

Expert aids state officials for 2nd time

Pathologist called one of 'country's most distinguished'

BY MAX PARKER
Democrat State Desk

Dr. Joseph Burton, a Georgia pathologist, has for the second time in three years assisted Arkansas authorities in their investigation of suspicious deaths.

On Friday, the 43-year-old chief medical examiner for north metropolitan Atlanta offered evidence in a 13-minute videotape that disputed a ruling that last summer's deaths of two Saline County youths were accidental.

It was announced Friday that a Saline County grand jury investigating the case believes the deaths of Larry Kevin Ives, 17, and Don George Henry 16, were homicides.

In April, 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 Aug. 23, 1987.



Dr. Joe Burton

State Medical Examiner Fahmy Malak had said the boys were under the influence of marijuana when they were struck and ruled their deaths

accidental.

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. Burton testified Williams died from massive head trauma and said it was homicide. The two men were acquitted.

Burton's work also has gained him national recognition.

The National Law Enforcement Institute Inc. at Santa Rosa, Calif., cited Burton as "one of the country's most distinguished medical examiners."

He was used as a consultant

by officials in Tallahassee, Fla., during an investigation of the 1978 strangulation murders of two Florida State University sorority sisters.

Theodore R. Bundy was convicted of the killings after bite marks found on one of the victims matched impressions that had been taken of Bundy's teeth.

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. Wayne B. Williams was subsequently convicted in 1982 of two of the murders.

Burton 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, he has been a regional pathologist for the Federal Aviation Administration. And since 1978, Burton has been a pathologist for the U.S. Federal Penitentiary and a consultant for the National Transportation Safety Board.



Arkansas Democrat/David Hoge

CONFERRING — Curtis Henry (left), father of Don George Henry, talks with Special Deputy Prosecuting Attorney Dan Harmon and Deputy Prosecuting Attorney Richard Garrett in the Saline County Courthouse. Videotaped testimony by an expert who examined the deaths of Henry's son and another youth was released Friday.

Leads expected to occupy grand jury a month or 2

BY DOUG THOMPSON
Democrat Benton Bureau

BENTON — The Saline County grand jury has 30 to 60 days of work in front of it in investigating the deaths of two teen-agers struck by a train.

That's how long it will take to find an answer to existing leads, said Dan Harmon, special prosecuting attorney.

"Our purpose is not to prove these boys were murdered. Our purpose is not just to issue an indictment. Our purpose is to issue an indictment that will

lead to a murder conviction," Harmon said.

He made those comments Friday, after Circuit Judge John Cole of Sheridan granted the panel more time. In a report to Cole released Friday, the grand jury said it had spent \$5,420.04 of county funds in its investigation.

In a letter delivered Sept. 2, Cole had threatened to dismiss the grand jury unless it made progress. After a public hearing Friday, supplemented by a

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Jury

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confidential report to him, Cole said he was satisfied the grand jury had progressed and would continue to do so. But, he did tell the panel to get on with the matter.

Cole swore in the grand jury April 27 at the request of Deputy Prosecuting Attorney Richard Garrett of Benton. Harmon had been named assistant special deputy on April 18 to assist Garrett in the investigation.

"I believe we are closer to achieving that purpose than we have ever been," Harmon said. He stopped short of saying the jury would be ready to issue indictments in the next two months.

"By that time we will know where our existing leads are going," he said.

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

about 4:25 a.m. Aug. 23, 1987.

The deaths were ruled an accident by Dr. Fahmy Malak, state medical examiner. Without the persistence of the parents in refusing to believe that ruling, Harmon said, the truth about the nature of the deaths would never have been uncovered.

Based on the evidence of Dr. Joe Burton, an Atlanta, Ga., medical examiner, the grand jury announced Friday that the deaths were a "definite homicide." The grand jury had earlier called the deaths a probable homicide.

"At present we are in possession of additional leads that are being investigated," the jury's report read. "We have viewed Dr. Burton's film pertaining to his most recent investigation regarding some of the wounds suffered by the boys."

The film referred to was a videotape of testimony by Burton, made public Friday. That testimony stated the boys were attacked and hurt, rendered

unconscious or killed before the train hit.

The most "disconcerting and very important" evidence, Burton said, was a shirt. Henry's shirt has a cut matching 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.

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.

Ives' body also had an injury not caused by the train, a pattern injury on the face. A pattern injury, Garrett explained, is a bone fracture caused by being struck with a something that is identifiable by the pattern or impression it leaves. The implement that caused Ives' injury was not revealed.

To date, the grand jury has issued no murder indictments.

Around Arkansas



The Associated Press

DEFINITELY HOMICIDE — Pulaski County coroner Steve Nawojczyk (left) and Curtis Henry (right), father of Don Henry, watch a videotape of Dr. Joe Burton, a Georgia medical examiner, during a meeting of the Saline County grand jury investigating the deaths of two Bryant teen-agers. The grand jury said Friday that the deaths were homicide.

WEEK IN REVIEW

Around Arkansas

A SALINE COUNTY GRAND JURY SAID Friday the deaths of two Bryant teen-agers Aug. 23, 1987, were "definitely homicide."

