

## COURT RULES

# Eavesdrop claims put case on line

By MAE GENTRY  
mgentry@ajc.com

During breaks and recesses in the high-profile murder trial of Scott Davis, the defense team used the empty courtroom to plot strategy and talk about witnesses.

They knew that CBS News had an audio-video feed running out of the court, providing "pool" trial coverage for all TV stations to use. But the lawyers didn't know the line was open when the courtroom wasn't. And they certainly didn't know that Fulton County District Attorney Paul Howard had tapped into the feed and was running it directly into his office in an adjacent building.

So even as jurors deliberated the guilt or innocence of Davis in the murder of Buckhead millionaire David Coffin last week, the judge had to decide whether to declare a mistrial because of what the defense termed "eavesdropping" by Fulton's top prosecutor.

Howard's office said that the DA wasn't eavesdropping, Superior Court Judge Tom Campbell denied the motion for a mistrial, and the jury found Davis guilty of malice murder and felony murder. Campbell sentenced him to life in prison. But his attorneys are unhappy



Fulton County District Attorney **Paul Howard** had a link into the media feed directed into his office.

> Please see EAVESDROPPING, E4

ASC 12-10-00

on a camping holiday with a man who owned the Engineer, which incorporates everything in the Scout knife plus tag clamp, wire cutter and pliers.... If that happened, then I'd probably pretend that I didn't have a Swiss Army knife at all, rather than be revealed as someone who could bend wire all day long but not actually cut it, and who was completely unable to tag any clamps — or clamp any tags, as the case may be.

### Limitless gadgetry

Just as you can't be too rich or too thin, I'd always thought, so you can't have too many tools on your Swiss Army knife — but that was before I took delivery of the new Giant Swiss Army knife. Grotesque, if superbly engineered, the Giant weighs about 2 pounds and features 85 devices in all. Unload this baby into the

traption.

The Giant is a real product, available for the very real price of \$1,200, but it is aimed at completists and collectors. One gadget Web site correspondent has balefully written, "I envision this monstrosity being presented as a rare 'salesman's sample' on 2310's version of The Antiques Roadshow." Wenger admits that its practicality is limited, and that its purpose is partly to promote the company.

Wenger was not the first company to make Swiss Army knives. That was Victorinox, founded by the Swiss cutler Karl Elsener, who was appalled to discover that the Swiss army was supplied with knives by Germany. He began making knives for his country's armed forces, and from 1893 faced competition from another

corkscrew.

long considered the most reliably vicious in Europe. The infantrymen of the Swiss Confederation were particularly skilled in the use of very nasty-looking pointy things, including crossbow bolts and the 18-foot pikes with which they fought off the Habsburgs at the Battle of Morgarten in 1315. (The pikes carried by the Papal Swiss Guard are an echo of this battle.)

### Got gun? Get knife

Every Swiss man is required to do regular stints of military service, and keeps his kit, including his gun and his knife, at home in between. The version of the knife that is actually issued to the Swiss army, by the way, does not feature a corkscrew. Versions with bottle openers, however, were particularly popular with American GIs, and today 50 percent of Swiss Army knives are

which surely is the classic Swiss Army knife tool. Imagine paying out \$1,200 for the Giant knife and to be sauntering down a road with it, only to encounter a man with a horse with a stone in its hoof. "Sorry, mate, I can help you," you'd have to say, "unless you think a golf divot repair tool might do the job." In fact, the stone-removing device is mythological, so the completist owner of the Giant needs to be embarrassed.

However, if you put to him — and of course it will be him — the suggestion that 100 fingernails could do with trimming, he will probably change the subject pretty quickly. The Giant was conceived too late to feature the new Wenger fingernail-clipping tool. Even so, other presents for practical-minded men are going to look pretty skimpy this Christmas.

# Eavesdropping: Claims draw murder

## ► Continued from E1

about the unusual affair, and one legal scholar suggested that the district attorney's special access may become an issue on appeal.

Howard's media feed came to light when the DA's office informed the court that Howard had overheard a conversation during a recess. Defense attorneys Brian Steel and Bruce Morris were livid. They protested that they had been given permission to use the courtroom as an office during breaks, and they were concerned that prosecutors might have overheard privileged conversations.

"The district attorney's office did not tell us, although they knew, that they were plugged in," Steel said. "It's a crime to eavesdrop on someone."

Senior Assistant District Attorney Sheila Ross told the judge that Howard had not overheard anything, except the one time his office notified the court.

"There is no eavesdropping," Ross said. "There is a media feed."

Before the trial began, Judge Campbell signed a court order, known as a Rule 22, that allows cameras in the courtroom. As the designated pool photographer, CBS News/48 Hours pro-



KIMBERLY SMITH / Staff

**Scott Davis** (center), who is accused in the killing of David Coffin, talks with a spectator during a courtroom break in October. Now his defense lawyers have brought up another issue, arguing that the district attorney was eavesdropping on their discussions.

vided an audio and video feed to other news organizations covering the trial.

### Questionable approval

CBS News Senior Producer Allen Alter testified earlier that the cameras were occasionally rolling when court was not in session.

Howard's office plugged into the media feed during jury selection. His spokeswoman said he has done the same thing on other major cases, because he doesn't have time to sit in the courtroom day after day.

In a sworn statement, Howard said he had asked CBS News to allow him to tap into the feed.

"I requested permission from CBS News/48 Hours to access the media feed equipment installed pursuant to the Court's Order dated October 2006," said Howard's affidavit.

But attorney Tom Clyde, who represents CBS News, told the judge that to his knowledge, no one at the TV network had given the district attorney or anyone else permission to link into the feed. (Clyde also rep-

resents The Atlanta Journal-Constitution.)

