



<p style="text-align: right;">Page 18</p> <p>1 To my dismay, it was my correspondence with the  2 restaurant. I hadn't expected it to be published. They  3 sought to portray me in a negative light. They sought  4 to present it as newsworthy not really because the  5 restaurant was overcharging people, which wouldn't be  6 that newsworthy, lots of people are overcharged by lots  7 of restaurants. The main thing about it that was  8 exciting was that I was a Harvard professor and maybe I  9 was out of line in the tone of my messages.</p> <p>10 The combination of those two things, I suppose,  11 provided an opportunity for them to style this as  12 newsworthy and present it as such to the readers.</p> <p>13 Q. Do you think you exercised good judgment in the  14 Sichuan Garden matter?</p> <p>15 A. Again, I think there are lots of ways I could have  16 done it better. And in my routine practice, before and  17 since, I have never had anything quite like that happen  18 to me. I hope I never will again. I hope it doesn't  19 happen to you either. I could have avoided it in many  20 ways and I wish I had.</p> <p>21 Q. Now, did your actions with respect to BlinkX  22 cause problems for Harvard Business School?</p> <p>23 A. Plenty of ink was spilled; emails were written,  24 meetings were held. I don't know that there were any</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Sure. I think they had basis to be concerned.</p> <p>2 Q. Now, there came a time when you talked to the  3 dean at Harvard Business School, Dean Nohria, about your  4 tenure prospects and your tenure case. Is that true?</p> <p>5 A. I'm not sure which discussion specifically you  6 are talking about. I did meet with him on a few  7 instances on that subject.</p> <p>8 Q. So tell me when was the first time that you  9 recall speaking to Dean Nohria about the tenure process  10 and your tenure case?</p> <p>11 A. In general, my interactions with Dean Nohria --  12 you will excuse me for pronouncing it the way that I was  13 taught, I don't know which is correct but I will do it  14 the way I came to do it.</p> <p>15 My meetings with Dean Nohria were few and far  16 between and instead the subjects were handled through  17 intermediaries, be it my unit head or an associate dean  18 of one sort or another.</p> <p>19 Q. Do you remember ever talking directly to Dean  20 Nohria about tenure?</p> <p>21 A. Yes.</p> <p>22 Q. When is the first time that you recall speaking  23 directly with Dean Nohria about tenure?</p> <p>24 A. The one that I'm certain of was in spring of 2018</p>
<p style="text-align: right;">Page 19</p> <p>1 actual problems. It is not like a building was on fire  2 and fire extinguishers had to be deployed.</p> <p>3 So in that sense, no. But in another sense, yes.</p> <p>4 Everyone cares about the reputation of the school, about  5 the media coverage. There was negative media coverage  6 and that was a concern.</p> <p>7 Q. You'd agree that the BlinkX controversy resulted  8 in adverse publicity to Harvard Business School?</p> <p>9 A. I agree with that.</p> <p>10 Q. Likewise, did the Sichuan Garden controversy  11 result in adverse publicity to Harvard Business School?</p> <p>12 A. It did.</p> <p>13 Q. Do you believe that after the BlinkX controversy  14 and the Sichuan Garden controversy, the leaders of the  15 Harvard Business School had legitimate reason to wonder  16 whether you exercised good judgment?</p> <p>17 A. They were entitled to inquire. I supported them  18 inquiring in multiple ways. I wanted to provide the  19 information that they would need to evaluate me in order  20 to reach a conclusion about what exactly had happened in  21 2014 and whether it was likely to recur.</p> <p>22 Q. Do you think that after those two controversies,  23 they had a legitimate reason to be concerned about  24 whether you were capable of exercising good judgement?</p>	<p style="text-align: right;">Page 21</p> <p>1 after the conclusion of the 2017 process in his office.  2 I remember that one quite clearly.</p> <p>3 I also remember the discussions of my promotion  4 to associate, which was with him personally in his  5 office -- with him and with others. I can tell you  6 about that. As to what happened between those two,  7 those are sort of bookends.</p> <p>8 What I don't have a specific recollection of is a  9 prior discussion with Dean Nohria at any time, for  10 example, in 2014 or 2015 in person. I remember a very a  11 brief email thread after the Sichuan Garden email  12 correspondence. But I take you to be referring to  13 in-person meetings rather than email discussions.</p> <p>14 Q. In-person meetings or phone conversations?</p> <p>15 A. I don't think I had ever spoken with Dean Nohria  16 by phone until the November or December 2017 phone call  17 when he called me to notify me of the decision that he  18 made based on the vote of the appointments committee in  19 November 2017.</p> <p>20 Q. Do you recall meeting with Dean Nohria in early  21 2016?</p> <p>22 A. I'm not sure.</p> <p>23 Q. That would be after the 2015 tenure process had  24 concluded?</p>

<p>1 A. 2016 would be after the 2015 process had 2 concluded, yes.</p> <p>3 Q. Did you meet with him to discuss what your future 4 would be going forward?</p> <p>5 A. I certainly met with someone to discuss 6 specifically what I would be doing during the two-year 7 extension. But you asked whether about whether I met 8 with Dean Nohria specifically. I don't recall that 9 meeting being with Dean Nohria specifically.</p> <p>10 I would have said that it was with an associate 11 dean, such as Paul Healy, conveying what were 12 represented as discussions and agreements from Dean 13 Nohria, but without me meeting with Dean Nohria 14 personally. I'm open to being corrected by a record, 15 but that is my recollection.</p> <p>16 Q. And can you tell us how many times did you talk 17 to Associate Dean Paul Healy about your tenure case?</p> <p>18 A. I think quite a few over an extended period.</p> <p>19 Q. Do you recall talking with him in 2015?</p> <p>20 A. Yes.</p> <p>21 Q. How many times do you think you talked to Paul 22 Healy in 2015 about your tenure case?</p> <p>23 A. I'm sure more than half a dozen. Could be a 24 dozen in person or telephone discussions and a variety</p>	Page 22	<p>1 Dean Healy or on the phone?</p> <p>2 A. I would think it would have been one of those 3 two, but I can't recall which.</p> <p>4 Q. Did you speak with -- so your case did go to the 5 standing committee in 2015?</p> <p>6 A. It did.</p> <p>7 Q. Did you talk to Associate Dean Healy about -- 8 after that, after it went to the standing committee?</p> <p>9 A. I did.</p> <p>10 Q. What do you recall about that conversation? Was 11 that in person or by phone?</p> <p>12 MS. O'MEARA-COSTELLO: Objection.</p> <p>13 A. I'm not sure.</p> <p>14 Q. What do you recall about that conversation?</p> <p>15 A. Paul Healy told me the general reaction of the 16 standing committee -- to the totality of my candidacy 17 and the materials that were before them, told me that 18 the standing committee was of the view that an extension 19 would be appropriate. That some aspects of the 20 extension were still to be hammered out, what exactly I 21 would be asked to do, what I would have the opportunity 22 to do. But he wanted to generally gauge my 23 receptiveness to extending my time as an untenured 24 professor by two more years in order to let the school</p>	Page 24
<p>1 of emails.</p> <p>2 Q. Was there a time when you spoke to him about 3 whether or not you should withdraw your tenure 4 application?</p> <p>5 A. There was a discussion of that possibility before 6 the standing committee considered my candidacy. And 7 then after the standing committee considered my 8 candidacy that was offered as one of several options 9 that I could consider.</p> <p>10 Q. Tell me about the first of those two discussions?</p> <p>11 A. The FRB had prepared its report in fall 2015. I 12 had replied to their report. They hadn't revised their 13 report on the basis of my reply and I was told that 14 their report and my reply along with the subcommittee's 15 report, and perhaps some other materials, would be 16 considered by the standing committee.</p> <p>17 I was told that I could withdraw my candidacy if 18 I wanted to. And that was presented as, you know, an 19 option, I suppose. It is not like it was necessarily 20 presented as something that was particularly 21 recommended. I didn't consider withdrawing my candidacy 22 at that time, because I didn't think that would be in my 23 interest.</p> <p>24 Q. Was that in an in-person meeting with Associate</p>	Page 23	<p>1 get more information.</p> <p>2 Q. Do you recall anything else about that 3 conversation with Associate Dean Healy?</p> <p>4 A. I don't want to put words in his mouth. I 5 recall generally some other things that I learned one 6 way or another about the standing committee discussions 7 of 2015. Did I learn them from Paul Healy versus 8 others? I'm not sure.</p> <p>9 Q. Did you take notes relating to your conversations 10 with Dean Healy?</p> <p>11 A. I don't know. If I did, I would have produced 12 them.</p> <p>13 MR. MURPHY: Mark this as Exhibit 80.</p> <p>14 (Document marked as Exhibit No. 80 for 15 identification.)</p> <p>16 BY MR. MURPHY:</p> <p>17 Q. I show you what has been marked as Exhibit 80. 18 Do you recognize that document, sir?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. This is contemporaneous notes from my discussion 22 with Paul Healy at some point in fall 2015 after the 23 standing committee had met and before I had accepted the 24 proposed extension.</p>	Page 25

<p style="text-align: right;">Page 26</p> <p>1 Q. I will represent to you that the metadata that 2 came with this said that it was created on November 12, 3 2015. Does that sound correct to you?</p> <p>4 A. It does.</p> <p>5 Q. We have seen a number of notes like this in your 6 production. Can you tell us what this is?</p> <p>7 A. Yes. It had become apparent to me, certainly by 8 the 2015 FRB, that litigation was likely if the matter 9 didn't come to a resolution that was satisfactory to me. 10 So I began to contemporaneously record all discussions 11 that I believed to be important.</p> <p>12 And, in general, I tried to record 13 contemporaneously the important parts of each of those 14 discussions. Not just the fact that the discussion 15 occurred, but the important parts of what people said to 16 me and where applicable what I said in response.</p> <p>17 I tried to do it in a way that would have very 18 clear metadata, and would even be tamper-evident if I 19 were to go back and change it, you would see that in the 20 metadata. Tried to do it first class in the best 21 possible way, without using any particular formalities. 22 It is just Notepad. It is a text file, but it was done 23 with an eye to creating a record that I thought we might 24 need at a time like today.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes.</p> <p>2 Q. Could you tell us whether you remember anything 3 other than those words about what he said?</p> <p>4 A. Again, I could put it into complete sentence form, 5 but I would really just be adding filler words to turn 6 this into a normal sentence that a person would actually 7 utter.</p> <p>8 Q. Please do that, if you would?</p> <p>9 A. If these events had happened two years ago, the 10 evaluation process would have told me that these are 11 serious concerns and I have to learn from them. Because 12 it happened with this sort of unusual time, all within 13 the last 12 months, I didn't have the opportunity to 14 prove just how unrepresentative these events might be, 15 might not be, of my overall candidacy, and hence the 16 committee's struggle to figure out what to do next.</p> <p>17 Q. He said in essence that this was on you to prove 18 that this stuff would not happen again. Is that 19 correct?</p> <p>20 A. I think that was my overall impression. Whether 21 he said it quite that way, I'm not sure. Certainly 22 wasn't expecting anyone to give me any gifts or do me 23 any favors. The burden on the candidate is to establish 24 the case for promotion and I wanted to establish that.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. If we take a look at what has been marked as 2 Exhibit 80. The first two lines say, Standing committee 3 focused on BlinkX, Sichuan Garden, concern serious.</p> <p>4 Are those things that Associate Dean Healy said 5 to you?</p> <p>6 A. I think that is selected keywords from what he 7 would have said. I think I probably could reconstruct 8 the complete sentence version of that, but maybe it is 9 apparent.</p> <p>10 Q. Why don't tell us what that note indicates he 11 said?</p> <p>12 A. I'd say approximately, he said the standing 13 committee met to consider your case last week, the 14 discussion focused on BlinkX and Sichuan Garden. 15 Everyone who participated in the discussion was 16 concerned. They thought the problems were serious.</p> <p>17 Q. The next two lines, If this had happened two 18 years ago, would have told me serious, have to learn 19 from them. Because happened with this timing, no 20 opportunity to prove.</p> <p>21 Did I read that correctly?</p> <p>22 A. That's what it says.</p> <p>23 Q. Are you referring here to something Dean Healy 24 said?</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. It says below, a few lines down, Nitin said he 2 wanted -- says want to check with FRB, they were all 3 onboard with it.</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell us -- is that something that Paul 7 Healy said?</p> <p>8 A. I think that is my distilled version in note 9 taking form of what Paul Healy said.</p> <p>10 Q. Can you provide any more context about what he 11 said there?</p> <p>12 A. Yes. Sometimes discussions had already turned to 13 the prospect of an extension, which I don't see as 14 clearly laid out in the block of text above. As to the 15 possibility of an extension, Nitin, whose approval would 16 be needed for any extension, wanted to get a reaction 17 from the FRB to the possibility of an extension. And 18 Nitin, in fact, did check with the FRB. And they all 19 were supportive of the proposed extension.</p> <p>20 Q. The next line says, Fair to me and fair to the 21 school.</p> <p>22 Can you recall whether -- is that something that 23 Paul Healy said?</p> <p>24 A. It's a distilled note taking version of it.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Can you tell us what you recall him saying?</p> <p>2 A. The proposed extension was designed to be fair to</p> <p>3 me and also to be fair to the school.</p> <p>4 Q. The next three lines, How to evaluate progress on</p> <p>5 FRB matters. Reach out to Brian and/or Nitin. What</p> <p>6 would evidence look like.</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Could you tell us more about -- again that is</p> <p>10 something that Dean Healy said?</p> <p>11 A. My notes from something that Dean Healy said.</p> <p>12 Q. Could you tell us more about what he said there?</p> <p>13 A. Broadly he conveyed that over the coming years</p> <p>14 during the proposed extension, there would need to be</p> <p>15 methods to evaluate my progress on the concerns that the</p> <p>16 FRB has looked into.</p> <p>17 Two people I would need to talk to in order to</p> <p>18 figure out how to demonstrate that progress would be</p> <p>19 Brian and Nitin and we need to think about what the</p> <p>20 evidence would look like.</p> <p>21 Q. Brian is Brian Hall?</p> <p>22 A. That is surely what he was referring to.</p> <p>23 Q. Who was Brian Hall in 2015?</p> <p>24 A. He was the unit head of the department in which I</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes.</p> <p>2 Q. Was that something that Paul Healy told you back</p> <p>3 in November of 2015?</p> <p>4 A. I think it must have been.</p> <p>5 Q. Do you remember anything else about the context</p> <p>6 of what he said?</p> <p>7 A. I think he was conveying what he had learned from</p> <p>8 a discussion with Nitin about what Nitin said I would</p> <p>9 need to do in the coming years.</p> <p>10 Q. You were told that there were no guarantees;</p> <p>11 correct?</p> <p>12 A. What exactly they said, I'm not sure. I wrote it</p> <p>13 down as no guarantees. I think they intended to convey</p> <p>14 -- the words used were, I believe, no guarantees. I</p> <p>15 wouldn't have written "no guarantees" unless someone</p> <p>16 used the words "no guarantees".</p> <p>17 Q. You understood that it was going to be on you to</p> <p>18 demonstrate that you deserve tenure after the period of</p> <p>19 the extension was over?</p> <p>20 A. I think it's always a burden on the candidate to</p> <p>21 produce a strong case for candidacy, for promotion, and</p> <p>22 that's true in every respect.</p> <p>23 To say you are a good scholar, you'd better write</p> <p>24 some articles, they better be published, ideally in good</p>
<p style="text-align: right;">Page 31</p> <p>1 was a faculty member.</p> <p>2 Q. And Nitin is Dean Nohria?</p> <p>3 A. That's right.</p> <p>4 Q. Do you remember any more about what he said about</p> <p>5 what would evidence look like?</p> <p>6 A. I don't remember anything beyond what is in the</p> <p>7 notes here.</p> <p>8 Q. And you say -- your note says, My decision by</p> <p>9 6:00 tomorrow?</p> <p>10 A. Yes.</p> <p>11 Q. Did you make a decision?</p> <p>12 A. I did.</p> <p>13 Q. What decision was that?</p> <p>14 A. I accepted the proposed extension.</p> <p>15 Q. There's a further statement below that says,</p> <p>16 Dean: No guarantees here. People see Ben smart,</p> <p>17 well-intentioned, but dogged and not otherwise seeing</p> <p>18 other's points of views and where they are coming from.</p> <p>19 Need to put me in situations where I have a chance to</p> <p>20 demonstrate that. Committees where I am engaged with</p> <p>21 people outside of my unit able to demonstrate to them</p> <p>22 that I have -- I had seen the message, had learned the</p> <p>23 lessons.</p> <p>24 Did I read all that correctly?</p>	<p style="text-align: right;">Page 33</p> <p>1 journals. And if can't do that, who would believe you</p> <p>2 are a good scholar. And so too for FRB matters.</p> <p>3 On the other hand, it certainly was always my</p> <p>4 belief that I'd have the entitlement of the usual</p> <p>5 procedures, whatever procedures were written down. So</p> <p>6 with respect to the burdens and what would be done and</p> <p>7 while I'd need to make a showing, still the rules would</p> <p>8 apply.</p> <p>9 Q. You understood that after the extension was</p> <p>10 granted, one of the things that you'd need to show would</p> <p>11 be that you didn't pose an undue risk to the school and</p> <p>12 that you didn't pose a risk to the school's reputation;</p> <p>13 correct?</p> <p>14 A. I probably wouldn't have put it quite that way.</p> <p>15 I'm not sure that others put it quite that way</p> <p>16 especially in this time in fall 2015.</p> <p>17 Q. Is it fair to say that you understood that it was</p> <p>18 on you to show that the problems that had occurred with</p> <p>19 respect to Sichuan Garden and BlinkX's would be unlikely</p> <p>20 to occur again?</p> <p>21 A. I think different people had different ideas even</p> <p>22 as of fall of 2015 about exactly who would, quote/unquote,</p> <p>23 show that and what evidence they would rely on in order</p> <p>24 to make that showing or to convince others of that.</p>

