.

That ruling has recently come under sharp attack and has been a central focus of the hearings called by Deputy Prosecutor Richard Garrett.

Malak said blood, urine, stomach contents, spleen, kidney, liver and brain samples were submitted to toxicologists, but only the blood was tested. "The blood was enough," he stated several times during the testimony. "The blood is one that counts."

The medical examiner said there has been too much speculation concerning the deaths of the two boys and near the conclusion of his testimony said, "I'm not playing God. I'm not Quincy ... This was apparently a reference to a television series about a crime-solving police medical examiner."

He said the victims "took the secret with them ... we as survivors are trying to explain it. We may never know." He said he was not "damaging these kids. They are like my children ... we find it, you have to accept it."

Malak disputed the ability of the train crew to note that the boys' eyes were closed as they lay on the tracks. He said he does not consider it unbelievable that the two boys were lying in identical positions. "Nothing is strange in this business. I see lots of things."

"I am a human being. My heart bleeds when I see those two kids ... we love them unconditionally, even when they do stupid things ... and then they are gone."

When Garrett asked why clothing of the victims was not tested to determine if any contained the blood of any other persons or of gunpowder residue, Malak said that was not part of his job. This would have been done, he said, "only if relevant to cause of death. I don't want to submit for other people to work if not necessary. They have 75 counties" that submit samples to the state Crime Lab, Malak said.

Garrett asked about eye fluid samples and Malak referred to his file. Eye fluid was submitted for Don Henry, but not for Kevin Ives, he said. Then, in response to a question, he said no results were ever given to him. No explanation for the purpose of eye fluid tests was given.

"We have body fluids ... blood, urine ... this is extra work, extra request ... " He contended this would be unnecessary if it were not found relevant to his findings. "This special test costs lot of money for Crime Lab," Malak said.

Garrett asked if the Crime Lab were certified to perform this type of procedure and Malak replied, "I know the medical examiner is qualified ... I have no idea if Crime Lab certified." He said he was doing the test for his "scientific curiosity."

One of the autopsy reports included more details than the other, Garrett said, and questioned Malak about this.

"Why?" Malak replied. "As simple as this. I am working 16 hours a day, Saturdays. This is job that should be done by five being done by two. Either I like it or I quit — you understand now?"

In spite of objections from

Deputy Prosecutor Richard Garrett and parents of the victims, Malak displayed photographs of the bodies in order to defend his ruling in the deaths.

Before Malak's testimony began, Garrett made an announcement concerning the use of the photographs of the bodies.

"I personally don't feel like it serves any purpose," Garrett said. "Dr. Malak says it does."

Garrett looked at television crews in the courtroom and said, "I don't want y'all showing any of these pictures on the six o'clock news."

That instruction was apparently disputed by KATV reporter Deborah Mathis who said Garrett did not have the authority to determine what photographs would be shown. Mathis reportedly said because of the graphic nature of the photos her station would not show them. Garrett indicated he would consider clearing the courtroom if television reporters were going to assume that attitude and allowed five minutes for anyone to leave before Malak's testimony began.

Malak was adamant in defending his contention that the boys were in a deep sleep or unconscious because they had smoked a large amount of marijuana before being struck by the train. He said his function as medical examiner was to determine "was it homicide, suicide or an accident."

He said there was no evidence of beating, strangulation, stabbing or gunshot wounds and that he is certain the two teenagers were alive before they were struck by the train at 4:25 a.m. "They died from the crash."

More than once during Garrett's questioning, Malak stated he had performed a "minimum of 10,000 autopsies" throughout his career in forensic pathology.

Malak said he was basing his ruling on the assumption that everything he had been told represents an accurate account of the incident. "Was the engineer telling the truth? What condition was he in? Was he testified for drugs?"

Malak made reference to Dr. Arthur J. McBay, chief toxicologist.

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## Hearing

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gist in the North Carolina medical examiner's office, who has spoken with a *The Benton Courier* reporter and with the families of the victims.

"Dr. McBay said he didn't challenge my autopsy findings," Malak said. "He challenged the marijuana amount."

Malak said McBay never reviewed the autopsy, the toxicology report or the investigation itself and had based his statements "upon what a newspaper man or woman told him."

In telephone interviews with McBay and another toxicologist, both stated that marijuana, unlike alcohol, cannot cause a person to lose consciousness. Also, a number of young witnesses, who claim to have seen many people smoking marijuana, testified they have never seen it happen to anyone, nor have they even heard of it.

During the months that have passed since the boys died, the victims' parents, Curtis and Marvelle Henry and Larry and Linda Ives, have spoken with McBay and other medical experts and say they have been consistently told that smoking marijuana could not have caused the boys to lose consciousness. They believe their sons were murdered and recently held a news conference to ask for a grand jury investigation into the boys' deaths. That conference led to the present hearings.

Malak said he had discussed the case with the chief medical examiner in Florida and that person's opinion was that the boys were "playing chicken."

He staunchly contended that marijuana can result in a deep sleep, can make a person unaware of a sense of time and



space and can distort a person's thinking.

Malak said Tallent told him there was no evidence to indicate a suicide pact. "I gave these two children the benefit of doubt and ruled accident," Malak said.

"The bottom line is was it suicide, accident or homicide," Malak said. "I excluded suicide by the history ... by them being good kids. Society doesn't want to accept it (suicide). Was it accident? The best conclusion I could draw ... Was it homicide ... only if engineer was lying and couldn't stop" because of his condition.

Deputy Cathy Carty, who was one of the first persons to reach the site, said her "initial response then and now" was that it was "a very strange situation ... I do not believe that two young men would lay down side by side and have an accident."

She said that was her "own personal view."

For months, spokesmen for the Saline County Sheriff's Office have stated foul play was never suspected and they had no reason to believe anything other than a tragic accident had occurred. The day after the boys were killed, Malak allegedly told county investigators no foul play was suspected and no alcohol was detected in the bodies.

When asked if anyone at the scene stated the situation was "just an accident," Carty replied "nothing directly" was stated to that effect. Then she added, "But I believe none of us in our own minds could accept that happening."

Union Pacific personnel testifying Thursday also said they could not believe the boys would have lain motionless on the tracks with a train approaching. The whistle had been blown

when the train reached Alexander and could be heard for as far away as two miles, the crewmen said. When the engineer realized there were two boys on the tracks, he again sounded the horn and attempted to stop the train, but could not do so in the few seconds prior to impact, he stated.

The boys were lying in identical positions on the tracks and partially covered by a green tarpaulin, according to the three crewmen who were riding in the lead engine.

The tarpaulin was never located by authorities, but the conductor testified he pointed out its location after impact to several persons at the scene, including Investigator Chuck Tallent, who was in charge of the case.

Charles Beck Jr., a friend of the late Don Henry, testified Friday he and Henry had gone "spotlighting" for deer together many times near the railroad tracks where the train ran over the boys.

Beck had planned to go hunting with the two teen-agers that day, but said he had gone to the races, gotten home late and "forgot it."

On previous occasions when Henry and Beck had gone to the tracks, located near the Alexander crossing off Arkansas 111, they would hide in the bushes when a train approached to prevent being seen by the engineer.

