

## Crime Lab assistant director, 4 autopsy reports subpoenaed

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Ralph Turbyfill, assistant director of the state Crime Laboratory, was issued a subpoena to appear today before a Saline County grand jury investigating two teen-agers' deaths.

In the subpoena, Turbyfill was ordered to submit reports of autopsies performed on four homicide victims. Dan Harmon, special deputy prosecutor, said the records were first requested, then subpoenaed when the request was denied.

Neither Harmon nor Richard Garrett, the deputy prosecuting attorney leading the investigation, would comment on why the grand jury was interested in four apparently unrelated homicide cases. Turbyfill was unavailable for comment Tuesday afternoon.

The grand jury was convened to investigate the deaths

of Larry Kevin Ives, 17, and Don George Henry, 16. Ives and Henry were struck and killed by a train Aug. 23, 1987, as they lay motionless on railroad tracks near Alexander.

Dr. Fahmy Malak, state medical examiner, ruled that the deaths were accidental. The boys were in a deep, marijuana-induced sleep when the train hit, Malak ruled. That ruling has been questioned by medical experts on the effects of marijuana.

The four deaths involved in the subpoenas are those of Charles Sargent, Rena Wearsch, Debra Bearden and Sandra McCann.

Miss McCann, 14, was found dead Feb. 4, 1980. A resident of the Indian Springs Community north of Benton, she was found dead of multiple gunshot wounds near Arkansas 5 west of Benton. Details on the other three deaths were unavailable.

Also scheduled to testify Wednesday are Tommy Madison, who directed an ambulance at the scene; Ken Michéau, state Crime Laboratory toxicologist; Ron Eaton, an emergency medical technician for the Benton Fire Department and Saline Memorial Hospital; and Sam Ballard, Saline County coroner.

In a related matter, the NBC network documentary *Unsolved Mysteries* is considering an episode on Ives' and Henry's deaths.

"The producers for the show have been told about this and have decided that this is one they want to pursue," said Chip Clements, a researcher for the program.

The proposal has already passed the preliminary stage, Clements said.

Any such episode is at least several months from being aired, Clements said.



## Lab official calls inquiry 'vendetta'

BY DOUG THOMPSON  
Democrat State Desk

**BENTON** — Ralph Turbyfill, the state Crime Laboratory's assistant director, said prosecuting attorneys in a Saline County grand jury investigation "appear to be pursuing a personal vendetta" against the state medical examiner.

Meanwhile, Dan Harmon, special deputy prosecuting attorney, accused the state medical examiner of calling "investigators and secretaries," trying to get inside information about the investigation.

The grand jury is investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16 who were struck by a train Aug. 23, 1987. Dr. Fahmy Malak, state medical examiner, ruled the deaths were an accident that

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Arkansas Democrat/Don Marquis

**ON HIS WAY** — Special Prosecuting Attorney Dan Harmon on Wednesday heads to the courtroom where a grand jury is meeting to investigate the deaths last summer of two Saline County teen-agers.

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# 'Vendetta'

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occurred while the boys were in a deep, marijuana-induced sleep.

Joe Burton, an Atlanta pathologist reviewing Malak's findings in those deaths, will testify before the grand jury but the date has not been determined.

Deputy Prosecuting Attorney Richard Garrett of Benton said he will call Burton today to make the arrangements. The grand jury will not meet again until Burton arrives. Garrett said he hopes Burton will come "this week or the next."

At a grand jury hearing Wednesday, Turbyfill appeared as a witness.

"Dr. Malak feels he is being investigated, and was treated unfairly and rather rudely" by prosecuting attorneys while testifying before the grand jury, Turbyfill said in an in-chambers hearing before Circuit Judge John Cole of Sheridan.

Harmon and Garrett denied any personal animosity towards Malak. They also denied treating him rudely. "I'm sorry he feels that way," Harmon said. "I thought we were on cordial terms, even though we disagreed."

Turbyfill also said, "I have been wrongfully accused of refusing to provide records." On May 5 Harmon requested records of four autopsies performed by Malak. Turbyfill said that, as a point of law, the crime lab cannot release those records except under subpoena.

Harmon said Turbyfill told him he had no right to the records.

During the chambers hearing, Harmon attempted to subpoena Steve Cox, an employee of the crime lab who witnessed



Ralph Turbyfill

the exchange between Harmon and Turbyfill. However, Cox was on vacation this week, Turbyfill said.

Although they apparently have nothing directly to do with the two boys' deaths, Burton requested reports of previous autopsies performed by Malak. Burton wants to compare those reports to the Ives and Henry report, Harmon said.

The records concern four unrelated homicides occurring in Saline County between 1980 and 1987.

Cole ruled the grand jury "was entitled to the autopsy reports as long as they are utilized for the purpose of drawing conclusions in the investigation of this particular incident," Ives and Henry's deaths.

Turbyfill requested that Cole instruct Garrett, Harmon and the grand jury that they are not to open an investigation of the state medical examiner's office or the crime lab.

If the grand jury strays into other areas, Cole said, "the

court has some control over what is contained in the grand jury's report. The court will make sure the report relates entirely to the occurrences being investigated."