<p>1 area.</p> <p>2 Q. Do you recall what whether Professor Hall or</p> <p>3 Professor McGinn said?</p> <p>4 A. I think generally they weren't sure. What they</p> <p>5 told me was that there was no benefit to me worrying</p> <p>6 about that. That the school would decide what procedure</p> <p>7 it wanted to follow. That it wasn't my role or place as</p> <p>8 a junior faculty member to question the procedure. To</p> <p>9 question compliance with the procedure. God forbid, to</p> <p>10 allege that someone had failed to follow the procedure.</p> <p>11 All of that would be viewed quite unfavorably and the</p> <p>12 best thing I could do would be to put it out of mind,</p> <p>13 try to be easygoing, and do whatever was asked of me.</p> <p>14 Q. As of that time period late 2015, early 2016, did</p> <p>15 you believe that the 2015 FRB had failed to follow any</p> <p>16 of its procedures?</p> <p>17 A. Absolutely.</p> <p>18 Q. So as of late 2015 and early 2016, what</p> <p>19 procedures did you think the 2015 FRB had failed to</p> <p>20 follow?</p> <p>21 A. Well, fundamentally as to the, quote/unquote,</p> <p>22 last third of the report -- not necessarily the last in</p> <p>23 page numbers, but the addition. If you think of the</p> <p>24 2015 report as having BlinkX, Sichuan Garden and</p>	<p>Page 46</p> <p>1 Q. Did you think that there had been a specific</p> <p>2 failure to follow the FRB principles?</p> <p>3 A. I'm not sure. I think I probably did. I think</p> <p>4 that I thought that in some way the principles compelled</p> <p>5 being guided by the evidence to a greater extent than</p> <p>6 they were especially when they received the additional</p> <p>7 evidence in my reply.</p> <p>8 Somehow I thought the principles required them in</p> <p>9 a final report. At least to discuss my reply and say</p> <p>10 why they think I got it wrong. Who doesn't file a</p> <p>11 reply? After a motion and an opposition, you've got to</p> <p>12 file a reply. And they hadn't even bothered to do that,</p> <p>13 which I thought was out of line.</p> <p>14 Q. When you say "out of line," do you mean</p> <p>15 inconsistent with the FRB principles?</p> <p>16 A. I did think it was inconsistent with the</p> <p>17 principles.</p> <p>18 Q. Did you bring to anyone's attention in 2015 that</p> <p>19 you believed that the 2015 FRB had acted in a way that</p> <p>20 was inconsistent with the FRB principles?</p> <p>21 A. I discussed it with Brian and Kathleen in general</p> <p>22 terms. They discouraged me with all the force they</p> <p>23 could muster from making complaints like that.</p> <p>24 Q. Did they explain why?</p>
<p>1 internal matters, or staff interaction, I thought the</p> <p>2 staff interaction section was quite glaringly flawed.</p> <p>3 Frankly, I thought I had demolished it in my</p> <p>4 reply and I thought the FRB was out of line both in what</p> <p>5 they had alleged in their draft report, a properly done</p> <p>6 draft report shouldn't have said those things about me.</p> <p>7 And also in failing to retract it when my reply</p> <p>8 was just devastatingly powerful, they should have</p> <p>9 revised it. They should have revised it to delete many</p> <p>10 entire paragraphs, delete entire sections, because they</p> <p>11 were wrong, and I proved it, and that should have been</p> <p>12 the end of it.</p> <p>13 I thought some aspects of the FRB policy and</p> <p>14 procedure should require them to admit defeat and</p> <p>15 surrender when they are beaten fair and square.</p> <p>16 Q. I take that as a statement by you that you</p> <p>17 thought the 2015 FRB was wrong on the merits of your</p> <p>18 interactions with staff, the third part of the report?</p> <p>19 A. I did think that they were wrong on the merits,</p> <p>20 but I also thought there was something flawed about the</p> <p>21 process. I thought with respect to the process, somehow</p> <p>22 the way they had gotten there, had to be wrong. You</p> <p>23 couldn't reach that wrong result if you had followed the</p> <p>24 right process.</p>	<p>Page 47</p> <p>1 A. Yes.</p> <p>2 Q. What did they say?</p> <p>3 A. They said that it's not the role of a junior</p> <p>4 faculty member to question a process. That HBS senior</p> <p>5 faculty and the dean and administrators designed the</p> <p>6 process, and junior faculty must follow it.</p> <p>7 They said that people already viewed me as</p> <p>8 argumentative and lawyerly and that if I questioned the</p> <p>9 process, I would be seen as having those characteristics</p> <p>10 to an even greater extent and it would be held against</p> <p>11 me.</p> <p>12 Q. But based on your review of the FRB principles,</p> <p>13 you believe there had been a violation of those</p> <p>14 principles?</p> <p>15 A. I thought there surely must have been given the</p> <p>16 substantive problems with the report.</p> <p>17 Q. You came up again for tenure in 2017; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. After the tenure vote by the appointments</p> <p>21 committee, did you speak with Dean Nohria?</p> <p>22 A. Yes.</p> <p>23 Q. Did you take notes of that conversation?</p> <p>24 A. You know, it was funny, I was standing by the</p>

13 (Pages 46 - 49)

<p style="text-align: right;">Page 50</p> <p>1 side of the road waiting for an Uber when Dean Nohria    2 called me slightly after the appointed time. I think I    3 wedged the phone between my ear and my shoulder and did    4 take notes contemporaneously to my laptop. At least I    5 touch type pretty well, so I could actually do that.    6 That's my recollection.</p> <p>7 It is possible that I did it some other way like    8 scribbled long hand and then typed it into my computer    9 at the first opportunity.</p> <p>10 MR. MURPHY: Let's mark the next exhibit as    11 Exhibit 82.</p> <p>12 (Document marked as Exhibit No. 82 for    13 identification.)</p> <p>14 BY MR. MURPHY:</p> <p>15 Q. Do you recognize what has been marked as    16 Exhibit 82?</p> <p>17 A. Yes. It looks like the notes I took    18 contemporaneously of that discussion with Dean Nohria,    19 according to the date on the second page, September 5,    20 2017.</p> <p>21 Q. Dean Nohria said, Don't have good news. Not able    22 to move forward with promoting to tenure. Not enough of    23 a faculty vote for me to do so. Correct?</p> <p>24 A. That's what it says.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Did you ever tell you that if there had been more    2 votes in favor of your candidacy for tenure from the    3 members of the appointments committee, he would have    4 recommended you to President Faust to receive tenure?</p> <p>5 A. I have some information about that but not from    6 anything he said to me.</p> <p>7 Q. He did not say that to you?</p> <p>8 A. He did not say that to me.</p> <p>9 Q. Did he tell you whether he personally believed    10 that you would pose a reputational risk to the school if    11 you became a tenured professor at HBS?</p> <p>12 A. He didn't speak to that subject.</p> <p>13 Q. The phrase is here in these notes, Dug yourself    14 in the hole from the 2015 incidents.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember anything else about what he said    18 about that?</p> <p>19 A. I remember biting my tongue with respect to 2015,    20 which was an error by him, not an error by me in my note    21 taking. It was an error by him. He said the wrong    22 year. That's okay. He has a lot on his mind; he's the    23 dean.</p> <p>24 But it's pretty close to the core of the weakness</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Do you remember, if you take a moment to take a    2 look at this note, anything else this Dean Nohria said    3 other than what is on this page?</p> <p>4 A. I don't remember anything that he said other than    5 what I wrote down in my notes.</p> <p>6 Q. He phrases -- your note say, Not enough of a    7 faculty vote for me to do so.</p> <p>8 Do you remember anything more about what he said    9 about that?</p> <p>10 A. I have other information about what he told other    11 people about that. But I don't remember anything    12 further from this discussion.</p> <p>13 Q. Did Dean Nohria ever tell you that -- what his    14 personal views were about whether you should get tenure?</p> <p>15 A. No.</p> <p>16 Q. Did he ever say if the faculty vote had been    17 different he would have recommended you for tenure?</p> <p>18 A. He did not say that.</p> <p>19 Q. Did he say whether he personally believed that    20 you demonstrated a sufficient evidence that you had seen    21 the message and learned the lessons from the 2015 and    22 2014 incidents?</p> <p>23 A. I don't think that he spoke to that subject one    24 way or the other.</p>	<p style="text-align: right;">Page 53</p> <p>1 in my case to know what happened and when it happened,    2 which is relevant, because that speaks to the information    3 provided by it not having happened subsequently. I    4 would have liked him to get the year right. I took a    5 little bit of offense, though, to be sure, not too much.</p> <p>6 Q. You certainly didn't say anything to him?</p> <p>7 A. I certainly did not.</p> <p>8 Q. What did you understand him to mean when he said    9 the 2015 incidents?</p> <p>10 A. I took him to be referring to BlinkX and Sichuan    11 Garden.</p> <p>12 Q. You did not understand him to mean your    13 interactions with staff?</p> <p>14 A. In fact, I understood him to be saying that he    15 judged all of the other matters in both the 2015 and    16 2017 reports to be kind of inconsequential.</p> <p>17 Q. Did you speak to Dean Nohria again about your    18 tenure case after this conversation in 2017?</p> <p>19 A. I spoke to him in the Spring 2018, either    20 February or March, I'm sure the date is in multiple    21 places. And that was the only other time I discussed it    22 with him, quote/unquote, live in person or    23 telephonically.</p> <p>24 Q. You remember that was the meeting in his office</p>

14 (Pages 50 - 53)

<p style="text-align: right;">Page 66</p> <p>1 no fishing expedition line; correct?</p> <p>2 A. I did.</p> <p>3 Q. What do you recall?</p> <p>4 A. I was concerned that the FRB in 2017 had added 5 new subjects at the last minute, a practice that I and 6 others were on a fishing expedition. You don't know 7 what kind of fish you will catch, but you put a worm in 8 the water and see who bites.</p> <p>9 And I found what I had believed to be support for 10 the prohibition on so-called fishing expeditions; 11 support within P&amp;P. I had brought that support to 12 Nitin's attention via the color highlights and had 13 explained to him the concern broadly that you could 14 probably find something bad about almost anyone if you 15 go looking with a search criteria as something bad about 16 this guy. And I thought that wasn't what the P&amp;P 17 instructed in FRB or authorized in FRB to do. And on 18 that basis I thought the late added expansion of the FRB 19 was improper and shouldn't be allowed.</p> <p>20 Q. Three paragraphs from the bottom it says, Some 21 space, going elsewhere for a bit could help. People 22 could revisit later. Time could be a friend. And stand 23 for HKS. HKS could happen with time.</p> <p>24 Do you recall what that means?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Does that refer to the meeting that you had with 2 Dean Nohria?</p> <p>3 A. Yes.</p> <p>4 Q. Did you accurately summarize this meeting for 5 your colleagues in NOM?</p> <p>6 A. I summarized parts of it. I hope I did it 7 accurately.</p> <p>8 Q. You say that, His intended agenda. That was Dean 9 Nohria's intended agenda?</p> <p>10 A. Yes.</p> <p>11 Q. Was broadly, as we expected, telling me that he 12 is doing what he can from me and encouraging me to ask 13 him for assistance.</p> <p>14 Did I read that correctly?</p> <p>15 A. That's what it says.</p> <p>16 Q. What did Dean Nohria say that he was doing for 17 you? What did he encourage you to ask him for 18 assistance for?</p> <p>19 A. He told me that he was contacting faculty and 20 deans at other schools, elsewhere in Harvard, and his 21 contacts more broadly, alluding them to my availability 22 and encouraging them to consider me.</p> <p>23 Q. You say that you, Politely provided him with a 24 color highlighted version of the FRB principles and</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. What did that mean?</p> <p>3 A. These are Nitin's remarks to me about what he 4 thought might happen to my professional trajectory based 5 on his view that I would be departing from HBS before 6 long.</p> <p>7 MR. MURPHY: Mark this as Exhibit 85.</p> <p>8 (Document marked Exhibit No. 85 for 9 identification.)</p> <p>10 BY MR. MURPHY:</p> <p>11 Q. Mr. Edelman, I'm showing you what has been marked 12 as Exhibit 85. Is that a document that has a Bates 13 number beginning HBS 0002503?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recognize this as a collection of emails 16 between you and Ms. -- Professor McGinn, Professor Gino, 17 and Professor Bazerman?</p> <p>18 A. Yes.</p> <p>19 Q. If you take a look at the first page that is the 20 one marked a 2503.</p> <p>21 Do you see that it contains an email from you to 22 Professor McGinn, Professor Gino, and Professor 23 Bazerman, dated March 20, 2018, at 11:15 a.m.?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 procedures document, pointing out the respects in which 2 our process fell short of that.</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. You then say, Throughout I tried to make this 6 more about the fundamental fairness and less about the 7 document as I didn't want to sound lawyerly. But he was 8 clearly skeptical about arguments about how the process 9 could have been better for just the reasons you are 10 articulating, Kathleen, while more receptive to arguments 11 that we hadn't done what our own policy said that we'd 12 do.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Is that what happened in the meeting with Dean 16 Nohria?</p> <p>17 A. That's a long sentence with several clauses, but 18 each of the claims matches aspects of what I remember 19 about the meeting.</p> <p>20 Q. He asked me what I thought he should do.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. You said you didn't know, correct?</p> <p>24 A. That is what I said.</p>

18 (Pages 66 - 69)

