

# Official disagrees with Malak

'Foul play' suggested

By James Scudder  
GAZETTE STAFF

BENTON — The deputy prosecuting attorney of Saline County says the cause of the deaths of two boys who were run over by a train last summer remains "undetermined."

The conclusion directly conflicts with the finding of Dr. Fahmy Malak, the state medical examiner. Dr. Malak concluded the boys were alive when the train struck them and the accident was the cause of death.

Richard Garrett, the deputy prosecuting attorney, also said at a press conference Friday morning that "I still feel there is a high degree of probability that foul play was involved" in the deaths of Larry Kevin Ives and Don George Henry.

Garrett has asked the State Police to assist Saline County authorities in a continuing investigation into the deaths.

## File to be 'kept open'

"Therefore, the case file will be kept open and an active investigation pursued to see if the cause of death can be established," he said.

Asked about Garrett's findings, Dr. Malak said Friday, "I have no comment about these things. The case is over for me. Period."

Garrett also said "there is a possibility" that he would ask that the boys' bodies be exhumed for further forensic tests.

Maj. Doug Stephens, head of the State Police Criminal Investigation Division, said later Friday he had assigned Sgt. Barney Phillips to assist in the investigation.

The two boys were struck by a Union Pacific Railroad train while lying side-by-side on the railroad

(See GARRETT on Page 8A.)



—Staff Photo

RICHARD GARRETT

track about 4:25 a.m. August 23. Dr. Malak ruled that the boys were in a deep, marijuana-induced sleep when the train ran over them. He ruled the deaths accidental.

But Larry and Linda Ives and Curtis and Marvelle Henry, the boys' parents, were dissatisfied with Dr. Malak's findings and persuaded Garrett to conduct a special hearing February 18, 19 and Monday. Garrett interviewed 42 witnesses, including Dr. Malak and other state Crime Laboratory officials, during the hearing.

## Questions linger

Garrett said Friday that a number of "unanswered questions" had left him to conclude that the manner of deaths was "undetermined" and that a continued investigation was needed. The questions were:

★ Why would the boys be lying with their heads flat on the gravel between cross ties of the railway bed when it would have been much more comfortable to have propped their heads against the rail?

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

★ Why did one boy have his shirt off? (The shirt was a pullover shirt, which, when found, was torn from the armpit to its base.)

★ Why was a bottle of whiskey that other teen-agers said they had seen earlier in the evening never found? (Neither boy had a measurable amount of alcohol in his blood.)

★ Did a green tarpaulin that the three train crew members said covered the boys from their waists down ever exist? If so, what happened to it? One crew member said he saw the tarp beneath the trestle after the boys were struck.

★ Is it possible to detect trauma that could have happened to the bodies before the train struck them?

In a seven-page synopsis of hearing testimony, Garrett noted that state Crime Laboratory officials performed blood tests on each boy to detect the presence of marijuana, but added, "However, the test which was performed was inadequate to make any determination as to the state of intoxication of either boy, if any, at the time of death. The testimony showed that the presence of cannabinoids [the chemical in marijuana] as shown by this examination could have

Garrett also noted that other experts had disputed Dr. Malak's conclusions about the effect marijuana can have.

developed as a result of smoking marijuana as much as a week before."

Also, Garrett said, the 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 the boys if they were in fact incapacitated to any degree."

There was no testimony that either boy "was substantially impaired" when last seen about four hours before they were struck by the train, Garrett said, adding, "Neither boy was a stranger to marijuana smoking but neither appeared to use it in any more than a recreational use."

Garrett noted that samples of the liver, kidney, brain and stomach contents were submitted to the medical examiner, but no tests were run on them except for alcohol in the gastric juices. Also, clothing samples were submitted from each boy but no tests of any kind were run on any of those samples, Garrett said.



"I do not mean to be overly critical of the State Crime Laboratory," he said. "Their manpower and budget limitations sharply restrict what they can do and still render efficient assistance to requesting agencies. However, it would have been quite helpful in this instance if tests which they do not normally perform could have been completed."

Garrett also noted that other experts had disputed Dr. Malak's conclusions about the effect marijuana can have, saying the conclusion that the boys were "unconscious" as the result of marijuana use "is inconsistent with the belief of researchers."

