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***Hiring to Firing Podcast — Office Holiday Parties: Legal Insights and Best Practices from Office Christmas Party and Love Actually***

**Hosts: Tracey Diamond and Emily Schifter**

**Guest: Jan Levine**

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**Emily Schifter:**

Well, Happy holidays, everyone. Now that we're entering really into the thick of the holiday season, we thought it would be the perfect time to talk about workplace holiday celebrations. Tracey, do you have any good office holiday party stories that you can think of?

**Tracey Diamond:**

One story that comes to mind happened many years ago when I was working in-house for a company and actually what happened occurred before I was there. But there was two professionals that it turns out were having an affair and it became apparent to the in-house general counsel at the holiday party that this affair was going on. He first got wind of it then. The only paper he could find was a cocktail napkin at the bar and he asked the two employees at the holiday party to write in pen on the cocktail napkin that their relationship was consensual because he was so worried about a harassment claim.

**Emily Schifter:**

Well, that's one way to avoid a claim.

**Tracey Diamond:**

At least to avoid a claim at the moment.

**Emily Schifter:**

Right.

**Tracey Diamond:**

So this was a good example of what we're going to talk about today when we talk about legal compliance issues when it comes to holiday parties. Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond and I'm here with my co-host and partner, Emily Schifter. Together, we tackle all employment issues from hiring to firing. Today, we welcome Brett Schwab, Corporate Counsel at D&H Distributing. D&H Distributing is a leading technology wholesale distributor. Hey, Brett, so nice to have you here today.

**Brett Schwab:**

Yes, thank you so much for having me on. Great to be here on the podcast. For anyone who's not familiar with D&H, D&H is a pretty unique company, we're over 100 years old and we are in the technology distribution business. So decades and decades ago we started out by distributing tires and then radios and then toys, video games. Now, we distribute hundreds of manufacturers' technology products. We also distribute software products, and we offer both logistics 3PL services, as well as white glove professional services. So I guess as a general example as to what we do at D&H, if you think about Troutman Pepper and the technology you use at work, let's say you're issued a law firm laptop, it's very possible that a manufacturer manufactured that laptop and then sold it to D&H, who subsequently sold it to a reseller, who then sold it to Troutman Pepper.

**Tracey Diamond:**

You got so many links in the chain, right?

**Brett Schwab:**

Yes. Yep. That is the supply chain. So yeah, we operate in the United States and Canada. We have six distribution centers throughout North America, so there's a lot going on at D&H on any given day.

**Tracey Diamond:**

How many employees do you have and how far spread out are they?

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**Brett Schwab:**

So we have 1,600 employees. I would say roughly half are spread out within our distribution centers, and the other half are in our corporate headquarters in Harrisburg, Pennsylvania, yeah, right by Hershey Park, if you're a chocolate fan.

**Emily Schifter:**

Not a bad perk.

**Brett Schwab:**

Yep, not at all.

**Tracey Diamond:**

Well, chocolate is something we're certainly eating a lot of this season. We are definitely in the swing of the holiday season right now. Emily, you want to talk a little bit about our subject matter for today?

**Emily Schifter:**

Yeah, we thought this would be the perfect time to talk about compliance issues surrounding corporate holiday parties and celebrations. I think almost everyone, I know at least, loves a good party or a gift or some sort of perk from their employer. There are definitely a lot of benefits associated with getting everyone together, throwing a big event. What do you guys think of when you think of big corporate events like that around the holidays?

**Brett Schwab:**

I think big corporate events are fun. I think it reminds employees about the perks of the workplace. I think we're, right now in this world, where it's in this odd post-COVID, hybrid remote workplace situation, and so I think holiday parties have been a big part of workplaces for years and years, and so it reminds people of the fun parts of work.

**Emily Schifter:**

I love that. It's like the antidote to the quiet quitters, right?

**Brett Schwab:**

Yeah, exactly.

**Emily Schifter:**

Here's a reminder of we all like each other and the company is a great place to be.

**Tracey Diamond:**

It's particularly important now because we don't see each other every day, and if you're working for a big company like D&H, or Troutman Pepper for that matter, there's folks that you're working with throughout the country and if you're in a place where everybody's getting together for one big party, it gives you a chance to actually see people face-to-face and have a little fun.

