

Business Better (Season 2, Episode 24): Trauma-Informed Investigations, Part Eight: When Victims Speak Out--The Legal and Wellbeing Considerations of Victims Engaging With the Press

Speakers: Jill Steinberg, Kaitlin Gurney, Katharine Manning, Ariella Steinhorn, and Amber Scorah

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 eight of the “Trauma-Informed Investigations” series. In today's episode, we're joined by special guests Ariella Steinhorn and Amber Scorah from Lioness; a media company that brings to light the stories of everyday people dealing with corruption, harassment, and cover-ups. We discuss the inspiration for Lioness and the decision-making processes involved in their work with clients to publicly share their stories. Participating in this discussion are Jill Steinberg and Kaitlin Gurney, both of whom are Partners in Ballard's Philadelphia Office, and Katharine Manning, 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. So now let's turn the episode over to Jill Steinberg.

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 Katharine Manning. This podcast has examined a number of topics relating to organizational responses to sexual abuse allegations. From the perspective of individuals like us, who've handled these matters. For me as an attorney who investigated and prosecuted these cases for many years. And for Katherine as an attorney and expert on trauma and victim's rights. In past episodes, we used a hypothetical to facilitate our discussion. That fictional scenario involved the sexual abuse of a teenager at a camp that was held at a college campus. In some episodes, we engaged experts to address related topics, including trauma in the brain, child forensic interviews, and online victimization. Today, we are joined by a few amazing women to discuss the decision by a victim to come forward publicly about alleged misconduct and the legal and practical issues among others an individual faces when coming forward.

Jill Steinberg:

My law partner, Kaitlin Gurney, is a litigator who focuses on media law and white collar criminal defense. She defends media and entertainment companies and lawsuits alleging defamation and invasion of privacy. And she represents newsrooms in securing access to public records, documents, and court proceedings. Before becoming a lawyer, Kaitlin was a reporter at the Philadelphia Inquirer, The Charlotte Observer and the Raleigh News & Observer. And we are joined by Ariella Steinhorn, the founder and CEO of Lioness. And Amber Scorah, the co-owner and president of Lioness. Lioness is a storytelling platform and new media company that brings forward stories about what they describe as encounters with power. Ariella and Amber have worked on thousands of untold stories submitted by everyday people, including stories of corruption, sexual abuse, and harassment. Many of those stories would've gone untold or unnoticed without their help. So thank you all for being here today, I really appreciate it.

Jill Steinberg:

This is a great way to conclude, or at least start to conclude, these podcasts. We've discussed various aspects of the investigatory process that arise from allegations of sexual abuse of misconduct in an organization. And now we discuss whether an individual comes forward publicly with his or her allegations, and the issues to consider if they do come forward. Will you tell a bit about your backgrounds and what inspired you to create Lioness?

Ariella Steinhorn:

Sure. I'll start. This is Ariella. Thanks for having us. So my background is actually in public relations, which is sort of a weird trajectory. Most people go from journalism to public relations, not the other way around. So I worked at a number of big tech companies, including Uber, in the early days and subsidiaries of WeWork and Ford Motor Company. So I really got to understand how usually powerful entities would use narrative to their advantage. And I had had something happen to me in a workplace that brought me to hire an employment lawyer, which I never thought that I would've needed when I first started out in the workplace. And in hiring the employment lawyer, I realized how important it is to have support outside of your workplace from lawyers, therapists, just people outside of your workplace, who can help you navigate something difficult. Because as we all know, or as many of us know HR works for the company, not for you, even though they claim to work for you.

Ariella Steinhorn:

And that's something that I learned the hard way a few times. So I became really interested in employment law and helping people who had been through something difficult find those sorts of resources to navigate out of a really bad work situation. And I decided to marry my PR background with my newfound interest in employment law. Especially having seen so many stories signed away by non-disclosure agreements and figure out how to help stories in the workplace see the light of day, if people wanted to tell those stories and bring that information to light. So that's where the idea for Lioness was born. It started out as this intermediary between journalists and sources, usually workers and employees and people who had information to share in the public interest or just information holding power to account. And figuring out how to help these people bring that information to journalists, realizing that most people have no idea how the media works.

Ariella Steinhorn:

Great algorithms. So yeah we launched just as this very nascent idea, would people need this sort of resource to help them tell their stories? And it turns out that they did, they really wanted this advice. They really wanted this council and Lioness became this clearing house for stories of people who thought that they wanted to go to the media, but weren't quite sure how to go about doing it or stitching their stories together or accumulating the right evidence. And we were just inundated with all kinds of people who had stories to tell. And then I met Amber very soon after launching on LinkedIn, which we call the Tinder for co-founders.

