

# Business Better (Season 2, Episode 7): Trauma Informed Investigations, Part One: Setting Out the Hypothetical and Identifying Red Flags

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. This is episode one 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. Today's episode focuses on identifying red flags, and following your instincts.

Steve Burkhart:

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 Katharine Manning. The intention of this podcast is to examine organizational responses to sexual abuse allegations, from the perspective of individuals like us who have handled these types of matters. For me as a prosecutor handling these cases for many years, and Katharine as a lawyer and expert on trauma and victims' rights.

Jill Steinberg:

In this first episode, we're launching into a hypothetical that we've created to facilitate our discussion going forward. This entirely fictional situation involves the sexual abuse of a teenager at a camp that's being held on a college campus. Once I lay out the first part of this story, we'll discuss the impact of what is happening on that individuals who are witnessing the events and how they should respond. We also talk about how we can support those individuals and encourage good decision making. I created this hypothetical in part because I was a high school debater and I remember being on a college campus at debate camp as a teenager, but this did not happen to me, nor do I know someone who found themselves in this situation. We sought to make this scenario as real as possible, but it's not real.

Jill Steinberg:

So with that said our hypothetical situation involves a college that we're calling Edgewood College, which is a small liberal arts institution in Wisconsin that's known for its nationally ranked debate team. During the summer, the college holds a competitive speech debate camp for high school students who come from throughout the United States. And there are about a hundred students who stay on campus in dorms learning basic skills and researching debate topics for the upcoming year. The students are divided into smaller groups and are taught by college and graduate students with debate backgrounds and experienced high school debate coaches. And this is all, in fact, true. I've lived it, but not some of the other stuff because it's

fictional. The camp is sponsored and supervised by the college's speech and debate program, which uses it as a recruiting tool to draw the best students to the college each year, in addition to making money for the college from the cost of attendance.

Jill Steinberg:

And it's informally led by one of the colleges alums who we're calling Tim Jacobs, who won the national debate tournament when he was at Edgewood and continues to judge debate competitions around the country. And the camp ends with the students traveling to Illinois, because who wouldn't want to go from Wisconsin to Illinois to compete against another group of high school speech and debate students? That's the grand finale, is their trip to Illinois. Approximately halfway through the 2021 camp, Danny Klein, also completely fictional character, an 18-year-old college freshman and counselor for the camp, notices that Tim, who's in his 30s, is spending a lot of time with Caroline, a 14-year-old rising sophomore from Iowa. And she is in Danny's cohort, meaning his group of debate students that are being taught.

Jill Steinberg:

Danny sees them walking alone through the woods near campus on a Saturday afternoon. Tim asked Caroline to stay after class on some days, and she's begun wearing Tim's old Edgewood sweatshirt. Tim often brings Carolina Starbucks Frappuccino for early morning camp sessions. This is noticed by Caroline's roommate, Mary. And as one would expect, Mary notices the extra attention that Caroline's receiving from Tim. And the fact Caroline is missing from their room for long periods of time without explanation. When Mary inquires, Caroline shrugs it off and says she and Tim are just friends and she's spending lots of time away from her room doing additional research for the upcoming tournament.

Jill Steinberg:

And that's where we're going to stop for now on the podcast. And it brings to me when I think about this type of thing now in this stage of my career and with the experience I have, what the role is of folks like Danny and Mary in this situation. Obviously, we have teenagers, younger teenager and an older teenager who are witnessing this in the context of a camp and on a college campus. What does that bring to mind for you?

Katharine Manning:

Well, I think there are a lot of challenges that this brings up. One, as you've mentioned, these are very young people, so they're not very experienced in life. They also are not very powerful in this situation. I mean, Danny is a counselor, but he's only 18. And the person in more power is Tim who's the head of the camp. Has this long history of success as a debater, won the national championships, still is a judge. So for both Danny and Mary, as well as, obviously, for Carolyn, Tim has a lot of power. So that is going to affect how comfortable these bystanders are going to feel in naming what it is that they're seeing, right? One of the biggest challenges when it comes to encouraging bystanders to come forward is just helping them to recognize that the behavior that they're seeing is not quite right.

