
Hiring to Firing Podcast, Max TV Series Industry and Drugs in the Workplace

Hosts: Tracey Diamond and Evan Gibbs

Guest: Larissa Boz

Tracey Diamond:

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, a labor and employment attorney at Troutman Pepper, and I'm here with my co-host, Evan Gibbs. Together, we tackle all employment and HR issues from hiring to firing. And today, we have a special guest, Larissa Boz, senior counsel at Squarespace, a well-known website building and hosting company. Welcome, Larissa.

Larissa Boz:

Thanks so much, Tracey. Happy to be here.

Tracey Diamond:

Tell us a little bit about Squarespace and your role with the company.

Larissa Boz:

Sure. So as you mentioned, Squarespace is an all in one website building and e-commerce platform. The goal of the company is to enable users to build brands and transact with customers, and we have a suite of products that help them do just that, including, but not limited to, websites, domains, e-commerce, marketing tools, scheduling, and much, much more.

Tracey Diamond:

Where are you headquartered?

Larissa Boz:

We are based in New York City, with offices elsewhere in the US and also internationally.

Tracey Diamond:

And how many employees do you have altogether?

Larissa Boz:

Generally around 1800.

Tracey Diamond:

Okay. Do they mostly work from home, or are they coming into the office these days?

Larissa Boz:

We have a hybrid workforce, and we take a really flexible approach to work. We've left it to our department heads to determine for their departments, and also through each of their teams what works for them, what works best for them, and that's been working really well for us so far.

We just find that for some people, coming to the office is important. For some teams, it's more important than others, and so far so good.

Tracey Diamond:

That's great. I love hearing when there's a flexible approach that companies are taking, because I think those are really hard issues to grapple with in terms of keeping your employees motivated, but also keeping your workforce productive, for sure.

So Larissa's a labor and employment lawyer, just like Evan and I, and I know you've grappled with a lot of the issues that we grapple with in our practice for the firm, and I know you also have a background working for law firms as well. Did I get that right?

Larissa Boz:

Yep, that's exactly right, and I actually started my professional career within HR, so I got a front row seat during the financial crisis, then went to law school, did the whole thing, worked at a law firm for several years, and landed at Squarespace a few years back.

Tracey Diamond:

You were a client, an attorney, and a client again?

Larissa Boz:

Exactly. That's exactly right. It comes full circle in a lot of ways, but I hope I've picked up a thing or two along the way.

Tracey Diamond:

Excellent. Evan, you want to kick off our TV show and our topic?

Evan Gibbs:

For sure. Today, our topic is going to be drugs in the workplace, which can be, I guess, an interesting and exciting topic if you've ever had to deal with any of these issues from an HR and employment level perspective. And we're going to frame this discussion with clips from the hit HBO Max series, *Industry*. So if you haven't seen it, the show follows a group of young graduates competing for a permanent position at a prestigious investment bank in London called Pierpoint & Company. They work long hours, often through the night, and they party just as hard. They subscribe to the work hard, play hard mentality. So in our first clip today, the protagonist Harper, she has a wild birthday celebration with several coworkers snorting cocaine into the wee hours of the morning. She shows up for work the next day, completely hung over. In our clip, her line manager Daria takes her to task for her appearance. Here's the first clip:

Duncan Hicks:

Harper, it's Duncan Hicks in middle office. Can you call me as soon as you get this in order to discuss something urgent?

Eric:

But, the market is backstopped like... Oh, you coming?

Daria:

You can't go to the drive. Harper, you can't represent us like this in this condition. It was a chance to represent the firm in front of Sara. Remember, this place is bigger than one desk.

Eric:

I mean I want to, that's on tomorrow.

Daria:

At minimum, find a replacement, and please take your shirt off.

Tracey Diamond:

I just want to start off by talking about the show in general because, I'm curious if you guys felt this way, I actually found it extremely uncomfortable to watch this show, seeing all of these young people who are at the beginning of their professional careers, the drug use was just so rampant. Makes me wonder how naive am I and how realistic that is. What do you think?

