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Grounds For Appeal?

294 Convicted Murderer Protests 'Needle' Gesture

WACO, Texas (AP) — Prosecutor Vic Feazell readily admits that during a recent trial, he rattled a capital murder defendant by symbolically shoving a fountain pen at his arm as though administering a lethal injection.

"Prosecutors do that kind of thing all the time," the McLennan County district attorney said Tuesday. "It's part of the psychological aspect of the trial. It's what you call psyching out the opponent."

But the attorney for a 27-year-old man sentenced to die for the 1982 murders of two teen-agers doesn't find Feazell's antics humorous.

Attorney Walter "Skip" Reaves says he will appeal last week's conviction of David Wayne Spence in Bryan on grounds that a mistrial should have been declared because of Feazell's efforts to unnerve his client.

Reaves' motion for a mistrial was

filed after Feazell wrote notes — some that Reaves says ridiculed Spence's defense attorneys and the hopelessness of Spence's case — during jury selection.

Jurors took only 10 minutes to sentence Spence to die for the murder of Kenneth Franks. He now has been convicted of murdering Franks and Jill Montgomery, two of the three teen-agers found stabbed to death at Lake Waco in July 1982.

Feazell said his "needle" gesture occurred during Spence's first murder trial, which was in Waco. He readily confirms writing notes during jury selection of the second trial, but says they are not grounds for an appeal.

Spence was sitting next to Feazell, and the district attorney said he couldn't help it if Spence looked over his shoulder to see what he was writing.

"I didn't give Mr. Spence any

notes. He was reading my writing over my shoulder. They were just things that I had written down, and he peeked over and read them," Feazell said.

Reaves said one Feazell note said one death sentence might be all right in the federal court of appeals, "but with two, your coffin is shut." Feazell said he did not write a note to that effect.

Copies of Feazell's notes, scribbled on the back of juror questionnaires, were placed in the court's official records of the trial, but State District Judge W.T. McDonald denied Reaves' mistrial request. McDonald called Feazell's notes "rather innocuous."

The judge said at one point, one of

Feazell's assistant prosecutors got his words twisted and said, "You're presumed guilty until proven innocent."

"Everybody knew what he meant, and even some of the jurors laughed, but the defense didn't jump right up and object," McDonald said.

Then, the judge added, Feazell "wrote a note to Spence saying, 'You're drowning, and your lifeguards can't swim.' Meaning his attorneys were not doing everything just right."

Reaves said Feazell's notes caused mental anguish and trauma for Spence and so disillusioned him about defense attorneys' efforts that he tried to fire Reaves and co-counsel W.W. Vance five times during the trial.