

HIRING TO FIRING PODCAST, UNCONSCIOUS BIAS AND NETFLIX'S PARTNER TRACK**HOSTS: TRACEY DIAMOND AND EVAN GIBBS****GUEST: YING WONG, VP OF PEOPLE, CYBERRISK ALLIANCE****Tracey Diamond:**

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, a labor unemployment attorney with the law firm of Troutman Pepper. Together with my partner and co-host, Evan Gibbs, we work with clients on all issues involving employees, from hiring to firing.

Today, Evan and I welcome Ying Wong, VP of People at CyberRisk Alliance, a company that provides business intelligence and information services to cybersecurity professionals.

Welcome and thanks so much for joining us, Ying. Before we turn to our topic, why don't you tell us a little bit about CyberRisk Alliance's mission, its workforce, and your role at the company?

Ying Wong:

Absolutely. Very happy to be here. A little bit about CyberRisk Alliance. We serve the very high growth and rapidly evolving cybersecurity industry with our diversified portfolio that informs, educates, and builds community, and inspire and envision marketplace through our very powerful data-driven business intelligence.

As with most organizations nowadays, we have a workforce that is primarily remote. We offer a hybrid environment and I would say that we are in probably almost 50 states, I would say, in terms of our employee base.

At CRA, I'm the VP of people, the head of people, as you will, where I plan, lead, direct, and develop policies and activities to ensure that we are poised for growth.

Tracey Diamond:

It's always so interesting when I talk with you about different legal compliance issues because you're all over the country, but you're relatively small company, so you have literally one person in each jurisdiction, which has I'm sure its onset of challenges, right?

Ying Wong:

Absolutely, and I think that we're not alone. First of all, the ability to recruit nationwide, which is amazing. A few years ago, you wouldn't even have thought that was a possibility.

We're based in New York City, but I would say more than half our organization is in a different state. And so, when you're looking at policy, when you are looking at implementing different things of working, you have to consider the state and the state laws within that state, whether it's PTO accrual or PTO carryover. So something as little as that. You have to look at it from a holistic point of view.

Evan Gibbs:

I'm curious, have you always been mostly or fully remote, your workforce, or is that something that changed for you all during the pandemic?

Ying Wong:

Yes. I joined the organization about a year and a half ago, and the organization were probably a little shy of four years. So fairly new company and we've gone through actually very rapid growth in the span of four years. We've had eight acquisitions to date, which is a lot.

Tracey Diamond:

Sure.

Evan Gibbs:

Yeah.

Ying Wong:

But I think part of it is due to the pandemic. We hired a lot of individuals during the past three years now, and it just worked out that way. If the pandemic didn't happen, I think we would probably be looking at a different organization today.

Evan Gibbs:

We'll get diverted and we'll end up talking to you about all these unrelated questions. So we better focus on the topic, which today we're focusing on the show, *Partner Track*. And if you've seen it, you know that it centers around Ingrid Yun who's a young associate attorney trying to make partner at a fairly swanky white shoe, New York City law firm called Parsons Valentine.

As a female Asian American, she faces both sexism and racism at the firm and from everybody ranging from fellow attorneys to clients. There are moments in the show where we see her coworkers taking credit for her work, when they are given better assignments because they get along better with the partner or with a particular client, and then of course when they're elevated for mediocre performance when she's the one who's been putting in the time and coming up with the best client solutions.

So spoiler alert, ultimately a mediocre performer makes partner over her even though she's far better qualified. So it made me think about how it's often who you know rather than what you know which I've seen play out many times.

So I'm curious, just to kick us off, how do you think women and women of color can maintain equal footing in industries that tend to be made up of primarily white males?

Tracey Diamond:

We always start with the hard questions.

Ying Wong:

I know.

Evan Gibbs:

Yeah, no softballs here.

Ying Wong:

I'll take a stab at that. I mean, being a woman and a woman of color, I think it's a challenge, but I personally feel, and this is my own personal belief, that hard work and proving that you belong goes a long way.

My parents instilled in me when I was growing up that as long as you put in the hours, whether it's studying, it really would open doors for you down the road. And my parents are immigrants and I have a bachelor's, master's degree and I am in a certain position, and I think there's truth to that, but I've also been very lucky where I've worked with really wonderful executives and leaders within organizations, I think, that help propel me to where I am today.