**Brett Schwab:**

Yep, agree. I feel like everyone's on so many video conference calls, Zoom, Teams, whatever it is, and so to have that face-to-face interaction, there's definitely a value there.

**Emily Schifter:**

Definitely. It's a little bit like internal networking.

**Brett Schwab:**

Right.

**Emily Schifter:**

Some companies will even extend invitations to former employees or to clients, so there can be that kind of external networking too, in addition to the intangible morale of getting to see your teammates who you might not get to see in person every day. What do you guys think about parties where spouses are invited or dates? I know sometimes companies don't want to expand

the guest list too broadly, but I know sometimes it can be fun to see who people are close with outside of work as well and gives their spouses an insight too.

**Brett Schwab:**

Yeah, I think it's definitely workplace dependent on the type of organizational culture and how large the party is. But generally, I do think there's an upside to inviting spouses and guests to these parties. It allows that personal touch that you maybe don't get on the typical workplace. I find that meeting someone's spouse kind of humanizes the whole work experience, be able to have that interaction.

**Tracey Diamond:**

That's such a good way of putting it. I completely agree with you. You meet somebody's partner or spouse and it presents them to you in a whole new light in terms of what their personal life is like because oftentimes we just don't have time to really get into those kind of conversations with our coworkers.

**Brett Schwab:**

Yeah. I think that, generally, people enjoy hearing about others' lives and their kids and what's going on in their world, but it's not something to always bring up so easily at work. But if you're meeting someone's spouse, it definitely gives you a window to have those more personal level conversations. There's definitely an upside there.

**Emily Schifter:**

For sure. We spend so much time with our colleagues at work, sometimes more than our families, depending on the week, so it's nice to be able to see the other side.

**Brett Schwab:**

Yeah, I think these parties, they also allow for more executive to non-executive interactions. I think sometimes when you think about these workplace meetings and these workplace calls, there's sometimes scenarios where someone who's new to an organization, is perhaps just starting their career, does not get that face-to-face interaction with higher levels of leadership.

But these parties do provide that face-to-face interaction, which I think is good for the executives because they get to see how different individuals in their workplace are enjoying work and what their thoughts are and how they're interacting in the workplace. And the new hires, and someone who is new to the workforce, gets to have that executive interaction, something that maybe they don't get on a day-to-day basis.

**Emily Schifter:**

All about the networking, right, in more of an informal setting, which leads to our next point. There's obviously lots of benefits to getting everyone together, but holiday parties have their own set of compliance issues too. So to illustrate some of those issues, as we always do, we have taken some inspiration from Hollywood. We are pulling from two holiday movies today, *Office Christmas Party* and *Love Actually*. So, let's start with *Office Christmas Party* and what a party that one is-

**Tracey Diamond:**

For sure.

**Emily Schifter:**

... for those who haven't seen this movie. This one, it's every stereotype of a holiday party that you could imagine x 10. This is a movie from 2016 starring Jason Bateman, Kate McKinnon and Jennifer Aniston, among others. In the movie Clay Vanstone, the branch manager of a company called Zenotech funds an extravagant holiday party. So let's take a listen.

**[BEGIN CLIP]**

**Joel:**

Oooh, looks like some babies getting made tonight.

**Partygoer:**

I'm not looking to get pregnant tonight.

**Mary:**

Excuse me. Sorry. Sorry. Joel, that's a red card for you. Babies are not getting made tonight, not here on company property. If you're going to have intercourse, please go beyond the flood lamps at the perimeter of the plaza and into the Rite-Aid parking lot.

**Joel:**

Guess what because we f\*\*\*ing tonight.

**Mary:**

Joel, language. This is still an office and even though it's dark outside, the rules don't turn off.

**Joel:**

The rules may not turn off, but your inhibitions can. I'm talking about take your pee-pees out and put them in some booties. Swim, swim, swim.

**Mary:**

And remember that tonight, the decisions you make will have consequences that will haunt you for the rest of your professional lives. And so have fun.

**Partygoer:**

Yeah, Mary, way to psych everybody up.

**Joel:**

Main takeaway if you're going to f\*\*\* do it in a parking lot. Turn it up.