"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.

Garrett said investigators had "no concrete suspects" to indicate a homicide occurred, but "there are some people we want to talk to." He declined to name them.



# Search returns to death scene

By Byron McCauley  
GAZETTE STAFF

ALEXANDER — Low clouds hovered on a cool and somber Saturday at 3 a.m. It would be a while before another train would pass.

The tranquility made it difficult to believe that six months earlier a freight train traveling at 55 miles an hour roared across two boys who had left home earlier in the night to go hunting and mysteriously were lying on the tracks.

The clouds Saturday morning seemed to muffle the only obvious sounds — those of nocturnal creatures and the conversation of a reporter, a photographer and a concerned father. The father is still doing all he can to find out how his son, Don George Henry, 16, and his son's friend, Larry Kevin Ives, 17, lay motionless side-by-side while a Union Pacific train ran over them on a hot Sunday morning in August.

The three were at the railroad tracks to record the decibel level the train noise would have reached the night the two teen-agers were killed.

Standing between the silver rails of the tracks in almost the exact spot where his son

(See NOISE on Page 6A.)

ARKANSAS GAZETTE Sunday, February 28, 1988



Henry stands near accident site; light at left is from flashlight.

— Staff Photo by Steve Keese



# Noise

Continued from Page 1A.

died, Curtis Henry, 44, took a long pull on a cigarette. He thought about a conversation with his son the day before the accident.

He remembered hunting trips with Don.

"He killed his first squirrel when he was 5," Henry said. "He knew how to hunt."

Henry still searches for clues, mentally and physically, but finds nothing. He has spent much of his life's savings investigating.

"It's just a screwed-up mess any way you look at it," he said. "It upsets me to come out here, but it's something you've got to do to get some answers."

He's been looking for answers for six months, since the state medical examiner, Dr. Fahmy Malak, concluded the boys were alive and under the "psychedelic influence" of marijuana, which caused them to be in a deep sleep when the train struck them, and that the accident was the cause of death.

Richard Garrett, the Saline County deputy prosecuting attorney, has contended that no one

could have slept through the noise a train makes and recently held a special investigative hearing to review the case. After the three-day hearing, Garrett said at a press conference that the cause of the boys' deaths was still "undetermined."

If they were alive when struck, what they heard and felt about 10 seconds before they were struck was a sound and vibration comparable to that of a jackhammer, according to a decibel meter a reporter used at the site Saturday to measure the sound of a train at 4:25 a.m. That's almost exactly the same hour and minute the boys were hit August 23.

In August, the train's engineer said he blew the train whistle from the moment he spotted the boys until impact. The whistle sounded at the Shobe Road Crossing Saturday, about a quarter of a mile from where the boys were hit.

## Jackhammer at 100 level

The decibel level Saturday was 98 at the spot of impact — without the train whistle. On a decibel scale, 140 is the maximum level the human ear can stand without feeling pain, according to state Labor Department figures. That is the decibel level of a jet engine from a distance of 100 feet. Average street traffic registers about 85, conversational speech about 59 and the sound of a jackhammer 100.

## Other readings

Other decibel readings measured at various distances and intervals on the tracks were:

★ 49, about two minutes from point of impact and at the point where train lights become visible. Living room noise registers about 49, according to the Labor Department.

★ 66, with whistle, at the Shobe Road Crossing, about 70 seconds from point of impact.

It seems unlikely that one could sleep through the sound of a jackhammer, but many questions remain unanswered.

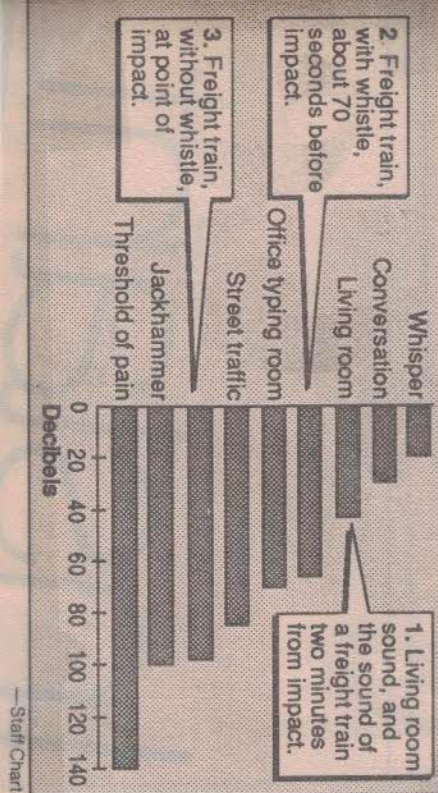
Curtis Henry will not stop looking for answers.