Katharine Manning:

So you can imagine there is pressure that they have internally to not see what is in front of them. It is a lot easier to not notice that there is something strange going on between this camper and this counselor. To just keep your head down, not say anything is certainly a lot easier. And there's going to be a lot of internal pressure to take that route. So what can be helpful in terms of helping bystanders feel more comfortable coming forward is making sure that they have some understanding of what are the grooming behaviors, like what is behavior that seems a little strange? And also the sort of power within themselves, making sure that they are empowered to step up to say something and know what steps to take. And that it is okay to do that, to bring up something that they're seeing that to them is not sitting right. So what are a few of the things, Jill, that you would say a bystander might notice that seem a little off about what's going on between Caroline and Tim?

Jill Steinberg:

One of the things that sticks out to me, and one of the reasons why we wrote the hypothetical this way is creating distinction between behaviors that might be normal and appropriate and that people might not want to overreact to and things that are not quite right. My experience is that some of the reasons why people don't come forward, whether they're younger or older is their fear that they might be calling out a situation that is not really suspect. And they're going to create a lot of havoc for somebody who's engaged in "innocent behavior". And so that's one of the things that I think people need to be educated on, is sort of the distinction on what makes something that truly suspect, and also putting into folks' minds that there should be sort of a culture of safety.

Jill Steinberg:

And if that red flag comes up or that instinct in you is sort of bothering you, is sort of ringing that bell in your head, you should respond to it and not ignore it. And for me, one of the things is the unexplained absences. The fact that the 14-year-old victim or alleged victim at this point is not in her room. There's not a plausible explanation for where it is that she is from her roommate. And that's obviously one of the things that happens in these situations, is an isolated environment can create a situation in which not only the victimization can happen because they're not surrounded by other people, but also the feeling from the victim that there's no one for them to talk to the more and more isolated that they get.

Katharine Manning:

Yeah, absolutely. And we've talked a little bit about grooming behavior. One of the things I think that's important to note is that grooming involves the person who is the victim, the subject of the abuse, but also everybody around them. So people who are abusers will take steps to create behaviors that will be excused, right? So they will act in ways that maybe are very charming or quirky and people will say, "Oh, that's just the way he is." So a very common thing for somebody who might be in a position like Tim is to talk a lot about how important mentoring is for him. That he really sees it as important to his role that he identifies young up-and-coming debaters, and he can really help mentor them and make sure that their debate career proceeds in a way that they want it to.

Katharine Manning:

So as he is grooming Caroline, he's probably also grooming the others around Caroline who might notice this. And this can be the counselors at the camp around what sort of expectations they should have about him and how he interacts with people. And also, obviously, in other situations, it's for parents, teachers, other adults who might be around the kid and working to protect them, are also subject to these grooming behaviors. This is something I know we saw a lot in the Penn State, Jerry Sandusky investigation.

Jill Steinberg:

Right. And that's such an important point. And this is something that's come up in a number of circumstances. USA Gymnastics, even the Jeffrey Epstein case, is how important it is for the offender to be in effect grooming the people around the victim. Because the reason why these things happen, in part, is because an individual who has the trust of adults is being given access for periods of time to somebody who's younger and more susceptible to some of these techniques. And so in order for that to be successful, you have to convince the adults in the environment that you're a person to be trusted. And there's a role that you have in this person's life, an unsupervised role that you have in this person's life. And not only does that give you trust and access to the person, but it makes it that much harder for them people to speak out because they're constantly questioning themselves.

Jill Steinberg:

Like, if I have these red flags and these instincts in my mind that something's not right, well, I can beat them away because this person's an esteemed doctor. This a person is an esteemed debate coach. And I'm just going to shake it off. And that's something that you just see over and over and over again, is the very thing that gives you that sense of confidence and trust is

the very thing that's being utilized against people in order to perpetuate these crimes and then to avoid people then coming out. And one of the things that the hypothetical shows is some these really small things that individuals might be able to pick up on that are unusual. So it might be usual that a coach is mentoring somebody, but it's unusual for say one particular student to be getting gifts.

Jill Steinberg:

And that's something that you see in this hypothetical and you see in other sort of publicly discussed cases, is gift giving, things like taking people to meals, traveling with them. Things that are unusual and separates that particular victim or that victim's family from others. Her wearing the sweatshirt is also an indication of him creating this unique and special relationship and environment between the two of them that's exclusive and is probably making her feel special. And so that helps people in the environment sort of say, "Okay, there's something different here. This is why that bell is ringing in my head. The flag is being raised that I need to pay attention to."

