

Saline County grand jury told to make progress

BENTON — Circuit Judge John Cole of Sheridan wants the Saline County grand jury to make some progress in its investigation or he might dismiss the jury.

In a letter Friday to grand jury foreman Carl Allen, Cole asked Allen to tell him how much longer the jury will need to meet and whether it is making any progress.

Since April 27, the jury has been investigating the deaths of Don Henry, 16, and Kevin Ives, 17, who were struck by a train Aug. 23, 1987.

Asked about the letter Saturday Allen said, "We have some things that we are working on. I don't think we would dismiss the grand jury at this time."

Allen would not elaborate on the status of the investigation. He said he would have to meet with deputy prosecuting attorneys.

Cole "wants a response in the very near future. I'm sure that after we meet and after the grand jury reads the letter, we'll have a response." The next grand jury session is Thursday.

"Frankly I am concerned with both the amount of time and the amount of money being utilized for

this investigation," Cole's letter said.

"If progress is being made ... the court will not take any action. On the other hand, if the jury feels no substantial progress can be achieved, the court will consider discharging the grand jury."

Cole asked Allen to send him a sealed letter summarizing the panel's investigation so far, how much more needs to be investigated and how long it's going to take.

In a preliminary report, the grand jury ruled the deaths a probable homicide May 26, but did not expand on that to indicate whether it considered the deaths accidental or the result of murder.

Report from Burton, progress report on tap for grand jury

By LYNDA HOLLENBECK
Courier Staff Writer

State Police Investigator Don Birdsong is the only witness scheduled to appear Thursday before the Saline County Grand Jury investigating the deaths of two Bryant teen-agers.

The jury is expected to receive late today or early Thursday a videotaped presentation from Dr. Joe Burton, the Atlanta, Ga., pathologist who performed autopsies of the victims' exhumed bodies.

Special Deputy Prosecutor Dan Harmon spoke with Burton by telephone Tuesday and was told the tape was mailed air express late in the day.

The tape will be released to the press and public, Harmon said. On that tape, Burton has reviewed his findings in the

investigation without revealing the specific nature of the victims' injuries. "Specific details of the injuries will be held back because of their value in the investigation," Harmon said.

A supplemental report related to other tests is also expected from Burton, Harmon said. Those tests were done on clothing of the victims.

The grand jury is also expected to take action regarding a requested progress report from Circuit Judge John Cole of Sheridan.

Cole recently wrote a letter to the grand jury foreman, Carl Allen of Benton. In that letter, the judge told Allen he would consider dismissing the panel if there appears to be no headway in the investigation or if none is anticipated.

The jury was empaneled April 27 to probe the deaths of Kevin Ives, 17, and Don Henry, 16. The two were struck by a Union Pacific train as they lay motionless on railroad tracks near the Shobe Road crossing.

The state medical examiner's accidental ruling of the deaths was challenged by the parents and investigative hearings in February led to calling a grand jury investigation. On May 26, the panel issued a preliminary report stating the deaths should be considered probable homicide.

According to Cole's letter, the court does not plan to take any action if progress is being made in the probe.

Deputy Prosecutor Richard Garrett said recent progress has been made toward solving the

case and contends the investigation should continue.

Harmon said he can understand Cole's position. "He has been very patient with us. This has taken even longer than I anticipated. We would not have even had an investigation if it weren't for Judge Cole."

In his letter to Allen, Cole expressed concern with the amount of time and money being utilized for the investigation. Funding has come from county funds and the Saline County Sheriff's Office drug enforcement fund.

Cole commended the 16-member panel for the five arrests on other charges that have resulted from its investigation, but noted that the grand jury was empaneled to investigate the deaths of Ives and Henry. He

contends the investigation should be concluded with reasonable speed without sacrificing thoroughness or effectiveness.

The judge requested Allen to reply to his letter with a confidential, sealed letter that will detail the jury's conclusions to date, the remaining investiga-

tion anticipated, the length of time he expects the investigation to continue and whether he believes further progress can be made.

The contents of the foreman's reply will not be revealed, according to Cole.

The grand jury will convene at 9 a.m.

Panel views tape from pathologist

By LYNDA HOLLENBECK
Courier Staff Writer

A Saline County Grand Jury investigating the deaths of two Bryant teen-agers viewed a videotaped presentation today from Dr. Joe Burton, the Atlanta, Ga., pathologist who performed autopsies of the victims' exhumed bodies.

The tape is scheduled to be released to the press and public, according to Deputy Prosecutor Danny Harmon. Press viewings expected this morning were delayed, however. By 12:30 p.m., the grand jury had watched the presentation twice and was apparently involved in a lengthy discussion afterward.

On the tape, Burton has reviewed his findings in the investigation without revealing the specific nature of the victims' injuries, prosecutors said.

"Specific details of the injuries will be held back because of their value in the investigation," Harmon said.

A supplemental report related to tests done on clothing of the victims is also expected from Burton.

