

Business Better (Season 2, Episode 12): Trauma-Informed Investigations, Part Four: Full Disclosure

Speakers: Jill Steinberg and Katharine Manning

Steve Burkhart:

Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host, Steve Burkhart. After a long career at global consumer products company BIC – where I served as Vice President of Administration, General Counsel, and Secretary – I'm now Of Counsel in the Litigation Department at Ballard Spahr, a law firm with clients across industries and throughout the country.

Steve Burkhart:

This is episode four of the “Trauma Informed Investigations” series, where we follow a fictitious story to address the legal and human issues that arise in an organization when confronted with allegations of sexual abuse. In today's episode, we discuss the process of conducting an internal investigation and retaining outside counsel, notification processes, and mandatory reporting and communications with law enforcement. Leading the discussion is my Ballard Spahr colleague Jill Steinberg, a Partner in Ballard's Philadelphia Office. Jill is joined by Katharine Manning. Katharine is the author of “The Empathetic Workplace: Five Steps to a Compassionate, Calm, and Confident Response to Trauma on the Job”, and the President of Blackbird DC. She has worked on issues of trauma and victimization for more than 25 years. So now let's turn the episode over to Jill Steinberg and Katharine Manning.

Jill Steinberg:

This is Trauma Informed Investigations, a podcast from Ballard Spahr. I'm Jill Steinberg, a partner at the firm and I'm joined by Katherine Manning. The intention of this podcast is to examine organizational responses to sexual abuse allegations from the perspective of individuals like us, who've handled these type of matters. For me as an attorney who investigated and prosecuted cases for many years, and for Katharine as an attorney and expert on trauma and victim's rights.

Jill Steinberg:

In the prior episodes, we used a hypothetical to facilitate our discussion. That fictional scenario involves the sexual abuse of a teenager at a camp that's being held on a college campus. We discussed how to identify suspect behavior, the role of witnesses to these events, and how they should respond. We also talked about the first disclosure of the abuse to a high school counselor, and how that person should respond.

Jill Steinberg:

In episode three, we engage an expert to address trauma in the brain and how trauma impacts disclosure and memory among other things. In this episode, we discuss the further and final disclosures to others, including the college that hosted the camp and the investigatory steps that should take place once the information becomes known to all the relevant parties. Greetings, Katharine.

Katharine Manning:

Hello.

Jill Steinberg:

Let's get our listeners caught up if they missed the prior episodes. Can you fill us in a little bit on what's happened in our fictional scenario up to this point?

Katharine Manning:

Absolutely. So what we have so far in the hypothetical is a 14 year old girl named Caroline who attended a prestigious debate camp one summer at the fictional Edgewood College in Wisconsin. The camp is run by a guy named Tim who is both an Edgewood alum himself and also a debate tournament judge. So this is a very high profile guy in the debate world. Part way through the summer Caroline's primary camp counselor, Danny, who's an 18 year old Edgewood student notices that Tim is paying an awful lot of attention to Caroline. He's buying her gifts, he's spending a lot of time with her one on one, they're walking together in the woods on the edge of campus, but he doesn't do anything about it. He just notices that's happening. And then they get to the end of the camp, so this is the kind of grand finale of this camp that takes place every year is they have a big debate tournament in Illinois. So remember the camp itself takes place in Wisconsin, the campers all go to Illinois for this big multi-state debate tournament.

Katharine Manning:

At that tournament, Danny walks in on Tim, the head of the camp, and Caroline, the 14 year old camper engaged in a sex act in a hotel room. Danny, at that point confronts Tim who denies that any abuse was taking place, basically says like, "You're wrong, you didn't see what you thought you saw." And Danny backs down and does nothing further. So then camp ends, Caroline returns home to Iowa and goes back to her regular high school. And when the school year starts, she has a conversation with her school guidance counselor where she discloses that Tim had indeed been sexually abusing her. The guidance counselor in the hypothetical receives that report, and as we discussed in a previous episode, we gave some advice around how to receive supports like that, and we also talked about mandatory reporting. That guidance counselor is a mandated reporter, so she has now contacted Caroline's parents to let them know what Caroline has disclosed. She's also contacted the police and she's contacted Edgewood College so that they're aware of these allegations.