<p style="text-align: right;">Page 82</p> <p>1 to be submitted and not that much more than a year    2 before they were to make a decision about that question,    3 a lifetime commitment, and they are entitled to look at    4 these two very negative bouts of publicity. Two high    5 watermarks in the school of negative publicity and ask    6 themselves, Well, these two incidents from this guy,    7 this year, is this is someone we can tolerate having    8 around?</p> <p>9 I expected them to ask that question by the end    10 of the restaurant email media coverage. And accepted    11 that they would answer it and was prepared to speak to    12 the subject.</p> <p>13 Q. So you think it was legitimate for them to worry    14 about whether it could happen again?</p> <p>15 A. I think they were right to be thinking about    16 whether it could happen again, yes.</p> <p>17 Q. Do you think it was appropriate for them in    18 considering your tenure case to evaluate whether in    19 their view your conduct posed risks to HBS?</p> <p>20 A. In the abstract matter, I think that's fine.    21 We need to be constrained by all governing contracts,    22 policies, and maybe by notions of academic freedom.    23 There might be a set of subjects that are off-limits.    24 But subject to that, it would be proper to consider.</p>	<p style="text-align: right;">Page 84</p> <p>1 (Document marked Exhibit No. 86 for    2 identification.)</p> <p>3 BY MR. MURPHY:</p> <p>4 Q. Do you have Exhibit 86 in front of you?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. It's an email from Nitin Nohria to me on    8 April 24, 2018.</p> <p>9 Q. Is that your follow-up to your meeting with him?</p> <p>10 A. It is.</p> <p>11 Q. After that email, did you have any further    12 communication with Dean Nohria concerning your tenure?</p> <p>13 A. It is possible that he was cc'd on some further    14 messages between me and Paul Healy. I don't recall    15 further communication with Dean Nohria specifically.</p> <p>16 Q. Have you now discussed all of your personal    17 interactions with Dean Nohria concerning your tenure    18 matter in 2015, 2016, and 2017?</p> <p>19 A. To the best of my recollection, yes.</p> <p>20 Q. I take it you had a significant amount of time    21 since 2015 and 2017 to think about your interactions    22 with Dean Nohria, correct?</p> <p>23 A. Yes.</p> <p>24 Q. When you did first conclude that the FRB had</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. And in the end, you understood based on what Dean    2 Nohria had told you that the faculty at Harvard Business    3 School on the appointments committee believed that you'd    4 dug a hole too deep to get out of by your actions in    5 2014?</p> <p>6 A. That isn't quite what I understood Dean Nohria to    7 convey when he called me in December of 2017.</p> <p>8 Q. What did you understand him to convey?</p> <p>9 A. The dug a hole reference, I took to be his    10 personal impression of what he thought had happened.</p> <p>11 He was stepping back and giving me his personal    12 assessment, separate from what the various appointments    13 committee members might have thought in their respective    14 assessments.</p> <p>15 MS. O'MEARA-COSTELLO: Marty, would now be a    16 reasonable time for a break?</p> <p>17 MR. MURPHY: Sure.</p> <p>18 THE VIDEOGRAPHER: The time is 10:59. We    19 are off the record.</p> <p>20 (Break in the proceedings.)</p> <p>21 THE VIDEOGRAPHER: We're are back on the    22 record. The time is 11:19.</p> <p>23 MR. MURPHY: I ask you to mark this as    24 Exhibit 85 -- 86.</p>	<p style="text-align: right;">Page 85</p> <p>1 violated the Principles and Procedures for Responding to    2 Matters of Faculty Conduct?</p> <p>3 A. I'm not sure.</p> <p>4 Q. It was in 2015, correct? After the 2015 FRB    5 report came out?</p> <p>6 A. In 2015 I was certainly concerned that some    7 aspect of the process seemed a little -- what is the    8 word -- fishy, and I don't think I was crosschecking    9 what they did with the P&amp;P in fall of 2015.</p> <p>10 And I was not unhappy with where the process    11 ended up. The recommendation of a two-year extension    12 seemed to me perfectly reasonable. I was happy to take    13 on the new teaching assignment. I just wasn't sure that    14 -- I wasn't sure one way or the other. I had some    15 evidence as of fall of 2015 suggesting that something    16 untoward was occurring and some evidence suggesting that    17 it was all going to be fine and I should smile and nod    18 and go with the flow and do what was asked of me.</p> <p>19 Q. You understood, I think as we discussed, that it    20 was on you to demonstrate that you could abide by    21 community values between 2015 and the time that you next    22 came up for tenure in 2017?</p> <p>23 A. I think I knew that I would be evaluated in 2017    24 and I would be evaluated in all the respects specified</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 in the Green Book community values, of course, among 2 them.</p> <p>3 Q. That it was the candidate's burden to 4 demonstrate, correct? Persuasively?</p> <p>5 A. With respect to community values, I'm less sure 6 that it is always the candidate's burden. I don't think 7 candidates routinely make any particular showing in that 8 regard. I think it's sort of presumed, unless someone 9 alleges the opposite, and then one has to think 10 carefully about what the procedure is if someone alleges 11 misconduct.</p> <p>12 Q. But you knew in 2015 that your conduct was going 13 to be looked at carefully in 2017, correct? Your 14 conduct not just with respect to scholarship and 15 teaching, but with how you behaved generally within HBS; 16 correct?</p> <p>17 A. I knew that some aspect of conduct would be 18 evaluated. Whether it would be internal or external, 19 how carefully it would be examined and by who, I was 20 less clear on any of that.</p> <p>21 Q. Did you ask?</p> <p>22 A. I think it was discussed some in my unit, between 23 me, Brian Hall, and Kathleen McGinn, and I was counseled 24 not to ask, because excessive focus on procedure would</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No.</p> <p>2 Q. Did you have any contact with anyone from the FRB 3 between the time of your extension in late 2015 and the 4 time that the FRB process commenced in 2017?</p> <p>5 A. At most it would have been a smile and good 6 morning while crossing paths in a hallway; even that I 7 specifically don't recall.</p> <p>8 Q. I'm going to ask you to take a look at what has 9 previously been marked as Exhibit 45.</p> <p>10 A. Thank you.</p> <p>11 Q. Do you recognize what has been marked as 12 Exhibit 45?</p> <p>13 A. It says that it is the FRB's report in 2017. I 14 take this to be the last and final version. Sometimes 15 it gets confusing for me to find the right one, so I'll 16 be reliant on you that this is the one it's supposed to 17 be.</p> <p>18 Q. Why don't you take a look all the way to the end. 19 Do you see that this one includes both an addendum and a 20 list of changes?</p> <p>21 A. I do see that.</p> <p>22 Q. Does that give you additional confidence this is 23 the final report?</p> <p>24 A. It does.</p>
<p style="text-align: right;">Page 87</p> <p>1 be viewed unfavorably I was told.</p> <p>2 Q. Did you seek other counsel about that, outside of 3 your unit?</p> <p>4 A. I'm not sure. Seems like it would have been 5 pretty natural to do with my contacts outside of my 6 unit.</p> <p>7 Q. But did you?</p> <p>8 A. You are asking specifically whether I asked 9 people outside of my unit after fall 2015 how my conduct 10 would be evaluated in 2017?</p> <p>11 Q. Yes.</p> <p>12 A. Nothing immediately comes to mind. I know I 13 discussed other aspects of my extension, but maybe not 14 the specific aspect that you asked about.</p> <p>15 Q. Did you discuss how your conduct would be 16 evaluated with Associate Dean Healy?</p> <p>17 A. I don't think so.</p> <p>18 Q. Did you discuss how your conduct would be 19 evaluated with Dean Nohria?</p> <p>20 A. I think we discussed that there was probably only 21 one meeting or phone call on that subject and I really 22 don't recall that one specifically.</p> <p>23 Q. Do you recall how -- discussing how your conduct 24 would be evaluated with anyone from the FRB?</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. This is the document that is Bates numbered 18879 2 at the first page, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Is it fair to say that in general terms the FRB 5 in 2017 focused on two issues. The first being, that is 6 listed on page 3, Respect for other inside the 7 institution. And the second on page 6, Outside 8 activities and conflict of interest?</p> <p>9 A. I think that is a reasonable summary.</p> <p>10 Q. If we focus to start with on outside activities 11 and conflict of interest. Do you agree that that 12 section focused on two specific issues; one, relating to 13 your disclosures concerning Google and Microsoft and the 14 second concerning the American Airlines suit?</p> <p>15 A. I think that is a fine summary of that section.</p> <p>16 Q. Is it fair to say that the section on Microsoft 17 provided the evidence on which the FRB relied?</p> <p>18 A. I think it did provide the evidence in that it 19 identified the specific work products where disclosure 20 was judged to be, quote, inconsistent.</p> <p>21 Q. With respect to the American Airlines suit, did 22 it also set forth the evidence on which that section was 23 based?</p> <p>24 A. It did. Some of the evidence was flawed, of</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 course, but the evidence such as it was was provided.</p> <p>2 Q. You both had an opportunity to respond to that</p> <p>3 evidence and did respond to that evidence; correct?</p> <p>4 A. I had some opportunity. This was difficult for</p> <p>5 me, because the first inclusion of these subjects was at</p> <p>6 a pretty late date. I am remembering dates in September</p> <p>7 of 2017 and the number four business days. It was not</p> <p>8 possible for me to provide the very best reply I could</p> <p>9 have in the four business days that were allowed.</p> <p>10 Subject to that, I was given the opportunity to</p> <p>11 speak to that subject and ultimately upon receiving the</p> <p>12 draft report to provide a reply to the draft report.</p> <p>13 Q. Right. That draft report, your reply is included</p> <p>14 in this draft report -- in this report, correct? What</p> <p>15 has been marked as Exhibit 45?</p> <p>16 A. It is in there. This is no tab in my version but</p> <p>17 I know it is in there somewhere.</p> <p>18 Q. It is -- if you turn to page 36, which begins at</p> <p>19 Bates number 18914.</p> <p>20 That was your reply that you submitted October 5,</p> <p>21 2017, correct?</p> <p>22 A. That's right.</p> <p>23 Q. And if you look at the first page of that has a</p> <p>24 heading that says, Disclosure your response to the</p>	<p style="text-align: right;">Page 92</p> <p>1 work products that the FRB wanted to discuss in 2017.</p> <p>2 Q. With respect to the American Airlines suit, is</p> <p>3 there anything more that you would say today than you</p> <p>4 said back in October of 2017?</p> <p>5 A. Certainly today the suit long since completed,</p> <p>6 even the follow-on suit also completed. We have quite a</p> <p>7 bit more information now about whether there was in fact</p> <p>8 any, quote/unquote, reputational risk to that. We don't</p> <p>9 have to speculate. We don't have to wonder what the</p> <p>10 future has in store, because the future has become the</p> <p>11 past. So I would remark on that.</p> <p>12 I have some stories of the class members and the</p> <p>13 money we got from them. The gratitude they had. The</p> <p>14 surprise that they have. They had some information to</p> <p>15 report after the media coverage. It is not like this</p> <p>16 was on the front page of any newspaper. But it's had a</p> <p>17 little bit of media coverage and some blogs and</p> <p>18 discussion forums.</p> <p>19 We now have information, I think vindicates what</p> <p>20 I had said all along, which is there is not material</p> <p>21 risk to suing an airline about its violation of its own</p> <p>22 black letter contract with the passengers. This is</p> <p>23 something that people will view positively. And indeed,</p> <p>24 just as I predicted, people did review it positively.</p>
<p style="text-align: right;">Page 91</p> <p>1 issues relating to Microsoft; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And there is also a response to your issues with</p> <p>4 the American Airlines lawsuit, correct? That is on page</p> <p>5 37; correct?</p> <p>6 MS. O'MEARA-COSTELLO: Objection.</p> <p>7 A. Yes.</p> <p>8 Q. Is there anything more that you would say today</p> <p>9 relating to the disclosure of work with Microsoft</p> <p>10 section than you said here?</p> <p>11 MS. O'MEARA-COSTELLO: Objection.</p> <p>12 A. I think there is.</p> <p>13 Q. What would you say that you didn't say here?</p> <p>14 A. I call out the defined term, quote, directly</p> <p>15 related on page 36 of this document.</p> <p>16 But I write literally two sentences about it</p> <p>17 here. I think much more could be said about the meaning</p> <p>18 of that term, how it came to be included in the COI</p> <p>19 policy. What people thought it meant contemporaneously</p> <p>20 in discussions. How other faculty have approached the</p> <p>21 question of whether a work is or is not directly</p> <p>22 related. More generally, how others have handled</p> <p>23 questions of disclosure that might be in some way</p> <p>24 similar to the questions that arose for me on the six</p>	<p style="text-align: right;">Page 93</p> <p>1 And I have a second set of things I would have</p> <p>2 said had I had unlimited time to reflect on my reply to</p> <p>3 this part.</p> <p>4 Q. Let me go back. I will get back to that in a</p> <p>5 second. You couldn't have said in 2017, even if you had</p> <p>6 been given more time, anything about events after 2017.</p> <p>7 We can agree on that?</p> <p>8 A. That's true. I was trying to answer your</p> <p>9 question in the most literal way, what more would I say</p> <p>10 about it today? That is what I would say about it</p> <p>11 today.</p> <p>12 Q. Is there anything in retrospect having looked at</p> <p>13 this in connection with this litigation that you would</p> <p>14 say about the American Airlines case based on</p> <p>15 information that was available to you in 2017?</p> <p>16 A. I understand the question now. I think there is</p> <p>17 more I would have said about it.</p> <p>18 Q. What would you have said about it?</p> <p>19 A. Well, I have had quite a few class actions in my</p> <p>20 professional life prior to 2017. This was not my first</p> <p>21 case. Not my last either, but it wasn't my first and I</p> <p>22 could have talked about the others that came before.</p> <p>23 The others were against, honestly, much bigger</p> <p>24 companies than American Airlines. American Airlines may</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 have the most airplanes but Apple, Google, Facebook,    2 Yahoo!, I had brought cases against them. Big and    3 powerful companies. Not one of them had caused any    4 negative media attention to me or to HBS.</p> <p>5 Some of them had caused positive media attention.    6 I could tell you about the specific benefits that we    7 obtained for the classes in those cases. I could tell    8 you what the courts said about the quality of the legal    9 representation that co-counsel and I provided. And    10 about the fee awards that courts decided to grant us    11 based on the assessments of the quality of our work.</p> <p>12 I guess I should have said all of that in 2017 as    13 part of arguing that this was low-risk work that was    14 likely to be seen favorably. But I was struggling in    15 the four business days that I had to reply when it was    16 first raised. And, frankly, by the time of my final    17 reply to the draft report, I perceived that it didn't    18 really matter in the sense that the FRB wasn't going to    19 materially revise its draft based on anything that I    20 said at that point.</p> <p>21 Q. Do you recall when it was first raised?</p> <p>22 A. I do. There was an email to me, I want to say,    23 September 4, 2017 -- September 2017, just before    24 Memorial Day, and I was granted until the Friday of</p>	<p style="text-align: right;">Page 96</p> <p>1 time was something of a formality. That it was not a    2 serious offer for more time. Because I was told by my    3 unit leaders more time really couldn't be granted based    4 on the totality of steps that had to occur before the    5 scheduled date on which the dean and the president would    6 discuss my candidacy if my candidacy should, in fact,    7 get to that stage.</p> <p>8 Q. But you didn't talk about that with the FRB?</p> <p>9 A. I did not.</p> <p>10 Q. Or with Professor Edmondson, who was the person    11 who extended that offer of additional time; correct?</p> <p>12 A. That's true, I did not.</p> <p>13 Q. Now, the first section in the FRB report in 2017    14 that has been marked as Exhibit 45, that focuses on    15 respect for others inside the institution. Is that    16 correct?</p> <p>17 A. That's what it says, the underlined subsection    18 heading on page 3.</p> <p>19 Q. And that contains a series of bullet points;    20 correct?</p> <p>21 A. It does.</p> <p>22 Q. There are 27 bullet points that contain favorable    23 information, correct?</p> <p>24 A. I don't recall the number but that sounds about</p>
<p style="text-align: right;">Page 95</p> <p>1 Memorial Day week in order to provide my response to    2 that question.</p> <p>3 Q. I'm sorry, do you mean Labor Day?</p> <p>4 A. Yes, I do. I apologize.</p> <p>5 Q. But after that initial response, you had weeks    6 before your reply to the FRB report itself to think    7 about those issues relating to Microsoft and the    8 American Airlines suit; correct?</p> <p>9 A. I suppose I did. I was not focused on this at    10 that moment. I had submitted what I needed to submit in    11 the timetable that was asked of me. I was more waiting    12 then I was preparing. Maybe that too was a mistake, but    13 I was waiting to receive the draft report and was not    14 prewriting sections of a possible reply to a draft I    15 hadn't seen.</p> <p>16 Q. Do you recall being asked whether you needed more    17 time in response to the request for information about    18 your outside activities?</p> <p>19 A. I do recall that there was a sentence to that    20 effect.</p> <p>21 Q. Did you ask for more time?</p> <p>22 A. I did not.</p> <p>23 Q. Why not?</p> <p>24 A. I perceived that being told I could ask for more</p>	<p style="text-align: right;">Page 97</p> <p>1 right.</p> <p>2 Q. Would you mind counting for me.</p> <p>3 A. I get 27.</p> <p>4 Q. How about the negative bullet points, how many    5 are there?</p> <p>6 A. I remember at one point I said there were 12 and    7 I counted again and found 13. Maybe I should count it    8 sitting here today.</p> <p>9 Q. Please do.</p> <p>10 A. I guess 13.</p> <p>11 Q. Neither the 27 positive bullet points or the 13    12 negative bullet points contained attribution; correct?</p> <p>13 A. That's true.</p> <p>14 Q. So from the FRB's perspective, it is not your    15 contention that they didn't provide the evidence for the    16 negative points, but did provide the evidence for the    17 positive points. They didn't provide, in your view, the    18 evidence for any of the bulleted points positive or    19 negative. Is that fair?</p> <p>20 A. Withholding of both the speaker's name and the    21 context was withheld as to both the positive and the    22 negative quotes. I think the quotes are part of the    23 evidence, but they are not the totality of, quote, the    24 evidence gathered.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 102</p> <p>1 limited to that specific subsection of the FRB report.  2 I had intended to convey concerns that covered in the  3 totality as I thought all of the FRB's report in 2017.  4 So for him to pick out one subsection of the FRB report  5 and talk about which of the faculty comments connect to  6 that subsection of the FRB report wouldn't be responsive  7 to the whole of the critique that I had offered to him.  8 Q. Tell me what critique you offered to Dean Healy  9 about the process?  10 A. I believe I showed him the same color highlighted  11 version of the P&amp;P that I had delivered to Dean Nohria  12 in his office. I showed him the color highlighted two  13 instances that required, quote, the evidence gathered to  14 be provided, not most neatly, as we've discussed, to the  15 quotes, the internal interactions.  16 I also pointed out the reference to quote, the  17 allegation. The allegation is to be stated at the  18 beginning and the FRB is to investigate the allegation.  19 I said, Hey, the same words must mean the same  20 thing, right? You can't have the same words change  21 meaning from whatever it is; page 1 of the policy to  22 page 2 of the policy.  23 So I said everything not stated at the outset was  24 improper under that part of the P&amp;P; therefore, I</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. If I represent to you this is a compilation of  2 the no votes or the abstentions; does that look right to  3 you?  4 A. Yes.  5 Q. You are not complaining about the yes votes, to  6 be clear?  7 A. I am not.  8 Q. With respect to the category that was identified  9 in the 27 FRB report, Respect for others inside the  10 institution.  11 I would ask you to look through here and ask you  12 to take a look at these statements, essays, I think you  13 called them earlier, to see whether you see any  14 reference to respect for others inside the institution.  15 The abstention -- the first no -- 42, can you  16 see that, sir?  17 A. Yes.  18 Q. It doesn't say anything about respect for others  19 inside the institution, correct?  20 A. It doesn't indicate the specific basis of that  21 person's negative evaluation, no.  22 Q. The abstention that is the next vote with no name  23 that does indicate the concern about respect for others  24 within the institution; is that correct?</p>
<p style="text-align: right;">Page 103</p> <p>1 thought the late addition of the Microsoft, Google  2 concern and the American Airlines concern that those  3 late additions were also equally improper due to a  4 violation, to be sure, a different part of the P&amp;P.  5 Q. Have you since had an opportunity to look at  6 transcripts of voting slips that had been produced in  7 this case?  8 A. I have looked at those, yes.  9 Q. Do you agree with Dean Healy that respect for  10 others was not mentioned as a concern by a significant  11 majority of those who voted against your case?  12 A. I'm not sure I looked at them with an eye to that  13 question.  14 MR. MURPHY: If you could mark this document  15 as Exhibit 88.  16 (Document marked as Exhibit No. 88 for  17 identification.)  18 BY MR. MURPHY:  19 Q. I'm showing you what has been marked as  20 Exhibit 88, which is document that begins HBS 0000105.  21 Do you recognize what this is, sir?  22 A. It seems to be an incomplete subset of a document  23 that I have seen before, a typed up and partially  24 redacted version of comments from the tally sheets.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Could you repeat the last sentence? I want to  2 make sure I heard every word.  3 Q. The abstention that is recorded as the second  4 vote here with no name on page 110 on this document.  5 That does include respect for others inside the  6 institution as part of the basis, correct?  7 MS. O'MEARA-COSTELLO: Objection.  8 A. I agree. I'd say this person references multiple  9 aspects of the FRB report including, as you say, what  10 could be classified as respect for others.  11 Q. That is one non-positive vote so far that  12 mentioned respect for others within the institution;  13 correct?  14 A. That's true.  15 Q. If you look the abstention that appears at the  16 top of page 111, that abstention also refers to respect  17 for others within the institution; correct?  18 MS. O'MEARA-COSTELLO: Objection.  19 A. It does among other factors.  20 Q. So that is two non-positive votes that refer to  21 it, correct?  22 A. So far.  23 Q. The no vote that is in the second block on page  24 111, that is faculty member 45. Also includes respect</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 for others; correct?</p> <p>2 A. I would say so.</p> <p>3 Q. That is three non-positive votes; correct?</p> <p>4 A. So far.</p> <p>5 Q. The next one down, faculty member 46. There is 6 no reference to respect for others within the 7 institution; correct?</p> <p>8 MS. O'MEARA-COSTELLO: Objection.</p> <p>9 A. It's hard for me to interpret the third sentence 10 of that person's comment specifically. Additional 11 incidents like the one we have seen; I'm not sure what 12 that person is referring to. They could be referring to 13 some aspect of what they think they learned about my 14 interactions with staff or they could be referring to 15 something else. It's hard to say.</p> <p>16 Q. There is no specific reference to respect for 17 others inside the institution, correct?</p> <p>18 MS. O'MEARA-COSTELLO: Objection.</p> <p>19 A. There is no specific reference to respect for 20 others inside the institution.</p> <p>21 Q. With respect to the fourth block here, that is no 22 name. There is no reference to respect for others 23 within the institution; correct?</p> <p>24 MS. O'MEARA-COSTELLO: Objection.</p>	<p style="text-align: right;">Page 108</p> <p>1 MS. O'MEARA-COSTELLO: Objection.</p> <p>2 A. I agree with that.</p> <p>3 Q. That is four with specific reference; correct?</p> <p>4 A. So far.</p> <p>5 Q. In the first block on page 8, that is Bates 6 Number 112, that is a continuation of the vote on the 7 previous page; can we agree on that?</p> <p>8 A. Yes.</p> <p>9 Q. The next block down, faculty member 52, there is 10 no mention of the respect for others inside the 11 institution; correct?</p> <p>12 MS. O'MEARA-COSTELLO: Objection.</p> <p>13 A. True.</p> <p>14 Q. Next block down, 53, there is no reference for 15 respect for others within the institution; correct?</p> <p>16 MS. O'MEARA-COSTELLO: Objection.</p> <p>17 A. I'm not sure I read the first sentence as 18 seemingly to reflect something that 53 learned or things 19 he or she learned from the FRB report about my 20 interactions with others within the institution.</p> <p>21 Q. You think that does contain an explicit reference 22 to respect for others within the institution?</p> <p>23 A. The only record -- the only thing in the 24 materials provided to the AC in some quotes in the</p>
<p style="text-align: right;">Page 107</p> <p>1 A. There is no reference to that term or that idea.</p> <p>2 Q. The next block down, 48, faculty member 48, three 3 is no reference to respect for others within the 4 institution; correct?</p> <p>5 MS. O'MEARA-COSTELLO: Objection.</p> <p>6 A. I can't figure out the basis on which 48 reached 7 the conclusion in his or her fourth sentence, but there 8 is no specific indication based on the factor respect 9 for others.</p> <p>10 Q. 49, the next block down. There is no specific 11 reference to respect for others within the institution; 12 correct?</p> <p>13 MS. O'MEARA-COSTELLO: Objection.</p> <p>14 A. Hard to know what the person has in mind in 15 saying consuming colleagues' time, but I agree it 16 doesn't specifically reference respect for others.</p> <p>17 Q. The next one down, faculty member 50. There is 18 no reference to respect for others within the 19 institution; correct?</p> <p>20 MS. O'MEARA-COSTELLO: Objection.</p> <p>21 A. There is not.</p> <p>22 Q. The next one down that is 51, that does include 23 reference to respect for others within the institution; 24 correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 respect for others section of the FRB report that might 2 be understood in some way to speak to the questions in 3 the first sentence of 53.</p> <p>4 Q. Do you recall the FRB report raising concerns 5 about your conflict of interest disclosures as to be 6 essentially deciding things for yourself that should 7 have been left for others?</p> <p>8 A. Some people said things like that.</p> <p>9 Q. But we will count that as in the way that you've 10 described so that gets us to five, correct?</p> <p>11 A. That's where we are so far.</p> <p>12 Q. Okay. To me this is a Rob Parson's case, the 13 next one down. We were tempted by his academic success 14 and influence, but these are not worth being soft on our 15 values.</p> <p>16 Do you know what that reference means?</p> <p>17 A. I do not.</p> <p>18 Q. It does not contain any specific reference to 19 respect for others within the institution; correct?</p> <p>20 MS. O'MEARA-COSTELLO: Objection.</p> <p>21 A. The reference to our values includes several 22 things. HBS has multiple values and I would take this 23 to be a reference, among other things, interactions with 24 others inside HBS.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. That is six by your count.  2 The next one explicitly refers to respect for  3 others within the institution; correct?  4 A. It does.  5 Q. That is seven by your count, right?  6 The eighth one does not. This is faculty member  7 56, that does not refer to respect for others; correct?  8 MS. O'MEARA-COSTELLO: Objection.  9 A. The last clause references, quote, other issues,  10 so it is not indicating which issues specifically that  11 56 is thinking about. But I take it to be all of the  12 issues that would include, yes, respect for others.  13 Q. That is nine.  14 A. I'm counting on you to keep the count.  15 Q. With respect to faculty member 57. There is no  16 specific reference to respect for others; you would  17 agree?  18 MS. O'MEARA-COSTELLO: Objection.  19 A. I would be looking at the phrase and the second  20 bullet, The harm this does to HBS.  21 What is the antecedent for the pronoun "this." I  22 really can't tell. I take it to be the totality of the  23 material in the two FRB reports, which does include,  24 yes, the subsection that you asked about.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. The first sentence indicates following the FRB  2 conclusions, plural, from the two sections of the  3 report, as you count it, I'd say it is personal, I have  4 done the totality of the FRB report.  5 Q. But the specific reference are to academic  6 freedom and lack of bias and conflict, correct?  7 A. Even the word conflict there, do they mean it as  8 conflict of interest or conflict as in some notion of  9 interpersonal conflict with other people who might not  10 like me in some way. I'm not completely sure what this  11 person is referring to there.  12 Q. The next, 61, does that contain any reference to  13 respect for others as described by the 2017 FRB report?  14 A. I think 61 is wrong. But I don't think 61  15 discusses respect for others.  16 Q. So when you say 61 is wrong, what do you mean by  17 that?  18 A. Specifically as to pivotal, quote/unquote, lots  19 of law firms like to do this. I think 61 is wrong on  20 the facts. And I think I could prove it with evidence  21 in an evidence-based proceeding if I had the opportunity  22 to do so. I think I could have, had I had somewhat more  23 time to address the late addition of the American  24 Airlines matter. I could have used my own my framework</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. So you would count that?  2 A. I would. This is a person who is influenced at  3 least in part by that part of the FRB report.  4 Q. That gets us to 10. 11, is if we look to 58, you  5 would count that, correct?  6 A. I would.  7 Q. If we look to 59. That does not concern respect  8 for others, would you agree?  9 MS. O'MEARA-COSTELLO: Objection.  10 A. 59, criticizes my consultation with senior  11 colleague, which is actually linked to questions in  12 respect to others. Is it or is it not respectful to  13 consult with people. But it is not the specific areas  14 criticized by the respect for others portion of the FRB  15 report. This to me maybe shows the difficulty of  16 crosschecking the individual votes against the FRB  17 report.  18 I would say that 59 does not specifically discuss  19 the ideas that are in the respect for others section of  20 the FRB report.  21 Q. 60, if we turn to the page. That does not  22 mention respect for others as described by the FRB  23 report, correct?  24 MS. O'MEARA-COSTELLO: Objection.</p>	<p style="text-align: right;">Page 113</p> <p>1 which includes the, quote/unquote, pivotal question. I  2 could have applied that framework step-by-step to that  3 case, and explained why in fact my role in the case  4 absolutely was pivotal.  5 Q. But you'd agree that it doesn't refer to the  6 respect for others within the institution?  7 A. I agree with that.  8 Q. The next one, 62, does; correct?  9 A. I agree with that.  10 MS. O'MEARA-COSTELLO: Objection.  11 Q. 63?  12 MS. O'MEARA-COSTELLO: Objection.  13 A. I have a lot to say about 63, also. That aside,  14 I think a fair reading of 63 juxtaposed against the 2017  15 report is consistent with 63 being influenced by the  16 respect for others section of the FRB report.  17 Q. 63 is also concerned based on something that he  18 or she personally witnessed; correct?  19 A. Discussion in a faculty meeting where I was  20 concerned about spoliation by Harvard's failure to  21 retain video evidence of alleged sexual assault, yes.  22 Q. Tell us about that?  23 A. Sure. It is a subject that I think about often.  24 I think about it often in part because it didn't come to</p>