Katharine Manning:

Absolutely. Yeah. So some of those red flags, we've talked about the time alone between the adult counselor and the child, the gift giving and creating of a special relationship that's exclusive of others. Those are all indications that there might be something amiss there. And I think for those who might be in a position where you were observing some of these behaviors, the question is, what do you do at that point? And understanding that there can be a lot of pressure, as we've talked, about that you might not want to bring up something that where you think maybe I'm just misunderstanding. Probably this is not what I think it is.

Katharine Manning:

One of the things I think is important is for those bystanders to trust their instincts, listen to your gut about that. And don't be afraid of making a report. It's okay to bring up an issue. And that doesn't mean that the police are going to be called right away. I mean, there will be an investigation. There will be discussion. And I think you talked about the idea that we want to create a culture of safety first. So better to raise the concern and allow it to be examined than the worst, which could be opening a child up to abuse.

Jill Steinberg:

I think one of the things that would be helpful to bystanders in this situation is having information. Information is power. So they're witnessing something that suspect, they're not entirely sure what to make of it. How do they know the type of information that we're talking about, for example? Because they're probably not 14 year olds listening to this. But they go to camp, there's an orientation session, say, and you might want to set sort of some standards. Train, set some rules not only for the counselors, but for the attendees as well. And you do a lot of training. I've done a lot of training myself, but I mean, you are the master.

Jill Steinberg:

And so I'm interested in your perspective, because as someone who's been trained and who's done a lot of training over time, one of the things that I've noticed is that sometimes in response to things that happen within an organization, or even outside of an organization that your organization might be responding to, is people write a flurry of memos. They do a lot of training and then the same things happen. And so I'm really interested in the sort of perspective of someone who does this for a living and for a really long time. In this particular context, what do you think is the most effective? And also, what is the most age appropriate, if relevant, way to convey this kind of information and make sure it sticks?

Katharine Manning:

There are a few things. One, I think any kind of training is going to be ineffective if the leadership of the organization is not standing behind it. If the leadership use this as something that we have to do as a CYA, or because the state requires it, that

will come across... There's no question that the people in that organization are going to be well aware that this is not something that the leadership actually believes in. So it's essential that there be a full throated commitment by leadership in this message getting across. I have found much more effective in training if we start off with the why and just a little bit of stage setting. Understanding how does trauma affect people? How can this show up? And also normalizing that it is okay to ask questions. It is okay to make reports.

Katharine Manning:

And we expect that of you. That if you are a counselor, including if you're 18 years old, you have a responsibility. And we'll talk on later episodes about mandatory reporting, but this can be a legal obligation that you have as well. So you can be opening yourself up to liability if you do not take the steps identify the behaviors that you're seeing. So creating that baseline understanding, and then going through the specifics of the things that you and I have been talking about. What are the things to be keeping an eye out for? And then what to do in very practical terms. And the idea here is to normalize it. This is not a huge deal. This is not calling the attorney general. This is picking up the phone and calling the person who has been identified to receive these kinds of questions and letting them know what you've seen and letting them decide what steps should be taken after that. Would you agree?

Jill Steinberg:

I do agree. And I wonder in these kind of situations if it should be treated as something that's designed for, say, the whole family. Like in a camp situation, you have young people who are coming and potentially you want to arm them with information, but it might be a sensitive subject to try and do that without their parents or guardians around. And what kind of information are you conveying from the camp without sort of... Not a filter, but input from the other people in their lives and making sure that you're being sort of age appropriate and sensitive to everybody. There's the counselors who are adults, of course, and that's a different scenario.

Jill Steinberg:

But I wonder with trying to do training for younger people, I've certainly done it in schools on internet safety and things like that. Sometimes you don't have their complete attention. Teenagers love their phones and they love to roll their eyes. I mean, these are pretty heavy subjects and you're asking a lot of people. Have you found that there are particular ways to convey this information that's not only age appropriate, but you might be able to battle the phone and the TikTok and get through?

