

New Hampshire Association of Criminal Defense Lawyers

October 21, 2020

** Press Release Regarding Disagreement With Court's Live-Streaming Policy

We have seen the Judicial Branch's press release about new live-streaming policies that allows an accuser to dictate when and if a criminal trial is live-streamed. While the press release says that the Judicial Branch worked with the defense bar to craft changes to the live-stream policy this is not entirely accurate. As soon as NHACDL learned that there were calls to limit public access to criminal trials we contacted the Court to share our concerns. We were assured we would be involved in the amendment process. Yesterday afternoon we were told of the new policy and that it was already being used in Belknap County. We saw the Court's press release this morning.

COVID has caused an unprecedented pulling back of defendants' rights. As we continue to rework how criminal trials are held in these times, it is unacceptable to limit to this extent the ability of the public to see what is happening in the courtroom. The limited capacity public access afforded by this policy does not constitute a public trial.

Especially concerning is that despite the presumption of innocence, the Court's policy gives the accuser the power to decide how and how much of a public trial a defendant will be afforded. This violates defendants' constitutional right to a public trial, which is guaranteed by the Sixth Amendment to the United States Constitution.

NHACDL is grateful to be able to collaborate with the Judicial Branch and prosecution as we all work to adapt to COVID necessitated modifications to court practice and we look forward to continuing this relationship. But our mission as advocates for criminal defendants will at times diverge from those our collaborators. This is one of those times. We will be proposing changes to the amended policy and hope the Court will respect our proposals as consistent with existing State and Federal case law about access to the courts and a defendant's right to a public trial.

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