

Arkansas Democrat
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METRO/STATE

FBI to begin investigating train deaths

Page 9A.

FBI may enter train-death investigation

Will assist state police to see if federal laws were broken

BY MAX PARKER,
Democrat State Desk

BENTON — FBI agents met with Saline County officials Friday to discuss whether the bureau will investigate the deaths of Larry Kevin Ives and Don George Henry and two other similar cases.

Danny Harmon, special deputy prosecuting attorney, and Deputy Prosecuting Attorney Richard Garrett, both of Benton, met with FBI agents late Friday at Garrett's office.

Harmon said after the meeting that the FBI has agreed to assist the Arkansas State Police in the investigation. FBI officials could not be reached after the meeting.

"The information will be discussed with the U.S. Attorney's office to see if there is any violation of federal law or any jurisdiction for the FBI to become involved," an FBI spokesman said earlier Friday.

On Wednesday, a Saline County grand jury concluded the deaths of Ives, 17, and Henry, 16, should be classified as probable homicide.

In its preliminary report, the grand jury also requested the FBI be called in to investigate the teens' deaths, along with similar cases in Oklahoma and Missouri.

Ives and Henry, who would have been seniors at Bryant

High School, were run over by a Union Pacific train about 4:25 a.m. Aug. 23, 1987. Dr. Fahmy Malak, state medical examiner, said the boys were in a marijuana-induced sleep and ruled the deaths accidental.

Two out-of-state pathologists — Dr. David K. Wiecking, chief medical examiner at the Virginia medical examiner's office, and Dr. Russell Zumwalt, assistant chief medical examiner at the New Mexico medical examiner's office — have been hired by the state to conduct a review of the state medical examiner's office.

Their fee, \$20,000, will be paid from the governor's emer-

gency fund.

A futile attempt to subpoena Wiecking and Zumwalt was made by the grand jury Tuesday. The pair was in Arkansas for a one-day visit.

Dr. Joseph Burton, an Atlanta pathologist, exhumed the boys' bodies and presented his findings to the grand jury Tuesday, one day before its report was issued.

Meanwhile, hundreds of Bryant High School students attended an awards ceremony Friday in which plaques were presented to the parents of Ives and Henry in memory of their former classmates.

State Police, FBI to investigate Saline County deaths

GAZETTE STAFF AND AP

The State Police and the FBI will investigate the deaths of Don Henry and Kevin Ives, two Benton teen-agers killed last summer, Special Prosecuting Attorney Dan Harmon said.

Prosecutors and investigators met for two hours Friday in a closed meeting at Benton to discuss the case, Harmon said.

Harmon said the agencies were given information gathered by him before a Grand Jury was convened to investigate the deaths. The investigation will begin immediately, he said. The FBI entered the case at the State Police's request, Harmon said.

In other developments Friday:

★ Betsey Wright, Governor Bill Clinton's chief of staff, has agreed to appear before the Saline County Grand Jury.

★ Mr. Clinton expressed consternation over the Jury subpoenas issued Tuesday for Wright and two out-of-state pathologists being paid by the governor's office to review the state medical examiner's office.

Harmon said a gag order issued in the Grand Jury's investigation prevented him from giving investigators details of the Grand Jury's findings.

Henry, 16, and Ives, 17, were struck by a train last summer

while lying in identical positions on tracks near Alexander. The deaths were ruled accidental by the State Medical Examiner Fahmy Malak. The Grand Jury this week ruled the deaths as "probable homicide," meaning the boys were probably murdered, Saline Deputy Prosecutor Richard Garrett has said.

"I don't know what any of the three knows about" the Saline County case, Mr. Clinton said. He said the pathologists have "no direct knowledge" of the deaths and would have "nothing to contribute" to the Jury.

The governor said he wouldn't want the review of the medical examiner's office ruined because the pathologists — Dr. Ross E. Zumwalt of Albuquerque, N.M., and Dr. David K. Wiecking of Richmond, Va. — "don't want to risk lighting at the Little Rock airport again" because of subpoenas.

The two were at Little Rock Tuesday. The Jury subpoenaed Wright that day after Saline County deputies failed in several attempts to serve subpoenas to the pathologists.

The Saline County case is one of several in which questions have been raised about Dr. Malak's actions. Controversy over the cases spurred the review being performed by the out-of-state pathol-

ogists.

Harmon, the special prosecutor, said he called Wright's attorney Friday and was informed she would provide the Jury with any information about the two pathologists. Wright agreed to appear before the grand jury, if requested, if the panel would provide five days notice.

Wright was in charge of the pathologists' schedule when they were in the state Tuesday, but would not make that information available to the prosecutors, Harmon said Wednesday. Wright told reporters Friday that she had offered to meet with the prosecutors working with the Jury, but hadn't received a response.

Mr. Clinton also Friday supported the limited scope of the review of Dr. Malak's office being conducted by the pathologists. They don't intend to pass judgment on specific rulings by Dr. Malak or look into discrepancies in his court testimony.

The governor said the pathologists can review Dr. Malak's office without examining "his opinion on each and every case." He also said "the initiative" for investigating or questioning a specific ruling by Dr. Malak should originate with county officials, as has been done in the Saline County case.

Around Arkansas

WEEK IN REVIEW

FBI AGENTS MET WITH SALINE COUNTY officials Friday to discuss whether the bureau will investigate the deaths of Larry Kevin Ives, 17, and Don George Henry, 16, and two other similar cases.

A Saline County grand jury Wednesday concluded the two boys' deaths should be classified as probable homicide. It requested that the FBI look into the deaths along with similar cases in Oklahoma and Missouri.

Henry and Ives, both students at Bryant High School, were struck and killed Aug. 23, 1987, by a train while lying motionless across the tracks.