Katharine Manning:

I find in general with teenagers, which is the audience that we're talking about here, that it's important to lead with respect and to treat them as smart. They are very knowledgeable about a lot of these issues, certainly much more knowledgeable than I was at their age. And to be, again, sort of de-stigmatizing it. This does not have to be a giant issue that there's a huge lot of pressure about. Just trying to bring down the pressure level a little bit and saying, "This is what we're going to be talking about today. Here's some examples of things that have seen going on. Can anybody..."

Katharine Manning:

And then trying to get their input. What are some things that you might think are problematic? Trying to engage them in conversation about it and trying to make sure that throughout we are validating what they are saying, make sure that the kids who are participating are receiving validation for it. You never want to make somebody feel dumb for something that they might ask or share. So when they do share something, even if you think it's wrong, you say, "That's such a great point. Thanks for bringing that up. I can understand why that's what you think. And some of the things that I've seen in addition are..." And then use that to clarify it. You want to make sure that people don't ever feel embarrassed about opening up about things that they've seen or experienced that they might be curious about.

Jill Steinberg:

I agree. And one of the things that you see in some of these publicly reported cases, which I like to refer to because A, they're public, so we're not revealing anything that we're not supposed to reveal, but also it's something that listeners might relate to just from listening to the news. They know about USA Gymnastics and Larry Nasser and Penn State and things like that. One of the things that you see in the USA Gymnastics report is the fact that there were gymnasts who were talking to each other at the time about was going on and trying to figure out themselves whether it was right or wrong. And they concluded that, well, because it was happening to so many of them, it must be okay, which, of course, is the complete opposite thing of what you would want them to conclude.

Jill Steinberg:

There were just a number of victims, which is so profoundly sad to think that that is the result of this conversation, is that, oh, it must be okay because it's happening to a lot of us. And instead to say, "No, it's not okay. Just because it's commonplace doesn't mean that it's acceptable. It's in fact something that is actionable." And then the other thing that comes out of that case and a number of other cases is I think the lack of transparency or understanding about what you do once you have this suspicion. And a part of the training I think is not just identifying, which, of course, is enormously important, but also letting people know that there's a very simple way to communicate to somebody who's going to be understanding and do exactly what it is you're doing, which is consider the information in a way that's thoughtful and not immediately call the attorney general.

Jill Steinberg:

Like you're saying, you're going to have an assessment of the situation, talk to the people who need to be talked to, use the information and have the tools available to sort of get through this very difficult issue and get to the conclusion that needs to be gotten to and not it take a wrong turn in terms of it being escalated further than it needs to, or it being entirely ignored. And so I think that's another thing that I've noticed. When you look at all these failures in the past, there's just a lack of simple, transparent and understanding process for people to avail themselves of. And in your experience doing trainings, have you found that when the door is open and there is a simple process and somebody to talk to who's understanding that that does in fact help?

Katharine Manning:

Absolutely. And I think there needs to be a lot of information about that process. So you may think, "Well, we went over it in the orientation for the CITs. And so, therefore, we're done." It's something that you have to remind people about. So make sure that it's available on whatever your methods are for communicating, that people can find that information quickly and without having to have a big discussion with a bunch of other people, right? So you want to make it very accessible in a way that would even be anonymous, that they could quickly find out if they have forgotten what it is that you covered in the orientation.

Jill Steinberg:

Right. And I think that's another theme that you see, is the more barriers that there are. It has to be the victim that comes forward. It has to be a written complaint that has to be signed. It has to be not anonymous. The person has to identify him or herself. All these barriers that you create are more and more reasons why people will be hesitant. And so for people who have that little voice inside of them that want to say something, but they're questioning, I feel like the more barriers that you put up, the more likely it is that they're going to tamp that down.

Katharine Manning:

Yeah, absolutely. One of the things I often talk about in training is that we want to not just listen. We want to create the circumstances where people feel comfortable coming forward.

Jill Steinberg:

Right. And one of the things you talk a lot about in your book is how people who are listeners or helpers... In your book, you're talking about an employment environment, but it really can be anywhere. But if you are in this hypothetical situation and you're a friend of Mary, you're a friend of Danny and they're talking to you about what it is that they're seeing and how it is they're supposed to navigate it, how is it that you're taking all of this in? And how is it that you're responding to be the most effective for them?