PAGES 114-116

INTENTIONALLY OMITTED –  
IMPOUNDMENT REQUESTED

<p style="text-align: right;">Page 118</p> <p>1 suspect is referring to rebuttal of the claim that I was  2 disrespectful to others in the institution. That is the  3 rebuttal that I wrote that was the source of some  4 consternation for some people.</p> <p>5 So I think 66, by criticizing my rebuttal to  6 materials about respect for others, is intertwined with  7 respect for others, yes. I'm going to count that as  8 yes.</p> <p>9 Q. So you count that as yes. That number gets us to  10 13.</p> <p>11 What about 67?</p> <p>12 MS. O'MEARA-COSTELLO: Objection.</p> <p>13 A. It would be helpful to know what is redacted at  14 the top of Bates 115, the two words separated by a plus  15 sign and then I would figure out what those two people  16 might have said if there is anything in the record.</p> <p>17 Operating subject to the redactions that are in this  18 file.</p> <p>19 I think I give it a no. Although, I do think  20 this person read the totality of the FRB report and the  21 totality of the report had an influence on them.</p> <p>22 Q. What about 68?</p> <p>23 MS. O'MEARA-COSTELLO: Objection.</p> <p>24 A. I think that the third sentence of 68 is fairly</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. So you count 17 people who said respect for  2 others inside the institution was a factor, as you've  3 described it?</p> <p>4 A. I think that's where our classification went,  5 yes.</p> <p>6 Q. You disagree with what Associate Dean Healy said?</p> <p>7 A. Well, Dean Healy had a different version of the  8 analysis, that isn't in Exhibit 87, but is somewhere in  9 the production and I read it recently where he had both  10 a complete list of his categories and the numbers  11 associated with each category. That to me is a somewhat  12 more fruitful path than looking at this one category  13 alone without the number, whatever it might have been,  14 that he described in his last sentence there.</p> <p>15 MR. MURPHY: We can mark this as the next  16 Exhibit 89.</p> <p>17 (Document marked Exhibit No. 89 for  18 identification.)</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. Do you recognize what has been marked as  21 Exhibit 89.</p> <p>22 A. Yes. The message on the continuation on the back  23 is exactly what I was referring to a moment ago.</p> <p>24 Q. That was the backup that Associate Dean Healy</p>
<p style="text-align: right;">Page 119</p> <p>1 read to refer to respect for others.</p> <p>2 Q. Some behaviors raised serious concerns?</p> <p>3 A. Yes.</p> <p>4 Q. What about 69, that gets us to -- you are  5 counting that as a yes. That gets us to 14 -- 15.</p> <p>6 Okay. The next one?</p> <p>7 A. 69 is a yes for me based on the first sentence.</p> <p>8 Q. That gets us to 16. 70 there is no comment. 71,  9 there is no reference to respect for others; correct?</p> <p>10 MS. O'MEARA-COSTELLO: Objection.</p> <p>11 A. I have struggled to understand 71's comment when  12 I previously read it and have no greater insight today.</p> <p>13 It has no reference to respect for others.</p> <p>14 Q. 72 and 73 obviously do not, correct?</p> <p>15 A. Agree.</p> <p>16 Q. So that has -- we were -- you have counted 16  17 yes's, correct?</p> <p>18 A. Obviously, I was focused on the substance and not  19 counting. If you represent that it was 16 or 15 or 17.</p> <p>20 Q. Take a look at 63.</p> <p>21 A. I gave 63 a yes on the basis of the fourth  22 sentence. Personal judgments, which by its term could  23 refer to either of the two halves of the FRB report as  24 you have classified it.</p>	<p style="text-align: right;">Page 121</p> <p>1 relied on before he sent you the message that has been  2 marked as 87; correct?</p> <p>3 A. I think it must have been.</p> <p>4 Q. Do you -- have you had an opportunity to review  5 Exhibit 88 before your deposition?</p> <p>6 A. I did, yes.</p> <p>7 Q. Do you disagree with Associate Dean Healy's  8 tally?</p> <p>9 A. I didn't cross check the tally row by row. In  10 part when I attempted to do so I found myself struggling  11 with the kinds of challenges we were just doing  12 together.</p> <p>13 Q. What did you understand -- what was your  14 impression of Associate Dean Healy's perspective on your  15 candidacy for tenure?</p> <p>16 A. As of what time?</p> <p>17 Q. As of this time, as of 2018?</p> <p>18 A. As of 2018, I thought that he thought that it was  19 over and I needed to accept the results and move on.</p> <p>20 Q. What did you think about his perspective earlier  21 in 2015?</p> <p>22 A. As of 2015, I thought he was potentially  23 open-minded. He and I had worked together productively,  24 even warmly, on the subject of faculty rights in cases.</p>

<p style="text-align: right;">Page 122</p> <p>1 Whether faculty should allowed to give away their cases  2 in certain ways. Whether the school had a copyright  3 interest that would prevent that. Whether the school's  4 copyright interest, if it had one, should be waived in  5 some way.</p> <p>6 We had worked together, as I say, warmly and  7 cordially, and reached an excellent outcome there that  8 was beneficial to the school and to the faculty. So I  9 was optimistic that he would see the best in me and  10 would help through the promotion process, genuinely,  11 open-minded and running the process by the book and  12 according to the rules.</p> <p>13 Q. In 2017, what was your impression of him?</p> <p>14 A. I don't really remember having changed my view  15 from what it was in 2015. Obviously, I had some  16 questions, potentially some concerns. But a favorable  17 view of him, and hoped that he had a favorable view of  18 me. Thought the process would run according to the  19 rules and he would see to it.</p> <p>20 Q. Did you likewise have a favorable view of Dean  21 Nohria?</p> <p>22 A. I did.</p> <p>23 Q. Did you ever believe that either of them held any  24 kind of personal animus towards you?</p>	<p style="text-align: right;">Page 124</p> <p>1 given to me in 2015, although significant weighty  2 assignments, don't get me wrong, to be moved to a new RC  3 course with a young baby and no maternity leave -- a  4 subject which we haven't discussed and don't necessarily  5 need to -- it was a big undertaking. But it was an  6 appropriate undertaking. I accepted it. I came to  7 really value the opportunity that they had provided me  8 in asking me to do that and I thought it was appropriate  9 and fair, yes.</p> <p>10 Q. Do you recall talking with -- communicating with  11 people outside of the institution about why you believed  12 you hadn't been granted tenure in 2017?</p> <p>13 A. Yes.</p> <p>14 Q. Who do you recall speaking with?</p> <p>15 A. There was an interrogatory about this where I  16 tried to be comprehensive. I really did try. I sat  17 down and made a list and later sat down some more and  18 added to the list. I don't think sitting here today  19 without my rog response, I can do nearly as good a job.  20 But broadly I spoke to family, my wife, my parents. I  21 spoke to professional colleagues. I spoke to personal  22 friends. I spoke to academic colleagues. I spoke to a  23 lot of people. It was a material event in my life.</p> <p>24 (Document marked Exhibit No. 90 for</p>
<p style="text-align: right;">Page 123</p> <p>1 A. I wouldn't have had a strong basis to evaluate,  2 but I didn't have any particular reason to think that  3 either of them had a personal animus against me.</p> <p>4 Q. Do you believe that they did their best to  5 preside over a fair process in your tenure case?</p> <p>6 MS. O'MEARA-COSTELLO: Objection.</p> <p>7 A. At which stage?</p> <p>8 Q. At any stage.</p> <p>9 A. By the end, by spring of 2018, I felt I had  10 produced pretty good evidence that the process hadn't  11 been done properly. It would have taken great strength,  12 really fortitude, by either of them after the FRB was  13 done, after the appointments committee vote had been  14 held, to admit, Uh, oh, we did it wrong. We built a  15 whole house on top of a messed up foundation. But they  16 could have. That's why they are the deans and I'm just  17 a junior faculty member.</p> <p>18 I would have liked to see them do that. I think  19 that would have been the principle way to proceed and I  20 was disappointed that they didn't do that.</p> <p>21 Q. Did you -- during the process itself, did you  22 think that they were acting fairly in 2015 and 2017?</p> <p>23 A. In 2015, I thought that the extension was  24 perfectly reasonable. I thought that the assignments</p>	<p style="text-align: right;">Page 125</p> <p>1 identification.)</p> <p>2 BY MR. MURPHY:</p> <p>3 Q. I am showing you what has been marked as  4 Exhibit 89 [sic], Mr. Edelman. Do you recognize this as  5 an email exchange with Lawrence Lessig?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Lawrence Lessig?</p> <p>8 A. He is a faculty member at Harvard Law School and  9 a mentor and a friend.</p> <p>10 Q. And -- this is Exhibit 90.</p> <p>11 I am showing you what has been marked as  12 Exhibit 90. The emails from 2014 at the bottom of this  13 chain refer to the Sichuan Garden incident?</p> <p>14 A. They do.</p> <p>15 Q. Then on December 31, 2017, you wrote to Professor  16 Lessig, and said, Thought you might be interested to  17 know how this played out. In short, this probably cost  18 me tenure at HBS. Correct?</p> <p>19 A. That's what I wrote.</p> <p>20 Q. And this was with reference to the Sichuan Garden  21 incident; correct?</p> <p>22 A. It was.</p> <p>23 MR. MURPHY: We will mark another document  24 as Exhibit 91.</p>

