

Grand jury investigating death of teens to call 2 experts

BY DOUG THOMPSON
Democrat State Desk
And The Associated Press

BENTON — After hearing the state medical examiner's testimony Tuesday, a Saline County grand jury investigating the August 1987 deaths of two teen-age boys will attempt today to reach two pathological experts by telephone.

When the grand jury meets at 9 a.m. today they will try, by speaker-phone, to talk to Arthur McBay and Joe Burton, Special Prosecutor Dan Harmon said Tuesday.

McBay is chief toxicologist for the North Carolina medical examiner's office and a noted expert on the effects of marijuana.

Burton is a Georgia pathologist who conducted further autopsies on Larry Kevin Ives, 17, and Don George Henry, 16. His final report has not been filed.

The grand jury is investigating the deaths of Ives and Henry. The two Saline County teen-agers died Aug. 23, 1987. They were hit by a train about 4:25 a.m. that day while lying on Union Pacific tracks near



Arkansas Democrat/Kim Fowler

GRAND JURY BEGINS — Bob Monroe and Danny Delamar, both Union Pacific employees, wait outside the Saline County Courthouse room where a grand jury is investigating the deaths of two youths hit by a train.

Alexander.

Dr. Fahmy Malak, state medical examiner, had ruled

the deaths an accident, saying the boys were in a deep, marijuana-induced sleep when the

train hit.

Malak testified to the grand jury from about 1:30 to 3:50 p.m. He said afterward that the evidence supports his findings and his opinion has not changed.

"I basically told them my findings, only in more detail," Malak said.

"The evidence stands by itself. It is the same as it was August 24."

But McBay has publicly questioned whether marijuana can induce such a deep sleep. His and other experts' opinions about the effects of marijuana prompted the reopening of the case by Richard Garrett, deputy prosecuting attorney for Saline County.

Members of the train crew testified Tuesday morning. Harmon said today's witnesses would consist of law enforcement officers and emergency medical personnel called to the scene.

Jerry Tomlin, conductor of the Union Pacific train that hit the boys, was the first person to testify Tuesday.

At public investigative hear-

ings in February conducted by Garrett, Tomlin testified that neither boy gave any sign of awareness of the train as it approached with lights on and horn blowing.

James Shroyer, engineer of the train, was the second person called before the 16-member jury that was impaneled April 27 by Circuit Judge John Cole of Sheridan. At the earlier hearings, Shroyer also testified that neither boy moved or appeared aware of the train as it approached at a speed of 50 mph.

Danny Delamar, head brakeman on the train, was scheduled to testify Tuesday.

Malak's ruling in the boys' deaths has been contested by the teen-agers' families. Malak's report said the boys had lost consciousness from the effects of smoking marijuana. At one point, he estimated they had each smoked 20 marijuana cigarettes.

But Burton said after he conducted an independent autopsy that the boys had smoked three or four marijuana cigarettes.

Panel seeks to contact Burton

By LEE BROCKWAY
Courier Staff Writer

A Saline County Grand Jury searching for answers in the deaths of two Bryant High School seniors today will attempt to contact an Atlanta, Ga. pathologist who performed autopsies on the bodies.

The grand jury will try to reach Dr. Joe Burton by telephone at his office in Atlanta, according to Deputy Prosecutor Richard Garrett. Garrett declined to reveal what the panel would ask Burton, but did say it would not ask the pathologist for a preliminary ruling.

Burton is still conducting tests on tissue samples he obtained during the April 5 autopsies. His ruling is not expected for a few weeks.

The 16 jurors will also attempt to reach Dr. Arthur J. McBay, chief toxicologist for the North Carolina medical examiner's office. McBay has been involved in marijuana studies for more than 30 years and is considered one the country's foremost experts in the study of marijuana, according to Garrett.

McBay said in an earlier interview with *The Benton Courier* that large quantities of marijuana will not cause unconsciousness. Garrett would not say what the grand jury will ask McBay.

A new "interesting" piece of information was revealed during today's testimony, he said, but added, that it may not have any "significance."

The bodies of Larry Kevin Ives, 17, and Don George Henry, 16, were crushed when a Union Pacific train traveling 50mph struck them at 4:25 a.m. on Aug. 23. They were lying beside each other, their legs and heads over the rails, their heads straight up, eyes closed, according to the train crew.

Authorities found their remains scattered over a half-mile area. Broken pieces of a



Courier photo by Lynda Hollenbeck

State Medical Examiner Fahmy Malak leaves Saline County courthouse after his grand jury testimony Tuesday.

rifle they had carried to spotlight deer were lying between the tracks. A flashlight remained intact. Two small packages of marijuana were found in the boys' pockets.

That marijuana caused Henry and Ives to fall into a deep sleep that left them unable to wake up as the train approached, according to State Medical Examiner Dr. Fahmy Malak.

For two hours Tuesday afternoon, Malak presented the same information he gave in the February hearings, but in more

detail, he said.

Shortly before the jury recessed, Malak began reviewing the mounds of evidence in the circuit judge's chambers in an effort to answer a question for the grand jury. However, Malak did not complete the review before the panel recessed. He refused to say what question he was preparing to answer for the panel.

Malak, assisted by two state Crime Laboratory employees,

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Jury

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carried written documents, photographs, X-rays and an X-ray viewing machine into the courtroom.