Harmon requested that Malak be ordered to stop "calling secretaries and investigators about Dr. Burton's report." Turbyfill said, "If he is making calls, I'll take care of it this afternoon."

Malak has called "every investigator connected in this case and the prosecuting attorney's secretary, trying to get them to tell him what Burton's findings are as soon as they find out," Harmon said in a later interview.

Malak declined comment Wednesday evening.

After the hearing, Turbyfill said Malak "feels his abilities are being questioned" by the investigation. "Dr. Malak is a very emotional man," Turbyfill said. "This is a very big strain on him, seeing his name in the paper every day. He feels he's being persecuted by the press."

Asked if Malak was worried about what Burton's report might say, Turbyfill said, "He's not concerned about his ruling. He's concerned about why it's taking so long. He does his in two weeks." Burton performed the autopsies April 5.

In other business, the grand jury reviewed a videotape of the view from a locomotive

## At a glance

- The assistant director of the state Crime Laboratory said Wednesday that prosecuting attorneys are pursuing a "personal vendetta" against the state medical examiner in a Saline County Grand jury investigation. The prosecuting attorneys denied the charge.

- The special deputy prosecuting attorney retorted Malak had called "investigators and secretaries" to try and get inside information on the investigation.

- The grand jury met Wednesday. It will not meet again until the arrival of Joe Burton, an Atlanta pathologist. The date of his arrival is uncertain.

crossing the site where the boys were found. The panel heard testimony from Sam Ballard, Saline County coroner; Ron Eaton, a paramedic; and Ken Micheau, head toxicologist at the state crime lab.

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Courier photo by Philip Felton

Ralph Turbyfill, left, assistant director of the state Crime Laboratory, is swamped by the media following a public hearing Wednesday afternoon in Circuit Court Judge John Cole's chambers. Turbyfill had been subpoenaed to testify before the grand jury, but had requested a hearing prior to his testimony to issue allegations that prosecutors in the grand jury investi-

gation were pursuing a personal vendetta against Fahmy Malak, state medical examiner. Turbyfill also stated, with some humor, that the media had finally found someone who would talk to them. He was referring to the fact that a grand jury's investigation is closed.



# Probe may indicate foul play

By LYNDA HOLLENBECK  
Courier Staff Writer

The Atlanta, Ga., pathologist who performed autopsies on the exhumed bodies of two Bryant teen-agers is expected to testify that evidence points to murder when he appears before a Saline County grand jury May 24.

Deputy Prosecutor Richard Garrett says the grand jury won't meet again until Dr. Joe Burton testifies.

"He's not completely finished (with the investigation), but I suspect he's close enough that he can come in and tell us they were murdered," Garrett said.

Garrett said Burton probably would not use those words, but "I expect him to say the boys received injuries that were possibly not caused by the impact of the train."

Burton, medical examiner for north metropolitan Atlanta, performed autopsies last month after the bodies of Don Henry, 16, and Kevin Ives, 17, were exhumed.

The grand jury is probing the Aug. 23 deaths of the two teen-agers who were lying in identical positions on the railroad tracks near the Shobe Road crossing when they were struck by a Union Pacific train. Train crew members testified the boys were partially covered with what appeared to be a green tarpaulin. Neither moved or appeared to be aware of the oncoming train, the crew said.

State medical examiner Fahmy Malak ruled the deaths accidental, but that ruling was questioned by parents of the victims and prosecutors. Public investigative hearings led to the current grand jury investigation.

The amount of marijuana smoked by the youths has been an area of dispute in the investigation. Since performing the second autopsies, Burton believes the boys

smoked "three or four" marijuana cigarettes, according to Garrett. Malak has contended they smoked an equivalent of 20 marijuana cigarettes.

A witness before the grand jury said Wednesday he believes Malak indicated the amount of marijuana was "cumulative," rather than the amount the boys smoked during the last few hours they were alive.

That witness, Ralph Turbyfill, assistant director of the state Crime Laboratory said he had never heard Malak say the boys had smoked that many cigarettes and that the only place he had seen that figure was in news accounts. He also said he had never looked at the autopsy reports.

Benton Police Chief Rick Elmendorf, who was present during a conference with parents of the victims and State Police Investigator Frank Mitchell approximately an hour before the autopsies were released, said today he had no recollection of Malak indicating the amount was cumulative.

In that setting, Malak allegedly told the parents and investigators the amount of THC, the active ingredient in marijuana, found in the bodies was the equivalent of 20 marijuana cigarettes.

"He (Malak) said, 'The THC content was the equivalent of 20 marijuana cigarettes,' so that made me assume he meant that was the amount smoked that night," said Elmendorf, who was chief deputy at the time the boys died.

Prior to Turbyfill's testimony Wednesday before the grand jury, a hearing was held before Circuit Judge John Cole in the judge's chambers at the county courthouse.

Turbyfill had requested that hearing to register a complaint about a meeting he had Thursday with Special Deputy Prosecutor Dan Harmon and also to relay a complaint from Malak.

According to Turbyfill, Malak feels he was "treated rudely" by prosecutors when he testified before the grand jury last week. He said Malak considers the extensive press coverage he has received to be "harassment" and feels "personally persecuted" as he continues to be a recurring item in the news.

"He feels it is a personal vendetta against him," Turbyfill said.