—Staff Photo

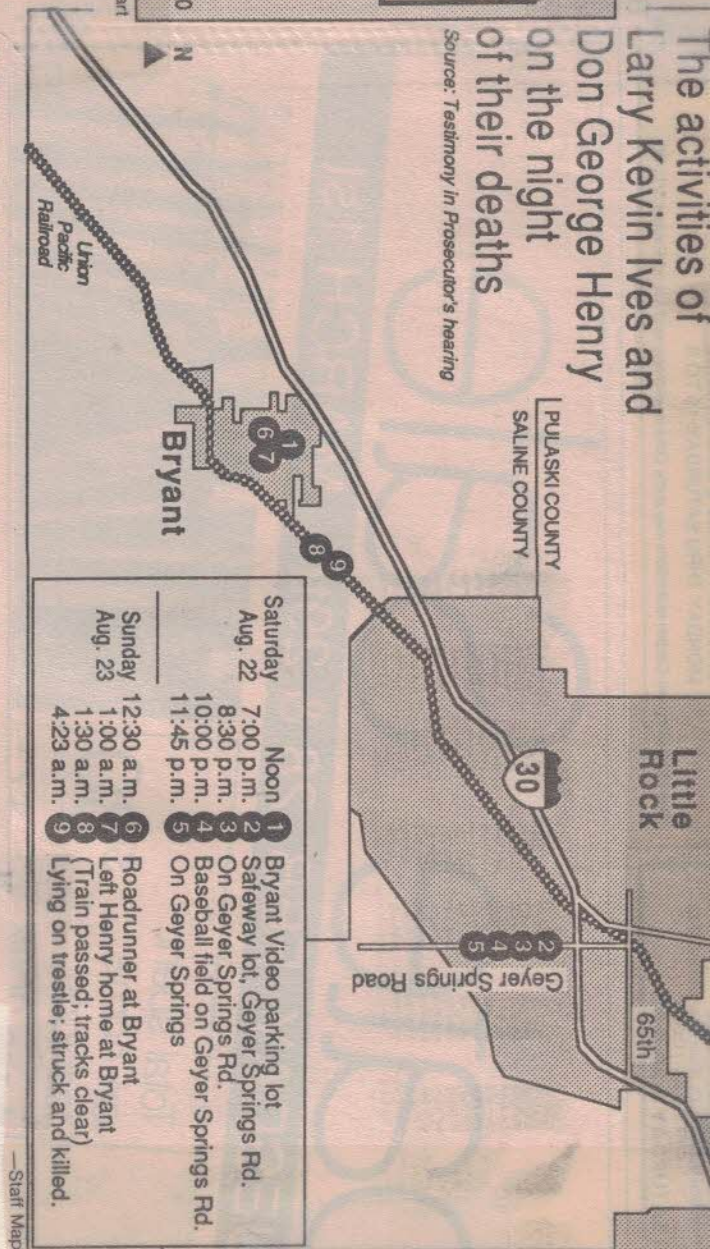
CURTIS HENRY

## The sound of a freight train



## The activities of Larry Kevin Ives and Don George Henry on the night of their deaths

Source: Testimony in Prosecutor's hearing





# Malak

Continued from Page 1A.

lak 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 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 of 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.

Apart from the discrepancy between Dr. Malak's testimony and 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's tenure often controversial, 6A.

the Board's records, the certification question



# Editorial

## 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.



# Fabric located near death scene

By LYNDA HOLLENBECK  
and LEE BROCKWAY  
Courier Staff Writers

A crucial piece of evidence in the investigation of the Aug. 23 deaths of two Bryant teen-agers may have been recovered.