It's a combination of hard work and also being lucky that you're working with good people who believe in you and having the right people in a mentorship capacity to help you grow is important.

And as an individual, if you find yourself in a situation where it's not the right environment for you, I think that you need to look elsewhere because there are opportunities out there.

Evan Gibbs:

And I'm just curious, your feedback on if you think you've seen just overall company, a corporate culture changing over the years with respect to opportunities and/or treatment of women and minorities.

Ying Wong:

I've been in this industry a really long time, and I can tell you for sure that there has been a change, I think, in the environment. We're not going to talk about how many years I've been in the industry because that, well, just me.

But I think that having been in the workforce in the early '90s, I've definitely seen a shift with regards to how organizations have changed, with regards to diversity initiatives.

And in the past, you would never see, let's say, employee resource groups to promote women within an organization or a certain ethnicity. There were never mentorships or coaching for that matter from leader because it was not a priority. It wasn't something that was thought of.

I think that we've come a long way since those times, especially HR. HR has evolved. Think about it. It's no longer personnel. In order for an authorization to succeed, HR have to have a seat at a table, not just the pencil pusher, paper pusher. It's really looking at the organization and talking to the people and building culture. All these kind of buzzwords that we talk about nowadays, we take them for granted because this was not the case just 10, 20, 30 years ago.

Tracey Diamond:

I'd like to explore that idea of HR having a seat at the table. And I think that some of our clips today are going to hit at that point to a certain extent.

The *Partner Track* show sort of in part, I mean it deals with a lot of things, but in part it deals with this concept of what is HR's role and how does HR manage situations where management and employees may not really be in sync.

It's a really tough job. And with the concept of diversity, do you think that HR is just taking a more active role in pushing initiatives or is just generally more cognizant of the issue and therefore it's filtering its way into the recruitment process and then on up through the performance process? Or do you think it's something else?

Ying Wong:

I think it's both. As HR professionals, we go through certifications and educations and learnings to be the best that we can be in terms of looking at how do we improve organizations, right, because we walk this very fine line in the workforce.

But I believe that overall, your average worker is a lot more aware. Managers are a lot more aware, and executives are a lot more aware of what can be beneficial. It's not just about the bottom line.

We always talk about employees being the most important asset within an organization. It's true. And I think that part of it is that we've come as a society to recognize that this is in fact true. It's not just about revenue, but it's how do we grow revenue, but also by enhancing our workforce and bringing everyone along in that journey.

Evan Gibbs:

Yeah, I can say just in my experience, my limited experience, it seems like there has been a real culture shift from, "We have to do these things around diversity and anti-discrimination, anti-retaliation. We have to do this stuff because we could be sued and lose, get a judgment against the company," to...

I'm seeing a lot more, "We want to make these changes as an organization, and we want to develop an inclusive culture." Those are two very different approaches, going from "I have to do this," to "I want to do this," seems to be the shift that I've at least personally seen.

Tracey Diamond:

Let's talk about Pars and Valentine, our law firm in the show, a bit because there's a good example of a law firm where maybe they want to, I think as a theme, they want to be a more diverse place and they certainly have diverse associates at least before they all quit, but there's certain competing demands here.

So we're going to turn to some clips and in our first clip, Ingrid's coworker, Dan, is a glib, arrogant associate who's a white male and he makes a comment to Tyler, a black associate in the coffee room to say something like, "Tyler doesn't have to worry about making partner because he's black and gay."

Tyler is understandably upset and calls Dan out, giving him a lecture on white fragility. Let's listen to a clip.

Tyler:

Anyway, I need a rain check for Friday's match. This Luxe deal really just deserves my all.

Dan:

Oh, come on man. Don't be such a martyr. You know, you don't have to give your life to this place. You're black with an adequate bonus. Your success is pretty much guaranteed. Job security, baby.

Tyler:

Okay, that is all kinds of racist.

Dan:

Whoa. I'm not racist.

Tyler:

Sure. And I'm not still upset about what happened to Manila Luzon on Drag Race All Stars. We all got to accept a true stand.

Dan:

Are you really doing this right now? Don't be so sensitive.