He testified they had probably been in that area "around 20" times during the past five or six years. They went to that location, he said, because they had seen deer there, yet he said they had never shot at a deer while there and had never even seen one during the times they were spotlighting.

## Men in truck near scene identified

By LEE BROCKWAY  
Courier Staff Writer

The two men seen in a pickup truck near the Alexander railroad crossing where two teen-agers were struck on Aug. 23 were identified today.

The men, Alexander residents Gary Pulliman and Allen Smith, were in the wooded area near the tracks shortly after the boys were struck because they were attempting to help the victims, 17-year-old Kevin Ives and Don Henry, 16, both of Bryant. Pulliman and Smith are members of the Alexander Volunteer Fire Department.

They were identified today by Fire Chief Tommy Madison in an interview with *The Benton Courier*. Madison, who was also at the scene, encountered Pulliman and Smith after he and a Saline Memorial Hospital paramedic attempted to enter the area by using an alternate route through the woods. Madison was in the hospital ambulance with Shirley Raper when a small pickup truck drove toward them from the right side.

Raper testified Friday she could not identify the men in the pickup truck. She said Madison, whose name she did not know until he contacted her today, talked with the men while she walked ahead on a different lane to see if she could drive the ambulance onto the tracks. When Raper returned, the pickup truck had left the area and she and Madison returned to the crossing.

Madison said he did not identify himself or Pulliman and Smith earlier because he was unaware authorities were interested in talking to him. Raper first made known her encounter with Madison and the two men in the vehicle during an interview with the *Courier* last week.

The fire chief said Pulliman and Smith told him at the site they were attempting to reach the victims. He did not know if they had been successful, either by vehicle or by foot.

Madison said he was at the scene with several other bystanders when Raper asked the crowd if there was an alternative route to the area. He said, "All I was trying to do was volunteer my services."

Attempts to reach Pulliman and Smith today were unsuccessful.

ay, February 22, 1988



Courier photo by Phillip Felto

Dr. Fahmy Malak defends his ruling in the deaths of two Bryant teen-agers through the use of photographs of the bodies. Deputy Prosecutor Richard Garrett strongly objected to the use of the photos in a prosecutor's hearing, saying he did not feel like they served any purpose. Malak insisted on displaying the photos, though, and Garrett allowed them after asking the parents persons under 18 and others to leave the courtroom.

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# Story of boys' deaths unfolding slowly

By James Scudder  
GAZETTE STAFF

It was still hot at 4 o'clock that Sunday morning. The temperature had fallen only to 78, after a high of 96 the day before.



Shortly before 4:30 a.m., the sky was clear but it was still dark as a freight train roared toward the

Ives toward the Shobe Road crossing south of Little Rock near Alexander.

The train was traveling at an approved speed, 55 miles an hour, and Stephen Shroyer, the engineer, sounded the required blasts of the train's horn — two longs, one short, and one long. The train passed the crossing with bells ringing.



With the engineer in the locomotive that pulled the 75-car Union Pacific Railroad train were Jerry Tomlin, who was the conductor, and a brakeman. The train



—Staff Photo by Kelly Quinn

Railroad trestle where the bodies of the two youths were found.

approached a 62-foot trestle that bridges Crooked Creek before the track approaches a crossing at Alexander. Its headlight was on the brightest setting, and suddenly Tomlin stood up.

"What is that?" he exclaimed.

There was something on the tracks ahead. It could have been

almost anything — a box, a large piece of paper.

"Oh, my God!" Shroyer cried, activating the train's emergency braking system and sounding the horn.

An eternal instant of horror and futility followed as the three men watched.

Very near the end of the trestle, two teen-aged boys were lying side by side on their backs and motionless across the tracks.

Their heads rested between the rails and their legs extended over one rail. Their hands were folded

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# Deaths

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in a resting position. Their eyes were closed. Beside them lay a .22-caliber rifle that was neatly parallel to their bodies, its barrel toward the rail where their heads lay. What appeared to be a green tarpaulin covered them from their waists down.

## Did not move

They did not move when the train ran over them, scattering parts of their bodies along a 1,000-foot section of the track.

Shroyer was traumatized, but instinctively kept control of his train. He got it stopped.

What followed was a two-hour convergence and investigation by Saline County sheriff's deputies, the county coroner, a Bryant police officer, a Shannon Hills police officer, a State Police trooper, a Benton Fire Department rescue unit and paramedics from Saline Memorial Hospital.

Sheriff's investigators secured the scene and authorities began sorting out what happened. The boys' bodies were assembled, placed in plastic bags and, with belongings that could be found, were sent to Dr. Fahmy Malak, the state medical examiner.

The boys were identified as Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant.

## Ruled accidental

After an autopsy, Dr. Malak ruled that the deaths were accidental and that the boys had been "unconscious and in deep sleep" while under the influence of marijuana.

Their parents, Larry and Linda Ives and Curtis and Marvella Henry, were not convinced. But they buried their boys, and then went home to ask their questions.

Kevin Ives and Don Henry were the kinds of sons knowing parents call "good boys." They were energetic and obedient, did well in school and had high aspirations. At the time, the parents knew little about marijuana but were convinced that, if their sons used it, it was out of character for them to use it in amounts that would make them comatose.

They did not think of the boys as suicidal, but were even willing to concede that, if they were, they could not conceive of their placidly keeping commitment to it while the earth beneath them shook like Armageddon as a roaring freight train approached.

The parents were not bitter, or even angry, and grief cannot be sustained forever. A quest for justice and answers can.

Finally, after hiring a private investigator and months of their own searching, Larry and Linda Ives and Curtis and Marvella Henry persuaded the deputy prosecuting attorney of Saline County to call a special prosecutor's hearing.

Richard Garrett, who is seeking the office of prosecuting attorney, said Friday that his election campaign had nothing to do with his calling the special hearing. When a reporter broached the question, Garrett snapped back, "Nothing whatsoever."

## Questions persist

That aside, the parents finally have attracted the attention of the press and have managed by their initiative and perseverance to place these questions on the public conscience:

★ Can marijuana use — in any amount — make one comatose or induce a sleep so deep that one would not be aroused by an approaching freight train? Dr. Malak says yes, but other authorities, toxicologists and pharmacologists, say it is either impossible or highly unlikely. What the parents want is an answer, one way or the other.

★ Can two teen-aged boys who previously have given no signs of suicidal tendencies, lie on a railroad track, carefully position themselves as if laid out for military inspection, pull a drapery of tarpaulin over their legs, close their eyes, fold their hands and lie motionless while a freight train approaches and runs over them? The parents want someone to convince them that is reasonable to believe, even rational.

★ If, as the poet asked, gold should rust, what, then, will iron do? The prosecutor's hearing has brought to light numerous downright oversights by the authorities. For example, while collecting parts of the bodies, a foot was missed and it was only after the medical examiner noted it that officers went back to the scene and found the foot. A gold necklace one of the boys was wearing was lying near the point of impact between the rails but was not found until a cousin visited the scene later just to see where his relative had been killed. A paramedic saw a pickup truck occupied by two or three persons leave a wooded area near the death scene less than an hour after the boys were killed, and a passenger in her ambulance had even talked to the truck's occupants, but she never reported it to the police. They learned about it

much later when they read her statements in the newspaper.