In the hearing, Cole told Turbyfill the grand jury is entitled to have the reports and Burton is entitled to use them "as long as they are utilized for the purpose of drawing conclusions in this particular incident."

Harmon requested Cole to issue an order prohibiting Malak from "calling secretaries at prosecutor's offices and investigators to find out if Dr. Burton's report is ready."

Turbyfill said he would see that Malak does not make any calls of that nature, but also said he had been unaware that Malak had called any of these people.

Harmon had requested that Steve Cox, chief criminalist at the Crime Lab, be subpoenaed Wednesday, but Cox was on vacation. Cox reportedly witnessed the conversation between Harmon and Turbyfill.

Also, jurors viewed a video tape made by State Police investigators aboard a Union Pacific train traveling on the same tracks where the boys were struck.

Other witnesses Wednesday included Ken Micheau, a toxicologist at the state Crime Lab; Ron Eaton, an emergency medical technician at Benton Fire Department; and Saline County Coroner Sam Ballard.

"Dr. Malak is, on a daily basis, being kept in the news and is a very emotional person, and it's difficult for him to do his job with the amount of press that he's getting at this time," Turbyfill said. "He feels that this case is just adding to that pressure."

"It's not affecting his work as a pathologist, but is affecting him emotionally and personally," he said.

"Dr. Malak, as far as I'm concerned, is a very capable pathologist," Turbyfill added.

When a reporter asked if Malak could be paranoid, Turbyfill replied, "I'm no psychologist."

In response to another question, Turbyfill repeated the reporter's question in his answer. That question was "Is he concerned about his job?"

Turbyfill replied, "Should he be?"

Turbyfill also complained about an earlier news account that stated he had refused a request from Harmon to release copies of autopsy reports concerning cases that have already been settled. According to Turbyfill, a state law prohibits him from releasing an autopsy except through a subpoena.

Robert Fisher, a spokesman for the state attorney general's office, today said subpoenas for autopsy reports are necessary because the reports become part of the deceased persons' medical records when a case is closed.

Turbyfill said he did not explain to Harmon that a subpoena was necessary "because he (Harmon) didn't give me a chance."

Garrett said he had sent Harmon to get the autopsy reports because Burton wanted to study them.



# Officials to look at similar deaths

## *2 Oklahoma men hit by train in '84 also 'sleeping,' motionless*

The Associated Press

BENTON — Saline County authorities traveled to Oklahoma on Tuesday to get information about two Oklahoma men whose deaths were similar to the deaths of Bryant teen-agers Larry Kevin Ives and Don George Henry.

Deputy Prosecuting Attorney Richard Garrett and Special Deputy Prosecuting Attorney Dan Harmon received copies of the case file and autopsy reports from Poteau, Okla., officials. They were accompanied by Chuck Tallent, a Saline County sheriff's investigator, and Benton Police Chief Rick Elmendorf.

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 about 50 miles from the Oklahoma-Arkansas border.

The train engineer reportedly told Oklahoma authorities the two apparently were asleep on the tracks.

Initially, the deaths were ruled accidental by the local coroner. After an autopsy, the cause of death was changed to undetermined by the state medical examiner. A year later, a grand jury supported the ruling of undetermined and recommended authorities continue their investigation.

A high level of alcohol was found in one of the men's bod-

ies, but only a small amount was detected in the other body, Garrett said. No other drugs were found in the bodies.

"There are enough similarities between the deaths to warrant further investigation," Harmon said. "They were side by side, motionless and supposedly sleeping. They made no movement as the train approached. They had been out walking before it occurred, and there was a small amount of alcohol involved."

In July 1985, the grand jury investigated a possible connection between the deaths and illegal drug laboratories in the same area. A month after Hainline and Decker

died, a methamphetamine lab was discovered.

Garrett said authorities have not done enough investigating to determine if the 1984 deaths are connected to the deaths of Ives, 17, and Henry, 16.

"Personally, I don't think there is," he said.

The autopsy reports on the two Oklahoma men will be mailed to an Atlanta pathologist who is conducting additional tests on the exhumed remains of Ives and Henry, Garrett said.

He said a Saline County grand jury, empaneled to look into the deaths of the two teen-agers, has been informed of the Oklahoma deaths.



# Malak feels media, officials persecuting him, aide says

AP AND GAZETTE STAFF

BENTON (AP) — The state medical examiner feels persecuted by the media and officials involved in an investigation into the deaths of two Bryant teen-agers, a Crime Lab official said Wednesday.

Deputy Crime Lab Director Ralph Turbyfill, who appeared before a Saline County Grand Jury investigating the deaths, told reporters the panel had treated medical examiner Dr. Fahmy Malak rudely when he testified last week.

Turbyfill said Dan Harmon, a special deputy prosecuting attorney in the case, had harassed Dr. Malak by asking for four autopsy reports which apparently are unrelated to the Grand Jury's in-

quiry.

"Dr. Malak is, on a daily basis, being kept in the news and is a very emotional person, and it's difficult for him to do his job with the amount of press that he's getting at this time," Turbyfill said.

Harmon, who subpoenaed the autopsy reports of four homicide and suicide cases dating back to 1980, said he did so at the request of an independent pathologist who has conducted his own investigation into the deaths of Don Henry, 16, and Kevin Ives, 17.

