





Photograph by Candace diCarlo



LEGAL ZOOM-IN

Law professor and alumna Regina Austin loves star-attorney Perry Mason, but the students in her year-long Visual Legal Advocacy seminar are learning to make their cases from behind the camera.

BY JOANN GRECO

“I interviewed him on my birthday,” Rodney Holcombe says, leaning back in a chair at the Penn Law library as he watches the video clip on the screen before him.

“That was pretty heavy. Seeing him lying on the bed, hearing his family talk about how active he used to be.”

His classmate Esther Clovis picks up the story. “Yeah, it was this nice home, but he was basically living in the living room. His hospital bed was the first thing I saw when I came in.”



“I felt really weird going into this person’s home, carrying all of the equipment,” says Hayley Winograd, another student.

“But,” concludes Holcombe, turning to his peers, “these people really want you to tell their story.”

The three second-year law students are remembering their encounter with convicted murderer Michael Moore last spring while researching the issue of compassionate release, which allows seriously ill inmates to leave prison before their sentence is finished. They had also interviewed prison personnel, including a nurse and a chaplain, and several legal experts. But the powerful sight of Moore in the home of his sister, Deborah Hall—where he had come to die after serving 30 years of his life sentence—was an unsettling experience that moved the issue from a legal question to a human one. Moore, then 56, was terminally ill with cancer; he has since passed away.

In a close-up shot in the students’ resulting film, Hall recalls, “When I found out he was ill, I didn’t want to believe it.” The camera glides to a shot of Moore resting on a hospital bed as Hall tends to him, followed by another close-up, this time of Moore’s right leg in a shackle, as she continues speaking in measured tones. “It should be easier for people to come home and spend their last days with their family. They’re not going to hurt nobody—they’re dying. They need to be shown love.”

Holcombe, Clovis, and Winograd made up one of three teams participating in the 2015-2016 iteration of an unusual year-long seminar at the Law School. Called Visual Legal Advocacy (VLA), it’s taught by Regina Austin L’73, the William A. Schnader Professor of Law and director of Penn’s Program on Documentaries & the Law. Austin, whose work revolves around race, gender, and class oppression, created the program 10 years ago, after a long teaching career centered on social-justice issues. The seminar is a way to encourage lawyers-in-the-making to “contextualize legal disputes for legal decision-makers,” she says. “VLA allows clients to tell their stories in their own words, it expands the narrative possibilities and the vocabulary. In some cases, the client will have no other opportunity to put a human face on an abstract legal idea such as compassionate release.”

Only 12 individuals in Pennsylvania have won compassionate release since 2009.

That’s when state law was amended to make it tougher for prisoners to qualify for what became known as “medical transfer,” a term that was “more to the liking of victims and victims’ survivors,” says Austin. “The biggest change was the requirement that applicants have a very short life expectancy to which a physician should attest. Gauging that may be difficult. If the prisoner has to be at death’s door to apply, there may be little time for completing the process for release before the person dies.”

Loosening these restrictions has been touted as a way to ease the expense associated with housing aging prisoners and pro-

trification and community gardens in their documentary for the class. She says she was drawn to the VLA seminar because it seemed “completely different from other Law School classes.” In addition to learning about the subject and developing the technical skills to shoot and edit video, Burke adds that “the art of story-telling” is what will stay with her the most. “Being able to fit any issue into a story arc so it can be more easily digested by the audience will be invaluable in my practice,” she says.

In the first semester of the seminar, Austin focuses on viewings of the 20-minute documentaries created by past students and leads discussions about ethical



An image from *Mothers in Prison*, the most-watched video from the Penn Program on Documentaries & the Law, with nearly 30,000 YouTube views.

viding hospice care for terminally ill ones. “We’ve incarcerated so many people that we now have a huge aging population there,” observes Holcombe, who says he wants to pursue prison-reform work after graduation.

The discomfort that the compassionate release team experienced while making their film often comes with the VLA territory. “My students’ videos tell the stories of people who don’t make the local news,” Austin says. “Law school doesn’t prepare students for real contact with the material circumstances of the people they’re representing. They generally meet clients in the court or in their office, not on their [home] turf.”