According to a source who requested anonymity, a large section of "whitish-gray" material containing what appears to be bloodstains was found Sunday near the Shobe Road railroad crossing where Kevin Ives, 17, and Don Henry, 16, were struck by a train at 4:25 a.m. as they lay in identical positions across the tracks.

During testimony in recent hearings called to probe the deaths, train crew members said the boys had been partially covered with what appeared to be a "pale green tarp."

The source said the cloth found near the tracks could have been what the train crew believed to be a tarpaulin. It was large enough to have been covering the boys, the source said.

The stains will be analyzed to determine if they are actually blood, according to the source.

Saline County Sheriff Jim Steed said today a section of material was found, but he does not believe it has any connection to the deaths.

"There was something found and I'm not sure what it is except a piece of cloth," Steed said. "We didn't find no tarp. I'm not sure we found anything. We haven't found anything that resembles a tarp or found anything that could be a tarp."

A county investigator who reportedly went to the scene after the fabric and other articles were found by another indi-

vidual was asked today to confirm the discoveries, but said he is not allowed to discuss the case with the media. Another investigator was questioned about a specific issue in the case last week and gave a similar response to a reporter.

Deputy Prosecuting Attorney Richard Garrett, who conducted the hearings, was unavailable to discuss the case today.

County investigators have persistently disputed the railroad employees' contention that a tarpaulin had been covering the boys. They have referred to it as an "optical illusion." However, one crew member said he saw the tarp near a creek bed after the boys were run over. He testified in the hearings he told deputies about the tarp while they were at the scene.

State Medical Examiner Dr. Fahmy Malak ruled the boys were in a marijuana-induced sleep on the railroad tracks when they were struck by the train. Malak said autopsies on Henry and Ives indicated they had smoked a large amount of marijuana prior to their deaths. His ruling has been questioned by several medical experts and by Garrett, who has a degree in chemistry.

Several students testified in the hearings they had heard many rumors related to the boys' deaths, including one indicating the boys had found a marijuana field, had been caught at its site, were killed or knocked unconscious and then placed on the tracks.

All of the boys' clothing found at the site was submitted to the state Crime Laboratory for analysis, according to Chief

Deputy Ray Richmond. The items were placed in body bags and not separated according to ownership, he said.

No analysis was ever done on any of the clothing, a gun, a flashlight, cigarettes, rolling papers, .22-caliber shells and other items found at the site. In a news conference Friday, Garrett said all of these items will be submitted for testing. He declined to say what agency or individuals will conduct the tests because he had been asked not to reveal the name.

Garrett said he suspects foul play was involved in the boys' deaths. The investigation is continuing, he said, and will be conducted by the sheriff's office and the State Police.

Garrett said in Friday's news conference he believes if anything significant develops in the investigation that it would be because of the efforts of the boys' parents, Larry and Linda Ives and Curtis and Marvelle Henry, and the influence of the media.



# 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.

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*Ar. Democrat 2-29-83*



## 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."



## Stained cloth found near train crossing

BENTON (AP) — A large piece of whitish-gray material, apparently bloodstained, has been found near the railroad crossing where two teen-agers were killed, the *Benton Courier* reported Monday.

Kevin Ives, 17, and Don Henry, 16, were struck by a Union Pacific freight train about 4:25 a.m. August 23. State Medical Examiner Dr. Fahmy Malak ruled the boys were in a marijuana-induced sleep on the railroad tracks when they were struck by the train.

The parents of the two boys questioned the ruling and Deputy Prosecuting Attorney Richard Garrett recently conducted a three-day hearing into the deaths.

During the hearing, train crew members said the boys had been partially covered with what appeared to be a "pale green tarp."

Saline County Sheriff Jim Steed said Monday that a section of material was found, but he does not believe it is connected to the deaths.

"There was something found and I'm not sure what it is except a piece of cloth," Steed said. "We haven't found anything that resembles a tarp or found anything that could be a tarp."

Garrett was unavailable to discuss the case Monday. Garrett said last week that he suspects foul play in the boys' deaths.