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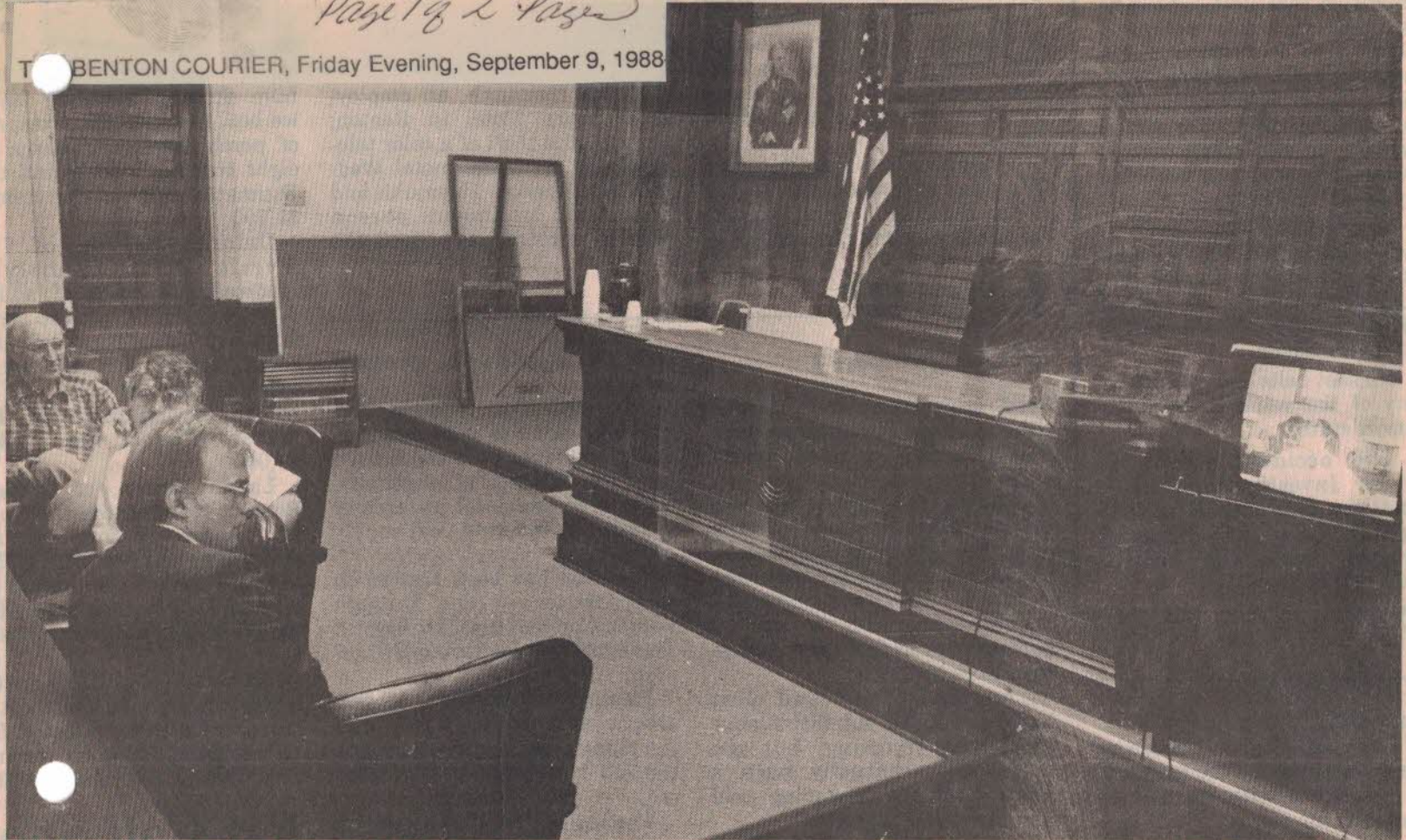
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State Police Investigator Don Birdsong testified before the panel Thursday.

Deaths 'definitely homicide'

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TOMBENTON COURIER, Friday Evening, September 9, 1988



Courier photo by Phillip Felton

Grand Jury foreman Carl Allen, Deputy Prosecutor Richard Garrett and Special Deputy Prosecutor Dan Harmon view a videotaped presentation by Dr. Joe Burton, chief medical

examiner for North Metropolitan Atlanta and DeKalb County, Georgia. Burton is assisting the county in the investigation of the 1987 deaths of two Bryant teen-agers.

By **LYNDA HOLLENBECK**
Courier Staff Writer

No longer is the Saline County Grand Jury saying "probable homicide" in regard to the Aug. 23, 1987, deaths of two Bryant teen-agers.

The panel released an interim report today to Circuit Judge John Cole of Sheridan. In that report, the panel states the deaths of 16-year-old Don Henry and 17-year-old Kevin Ives are "definitely homicide."

Sophisticated microscopic scanning of a torn section of a shirt worn by Henry and analysis of a puncture wound to his back indicate Henry sustained injuries prior to those inflicted by the Union Pacific freight train that struck him and Ives as the two boys lay motionless on a railroad track near the Shobe Road crossing in Saline County.

That information was included in a 13-minute, videotaped presentation by Dr. Joe Burton, chief medical examiner for North Metropolitan Atlanta and DeKalb County, Georgia. Burton performed autopsies on the exhumed bodies of the victims and has been conducting subsequent tissue and clothing tests at the request of the grand jury, Deputy Prosecutor Richard Garrett and Special Deputy Prosecutor Dan Harmon.

Burton's taped presentation was shown today at the Saline County Courthouse to members of the press and others. Among those attending the showing were Curtis Henry, father of Don Henry; Saline County Sheriff James Steed, whose office conducted the initial investigation of the boys' deaths; and Pulaski County coroner Steve Nawojczyk, who said he was present

on a "fact-gathering" mission.

Nawojczyk said he plans to request Burton to assist in a rare coroner's jury to determine whether a beating a man received at a nursing home two months before he died contributed to his death. "You couldn't find a better pathologist" than Burton, Nawojczyk said.

Burton's tape, which was studied Thursday by the grand jury, was shown Thursday night to Curtis Henry and his wife, Marvelle, and to Larry and Linda Ives, parents of Kevin Ives.

Henry's shirt was not on his body when it was found, but was some distance away from the railroad track, Burton states in the videotape.

During public investigative hearings in February, members of the train crew testified that one of the victims was not wearing a shirt. A shirt

was on Ives' body when it was recovered.

Henry's shirt includes "lots of tears and defects," Burton states. He said he took the shirt to a private laboratory in Atlanta and cut out an approximate one-inch tear from the "left, lower back area, in the area of the injury ..."

The section of the shirt was analyzed under a "powerful" scanning electron microscope, Burton said. "With this microscope you can tell whether it's been torn or cut with something like scissors or a knife. The shirt in this area does indeed exhibit all the characteristics of a defect caused by something with a sharp blade, such as a knife ... there is no question that this particular defect was not a tear, that it was made by something cut-

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ting through the fabric. Also, around the margins of this defect there are a number of red blood cells ... so there appears to also be blood around this defect.

"I think this is important, first of all because the shirt was not on the body when it was found," Burton said, "and secondly, the defect is not a tear that you might expect from the shirt snagging on a crosstie or snagging on a railroad spike ... but is consistent with something actually cutting the fabric. It's also important because the defect is in the area on the back where this injury which I've described to you previously is located."