See STATE, Page 2J



Associated Press

ARRIVES TO TESTIFY — Dr. Joe Burton, right, an Atlanta pathologist, arrives at the Saline County Courthouse on Tuesday to testify in the grand jury investigation of the deaths of two Bryant youths hit by a train last summer.

• Continued from 1J

Dr. Fahmy Malak, state medical examiner, said the boys were in a marijuana-induced sleep and ruled the deaths accidental. Two outside pathologists have been hired by the state to conduct a review of the medical examiner's office.

Dr. Joe Burton, an Atlanta pathologist, exhumed the boys' bodies and presented his findings to the jury Tuesday.

FBI to enter investigation

By LEE BROCKWAY
Courier Staff Writer

The FBI will participate in the investigation of the deaths of Don George Henry and Larry Kevin Ives, who were struck by a train Aug. 23 while lying on railroad tracks near Alexander.

Ron Kelley, director of the state FBI division, agreed Friday afternoon to work with the State Police in the investigation after meeting with Deputy Prosecutor Richard Garrett and Special Deputy Prosecutor Dan Harmon. Also attending the meeting were Major Doug Stephens and Lt. Doug Williams, both of the State Police.

Garrett said today he and Harmon would meet with the agencies "sometime this week and see what they have and what they need" to continue their investigation.

He is not certain if the agencies will be given copies of a second autopsy report presented last week to a grand jury probing the deaths. The preliminary report was issued by Dr. Joe Burton, an Atlanta forensic

pathologist who conducted autopsies on the exhumed bodies in April.

The decision to release the report will probably lie in the hands of the grand jury. Garrett said the panel may meet to discuss the issue before its next scheduled session on June 20.

Meanwhile, "there are things we (prosecutors) have we can certainly give them, like names and information," Garrett said, "but there are other things that are in the purvey of the grand jury that I don't think can be released."

The State Police entered the case in February after Garrett conducted public hearings into the deaths. Investigators from that agency have since assisted sheriff's deputies in interviewing friends of the victims and video-taping a train traveling along the tracks where the boys died. That tape was shown to the grand jury.

Thursday, the 16 jurors issued a preliminary report of their findings in the case. They said Ives and Henry's deaths should be considered a "probable

homicide" and actively investigated by the State Police and the FBI. The grand jury will continue to meet the third Monday of each month, or whenever necessary.

Burton has said the boys smoked three or four marijuana cigarettes before they died. His conclusion conflicts with the ruling made by State Medical Examiner Fahmy Malak, whose report attributes the deaths to the impact of the train. He said the deaths were an accident, the result of the boys smoking a large amount of marijuana and falling asleep on the tracks.

The Bryant teen-agers had gone to the area to spotlight deer. They left the Henry home at approximately 12:30 a.m. and never returned. The train crew was unable to stop the train. They said they did not see either youth move or give any awareness of the presence of the train.

Both boys were covered from the waist down by a green tarpaulin, according to the crew. The tarp was never recovered and sheriff's deputies contended it was an optical illusion.

Editorial

Why such outrage?

Dr. David K. Wiecking of Richmond, Va., one of the pathology experts who's reviewing the Arkansas medical examiner's office, has expressed "outrage" over the Saline County Grand Jury's trying to serve him with a subpoena while he was in Arkansas last week. He says he may never return to the state.

Why should Wiecking feel outraged by the grand jury's wanting to question him about his review of the medical examiner's office? Whatever he might have said probably would have been kept secret, and he might well have been able to help with procedural questions in the investigation of the deaths of two teen-agers killed by a train last August.

Wiecking's own reponse to the question was that he didn't appreciate being invited into a controversy by the governor's office without any warning of what to expect. But isn't that straining at a gnat? The Saline County case was among several disputed cases that caused the state to ask Wiecking to make the review in the first place. And since his review was a general one, it's most unlikely that the grand jury would have asked Wiecking about this specific case.

In any event, the very thought of having to testify panicked not only Wiecking, but also Crime Lab officials and members of the governor's staff who helped shield him from being served.

We have to agree with Circuit Judge John Cole, who said the grand jury has every right to talk to Wiecking and the other out-of-state pathologist. Moreover, says Cole, both will be subpoenaed if they return to the state. Since Wiecking and the other pathologist have become willingly involved, Wiecking's subpoena shouldn't have come as any surprise.

Editorial

A dim light

The Saline County Grand Jury has managed to add more confusion to the case of two teens who were killed last year when a train ran over them. Summoned to decide what happened to Kevin Ives, 17, and Don Henry, 16, on the night of Aug. 23, 1987, the jurors have issued a report that is both contradictory and obfuscatory.

The boys' deaths have been a matter of public interest and debate since February, when their parents criticized and questioned the ruling by the state medical examiner, Dr. Famhy Malak, that they were run over while in a deep marijuana-induced sleep. He ruled the deaths accidental.

It was the belief of the parents that the boys may have been the victims of foul play. The grand jury accepted that line of reasoning, and said Wednesday that the deaths should be classified as "probable homicide."

Dr. Joe Burton, an Atlanta pathologist, was instrumental in the grand jury's decision. He did a second autopsy on both bodies, and submitted a report, but it has not been released. Regardless of the grand jury finding of "probable homicide" — which leaves plenty of room for qualification and backtracking — the ruling raises many unanswered questions.

• Because the report by Burton has not been made public, it is impossible for press and public to form a reasoned opinion on the case.

The grand jury says release of the report would be "detrimental to the investigation." In what way?

• Malak ruled the deaths accidental. An assumption may be made that Burton disagreed with his finding, since the grand jury issued its "probable homicide" report. But the jury report goes on to quote Burton as saying that Malak's findings are "consistent in their form and content with what might be expected from a medical examiner who is asked to examine the remains of two individuals who allegedly have died by accidental means in a pedestrian-train accident."

The tone of this remark is that Burton views Malak's approach to the case as predetermined, that Malak made an assumption in advance of his work and found a way to validate that assumption.

