

# Evidence of wound reported

A puncture wound may have been found in one of the bodies of two Saline County youths struck by a train near Alexander in August.

A Little Rock television station reported Tuesday pathologist Dr. Joe Burton of Atlanta, Ga., had discovered a puncture wound in one of the bodies. The station did not identify the source of its information, but said Burton was unavailable for comment.

Deputy Prosecutor Richard Garrett declined today to confirm or deny the report. Garrett said he expects Burton to issue a report on his findings within two weeks. A relative of one of the victims said today she had no knowledge of the alleged finding.

Several attempts by a *Courier* reporter to contact Burton during the past week have been unsuccessful.

Burton conducted autopsies last week on the bodies of Don George Henry, 16, and Larry Kevin Ives, 17, both of Bryant. The bodies were exhumed at the request of the boys' parents, who suspect the sons may have been murdered. The parents have questioned a ruling by state Medical Examiner Famhy Malak. Malak said when the Union Pacific train struck the boys they were in a marijuana-incuded sleep.

Garrett said Burton told him last week Henry and Ives had smoked three or four marijuana cigarettes, as opposed to the 20 reportedly estimated by Malak.

Henry and Ives, who were to have been seniors at Bryant High School this year, were lying in identical positions on the tracks near the Shobe Road crossing when the train struck them. The train engineer said neither boy moved nor gave any indication the train was present.



## Pathologist: No report of puncture

Finds case on teens  
'very complicated'

BY DOUG THOMPSON  
Democrat Benton Bureau

MARIETTA, Ga. — Dr. Joe Burton, a pathologist conducting additional autopsies on two Saline County youths killed in August, said Wednesday his office never released information about a puncture wound on one of the boys.

A Little Rock television station reported Tuesday that a puncture wound was found. Burton would not comment on whether the information was true.

"This is a very complicated case. We are trying to reconstruct fragmented bones and going through other procedures," Burton said. "There is no legitimate comment I can make at this time, other than that I am extremely concerned about this case."

Asked the basis for his concern, Burton replied: "I think the circumstantial evidence, the events surrounding the deaths, are enough to make people concerned about it."

"But as for the news report (about the puncture wound), that didn't come from me or anyone in my office."

*'This is a very complicated case. We are trying to reconstruct fragmented bones and going through other procedures.'*

Larry Kevin Ives, 17, and Don George Henry, 16, died Aug. 23, 1987. The boys lay motionless in the path of an Union Pacific train near Alexander.

Burton was called in for a second opinion after Dr. Fahmy Malak, the state medical examiner, ruled the deaths were accidental and the boys were in a drug-induced sleep when hit.

The bodies were exhumed earlier this month. Burton performed preliminary autopsies in Little Rock. He is conducting further work in his lab in Georgia.

Deputy Prosecuting Attorney Richard Garrett of Benton, who requested further autopsies, said he expects a report from Burton in about two weeks.

Asked why Burton was restructuring bone fragments, Garrett said: "I ain't the pathologist. He is."

Asked if a stab wound was found, Garrett said: "A confirmed stab wound has not been found at this time." But asked if there was a puncture wound, Garrett declined comment.

Asked the difference between a stab wound and a puncture wound, Garrett said a stab wound would be made by a bladed instrument. A puncture wound, he said, would be any type of piercing wound.

A puncture wound could be caused by a number of things, Garrett said.



# Clark: Forgotten medical panel should continue function

ARKANSAS DEMOCRAT • FRIDAY, APRIL 15, 1988

BY MAX PARKER  
Democrat State Desk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

was in effect at the time."

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

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

The state Medical Examiner Commission is listed in that section.

## At a glance

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



Saturday, April 16, 1988 . .

## Panel to review office of medical examiner

To decide if 'needs of state' being met

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

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

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

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

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

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

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



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

BY JOAN I. DUFFY  
Democrat Capitol Bureau

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

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

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

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

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

limit the powers of the medical examiner's office.

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

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

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

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

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

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



# County voters turned out, weren't turned on

BY DOUG THOMPSON  
Democrat Benton Bureau

**BENTON** — Voter participation in Saline County was high, but excitement was down in the 1988 party primaries, said Ray Baxter, county Democratic Party secretary and noted pundit.

He was pleased 60 percent of the voters turned out in a year with no races for governor, senator or congressman. He was also pleased that, despite two "very attractive" candidates in the GOP primary, Saline County Democrats cast 12,200 votes to 1,600 by the Republicans.

But he criticized the effect that presidential politics had on local races. For example, there was Super Tuesday's effect on the traditional county rally the night before the election.

"The first rally I went to was in 1978, a very active political year," Baxter said. "On the courthouse lawn in the spring, there were 3,500 people there." This year, Baxter said, there were 200 to 300 at an indoor rally in March.

"There's just something



Ray Baxter

about warm weather that's compatible with this type of activity — rallies, speeches, knocking on doors," Baxter said.

Super Tuesday had one redeeming quality, Baxter said. It failed to pick a presidential candidate. A brokered convention, Baxter said, would be "the best and healthiest

thing to happen to the Democratic Party in decades."

"I'm ready to go back to the smoke-filled room," Baxter said. "Don't forget that the smoke-filled room gave us Woodrow Wilson, William Jennings Bryan, Franklin Roosevelt and, in large part, Harry Truman."

On the local level, the most interesting races were in the 7th Judicial District, comprising Saline, Grant and Hot Spring counties. Saline County is the largest, with about 60 percent of the district's vote.

Two Benton lawyers lost to Phil Shirron, a Grant County lawyer, in the race for circuit-chancery judge. Pete Lancaster, who carried Saline County, failed to make the runoff.

Richard Garrett, a deputy prosecuting attorney who was a candidate for prosecuting attorney, also won in Saline County but lost the race to Benton lawyer Gary Arnold.

Arnold and Shirron won by starting early and organizing effective districtwide campaigns, Baxter said. Shirron also "never forgot about Grant County. He campaigned there

and carried it 3-to-1 in the runoff."

In that runoff, opposing candidate Robert Hardin made county origin an issue.

"I don't think people vote for someone because of the county they come from," Baxter said. "They vote for you because they know you."

In that regard, he said, the obstacle of coming from another county can be overcome.

There was another factor in that race — Garrett's investigation into the mysterious deaths of two Saline County youths.

Garrett "was making a move toward the end," Baxter said. "There's no question that the prosecutor's hearing helped him. You can't buy that kind of advertising — front-page stories, coverage on television news." But by then — late February — it was too late, Baxter said.

In the sheriff's race, Bill Ramsey gained 44 percent of the vote in his first try at the office against 10-year incumbent James Steed Jr. In 1986, Steed had swamped two other primary candidates with more than 80 percent of the vote.