Burton said he has submitted photographs, made during Dr. Fahmy Malak's initial autopsies of the victims, to the Dade County Medical Examiner's Office in Miami, Fla., where Burton received his training. One photograph depicts a "pattern facial wound" sustained by Ives and another details back injuries suffered by Don Henry.

In the videotape, Burton does not clarify the type of pattern wound on Ives, nor would Harmon reveal that information when questioned after the session. "That's our only ace in the hole," Harmon said.

The Dade County Medical Examiner's Office includes an "extensive computer enhancing laboratory" where photographs can be enhanced for closer study of injuries, Burton said. He expects results from those tests in 7-10 days.

No protruding objects on the train could have caused the facial injuries sustained by Ives that Burton said he had "discussed previously" with the grand jury. Burton has made two personal appearances before the panel and submitted an earlier videotape that was not released to the public.

Dr. William Anderson, another Atlanta pathologist, is assisting Burton in the investigation. According to Burton, Anderson has gone over tissue slides and is "very much concerned about the degree of reaction and congestion and fluid in the lungs of both boys. He feels that it is inconsistent with the type of injuries that one might expect from someone being run over by a train, where you'd have sudden death occurring. He feels like the possibility exists that this information alone would strongly suggest that the boys were injured, rendered unconscious or even killed prior to their bodies being run over by the train."

After the showing, Garrett said the lungs of both victims contained "a great deal of fluid. One had twice as much as normal."

Both pathologists believe evidence supplied by the train crew is consistent with forensic evidence in the case.

Burton referred to FBI audio studies and audiograms of noise levels along the track and noise and vibrations generated by the oncoming train. "It is my impression that, based on their findings, they tend to think the boys could have slept through the train coming down the tracks and not been awakened in time to move," Burton said. "I still have considerable difficulty accepting that just from a common sense point of view."

Further analysis will be made on Henry's shirt and other evidence, Burton said.

Burton is not charging the county or the state for his or Anderson's professional services. He is billing the county only for the actual reimbursement costs of tests themselves. He is ordering only the tests he believes are necessary in order to curtail costs of the investigation.

As additional evidence is accumulated, Burton said he believes more strongly that the deaths of Ives and Henry were the result of foul play. The concern about the boys' deaths appears to be "well-founded," Burton said.

"If it had not been for this ongoing investigation and concern on everyone's part, I don't think that the truth, whatever it may have been or may turn out to be, would ever have been found," Burton said.

County investigators stated the boys' deaths were the result of an accident and the state medical examiner's ruling was consistent with that belief.

The grand jury has recommended that expenses of the investigation come from the Saline County Sheriff's Office Drug Enforcement Fund, which includes money confiscated during drug-related arrests. At one time, the fund included approximately \$30,000 and the grand jury believes this is the logical source of funding for the investigation.

Throughout the probe, prosecutors have stated they believe the deaths of Ives and Henry are related to the drug trade in Saline County.

To date, the grand jury has spent \$5,420 in county funds and Harmon told Judge Cole other costs related to the second autopsies have not been made.

The grand jury's decision to release Burton's tape was not based on pressure to justify the continuation of the investigation, Harmon said. "The decision to release the tape was made before Judge Cole wrote the letter."

Harmon was referring to a letter written by Cole to the grand jury foreman. In that epistle, Cole asked for justification to continue the investigation. Without any indication of progress, Cole said he would consider dismissing the panel.

After viewing the tape and receiving the grand jury report, Cole said he does not plan to take any action at this time.

"The benefits (of releasing the tape) outweighed the losses," Harmon said, while noting that some "specifics" are being held back.

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Cole to view tape of Burton on autopsies

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — The Saline County grand jury, challenged to make progress or disband, announced Thursday it will continue its investigation into the deaths of two teen-agers.

The grand jury foreman will report on the investigation to Circuit Judge John Cole of Sheridan in open court today.

That report will include the unedited, 13-minute videotape testimony of Dr. Joe Burton, a Georgia medical examiner who has conducted autopsies on the boys.

That tape apparently was revealing enough to give some pause to grand jury members, who debated all day Thursday whether it should be released.

The time of the hearing has not been set yet.

Cole had sent a letter to the jury foreman last week. Cole said in the letter that he would consider dismissing the grand jury if it could not prove that progress could be made.

The jury met with Cole on Thursday in a closed session. Afterward, Cole said he will not dismiss the grand jury, which is investigating the deaths of Larry Kevin Ives, 17, and Don George Henry, 16. The two teen-agers were struck by a Union Pacific train as they were lying on railroad tracks near Alexander early on Aug. 23, 1987.

Dr. Fahmy Malak, the state medical examiner, had ruled

the deaths an accident. The boys' parents, upset with that ruling, began seeking an in-depth investigation. The grand jury was subsequently formed and ruled in May that the deaths were probable homicide.

Cole said after the session Thursday that he was satisfied with the jury's progress.

"We are pursuing leads. The further the investigation goes, the better the leads are becoming," said Dan Harmon, special deputy prosecuting attorney.

The videotape arrived Thursday morning. It was to have been played in public that day. But some members of the grand jury had misgivings about releasing it after viewing the tape in closed session.

There was some concern that information released in the tape would reveal details of the deaths that the grand jury wanted to keep secret, Harmon said. But the majority of the grand jury felt the tape could be released without harming the case, Harmon said.

"The majority felt that way all along, but all our actions so far have been unanimous," Harmon said. "After our meeting with Judge Cole, this decision is unanimous also."

Ever since Burton conducted his autopsies in April, the results have been kept se-

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Inquiry

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cret. The reason, Harmon said, was because if the boys were murdered, only the killer could know the details of how the deaths occurred.

"Burton's tape goes back to point out why we ruled it was a homicide," Harmon said. "The timing couldn't be more perfect, in that at the stage we've reached in the investigation, release of some details won't hurt us."

The grand jury will probably not be meeting as often as it has to date, Harmon said.

"We are receiving extremely good cooperation from the state police now," he said. "We hope to be able to have them do all the questioning of witnesses, then have them report to us instead of doing the questioning ourselves."



—Staff Photo by Art Meripol

Garrett (left), Curtis Henry (center), father of victim, view tape by Atlanta pathologist.

