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Questions surface over Kevin Spacey's 'secret court' hearing









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NICHOLAS KAMM/AFP/GETTY IMAGES

Kevin Spacey in 2016.

By [Matt Rocheleau](#)

GLOBE STAFF JANUARY 06, 2019

Update: Kevin Spacey appeared in a Nantucket courtroom Monday for his arraignment. For more, [click here](#).

The Academy Award-winning actor Kevin Spacey has tried to limit publicity about recent sexual assault charges against him, and officials in the Massachusetts judiciary seem largely to have refused him preferential treatment.

But the Globe has found that in the months leading up to his arraignment — set for Monday — the actor's lawyers were given a special opportunity to have his case reviewed in a mini-trial-type setting where potential charges can be dropped and records kept out of public view.

Such hearings — overseen by clerk-magistrates and typically closed to the public — have been the focus of recent [Globe Spotlight Team investigations](#) into this often-hidden part of the state's criminal justice system.

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Even though Spacey's lawyers failed at that Dec. 20 hearing to derail the criminal case before arraignment, questions remain about why his attorneys were given the opportunity in the first place — and who initiated the idea.

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These proceedings, called “show-cause” hearings, are used primarily to assess if there is enough evidence to bring charges, and suspects have a legal right to these hearings only in misdemeanor cases. Spacey, however, was facing a felony charge.

Questions about this aspect of Spacey's legal proceedings come as the 59-year-old actor — known for his roles in the Netflix series “House of Cards” and the films “American Beauty” and “The Usual Suspects” — faces more than a dozen sexual-assault [accusations](#)

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His current case in Nantucket, in which he is expected to plead not guilty, surfaced in November 2017.

It began when a former Boston TV anchor, Heather Unruh,

[announced at a press conference](#) that Spacey had met her then-18-year-old son at the Club Car bar on the island in 2016, bought alcohol for him until he was drunk, and sexually assaulted him by sticking his hand inside the teenager's pants.

Spotlight: Inside the secret courts of Massachusetts

The Spotlight Team delves into the darkest corner of the Massachusetts criminal justice system, where the quality of justice can depend on where you live and who you know.



SUZANNE KREITER/GLOBE STAFF

In November 2017, Heather Unruh discussed the allegations that her son was allegedly sexually assaulted by Kevin Spacey. Unruh with her lawyer, Mitchell Garabedian, and her daughter, Kyla.

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Prosecutors [vowed](#) to talk to the alleged victim, and for months last year, State Police troopers assigned to the office of Cape and Islands District Attorney Michael O'Keefe quietly investigated.

A spokeswoman for O'Keefe's office said that a state trooper traveled to Nantucket District Court on Sept. 20 and presented the written results of his investigation to the presiding clerk, Donald Hart. As with other felony charges in District Court, the trooper was required to get the clerk's sign-off in order for Spacey to be formally charged in a public arraignment. For felonies, it is typically a review of the paperwork that outlines the main evidence.



NICOLE HARNISHFEGER/INQUIRER AND MIRROR

Nantucket District Court is located on the second floor of the downtown Nantucket Town and County Building.

The trooper's application for a criminal complaint showed he had interviewed the complainant and others with whom he had spoken that night about the alleged assault, as well as viewed a brief Snapchat video of the alleged incident.

But, prosecutors say, clerk-magistrate Hart raised questions about whether Unruh's son may have agreed in some way to a sexual encounter and wanted to speak to him.

"After reviewing the materials for a time, magistrate Hart indicated he had questions concerning the issue of consent and wanted to hear from the complaining witness and would require a show-cause hearing," Assistant District Attorney Tara L. Miltimore said in an e-mail.

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She insisted it was Hart — and never the trooper — who requested the hearing.

Miltimore did not answer questions about whether the trooper or anyone else from that office openly objected to Hart's reportedly ordering a hearing.

Miltimore also said the trooper told the clerk the alleged victim was studying abroad and would not be available until December.

Spacey's show-cause hearing stands out because he was facing a felony charge of indecent assault and battery. Massachusetts court rules set a higher bar for such serious charges to get a more informal — and typically closed — clerk-magistrate hearing, saying they can be ordered only if police request it. Typically in these proceedings, the clerks — many of whom do not have law degrees — are reviewing evidence supplied by police against someone who has not been arrested. Often, in a particularly controversial part of their work, they try to work out mediation-like settlements, in return for dismissing the case.