<p style="text-align: right;">Page 126</p> <p>1 (Document marked as Exhibit No. 91 for 2 identification.)</p> <p>3 BY MR. MURPHY:</p> <p>4 Q. Do you recognize this document, Exhibit 91?</p> <p>5 A. Yes.</p> <p>6 Q. Is this an email exchange with Michael Schwartz?</p> <p>7 A. Yes.</p> <p>8 Q. Who is Michael Schwartz?</p> <p>9 A. Michael Schwartz is the chief economist at 10 Microsoft, previously he was a faculty member in the 11 Department of Economics at Harvard and in that capacity 12 he was -- I think the term is the preceptor -- the 13 preceptor of my undergraduate thesis.</p> <p>14 Q. He writes at the bottom, I would like to 15 double-check with you on a few things that I remember 16 about you.</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Then he says, I suspect the reason that you were 20 denied tenure is that the dean viewed you as a PR risk. 21 You were the only practicing attorney on HBS faculty and 22 as a class actions attorney, you made a number of 23 enemies litigating against businesses, including some of 24 the largest companies in the country. Including</p>	<p style="text-align: right;">Page 128</p> <p>1 as a PR risk, correct?</p> <p>2 MS. O'MEARA-COSTELLO: Objection.</p> <p>3 A. That's what they say.</p> <p>4 (Document marked Exhibit No. 92 for 5 identification.)</p> <p>6 BY MR. MURPHY:</p> <p>7 Q. Do you recognize what has been marked as 8 Exhibit 92?</p> <p>9 A. I do.</p> <p>10 Q. What is Exhibit 92?</p> <p>11 A. The discussion between myself and Susan Athey.</p> <p>12 Q. Who is Susan Athey?</p> <p>13 A. She is the faculty member at Stanford G and C, 14 previously of Harvard Economics.</p> <p>15 Q. You exchange emails with her that in part 16 included the discussions about the reasons you were 17 denied tenure; correct?</p> <p>18 A. Yes.</p> <p>19 Q. You write, Terrible PR from the restaurant emails 20 was certainly the big problem I needed to overcome and 21 did not. HBS cares a lot about reputation even more 22 than I had anticipated. Folks were furious about this.</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 successfully representing a class of advertisers who 2 litigated against Yahoo!.</p> <p>3 Did I agree that correctly?</p> <p>4 A. You read it correctly.</p> <p>5 Q. Your response to Mr. Schwartz was, Your second 6 sentence is a fine summary. Correct?</p> <p>7 A. That's what I wrote.</p> <p>8 Q. Did you agree with, at the time, that -- with Mr. 9 Schwartz's suspicion that the reason you were denied 10 tenure is the dean viewed you as a PR risk?</p> <p>11 A. Both as to this exhibit and the last. I wasn't 12 necessarily getting into the full details of my thinking. 13 I was being a little bit flip and trying to see, some 14 kind of a silver lining in what felt like some pretty 15 dark clouds at that time.</p> <p>16 But overall I was discussing some of the factors 17 and the way those factors came together, of course, the 18 totality of the factors that impacted my cases is all 19 much more complicated than either of these two exhibits 20 lays out.</p> <p>21 Q. But what you told Professor Lessig and Mr. 22 Schwartz was -- that in the case of Professor Lessig, 23 that it was Sichuan Garden. And in the case of 24 Professor Schwartz that you were viewed by the dean</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Now, the tenure process at Harvard is governed by 2 something called the Green Book. Do you agree with 3 that?</p> <p>4 A. At Harvard Business School, yes.</p> <p>5 Q. What is the Green Book?</p> <p>6 A. It is a set of principles and procedures for 7 appointments and promotions.</p> <p>8 Q. I'm showing what has been marked as -- 9 previously marked as Exhibit 5.</p> <p>10 Do you recognize that as a copy of the so-called 11 Green Book?</p> <p>12 A. Yes.</p> <p>13 Q. You read this document before your tenure case 14 came up in 2015; correct?</p> <p>15 A. Yes.</p> <p>16 Q. You know that sets out rules for the promotion 17 process?</p> <p>18 A. Yes.</p> <p>19 Q. As a lawyer, it's a fair to say that documents 20 that describe rules like this, procedures, deserve 21 careful study?</p> <p>22 A. Yes.</p> <p>23 Q. You wouldn't have approached the tenure process 24 without reading these rules; correct?</p>

<p style="text-align: right;">Page 134</p> <p>1     Did I read that correctly?</p> <p>2     A. That's what it says.</p> <p>3     Q. It goes on to say towards the bottom of that paragraph, All evidence, recommendations, views, and votes are taken into account by the dean in making decisions or recommendation to the president. Correct?</p> <p>7     A. I'm sorry, I may have lost you with respect to the last sentence.</p> <p>9     Q. Seven lines up the sentence that begins with all evidence?</p> <p>11    A. Okay. I found it.</p> <p>12    Q. All evidence, recommendations, views, and votes are taken into the account by the dean in making decisions or recommendations to the president.</p> <p>15    Did I read that correctly?</p> <p>16    A. Yes.</p> <p>17    Q. Upon completion of the process the dean holds a final meeting with the appointments committee at which time the appointments committee is informed that the decisions and recommendations made by the dean to the president and the reasons therefore, including the results of advisory votes. It is the exclusive responsibility of the dean to disclose his or her recommendation to the individual candidate.</p>	<p style="text-align: right;">Page 136</p> <p>1     A. I doubt I have been thinking about that provision specifically. I probably read the file top to bottom, but skipped paragraphs and even sections that seemed less relevant to me.</p> <p>5     Q. So you testified that you read this Green Book document, but is it your testimony you didn't read -- you skipped paragraph 24?</p> <p>8        MS. O'MEARA-COSTELLO: Objection.</p> <p>9     A. I read it kind of quickly. I wouldn't have been worried about myself being excluded from the appointments committee, a committee I wasn't a member of. But I knew that the appointments committee deliberations, for example, were confidential, that was amply discussed in multiple places.</p> <p>15    Q. Despite that knowledge, did you take steps to learn what happened in the appointments committee meeting, long before you filed this lawsuit?</p> <p>18    A. I wouldn't say I took steps to learn, no.</p> <p>19    Q. Did you communicate with senior members of the faculty about what happened in the appointments committee meeting?</p> <p>22    A. Many people communicated with me and I was happy to talk everyone who expressed interest in talking to me. With respect to me reaching out to others, I think</p>
<p style="text-align: right;">Page 135</p> <p>1     Did I read that correctly?</p> <p>2     A. Yes.</p> <p>3     Q. Would you agree that the appointments committee role is advisory?</p> <p>5     A. That's what it says.</p> <p>6     Q. And the decision rests in the end with the dean?</p> <p>7     A. That's what this says.</p> <p>8     Q. These are the procedures that govern the business school professor's tenure case.</p> <p>10    A. These are those procedures.</p> <p>11    Q. Now, if you turn to page 12 of Exhibit 5, look at paragraph 24.</p> <p>13    It says, The deliberations of the appointments committee are highly confidential. Its usefulness would be destroyed if reports of its deliberation were communicated to anyone outside of the committee.</p> <p>17    Members who fail to fulfill their responsibilities of serving on the appointments committee or fail to abide by this requirement of confidentiality, can be asked by the dean to withdraw from the committee.</p> <p>21    Did I read that correctly?</p> <p>22    A. That's what it says.</p> <p>23    Q. You were aware of that provision in 2017, correct?</p>	<p style="text-align: right;">Page 137</p> <p>1     I did that only when I had a specific and proper purpose such as my professional development or placement.</p> <p>3     Q. Is it your testimony that you did not initiate any conversations with any members of the appointments committee to learn what happened during the appointments committee meeting?</p> <p>7     A. I think I did not initiate those conversations.</p> <p>8     I didn't need to because people were coming to me to tell me what they felt they could or should or, in any event, wanted to tell me.</p> <p>11    Q. Who came to you?</p> <p>12    A. Multiple people. Sitting here today, it is hard to remember all of them. I think I might be able to remember some of them.</p> <p>15    Q. Who do you remember coming to you?</p> <p>16    A. Brian Hall, Kathleen McGinn, Deepak Malhotra, Francesca Gino, Max Bazerman, Sunil Gupta, Marco Iansiti.</p> <p>19    There's others that I'm less certain about. Of course, if the notes say that it happened, contemporaneous notes by me, I'm not about to say my notes are wrong. I'm sure my notes are right.</p> <p>23    Q. What do you recall learning about what happened in the appointments committee meeting with these</p>

<p>1 individuals?</p> <p>2 A. Collectively and generally they conveyed that the 3 meeting was lengthy. That there was substantial 4 discussion of the substance of the research of my 5 academic publications. Discussion of my teaching 6 materials and my teaching.</p> <p>7 They said the majority of tension in the room 8 nonetheless -- all of the tension in the room was about 9 FRB matters and that was where the heat of the meeting 10 occurred.</p> <p>11 They told me that the meeting was considerably 12 longer than normal. They told me that people who knew 13 me best spoke from their personal firsthand experience 14 with their direct observations. They told that the 15 people who don't know me, primarily relied on what they 16 learned from the FRB report -- what they learned or 17 thought they learned from the FRB report.</p> <p>18 They told me that the FRB was present in the 19 meeting. And spoke forcefully for their points of view. 20 At least one person told me what was represented to be 21 the exact actual vote, which I immediately jotted down, 22 because numbers have a way of playing tricks on you. I 23 wanted to write them down immediately when they were 24 told, because I recognize that that was information I</p>	<p>Page 138</p> <p>1 which meeting we are talking about.</p> <p>2 Q. Understood.</p> <p>3 Your meeting with Brian Hall, you attended that 4 meeting. You were there?</p> <p>5 A. I think this was by telephone.</p> <p>6 Q. This was by telephone. Okay. Do you recall this 7 conversation?</p> <p>8 A. I recall aspects of it.</p> <p>9 Q. But you did your best to record what happened?</p> <p>10 What he told you?</p> <p>11 A. I did.</p> <p>12 Q. And this was as part of your developing evidence 13 for the lawsuit that you ultimately filed?</p> <p>14 A. No. It wasn't my sole goal. I'm not sure it was 15 even my primary goal. But it was one of multiple 16 reasons why it felt like it was prudent to do.</p> <p>17 Q. Professor Hall said, Meeting went fine, not 18 better than expected or worst than expected, pretty much 19 as expected.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. If you could just to take a moment to read this 23 set of notes and I'm going to ask you whether you 24 remember anything about this conversation other than</p>
<p>Page 139</p> <p>1 wasn't likely to come across in the ordinary course. So 2 I was grateful when I received it despite recognizing, 3 as you say, that it was information that perhaps under 4 some understanding of some of the rules shouldn't have 5 been provided to me.</p> <p>6 MR. MURPHY: Let me show you what I will ask 7 to be marked as Exhibit 93.</p> <p>8 (Document marked Exhibit No. 93 for 9 identification.)</p> <p>10 BY MR. MURPHY:</p> <p>11 Q. Do you recognize what was been marked as Exhibit 12 93, Mr. Edelman?</p> <p>13 A. Yes.</p> <p>14 Q. What is Exhibit 93?</p> <p>15 A. The files indicates that these are notes from my 16 meeting with Brian Hall November 16, 2017.</p> <p>17 Q. Do you know whether -- do you recall this 18 meeting?</p> <p>19 A. I didn't -- my meeting with Brian Hall.</p> <p>20 Q. Do you recall this meeting, as you sit here 21 today, do you recall this meeting?</p> <p>22 MS. O'MEARA-COSTELLO: Objection.</p> <p>23 A. I'm a little bit confused. There are notes about 24 a meeting about a meeting. I want to be clear about</p>	<p>Page 141</p> <p>1 what is written here?</p> <p>2 A. I really don't recall any aspect of the meeting 3 beyond what is written down here.</p> <p>4 Q. By the meeting, you mean the call?</p> <p>5 A. The call between myself and Brian. I apologize.</p> <p>6 Q. Do you see where your note says, Don't know where 7 the vote ends up. Conditional on vote getting to Nitin 8 range. Don't know what Nitin would do.</p> <p>9 Did I read that correctly?</p> <p>10 A. That's what it says.</p> <p>11 Q. What was your understanding of what Professor 12 Hall meant by, Conditional on vote getting to Nitin 13 range?</p> <p>14 A. He was indicating, consistent with my remarks of 15 a few minutes ago, that there is some set of mostly 16 negative votes for which the dean probably wouldn't 17 seriously consider advancing the candidate, the 18 consideration by the president. Some other set for 19 which the dean would consider it, and if my vote were in 20 the range where the dean would consider it, he didn't 21 know what the dean would do in the course of that 22 consideration.</p> <p>23 Q. Has anyone given you any information about what 24 -- anything Dean Nohria said about what he would have</p>

<p style="text-align: right;">Page 150</p> <p>1 Q. He essentially said that because the vote was as 2 low as it was, he really didn't have a choice in the 3 matter. Is that the way you took it?</p> <p>4 A. That was my understanding of what he was saying.</p> <p>5 Q. But he didn't explain to you or say to you what 6 he would do in the event he had had a choice from his 7 perspective?</p> <p>8 A. He didn't say that.</p> <p>9 MR. MURPHY: Can we mark this as 94.</p> <p>10 (Document marked Exhibit No. 94 for 11 identification.)</p> <p>12 BY MR. MURPHY:</p> <p>13 Q. So, Mr. Edelman, I'm showing you what has been 14 marked as Exhibit 94. Do you recognize that?</p> <p>15 A. It looks like the color highlighted version that 16 I provided to Dean Nohria in his office.</p> <p>17 Q. It is not Bates numbered, by the way, that is 18 because the color didn't print well with the Bates 19 numbers on. We will get Bates number that goes along 20 with this.</p> <p>21 So how did you learn in 2015 that there was going 22 to be a faculty review board convened to address your 23 tenure case?</p> <p>24 A. I believe I first learned about it because Paul</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Okay. It does say that.</p> <p>2 Q. You are saying it was not attached?</p> <p>3 A. It was not. And I can explain what I mean, if 4 you would like?</p> <p>5 Q. Sure.</p> <p>6 A. These messages were typically sent to a tool 7 called FileTransfer or Secure FileTransfer, SFT, which 8 is not email. It is web-based system. It sends an 9 email notification. You can click on the email and 10 download the file. Maybe that is viewed as more secure, 11 having some other benefits. Nothing is exactly 12 attached. It is provided in the same bundle. You need 13 to download it within a specified period or it 14 disappears. Unlike say an email in Outlook that would 15 stay there indefinitely unless your computer was lost or 16 you deleted the email.</p> <p>17 Q. Is the document that you have before you marked 18 as Exhibit 94, the document that you -- a copy of the 19 document that you received from Paul Healy accompanying 20 this transmission, minus of course, your color-coding?</p> <p>21 A. Yes, that's what I was thinking, yes.</p> <p>22 Q. Is it your testimony that you didn't have any 23 advanced knowledge or warning that there would be an FRB 24 in 2015 before this email -- before this transmission?</p>
<p style="text-align: right;">Page 151</p> <p>1 Healy sent me a message to that effect.</p> <p>2 Q. Did he talk to you in advance of sending you a 3 message? Or did you just receive that message cold?</p> <p>4 A. I had spoken to him previously but on other 5 subjects. I don't think we had spoken on this subject 6 previously.</p> <p>7 Q. I'm showing you what has been previously marked 8 as Exhibit 6. Do you recognize Exhibit 6, a copy of the 9 2015 FRB report?</p> <p>10 A. It looks to be the complete FRB report with my 11 reply and the exhibits.</p> <p>12 Q. Can you take a look at page 15713. Is that the 13 letter that you received from Dean Healy relating to 14 kicking off the 2015 FRB process?</p> <p>15 A. It looks like that, yes.</p> <p>16 Q. That letter attached a document called the 17 Principles and Procedures for Responding to Matters of 18 Faculty Conduct, correct?</p> <p>19 A. I wouldn't say it attached, but it was provided 20 in the same transmission.</p> <p>21 Q. It says it was attached?</p> <p>22 A. Which line should I be looking at to see 23 that?</p> <p>24 Q. The first line of the third paragraph.</p>	<p style="text-align: right;">Page 153</p> <p>1 A. I didn't know specifically. As I sat in the 2 faculty meeting in spring of 2015 where the new FRB 3 process was created. I couldn't help but wonder if it 4 had been created for me and if there would soon be one 5 about me. But I didn't specifically know one way or the 6 other.</p> <p>7 Q. Did you ever learn whether it had been 8 specifically created for you?</p> <p>9 A. I did.</p> <p>10 Q. How did you learn that?</p> <p>11 A. I learned that through production in this case.</p> <p>12 Q. What did you learn about that?</p> <p>13 A. I learned that, according to Jean Cunningham's 14 contemporaneous notes, Dean Nohria had instructed Jean 15 Cunningham to create it specifically for me.</p> <p>16 Q. That is based on Jean's notes; is that your 17 testimony?</p> <p>18 A. Two separate places in her notes.</p> <p>19 Q. Were you curious about what the FRB process was 20 when you received the letter from Paul Healy that is 21 part of the exhibit that we just marked Exhibit 94? I'm 22 sorry, Exhibit 6.</p> <p>23 A. I was curious about what lay ahead for me. As to 24 the FRB specifically, the contours of the FRB, I had</p>