*Depending on train deaths ruling:*

## Deputy prosecutor may be named

Prosecutor Joe Hardin was granted authority Monday afternoon to appoint Benton attorney Dan Harmon as a special deputy prosecutor to investigate the deaths of two Bryant youths.

Hardin said today Circuit Judge John Cole of Sheridan signed an order giving him the power to appoint Harmon if a Georgia pathologist rules the deaths were homicides. If he is appointed, Harmon will assist Deputy Prosecutor Richard Garrett in his investigation, which began in January.

Dr. Joe Burton of Atlanta is

expected to issue the results of his autopsies on the bodies of Larry Kevin Ives, 17, and Don George Henry, 16, within the next few weeks. Burton performed autopsies on the bodies in Little Rock earlier this month and is now conducting additional tests in Atlanta.

Ives and Henry died at 4:25 a.m. Aug. 23, 1987. They were struck by a Union Pacific train as they were lying beside each other on the tracks near Alexander. They did not move as the train approached with its horn blowing and its light on. Their

deaths were an accident, according to the state medical examiner.

Garrett hired Burton after he and the boys' parents disputed the ruling. Dr. Fahmy Malak said his autopsy findings indicated Henry and Ives had fallen into a deep sleep caused by marijuana.

Hardin said Garrett will need additional help if Burton rules foul play was involved. Harmon has assisted Garrett with the case since the deputy prosecutor held public hearings on the deaths in February. However,

Harmon has not had the power to issue warrants and subpoena witnesses, Hardin said.

If appointed, Harmon's status as a deputy prosecutor would remain in tact only until the investigation is completed, according to Hardin.

Prosecutor from 1979 to 1980 for the 7th Judicial District, Harmon was a special deputy prosecutor for Hardin during a grand jury investigation into Saline Memorial Hospital in 1984. Hardin was serving as special prosecutor at that time.



Arkansas Democrat

• TUESDAY, APRIL 19, 1988

## *Court appoints special prosecutor in deaths of Saline County youths*

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Benton attorney Dan Harmon was appointed special deputy prosecutor Monday in the investigation of the deaths of two Saline County youths.

Circuit Judge John Cole of Sheridan signed a court order Monday appointing Harmon. Richard Garrett, Saline County deputy prosecuting attorney, requested the appointment.

"This just ratifies what Dan Harmon has already been doing. It gives him official standing," Garrett said. "He's been very active in this case" since the February prosecutor's hearing on the deaths, he said.

The appointment does not indicate that charges are imminent or that there are any other changes in the investigation, Garrett said.

Harmon's new standing allows him to subpoena witnesses and issue warrants, Cole said.

Cole said he signed the order Monday afternoon, but it had not been filed at the Saline County Circuit Clerk's office by closing time Monday.

Larry Kevin Ives, 17, and Don George Henry, 16, died Aug. 23, 1987. They were found lying motionless in the path of an oncoming train about 4:25 that morning.

The state medical examiner ruled the deaths accidental.

Garrett has said he believes the deaths were probably a homicide. An out-of-state pathologist is conducting additional autopsies.

Harmon was Garrett's campaign manager during Garrett's unsuccessful bid for prosecuting attorney in the March 8 Democratic primary.

Harmon, who was 7th Judicial District Prosecuting Attorney from 1979 through 1980, also served as special deputy prosecutor under special prosecutor Joe Kelly Hardin in the 1984 grand jury investigation of Saline Memorial Hospital.

Harmon could not be reached for comment Monday afternoon.



## Special deputy prosecutor named for inquiry in deaths

BENTON — Dan Harmon, a Benton lawyer, has been appointed special deputy prosecutor in the investigation of the deaths of two Saline County youths who were found dead after being struck by a train last summer.

Richard Garrett, Saline County deputy prosecuting attorney, requested the appointment, and Circuit Judge John Cole of Sheridan signed a court order Monday appointing Harmon, Garrett said.

Garrett said he requested the special prosecutor because the case was taking so much time from the prosecuting attorney's office.

### Served as prosecutor

Harmon served as Seventh Judicial District Prosecuting Attorney in 1979 and 1980. He could not be reached for comment Tuesday.

Garrett said Harmon has worked with him extensively on the case since Garrett held a hearing on the case in February. The appointment

allows Harmon to work with him on the case in an official capacity.

"He and I have gone out and interviewed people \*\*\*. We've done it together. He's worked on this as much as I have," Garrett said. Harmon will now be able to subpoena witnesses and issue warrants.

Don George Henry, 16, and Larry Kevin Ives, 17, were killed August 23, 1987, when they were struck by a train near Alexander. The train's engineers say the boys were lying motionless on the tracks about 4:23 a.m.

State Medical Examiner Fahmy Malak ruled the deaths accidental, but the boys' parents and Garrett believe there is a good chance the deaths were homicides.

An out-of-state pathologist performed a second autopsy on the boys almost two weeks ago. Results from that autopsy are expected in about two weeks, Garrett said.



## Harmon appointed deputy prosecutor

Benton attorney Dan Harmon has been officially appointed as a deputy prosecuting attorney for the 7th Judicial District to investigate the deaths of two Bryant youths.

Prosecutor Joe Hardin was granted authority Monday afternoon to appoint Harmon as a special deputy prosecutor to participate in the investigation and the possible prosecution of any action that results in the case.

Harmon will be assisting Deputy Prosecutor Richard Garrett in the probe of the August deaths of Kevin Ives, 17, and Don Henry, 16. The investigation by the prosecutor's office got under way in January.

A petition appointing Harmon to the deputy prosecutor post was filed Tuesday in Saline County Circuit Clerk's Office at the county courthouse and Circuit Judge John Cole has approved the request.

The petition states that Harmon has been of "invaluable assistance" in investigating the boys' deaths and that the office feels additional help is needed to complete the investigation, due to time limitations and the complexity of the case.

The petition further states that Harmon is "eminently qualified to serve in this capacity" since he has previously served as deputy prosecuting attorney, prosecuting attorney and special prosecutor.

Dr. Joe Burton, an Atlanta pathologist, is expected to issue the results of his autopsies on the boys' bodies within the next

few weeks. Burton performed the autopsies in Little Rock earlier this month and is now conducting additional tests in Atlanta.

During the early morning hours of Aug. 23, Ives and Henry were struck by a Union Pacific train as they were lying beside each other on the tracks near the Shobe Road crossing. They did not move as the train approached with its horn blowing and lights on, according to train crew members. Their deaths were ruled accidental by the state medical examiner, Dr. Fahmy Malak.

Garrett hired Burton after he and the boys' parents disputed the ruling of Malak, who said his findings indicated Henry and Ives had fallen into a deep sleep caused by marijuana.