Amber Scolah:

Great algorithms. I actually kind of came to this idea of understanding how much the power of a story that connected to something that was in the larger culture. How the act of doing that could actually have political power or power to change people's lives just in the sense of this story, no longer sitting in isolation. And that happened in two ways in my life and I'm a writer by trade. And one of the very first things I ever had published was actually after I endure a terrible tragedy, in that I had taken my three month old baby to childcare after my employer would not give me anymore maternity leave. And then on the first morning that I left him in childcare, he died that morning and no one could explain why. And I couldn't help even in the midst of all the devastation immediately.

Amber Scolah:

Of course, as a mother my mind went to how hard I had tried to fight to get a longer maternity leave and how I felt that if they had granted it to me, he would not have died. And so just in thinking about this, I started to research and I realized across

this country, I'm not alone. A lot of parents feel this way. Fortunately, it's very rare for your child to die in childcare, but it happens. But all the same, there're all kinds of other costs to having to leave your child or your baby before you're ready to, or you feel they're ready to leave you. So anyway, I ended up writing this article that I pushed and pushed to get through, and I tried to get some help along the way. And a lot of people just didn't really, there was no resources available for someone to try to figure out how to get a story like this out in the world.

Amber Scolah:

And luckily I lived in New York and luckily I'm a writer. And so I found a way and it ended up getting published in New York Times, it went viral. It became one of their most read stories of the year and it led to this basically like a political campaign in a sense. In that I hooked up with another mother, a Republican mother, and we started this campaign to try to draw attention to the need for parental leave and it actually generated a lot of change. In fact, now New York state, I've been told by politicians in New York, largely why New York state passed parental leave was because of Carl's story. That's how it got pushed through. That's my son, Carl. And so anyway, there was that made me realize, in this thing that happened to me, I had this intuitive sense that although I felt so alone, I wasn't alone.

Amber Scolah:

And by getting the story into the world, I was able to unite all these parents around a cause and actually make some change happen. And so in that way, it's funny, we have this quote by Elena Frante on our website that talks about how stories transform the thread of writing into feelings, actions, humanity, life, and that in that way, storytelling isn't very far from political power. And I think that's kind of like our guiding force at Lioness. So through that experience and through another experience where I wrote a book about an experience I had, and to this day, get emails from people who say that the book changed their life. I saw the impact that a story could have. So then by marrying up with Ariella, our very different backgrounds, and it was interesting how we both had seen how important this was and what the power that storytelling could have through very different experiences. And then now together are able to help other people having had those experiences ourselves.

Katharine Manning:

This is Katharine. I just wanted to, first of all, thank you both for sharing your stories. And what a really powerful demonstration of the power of storytelling. One of the things that I saw again and again in my work with crime victims was that feeling of loss of control was so awful. Your life gets turned upside down and you didn't do anything wrong. You were doing everything exactly as you were supposed to do it, and it can feel really horrifying to have a sense of powerlessness. And it's really amazing to see the way that you are giving power back to people in those moments where they feel the most powerless, the most victimized. And actually seeing, I think the storytelling itself is incredibly healing and empowering, but you're also seeing real change that people are making. The fact that you are able to get a law passed, think about the difference that's making in so many lives. So it's truly giving power back to people who really need it. So I just want to applaud you and thank you for sharing your stories here and also for the work that you're doing.

Jill Steinberg:

Let me ask y'all, what that process looks like, you referred to the process of individuals identifying you as sort of this intermediary or facilitator with a media outlet, whatever that might look like. A more traditional one or, well you call yourself a new media, about whether they should come forward and then how to go about constructing that story that you would want to help them tell. Can you talk a little bit about what that process looks like when someone reaches out to you?

Ariella Steinhorn:

So I think people usually find us through one of two ways. We have terrible SEO as we've been told, but we do have a little bit of earned media and we've written some op-eds about non-disclosure agreements and free speech. And so people find us in that way, if they're considering breaking a non-disclosure agreement or want to understand the ramifications of doing so. And we have a great employment attorney partner who reviews people's NDAs for free and gives them legal advice because we're

not lawyers. So people find us that way, or it's been a lot of word of mouth, just like the traditional good old whisper network, where a friend of a friend hears a story and says, "Oh, you should talk to Lioness." Because we occupy this space, this void that I think hadn't really been occupied before between the source with the information and the journalists.

Ariella Steinhorn:

So they'll come to us and we usually have an initial intake call. That's confidential where we hear, off the record, what they went through and then the next step is getting them to assemble some evidence. And sometime they have evidence, sometimes they have to go back and put it all together. We're really journalistic in the way that we go about doing it and helping people understand that we want to help represent them, but we also need to get as much evidence and information as they can provide us to make it as legitimate as possible. So we'll talk through with them. I think it's usually a combination of almost a timeline of how a lawyer would do intake. And then it's also sometimes quite therapeutic, I think, for the people just to be able to hear their reality confirmed by a third party. For some people, this is the first time that they're telling their story, someone else outside of the confines of their organization or their abusive relationship or whatever it is telling them, we hear your reality and we hear your side of this story.