Larissa Boz:

What I'd say, Tracey, is I think a lot of this is drama for the sake of drama, and they're glamorizing the drug use, normalizing it in a way that could be destructive, but it's good TV and it's interesting and it keeps people interested. And if TV reflected real life, nobody would watch it because it'd be boring to us for sure. Maybe a bit exaggerated, but it's not that these things don't happen. They do resonate in some way, shape or form, probably far more isolated than you'd see in a show like Industry.

Tracey Diamond:

I wonder, because I have a friend whose son is on Wall Street and there's cocaine involved, shall we say? And I was really surprised to hear that, because I did not realize that cocaine was as widespread as it was back in the day, and I think it seems to be making a resurgence. I'm not sure why that drug in particular business people seem to be really gravitating towards, and what that means in terms of side effects and addiction and whatnot. In any event, with regard to Harper, our friend and protagonist, she comes in, she's totally hung over, and Daria's basically like, "Go take a shower, dude." What do you think in terms of first of all how Harper is mixing her professional and personal life, and then how Daria handled the situation?

Larissa Boz:

When we're talking cocaine, it's illegal drug use. There are no lines, there's nothing blurry about this. This is very black and white, right? And so if she were to do that at work, it's a fireable offense and it's an illegal substance, and I don't think anybody questions that.

Tracey Diamond:

We could start with that, right? You cannot bring drugs into the workplace.

Larissa Boz:

Can't bring drugs in the workplace. Every employer should have a policy around conduct in the workplace and cover drug and alcohol abuse in some fashion. But at the same time, do you really need a policy for something like illicit drug use? You would think not. It's illegal. Under every law, there is no state, this is not marijuana, there's no state that permits it. As far as how her manager handled it, I think that the most important takeaway for most managers is to not make assumptions about substance abuse, but to focus on the behavior. So to your point, she comes in disheveled. That's something that's objective and observable. So the manager is commenting on that. Is it related to her job? Sure, she sees clients. That's just what she does day in and day out. And also, she has to make an appearance at the office. So it's completely fair, completely legal, and my view completely objective for a manager to say, "You look disheveled, get yourself together, go home, take a shower, you stink."

Tracey Diamond:

The "you stink" comment is okay?

Larissa Boz:

In this, if she reeks of alcohol, right, or something like that, I think in this scenario that is okay. Maybe you're right, in other scenarios perhaps not, but if it is clear this person was partying, and I think in the scenario in this particular clip there was no gap here and it was pretty clear, that's fine to say. A manager should at first focus on performance, and then keep a close eye and continue to do it.

In an ideal world, of course this would not happen in a show like *Industry*, you would also document that to remind an employee what the expectations are when they come into work. And it could be as simple as a quick email, just, "Hope everything's okay, but as discussed, I expect you to come to work on time and in a manner and appearance that is appropriate for the workplace. Today was not so great. Hope all is well with you. If you do ever need to talk about anything, I'm here." And that's it. We move on.

Tracey Diamond:

Yeah, I think those are all really good points. And Evan, I want to pull you in a little bit about the idea of reasonable suspicion. When do you test? Most drug policies that I've seen, and I've drafted frankly, have a reasonable suspicion component to it where if someone comes in and there's a reasonable suspicion that they are impaired, you send them off for a drug test. Easy to write the policy, I think somewhat difficult to put the policy into place. Because what is reasonable suspicion? What do you guys think in terms of how do you define reasonable suspicion? How do you train your managers to make those decisions about when to test and when not to test?

Evan Gibbs:

I hear this from clients, it is a really difficult issue. It's relatively easy if somebody smells like alcohol, if there's something that's observable and can't be mistaken for something else, but other times maybe, oh, this person's got red eyes, bloodshot eyes, and they're going slower than normal. Or maybe they're going faster than normal. I don't know. Maybe acting clumsy or not maintaining their balance. And I think it's probably easier to detect in blue collar type jobs where you're physically around other people, but I'm thinking through this, how do you detect

that if it's a white-collar job and somebody's working from home? It can be much harder to detect. And what do you do in that circumstance?

