

## Lights, Camera, Criminal Defense: Lawyers Pick Up Cameras to Aid Clients

Wealthy defendants can hire video crews to help them argue for more lenient treatment. Public defenders are trying to get in on it, too.



By Karen Zraick

June 23, 2023

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The filmmaker set up his tripod outside a South Bronx public housing complex on a recent morning, recording traffic rumbling past aging buildings, playgrounds, older people greeting one another in Caribbean-accented Spanish and a growing line at a church food pantry.

A man walking by inquired about the purpose of the shoot.

“To get a person out of jail,” said Nicole Mull, a Legal Aid Society lawyer working with the filmmaker, David Simpson.

Ms. Mull and Mr. Simpson are at the forefront of an innovative effort to use documentary-style videos to get their clients more lenient treatment from prosecutors and judges — outcomes like shorter sentences or allowing people to be released as they await trial. Some are submitted as part of plea-bargain negotiations, in the hope of reducing a felony to a misdemeanor or to even get a case dismissed.

Such videos tend to be employed by wealthier defendants in federal cases. The production quality and cost vary widely, but a high-end video can easily cost more than \$10,000 — perhaps significantly more.

Now Legal Aid and a criminal defense clinic at Fordham University School of Law are trying to create videos for the defendants they represent: people in state court who cannot afford to hire lawyers, let alone video teams. They say that of the 23 videos they have submitted to the courts so far, 16 have helped draw what they see as favorable outcomes compared with initial offers from prosecutors. They expect to submit six more this month.



Mr. Simpson grabbed footage outside a South Bronx public housing complex, where a mitigation client had lived. Legal Aid makes a point of including context about the defendants' life stories. Kirsten Luce for The New York Times

“We’re trying to bring marginalized clients something that wealthier defendants who are facing charges are able to avail themselves of,” said Cheryl Bader, the Fordham Law professor who runs the clinic. “It’s a novel way of trying to advocate for clients.”

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Mitigation videos, as they are known, often include interviews with the defendant, their family and friends, as well as social workers and psychologists. They can be more than 20 minutes long; Legal Aid makes a point of including context about the defendants' life stories and the places they come from.

At Fordham, the students formed three teams, and each worked with a defendant on a video during the spring semester. Much of the time was spent on research to build a strong argument and planning on-camera interviews. The clinic is also open to social work and forensic psychology students who plan to work in the legal field. Students from the Center for Spatial Research at Columbia University have contributed research and data visualizations, while editing and postproduction are handled by the Legal Aid team.

The seed grant for the Legal Aid effort came from the Bertha Foundation, which finances film projects with a social justice angle. The human rights nonprofit Witness, which is focused on video and technology, provided support and mentorship. Jackie Zammuto, an associate director of programs at Witness, said that the organization's guidelines stress ethics and a restrained editing style without flashy effects.

"We'll often say things like, 'Don't include music,' because that can feel overly manipulative and can take away from what people are saying and be a distraction to the judges or district attorneys," she said.

One Legal Aid video was a motion to dismiss in the interest of justice, meant to help a 26-year-old defendant facing a drunken-driving charge stemming from a car crash that could have gotten him deported. The young man had fled gang violence in El Salvador as a child and was allowed to stay in the United States under the Deferred Action for Childhood Arrivals program. He allowed The New York Times to view the video for this article.

It begins in the living room of his family home, which is in full Christmas mode, featuring a tree with shiny ornaments, a snowman pillow, stockings with each family member's name, ceramic animals with shiny antlers and scarves on. The visuals drive home a central point: The defendant comes from a tight-knit family that is frantic at the prospect of losing him.

The video included photos of the young man teaching and volunteering with his church as his tearful mother, a psychologist and others attested to his deep remorse. The editors included maps that showed the long overland routes that migrants take to the United States, discussion of what they endure on the way and news clips about the continuing violence in El Salvador. The interviewees also detailed his contributions at work and at home, and talked about how he had already enrolled in addiction treatment and counseling.

The interviews even included the other man involved in the crash, who noted that he was uninjured and that the defendant stayed at the scene and immediately apologized. The man said deportation because of the crash seemed "a little extreme."

The case was ultimately dismissed because prosecutors had not met their obligation to move the case along in a timely fashion, according to Legal Aid.

One of the pioneers of video mitigation is Doug Passon, a lawyer in Scottsdale, Ariz., who began making them in 2005 as a public defender.

"The goal is not sympathy; it's empathy, to get the judge to see the world through my clients' eyes," he said. "Not to excuse the conduct but to help them put it into proper context — who the client is and why they did what they did and why, hopefully, they're not going to do it again. A lot of those stories we love to tell are redemption stories."

The videos replace or supplement a written memo and can be submitted directly to prosecutors during plea bargaining, which is how a vast majority of criminal convictions in New York City's courts are reached. Nearly 150,000 criminal cases were filed in the five boroughs in 2022 alone, according to the state Office of Court Administration.



The group from Fordham University and Legal Aid, who gathered for a meeting at the School of Law, has made dozens of videos on behalf of low-income defendants. Kirsten Luce for The New York Times

Both federal and local prosecutors said the videos remain so rare that it's hard to gauge their efficacy. According to Mark Allenbaugh, the chief research officer at sentencingstats.com, which analyzes federal data, the scanty records available nonetheless indicate a marked rise in the use of mitigation videos around the country, starting in 2015. In a recent search, he found that about 250 have been used in federal cases since that year.

When the videos are introduced, there's no guarantee that they will be warmly received by a judge. Seth DuCharme, a former acting U.S. attorney in the Eastern District of New York, said that he believes in-person testimony — whether from a defendant or a character witness — would always be more powerful than a video.

But Mark J. Lesko, who held the same title after Mr. Ducharme, noted that video can also be a powerful tool for prosecutors. His team used them against Keith Raniere, the leader of the Nxivm cult, to allow victims who could not travel to court to speak before sentencing. Mr. Raniere was later given 120 years in prison for sex trafficking and other crimes.

"In the digital age, I think it's inevitable that this sort of thing will expand," Mr. Lesko said.

Mr. Simpson and his colleagues are now focused on ways to scale up their project and figure out how to make videos more quickly and easily. At the moment, the student videos take an entire semester to create.

"We want public defenders across the country to be aware of this and not be dissuaded by the price tag," Ms. Mull said. "Every public defender office should have this tool."

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A version of this article appears in print on , Section MB, Page 1 of the New York edition with the headline: With Videos, Appealing to the Eyes of the Law