The parents are bothered by those questions. So are the police.

Nearly all the officers, including those in charge of the investigation, have said at the hearing that they are as baffled by the unanswered questions as the parents. They say, too, that the case is not closed. It never has been closed, and it will remain open as long as there are unanswered questions.

## Hearing resumes today

The prosecutor's hearing, which last week merely made public information previously known only to the police and other authorities, may begin to get at least some of those questions answered when the hearing resumes at 9 a.m. today in Saline Circuit Court.

Dr. Malak and other state Crime Laboratory officials have been subpoenaed and will testify.

In the meantime, it would be interesting to know who was in the pickup truck, and what they were doing within a few hundred feet of the death scene before daylight August 23.





—Staff Photo by Kelly Quinn

Dr. Fahmy Malak, the state medical examiner, testifies during hearing at Benton.

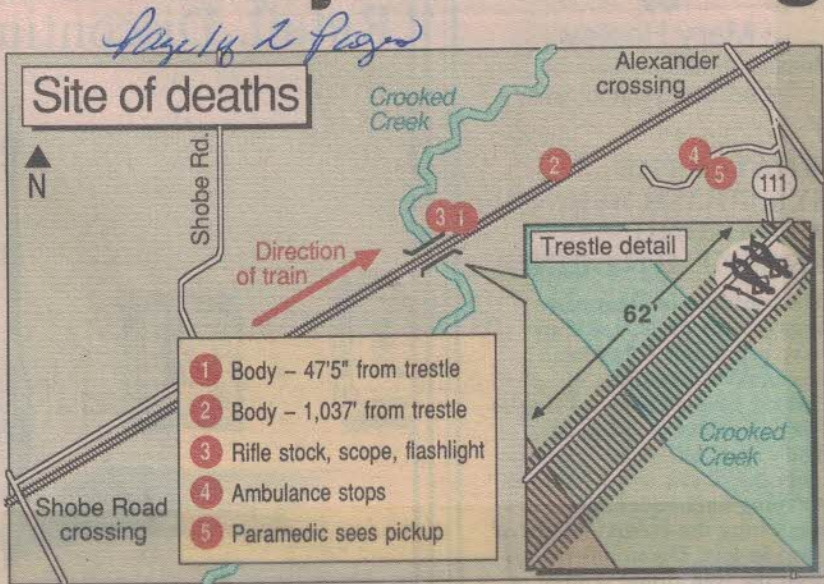
# Malak stakes his job on ruling

By Lamar James  
GAZETTE STAFF

BENTON — Dr. Fahmy Malak, the state medical examiner, said Monday he would quit his job if it turned out two teen-agers were beaten to death before a train struck them.

Dr. Malak made the remark while testifying on the third and last day of a public inquiry called by Deputy Prosecuting Attorney Richard Garrett.

Garrett is investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16, who were lying on a track before a train struck them about 4:30 a.m. Au-



(See MALAK on Page 10A.)



# Malak

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gust 23.

Garrett told the family after testimony Monday afternoon that he was going to continue his investigation, but not publicly. He said he might release a preliminary statement later in the week.

He also said he was "fairly certain" he would ask for additional testing on evidence by either the state Crime Laboratory or an independent agency.

Two scientists in toxicology or pharmacology, in answer to questions in newspaper interviews, have questioned Dr. Malak's conclusion that the boys were "unconscious and in deep sleep on the railroad tracks under psychedelic influence" of marijuana. It was highly unlikely that marijuana could make a person unconscious, the two said in reply to reporters' questions in the interviews.

## Doesn't back off

But Dr. Malak did not back off his ruling.

"They were sound asleep. \*\*\* The ruling is based on reasonable medical certainty," Dr. Malak said. "I went with what I had" and not with speculation that it was a suicide or they were playing a game of "chicken."

He told Garrett: "Don't make something more than it is. We may not ever succeed to know what happened. These are things we have to accept and live with. I see it every day. Children 15 and 16 shoot themselves and take drugs."

Dr. Malak said the boys were not beaten, strangled, shot or stabbed before being struck by the train and there was no evidence to support suicide.

He said the bodies were X-rayed and showed no signs of bullets, and a careful examination of the bodies showed no wounds consistent with a beating, strangulation or stabbing.

He used autopsy photographs to illustrate his talk. The parents of the victims and several young persons in the audience left the room while the photographs were shown.

"The definite proof they were alive at the time of the crash is the aspiration of blood in the lungs," Dr. Malak said. "The children bled from the crash. They died of the crash."

Dr. Malak said the train would have shaken the track so vigorously it would have awakened the boys if they had just been asleep.

"Then the test came and there is a large amount of marijuana in the blood," he said. "This is an accumulation of current use and old use." The test did not show any alcohol or other drugs in the blood, he said.

He said the test showed one boy had 100 nanograms of marijuana in his blood and the other had 122 nanograms. He said one "joint," or marijuana cigarette, may cause five to 10 nanograms in the blood.

He said marijuana distorts the mind, distorts time and space and slows down reaction times.

"It induces sleep," he said. "Mr. Garrett, yes, marijuana induces sleep. As a matter of fact, some authorities say it induces paralysis."

"What made these kids go and sleep on the railroad in the first place," he asked. He suggested that their minds may have been distorted by the marijuana.

Garrett asked if the boys could have had suffered a severe trauma that would not be detected.

Dr. Malak then stated he would quit his job if it turned out the boys had been beaten.

Could he have missed evidence of beatings?

Maybe others might, he said, "but not with me."

Could the train impact have covered up the beating injuries.

"I know, and this was not the case," he said.

Dr. Malak said if the train crew was under the influence of a drug and they were lying, then the deaths would be a homicide.

Garrett said he had talked to the engineer of the train, J. Stephen Shroyer, and he said neither he nor his crew had used any alcohol or marijuana before the accident.

"Did it not appear strange to you" Garrett asked, that the boys were both sleeping in the same position at the same time.

Dr. Malak replied that he had seen many things that would make Garrett's hair stand on end and that "to me nothing is strange."

## Truck identified

It was also learned during the day that a mysterious pickup truck seen near the accident scene was not so mysterious after all — it contained volunteer firefighters. The men were identified by Alexander Fire Chief Tommy Madison as volunteer firemen Gary Pullman and Allen Smith, who were trying to help authorities.

The parents of the victims, Larry and Linda Ives and Curtis and Marvelle Henry, have been unhappy with the conclusion of Dr. Malak and have pushed for an expanded investigation.

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Arkansas Democrat/John Sykes Jr.

**MAKING A POINT** — Dr. Fahmy Malak, the state medical examiner, Monday makes a point while being questioned about his ruling in the deaths of two Saline

County teens who were hit by a train last summer. Malak testified at a prosecutor's hearing in the Saline County Courthouse at Benton.