That difference wasn’t lost on students like Marion Burke—who, along with fellow third-year students Frank White and Brandi Lupo—examined the conflict between gen-

issues to be on the lookout for: “How do we treat people who are the subjects of the films? What kind of information do you give them before you start, how do you get their consent, what should the consent form look like, what constitutes taking unfair advantage of the subjects?”

In addition, the class covers the nitty-gritty of copyright and fair-use issues involved in incorporating footage from other films into their work. Austin also sends crews out with still cameras to conduct man-in-the-street interviews, to get students into the habit of approaching subjects and to supplement an ever-growing library of stock photographs that teams can later use in their videos. Students spend the second semester making the film—from research to finding experts and subjects to shooting and editing the footage.

“We spend a good deal of time talking about delivering a legal message,” Austin says. “You start with individuals, then you situate them in groups and you see how different groups are competing with each other, and finally you look at the problem within the institutional context. There’s a capacity of documentary films to move back and forth from these various levels that I find really interesting.”

The class divides into crews, each one dedicated to exploring a single topic, chosen from a batch of ideas that Austin works up over the summer. “I may read something or have a conversation with a public-interest friend that piques my curiosity,” she says. One recent addition to the list came out of a discussion Austin and a few colleagues were having about a study examining how long it took imprisoned defendants awaiting trial to come up with the money to pay for their bail. She thought of a spin on the subject: how do people actually go about raising the money? “I don’t know if the kids will want to do it, but I’ll propose it,” she says.

A decade into the program, Austin has established the critical ingredients for a good advocacy documentary. “You want a nice crisp issue, a public-interest lawyer who has dealt with the issue, a grassroots group, and interesting subjects who may be clients of the first or members of the second,” she says. “You need to know what the law is on the ground, and have someone against whom to bounce ideas about what is and isn’t working.”

Occasionally, the students come up with their own ideas. For the third project of the 2015-2016 seminar, Christopher Kao, a sophomore pursuing a dual degree in computer science in the School of Engineering and Applied Science and marketing in the Wharton School, proposed a film contrasting the economic booster-ism surrounding fracking in Pennsylvania with charges of pollution and environmental racism.

“Chris is amazing, a sort of a prodigy,” Austin says. “I don’t usually allow undergrads in, but he had done a video of class orientation and I thought, ‘This looks pretty good, he’ll be all right.’”

But, she remembers, even Kao had some learning to do. “At one point, he couldn’t get people on the [pro-fracking] side” to talk, says Austin. “I said, ‘Fair use! They’ve got all these videos selling the [energy]

hub, we can take their video and just plug them in. Pro and con.” With that bit of advice, she adds, “He filmed this! He just knows how to do it.”

In today’s increasingly visual culture, might young people be more adept than ever at imitating the story-telling techniques they see everywhere? “Yes, that’s right,” Austin says. “Chris had been taking segments and putting them together. He’s got a good eye.” The same can’t be said for most law students, she adds. “I think my students are somewhat exceptional. Usually law students are people of the written and spoken word, but visual images—not so much. My law students have been totally talented. They’re good at working with people, with shooting, with editing.”

For example, the students on the community garden team found a “guru kind of black guy, who had been involved with a garden. He was good. Then they found somebody at the film school at Temple University who had taken pictures of a garden before it moved” to make way for development, she says. “So, they learn to do a different kind of research than they would if they were just writing an ordinary legal paper. They have to be much more imaginative.”

The variety of films in the 2015-2016 seminar is typical, says Austin, although she points out that sentencing topics, such as compassionate release, tend to re-occur.

Remembering a “wonderful” video on court debt (fines incurred at sentencing) filmed in 2012, she chuckles. “I don’t think anybody could have made a more interesting video on court debt than my students did,” she says. “And we’ve been fairly successful—after our film, that program was eventually stopped.”

Pay Up! Criminal Justice Debt in Philadelphia, created by Tom Isler L’12, Sam Saylor L’12, and Yaya Wu L’12, received Penn Law’s Benjamin R. Jones Award for outstanding contribution to the public interest.