Tyler:

I don't think I'm the one being sensitive.

Dan:

Man, you don't know my background. What? Because I'm white, I just have the easiest life?

Tyler:

Okay. I can't deal with your white fragility right now.

Dan:

My white what?

Tyler:

I have to... not be here. Your white fragility. This extreme defensiveness when you're told you're being racist.

Dan:

Because I'm not.

Tyler:

No, because you don't want to be. Yeah. I know you posted a Black Square so you think you are an ally, but do you realize the **** you say around here? Like how you crack jokes about how Nihal's lunch smells or how you mix up the two Latinx paralegals' names.

Dan:

Oh my God. Dude, it was one time. I was in a hurry.

Tyler:

See? No, no, no, no. This? This is what I'm talking about. I am telling you that you are being offensive and instead of respecting what I have to say, you are more concerned with how this is an interruption to the highly filtered way in which you see yourself.

Yeah. It is more important to you that I protect your white comfort than you actually hearing me and making some changes.

Dan:

What do you want me to do? Huh? You want me to just shut up and listen?

Tyler:

Yes and learn. Maybe say thank you if you have some manners. I don't know.

Tracey Diamond:

What do you think of Tyler calling Dan out in this matter? First of all, should he have done it in private or what else could he have done besides yelling at Dan?

And I don't mean to come down Tyler because I think what Dan said was horrific, but let's talk about Tyler for a minute. What could Tyler have done differently?

Ying Wong:

Yes. I think that private is important. I mean look, hindsight is 2020, right? But-

Tracey Diamond:

Emotions were running high.

Ying Wong:

Exactly. Mostly-

Tracey Diamond:

Cue some dramatic music.

Ying Wong:

Yeah, exactly. And I think that it became... I don't think he meant to take it to where it was. You could hear there was anger and I think part of the things was it's not new. You could tell there's undertone that there are other things that have bothered him over the course of their working together that has manifested himself in this particular instance.

So we're not just talking about what Tyler said at that instance. We're talking about the culmination of things that he had said over the course of their working relationship. And I think that he could have taken a different approach.

And I always one... for to say that if you're going to get emotional and you feel that way, take a step back, come back at a right time, have your mind clear and have a conversation, have a fruitful conversation instead of an argument in essence. And I get it, emotions are high and it's hard when you're in the heat of the moment to take that step back.

Tracey Diamond:

Yeah. I always say once you've raised your voice, you've lost the battle. And of course, I'm human and I raise my voice, but I see it time into Ken at the car dealer, in the supermarket

aisle. Once you start getting mad, no one's going to hear you anymore. They just are going to go right into defense mode.

Dan reacts essentially by mocking Tyler, right? And he mocks the whole concept of white fragility. In the moment in the coffee room, he just basically shouts back at Tyler and says, "What do you want me to do?" And Tyler says, apologize and don't do it again.

But Dan takes a different approach. He goes to the corporate retreat and he gives a presentation that mocks Tyler in this whole concept of white fragility and this sparks an HR investigation. Let's listen to a clip of the investigation.

Human Resources Rep:

Parsons Valentine is committed to a culture of respect. It's our hope that a swift investigation will uncover any inappropriate behavior and if so, we will take corrective action. Can you tell me in your own words what happened?

Tyler:

Well, Dan Fallon got up on stage and let his racist flag fly. So there's that.

Employee 1:

Dan Fallon did a comedy routine at the firm's annual retreat featuring jokes that went from dumb to outright racist.

Employee 2:

Yeah, Dan did stand up, which I didn't know he could do. I mean, he's always telling jokes, so I guess it makes sense.

Employee 3:

Dan did a comedy routine. It was... I don't want to get anyone in trouble.

Dan:

I performed at the annual company retreat as requested, offering commentary that was both educational and humorous. I would love to know where exactly my words violate Parsons' code of conduct or any law for that matter.

Tyler:

He probably thought he was funny.

Dan:

It's just a joke. I mean, come on.

Human Resources Rep:

And how did that make you feel?

Tyler:

Like it was a personal attack. I was the one that talked to Dan about white fragility and here he is up on that stage using it as a weapon.

Employee 4:

Dan othered the lawyers of color in that room and it was like he wanted to make us feel unwelcome.