He refused to comment on Burton's autopsies and related tests. Another ruling will have to "be backed up," he said, adding, "I have the evidence and our evidence stands for itself."

When asked about Burton's initial statement that the boys had not smoked only three or four marijuana cigarettes, Malak said, "The effect of marijuana was there, how much is debatable."

The state medical examiner said that does not mean his ruling was incorrect. "I would refer you to material I referred the grand jury to," he said. However, Malak declined to identify what material he had referred to the panel.

He said the grand jury proceedings do not indicate his credibility is being questioned. He characterized the action as "a search to find out what happened to these children and these parents have a right to know."

Benton Police Chief Rick Elmendorf, who was the first witness today, was asked about a meeting held between himself, Malak, the boy's parents and State Police Investigator Frank Mitchell about an hour before the medical examiner's ruling was made public.

Elmendorf said, "To the best of my knowledge, none of the parents in the room challenged it (the ruling) at that time."

The panel was also interested in Elmendorf's role in the investigation, which was to supervise Investigator Chuck Tallent, and if the former chief deputy conducted any interviews himself. Elmendorf said he interviewed Henry's sister, Gayla, and a former work associate of Ives', Charles Dodds of Little Rock.

Cpl. Cathy Carty testified for 55 minutes about the investigation conducted by herself and several other law enforcement

officers who arrived at the scene first.

Carty testified in the hearings that she did not see any unauthorized officials enter or leave the scene upon her arrival.

During the hearing, she said her "initial response then and now" was that it was "a very strange situation...I do not believe that two young men would lay down side by side and have an accident."

Other officials who took the stand earlier today included Investigator Chuck Tallent, Bryant Police Officer Danny Allen and Deputy Pat Hawkins. Allen and Hawkins were on the scene before investigators and medical personnel. Tallent conducted the investigation. They told reporters they simply retold their version of what occurred when they arrived at the tracks.

Additional subpoenas are expected to be issued Thursday. The grand jury will recess until next week.

The pace of the proceedings is slower than Garrett and special Deputy Prosecutor Dan Harmon had wished.

"So far it's going slower than I expected," Garrett said, adding, the jurors are "doing very well."

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Grand Jury hears Malak on 2 deaths

Medical examiner stands by his finding

By Byron McCauley
GAZETTE STAFF

Dr. Fahmy Malak, the state medical examiner, testified for about two hours Tuesday before a Grand Jury that is investigating the deaths of two Bryant teen-agers.

Dr. Malak, who testified from 1:30 p.m. until about 3:30 p.m., said after the hearing that he "absolutely" maintained his ruling that the boys' deaths were accidental. Dr. Malak said he presented "basically the same evidence" to the panel, but with more detail.

Don George Henry, 16, and Larry

Kevin Ives, 17, were found dead in August 1987 after a train struck them while they were lying on the railroad tracks. Their families have said the boys could have been slain before the train struck them.

Three crew members of the Union Pacific train also appeared before the Jury.

Fourteen witnesses have been subpoenaed by the Grand Jury, which started two days of secret meetings Tuesday at the Saline County Courthouse.

Deputy Prosecuting Attorney Richard Garrett said the panel

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Malak

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asked "very intelligent" questions.

Dr. Malak said he does not think the hearings question his credibility. "It is a matter of opinion. *** I will go by what the evidence I have will say. I have the original evidence that stands," he said.

His report said the boys were unconscious from the effects of smoking marijuana. He once estimated they each had smoked 20 marijuana cigarettes.

But Dr. Joe Burton of Atlanta said after he conducted independent autopsies that the boys had smoked three or four marijuana cigarettes. Dr. Burton's report of his findings has not been released.

Garrett would not say whether Dr. Burton would appear before the Grand Jury. It depends on "what takes place. I don't know yet," he said.

The hearings will resume at 8:30 a.m. today.

Editorial

A difficult task

Special Prosecutor Dan Harmon and the Saline County grand jury are trying to piece together the circumstances that led to the mysterious deaths of two teen-agers under a freight train near Alexander last August. They're also seeking answers to difficult questions that were raised in public hearings in February.

State Medical Examiner Fahmy Malak testified then that he'd stake his reputation on his conclusion that 17-year-old Larry Kevin Ives and 16-year-old Don George Henry were in a deep marijuana-induced sleep when they were killed. He stood by that conclusion before the grand jury Tuesday during more than two hours of testimony. Malak's theory does seem to explain why the youths didn't react to the freight train's loud horn blowing or its bright lights.

But Saline County authorities, family members and classmates have challenged Malak's findings. Two out-of-state forensic experts have been enlisted for the grand jury's probe — marijuana expert Arthur McBay, the chief toxicologist in the North Carolina medical examiner's office, and Georgia pathologist Joe Burton, who conducted further autopsies after the bodies were exhumed.

Besides the disputed toxicological findings, there are other exigencies, including reports by the ambulance crew of a man in a parked pickup truck in the woods near the stopped train; a train crewman who saw a green tarpaulin covering both boys that was overlooked by investigators, and speculation about that area being a known hangout for drug dealers.

The grand jury's investigation, however, may raise more questions than it answers. But whatever the outcome, we hope it brings peace of mind to those involved so they can put this unfortunate tragedy behind them. They should realize, though, that it may be impossible to determine what happened.