Harmon has assisted Garrett with the case since the deputy prosecutor held public hearings on the deaths in February. However, Harmon has not had the power to issue warrants and subpoena witnesses until his appointment this week as a special deputy prosecutor.

Harmon's status as deputy prosecutor will remain intact only until the investigation is completed, according to Hardin.

Harmon served as prosecuting attorney from 1979-1980 for the 7th Judicial District and was a special deputy prosecutor for Hardin during a 1984 grand jury investigation into financial wrongdoing at Saline Memorial Hospital. Hardin was serving as special prosecutor at that time.



# Grand jury may be called soon in probe of deaths

By LEE BROCKWAY  
Courier Staff Writer

A grand jury may be called within the next two weeks to investigate the deaths of two Bryant youths who were struck by a train in August, according to Deputy Prosecutor Richard Garrett.

"Right now it's in our plans to call a grand jury, but right now we don't know when," Garrett said today.

He said the move to impanel a grand jury does "not necessarily" indicate the prosecutor's office believes the deaths of Larry Kevin Ives, 17, and Don George Henry, 16, were connected to a crime.

Garrett said he and special prosecutor Dan Harmon will decide within the next two weeks if a grand jury should be called. The decision will not be

based on a ruling by Dr. Joe Burton, an Atlanta, Ga., pathologist who conducted second autopsies on the bodies. Burton is not expected to issue a ruling as to the cause of death for at least two weeks, according to Garrett.

The scope of the investigation will center on "the manner and cause of the boys' deaths," but could be expanded if necessary, he said. "We have developed other evidence since the date of the (prosecutor's investigative) hearings. We want to have someone else look at this evidence and decide what steps should be taken — if the investigation should be continued, whether we should shut it down or if indictments should be issued."

If the panel were to decide the investigation should be closed, Garrett is not sure his office

would comply with the recommendation. "I'll just have to wait and see," he said.

The grand jury may be impaneled "quite a while," he said, because of the large volume of evidence gathered in the investigation. However, the panel would not meet daily.

Henry and Ives died before dawn on Aug. 23, 1987. A Union Pacific train struck their bodies as they lay motionless in identical positions on the tracks near the Shobe Road crossing at Alexander. The state medical examiner ruled that boys died accidentally because they were in a deep, marijuana-induced sleep.

Burton has already disputed Dr. Fahmy Malak's ruling that Henry and Ives had smoked an excessive number of marijuana cigarettes. Burton said each had

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## Probe

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smoked three or four marijuana cigarettes.

Autopsies on the bodies were conducted earlier this month in Little Rock at the request of

Garrett and the boys' families. Burton is currently conducting additional tests in Atlanta.

His ruling has been delayed until he receives a transcript of the hearings and other evidence he has requested.



## Prosecutor to decide on grand jury request in deaths of 2 teens

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Saline County Deputy Prosecuting Attorney Richard Garrett will decide this week whether to request a grand jury to further investigate the deaths of two teenagers.

"We want an impartial panel to review the evidence gathered since the prosecutor's hearing," Garrett said.

Larry Kevin Ives, 17, of Benton and George Don Henry, 16, of Bryant died Aug. 23, 1987. They were found lying on railroad tracks near Alexander about about 4:25 a.m.

Garrett said he will meet with special deputy prosecutor Danny Harmon today to discuss the matter. "If we call one, we'll call it pretty quick," Garrett said. "We would file the papers this week."

He expects a grand jury investigation to take "about a month, but not meeting every day."

Garrett held open hearings on the case in February. Since then he and Harmon have continued the investigation.

The report of Dr. Joe Burton would arrive after the grand

jury began hearings, Garrett said. Burton is a Georgia medical examiner hired to give a second opinion on the cause of death.

State Medical Examiner Dr. Fahmy Malak ruled the deaths were an accident. The boys' parents never accepted this ruling. Garrett called the prosecutor's hearing, then requested additional autopsies.

The boys' bodies were exhumed in early April and examined by Burton. Burton's report is expected soon, Garrett said.

A Union Pacific train crew reported they saw the boys lying motionless, side-by-side on the railroad tracks. The boys remained still despite warning blasts from the train's horn.

Malak ruled the boys were in a deep sleep under the influence of marijuana, and that the impact from the train caused death.

Neither Garrett nor Burton would confirm or deny reports that a puncture wound has been found on one of the bodies.



# Grand Jury set to hear evidence

By LEE BROCKWAY  
Courier Staff Writer

A grand jury will convene at 1 p.m. Wednesday at the Saline County Courthouse to begin its investigation into the deaths of two Bryant teen-agers who died in August.

Circuit Judge John Cole of Sheridan said today 40 names of potential jurors were drawn Friday and the list was sent to the sheriff's office Monday. A total of 16 jurors will be selected to serve on the panel by Deputy Prosecutor Richard Garrett and special Deputy Prosecutor Dan Harmon.

All grand jury proceedings are closed to the public with the exception of the qualification session. Harmon said he and Garrett will also familiarize the jury with the investigation Wednesday.

Garrett said Monday the jury's investigation could last a month, but sessions may not be held daily.

The decision to impanel a grand jury does "not necessarily" indicate the prosecutor's office believes the youths' deaths were related to a crime, Garrett said. The investigation will center on "the manner and cause of the boys' deaths," he said, but will be expanded if necessary.

In the pre-dawn hours of Aug. 23, the bodies of 16-year-old Don George Henry and Larry Kevin Ives, 17, were struck by a train as they were lying on the tracks

## Jury

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near Alexander.

Curtis Henry, one of the fathers, said today he supports the prosecutors' decision to call a grand jury.

"I depend on Danny (Harmon) and Richard (Garrett)," he said. "If they say let's try it, I say let's try it. I'm behind them 100 percent."

Henry said he doesn't know if the jury's investigation will bring him any closer to knowing how his son died. "We don't know till we try it. We've tried everything else."

Henry does not plan to attend the jury sessions.

"We're very pleased to have a grand jury investigation," Ives's mother, Linda, said. "We're hopeful that the truth of Kevin's and Don's deaths may finally be known. I believe the label of dope-head that Dr. Malak has placed on their names and memories will be removed and rightly so. They have been victimized enough."

Dr. Fahmy Malak, the state medical examiner, determined the deaths were an accident. He said Henry and Ives had fallen asleep on the tracks under the influence of marijuana.

The boys' parents rejected Malak's ruling, as did Garrett. The deputy prosecutor called more than two dozen witnesses during three days of public hearings. No conclusions were made and Garrett asked the parents to have their sons' bodies exhumed in mid-March.

Pathologist Joe Burton of Atlanta, Ga., conducted the second autopsies on April 5 and told Garrett that the Bryant High School students had smoked only three or four marijuana cigarettes before they died.