Employee 5:

I felt smarter. I didn't know any of that white fragility stuff. Now I do.

Tyler:

Nothing I haven't heard before. Karen, you were there. You tell me, that wasn't hostile.

Karen:

Dan covered himself. He didn't violate any of our codes of conduct. It's protected speech. And from what I've been hearing from everyone else, I simply do not have enough evidence to fire him.

Tyler:

Mm-mm. Well, I never said I wanted Dan fired, I just want accountability. I want to be respected in my workplace. Wow.

Karen:

What makes this right in your mind? Termination? probation? Probation would make Dan ineligible for partner this year. Would you consider that meaningful?

Tyler:

It's monetary. It puts into signal. Holding the golden boy back a year, yeah, that's exactly what I think the firm should do.

Karen:

I agree.

Tyler:

You do?

Karen:

Like you said, Tyler, I was there. Thank you. You've been a really big help.

Tracey Diamond:

I want to go back to something you just said earlier and before we played the clip about how this was a long time incoming. There were other things leading up to this incident in the coffee room between Tyler and Dan.

Do you think the HR investigator should have been investigating just this one incident or do you think that she should be delving into some of that history to get some context?

It's this idea of just concentrate on the one matter at hand that someone's complaining about or do you need to look at the whole bigger picture? And I guess that sort of leads to the initial question, which is: what is the goal of the investigation? Why does HR do investigations in the first place?

Ying Wong:

And here's the thing, right? As we're listening to this or watching this show, you don't know how much HR knows. We can assume that she doesn't know anything and she was just a witness to this outburst.

And as she's conducting these interviews, if these other issues would come to light, if other people have witnessed, I think you should consider it in totality and not just particular instance. That's how I feel, if it was me conducting the investigation.

Evan Gibbs:

Context is always important anytime you're conducting an investigation because if you just focus solely on just this one statement and you exclude the broader context, I think that the investigation's going to leave a lot on the table and may not reach an accurate conclusion and may not really be viewed by those who are involved or people that may second guess the investigation later in a lawsuit or something like that. It may appear that it was not a genuine effort to investigate whatever the conduct was.

Tracey Diamond:

Context always is very important, I think. In this instance, and I think this was done partly for comedy and in a cringey kind of way, but you'll have some people saying this was outright racism. I felt really uncomfortable. And then you have this one guy saying, "Oh, I learned something here and now I know what white fragility is."

So totally got the wrong message out of this situation, which sort of shows the danger of giving Dan this kind of platform in the first place.

Ying as a HR, VP of people, what if anything, would you have done differently in conducting this kind of investigation? You see this employee acting in this manner at the corporate retreat, how would you have handled it?

Ying Wong:

There were certainly cringe-worthy moments when I was watching this. First and foremost, I think there are certain things that was done right, in particular that the investigation was launched immediately.

I think that's important, the sense that it's important to the organization and what the organization's policy is with regards to these type of behaviors in zero tolerance, it's absolutely correct, the approach.

Now, how it was handled, I think that... HR should be handling investigations as an investigation. You should not be drawing any conclusions. You should not be adding any-

Tracey Diamond:

Biases or your own...

Ying Wong:

Correct. And I think that's where this HR investigator made certain mistakes in particular agreeing and negotiating the conclusion or what Tyler wanted to see as an outcome.

It's good to ask the question, what is your expectations to come out from this investigation but not agreeing to and offering probation with probation work. I mean, these are things you should not be doing. You're drawing a conclusion and setting certain expectations of what the results could be because ultimately, she doesn't have the final say. She can only recommend.

So by her stating these things, she's setting certain amount of expectations that may not happen. And I think that's exactly what happened here. It created a lot more harm than ultimately what could have been handled differently.

Tracey Diamond:

I agree with you. I think there's two big nos here. The first thing she did was suggest what the possible result could be when she didn't have authority to reach that results. And that's not her decision to make.

And second of all, she negotiated with the people who were complaining about what would satisfy them. And I agree with you, it is often really helpful to know what the people who are complaining are looking for, but it's not their decision to make either. It's not her decision to make, it's not their decision to make. And by jumping the gun and saying, "Well, will this be good?" And coming into an agreement with what's acceptable to the people making the complaint without authority, you're just setting yourself up if management decides to take another approach to disappoint the people making the complaint.

