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Kevin Spacey's lawyer goes after alleged victim's cellphone, DA's office

By [Matt Rocheleau](#) Globe Staff, Updated June 3, 2019, 4:29 p.m.

NANTUCKET — Kevin Spacey made a surprise appearance in district court here Monday, where his lawyer sought access to the cellphone of the man who has accused the actor of sexual assault.

Attorney Alan Jackson said he believes the phone contains exculpatory evidence and alleged that information on it had been deleted by Spacey's accuser or his mother, former Boston TV news anchor Heather Unruh.

When a state trooper [investigating](#) the case took possession of the phone from Unruh in 2017, she said she had gone through the phone to remove information about her son's "frat boy activities," according to Jackson.

"Are you kidding me?" Jackson said. "Why is Heather Unruh the holder of the keys? ... It's completely inappropriate."

He said the prosecution had never told the defense.

Cape & Islands First Assistant District Attorney Brian Glenny, who jousting with Jackson in the island courthouse, said the state "categorically denies" making any misrepresentations to the defense.

And in court filings Monday, the district attorney's office lobbed accusations back at Spacey's attorneys, saying they were using court filings to try to circumvent rules that prohibit lawyers from making statements to the media that could prejudice a case.

Spacey's team in filings Friday [accused](#) prosecutors of lying about and withholding evidence. They also raised concerns that the sister of an official in the district attorney's office is close friends with Unruh.

On Monday, prosecutors responded: "The defendant's motion is frivolous at best, and a not very well disguised attempt to get non relevant, non substantiated allegations to the media."

Spacey faces a felony indecent assault and battery charge stemming from a July 2016 encounter with a then-18-year-old busboy at the island's Club Car bar.

The two-time Oscar winner allegedly plied the man with drinks after his shift ended, unzipped his pants, and fondled him.

With one hand clutching a cup of coffee and the other in his pocket, Spacey strolled down the red-brick sidewalk into the courthouse alongside his lawyers on a pleasant, sunny morning.

Wearing a light gray suit, glasses, and a blue-striped tie, he didn't speak to reporters on his way inside or when he left in a gray SUV. Before the hearing started, he and Jackson whispered to each other, laughing and smiling at times. During the hearing, he showed little emotion.

Spacey wasn't required to show up for Monday's hearing and his appearance was unexpected.

The celebrity made a mandatory appearance at his [arraignment](#) in January; his [request](#) to waive the requirement that he attend had been [denied](#) by [Judge Thomas S. Barrett](#). His lawyers also tried to rush to have his arraignment held before the criminal case was known publicly. And Spacey did not attend two other hearings since the arraignment, which [drew widespread media attention](#).

Spacey has pleaded not guilty and his lawyers have denied the allegations as “patently false,” [describing](#) the encounter as “mutual and consensual flirtation, nothing more,” attempting to [discredit](#) statements the accuser made to police investigators, and [saying](#) the allegations may have been made up in an attempt to cash in through a lawsuit.

No lawsuit has been filed by the family, which is represented by Boston attorney Mitchell Garabedian, who is well known for representing hundreds of clergy sex abuse victims.

Garabedian declined to comment Monday citing the pending criminal case.

Part of Spacey's legal team's strategy has focused on getting copies of [information](#) from the man's [cellphone](#) and the phones of others he was in contact with.

According to police reports, the alleged victim used his phone to record footage of the incident via Snapchat. The alleged victim also texted and called his then-girlfriend the night of the encounter.

Jackson, a former Los Angeles County prosecutor who's still based there, said he wanted a “mirror image” that he believed prosecutors made of the alleged victim's phone. He also said he wanted the actual phone. He said he wanted the same for Unruh's phone.

He said he believed the prosecution released to him a more limited “extraction report” that he believed was inaccurate.

Jackson said that he hoped that if he received the phone his own forensic expert could resurrect items that had been deleted from it. "It's science, but it's not perfection," he said.

Jackson said that in one particular exchange, someone texted "Leave and go home" to the alleged victim who replied, "Should I, actually?," and later the alleged victim texted "help" and the word "picture," which Jackson said he believed was the man asking about getting a photo with Spacey. But according to Jackson, messages were deleted from that thread so that only the word "help" appeared when the phone was handed over to the police.

Glenny said the phone had been returned to the alleged victim or his mother.

Prosecutors said that for weeks prior to Friday they had been in contact with Spacey's legal team, ironing out terms for releasing the cellphone information they possess. Their plan was to turn that information over at Monday's hearing, which prosecutors did.

Glenny noted that discovery, or the process of sharing evidence in a case, was "ongoing" and further motions may be filed in the future, but said the current motion was not "timely."

"If there's an issue, let's address it," he said.

Barrett, the judge, said he hoped to rule on the defense's outstanding motions this week.

Jackson also sought to get the trial speeded up, saying of his client, "Every day that this goes on without resolution is a day that he suffers."

Barrett said, "Every other defendant, it's likewise a burden to them," and noted that some were in jail waiting for their day in court.

“I’m disinclined to let Mr. Fowler [Spacey’s given name] step in front of those people,” Barrett said. “He’s still one of the individuals who is in this queue.”

Barrett said a trial may be held in the fall. The next hearing was scheduled for July 8.

Spacey’s attorneys have also sought a copy of any surveillance footage from the bar. But the bar, which has since changed ownership, said in court papers Monday no footage exists.

Spacey’s lawyers have also raised concerns about how the island court’s clerk’s office didn’t send a copy of [rulings](#) the judge made on several pretrial motions on April 30 until May 29. Barrett said Monday he didn’t know what led to the “snafu,” and court officials have refused to answer questions about the delay.

The charge Spacey faces carries penalties of up to five years in prison or up to 2½ years in jail or a house of correction and a requirement to register as a sex offender.

The accusation emerged about a year before the criminal case began. In November 2017, Unruh [publicly accused](#) Spacey of sexually assaulting her son during an [emotional press conference](#).

The alleged victim, who has a different last name than Unruh, has been named in court records but the Globe does not identify, without their consent, people who allege sexual assault.

Spacey’s film career has imploded since the fall of 2017, after [numerous](#) sexual misconduct accusations.

On Christmas Eve, shortly after the Globe [published a story](#) online about the opening of the criminal case against Spacey, he surfaced in a [bizarre YouTube video](#) in which he appeared to assume the character of Frank Underwood, the ruthless politician he’d portrayed in the popular Netflix series “House of Cards.”

Spacey was cut from the show's final season amid the wave of accusations.

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