# Malak defends death ruling

## *Parents, prosecutor remain unconvinced*

BY MAX PARKER  
Democrat State Desk

**BENTON** — Dr. Fahmy Malak, state medical examiner, in testimony Monday defended his findings that the deaths of two Saline County teens hit by a train last summer were accidental.

Malak testified for more than two hours during the third and final day of a prosecutor's hearing into the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant.

The hearing was conducted by Deputy Prosecuting Attorney Richard Garrett, who said he planned to issue a preliminary report within the next two days. He also said the investigation would continue.

On Aug. 24, Malak ruled the boys were "unconscious and in deep sleep on the railroad tracks, under the psychedelic influence" of marijuana when a Union Pacific train passed over them near Arkansas 111

in Alexander.

"Don't make something more (of this) than what it is," Malak testified Monday. "These boys died because of the train and because of marijuana. I did my best ... and I have a clear conscience."

Garrett called the prosecutor's hearing after the parents of the boys, dissatisfied with the ruling in the deaths, requested a grand jury investigation. The parents later called a news conference in which they criticized the work done on the case by the state Crime Laboratory.

Malak ended his testimony by declaring he had forgiven the family and others for "what has been said and written."

"He apologized to the family, but if he could back up his statements, why apologize?" said Curtis Henry, father of Don Henry, after Malak's testimony.

"At this point my mind has still not been changed," Henry said. "I still have the same questions I had at 8 this morning."

"I'm still not satisfied with what Dr. Malak said, and we've had so much testimony contrary to his, he hasn't explained anything further," said Larry Ives, father of Kevin Ives.

"I think there is still a great chance foul play was involved," Garrett said, although he refused comment on Malak's testimony. "Right now, we're just trying to determine what happened."

The train crew had said the boys were lying side-by-side on

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## At a glance

- Dr. Fahmy Malak, the state medical examiner, defended his ruling that the Aug. 23, 1987, deaths of two Saline County teen-agers struck by a train was accidental. He said he had a "clear conscience."

- At the close of the three-day prosecutor's hearing into the deaths, Deputy Prosecuting Attorney Richard Garrett said the investigation would continue and he would issue a preliminary report within two days.

- The fathers of the two teen-agers remained dissatisfied with Malak's conclusions that use of marijuana had put the boys in a deep sleep.

- Malak said he had no proof of suicide and denied the boys could have suffered injuries undetectable by an autopsy that would have made them unconscious before impact.

the tracks, with a piece of tarpaulin covering them from their hips to their ankles, when the train hit them about 4:25 a.m. They said the boys never moved, despite repeated warnings from the train's horns and bells.

"I invite you, Mr. Prosecutor, to read how it (marijuana) distorts the mind, how it distorts the reaction time, how it makes the person unaware of time and space," Malak said. "It induces sleep."

Malak said that if the crew were not telling the truth, he

would consider it a homicide.

"Is the engineer telling the truth?" Malak asked. "Was he examined for drugs, alcohol, (or) marijuana? What condition was he in?"

Garrett said he had been assured by Stephen Shroyer, the train's engineer, that none of the train's crew members were under the influence of alcohol or any drug during the 10-hour shift.

Malak said that in his mind, there was one condition for homicide. That would be if Shroyer "tried to stop (the train) but he didn't."

Malak said he would change his ruling to homicide if officials could prove it was a "hit and run."

"Dr. Malak's statements appeared to be cold and clinical, yet very logical," Shroyer said during the noon recess. "He appears to be limited by time and finances and the only reply to his allegations is that I was not alone in my observations and I do not feel personally or professionally responsible for this incident."

Ives, who also is an engineer with Union Pacific, said Malak was wrong to question Shroyer, who had attended all three days of hearings.

"That is completely, completely way out of line," Ives

said. "I know these guys personally. Out of this whole investigation, the one thing that I am completely satisfied with is what the train crew has done."

Malak said he had no proof the incident was a suicide. He also denied the boys could have sustained an injury undetectable by autopsy that could have made them unconscious before the train's impact.

"There was no evidence of beating," Malak said. "Were they strangled? Absolutely not! Were they choked? They were not choked. Were they stabbed? No. Were they shot? No."

Malak, citing his 26 years of experience, discounted speculation from other medical experts that the boys were playing "chicken," a game he said was explained as a test to see "who's courageous."

"Were these kids playing 'chicken,' like Russian roulette?" he asked. "I personally rule Russian roulette as suicide. It's a stupid act."

"I gave these two children the benefit of the doubt," he said. "I went with what I have. ... The ruling is based on reasonable medical certainty. It is an opinion ... my opinion based on what I have."

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# Benton Courier

112 Years of Continuous Service to All of Saline County

Tuesday  
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Tuesday, February 23, 1988

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Courier photo by Philip Felton

Deputy Prosecuting Attorney Richard Garrett, who conducted a three-day prosecutor's investigation into the Aug. 23 deaths of two Bryant teen-agers, is expected to make a public statement concerning the inquiry this week.

## Toxicologist called in hearing

By LYNDA HOLLENBECK  
and LEE BROCKWAY  
Courier Staff Writers

A three-day prosecutor's hearing concluded Monday afternoon with the testimony of a state Crime Lab toxicologist who said additional tests might have produced more specific readings as to the level of marijuana present in the bodies of two Bryant teen-agers.

Deputy Prosecuting Attorney Richard Garrett, who initiated the investigation to probe the Aug. 23 deaths of Kevin Ives, 17, and Don Henry, 16, said Monday afternoon he expected to release a report of the hearings within 48 hours. He emphasized that the investigation would continue, but would not be done in a public session.

Toxicologist Ken Michau and Dr. Fahmy Malak, state medical examiner, were the only witnesses called to testify Monday.

Malak's ruling in the deaths of the two boys has come under close scrutiny in recent days. In that ruling, Malak stated the two boys were in a marijuana-induced sleep as they lay in identical positions across the tracks of a railroad crossing near Alexander before they were struck by a train traveling at 50 mph. He ruled the death accidental.

Malak allegedly estimated each boy had smoked 20 marijuana cigarettes prior to their deaths.

In response to questioning by

Garrett, Michau said he routinely conducts tests to detect the presence of THC, but does not normally conduct quantitative tests. THC is an active ingredient found in marijuana.

Michau reviewed the procedures he followed in the toxicological tests for marijuana, as well as several other drugs.

He normally does not attempt to determine the level of THC because he said it requires making up standards to be used to determine the results. "I was required to do so in this instance," he said.

Individual metabolism can cause a wide range in readings, he said.

"I have always kept my mouth shut because of the wide range," Michau said in response to questions about Malak's contention that the victims had smoked 20 marijuana cigarettes.

The toxicologist indicated other tests could possibly have produced more accurate readings than the ones that were actually performed.

"It would require a lot of time" to routinely conduct quantitative tests for THC, Michau said.

Malak's testimony, which lasted more than two hours, included the display of photographs of the victims. Garrett objected to the use of the photos because of their graphic nature, but Malak insisted they were necessary in order to defend his ruling.

No other drugs or alcohol

were found in the toxicological tests done at the Crime Lab.