<p style="text-align: right;">Page 154</p> <p>1 read all of that carefully in the spring of 2015. So to    2 the extent that anything could be known from this    3 document, that P&amp;P Exhibit 94, I had read it backwards    4 and forwards in spring of 2015 and wouldn't have reread    5 it that many times coinciding with receiving Paul's    6 email on Bates 15713.</p> <p>7 Q. When did you first read the Principles and    8 Procedures for Responding to Matters of Faculty Conduct?</p> <p>9 A. It was provided to all faculty incidental to the    10 faculty meeting in spring of 2015 when it was discussed    11 by faculty.</p> <p>12 Q. Did you keep a copy of it?</p> <p>13 A. I don't know. At some point later, I tried to    14 find it and had trouble finding it. But I might have    15 had it somewhere and didn't know exactly where it was.</p> <p>16 Q. When the discussion occurred in the spring of    17 2015, did you think, Oh, this might -- given just what    18 happened to me with Sichuan Garden and what happened to    19 me earlier the previous year with BlinkX, this could be    20 about me?</p> <p>21 A. That's exactly what I was thinking, yes.</p> <p>22 Q. You don't remember whether you saved the copy?</p> <p>23 A. I wouldn't have thought that I needed to because    24 I would have thought I could always get it from</p>	<p style="text-align: right;">Page 156</p> <p>1 the spring of 2015.</p> <p>2 Q. But you don't recall reviewing that in July    3 of 2015 when you received this?</p> <p>4 A. I don't.</p> <p>5 Q. What did you expect would happen when you    6 received this July 16th letter from Dean Healy?</p> <p>7 A. What's most important to me as I reread it now    8 and what I remember most clearly was the next step that    9 was stated as coming soon that Amy Edmondson would send    10 me a letter. And I anticipated that her letter would be    11 more substantive.</p> <p>12 This is -- I don't want to say it is perfunctory,    13 it's not, there is nothing perfunctory about it. But it    14 doesn't get to the substance of what exactly the FRB is    15 going to look at. And I knew the next letter would say,    16 I expected -- I had some expectation about what would be in    17 the next letter and I thought that the next letter would    18 give my a lot more information about what was to come.</p> <p>19 Q. Did you have any expectation of what would    20 happen beyond the next letter based on your review of    21 principles and procedures earlier in the spring?</p> <p>22 A. I had some general expectations, yes.</p> <p>23 Q. What were those?</p> <p>24 A. When I read the P&amp;P previously, what I remember</p>
<p style="text-align: right;">Page 155</p> <p>1 My.HBS.edu and you click on policies and it would be    2 right there, I thought.</p> <p>3 Q. Did you study it at the time?</p> <p>4 A. I did.</p> <p>5 Q. Did you think that you absorbed its contents in    6 the spring of 2015 before this letter came?</p> <p>7 A. Looking back on it, I don't think I adequately    8 absorbed it in relevant part.</p> <p>9 Q. When you received this letter, did you reread    10 what you carefully studied earlier in the year?</p> <p>11 A. I don't remember one way or the other.</p> <p>12 Q. Did you discuss it with anyone -- did you discuss    13 specifically -- did you specifically discuss the    14 principles and procedures for responding to matters of    15 faculty conduct with anyone?</p> <p>16 A. I don't think so.</p> <p>17 Q. Did you do anything to chart out the steps that    18 according to the Principles and Procedures for    19 Responding to Matters of Faculty Conduct contemplated?</p> <p>20 A. I did not.</p> <p>21 Q. Did you review whether or not your -- did you    22 notice that there was a separate provision in the    23 procedures that relate to tenure reviews?</p> <p>24 A. I'm sure I would have looked at that carefully in</p>	<p style="text-align: right;">Page 157</p> <p>1 most thinking about it was this is a good procedure;    2 whoever wrote this had my interests at heart. If    3 anything had a thumb on the scale for me, giving me more    4 rights than the subject of an investigation would    5 necessarily receive.</p> <p>6 Not every subject of an investigation gets to see    7 all the evidence gathered. Some people might only get    8 to see the evidence relied on or the evidence cited,    9 something like that. But here it says I'm going to get    10 all of it.</p> <p>11 I remember thinking at the time this should be    12 okay. I have a future here. I will continue to invest    13 in this job. People know me, care about me, and want    14 the process to work out for me. That's what I most    15 remember. Although to be sure, that was spring of 2015    16 rather than incidental to the July 16th letter.</p> <p>17 Q. When you -- if you turn to the next page of    18 Exhibit 6. That is the letter that you received from    19 Amy Edmondson on July 31, 2015; correct?</p> <p>20 A. It is.</p> <p>21 Q. When you received this letter, did you turn back    22 to the Principles and Procedures for Responding to    23 Matters of Faculty Conduct to evaluate whether or not    24 this letter complied with those principles and procedures?</p>

<p style="text-align: right;">Page 158</p> <p>1 A. I don't remember looking back at the P&amp;P. I  2 don't remember even considering the possibility that it  3 wouldn't comply. I presumed that it would comply and  4 was most focused on the substance of the third paragraph  5 of this letter.</p> <p>6 Q. Did you think that the third paragraph of this  7 letter complied with the principles and procedures?</p> <p>8 A. I thought it did. It is just that I thought some  9 of the third paragraph, specifically beginning at the  10 words, In addition through to the end of that sentence.  11 I was surprised to see those materials added. I see the  12 subjects added. I thought it didn't bode well for me  13 that those subjects were listed. I was concerned about  14 the overall direction of the inquiry appeared to be  15 heading based on that sentence specifically.</p> <p>16 Q. Now, does the July 31, 2015 letter contain a  17 summary of the allegations that the FRB was  18 investigating -- charged with investigating?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Well, in July 2015 when you received it, did you  21 consider that?</p> <p>22 A. I was thinking more about the substance. Do I  23 know what this FRB is going to be about. Do I know what  24 is in-scope? Out-of-scope? Do I know what kinds of</p>	<p style="text-align: right;">Page 160</p> <p>1 those subjects might have an objective of finding some  2 set of interactions that would portray me in a negative  3 light.</p> <p>4 And, furthermore, some goal of making this bigger  5 than the 2014 media incidents that I knew would be  6 investigated somehow. I was content to and expecting to  7 face an investigation on those subjects, but was not  8 expecting anything else to be added.</p> <p>9 Q. Did you have any worries that a review of your  10 interactions with staff and other colleagues would  11 produce negative results?</p> <p>12 A. Not particularly. I knew that I was different  13 than other people, but I thought I was basically  14 different in good ways. And if not good, than neutral.  15 So I thought I would be fine.</p> <p>16 Q. The FRB produced a report in 2015 that is marked  17 as Exhibit 6; correct?</p> <p>18 A. Yes, I have got that here.</p> <p>19 Q. And part of the work of the FRB in 2015 was  20 conducting a series of interviews; correct?</p> <p>21 A. I think they did.</p> <p>22 Q. If you look at the first paragraph, they say they  23 did, right?</p> <p>24 A. I see in the last sentence where they say they</p>
<p style="text-align: right;">Page 159</p> <p>1 questions might be asked of me? Do I know from the  2 outset what evidence I should begin to gather and what  3 reflections should I begin to do.</p> <p>4 To all of those questions, my answer would have  5 been yes. I knew what it was about. I thought it was  6 clear enough. And for that I was thankful, frankly.</p> <p>7 Q. Is it fair to say that when -- at the outset of a  8 procedure like this, it would have made sense to review  9 the principles and procedures to see what the rules of  10 the road were going to be going forward?</p> <p>11 A. It seems very logical sitting here today. I  12 don't think that I specifically did it. And had I done  13 it, I don't know that it would have changed my thinking  14 as to this letter and this process at this time.</p> <p>15 Q. You said that you had concerns based on the -- I  16 think you said the third sentence of the third paragraph.  17 The sentence, in any event that reads, In addition,  18 concerns have been raised.</p> <p>19 Did I recall that testimony correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Why did you have -- did you have -- did you have  22 worries about your interactions with staff and other  23 colleagues at the school?</p> <p>24 A. I was concerned that an FRB that was asking about</p>	<p style="text-align: right;">Page 161</p> <p>1 conducted a series of interviews, yes.</p> <p>2 Q. Over the summer and early fall it says, The FRB  3 reviewed documents and other material including  4 Professor Edelman's statement to the FRB and his  5 personal statement submitted in conjunction with his  6 promotion package and conducted a series of interviews  7 to evaluate these incidents.</p> <p>8 Did I get that right?</p> <p>9 A. That's what it says.</p> <p>10 Q. Now, the 2015 FRB report does not include the  11 identities of the individuals that were interviewed by  12 the FRB; correct?</p> <p>13 A. It does not.</p> <p>14 Q. It does not provide interview notes; correct?</p> <p>15 A. It does not.</p> <p>16 Q. Did you complain about that at all?</p> <p>17 A. I did not.</p> <p>18 Q. Did you expect in 2017 when the FRB reconvened  19 that they would take a different approach than they took  20 in 2015?</p> <p>21 A. Generally, I expected the 2017 FRB to be similar  22 to the 2015 interview -- the 2015 FRB in terms of the  23 methods used, the kinds of information provided at the  24 outset and the kinds of information provided as exhibits</p>

<p style="text-align: right;">Page 162</p> <p>1 or attachments to the report.</p> <p>2 Q. So you didn't expect in 2017 that the FRB would</p> <p>3 include -- would identify the names of the individuals</p> <p>4 interviewed or provide interview -- provide notes of</p> <p>5 those interviews. Is that right?</p> <p>6 A. That is really not true. Because the quotes were</p> <p>7 so much more central to and maybe pivotal to the 2017</p> <p>8 report. They were front and center. And they were</p> <p>9 supporting contentions that didn't otherwise have any</p> <p>10 support in the report.</p> <p>11 Versus in the 2015 report, honestly, the</p> <p>12 interviews didn't seem to be nearly as important.</p> <p>13 Overall the FRB seemed to be drawing conclusions based</p> <p>14 on written records, many of which they attached, and</p> <p>15 others of which I was to provide in my reply.</p> <p>16 The bottom line being that I had the evidence I</p> <p>17 needed to oppose the 2015 report based on the nature of</p> <p>18 what was alleged and what was provided and I didn't feel</p> <p>19 that that occurred in 2017.</p> <p>20 Q. My question was a little different than that. My</p> <p>21 question was going into the 2017 process.</p> <p>22 Did you expect that the FRB would -- the FRB's</p> <p>23 report would include the identity of the individuals the</p> <p>24 FRB interviewed?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. You don't know whether or not any other FRB</p> <p>2 subjects received the identity of interviewees or</p> <p>3 interview notes, correct?</p> <p>4 A. I don't know.</p> <p>5 Q. Now, when you received notice -- let me ask you a</p> <p>6 different question.</p> <p>7 How did you learn that there was going to be a</p> <p>8 2017 FRB review?</p> <p>9 A. It proceeded in a few steps. In spring of 2017,</p> <p>10 Paul Healy asked me to write reflections on the 2017</p> <p>11 FRB. And I did so. I did so without knowing whether an</p> <p>12 FRB would evaluate them or perhaps someone else would</p> <p>13 evaluate my reflections on the prior FRB. Whether there</p> <p>14 would be a new FRB, versus an FRB being composed and,</p> <p>15 for lack of a satisfactory allegation authorizing them</p> <p>16 to go forward would immediately dissolve themselves.</p> <p>17 I really didn't know what was going to happen as</p> <p>18 of spring of 2017. It was only as of summer of 2017</p> <p>19 when Amy sent a note indicating that there would be a</p> <p>20 second FRB that I learned that that was the school's</p> <p>21 intention.</p> <p>22 Q. You said that your learning of this proceeded in</p> <p>23 a number of steps. Are there any steps other than those</p> <p>24 two; your conversations with Paul Healy and the letter</p>
<p style="text-align: right;">Page 163</p> <p>1 A. My expectation in both years were that if</p> <p>2 interviews were important, the relevant information</p> <p>3 necessary to evaluate the interview remarks, including</p> <p>4 the speaker, the context, those would be the two most</p> <p>5 important pieces of information would be provided.</p> <p>6 In 2015, I guess I'd really need to reread the</p> <p>7 report to see if it even quotes from any of those</p> <p>8 interviews. But if it did, I felt like it was a passing</p> <p>9 quote or not that important, not that central. Versus</p> <p>10 in 2017, not only was it central, it was the entirety of</p> <p>11 one of the two subsections of the report in the</p> <p>12 framework that you provided before lunch.</p> <p>13 Q. What basis did you have to believe going into the</p> <p>14 2017 report, that going into the 2017 FRB process, that</p> <p>15 you get the identities of witnesses or the interview</p> <p>16 notes?</p> <p>17 You certainly didn't get them in 2015, do you</p> <p>18 agree with that?</p> <p>19 MS. O'MEARA-COSTELLO: Objection.</p> <p>20 A. I agree that in 2015 I didn't get the identity of</p> <p>21 the witnesses or the interview notes.</p> <p>22 Q. Did you have any information about any other FRB</p> <p>23 that took place between 2015 and 2017?</p> <p>24 A. I did not.</p>	<p style="text-align: right;">Page 165</p> <p>1 that you got from Professor Edmondson?</p> <p>2 A. Incidental to the conversation with Paul Healy, I</p> <p>3 believe all of those conversations kind of had shadows</p> <p>4 where Paul Healy would then say the same thing to Brian</p> <p>5 Hall, my unit head, who would then come and say the same</p> <p>6 thing to me, but I would have just heard it from Paul</p> <p>7 Healy. So I think it happened a second time in that</p> <p>8 shadow way that I've described it to you here.</p> <p>9 Q. Was your conversation with Dean Healy on the</p> <p>10 phone or in person?</p> <p>11 A. I'm not sure. We might be able to figure it out</p> <p>12 from the emails.</p> <p>13 Q. Did you make any notes of that?</p> <p>14 A. I'm not sure. If I did, I would have done them</p> <p>15 electronically, stored them in the same place, and</p> <p>16 produced them to you.</p> <p>17 Q. Were you contemplating litigation at Harvard at</p> <p>18 the time that you had that conversation with Associate</p> <p>19 Dean Healy?</p> <p>20 A. I was not.</p> <p>21 Q. Tell us, as best you can, what you said and what</p> <p>22 Dean Healy said in that conversation?</p> <p>23 A. I really don't have a specific recollection. But</p> <p>24 I can reconstruct for you what have would made sense</p>

<p style="text-align: right;">Page 170</p> <p>1 And as to what else would happen, I was less  2 sure. But maybe it wasn't that important in the sense  3 that I need to do a good job on it and I would do it to  4 best of my ability, no matter who was going to read it.  5 Q. Did you expect that the members of the FRB would  6 read it?  7 A. I'm not sure if I expected that. I certainly  8 knew that was one possibility and I was open to that.  9 Q. So is it fair to say as of early 2017, your  10 expectations of what an FRB process would be like was  11 based on your experience with the FRB in 2015 and on the  12 principles and procedures document that has been marked?  13 A. I think those were two important sources of  14 influence of my expectations. There might have been  15 some others.  16 Q. What were the others?  17 A. I had expectations grounded in the overall  18 professionalism, decorum, sensitivity for calendar  19 timing, appropriate time at every step. That I had seen  20 in other aspects of the HBS promotion process.  21 Frankly, it is a pretty careful process  22 ordinarily. Run with careful attention to timing. Run  23 strong decorum. Run with care and attention and I  24 expected all of those things to continue.</p>	<p style="text-align: right;">Page 172</p> <p>1 Exhibit 95.  2 (Document marked Exhibit No. 95 for  3 identification.)  4 BY MR. MURPHY:  5 Q. Do you recognize what has been marked as  6 Exhibit 95?  7 A. I do.  8 Q. What is it?  9 A. This was my correspondence with Kathleen McGinn  10 in November of 2017 on the subject of FRB.  11 Q. If we go back to the first page on the screen  12 that is 12477 at the bottom. Do you see that?  13 A. Yes.  14 Q. Professor McGinn wrote to you on November 6th at  15 4:13 p.m., the subject is two unrelated issues.  16 She says, Hi Ben, issue number one, paid work for  17 Microsoft. Do you mind telling me the years you had any  18 paid work with Microsoft, pointing me to the pubs  19 disclosing your work with Microsoft. You responded to  20 the FRB that your last payment from Microsoft was  21 October '15 and during the period that you were being  22 paid, your related pubs had exceptional disclosures. It  23 would be helpful for me to be able to discuss dates and  24 pubs if you are comfortable with that information being</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. In 2015 the FRB report that was done was  2 submitted to the standing committee; is that correct?  3 A. That's my understanding, yes.  4 Q. Did you complain when that happened?  5 A. I did not.  6 Q. At the time had you read the FRB principles and  7 procedures?  8 A. I had, although maybe not so recently.  9 Q. Based on -- is it fair to say that the only  10 expectation that you had about whether the standing  11 committee would get an FRB report was based on your  12 experience in 2015?  13 A. No, I wouldn't agree with that.  14 Q. Why not?  15 A. First and foremost, my expectation was based on  16 what the P&amp;P said about it. My experience,  17 notwithstanding, if the rules say something -- you can  18 park in a handicap spot and not get a ticket, but you  19 shouldn't expect that you won't ever get a ticket when  20 you park in a handicap spot.  21 I read the rules. If the rules say it, then that  22 is what is supposed to be done regardless of what might  23 have been done once before.  24 MR. MURPHY: Let's mark this as the next</p>	<p style="text-align: right;">Page 173</p> <p>1 shared in the big room.  2 Then there is a request below that.  3 Do you have a copy of the FRB's principles and  4 procedures? They are referred to in their letter to  5 you. I think this is their July 6, 2017 letter to you,  6 but it is not dated.  7 Did I read that correctly?  8 MS. O'MEARA-COSTELLO: Objection.  9 A. That's what it says.  10 Q. You responded above; correct?  11 A. I did.  12 Q. There was a long and detailed discussion about  13 your work from Microsoft?  14 A. I see that.  15 Q. Then there are a series of asterisks on the top  16 of page 12477; correct?  17 A. I see that.  18 Q. You go on to say, I don't think I have the  19 principles and procedures document. Here is the FRB's  20 July 6, 2017, letter to me. I see the reference to an  21 attachment of principles and procedures documents. That  22 letter and attachment was sent to me via  23 Filetransfer.HBS.edu, which keeps materials only for a  24 limited period of time. And now I'm only able to see</p>

