

Business Better (Season 2, Episode 18): Trauma-Informed Investigations, Part Six: Victims' Rights

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 six 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 federal and state laws that protect the rights of a victim of abuse and available compensation funds. 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 types of matters. For me, as a prosecutor handling these cases for many years, and for Katherine who's a lawyer and an expert on trauma and victim's rights.

Jill Steinberg:

In prior episodes, we used a hypothetical to facilitate our discussion. That fictional scenario involved 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.

Jill Steinberg:

We also talked about the first disclosure and how a listener should respond in that circumstance. We engage an expert to address trauma in the brain. And in the last two episodes, we discussed the further disclosure to others including the college that hosted the camp, expected investigatory steps that they would take and the complexities of the applicable criminal and other laws to this situation.

Jill Steinberg:

Today, we discuss victims' rights and we discuss it with one of the experts in the field. So I'm always excited of course, to be here with Katherine, but particularly so for this episode, because we could not have somebody better to talk about this topic.

Katharine Manning:

I don't know, Jill. This might be one of those be careful what you wish for kind of moments because this is definitely a topic that I can geek out on. So I was at the justice department for about 15 years and my main area that I worked on was victim's rights. So I have a lot of thoughts on this. I'm going to try to give just a high level overview of what victim's rights are and how they can play out in a criminal case.

Katharine Manning:

And then I'm hoping we can also talk some about services that victims are entitled to and other ways that victims can try to have a voice in the proceedings as they move forward. So first off, let me just say, in general, victims rights are a statutory or constitutional guarantee of certain rights in the criminal justice process that are guaranteed to victims as defined in those laws.

Katharine Manning:

So every state in the US has a victim's rights law and the federal government does a lot of tribes, also have victims' rights laws. In a lot of states, those are also constitutional rights. Federally, they're not constitutional. They're statutory. The rights in general are designed to guarantee victims of voice in proceeding. So they say things like victims are entitled to know what's happening in the proceeding or entitled to know when hearings are happening. When is trial, when is the sentencing.

Katharine Manning:

They're entitled to other kinds of information like when the defendant is arrested or how the criminal case is proceeding, how the investigation is proceeding. They're entitled to things like the right to confer with the prosecutor or to share with the judge, their views on how the case should proceed.

Katharine Manning:

They're entitled to restitution, which is financial compensation from the defendant for harms caused as a result of the offense of conviction. They're also entitled to rights to protection from the accused and for privacy. Respect for their dignity and privacy as the case proceeds. All of these vary a lot from jurisdiction to jurisdiction, but those are just on a high level the types of things that victims are guaranteed.

Katharine Manning:

If you are a victim in a case or might be, or if you're interested in learning more about the rights in your jurisdiction, I would suggest looking up the rights for your particular area. So there's a few ways to do that. One is you can just literally Google your state plus victim's rights. So Wisconsin victim rights law and see what comes up. And usually, the state AG's office will have a listing of the victim's rights. And you can just read through them. Often, they'll even have a brochure available online that explains the rights and gives you some detail about what the rights are and how to get access to them.

Katharine Manning:

If you can't find them that way, there's also a website which is victimlaw.org. So that's V-I-C-T-I-M-L-A-W.org where they list every victim's rights law by jurisdiction. So what you can do is search through there and find your particular jurisdiction. Again, maybe it's the victim's rights for the Navajo nation or for the state of Maine. You can find the listing on there and be able to read through it yourself and see what rights are available for your jurisdiction.

Katharine Manning:

Again, though, in general, the purpose of these rights is to ensure that victims get the information and the opportunity to provide input into the criminal case. So as we talked about a little bit last time, Jill, some of this can depend on the definition of victim, which can depend on how the case is charged. So we talked last time about how there can be state and federal proceedings going forward at the same time. And in the federal case, for instance, maybe the charge is something like commercial, sexual abuse of minors, or what's commonly called child pornography.

Katharine Manning:

It's the images taken. If the particular victim is not a victim of that crime, but maybe is a victim of some other crime. Maybe those images were used to groom the person for a sexual abuse. That sexual abuse case might be preceding on the state level. The federal level could be the distribution of the images that were used for the grooming. That victim is going to be entitled to rights in the state case, but may not be in the federal case.