Parents of the victims and toxicologists in other states contend that smoking marijuana cannot produce a loss of consciousness, but Malak believed otherwise. When he was questioned by Garrett, he never conceded that any of his findings could have been in error.

Malak also testified that he had examined both victims for the possibility of sexual abuse and said this did not occur. He said he did not make mention of this in the autopsy reports because of the "sensitivity of the parents."

Malak based his ruling on blood tests, he said. Although urine, stomach contents, spleen, kidney, liver and brain samples were submitted to toxicologists, only the blood tests were done, he said. "The blood is enough," he testified.

When Garrett asked if he were not "rule of thumb" to analyze stomach contents during an autopsy, Malak replied, "Not necessary" in the case of these two victims.

The medical examiner said there was no evidence the boys were shot, choked, stabbed or beaten. He contended the trauma from the impact of the train would not have obscured any possible prior injuries.

The medical examiner said he ruled out suicide because there was no evidence to indicate this

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## Hearing

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and contended the only way homicide could have been possible would be if the train engineer had been under the influence of alcohol or drugs.

Engineer James Shroyer, a personal friend of the Ives family, testified he stopped the train even more quickly than could normally be done, causing its brakes to "lock up." The train crew was aware of the boys' presence on the tracks only seconds before impact occurred.

During Garrett's concluding remarks, he said he had interviewed the train engineer, who had observed the crew over a 10-hour period prior to the moment the train struck the boys. The engineer assured Garrett that no one on the train had consumed any type of alcohol, used any narcotics or had smoked marijuana during that time. The engineer will be filing a written report to this effect, Garrett said.

At one point during Malak's testimony, he said the victims took the "secret" with them when they died and that all the questions about their deaths may never be fully answered. He said he gave the boys the benefit of the doubt by ruling the deaths accidental and made that ruling for the benefit of the families.

Malak said the job of the

state medical examiner is "more than to find the cause of death ... we have a social message to tell kids, our children, to stop using marijuana, say no to marijuana."

The medical examiner said there has been too much speculation concerning the deaths of the two boys and near the conclusion of his testimony said, "I'm not playing God. I'm not Quincy [Quincy Jones]. This was apparent to me. This was apparent to a reference to a television set about a crime-solving police medical examiner."

Malak disputed the ability of the train crew to note that the two boys were lying in identical positions. "Nothing strange in this business. I've seen lots of things."

When Garrett asked why the medical examiner was not tested to determine if any of the blood of any of the persons or of gunpowder residue, Malak said that was not part of his job. This would have been done, he said, "only if relevant to cause of death. I don't want to submit for other people to work if not necessary. They have 75 counties" to submit samples to the state Crime Lab, Malak said.

Several times he mentioned that cost factors precluded additional tests.



# Testimony told part of the story

By LEE BROCKWAY  
Courier Staff Writer

Three days of investigative hearings into the deaths of Bryant youths Don Henry, 16, and 17-year-old Kevin Ives ended Monday afternoon.

The information gathered from the testimony of more than two dozen witnesses answered a few questions for the victims' families, but failed to provide any insight into some of the mysterious circumstances surrounding the boys' deaths.

The testimony provided the following information:

— The presence of a pickup truck in a wooded area near the tracks was mentioned Friday by witness Shirley Raper, a Saline Memorial Hospital paramedic. The occupants were identified Monday as two members of the Alexander Volunteer Fire Department.

— A few teen-agers who visited with Ives and Henry at a Little Rock park testified they saw a bottle of whiskey in Henry's car. One youth said he smelled alcohol on Henry, but did not get close enough to Ives to detect any alcohol. The whiskey bottle was not found at the scene or in either of the boys' cars. Autopsy results indicated there was no alcohol present in either of the boys' bodies.

— A flashlight at the scene was not destroyed, as was a rifle the boys were carrying. The rifle was broken into several pieces, while the flashlight was undamaged and still worked. The gun was seen by the crew lying parallel to Ives and Henry with the barrel near the boys' heads. Saline County sheriff's investigators previously said the flash-

See TESTIMONY, page 2A

## Testimony

Continued from page 1A

light and gun were lying between the two boys.

— An aerial search for a marijuana field was conducted Sept. 1 by investigators after friends of the victims said they had been told such a field was located in the area. The search brought negative results. A foot-search for marijuana was never conducted by the sheriff's office.

— The three train crew members in the lead engine saw a green tarpaulin covering the boys from their waists to ankles. One of the members observed the tarpaulin near a creek bed after the boys were struck. Investigators contend the crew saw an "optical illusion."

— Some friends of the boys changed their original statements when they were called to testify. One youth said he did not shoot pool with Henry and Ives the evening before they were killed. He said he had been mistaken about the day. Later another friend testified Ives showed him a pistol he had in Henry's car the night before

their deaths. He had earlier told officials Ives had a flashlight in the car.

— A second train entered the area shortly after the accident occurred. The presence of the other train was not known by the families or to Deputy Prosecutor Richard Garrett until Bryant Police Officer Danny Allen took the stand Thursday. He said a second train slowly left the area shortly after his arrival. Allen was one of the first persons at the scene. Crew members said they conducted an initial search before the second train entered the area.

— Allen also told Garrett about an incident that occurred about 5 a.m. Aug. 17 on Shobe Road, two miles from the railroad crossing where Ives and Henry were killed. He said an unidentified man fired a pistol at his patrol car when he attempted to stop the man, who was walking along the road. A few hours earlier that day, the department had received a report of a man, fitting the same description, who had pointed a gun at several other people.

During the evening of Aug. 22, Bryant police were called about a "suspicious person" in an area five blocks from the railroad crossing. The description of the man was similar to the one who fired shots at Allen a few days earlier. The man was dressed in a green jumpsuit.

— A state trooper responding to the call revealed during his testimony he filed a report of the incident and made a diagram of the scene. The families had been told the State Police had not filed a report since the sheriff's office was handling the investigation.

— An undamaged gold necklace observed at the scene less than 12 hours after the boys were killed is believed to have belonged to someone other than the victims. The necklace was not recovered by the teen-ager who saw it and was not seen a few hours later when a relative of the Henrys went to the area. The relative found a knotted, blood-splattered necklace, which he gave to Don Henry's father, Curtis. He said that necklace did not belong to his son.



# Malak testimony about train crew angers conductor

BY MAX PARKER  
Democrat State Desk

Testimony by employees of the state Crime Laboratory on conclusions reached in the deaths of two Saline County youths last summer, left a Union Pacific train conductor angry Tuesday.

Dr. Fahmy Malak, the state medical examiner, and Dr. Kenneth Michau, the laboratory's chief toxicologist, testified Monday in the third and final day of a prosecutor's hearing into the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant.

During the hearing, Malak questioned the condition of the railroad crew aboard the Union Pacific train. He asked whether they had been tested for drug or alcohol use after the incident.

"All I've got to say about Dr. Malak's testimony is that I will go with him and be tested 365 days a year, 24 hours a day, any time he choses," said Jerry Tomlin of North Little Rock, conductor of the train that struck the teen-agers.

"Then, we will go to the State Hospital to have him tested for a brain."