Let's say you're in a Teams meeting with somebody and they're acting jittery and bloodshot eyes and disheveled. By what point do you think, okay, maybe I should send this person who's sitting at home working alone to go get a drug test? Since Covid started and work from home became so prevalent, I haven't had a client raise this issue. I'm curious if either of you have had this, have you ever had to talk through getting a reasonable suspicion drug test for a work from home employee?

Larissa Boz:

I can chime in there, Evan. I'll say in my law firm days when I was advising many clients, I have seen this once or twice, but I first want to just circle back to a few things that you just said that were exactly on the nose, but is an area where there's often missteps.

You focused on physical characteristics, which is to say they're disheveled, they have red eyes, they're jittery, they're manic, they're talking too fast, or they're slurring and they're too slow. These are all physical attributes. These are observable behaviors. As opposed to saying, "They were aggressive, they were upset, they were hostile," and a lot of managers actually will skew to that second piece. They will characterize the behavior as opposed to just observing and describing what they were seeing.

Tracey Diamond:

The idea of saying you're aggressive versus saying he raised his voice. Right?

Larissa Boz:

Exactly. And that is a very, very common pitfall. Because then rightfully so for an employee it becomes personal because this is no longer about what you're seeing and your concern, but it's about you having an impression of me, and people tend to get defensive, so that's first part of the problem. And the second part is it's really hard to diagnose. I'm not a doctor. I mean, in a legal sense it's hard to understand is there a reasonable suspicion, do we have enough objective indicia that this person is not acting in a way that is reasonable, expected? Is it really out of character? Is this a fair assessment?

And so I do think it's really important to focus on that when thinking about reasonable suspicion. Can we take action? I think the other big, and maybe obvious for us, but not always for everybody, is that managers shouldn't be going rogue and just ordering drug tests. They should be talking to their HR team, their legal team or external counsel, and really talking it through and pressure testing those observations to make sure that there really is a there there instead of them just making assumptions.

Tracey Diamond:

That's another area where we're just putting so much on the shoulders of these supervisors, and that always really worries me, particularly in the manufacturing environment. Really in all industries, but particularly in manufacturing where oftentimes supervisors just inherit these supervisor positions and don't really have any training, and they're not going to know does this person meet the definition of reasonable suspicion, or not meet the definition of reasonable suspicion. I think that's where training becomes just so important.

Larissa Boz:

A thousand percent. And in a Covid environment, while I haven't yet seen it, but I imagine it has happened, I think some of the telltale signs of somebody who's either disengaged or there's something going on is we usually have cameras on, but today their camera is off and you don't know why. Or you're seeing emails that are sporadic or coming really early in the morning or really late at night and then you start to think it's out of character or maybe you're seeing the quality of the work slip, and so it's really the totality of the circumstances here.

Tracey Diamond:

Missing meetings, right, even though the person's working at home, and just general attendance issues. Getting back to my point though about when is it reasonable suspicion, if someone has an attendance problem in and of itself, is that grounds to send someone for testing? I mean, of course context is everything, and that's I think a little bit of a tough one.

Larissa Boz:

In isolation I think that's a really difficult case to make. Unless you were doing that consistently across the org for people in that role or in that department, and every time they missed three meetings, we drug test you, I mean, that'd be an interesting policy. I've not seen it.

Tracey Diamond:

Be a very expensive policy.

Larissa Boz:

Yeah, I think it's expensive and maybe not so practical, but different industries have different views about this, and industries that are highly regulated for a lot of reasons, you're thinking healthcare, you're thinking some manufacturing, maybe in finance you'll see drug testing a lot more often. Because not only is the issue pervasive I think generally across those industries, but they also may have the means and the funds and the access to do it.

Evan Gibbs:

What about the company employer does get it wrong and they order a reasonable suspicion testing and then let's say whether it comes back positive or negative, what are the implications for the company? What have you guys seen? If it came back negative, in my opinion, if you had reasonable suspicion, send somebody for a drug test, it comes back negative, everybody moves on with their lives, I can't really think of a penalty that would be assessed in that type of situation.