The panel gave its interim report to Circuit Judge John Cole of Sheridan regarding the deaths of 16-year-old Don Henry and 17-year-old Kevin Ives.

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.

The information was in a 13-minute videotape by Dr. Joe Burton, chief medical examiner for North Metropolitan Atlanta and DeKalb County, Georgia. He 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.

Sheriff wary of panel request for funds

By LYNDA HOLLENBECK
Courier Staff Writer

A Saline County Grand Jury recommendation to finance the investigation of the deaths of two Bryant teen-agers from the county sheriff's office drug enforcement fund may not be followed.

On Friday, the grand jury released an interim report to Circuit Judge John Cole, who had asked the panel to justify

continuing the probe of the deaths of Don Henry, 16, and Kevin Ives, 17.

In that report, the panel stated the deaths are considered "definitely a homicide" and recommended expenses be borne by the sheriff's drug enforcement fund.

However, Sheriff James Steed is not in favor of that proposal.

Steed was among a group of individuals who viewed a video-

taped presentation by Dr. Joe Burton, the Atlanta, Ga., forensic pathologist assisting Special Deputy Prosecutor Dan Harmon and Deputy Prosecutor Richard Garrett in the investigation.

Burton performed autopsies on the exhumed bodies of the victims and has recently obtained results from tissue tests and tests of the victims' clothing. He has concluded that both victims sustained injuries

not caused by the freight train that struck them as they lay motionless on a railroad track near the Shobe Road crossing.

One appears to have sustained a prior stab wound to the back and the other suffered an unidentified facial pattern wound not caused by any protruding objects on the train, Burton said.

See FUNDS, page 2

THE BENTON COURIER, Monday Evening, September 12, 1988

Funds

Continued from page 1

When contacted today, Steed said he is not convinced the drug enforcement fund should be used to pay for the grand jury investigation.

"For right now, my reasoning is that this money is just a little pool of money," Steed said. "It doesn't flow but one direction and then it's gone, that's it."

"In the past we've missed some pretty good drug deals because of lack of funds," Steed said. "The county didn't have the funds budgeted. I'm hesitant to spend it in one spot ... I'm using it to help support my drug and alcohol education programs for schools."

Steed said he has not discussed the proposition with Deputy Prosecutor Richard Garrett or Special Deputy Prosecutor Dan Harmon. He does not know "how much money they want. They haven't officially asked me."

His feelings about the fund are "subject to review," however.

"The only way I'd change my

mind is to see how much money they need and how much I've got and then we'll see," he said. He added that he won't be "their sugar-daddy."

The fund presently contains approximately \$20,000, according to Steed.

"It could possibly be homicide," Steed said in reference to the boys' deaths. "I'm not saying it isn't, but I'm just not sure how much money we can spend to prove it. I realize you can't put a dollar value on somebody's life ... but that money belongs to 53,000 people and everyone may not want it spent on this."

The sheriff said he did not see a great deal of value in Burton's videotape since it was being released publicly. "From an investigator's standpoint, anything you're going to show to the public is not going to have that much value," Steed said.

"You've got Malak's (State Medical Examiner Fahmy Malak) opinion on one hand, and you've got Burton's on the other hand. Both of them are supposed to be experts."

Crime Lab expert: Cut dismissed

THE BENTON COURIER, Tuesday Evening, September 13, 1988

LITTLE ROCK (AP) — The chief criminologist for the state Crime Lab says lab administrators dismissed questions about an apparent cut in the shirt of one of two teen-agers struck by a train last summer.

An Atlanta pathologist, studying the deaths of the boys for a Saline County grand jury, contended the shirt cut and a wound on the teen indicated the boy had been stabbed. The grand jury, based on the pathologist report and other information, has said that the boys were wounded or killed before being struck by the train.

The state medical examiner, Dr. Fahmy Malak, ruled the boys had fallen asleep on the tracks and were killed by the train. He said it was an accident. He said the boys had fallen asleep as a result of smoking a lot of marijuana the night before they were found dead early on the morning of Aug. 23, 1987.

Dr. Joe Burton of Atlanta conducted second autopsies in April on Larry Kevin Ives, 17, and Don George Henry, 16. He said in a videotape released Friday by the grand jury that Henry's shirt was cut by a sharp blade.

"I checked all of the clothing and do recall noting all the damages, including the defects that Dr. Burton noted," said Steve Cox, chief criminologist in the trace evidence section of the state Crime Laboratory. "I know for certain that I did report punctures in the clothing. They just were not coupled with the body. I tried to reconstruct ... to see if damages to the clothing were relevant to injuries on the body, but was told there was no need to go any further."

A reconstruction was warranted because by themselves, defects in clothing are irrelevant, Cox said Monday.

"Just by looking at the clothing alone, you just don't know if the damages have any meaning," Cox said. "I believed that these type of damages should have been looked at with the body to see if they were relevant."

Cox, who also suggested further tests be run on the clothing for blood stains, was unable to complete further testing.

He said by the time the clothing was examined, the autopsy had been completed and the rulings had been made.

Cox said three administrators — Howard "Bear" Chandler, then acting director of the agency; Ralph Turbyfill, assistant director; and Ken Micheau, chief toxicologist — told him there was no need to further examine the clothing.