Katharine Manning:

That doesn't mean that they weren't hurt. Obviously, they were hurt. It's just because of the way that the crime was charged. And in the federal system, as we've seen in numerous cases over the years, what the courts are looking for is who was a victim of the count that was charged in court. Like if you read the indictment, who would you say was harmed by the count set forth in that indictment.

Katharine Manning:

For those who may not be victims of the count, but they have an interest in the case, you still can learn about it. There's nothing that bars you from getting information. Most of the information that victims are entitled to is public information anyway. So you can still reach out to the prosecutor or the agent or the victim advocate and say, "Can you please let me know what's happening in this case? It pertains to my ex-husband and I need to know if he is out of jail or not because I need to protect myself." Those kinds of things that can really affect people.

Katharine Manning:

It's okay to reach out and seek that information from the individuals in the criminal justice process. I wanted to dive in a little bit deeper on a few of the rights next. So one of the rights that is more publicly seen is the right to be heard. Some of you may have seen online, there are the victim impact statements in a lot of different cases.

Katharine Manning:

One impact statement that is widely available online is from Chanel Miller who was sexually assaulted by a swimmer at Stanford. And her statement is really, really compelling and profound. In addition, impact statements from a lot of the victims of Larry Nassar's abuse are available on YouTube and can be seen. Victim impact statements are in a lot of ways of very powerful opportunities for victims to have their voice heard in the criminal proceeding. They're pretty open in what they can discuss, but the ultimate purpose is to provide information to the judge and to the defendant about the impact of the crime, how it affected them.

Katharine Manning:

So victims may choose to submit a statement in writing or sometimes they can submit it orally, stand up in court and present it. And it's really a chance for them to talk about how the crime affected them financially, physically, emotionally, maybe talk about the impact on others in their lives, family members as well. They can really be an incredibly powerful opportunity for victims to have a voice in the proceeding and really talk about how the crime has affected them. Jill, was that your experience as well?

Jill Steinberg:

My experience as a prosecutor is that you really are looking for more input from the victim. I had a thirst for that, and I actually found that I wanted to communicate with them sometimes more than they wanted to communicate with me. And that was one of the many lessons that I learned during the course of my time with the government and working on these cases is that it's so individualized. What somebody brings to the case. The history that they bring, their view of the government, the family and how involved the family is and how the family impacts the victim and the level of participation that the victim might have because of the impact of the family.

Jill Steinberg:

It's so complicated. And particularly when the victim and the offender might be related, it adds levels of complication that it's not even capable of being described in a podcast of this length. My perspective is like more, give me more. And I think with recent events, sometimes it's been portrayed as not a relationship that's synergistic. The victim and the prosecutor, somehow it can be antagonistic and it shouldn't be that way, and it's not normally that way. It's unfortunate that we've had these circumstances that have been publicized where it appears as if that relationship isn't as good as it should be because it should be.

Jill Steinberg:

And I think the key to making it as good as it can be is just open communication. And the things that we're talking about on this podcast, I hope will enable people to communicate better about some of these issues, because some of it is genuinely complex like who is technically a victim in this indictment? Why are they not talking to me? Why am I not getting notifications?

Jill Steinberg:

There's a reason for that, but you have to have that conversation in order to understand what your role is. So from my perspective, even if somebody was not technically considered a victim of the crime and the indictment, I'm still interested in hearing from that person, because when you're looking to resolve a case whether it's choosing the charge or make a sentencing recommendation, you need to hear the whole story. And in federal court, we call it a related conduct.

Jill Steinberg:

So you're looking for the entirety of the conduct, the entirety of the defendant's actions to determine what a reasonable sentence is under the statute. And that might not be specifically related to what is charged. You're looking at the whole course of this person's life. The good things in that person's life, the bad things in that person's life, and you're charged with making a reasonable sentence on behalf of the government.

Jill Steinberg:

So you want to consider everything about the defendant, about the victim and about all the related conduct. So it's enormously important. And just as a foundational issue for individuals who might be in the system, we talked a little bit about in the last episode that there are these automatic notifications that are generated when a case is charged to individuals who are technically considered victims of the charge conduct.