Are Burton and the grand jury saying Malak discarded time-honored scientific methods in favor of expedience? Are they agreeing with the original findings? Are they disagreeing? Or are they damning the medical examiner with faint praise?

• The grand jury has linked the deaths of these two boys with the deaths of four other people in two cases that may be only superficially similar.

In one of those cases, two boys, 13 and 15, were killed in Newton County, Mo., in 1985. The Newton County sheriff has said the boys talked to friends about positioning themselves on the tracks so the train would pass over them. He said they miscalculated the height of the train. In the other case, two men, 21 and 25, were killed in 1984 as they were lying on tracks in Oklahoma. The grand jury has asked the FBI to investigate all three incidents.

Even on the surface the three incidents aren't identical. They also happened three and four years ago. Is the grand jury grasping at straws?

Grand juries, because of their investigative powers and because they draw members from the community at large, have the ability to shed light in the oft-darkened hallways of the judicial system. So far, Saline County's light is a dim one.

Grand jury may release findings

Democrat State Desk

BENTON — The Saline County grand jury investigating the Aug. 23, 1987, deaths of two Bryant High School seniors will meet at 9 a.m. Thursday to decide whether to release autopsy findings.

Dan Harmon, special deputy prosecuting attorney, announced the meeting Tuesday night.

The bodies of Larry Kevin Ives, 17, and Don George Henry, 16, were found after they were struck by a train. The boys were reportedly lying motionless on the tracks about 4:25 a.m.

Dr. Joe Burton, a Georgia pathologist, testified for about 4½ hours the day before the grand jury ruled the deaths were "probable homicide." At that time, the grand jury ruled it would be detrimental to release Burton's findings.

Harmon said Tuesday that it is not certain any findings will be released.

Burton was asked to perform additional autopsies on the boys after Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental.

Jury calls session on giving reports to FBI

The Saline County Grand Jury investigating the deaths of two Bryant teen-agers will be in session Thursday morning.

Special Deputy Prosecutor Dan Harmon said the panel will meet at 9 a.m. to discuss releasing portions of an independent pathologist's report to the FBI.

The FBI agreed to participate in the investigation of the deaths of Kevin Ives, 17, and Don Henry, 16, following a meeting Friday afternoon. At

that meeting were Ron Kelley, director of the state FBI division, Deputy Prosecutor Richard Garrett, Harmon, and Major Doug Stephens and Lt. Doug Williams of the State Police.

The youths were struck by a Union Pacific train during the early morning hours of Aug. 23 as they lay in identical positions on railroad tracks near Alexander

Jury

Continued from page 1

State Medical Examiner Fahmy Malak ruled the deaths accidental and said they had been in a marijuana-induced sleep prior to impact. Family members and others disputed Malak's findings and ultimately Dr. Joe Burton, a forensic pathologist from Atlanta, Ga., was engaged to perform autopsies of the victims' exhumed bodies.

Burton testified before the grand jury last week, but the preliminary report he had completed prior to his testimony was not released. In a report from the grand jury, the panel stated it would be detrimental to the investigation to make those findings public now.

Burton recalled by grand jury

By LEE BROCKWAY
Courier Staff Writer

An Atlanta pathologist who conducted autopsies on the exhumed bodies of two Saline County youths will make a second appearance Thursday before a grand jury investigating the deaths.

Dr. Joe Burton agreed shortly before 11 a.m. today to testify again before the panel after the 16 jurors telephoned him. Special Deputy Prosecutor Dan Harmon said Burton's final report on the deaths of Larry Kevin Ives, 17, and George Don Henry, 16, is not complete.

Harmon told *The Benton Courier* the grand jury will petition Circuit Judge John Cole later today for an exception to

the gag order so investigators "directly involved" in the case can be present while Burton testifies Thursday.

He said the petition will also ask that it be "made clear they (investigators) are still subject to the gag order in regard to the injuries" the boys sustained. Also, Cole will be requested to hold in contempt of court those found in violation of the gag order, according to Harmon.

"We don't want any details released whatsoever," he said.

Keeping the type of injuries secret is extremely important, he said, because investigators will use it as tool when questioning suspects.

Burton will make a presenta-

tion to investigators of the State Police and FBI. When asked how many investigators will be present, Harmon said, "However many they feel is necessary."

The grand jury was expected to meet only briefly today to consider what, if any, information it has gathered should be released to the FBI. The FBI agreed last week to assist the State Police in the probe.

No witnesses were called today and Harmon would not say if any other witnesses are expected Thursday in addition to Burton.

Burton's work on the case is expected to continue. "He will continue to work on the report until it's resolved," Harmon said. "That's how interested he is in the case."

In a preliminary report last week, the panel said the youths' deaths should be ruled a "probable homicide" instead of accidental, the ruling of the state medical examiner.

Ives and Henry were struck by a train Aug. 23 while lying in identical positions on railroad tracks outside Alexander. A Union Pacific train hit them at 4:25 a.m., approximately four hours after they left Henry's home to spotlight deer. The train crew testified they saw a green tarpaulin covering the boys from below the waist. Neither Henry or Ives moved as the train approached with its horn blaring.

The Bryant teen-agers were unaware of the train's approach because they were in a drug-induced sleep caused by smoking a large amount of marijuana, according to Dr. Fahmy Malak, state medical examiner. A small amount of marijuana was found in each of the boys' pockets.

After Burton conducted autopsies on the exhumed bodies in April, he said Ives and Henry had smoked only three or four marijuana cigarettes prior to their deaths. Deputy Prosecutor Richard Garrett has said Burton found wounds on the bodies that were not consistent to being struck by a train.

Burton testified for five hours May 24, but would not publicly comment on his testimony because of a gag order. In its statement, the panel said it would be "detrimental to the investigation at this time if the report of Dr. Joseph Burton and the specifics of any injuries were discussed or made available to the public."