Katharine Manning:

Now in this episode, we're going to talk about what happens next in the investigation with these entities that have now learned about this allegation of abuse. But before we go on, I just want to point out that right now, we don't have a lawsuit anywhere. We have one disclosure of an allegation. There are a lot of potential lawsuits that could arise out of that. Obviously, maybe a criminal action. There can be civil suits, Title IX proceedings. But as for now, in this point in the hypothetical, there has been no lawsuit filed. So Jill, I just want to ask you, how do you think the various entities involved, Edgewood, the camp, Caroline's school, what do you think they should be doing right now? Should they just wait and see if any lawsuit gets filed, or should they be taking some immediate actions right now?

Jill Steinberg:

They should be taking immediate action. First and foremost, there should be an assessment of where the alleged offender is and whether he has access to other children. Because the first reaction should not be, we need to protect ourselves and our reputations. We need to protect any other kids that might be out there. So where is this person, is he actively working with children and what do we need to do to reach out to the appropriate entities to make sure that is not happening anymore? So that's the first step that has to be taken. And so there needs to be an immediate assessment by the organizations, who do they control, what information do they have, what are the sort of baseline pieces of information that they need to acquire to make that immediate decision in a way that's intelligent? So that's the first thing that has to happen, and that should obviously not wait.

Jill Steinberg:

Each organization, of course, is in a different position. There's the entity that might employ the coach, which is a different entity than the camp, which is a different entity than the high school where Caroline is reporting this activity. So you have the entity that employees Tim that might or might not know at this point, but as soon as they find out need to act. The camp, which is sort of located or housed at this university, of course has its own obligations. Which is to get as much information as it can and to act on the information that it has. It might be to reach out to law enforcement. It might be also to start to look at its own resources to determine how it's going to undertake an internal investigating of what happened.

Jill Steinberg:

Some organizations might have a very robust group of individuals who are trained and able to handle this, but it's fairly likely that with something of this magnitude that it needs to go outside of the organization, because you'll need a number of people to do the kind of work that needs to be done to do this properly. They need to be trained and informed on how to do an intra-organizational investigation. They're going to need to have the bandwidth to do it, because it's going to take a lot of time in a short period of time to get it done because the allegations are so serious, and everyone in this situation is going to have to be really cognizant of the perception. The perception of objectivity and whether or not everybody who is in the situation and evaluating the circumstances have the appropriate distance and perspective to give the victim, her family, and the public an answer that has credibility.

Jill Steinberg:

And that's one of the things that in my opinion is often absent in these type of investigations, is the individuals who are doing it may subjectively feel like they're the right people for it. They might have good subjective intent, but ultimately when the report comes out, whether it's orally, or in writing, or however the information will ultimately gets out to the stakeholders, sometimes it is not well received because of the view that the individuals who are doing the work were not sufficiently objective or credible, or had the interests of the victims and their families at heart.

Jill Steinberg:

And that's something that I think is incredibly important, that even if you have the resources and you might think that you are subjectively in the right frame of mind to do it, you have to be aware of how the information is going to be received. And it's sort of in that spirit that I want to ask you, what do you think are the biggest problems that you've seen organizations make when confronting these kinds of issues? I mean, your background is as somebody who is supporting victims through trauma and an expert in victim's rights. From that perspective, how do you think organizations have erred? Not only in terms of the substance of the process, but how it's received.

Katharine Manning:

I think there can be a real cognitive dissonance when you hear an allegation against somebody that you know. And I think it can be very, very challenging for people if they've known someone for a long time, and they think they know that person really well, to then hear an allegation of some conduct that is horrific that this person has committed. And because there that is so dissonant in our minds, it is hard for us to wrap our minds around, "This is a person that I've known and worked with for five years. He is funny, he is kind, he is polite, he is smart." It is very hard for us to wrap that in with the idea that he can also be an abuser. And as you mentioned, that can make it very, very difficult to be objective. We want to believe that these are not true allegations because we can't square that with our perception of who this person is.