Pathologist asks for rifle youths had before death

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — More evidence — including a gun — is needed before Joe Burton, an Atlanta pathologist, can complete autopsies on two Saline County teen-agers struck by a train last summer.

A Saline County grand jury investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16, tried to telephone Burton on Wednesday.

Burton told Deputy Prosecuting Attorney Richard Garrett that he needed additional evidence before he could complete his report or answer questions, Garrett said.

Burton has requested the .22-caliber rifle the boys had with them the night they died, prosecutors said. Burton has also requested a transcript of the February prosecutor's hearing into the deaths.

The two boys told their parents on Aug. 23, 1987, they were going rabbit hunting. They took the gun with them. They were not seen again until 4:25 a.m., when they were seen lying motionless in the path of a Union Pacific train traveling at 50 miles an hour. The gun was found beside them.

Neither Garrett nor Dan Harmon of Benton, special deputy prosecutor, would answer why Burton wanted the gun.

Garrett and Harmon said they are considering going to Atlanta this weekend to hand-deliver the evidence to Burton.

The grand jury, which is meeting behind closed doors, is tentatively set to meet again at 9 a.m. Tuesday, Garrett said. Another three to seven subpoenas could be issued Friday or Monday, he said.

The jury did hear, by telephone, from Arthur McBay, a North Carolina toxicologist and noted expert on marijuana. McBay "expressed the same opinion as he has earlier, and was much more positive about it," Garrett said.

McBay had said earlier that it was unlikely that the two boys passed out from using marijuana.

Fahmy Malak, state medical examiner, ruled that the boys were killed by the train as they lay in a deep sleep under the influence of marijuana. Malak testified before the grand jury Tuesday. He said Tuesday that his opinion has not changed.

Wednesday's session was spent hearing police and an ambulance driver who were at the scene.

Benton Police Chief Rick Elmendorf, who was the Saline County sheriff's office chief deputy at the time, was the first to testify Wednesday. Elmendorf said the grand jury wanted to know about the investigation and about a meeting held by Malak, law enforcement officers including Elmendorf and the boys' parents.

At that meeting, Elmendorf said, Malak announced his ruling that the deaths were accidental.

"From what I can remember, no one openly challenged

the ruling at the meeting," Elmendorf said. "But whether they (the parents) accepted it then, you'll have to ask them."

Also testifying Wednesday were sheriff's Deputies Ray Richmond, Chuck Tallent,

Cathy Carty, Pat Hawkins and Bobby Herr; Ron Daniels, a Shannon Hills patrol officer; Danny Allen, a Bryant patrol officer; and Shirley Raper, a Saline Memorial Hospital ambulance driver.

Expert is 'helpful' to jurors

By LYNDA HOLLENBECK
Courier Staff Writer

Information obtained Wednesday during a telephone call with a North Carolina toxicologist was "quite helpful" to the grand jury investigating the deaths of two Bryant teen-agers, said Deputy Prosecutor Richard Garrett.

A call to Dr. Arthur McBay, chief toxicologist for the North Carolina medical examiner's office, was made during the grand jury's afternoon session.

McBay has been involved in marijuana studies for more than 30 years and is considered one of the country's foremost experts in the study of marijuana, according to Garrett.

Neither Garrett nor Special Deputy Prosecutor Dan Harmon would reveal what McBay said in that conversation.

Garrett also was able to contact Dr. Joe Burton, an Atlanta, Ga., pathologist who conducted autopsies on the bodies of Kevin Ives, 17, and Don Henry, 16, after Circuit Court Judge John Cole approved exhuming the bodies.

Garrett said he and Harmon are considering driving to Atlanta this weekend to deliver transcripts of investigative hearings held in February. They will also deliver a gun found with the victims and other materials Burton has requested.

Burton has not completed tests on tissue samples he obtained during the April 5 autopsies. His ruling is not expected for a few weeks.

THE BENTON COURIER, Thursday Evening, May 5, 1988

In an earlier interview with *The Benton Courier*, McBay said large quantities of marijuana will not cause unconsciousness.

However, Dr. Fahmy Malak, state medical examiner, contended in his ruling that the boys had lost consciousness due to the "psychedelic influence" of marijuana. He ruled the deaths accidental and stood by that ruling in the earlier public hearings.

Malak presented testimony to the grand jury Tuesday afternoon.

The two teen-agers were struck by a Union Pacific train traveling 50mph at 4:25 a.m. Aug. 23. Neither boy moved or showed any awareness of the approaching train, according to members of the train crew.

Testifying Wednesday afternoon were Chief Deputy Ray Richmond, Shannon Hills Officer Ron Daniels, Reserve Deputy Bobby Herr and Saline Memorial Hospital Paramedic Shirley Raper.

Other witnesses Wednesday were Benton Police Chief Rick Elmendorf, Investigator Chuck Tallent, Cpl. Cathy Carty, Deputy Pat Hawkins and Bryant Police Officer Danny Allen.

Carty said in the February hearings that her "initial response then and now" was that it was "a very strange situation...I do not believe that two young men would lay down side by side and have an accident."