Ariella Steinhorn:

And just confirming that reality is so affirming for people who sometimes have started to doubt themselves and not believe that what they went through was something that's actually worth talking about. So yes, this interesting combination of journalism going through a timeline like a lawyer would and then therapy. Amber, do you want to talk about the next steps after that?

Amber Scolah:

The other thing that is a large part of what we do is that just because someone has a story doesn't mean they always know how to tell it. So sometimes we'll get on the phone with someone in for hours and just ask questions, let them get it out. And then, we just help someone publish or about to help someone publish an essay that they sent us. We said sometimes we offer, you can take first stab, like write it all down. Different people like different processes. And one sent us 95 pages worth of information that we have to try to boil down into something that is readable. So that's part of the process as well. Whether we take a story to a reporter, which is a reported story, we help the people to first refine their talking points, to boil things down so that they can keep on track.

Amber Scolah:

So whether they're going the reporter route or whether they're going to publish an essay on our site, we help them to refine their talking points to get it... understand their own story in a way to make themselves be able to tell it better and then essentially help them with the process of going public. And so what that involves is dealing not only with getting the story written or interviews with reporters, but also has to do with helping them get legal advice, also has to do with dealing with the aftermath of what happens once you go public as well.

Ariella Steinhorn:

I also add one other quick thing that we do is, obviously some of these stories are very granular in the weeds and people get really caught up on in the details. And something we do for people is try to help them zoom out to understand how their individual story connects to some broader social trend. Because oftentimes we'll find that, like with Amber's story, it's about what happened to Carl, her son. But there's this broader social trend that so many people are feeling sort of this unsaid, untold thing in the culture. And as people are talking through what happened to them, we try to really zoom out and connect it to something broader that's going on socially. And usually there is that connection and we'll be able to tap into what the culture is looking ahead to just by getting all these individual stories that are bubbling up. So I think that's a really critical piece of it too, in getting it widespread traction.

Katharine Manning:

Do you find that going through the process of recounting their story, talking it out with you, writing out 95 pages, is that helpful to people? Do people feel like the process itself is healing for them?

Amber Scolah:

I do notice that I think everyone that we've worked with has felt no matter what the result was. Some people will get the results that are very satisfying and accomplish what they set out to, or be able to work on something that they can see a result takes place, as a result of the story they brought forward. And some people, the effect was maybe not what they wanted, but universally, what I've noticed is that people experience a change through the process of telling their story. And part of that change is that they feel less alone just for having told the story maybe first to us and had it affirmed that yes, this story matters because almost everyone that comes to us. One of the first things almost everyone says is, "I don't even know if this story matters. I don't even know if this is a story or if anyone cares."

Amber Scolah:

So I think the first step is realizing someone does care and will listen. And then as you go down the process, when you finally bring that story to the world, what's happened almost universally is that they will find other people who have had similar experiences, will come to them, find the story. And that alone can be very healing for people. Cause I think part of when you experience anything or traumatic, speaking from my own experience, I remember one of the biggest difficulties for me was feeling like I was completely alone in it. This could never have happened to anyone before. How could anyone survive this? And then I slowly started to, through this public telling me of my story, find that there in fact were other people that this had happened to and there were other people who had survived it and I could talk to them and that made all the difference. And I think it's the same for people that we work with too, quite often.

Jill Steinberg:

What are the types of considerations that you work through with individuals when they come to you? One of the things that has been mentioned in the course of this conversation is the issue of non-disclosure agreements, but there might be other factors that play into it. For example, it might affect members of your family or friends or your coworkers, the legal and practical impact of coming forward. Can you talk a little bit about the types of things that you discuss with individuals before the story goes public and the type of advice that you give to them about the potential impact of them coming forward with the information?

Ariella Steinhorn:

I think that we always preface every conversation by telling people and they know this, I think in their heart of hearts, but they don't want to admit it, that this is a risk. No matter how way you slice it, it's risky what they're doing. And we try to arm them with as many resources as we can between employment attorney advice, whistleblower attorney advice, speaking with other whistleblowers who have gone through something similar. Of course, conferring with Kaitlin and our lawyers and being able to share as much as we can with the people about defamation and media on advising that they seek their own representation. So there's a lot of arming them with as many resources and tools and education as we can, but then it really is up to them to decide how much risk they want to stomach. We don't have a crystal ball. We can't say like, "We know exactly how Jeff Bezos or Elon Musk or these people who we've written about will react."

Ariella Steinhorn:

We can try to anticipate that how they will react based on who they are and what we've seen in the past, and the patterns and what would make sense for the entity optically to do or not to do. For instance, if many different employees are speaking out about something that's well evidenced and egregious in a workplace, it's not a great PR look for that entity to sue them for breach of non-disclosure agreement. Of course the company still could do it, but we'll say to people it's unlikely, in our

experience. So we just try to give them as many examples and patterns and information as possible to help them make that decision.