The boys were run over by a Union Pacific train August 23 as they were lying on tracks near Alexander.

Dr. Malak ruled the deaths acci-

dental, saying Henry and Ives had fallen asleep after smoking a large amount of marijuana. Dr. Joe Burton, the independent pathologist, said the boys had smoked three or four marijuana cigarettes each.

Dr. Burton conducted autopsies on the boys last month, and his reported is expected within a few days.

Harmon said Dr. Malak had been calling his office daily to get results of Burton's report, and he said he had asked Circuit Judge John Cole to order the medical examiner to stop the calls.

## Oklahoma journey

Tuesday, Harmon, Deputy Prosecuting Attorney Richard Garrett

and two other Saline County investigators traveled to Poteau, Okla., where they studied a case where two men died under circumstances that were similar to the deaths of the Bryant teen-agers.

In that case two men were struck by a Kansas City Southern Railroad train in 1984 as they were lying beside each other on railroad tracks about 50 miles from the Oklahoma-Arkansas border.

Garrett said authorities have not done enough investigating to determine if the 1984 deaths are connected to the deaths of Ives and Henry.

"Personally, I don't think there is," he said.

## Other testimony

The jury heard testimony Wednesday from State Crime Lab Toxicologist Ken Michau, Ron Eaton, a Benton Fire Department medical technician, and Saline County Coroner Sam Ballard.

The panel also viewed a police videocassette taken from aboard a traveling Union Pacific train. Garrett said the panel will not meet again this week.



# Garrett expects autopsy of teens to reveal murder

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — Deputy Prosecuting Attorney Richard Garrett of Benton expects a recent autopsy will show two teen-agers were murdered, not killed in a train accident last summer.

He based that prediction on his own opinion, not on the autopsy findings.

"I've believed for months that these boys were murdered. There's no secret about that," Garrett said Thursday. "And I expect that the autopsy being conducted will bear me out. But I do not know that for a fact. I will not know that until Dr. (Joe) Burton makes his report."

Burton, an Atlanta pathologist, has conducted autopsies on Larry Kevin Ives, 17, and Don George Henry, 16, who were killed Aug. 23, 1987, in Saline County.

Garrett told the *Associated Press* Thursday morning that Burton has "not completely finished (with the autopsies), but I suspect he's close enough that he can come in and tell us they were murdered."

Ives and Henry were struck by a train about 4:25 a.m., but questions have been raised about the possibility they were already dead.

Garrett said Thursday he has not received any information from Burton that confirms murder.

"Dr. Burton has told me that the boys received injuries that were possibly not caused by the impact of the train," Garrett said. "But he has not told me if those injuries are lethal or incapacitating or what they were caused by."

"That these findings will point to murder is my own conclusion, not Dr. Burton's," Garrett said. Burton's report on the deaths is expected next week, Garrett said.

A grand jury is investigating the boy's deaths. Burton is tentatively scheduled to testify before the grand jury May 24. Another session of the grand jury is not expected until Burton arrives.

"Even if the deaths were a homicide, I don't expect Dr. Burton to reach that conclusion on his own," Garrett said. "He will present the facts he finds to the grand jury and let it draw the conclusion."

Dr. Fahmy Malak, state medical examiner, ruled the deaths were an accident. Malak ruled the boys were in a deep, marijuana-induced sleep. Malak confirmed Thursday he believes the current investigation is a vendetta against him — a charge Garrett denies.

"We are investigating incidents in Saline County out at the railroad tracks, not the state crime lab," Garrett said. "We have no personal animosity towards Dr. Malak, nor any vendetta against Dr. Malak or the crime lab." Ralph Turbyfill, assistant director of the state Crime Laboratory, told Circuit Judge John Cole of Sheridan on Wednesday that Malak feels the medical examiner is being investigated, his credibility challenged, and a personal vendetta being pursued by Garrett and by Dan Harmon of Benton, special deputy prosecuting attorney.

Thursday morning, Malak said Turbyfill's comments "were, if anything, an understatement."

Malak also said he talked to investigators and personnel at the prosecuting attorney's office, trying to obtain information about Burton's findings. But he said he only brought up the topic during conversations about other business. He also said he would not do it again.

"I have a right to know," Malak said. "He (Burton) used autopsy reports and X-rays provided by me. He used my evidence, I have a right to see his. This is America, not the jungle."

Malak said he respected proper channels "and wrote a letter to (Prosecuting Attorney Joe Hardin of Benton, who is Garrett's boss), asking for the reports and asking how the investigation was being held. It was all very proper."

Hardin said Thursday he recalls receiving the letter, but said he did not respond to it.



## Other injury suggested in death of 2 on tracks

By Byron McCauley  
GAZETTE STAFF

BENTON — An Atlanta pathologist has found injuries on the bodies of two Saline County youths that may not have been caused when they were run over by a train, Deputy Prosecuting Attorney Richard Garrett said Thursday.

The Associated Press reported that Garrett said the injuries were enough to indicate the youths were slain, but Garrett later disputed that statement.