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

BY MAX PARKER
Democrat State Desk

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

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

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

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

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

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

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

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

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

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

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

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

KANSAS DEMOCRAT • THURSDAY, MAY 5, 1988

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

Arkansas Democrat/Myra Benner



Review chairman says he supports Malak

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

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

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

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

The state Crime Laboratory

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

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

Malak reviewers to arrive May 24

Outside pathologists already briefed on Crime Lab

BY MAX PARKER
Democrat State Desk

Two outside pathologists hired to conduct a review of the state medical examiner's office will arrive in Little Rock on May 24, the chairman of the state Crime Laboratory Board said Thursday.

Dr. J. Malcolm Moore Jr., board chairman, said Drs. David Wiecking and Russell Zumwalt already have been provided with information about the operation of the state Crime Laboratory and its forensic pathology section.

The experts also have been sent all the recent newspaper articles that raised questions about some of the rulings and court testimony by Dr. Fahmy Malak, the state medical examiner.

"They are doing their homework right now," Moore said. "We're trying to get in the meat of this. They'll hopefully begin

working immediately when they get here."

Wiecking, chief medical examiner at the Virginia medical examiner's office in Richmond, and Zumwalt, assistant chief medical examiner at the New Mexico medical examiner's office in Albuquerque, were hired by Moore in March.

The cost for the review — up to \$20,000 — will come from the governor's emergency fund.

Moore said he didn't know how long the two experts would be in the state. The pathologists will meet with Moore, other board members, the state Crime Laboratory director, and representatives from the governor's office.

"What we don't know is if it's going to take three days or 30 days," Moore said. "We'll better know the scope of the review and the time involved when they get here."

During a Legislative Com-

mittee meeting Wednesday, Betsey Wright, gubernatorial chief of staff, said the experts were not coming to the state to research specific cases.

Moore agreed with Ms. Wright's assessment.

"What we're looking for is competency of our lab and our forensic section," Moore said. "We're not bringing them here to testify about a specific case."

In April, the Legislative Committee was created to review the medical examiner's office and laws relating to the authority and responsibility of the medical examiner.

Sen. Max Howell, committee chairman, said Thursday that an agenda had not yet been set. He also said he wanted to give "anybody who wants to appear and testify a chance to do so."

Howell had said news articles about Malak — including

those about the deaths of two Saline County youths struck by a train last summer and currently the focus of a Saline County grand jury — were political in nature.

"Dr. Malak did not cause those children's deaths," Howell said Thursday. "My concern is that he not be indicted for those deaths. I have an admiration with the way Dr. Malak has handled his office."

Linda Ives, the mother of Kevin Ives, who was one of the youths struck by a train, said she talked to Howell on Thursday about his statement.

"I just think that the least he could have done is examine all the facts before coming out with the comments he made yesterday," Mrs. Ives said. "I don't think our case is what this legislative review is all about. It's much bigger than that."

Guide to bodies of teens on tracks faces drug charge

BY DOUG THOMPSON
Democrat Benton Bureau
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BENTON — Tommy Lee Madison, who guided an ambulance toward the spot where two Saline County teen-agers died, is in jail on a drug-related charge and has been questioned about similar charges.

Prosecutors said Thursday that Madison, 40, of Alexander, will testify

• Pathologists re-viewing medical examiner's office to arrive in state May 24. 3B

Wednesday before a grand jury investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16.

Ives and Henry were hit about 4:25 a.m. Aug. 23, 1987, by a train as they were lying motionless on railroad tracks near Alexander. Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental, saying the boys were in a deep sleep induced by marijuana.

Among the first to arrive on the scene after the boys were hit was an ambulance crew from Saline Memorial Hospital.

Shirley Raper, an ambulance driver, asked a bystander if he knew how to get closer to the tracks. Madison was that man, Deputy Prosecuting Attorney Richard Garrett and Special Deputy Prosecuting Attorney Dan Harmon confirmed Thursday.

"He identified himself to her as the chief of the Alexander Volunteer Fire Department," Garrett said. "He is not. As far as we can determine, no such department existed."

Madison rode with Ms. Raper in the ambulance, Garrett said, and showed her a dirt road that led toward the tracks. On the way, Ms. Raper

reach the tracks without getting stuck.

As Ms. Raper was turning around, a pickup truck came out of the woods. Madison left the ambulance and talked to the people in the truck. He then returned and rode back with Ms. Raper. Garrett would not comment on whether the people in the truck had been identified or questioned.

Garrett obtained an arrest warrant April 13 for Madison. Asked Thursday if the arrest warrant had anything to do with the investigation into the deaths of the boys, Garrett declined comment.

The arrest warrant was served by the Arkansas State Police the next day. Madison was released April 14 after questioning about eight separate allegations involving the sale of cocaine.

Garrett said he has not yet decided whether to file charges against Madison.

Madison was arrested again April 25, this time in Pulaski County. He is charged there with theft by receiving and possession of a controlled substance, a spokesman for the Pulaski County sheriff's office said.

Garrett said he asked that Madison be brought to the Saline County Jail to be available for grand jury testimony. Madison arrived Tuesday. Madison has not made bond on the Pulaski County charges, Garrett said.

The grand jury will not meet again until Wednesday, prosecutors said. Garrett and Harmon left for Atlanta, Ga., on Thursday.

Garrett and Harmon were to deliver evidence to Dr. Joe Burton, a pathologist appointed to conduct additional

Grand jury meets at site of impact



Impact site

Courier photo by Lee Brockway

The 16 members of a Saline County Grand Jury inspect the railroads tracks near Alexander today where two Bryant High School seniors were struck as they were lying on the tracks in

the pre-dawn hours of Aug. 23. The grand jury will reconvene at 9 a.m. Wednesday.