Tracey Diamond:

Then you would focus on the behavior, right? Somebody's walking in front of a forklift, you send them for reasonable suspicion testing, it's negative, but they're still a bozo that walked in front of the forklift and you're going to want a potentially discipline for the behavior.

Evan Gibbs:

Well, I guess what I meant was the employer, let's say they're wrong, so they order the test based on reasonable suspicion, it comes back negative, so they were wrong that this person

was under the influence, is there any penalty just purely for the employer for having gotten the reasonable suspicion wrong? I haven't really seen anything. I'm not aware of any kind of penalty. We do want to focus on the objective and be really careful about it. The thing to also remember is that maybe if they're over-testing, are there any penalties for that? If you're being overly careful, especially in an industry where safety is really an issue, like manufacturing, healthcare, if you're being overly cautious and over-testing.

Tracey Diamond:

Where someone drives for work, right?

Evan Gibbs:

Yeah.

Tracey Diamond:

What about the ADA though? You send them out for reasonable suspicion testing, they're negative, you now are disciplining them for whatever they did that caused you to believe that they had reasonable suspicion. Does that give any risk under the ADA? Where does the ADA come into this altogether?

Larissa Boz:

It could. We talk about penalties, could be just the monetary cost, the time, the effort of doing that, in some form that's a penalty. The penalty can also be viewed as the impact on morale. Other employees are seeing and hearing about this, there's going to be chatter about it. "I was drug tested because this happened." And maybe it turns out, to your point, Evan, there was no reasonable suspicion, it was something that anybody would do, and it was a misread. And I think what an employer should do is take a look at their policy and have a conversation with that manager and make sure there's alignment. What's the postmortem? How do we fix this going forward and how do we ensure our employees that we're going to be careful about this.

But to your question, Tracey, on the ADA, how does it come into play here? This is a really interesting area, and I know when I've counseled clients that it's often shocking to people to hear that the ADA not only covers having a physical or mental impairment, so if you're an alcoholic or if you are somebody who's addicted to any kind of substance, it doesn't matter if it's illegal or not, but also the perception if somebody's reported as having such an impairment.

Tracey Diamond:

That's where I get concerned with the over-testing, is that we're creating a potential cause of action that someone's perceived as being disabled when they aren't really disabled.

Larissa Boz:

Right. But what would have to happen there is the employer or company has to assume the employee has that addiction to drugs or has an alcohol problem, whether or not that person has that addiction or a problem, and they have to take a negative employment action based on that belief. And drug testing by itself, is that like a negative employment action? I mean, I suppose there could be. I've never seen a claim.

Tracey Diamond:

Unlikely. Yeah, I agree. Very unlikely that would be considered by itself an adverse employment action.

Larissa Boz:

Then of course if they're not promoted or they get a poor performance rating for reasons unrelated to this, or we don't give them the comp increase that they think that they deserve, then they could say, "Well, that is because..." I think it would be logical for that employee, especially if they came up negative, to point back to this and say, "You created this perception of this bias against me." And then you have to have a tough conversation.

So that's why I think it's important that if it is negative and it turns out that maybe we didn't have all the facts, or the facts were skewed, or now in retrospect we look back and that wasn't the right call, it's really important to sit down with that employee and make sure that everybody's aligned with the expectations going forward, address the situation that occurred, and to the extent that the employer realizes maybe we didn't make the right decision there, I think you own it. I don't think there's a huge risk in owning it. It's not an adverse employment action saying, "I want you to know this is not going to affect your compensation or your eligibility for promotion," or wherever you are in your employment life cycle. "We could have made a better decision here, but at the same time, not showing up to meetings," whatever it is, whatever they did, "Is something that we want you to be mindful of and that needs to change going forward."