Turbyfill, citing a May 16 gag order issued by the grand jury, would not comment Monday. Neither Chandler nor Micheau were available Monday for comment.

Cox said he was told the agency didn't have the time to investigate further and that "we need to get the case out."

"These are reasons that are just not legitimate in my mind," Cox said. "I'm all for speedy results ... but sometimes you have to sacrifice that. We're all there trying to find the truth."

Cut in shirt was dismissed, lab chief says

BY MAX PARKER
Democrat State Desk

Although an apparent cut in the shirt of one of two teens struck by a train last summer had been found and reported, it subsequently was dismissed by administrators of the state Crime Laboratory, the agency's chief criminologist said Monday.

Dr. Joe Burton, chief medical examiner for north metropolitan Atlanta — who in April conducted second autopsies on Saline County youths Larry Kevin Ives, 17, and Don George Henry, 16 — said in a videotape released Friday that Henry's shirt was cut by a sharp blade.

Burton's 13-minute videotape was released to the public by the Saline County grand jury investigating the deaths of Ives and Henry. Burton's conclusions prompted the grand jury last week to rule the Aug. 23, 1987, deaths as homicide.

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

Burton said the cut on the left lower back area of Henry's shirt was in the same area as an injury on the youth and "ex-

hibited all the characteristics of a defect caused by something with a sharp blade such as a knife."

The pathologist also said blood appeared to be around the defect.

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Haste

• Continued from Arkansas Page
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"These are reasons that are just not legitimate in my mind," Cox said. "I'm all for speedy results ... but sometimes you have to sacrifice that. We're all there trying to find the truth."

Biggs starts grand jury expense fund

By LYNDA HOLLENBECK
Courier Staff Writer

Saline County resident Lewis Biggs has established a special fund to defray expenses of the Saline County Grand Jury investigation of the 1987 deaths of two Bryant teen-agers.

Biggs donated an initial \$50 for the fund, which was set up through the office of Saline County Treasurer Tommie Adams.

Persons who wish to contribute to the fund, which Biggs is also calling a "truth fund," may send donations to: Treasurer Tommie Adams, Saline County Courthouse, Benton, Ark., 72015. Checks should be designated for the Grand Jury Expense Fund or Truth Fund, Biggs said.

Biggs' action stems from a request from the grand jury to pay for the investigation out of the Saline County Sheriff's Office Drug Enforcement Fund.

The grand jury made that recommendation in an interim report released Friday, but Sheriff James Steed has said he does not favor the idea.

Steed said he believes the money should be used for drug enforcement and noted he is "using it to help support my

drug and alcohol education programs for schools."

According to Steed, during the 1987-88 school term, he presented drug education programs for 3,874 students in eight Saline County schools. In most schools, "two or three programs" were necessary to accommodate the number of students involved, Steed said. A maximum of 150 students can be handled in the programs which are geared to kindergarten-age children through sixth grade, he said.

Individual schools would have to be contacted to determine if a presentation had been made there. No central administration office personnel has that information, according to a secretary in one of the school districts.

Steed said his present stand about taking money from the fund for the grand jury investigation is "subject to review," depending upon how much money the panel wants from the account.

The fund was established through money confiscated during drug-related arrests. It presently contains about \$20,000, according to Steed.

Biggs, who is a write-in candidate for county sheriff, said he

has been keeping up with news accounts related to the Aug. 23, 1987, deaths of Kevin Ives, 17, and Don Henry, 16.

The boys were struck by a Union Pacific train as they lay motionless on a railroad track near Alexander. Saline County investigators and the state medical examiner's office contended the deaths were the result of an accident, but family members and other medical experts disputed the medical examiner's accidental ruling.

After releasing a videotaped presentation by an Atlanta pathologist who performed second autopsies of the victims, the grand jury updated a prior "probable homicide" assessment of the case to "definitely a homicide." That action occurred Friday.

Dr. Joe Burton, chief medical examiner for north metropolitan Atlanta and DeKalb County, Ga., performed the autopsies of the victims' exhumed bodies and has been cited by the National Law Enforcement Institute Inc. as "one of the country's most distinguished medical examiners."

He served as a consultant for authorities in Tallahassee, Fla., during the investigation of the

1978 strangulation murder of two Florida State University sorority sisters.

Burton also was a coordinating consultant to the FBI and the Georgia Bureau of Investigation in the Atlanta child-murder case, which involved the slaying of 28 black children and young adults. Wayne B. Williams was convicted in 1982 of two of the murders.

Biggs commended the grand jury for its work and noted that the investigation has created expense for parents of the victims and the citizens of Saline County.

"We help people to get a new heart, kidney, bone marrow and lungs, and this is great," Biggs said.

He encouraged other local citizens to "help the grand jury get to the truth. We not only need the truth as to what happened that fatal morning at Alexander ... we need the person or persons who did this killing convicted."

Parents of the victims have established a reward fund. They have offered \$10,000 for information leading to the arrest and conviction of the person or persons responsible for their sons' deaths.

editorial

opinion

Efforts pay off

No one wants to hear that a death is "definitely homicide," but that's the latest report from the Saline County Grand Jury investigating the deaths of two Bryant teen-agers in August 1987.

