

## Robert Kraft Has A Whole New Argument For Keeping His Massage Parlor Video Out Of The Public Record

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Photo: Jim Rogash ([Getty](#))

Robert Kraft *really* doesn't want you seeing the tape of him recorded by authorities inside the Orchids of Asia Day Spa where, according to Jupiter police, he [twice received sexual acts in return for money](#). Last week, his legal team tried arguing there were [pieces of the state's public record](#) law that prevented the video from being released. A motion filed by multiple media outlets [tore apart that argument in exacting detail](#)—the Florida Sunshine Law is very strong and assumes a record is public unless there is a specific exemption for it—so today Kraft's lawyers took a different approach. Now they are arguing that the recording by police never should have been allowed, therefore it should be suppressed from the criminal case, and for those reasons the judge should block it from being released to the public.

The motion to suppress isn't shocking; it's a defense lawyer's job to try to get as much evidence as possible thrown out, and illegally obtained evidence should be thrown out. In Kraft's case, law enforcement in Jupiter said they obtained a search warrant to place the cameras inside the massage parlor. But Kraft's lawyers argue in their filing that the videos are the "fruits of an unlawful sneak-and-peek search warrant." They outline in the motion multiple reasons they believe the videos were "obtained in flagrant violation of the laws of Florida and the United States."

Those reasons can be read in full in the motion, which is below. But here are some of the key reasons it gives:

- Law enforcement didn't try less invasive methods of investigation first.
- The low-level offenses involved make invasive recording methods "categorically unnecessary and inappropriate."
- The warrant didn't "hew to adequate minimization procedures." According to the motion, the warrant provided "no instructions for the video monitors to guide them as to when to stop recording, instead authorizing them to record *everything* that occurred while the cameras were on."
- Florida law doesn't allow wiretapping for investigating prostitution.
- The warrant was issued based on "misstatements" by law enforcement.

This is followed by an amended request for a protective order, again asking that the videos taken of Kraft not be released. This second try at a protective order focuses on the defense argument that the videos were illegally obtained, and therefore they shouldn't be allowed to enter the public record.

(It's worth pointing out that the case cited above, *Post-Newsweek Stations v. Doe*, is a ruling that ultimately said the names of men who solicited a woman for prostitution were public because the men lacked a strong privacy interest. You can read the entire ruling by the Florida Supreme Court [here](#) and a good summary done by Craig Pittman a few years ago for *Slate* [here](#). What Kraft's lawyers probably want to emphasize is a further part of that ruling, in which the supreme court [allowed the circuit judge to use his discretion](#) to decide if other records, [including videos taken](#), were public.)

And this claim that the journalists have "no legitimate right" to the video? While I understand that Kraft is likely not thrilled by the idea that video showing him, [according to police](#), getting a hand job is public record, I feel compelled to point out that the sunshine law—in fact most public record laws—aren't based around concepts of what journalists should and should not say or publish. They are in place to protect the rights of all citizens to see what the government they pay for is doing. Do journalists use these laws on a daily basis more than other people? Probably. But the same right the *New York Times* has to the video is the same right that Deadspin has to the video, *and* is the same right a totally random human being has to the video—as well as to almost any public record in Florida.

Yes, it's journalists who have asked to intervene, but that happens because that's the job. That's journalism 101—especially in Florida—fight for public records because not everyone has the money, time, and resources to wage those costly battles in court. Because defending the rights of the free press to operate as watchdogs on behalf of the public isn't their jobs—and I understand that's how this country's legal process works—Kraft's lawyers left that part out of their motion.

These requests, along with all the other ones you've read about, have to go before Palm Beach County Judge Frank S. Castor. The next hearing is scheduled for April 9.

The motion to suppress and the amended request for a protective order are below.