His ruling should be issued within a few weeks.



## opinion

# No alternative

When two teen-agers from Saline County were struck by a train on Aug. 23, 1987, authorities at first didn't suspect foul play or suicide.

The day after the deaths, law enforcement officers were baffled. They knew the engineer and two crew members saw the teens lying on the track near the Arkansas 111 crossing west of Alexander, but were unable to stop the train in time. Neither of the youths, the crew said, made any visible attempt to move as the train approached.

A few weeks later, Dr. Fahmy Malak, state medical examiner, issued a written statement: "At 4:25 a.m. on Aug. 23, 1987, Larry Kevin Ives, 17, and Don George Henry, 16, were unconscious and in deep sleep on the railroad tracks, under the psychedelic influence of THC (marijuana), when a train passed over them causing their accidental death."

But that wasn't the end of the matter. In February, the victims' parents held a press conference questioning the medical examiner's ruling and the thoroughness of the inquiry by county investigators.

To sum it up, the parents disagree with Malak's accidental death ruling. They believe the boys may have been murdered.

About a week after the press conference, Deputy Prosecutor Richard Garrett initiated a prosecutor's investigation into the case. On the final day of the three-day hearing, Malak took the stand and defended his earlier ruling that the deaths were accidental.

A toxicologist from the state Crime Lab testified that additional tests might have revealed more specific readings concerning the level of marijuana present in the bodies of the two victims.

Testimony from more than two dozen witnesses answered some questions for the victims' parents, but not enough to satisfy them or the deputy prosecutor.

No definite conclusions resulted from the hearing, but the case remained open.

Earlier this month, the two bodies were exhumed and autopsies have been conducted by Dr. Joe Burton, a pathologist from Georgia. Results of extensive tests have not been released and Burton's ruling as to cause of death is not expected for at least two weeks.

Malak contends the teens had smoked about 20 marijuana cigarettes before they were struck by the train, but Burton has already told Garrett his tests show the boys hadn't smoked enough marijuana to make them pass out.

Last week Benton attorney Dan Harmon was appointed as a deputy prosecutor to investigate the deaths of the youths. He will assist Garrett in the investigation and possible prosecution connected with the case.

Is homicide a possibility? We think so.

At the hearings in February, the engineer of the Union Pacific train that struck the youths testified, "the young men were on the tracks, side by side, absolutely identical." He also said there was no muscle reaction whatsoever from either boy as the train approached. That testimony alone leaves room for doubt.

A grand jury to investigate the manner and cause of the deaths has been called and will begin at 1 p.m. Wednesday. We see no alternative.

Two young lives were lost. We support the victims' families in wanting to know why.

JS



# Cole submits list of 60 potential jurors

By LEE BROCKWAY  
Courier Staff Writer

Sixteen jurors were to be selected today to serve on a grand jury called to investigate the mysterious circumstances surrounding the deaths of two Bryant High School seniors.

Deputy prosecutors Richard Garrett and Dan Harmon were to choose the jurors at 1 p.m. from a list of 60 potential jurors.

The names of the potential jurors were drawn by Circuit Judge John Cole of Sheridan Friday and the list was sent to the sheriff's office Monday. Cole originally drew 40 names but additional names were drawn when authorities had problems contacting all of the potential jurors.

The decision to impanel a grand jury does not imply the boys' deaths were related to a crime, according to Garrett. The investigation will center on "the manner and cause of the boys' deaths," Garrett said, but will be expanded if necessary.

Larry Kevin Ives, 17, and Don George Henry, 16, were lying in identical positions on the tracks near the Shobe Road crossing at Alexander when a Union Pacific train struck them at 4:25 a.m. Aug. 23. Neither youth made an movement or appeared to be aware of the train, according to the train crew.

Dr. Fahmy Malak, the state medical examiner, ruled the deaths as accidental, caused by both boys falling asleep on the tracks under the influence of marijuana.

Pathologist Joe Burton of Atlanta, Ga., conducted second autopsies on the bodies earlier

this month in Little Rock and is performing other tests in Atlanta. Burton has told Garrett the boys did not smoke enough marijuana to make them pass out. His report should be issued within a few weeks.

The potential jurors included: Charles W. Styles, Catherine A. Wist, John R. Molock, Johnnie C. Young, Kenneth E. Harris, Polly E. Beachem, Billy D. Mitchell, Dorris L. Conway, Margaret L. Jones, Winfred Lee Tucker, Dale K. Williams, Orpha M. Sparks, Richard A. Moore, Albert W. Sarna, Mary Alice Wood, Claudes S. Ellis, Gertrude C. Kincade, Glennie E. Wright, Wayne W. Baker, Donald W. Rivers.

Elva L. Packer, Marvin R. Davis, Pamela R. Burton, Clarence D. McCain, Brenda M. Howell, Jimmy L. English, Percie Heard, Beverly Zane Beck, Melody J. Thompson, Eliga Suggs, Bonnie J. Glimore, Carl R. Manning Jr., Donald H. Simms, Carl B. Allen, Thelma R. Ramsey, Jewell Melton, Jeffery D. Tudor, Hulah Mae Childress, Beverly E. Berryhill, Hope M. Lehauillier, Herbert E. Kling, Shelby Dean Willcockson.

Richard R. Martin, Jebby W. Abbott, Lou Ella Smith, Rita A. Hampel, Norma R. Lee, Una S. Hobby, Kenneth Trimm, Mary L. Cloud, James W. Mills, Juley E. Permenter, Michael J. McCreight, Donnie S. Brooks, David C. Bryan, Judy A. Jackson, Steve E. Dinkins, Robert Kent Ferguson, Bonnie D. Adams and Kenneth Evans.

Garrett declined comment today on the following issues:

## Probe

*Continued from page 1*

why the grand jury will be impaneled without Burton's report; whether the panel will call Burton to testify; if it will study the way the investigation has been handled by law enforcement officials; or if he anticipates any indictments indirectly related to the boys deaths.

Prosecutors occasionally use grand juries to test their evidence or to discover additional information to use in criminal cases. Grand jurors hand down indictments when they are persuaded by the evidence that the prosecutor has reason to try a case.

Those under investigation can be called to testify before the grand jury, but can not have an attorney present to give rebuttal evidence. That opportunity follows when a person who has been indicted is tried before a petit jury.

Prosecutors usually believe they will have a better opportunity to win their case during a jury trial if the grand jury indicts the suspect. However, even if no indictment is returned, the prosecutor can still choose to try the case.



# Seating of county grand jury to begin

## Panel to review deaths of Saline County youths hit by train

BY DOUG THOMPSON  
Democrat Benton Bureau

**BENTON** — Selection of jurors for a grand jury investigating the deaths of two Saline County teenagers hit by a train on Aug. 23, 1987, begins at 1 p.m. today.

