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A Flattering Biographical Video as the Last Exhibit for the Defense

By **STEPHANIE CLIFFORD** MAY 24, 2015

GILROY, Calif. — About 3,000 miles from New York, members of a camera crew gathered around Anthony Quijada, trying to do for their not-famous, not-rich client what some high-priced lawyers are doing for theirs in New York courts: Make a video that can keep him out of prison.

Lawyers are beginning to submit biographical videos when their clients are sentenced, and proponents say they could transform the process. Defendants and their lawyers already are able to address the court before a sentence is imposed, but the videos are adding a new dimension to the punishment phase of a prosecution.

Judges “never knew the totality of the defendant” before seeing these videos, said Raj Jayadev, one of the people making the video of Mr. Quijada, who lives in this Northern California city of about 52,000 people. “All they knew was the case file.”

Yet as videos gain ground, there is concern that a divide between rich and

poor defendants will widen — that camera crews and film editors will become part of the best defense money can buy, unavailable to most people facing charges.

Videos, especially well-produced ones, can be powerful.

In December, lawyers for Sant Singh Chatwal, a millionaire hotelier who pleaded guilty in United States District Court in Brooklyn to illegal campaign donations, submitted a 14-minute one as part of his sentencing. Elegantly produced, the video showed workers, relatives and beneficiaries of Mr. Chatwal describing his generosity.

As he prepared to sentence Mr. Chatwal, Judge I. Leo Glasser said he had watched the video twice, including once the night before. The judge, echoing some of the themes in the video, recounted Mr. Chatwal's good works. Judge Glasser then sentenced Mr. Chatwal to probation, much less than the four to five years in prison that prosecutors had requested.

Yet efforts such as those on behalf of Mr. Chatwal are hardly standard. While every criminal defendant is entitled to a lawyer, a day in any court makes it clear that many poor people do not receive a rack-up-the-hours, fight-tooth-and-nail defense like Mr. Chatwal did.

Even in cities with robust public defense programs, like New York, lawyers may be handling as many as 100 cases at once, and they say there is little room to add shooting and editing videos to their schedules.

“It's hard for me to imagine that public defenders could possibly spare the time to do that,” said Josh Saunders, who until recently was a senior staff attorney at Brooklyn Defender Services, adding that lawyers there are often physically in court for the entire workday. He sees the humanizing potential of videos, he said, but “I would also be concerned that defendants with means would be able to put together a really nice package that my clients generally would not be able to.”

Mr. Jayadev's nonprofit, Silicon Valley De-Bug, a criminal justice group and community center in San Jose, Calif., believes that videos are a new frontier in helping poor defendants, and is not only making videos but also encouraging defense lawyers nationwide to do the same. The group has made about 20 biographical videos for defendants, one featuring footage of the parking lot where a homeless teenage defendant grew up. With a \$30,000 grant from the Open Society Foundation, De-Bug is now training public defenders around the country.

Given that a defendant has a right to speak at sentencing, a video is on solid legal ground, said Walter Dickey, emeritus professor of law at the University of Wisconsin Law School, "though the judge can obviously limit what's offered." Professor Dickey said that because, at both the state and federal levels, the lengths of sentences are increasingly up to judges rather than mandated by statute, it followed that videos that "speak to the discretionary part" of sentencing were having a bigger role.

Mr. Jayadev takes a standard approach to his projects: The producers identify the defendant's past hardships and future prospects, then select supporters or family members to describe those, usually in a visual context, like a pastor in a church pew. Mr. Jayadev said he found it was more natural to have the defendant talking to someone off-screen, rather than staring at the camera.

For Mr. Quijada, "this story is around this young man's transformation from a life that had sort of run its course," Mr. Jayadev said.

Mr. Quijada, 23, a former gang member with some arrests as a teenager, was paralyzed from the waist down in a 2011 shooting. In 2013, he was arrested and charged with possessing an unregistered gun.

For Mr. Quijada, a student at Gavilan College, a community college in Gilroy, a lot was riding on the video and his possible sentence.

His lawyer, Lisa McCamey, had filed a motion requesting that his gun conviction be downgraded to a misdemeanor from a felony. If the judge acquiesced, Mr. Quijada could hold onto his Section 8 housing. If not, that benefit would be in jeopardy.

In his wheelchair outside the life sciences building on campus, with Mr. Jayadev and his co-workers recording, Mr. Quijada gave a stiff explanation of how he wanted to reform himself and become a business lawyer.

“You don’t have to give a speech, man,” Mr. Jayadev said kindly. “It doesn’t have to be formal.”

“I’m driven to be commercially successful...” Mr. Quijada said, trying again.

“Take a deep breath,” suggested Fernando Perez, a De-Bug staff member, looking into the view screen of his camera. “Relax.”

Eventually, the videographers got the footage they were after, particularly when they followed Mr. Quijada to his small apartment. They filmed the collage that his sister made after their father died; they recorded his mother and sister talking about him as a child.

A few weeks later, De-Bug completed the nine-minute video. It opens with Mr. Quijada at Gavilan, describing, over a light piano soundtrack, his coursework at the college. (Until recently, De-Bug made sentencing videos available at no cost. When demand surged, the group began to charge lawyers about \$1,000 to \$3,000 per video.)

The videography is not perfect — there are some shots out of focus and some lighting miscues. But it gives a sense of Mr. Quijada’s life outside the courtroom.

At Mr. Quijada’s sentencing, Judge Edward F. Lee of Santa Clara Superior Court said he had not looked at the video. He stepped away to watch it but

made no mention of it after he returned to the bench.

Rather, Judge Lee questioned what made this case different from Mr. Quijada's previous arrests.

"Because I wasn't paralyzed, and I didn't lose my father yet, and I didn't realize that I don't have other people to depend on anymore," Mr. Quijada said.

Judge Lee denied the motion to reduce the felony to a misdemeanor, and sentenced Mr. Quijada to 90 days in jail. "I don't know if it made a difference to the judge or not," Ms. McCamey said of the video. "It made a difference to everybody else."

LaDoris H. Cordell, a former state court judge in Santa Clara County who is now the independent police auditor in San Jose and who has seen some of Mr. Jayadev's videos, said she would like them to be used more widely.

"I'm very wary, and I was as a judge, of the double standard," where wealthy defendants can afford resources that poorer defendants cannot, she said. "It is a problem, and what Raj is doing, these videos, is something that should be available to anyone who needs to have it done."

A prosecution, she said, "usually is a one-sided process, and now it's like the scales are being balanced out."

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