Ariella Steinhorn:

But they do need to know ultimately that it is a risk and we cannot say like, "This is exactly how it will pan out because the world is unpredictable." Life is unpredictable. People can be rational or irrational at the other end of the story. And there's no way of knowing for sure, but just giving them as much information as possible. And being honest and transparent with them is our rule of thumb and how we like to operate.

Amber Scoriah:

And the other thing too, is that we always guarantee them that no matter what happens, whatever the end result's going to be, we have their back. It doesn't end when we publish the story because a lot of times if a really powerful entity comes at someone's small, that powerful entity has entire teams, like 22 PR firms. They hired some of these big billion dollar companies. And we are like, "They might have 22 PR firms, but you have us." This is just part of our commitment to helping people that we will help them get their side of the story out. Maybe more effectively than those PR teams because we're small and nimble and clever.

Kaitlin Gurney:

This might be a good moment for me to pipe in. This is Kaitlin. As a media lawyer, as a first amendment lawyer, talk a little bit about some of the ramifications for speaking out. It may seem a little counterintuitive to folks, but you have the criminal justice system that works and obviously approaches victims of sexual assault on one hand. But then you have a completely separate civil tort system, where people can be sued for the content of their speech, subject to of course the limits of the first amendment. And often that takes the form of a defamation case, but there's lots of other different ways people can be sued for something they speak out about something they publish. And we've had a tremendous movement now with the internet, anyone can be a publisher. Anyone can speak out and tell their story, but that's not without risk.

Kaitlin Gurney:

And then similarly at the same time, the Internet's made so much speech possible. We've also had the MeToo movement and we've had women victims speaking their truth. But again, this isn't without risk and there's nothing more tragic than someone who has endured a lot to then being hit with a defamation case. We have seen enormous trends in that in the past 10 years or so. We've seen a lot of folks who speak out then be sued for defamation because what defamation is at its core is a false statement of fact. So when you're making factual allegations and you don't get much more factual than an allegation of sexual assault or something other that constitutes a MeToo story. It's about facts. It's a he said, she said. And so we've seen a lot of defamation cases brought by people who are accused publicly online or somewhere else, of being a sexual abuser or something else of the sort and there's been a lot of lawsuits.

Kaitlin Gurney:

So just flagging that, it's sometimes doesn't seem right to folks that this can happen, but indeed it can, this is a completely separate legal system. And we've seen a lot of claims and these aren't claims that necessarily go away quickly. There're some lawsuits that can be litigated very quickly, very in the early stages. But when you get to an issue of fact, when you get to whether a sexual assault occurred, that is an issue that our legal system says should be determined by a jury. Whether we're talking about the actual abuse itself or this content of that speech. And so these lawsuits end up in many cases going to trial over whether the alleged abuse that was spoken out online or somewhere else actually occurred.

Jill Steinberg:

And we talked a little bit earlier about the issue of substantiating or corroborating the story. So a media outlet could then run with it, or it would be sort of more enticing, I guess, to a media outlet to run with it, as opposed to it being self published. And

that I suppose is one of the protections that an individual would have in terms of coming forward. So whether it's the issue of legal barriers or risks or more practical impacts like family friends, or whatever, sort of pushing back on you about why is it you're coming forward. We might or might not believe you. Certainly, I can say as a prosecutor that I see a lot of victim blaming still in the environment, even though I like to think we've come a long way.

Jill Steinberg:

We haven't gotten all the way there yet. And so I think there are a lot of reasons why corroboration and the accumulation of evidence is important to guard yourself against all of these things. But is there other advice that you give other than that, to people who are coming forward, whether it's legal risk like this, or the societal risk of backlash, what is it that they can prepare themselves for? Or how can they approach the process in a way that's going to give them as much protection as possible?

Kaitlin Gurney:

Well, what I can speak to is the way a journalist would approach this kind of story. And journalists are focused on doing their due diligence and above all corroborating a story. And there's a lot of reasons in the case of a MeToo accusation, where there might not be a lot of corroboration out there. Victims may not have gone forward for a lot of reasons until a late period. And so what you see with journalists is they're going to be careful. They're going to look. They will, of course, in some cases, grant anonymity to the MeToo accuser, but only in certain cases. And we'll look for numbers and above all, we'll look for any sort of corroboration out there, whether that's a complaint that has moved its way through the legal system or some other case or evidence.