“Regina’s class was a way for me to combine my interests in filmmaking and the law,” says Isler, who had studied at Yale under the legendary documentarian D.A. Pennebaker (*Don’t Look Back*, *The War Room*) and is now an attorney practicing in Denver. The class encouraged him to use his filmmaking skills in a “new way, toward new ends,” he continues. “I had the

opportunity to get out into the community and tell a story that was largely being ignored by the general public. The law isn’t just about lawsuits, contracts, or corporate deals—which is easy to forget when you’re in law school. It was great to get a different perspective on how documentary could be used to effect social and legal change.”

While Austin doesn’t enter the students’ videos into competition at film festivals—“we’re not auteurs here,” she says—they are uploaded to YouTube and Vimeo, and can also be viewed at the program’s own website (<https://www.law.upenn.edu/institutes/documentaries/>). The most-watched has been *Mothers in Prison*, with nearly 30,000 YouTube views. It begins with an imprisoned mother who was chained during childbirth.

The films are also distributed to the students’ sources and organizations working on the issues. *Between Worlds: Immigrant Women and Domestic Violence* has proven very useful to social workers, says Austin, noting that it won an award in a contest run by the Council on Social Work Education. Shikha Bhattacharjee L’13, Tsedey Bogale L’13, and Tarun Sridharan L’13, who made the 19-minute film, donated their \$500 reward to a Philadelphia nonprofit that provides social, educational, and legal services to immigrants and refugees.

Such achievements are especially noteworthy, given that many of the students haven’t had much experience with writing nonfiction narratives or shooting films. Besides being plagued by technical issues—muffled sound, jerky transitions—rough cuts can suffer from journalistic no-nos like throat-clearing introductions that take too long to get to the crux of the conflict, and notebook-emptying exercises that attempt to give every single person interviewed a piece of the action. “We always send them out with one of a few professional filmmakers that we’ve worked with for a long time,” Austin says.

Kao recalls a disagreement with Austin over the use of original drone footage in his project. “I had gotten a drone over winter break, and after watching other environmental documentaries that included lots of effective drone footage, I became passionate about shooting my own aerial footage of refineries and oil trains,” he says. “Professor Austin refused to allow us to do this, because she was worried about legalities of flying a

drone. Even when I called the FAA and airport security to clear things up so we could fly, she remained firm. Her logic was that instead of focusing on B-roll [supplementary footage], we should focus on our storytelling. We listened, and now I realize that she was completely right.”

Austin was born in Washington. Her mother was a hairdresser and her father was a government clerk. He disappeared from the scene when she was four, she says. As a child, she never “wanted to be a high school teacher, which is what black working-class kids aspired to.” The law appealed from early on, because “I loved Perry Mason,” she continues with a laugh. “I still love Perry Mason. I don’t know why. But he comes on at 11:30 at night and at 9 in the morning, so I go to bed and wake up with Perry Mason.”

(She also admits to being a fan of Jane Austen. “It’s very bourgeois, but she tells stories so cleanly and nicely, and she’s witty,” she says. A copy of *Eligible*, Curtis Sittenfeld’s modern-day variation on *Pride and Prejudice*, recently shared space on her desk with *Digital Rebellion: The Birth of the Cyber Left* and similar tomes.)

For her undergraduate degree, Austin attended the University of Rochester on a scholarship, majoring in history. When it came time to liberate her inner Raymond Burr, Penn Law beckoned with similar financial assistance. “It turned out to be a wonderful environment for me to study law seriously,” she says. “I had a lot of supporters who developed into supporters of me as a young faculty member, including Dean Bernie Wolfman. When you’re a first-generation college kid, you need people who understand the economics of your situation, as well as the isolation and fish-out-of-water sense. I felt well-protected at Penn.”

After graduation, “I guess I thought I would practice civil-rights law—if I practiced law,” she says. But after a short stint as a law clerk and then as an associate in a big firm, she realized that what she really wanted was to be a law professor.

She landed a tenure-track position at Penn and focused on torts and insurance, which led her to research the impact of social inequality, status, and culture on labor and consumer regulations. “I’ve written about shopping and selling by blacks as forms of deviance, street vending and

the informal economy, restraints on leisure as limitations on black pleasure and profit, the importance of preserving some aspects of informality in loan transactions, and the impact of the social significance of black people’s money on its material worth,” she says. “Everything I do combines law, culture, and economics.”