**[END CLIP]**

**Emily Schifter:**

So the party gets wilder when cocaine placed in a snow-blowing machine where it sprays over the entire workforce, resulting in nudity, orgies in the restroom, and as you can imagine,

damage to company property. So at the risk of sounding like Scrooge this holiday season, what are some of the legal compliance issues that come along with the company sponsored holiday party?

**Brett Schwab:**

I actually see no issue with that. I'm very much kidding. Obviously the big concern with company holiday parties is alcohol and drugs. That is the no-brainer issue, and I think it's really more so alcohol and it is people getting set for a holiday party, drinking too much, and then going about and doing something stupid. That is where a lot of these legal issues begin.

**Tracey Diamond:**

I think it leads to all the other issues, right, once there's alcohol involved and drugs involved, there's everything else that becomes a legal compliance nightmare. There's concerns about how are our employees getting home after they've imbibed? Are they drinking and driving, for example? There's concerns about harassment and we're going to talk about that in more detail in just a minute, and then just overarching bad behavior that could lead to bad PR and other fall outs. For example, if there's an accident that occurs, hopefully never happens, but the police get involved or there's company property damage or even just the day after awkwardness of what actually happened that maybe got out of hand the night before and now that's creating tension around the office after the party.

**Brett Schwab:**

There's always concerns that go into a holiday party, and I think the holiday-specific element also can create other workplace issues. Whether it's asking someone who is an overweight person in the workplace to dress up as Santa Claus for the holiday party or asking someone who is perhaps not as tall to dress up as an elf. There are different holiday-specific characters and roles that can create these awkward workplace tensions.



**Emily Schifter:**

That's so true. I hadn't thought of that before, but you're absolutely right. I think people sometimes forget themselves a little bit in that holiday season, especially when you're maybe celebrating year-end.

**Brett Schwab:**

Yes.

**Emily Schifter:**

Or you're thinking of a tradition that maybe you do in your own family that is all fun but maybe isn't so fun. I can think of a white elephant. I've had some clients have some stories of that going wrong. So definitely when you've got that less formal environment and the lowered inhibitions, lots of odd things that can go wrong for sure.

**Brett Schwab:**

Yep. And I think when things do go wrong, it becomes just such a point of gossip in a workplace. Everyone wants to know the story about what happened with the drunkest person at the holiday party.

**Tracey Diamond:**

Absolutely.

**Brett Schwab:**

It'll certainly get around.

**Emily Schifter:**

That's very true.

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**Tracey Diamond:**

Emily and I were talking about this, do you think there's a particular concern if attendance at a party is mandatory rather than voluntary? I know if voluntary it doesn't get us out of the woods in terms of all these other legal compliance concerns or bad behavior and the consequences of bad behavior, but what about if attendance is mandatory, does that create a heightened legal compliance issue?

**Brett Schwab:**

Certainly, yeah. I think the first component would be wage and hour. If you have non-exempt employees that are forced to attend, that can create a wage and hour concern. I think there's also a general unhappiness if there's a mandatory event and it's outside of work hours, you might just have frustration and grumblings. Especially if there's scenarios where the party's occurring far from one's home, if they perhaps are a more remote worker or the parties in the city and they're out in the suburbs, there could definitely be some unnecessary tension there.

**Tracey Diamond:**

Employees with young kids may not want to devote an evening their personal life to going to the company holiday party, or you have employees that are more introverted that think something like a company holiday party is their worst nightmare rather than something that sounds fun to other folks. It's hard to have a one size fits all approach that's going to make everybody happy.

**Emily Schifter:**

You were trying to do this great thing to improve morale, but maybe some of your workforce is thinking, "Gosh, now I'm having to get a babysitter and spend my Friday night driving into town." I think it's probably one where you have to know your workforce for sure. I think that's kind of similar to a point you raised, Brad, about the holiday aspect of things. I think religious discrimination or just making people who might, if you make a Christmas party, people who don't celebrate Christmas might think, "Gosh, I don't really feel comfortable here." Or, "I don't know that I want to feel forced to be part of this celebration if it's not something that I recognize." That's another thing to be aware of or for employers to maybe know their workforce.