In some ways, the grand jury's latest statement is probably a relief to the families of two young men who died last year.

For more than a year, since the early morning hours of Aug. 23, 1987, when the two Bryant High School seniors were struck by a train near the Shobe Road crossing in Saline County, the community has been buzzing with speculation about the deaths.

Early reports included a ruling by Dr. Fahmy Malak, state medical examiner, that the deaths were accidental. He surmised they had passed out on the tracks after smoking more than 20 marijuana cigarettes.

The boys' parents had strong doubts and their public outcry contributed to the grand jury investigation.

Others have had doubts, too. Some have wondered how the boys could have been in such a deep unconscious state that the thundering train would not wake them or at least cause some movement. The train crew said there was no sign of awareness before the train hit them.

THE BENTON COURIER, Tuesday Evening, September 13, 1988

It seems highly unlikely that the boys would pass out on the tracks in identical positions.

One medical examiner doubted the two youths could smoke marijuana in the amount speculated by Malak.

The 16 grand jury members, Deputy Prosecutor Richard Garrett and Special Prosecutor Dan Harmon have spent months studying the case. The grand jury's opinion after months of study and collaboration with experts in the field of medical examiners? "Definitely homicide."

No other answer seems plausible.

The prosecutors hold firm to their beliefs that the deaths were related to drug trade in the county and the grand jury hearings have led to the arrests of some of those who have been subpoenaed to testify on drug charges.

Some questions remain unanswered concerning the early reports of accidental death, but Malak apparently still stands by his ruling. County investigators had also contended the deaths were accidental, but Sheriff James Steed admitted Monday the deaths could possibly be homicide.

The evidence made available to the public, including a videotaped presentation by Dr. Joe Burton, one of the nation's leading medical examiners, strongly suggests the deaths were caused by foul play.

Since that is the case, the investigation should continue until the crime is solved so others don't have to face what the families of Don Henry and Kevin Ives have have to contend with for the past year — and will for the rest of their lives.

JS

Editorial

Burton vs. Malak

The question of what to do about the state medical examiner's office is bigger than ever now that an Atlanta pathologist has concluded that two Bryant teen-agers were the likely victims of foul play before being run over by a train there last year?

Dr. Joe Burton's findings directly contradict the official ruling by Dr. Fahmy Malak, the state medical examiner, that the train accidentally killed Joe Don Henry and Kevin Ives while they lay on the tracks in a deep marijuana-induced sleep.

The Saline County grand jury investigating the case has chosen to accept Burton's conclusion and declared the deaths homicides.

The jury also says new leads concerning the deaths have developed and progress in the investigation is intensifying. Since the jury has also been investigating illegal drug dealing, it now seems possible that drugs were involved.

Wherever the grand jury search leads, the Saline County case raises real questions about the medical examiner's office, questions not easily resolvable.

Does Malak dispute Burton's findings, which were reviewed and concurred in by another Atlanta pathologist, Dr. William Anderson?

Malak can't. He's under a gag order imposed by the grand jury. However, during a prosecutor's public hearing in February, Malak stood firm on his marijuana-sleep ruling and vowed to resign if it later turned out that the boys had been beaten, or that *any evidence could've been overlooked by him during his own investigation.*

That's a definite commitment, and Malak may have to make good his pledge, partly because of two critical pieces of evidence that Malak himself furnished Burton: photos of the two bodies. Burton also examined the exhumed bodies.

The photograph of Henry shows an apparent stab wound on the back that matches a slit in a shirt found at the scene and identified as his. The one of Ives shows a bone-crushing pattern fracture on his face.

Burton said Henry's wound and the cut on his shirt were "the most important evidence," noting that Henry wasn't wearing the shirt when the train ran over him; that the fabric had been cut by "something with a sharp blade, such as a knife;" that it wasn't a tear caused by a rip or snag; and that droplets of blood were found on the edges of the cut fabric.

Malak might not, of course, have given much consideration to the shirt, since Henry wasn't wearing it when hit by the train. But what about the apparent stab wound on Henry's body? Malak did not even mention it in his autopsy report.

As for Ives, Burton said his facial fracture fits the shape of a specific object, but he doesn't say what the object is. He is emphatic, however, in saying that neither of the two injuries to the boys could have been caused by any part of the train that passed over them.

The evidence and the findings based on them seem enough in themselves to justify a homicide conclusion, but Burton offers further evidence for the boys having been dead before being hit by the train.

Both, he says, had heavy concentrations of fluid in their lungs. And since the more sudden the death the less such accumulations, those found in the bodies justify the conclusion that they had been rendered unconscious or killed prior to the arrival of the train, he said.

In his February testimony, Malak read just the opposite into the presence of the fluid. He said "the definite proof they were alive at the time of the crash is the aspiration of blood in the lungs."

If Burton and Anderson are correct, then Malak has to be wrong. But Malak is forbidden to speak.

The gag order is now a burden on the public, and until Malak can speak, the Saline County case will continue to reverberate and pose a dilemma for the state's criminal justice system, which badly wants this case resolved.