The jurors also called for the FBI to investigate two similar deaths that occurred in 1984 and 1985 in Missouri and Oklahoma. Each case involved the deaths of two individuals who were struck while lying on railroad tracks. None of the victims reportedly moved before being struck. Both cases occurred within a 300-mile radius of the Alexander deaths.

Pathologist summoned to testify for 2d time

Gag order eased for Burton testimony

By Byron McCauley
GAZETTE STAFF

BENTON — Dr. Joseph Burton, the Atlanta pathologist who performed second autopsies on the exhumed bodies of two Saline County youths, has been called back for more questioning by the Saline County Grand Jury investigating the case.

He will testify on June 9. He also appeared before the jury last month.

The jury is investigating the deaths of Don Henry, 16, and Kevin Ives, 17, who were struck by a train last summer. The jury met for several hours Thursday before announcing it was inviting Dr. Burton back.

Special deputy prosecutor Dan Harmon said Circuit Judge John Cole agreed Thursday afternoon to make an exception to the gag order in the case. This allows state police and FBI investigators "directly involved" in the case to be present

when Burton testifies Thursday, Harmon said. Both agencies are investigating the case at the request of the jury.

Wright will appear

Harmon also said Betsey Wright, Governor Bill Clinton's chief of staff, has agreed to appear at the June 9 session to "simply clear up some misunderstandings between the two sides."

In a page-long petition to Judge Cole, the Grand Jury said it is important that the specifics of the injuries to the boys not be made public, because if anyone offers evidence about how the boys were killed, "the only way to corroborate their statements is their knowledge of specific injuries."

Reaffirmation of order sought

The jury asked Cole to "reaffirm" the previous gag order so that investigators "are fully

(See JURY on Page 11A.)

Jury

Continued from Page 9A.

aware that the gag order is and will be in full force ***," and that those who violate the gag order will be held in contempt of court.

"We want to make sure there are no leaks to the press about specific injuries," Harmon said.

The Grand Jury last week concluded in a preliminary report that the boys' deaths were a "probable homicide" and deputy prosecutor Richard Garrett said that meant

"We want to make sure there are no leaks to the press about specific injuries."

—Special deputy prosecutor Dan Harmon

the jury thought they were murdered. However, neither Garrett nor the jury would say what led them to that conclusion. The deaths had been ruled accidental by state Medical Examiner Fahmy Mahak.

Grand jury: Secrecy essential to inquiry into train deaths case

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — A Saline County grand jury said Thursday it has not released details about the results of second autopsies on two Bryant High School seniors hit by a train last summer because that could hinder a continuing investigation into their deaths.

The grand jury will reconvene Thursday to review the autopsy results with police investigators.

Betsey Wright, Gov. Bill Clinton's chief of staff, also is scheduled to appear before the panel then, apparently to explain why two out-of-state medical examiners brought to Arkansas on April 24 by the governor's office did not answer grand jury subpoenas.

The grand jury is investigating the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, and Don George Henry, 16. Specific knowledge of how the boys died could be the only way to track the boys' killer if the two were murdered, a statement released Thursday by the grand jury said.

"It is extremely important that the specifics of any injuries not be made public. If any

person should offer evidence that they purport to know what happened to these boys, the only way to corroborate their statements is their knowledge of specific injuries," the statement said.

Circuit Judge John Cole of Sheridan said Thursday he would grant a request in the statement to reaffirm a gag order he previously had issued in the case.

On April 25, the grand jury ruled the deaths probable homicides. It announced the ruling a day after hearing 4½ hours of testimony from Dr. Joe Burton, an Atlanta medical examiner.

Burton conducted autopsies on the boys April 5 at the request of Deputy Prosecuting Attorney Richard Garrett of Benton.

Garrett confirmed that Burton found "other injuries that possibly were not caused by the train." However, no details were released.

The grand jury, police and Burton next Thursday will discuss whether any general description or portion of Burton's findings can be released

See DETAILS, Page 16A

Details

• Continued from Page One

without harming the case, said Dan Harmon, special deputy prosecuting attorney.

To date, not even Arkansas State Police investigators know what Burton's findings are. They will be allowed into Thursday's grand jury session along with FBI agents assisting in the investigation, the statement said.

Investigators also will be subject to the gag order, issued the week before Burton first testified.

"The grand jury requests that this court reaffirm its previous gag order so that the individuals receiving the information are fully aware that the gag order is and will be in full force and effect and the specifics of any injuries suffered by the boys will not be used for any other purpose than to investigate their deaths and any violations or leaks to the press will be punished," the grand jury statement said.

Asked why the grand jury thought such a direct warning to investigators was necessary, Harmon replied, "No comment."

Dr. Fahmy Malak, the Arkansas medical examiner who has ruled the deaths accidental, previously has stated that he had asked investigators and a secretary in the Saline County prosecuting attorney's office to provide him with Burton's autopsy results.

Harmon was asked Thursday about whether he had violated the gag order when, before the grand jury statement was released, he released information about what it would contain to the *Benton Courier*.

The *Courier* is an afternoon paper whose deadline was near, Harmon said. He passed on the information — which was to be released that afternoon anyway — as a courtesy to the local paper, he said. No one on the grand jury objected, he said.

Ives and Henry, two Bryant High School seniors, were struck by a train as they lay on railroad tracks near Alexander about 4:25 a.m. Malak ruled they were asleep on the tracks while under the influence of marijuana.

Dr. David K. Wiecking of Richmond, Va., and Dr. Ross E. Zumwalt of Albuquerque, N.M., are conducting a review of the state medical examiner's office. They were in Little Rock on April 24, the day Burton testified. The grand jury issued subpoenas to them.

The subpoenas never were served. Wiecking confirmed April 26 that he was told while in Little Rock that a telephoned subpoena was issued for him. The men were advised a telephone subpoena is not binding, a spokesman for the governor's office has said.