Katharine Manning:

For those who are supporting people going through a challenging episode, there are a few things that we want to make sure that we do. So active listening means that we are present for them. We are holding the space, we are letting them share what they want to share. Part of creating that environment where people feel comfortable talking about what they're experiencing is that we don't sit mutely. We ask questions, tell me about that. We show them that we actually do want to hear what they're sharing. And then we acknowledge what they've shared. So if I were a friend of Mary and Mary came to me and said, "I'm really worried about what I'm seeing with Caroline." I want to listen to her, make sure she knows that I am interested in hearing what she's sharing.

Katharine Manning:

And then I would reflect back to her. Like, "That sounds really hard. It sounds like a difficult situation. Thanks for sharing that with me." And then you can go further with what should the next steps be? Are there resources? But it's important that we both give space for them to share what they're experiencing and acknowledge that we've heard them. Let them know that we are not just ready to jump right to here's what I think you should do, but you really are grateful that they have come to you to share something that they are struggling with.

Jill Steinberg:

That's great advice. I think one of the things is attention, and I've certainly experienced this. Being a prosecutor for a really long time, state and federal, and done the whole gamut of cases, one of the things people will talk to you about, cocktail parties, is something that they've seen or happened to them. And you almost immediately launch into, did you tell the police? Did you do this? I have had an instinctual reaction for a long time to immediately want to tell people what to do because I can help you, or I can tell you who will help you and we'll get justice. And I think over time you come to realize that there's a better approach to that.

Jill Steinberg:

And listening, as you said, and engaging in meaningful support before we start offering our own opinions is a helpful thing. This, obviously, is a highly sensitive situation that Danny and Mary are dealing with right now. If you're in that situation, you feel personally strongly that they should come forward and you're trying to figure out how to say that, but use all the other tools that you've talked about in terms of being a supporter. What do you think the best ways to balance making those suggestions and recommendations as strong as you might feel about it and being a supporter to them?

Katharine Manning:

Yeah. What I have done in similar situations is do the listening, the acknowledgement, and then reflect back. So what I hear you saying, Danny, is that you have observed Tim spending one-on-one time with 14-year-old who's under your authority as the CIT. So Tim is spending one-on-one time with her. He has given her some of his clothing. She's actually wearing his sweatshirt now. He is giving her gifts that other campers are not getting. And it sounds like, from what you've said, that you feel kind of uncomfortable with what you're observing. Does that sound right?

Katharine Manning:

And then usually they'll say, "Yes." And then you can say, "So what are you thinking?" So open it up, let them reflect back. And then at that point, if they say, "Well, I'm not really sure what to do." You can then say, "Is there a procedure in place? Is there something that you've been told about what should happen?" And if they're not sure that's when you can say, "Well, let me take a look. It looks to me like there is this process in place. It looks like it's pretty easy, anonymous. Doesn't look like it's going to be a big deal. What do you think about calling them? I can sit here with you while you do it. We can fill in the report form together. Whatever it is, I'm here to support you through it."

Jill Steinberg:

That's really great advice. And it's at this point when Danny and Mary is getting this astonishingly good advice from their teenage version of Katharine Manning, that our story continues. The way we ended the hypothetical was with Mary, Caroline's roommate, inquiring of Caroline. What was going on? Caroline shrugs it off. She says she and Tim are just friends and she's spending lots of time in the library doing additional research. Mary senses that something isn't right, but she doesn't act on it. She's not sure. So what is really happening between Tim and Caroline? And so the story continues.

Jill Steinberg:

We've arrived at the last week of camp when the students are in Illinois at the final competition. And Danny, who's sharing Tim's hotel room, walks in on Tim and Caroline engaged in a sex act. Danny confronts Tim. Tim is insisting the conduct was consensual. But Danny, who is fearful that he could lose his job and forever fracture his relationship with Tim, doesn't say anything further. The camp ends the following week and Caroline returns home to Iowa. And so this is where our hypothetical ends for now. We'll begin our next episode by talking about the implication of what Danny saw, and what Caroline reveals when she returns home from camp. So I hope you all tune in to our discussion about what happens next in episode two.

Steve Burkhart:

Thanks again to Jill Steinberg and Katharine Manning. Make sure to visit our website, [www.ballardspahr.com](http://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](mailto:podcast@ballardspahr.com). Stay tuned for a new episode coming soon. Thank you for listening.