Tracey Diamond:

I think it's helpful to have some standardization to the extent possible, with discretion on top of it for line supervisors so that they know what the signs should be, what the company is considering to be reasonable suspicion and maybe a laundry list of behaviors that would give rise to reasonable suspicion probably is helpful to supervisors. Somebody's having an attendance problem, there's an accident, disheveled appearance, odors, walking unsteady, whatever it is, make a list of those things so that there is some consistency on when you're making the decision to send someone for testing. I want to turn to a situation where what if the person does test positive? So now what? What are the company's options here short of just letting the person go?

Larissa Boz:

Certainly, it's always context specific, and what do they test positive for? Right? And what is the philosophy of the company? Is there a zero-tolerance policy? Is the view of the company that it's one strike, it's an illegal substance, there is no room for that here? You are in a position within the company where you have access to sensitive information or that you have an obligation, some sort of fiduciary obligation or other duty to the company where they don't feel comfortable with somebody who is using cocaine or heroin, and then they happen to be the head of accounting. In no universe is that going to be okay. Maybe there's zero tolerance. In other cases, it could be, well, this person tested positive for some substance, or perhaps used a substance that is not illegal, which also happens. So they're prescribed, just make up a drug, but they're prescribed some sort of painkiller let's say, and they're overusing it, and so they're slurring speech and then they're a little bit woozy.

Tracey Diamond:

Or they're even using it in conjunction with a prescription, but it just makes them really drowsy and so they fall asleep at their desk in the middle of the day.

Larissa Boz:

Or they have a drink at the company cocktail party and they happen to also be medicated and didn't think about the drug interactions. And that has happened from time to time. And so they test positive. And I think that the company has to think about the role that the employee sits in, absent a zero-tolerance policy, and figure out, well, what are the reasonable next steps based on this situation?

So if it is an illegal substance, and this is somebody, we see this in sales a lot across industries, salespeople are gregarious, they're out there, they're social and often work hard, play hard. Same sort of mentality. If there's a substance abuse problem, I think that you can give the employee a choice. You can say, "It's a warning." That's one approach. Or you could say, "This is a fireable offense, we could terminate you right now, but we're invested in you staying here and we're invested in you getting better. And hopefully this is something that is repairable and that you want to stay here, but here's a last chance agreement. As a condition of you returning to work, you have to take advantage of our EAP or attend this rehab program," or whatever you offer through your benefits.

Tracey Diamond:

Or, "Go find it. You're on your own, employee. It's your responsibility to find it and provide us with proof that you're undergoing this rehabilitation, and we'll give you some time off to do it if you need to." I think that's an important point, because under the FMLA, the person, if they're eligible, would potentially be entitled to time off. And under the ADA even they may be entitled to a leave of absence to take care of it.

Evan Gibbs:

I was going to point out one other really very important and extremely nuanced issue that I think is too nuanced to even get in here, and that's marijuana use. With the current very patchwork laws of marijuana state by state, I think that that's one in particular that... We can do a whole podcast episode on that; we can do two or three on that.

Tracey Diamond:

Absolutely.

Evan Gibbs:

I think just for purposes of this discussion, I just wanted to point out that that's a very state and even sometimes a city specific issue that anybody listening, if you're dealing with this, you need to be very careful and make sure you know what you can and can't do with respect to marijuana use, since somebody tested positive in the workplace.

Tracey Diamond:

I'm glad you mentioned that, Evan. And I also want to add to that, that some state laws have limitations generally on drug testing, and we're not giving legal advice here on our podcast, but I

want to just caution you to make sure you know the law of the state in which you have employees.

Larissa Boz:

Also, regardless of whether you're in the US or not, think about the local laws, but also the national law. What's the federal law in the US? Is it legal federally versus state specific, and is this employee remote and are they traveling, and what does that mean? And so I think that those are nuances that you would absolutely want to raise to your legal counsel to discuss.