Grand jury now definite — teen-agers' deaths homicides

By Larry Sullivan
GAZETTE STAFF

BENTON — A grand jury has decided that the deaths of Donald Henry and Kevin Ives definitely were homicides.

An Atlanta pathologist also has determined that the youths might have been dead when a train hit them.

Henry, 16, and Ives, 17, were the two Bryant teen-agers who were run over by a train early Aug. 23, 1987, near Alexander while they

were lying on the tracks.

On a videotape made public Friday, Dr. Joe Burton said work by himself and another Atlanta pathologist, Dr. William Anderson, showed that congestion in both boys' lungs indicated they had been "injured, rendered unconscious or even killed" before they were hit by the train.

The videotape of Burton's comments was part of an interim report issued Friday on behalf of the grand jury by Carl B. Allen, the panel's foreman.

Based partly on Burton's findings, the jury concluded "that this case is definitely a homicide and that we should continue the investigation."

That was more definite than an earlier report from the jury that said it was a "probable homicide," but it didn't answer the question of whether the jury thought the youths had been killed intentionally by someone.

But when Richard Garrett, a

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"We have developed new leads and anticipate that investigation of these new matters will take another 30 to 60 days," the report read. The next grand jury session has not been scheduled. The panel approved Allen's report and release of Burton's statement in a session Thursday.

The grand jury also asked that further expenses be paid out of the drug enforcement fund of the Saline County sheriff's office. But Sheriff James Steed Jr. said Friday he would not grant that request.

Ives and Henry were hit by the train about 4:25 a.m. Train employees reported that neither boy appeared to move as the train approached.

Burton took note of a report on the weight of the lungs - information Malak provided.

Malak also provided pictures of what seems to be a stab wound on Henry and of a pattern fracture - a crushing of the bone that fits the shape of a specified object - on Ives' face. What caused the pattern fracture was not revealed.

Burton expects computer-assisted enhancement of those photos within 10 days from the Dade County, Fla., medical examiner's office.

A hole in Henry's shirt was the most important evidence, Burton said.

"The shirt in this area does indeed exhibit all the characteristics of a defect (cut or tear) caused by something with a sharp blade, such as a knife," he said.

"There is no question that this particular defect was not a tear," Burton said. "It was made by something cutting through the fabric."

Neither one of the injuries in question could have been caused by any part of the train Burton has seen, he said.

Dr. William Anderson, another Atlanta pathologist, was consulted by Burton about the amount of fluid Malak found in the boys' lungs. Anderson "is very much concerned about the degree of reaction and congestion and fluid in the lungs in both boys," Burton said.

Burton and Anderson agree, Burton testified, that the findings are "inconsistent with the type of injuries that one might expect with someone being run over by a train where you have sudden death occurring."

The more sudden the death, the less chance fluid has to accumulate in the lungs, Deputy Prosecuting Attorney Richard Garrett explained.

Burton said Anderson "feels like the possibility exists that this information alone would strongly suggest that the boys were injured, rendered unconscious or even killed prior to their bodies being run over by the train."

"He also shares my same concerns that the evidence supplied by the engineers and conductors on the train is consistent with the forensic evidence and at this time we have nothing to account for the fact that these boys apparently did not try to move away from the oncoming train," Burton said.

Burton said he was aware that FBI acoustic experts believe the boys could have slept through the approach of the train.

"I still have considerable difficulty in accepting that just from a common-sense point of view," Burton said.

Chronology

Here is a chronology of events leading to a ruling Friday by a Saline County grand jury that the deaths of Larry Kevin Ives and Don George Henry were homicide:

- Aug. 23, 1987 - Ives and Henry killed. Boys were lying on Union Pacific railroad tracks near Alexander.

- Aug. 25 - Saline County sheriff's office rules out foul play.

- Sept. 4 - Deaths ruled accidental by state Medical Examiner Fahmy Malak; marijuana-induced sleep blamed.

- Oct. 31 - Boys' families file court action to obtain medical examiner's files, hire private investigator.

- Feb. 10, 1988 - Families request grand jury investigation.

- Feb. 11 - Deputy Prosecuting Attorney Richard Garrett announces prosecutor's investigation.

- Feb. 18-22 - Prosecutor's investigation; Malak stakes job on findings.

- March 16 - Garrett seeks exhumation of bodies; says deaths are probably homicide.

- March 19 - Circuit Judge John Cole of Sheridan orders exhumations.

- March 26 - Two out-of-state medical examiners hired to review Malak's office.

- March 29 - Dr. Joe Burton of Atlanta hired to conduct autopsies.

- April 5 - Burton performs autopsies; sleep theory discounted.

- April 27 - Grand jury sworn in.

- May 11 - Investigation called a "personal vendetta" against Malak by Ralph Turbyfill, state Crime Laboratory assistant director.

- May 26 - Grand jury rules deaths probable homicide.

- Aug. 30 - Reward of \$10,000 for information offered by parents.

- Sept. 2 - Cole demands progress, threatens to disband grand jury otherwise.

- Sept. 9 - It is announced the grand jury ruled the deaths as homicide.

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Deaths ruled homicides

Expert says boys hurt or dead before hit by train

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — An out-of-state pathologist says Don George Henry and Larry Kevin Ives apparently were attacked and injured, or killed, before being struck by a train in August 1987. The state medical examiner had ruled the boys' deaths accidental.

The videotaped testimony of Dr. Joe Burton of Atlanta, which was shown Thursday to a Saline County grand jury investigating the deaths, was released to the public Friday.

It was announced Friday the grand jury changed its ruling to homicide, from a previous May 26 ruling of probable homicide.

Ives, 17, and Henry, 16, both Bryant High School seniors, were probably "injured, rendered unconscious or even killed prior to their bodies being run over" by a Union Pacific train near Alexander on Aug. 23, 1987, Burton said in the videotape.

Burton is medical examiner for north metropolitan Atlanta. The tape was played in a public hearing at 9:30 a.m. Friday before Circuit Judge John Cole of Sheridan.

The most "disconcerting and very important" evidence, Burton said, was a shirt. Henry's shirt has a cut on it that matches the location of what appears to be a stab wound on the boy's body. That portion of the shirt has what appears to be blood on it.

But Henry was apparently not wearing the shirt when the train struck, so it seems the cut in the shirt was not caused by the train, Burton said.