UP officials show jurors train scene

By LEE BROCKWAY
Courier Staff Writer

Armed with cameras and notebooks, members of a Saline County Grand Jury walked along the railroads tracks near Alexander today where two Bryant teen-agers were struck by a train in August.

The jurors were shown the impact site and surrounding area by four Union Pacific employees and a State Police investigator. Deputy Prosecutor Richard Garrett and special Prosecutor Dan Harmon did not accompany the grand jury.

Today's proceedings were not publicly announced and Prosecutor Joe Hardin refused to confirm the session, but a *Benton Courier* employee learned of the meeting earlier today through an anonymous source. The 16 members convened in Alexander shortly before 10 a.m. and met for more than an hour.

Union Pacific employees pro-

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Train

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hibited a *Courier* reporter and photographer from accompanying the panel on the basis that the railroad area is private property. Jurors were required to sign a company release before walking to the site.

In the pre-dawn hours of Aug. 23, a train struck 16-year-old Don George Henry and Larry Kevin Ives, 17, as they were lying in identical positions on the railroad tracks. The train crew said neither boy made any movement or appeared to be aware of the oncoming train.

They were in a deep, marijuana-induced sleep when they were struck, according to the state medical examiner, Dr. Fahmy Malak. However, Dr. Joe Burton of Atlanta, Ga., an independent pathologist, conducted second autopsies and issued a preliminary ruling saying the boys smoked only three or four marijuana cigarettes.

Garrett and Harmon did not attend today's proceedings because they were en route to Atlanta to discuss the case with Burton. They were to deliver transcripts of investigative hearings held in February, copies of interviews with witnesses and pieces of a gun found at the scene.

The visit will also provide an opportunity for the prosecutors to discuss the deaths with Burton. "I think it's important that they talk to Dr. Burton one on one," Hardin said.

Burton's report is expected within two weeks.

The grand jury is set to reconvene at 9 a.m. Wednesday at the courthouse. Only one new wit-

ness, Tommy Lee Madison of Alexander, has been subpoenaed to testify Wednesday, according to Hardin. Other subpoenas are expected to be issued Monday.

In February, Madison identified himself to *The Courier* as the person who assisted a Saline Memorial Hospital paramedic in trying to locate an alternate entrance to the railroad tracks shortly after the train struck the boys. The paramedic, Shirley Raper, did not know the man's name.

Hardin said Madison is currently incarcerated at the Saline County Detention Facility until he appears before the grand jury. He was transferred Monday from the Pulaski County Jail at Garrett's request, according to Chief Deputy Ray Richmond.

Madison was arrested April 25 by Pulaski County deputies on two felony warrants charging him with theft by receiving and possession of a controlled substance, according to a Pulaski County sheriff's spokesman.

Hardin said his office issued an arrest warrant for Madison on April 13. He was questioned by State Police Investigator Don Birdsong the next day in relation to eight allegations of pos-

session of a controlled substance, cocaine. Madison was not formally charged and no decision has been made regarding the filing of charges, according to the prosecutor.

Hardin had no comment when asked if the allegations were related to the teen-agers' deaths, if Madison was not charged because of a lack of evidence, or if additional persons could be charged in relationship to the investigation involving Madison.

Madison had told Raper he was the fire chief of the Alexander Volunteer Fire Department and that two men in a pickup truck near the scene were members of his department. However, Garrett informed *The Courier* later that the fire department had been disbanded before the incident, but he requested that the information not be made public.

According to a copyrighted story in today's edition of the *Arkansas Democrat*, Garrett said no department existed as far as the prosecutor's office could determine.

The grand jury heard testimony Tuesday and Wednesday from the train crew and law enforcement and medical personnel who were at the scene.

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Associated Press

SITE INVESTIGATED — Members of a Saline County grand jury walk Friday along the tracks outside Alexander where two Bryant teen-agers were killed. The

panel spent more than an hour at the site, accompanied by Union Pacific employees and an Arkansas State Police investigator.

Grand jury visits location where train hit 2 teen-agers

From Democrat News Services

BENTON — In an unannounced session Friday morning, members of a Saline County grand jury visited the site near Alexander where two youths were hit by a train last summer.

The grand jury began meeting this week to investigate the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. Like all grand jury sessions, Friday's meeting was closed to the news media.

Prosecuting Attorney Joe Hardin of Benton confirmed the session took place from about 10 to after 11 a.m.

The grand jury's next announced session is to begin at 9 a.m. Wednesday.

The teens were hit by the train as they were lying on the tracks about 4:25 a.m. Aug. 23,

1987. The train crew said neither youth moved or appeared to be aware of the oncoming train.

Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental, saying the boys were in a deep, marijuana-induced sleep at the time.

The boys' parents questioned Malak's ruling and pushed for further investigations.

Cameras and notebooks in hand, the jurors were shown the site and surrounding area by four Union Pacific Railroad employees and an Arkansas State Police investigator.

Union Pacific employees barred a reporter and photographer from *The Benton Courier* from accompanying the 16-member panel, saying the

railroad area is private property.