Jill Steinberg:

But sometimes before the case is charged, there's a lot of uncertainty because they may not be getting these notices. So I think the absence of information can sometimes be the worst. You're just waiting and you're waiting to hear what's going to happen. It causes just a lot of anxiety. So I always tell people, just try and communicate upfront about, "If you don't hear anything, you shouldn't make any assumptions. You should call me. Here's my number. This is our victim advocate. You can call that person. Here's the agent. You can call that person."

Jill Steinberg:

Have open avenues of communication, and upfront assess how involved that person wants to be. You're talking about victim impact statements. It's one of a range of options for individuals to participate in the process. And one of the things I say at the very beginning is start thinking about what level of involvement you want to have. Some people are like, "Don't talk to me. Tell me when it's over." And then there are other people who really want to hear every single thing.

Jill Steinberg:

They want to come to court every time there's a court appearance. And part of the process of building a relationship of trust and having a good relationship throughout the course of the case is measuring how much communication that person wants. And if they don't want to hear from you, make note of it and check in only when it's significant or there's a major event.

Jill Steinberg:

Don't wait until the end. I wouldn't take that person that literally, because they might change their mind, but be careful then about being overly communicative when that might be retraumatizing to that person. And similarly, if they ask you to communicate, make sure there's someone on your team who is in fact communicating regularly with the right person. If it's someone who's a young victim, then of course that might be that person's parent or guardian.

Jill Steinberg:

Identify the appropriate person and make sure that you continue to communicate and give them options. Because I think one of the things that happens is it's like, "You're in or you're out." But that's not really true. You don't have to commit at the beginning of a case to testifying, to being fully involved, to showing up at every hearing. You can think about it throughout the process. And there are even ways to make a trial go forward and to get the result you want to get with minimal levels of participation.

Jill Steinberg:

There are times when you need to have a full level of participation, you need to have testimony. Other times you can work around it. So I always just say to people, just keep an open mind and keep talking throughout the process to figure out what's going to work best for everybody, because ultimately you're trying to reach a just result.

Jill Steinberg:

If you're working as a prosecutor, you're doing so on behalf of the government and the victim is a very important part of the process, not the person you're representing. So the case might go forward and the victim might be forced into a situation that he or she doesn't want to be in. But that is very rare. It's very rare. Usually, if you have an open line of communication and you're talking throughout the process, you can get to a resolution that is fair and right on behalf of the community and also is going to do as well as you can do for the victim.

Jill Steinberg:

I just think it's just so important just to keep an open mind and avail yourself of every option as the case is proceeding whether it's a criminal case or it's a non-criminal investigation. Don't close off all the different possibilities as you're progressing through the matter, because people's minds change, situations change. The evidence changes. All of a sudden, you'll get, for example, electronic evidence that suddenly makes the victim's participation less important.

Jill Steinberg:

So, for example, if you have a photograph or a video of certain conduct, you might not need that human being to testify. So you might not know that at the beginning, but all of a sudden you do the forensics and you have the evidence you need, and that person doesn't need to necessarily appear in court anymore. So I always have just given this advice to people. It's just keep the communication lines open, keep the options open. Don't rule anything out, and don't cut people out because they might not want to cooperate at the beginning. There are always things that we can do to at least provide services and support whether or not that person wants to fully participate.

Katharine Manning:

I totally agree, and I think all of that equally applies if you're talking about an internal investigation or civil litigation as well. The reason that we have the victim's rights that we do are because victims fought for them. So they went to court. They went

to legislatures. They lobbied for these rights to things like information to protection for a voice, the ability to be heard in the process. Those same desires are going to be present during a civil litigation or an internal investigation as well.

Katharine Manning:

So it is worthwhile to use those as your touchstones, as you're moving forward in any kind of investigation. What can we do to be giving autonomy to the participants in this process? What can we be doing to protect them, protect their privacy, give them a voice, make sure they have the information that they want in the way that they want it.

Katharine Manning:

We should be using these in any proceeding in terms of trying to give back as much autonomy as we can. One other thing I wanted to talk about just specifically on this issue of notification. If you are a victim, or if you are helping a victim in a criminal case, there are two main types of victim notification on the federal level. It's called the victim notifications system and you should be receiving affirmative notifications, meaning you should be getting an email, a phone call or a letter, some sort of reaching out to you to provide notices on the stateside notifications for the most part are provided through VINE, V-I-N-E. And if you go to vinelink.com, you can find out information about how notification is provided in your state.