Kaitlin Gurney:

And so when you hear Amber and Ariella talk about the kind of documentation that they try to assemble, that would be the kind of same sort of stuff that a reporter would look to. Because a reporter, we just talked about the legal risk related for any actual MeToo victim. A media organization would have a separate risk to publication. So, say a media organization chose to publish a MeToo story. That media organization could also be sued for defamation or some other tort. And so there're some cases where a media organization, not for lack of empathy, but simply out of concern for legal risks and limit of resources may choose not to go forward with publication. Because it's too risky for them or because not for lack of trying, they just weren't able to find the external corroboration that their internal processes needed to feel confident in publishing. For one reason that Amber and Ella have moved forward to offering another way to help folks speak out in terms of actually becoming publishers, as well as just working with some of these media organizations.

Ariella Steinhorn:

And in terms of the evidence that we've seen. We've seen diary entries, screenshots, emails, recordings, other witnesses have come to us. Of course, legal documentation is the best thing to have if there's a lawsuit that makes it a lot easier for us and for all journalists. But as Kaitlin said, we ask for anything that a journalist would ask for. And luckily, usually the people have queued up quite a bit of information and evidence to be able to serve up to us. And that obviously helps the journalists immensely if we're to go forward and publish an essay. And then we have a folder of evidence ready to give to the journalist that helps them out a lot.

Katharine Manning:

In the criminal justice context, there's often a conversation at some point where the victim will feel reluctant to turn over some evidence because they think it puts them in a bad light because of language that they've used or something like that. There's usually a conversation about better to have the information out and you're going through an incredibly horrific circumstance and nobody is going to be at their best in that moment and nobody expects that of people. I assume that you have sort of a similar conversation with people and that you're probably seeing similar reluctance around turning over information. Is that right?

Ariella Steinhorn:

Yeah, there definitely is the question of, this goes back to the conversation of the perfect victim, and there are so few perfect victims. And of course, when people are in these really intense relationships involving domestic violence or abuse. The person usually just isn't sitting there quietly taking it, they're saying something back. And we do get the question oftentimes of like, "He or this entity could spin it this way, because I said this once." And we're like, it doesn't matter. You still have so much evidence in your favor and you are a human being after all. You didn't enter this relationship or this work relationship preparing for a court case. No one was approaching this as it was going to be broadcast as a defamation trial. We recognize that they're human beings who are fallible and make mistakes, and none of us would want our private conversations at all times aired publicly. But to still just to have the raw firsthand evidence of what happened is really important.

Jill Steinberg:

One of the things I've seen in the criminal justice system, and it's worked its way into civil lawsuits as well, is the use of expert to help contextualize or explain why a person might have reacted the way he or she did react in the moment or took time to come forward. It's not evidence of the underlying offense if it was a criminal offense or if it's workplace harassment, whatever it might be. But it's a third party who can explain to somebody, whether it's in the context of a court of law, in the context of a journalistic endeavor. Why somebody who's just reading it without any sort of personal connection to it, or with some level of skepticism, they should accept that narrative. And I think I've seen more and more of it work its way into sort of the pop culture, I guess, from the courtroom.

Jill Steinberg:

But just from talking to people in my own experience that helps them understand why it is because there's initial reaction of, "Why isn't it you didn't just say at the time, why didn't you leave? Why didn't you quit?" That still is happening. And I feel like that can help. And I don't know if that's going to continue to happen, but I think it's certainly made its way into a courtroom effectively and maybe it'll make its way into other areas of sort of the storytelling process. And that will become something that people will have a greater understanding of.

Amber Scolah:

I could just add to that in that one thing since we started publishing on our site, people's own personal accounts, their own narratives, their personal essays. One thing that has been really interesting to note is how much it means to people that they get to have their story told in their voice, because actually that is a way for them to contextualize things like that. And it's really a wonderful pairing with a reported story because you have the journalistic third party more clinical reporting of a story. But when it's tied, it's inextricably linked to this person's own accounts that is fact tagged, embedded, and we stand behind it. But what it means is that they don't feel as much that they've lost control of their story and that their voice has been lost or the things that they wanted to connect it to didn't get connected to in the article. There is a sense of powerless sometimes when a reported story comes out and they're like, "Why didn't they put this in? This was what I said and it really meant a lot to me, but the editor was cutting things or something."

Amber Scolah:

So that's why I think that this has been such a wonderful experience in a way for us to see and for people to use our website this way, to publish themselves because it does allow them to contextualize a bit more.

Katharine Manning:

I have a quick question on a slightly different topic. My parents are journalists and I know that often when people are in the role of helping others tell their story, they want to pull themselves out of the equation entirely and feel like it has no impact on them at all. But the reality is when we hear a story of trauma, it affects us. And I think secondary trauma for journalists and lawyers and doctors, anybody who's in a fact finding role is something that we have to deal with. Is that something, Amber and Ariella, that you have experienced and how do you manage that as you're hearing some pretty difficult stories?