In much of this work, she relied on ethnographies—her favorite is the 1977 Paul Willis classic *Learning to Labor: How Working Class Kids Get Working Class Jobs*—because case readings did not provide enough information about the contexts that give rise to legal disputes, especially where race, class, and gender might be involved. “Real people do not necessarily think about their situations the way the law would like them to,” she says. “From ethnographies I moved to documentaries.”

From about 1993 to 2005, Austin lived in New York and commuted to Penn for work. She was then married to Manthia Diawara, a professor at New York University who was a professional documentarian. She never worked on Diawara’s films, she says, but “it put me in that world, and I

But for Austin it was a “blip in my career. It didn’t direct me; it misdirected me, if anything. That’s not me. I never believed that I was my own best cause, that’s just not part of my persona.” Obama wasn’t one of her students and in fact she never met him, she says. “I wasn’t a Harvard person. Penn was very supportive, they recognized that I was dragged into something that didn’t have anything to do with me.”

Austin uses what she calls law-genre documentaries such as Spike Lee’s 1997 *4 Little Girls*, or Christine Choy and Renee Tajima-Peña’s 1987 *Who Killed Vincent Chin?* in her other classes at Penn—“Cultural Conflicts and the Intention of Torts” and “Law and Documentary Media”—to encourage students to think about what happened before the parties got to court and what happened after they left.

“Under the case method, the students read a lot of appellate cases, which to a certain extent have been pushed through a wringer, which culls and dismisses as insignificant things that might be relevant to other people looking at the situation,”

“Real people do not necessarily think about their situations the way the law would like them to.”

began to understand the process and I got to meet people who were involved, including Louis Massiah, the founder of Scribe Video.” These days, Austin is co-chair of the board of that University City nonprofit, which is dedicated to using audio and video as an artistic means of social change.

Already tenured at Penn by 1990, Austin was offered a visiting professorship at Harvard University, where she began using films in her torts class. During her year there, she gained national notoriety when dozens of Harvard Law students—Barack Obama among them—demanded that the school extend tenure to a female minority professor and chose her as their exemplar. During the 2012 presidential campaign the incident gained prominence again when video footage surfaced of a young Obama speaking at one of the rallies.

she points out. “Are the parties Asian or white or black or Latino? Are they rich or poor? What else was going on in terms of socio-economic conditions? The law genre docs that I use put that back in.”

Take, for instance, Dan Klores and Fisher Stevens’ 2007 film *Crazy Love*, which looks at the case of a spurned lover who hired someone to throw acid at his girlfriend. “The students don’t necessarily read the case as a domestic violence case or view it in terms of disparities in policing based on gender,” Austin says. “But when they see the movie, they contextualize it in a way that deepens their understanding of the terrain upon which decisions are made. The same with *La Operación* [by Ana María García, 1982], a very controversial film about female sterilization in Puerto Rico. I show it in the context of talking about

consent by women to certain reproductive choices presented by physicians.”

Law genre documentaries “have a tremendous ability to educate the public and affect how they perceive the criminal justice system,” agrees Austin’s former student Tom Isler. “It’s valuable to be training lawyers to be able to use film to tell their own stories or, at least, to spark an interest in young lawyers that could lead to collaborations with more filmmakers down the road to tell legal stories.” Such stories are hotter than ever, he adds. “Think about the popularity of *Making of a Murderer* or the recent ESPN series on the O.J. Simpson trial.”

Penn’s Program in Documentaries & the Law and was born out of Austin’s desire a decade ago to “figure out how lawyers were actually using video,” she says. “I knew about day-in-the-life videos, I knew there were some filmmakers who were lawyers, like Frederick Wiseman. But when I investigated a little further, I discovered that there were lawyers who were making advocacy videos, and videos to build a case for settlement in personal injury actions, and clemency videos for people who were sentenced to death.”

She submitted a proposal to the provost’s office and received funding to establish a media lab in the Law School. All along, she realized that the effort to introduce documentaries into the Law School curriculum “wouldn’t succeed unless it had some payoff in terms of practice.”

