

**BJA Body Worn Camera Training & Technical Assistance**  
**Jessica Mindlin**

Todd Maxwell: Hello again, listeners. This is Todd Maxwell, member of the Bureau of Justice Assistance Body-Worn Camera team. And today, I'm speaking with Jessica Mindlin, National Director of Trainee and Technical Assistance at Victim Rights Law Center.

Jessica Mindlin directs both the Victim Rights Law Centers National Technical Assistance efforts and the Victim Rights Law Center organ office which provides free legal services to protect survivors.

Jessica has (trained) thousands (inaudible) lawyers, help keeps professional law enforcement, other service providers across the U.S. on how to effectively identifying (news), the law to meet sexual assault survivors most urgent needs.

Her expertise on privacy issues for survivors has been recognized by the office on Violence Against Women and the office for victims of crime. Jessica is also presented (attorneys) workshops to U.S. Military, the National Assembly (inaudible) and to NGOs and government officials in Northern Iraq.

Jessica serves as an agent of law at both Lewis and Clark and Louisiana State University Law School. She has been active in the movement in (gendered) violence since 1970s.

Jessica, thank you for speaking with me today.

Jessica Mindlin: Thank you for this opportunity.

Todd Maxwell: Let's go ahead and get started unless you had any opening remarks.

Jessica Mindlin: Nope. Go ahead and I will just follow.

Todd Maxwell: OK. And you work with Sexual Assault Survivors and Victims, what would say is the biggest fear around BWC?

Jessica Mindlin: So, I want to start of by just saying that, on the one hand I don't think the concerns are the same for every sexual assault survivor in every community. And of course, I don't speak for all sexual assault survivors. That said, I've worked with both thousands of survivors and also the victim service providers.

And I think particularly with respect to Body-Worn Cameras, and the discussion happening right now. There's certainly a recognition that there's some very good things that come from the use of Body-Worn Cameras or BWCs, and particularly, I mean, we spoke earlier acknowledging the headlines today that as we have seen, that there is lots of concern in communities of color, around law enforcement and the shootings that have happened. But there is a need for transparency, and to promote trust both – and safety for law enforcement as well as for the communities that they serve.

That said, I think for survivors, there is great concern around the actual and potential breach of privacy, that results from the use of cameras. And it's a tension that we need to resolve, that we need to make informed decisions going forward. I mean, often time depending on the laws of a specific state or territory that the recording is maybe being made by law enforcement without a victim's knowledge, without a victim's consent to the recording being made, and perhaps limited if no understanding on what will happen with that recording afterwards.

Certainly when victims call 911 to report a sexual assault, whether that report is being made immediately following the assaults or in the hours, days or even weeks, months or years later; survivors are typically unaware of what may happen, where the possibilities of what will happen to the information that they share. And certainly, in that sort of recent post-assault period, it may not ever occur for them to ask questions such as with whom is this information going to be shared? Is there a recording being made, and what will happen to it? Providing all of this personal information, will the person who raped me have access to my address and my phone number, to the statements that I'm making, to the information about where I work if I'm providing that?

And certainly, they are not thinking about what it might mean to have not just the person who assaulted them, but friends or family members, or judges or jurors or even just the public at large, anybody being able to access that recording of them. And it maybe victims who are describing injuries that they sustained, they may be only partially clothed, or even unclothed. I think we have really sort of let the technology get ahead of us.

And survivors are understandably and very justifiably concerned about losing any kind of control or having any kind of input as to what happens once they reach out for help. And these are just, I think some of the examples I just gave of victims who choose to call law enforcement. And certainly, we know that with mandatory reporting laws, there may be victims who are minors, or adults who have a disability, or an older adult, where somebody else may have made the report to law enforcement on their behalf, either consistent with or over their issues or over their objections.

And for those survivors there is even less of any input into the decision or access to have an understanding of what may happen with the recording that is being made.

Sexual assault survivors tell us that one of the number reasons they don't report a sexual assault to law enforcement is their fear and their concerns around their privacy being compromised. They are more concerned about friends or family, or co-workers finding out about the rape or a sexual assault than they are concerned about getting pregnant, getting a sexually transmitted infection.

You know, we know that video and visuals, and audio are very powerful; and they are powerful for the community; they are powerful for Trier of Fact; and they are powerful for the victims themselves. And unfortunately, they are not always handled in a survivor centered way.

I mean, I remember our case a number of years ago that I was tangentially involved with and helping with where the perpetrators actually made a recording. They video tape themselves as they assaulted this woman, it was multiple perpetrators. And the judge was ordering this victim that she is

going to have to watch a video of herself being raped. And she refused and the prosecutor was absolutely adamant that she should have to watch it, and the judge threatened to hold her in contempt.

And the victim said, "I'm not watching it. I have no memory of what happened to me. I don't want to have to watch a video of myself being raped." And that's always stayed with me about the power that these recordings have. And obviously, in this case we are not talking about (inaudible) victims being raped but rather of their interviews in which they're recounting what happened to them.

Todd Maxwell: Right. So, how would you suggest that a law enforcement agency balance a victim's right to privacy, with the need to capture information using either a Body-Worn Camera or other type of recording device for evidence, and what cases, because it's becoming the practice now that judges and prosecutors are expecting this type of video and audio evidence?