The deaths of Don George Henry, 16, of Bryant and Larry Kevin Ives, 17, of Benton were ruled accidental by Dr. Fahmy

• Clinton asks lawmen to pick representatives to Medical Examiner Commission. 3B

Malak, the state medical examiner. The two youths were hit about 4:25 a.m. while laying side-by-side on a railroad track.

Special Deputy Prosecutor Danny Harmon of Benton said he expects the jury to start by subpoenaing "everyone who was at the scene, including the Union Pacific train crew. Who they subpoena will be up to them, but that's the logical starting place.

"I anticipate the jury will

meet one or two days a week and remain in session at least until they receive the report from Dr. (Joe) Burton," Harmon said.

Burton, an Atlanta pathologist, is conducting further autopsies and tests. Harmon said he did not know when Burton will finish.

Asked why the grand jury was starting before receiving Burton's report, Harmon said: "The reasons will become obvious when the grand jury fin-

ishes."

Asked if Malak would appear, he said: "That's up to the grand jury."

Circuit Judge John Cole of Sheridan called the grand jury. Sixteen jurors will be selected from a list of 40 potential jurors given Monday to the sheriff's office. Cole signed the order authorizing the grand jury Tuesday morning.

The grand jury will have access to the records of the Feb.

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## Inquiry

• Continued from Page One

19-23 prosecutor's investigation, Harmon said, although the panel is intended mainly to review evidence uncovered since then.

Deputy Prosecutor Richard Garrett, who called the prosecutor's investigation, said Sunday the case needs review by an impartial panel. Garrett was out of town and could not be reached for comment Tuesday.

Under state law, the grand jury will have the power to subpoena witnesses and review evidence. It could recommend further action and issue criminal indictments. At the end of its session, it will make a report. The grand jury's sessions will be closed to the public.

Garrett said Sunday the jury will investigate the boys' deaths, but is not limited to that topic. Asked Tuesday if drug-related charges could issue from the grand jury, Harmon declined comment.

Harmon was recently appointed special prosecutor and is serving without pay.

Members of each of the boys' families expressed approval of the investigation.

"I'm glad they're doing it. We appreciate what's been brought out so far by Richard and Danny," said Larry Ives, Ives' father. Curtis Henry, father of the Henry boy, said he was behind the investigation "100 percent."

## At a glance

• Selection of jurors for grand jury duty starts today to begin investigating the deaths of Larry Kevin Ives and George Don Henry.

• Ives and Henry were killed Aug. 23, 1987. They were hit by a train about 4:25 a.m., but questions have been raised about the cause of death. Dr. Fahmy Malak, the state medical examiner, ruled the deaths accidental.

• The likely first witnesses are the train crew and people who first arrived at the scene, said Danny Harmon, special deputy prosecutor.



## 2 deaths to be topic for Jury

Youths on tracks,  
struck by train

BENTON (AP) — A Grand Jury will convene this afternoon at the Saline County Courthouse to begin an investigation into the death of two Bryant teen-agers.

Circuit Judge John Cole of Sheridan said Tuesday that the names of 40 potential jurors were drawn Friday and sent to the sheriff's office. Deputy Prosecuting Attorney Richard Garrett and Dan Harmon, special deputy prosecuting attorney, will select 16 jurors.

The decision to impanel a Grand Jury does not necessarily indicate that the prosecuting attorney's office believes the youths' deaths were related to a crime, Garrett said. The investigation will center on "the manner and cause of the boys' deaths," he said, but will be expanded if necessary.

Don George Henry, 16, and Larry Kevin Ives, 17, were struck by a Union Pacific train before dawn August 23 as they were lying on the tracks near Alexander.

Dr. Fahmy Malak, the state medical examiner, ruled that the deaths were an accident and that the boys had fallen asleep on the tracks under the influence of marijuana.

The boys' parents challenged Dr. Malak's ruling. Garrett called more than two dozen witnesses during three days of public hearings in February. No conclusions were made and Garrett asked the parents to have their sons' bodies exhumed for a second autopsy.

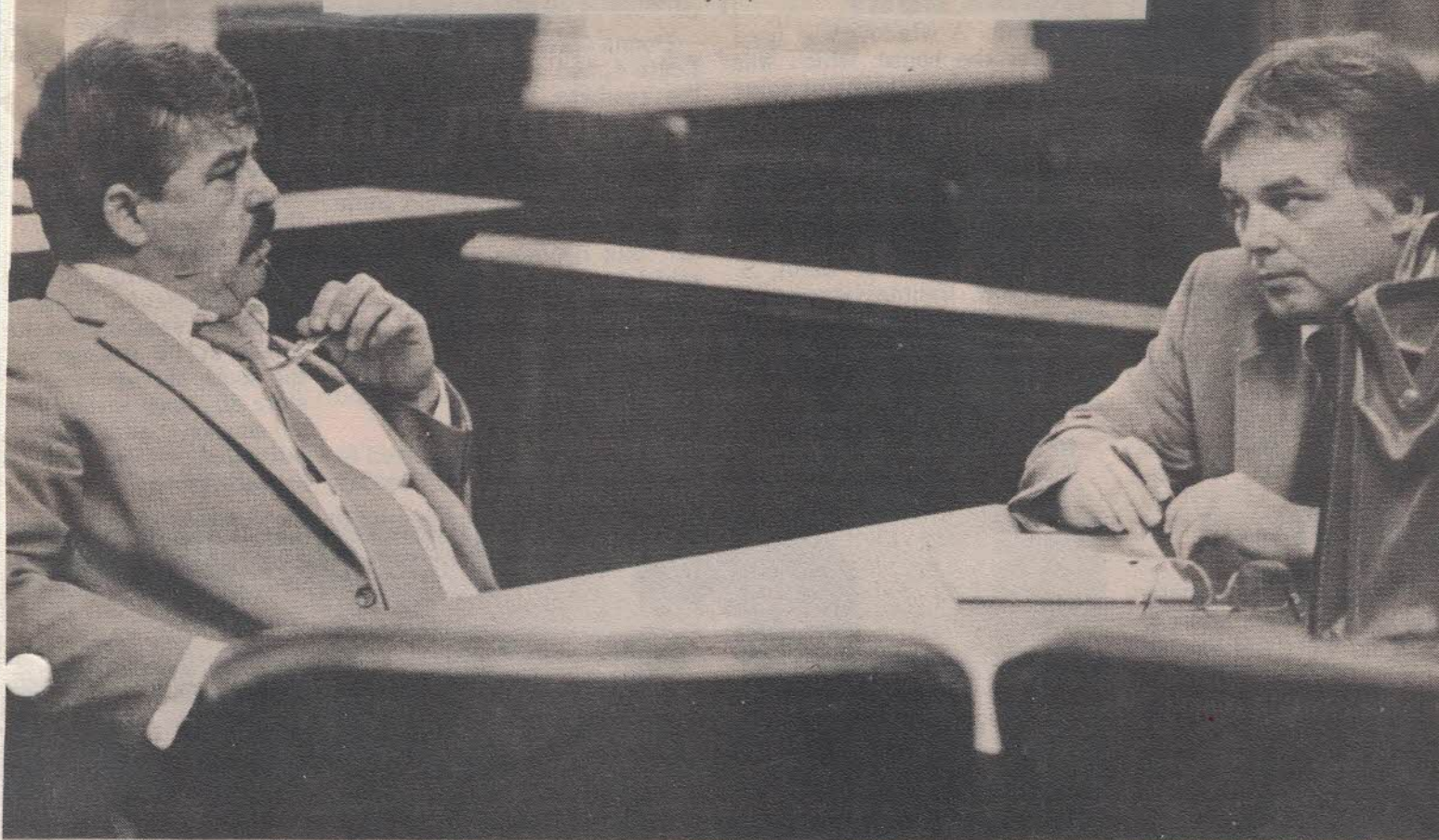
Pathologist Joe Burton of Atlanta conducted the second autopsies April 5 and told Garrett that the Bryant High School students had smoked only three or four marijuana cigarettes before they died. Burton is conducting additional tests.