**Brett Schwab:**

Right. All in all, I find that there's very few pros to mandating a holiday party. I feel like optional is just always the best practice.

**Tracey Diamond:**

I agree with you. From a pure legal compliance standpoint, once you're making attendance mandatory, it's becoming work. It's part of the work day. So in addition to the wage and hour ratios that you highlighted before, Brad, I could see OSHA workplace safety concerns being an issue as well because now, we're in the workplace as opposed to just at a voluntary offsite type of situation. I agree with you. I think attendance should always be voluntary. You shouldn't force people to be merry.

**Brett Schwab:**

Yeah.

**Tracey Diamond:**

So one topic we haven't covered yet is the potential for an office relationship to form out of a holiday party. Our second clip illustrates this. This is from the movie *Love Actually*, which is a 2003 Rom-Com and features 10 different stories that weave together in the weeks leading up to Christmas. In one subplot, Harry, played by Alan Rickman of what was the name of his character in *Harry Potter*, Snape, right?

**Emily Schifter:**

Snape.

**Brett Schwab:**

Yeah.

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**Tracey Diamond:**

Well, in this movie he plays a married man with two children and he is attracted to his overtly sexual secretary Mia in the scene, which takes place at the office holiday party, the two dance closely. Let's take a listen.

**[BEGIN CLIP]**

(Music playing)

**Mia:**

Any chance of a dance with the boss?

**Harry:**

Yeah, sure, sure. As long as your boyfriend doesn't mind.

**Mia:**

Not my boyfriend.

(MUSIC: And you're all I see and you're all I need. Help me baby. Help me baby. Help me baby. Help me baby. I'm too lost in you. Caught in you.)

**Harry:**

You're looking very pretty tonight.

**Mia:**

It's for you.

**Harry:**

Sorry?

**Mia:**

It's all for you, sir.

**[END CLIP]**

**Tracey Diamond:**

What do you think it is about holiday parties that create this atmosphere that may be more conducive to romance?

**Brett Schwab:**

The post-work, late night nature of the holiday party makes it more conducive to romance. You could obviously avoid that by having a party during a happy hour setting or perhaps during the work day. But if you're doing it late at night on a Friday night, that is something that people are going to let loose a bit more and you risk those romantic subplots of the evening.

**Tracey Diamond:**

And then throw alcohol and/or maybe even drugs into the mix, and now we may have a problem.

**Brett Schwab:**

Yeah, certainly. When you think about the layout for a holiday party, if you were going to have a dance floor and music playing and you're encouraging people to dance, I think you're asking for these scenarios to reveal themselves.

**Tracey Diamond:**

What do you guys think about the dancing thing, the dancing with work colleagues thing? To me, I guess I go into the introverted employee worst nightmare feeling of, I would never want to be dancing with people I work with. But some people really enjoy that. Where do you guys stand on that spectrum?

**Brett Schwab:**

I'm right with you. I find it to be a little bit awkward and just not work appropriate, more harm than good.

**Emily Schifter:**

Yeah, I would tend to agree. I know at the firm, the Atlanta office does a holiday party every year, and there's always music, but there's also a photo booth and buffets and places to talk, which I've always appreciated. I find that to be a better way to get to spend time with my colleagues than squeezing in a dance on the dance floor.

**Tracey Diamond:**

Not that there's anything wrong with that, as long as it's not overtly of a sexual nature.

**Emily Schifter:**

That's right.

**Tracey Diamond:**

For colleagues to want to go and dance and enjoy themselves at the holiday party by dancing, by all means go for it. It's just something that's not for me.

**Brett Schwab:**

Yep. I do think this scene, it's interesting because it does describe almost the past few decades of what these workplace relationships would look like. In the '80s, '90s, it would be the older male executive and the younger female secretary. Now, I think we're in a world where you're seeing all different types of potential workplace relationships, whether it's the older female executive and the younger male colleague or a same-sex relationship where there's a different power dynamic between executive and non-executive. I think while the scene kind of shows the past, I think that employers need to be thinking about all these different scenarios that could arise at holiday parties in the workplace in general.

**Tracey Diamond:**

I think that's a really good point, and it sort of shows that the movie's gotten a little bit dated.