Katharine Manning:

So it can be very, very difficult to take a step back and say, "Okay, there is this allegation, and I have a responsibility as somebody who is a part of this organization to treat this allegation in a certain way." And that's why it's so important to have good policies and procedures in place so you aren't just making it up on the fly the first time you get an allegation. You want

there to be these standards that are set objectively, not just created with respect to a particular allegation against a particular person.

Katharine Manning:

In this hypothetical, we have a very beloved camp counselor who is well respected nationally. If the camp that is run by this man is being forced to come up with their policies and the procedures on the fly with respect to an allegation against Tim, that is possibly to be a very different process than they would've put in place if they had done this two years earlier and just thought in a vacuum, "How do we think these investigations should go?" So I think it's important that the organizations have those procedures and policies in place already, and that those are well communicated. Everybody understands what their role is and what they are supposed to do before you get to the particular facts of a particular case.

Katharine Manning:

The other thing I want to make sure that everybody understands who is involved with an allegation like this is the importance of maintaining privacy, both of the person who is the complainant, anybody involved whose witnessed this, the person who's the subject of the complaint as well. We want to make sure that this investigation unfolds in as fair a way as possible, and that means that we have to make sure that when we are interviewing witnesses, we are relying on their own personal observations and not what they may have heard from somebody else. So it's important as we are putting together an investigative team and thinking through how to conduct the investigation, that we are as mindful as it is possible to be about the privacy interests of everybody involved.

Jill Steinberg:

That's a good point, particularly when you have a small group of people who have congregated on this college campus for a specific purpose at a specific period of time. The rumors will start flying, and they'll be a great deal of temptation by people to speculate on who was the victim. And there might be people, of course, like some of the individuals that we've already discussed, who are going to know, and there's nothing you can do about that. But in terms of addressing other people who might come to the leadership of the camp, or the university, or the high school at issue, there wouldn't be a reason to disclose the name of the person. And even in interviewing some of these other witnesses, there would be no reason necessarily for them to know the identity of that person, unless you believed that individual to have been eyewitness between the coach and Caroline.

Jill Steinberg:

And as we'll see later in the hypothetical, it might be that there are other victims and the victims don't necessarily even need to know who those other individuals are. And so it's very important to be cognizant, again, it's one of those things, you might subjectively think that you're doing the right thing or have good intentions, but ultimately it's likely to backfire on you. And that's one of the other things about getting outside help. And by getting outside help and someone who has a little bit of distance from the situation, sometimes you can get some better decisions.

Katharine Manning:

Absolutely. I think it's important to as much as possible, try to approach these issues with a genuine curiosity and a desire to learn the truth. I think especially when it's our own organization, it's people that we know and care about, there can be a desire to push things along in a certain way, because you think, "Well, this is outrageous," and, "It's not fair that this person is being put through all this," and, "I know this couldn't be true." There can sometimes be a desire to move things along more quickly, or try to kind of push the investigation in one way or another. It's really important that you let the investigation go in the direction it needs to go, and really aim at trying to uncover the truth of the matter, what are the facts that were observed by people, what are the things that we are able to get evidence for? And as you said, it might be easier to do that if you are somebody a little bit further away from the facts at issue.

Jill Steinberg:

I agree. And once it's determined who is going to handle this in the organization, we talked a little bit about earlier, doing an assessment of your resources, doing an assessment of your objectivity, doing an assessment of the way that people who receive the information will take it at the end. Once you decide how that's going to fall out, one of the really important things, and it's something that we've mentioned in a prior episode is having a single point of contact once the investigation begins. One of the things that you see in looking at these various investigations that have happened in the past is oftentimes where these failures happen is in the ambiguity of who is responsible for what, and the fact that all these things aren't landing on one person's plate. When there isn't one person who's clearly accountable and responsible and it's too diffuse a responsibility, basically means no one's going to ultimately take responsibility.