A Grand Jury is investigating the deaths last summer of Kevin Ives, 17, and Don Henry, 16, both

of Bryant, and Dr. Joe Burton of Atlanta has performed an autopsy on their bodies. Dr. Burton is expected to present his findings to the Jury May 24.

According to the AP, Garrett said Dr. Burton is "not completely finished, but I suspect he's close enough that he can come in and tell us they were murdered." Garrett then said Dr. Burton probably would use different words, the AP reported.

Garrett told the *Arkansas Gazette*, however, that he didn't say Dr. Burton's information was that strong. He said Dr. Burton would

(See GARRETT on Page 10A.)

## Garrett

Continued from Page 1A.

tell the panel that the boys suffered injuries "possibly not caused" by the train. "I do not expect Dr. Burton to come out and say these boys were murdered," Garrett said.

Dr. Burton could not be reached for comment at his office Thursday.

### Ruled accidental

The youths were run over August 23 by a Union Pacific train while they were lying next to each other on the tracks. Dr. Fahmy Malak, the state medical examiner, ruled the deaths accidental, saying the youths were drugged from excessive use of marijuana. The boys' parents contested the ruling and Garrett had the Grand Jury impaneled to investigate. He also had Dr. Burton perform autopsies on the bodies. The Jury has had several sessions to question witnesses.

Dr. Malak, contacted at his home, would not comment Thursday on Garrett's remarks.

In a related matter, Garrett responded to statements made Wednesday by Ralph Turbyfill, deputy director of the state Crime Laboratory. Turbyfill said Dr. Malak feels the prosecutors conducting the Grand Jury hearings have a "personal vendetta" against him.

"We were not out to get Dr. Malak. We don't have any vendetta against the Crime Lab," Garrett said. "What we are after is to find out what happened to these two boys."



## Garrett: Wait for ruling

Although an Atlanta, Ga., pathologist has found injuries on the bodies of two Bryant boys that may have not been caused by a train that struck them, a local deputy prosecutor says the findings may not be strong enough to rule the deaths as homicides.

Richard Garrett said late Thursday afternoon that Dr. Joe Burton may not rule foul play was involved, as reported Thursday by The Associated Press.

Burton is expected to present his findings May 24 to a grand jury investigating the Aug. 23 deaths of Don Henry, 16, and Kevin Ives, 17, both of Bryant. Henry and Ives were lying in identical positions on railroad

tracks near Alexander when a train struck them. The train crew said neither teen-ager moved or gave an indication they were aware of the approaching train.

Burton conducted autopsies on the exhumed bodies in April and is completing additional tests in Atlanta.

The AP reported that Garrett had said, "He's not completely finished, but I suspect he's close enough that he can come in and tell us they were murdered," Garrett said.

Garrett told *The Courier* Thursday morning that Burton probably would not use the word murder, but "I expect him to say

the boys received injuries that were possibly not caused by the impact of the train."

He declined further comment on the matter today.

Henry and Ives had smoked a large amount of marijuana before their deaths and, as a result, were in a deep sleep when the train crushed them, according to State Medical Examiner Fahmy Malak. Burton has already disputed that statement, saying only three or four marijuana cigarettes were smoked by the boys prior to their deaths.

The grand jury is not expected to convene again until Burton testifies.



## Grand jury investigating train deaths to meet again

BY DOUG THOMPSON  
Democrat State Desk

BENTON — The grand jury investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16, will meet at 9 a.m. Monday, special prosecuting attorney Dan Harmon of Benton said Saturday.

Harmon said that the grand jury foreman wants to meet again to decide if more subpoenas should be issued and more meetings held before May 24.

At the grand jury's last meeting Wednesday, it announced then it would recess until May 24, awaiting testimony by Dr. Joe Burton, an Atlanta pathologist who conducted autopsies on the victims.

Burton's report has not been received yet, Harmon said. It is expected sometime

this week.

Ives and Henry were lying on the tracks near Alexander when they were struck by a train at about 4:25 a.m. Aug. 23, 1987. Neither boy moved as the train approached.

Dr. Fahmy Malak, state medical examiner, ruled the deaths were accidental. They boys were in a deep sleep while under the influence of marijuana, he ruled.

Deputy Prosecuting Attorney Richard Garrett of Benton conducted his own investigation at the request of the boys' parents. Garrett said he expects the deaths to be ruled a homicide and requested the further autopsies by Burton.

Malak recently confirmed he believes Garrett and Harmon are pursuing a personal vendetta against him through this investigation.

### Perspective

#### DEPUTY PROSECUTING

Attorney Richard Garrett of Benton expects a recent autopsy will show two teen-agers were murdered, not killed in a train accident last summer.

Larry Kevin Ives, 17, and Don George Henry, 16, were struck by a train and killed while lying motionless across railroad tracks Aug. 23, 1987.

Garrett said he based his prediction on his own opinion, not on autopsy findings. Dr. Joe Burton, an Atlanta pathologist, is conducting autopsies on the boys' bodies. Dr. Fahmy Malak, Arkansas' medical examiner, conducted autopsies after the deaths and said the boys were in a deep marijuana-induced sleep at the time they were killed.