But state officials never told Saline County authorities where the medical examiners were so they could be served with written subpoenas. The two were brought to Arkansas with \$20,000 from the governor's emergency fund.

Ms. Wright is coming to the grand jury voluntarily, Harmon said. She is expected to "clear up misunderstandings between the governor's office and the grand jury over two out-of-state pathologists," Harmon said, adding that she has not been subpoenaed.

At a glance

• A Saline County grand jury explained Thursday why it has not released details about the deaths of two Bryant High School seniors.

• Exact knowledge of how the boys died could be the "only way" to distinguish the boys' killer if they were murdered, a petition issued Thursday by the grand jury said.

• The petition asked that the gag order on the case be reaffirmed.

• To date, not even police have been informed of the details of second autopsies done on Larry Kevin Ives, 17, and Don George Henry, 16. They will be informed in a closed session with the grand jury and the medical examiner next Thursday.

• Betsey Wright, Gov. Bill Clinton's chief of staff, is also expected to appear before the grand jury next Thursday.

Officials to receive details of injuries

By LEE BROCKWAY
Courier Staff Writer

Information about how two Bryant teen-agers died will be given to investigators when an out-of-state pathologist testifies next week before a Saline County Grand Jury.

The grand jury was granted an exception to a gag order Thursday afternoon that will permit State Police and FBI investigators to receive information from Dr. Joe Burton of Atlanta, Ga. Burton performed second autopsies on the bodies in April and presented his findings to the panel May 24.

Circuit Judge John Cole also granted the panel's request that the gag order be reaffirmed for the investigators. Secrecy of the information presented by Burton is necessary to resolve the case, the jurors said.

The deaths of 16-year-old George Don Henry and Larry Kevin Ives, 17, occurred Aug.

23, 1987. They were lying on railroad tracks near the Shobe Road crossing outside Alexander when a Union Pacific train hit them. The state medical examiner ruled the deaths an accident, but the grand jury said last week they should be ruled a "probable homicide."

Burton has found wounds on the bodies that were not consistent with being struck by a train, according to Deputy Prosecutor Richard Garrett.

The petition says, "That it is extremely important that the specifics of any injuries not be made public. If any person should offer evidence that they purport to know what happened to these boys the only way to corroborate their statements is their knowledge of specific injuries."

"That the Grand Jury requests that this court reaffirm its previous gag order so that

Continued from page 1

the individuals receiving the information are fully aware that the gag order is and will be in full force and effect and the specifics of any injuries suffered by the boys will not be used for any other purpose than to investigate their deaths and any violations or leaks to the press will be punished."

Also, the governor's chief of staff, Betsey Wright, will appear before the grand jury Thursday "to clear up any misunderstandings" between the panel and the governor's office, Special Prosecutor Dan Harmon said. When jurors subpoenaed two out-of-state pathologist last month, Wright refused to tell prosecutors their whereabouts. The pathologists were in the state to review the medical examiner's office.

When the petition was released to the media at 4 p.m. Thursday, reporters questioned Harmon as to whether he had broken the gag order by releasing the information to *The Benton Courier* earlier that day.

Harmon said he did not violate the order because the petition had been approved by the grand jury. He said he simply waited to release the information to other reporters until it was approved by Cole. Cole agreed that the gag order was not broken by Harmon's actions.

The 16 jurors have called for the FBI to investigate two similar deaths that occurred in 1984 and 1985 in Oklahoma and Missouri. Both cases involved the deaths of two individuals who were struck by trains while lying on railroad tracks. None of the victims reportedly moved before being struck. The cases occurred within a 300-mile radius of the Saline County deaths.

Arkansas Democrat

• SUNDAY, JUNE 5, 1988

WEEK IN REVIEW

Around Arkansas

A SALINE COUNTY GRAND JURY SAID Thursday it has not released details about the second autopsies on two Bryant youths hit by a train last summer because it would hinder a continuing investigation into their deaths.

The grand jury will reconvene next Thursday to review autopsy results with police investigators. Betsey Wright, Gov. Bill Clinton's chief of staff, also is scheduled to appear then, apparently to explain why two out-of-state medical examiners who were brought to Arkansas on April 24 by the governor's office did not answer subpoenas.

The panel is investigating the Aug. 23, 1987, deaths of Larry Kevin Ives, 17, and Don George Henry, 16. Specific knowledge of how the boys died could be the only way to track the boys' killer if the two were murdered, a statement released Thursday said.

Veteran of noted cases aids train deaths query

6-6-88
BY MAX PARKER
Democrat State Desk

The expert who may hold the key to what happened to two Saline County youths struck by a train last summer has previously assisted authorities in some of the country's most renowned criminal cases.

Dr. Joseph Burton, chief medical examiner for north metropolitan Atlanta, is assisting Arkansas officials in their investigation of the August 1987 deaths of Larry Kevin Ives, 17, and Don George Henry, 16.

On April 5, Burton - at the request of Deputy Prosecuting Attorney Richard Garrett of Benton - examined the exhumed bodies of the youths, who were hit by a Union Pacific train about 4:25 a.m. Aug. 23.

Dr. Fahmy Malak, state medical examiner, said the teens were unconscious from the "psychedelic influence" of marijuana when they were struck. He ruled their deaths accidental.

On April 25, a Saline County grand jury investigating the incident ruled the deaths probable homicide. The ruling came just one day after hearing 4½ hours of testimony from Burton, who reportedly found other injuries that may have not come from the train.

Cited as "one of the country's most distinguished medical examiners" by the National Law Enforcement Institute Inc. at Santa Rosa, Calif., Burton had also been asked by Arkansas officials for assistance nearly three years ago.

In August 1985, Burton was used by the prosecution as an expert witness in the Faulkner County Circuit Court first-degree murder trial of two men accused in the 1960 death of Marvin Williams. Williams died while in police custody at the Faulkner County Jail in Conway. The two men were acquitted.