Amber Scorah:

Personally, I think because I've been through something so horrific, honestly the worst thing that I can personally imagine could have ever happened to me. In some weird way, I think it helps me in helping other people. Because an experience like losing your child feels so senseless and such a loss of meaning that literally I think the only way that you can get any sense of meaning back because you cannot change what happened and you cannot get your child back is by being able to use that experience as something that actually is in your work that has managed to help other people that are going through really horrific things. So I won't say that it's not hard. I would say Ariella and I definitely have emotions about it and it's not easy and it affects us. However, there is something I remember when I was going through the loss of my son, someone who had a similar experience told me once that the only way through difficult things is through. You cannot go around them.

Amber Scorah:

You have to go through it. So in some sense, I feel like having walked through and been on the other side, now that I am on the other side of something and the one who survived it. There is something about being able to stand there and say to someone who doesn't see the other side, "Hey, there is a way through this and it's not easy, but I'm evidence and I'm here beside you." That is actually kind of very fulfilling and meaningful. So in that sense, what is difficult about it is also what is generative about it.

Ariella Steinhorn:

I think for me, there are two things. One, I found in myself that suppressing something is actually much worse for me emotionally than actually just confronting it and bringing it to the fore and even if it's dark. Weirdly, I'm not really afraid of that darkness, I'd rather know than pretend it's not there or suppress that knowledge. And when I had been through some things in the workplace, I did have a tendency to do that. And one day my body actually broke out in hives, like full body hives. And I thought I was having an allergic reaction and went to the allergist and said, "You're not actually allergic to anything, but what do you do for work? This is like a stress-induced reaction." Because I wasn't properly feeling my emotions and I was compartmentalizing so much and trying not to admit that I was being so mistreated.

Ariella Steinhorn:

So I think I've learned that about myself over time. And so then as people talk to me, I actually find some comfort in knowing what their truth is and getting to the heart of the matter and not suppressing that. And then there's this other piece of it that's just this rejection of nihilism. I think sometimes people come to us and they're like, "Does this matter? Does anything matter?" And I'm like, "Yes, it does." We can together reject nihilism. This nihilistic strain that a lot of people feel, especially in a climate where a lot of powerful people just do whatever they want without any sort of accountability. And I think that makes people feel especially hopeless and nihilistic. So I think that rejecting that and making an active effort to do that and being hopeful and acknowledging different realities is something that's very comforting to me even if there is some darkness in that.

Katharine Manning:

Beautifully said, both of you, thank you.

Jill Steinberg:

How does this, what y'all have just talked about, which I think is very powerful, affect your advice to somebody who might want to come forward because they want to achieve organizational change for example but they don't necessarily want to be personally tagged to it. They have a sense of responsibility, in that they want to reveal some information, but they also want to be able to go on with their lives, to the extent they can and so they want to have anonymity. This is something that Katharine and I have talked about in other episodes in the context of the criminal justice system and being honest with people about what is and is not possible. Can you talk a little bit about that in terms of how does that impact your ability to sort of publish a story or push it out into the world and then also realistically, is it even possible?

Ariella Steinhorn:

It's a great question. Something we think about a lot because we found that people either really want to put their names on something or they really want to remain anonymous and there isn't really an in between. And the people who want to remain anonymous, they really are, in our experience, they're doing it because they want to see societal change. It's not about their own persona or their own granular story per se. It's about calling out some hypocrisy or making some sort of institutional or organizational change as you say. But I think it's not always easy. I think if there are many anonymous sources and Kaitlin can speak to this as well, it's definitely a lot easier than one. We had one story with one anonymous person and that was a difficult one because she had witnesses and contemporaneous evidence. And we believed her story. But because she was one anonymous source, most other news outlets wouldn't publish anything about it because it was too much of a legal risk for them.

Ariella Steinhorn:

And she really was doing it to call out this hypocrisy and bring awareness about this issue of spiritual people or people in the wellness community taking advantage of the vulnerable. But because it was just her, it was very difficult. And she wanted to know if there were more women who had been impacted by the same thing that she was impacted by, but it was very hard to get traction for the story because no one could really report on it cause it's just the one anonymous source. So it's not always easy, but I found that sometimes the people who want to maintain their anonymity are really doing it. When you talk about motives and of course you have to decouple the motives from the truth. Sometimes people have a true story, but their motives are a little bit interesting. But people who are anonymous, their motives are truly just get the information out there, but it's not always easy. It's easier the more people that there are for sure.

Amber Scolah:

I could add to that we had... There's also something really interesting we saw happen with another story that the author ended up going anonymous on the byline due to concerns over defamation. And that's a story that no reporter would've reported on, but we published it anyway. And it was about conservatorship abuse of elderly people. And because of fear of defamation it ends up being this thing we published that no one reports on. It's an anonymous byline, you might think what's the point. However, the very people, her biggest desire was to get attention of what was happening to her elderly mother in this conservatorship. And the very fact that her story, even on a website like ours, it is not in the New York Times, was out there in the world, published in a journalistic fashion. The story was laid out very clearly with proof.