Meanwhile, the Saline jury is pursuing its own leads to murder.

Malak retains support, in line for \$14,000 raise

By Mark Oswald
GAZETTE STAFF

Dr. Fahmy Malak, the state medical examiner, has the support of the state Crime Laboratory Board, despite controversy over his ruling in the deaths of two Saline County teen-agers.

The Crime Lab director is even recommending a \$14,000 raise for Malak.

"Until he's proven wrong, the jury's still out," Dr. Malcolm Moore, the board chairman, said after a board meeting Friday.

The board met in executive ses-

sion for about an hour. In answering questions afterward, Dr. Moore said the board discussed "the medical examiner situation" and other matters.

Autopsy findings questioned

Newspaper articles have raised questions about Malak's autopsy findings and discrepancies in his sworn testimony in several cases.

Recently, attention has focused on Malak's findings in the deaths last year of two Saline County teen-agers who were run over by a

(See MALAK on Page 13A.)

Malak

Continued from Page 1A.

train. Malak said the boys had smoked a large amount of marijuana, laid down on the tracks and fell asleep.

A grand jury decided last week that the deaths instead were homicides. Dr. Joe Burton, an Atlanta pathologist who presented testimony to the jury, rejected Malak's findings and told the jury that congestion in the boys' lungs showed they were "injured, rendered unconscious or even killed" before they were hit by the train.

"It's not unusual to have a difference of opinion among medical experts," Moore said Friday. "We don't know where the truth lies."

(The board's action came before a Pulaski County coroner's jury took sharp exception to a Malak ruling in another case. The Crime Lab Board meeting was scheduled before the coroner's jury was called.)

Friday's meeting was the board's first with former Sebastian County Sheriff Bill Cauthron, who became director of the Crime Lab Aug. 1.

Cauthron recommended a raise for Dr. Malak in each of the next two years — his salary would go from \$81,000 now to \$95,000 in 1990.

Cauthron said he has confidence in Dr. Malak. "The only accusations against him have been in the media," Cauthron said. Of Burton's findings in the Saline County case, Cauthron said, "That's an opinion. The grand jury can rule anything it wants. In the final analysis, something's got to be proven in a court of law."

"If the grand jury chooses to believe one expert over another, is the one they didn't believe incompetent?"

The proposed pay raise for Malak is part of an increase in the Crime Lab budget that Cauthron will be seeking in the 1989 legislative session.

He said that before he agreed to accept Gov. Bill Clinton's appointment as Crime Lab director, he got a commitment from Clinton and Betsey Wright, the governor's chief of staff, that they were "going to help this agency and bring it up to standards."

Cauthron wants to add 15 new positions, to bring the total to about 75, but didn't have a dollar amount.

The new positions would include a third pathologist. Cauthron said the medical examiner's office will do about 600 autopsies this year. Since the end of June, when Dr. Bennett Preston resigned from the Lab's associate medical examiner's position, Malak has been the only pathologist.

Proposal would raise Malak's pay

Worth of position would rise \$14,000

BY BETH DEMPSEY
Democrat Staff Writer

The director of the state Crime Laboratory said Saturday a \$14,000 raise has been recommended for the state's chief medical examiner to allow Arkansas to be competitive with other states.

"The raise was for the chief (medical examiner's) position," said Bill Cauthron, the Crime Laboratory director. "It was an objective decision based upon what we need to be competitive with what other states pay. If the position is worth that much and Dr. (Fahmy) Malak is in that position, then that's what he should be paid."

Malak, the chief medical examiner, has been criticized recently for discrepancies in autopsies in two major cases. In both instances, Malak's findings were disputed by Dr. Joseph Burton, an Atlanta pathologist.

The raise is part of the Crime Laboratory's budget for the two-year fiscal period beginning July 1, 1989. Cauthron said the proposal was prepared before he joined the staff Aug. 1, although he sought additional raises for the medical examiners. The proposal was presented to Gov. Bill Clinton and his staff Aug. 25, he said, and will be considered in the 1989 legislative session.

Cauthron said there were no budget objections from the Crime Laboratory board during its meeting Friday. Cauthron said the Legislature should "remove personalities" when considering the proposal.

"I would hope they would be objective," he said. "This is what the state will have to have, regardless of who is in the position. We did an objective evaluation based upon what other states pay. That (the proposal) includes raising the assistant medical examiner's pay."

"That (money) is the problem we're running into in trying to recruit (an assistant). We have assistants coming in here that are drawing as much as our chief examiner, more including fringe benefits. That's what we made the recommendation from. The position needs to be competitive. It's void of personalities."

The Crime Lab has had just one pathologist — Malak — since the resignation of the assistant medical examiner, Dr. Bennett Preston, in June. Cauthron also is seeking funding for 13 new positions, including a third pathologist.

Cauthron said he backed the vote of support the Crime Laboratory board gave Malak on Friday.

After the board's vote, a Pulaski County coroner's jury decided unanimously that a beating suffered by Peter Robinson, 75, contributed to his death. Malak had earlier ruled Robinson died of natural causes.