Jessica Mindlin: Well, the first part for me is that, I think victims should be made aware; number one, when a recording is being made. And certainly in jurisdictions where, you know, two-party consent is required. Their consent should be secured before it's being made.

I think, in many respects, we have the technology that really has gotten ahead of any kind of critical conversation in terms of what are we doing with that technology, how are we using it. And information can be captured in so many different formats. And yes, it may enhance that prosecution for (witness) or victim statement to be on video, but it also maybe powerful to have photograph to have audio without the visual that we have all collectively played a part in creating these expectations. And I think there is a way in which we can ratchet them back down.

We can do public education around this podcast (is) trying to enhance understanding of why a victim may choose not to have his or her image being recorded. Or they may want to give statements rather than the audio recording.

We also need to recognize that once that information is out there, it can be used to further victimize the survivor. You know, just recently I was involved with a case where the perpetrator got access to the victim's medical records, and he and his family members shared them with dozens of other people.

And if I think helping certainly Trier of Fact to understand if this were you, you wouldn't want this video public on the internet or on the television stations, et cetera, to try and reframe expectations.

Todd Maxwell: Right. Well, earlier you mentioned the next question sort of goes around the advisor (and police) department thus developing those policies and what (inaudible). And I know you mentioned advising the victims that they were going to be recording and given the option to turn it off, but could you elaborate maybe some more on the different important advocacy issues that they should consider for their policy development?

Jessica Mindlin: Well, there are certainly a lot of different factors to consider. I think we have really are found ourselves in a situation where we have put the cart before the horse, and begun to use these video cameras without policies, without protocols, without public awareness campaigns in place.

You know, I have done this work for almost 40 years, and from the outset and remained really believe in the value of providing survivor centered response to sexual assault or to domestic violence, and information is power. And I think that we need to have some power with these really unique personal crimes being returned to the victims themselves.

So, as I mentioned earlier, victims are being informed in advanced that the interview will be recorded and ideally given a choice of whether the camera is on voice, whether it's on visual, whether it's on both. We need to –policies that address who has access to that tape; is it turned over to, for example, the defendant; what if the defendant is representing him or herself? In other words, proceeding pro se, do they actually get –given the physical tape, are they allowed to go somewhere to view it? How do we balance that in terms of defendant's rights?

Will the victim be able to get a copy of the video him or herself? You know, we know that a lot of sexual assault reports for example, don't go forward - the prosecution doesn't go forward. What if you have the terms who are interested in a civil case? Can they get access to it - does it determine (does) it rest on whether or not there's been a conviction?

If you have a victim who is a minor, who decides whether or not that victim may be recorded, is there a certain age cut-off? Do you look to like the mature minor doctrine where it's typically, you know, around the age of 14? There is increase in agency for the individual, is it a parent? Is it a guardian? Does the court decide? When is that decision made?

How do you, you know, obviously responding police officers you need to have a policy that they can implement right there on the spot. Does the victim have a choice to say, I want you to shut the camera off now? And do we educate them on what implications that may have in the context if there is going to be a criminal case?

You know, there are some jurisdictions where the cameras are on from the time that the officer starts work until the end of the shift, and that means it's on as they walk through emergency room, waiting rooms. What happens when they go in there? Some jurisdictions officers are at the hospital, and they are actually in the room when a medical forensic exam is being conducted. I don't think that's a good practice. Are we taping somebody's medical examination? Who is captured on the video, is it just the individual victim? Is it the support person, family members, medical personnel?

And then of course, the critical issue of who gets access to that video? Is it the general public? Are there any limitations that are going to be put in place under the law? (How do you get it) taken down if it's improperly put up? You know, we really sort of started using these cameras and making these recordings without fully thinking through what's the impact, what are the implications and what policies need to be in place, before we are implementing - they should have been in place before we started using them.

Todd Maxwell: Yes. And that certainly leads to our next question which is about foreign laws, and many states have these Sunshine Laws that dictate open record to the public. So, how does that conflict with the victim or survivors that want to have a voice in whether the video should be made publicly available to limit the victimization again?

Jessica Mindlin: It's a direct conflict. And again, I think it's a great example of where we began to use the technology without hitting the pause button which is what we should have done to say, "What laws are in place? Are there laws that need to be changed? Are there policies that need to be changed?" And then trying to affect those changes before we begin using the Body-Worn Cameras.

And as you note in the question, there are states or territories where the Sunshine Laws require any policy recording be made available, anything in their possession. And I think if victims were fully aware of this, it would have a tremendous negative impact on survivor's willingness to call law enforcement, to report crime, and that in turn would have a negative impact on the safety of our communities, for everyone.

So, I think we need to, again sort of what I would like to see is hitting that pause button and looking for each jurisdiction, what are the laws in my state or my tribe, or my territory, how do they implicate the use of Body-Worn Cameras, and then involving the community to decide what are the policies going to be given what the state of the law is, or do we need to change the law.

Kamya Raja: This concludes part 1 of our podcast with Jessica Mindlin, National Director of Trainee and Technical Assistance at Victim Rights Law Center.