# The Benton Courier

112 Years of Continuous Service to All of Saline County

Thursday, April 28, 1988



Courier photo by Ph

Deputy Prosecutor Richard Garrett, left, and Special Deputy Prosecutor Dan Harmon wait for the grand jury to be sworn

in Wednesday afternoon. The jury is scheduled to meet Tuesday morning.

## Jury convenes to study 2 deaths

By LYNDA HOLLENBECK  
Courier Staff Writer

A Saline County Grand Jury comprised of 10 men and six women began deliberations Wednesday into the deaths of two Bryant teen-agers.

Circuit Judge John Cole, who chose the jury, appointed Carl Allen of Benton to serve as foreman of the panel, which was selected Wednesday at the Saline County Courthouse.

The jury will be probing the circumstances that led to the Aug. 23 deaths of Kevin Ives, 17, and Don Henry, 16.

Dr. Fahmy Malak, the state medical examiner, ruled the deaths as accidental. He said the boys had been rendered unconscious because of the "psychedelic

effects" of marijuana when they were struck by a Union Pacific train at 4:25 a.m. as they lay in identical positions on the tracks near the Shobe Road crossing. Neither youth made any movement or appeared to be aware of the train, according to the train crew.

Parents of the victims suspect foul play was involved and do not agree with Malak's findings.

The decision to impanel a grand jury does not imply the boys' deaths were related to a crime, according to Deputy Prosecuting Attorney Richard Garrett. The investigation will center on "the manner and cause of the boys' deaths," Garrett said, but will be expanded if necessary.

Special Deputy Prosecutor Dan Har-

mon is assisting Garrett with the investigation. Harmon, who was appointed last week by Circuit Judge John Cole to assist with the investigation, is receiving monetary compensation for his work on the case.

After the jury was sworn in Wednesday, the two prosecutors reviewed the case with the jurors, Harmon said. No witnesses will be called until Tuesday. Members of the train crew and "a fellow" whom Harmon declined to identify will be presenting testimony. The jury was not scheduled to meet again on Tuesday.

The crew on the train that struck the two boys included James Shroyer

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# Jury

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neer; Jerry Tomlin, conductor; Danny Delamar, head brakeman; and James Stihnett, rear brakeman. All presented testimony earlier at public investigative hearings in February.

Twenty-three of the 60 persons whose names had been randomly drawn as potential jurors were present when the grand jury convened at 1 p.m. Wednesday. Of that number, six had valid reasons for being unable to serve on the panel, which is expected to meet for several weeks. However, the panel will not be meeting every day during that time.

The names of the potential jurors were drawn by Cole Friday and the list was sent to the sheriff's office Monday. Cole originally drew 40 names, but additional names were drawn when authorities had problems contacting all of the potential jurors.

In addition to Allen, the grand jury includes Eva "Posey" Packer of Route 3, Benton, Eliga Suggs of Benton, Jeffery D. Tudor of Route 9, Benton, Hulah Mae Childress of Benton, Shelby Dean Willcockson of Bryant, Jerry W. Abbott of Route 2, Alexander, Rita A. Hampel of Benton, Donnie S. Brooks of Route 1, Hensley, David C. Bryan of Benton, John R. Molock of Route 1, Bauxite, Johnnie C. Young of Alexander, Polly E. Beachem of Route 4, Benton, Dorris L. Conway of Mabelvale, Dale K. Williams of Route 4, Alexander, and

Richard Moore of Route 5, Benton.

Pathologist Joe Burton of Atlanta, Ga., conducted second autopsies on the bodies earlier this month in Little Rock and is performing other tests in Atlanta. Burton has told Garrett the boys did not smoke enough marijuana to make them lose consciousness. His report is expected within a few weeks.

When the grand jury completes its deliberations, it may return indictments, or may simply issue a report. When Cole was giving instructions to the panel, he emphasized "thoroughness, secrecy and brevity."

All grand jury proceedings are closed to the public, except for the qualification session.

Garrett declined to say why the grand jury was called before Burton's report was released; whether the panel will call Burton to testify; if it will study the manner of investigation by law enforcement officials; or if he anticipates any indictments indirectly related to the boys' deaths.

Persons under investigation can be called to testify before the grand jury, but are not allowed to have an attorney present to give rebuttal evidence.

Prosecutors usually believe they will have a better opportunity to win a case during a jury trial if a grand jury has indicted a suspect. However, even if no indictment is returned, the prosecutor can still choose to try the case before a petit jury.

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**SWEARING IN** — Members of a 10-man, six-woman Saline County grand jury are sworn in Wednesday. The panel will investigate the deaths of two Saline

County youths who were hit while lying on railroad tracks last summer. The grand jury will hear its first witnesses at 9 a.m. Tuesday.

Arkansas Democrat/Alex Brandon

## Grand jury set in train query

### Awaits pathologist's report on teens' deaths

BY DOUG THOMPSON  
Democrat Benton Bureau

**BENTON** — A 10-man, six-woman Saline County grand jury was sworn in Wednesday to investigate the deaths of Larry Kevin Ives and Don George Henry, two youths hit by a train last summer.

The panel will hear its first witnesses at 9 a.m. Tuesday. Further sessions have not been scheduled.

Those first witnesses will include the crew of the train that struck the two boys and a man that special Deputy Pro-

secuting Attorney Dan Harmon declined to identify.