So management ultimately does overrule. Karen, the HR investigator, says probation, which would've made Dan ineligible for partner that year. So it had real consequences and management decides not to go that direction.

I think they went with the reprimand, which was basically a slap on the wrist. It had no consequences. And the stated reason was that Dan has clients that are very valuable to the firm and they can't chance the fact that he might leave.

What are your thoughts there? Often I've seen situations like this where a company executive engages in bad behavior, but the company executives is super important to the company and often the discussion is, "Do we terminate for the bad behavior or is there anything else we can do that gets to the bottom of the issue and solves the problem short of termination?" Have you guys seen that before, either of you, and how did you handle it?

Evan Gibbs:

That certainly has come up, I think several times for me, and there's been a range of responses that I've seen. Currently, companies in my opinion, are more willing to part ways with even a really valuable employee or executive based on bad behavior that could, even if it's not illegal, maybe really harms the culture of the organization.

Tracey Diamond:

The reputation of the organization.

Evan Gibbs:

Yeah, that's right. Because I think one of the big things that seems to be driving a lot of change now is social media and public relations issues. Because companies, I think, they realize now that in the cultural environment we're in that there's not... I think there's more harm that can be done to an organization that outweighs the benefit of having just one particular employee or executive at a company that may be a high performer.

I think organizations now realize that it doesn't make sense to keep people like that on if it's going to really, really hurt the perception and/or culture within the company.

That's been my observation recently when within the past year I've seen a few separate situations in different parts of the country in different industries where high level really valuable employees engaged in some kind of improper conduct and the company... they weren't even really much of a struggle in the ones that I've dealt with as to whether or not the company decided to let them go. I mean, it was pretty clear-cut.

"Well, yeah, we're not going to tolerate this," and it's a shame because this person was really valuable, but we will live. We've got a good company and that's not going to be the culture that we're going to foster.

Tracey Diamond:

I've seen it go both ways actually in the past year. One in which an executive was let go and another one in which the executive wasn't let go and was basically told, "Don't do it again."

I think a lot of it has to do with how egregious is the conduct in the first place. There's conduct where there's just way that you can do anything but terminate, and then there's conduct where maybe the person is able to be rehabilitated or it's less risky for the company to keep them than to lose them. Maybe they're in their own protected category and letting them go may create its own issues. So, it can be somewhat multifaceted and complicated.

Evan Gibbs:

The severity is definitely a very important factor.

Tracey Diamond:

In the show, in *Partner Track*, the next thing that happens is that the firm then tries to buy, Tyler, the black associate, silence with the sweet severance package that they make. Ingrid actually present to him.

First of all, Evan, I wanted to ask you from a legal perspective, are there any rules that prohibit that type of deal?

Evan Gibbs:

In terms of, I guess, offering someone essentially a payment for a really tight non-disclosure agreement, some jurisdictions, I believe New York's one of them now, they have certain rules around that. There are certain disclosures that have to be made, and some jurisdictions may even outright prohibit requiring a confidentiality or non-disclosure provision in a severance agreement so that it avoids or prevents this exact thing, silencing employees with complaints of discrimination that they might have.

I don't know how far this trend will go. I mean, it seems to be really limited to just a few jurisdictions.

Tracey Diamond:

There's also the federal Speak Out Act that prohibits employers from entering into or forcing their employees to enter into non-disparagement and non-disclosure provisions that prohibit

employees from speaking out about sexual assault and sexual harassment prior to a dispute having arisen.

So if there's already a dispute, an agency charge or a lawsuit, the law doesn't apply. But if it's pre-dispute, like in Tyler's case where there's just an internal complaint, the Speak Out Act would prohibit the company from having Tyler sign a non-disclosure that doesn't allow him to talk about it, at least in the context of sexual assault. And I believe it's sexual harassment, just not all kinds of harassment.

It was interesting, I was talking with somebody about this issue last night and the person hadn't seen the show and what they said to me was, "I bet you after that HR investigation, they probably paid off the guy who complained, right?"