"CBS News is not responsible for designating who can and who cannot plug into the pool camera feed," Clyde said. "That is approval that's granted pursuant to the Rule 22."

According to Ross, the district attorney asked an employee of Fulton Government Television to connect his office to the courtroom through the media feed.

"He sent someone to the media room, where they got access — that's implied consent," Ross said.

### A risk of appeal

The judge said he would take the arguments about the alleged eavesdropping under advisement. It is unknown whether he will hold a hearing on the issue, as the defense has requested.

Ronald Carlson, a professor at the University of Georgia School of Law, said he knows that some judges have intercom systems that allow their clerks and secretaries to prepare research or documents.

"While there are some indications that there could be judicial overhearing, the defense is seeing a difference here where the adversary party does the listening," he said.

Carlson said if the defense



my knife — but took delivery of a Swiss Army knife. superbly engineered weighs about 85 devices is baby into the

ounded by the Swiss cutter Karl Elsener, who was appalled to discover that the Swiss army was supplied with knives by Germany. He began making knives for his country's armed forces, and from 1893 faced competition from another

nome in between. The version of the knife that is actually issued to the Swiss army, by the way, does not feature a corkscrew. Versions with bottle openers, however, were particularly popular with American GIs, and today 50 percent of Swiss Army knives are

the subject pretty quickly. The Giant was conceived too late to feature the new Wenger finger-nail-clipping tool. Even so, all other presents for practically minded men are going to look pretty skimpy this Christmas.

- 2.5-inch clip point blade
- 2.4-inch round tip blade
- Patented locking screwdriver, cap lifter, can opener
- Golf shoe spike wrench

- Fiber optic tool holder
- Can opener
- Toothpick
- Tweezers
- Key ring

# Eavesdropping: Claims draw murder trial into question

om E1

usual affair, and ar suggested that attorney's special come an issue on

media feed came he DA's office in- court that Howard d a conversation ess. Defense at- Steel and Bruce livid. They pro- ey had been given o use the court- ice during breaks, e concerned that night have over- ict attorney's of- tell us, although that they were Steel said. "It's a eadrop on some-

ssistant District ila Ross told the Howard had not thing, except the office notified the eavesdropping," here is a media

trial began, Judge ed a court order, ile 7" that allows room. As hotogra-



KIMBERLY SMITH / Staff

**Scott Davis** (center), who is accused in the killing of David Coffin, talks with a spectator during a courtroom break in October. Now his defense lawyers have brought up another issue, arguing that the district attorney was eavesdropping on their discussions.

vided an audio and video feed to other news organizations covering the trial.

## Questionable approval

CBS News Senior Producer Allen Alter testified earlier that the cameras were occasionally rolling when court was not in session.

Howard's office plugged into the media feed during jury selection. His spokeswoman said he has done the same thing on other major cases, because he doesn't have time to sit in the courtroom day after day.

In a sworn statement, Howard said he had asked CBS News to allow him to tap into the feed.

"I requested permission from CBS News/48 Hours to access the media feed equipment installed pursuant to the Court's Order dated October 2006," said Howard's affidavit.

But attorney Tom Clyde, who represents CBS News, told the judge that to his knowledge, no one at the TV network had given the district attorney or anyone else permission to link into the feed. (Clyde also rep-

resents The Atlanta Journal-Constitution.)

"CBS News is not responsible for designating who can and who cannot plug into the pool camera feed," Clyde said. "That is approval that's granted pursuant to the Rule 22."

According to Ross, the district attorney asked an employee of Fulton Government Television to connect his office to the courtroom through the media feed.

"He sent someone to the media room, where they got access — that's implied consent," Ross said.

## A risk of appeal

The judge said he would take the arguments about the alleged eavesdropping under advisement. It is unknown whether he will hold a hearing on the issue, as the defense has requested.

Ronald Carlson, a professor at the University of Georgia School of Law, said he knows that some judges have intercom systems that allow their clerks and secretaries to prepare research or documents.

"While there are some indications that there could be judicial overhearing, the defense is seeing a difference here when the adversary party does the listening," he said.

Carlson said if the defense

attorneys request a new trial or file an appeal, Howard's access to the media feed could be a key issue.

Gwinnett County District Attorney Danny Porter said he does not ever monitor the courtroom remotely.

"But we have had a video feed to our victims area in the [Wesley] Harris case," he said by e-mail. "We had court permission and the defense agreed."

DeKalb District Attorney Gwen Keyes Fleming has never gained access to a courtroom through her county's cable-TV station or by tapping into a media feed, said her spokeswoman, Adora Andy.

"I don't think we have the capability," Andy said.

## Disclosure significant

Keyes Fleming's predecessor, J. Tom Morgan, said he didn't plug into the media line because he didn't think it was physically possible, though he thinks it's a good idea.

"Had I been able to run a feed line up to my office just for convenience' sake, I certainly

would have," Morgan said. "I would have let the defense know just to be on the safe side, just to make sure they don't say things with an open mike."

Steel and Morris said that while court was recessed, they conferred with their client and discussed which witnesses to call, whether to put Davis on the stand and other issues.

But Ross argued that "there is no reasonable expectation of privacy in a courtroom," especially one wired by the news media.

Morris said he and Steel knew there were microphones in the courtroom but were unaware that Howard was monitoring the proceedings.

"That's where the problem lies," Morris said. "It was a viola-

tion of our privacy and the Sixth Amendment right to counsel."

Morgan, who is now in private practice, said that while he doesn't think Howard overheard the defense attorneys, they should have been told about his pipeline.

"The defense needs to know [to] be careful because the courtroom is miked and anybody can hear it."



Former DeKalb District Attorney J.

**Tom Morgan** says it's a good idea to tap into media feeds in courtrooms, but that the defense should be told.