Officials in Tallahassee, Fla., used Burton as a consultant while investigating the 1978 strangulation murders of two Florida State University sorority sisters, according to a spokesman at Burton's office.

Medical evidence presented at the trial of Theodore R. Bundy revealed that bite marks found on one of the murder victims matched impressions that had been taken of Bundy's teeth.

The former University of Utah law student, who was being sought by police in other states for the murders of more than 35 other women, was sentenced to death.

At Atlanta, Burton was a coordinating consultant to both the FBI and the Georgia Bureau of Investigation during the investigation of 28 slain black children and young adults. The murders, which spanned a two-year period beginning in July 1979, resulted in the Feb. 27, 1982, conviction of Wayne B. Williams.

Williams, then a 23-year-old black free-lance photographer and aspiring talent producer, was convicted of murdering two of the victims and sentenced to two consecutive life terms in prison.

Burton, 43, has held his current position since 1978. From 1981 to 1984, he was director of the Forensic Pathology Training Program at Emory University School of Medicine at Atlanta.

Since 1979, Burton has been a regional pathologist for the Federal Aviation Administration. And, since 1978, he has been a pathologist for the U.S. Federal Penitentiary and a consultant to the National Transportation Safety Board at Washington, D.C.

Prior to his current position, Burton was a medical examiner for Dade County at Miami.



Dr. Joseph Burton



Courier photo by Phillip Felton

Atlanta pathologist Dr. Joe Burton, right, with Saline County Sheriff's Investigator Chuck Tallent, enters the Saline County courthouse May 24 during testimony before a grand jury investigating the deaths of two Bryant teen-agers.

Wright testifies before grand jury

By LYNDA HOLLENBECK
Courier Staff Writer

Betsey Wright, Gov. Bill Clinton's chief of staff, was a witness today before the Saline County Grand Jury investigating the Aug. 23 deaths of two Bryant teen-agers.

Citing a gag order, Wright declined to discuss the specifics of her testimony, but said there had been "a good conversation."

Wright said she is "willing to be cooperative" in any way she can and willing to "talk with them (grand jurors)" whenever her testimony could be helpful to the investigation.

Her appearance before the panel took approximately 80

See JURY, page 2

Page 1 of 2 Pages

Jury

Continued from page 1

minutes.

The jury is investigating the deaths of Kevin Ives, 17, and Don Henry, 16, who were struck by a Union Pacific train as they lay in identical positions on the tracks near the Shobe Road crossing. Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental and contended the boys had been in a marijuana-induced sleep when the train passed over them.

Malak's ruling has been a key issue in the investigation. After hearing 29 witnesses, the grand jury released a preliminary report, in which it stated the deaths should be classified as a "probable homicide."

Also testifying at today's morning session was a female school friend of the victims. Special Deputy Prosecutor Dan Harmon declined to identify the witness and said the subpoena for that person will be sealed as

part of the grand jury testimony.

Wright was at the center of an earlier controversy when she would not aid Saline County sheriff's deputies in providing information about the whereabouts of two out-of-state pathologists conducting a review of Malak's office.

A subpoena was issued for Wright's appearance before the panel, but the day Wright was scheduled to testify, she did not appear. She was represented by Mary Stallcup, a deputy attorney general, who said Wright would be willing to testify provided she had at least five days' notice in order to rearrange her schedule. Circuit Judge John Cole conducted a hearing, at which time he ruled the grand jury could subpoena Wright or any other state official who might have information pertinent to the investigation.

Stallcup accompanied Wright to the courthouse again today,

but there was no objection to Wright's appearance before the grand jury.

In an affidavit filed May 26, Wright said she did not know the date the two pathologists would be returning to the state, but that she had managed to contact one of the doctors who reportedly contended the date had not been set for the next trip to Arkansas. According to Wright's affidavit, the pathologist said he would refuse to return to Little Rock if he were required to submit to a subpoena upon doing so.

Scheduled to appear at 1 p.m. today was Dr. Joe Burton, the Atlanta pathologist who performed autopsies of the exhumed bodies of the victims. Six State Police investigators, Saline County Sheriff James Steed and two county investigators were to be sworn in as witnesses in order to permit them to hear Burton's testimony, Harmon said.

Page 2 of 2 Pages
Case 6-9-84

Atlanta pathologist to testify to Saline Grand Jury again

BENTON — Dr. Joseph Burton, an Atlanta pathologist, will testify today before the Saline County Grand Jury investigating the deaths of two teen-agers. State Police and Saline County investigators have been invited to attend.

Burton is appearing before the panel for the second time. He will review autopsies he performed on the bodies of Don Henry, 16, and

Kevin Ives, 17, who were struck by a train last summer. He is expected to testify in the afternoon.

Clinton aide to appear

Betsey Wright, Governor Bill Clinton's chief of staff, also is expected to appear before the jury at 9 a.m., Special Prosecutor Dan Harmon said. Harmon said last week that Wright was called to

"simply clear up some things between both sides." Wright was subpoenaed by the panel last month to present the schedules of two out-of-town pathologists hired to investigate the state medical examiner's office, but she did not attend.

Wright said through her secretary Wednesday that she has agreed to appear but, "I do not know what I will be asked to talk about."

Harmon said State Police Investigator Don Birdsong would give a report on the agency's investigation.

Grand jury sees shirt of youth hit by train, hears from schoolmate

Democrat State Desk

BENTON — The Saline County grand jury apparently was shown the shirt of a dead boy when it met Thursday to continue its investigation of the Aug. 23, 1987, deaths of two youths who were struck by a train.

Also Thursday, Dr. Joe Burton, a Georgia pathologist, met for the first time with state police and sheriff's investigators. Burton had performed second autopsies on the victims, Larry Kevin Ives, 17, and Don George Henry, 16, both of Saline County.

The closed conference with the investigators lasted from 1 p.m. to about 4 p.m. Burton first presented his findings to the grand jury May 24.