Hart, a former attorney in Weymouth and Holbrook who was [appointed](#) to his \$155,000-a-year clerk-magistrate post about five years ago, declined to speak to the Globe about the case.

"I'm not going to talk about it," said Hart, who retired in mid-December.

Other top court officials declined to comment, citing the case as a pending matter. Another clerk-magistrate, Brian Kearney, who ultimately held the hearing because of Hart's retirement, told the Globe that he was told by Hart that it was the police who requested the hearing.

Spacey's attorneys, Boston lawyer Juliane Balliro and Los Angeles lawyer Alan Jackson, did not respond to requests for comment.

Court records seem to back up the prosecutor's account. The application for the criminal complaint, filled out by the principal investigator, Trooper Gerald Donovan, does not show he checked any of the available boxes indicating a request for such a hearing.

As of last fall, the issue of these private clerk-magistrate hearings was starting to get substantial public attention.

In late September, [The Boston Globe's Spotlight Team](#) began publishing investigative stories that raised questions about this part of the criminal justice system, in which clerks operate largely in private and dismiss thousands of cases even when they find probable cause to charge someone. Many clerks, however, defend the system as a way for baseless charges to be weeded out, without stigmatizing the accused with unwanted publicity.

In the fall, the Globe filed a lawsuit against the heads of the trial court, asking that the files in cases in which probable cause was found but the charges were dismissed be made public. A justice of the Supreme Judicial Court, David Lowy, held a hearing on the case Dec. 27. Last week, he asked the parties for additional information and has yet to rule.



LANE TURNER/GLOBE STAFF

The John Adams Courthouse in Boston, which is home to the Massachusetts Supreme Judicial Court and the Massachusetts Appeals Court.

Some clerks who defend the system say their hearings focus on minor cases, but data show that one of eight cases involved felonies, including attempted murder, rape, and kidnapping.

Court guidelines say clerks should consider opening the hearings to the public in high-profile cases to promote trust in the system. But the Globe found a number of cases against public officials — and even a judge — in which the show-cause hearings were closed and the requests for charges were dismissed.

Spacey's hearing was held Dec. 20, and there is no indication anyone other than his lawyers, the trooper, and the alleged victim and his family were in the courtroom. A court official acknowledged that the hearing was never posted on a public court calendar.

An [audio recording](#) of that 36-minute hearing includes the clerk, Kearney, saying at some point that the hearing was "public." Kearney typically works in Natick District Court but was assigned to handle the Spacey hearing and other matters that day because of Hart's retirement.

Speaking by phone Friday, Kearney said he declared it "public" on his own that day — despite no advance public notice of the event — because it was "a high-profile case."

During the hearing, the alleged victim was present but was never called by Kearney to testify. Kearney oversaw what amounted to an informal discussion and a review of evidence, including hearing from the trooper and Spacey's lawyers.

Kearney ruled there was enough evidence to issue a sexual assault charge and scheduled an arraignment. Once that happened, Spacey's case fully entered the public realm — where virtually all court documents are required to be public and future proceedings are listed on a public court calendar.

Spacey's attorneys [tried to rush](#) his arraignment at the hearing's conclusion, saying the actor was on the island and could make his initial court appearance that afternoon. Kearney told them no judge was available and denied the request.

Spacey's criminal charges became public only after the Globe received a tipster's phone call and scrambled to verify that through calls, including to the Nantucket courthouse. Efforts to find online court records were hampered by the fact Spacey is listed under his legal name, Kevin Fowler.

On Dec. 24, District Attorney O'Keefe [confirmed to the Globe](#) that charges against Spacey had been issued.

Spacey's lawyers [subsequently asked](#) a District Court judge if the actor could be spared a public arraignment, saying the publicity would be prejudicial. But once the case was beyond the clerk-magistrate hearing, there would be little precedent for allowing Spacey to avoid public scrutiny. The request was [denied](#).

His arraignment is scheduled for 11 a.m. Monday in Nantucket District Court.

Todd Wallack of the Globe staff contributed to this report. Matt Rocheleau can be reached at matthew.rocheleau@globe.com. Follow him on Twitter [@mrochele](#). The Spotlight Team's coverage of the private clerk-magistrate system can be found [by clicking here](#).

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