Arkansas Democrat  
MONDAY, MAY 16, 1988

## The Democrat Poll



May 16, 1988

### Today's Issue

Dr. Fahmy Malak has ruled two teens who were hit by a train last August were in a marijuana-induced sleep. Others contend there was foul play and the boys were murdered. The case has gotten a good deal of publicity.

### Today's Question

From what you have read, do you believe the deaths of Larry Kevin Ives and Don George Henry were (A) accidental or (B) murder?

### How to Participate

Call 378-7603 between 6 a.m. and 7 p.m. and follow the recorded instructions. Outside Pulaski County, call toll-free 1-800-272-4650 between 6 a.m. and 8 a.m.

### Yesterday's Response

Yesterday's question was:  
Would you support dropping drug charges against Gen. Manuel Noriega if he steps down in Panama? The response:

Yes . . . . . 17.3 percent  
No . . . . . 82.7 percent

Arkansas Democrat  
TUESDAY, MAY 17, 1988

## The Democrat Poll



May 17, 1988

### Today's Issue

Texas has begun a massive television tourism campaign bragging about its attractions and designed to lure visitors to the Lone Star state.

### Today's Question

Would you like to see Arkansas spend more money to bring tourists to the state?

### How to Participate

Call 378-7603 between 6 a.m. and 7 p.m. and follow the recorded instructions. Outside Pulaski County, call toll-free 1-800-272-4650 between 6 a.m. and 8 a.m.

### Yesterday's Response

Yesterday's question was:  
From what you have read, do you believe the deaths of Larry Kevin Ives and Don George Henry were (A) accidental or (B) murder?

The response:  
Accidental . . . . . 16.4 percent  
Murder . . . . . 83.6 percent



# 16 jurors issue gag order today

By LEE BROCKWAY  
Courier Staff Writer

A gag order was issued today for all persons involved in a Saline County Grand Jury investigation into the deaths of two Bryant High School students.

The order was announced shortly after the jury met for 2½ hours today. Deputy Prosecutor Richard Garrett said the order applies to jurors, prosecutors and witnesses who have testified or will testify before the panel.

When asked why the order was issued, Garrett said, "I don't know." He said he and Special Prosecutor Dan Harmon were out of the room when the decision was made by the 16-member panel. Garrett was not surprised by the decision.

"I kind of expected them to" issue such an order, he said.

All grand jury proceedings are closed to the public.

The panel is searching for clues in the deaths of Don Henry, 16, and 17-year-old Kevin Ives. Ives and Henry were struck by a Union Pacific train at 4:25 a.m. Aug. 23 as they were lying on the tracks near Alexander. The train crew said the boys were covered with a green tarp and did not move as the train traveled toward them.

The state medical examiner has ruled the deaths an accident. The boys were in a drug-induced sleep because they had smoked a large amount of marijuana, according to the examiner. His findings have been disputed by Atlanta, Ga., pathologist Joe Burton, who conducted

second autopsies last month. Burton said Ives and Henry smoked three or four marijuana cigarettes before their deaths.

The jury foreman asked Saturday that today's session be held to decide whether subpoenas should be issued before Burton testifies May 24. After recessing, Garrett said the panel had decided not to issue any more subpoenas until next week.

State Police Investigator Don Birdsong was the only witness called by the grand jury today. He declined to comment to reporters on his 15-minute discussion with the panel.

Birdsong "gave a quick report on some things he's done" in the investigation, Garrett said later.

When asked if the decision to consider subpoenas without Burton's report was an indication those subpoenaed next would be possible suspects or have indirect information about the deaths, Harmon refused to comment.

However, Garrett said, "We do not have any hard core suspects as such, but the grand jury is deciding what they're going to do, which direction they want to go."

Burton may not have his report completed when he testifies, according to Garrett. The prosecutor declined to speculate on Burton's ruling, but said he and Harmon are "fairly aware of what he's going to say."

He said last week that he personally believes Burton will indicate foul play was involved, but said the pathologist may not use the term homicide in his ruling.



# Jurors may ask Cole to issue gag order

By The Associated Press

A spokesman for the state attorney general's office said he can find no laws that would grant a grand jury the authority to impose a gag order.

On Monday the Saline County grand jury investigating the deaths of two Bryant teen-agers issued an order forbidding jurors, witnesses and prosecutors involved in the investigation to talk about the probe.

Robert Fisher, ombudsman for the state attorney general's office, said Monday that he couldn't find any state laws giving the grand jury the power to issue a gag order.

But Circuit Judge John Cole

of Sheridan said Monday night that, if asked, he would issue a gag order, and jury foreman Carl Allen says he may take Cole up on his offer.

"If it's necessary to petition Judge Cole, we will do that," Allen told the Arkansas Democrat. Allen said the jury was under the impression it could issue its own gag order.

"We feel the case needs to be kept confidential at this time," Allen said.

The panel is investigating the deaths of Don Henry, 16, and Kevin Ives, 17. Ives and Henry were struck by a Union Pacific train at 4:25 a.m. Aug. 23 as they were lying side by side on the tracks near Alexander.

Allen said he would talk to the prosecuting attorneys to determine if more action is needed to make the gag order binding. Allen said he won't call another grand jury session about the order.

The next session is scheduled for May 24.