Dr. Fahmy Malak, the state medical examiner, had ruled the boys were killed by the train while asleep on the tracks under the influence of marijuana.

Before Friday, all Burton's findings were kept secret. He first testified before the grand jury May 25. This is the first time the grand jury, which has met off and on since April 27, has released any details about



VIEWING THE TAPE — Public officials, reporters and other spectators sit in the Saline County Courthouse

on Friday where they viewed videotaped testimony of Dr. Joe Burton of Atlanta.

the deaths.

Friday's revelation came one week after Cole informed grand jury foreman Carl Allen he would consider dismissing the grand jury if progress was not made.

"Our conclusions are that this case is definitely a homicide and that we should continue the investigation," said the public portion of a grand jury report submitted to Cole. The report was signed and presented for the grand jury by Allen. A more detailed report to Cole was not released.

That confidential report is "substantially the same as the public one," Cole said. "It satisfies the inquiries I posed to Mr. Allen in a letter last Friday."

But Cole also said that "finality is important. I will not put a cap on the time allowed, but want to reiterate my concern about the time it is taking."

The grand jury appreciates the need for speed, the report read.

"We also believe that more progress is being made at the moment than at any other time," the report read.

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Jury

Continued from Page 1A.

deputy prosecuting attorney who has worked on the case, was asked if the jury meant that the youths had been murdered, he said, "Yes, definitely."

In the tape, Burton discussed wounds on the boys' bodies that he said were inconsistent with injuries seen in train accidents.

Burton also rejected the ruling by state Medical Examiner Dr. Fahmy Malak, who said the boys had smoked a large amount of marijuana, laid down side-by-side on the tracks and fell asleep. "I still have considerable difficulty accepting that just from a common sense point of view," Burton said.

Malak not talking

Asked Friday about Burton's comments and the jury's statement, Malak said he would not comment because there was a gag order in the case.

Authorities have refused to give the details of the case and of the injuries suffered by the youths. The release of Burton's tape was a marked departure from a gag order in place since the grand jury investigation began April 27.

The 13-minute tape was made Tuesday in Burton's office. He was dressed in shirt and tie and looked directly at the camera with his hands folded on a desk. The tape was described as an update for the grand jury.

In public testimony, the train crew has said that neither boy moved at all as the train bore down on them and Burton said in the tape that evidence offered "nothing to account" for this except that they were in no condition to move.

Also, Burton discussed a stab wound on Henry's back and said sophisticated tests with a scanning electron microscope showed that the boy's shirt was torn by a blade "such as a knife" in the same location. Burton termed this finding "most disconcerting" and said, "I think this is important."

Regarding Ives, Burton mentioned continued tests with special equipment in Dade County, Florida, on photographs of a facial wound, but didn't elaborate on the cause. Local officials also declined to elaborate.

Burton said neither he nor Anderson would charge for their time on the case but wanted the county to pay for the tests.

Burton also expressed frustration with the pace and difficulty of the investigation. "I wish I could just come right out and give you all the information that you need," he told the grand jury.

To dispel rumors

Special Deputy Prosecuting Attorney Dan Harmon of Benton, who has been working with the grand jury, said authorities hoped Friday's information would dispel a wide array of rumors in the community that were making the investigation difficult.

"I just felt like there were so many rumors ... that the benefits outweighed the losses," Harmon said.

Curtis Henry, father of one of the victims, watched the tape with reporters and said afterward that he was relieved and not bitter that it has taken a year for the homicide finding.

"I don't think we should have waited this long, but to get answers I'll wait forever — whatever it takes," he said.

Henry also said he agreed with releasing the tape. "I think the

public deserved to know more of what was going on. We would never have gotten this far if it hadn't been for the public and the news media behind us."

In its report, the grand jury said officers were checking new leads that will take "another 30 to 60 days" to investigate.

The jury also asked Circuit Judge John Cole to allow the investigation to continue. Last week, Cole asked the jury for a report and said it should cease its activities if there was no progress.

During a brief hearing Friday morning, Cole told Harmon and Allen, the jury foreman, that "finality is important."

Cole urged the jury to "take every possible step and precaution that no time is wasted," but said he wanted a "thorough and effective investigation."

Cole also expressed concern about the investigation's cost. Allen said \$5,420.04 of county money has been spent, but more test bills were expected.

The parents of the boys recently offered a \$10,000 reward for information that leads to an arrest and conviction in the deaths. The reward prompted some tips, Harmon said, "but nothing that's panned out."

Steve Nawojczyk, the Pulaski County corner, also was at the hearing Friday. He has disputed a recent ruling by Malak regarding the death of a Little Rock nursing home patient. Nawojczyk described his attendance as "fact gathering."

Nawojczyk said he would probably call Burton to testify at a coroner's inquest planned next week at Little Rock. "I don't think you could find a better pathologist to look into the case and I think I'm going to give Dr. Burton a call," Nawojczyk said.

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Pathologist offers insight into forensic exam of boys' bodies

Here is the text of videotaped testimony by Dr. Joe Burton of Atlanta to the Saline County grand jury examining the Aug. 23, 1987, deaths of two teen-agers:

I guess I'm speaking to the ladies and gentlemen of the grand jury in Arkansas and to (Deputy Prosecuting Attorney) Richard Garrett and (Special Deputy Prosecuting Attorney) Dan Harmon.

I'm sorry that I could not be present with you today in Arkansas to discuss this case, but Mr. Harmon has advised me that a lot of investigative information has come forward from the grand jury's concern and interest in this case and has been keeping in touch with me each week about the progress of this investigation.

I would like to tell the grand jury today of what we have been doing with the case since I last visited with you.

As you know, all the evidence that has been acquired by the police investigators on this case involving the death of Don Henry and Larry Ives has been forwarded to my office. I have been going through this evidence, looking at it. It has been photographed and various test procedures have been done on some of the evidence.

Some of the tests, I think, are very significant and certainly, I think, shed some light onto, possibly, the manner in which these two boys died. Some of the tests are not completed at this point and I hope to have them completed in the next 10 days.

To begin with, one of the things that I feel is most disconcerting and very important in this case is the shirt that was worn by Don Henry, or allegedly worn by Don Henry.