Richard Garrett and Dan Harmon, the two deputy prosecutors leading the investigation, were not with the grand jury and were unavailable for comment later Friday. They were in Atlanta, Ga., delivering evidence to Dr. Joe Burton, a pathologist who conducted second autopsies on Ives and Henry.

They were to deliver transcripts of February investigative hearings, copies of interviews with witnesses and pieces of a gun found at the scene.

Burton's report is expected within two weeks. He said in a preliminary report that the boys smoked only three or four marijuana cigarettes.

Grand Jurors visit tracks where 2 died

BENTON (AP) — Members of a Saline County Grand Jury Friday walked along the railroad tracks near Alexander where two Bryant teen-agers were struck by a train in August.

Four Union Pacific Railroad employees and a State Police investigator showed the jurors the impact site and surrounding area. Deputy Prosecuting Attorney Richard Garrett and special Deputy Prosecuting Attorney Dan Harmon did

not accompany the Grand Jury.

The visit to the railroad tracks was not announced beforehand, and Prosecutor Joe Hardin declined to confirm the session. But the *Benton Courier* newspaper was tipped.

Union Pacific employees barred a reporter and photographer, saying the railroad area is private property.

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

The deaths were officially ruled accidental, but the boys' families have speculated that they may have been wounded or slain and their bodies placed on the tracks before the train hit them.

SUNDAY, MAY 8, 1988

Arkansas  Gazette.

Forum

TIP OFF

Strong conclusions

You can almost bet the Georgia pathologist hired to conduct a second autopsy on the bodies of two Saline County boys who were struck by a train in August is going to have some strong new conclusions when his report goes to a Grand Jury.

Why so? Deputy Prosecuting Attorney Richard Garrett conducted a "prosecutor's hearing" earlier this year and heard three days of testimony from an almost identical list of witnesses, including Dr. Fahmy Malak, the state medical examiner.

Garrett wouldn't have called the Grand Jury if he didn't have a strong hint the pathologist's findings would be different from those of Dr. Malak, who ruled that the boys were in a marijuana-induced sleep and died accidentally.

Pathologist's report possible late this week

By LEE BROCKWAY
Courier Staff Writer

An Atlanta, Ga. pathologist may issue his report on the autopsies of two Bryant teen-agers late this week, according to Deputy Prosecutor Richard Garrett.

Garrett said today Dr. Joe Burton informed him during a visit Friday the report should be completed within eight to 10 days as of May 6. Garrett and special prosecutor Dan Harmon drove to Atlanta Thursday to deliver a gun found at the scene, transcripts of public hearings held in February and copies of interviews with witnesses.

Garrett said he has not decided if the report will be released to the public or restricted to members of a grand jury investigating the Aug. 23 deaths.

The grand jury will wait until after it receives the report to decide if Burton will be subpoenaed to testify, according to Garrett. Jurors were scheduled to talk with Burton by telephone last week, but were unable to reach him.

During an unannounced session Friday morning, jurors were shown the railroad tracks where 17-year-old Larry Kevin Ives and Don George Henry, 16, were lying when they were struck by the Union Pacific train.

In a preliminary report, Burton has said Henry and Ives smoked three or four marijuana cigarettes before their deaths. His statement directly conflicts with the state medical examiner's ruling that the Ives and Henry had smoked a large amount of marijuana and, as a result, were in a deep sleep when the train passed over them.

The jurors found a section of material that might have been part of a tarp covering the boys when they were hit, according to Garrett. The train crew testified a green tarp was covering the boys' legs, but Saline County sheriff's deputies were unable to find a tarp after the incident.

Garrett said he does not know what will be done with the material until he has an opportunity to examine it. "I don't know what we'll do with it."

Other sections of material located in March by a Salem man were tested by the state Crime Laboratory, but no blood or

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Train

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trace evidence was discovered.

Friday's session was held to let jurors "familiarize themselves with what happened," he said.

Additional subpoenas will be issued today or Tuesday for witnesses to testify when the grand jury reconvenes at 9 a.m. Wednesday.

Tommy Lee Madison of Alexander has already been subpoenaed for Wednesday, but his testimony may be delayed, according to Garrett.

Madison identified himself in February as the man who assisted Saline Memorial Hospital paramedic Shirley Raper in locating an alternate entrance to the railroad tracks. Raper had not known the man's name.

Madison is being held at the Saline County Detention Facility until he appears before the grand jury. Garrett requested

Madison be transferred last week from the Pulaski County Jail.

He was arrested April 25 by Pulaski County deputies on two felony warrants for theft by receiving and possession of a controlled substance, according to authorities.

The Saline County prosecutor's office issued an arrest warrant for Madison on April 13 for questioning on eight allegations of possession of a controlled substance, cocaine. Madison was not charged and no decision has been made regarding the filing of charges, Garrett said.

Authorities have refused to comment on whether the allegations are related to the boys' deaths, if Madison was not charged because of a lack of evidence, or if additional persons could be charged in relationship to the investigation involving Madison.

Madison had identified himself to Raper as the fire chief of the Alexander Volunteer Fire Department. He told her two men in a pickup truck near the scene were members of his department. He talked to the men after Raper had left the ambulance and walked to the tracks. When she returned, the pickup truck was gone.

Garrett discovered later that Alexander does not have a fire department.

Report about 2nd autopsies expected soon

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — Prosecutors expect within eight to 10 days the long-awaited results of second autopsies on two Saline County teen-agers struck by a train.

