

Bureau of Justice Assistance
Judge Barbara Mundell Body-Worn Camera Interview
6/19/2015

MICHAEL ROOSA: Hello, this is Michael Roosa, Senior Policy Advisor at the Bureau of Justice Assistants. Today I'm speaking with the Honorable Barbara Rodriguez Mundell as part of BJA's Body Warm Camera Podcast Series. Judge Mundell was appointed to the bench of the Superior Court of Arizona, Maricopa County, in 1989 and retired on May 31, 2010. Immediately prior to her retirement, she served a five-year term as the presiding judge for all trial courts in Maricopa County. In her tenure as a trial judge, she handled many case assignments, including civil, juvenile, family, criminal, probate, and mental health. She served on many Arizona Supreme Court committees, including past Chair of the Commission of Judicial Conduct.

Upon retirement, Judge Mundell participated in an international project for three years through the National Law Center at the University of Arizona, training Mexican State and Federal judges and attorneys in civil and criminal oral trials in Mexico. Judge Mundell, thank you for speaking with me today.

JUDGE MUNDELL: My pleasure.

MICHAEL ROOSA: So to start, can you explain how digital evidence from body-worn cameras is used in court and how it changed the course of practice for judicial officers?

JUDGE MUNDELL: Well, police take the video during the course of their jobs and if an event occurs where someone is arrested and charged with a crime and that case goes to trial, then the prosecutor and/or the defense attorney may introduce the video into evidence to help prove the defendant committed the offense he's accused of or clarified issues or show the defendant did not commit the offense. The video then is shown to a jury or a judge to directly show the actions of a defendant, police officers, and other relevant individuals to prove the case.

Generally, at least in Arizona, a recording is admissible if it is substantially accurate and a correct representation of relevant facts observed. How the digital evidence has changed the course of practice for judges is that now parties, juries and judges, we all have a visual of the evidence captured by the cameras. And this may very well lead to more plea agreements and less trials. And if a case actually goes to trial, then perhaps less witnesses will be needed.

MICHAEL ROOSA: Great. It sounds like there's a lot of aspects to cover there. What are the biggest challenges for judges when utilizing digital evidence from body-worn cameras?

JUDGE MUNDELL: Well, there are a few and first and foremost is the issue of privacy. A second issue is what happens when a video recording has been lost, destroyed, or a video recording simply wasn't taken when it should have been. Let's start with privacy. There is a reasonable expectation of privacy for most individuals such as victims, juveniles, confidential informants, witnesses, innocent bystanders, and sometimes, in certain situations, police officers. There also are locations where there's a privacy issue such as private homes, hospitals, restaurants, and places of security.

It's the responsibility of the court to weigh and balance expression and equitable considerations for everyone involved. That requires balancing a person's reasonable expectation of privacy against the defendant's right to due process of law and a fair trial.

Now regarding the issue of lost or destroyed evidence, each jurisdiction must look at its statutes, its state statutes, their court rules and case law, both state and

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federal, to determine what law is application. Some states have statutes in place to address this issue, but I found that most states do not.

MICHAEL ROOSA: Again, and it seems like there's a lot of complex issues going on. I would imagine there's significant case law relating to existing digital evidence, such as in car dash or cell phone footage. Can any of this case law be applied to the digital evidence for body-worn cameras?

JUDGE MUNDELL: Yes, and it's already being applied. When there aren't any statutes directly addressing body-worn cameras, many courts have turned to case law regarding in car dash cameras to use as an analogy to come to a decision on an issue. Many of the policy reasons police departments are using in car dash cameras are the exact reasons they've incorporated body-worn cameras into their work -- transparency, accountability, legitimacy, and improving the capture of evidence to present at trial. That's why the case law for in car dash cameras translates well for body-worn cameras.

MICHAEL ROOSA: So, again, with so many issues, how would you recommend a law enforcement agency that's implementing a body-worn camera program work or educate and train prosecutors, defenders, judges, and court staff?

JUDGE MUNDELL: First, they need to be deliberate, thoughtful and intentional in implementing a program. Second, they need to bring everyone to the table to discuss how to implement process, address issues and problems in the programs. I would suggest forming a committee with representatives from police, prosecutors, public defenders, the court, administrators, staff, civic leaders, and city council members. And this group would address many issues, including how law enforcement will designate in the computer system the cases that have videos from body-worn cameras so that the prosecutors will be aware that the evidence exists.

How the prosecutor will inform the defense attorney of the evidence and make it available in a timely manner. How council will submit the video recording to the court in a timely manner so that it's available for trial without the need for a continuance. How the evidence will be stored. Who will be able to view the evidence and how the public will learn of the new program. These are just a smattering of the issues that will need to be discussed by such a group because there are many, many more issues.

MICHAEL ROOSA: That sounds like a best practice in the making, but do you see any legal issues that will impact the use of body-worn cameras?

JUDGE MUNDELL: As I mentioned previously, privacy issues abound. It's important to strike a balance between transparency for police and privacy for citizens. Also what happens when video evidence is lost, destroyed, or there was a failure to preserve it? And what happens when an officer fails to gather or capture the evidence in the first place? I think these are the issues that will play out most in court.

MICHAEL ROOSA: All important. So for an agency considering implementing body-worn cameras, what would you consider your most important advice to give?

JUDGE MUNDELL: Since there are already a number of jurisdictions which have implemented body-worn cameras, I would strongly suggest looking at the protocols developed by the law enforcement agencies and see what issues have arisen for them. I would also suggest looking at each state statute and court rules and case law concerning the admissibility of a video recording in court and whether it is considered a public record, lost or destroyed evidence, privacy for individuals and locations, public records requests, and data storage. How long this evidence be preserved. These are all very important issues that need to be clearly thought out and addressed before implementing a body-worn camera program.

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MICHAEL ROOSA: An excellent list, thank you again. So thank you, Judge Mundell.

We are grateful you could speak with us today to share your knowledge on body-worn cameras.

JUDGE MUNDELL: Thank you.

MICHAEL ROOSA: We encourage law enforcement, justice, and public safety leaders whose agencies are interested in learning more about the implementation of body-worn camera programs to visit the Body-worn Camera Toolkit at www.bja.gov/bwc. This toolkit offers a variety of resources that agencies can use to develop with adoption and use for community engagement policy development, data collection, officer training, and educational purposes. We also encourage listeners to share and promote these resources with your colleagues and staff.

Lastly, all of these resources, and especially the Body-worn Camera Toolkit have been designed as a national resource, your resource. Please submit your ideas for new content through the PWC support link at the bottom of the homepage. Or email askbwc@usdoj.gov. This is Mike Roosa at the Bureau of Justice Assistants signing off. Thank you to our listeners for joining us today.

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