Burton was brought back from Georgia to brief the investigators after Circuit Judge John Cole of Sheridan signed a court order reiterating that grand jury proceedings were to be kept secret. Violation of the gag order could lead to a contempt-of-court citation, the order said.

During the session with Burton, Wes Wimberly of the state Crime Laboratory arrived with the shirt Henry had on when he died. The purpose of bringing that evidence to the grand jury was not revealed.

Also appearing before the grand jury was Joelle Matthews, a former schoolmate of the youths. She appeared before the grand jury for about 15 minutes. The substance of her testimony was not revealed.

In a prepared statement read by Dan Harmon of Benton, special deputy prosecuting attorney in the case, the grand jury announced Thursday it is getting the assistance it wants from Arkansas State Police and Gov. Bill Clinton's office.

"We feel that the investigators involved are capable and have expressed a professional attitude towards this case," the statement said.

"We will meet the third Monday of each month to review their investigation and to

Personality profile



Dr. Joseph Burton

√Age: 47

√Currently: Chief medical examiner for north metropolitan Atlanta.

√Background: Past director of the Forensic Pathology Training Program at Emory University School of Medicine at Atlanta. Regional pathologist for the Federal Aviation Administration. Pathologist for the U.S. Federal Penitentiary. Consultant for the National Transportation Safety Board. Was previously a medical examiner at Dade County in Miami, Fla.

lend any assistance possible," the statement said.

Harmon said the next grand jury session will be June 20.

Ives and Henry were hit by a train while lying motionless on railroad tracks near Alexander about 4:25 a.m.

Dr. Fahmy Malak, state medical examiner, ruled the deaths accidental. The subsequent prosecuting attorney's investigation and grand jury were requested by the boys' parents.

On May 25, the grand jury ruled the deaths probable homicides, indicating the possibility that the youths were dead prior to being struck by the train.

Betsey Wright, Clinton's chief of staff, met with the

See DEATHS, Page 8B

Arkansas Democrat
FRIDAY, JUNE 10, 1988

Deaths

• Continued from Arkansas Page

grand jury from 9 a.m. to about 10:20 a.m. Thursday. "There was a very good exchange of information about the grand jury's concerns about this investigation," the statement said about the meeting with Ms. Wright.

On May 24, the grand jury attempted to subpoena Dr. David Wiecking of Virginia and Dr. Russell Zumwalt of New Mexico, pathologists who were reviewing the state medical examiner's office at the expense of the governor's office.

However, the governor's office did not reveal the experts' whereabouts so they could be served with subpoenas.

The grand jury then subpoenaed Ms. Wright on the afternoon of May 24, apparently to seek information about how the pathologists could be subpoenaed, but Ms. Wright's subpoena was ruled invalid. Ms. Wright agreed to appear voluntarily Thursday and was not subpoenaed.

Investigators, Ms. Wright and all grand jury witnesses are under a gag order forbidding them to release details of grand jury proceedings.

"Ms. Wright was very cooperative," the statement said. "We feel that she has expressed a desire to cooperate fully and assist in any way possible with the grand jury."

After the meeting, Ms. Wright said she had a "good discussion." But Ms. Wright would not say if the two pathologists were coming back to the state so they could be served with subpoenas.

"That would be getting into the substance of my statements, and I'm going to respect the gag order," she said.



Courier photo by Phillip Felton

Atlanta pathologist Dr. Joe Burton, second from right, talks to law enforcement officials during a break in grand jury proceedings Thursday. Burton was in Benton to brief law investigators on his findings on the deaths of Don Henry and Kevin Ives of

Bryant. Talking to Burton are, from left, Saline County Chief Deputy Ray Richmond, state police investigator Barney Phillips, and an unidentified state police investigator.

Officers outline plans in probe

By LEE BROCKWAY
Courier Staff Writer

The State Police and Saline County Sheriff's Office outlined a plan Thursday afternoon for an investigation into the deaths of two Bryant youths.

The plan was drafted Thursday afternoon while the 10 investigators waited for a Saline County Grand Jury to complete its proceedings, according to Sheriff James Steed.

Steed said today the investigators made "tentative plans and they are to do an investigation and do it the best we can and not to do it in the papers."

Investigators from both agencies met for approximately three hours with the grand jury and Dr. Joe Burton, the Atlanta, Ga., pathologist who performed autopsies on the exhumed bodies of Don George Henry, 16, and Larry Kevin Ives, 17. Burton presented his findings to investigators as a means of assisting them in locating possible suspects in the deaths, which have been ruled probable homicides by the grand jury.

Burton first appeared before the 16-member panel May 24, but his evidence could not be released to anyone because of a gag order. Circuit Judge John Cole of Sheridan granted an exception to the order last week to allow the meeting between investigators and Burton to take place.

Ives and Henry were struck by a Union Pacific train at 4:25 a.m. Aug. 23 as they were lying on railroad tracks near Alexander. They were to have graduated from Bryant High School today.

The deaths were ruled an accident by Dr. Fahmy Malak, the state medical examiner. He said the boys were in a drug-induced sleep caused by smoking a large amount of marijuana at the time of their deaths. Burton has said Ives and Henry smoked three or four marijuana cigarettes. He has also found wounds that are not consistent with being hit by a train, according to Deputy Prosecutor Richard Garrett.

Burton's presentation to investigators was video-taped. After the pathologist's report, the investigators were secluded in a nearby room and brought before the panel individually in order to discuss the case with Burton. Those conversations were also video-taped.

During the afternoon session, Wes Wimberly of the state Crime Laboratory delivered a plastic bag containing a dark-colored fabric. Special Prosecutor Dan Harmon identified the material as the shirt Henry was wearing when he died. Harmon said he requested the shirt, but would not reveal for what purpose.

After the jurors concluded the proceedings, Harmon read a statement from the panel.

"We feel that the investigators involved are capable and have expressed a professional attitude toward this case," Harmon said.