Boys attacked before death, Saline County attorney says

Democrat State Desk

BENTON — Don George Henry apparently was stabbed and Larry Kevin Ives' face struck with a blunt instrument the night they died, Richard Garrett, Saline County deputy prosecuting attorney, said Monday.

"I have not seen the written report yet, but that is what I have been told," Garrett said.

Henry and Ives were struck by a train Aug. 23, 1987. State Medical Examiner Dr. Fahmy Malak ruled the train's impact caused the deaths. Atlanta pathologist Dr. Joe Burton publicly disputed these claims in a videotaped statement released Sept. 9.

Since then, Burton has had two photographs computer enhanced. These pictures are of two injuries the boys suffered. Garrett and Burton talked by telephone about the results

Monday.

Malak provided the photographs. Burton took them to a laboratory at the Dade County, Fla., Medical Examiner's office in Miami.

The enhanced photographs show that the puncture wound on the lower left side of Henry's back is definitely a stab wound, Garrett said. The wound matches a hole in Henry's shirt, he said. That hole was mentioned in Burton's earlier testimony. Henry apparently was not wearing the shirt when the train hit.

Burton also had a picture of an injury on Ives' face enhanced. Earlier examination had shown that this was a pattern injury, Burton had said. A pattern injury is a fracture which shows the shape of the object that caused it.

The photo shows what

caused the pattern injury, Garrett said earlier, but the type of object has not been released. Burton said in his statement that it was not caused by anything on the train.

Burton has also said that the amount of fluid in the boys' lungs was enough to cast doubts that they died suddenly.

After hearing Burton's statement in a closed session Thursday, a Saline County grand jury ruled the deaths homicide. They had earlier ruled the deaths probable homicide.

Burton has publicly contradicted Malak twice. The first time was in the videotaped testimony. The second time was at a Pulaski County coroner's hearing.

Photographs reveal wounds

By LYNDA HOLLENBECK
Courier Staff Writer

Forensic photographs indicate that Don Henry, 16, was stabbed and Kevin Ives, 17, was struck on the face with a blunt instrument before being run over by a freight train Aug. 23, 1987, according to Deputy Prosecuting Attorney Richard Garrett.

Copies of forensic photographs related to those deaths were received by Garrett Friday when an Atlanta pathologist was in the state to testify at a coroner's inquest in Little Rock.

Dr. Joe Burton, medical examiner for north metropolitan Atlanta and DeKalb County, Ga., had studied photos made during the victims' first autopsies at the state Crime Laboratory. Burton, who performed second autopsies on the victims' exhumed bodies, submitted those photos to the Dade Coun-

ty, Fla., medical examiner's office, where they were subjected to sophisticated microscopic scanning.

The photos are considered crucial to a Saline County grand jury investigation of the deaths of Ives and Henry.

"Each photo has been computer-enhanced of special injuries of each child," Garrett said. He has not received a written report Burton compiled in relation to the photos, but said he expects to receive the report within the next week.

Dr. Fahmy Malak, state medical examiner, ruled the boys' deaths accidental. Malak contended the boys had smoked a large number of marijuana cigarettes and were in a deep sleep that prevented them from responding to the sounds and vibrations of the freight train.

That ruling was challenged by the parents of the victims and

other medical experts who claim marijuana does not cause a person to lose consciousness.

After Garrett and Dan Harmon, special deputy prosecutor, enlisted Burton's help on the case, the pathologist testified twice before the grand jury. Burton publicly disputed Malak's ruling Sept. 9 in a videotaped presentation shown at the county courthouse to reporters and others.

In that videotape, Burton said Ives had sustained a pattern wound to his left cheek. Harmon defined a pattern injury as a fracture that shows the shape of the object that caused it. The specific pattern has not been revealed.

Burton noted that he had been particularly concerned about a shirt that had allegedly been worn by Henry, who was

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Jury

Continued from page 1

not wearing a shirt at the time he was struck by the train. The shirt, which was found some distance away from Henry's body, contained defects that were made by "something actually cutting the fabric," Burton said.

The defect in the shirt coincided with the area of Henry's back that had sustained a puncture wound, according to Burton. In addition, a number of red blood cells were detected around the margins of the shirt's defects, Burton said.

The pathologist said the defect in the shirt could not have been caused by its snagging on a crosstie or railroad spike.

Two days after the deaths, Rick Elmendorf, who was then chief deputy at the Saline County Sheriff's Office, said there was no evidence the boys were dead before they were struck by the train. No foul play was sus-

pected, said Elmendorf, who is now chief of the Benton Police Department.

During the February hearings, Malak testified that the boys had not been beaten, stabbed, strangled or shot and said he was certain they were alive before they were struck by the train. "They died from the crash," he testified on Feb. 22.

Malak was adamant in defending his theory that the boys were in a deep sleep or unconscious because of the quantity of marijuana they had smoked.

Last week, Steve Cox, a criminologist for the state Crime Laboratory, admitted publicly that lab administrators had dismissed questions he had about an apparent cut in the shirt of one of the victims.

Cox said he checked all of the victims' clothing and recalled noting the defects that Burton mentioned in the videotape. "I know for certain that I did

report punctures in the clothing. They just were not coupled with the body. I tried to reconstruct ... to see if damages to the clothing were relevant to injuries on the body, but was told there was no need to go any further."