And I said, "Yeah." And he goes, "Yeah, that's always what happens." And I said, "Well," wearing my defense hat, "what often happens is there's an employee who has bad performance and then they complain about somebody to try to save their own job."

So many layers, HR investigations, right Ying? And often you have to peel through that onion in order to get at what's really going on, and what's motivating folks in the first place.

Ying Wong:

Yeah. Going back to what one of the questions, what would've I done differently? Dan got reprimand and also coaching.

I think this would be a missed opportunity if you didn't have some kind of training across the board for all employees. And that's something I think was also missed, an opportunity there.

Tracey Diamond:

I agree with you. And always when there's an investigation like this and there's someone who has power at a company engaging in behavior that violates policies, it's a really good red flag that the whole company probably needs some training on what those policies are in the first place.

My last question involves diversity in general and diversity particular in the legal profession. According to a 2020 survey from the National Association of Law Placement, only 10% of all law firm partners are people of color. 12% of associates are Asian Americans, 5% of associates are Black, and 6% of associates are Latino.

How do you think the lack of diversity, at least in the legal industry, beyond other industries as well, contributes to the issues that we've discussed today?

Evan Gibbs:

Yeah, that's a hard one. I guess I'm happy to take a stab from where I sit as a white male in a very, very white male dominated profession. There is certainly, I think...

There are a lot of instances where because of shared, I guess, experiences and background among white males, that it does create a culture where there is, I think, a greater likelihood of, even if it's unconscious, bias in terms of favoring white male lawyers. I mean, I think it does create a self-perpetuating problem.

The other piece of data that I would want to know is the percentage of people of color in law school graduates and in the legal profession generally, because I don't know how those three things stack up, but I think that there's certainly sort of a self-perpetuating cycle of, you come up with shared experiences and you tend to gravitate towards those who have shared racial and, I guess, gender experiences.

I mean, a really easy example is I'm a dad and a husband, and so I talk to other dads and husbands about things that dads and husbands do. I have more, or at least it feels like, more shared experiences with a dad than with a mom.

But right now, I have a six-week-old newborn, and so I can't really commiserate with a new mom who just went through all the physical part of pregnancy. I feel like it wouldn't really be fair for me to say, "Oh, I know what you went through," and I didn't go through. That's not a shared experience that I have, and I wouldn't want to sort of mansplain, I guess, pregnancy to someone.

And so, I have more in common in terms of parenthood with a fellow dad. So I talk more about parenting with other males. And as a white guy, there are a lot of experiences that I just simply didn't have happen to me or take part in because I'm a white dude. It's sort of that white privilege, I guess.

And so, from my perspective, and I do think it's getting better, but white guys like me, we have to be really intentional about making sure that we're making other people that aren't white males feel inclusive, I guess.

And I think that in the legal profession in particular, that's really important that we are really intentional about it because it's so much easier to just talk to people with shared experiences. And I think that leads to, even if unintentionally, exclusion of people who are different.

Tracey Diamond:

I think it goes to what Ying said earlier about the need for strong mentorship programs and pairing up people of diverse backgrounds so that all younger or less experienced employees get the benefit of relationship with the more experienced employees.

Ying Wong:

I think it's human nature. You gravitate to those who are like you, or who share similar experiences, right?

So it's definitely about mentorship, it's about sharing, understanding, being cognizant of our differences, because our differences are what makes us unique. It's understanding, "Yeah, I am going to gravitate to those who are like me," but being cognizant in that, "Hey, there are different people from different backgrounds actually I can learn from, who would also benefit from my experiences," and being conscious about and being cognizant.

And I think that's a start. I mean, that's something that us, as individuals, we have a duty to ourselves to grow as individuals. And it starts there.

Tracey Diamond:

And I think the difference between now and years ago is that we're more aware of this, right? We're more aware of the benefits; we're more aware of the fact that we're doing it,

unconscious bias; and we're more aware of the benefits and fixing it so that we're opening ourselves up to more diverse viewpoints. And I think that companies are richer for that.

Well, this was certainly an interesting conversation today and we've touched on a lot of topics and want to thank Ying Wong for joining us today.

And before we go, I want to remind you about our great blog, [HiringToFiring.Law](#), which is your go-to resource for information about cutting-edge human resources issues across the country.

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