Katharine Manning:

In some states, you are required to opt into notification. And it might be that you have to affirmatively check a website or call in to get information on the case. But I just wanted you to know about those two options. If you are in a situation where you think, "I know that there was some sort of investigation begun and I haven't heard a word about it, that can be a way for you to try to find out what's going on.

Katharine Manning:

I wanted to talk next, Jill, about the issue of privacy, which I know is something that can be so crucial in a lot of cases, particularly in the case that we're talking about where we have a hypothetical child sexual abuse case. There will be a real need for privacy. I mean, in sexual abuse cases, no matter what, but in particular where there are children, issues of privacy are tremendously important.

Katharine Manning:

So I wanted to know if we could talk a little bit about some of the privacy protections that are available in the criminal justice system. First off, I'll just point out that in most jurisdictions, victims do have a right to privacy. And sometimes that is specifically things like private information about the victim shouldn't be entered in the public record, or shouldn't be disclosed to anybody without a need to know it. But there are other types of protections that can be provided to children and even to adults in the criminal justice process. Can you talk a little bit about those?

Jill Steinberg:

Sure. One of the things that happens in the course of a criminal case, and we reference this a little bit in the prior episode is the issue of discovery, meaning information that the government provides to the defendant and his counsel regarding the case is in many circumstances, constitutionally required by statute and the rules of procedure.

Jill Steinberg:

And when that kind of information is provided, the names are taken out of the documents. So they might be substituted with initials or just entirely removed. Of course, the defendant knows who the victim is and the defendant's lawyer knows who the victim is, but at least in terms of that documentary evidence that's turned over somebody's name is not floating around.

Jill Steinberg:

So those type of things happen to make sure that an individual's name and other personally identifying information, whether that's an adult or a child is not turned over and floating around in the public space. There are times when it's difficult to do something like that because the quantity of information you might be worried have I caught every time this person's name is used for example or every time that person's phone number is in the document.

Jill Steinberg:

We also do things that we call protective orders, which restricts the distribution of documents and other materials that are provided in discovery. So there are a number of different things that can be done to eliminate someone's name in the case of a minor. In the case of adult, you might not be able to eliminate the use of that person's name. But to at least sort of cabin sort of the number, the places where it can go, the number of people who can have access to it.

Jill Steinberg:

So those are some of the approaches that we use. One of the things that comes up is the issue of confrontation in court. When you go into court, it's a public courtroom. If the case is tried a person testifies, then that person has to testify in the presence of the defendant. That's really not something that you can get around.

Jill Steinberg:

Every once in a while, there are circumstances where sometimes the victim can testify in a separate physical location, and there might be a closed circuit camera. It's not common, and it's discouraged generally to have any sort of barrier in terms of a defendant's right to confront the witnesses against him or her. So ultimately that is something that we need to talk to victims about is there's likely going to be that moment when you'll be physically sitting in a courtroom with the person who perpetrated this crime, if the case goes to trial.

Jill Steinberg:

That's one of the few things that is hard to control. Most of the other parts of the process, we can exercise control over. We can limit the distribution of information, the use of the person's name. Even the transcript of a proceeding can be sealed or redacted before it goes on the docket. So people wouldn't be able to publicly to get onto the public docket and pull information that has someone's name on it. But I'm just careful to say that there are a few areas where the government is limited based on the constitutional rights of a criminal defendant.

Katharine Manning:

I think in particular when we're talking about a sexual assault like we are with this hypothetical, sexual assault is such a loss of control, loss of autonomy. I think it behooves everybody who is interacting with that person to do everything they can to try to give them as much control back as possible throughout the system. So that means wherever possible taking steps to protect their privacy, keep their name out of public records, let them make choices about what they want disclosed and where that is not possible, where there's going to have to be information disclosed that they don't want to have disclosed, giving them as much warning as possible and being as clear as we can about why it has to be disclosed when and who it's going to.