# Cloth possible missing link

*Could be tarp that covered boys hit by train*

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Authorities will request laboratory analysis of a piece of stained cloth found Sunday that may offer clues into the deaths of two Saline County youths last summer, Deputy Prosecuting Attorney Richard Garrett said Monday.

However, the state Crime Laboratory won't be the first asked to conduct that analysis, Garrett said.

The cloth could be the missing tarp that reportedly covered Larry Kevin Ives, 17, and Don George Henry, 16, as they lay across the Union Pacific railroad tracks near Arkansas 111 southwest of Alexander on Aug. 23, 1987.

The tarp was seen by the crew of the train that hit the boys, but the cloth was never found by authorities investigating the scene.

"At this point, we just don't know," said Garrett, who presided over a recent prosecutor's investigation into the deaths.

"It will probably be another four to six weeks before the analysis is finished," he said.

One crew member testified at the prosecutor's hearing he found the tarp and showed sheriff's deputies where it was. The location he pointed out was at least 50 yards from the

## At a glance

- A piece of cloth that may be a missing piece of evidence in the deaths of Larry Kevin Ives and Don George Henry was found Sunday.

- Ives and Henry are two Saline County youths who were hit by a Union Pacific train as they lay motionless on the tracks at 4:25 a.m. Aug. 23, 1987.

- Deputy Prosecuting Attorney Richard Garrett will seek a laboratory analysis of the cloth, but may ask someone other than the state Crime Laboratory to do it.

- Results from the tests will not be known for another four to six weeks, Garrett said.

location of the cloth found Sunday, according to Garrett.

The deaths of the boys were ruled accidental by state Medical Examiner Fahmy Malak. He said the youths were in a marijuana-induced sleep when hit. The boys' parents were upset by the Crime Lab's investigation and sought a grand jury investigation. Garrett conducted the prosecutor's hearing in response.

Garrett wouldn't say what agency may be asked to analyze the cloth.

"These people have very sophisticated instruments, perhaps more sophisticated than anyone else in the world," he said. "I suspect they can tell us

if the stains on the cloth are blood stains. But if they can type it to tell if it matches the boys' blood, I don't know."

The cloth was found "by a fellow who came to the (prosecutor's) hearing" as a spectator, Garrett said. "He was in the courthouse to get his car tags and went on up to see the hearing."

Afterward, Garrett said, the man took his young son, "about 6 or 7 years old, out to where he thought the boys were laying. They did not hit the right spot, but they were in the area where the train would have stopped.

"They picked up several pieces of cloth," Garrett said. "We're going to send them all in for a test, but one appears more significant than the others."

That one is a piece of light material about 4 feet by 3 feet, Garrett said. It has a stain on it, he said.

"They found it wadded up into a small ball," Garrett said. "It was very faded. It was a grayish, whitish piece of cloth.

"If that is the piece, it's been through snow, sleet, rain and blistering heat in the past six months," Garrett said. "I can't tell you what we'll be able to find from it. I can't even tell you if we will ever certainly determine if it was the cloth."



## *Man reading about case finds cloth*

Spent 2 days with sons searching area where train hit boys

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — The man who found possibly crucial evidence in the deaths of two youths said Tuesday he never met any member of the boys' families before he handed over the material.

"I was just reading about it in the paper, mostly since the hearing" Feb. 18, said Terry Fox, 33, a resident of the Salem community.

He searched for two days before finding a piece of cloth about 4 feet by 3 feet. He said he had no other connection with the investigation or anyone in it.

That cloth could be the missing "tarp" that train crewmen testified about in the deaths of Don Henry, 17, and Kevin Ives, 16.

The teens were apparently killed when a train ran over them Aug. 23, 1987. All mem-

bers of the train crew in a position to see testified the boys were covered with a tarp.

But the tarp was never found, despite two searches of the scene by sheriff's deputies. One search was specifically for the tarp.

Fox said he had planned to go to a prosecutor's hearing into the deaths while in the Saline County Courthouse for his yearly tax assessment. However, another hearing was in progress that morning, so he never got to go.

"I was just curious," Fox said when asked why he went to the site. "I went to the wrong place. I thought it was at the bridge towards Alexander, when it was really the middle one" of three bridges in the area.

He searched Friday, then again about 1 p.m. Saturday for "several hours." His sons, Tony, 8, and Eric, 6, were with

him.