This is the shirt that was not on the boy's body when it was found, that was some distance away from the track, where the torso and body of Don Henry was recovered.

This shirt, as you know, has a lot of tears and defects in it. A question was raised as to whether these tears or defects were made by the body being pulled down the track or the shirt being torn off or pulled down the track by the motion of the train over the body of the victim.

What I did was I took this shirt to a private laboratory that I work with here in Atlanta and we took one of these tears on the left lower back area of the shirt that kind of was in the area where this injury was on the back of Don Henry and we took a scalpel and cut this defect out, which measured a little bit over an inch in length.

We then took this defect and it was analyzed under a scanning electron microscope, which is a very powerful microscope. With this microscope you can tell whether it was torn or cut with something like scissors or something with a knife.

The shirt in this area does indeed exhibit all the characteristics of a defect caused by something with a sharp blade such as a knife. As I said, it is a little over an inch in length. The margins of it are similar to the margins made by the cut the scalpel made in the fabric.

There is no question that this particular defect was not a tear. It was made by something cutting through the fabric. Also, around the margins of this defect, there are a number of red blood cells, or objects consistent with red blood cells under the scanning electron microscope.

So not only do we have a defect in the shirt, but there appears also to be blood around this defect. I think this is important because, first of all, the shirt was not on the body when it was found and, secondly, the defect is not a tear that you might expect from the shirt snagging on a crosstie or snagging on a railroad spike or on something underneath the train itself, but is consistent with something actually cutting the fabric.

It is also important because the defect is in the area of the back where this injury which I described to you previously is located. I think that this is very important as far as the investigation into the deaths of these two boys is concerned.

The other thing that I am in the process of doing is the photograph made by Dr. (Fahmy) Malak (the state medical examiner) at the autopsy of Kevin Ives that shows the pattern injury on the left cheek and the photograph that shows the injury on the back of Don Henry have been sent off to the Dade County medical examiner's office in Miami, Fla., where I train.

They now have a very expensive computer enhancing laboratory where they can take photographs and enhance the image you are trying to see.

These photographs have been forwarded to them and I hope within the next seven to 10 days to have the results back on those photographs. Not only will they be helpful in analyzing more about the characteristics about the wound on the back of Don Henry, but they will tell us much more about the injury to the face of Kevin Ives.

I have also looked at a lot of the evidence that has been sent here by the police investigators, who I might add have been very cooperative and seem to be forwarding me everything they have available and have looked especially at these black, thick rubber hoses with the metal attachments at the end which hung over the front part of the cowcatcher of the engine.

I have looked at these with the question in mind as to whether the injury to Kevin Ives may well have been made by this particular object on the train.

It is my opinion that this object is not consistent with the injury on Kevin Ives. Neither are any of the protruding objects that I have seen on the train consistent with having caused any of the injuries that are questionable, which I have discussed with you previously.

Also since we last met, Dr. William Anderson, one of the pathologists here in Atlanta that I have talked to you about, has looked further into this case.

He has gone over the slides of the tissue sections again and is very much concerned about the degree of reaction and congestion and fluid in the lungs in both boys and feels that it is inconsistent with the type of injuries that one might expect with someone being run over by a train, where you have sudden death occurring.

He feels like the possibility exists that this information alone would strongly suggest that the boys were injured, rendered unconscious or even killed prior to their bodies being run over by the train.

He also shares my same concerns that the evidence supplied by the engineers and conductors on the train is consistent with the forensic evidence and at this time we have nothing to account for the fact that these boys apparently did not try to move away from the oncoming train.

I am aware that the FBI has conducted some audio studies and some audiograms of noise levels along the track, the noise generated by the train, the vibration generated by the train, and it's my impression that based on their findings, they tend to think the boys could have slept through the train coming down the tracks and not been awakened in time to move. I still have considerable difficulty in accepting that just from a common-sense point of view.

To summarize things at this point, Dr. Anderson and myself are both continuing to look at this case. There will be further analysis made on the shirt, and possibly other evidence that has been sent. I am aware that the families have requested that certain tests be done on some of the clothing of the boys. I am holding back on that at this time because of the cost involved.

As I told you previously I have not charged the county or the state of Arkansas anything for the many hours of time that myself and Dr. Anderson have spent on the case.

I have looked at tests we're having done, the laboratory tests and procedures, are tests we have to pay for ourselves and so we are having to bill the county what we are billed to cover the costs and expense of these tests.

So at this time I am trying to only do those tests that are necessary to keep the investigation ongoing and I think will yield the greatest amount of valuable information without just doing a blanket test procedure on everything that we've been sent.

At this point in time, that's about all that I have to add. I understand that Mr. Harmon and Mr. Garrett have found out some interesting information that seems to possibly point to the fact that my concerns about the deaths of these two boys as well as the families' and your own may be well-founded.

If any of you in the grand jury ever have any questions or desire to ask me specifically about anything that troubles you about this case, Mr. Garrett and Mr. Harmon both know how to get in touch with me and I would be pleased for you to personally call and talk to me.

Thank you again for allowing me to look at this case, and as I have said previously I wish that I could just come right out and give you all the answers that you need, but I think as you see that as the investigation has continued in this case, more and more evidence has been accumulated to point to the fact that the deaths of these two boys most probably were not accidental deaths, but that they met their death as a result of injuries inflicted on them by other people or another person.

And if it had not been for this ongoing investigation and concern on everyone's part, I don't think that the truth, whatever it may have been or may turn out to be, would ever have been found.

Thank you, and I hope to see you all again soon.

Malak declines to defend findings in train deaths

BY MAX PARKER
Democrat State Desk

Dr. Fahmy Malak, state medical examiner, who ruled as accidental the Aug. 23, 1987, deaths of two teen-agers, declined Friday to defend the findings against new medical evidence indicating homicide.

The latest findings were by Dr. Joseph Burton, chief medical examiner for north metropolitan Atlanta, who in April exhumed the bodies of Larry Kevin Ives, 17, and Don George Henry, 16. The findings prompted a Saline County grand jury to rule the deaths as homicide. The panel had previously deemed the deaths "probable homicide."

On Sept. 4, 1987, Malak ruled the boys were "unconscious and in a deep sleep on the railroad tracks, under the psychedelic influence" of marijuana when a Union Pacific train ran over them near Arkansas 111 near Alexander.