Katharine Manning:

Throughout the process, our goal should be trying to give as much power back to that individual victim. And again, this applies in the criminal case as well in civil litigation, internal investigations, being very mindful of the fact that this is someone who has suffered a tremendous wrong, been acted upon, and we want to make sure that we can do everything we can to give some power back to her.

Jill Steinberg:

And I think part of giving power back to somebody is trusting them with information that he or she might not like. And sometimes there's this sort of kindness. I think it's motivated by kindness, wanting to tell people what they want to hear. We can create more protections for you than really can exist. "Oh, you won't ever have to testify. You won't ever have to confront this person." Well, maybe, maybe not.

Jill Steinberg:

And the last thing you want to do is set an expectation with this person that you can't meet because it's a trust building process and they've already been put in a position they did not want to be put in and have been likely traumatized. So I think the best way to build trust even if it's hard is to tell people the parts that are good and the parts that are not so good.

Jill Steinberg:

And even if he or she doesn't like what she hears, it's like, "Well, I'm going to shoot you straight though at the end of the day." Because there might be times that the victim or the victim's family and the government doesn't see eye to eye on certain things, whatever those things might be. And the best that you can do sometimes at the end of the day is to say, "Well, you know what, we had this conversation. We see things differently, but we're walking away from this with mutual respect and understanding."

Jill Steinberg:

And that's not where you want to be. You want to be in a place where you see things the same way, but on occasion you don't. But at least they've come away from it thinking that they've been heard. There's such a fundamental, I think, lack of trust. There's already probably a lack of trust in our government and our institutions as it is because of things that have nothing to do with this subject. But then when someone has been a victim of a crime and in this scenario, it has happened on a college campus or it might have happened by somebody who's in power and has been trusted by an organization to have a youth-facing job, for example, it further erodes that trust in these institutions, that this person was in a position to do this.

Jill Steinberg:

Now, you're looking towards these very institutions to solve the problem. It's obviously going to be met with a good bit of skepticism. So going into it, you have to recognize where the victims and their families are coming from and give credit to that because it's deserved. That skepticism and that concern is deserved. And you see what's happening with these various cases in the media. It just keeps happening.

Jill Steinberg:

So people rightly start to question. So I think the best you can do is just be honest about what it is you can and can't do. And that's sort of hopefully the start of building a better relationship and the best result you can get going forward.

Katharine Manning:

I totally agree. I often say that you can tell somebody almost anything if they know that you are doing it from a place of respect and honesty. They might not like what it is that you're sharing, but if they know they can trust you and that you aren't going to evade or wiggle out of it, the worst possible is to stop picking up your phone and just try to avoid the conversation or to overpromise something that you can't deliver on. So much better to just be clear from the beginning about what limitations you have or the system has or what is going to be required of the individual.

Katharine Manning:

In a similar vein, I want to talk a little bit about protection. This is an issue that comes up in a lot of cases. Physical protection from the accused or the person who is the subject of the complaint. What can be done to keep the victim or the complainant away from that individual?

Katharine Manning:

There are some things that may be available through the criminal justice process. There can be funding available to provide physical protections, meaning help people to get a security system, for instance, if they're concerned about somebody showing up at the house. But one of the things that I just want to stress to people is that be alert, be aware of any kind of security concerns. And that's really for everybody. That's the victim and the victim's family, but it's the victim advocate. It's any friends of the victim. It's investigators. Anybody who is involved in this process be alert to any security concerns because people often don't recognize that what they're saying is actually a security concern like, "Oh, I know. He just keeps texting me or I saw him drive by the house a few times. He's just like that. It's no big deal."

Katharine Manning:

We want to make sure that everybody in the process is aware of any kind of security concerns so that there can be a plan put in place. Particularly when you're talking about children. We want to make sure that we are identifying security concerns that they might not recognize our security concerns for them.

Katharine Manning:

So what I always say is have a healthy curiosity for any kind of security issue and follow up. "Tell me more about that. What time did he drive by? How do you know it was him? Did he pause or not? Were your lights on?" Just trying to get as much information as you can. Again, not in a way that you want to scare them or create any sort of fear in them, but you need to be able to make a plan for their security and to do that, you have to have the information and you've got to communicate it to others so that everybody is aware.

