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Volume I  
Pages 1 to 214  
Exhibits 193 - 214

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court  
Civil Action No.  
2384CV00395-BLS2

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BENJAMIN EDELMAN, :  
Plaintiff, :  
vs. :  
PRESIDENT AND FELLOWS OF HARVARD :  
COLLEGE, :  
Defendant. :  
----- -x

DEPOSITION OF JEAN M. CUNNINGHAM, a witness called by counsel for the Plaintiff, taken pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure before Carol H. Kusnitz, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Zalkind Duncan & Bernstein LLP, 65A Atlantic Avenue, Boston, Massachusetts, on Wednesday, June 18, 2025, commencing at 9:32 a.m.

PRESENT:

Zalkind Duncan & Bernstein LLP (by David A. Russcol, Esq.) 65A Atlantic Avenue, Boston, MA 02110, drusscol@zalkindlaw.com, 617.742.6020 - and -  
Law Office of Ruth O'Meara-Costello (by Ruth O'Meara-Costello, Esq.) 875 Massachusetts Avenue, Suite 31, Cambridge, MA 02139, 617.658.4264, ruth@ruthcostellolaw.com, for the Plaintiff.

(Continued on Page 2)

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1 what one or more FRB members conveyed in discussions  
 2 before you drafted it, right?  
 3 MR. MURPHY: Objection.  
 4 A. I would assume so, yes.  
 5 Q. In his reply to the draft report, did Mr.  
 6 Edelman criticize what he said were errors of the  
 7 FRB?  
 8 A. In Paragraph 3 he indicates that he felt  
 9 the report makes errors and material omissions.  
 10 Q. How did you evaluate whether or not the FRB  
 11 needed to revise its report in response?  
 12 A. Me personally?  
 13 Q. Let's start with you personally.  
 14 A. Not my role.  
 15 Q. How did the FRB evaluate that question?  
 16 A. They read the document. They took the  
 17 feedback. They assessed the report and decided what  
 18 they thought were material changes, again,  
 19 recognizing that -- and knowing in all cases that  
 20 the -- that Professor Edelman's response would also  
 21 be included in any materials that were forwarded on.  
 22 Q. Did Mr. Edelman write that his work for  
 23 Microsoft was not directly related to his  
 24 publications about Google as that was defined under

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1 the Conflict of Interest policy?  
 2 A. In this document?  
 3 Q. Yes.  
 4 A. He indicates that he does not believe that  
 5 his work was directly related.  
 6 Q. And did he argue that the FRB should have  
 7 discussed the details of the Conflict of Interest  
 8 policy and applied it to the disclosures he made?  
 9 A. What I see is him indicating that he wishes  
 10 that the -- well, he will do what is required,  
 11 depending on the FRB interpretation of the rules.  
 12 Q. Did the FRB revise its report to discuss  
 13 the application of the Conflict of Interest policy  
 14 to each of Mr. Edelman's disclosures?  
 15 A. I would have to go back and look at the  
 16 report to ascertain that.  
 17 Q. Please do.  
 18 A. This will take a while. Do you want to...  
 19 (Reviewing document) Can you repeat the question,  
 20 so I make sure I'm doing this appropriately.  
 21 Q. Well, looking at the end of Exhibit 45,  
 22 there's a list of changes made to the report, isn't  
 23 there?  
 24 A. Yes.

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1 Q. Is one of those changes to discuss the  
 2 application of the Conflict of Interest policy?  
 3 A. No.  
 4 Q. Did the FRB discuss whether to make a  
 5 revision to discuss the Conflict of Interest policy?  
 6 A. They clearly discussed which changes to  
 7 make.  
 8 Q. Did anyone suggest revising the report to  
 9 discuss the Conflict of Interest policy?  
 10 A. I don't remember specifically that it came  
 11 up.  
 12 Q. Did the FRB believe that Mr. Edelman's  
 13 interpretation of the Conflict of Interest policy  
 14 was incorrect?  
 15 A. I can't speak to what they believed.  
 16 Q. Did you believe he was incorrect?  
 17 A. So a directly related question is one we  
 18 have debated before. Specifically, though, in  
 19 speaking to the timing of the work, the COI policy,  
 20 as he notes, does indicate the past three years are  
 21 a relevant time frame. And I think the broad  
 22 definition of Conflict of Interest uses both the  
 23 "directly related" and "reasonable reader" tests and  
 24 indicates that there may be judgment that needs to