The grand jury investigating the boys' deaths has not decided whether to make those results public immediately, prosecutors said.

The grand jury will meet again at 9 a.m. Wednesday. Tommy Madison of Alexander, who was at the scene and since has been arrested on unrelated charges, is expected to testify.

Deputy Prosecuting Attorney Richard Garrett and Dan Harmon of Benton, special deputy prosecutor, met with pathologist Joe Burton in Atlanta on Friday.

Neither Garrett nor Harmon would comment on whether Burton had reached any findings. Garrett gave Burton a .22-caliber rifle that was in the boys' possession, a transcript of a February prosecutor's investigation and a copy of his case file.

Asked if Burton would testify before the grand jury, Garrett said it was "possible, but that's not been decided yet."

Burton was hired under a ruling by Saline County Circuit Judge John Cole of Sheridan. Fahmy Malak, state medical examiner, ruled the Aug. 23, 1987 deaths of Larry Kevin Ives, 17, and Don George Henry, 16, were accidental. Cole ruled there was enough contrary evidence to justify a second opinion.

Burton performed the autopsies April 5. Since then, he has conducted various tests at his lab in Georgia, Garrett said.

Malak ruled that the boys were in a deep, marijuana-induced sleep the night they died. The boys were lying on train tracks about 4:25 a.m. on Aug. 23, 1987, when they were hit by a Union Pacific train.

Arthur McBay, chief toxicologist for the North Carolina medical examiner's office and noted expert on marijuana, has publicly stated that it is unlikely that marijuana could cause such a deep sleep.

In an interview Thursday, McBay confirmed that he spoke with the grand jury by telephone the day before. McBay also confirmed that he has not changed his opinion, but declined to comment specifically on what he told the grand jury.

When asked if Garrett's summary of his testimony — that McBay said what he had said earlier, only more forcefully — McBay answered, "Yes, that's accurate."

In an unannounced session, the grand jury met Friday at the site where the boys were killed.

At a glance

- Atlanta pathologist Joe Burton is expected to finish within the next eight to 10 days his report on the deaths of two Saline County teen-agers.

- The report may not be made public immediately, prosecutors said. The grand jury investigating the deaths will decide.

- The grand jury is investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. Those deaths, which occurred Aug. 23, 1987, were ruled accidental by Fahmy Malak, state medical examiner.

Crime Lab assistant subpoenaed by panel

By LYNDA HOLLENBECK
Courier Staff Writer

Ralph Turbyfill, assistant director of the state Crime Laboratory, has been subpoenaed to appear Wednesday before the Saline County Grand Jury that is investigating the deaths of two Bryant teen-agers.

Turbyfill was also ordered to submit reports of autopsies performed on Charles Sargent, Rena Wearsch, Debra Bearden and Sandra McCann. All were homicide victims.

Special Deputy Prosecutor Dan Harmon said the autopsy reports have been subpoenaed for study by Dr. Joe Burton of Atlanta, Ga., an independent pathologist who recently did autopsies of the Bryant youths' bodies.

Harmon said Turbyfill refused to release the records to him when he had requested them. Turbyfill contended the autopsy reports were not public records, Harmon said.

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Jury

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Ken Micheau, a toxicologist at the Crime Lab, is also subpoenaed as a witness for Wednesday's proceedings. His subpoena states he is to bring all records pertaining to the autopsies done on Don Henry and Kevin Ives, the two victims whose deaths are the basis for the grand jury investigation.

Others subpoenaed as witnesses on Wednesday are Ron

Eaton, an emergency medical technician for the Benton Fire Department and Saline Memorial Hospital, and Saline County Coroner Sam Ballard.

Henry, 16, and Ives, 17, were struck by a Union Pacific train as they lay in identical positions on the railroad tracks near the Shobe Road crossing. The impact occurred at 4:25 a.m. Aug. 23. Neither moved or showed any sign that they were aware of the approaching train,

according to members of the train crew.

Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental, but parents of the victims and medical experts disagreed with those findings. Public investigative hearings were held in February to investigate the deaths.

The grand jury was impaneled April 27 and is expected to meet for several weeks.

Prosecutors eye similar case

By LEE BROCKWAY
Courier Staff Writer

Saline County prosecutors traveled to Oklahoma Tuesday to obtain information about two Oklahoma men whose deaths were similar to that of Larry Kevin Ives and Don George Henry, both of Bryant.

Richard Garrett and Dan Harmon discussed the case with Poteau, Okla., officials and received copies of the case file and autopsy reports. They were accompanied by Saline County Sheriff's Investigator Chuck Tallent and Benton Police Chief Rick Elmendorf, who was chief deputy at the time.

Billy Don Hainline, 21, of Hodgen, Okla., and Dennis Decker, 26, of Heavener, Okla., were struck by a Kansas City Southern Railroad train about 5:20 a.m. June 25, 1984, as they were lying beside each other on railroad tracks between Hodgen and Stapp-Zoe, located approximately 50 miles from the Oklahoma-Arkansas border.

Initially, the deaths were ruled an accident by the local coroner, but were ruled undetermined later by the state medical examiner after an autopsy was conducted. A year later, a grand jury supported the ruling of undetermined and recommended authorities continue their investigation. That ruling remains today.