Tracey Diamond:

They can get very complicated as people are crossing state lines. And you're right, federal and state law is constantly changing on this issue. All right, let's change to our next clip, which is actually from the very first episode of the show. In this episode, a man named Harry, he's a young grad assigned to the investment banking division desk, and he takes a combination of energy drinks and amphetamines to pull a series of all-nighters to impress his boss, catching just a few hours of sleep here and there literally in the bathroom stall. He ends up having a heart attack and dies in the bathroom. The employees briefly paused to recognize his death and then it's onto business as usual. Let's listen to a clip about Harry.

Sara:

Harry's death is an unexpected tragedy. The next 24 hours and the way we respond to this are defining. Do not speak to the press, I'd rather you didn't speak to anyone outside of the office for now. This is about respect. There will be an inquiry into the circumstances.

Tracey Diamond:

This is an illustration of drugs being used to power through and get the work done, as opposed to what we have been talking about so far, which is drugs being used and its negative effect on employees coming in hungover the next day. In real life I could certainly see this happening with ADD drugs and other drugs that fuel workplace behavior, drugs to help you concentrate taken in excess and without a prescription. Should companies be acknowledging this and managing this sort of problem, and do you see a problem out there?

Evan Gibbs:

Yes, a hundred percent. This is a serious problem. I remember in law school people snorting Adderalls in the bathroom before exams on top of energy drinks and things like that during finals weeks, and I personally know a number of people who have active Adderall prescriptions, and they use them when they need to power through.

I don't really hear people talk about it that much, and I think part of the reason is because it is a prescription drug, and I think it's kind of like the way it was with painkillers for a long time. It's like, well, it's a prescription drug, it's not illegal, so it's not a big deal. But I've heard that people pay a premium on the street for this stuff, that it's pretty readily available and that it's highly abused and it can be very addictive.

I've known people who have had these drugs, prescriptions, and then they'll run out and they'll buy from other people, and they've done this for years. And there's a perception that, well, doing this to get my job done, so it's okay, I'm not having fun. This isn't for fun. This is to crush life. So

at least from what I've heard from people and read, there's not as much of a stigma because it's viewed as they're just being productive. They're just hustling.

Tracey Diamond:

Or they feel like they need to because they can't get the work done otherwise, they can't meet the deadlines. They're being backed up into a corner.

Evan Gibbs:

Yeah.

Tracey Diamond:

How do companies recognize this though? I'm not sure how recognizable it is. I think back to Harry and the show, he was jittery and he seemed clearly to be working crazy hours. And what I thought was really interesting was the manager was saying, "Oh, don't work through the night, but get this done." Right?

Larissa Boz:

Don't kill yourself, don't over-work yourself, but do this task that could not possibly be completed unless you do exactly that, and that is that double speak. I think part of it is also setting expectations, making sure that managers are setting reasonable ones.

I mean, look, we're lawyers, so maybe we're a little bit jaded, but I'm not suggesting it's a nine to five. In some jobs you know it's going to be more than that. But there has to be a recognition that with flexible work and working from home, there's got to be a division between when there's some downtime and when you're back to work. I think what is so interesting and difficult about abuse of amphetamines and this nature of drug, this class of drug, is that the short-term impact has increased productivity. It is not immediately apparent the effects of that abuse.

And it's not until somebody burns out or dishevels themselves or looks like they dropped a bunch of weight or "looks dead behind the eyes" kind of a thing that you really think to yourself there is an issue here. It's too late by that point, they're already burnt out, they're probably going to quit, and they're in a whole different zone.

So I think part of it is managing your managers and making sure they're setting reasonable goals for their team and doing their own share of the work. At the same time, in a situation where you have people in the office, this is an interesting example, because they could tell if this guy swiped in or swiped out, if this character swiped in or swiped out, they could check these things. If they really saw how tired he was, he's drinking all these energy drinks, absolutely.

They could have a policy in New York City, if you see something, you say something. On the MTA, same exact thing. If other employees understood these are signs of addiction or abuse or this person is in trouble, they should feel empowered and comfortable enough to talk to that manager and have trust that the manager's going to do something about it. And to say, "So and so, I don't think he's left the office for a day or two days. He's really burning the midnight oil."