Jill Steinberg:

And you don't necessarily want to be that person, but ultimately whoever that person is, is going to feel a very strong desire to move the process forward in a way that is efficient, but also is thorough, and is going to end in a result that is going to be as credible as possible. And I think we found ... I probably can speak to you in saying, I definitely found that in the government, is that sometimes the Congress passes these laws that basically make one person the coordinator of X subject. And I always was a little bit sort of ... I don't know, mocking of that, that every time there was a bill to solve problem, they made someone like the czar or the coordinator of it. But I think ultimately I've decided that might not be such a bad idea, because there is something to be said for an individual having ultimate responsibility, and I think that's a good lesson.

Jill Steinberg:

And one of the things that person is going to have to do is figure out exactly who needs to be contacted. Contacted in the short term, in the midterm, in the long term, and formulate a strategy for communication. And throughout all of this, of course, the victim and her family need to be constantly in the loop in terms of that communication. What is it that's happening? Why is it happening? How long is it going to take? There isn't a period of time of any length that goes by where the victim and her family are sitting at home wondering what's going on.

Jill Steinberg:

And that's something I've also noticed, not just in these cases that I've read about publicly, but also cases that I've had where I've had victims who have said, "I haven't heard from this person, whatever, X person, for a long period of time. What's going on?" And so I would talk to the investigator and say, "Hey, this person hasn't heard from you." They might perceive that they were clear in their communication and that they had projected to that person sort of what the timeline was, but that person is sitting at home, extremely anxious wondering what's going on. I would always err on the side of being more open, and if that person says enough, then that's when you sort of step back.

Katharine Manning:

I think that's such a great point, Jill. And we talked earlier about one of the things that can be really hard about being a victim is the loss of control, and so that sense of things are happening that I don't know about can just exacerbate that issue. But I also want to point out how you talked about choice, the victim having choice about how much communication they wanted. I think that's a great idea to say, "Would you like me to check in with you every month, every week? Do you want to only hear when there are updates?"

Katharine Manning:

And another thing that I recommend people do is talk to the victim about how they would like that communication to happen. Some people will say, "I want a text as soon as you know anything," other people might say, "Why don't you send me an email?" I've even seen people who have set up a separate email box just for communication about the investigation, because they don't want to be reminded of the investigation on an otherwise good day, just opening up their email box. So good communication with the victim, even around how you communicate with them is important.

Jill Steinberg:

I agree. And we've certainly seen in the cases that we've handled, that there are some victims who don't want to be notified at all. And I don't think there's a judgment to be made. I think the important things to have open communication upfront, and then to be checking in to make sure that hasn't changed and whatever the instruction is that you have from the victim, that's what you should be sort of abiding by as much as possible. And so one of the things that is going to happen in the course of your fully formed strategy by your single point of contact is, who is it that we talk to, in what order do we need to talk to them, and why is it that we're talking to them? And I want to dive a little bit into a legal concept of jurisdiction, but it's important, not just for lawyers, but it's important for everyday people to understand this, because this is another place where things can really go sideways.

Jill Steinberg:

For example, if you look at the USA Gymnastics report from the Inspector General's office about the FBI, one of the things that you see in that report is the fact that USA Gymnastics went to the wrong jurisdiction. And that's not taking responsibility away from the FBI, but that was one of the reasons why the case didn't move forward as quickly as it should have, among other things that were obvious failures. And so to be able to identify as a non-lawyer sort of where you go to and why is very important. So in this situation, we had a camp that's in Wisconsin, you have a sexual assault that occurs in Illinois at the hotel, although it certainly could have occurred where the camp happened as well, we just don't know that. And then we have Iowa, which is where the victim lives.

Jill Steinberg:

The location where the victim lives, frankly, is the least important in this situation, because a crime hasn't occurred there. And so one of the things that you should be focused on is where did the events occur? That's the most material to the investigatory process, because that's what we're talking about right now. And so where you need to go is probably Wisconsin or Illinois. Wisconsin might be the best scenario because that is where the camp happened, and you might have also some criminal conduct. That would probably be where I would start.