Amber Scolah:

Well, actually the thing that she had been for years trying to happen has now happened. The people in the positions of authority have taken note. When she sent them the link, she got a response up the chain, which is something she had been trying to do for years. And so it's interesting because that was an anonymous byline like 500 people might have seen that on our website because nobody pushed it out other than us, but it did have the desire effect. And her mother sent us a video yesterday, thanking us, nearly in tears for having published it. So it was really kind of interesting to see that too and how there is a place for something with an anonymous byline that no publication would've touched. However, it was a true story and it's in the world and now it's created a change for this person's life, a very palpable change. So it was kind of interesting to see the way the power anonymous byline can still have.

Kaitlin Gurney:

I think it's probably good to note that not unlike how the criminal system has areas where you can come forward as an anonymous whistleblower. We see this on the flip side, in terms of just speaking out through a journalist. With Amber and Ariella, for example, there are challenges in anonymous speech. There's also power in it in terms of this is how someone might feel most comfortable, but there are risks. There's not a perfect way. A lot of people think these days they can just create a fake account or go on medium and speak their truth. And no one will be able to figure out who they are, the internet always leaves trails. And so there can be real consequences to speaking out. And I think one of the reasons it's such a pleasure to work with Amber and Ariella is they are impassioned on in terms of the power of speech and getting people's stories out there,

but trying to do it as safely as possible in terms of making it so the person doesn't speak out and then be confronted with a huge court case or something else and make matters worse.

Kaitlin Gurney:

That's the opposite of what you ever want and it's the opposite of the healing process that this was meant to entail. But you can't say that speaking out was without risk and so there is a lot of counseling that needs to take place even when that speech is intended to be anonymous. And on the reporter's side, taking on a confidential source and protecting that confidential source, it has been held to be a contract between that journalist and your confidential source. So it's an area where you see journalists take on very seriously and really thinking through whether they want to do that. Because then they're agreeing to protect this person and there is no federal shield law in terms of protecting your sources.

Kaitlin Gurney:

And so we've seen journalists go to jail, being contempt of court in order to protect their sources. And then, on the flip side, you also see a lot of state laws that have cropped up, that will protect these shield laws. That will protect a journalist from being compelled to reveal their sources. So, it really depends on where this publication is happening and about the content of that agreement between the person who wants to be anonymous and a journalist. And again, that publication can take a lot of different forms, whether it's a professional journalist or folks like Amber and Ariella, that are really vetting and deciding whether they want to publish someone's anonymous speech because always the publisher or the speaker can potentially confront some risks. And that's the last thing you want to do when you are out there trying to reach either, have this information come out and affect change or just reach healing for the person who wants that information out there.

Jill Steinberg:

That's really interesting. So is there potential liability then for a journalist or somebody else who assures an individual that they can maintain their anonymity and then in effect breaches that contract? Is there law to that effect, because you use a phrase, breach of contract. So now I'm really interested because I don't know I'd heard of anything like this before. Certainly the government or an individual compelling a reporter to disclose I've heard about, but the private litigation between a source and a journalist is not something that I've seen before. So I'm really interested in that. Is that been something that's happened or something that you've seen as a trend?

Kaitlin Gurney:

No. Well it actually, a Supreme Court case that a news outlet had a reporter who had promised confidentiality, but the information that reporter's editor decided it was so newsworthy that the fact of this confidential source offering this information meant that it was worth burning the source and publishing the information and how it came about. And the Supreme Court held that there was in fact a contract when the reporter offered anonymity. So you'll see reporters know this and their lawyers certainly do. And it's one reason. And because there are real risks to reporters in terms of either breaching those agreements or on the flip side keeping at all costs a source of information confidential. Whether it's some sort of contempt of court going to jail themselves, a sanction in their own defamation case, we've seen that as well. So the price of keeping someone anonymous can be a big one for journalists or again any speaker, any publisher who's trying to bring this information forward.

Jill Steinberg:

Interesting. So that case was an intentional choice to reveal the source after making that representation, as opposed to the information sort of negligently or recklessly being disclosed or discovered.

Kaitlin Gurney:

That's correct. And obviously there're permutations that have come out there. I think that it's worth raising that there're some similarities between the kind of arrangements that you have on the criminal side in terms of coming forward as a

whistleblower or as a confidential informant. And then again, on the civil side where you have a confidential source or someone who's asking to be anonymous and being granted a promise. That promise can be enforceable.