Katharine Manning:

If you are involved in the investigation and you know that maybe the victim has moved out of her home and is living in a group home, make sure that the people who are at that group home also know that this person has been driving by. Make sure that there's good communication among everybody on the team, in particular about security concerns. Is there anything you want to add on that, Jill?

Jill Steinberg:

I just want to emphasize from the perspective of a prosecutor and someone who's worked with law enforcement throughout the course of these cases, you can't do anything about actions that you don't know about. Sometimes you hear later into the case that, "Oh, so and so was writing me or I ran into this person at the mall and they gave me this look and you're like, "What, why didn't you tell me?" It's just so common whether it's from people who don't want to bother you and it's from that place or maybe they think you can't do anything about it. It's worthwhile to communicate it. It might be nothing. It might be something.

Jill Steinberg:

And frankly, just from a hard lawyer perspective, sometimes conduct like that helps your case. It helps bolster the story that you're going to tell about that person's guilt. So it could be a separate charge, frankly. I mean, it could be intimidating witness. So whether you look at it from the victim safety perspective, which of course is the most important perspective is safety first also from sort of the outcome perspective, that could be a part of whether it's a criminal case or a civil case or some other form of investigation, how that person behaves after they're discovered can be enormously probative.

Katharine Manning:

I want to shift gears now and talk a little bit about financial compensation that might be available to victims. The financial losses that a victim suffers can be enormous and it can be anything for medical bills, therapy bills, sometimes funeral expenses, replacement of cars or other personal property, lost wages, childcare sometimes for participation in the case.

Katharine Manning:

So there's a wide array of financial losses that people can experience and there are also a wide array of options. So I just wanted to talk a little bit about them. First off, I wish more people knew about crime victims' compensation, crime victims' compensation is a state run program. Every state in the US has it. And it is money that is available to compensate victims for losses associated with the case. Because it's state run, it varies state by state. And so the types of crimes that are available for which crime victims compensation is available can vary as well as the types of losses that can be covered.

Katharine Manning:

So you should look it up for your particular state if you're in this situation. Again, you can just Google Minnesota Crime Victims' Compensation and you'll find out both what's available and how to apply. But it is a tremendous resource for a couple reasons. One is it's money from the government and there's a lot of money there, so you don't have to worry that you're not going to get it recovered. You are going to get it recovered. You'll get a check.

Katharine Manning:

The other thing is it happens much earlier in the case. So even during the investigation, perhaps maybe a crime has been reported and it's still under investigation and it might take three years for this case to get all the way through trial into a sentencing, that crime victim's compensation can happen in that very first year. So you can apply as soon as the crime has occurred. In a lot of jurisdictions, you do have to have at least reported it to police, but even if no case ever comes from it, you can still recover for those losses in compensation.

Katharine Manning:

So it's a really, really great resource. Another thing I sometimes hear from victims is, "Well, I didn't apply because I wanted to make sure that money was there for other people. I was fine. I was able to replace my phone," or whatever it is. You are not saving somebody else by not applying for that. There is enough money there to compensate all of the victims for the losses that have been designated. So don't feel like you shouldn't apply because you want to save it for somebody who's in more need. You aren't actually saving it. They can recover and you can recover.

Jill Steinberg:

That's a great point. I was up and watching for a while, as you know. And I think that was one of the only times that I ever heard from anyone that a government program was adequately funded were the victim compensation funds. As a matter of fact, other programs were trying to steal from the victim's compensation fund because it was so robustly funded. I think that's the only time I ever heard anything like that in Washington. So it is there, utilize it.

Katharine Manning:

Absolutely. So another form of financial compensation for victims, that's a little different is called restitution. So restitution is money awarded to the victim from the offender. So the person who committed the crime will be ordered as part of their sentence to pay compensation to the victim for the costs of the crime. A few differences, obviously, the money is coming from the offender and not from the government. It means that the likelihood of recovery might be a lot lower.

Katharine Manning:

If you have a corporate defendant, maybe they have the money to pay it. A lot of individual dependents don't. However, for a lot of victims, they do find it very important to know that the offender is having to pay that compensation to them for the losses that they've suffered. That can feel very important to them. The types of losses for restitution can include out of pocket expenses.