Jill Steinberg:

The other thing to think about is, okay, what is the law enforcement agency, to the extent we're talking about law enforcement. Again in the USA Gymnastics situation, they went to the FBI, but there might not have been a federal crime. And that's something else to know is the difference between federal and state crimes. Federal crimes generally involve communication across state lines or international events. Sometimes it can involve the use of the internet or the telephone, because those are communications that, even though they're electronic and you can't see them extend beyond state lines.

Jill Steinberg:

In this situation where you have a sexual abuse event that is a physical contact between two people, that's generally going to be a state offense. So it's going to be handled by your local police department or sheriff's department, whatever that might be. And so also understanding the difference between which states would be involved, which law enforcement organizations will be involved, will help guide who it is you should tell first, and frankly, potentially tell exclusively. Because one of the things that can go wrong is you have too many cooks in the kitchen, and you have people competing over who's going to work the case, and you get into a lot of complications in terms of coordination, and too many people being interviewed by sort of random individuals who are never going to ultimately charge or pursue the case. Another reason why it's good to have someone, likely from outside the organization with experience on these issues to help guide how that process works.

Katharine Manning:

Right. And Jill, in addition to the criminal action, there might be civil actions that can be moving forward at the same time. There could be a civil suit, perhaps brought by Caroline and her family, maybe against the camp, or against the college as a whole, or even against Tim individually. There might also be a Title IX proceeding. So Title IX proceedings are a little

different than civil cases. A civil lawsuit is something that would be filed in a court of law by a plaintiff against a defendant, usually seeking money damages or for them to take some action. A Title IX proceeding is a little different. Title IX is something that grew out of a federal statute, the Equal Access to Education Act, which guaranteed that people should not be discriminated against in their access to education on the basis of their gender.

Katharine Manning:

That act first was passed in 1972, but continues to be the law today. But there is now a really full administrative proceeding that goes along with ensuring that people have equal access to education under Title IX, and part of that means that colleges and other educational institutions are tasked with ensuring that people are not discriminated against on the basis of their gender, including by being subject to assault, harassment, stalking, violence on the basis of their gender.

Katharine Manning:

It is conceivable that there might be a Title IX action brought within Edgewood College by Caroline and her family challenging the actions of Tim in subjecting her to sexual abuse while on campus. Title IX is a very complex area of law that is changing and evolving every day. It's not clear that it would apply in this case, but I just wanted to flag for you that there might be multiple types of investigations that are going on. There can be the criminal action, maybe multiple criminal actions. There could be civil suits, again multiple civil suits, and there could also be Title IX proceedings, all happening simultaneously.

Jill Steinberg:

Yes, and there are also other things to consider as well. There's something called the Clery Act, which involves data gathering by colleges and universities about violence on campus, for example. And again, that's a very simplified for version of what it is that act requires. But it's one example of many things that might come to play. There are probably issues that relate to policies and procedures as it relates to behavior on campus that might have nothing to do with sexual abuse and assault, just good behavior ethics and good conduct that the university or the high schools who employ the coach might consider. There are probably certification and licensing issues for somebody who is a teacher that are implicated. There are a number of different things that are likely to be going on, and it's just good to be sort of cognizant of all that.

Jill Steinberg:

And again, in sort of your strategic plan, have every single thing that might be implicated sort of noted on your list of things to consider. Whatever the action might be, one of the really important things to do is to identify and retain data to the extent that's applicable. And it might be that you're thinking to yourself, "Well what do I have? I mean, I don't have this person's text messages. I don't have this person's emails." But you probably have more than you think. Here, for example, the college might have documents that show Caroline's application to the debate camp. So it shows her personal identifying information, her age. Of course, if there is a trial, someone else had probably testified to it, but nevertheless, it's good to have that kind of information. When did the camp start? When did the camp end? That can help bracket when the conduct occurred.

Jill Steinberg:

There could also be information about the travel to Illinois. Was there a bus that was taken, some other form of transit, that shows the transportation? That could mean an element of a criminal offense. So you'd want to be aware of that. Is there information in electronic databases or devices on campus that show going into a building, for example. If there's an allegation that there was conduct that happened inside of a dormitory, would someone have to fob into that dorm? Would it show her fobbing in? Would it show him fobbing in? That kind of thing. Is there video footage on campus that might show them together? There are all kinds of things that if you're very broad minded in thinking about these things, you can start the process of making a list and collecting.