**Brett Schwab:**

Yep.

**Tracey Diamond:**

In this movie, the blame is being placed on Mia, the secretary, but looking at it through today's lenses and given the power imbalance between Alan Rickman's character and his secretary, you wonder how consensual is it, even though she is whispering sexual things into his ear. I suppose consensual is consensual regardless, but I just think that in more modern times we're a little bit more tuned to the power imbalance piece of that type of relationship going south and turning into harassment.

**Brett Schwab:**

Yeah. If you want to avoid these types of inappropriate workplace relationships blossoming at a holiday party, I would avoid mistletoe and any type of sitting on Santa Claus's lap type scenarios.

**Emily Schifter:**

Yes. Two good pointers.

**Tracey Diamond:**

Whether Santa Claus is male or female.

**Emily Schifter:**

That's right.

**Tracey Diamond:**

So what are some of the best practices for hosting a company holiday party or a company celebration? It doesn't have to necessarily be a party.

**Brett Schwab:**

The number one thing that I always try to emphasize to my friends in the legal field who are dealing with these holiday party scenarios is Uber. Uber, and I'm sure Lyft does it as well, they offer these Uber for business services where an organization can purchase vouchers for their employees to get to and from a venue. It can completely eliminate any drunk driving risks that's associated with these alcohol events.

**Tracey Diamond:**

Great idea. That is really a truly a good idea. I guess you just have to think through how if the party's happening right after work, how's that person getting to work and if they're driving, what are they doing with their car if they're going to Uber home so that you make sure that you appropriately discourage them from getting into their car after they got one too many.

**Brett Schwab:**

Yep, definitely. And I think on that topic of how much people are drinking, drink tickets are also a good practice for employers. There shouldn't really be scenarios where an employee is going to a party and they're drinking 8 drinks, 10 drinks in a night. So drink tickets, while people might be moderately annoyed with them, it's a good way to ensure that nobody's having more than 3, 4 drinks.

**Tracey Diamond:**

Yeah, that's a good idea.

**Emily Schifter:**

And plenty of food, lots of options of food as well.



**Tracey Diamond:**

What other best practices do you guys see when it comes to these kind of celebrations?

**Brett Schwab:**

I think it's helpful to have HR present at a holiday party. If HR is perhaps assisting with the check-in table at a holiday party and they're visible at a holiday party, I think that acts as a reminder to employees like, "Hey, I need to stay within control. This is not a college party where I can go crazy without consequences."

**Tracey Diamond:**

Unless it's the movie Office Christmas Party. No rules there.

**Brett Schwab:**

Yep. Speaking of HR, I think this time of year is a good time for employers to double check that all employees, whether new hires or legacy hires, are up to date with their sexual harassment trainings and all of their workplace trainings. Because that's often the first thing that comes up when there's an incident at a party like this, when was their last training? If someone hasn't been trained in 6, 7 years, you're just creating risks. I think on that topic of trainings, it's also a good idea just to remind employees like, "Hey, here's our code of conduct. Here are the rules for the holiday party." You could, I think, even be a little bit more blunt, "Do not drink too much at the holiday party," just to really put it in your employee's minds.

**Tracey Diamond:**

Maybe it could be handled on an individual level or within small teams rather than issuing it out as a company directive so that it's maybe not so awkward, where the manager has a relationship with your team and can say to people, "Hey guys, really looking forward to celebrating with you, but you need to use good judgment tonight. Just don't forget it's a work event."

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**Emily Schifter:**

That's right, I think employees can sometimes forget that just because I'm not in my physical office doesn't mean that the policies don't continue to apply. So just that little reminder, that even if it's voluntary we're all here to celebrate and have fun. The rules don't completely go out the window, and everything that you would do in your boss's office on a Monday morning is probably the ceiling for what you ought to be doing at the holiday party as well.

**Tracey Diamond:**

We actually, informally, very anecdotally, surveyed some of our clients to see what they were up to this year when it comes to holiday celebrations. We were somewhat surprised to hear that many companies are actually moving away from parties and considering alternative celebrations, whether it's for budgetary purposes or because of this issue of hybrid remote work and employees that are scattered amongst many different offices and so it's a lot more difficult to pull them together. What alternatives have you guys heard of from the traditional holiday party that would be an alternative type of celebration that employers might want to consider?