When asked to comment about the inconsistencies between the two medical findings, Malak cited a gag order issued by the grand jury May 16.

"I have no comment," he said. "There is still a gag order on the case."

During more than two hours of testimony during a prosecutor's hearing in February, Malak reiterated the deaths of the teens were accidental. He said the boys "died because of the train and because of marijuana. I did my best ... and I have a clear conscience."

Malak said the boys were not beaten, strangled, shot or



Fahmy Malak

stabbed before being struck by the train.

"There was no evidence of beating," he said. "Were they strangled? Absolutely not. Were they choked? They were not choked. Were they stabbed? No. Were they shot? No."

During Burton's videotaped testimony to the Saline County grand jury, the expert said a tear on the left lower back area of a shirt belonging to Henry — which was in the same area as an injury on the youth — "exhibited all the characteristics of a defect caused by something with a sharp blade such as a knife."

"There is no question that this particular defect was not a tear," Burton said. "It was made by something cutting through the fabric."

Burton denied the defect was caused from the shirt snagging on something. He said there "appears to be blood around this defect."

He also cited a pattern injury evident on the left cheek of Ives. The wounds to both boys were visible in photographs taken by Malak during the autopsy.

Deputy Prosecuting Attorney Richard Garrett, who conducted the three-day hearing, asked Malak at the time if the boys could have suffered undetectable trauma.

Malak said he would quit his job if it turned out the boys had been beaten and denied evidence could have been overlooked by him during the examinations.

"Maybe others might," Malak said, "but not with me."

Crime Laboratory Director Bill Cauthron said Friday he was unaware Malak had offered to quit his job if proven wrong.

"This is the first I've heard of that," he said.

During the hearing, Malak also said, "The definite proof they were alive at the time of the crash is the aspiration of blood in the lungs."

Yet, Burton referred to the findings of Dr. William Anderson, an Atlanta pathologist, who examined slides and tissue sections taken from the bodies. Burton said the expert believed the condition of the youths' lungs were "inconsistent with the type of injuries that one might expect with someone being run over by a train where you have sudden death occurring."

In-depth report: The Saline County train deaths



Carl Allen



John Cole

**Boys hurt, dead
before train hit,
pathologist says**

Boys hurt, dead before train hit, pathologist

says

• Continued from Page One

the deaths.

Friday's revelation came one week after Cole informed

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grand jury foreman Carl Allen he would consider dismissing the grand jury if progress was not made.

"Our conclusions are that this case is definitely a homicide and that we should continue the investigation," said the public portion of a grand jury report submitted to Cole. The report was signed and presented for the grand jury by Allen. A more detailed report to Cole was not released.

That confidential report is "substantially the same as the public one," Cole said. "It satisfies the inquiries I posed to Mr. Allen in a letter last Friday."

But Cole also said that "finality is important. I will not put a cap on the time allowed, but want to reiterate my concern about the time it is taking."

The grand jury appreciates the need for speed, the report read.

"We also believe that more progress is being made at the moment than at any other time," the report read.

"We have developed new leads and anticipate that investigation of these new matters will take another 30 to 60 days," the report read. The next grand jury session has not been scheduled. The panel approved Allen's report and release of Burton's statement in a session Thursday.

The grand jury also asked that further expenses be paid out of the drug enforcement fund of the Saline County sheriff's office. But Sheriff James Steed Jr. said Friday he would not grant that request.

Ives and Henry were hit by the train about 4:25 a.m. Train employees reported that neither boy appeared to move as the train approached.

Burton took note of a report on the weight of the lungs - information Malak provided.

Malak also provided pictures of what seems to be a stab wound on Henry and of a pattern fracture - a crushing of the bone that fits the shape of a specified object - on Ives' face. What caused the pattern

fracture was not revealed.

Burton expects computer-assisted enhancement of those photos within 10 days from the Dade County, Fla., medical examiner's office.

A hole in Henry's shirt was the most important evidence, Burton said.

"The shirt in this area does indeed exhibit all the characteristics of a defect (cut or tear) caused by something with a sharp blade, such as a knife," he said.

"There is no question that this particular defect was not a tear," Burton said. "It was made by something cutting through the fabric."

Neither one of the injuries in question could have been caused by any part of the train Burton has seen, he said.

Dr. William Anderson, another Atlanta pathologist, was consulted by Burton about the amount of fluid Malak found in the boys' lungs. Anderson "is very much concerned about the degree of reaction and congestion and fluid in the lungs in both boys," Burton said.

Burton and Anderson agree. Burton testified, that the findings are "inconsistent with the type of injuries that one might expect with someone being run over by a train where you have sudden death occurring."

The more sudden the death, the less chance fluid has to accumulate in the lungs, Deputy Prosecuting Attorney Richard Garrett explained.

Burton said Anderson "feels like the possibility exists that this information alone would strongly suggest that the boys were injured, rendered unconscious or even killed prior to their bodies being run over by the train."

"He also shares my same concerns that the evidence supplied by the engineers and conductors on the train is consistent with the forensic evidence and at this time we have nothing to account for the fact that these boys apparently did not try to move away from the oncoming train," Burton said.

Burton said he was aware that FBI acoustic experts believe the boys could have slept through the approach of the train.

"I still have considerable difficulty in accepting that just from a common-sense point of view," Burton said.

9-10-88
Ar. Democrat

'Appear to be getting answers,' victim's father says of tape

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — Curtis Henry watched Friday as a videotaped statement contradicted the state medical examiner's ruling that his son's death was accidental — a ruling that Henry has fought for a year and five days to overturn.

"I love it," Henry said, without a trace of a smile, when the tape finished. "It's not any more than I expected. I'm relieved we appear to be getting answers."

Henry's son, Don George Henry, 16, and Larry Kevin Ives, 17, were killed Aug. 23, 1987. Dr. Fahmy Malak, state medical examiner, ruled Sept. 4, 1987, that the deaths were accidental. Malak said the boys were asleep, under the influence of marijuana, when struck by a Union Pacific train while lying on tracks near Alexander.