<p style="text-align: right;">Page 174</p> <p>1 the files and files names not FRB_28April2015_final PDF  2 -- I'm sorry I missed a line -- now I'm only able to see  3 the file names, not download or redownload the actual  4 files. Nonetheless, I can see that I was sent a file  5 called FRB_28April2015_final PDF. I do not know  6 whether I read it at the time but I didn't keep a copy.  7       Did I did read that correctly?  8       A. That's what it says.  9       Q. It's fair to say that as of November 6, 2017, you  10 did not know whether you had an even read the FRB  11 principles in 2017 when they were sent to you by Dean  12 Healy; correct?  13       A. I didn't know whether I had read the copy that  14 was sent to me by Dean Healy, in any event, in July  15 of 2017. I knew I had read it previously in March 2017.  16 I didn't know that those two documents were necessarily  17 the same. Not knowing what the July one is, you  18 couldn't know if it was the same as the March one.  19       Q. Is it your testimony that you did not -- did you  20 open the 2015 attachment from FileTransfer, the secured  21 FileTransfer?  22       MS. O'MEARA-COSTELLO: Objection.  23       A. I don't know if I opened it from FileTransfer in  24 2015.</p>	<p style="text-align: right;">Page 176</p> <p>1 November 7, 2017 -- through November 7, 2017, you didn't  2 look at it; correct?  3       MS. O'MEARA-COSTELLO: Objection.  4       A. That's my recollection. I don't specifically  5 recall looking at it.  6       Q. Do you generally recall looking at it?  7       A. I remember quite clearly discussing with Brian  8 and Kathleen some of the issues for which I later  9 realized the P&amp;P would have given us clarity. But I  10 don't remember looking the P&amp;P, nor do I remember  11 discussing that the P&amp;P would inform our understanding  12 of those issues.  13       My best recollection is that I didn't look at it  14 in that period.  15       Q. Could you explain how a trained lawyer could go  16 from July of 2015 through an FRB proceeding, all the way  17 through November 7, 2017, without -- through another --  18 through a continuation of the FRB proceeding without  19 looking at the governing document?  20       MS. O'MEARA-COSTELLO: Objection.  21       A. By the end, I was uncomfortable that I didn't  22 have it. I knew that there was something amidst. I  23 knew that this file that I mentioned should have been  24 able to be gotten from myHBS in the policy section. It</p>
<p style="text-align: right;">Page 175</p> <p>1       Q. You certainly didn't keep it, because you are  2 telling Professor McGinn that you didn't keep it, right?  3       A. I am telling her that I can't find it, so I  4 conclude that I didn't keep it and that's my best  5 recollection and what I have been able to figure out in  6 looking into it subsequently, yes.  7       Q. Between the time that you were notified that you  8 were subject of a FRB proceeding by Dean Healy in 2015,  9 and November 7, 2017, is it fair to you say that you did  10 not look at the faculty principles and procedures?  11       A. I'm not sure.  12       Q. Do you have any basis to suggest that you did?  13       A. I don't think I have any writing that indicates  14 that I did.  15       Q. Do you have any memory that says that you did?  16       A. The main memory that I have when I did look that  17 documents in spring of 2015, I was more than comfortable  18 with it. Indeed I was pleased with it. On that basis,  19 I didn't see a need to look at it more often.  20       Q. So all during the 2015 FRB proceeding you didn't  21 look at it; correct?  22       A. I don't think I looked at it during the 2015  23 proceeding.  24       Q. All during the 2017, proceeding up through</p>	<p style="text-align: right;">Page 177</p> <p>1 wasn't there. Which was the reason, of course, which I  2 hadn't kept a copy in the first instance. I hadn't kept  3 a copy, because I knew exactly where it should be, only  4 Jean Cunningham hadn't put it there, and thus I couldn't  5 get it in the place where I thought it should be when I  6 wanted it.  7       Q. So it's Jean Cunningham's fault that you didn't  8 look the FRB's principles between July 2015 and  9 November 2017; is that what you are saying?  10       A. Not at all.  11       MS. O'MEARA-COSTELLO: Objection.  12 BY MR. MURPHY:  13       Q. You are saying if Jean Cunningham had put it in  14 the right place, you would have looked at it?  15       A. At some point when I realized that I wanted to  16 consult it, I looked in the obvious place on myHBS,  17 where it should have been. And I found that it wasn't  18 there. Then I looked in my files thinking, Well, I  19 might have kept a copy. But I found that I hadn't kept  20 a copy, which wasn't particularly surprising, because I  21 had anticipated that I could always get it from the  22 official place so there was no need to keep a copy.  23       At that point I found myself with a small  24 conundrum, not a big one. I could write to Jean at any</p>

<p style="text-align: right;">Page 178</p> <p>1 time and ask her for a copy. And I knew that she would 2 provide it to me if I asked for it. 3 Q. Why didn't you do that? 4 A. I didn't think it that was important or that 5 useful to me given the top priority that had been 6 drummed into me so many times that I couldn't question 7 the procedure. 8 I was going to fully comply with whatever 9 procedure the FRB instructed or requested. I was going 10 to do what was asked of me. I wasn't going to question 11 it or object to it. So what was the best I could hope 12 for. Based on that, it didn't seem important. 13 Q. Were you embarrassed to acknowledge to Jean that 14 you hadn't kept a copy of it? 15 A. That was part of it, yes. 16 Q. Why were you embarrassed about it? What made it 17 embarrassing? 18 A. It was embarrassing because maybe I should have 19 kept a copy. And then to the extent that I was 20 discussing why I didn't keep a copy, it would inevitably 21 turn, as our discussion did a moment ago, into whether 22 she in turn was remiss in not having posted it. I 23 didn't really feel a need to have either of those 24 discussions.</p>	<p style="text-align: right;">Page 180</p> <p>1 the complaint continues. 2 Have you had further time to reflect on who on 3 this -- how you learned that members of the standing 4 committee were irritated by the 2015's report focus on 5 trivial instances of friction between plaintiff and HBS 6 staff? 7 MS. O'MEARA-COSTELLO: Objection. 8 A. I thought about this specific basis of that 9 statement in the course of drafting the complaint. I 10 went back to my contemporaneous notes and reread each of 11 them looking for something that would support that. I 12 actually don't recall whether I found anything. 13 Q. Since the complaint was filed, have you thought 14 of any further basis for that answer? For that 15 allegation? 16 A. I have spent sometime reading the production in 17 this case, as you'd would expect. I don't recall 18 reading minutes from the 2015 standing committee, which 19 would be the obvious place to look. 20 The bottom line is I think I formed that view 21 based on something that some member or members of the 22 standing committee said to me contemporaneously, but I 23 don't think I know who it was who said that to me. 24 Q. Do you still have Exhibit 45?</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. By November 7, 2017, had the FRB completed its 2 report? 3 A. It had. 4 Q. Do you wish in retrospect that you read the FRB 5 principles at any point between June 2015 and 6 November 7, 2017? 7 A. I thought about that a few times actually. I 8 don't where I come out on it. Had I read it at the 9 time, it would have been awfully tempting to object to 10 the violations of procedure that I would definitely have 11 noticed as soon as I started reading it. 12 What then? Where would that have gotten me 13 really? I'm not sure it would have made a whole lot of 14 difference. But I agree with the overall sentiment that 15 a person operating under a procedure should have a copy 16 of the procedure at all times and I wish I had. 17 Q. In your complaint you say that -- On information 18 and belief, members of the 2015 standing committee were 19 irritated by the 2015 FRB's report focus on trivial 20 instances of friction between you and the HBS staff. 21 Do you recall that? 22 A. I recall that. 23 Q. Particularly where you were able to demonstrate 24 that you were not meaningfully at fault. That is how</p>	<p style="text-align: right;">Page 181</p> <p>1 A. I apologize something has just come to mind 2 responsive to your prior question. 3 Q. Which prior question? 4 A. The most recent question who told me. 5 It comes to mind now that [REDACTED] told his 6 interviewer in the 2017 FRB interview that he was a 7 member of the standing committee in 2015 and I know that 8 I discussed my 2015 review and extension with [REDACTED] 9 [REDACTED] at some point. I don't say it is speculating. 10 It is an inference. Maybe [REDACTED] is the person 11 who said it to me. Maybe it was someone else. Maybe 12 some combination of people said it. 13 [REDACTED] is a logical person, because I know 14 we discussed the subject and I know he was on the 15 standing committee. Otherwise, I don't know who was on 16 the standing committee and therefore can't even narrow 17 down the universe of who it could have been. 18 Q. Did you take notes of that conversation with 19 Professor Eisenmann? 20 MS. O'MEARA-COSTELLO: Objection. 21 A. I don't recall seeing that when I reviewed notes. 22 And my meetings with [REDACTED] were ordinarily 23 about other subjects; such as, teaching and research 24 where I would most focused on the work at hand rather</p>

<p style="text-align: right;">Page 190</p> <p>1 this quote on its terms pertains to how I might interact  2 with the business community. But in [REDACTED]  3 interview notes, he says, and it's certainly true, that  4 our only interaction was in the context of teaching  5 group for LCA. That was out of context, outside of his  6 realm of knowledge. He knows how I interacted with some  7 people in one context, and he is really speculating  8 about what he thinks I might do in some other context.  9 I would have pointed out the limit of his knowledge and  10 the fact that he is opining outside the scope of his  11 knowledge.</p> <p>12 Q. [REDACTED] was a long-time member of the business  13 community; right?</p> <p>14 A. I agree with that.</p> <p>15 Q. Do you think that that would give him some  16 insight on whether he would be proud to know whether you  17 or senior faculty member interacting with the business  18 community?</p> <p>19 A. I think some people might be prepared to credit  20 his view and other people might be prepared to credit my  21 critique.</p> <p>22 Q. Any others as you sit here?</p> <p>23 A. There is at least one, and maybe two, depending  24 on how strict you are about quote matching, that cannot</p>	<p style="text-align: right;">Page 192</p> <p>1 perceived me one way and [REDACTED] perceived me a  2 different way.</p> <p>3 I want the reader to reflect on whose evaluations  4 they are prepared to credit. These three people  5 disagree. And whether we do it as two against one or  6 the faculty votes get credited over a disagreeing staff  7 vote or the course head gets credited over disagreeing  8 with anyone; by any of those standards, [REDACTED] would  9 not be credited and the favorable assessments would be  10 credited.</p> <p>11 Q. What was [REDACTED] role?</p> <p>12 A. She was a staff member supporting the field 3  13 course.</p> <p>14 Q. Can you be more specific about what that entails?</p> <p>15 A. The field 3 course was a very unusual course that  16 the MBA students were assigned to start small businesses,  17 and were required as a condition of the course, maybe  18 they wouldn't be able to do it, but required to get one  19 arm's length customer, not your cousin, not your mom, to  20 buy at least one dollar of something that that small  21 business created. And do all of that within a very  22 modest amount time, like eight weeks.</p> <p>23 So start a business and get a customer to pay you  24 something. Obviously, the better version of that is get</p>
<p style="text-align: right;">Page 191</p> <p>1 be found in any of the interview notes.</p> <p>2 Go through every line of every interview note in  3 the quotes, just doesn't match. I'm having trouble  4 today remembering which two don't match. I would  5 certainly pull out the two that don't match and remark,  6 Hey, these aren't in the attached notes. So there is  7 something wrong with this. Where did it come from?</p> <p>8 Q. Do you think if you saw the notes you could match  9 up the others?</p> <p>10 A. Not only can I, I have. I have information about  11 which note matches which notes with the exception of  12 two. I have some more to say yet.</p> <p>13 Q. Yes.</p> <p>14 A. Several of the quotes come from a staff member  15 named [REDACTED]. I'm not sitting here today able to  16 tell which are the [REDACTED] quotes. But in response  17 to the [REDACTED] quotes, I would have pointed out that  18 my sole interactions with [REDACTED] where in the field  19 3 teaching group. And [REDACTED] and [REDACTED]  20 were both present in all of those discussions. And so  21 to the extent that [REDACTED], senior faculty member  22 and course head, and [REDACTED], senior faculty  23 member and the only female faculty member in the room or  24 the only senior female faculty member in the room,</p>	<p style="text-align: right;">Page 193</p> <p>1 a bunch of customers to buy a bunch of things. And even  2 better version is, And make a profit doing it.</p> <p>3 And teams struggled with it. It is a hard task.</p> <p>4 The school also struggled with it, because  5 administratively it was a lot to execute and [REDACTED]  6 role was to help make it possible.</p> <p>7 Q. Do you have any reason why her view should be  8 credited less than a faculty member's view just because  9 she is a staff member?</p> <p>10 A. Oh, not at all. I think everyone's view should  11 count. But to the extent that there is a disagreement  12 and you are trying to figure out how you'd address or in  13 any event reconcile different people saying different  14 things, we are all in the same room and all have the  15 same discussion. At the very least, the fact that some  16 other people saw it differently would be a fact that I  17 would have pointed out had I had the full interview  18 notes and other context necessary to do so.</p> <p>19 Q. Without the notes, you can't identify which of  20 the two belong the [REDACTED]?</p> <p>21 A. I can't. Serve us a rog and we will have it for  22 you promptly.</p> <p>23 I have more if you want to do everything I can do  24 offhand. I can keep going for a little while yet.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Yes. Okay.  2 A. Some of the quotes come from a staff member named  3 [REDACTED], last name [REDACTED], who was in  4 the IT department.  5 I can't tell you sitting here which of those  6 quotes come from her. But I would have remarked on her  7 thin basis to evaluate me. Just that we didn't interact  8 very much. I can remember one meeting in my office on  9 the subject of some improvements to the canvas course  10 administration tool. Improvements that I thought were  11 important, she thought they were not that important and  12 I agreed to do it her way. The improvements were never  13 made and the problem that I was concerned about was  14 still a problem as of the date that I left the school.  15 I would have remarked, one, that I didn't  16 interact with her very much. And I didn't think she was  17 a great person to evaluate on my overall activities.  18 Two, that I stand accused of not agreeing to disagree,  19 but my lead example of agreeing to disagree was  20 shrugging and saying, Okay, have it your way, on this  21 very issue, where she was the school's IT staff member  22 deciding what, if anything, to do about the area where I  23 said improvement would be useful.  24 And relatedly, of course, I would remark that she</p>	<p style="text-align: right;">Page 196</p> <p>1 something like five ATSC meetings. Maybe one of which  2 he missed and one of which he had to leave early.  3 And a couple of which weren't really substantive.  4 They were meetings that to me weren't exactly decision  5 meetings; certainly nothing sensitive. Nothing where I  6 had any opinion to offer. Basically not a strong basis  7 to judge.  8 That I would have remarked that his -- his one  9 example that he gives in his interview -- again, this  10 was discussed in Gilson's deposition yesterday, is all  11 about recording of MBA classes. Where I had taken a  12 firm position that I wanted my classes recorded, but I  13 had taken that position for a specific reason.  14 My colleague who most struggled with teaching --  15 of all the people I knew, he had the most trouble with  16 that crucial task, so central at HBS. Who I was trying  17 to mentor at teaching. And I had mentored him. His  18 first successful teaching was co-teaching with me.  19 Well, I was going to be teaching LCA and he would  20 have no more me around to help him plan his teaching. I  21 wanted him to have video recordings of me in my last  22 year teaching that class so that he could watch them  23 before he walked into the room to teach the class.  24 I said that to Brian Hall, my unit head. Who</p>
<p style="text-align: right;">Page 195</p> <p>1 was amazingly the only IT staff person interviewed in  2 the course of these 21 interviews. It seems, according  3 to the production that I received, only four staff were  4 interviewed. And of those four only two said anything  5 negative. And only, one, one of those two, was from IT.  6 Despite the supposed centrality of my negative  7 interactions with IT staff. That is my weakness and the  8 basis of this report.  9 There sure wouldn't be much in the actual  10 evidence and you can see that once you go through the  11 interview notes and look at who was interviewed.  12 Q. Okay. Anymore?  13 A. Yes.  14 Q. Okay.  15 A. [REDACTED], who was the chair of the MBA  16 program, offered a negative assessment of me in his  17 interview.  18 I would have remarked on the thinness of our  19 interactions in the sense that we really didn't see each  20 other very much. Compared to a course head, where you  21 spent dozens of hours. Every week you spend three plus  22 hours for the whole semester, times multiple years.  23 Versus [REDACTED] I saw in -- I tried to figure it out  24 from the recent production of ATSC scheduling. It is</p>	<p style="text-align: right;">Page 197</p> <p>1 said, Absolutely, so glad you thought of that before the  2 class passed. Right? Imagine having that idea but a  3 month too late. It would be too late to get to the  4 recordings and too late to make them.  5 Francis Frei approved it. And then [REDACTED] comes  6 and says, I was out of line, because I requested too  7 many recordings, in order to help a colleague, whose  8 association at HBS, his promotion, was imperil exactly  9 for this issue that his teaching was bad. Everything  10 else was good. And I'm the guy who can help him. And  11 my method of helping him includes class recording  12 advice.  13 I think I would have been able to establish that  14 I was totally in the right on that. Not that [REDACTED]  15 would have even seen it differently. Had he know those  16 facts, I'm confident that he would have thought, Oh,  17 that is important. And he would have taken it all back.  18 There is the problem with decontextualizing the  19 interview notes. Someone who has something really smart  20 and important to say, doesn't get the opportunity to say  21 so.  22 Q. What is ATCS?  23 A. That is the Academic Technology Steering  24 Committee. The committee I was asked to serve on as</p>