Katharine Manning:

So things like hospital bills, cost of replacement of property, it also can include future costs like lost future income can be included in restitution, lost future therapy bills. And in order to get those, you just have to have an expert who can say this is likely what it would cost, and that can be awarded even at the time of sentencing. So it's not like you have to wait until those future therapy sessions happen. You can get an award of restitution today for the future costs of that therapy.

Katharine Manning:

A few things that are useful for victims in terms of their ability to recover restitution is to retain as many receipts as you can. So if you can show these are the prescriptions, these are the receipts for the prescriptions that I had, these are invoices from my therapist for the sessions that I attended. Here are my wage statements showing that I missed two weeks of work, save all of that documentation. It can be difficult because often it takes so long to get to a criminal trial and sentencing, and that's really where you need that evidence is that the sentencing.

Katharine Manning:

It might be years later. So try to save that in a place that you'll hold onto so that you can provide it to the prosecutor when that sentencing comes up.

Jill Steinberg:

Yes. And it's a great idea to think also about what you indicated about what would happen in the future. And this is something that we've seen in the law. It's called child pornography, because it's written that way. As you said, there are better ways to phrase it, but because that's the legal term, I'll use that here. In child pornography cases, there's been a movement toward getting restitution for victims who are shown in these images, not just for the damage and the harm of the viewing process, but also for the impact on those victims going forward, the impact on their educational attainment, the impact on their ability to work the mental health treatment and other things that they're going to need going forward as these images continue to travel around the internet.

Jill Steinberg:

It's forever in effect. So you can think very broadly about not all the things that have accumulated up to the point of conviction and sentencing, but what it is that the needs might be going forward. So I would think broadly about that if you're in a restitution setting, but then also understand that restitution is somewhat limited in the context of a criminal case. In a sense, there's no pain and suffering. So that part of it is there are certain aspects of sort of a damages claim that you'd have in a civil case that don't cross over into the restitution arena.

Jill Steinberg:

The other thing to know is that you might look at a defendant. Sometimes people say, "Well, he doesn't have anything." I use the term he just because more of the defendants happen to be male. But this person doesn't have anything. That might be true. It might not be true. It's still worth pursuing, but the other avenue that the government has is forfeiture.

Jill Steinberg:

Sometimes there could be physical items that are forfeited from a defendant that can then be liquidated and then used to pay a victim restitution. There are different options that are out there depending on what the scenario is. And again, it doesn't hurt to have that conversation and ask. In the restitution setting, the prosecutor is in effect representing the victim in this regard.

Jill Steinberg:

So you're not having to hire an attorney and initiate a separate action in order to get this money to help sort of offset some of these expenses. So if you have that resource, meaning the government at the time, you might as well use it.

Katharine Manning:

Absolutely. I also have been interested to see that in some civil cases, the attorneys have also been really creative in terms of what they're asking for in damages, trying to bring in that pain and suffering as well as future harm, protection. And as part of a civil settlement, you can ask for non-financial remedies as well. So for instance, if what the individual really wants is an apology, maybe that's something that could be structured as part of a civil settlement.

Katharine Manning:

So I think it's important for everybody who is working in these kinds of arenas, whether you're an investigator, an attorney, an advocate, or a victim, if you are thinking through creatively, what are all the things that this victim might want and how can we help them to get the result that they're really looking for in this environment?

Jill Steinberg:

And one of the things I think we've seen particularly recently is the creation of non-government compensation funds. If that's the way to describe it. In some ways it's sort of a quasi-government entity, but I would say it's mostly private, for example, like the Epstein compensation fund. It was created by the estate to compensate victims of Jeffrey Epstein. So that's something that was created by a non-governmental entity for the purpose of addressing the outstanding claims and I'm sure ultimately closing down the estate.

Jill Steinberg:

We've seen it in a few other sexual abuse cases where an individual had multiple victims and it might be that it's somebody who has resources, who's an individual like Jeffrey Epstein, or it might be an institution that employed the person. So there are some permutations to how this works. So there are also some other, I think, different ways that people are trying to get to the same result which is how do we get resources to the people who need it? So ask a lot of questions, talk to the experts, and be open to all the possibilities.

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.