Neither Harmon nor Deputy Prosecutor Richard Garrett will release the name of the man until the subpoena is served, they said.

"Because we don't want him to dodge the subpoena," Harmon said when asked why the name was not being released.

Ives, 17, and Henry, 16, were killed Aug. 23, 1987. They were struck by a Union Pacific train about 4:25 a.m. while lying motionless on train tracks near Alexander.

Shortly after the deaths,

Fahmy Malak, state medical examiner, ruled them an accident. He said the boys were in a deep, marijuana-induced sleep at the time the train hit.

Neither Harmon nor Garrett would say if Malak was going to appear before the grand jury.

"That's up to the grand jury," Garrett said.

The grand jury will meet one or two days a week as long as there is evidence to review or witnesses to question, Harmon said. In response to a potential juror, Harmon said the

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## Inquiry

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investigation should be over in six weeks, but he couldn't guarantee it.

The chief cause of delay, Harmon said, was waiting for the report of Dr. Joseph Burton. Burton, a Georgia pathologist, has conducted further autopsies and tests on the boys.

"Each time we call him, it will be another three weeks," Harmon said.

Juror selection began at 1 p.m. By 1:54 p.m., selection was finished and closed deliberations began. The jury ended the day's session at 3:45 p.m. The jury's sessions will be closed.

Wednesday afternoon was spent giving the jurors a broad overview of the case, Harmon said.

Circuit Judge John Cole of Sheridan called the grand jury.

"The investigation had reached a point where it was necessary to review the case and where this was the best thing to do," he said when asked why he called the jury now, instead of waiting for Burton's report.

The jury's investigation "obviously cannot be concluded without that report," Cole said. "The grand jury can recess and wait on the report."

The investigation "will not take 30 days of working time," Cole said. "At least I do not anticipate that it will."

Garrett said he asked the families of the victims not to attend "because it would be improper" for them to be there, and because they could not listen to the deliberations anyway.

Malak's ruling was contested by parents of the boys. They requested that the case be reopened. This led to a prosecutor's investigation by Garrett. No arrests have been made in the investigation.



# Grand Jury convenes in 2 deaths

## Train ran over boys but doubts remain

BENTON — A 16-member Grand Jury was impaneled Wednesday at the Saline County Courthouse to begin an investigation into the deaths of two Bryant teen-agers.

Circuit Judge John Cole of Sheridan told the jurors that it is "time for an impartial, disinterested group of citizens in Saline County" to look at the deaths of the youths, who were run over by a train last summer.

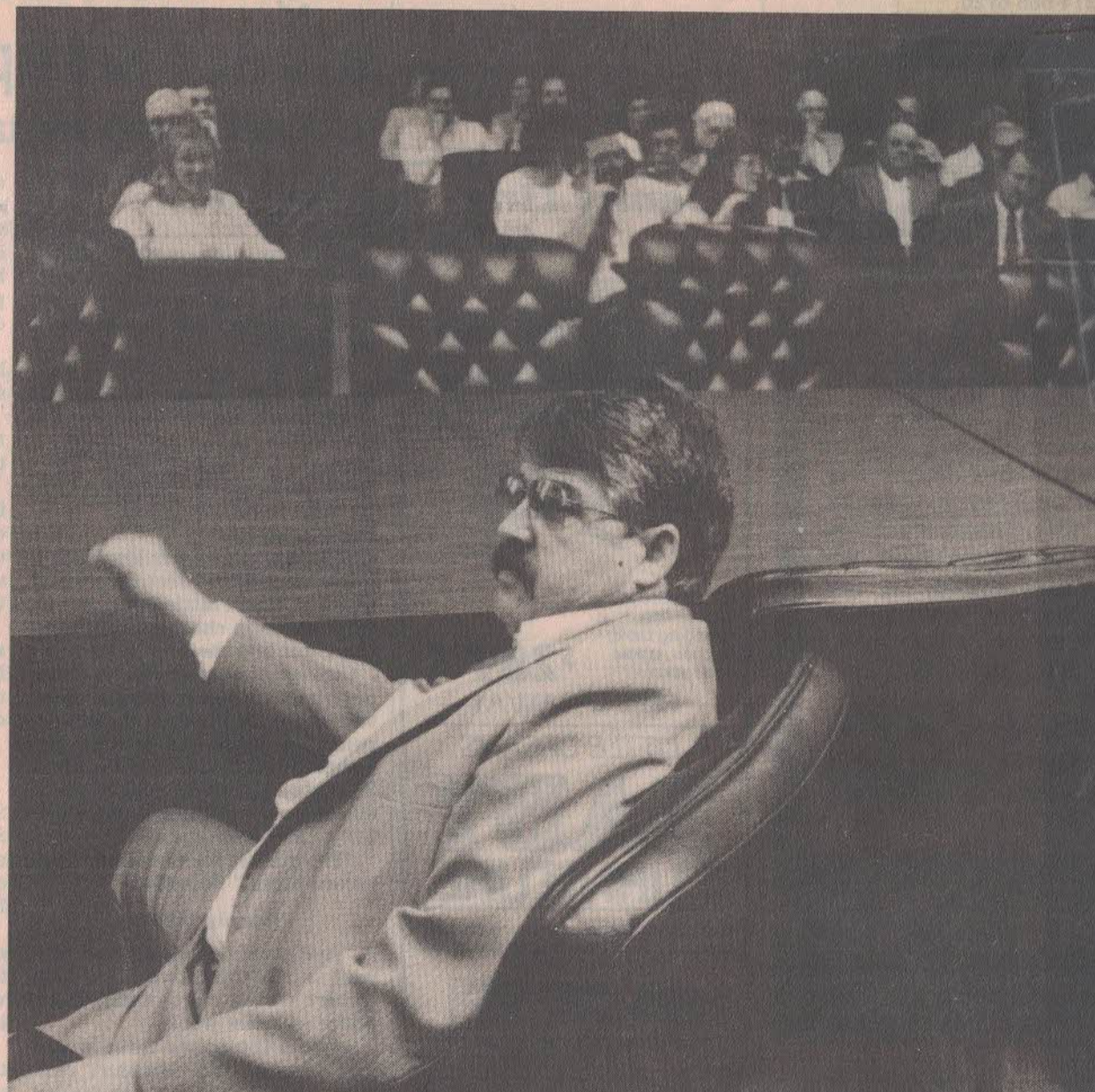
Judge Cole said he expected the investigation to be "somewhat lengthy." He said the Grand Jury would conclude the investigation by returning an indictment or submitting a report to the court.

Deputy Prosecuting Attorney Richard Garrett and Dan Harmon, special deputy prosecuting attorney, both of Benton, wouldn't talk about the case.

"We're going to put a lid on it until we get things going," Garrett said. Harmon said testimony may begin next week.