In 2006, she published an article in Fordham University’s *Intellectual Property, Media and Entertainment Law Journal*, predicting that visual legal advocacy would become useful in “Social Security disability claims, workers’ compensation cases, victims’ rights advocacy, and any other legal proceeding where the central issue is the extent of an individual’s physical or psychological impairments and the circumstances that gave rise to them.” In addition, she wrote, such projects would be advantageous in matters where the context of a person’s life is at issue, as with petitions for pardon; adjudicatory contexts in which the lifestyle of the participants is at issue, like custody matters; and in everything from tenant disputes to eminent domain initiatives to community groups seeking greater attention from

governmental authorities with regard to environmental justice issues.

So far, she admits, visual legal advocacy has yet to catch on in the corridors of America’s big law firms. “I don’t think most lawyers are comfortable with the idea,” Austin says. “Cameras are a good tool for documenting what is in front of you, but the minute you go beyond the very literal and presume to operate in the realm of the figurative, you lose ‘em. They don’t get it. It hasn’t garnered sufficient support among the movers and shakers.” She pauses before ticking off the usual objections: “video appeals to the emotions, video can be technically altered in ways that can slant the meaning ...”

One arena where video has been embraced is in the settlement of large personal-injury suits. Martin Brigham, currently of the Philadelphia law firm Raynes McCarty, has been producing videos for 30 years. “There are a number of firms that use video settlement brochures as part of their work, although I am surprised there aren’t more,” he says. “But they are time-consuming, and they can be expensive, so only a relatively small number of cases merit the treatment.” A 15-minute film featuring computer-animated reenactments and expert witnesses can cost upwards of \$50,000 to make, he says.

The typical film offers a brief synopsis of an accident, summarizes the damages, continues with a look at liabilities, and concludes with testimony from experts to build a case for settlement. “It’s a great tool,” says Brigham. “You’re in the client’s home, so you can really understand their situation and how they’ve been affected. And you have to be disciplined in thinking about how to tell that story.”

Brigham remembers one burn case involving a young man whose clothes were set on fire when a vat of molten metal exploded. “The federal court judge had a stack of briefs that were, literally, about two-feet high,” he says. “And he had our DVD. He looked at me and said, ‘I didn’t read the book, but I saw the movie. Let’s get this case settled!’ You can make a complex, catastrophic case into a very simple, compelling story with a video,” Brigham concludes.

“Social-justice lawyering today is clearly much more than standing up before a judge and recounting facts and espousing principles of the law,” says Austin about her

focus on advocacy. “Lawyers are advocating for changes in the law, at the same time they’re representing people in court, at the same time they’re trying to persuade people who are ordinary citizens that the law ought to be changed, as well as educating people with regard to their rights.” Having audiovisual technology at hand to do this sort of thing, she believes, is “going to be an essential development for all lawyers.”

Austin remains an avid viewer of all kinds of documentaries, attending as many festivals and theatrical showings as she can. She’s always learning, too. This spring, for instance, she saw *Vaxxed*, the controversial film that purports to expose the cover-up of a (comprehensively discredited) link between childhood vaccinations and autism.

“What struck me was that it was almost a cult film,” she says. “I felt, ‘Well, where’s the other side?’ And I had to think about what the audience might think when they watch some of the work that we do.”

She pauses, then answers the question hanging in the air.

“So, why do we do advocacy films? We do them because we’re lawyers, and I think our ethical obligations are such that we have to have a certain commitment to respect our subjects’ interests. Now, that’s not to say that you have to wholeheartedly agree with them, or that they can dictate what it is that you do—you still maintain a certain amount of objectivity and control over the message that you convey. But I don’t think you can ethically ask somebody who’s in the midst of some kind of trouble or conflict to be honest with you and then turn around and go seek the other side. In the case of *Vaxxed*, the solution for me was to say, ‘All right, now I have to go find the other side. I can’t expect these people to present it. That’s something I have to investigate.’”

Commenting on her role as part of the first generation of black professors to make their way in formerly un-integrated schools, she says, “To a certain extent, we were there to make trouble, so I make trouble,” emitting one of her hearty laughs. Classes like VLA and her students’ documentaries offer a way to further that laudable goal “through a medium that can touch people outside of the institution,” she adds. “I find that to be quite fulfilling.” ♦

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