Jill Steinberg:

Interesting. That could be a whole other podcast episode. I'm so intrigued now. Let me ask Amber and Ariella, obviously you guys are coming from the perspective of individuals who. I use the word victim, because I think that may be the most appropriate. And I'm not just talking about the victim of a crime. It could be something that happened in a workplace that would necessarily be criminal, but could be the subject of a civil lawsuit or just as inappropriate and unacceptable for a variety of reasons. So I'm using it in the most broad sense of the term. You're usually coming to it from that perspective and you talk about it on your website as being sort of a confronting power. So from that perspective, if someone with that power, if this organization that has the 30 and 40 folks in their employee who are tasked with sort of fighting a story like this, or confronting a story like this, what's the advice that you would give them? That someone's about to come forward, maybe not yet publicly revealed, but they know it's coming.

Jill Steinberg:

How do they react in a way that you think is going to be the most, I guess, responsible? If you were them, what would you do and what would you not do?

Ariella Steinhorn:

I would not sue the individual. I feel like that's the gut reaction. We did a story about one of the big space companies written by 21 of the current and former employees of the space company. And the knee-jerk reaction of that company was to write a very threatening legal letter to the named author in the essay saying that they wanted to claw back her severance, which is something like \$45,000. And this is a company run by one of the richest men in the world. And so I would not recommend that they do that because why do they need to get \$45,000 back from her when she was genuinely just trying to represent her colleagues and no one felt like they were being listened to on the inside. And I would not recommend that they do that.

Ariella Steinhorn:

But I think that responding, sometimes the PR teams of these big companies will have different advice from the legal teams. And it really depends on how willing they are to take responsibility, actually make changes internally based on the information that's coming out and how willing they are to be self-aware. And sometimes their lawyers are telling them not to be self-aware, but to protect and preserve. So I think it takes an especially bold company and leader in this day and age to be like, "I am going to be self-aware and take a step back." In an ideal world, that's what they would do, but that's not what always happens.

Amber Scoriah:

I think there's also.. there seems to be this PR playbook that feels like it's 30 years outdated, that companies still deploy when they have this kind of a whistle blowing crisis. And I think what can happen is that these PR teams or legal teams and these huge companies can get into these sort of echo chambers and these silos. I think a lot of times they've lost touch with the fact that the power has started to shift and generationally people are looking at what you do as how you respond to something like this and seeing what you do and what your ethics are and what your values are. And are you living up to these values? All these companies are putting out these statements about their values and if you're not living up to it, people are going to call you out on it now.

Amber Scoriah:

People are not going to want to work at your company. We work with a lot of whistleblower attorneys and we always talk about this idea of the whistleblowers actually the best employee you could hope to have because almost every whistleblower will try to flag these problems internally, long before they ever become public. So the other piece of advice is when people say something, when people bring something to you the first time, listen. And you won't even get to the point of this kind of crisis

that you perceive as a crisis. The crisis only comes because you don't listen. Most people don't want to just go expose something without trying to fix it internally first, because it comes at a cost for the whistleblower.

Amber Scolah:

So I think that's another piece of advice too, is shift your perspective and think of this as a boom to know this ahead of time long before it becomes public. And if it does become public, then listen all the same too. And people are watching and workers are watching and the public has shifted its stance, I think, workers feel more empowered now than ever.

Kaitlin Gurney:

I would also add that in terms of a lawsuit, right, I think there's often a misimpression. Obviously, one of my focuses is in what I do every day is to try and make publications happen, to get to published with as little legal risk as possible. But you never know who's going to bring in a defamation case. It can happen anytime that there is content that is published. But what I think sometimes the plaintiffs don't understand is you want to think twice before taking legal action. Because again, it gets back to what a defamation case is. It's a false statement of fact and publishers, responsible publishers, are not going to publish unless they believe that information to be true. And so then a defamation case becomes all about what is the truth and proving that the information that was published is in fact true.

Kaitlin Gurney:

So, these companies or individuals that end up bringing defamation cases often have a rude awakening and that defamation case can make matters worse. If the information that was published is true or even substantially true, then you've got a court record establishing that and through the discovery process. And so obviously we don't want that ever to happen, but a defamation case really is about proving the truth of that content, the content of the speech that was published. And I think sometimes a knee jerk reaction to sue is later regretted.

Katharine Manning:

Well, this has been such a fascinating conversation and I want to thank you so much, Kaitlin and Ariella and Amber for having this really great talk with us. For those who may be listening, who are curious about learning more about Lioness and possibly sharing their story. Amber, can you tell them how to get in touch?

Amber Scolah:

We have a website lioness.co. And if you go to the website, you'll see a button that has basically a portal where you can send us a little overview or you don't have to send us any information, but just your contact information. And then we can securely get in touch.

Katharine Manning:

Excellent. Thank you all so much for the work that you are doing to help survivors bring their stories forward in an ethical and compassionate and trauma informed way. I'm really grateful for all that you're doing and I'm so grateful that you spent this time with us.

Steve Burkhart:

Thanks again to our guests. 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.