"I was on my way back to my truck when I saw it," Fox said. "It was wadded up, about the size of a softball."

"It was so small, I didn't think it was anything. Then I opened it up and saw how big it was," Fox said. "It looked like a large cloth with blood on it."

"It had several large, soaked-in stains," he said. The cloth itself was similar to a sheet, he said, and was "fairly smooth."

Fox said he took that cloth directly to the home of Curtis Henry, father of one of the slain boys. Fox then went home, he said, and called Richard Garrett, Saline County deputy prosecutor.

Garrett has ordered laboratory analysis of the material Fox found. Results should come in four to six weeks, Garrett said.



# Cloth sent from state for testing

Train death evidence  
will be examined

By Michael Arbanas  
GAZETTE HOT SPRINGS BUREAU

SALEM — Deputy Prosecuting Attorney Richard Garrett said Tuesday that pieces of cloth found near the railroad where two Bryant teen-agers were killed would be sent out of state for testing.

Garrett said other evidence from the scene of the boys' deaths would also be sent to the lab, which he declined to identify.

"I don't mean this as any reflection on the State Crime Lab," Garrett said. "I think they do an excellent job at what they do. It's just that this other facility has the capability to perform different and more tests \*\*\* and that they won't test anything that's been tested already by somebody else." Garrett said the testing would take four to six weeks.

Terry Fox of Salem said Tuesday that he found several pieces of cloth near the railroad tracks on which Kevin Ives, 17, and Don Henry, 16, were stuck by a Union Pacific freight train in the early morning hours of August 23.

## Cloth found Friday

Fox said he had gone to the site out of curiosity Friday and found one piece in some underbrush near the track. He said he took the piece to Henry's father Curtis, who lives near the scene, and returned Saturday with his two sons to find several more pieces.

Fox said the pieces were scattered over an area about 200 yards long along the tracks.

He said that the pieces were of several different types of cloth. He said the large piece, about four by three feet, was from thin material, perhaps a worn bed sheet, and had been compressed to about the size

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## Cloth

Continued from Page 9A.

of a softball.

"It looked to me like it had been wadded up," Fox said. "The wind didn't blow it like that." Garrett said Fox and Henry called him Saturday, and he went to the site Sunday with them and Larry Ives, the father of Kevin Ives, Dan Harmon, a Benton lawyer, and Saline County Investigator Jeff Ramsey.

Garrett said the stain on the largest piece of cloth appeared to be blood and the other pieces had similar stains, but it would be impossible to tell for certain until the fabric had been tested.

"People may be reading more into this than it really is," Garrett said Tuesday. "It may be nothing."

Garrett said that if the stains were blood and matched the blood types of the boys, that would give more credence to statements by train crew members that the boys were covered by a tarpaulin-like cloth when the train hit.

Dr. Fahmy Malak, the state medical examiner, said the boys were unconscious under the influence of marijuana when the train struck them.



# 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."

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# 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 employe 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 employes. 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 employes 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-

ogy, you just don't know," she said. "Only God and the dead man know. And 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 collar bone and the butt of Horne's rifle solely on the basis of photographs.



# Only memories to embrace

Larry Kevin Ives will not walk across the Bryant High School stage this June to collect that long-hoped-for diploma, and those of us who knew and loved him are sick at heart.

We, his Springhill neighbors, will watch our sons, his childhood friends, claim the fruits of their labors and we'll be so proud. Our thoughts will not stray for long from the harsh reality that our neighborhood ranks are lacking one.

On this night especially, as on so many others in the past seven months, we'll miss Kevin and we'll cry because that is all we can do. We'll cry because we know that Kevin loved life and that someone cruelly deprived him of its joys. We want to know who and why. Knowing is important because justice is important.

Kevin's irresistible grin and effervescent personality are only memories, but our memories of him are good. He attacked each day with optimism and fervor in the belief that life was pleasant and that he was deserving of good things.

He loved his Mom's cooking,

## be our guest

By GAYLE WASHAM



pretty girls, his dog Jake and his "bad" blue car. He had an aversion for geometry, plaid shirts and mayonnaise on his hamburgers.