Jill Steinberg:

And some of this stuff can be very time sensitive, because at least with security cameras, you find that sometimes they're overwritten within a week or a month. And so it's very important that to the extent that you have the ability to stop the process of these things being overwritten and retain it, retain it. Because as we talked about earlier, sometimes even if you have subjective good intent, when these mistakes happen, they can be interpreted the wrong way and people perceive that you might be trying to hide something, even when you're not.

Jill Steinberg:

So in this type of circumstance, you always want to be as absolutely careful as possible. A, because you're on a fact finding mission, you want to get to the truth, but also because anything that goes wrong is going to be perceived as being poorly intended, even if you do not intend it that way. And one of the other things to think about is once some of this information starts coming out and the investigation starts to unfold, do you want to set up a place for people to contact the college? And so do you want to set up an email address? Do you want to set up a telephone number for people to reach out, whether they might themselves be victims or have information?

Jill Steinberg:

So think about how it is that people are going to make contact with the entity that's doing the investigation, the individual that's in charge of the investigation. Then also think about how it is you're going to collect the information that then comes in through that email and through those telephone calls so you are collecting it in a way that's appropriate and you're retaining it for your own use or for the use by somebody else to the extent that you need it.

Jill Steinberg:

And then think about as you're going through this, and really ideally at the beginning, what is it that the ultimate output is going to be? In some of these very public reports, there's an intention from the very beginning that the organization will have a fully independent investigatory team and that the report will be published broadly, and that's why we can talk about some of these things on this podcast. But there are obviously a number of other organizations that will retain outside counsel, they'll have a full examination done, but that report is maintained within the organization. And so that's something that you need to think about for various reasons, is what is it that you want to do with this information? How public is it that you want to be, and why is it you that you want to go about doing it that way?

Jill Steinberg:

And there are so many different aspects to that decision making, I don't think we could purport to really cover it anymore here other than to say that it's very, very important to think about it. And whatever that end result is of that conversation, that dialogue about how public to be about the results of the investigation, I will say the sort of overarching theme always needs to be safety first. And so whether the report is publicly available or it's kept inside the organization, the purpose always needs to be ultimately that you're getting to the truth and that whatever the findings are, adjustments will be made to ensure the safety of people in the future.

Katharine Manning:

Absolutely, Jill, thanks for that. I want to move on now with our hypothetical. As we noted earlier, what we have so far is the guidance counselor who received the report from Caroline has now reported on to law enforcement, to Caroline's parents, and to Edgewood College. So now just moving on with the hypothetical, what happens next is this. Because the events at issue didn't take place in Iowa, which is where Caroline made the report, the criminal investigation proceeds slowly while various law enforcement entities do or do not effectively communicate. This is something that can be really challenging in a lot of situations. As we talked about earlier, the events at issue took place in Illinois and Wisconsin, but right now we have the Iowa police receiving the initial report.

Katharine Manning:

Meanwhile, the college begins their own internal investigation of the incident, which includes interviewing various instructors, co-instructors, students. And the investigators reach a preliminary conclusion that Tim has sexually assaulted multiple students over the past decade in which he has taught at the camp. So Caroline reported the incident with respect to her, but as the college conducted their own investigation of Tim and his interactions with other students, other campers, they uncovered multiple students who had also been previously sexually abused by Tim.

Katharine Manning:

At this point, the college decides they're going to need to bring in outside counsel. The conduct is significant enough and there are enough issues going on with various law enforcement agencies that they're going to need to have outside counsel. So they bring in outside counsel to take over the investigation at this point, meanwhile the victims, some of whom are still minors and some of whom are now adults, are being contacted by various individuals and entities to give statements and discuss the conduct.