***'He must think he's pretty close to God if he said he couldn't make a mistake.'***

Larry Ives, father of Kevin Ives and an engineer for Union Pacific, said Monday it was not standard procedure for the crew to be tested after such an accident.

He said employees are randomly tested for drugs, but if the accident had occurred at a railroad crossing or had involved another vehicle, there would have been testing for substance abuse.

Deputy Prosecuting Attorney Richard Garrett called the hearing after the teens' parents requested a grand jury investigation. The parents were dissatisfied with Malak's ruling that the deaths were accidental.

Aug. 24, 1987, Malak ruled the youths were "unconscious and in deep sleep on the railroad tracks under the psychedelic influence" of marijuana when the train passed over them near Arkansas 111 in Alexander.

Tomlin, 46, who started

## At a glance

- Jerry Tomlin, the conductor of the train that hit two Saline County youths last summer, was angered at Dr. Fahmy Malak because of statements the state medical examiner made about the train crew.

- During the final day Monday of a hearing into the youths' deaths, Malak questioned whether the crew had been telling the truth about the chain of events and asked whether they had ever been tested for drugs or alcohol.

- Deputy Prosecuting Attorney Richard Garrett said he would issue a preliminary report possibly today.

- Dr. Arthur McBay, a toxicology expert in North Carolina, said the test performed on the boys' blood to determine the presence of active marijuana ingredients is a test designed for urine.

working at Union Pacific in 1959 as a brakeman and has been a conductor since 1972, said he resented Malak's attack on the crew's character.

"To think that someone in his position would make a statement like that for no reason. ... It's about as pathetic a display as I've ever seen," Tomlin said.

During questioning, Malak said it was not possible he made a mistake in his autopsy rulings.

"He must think he's pretty close to God, if he said he couldn't make a mistake," Tomlin said.

Malak also testified that during a recent conversation, Dr. Arthur J. McBay, chief toxicologist for the North Carolina medical examiner's office, told him of a young boy who smoked marijuana and lapsed into a coma for several months.

McBay told the *Arkansas Democrat* on Tuesday that he told Malak about a case where a boy was smoking a marijuana cigarette and "hyperventilated" after taking many deep puffs in a row.

"He did not go into a coma," McBay said. "He was able to be roused right away. I don't understand, nor can I find anybody else who agrees that someone can become unconscious from THC."

THC - short for tetrahydrocannabinol - is the active ingredient in marijuana.

"They were applying a test designed for urine and applying it to blood," McBay said of state Crime Laboratory staff.



## Report on deaths may be issued Wednesday

A report on three days of a prosecutor's investigation into the deaths of two teen-agers may be issued Wednesday, according to Deputy Prosecutor Richard Garrett.

Garrett said today he hopes to announce his findings on the matter along with future plans for the investigation. Before the hearings concluded Monday afternoon, he said the investigation would continue privately in cooperation with law enforcement officials.

More than two dozen witnesses testified during the public investigation into the deaths of Don Henry, 16, and Kevin Ives, 17, both of Bryant. The boys were struck by a train Aug. 23

as they were lying in identical positions on the railroad tracks at the Arkansas 111 crossing near Alexander.

The state medical examiner ruled the deaths accidental, saying Henry and Ives were in a marijuana-induced sleep when they were run over by the train. Malak contends the boys smoked an estimated 20 marijuana cigarettes prior to their deaths. His ruling has been disputed by the boys' families, Garrett and medical experts.

Ives and Henry were last seen about 12:30 p.m. Aug. 22 as they left Henry's home to spotlight deer. They were struck by the train at 4:25 a.m. Aug. 23.



# Inquiry over but doubts persist

## Mystery of deaths on railroad tracks haunts community

By Lamar James  
GAZETTE STAFF

**BRYANT** — The inquiry is over but the mystery of the railroad deaths continues.

The inquiry gave an airing to rumors, gossip and fears that have been rife at Bryant for six months. It also cast a shadow on the reputation of the town's young people, as accounts of drug and alcohol use and other illegal acts were heard.

"I think the general consensus was the inquiry was necessary," Mayor Dean Boswell said Tuesday. "I think there's doubts in everyone's minds, \*\*\* but laymen question the series of coincidental things that apparently occurred."

Larry Kevin Ives, 17, and Don George Henry, 16, who would have been seniors at Bryant High School, were struck and killed August 23 by a train as they lay on

railroad tracks.

Dr. Fahmy Malak, the state medical examiner, ruled the deaths accidental, saying the youths had fallen into a deep sleep after using marijuana.

That ruling did not sit well with the youths' parents and many members of the community.

### Unusual hearing held

Six months later, Deputy Prosecuting Attorney Richard Garrett called a "prosecutor's inquiry" — an unusual open hearing.

Bob Fisher, a spokesman for the state attorney general's office, said the public hearing was unusual and similar to a coroner's inquest, and "I don't see any reason why a prosecutor or deputy prosecutor couldn't do the same thing."

Caran Curry of the prosecutor co-ordinator's office, which gives technical assistance to prosecutors

in the state, said she never had heard of a public hearing like Garrett called, but that Garrett has subpoena power and there was nothing in the prosecutor's trial manual to prohibit it.

Danny Spadoni, principal of Bryant High, said the investigation again had made the accident the main topic of conversation.

### Principal not convinced

"There's probably not a person in this community feels it was freak accident," he said. "How many times would two boys pass out at the same time in the same position?"

"They were good students," he said of Ives and Henry. "Some of their friends said they had been experimenting with marijuana."

He said maybe 5 per cent or 10 per cent of students at any high

(See DEATHS on Page 10A.)



CASEY JONES



DANNY ALLEN



KIM CHITWOOD



# Deaths

Continued from Page 1A.

school in the state are regular marijuana users and Bryant was no better or worse than any other school.

Garrett said Tuesday the public hearing had accomplished several things.

"It developed new information," he said. "Maybe it's shown that the state ought to invest more money and more personnel in the Crime Laboratory. It certainly helped to answer some questions."

## 'Obligation' to families seen

He said his motive in the investigation was to help the families. "It appeared they'd been thwarted at every turn," he said. "They have a right to find out what they can about what took place and the state of Arkansas has an obligation to help them."

He said he used the public hearing format because Grand Jury proceedings are secret and he felt the public needed to know "what was being done." He is now in the process of reviewing the results.

During the hearings, Dr. Malak defended his findings and insisted the boys were alive when they

were struck by the train. They had not, he insisted, died of a beating, strangulation or gunshot.

Danny Allen, a Bryant policeman at the accident scene, said he thought the inquiry was necessary if for no other reason than to satisfy the parents. He said Dr. Malak's testimony makes him "feel better" about his explanation.

Allen said he had heard some people say Garrett called the public hearing because he was running for prosecutor, but "if he did it to satisfy the parents then I'm all for him. I know if it was my child I would want answers." He said the hearing "answered a lot of questions in my mind" although it won't erase the nightmares.

Here is a sampling of student reaction Friday at Bryant High:

★ "I don't feel like marijuana would put them in a deep sleep."

