

BJA Body Worn Camera Training & Technical Assistance Jessica Mindlin

Kamya Raja: Hi and welcome to part 2 of our podcast with Jessica Mindlin, National Director of Trainee and Technical Assistance at Victim Rights Law Center. She will continue to discuss sexual assault victims, survivors and body worn cameras.

Todd Maxwell: A lot of the state, they are re-examining their laws now around this and it's - it would be interesting to see because they are maybe starting to define some of these changes and some of these laws for evidence, but then the trend seems to be putting more duty on the law enforcement agency (to redact all this data).

A lot of the things you were talking about to make sure it's clean, which takes time so it's going to be interesting to see how this all comes out.

Jessica Mindlin: And again, in many jurisdictions, that's being done after the fact.

Todd Maxwell: Right.

Jessica Mindlin: And in some jurisdictions, the police – the law enforcement may not even have the legal authority to do that redaction. It may be that it has to be provided. So, unfortunately this is happening after the cameras are already in use and not before.

Todd Maxwell: There are (simple) studies out there suggest BWC lead to a higher pre-deals and convictions related to domestic violence, some of those cases involve the prosecutor proceeding without the victims. How would you suggest prosecuted balance a victim's rights, while also ensuring criminals and prosecutors especially in cases where they try to intimate the victims?

Jessica Mindlin: Well, I think one thing that we have seen happen increasingly is sort of technology being used in ways that perhaps it doesn't necessarily need to be implemented. You know, we've had law enforcement doing great investigation, and highly effective police work for decades long before we had recording devices or body-worn cameras, et cetera.

So, I think they are sort of really kind of two separate questions here; and one is, prosecutors going forward over victim's objections or when the victims don't want to cooperate with the prosecution. And then the other is, what do we do in cases where we know that there is victim intimidation going on. And to me, I would separate those two discussions.

Todd Maxwell: OK.

Jessica Mindlin: So, in terms of prosecutor's proceeding kind of where the victims who don't want to cooperate, you know, again I completely own and embrace the fact that I come from this from a solely survivor – well not solely but primarily a survivor centered perspective, which is that individual survivors have to live with the consequences of other people's decisions. And I certainly recognize that there is a tension here, there is an inherent tension between prosecutors and law enforcement whose primary responsibility is accountability and community safety, and the needs of individual survivors in terms of what support do they need to lead safe lives that are free from violence.

And certainly, I take a broader perspective at one of my concerns is that I think we don't have sufficient safety that's in place that really makes it safe for victims to fully cooperate with law enforcement, and to be part of prosecution.

So for example, we don't have sufficient child care, we don't even have child care most of the courts for somebody who comes to court. We don't necessarily have employment leave laws that protect somebody's job if they need to come to court to testify. We don't have enough public assistance, so if somebody can't work or needs to return to work because of the isolation and/or victimization or limited jobs, skills, et cetera that they may have experienced during the course of that abusive relationship.

For sexual assault, even though we have emergency financial support sometimes for domestic violence survivors, we don't have that in most jurisdictions for sexual assault survivors.

So, in terms of prosecutions that go forward over victim's objections, I think we need to take that step back and look at holistically, what can we do in our communities or what can we do as a society or as a country to make it safer and to support individual survivor's efforts in cooperating with law enforcement.

So, in terms of the situation where you have perpetrators or abusers who are intimidating victims, again will say I come to this from that survivor centered perspective, which is that I want to see victims have a choice, have agency, have autonomy. But I also recognize that there is this inherent tension between what we and the advocate community may be seeking on behalf of individual clients, and the prosecutors having to do that weighing.

I would like to see us first have created a situation where it's much safer, economically feasible, et cetera for victims to come forward and to participate in the criminal justice process, and some of it is that they have to have confidence in it. And certainly, when they feel as if they are not having a right to make informed decisions, they aren't given information, they aren't given the individual, financial, social, religious, political support, that should be the first step.

Todd Maxwell: Yes, I can see the tension on both sides. You very eloquently stated the victim's issue. I can also working with a lot of prosecutors and law enforcement, I know they want to make sure that this perpetrator doesn't do it again, and so they have tension through the community and people to do their job, too. So, find balance, it would be interesting to see how it plays out and maybe implementing some of those things you mentioned would help, with cooperation.

And since we sort of slow down the two questions, how would you think a prosecutor would – should proceed on cases where the victim is intimidated, especially where the victims says she doesn't want to or the suspect is threatening to if there is kids involved, to take the kids away if she continues, this, becomes sort of a hot topic issue that's been coming up in one state we happen to go to because of fourth amendment laws. They were saying that, if somebody went through the home and is wearing a body camera that the –

even if the suspect happened to be the person that owned the home, he could tell them that he didn't want any recording done in the home which sort of leads to issues of, if you are trying to capture information, and he has the right based on their interpretation of the fourth amendment that you won't record in the home but they are the suspect, so it all sort of comes back into how would you advise prosecutors to handle issues like this where the suspects are potentially criminals are trying to intimidate the victims, and that's why they don't want to proceed.