Hainline and Decker had apparently walked to the rural area. The train engineer told authorities he sounded the warning whistle and applied the brakes, but was unable to stop before striking the men.

A high level of alcohol was found in one of the men's bodies, but only a small amount was detected in the other body, according to Garrett. No other drugs were found in the bodies.

One of the autopsy reports says the lack of hemorrhaging is "suggestive of post-mortem injury."

In July 1985, the grand jury investigated a possible connection between the deaths and marijuana and illegal drug laboratories in the same area.

A month after Hainline and Decker died, a methamphetamine lab was discovered. A few weeks later, a man's body was found floating in a creek about one mile from the railroad tracks, according to authorities. However, the grand jury said they could find no evidence to warrant further investigation into the third man's death.

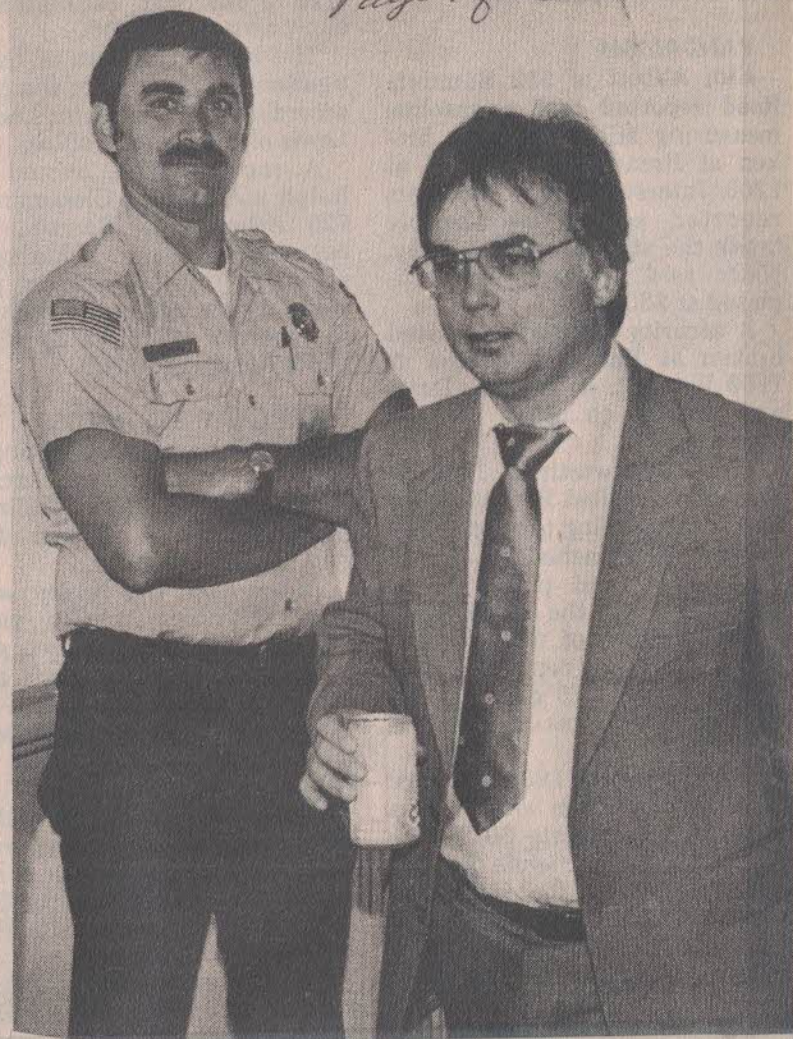
Garrett said further study is needed to determine if there is any connection to the 1984 deaths and those of Henry and Ives.

"Right now, I don't think so, but that's something that had to be checked out," he said. "We haven't done enough investigating to know if there is a connection. Personally, I don't think there is."

Garrett said the grand jury has been informed of the deaths and will consider it during the proceedings.

Ives and Henry were struck by a Union Pacific train at 4:25 a.m. Aug. 23 as they were lying in identical positions on the railroad tracks near Alexander. They did not move or appear to be aware of the train, which was traveling at 50 mph with its horn blowing, according to the train crew.

State Medical Examiner Fahmy Malak ruled the deaths an



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Courier photo by Phillip Felton

As Special Prosecutor Dan Harmon enters a Saline County courtroom this morning, Benton Fire Department Emergency Medical Technician Ron Eaton, left, waits in the hallway before his testimony before a Grand Jury investigating the deaths of two Bryant youths.

accident. He said Henry and Ives were in a drug-induced sleep as a result of smoking a large amount of marijuana. However, a Georgia pathologist has said the boys smoked only three or four marijuana cigarettes. No alcohol was found in either body.

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Probe

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During today's proceedings, the grand jury investigating Ives and Henry's deaths awaited a call from Dr. Joe Burton, who conducted second autopsies on the boys' bodies last month. His report is expected within a few days. Prosecutors have not decided if the report will be released to the public or if it will be restricted to the grand jury.

Only two witnesses were called during the morning session. Coroner Sam Ballard testified for 35 minutes, followed by brief testimony by Ron Eaton, a Benton Fire Department emergency medical technician. Both men were at the scene.

They told reporters their testimony covered the same material discussed in February during public hearings into the deaths.

Scheduled for testimony later today were Ralph Turbyfill, assistant director of the state Crime Laboratory, and Ken Micheau, a toxicologist at the Crime Lab.

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