Also Monday, the grand jury decided against issuing any more subpoenas this week, Deputy Prosecutor Richard Garrett said. Monday's grand jury session was held to determine if subpoenas should be issued before an Atlanta pathologist, Dr. Joe Burton, testifies May 24.

Although he expected the jury to issue the order, Garrett said he didn't know why they ordered it. Garrett said he and Special Deputy Prosecutor Dan Harmon were out of the room when the decision was made by the 16-member panel.

All grand jury proceedings are closed to the public.

Dr. Fahmy Malak, the state medical examiner, has ruled the deaths an accident. He said the boys had fallen asleep after smoking marijuana. Burton, who conducted second autopsies last month, said Ives and Henry smoked three or four marijuana cigarettes each before their deaths.

Don Birdsong, a State Police investigator, was the only wit-

ness called by the grand jury Monday. He declined to comment on his 15-minute discussion with the panel.

Burton may not have his report completed when he testifies, Garrett said. The prosecutor declined to speculate on Burton's report, but said he and Harmon are "fairly aware of what he's going to say."

He said last week that he personally believes Burton will indicate foul play was involved, but said the pathologist may not use the term homicide in his ruling.

"We do not have any hard-core suspects as such, but the grand jury is deciding what they're going to do, which direction they want to go," Garrett said.



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

BY MAX PARKER  
Democrat State Desk

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

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

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

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

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

See MALAK, Page 3B



Arkansas Democrat/Barry D. Arthur

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



# Malak

• Continued from Arkansas Page  
tory service.

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

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

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

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

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

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

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

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

## At a glance

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

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

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

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

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

occupation, the personalities of the people involved and politics.

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

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

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

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

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

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## Malak gets good news from sheriffs

### Approval rating high

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

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

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

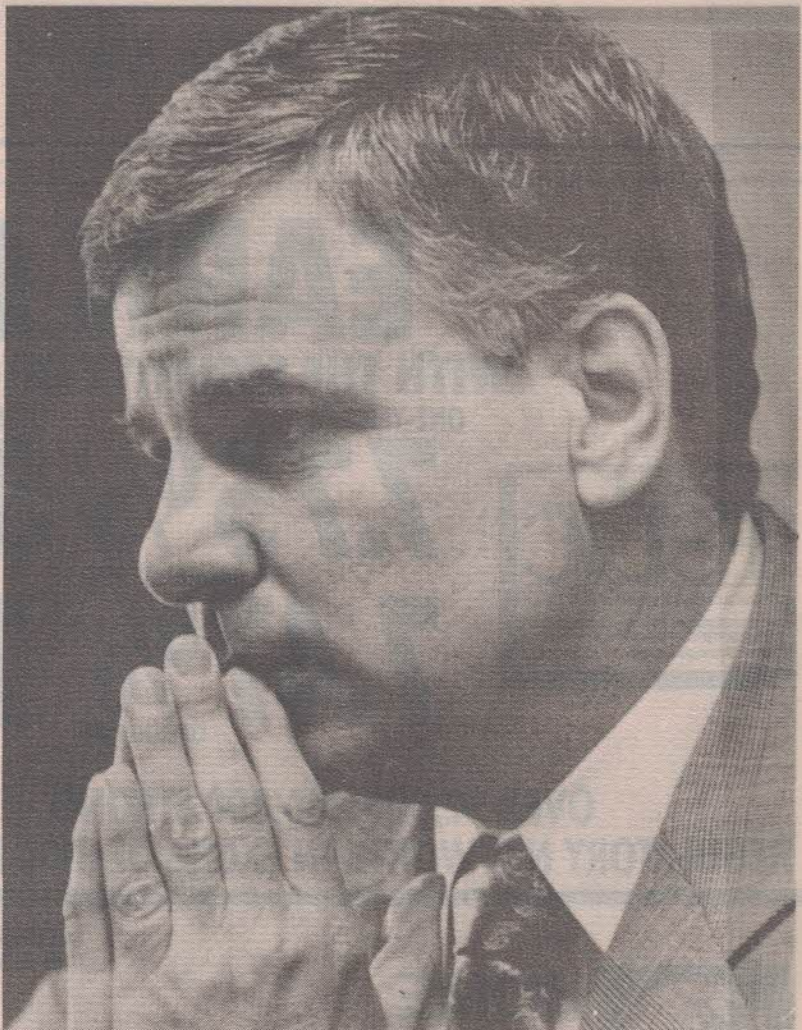
A total of 53 responded to the survey.

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

#### Requested survey

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

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



—Staff Photo by Steve Keese

#### Gaines listens to reporters' questions Monday.

lak's findings in the deaths last summer of two Bryant teen-agers. The youths were run over by a train while they were lying side-

by-side on the tracks. Malak ruled the deaths accidental and said the two were in a marijuana-induced sleep.



# Gag rule invoked in inquiry

## Grand Jury meets on railroad deaths

BENTON (AP) — A gag order was issued Monday for everyone involved in a Saline County Grand Jury investigation of the August 1987 deaths of two Bryant High School students.

The order was announced shortly after the Jury met for 2½ hours. Deputy Prosecuting Attorney Richard Garrett said the order applies to jurors, prosecutors and witnesses who have testified or will testify before the panel.