Before leaving Thursday, Burton told a *Benton Courier* reporter he does not expect to make another appearance before the grand jury.

"I didn't expect to make this one," he said, "but no, I don't expect to make another."

As for the session with investigators, Burton said, "I thought it went very well, very well." When asked if investigators appeared to accept his theory as to what may have happened to the youths, the pathologist said, "They were very receptive to having an open mind."

Citing a gag order, Burton declined to say if he presented any new evidence during Thursday's presentation or if he has additional tests to conduct.

When asked why no FBI investigators were present, Harmon said, "I got the impression they would be here. I expected them to be here and I'm surprised they weren't."

The FBI did not send any investigators to the session Thursday because it will rely upon the State Police to relay the information presented by Burton, according to Bill Baugh, assistant special agent for the FBI in Arkansas.

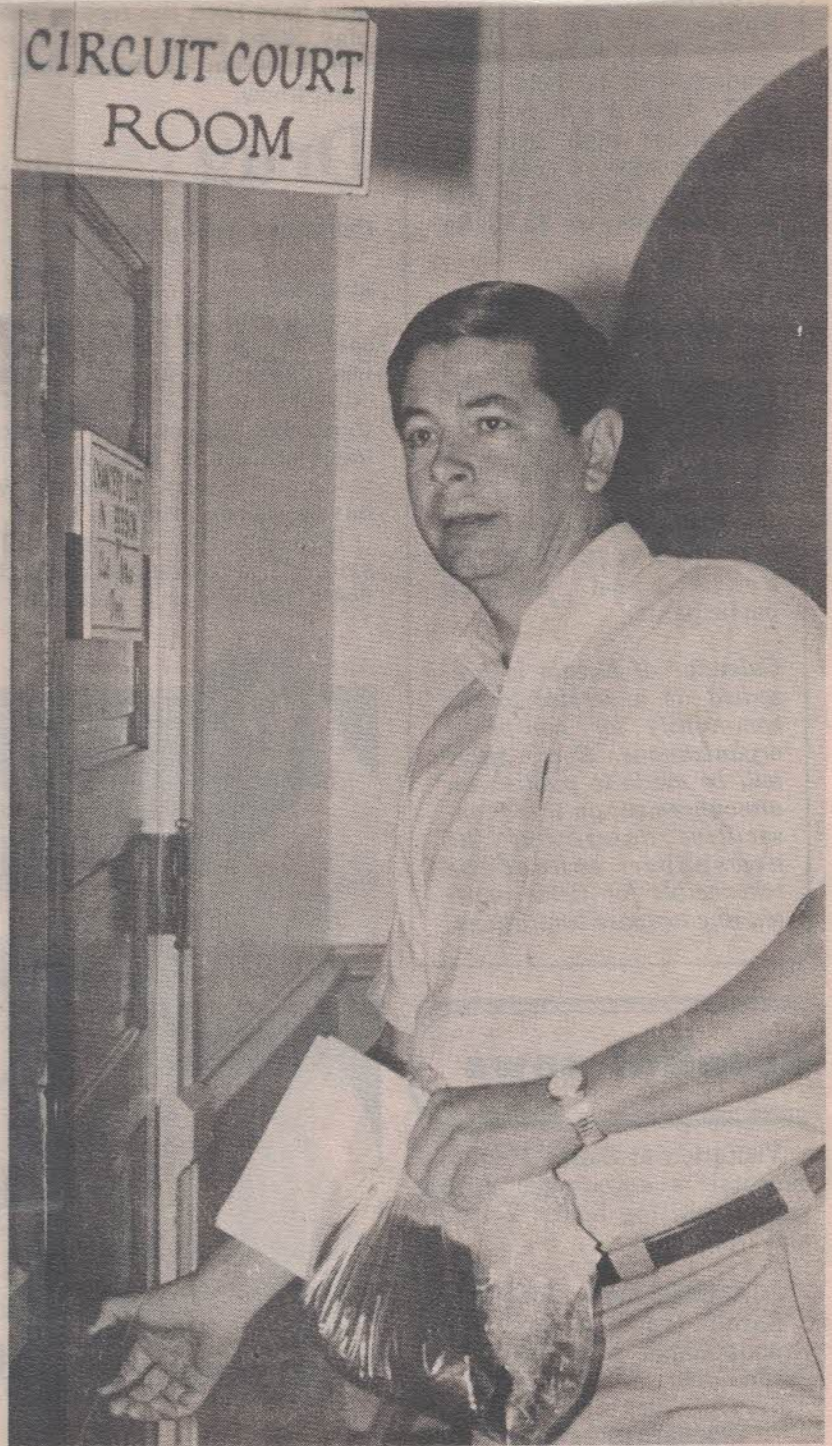
Baugh said today the agency's absence should "absolutely not" be considered a sign the FBI is not interested in the case. "The full resources of the FBI stand ready to assist in any way they can," he said.

The State Police is "the lead group" in the investigation, he said, and each request for assistance it makes is being handled on a "priority basis."

When asked if the pathologist's presentation convinced him Ives and Henry's deaths may have been the result of foul play, Steed said, "I asked myself this question all night long. I don't know."

"I'm not completely convinced that it's a probable homicide," he said, "but by the same token I'm not completely convinced it's not. This is the way we felt when we got our report back from Dr. Malak. We weren't completely convinced it was a homicide, but we weren't completely convinced it wasn't. We just didn't have any more leads to follow."

Since the State Police are in charge of the probe, Steed's office will act as an assistant. "Our role is we're here. We're familiar with the case. Whatever you need done, tell us and we'll do it," the sheriff said.



Courier photo by Phillip Felton

Wes Wimberly of the state Crime Lab enters the grand jury room Thursday carrying the shirt Don Henry was wearing on the night of his death. Wimberly said the grand jury requested the evidence be sent. No reason for the request was given.