Jessica Mindlin: Well, I have two thoughts; the first is there are probably people who are lot more qualified than need to be advising in terms of the prosecution side, but the other is, again what I mentioned earlier which is that these issues existed and prosecutions were conducted long before we ever had body-worn cameras.

In fact, before we had used - police officers or law enforcement were using recording devices at all in these situations. And certainly, there were abusers who are being prosecuted for witness intimidation, et cetera. And you know, I think sometimes we become so enamored with what technology can do, that we forget – that law enforcement had lots of great skills on which they relied even before the technology was ever being implemented.

What did they do in the past that was a good practice? Well, you would take the victim or you would take the witnesses outside, separate them from where the perpetrator was, (so) the perpetrator couldn't hear and ask whatever questions you needed to be asked unless this community, for example, they provide information on little cards about crime victim rights or about resources in the community to help domestic violence survivors, there may be an advocate who is present to provide support.

So, all of this information gathering and offering the support was in place before you needed to be doing recordings in the home, including in the home of the suspect.

Todd Maxwell: I get that. I guess the emphasis here is that, now that these cameras are out there, there has been a big push especially in (jury) trials that they want to see

videos, and that's part of the statement, it is powerful to them which may be an educational thing that we need to examine going forward.

But because of YouTube and all those incidents that even you mentioned have happened here recently. People are looking towards the video of it so that has become our natural inclination. And so, a video of a victim statement is a lot more powerful, and granted we have done prosecution for years without them, but it seems to be becoming the new norm, and that's sort of why from the background of this question is, if you have that ability to do it, how do you balance it? How do you balance the rights and the prosecution?

And it's a tough question, I don't want you to put you on the spot anymore with it.

Jessica Mindlin: Well, I mean, I will also say, I think that acknowledging and respecting Fourth Amendment Rights are critical. You know, I believe in victim's rights and I also believe in the constitution so...

Todd Maxwell: It's OK.

Jessica Mindlin: Yes. I was just sort of kind of not quite sure sort of how to add other than, I thought myself wondering, well where does it end? So, we started with maybe photograph - photographs or we started with just audio recordings. And again, just because you can do it doesn't mean that you should. And that maybe the moment is to try and educate Trier of Fact, to say we don't have this recording and here's why, and to be out front about that.

So in other words, you are not explaining it, just at the moment that you are standing in front of a jury saying, "Well, this is why we don't have video recordings of this even though you may see that on CSI or any other television show." But rather having that conversation in a broader context in lots of other forums so that you are not creating the expectation.

People's expectations get formed long before they are sitting in a jury box.

Todd Maxwell: Right. And maybe explaining like you mentioned earlier to them all of the issues with the victim being on here, and the further victimization would help towards their understanding of why this won't be provided.

Jessica Mindlin: You know, one example that comes to mind is that I'm guessing that you may and many others who may be listening to this, read the victim impact statement from the Stanford case.

Todd Maxwell: Right.

Jessica Mindlin: There is no photograph of the survivor in that case. There is no audio recording, there is no video. But I haven't spoken to a single person who have read that and didn't find it incredibly powerful and moving, and maybe even haunting.

Todd Maxwell: Good point. So, to finish up, we are just, I'm going to ask you, what do you think is the most important advice you would give to a law enforcement agency who is considering implementing body-worn program?

Jessica Mindlin: Slow down. Slow down the process either, as I said earlier, just because you can doesn't mean that you should. I think that we need to be very thoughtful in developing. We need to have policies and we need to be thoughtful in their creation. I think that the policies ought to be developed in conversation with various interest groups, both from the victim or not both because it's more than two.

So, from the victim and survivor, and advocacy communities, also from criminal defense and civil rights expert with representatives from communities of color and LGBTQ and other non English speaking and other marginalized populations that we shouldn't - there shouldn't be a rush to do this without thinking through what's the impact, what are the implications?

And how do we really develop a system that is both dedicated to and is implementing justice?

Todd Maxwell: Thank you for sharing all of your important knowledge on this topic with us. We encourage law enforcement justice and public safety leaders or agencies –

if these agencies (are interested in) learning more about the implementation of Body-Worn Camera Programs, visit the Body-Worn Camera toolkit at www.bj.gov/bwc.

This toolkit offers a variety of resources that agencies can use to help with the adoption and use of community engagement, policy development, data collection, officer training, and educational purposes. We also encourage those who do share and promote those resources with your colleagues and staff.

Lastly, all these resources and especially Body-Worn Camera toolkit has been designed as a national resource, your resource. So, please submit any ideas, the new content through the support – BWC link at the bottom of the home page.

This is Todd Maxwell from the Bureau of Justice Assistance Body-Worn Camera team signing off.

Thank you for joining us today.

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