He wasn't perfect; he was a typical teen-ager. He suffered the same doubts, and he made some mistakes. He enjoyed the unconditional love and support of his parents, but he knew that much was expected of him in return. Because he was loved, he was disciplined.

There is a well-traveled path connecting our property with the Ives'. I'll never forget one late afternoon encountering a glum Kevin busily stacking firewood while the neighbor boys were engaged in a baseball game in his front yard. At my query as to his sudden industri-

ousness, he smiled that crooked grin and as if he could hardly believe it himself, he said, "Grounded again!" His parents expected him to follow the rules — at home, at school and in society — and be a good person.

Larry and Linda Ives were successful with Kevin. Their memories — all they have to embrace — are good, and that is why their quest for justice is untiring. One of life's most precious possessions — their son — was taken from them.

Because of their efforts and determination, we all will one day know who and why.

*Gayle Washam is a neighbor and friend of Larry and Linda Ives and is a teacher at Parkview High School in Little Rock.*



# Dispute remains on drug test used in train deaths

By James Scudder  
GAZETTE STAFF

The reliability of a test used by the State Crime Laboratory to quantify the amount of marijuana in the blood of two teen-agers who were killed by a freight train last summer remains in dispute.

Several experts, including a spokesman for the company that markets the test, were interviewed after Saline County Deputy Prosecuting Attorney Richard Garrett conducted a three-day hearing on the deaths and later issued a report that was critical of the Crime Laboratory test.

Their disagreement centers on the reliability of data produced by a test that was designed for urine but used on blood.

Garrett said in the report, "Blood tests were done on the blood of each boy for the presence of cannabinoids. However, the test which was performed was inadequate to make any determination as to the state of intoxication of either boy, if any, at the time of death. The testimony showed that the presence of cannabinoids as shown by this examination could have developed as a result of smoking marijuana as much as a week before. Additionally, this examination did not separate the major active constituent of marijuana, delta 9 tetrahydrocannabinol [THC], which could have been an indication of the degree of intoxication of either boy if they were in fact incapacitated to any degree." Cannabinoids are chemical compounds in marijuana.

## Test can be used on blood

A spokesman for Syva Co. of Palo Alto, Cal., which markets the test — called the "enzyme multiplied immunoassay technique," or EMIT, said Wednesday that while it is true that the test is marketed for use on urine, "it is possible to do the test on blood levels, although it is a complicated procedure." She added that "you can get quantitative readings" with the test.

But a medical researcher on marijuana said that the results of tests by the Crime Laboratory on the blood were "meaningless."

Dr. Arthur J. McBay, a professor of pathology and pharmacology at the University of North Carolina at Chapel Hill, who has studied marijuana extensively, disputed statements by Dr. Fahmy Malak, the state medical examiner, who said that the tests showed the boys each had 100 to 122 nanograms per milliliter of marijuana in their blood when they were struck and killed.

"As far as I know, you can't quantify [the amount of marijuana]" using the two tests the Crime Laboratory performed on the blood, Dr. McBay said.

Two other experts on drug testing supported Dr. McBay's general position, but stopped short of call-

ing the test results meaningless.

Dr. Donald McMillan, head of the pharmacology department at the University of Arkansas for Medical Sciences, was told that Dr. McBay had said he didn't see how the test that was used could quantify marijuana content in the boys' blood, and he responded, "I don't either."

Dr. Elizabeth Todd, chief of the regulated substances section of the Institute of Forensic Sciences at Dallas, said the test used by the Crime Laboratory "is not the best system for quantifying. It would have been much better to have a more accurate spectrometry test, and that's the bottom line."

Dr. McMillan, who said he knew Dr. McBay well, said of his credentials, "I would say that probably from the standpoint of analytical toxicology, I would consider him to be one of the very top people in the United States."

Dr. Malak also had concluded in his autopsy report that the two boys were "unconscious" and "in a deep sleep" because of the influence of marijuana — a conclusion Dr. McBay previously had questioned, saying it isn't possible for marijuana use to cause unconsciousness.