A reconstruction was warranted because clothing defects by themselves are irrelevant, Cox said.

Cox said he also suggested that further tests be run on the clothing for bloodstains but was not allowed to do further testing.

According to Cox, three administrators — Howard "Bear" Chandler, Ralph Turbyfill and Kin Mischeau — told him there was no need to further examine the clothing.

Cox said he was told the agency didn't have time to investigate further and that "we need to get the case out."

Photos show other wounds on 2 train hit

One boy stabbed, the other hit in head

BENTON — Computer-enhanced photographs have identified a stab wound and a blow from a blunt instrument on the bodies of two teen-agers who were hit by a train in Saline County in August 1987.

Prosecutors said Tuesday that the photographs specifically show a stab wound on the lower left side of Don Henry's back. An enhanced photograph of Larry Ives' face shows an injury pattern that indicates he was hit with a blunt instrument. It is not known what the instrument might have been.

Deputy Prosecuting Attorney Richard Garrett said he received the computer-enhanced photographs Friday from Atlanta pathologist Dr. Joseph Burton.

Photos sent to Florida

Burton sent the photographs of the boys to Florida last week after testifying before the Saline County grand jury in a videotape Sept. 9. The Dade County Medical Examiner's office prepared the photographs in Miami.

In the videotape, Burton disputed State Medical Examiner Fahmy Malak's ruling that the

boys were killed accidentally while under the influence of marijuana. Burton said the boys may have been dead before the train hit them, and the jury said they considered the case a homicide.

Special Prosecuting Attorney Dan Harmon said they have several leads in the investigation. Burton will send a "more specific" written report in seven to 10 days, he said.

Malak refuses to comment

Malak was asked about the photographs in a telephone interview Tuesday. Malak said, "As I have said a hundred times before, no comment because of the grand jury gag order."

He declined to take additional questions from a reporter, saying, "I have no answers."

In February, Malak testified that he would quit his job if it turned out the two teen-agers were beaten to death before the train struck them. He made the comment during a hearing that was part of a public inquiry into the two deaths called by Garrett.

Clinton: Malak matter up to Crime Lab head

Gov. Bill Clinton said Tuesday he will leave questions about Dr. Fahmy Malak, the state medical examiner, up to the new state Crime Laboratory director.

Former Sebastian County Sheriff Bill Cauthron was appointed by Clinton and assumed the Crime Lab director's job Aug. 1. When asked if any action needs to be taken regarding Malak, Clinton said, "I want to wait and see what the new director has to say about that."

Two juries have taken sharp exception to Malak's findings this month. Newspaper articles also have raised questions about other cases.

In a Saline County case, Malak ruled that two teen-agers who were run over by a train had smoked a large amount of marijuana before they fell asleep on the tracks. A grand jury decided last week that the deaths were homicides.

In Pulaski County, a coroner's jury ruled Friday that a nursing home resident — whose death Malak ruled was by natural causes — actually was a homicide that resulted from a beating.

In both cases, Dr. Joe Burton, an Atlanta pathologist, was brought in to examine evidence and disputed Malak's findings.

Clinton, in a brief interview, said

he preferred to leave the Crime Lab's personnel matters to the director, and that he wanted to give Cauthron time to learn about the lab's operations.

Later, through a spokesman, Clinton noted that the medical examiner is hired and fired by the state Medical Examiner Commission.

Notes support

Clinton added in the interview that Malak "has a lot of supporters" and has done a good job despite understaffing of the lab. He said he would recommend a substantial increase in the lab's budget in the 1989 legislative session to make sure it is staffed adequately.

He said the lack of staff and deficiencies in facilities and equipment are "the biggest problems" at the lab. He said he wants to make sure "nobody is worked to the point of exhaustion, and that should solve most of the problems."

With support from the governor's office, the Crime Lab Board has hired out-of-state pathologists to review operations at the lab, but they are not reviewing specific autopsy findings by Malak.

Cauthron said last week that he will seek a pay raise for Malak and about 15 new positions in the 1989 budget.

Democrat Poll

378-7603

Sept. 22, 1988

Today's Issue

Gov. Bill Clinton has said he will leave questions about the fate of Dr. Fahmy Malak, the embattled state medical examiner, up to the new state Crime Laboratory director.

Today's Question

Should Dr. Fahmy Malak be fired?

How to Participate

To vote, call 378-7603 between 6 a.m. and 5 p.m. and follow the recorded instructions. Outside Pulaski County, call toll-free 1-800-272-4650 between 6 a.m. and 8 a.m. Questions or suggestions: Michael Storey, 378-3491.

Response

Yesterday's question was: Does your car average better than 11 miles per gallon? The response:

Yes 77.4 percent
No 22.6 percent

Democrat Poll

378-7603

Sept. 23, 1988

Today's Issue

Michael Dukakis has proposed a \$100 million plan to provide prenatal health care for uninsured women, saying the plan would save many millions more in the long run.

Today's Question

Would you support a prenatal care program to ensure the health of babies born to uninsured women?