\*\*\* I think there's more to it than what's being put out. \*\*\* He [Dr. Malak] is good, but in my opinion he missed it. \*\*\* I don't think the problems are at school. It [drug use] does happen. I think it's blown out of proportion." — Casey Jones, 17, a senior who was a friend of the victims.

★ "I don't think Kevin and Don would lay down on the tracks. We grew up knowing not to play on railroad tracks." — Joanne Lakin,

17, a friend of the victims.

★ "I'm glad they're trying to find something out. They weren't even trying out in the beginning." — Leanne Lakin, 17, twin sister of Joanne Lakin.

★ "I don't think it was an accident. I think it was foul play. They were nice. Everybody like them." — Kim Chitwood, a senior.

★ "I don't think anybody could lay down on the tracks, not even if they were under the influence of marijuana. Hopefully, it will open the eyes of those that do [marijuana]." — Tim Harper, 18, a senior.

★ "It's not the school that's getting high. It's not the school's fault." — Brian Russell, 17.

The fathers of the boys, Larry Ives and Curtis Henry, were dissatisfied Monday with Dr. Malak's testimony in which he explained why he ruled as he did. Neither parent said it had changed his mind that his son's death was something more than an accident.

Ives said Tuesday the public hearing had "suppressed" a lot of rumors and "kind of showed what we were up against. I think it was well worth the time and effort."

Henry said the hearing "got closer to the facts than we were getting before. All we were getting was the runaround until Garrett got into it."



# Boys' friends endorse deeper inquiry

BY DOUG THOMPSON  
Democrat Benton Bureau

**BRYANT** — One of the most haunting aspects of the deaths of Kevin Ives and Don Henry is the feeling that, if it happened to them, it could happen to anyone.

That's what three close friends of Ives and Henry said Wednesday in an interview at Bryant High School. Nothing about Kevin Ives or Don Henry, they said, made it more likely for them to die under mysterious circumstances.

"I'm glad they're doing a better investigation. When it first happened, it was like they decided: 'Well, a couple of bums got hit by a train. Let's clean this mess up and go home,'" said Mike Skasick, 16.

"They were friends with anybody. ... I'd never seen either of them lose their temper," he said.

Jennifer Brooks and David

## At a glance

- Three high school friends of Kevin Ives and Don Henry said the boys' mysterious deaths could have happened to anyone, and are glad to see renewed efforts to find another explanation for the deaths.

- Ives, 17, and Henry, 16, died when hit by a Union Pacific train Aug. 23. The boys were lying motionless on the tracks.

- The state medical examiner ruled the boys were in a deep sleep induced by marijuana. Their friends defended the victims, saying they never used drugs so heavily they would pass out.

Russell, both 16, testified at a prosecuting attorney's hearing concerning the investigation of the deaths. Russell was perhaps one of the last people to see the boys alive.

Russell and Ms. Brooks said neither boy had any enemies, both were happy, normal teenagers, and weren't rowdy or

moody. Ives and Henry were close, they said.

Ives and Henry were killed when they were hit by a Union Pacific train about 4:25 a.m. Aug. 23, 1987. The boys were lying side by side on the tracks in exactly the same position, train crew members testified in the hearing. Neither boy moved as the train approached, blowing its whistle and shining its light.

The state medical examiner ruled the boys were in a deep sleep induced by marijuana, but the boys' parents did not accept the ruling. The prosecuting attorney's hearing was conducted Thursday, Friday and Monday. A final report is expected this week.

Russell saw both boys at the Bryant Road Runner convenience store less than four hours before they died. "They looked straight," he said. "I can't believe they could smoke

enough marijuana in four hours to pass out. I've never heard of anyone passing out from it, no matter how long they smoked it.

"I just can't believe that," Russell said of the medical examiner's finding. "I wish they'd given Kevin and Don the benefit of a doubt," noting the ruling made it appear they were far heavier users than they actually were.

Staying out all night hunting was not strange for the two, Russell said. "Any teenager will do that. They did it all the time."

Ives and Henry were hoping to go to Florida on their spring breaks, Ms. Brooks said.

When the news spread that they'd been killed, she said, "I couldn't believe it. I thought the next day, they'd show up" and the whole thing wouldn't be true.



# 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.



# 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.



# Legislator requests opinion on duties of medical examiner

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.

## 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



—Gazette File Photo  
**MIKE TODD**

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.



# 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 the 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."



Dr. Fahmy Malak

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 Thursday.

## 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 Gauldin, 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.



# Investigation still 'active'

By LYNDA HOLLENBECK  
Courier Staff Writer

The prosecuting attorney's office has concluded the manner of death of Kevin Ives, 17, and Don Henry, 16, is undetermined as of this date but the investigation will be continuing, said Deputy Prosecutor Richard Garrett in a news conference today.

"The case file will be kept open and an active investigation pursued to see if the cause of the boys' deaths can be established," said Garrett in a written release he distributed to reporters in attendance.

State Police have entered the investigation at Garrett's request, but he said Saline County Investigator Chuck Talant and other personnel from the sheriff's office will also continue to work on the case.

The teen-agers, who died Aug. 23, had been lying in identical positions on the tracks near the Shobe Road crossing. Three train crew members testified neither boy showed any sign of movement or awareness as the train approached and that they were partially covered by a tarpaulin.

The tarpaulin was not recovered during the investigation of the scene. Prior to the recent hearings, county investigators said it did not exist and contended it had been an "optical illusion."

Dr. Fahmy Malak, state medical examiner, ruled the boys' deaths accidental and stated in his autopsy reports that they were "unconscious and in deep sleep due to the psychedelic influence of THC (marijuana), when a train passed over them causing their accidental death."

The medical examiner's conclusions have drawn sharp criticism from toxicologists who contend marijuana cannot produce loss of consciousness. However, during testimony at a recently completed three-day prosecutor's hearing, Malak would not equivocate from his opinion, saying others could be wrong, but he had made no mistakes.

Garrett said the hearings that probed the deaths of the Bryant teen-agers left many questions unanswered and raised additional ones. He named the unanswered questions as:

— Why would the boys be lying with their heads flat on the ballast of the railway bed when it would have been much more comfortable to have leaned their heads against the rail?

— Why would the position of their bodies be exactly the same and why did neither boy make any movement as the train approached?

— Why did one boy have his shirt off? (The shirt was a pul-

lover type, which when found was torn from the armpit to its base.)

— Why was the whiskey bottle not found? (Witnesses testified the boys had a bottle of whiskey in their vehicle, but neither boy had any measurable amounts of alcohol in his blood, according to autopsy findings.)

— Did the green tarp exist and, if so, what happened to it?

— Would trauma of a similar type sustained near the time of death have been detectable through autopsy?

"Hopefully, with the next month or two months, those questions will be answered," Garrett said.

The prosecutor said there are no "concrete" suspects. "There are people we want to talk to ... people whom we believe have information."

The investigation will be more difficult now that the public hearings are over, Garrett said. "It's going to be hard-nosed police work now."

Garrett said he had no way of knowing whether anyone had been with the boys prior to their being struck by the train and said he has not ruled out homicide as a strong possibility.