**Brett Schwab:**

Ugly Sweater Contest are a unique idea. It is not necessarily specific to any particular holiday. It could be reindeer, it could be Hanukkah, it could be Kwanzaa, it could be really anything on the Ugly Sweater. It could be pop culture jokes. That is something that remote employees can participate in as well. I think if the organization were to offer prizes as part of the Ugly Sweater Contest, you'll get a lot of fun creative entries.

**Tracey Diamond:**

I love that. And everybody loves a good prize.

**Brett Schwab:**

Yep, certainly.

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**Emily Schifter:**

I have clients who've done raffles, especially clients who have a lot of remote workers. Every day at 9:00 AM they'll do a Zoom, and it's a big surprise of who gets the gift. I've had some clients move toward an in-person we'll just do a lunch or maybe even a potluck, where it's more informal, especially again, those clients where they've got people distributed. Maybe the Georgia office gets together and the New York office gets together and it's a little bit more intimate, but it's also during the day, which I think can be good for folks who don't want to do something after the fact. I've seen clients do charitable events. We're all going to collect toys and donate them to a shelter, or we're going to volunteer at a soup kitchen. Different angle on the celebration, but another good way to mark the holiday, but still get employees to bond together. So really lots of alternatives for employers who are thinking, "Gosh, I don't know that the big holiday party is what we want to do." I still think there's ways you can mark the occasion.

**Tracey Diamond:**

I've also seen within the context of a party more activities. Our office here in Princeton does a casino night. They did it last year and they're doing it again this year and it's super fun. There's these state course races and blackjack and roulette and tons of prizes because I think the key there always is make the prizes good so that it's more of an activity-based type of event rather than it being just focusing on the drinking.

**Brett Schwab:**

Yep. I think if you do more department focused events because they're smaller in nature than company-wide events, you can be more creative. You could go to a Top Golf as a company event, you could go to some type of sporting event. I think you could also initiate a department versus department activity. Maybe it's a gingerbread house making contest, department verse department, and the winning department gets X, Y, Z prize. Especially if that's occurring during the day, I think people are more excited for that sometimes than an after work far away event.

**Tracey Diamond:**

Cookie exchanges are another good one.

**Emily Schifter:**

That's right.

**Brett Schwab:**

I think employers in recent years have become more cognizant of not just making it a Christmas specific event. I think a good way to involve some of the other holidays is to offer certain employees the ability to articulate their holiday of choice and to include it in a company-wide email. If someone celebrates a unique holiday that not everyone's familiar with, to send out like a, "Hey, we're going to talk about X, Y, Z holiday today." Include a few bullet points and include how that particular employee goes about celebrating. I find that people enjoy short emails like that and learn a bit or two.

**Tracey Diamond:**

It's a great DEI initiative to really teach folks about the different types of holidays that employees or their co-workers of different religions celebrate.

**Brett Schwab:**

Yeah, absolutely.

**Tracey Diamond:**

And I think at the end of the day, when all is in doubt and a company is deciding how to spend their funds, employees are always happy with cash. Do we spend it all on this big party that some people may or may not want to go to or do we put more cash in folks' pockets, something to consider.

**Emily Schifter:**

Cash or a day off.

**Brett Schwab:**

Right. Yeah. It is the season of giving, and so I think cash, everyone loves, you can't wrong there. I think that company swag, particularly for employees, families is always a good way to go as well. I think people like to have pride in where they work, and so if you're able to offer certain swag and apparel and gifts with the company's name and the employees able to go home and give that to their families, I think many employees that makes them happy and they feel prideful in the job they do.

**Tracey Diamond:**

And it's great advertising for the company. It gets the name out, emblazoned on shirts and water bottles.

**Brett Schwab:**

Yep, certainly.

**Tracey Diamond:**

This has been a really fun episode. I really appreciate you joining us today, Brett. We want to wish all of our listeners a very, very happy holiday no matter how you celebrate. Eat, drink, be merry and be responsible. We look forward to providing you with more podcast episodes of *Hiring to Firing* in 2025. Thanks so much for listening.

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