And the other thing is, check your systems. We're all in this digitized environment. When did he log off? Did he log off? Has he been active on his computer? Have your IT department do some forensics for you. They could do that really quickly and say, "This person was online for 24 hours."

Tracey Diamond:

It has to go beyond just the line supervisors too though, because when they're getting pressure, they're going to create pressure for the people below them. As someone who manages people, I get that. When deadlines are coming up, you have to stop yourself from saying to someone, "Don't kill yourself, but you got to get this done because we have this deadline coming up," and you're relying on people to get work done.

I think at the end of the day, the training is such a crucial component to this. And to both of your points, it's a tough one, because people do take these drugs with a valid prescription because they need it in order to concentrate. So when do you know when it's okay, and when do you realize that it's not okay or that the person is abusing something, as opposed to using something that's supposed to help them?

Larissa Boz:

But you know Tracey, the other piece of this too is perfect is the enemy of the great. And so many people fixate. I think in this episode, we've already spoiled it, so sorry audience.

Tracey Diamond:

The first episodes, so.

Larissa Boz:

If you didn't see it then none of this resonates, but the font had to be perfect, and that was what he was so stressed over. It was the single page of a PowerPoint. And again, instilling that trust that perfect is the enemy of the great, and that the substance is there and we'll get over the font. And training your line managers to show some empathy here and to recognize the hard work, and to not sweat this stuff, and to own some of that, not to just put it all on your direct report, but to have eyes on this deck before it goes out.

Tracey Diamond:

Yeah, I think that's the particular issue with the professional services organization, where you have grads from schools where people worked hard their entire lives to get into that great college and to get into that great grad school, and now they're out in this very high-power job.

There was a podcast I heard recently where this woman was at, and I forget the name of the Wall Street firm, and she left and wrote a book about what it was like to be there and how the recruits would come in for orientation and they would lock the door and tell them, "Half of you won't be here by the end of this year." They're creating and fostering this atmosphere of competitiveness between the different employees, the new grads, and then you turn around and say, "Don't work too hard." That's definite double speak for sure.

Larissa Boz:

Yes. The look to your left, look to your right, by the end of X number of years, those people are not going to be here. Right.

Tracey Diamond:

I mean, to me the ADD drugs are sort of a symptom of this problem as opposed to a problem in and of itself, although it is a problem in and of itself too. But Evan, when you were talking about

the people that you saw snorting Adderall and drinking energy drinks to get to their test, if there wasn't all this fear associated with the taking of the test, do you think they'd be doing that in the first place? It seems to me like it's a tool, not so much an end in itself.

Evan Gibbs:

My perception was not that they were like, "Man, it'd be so much fun to take this test blitzed out of my mind." It was, "I've got to make a good grade because I got to be at the top of my class and make law review to get the good job."

Tracey Diamond:

And so on and so on and so on, right?

Evan Gibbs:

Yeah, exactly. So I think we're in another one of those high pressure professions where that mandatory curve, it's brutal, and it's kind of like you described, Tracey, kind of locking the doors and saying, "Hey guys, only 10% of you are going to be in the top 10% of the class, so look around, there's a hundred people in here, only 10 of you are going to make it, so have fun."

Larissa Boz:

Right, right. Well, and it's not sustainable too. I mean, I think the message that you would hope that would get back to a lot of those young students is that if you need this crutch to perform at the level you think you need to perform at, you're setting a baseline that you cannot meet without this crutch, and can you sustain that baseline in perpetuity for the rest of your professional career?

Tracey Diamond:

Do you really want to, and then you see this whole category of young kids coming up that just is checking out, because they don't even want anything to do with that. That's a whole other set of podcasts right there.

Well, we are out of time, but I want to thank Larissa so much for having you join us today, and thank you listeners for listening to our podcast. Please subscribe to *Hiring to Firing* wherever you get your podcasts, and stay tuned for our *Law360* column coming up discussing each podcast episode. Don't forget to check out our blog hiringtofiring.law. Thanks so much, everybody.

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