

October 6, 2003

Contempt Charges Aimed At Defense Counsel

Kansas defense bar alleges intimidation

By Dee McAree staff reporter.

A defense attorney in Kansas is charged with contempt of court over evidence that he produced in a death penalty trial last year—an action some defense counsel in the state assert is an act of intimidation. About 15 members of the Kansas Association of Criminal Defense Lawyers packed into the Sedgwick County Courthouse in Wichita, Kan., on Sept. 24 to show support for him at arguments on the charge. The multiple murder trial involved one of the most notorious crimes in the state's history. The defense attorney, John "Val" Wachtel, 58, took on the case of Reginald Carr at the request of the Kansas Board of Indigent Defense Services. Carr and his brother, Jonathan, were accused of dozens

of criminal counts that included rape, robbery, sodomy and murder. The contempt charge against Wachtel stems from the prosecution's motion in limine - granted by District Judge Paul W. Clark—to bar the defense from introducing circumstantial evidence to rebut the prosecution's direct evidence of Reginald Carr's guilt. The brothers were accused of breaking into a Wichita home in December 2000. Two women and three men inside were forced to engage in sexual acts with one another, and the women were repeatedly raped. The victims were made to withdraw money from an automatic teller machine and were then taken to a soccer field where they were shot in the back of the head. Four died.

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One of the women survived and identified the brothers. They were sentenced on Nov. 15, 2002, to die by lethal injection. *State v. Carr*, No. 00CR2978 (Sedgwick Co., Kan., Dist. Ct.). In his opening statement at the trial, Wachtel asserted that a third party, not his client, had been Jonathan Carr's accomplice. He could properly make that claim only if he had direct evidence to support it. His evidence was an unidentified hair found at the crime scene, and his theory was that it belonged to the third person. But the prosecution introduced evidence that it was an animal hair. Also, Wachtel told jurors his client would testify, but he didn't. Those facts were the basis of the state's contempt action, filed eight months later, on July 9. Clark conducted a hearing last month, asked for written arguments by Oct. 28 and said he will rule shortly thereafter. Wachtel of Wichita's Klenda, Mitchell, Austerman & Zuercher, is one of a handful of Kansas private lawyers certified to handle death penalty defense work. His supporters allege that the contempt

charges are an attempt by the district attorney's office to intimidate lawyers who vigorously defend their clients, particularly in unpopular cases. "This is so far outside the norm," said the president of the defense lawyers' group, Steve Ariagno. "We typically expect contempt to be acted upon immediately in court. "Prosecutors say the contempt issue was brought up at the trial but that Clark said it would be taken up later so as not to interrupt the proceedings. "The DA's office is not a party to this action," said Kim Parker, who prosecuted the case. "It's between the court and Wachtel. "Parker said the contempt motion was filed at the request of the court. The suggestion that this is an intimidation tactic is "nuts," she said. Wachtel's lawyer, Roger Falk of Falk & Owens in Wichita, argued that his client made the opening statement about a third party in good faith, relying on DNA evidence from the unidentified hair and the belief that his client would testify. Falk, who is defending Wachtel pro bono as head of the defense

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lawyers' task force, said that the contempt proceedings will have a chilling effect on criminal defense lawyers. "Defense attorneys will hold back if they think they will be attacked," he argued. "Do you want a defense attorney who is timid and worrying about the possible consequences against himself when the government is planning a premeditated euthanization of the client?"

Parker said that Wachtel made statements in violation of the judge's order. "Wachtel has now suggested there was a reason for that," Parker said. "It's for the court to consider whether the violation was intention or unintentional."

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