Some tissue samples from the victims are at the state Crime Lab and others are in Memphis, Tenn., Garrett said. Additional tests will be run on the tissues, but Garrett declined to say what agency or individual would be conducting the tests because he

had agreed not to reveal the name.

The findings of the investigation to this point have been made known to the victims' parents, Larry and Linda Ives and Curtis and Marvelle Henry, and Garretts said he believes they are satisfied the investigation will be continuing.

Garrett noted that the Crime Lab conducted blood tests to detect the presence of cannabinoids in each victim. However, Garrett contends the particular test performed was inadequate to make any determination of a state of intoxication in either boy, if any existed at the time of death.

"The testimony showed the presence of cannabinoids as shown by this examination could have developed as a result of smoking marijuana as much as a week before," Garrett said.

"Additionally, this examination did not separate the major active constituent of marijuana, delta 9 tetrahydrocannabinol, which would have been an indication of the degree of intoxication of either boy if they were in fact incapacitated to any degree," Garrett said.

In an earlier setting, Garrett called the test "worthless."

Samples of the liver, kidney, brain and stomach contents were also submitted to the Crime Lab, but no tests were run on these except for alcohol

in the gastric juices, according to Garrett.

"I think if anything ever comes of this, it will be the direct result of the influence of the families and the influence of the press," Garrett said.

Prior to the hearings, Garrett said he believed there was a high probability of foul play. He still believes so, he said today, although he did not totally rule out the possibility of some sort of accident.

When asked if he believes marijuana could cause someone to lose consciousness, Garrett said, "Having never smoked marijuana, I don't know that I could answer that. But from what I've read, I don't believe you could smoke enough marijuana to pass out."

"Malak's definition of unconscious is not the same as maybe someone else's," Garrett said.

Literature pertaining to the effects of marijuana lead Garrett to believe it would produce a distortion of time and space. "But that so-called high only lasts for a short period of time, with the after-effects being mainly psychological," he said.

In his written report, Garrett stated there was no indication that at any time during the shift had any of the train crew taken any prescription or non-prescription drugs, nor had any consumed any alcoholic beverages.

During testimony in the hearings, Malak said the only way a homicide was possible would have been if the engineer had been in an intoxicated state. Malak said none of the crew had been tested for the presence of drugs.

Garrett was asked why he did not question Malak about a specific issue and said, "I don't remember Dr. Malak giving me a very straight answer to anything that I asked him."

Garrett said he had talked to medical experts concerning whether it would have been possible for the crushing effects of the train to have obscured possible prior trauma, but would not reveal their identity or the information he obtained.

Malak testified he could not have missed any prior injuries and said there was no evidence either boy was beaten, choked, stabbed or shot.

Calling it "conjecture" at this time, Garrett said the investigation may lead to requesting the parents to allow the exhumation of the boys' bodies, but he emphasized that this would depend upon the results of the various tests. He does not expect to have results from these for several weeks, he said.

If the bodies should be exhumed, the expense would be borne by the county or the state, Garrett said. "It would not be borne by the parents."

He said he would not call for a grand jury investigation unless evidence is obtained to produce a legitimate suspect or there is indication someone committed perjury in testimony during the investigation. He will not request a grand jury investigation based on speculation, he said.



Courier photo by Phillip Felton

Deputy Prosecutor Richard Garrett during hearings last week into the deaths of Kevin Ives and Don Henry.

Investigator Talant actively pursued leads related to the boys' deaths as long as three months after Malak's ruling, Garrett said. "I don't think it (investigation) has been lacking," he added.





Richard Garrett

## Report: Way 2 boys died undetermined

BY MAX PARKER  
Democrat State Desk

BENTON — Deputy Prosecuting Attorney Richard Garrett said Friday the manner of death of two Saline County youths hit by a train last summer was undetermined.

"Personally, I think it's awful strange, the events that occurred that night," he said. "I still feel there is a high degree of probability of foul play."

He said an investigation would continue into the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant.

Garrett's conclusion conflicted with an Aug. 24, 1987, autopsy ruling by Dr. Fahmy Malak, state medical examiner, that the deaths were accidental.

The prosecutor's findings were outlined in a seven-page statement that included six unanswered questions and a list of criticisms of the original investigation. The findings stem from a prosecutor's hearing into the deaths.

Garrett called the three-day hearing — which began Feb. 19 and ended Tuesday — after the boys' parents publicly ques-

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tioned Malak's ruling. The parents had sought a grand jury investigation.

"If anything ever comes of this, it'll be a direct result of the influence of the family and the influence of the press," Garrett said.

The boys were lying on railroad tracks near Arkansas 111 southwest of Alexander. Malak concluded the teens were unconscious from the "psychedelic influence" of marijuana when a Union Pacific train hit them about 4:25 a.m.

"The medical examiner's conclusion ... is inconsistent with the belief of researchers," Garrett said during a morning news conference at his Benton law office. "Such experts indicated ... it would be highly unlikely, if not impossible, for a person to pass out from smoking marijuana."

"I think that Dr. Malak may have been misinterpreted by what he said," Garrett said. "His definition of unconscious is not the same as maybe someone else's definition of being unconscious. And, I don't think Dr. Malak believes you can smoke enough marijuana to render yourself in a comatose state."

However, Garrett said he was unable to interpret testimony given by Malak on Monday.

"I don't remember Dr. Malak giving me a very straight answer to anything that I asked," he said.

Undisputed testimony revealed the boys were lying perpendicular to the rails with their arms straight by their sides, their heads positioned two to six inches from the south rail and their faces looking straight up.

"Common sense would also tell you that it would not be probable that any two people would pass out at the same time from the use of any drug or alcohol, and for them to pass out in exactly the same position would really be improbable," Garrett said.

His six unanswered questions were:

- Why would the boys lay with their heads inside the rail instead of leaning against the rail, a more comfortable position?

- Why were the bodies in exactly the same position and why was there no movement as the train approached?

- Why was one boy's shirt off?

- Why was a whiskey bottle seen by friends earlier in the boys' possession never found? Garrett noted blood tests for alcohol were negative.

- What happened to the green tarp that the train crew saw covering the boys? The tarp was never found.

- Would similar trauma sustained near the time of death have been detectable?

Malak said Monday he would have found any type of trauma that occurred before the boys were struck.

Garrett said medical experts had said some trauma wouldn't have been detectable. He declined to say who they were or to discuss their statements.

Criticisms raised in Garrett's report included:

- The test performed for the presence of active marijuana ingredients was "inadequate to make any determination as to the state of intoxication ... if any, at the time of death." Also, the test used could have detected marijuana smoked as much as a week before.

- Clothing samples were submitted to the state Crime Laboratory but were never tested.

- The results of other drug tests on the boys' blood were reported as negative but the "scans" given to the prosecutor were not marked or identified.

- Samples of eyeball fluid were taken but not analyzed. Such analysis could possibly have helped establish the time of death.

Garrett said new information obtained from the hearing included the passage of a second train, possibly removing some evidence.

Garrett said the Arkansas State Police had been asked to assist with the investigation. He also said he planned to have tissue samples and other evidence sent to an undisclosed location for analysis. He expected the results in four to six weeks.