



### SJC to hear Globe request for court criminal records of secretive hearings



LANE TURNER/GLOBE STAFF

### The John Adams Courthouse is home to the Massachusetts Supreme Judicial Court.

By [Todd Wallack](#)

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The Boston Globe's lawsuit to open up the records of thousands of closed-door criminal court hearings is expected to be heard by the Massachusetts high court this spring.

Justice David A. Lowy, who heard initial arguments in the case in late December, decided to refer the Globe's lawsuit to the full panel of Supreme Judicial Court judges in a [written ruling](#) this week. Lowy

said oral arguments should be scheduled for sometime in April.

“We are pleased that the Supreme Judicial Court has decided to review this important issue, and we look forward to presenting our position that the public has a right to access these records,” said Dan Krockmalnic, The Boston Globe’s general counsel.

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The Globe sued the heads of the Massachusetts’ trial courts last fall, arguing the public should have access to records in cases where clerks found more than enough evidence to issue criminal charges but declined to do so.

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The lawsuit arose from an investigation that began last year, [“Inside our secret courts,”](#) in which the Globe’s Spotlight Team found that Massachusetts is the only state in the country where clerks — many without law degrees — decide in private hearings whether to approve requests by police and others for criminal charges in district and municipal courts.

The hearings are typically closed to the public and the records are kept confidential, except in cases in

which clerks decide to issue criminal complaints and send the case to public arraignment before a judge. The process is so secretive that hearings typically are not listed on the public court schedules, and court officials frequently won’t confirm or deny the cases exist. Even victims are not always notified or allowed to attend the sessions.

During the December hearing, Globe attorney Jonathan Albano urged Lowy to issue an order opening up the records, or refer this case to the full court.

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However, Assistant Attorney General Eric Haskell, representing the heads of the trial courts, argued it would be premature for the SJC to review the case. He said the court should first give court officials a chance to review and revamp the procedures for handling clerks' hearings on their own. Trial Court Chief Justice Paula Carey recently [appointed a working group](#) of clerk magistrates and judges to review the process, saying the Spotlight report "raised issues that are worthy of fair consideration."

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Haskell said the court administrators were best equipped to address concerns raised by the Globe stories, using a "scalpel" not a "hatchet." He also said clerk magistrates should be able to use their judgment on whether to make the records public.

"One of the virtues of the current district court standards is that you have discretion as a magistrate to choose when to open up a hearing," Haskell said at the hearing.

In a three-page ruling, Lowy proposed a schedule for filings and arguments in the case, but did not explain his decision to refer the matter for full review by his colleagues on the seven-member SJC panel. The attorney general's office and a court spokeswoman declined to provide additional comment Wednesday.

The Spotlight report found that clerks rejected nearly 62,000 requests for charges over two years, including more than 18,000 where clerks acknowledged there was enough evidence to issue charges. The Globe also found a number of cases in which public officials, including police officers and elected officials, quietly avoided charges after the hearings. And statistics show the rulings varied wildly from one courthouse to the next.

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But because of the secrecy of the proceedings and records, reporters could not tell who else benefited

from the decisions to dismiss the cases or why.

The Supreme Judicial Court has [previously ruled](#) that hearings should generally be closed to the public, but urged clerks to make exceptions for high-profile cases when secrecy could undermine public confidence in the court system. Yet the SJC

has never considered before whether the court records

themselves should be withheld, particularly in cases where the clerks determined the allegations had merit.

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*[The Spotlight report] raised issues that are worthy of fair consideration.'*

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