Dr. Joe Burton, an Atlanta medical examiner, disputed that finding in a videotaped statement released Friday. A Saline County grand jury declared the deaths a "definite homicide." The grand jury also declared it is making progress in finding who did it.

Pulaski County Coroner Steve Nawojczyk also viewed the videotape. He said he will ask that Burton testify at a coroner's hearing next week that



Dan Harmon

is questioning another Malak ruling.

Henry and Linda Ives, Larry Ives' mother, both said they had no fears that releasing details of the deaths would hurt the case. Burton's findings had been kept secret until Friday.

"The public deserves to know," Henry said. "This never would have gotten off the ground without the public and the news media standing with us."

Ives, who with the other parents had seen the videotape the night before, agreed.



Curtis Henry

"We're just pleased Kevin and Don are getting the investigation they deserve," she said.

Dan Harmon, special deputy prosecuting attorney, denied that the grand jury was pressured into releasing the findings to justify its continued existence.

Circuit Judge John Cole of Sheridan sent a letter Sept. 2 demanding progress in the investigation.

"The plan to release a videotape was announced before Judge Cole's letter was sent,"

Harmon said. "Burton just didn't get it finished until now."

Both parents declined comment on the disclosure's effects on Malak's credibility.

"Let the public make that decision," Henry said.

Asked if he was bitter about having to wait more than a year for this, Henry said no.

"To get answers, I'd wait forever," Henry said.

The Ives and the Henrys are offering a \$10,000 reward for any information leading to the conviction of a murder suspect. Anyone with information can call the Saline County prosecuting attorney's office at 778-1193. The information will be kept confidential.

Nawojczyk said Burton's credentials and his report were impressive.

"I don't think I'd find a better pathologist," he said. "In my opinion, his report shows the deficiencies in the system."

Restricting the medical examiner to ruling on the cause of death while letting local authorities rule on manner of death would solve many of the problems, he said. In other words, the medical examiner would determine what caused someone's death, but local authorities would decide whether it was natural, homicide, suicide or accidental.

Chronology

Here is a chronology of events leading to a ruling Friday by a Saline County grand jury that the deaths of Larry Kevin Ives and Don George Henry were homicide:

- Aug. 23, 1987 — Ives and Henry killed. Boys were lying on Union Pacific railroad tracks near Alexander.

- Aug. 25 — Saline County sheriff's office rules out foul play.

- Sept. 4 — Deaths ruled accidental by state Medical Examiner Fahmy Malak; marijuana-induced sleep blamed.

- Oct. 31 — Boys' families file court action to obtain medical examiner's files, hire private investigator.

- Feb. 10, 1988 — Families request grand jury investigation.

- Feb. 11 — Deputy Prosecuting Attorney Richard Garrett announces prosecutor's investigation.

- Feb. 18-22 — Prosecutor's investigation; Malak stakes job on findings.

- March 16 — Garrett seeks exhumation of bodies; says deaths are probably homicide.

- March 19 — Circuit Judge John Cole of Sheridan orders exhumations.

- March 26 — Two out-of-state medical examiners hired to review Malak's office.

- March 29 — Dr. Joe Burton of Atlanta hired to conduct autopsies.

- April 5 — Burton performs autopsies; sleep theory discounted.

- April 27 — Grand jury sworn in.

- May 11 — Investigation called a "personal vendetta" against Malak by Ralph Turbyfill, state Crime Laboratory assistant director.

- May 26 — Grand jury rules deaths probable homicide.

- Aug. 30 — Reward of \$10,000 for information offered by parents.

- Sept. 2 — Cole demands progress, threatens to disband grand jury otherwise.

- Sept. 9 — It is announced the grand jury ruled the deaths as homicide.



Carl Allen



John Cole

An Democrat
9-10-88
Jim Heph Lerat

Sheriff rejects grand jury's request for funds

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — The Saline County sheriff refused a grand jury request Friday to pay the panel's expenses out of his special drug enforcement fund.

"They are not getting it," Sheriff James Steed Jr. said. "I am not financing the grand jury with my drug money. And I don't know a nice way of saying that."

In a report released Friday, the grand jury also said it has "had some difficulty having subpoenas served." Neither Deputy Prosecuting Attorney Richard Garrett nor Dan Harmon, special deputy prosecuting attorney, would elaborate, Steed did.

Since April, the grand jury has investigated the deaths of two teen-agers hit by a train last summer. The grand jury



James Steed Jr.

report said the deaths were homicide.

Steed saw a portion of vi-

deotaped testimony contesting the earlier accidental death ruling.

"I don't know that I'm as totally convinced it's a murder as the grand jury," Steed said.

The sheriff's refusal to provide the money will not hinder the investigation, Garrett said.

"We can't make him," Garrett said. Further grand jury expenses will have to come out of Saline County's general fund.

Garrett had already addressed the financial issue before learning of Steed's decision.

"It really gripes me to hear people talking about the cost of this when the governor can spend whatever he wants to hire two out-of-state ----- to come in here and do a white-wash," Garrett said after a court hearing Friday.

Garrett was referring to an independent review of the office of Dr. Fahmy Malak, state medical examiner, by two states' medical examiners. Neither medical examiner honored grand jury subpoenas in May.

The sheriff's drug fund consists of cash seized in drug arrests.

"I don't know how much is left," Steed said. "But I've paid a lot of the grand jury's costs already. The rest of the fund is going to go for fighting drugs."

With no indictments issued, all the murder investigation has netted so far are drug arrests, including one guilty plea. Four witnesses have had drug-related charges filed against them. The charges, prosecutors say, result from information uncovered during

the murder investigation.

"I don't know when the next seizure of cash will be," Steed said. "What I've got is all I'll get, as far as I know. I'm not going let any one thing suck it dry."

Steed addressed the matter of subpoenas.

"The only problem they've had with subpoenas is filing them at 4 in the afternoon and wanting the people there at 9 the next morning," Steed said.

"And they also bring subpoenas here for John Jones (hypothetical) and give his address as Alexander, for instance," Steed said. "They don't tell me if that's an Alexander mail route or downtown Alexander. They might tell me about where he used to live."

"I have to send a uniformed officer in a patrol car to serve the subpoena on Mr. Jones, who we have never met," Steed said. "That deputy asks people nearby where Jones is and — surprise — they don't always know or say they know."