Dr. Todd agreed, saying the levels of marijuana reported by Dr. Malak, even if accurate, "are not that high." Asked if, as Dr. McBay had said, the boys couldn't have been unconscious from marijuana use, she said, "Probably not at that blood concentration. I would agree with [McBay]. It is unusual for that level of marijuana itself to put people into a deep sleep."

Ken Michau, chief toxicologist for the Crime Laboratory, who performed the tests after Larry Kevin Ives and Don George Henry were run over by a Union Pacific Railroad train about 4:25 a.m. August 23, said he had performed an EMIT test on the blood of the two boys and also did studies under what is known as "thin layer chromatography."

Michau said he remained confident the tests he performed accurately quantified the amount of marijuana in the boys' blood. He said "there is literature" on the use of the EMIT test on blood and that, on the basis of that literature he "made up the standards myself" for using the EMIT test on the boys' blood.

Asked to cite the literature, Michau later said they were "some papers that were written by someone out of Canada" but he couldn't remember the title or author. "There's been work done on it, but for me to be able to find it now, I'm not sure," he said.

## Test can detect active ingredient

Michelle Moore, the Syva Co. spokesman, said Wednesday that the EMIT test can detect the active ingredient in marijuana to a level

as low as 20 nanograms.

"It's possible, the scenario you're describing, although it isn't very common" Moore said, referring to Michau's statement that he had set up his own standards for using the EMIT test on blood. "If someone has laboratory knowledge, they would be able to understand how to do it."

Dr. McBay said Tuesday he knew of no literature of the kind Michau referred to and said of the precise quantification given by the Crime Laboratory, "This is amazing that anyone would give this number."

He said the only way the amount of marijuana could have been quantified accurately was by using gas chromatography mass spectrometry, a test Michau has said he didn't use.

Dr. McBay said Tuesday, "My real feeling — and it gets me in hot water — is there are areas in the country where people are finding drugs and are automatically attributing whatever happened to [the people] to the drug. It's not that easy with marijuana. There have been tests that simulate driving, and you can show some minor changes, but nothing like this."



# State Police could step up role in case

By LEE BROCKWAY  
Courier Staff Writer

The State Police will apparently take a larger role in the investigation into the deaths of two Bryant teen-agers who were struck by a train in the pre-dawn hours of Aug. 23, 1987, as they lay across the tracks.

Larry Ives, the father of one of the victims, said today he had been informed the State Police will become involved "to a larger extent than they have been." Ives was uncertain, though, what the agency's plans are in the case. State Police officials were unavailable for comment before press time today.

Don George Henry, 16, and 17-year-old Larry Kevin Ives were lying in identical positions on the railroad tracks near the Shobe Road crossing in Alexander when they were run over by a Union Pacific train. Neither boy made any movement or indicated he was aware the train was present before he was struck, according to the train crew.

The teen-agers were in a marijuana-induced sleep when the train crossed over them, according to Dr. Fahmy Malak, state medical examiner. Malak said the boys had consumed a large quantity of marijuana before their deaths.

His ruling that the deaths were accidental has been disputed by medical experts in other states, the boys' parents

and Deputy Prosecutor Richard Garrett, who recently conducted public hearings to investigate the deaths. The families and Garrett believe the boys may have met with foul play.

Sheriff Jim Steed said today he has not received any official word that the State Police may expand its role in the investigation. Investigator Barney Phillips was assigned to the case after the hearings at the request of the families, Garrett and Steed.

Larry Ives said today if the agency does enlarge its investigation, it would be an encouraging sign. "We think that a thorough investigation will turn up some things that haven't been found," he said. Numerous rumors about the deaths is one area where the families would like officials to center their probe, he said.

"That's our main objective is to find out what happened," Ives said.

Saturday, a Salem resident found several sections of a stained fabric near the railroad crossing that might have been what the train crew said was covering Ives and Henry. The crew said the boys appeared to be covered from their waists to their ankles with a pale green tarp. The tarp was never found by authorities, who contended the crew saw an optical illusion.

The fabric is stained with

## Deaths

*Continued from page 1*

what appears to be blood, but a laboratory analysis will be conducted to make a determination, according to Garrett. Along with the fabric, the victims' clothing and other articles found at the scene will be sent to an independent laboratory for analysis, Garrett said.

*See DEATHS, page 2*