Garrett had indicated in February that a Grand Jury would not be called in the case unless there was sufficient evidence for a possible indictment. But Wednesday he refused to say if there was additional evidence. Garrett held a prosecutor's hearing in February that was inconclusive.

Don George Henry, 16, and Larry Kevin Ives, 17, were struck by a



Garrett prepares to give information to Grand Jury, seated in the courtroom.

—Staff Photos by Steve Keesee

Union Pacific train while they were lying side-by-side on the tracks near Alexander. Dr. Fahmy Malak, the state medical examiner,

ruled the deaths were accidental, but the parents of the teen-agers and Garrett doubt that.

Atlanta pathologist Dr. Joseph

Burton conducted autopsies on the boys April 5 at Garrett's request, but the results of his tests haven't been released.



# Malak to be called before grand jury

By LYNDA HOLLENBECK  
Courier Staff Writer

Dr. Fahmy Malak, state medical examiner, is one of several witnesses who will be testifying when the Saline County Grand Jury reconvenes next week.

The grand jury is probing the circumstances that led to the Aug. 23 deaths of Kevin Ives, 17, and Don Henry, 16.

The two Bryant High School seniors were struck by a Union Pacific train at 4:25 a.m. as they lay in identical positions on the tracks near the Shobe Road crossing. Neither youth made any movement or appeared to be aware of the train, according to the train crew.

Deputy Prosecuting Attorney Richard Garrett said subpoenas have been issued for Malak, three Union Pacific employees, law enforcement officers and rescue personnel who were at the scene.

Malak's ruling in the deaths has been a major focus of the investigation. He ruled the deaths accidental and said the boys had been rendered unconscious because of the "psychedelic effects" of marijuana.

Medical experts in other states disputed Malak's ruling,



Dr. Fahmy Malak

contending that marijuana will not cause a person to lose consciousness. However, when Malak testified at investigative hearings in February, he never wavered from his original ruling.

The medical examiner contended the boys smoked approxi-

mately 20 marijuana cigarettes before they were struck by the train, but the number of cigarettes has been disputed by an out-of-state pathologist who conducted autopsies after the boys' bodies were exhumed. Dr. Joe Burton, a pathologist from Atlanta, Ga. Burton estimated the boys may have smoked three or four cigarettes before they were struck by the train.

A complete report of Burton's findings is expected within a few weeks.

Garrett has not said whether Burton will testify before the grand jury.

The panel is currently scheduled to meet Tuesday and Wednesday. Garrett said no decision has been made about additional sessions next week.

The crew on the train that struck the two boys included James Shroyer, engineer; Jerry Tomlin, conductor; Danny Delamar, head brakeman; and James Stihnett, rear brakeman. All but Stihnett will be giving testimony next week, Garrett said. Stihnett was riding on the last car of the train and "didn't see anything," Garrett said.

All of the crew members presented testimony at the February hearings.

Also subpoenaed as witnesses are: Steve Cox and Ken Micheu, employees of the state Crime Laboratory; Saline Memorial Hospital paramedic Shirley Rapier; Deputy Kathy Carty; Benton Police Chief Rick Elmendorf; Investigator Chuck Tallent of the Saline County Sheriff's Office; Shannon Hills Officer Ron Daniels; and Bryant Officer Danny Allen.

Special Deputy Prosecutor Dan Harmon is assisting Garrett with the investigation. Harmon, who was appointed last week by Circuit Judge John Cole to assist with the investigation, is receiving no monetary compensation for his work on the case.

After the jury was sworn in Wednesday, the two prosecutors reviewed the case with the jurors, but no witnesses were called.

When the grand jury completes its deliberations, it may return indictments, or may simply issue a report. The jury is expected to meet for several weeks, but will not be in session every day.

All grand jury proceedings are closed to the public, with the exception of the qualification session.



# Grand jury subpoenas Malak, train crew

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Dr. Fahmy Malak, state medical examiner, a train crew, police and ambulance workers are among 16 people subpoenaed by a Saline County grand jury investigating the deaths of two teenagers.

The grand jury subpoenaed witnesses for Tuesday and Wednesday, a spokesman for the Saline County circuit clerk's office said. The subpoenas were issued after 4 p.m. Thursday.

Richard Garrétt of Benton, a deputy prosecuting attorney in charge of the investigation, confirmed that Malak was subpoenaed. Whether Malak appears Tuesday or Wednesday, Garrétt said, "will depend on his (Malak's) schedule."

The grand jury is investigating the deaths of Larry Kevin Ives, 17, of Benton and Don George Henry, 16, of Bryant. The boys were hit by a train about 4:25 a.m. Aug. 23, 1987.

The four-man crew of the Union Pacific train is part of the group that has been sub-

poenaed as the grand jury's first witnesses.

The investigation is expected to take as long as six weeks, with sessions one or two days a week.

Malak ruled the boys' deaths were accidental, saying they were in a deep sleep under the influence of marijuana. The boys' parents and experts on the effects of marijuana have questioned the ruling.

The boys' parents requested that the case be reopened,

which led to a prosecutor's hearing led by Garrétt.

Chief Deputy Ray Richmond of the Saline County sheriff's office said the subpoenas were received about 4:30 p.m. Thursday. Most will be served today, he said.

The grand jury was called by Circuit Judge John Cole of Sheridan. The 16 jurors, 10 men and six women, were seated Wednesday.

Garrétt and special Deputy Prosecuting Attorney Dan Harmon of Benton presented a broad overview of the case to

the grand jury Wednesday. That session lasted from about 2 p.m. to 3:45 p.m.

Harmon said earlier the investigation would last at least until the report of Dr. Joseph Burton is received. Burton is a Georgia pathologist who conducted his own autopsy earlier this month. His report is expected in a few weeks.

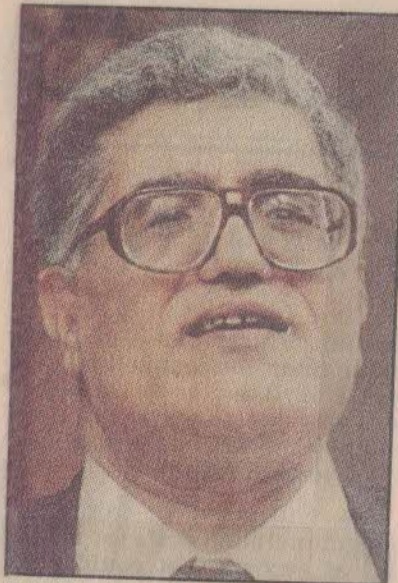
Garrétt has said he asked the families of the victims not to attend "because it would be improper" for them to be there and because they could not listen to deliberations, anyway.

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Arkansas Democrat

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Dr. Fahmy Malak