How to Participate

To vote, call 378-7603 between 6 a.m. and 5 p.m. and follow the recorded instructions. Outside Pulaski County, call toll-free 1-800-272-4650 between 6 a.m. and 8 a.m. Questions or suggestions: Michael Storey, 378-3491.

Response

Yesterday's question was: Should Dr. Fahmy Malak be fired? The response:

Yes 81.2 percent
No 18.8 percent

Program to focus on train deaths

The August 1987 deaths of two Bryant High School students who were struck by a train are to be examined on national television.

The NBC program "Unsolved Mysteries" is to air the segment about Larry Kevin Ives and Don George Henry on Oct. 12, KARK-TV, Channel 4, the network's Little Rock affiliate, reported Monday night.

The program examines unresolved police cases and phenomena.

The August 1987 deaths of the two teen-agers were declared accidental by state Medical Examiner Fahmy Malak. But a Saline County grand jury investigating the deaths recently ruled them a homicide. The grand jury was convened after urging from the

'Vague' letter purports to describe assailants

By LYNDA HOLLENBECK
Courier Staff Writer

An anonymous letter sent to a Little Rock television station is being investigated by investigators and prosecutors involved in an ongoing grand jury investigation into the 1987 deaths of two Bryant teen-agers.

The letter was received by Mel Hanks of KARK-Channel 4.

"We'll see what it means, but it's so vague it's hard to check out," said Dan Harmon, special deputy prosecutor.

The letter could have been written by an amateur psychic, Harmon said.

The letter has not been submitted to the grand jury, therefore it is not considered grand jury evidence at this point, according to Harmon.

The letter describes two men whom the writer apparently believes caused the deaths of Kevin Ives, 17, and Don Henry, 16.

Under a heading of "Larger Man" is a physical description of a man, who is said to have a "large face with slightly pug nose and short, stubby fingers." He has "very little hair on body," the writer says. The man is said to live in Bryant with a relative and the writer claims his work is connected with a Bryant school, perhaps in the form of delivering items or custodial work. Included in a description of the man's clothing is "bronze belt buckle with emblem - very tarnished."

Under "Small Man," the writer gives a physical description of a man, who is described as "very hairy with sweet smelling cologne." He is also said to have "some accent — maybe Spanish" and "drinks a lot." The man is said to have rented an apartment in southwest Little Rock,

but has now gone to another place south of this area.

The larger man has never killed before, according to the letter, but says the small man killed someone when he was in high school "or when younger."

The letter contains a description of the boys' injuries and a description of the site near the railroad track where the boys were struck by a Union Pacific train at 4:25 a.m. Aug. 23, 1987, as they lay motionless near the Shobe Road crossing.

Saline County investigators believed the deaths were accidental and the state medical examiner's ruling coincided with that theory.

After receiving a report from an Atlanta forensic pathologist, the grand jury issued a statement that the boys' deaths are "definitely homicide."

Deaths of Ives, Henry topic of TV show

By LYNDA HOLLENBECK
Courier Staff Writer

The 1987 deaths of two Bryant teen-agers struck by a train are to be examined on national television next month.

The NBC program "Unsolved Mysteries" is to air the segment about 17-year-old Kevin Ives and 16-year-old Don Henry on Oct. 12, KARK-TV, the network's Little Rock affiliate.

The program examines unresolved police cases and phenomena. The segment focusing on the deaths of Ives and Henry will use excerpts from *Benton Courier* stories and interviews with families and friends of the victims, according to Chip Clements, a field producer for the television program.

Two days after the boys died, Saline County investigators said there was no evidence of foul play and the deaths were subse-

quently ruled accidental by the state medical examiner, Dr. Fahmy Malak.

Parents of the victims did not accept that ruling and contacted medical experts who had studied the effects of marijuana. They learned that marijuana, when used alone, does not produce a loss of consciousness.

The segment focusing on the deaths of Ives and Henry will use excerpts from Benton Courier stories and interviews with families and friends of the victims ...

Malak's contention that the youths were in a marijuana-induced sleep and could not respond to the sounds and vib-

rations of the approaching freight train has been disputed by Dr. Joe Burton of Atlanta, the forensic pathologist who aided investigators in solving the Atlanta child-murders case and the Ted Bundy slaying of sorority sisters at a Florida university.

In early February, Larry and Linda Ives and Curtis and Marvelle Henry held a press conference to share their concerns about the investigation into their sons' deaths. That event led to a February prosecutor's hearing conducted by Deputy Prosecutor Richard Garrett. Investigation continued and a grand jury was empaneled April 27 to look into the case.

Recently the grand jury issued a report in which it stated the deaths are "definitely homicide."

The boys were struck by the

Union Pacific train as they lay motionless, in identical positions, on a track near the Shobe Road crossing. According to members of the train crew, they were partially covered by a green tarpaulin, which county investigators said did not exist.

At the public prosecutor's hearing in February, Jerry Tomlin, the conductor of the train, testified that he had pointed out the tarpaulin near the scene of the crash to a county investigator, but said it was not picked up by anyone at the scene.

The investigator, Chuck Talen, said he did not recall that incident during his testimony at that hearing.

The grand jury will be in session again before September concludes, according to Special Deputy Prosecutor Dan Harmon. No definite date has been set, he said.