Katharine Manning:

So remember, we've got multiple different investigations going on in the college, as well as criminally and possibly civilly as well. So the victims who are not the ones who originally came forward and disclosed this, right, Caroline is the one who came forward and disclosed. A number of these victims have never voluntarily come forward to discuss the abuse that they'd suffered, they are now being contacted by multiple individuals to talk about what it was that happened with Tim. Some of them are willing to discuss it and others either decline to participate or deny that it happened at all.

Katharine Manning:

Eventually there is a search warrant executed, Tim is arrested. And at that point, the case begins to receive media attention. This is a very prestigious debate camp that people are going to from all over the country, so we have multiple allegations of sexual abuse of minors, so you can imagine the press attention on this issue. So now there are multiple media outlets, as well as social media reports about this case. And some of the victims are being contacted by the press, as well as by other victims on social media. Some of them are trying to support one another and others might be actually attacking one another saying, "You were lying about this, that Tim didn't do anything wrong." This kind of attacking behavior could be from other campers, maybe who were not subject to abuse, but it also might be from some who were themselves subject to abuse, because part of the grooming process that we talked about earlier might be creating the perception of a special relationship between the abuser and the abused, such that they would then leap to his defense rather than see him be getting trashed in the media.

Katharine Manning:

So all of these things can be happening simultaneously, and I think can be incredibly overwhelming for everybody involved, in particular for the victims in this case, trying to navigate how do they manage multiple requests for their story, for them to meet with people, to talk about it as part of an investigation, or as part of a press story about the case? Jill, have you seen that happen?

Jill Steinberg:

I have, and it's a challenge. I mean from the perspective of a prosecutor, which is what I did for a very long time, you want to have a victim centered approach, of course. And that's sort of the premise of a lot of this podcast. At the same time as a prosecutor, of course, you want to have the best case possible. And so having your victim or any witness out there talking to the press can be enormously detrimental because that means that there are statements out there that can ultimately be used against a witness in court.

Jill Steinberg:

At the same time, if for some reason that feels like a process that person needs to go through or is somehow helpful for them, you don't want to limit them. And so my advice to individuals, it was mostly young people who use social media as a tool, and it's something that's so fundamental to their lives, that's less known to me because I did not grow up with it. But the idea of maybe don't post on social media, stay off of ... Well back then it was Facebook, of course, now it's something else. Maybe that's not something that's going to be welcome.

Jill Steinberg:

And so instead I left it open and said, "Hey, if this is something that's important to you, then I'm not going to tell you not to do that. What I'm going to do is just give you the information that you might need to make an educated choice. If you post about this, it might be that the attorney defending this person, who's alleged to have done this to you, might use it against you if you were to testify. It might be other people might see this and they might use in a way that's negative that you might not anticipate. And so you should do what's authentic and right for you, but if you could just let me know what you're doing so it doesn't surprise us, then that would be the best way for me to prepare you going forward."

Jill Steinberg:

And that's sort of where I landed sort of by the end of my career, when social media had become such a dominant force in our lives. I'd gone from a place where I was like, "Please don't," to realizing that it's such a fundamental part of particularly young people's lives that telling them not to do that was almost like telling them to sever a body part. And so trying to just be more sensitive to that and what might be therapeutic of about that, versus sort of the negative consequences and let them make that decision and just make sure to keep me informed so I know how to protect them later. What do you think about that?

Katharine Manning:

I absolutely agree, and I feel like we're coming back to the same themes again and again. The importance of communication, providing the information and letting people know the full ramifications of different choices, but then also giving them autonomy, letting them decide how they want to proceed. So to me those twin concepts of communication and autonomy are really central to the idea of a trauma informed investigation.

Jill Steinberg:

We were aspiring to end on a positive note, the episodes of this podcast, and I think autonomy is a positive note. And so I end it here and thank our listeners for tuning in, and we'll see you next time.

Steve Burkhart:

Thanks again to Jill Steinberg and Katharine Manning. Make sure to visit our website, www.ballardspahr.com where you can find the latest news and guidance from our attorneys. Subscribe to the show in Apple Podcasts, Google Play, Spotify, or your favorite podcast platform. If you have any questions or suggestions for the show, please email podcast@ballardspahr.com. Stay tuned for a new episode coming soon. Thank you for listening.