When asked why the order was issued, Garrett said, "I don't know." He said he and Special Deputy Prosecuting Attorney Dan Harmon were out of the room when the decision was made by the 16-member panel.

"I kind of expected them to" issue such an order, Garrett said.

Garrett said last week that he personally believes a pathologist investigating the deaths will indicate foul play was involved, but said the pathologist may not use the term homicide in his ruling.

The panel is investigating the deaths of Don Henry, 16, and Kevin Ives, 17. Ives and Henry were struck by a Union Pacific train August 23 as they were lying on the tracks near Alexander.

Dr. Fahmy Malak, the state medical examiner, has ruled the deaths an accident. He said the boys were in a drug-induced sleep because they had smoked a large amount of marijuana. Dr. Joe Burton, an Atlanta pathologist who conducted second autopsies last month, has disputed Dr. Malak's findings.

Monday's session of the Grand Jury was held to determine whether subpoenas should be issued before Burton testifies May 24. Garrett said the panel had decided not to issue any more subpoenas until next week.



# Jury seeks to impose gag order in case of Saline County teens

BY DOUG THOMPSON  
Democrat Benton Bureau

BENTON — A Saline County grand jury Monday declared a gag order on everyone connected with its investigation into the deaths of two Saline County teenagers. Arkansas Sheriffs' Association August 1987 announces support for Dr. Fahmy Malak, state medical examiner. 1B

However, Robert Fisher, ombudsman for the state attorney general's office, said Monday afternoon that he could find no laws giving authority to a grand jury to issue such an order.

But Circuit Judge John Cole of Sheridan said Monday evening that if asked, he would grant a request for an order to keep witnesses and attorneys from commenting on grand jury testimony.

Jury foreman Carl Allen of Benton, reached at his home Monday evening, said, "If it's necessary to petition Judge Cole, we will do that." Allen said the grand jury was under the impression Monday morning that it could issue a gag order on its own.

The victims in the case — Larry Kevin Ives, 17, and Don George Henry, 16 — were struck by a train about 4:25 a.m. Aug. 23, 1987.

Dr. Fahmy Malak, state medical examiner, ruled that the boys were asleep on the tracks while under the influence of marijuana. Malak has said he believes prosecutors in the case are pursuing a "vendetta" against him.

Asked the reason for the gag order, Allen said, "We just feel that information about the case needs to be kept confidential at this time."

The gag order, Allen said, will extend to all 16 grand jury members, both prosecuting attorneys in the case, the court reporter and all past and future witnesses. The gag order is in effect "until further notice," he said.

Allen said he would consult with the prosecuting attorneys in the case today to determine if further action is needed to make the gag order binding.

The foreman said he will not call another grand jury session about the gag order. The next session is set for May 24.

Cole, reached at his home Monday evening, said, "If the grand jury foreman requests an order instructing witnesses or attorneys not to divulge testimony before the grand jury while the grand jury is in session, I'll sign it."

A hearing would not be needed, Cole said. "I would ask for a petition from the jury foreman. That would be the proper procedure," he said.

Dan Harmon of Benton, special deputy prosecuting attorney in the case, announced the gag order after a three-hour session of the grand jury Monday morning.

"This will include Dr. (Joe) Burton when he comes ... on the 24th," Harmon said. Burton is an Atlanta pathologist who has conducted autopsies on the two boys and is reviewing Malak's findings.

Deputy Prosecuting Attorney Richard Garrett of Benton said before the gag order was imposed that Burton may arrive before his autopsy report. Garrett said he sent additional evidence to Burton on Friday.

Monday's session was not announced until Saturday. The grand jury had recessed Wednesday and was not to meet again until May 24.

On Thursday, Garrett had told The Associated Press that Burton was "not completely finished, but I suspect he's close enough that he can come in and tell us they were murdered."

Based on Garrett's comment, stories were published saying that Burton would testify that the boys were murdered. But Garrett told the Arkansas Democrat and other media that the quote was misleading.

Garrett has stated publicly for weeks that he believes the boys were killed. He said he expects the autopsy will bear him out. But Burton has not indicated to him what his findings are, Garrett said.

Burton has told him that the boys suffered injuries that pos-

sibly were not caused by the train, Garrett said. But Burton has not indicated whether these injuries were lethal or incapacitating or how they were inflicted, Garrett said.

After Monday's session, the grand jury issued no new subpoenas. The only witness interviewed Monday was Don Birdsong of Hot Springs, the Arkansas State Police investigator assigned to the case.

## At a glance

- A Saline County grand jury is trying to stop statements to the press about the investigation into the deaths of two Saline County teenagers.

- While the grand jury may not have legal authority to issue a gag order, Circuit Judge John Cole of Sheridan does. Cole said Monday he would grant a request for such an order.

- The gag order comes four days after accounts were published quoting Deputy Prosecuting Attorney Richard Garrett as saying he expected autopsy results to show murder.

- Garrett has said the quote was misleading. He said he has had no indication from the pathologist who conducted the autopsy about what the autopsy uncovered.

- The grand jury will meet again May 24.



# Legislators hear about rulings

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

BY MAX PARKER  
Democrat State Desk

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

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

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

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

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

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

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

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

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

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

Other witnesses included

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

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

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

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

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

Chandler said he could not

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

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

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

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

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

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