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1 be applied when someone is working in a related  
 2 industry.  
 3 Q. And so if it's in an area where there is a  
 4 judgment call for a faculty member, does that mean  
 5 that the Conflict of Interest policy does not  
 6 require one way or another whether there should be a  
 7 disclosure?  
 8 A. The policy overall, it does both. It  
 9 allows for judgment, but the "reasonable reader"  
 10 test is an overlay on top of that, as well as, I  
 11 think, an admonition in areas of uncertainty to seek  
 12 advice.  
 13 Q. Did the FRB explain why Mr. Edelman's work  
 14 for Microsoft was directly related to his  
 15 publications for Google?  
 16 MR. MURPHY: Objection.  
 17 A. In the document itself?  
 18 Q. Yes.  
 19 A. I don't know that it viewed that as its  
 20 task. But it does have a paragraph that speaks to  
 21 its understanding of the policy, Page 49. It  
 22 articulates a viewpoint.  
 23 Q. But it doesn't address the question of  
 24 directly related, does it?

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1 A. By saying that "Ensure that faculty members  
2 provide sufficient information... so that readers  
3 can make that judgment themselves," that speaks to  
4 "directly related." It calls for erring on the side  
5 of disclosure.  
6 Q. But it's framed as the FRB's understanding  
7 of the intent of the policy, right?  
8 A. Yes.  
9 Q. It's not expressing what the policy  
10 actually says, is it?  
11 MR. MURPHY: Objection.  
12 A. The policy does two things, which is to  
13 outline definitions and then also speak to the  
14 underlying philosophy, and both of those things are  
15 important in that document. The philosophy speaks  
16 to the intent.  
17 Q. And the FRB's addendum doesn't address the  
18 definition question, right?  
19 A. The definition question? I'm sorry.  
20 Q. The question of whether the definition of  
21 "directly related" required disclosures.  
22 A. Because I think their broader focus was not  
23 on the answer to that specific question, but on his  
24 judgment in making the decision that he did.

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1 Q. So the FRB didn't think it was relevant  
2 whether or not Mr. Edelman had violated the Conflict  
3 of Interest policy by failing to make disclosures?  
4 MR. MURPHY: Objection.  
5 A. Can you say the sentence again, please.  
6 Q. So the FRB didn't think it was relevant  
7 whether or not Professor Edelman had violated the  
8 Conflict of Interest policy by failing to make  
9 disclosures that they considered adequate?  
10 MR. MURPHY: Objection.  
11 A. I'm not sure that's how they would have  
12 framed the question.  
13 Q. If the FRB thought that Mr. Edelman was  
14 wrong about the application of the Conflict of  
15 Interest policy and the definition of "directly  
16 related," why didn't it explain why?  
17 MR. MURPHY: Objection.  
18 A. That had been one of the issues under  
19 discussion in 2015 as well. So the job was not to  
20 try and rearticulate what constitutes "directly  
21 related." Their assessment was whether or not it  
22 was testing his judgment.  
23 Q. Did the FRB in 2017 make finding that Mr.  
24 Edelman had violated the Conflict of Interest policy

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1 by his publications regarding Google?  
2 MR. MURPHY: Objection.  
3 A. That was not their mandate.  
4 Q. So is the answer no?  
5 MR. MURPHY: Objection.  
6 A. I don't think it's relevant.  
7 Q. Is that what the FRB did?  
8 MR. MURPHY: Objection.  
9 A. What do you mean by that?  
10 Q. Did the FRB make a determination that Mr.  
11 Edelman violated the Conflict of Interest policy?  
12 MR. MURPHY: Objection.  
13 A. No. They assessed whether he used good  
14 judgment in applying the policy on his work.  
15 Q. Do you recall that the final report  
16 described Mr. Edelman's disclosures as inconsistent  
17 regarding Google?  
18 A. Yes.  
19 Q. And in his reply, did Mr. Edelman try to  
20 explain how his disclosures had been consistent and,  
21 in his view, consistent with the Conflict of  
22 Interest policy?  
23 A. Are you referring to the October 5th  
24 document still? If you're referring to Page 37, the

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1 paragraph there, I believe that what you're  
2 referring to is his explanation.  
3 Q. Yes. Did the FRB respond to his  
4 explanation for why he believed his disclosures had  
5 been consistent?  
6 A. No.  
7 Q. Why not?  
8 A. I think they viewed that their perspective  
9 was different, and that by including Professor  
10 Edelman's description and their own work, they would  
11 leave it for others to assess.  
12 Q. As we discussed earlier, did Mr. Edelman  
13 point out that one of the articles that the FRB  
14 cited as relating to the Bazerman lawsuit was  
15 actually not related to the Bazerman lawsuit and  
16 preceded it by two years?  
17 A. I'm sorry, the first part of that sentence  
18 again?  
19 Professor Edelman pointed that out, yes, he  
20 did.  
21 Q. Why didn't the FRB revise its report to  
22 remove or better explain that reference to that  
23 article?  
24 A. Again, because I think the response from