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Spence jurors to be asked about prejudice

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Staff Writer

Jurors expecting to hear opening arguments in the capital murder case against David Wayne Spence of Waco today will first be asked whether they've been prejudiced by comments made by the prosecutor in a local newspaper article.

State District Judge W.T. McDonald Jr. said he will question the 12 seated jurors and two alternates before ruling on a defense motion for a mistrial. It is the third motion for mistrial to be filed in the case that was transferred to Bryan from Waco on a change of venue.

Defense attorney W.W. Vance of Bryan claims in the motion for mistrial filed last week that McLennan

County District Attorney Vic Feazell violated an order governing the release of information in the case by granting an interview to an *Eagle* reporter. He alleges that comments taken from the interview and published in a Sept. 29 article violated terms of the protective gag order in several instances.

The protective order is designed to assure Spence a fair trial by prohibiting those connected to the case in an official capacity from discussing related facts publicly.

Spence is on trial for the July 1982 murder of 18-year-old Kenneth Franks in Waco. He has already been convicted of capital murder and given the death penalty in a related case.

At a court hearing Monday, Vance

said the newspaper article represented "another instance of prosecutor misconduct" and "a continuing disregard for the orders of this court." He asked that either a mistrial be declared or Feazell be jailed for contempt of court.

Feazell said specific facts about the case were not mentioned in the newspaper interview and that other information in the article was public record and could have been picked up elsewhere by the reporter.

"Apparently the defense counsel doesn't know how to read a newspaper article," Feazell said.

Feazell vigorously objected when Vance noted that the defense had earlier moved for a mistrial when it was alleged that the prosecutor had been

passing handwritten notes to Spence during juror selection. Feazell said it was never established that the notes had been passed.

But in a separate motion filed Monday, Spence alleges that Feazell did pass him notes which criticized the ability of his lawyers to represent him and pay attention in court. Vance and Walter Reaves of West were appointed by McDonald to represent Spence.

Spence used the motion to ask that his lawyers be dismissed for ineffective representation. He said he was suing Reaves for ineffective representation in a separate case and that both attorneys refuse to introduce evidence that he wants offered in the Franks case.