<p style="text-align: right;">Page 198</p> <p>1 part of my two-year extension. The committee with which 2 [REDACTED] was maybe the most senior faculty member. 3 Q. Anything else? 4 A. Yes. Like I said, I can do this all afternoon. 5 [REDACTED], a senior faculty member in 6 marketing, offered an interview that was quite positive 7 on the whole. But maybe the only negative line or one 8 of two negative lines, was pulled out against the weight 9 of the evidence. 10 [REDACTED] is someone I have worked 11 productively with for so many years. He and I were 12 actually opposing experts in a case when I was in 13 college; go figure. He was an HBS professor. I was a 14 college student. But our respective clients engaged us. 15 We weren't friends. Never saw him socially. But 16 we did alumni sessions together. He offered what is 17 clearly a favorable assessment of me on the whole. Not 18 saying I'm perfect. But also not saying that I'm flawed 19 in the way that was indicated by the one quote that was 20 pulled out. 21 Q. Do you know which one is his? 22 A. I can't figure it out from looking at this. But 23 as I say, I have it. Serve us a rog and we will get it 24 to you to promptly.</p>	<p style="text-align: right;">Page 200</p> <p>1 edit line. I would prefer not to try to find anymore 2 now. I will, if you ask me to. 3 MR. MURPHY: Fair enough. And we will serve 4 an interrogatory now that the offer has been made. 5 BY MR. MURPHY: 6 Q. Did you also notice that there were a number of 7 negative comments that the FRB chose not to include in 8 the report? 9 A. I did notice that, yes. 10 Q. So would you agree with the idea that the FRB 11 exercised judgment about what to include? 12 A. They made decisions. Whether the decisions were 13 perfect, reasonable, I'm not sure. But they made 14 decisions and I guess any decision counts as judgment. 15 Q. So, for example, if you take a look at what has 16 been marked as Exhibit 96. There is on the first page 17 that is 16625. There is a discussion about LCA and 18 Kaltura. Do you see that? 19 A. I did see that, yes. 20 Q. Does that contain negative information about you? 21 A. First, I struggled with this, I'm not sure that 22 it's correct. I went back and tried to figure out what 23 are these people talking about. To the extent I 24 remembered it, I had a different recollection.</p>
<p style="text-align: right;">Page 199</p> <p>1 Is that the wrong answer? 2 Q. I'm not sure it is going to be that popular with 3 the people to your right. But you are under oath. 4 A. If I had photographic memory, I would just tell 5 you the answer. 6 Q. I am going to show you the notes, but are there 7 any others offhand? 8 A. Now I think I might be done. There might be 9 more, but that's what I'm able to do at this time. 10 MR. MURPHY: Can we mark as the next, 96. 11 (Document marked Exhibit No. 96 for 12 identification.) 13 BY MR. MURPHY: 14 Q. Do you have Exhibit 96 in front of you? 15 A. I do. 16 Q. And I will represent to you that it is a 17 collection of materials from our production that 18 includes notes. 19 So are there others that -- do you want to take a 20 moment to look through, first of all, to see whether you 21 can you expand on your answers relating to the 22 individuals that you have identified? 23 A. Having done this on my own time previously, I 24 know how long it takes. That is with the benefit of</p>	<p style="text-align: right;">Page 201</p> <p>1 But in any event, true or false, it is negative. 2 Q. That was not included in the report? 3 A. That's true. I didn't see anything pertaining to 4 this in the report. 5 Q. On is one. 6 On the second page 16626. Do you see 7 observations from [REDACTED]? 8 A. Yes. 9 Q. Who is [REDACTED]? 10 A. The staff member at HBS. I don't know her title. 11 Q. What was the nature of your interactions with 12 her? 13 A. She must have been present in some ATSC meetings, 14 but I don't recall interacting with her specifically. 15 Q. Do you know whether she is a member of the ATSC? 16 A. I don't know. 17 Q. She says, about you, Comes across as arrogant. 18 Long emails. Inappropriate. And absorbs meetings. 19 That is a negative comment; correct -- those are 20 negative comments? 21 A. Those are negative comments. 22 Q. And they were not included in the FRB report? 23 A. I'm not sure these were in scope and that they 24 are outside of the 21 interviews. But, yes, they are</p>

<p style="text-align: right;">Page 202</p> <p>1 not included.</p> <p>2 Q. I will call that a second one.</p> <p>3 She also says, When Linda and Felix in room more</p> <p>4 in control. Who is Linda?</p> <p>5 A. That must be a reference to Linda Applegate.</p> <p>6 Q. And who is she?</p> <p>7 A. Senior faculty member who is a member of the</p> <p>8 ATSC.</p> <p>9 Q. You talked about █ already. They are both</p> <p>10 senior faculty members; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that the idea of you being more in</p> <p>13 control when the two of them are in the room supports</p> <p>14 the notion that with your superiors you have more of a</p> <p>15 filter?</p> <p>16 MS. O'MEARA-COSTELLO: Objection.</p> <p>17 A. That report from her might be seen as supporting</p> <p>18 it. I would want to test it, I suppose. Taking it in</p> <p>19 the abstract, yes, that is what it says.</p> <p>20 Q. If we look at page 18512. █. Who is</p> <p>21 █?</p> <p>22 A. He is the head of the center for teaching and</p> <p>23 learning. He is the school's expert on how to teach.</p> <p>24 Q. If you look down at the seventh bullet point. It</p>	<p style="text-align: right;">Page 204</p> <p>1 █ sees me in a favorable light, which is consistent</p> <p>2 with my many interactions with him over a decade.</p> <p>3 Q. Do you believe that the FRB would have complied</p> <p>4 with the principles and procedures if it had provided</p> <p>5 all of these raw notes to you?</p> <p>6 A. I think that would have been much closer to what</p> <p>7 the P&amp;P requires as to providing, quote, the evidence</p> <p>8 gathered. I think they might have need to provide them</p> <p>9 as an exhibit to the report such that all readers would</p> <p>10 receive them not just me.</p> <p>11 But that -- to be fair, that is "should" rather</p> <p>12 than "must" in the FRB P&amp;P. So you can think about what</p> <p>13 reasons there might be not to do that.</p> <p>14 Q. Is there -- do you think there is -- there was</p> <p>15 requirement of, for example, recording these interviews,</p> <p>16 audio recording these interviews?</p> <p>17 A. I do not think there was a requirement to audio</p> <p>18 record the interviews.</p> <p>19 Q. And I think that the report says, Has a hard time</p> <p>20 thinking about other perspectives?</p> <p>21 A. I see that line.</p> <p>22 Q. That is in the second set of bullet points --</p> <p>23 that is the second bullet point; correct?</p> <p>24 A. Yes, on Bates 18883.</p>
<p style="text-align: right;">Page 203</p> <p>1 says, At times has a rough edge to him.</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. That is a negative comment, correct?</p> <p>5 A. I'm not sure. Taken in context, I would hesitate</p> <p>6 to interpret it that way.</p> <p>7 Q. Is it a positive thing to have a rough edge to</p> <p>8 you?</p> <p>9 A. Everyone has a personality. We're not talking</p> <p>10 about a social club here. The question is whether I was</p> <p>11 -- in any event, the question before the FRB was not my</p> <p>12 personality or whether I had a rough edge to me. I'm</p> <p>13 not sure it is relevant one way or the other.</p> <p>14 Q. Would you agree that whether you have a rough</p> <p>15 edge can be relevant to the question of whether you are</p> <p>16 respectful to others?</p> <p>17 A. I agree that respect for others is a relevant</p> <p>18 question and a question the FRB was investigating. And</p> <p>19 some people might think there is a connection between</p> <p>20 rough edge and respectful to others.</p> <p>21 Q. But you don't?</p> <p>22 A. I'm not sure. I would need to hear the whole</p> <p>23 interview in context in order to form an opinion.</p> <p>24 Looking at the bullets here, my assessment is that █</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Yes. So you agree that █ is the source</p> <p>2 for that comment?</p> <p>3 A. That was my conclusion.</p> <p>4 Incidentally, in the course of looking at this, I</p> <p>5 now see another quote that I recognize that has been</p> <p>6 incorrectly excerpted in a material way, that I</p> <p>7 certainly would have criticized. If you would like to</p> <p>8 do more of those.</p> <p>9 Q. I will get there in a moment.</p> <p>10 One of the things that █ on the next</p> <p>11 page 18513 is, Can be disruptive.</p> <p>12 Did I read that correctly?</p> <p>13 A. I see that.</p> <p>14 Q. Would you agree that that is a negative comment?</p> <p>15 A. In the abstract it sounds like a negative</p> <p>16 comment. Being disruptive could be important in the</p> <p>17 right circumstances for the right reasons.</p> <p>18 Q. In this context, do you have any reason to</p> <p>19 believe it is a positive comment?</p> <p>20 A. I think most people would interpret it as a</p> <p>21 negative comment. Although, with context, if I was</p> <p>22 thinking carefully about the context in which she might</p> <p>23 have said I was being disruptive, I might be able to</p> <p>24 convince some readers that actually it was good</p>

<p style="text-align: right;">Page 206</p> <p>1 disruptive rather than bad disruptive based on the 2 situation, what I was trying to achieve, and what I 3 ultimately did achieve.</p> <p>4 Q. You see, Lacks understanding of an appropriate 5 path to a goal.</p> <p>6 A. I do see that.</p> <p>7 Q. Is that negative?</p> <p>8 A. I think she presents it as negative. Her 9 judgment of what an appropriate path is. Different 10 people might view particular goals and particular paths 11 and in different ways.</p> <p>12 For example, an IT person creating a tool might 13 have a different view of its importance versus a person 14 who has to use the tool in order to do their job every 15 day.</p> <p>16 Q. [REDACTED] was an IT person; correct?</p> <p>17 A. She was, yes.</p> <p>18 Q. She said, He has a hard time thinking about other 19 perspectives. Can be disruptive. Lacks understanding 20 of an appropriate path to a goal.</p> <p>21 Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Those were three things she said?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 208</p> <p>1 I would have sought to establish that whatever she was 2 referring to was outside of the time period of the 2017 3 FRB.</p> <p>4 Q. That is something that we will see in your answer 5 to the interrogatory.</p> <p>6 MS. O'MEARA-COSTELLO: Objection.</p> <p>7 A. Somehow you will.</p> <p>8 I would also have thought about what other parts 9 of her answer, might either explicitly or implicitly or 10 through continuation be temporally tied to that sentence. 11 She might not repeat in every single sentence, This is 12 something that was a while ago. This is something that 13 is currently.</p> <p>14 You really have to read through it and think 15 about the totality of the interview.</p> <p>16 Q. You mentioned [REDACTED] before; is that 17 correct?</p> <p>18 A. I did.</p> <p>19 Q. There is -- if you look at the fifth bullet point 20 for him. Tendency to go down rabbit holes that others 21 are not interested in.</p> <p>22 A. I see that.</p> <p>23 Q. The rabbit holes remark ends up in the report, 24 correct?</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. Only one of those three things ended up in the 2 report; correct?</p> <p>3 MS. O'MEARA-COSTELLO: Objection.</p> <p>4 A. I would really have to cross-check all of them, 5 which is hard as we've discussed.</p> <p>6 Q. You did say that you had another comment to make 7 about one of these bullet points?</p> <p>8 A. You can call it a discrepancy.</p> <p>9 At the top of Bates 18513, [REDACTED] is noted as 10 saying, Can have a tendency to threaten to take 11 something to the next level, but he has taken a step 12 back.</p> <p>13 And that is presented in the FRB report, Bates 14 18838, second block of quotes. First quote, Where it is 15 presented with a period inserted, as if it is a full 16 stop in the original. When, in fact, according to the 17 notes, it is not. There is a clause that goes in 18 exactly the opposite direction saying that I have 19 improved.</p> <p>20 And that makes you think about what time period 21 the first clause of the sentence pertains to. What 22 period I interacted with [REDACTED] When did I interact 23 with her? When does this problem pertain to? Cross 24 checking that with the meetings invites and the emails,</p>	<p style="text-align: right;">Page 209</p> <p>1 A. There is a reference to rabbit holes on Bates 2 18883. The quote is not a perfect match. I think 3 reasonable people could disagree whether the last bullet 4 on 18883 is a match to the [REDACTED] quote that you 5 reference.</p> <p>6 Q. If we turn to the notes of [REDACTED] 7 [REDACTED], which begin at 20460. There are some 8 comments from [REDACTED] included in the 9 bullet points that you described earlier; correct?</p> <p>10 A. I think I described concerns about 11 [REDACTED] remarks generally. I don't recall 12 whether I was able to connect specific quotes back to 13 the interview.</p> <p>14 Q. Among other things, he says, But he can't see why 15 some things are just not feasible for the IT group, or 16 are not best for other EC instructors.</p> <p>17 Is it fair to say that that is a negative 18 comment?</p> <p>19 A. I do agree that it is a negative comment.</p> <p>20 Q. That is not in the report; correct?</p> <p>21 A. I agree that that comment is not in the report.</p> <p>22 Q. He gives a recent example. This is one that you 23 talked about earlier; correct?</p> <p>24 A. That's right.</p>

<p style="text-align: right;">Page 210</p> <p>1 Q. And he says, There is an overwhelming demand by 2 faculty to be videotape but IT faces capacity 3 constraints. But BE has a particular view, doesn't 4 understand why all faculty and classes can't be 5 videotaped given technology that's available to support 6 this. Could videotape every class continuously edit 7 later.</p> <p>8 That's not in the report, correct?</p> <p>9 A. That's true.</p> <p>10 Q. Going down further. The world is black and white 11 to BE.</p> <p>12 BE is you I take it?</p> <p>13 A. That's my understanding.</p> <p>14 Q. Would you say that is a negative comment?</p> <p>15 A. I disagree with many of these questions.</p> <p>16 Q. Sure. I assume you would.</p> <p>17 But would you agree that it is -- can we agree 18 seeing black and white is not -- to see the world as 19 black and white is not a compliment?</p> <p>20 A. I think he intends it as a criticism. On some 21 subjects black and white could offer you some clarity.</p> <p>22 But he intends it as a criticism. I think most people 23 would perceive it as a criticism.</p> <p>24 Q. Unable to restrain himself.</p>	<p style="text-align: right;">Page 212</p> <p>1 quote/unquote, older model idea; I think I saw that in 2 either a draft or the final 2017 report. But not as one 3 of these quotes. If it's in the report, it is elsewhere.</p> <p>4 Q. Do you disagree with the substance of this, of 5 what [REDACTED] has said here; is that 6 correct?</p> <p>7 A. I disagree with the big parts of it.</p> <p>8 Q. In your view, is it sometimes important to credit 9 the perspective of a person who interacts with you from 10 their perspective not based on whether that person is 11 right or wrong on the merits of what is under 12 discussion?</p> <p>13 MS. O'MEARA-COSTELLO: Objection.</p> <p>14 A. Sure.</p> <p>15 Q. Why?</p> <p>16 A. Specifically as to people interacting with me, I 17 want people to have a positive interaction with me.</p> <p>18 [REDACTED] remarks, when I know I'm going to interact 19 with him, I feel glad. Which is a nice thing for him to 20 say, and I'd like most people to feel that about me most 21 of the time or at least feel neutral.</p> <p>22 Q. If you go to the next page 20461. That is the 23 interview notes from [REDACTED], correct?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 Is that in the report?</p> <p>2 A. I see it in the interview notes. I don't recall 3 seeing that in the report.</p> <p>4 Q. That is a negative comment, right?</p> <p>5 A. I agree that that is a negative comment.</p> <p>6 Q. Comes from a good place, but no sense of what is 7 appropriate.</p> <p>8 Is that a negative comment?</p> <p>9 A. I agree that is a negative comment.</p> <p>10 Q. Is unable to see the other side's point of view 11 contrary to HBS where the case method is based on 12 finding common ground; trying to understand the 13 perspective of those who disagree with you.</p> <p>14 Is that in the report?</p> <p>15 A. Again, I vigorously disagree with the 16 characterization, but I agree that it is not in the 17 report.</p> <p>18 Q. Concern that your approach harkens back to the 19 older model of faculty staff interaction. I am smarter 20 than you are. You are inferior. Has no sense that BE 21 can and will change. Risk of creating bad environment. 22 Fostering heightened fear of failure.</p> <p>23 Is that in the report?</p> <p>24 A. I don't see any of that -- maybe some of that,</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. [REDACTED] says that you come across as 2 lawyerly, blunt, and almost disrespectful.</p> <p>3 Would you agree that that is a negative?</p> <p>4 A. Present company included, I don't think all 5 lawyers are blunt. I don't think there is anything 6 wrong with being lawyerly. Being direct. Making a 7 meeting take four minutes instead of 40; some people 8 praise such things.</p> <p>9 Being, quote/unquote, almost disrespectful, but 10 not actually disrespectful, apparently, so he says. I'm 11 not quite sure. I'd want to learn more. I always felt 12 I had a warm and cordial relationship with [REDACTED], 13 who is basically my boss. I liked him a lot. I hope he 14 liked me.</p> <p>15 Q. Blunt is that a negative comment?</p> <p>16 A. I once went out on [REDACTED] boat and he 17 almost beached his boat. That is when you get your boat 18 stuck on the sand and you can't move it until high tide.</p> <p>19 And I told him, [REDACTED] we have got to move this 20 boat right now, the tide is going out. There was no 21 time for pleasantries; [REDACTED] you look so handsome in 22 those sunglasses.</p> <p>23 We just had to move the boat before the tide went 24 out. So was I blunt? Yes. Did I save his boat from</p>

<p style="text-align: right;">Page 214</p> <p>1 being stuck there for six hours? Guilty.</p> <p>2 Q. Down to the fourth point. You may rebuke staff</p> <p>3 who disagree with you, but in your mind you are working</p> <p>4 to help other staff who are victimized by having to do</p> <p>5 the extra work.</p> <p>6 Is that a negative comment?</p> <p>7 A. I don't think so, no.</p> <p>8 Q. Is rebuking staff something that is a positive</p> <p>9 thing?</p> <p>10 A. I hope that no one ever felt that I was out of</p> <p>11 line in the way that I spoke to or with them and I want</p> <p>12 people to have positive experiences when they interact</p> <p>13 with me.</p> <p>14 I know the specific circumstances that [REDACTED] was</p> <p>15 talking about. I remember it vividly, because, as I</p> <p>16 say, it is that famous one where I specifically within</p> <p>17 the time of the 2017 report decided to walk away and let</p> <p>18 the staff do what they wanted despite my grave concerns.</p> <p>19 I don't think I rebuked anyone in that context. I</p> <p>20 forcefully stated the reason why I recommended that they</p> <p>21 improve the software in a particular way. How that</p> <p>22 would save time for low status members of our community.</p> <p>23 How it would improve teaching and learning.</p> <p>24 I stand by all of that. The solution I</p>	<p style="text-align: right;">Page 216</p> <p>1 principled but needs to learn to respect others'</p> <p>2 principle points of view. You can't argue them to</p> <p>3 death, but sometimes have to agree to disagree.</p> <p>4 Is that a positive or negative comment?</p> <p>5 A. I think there are both elements of positive and</p> <p>6 negative ideas within that quote.</p> <p>7 Q. I should have asked you earlier about the</p> <p>8 information from [REDACTED] about blunt and</p> <p>9 disrespectful and rebuking staff is not in the FRB</p> <p>10 report. Do you agree with that?</p> <p>11 A. I agree with that.</p> <p>12 Q. And neither is this bullet point about arguing</p> <p>13 people to death?</p> <p>14 A. That is true.</p> <p>15 Q. At page 20465. In the interview of [REDACTED]</p> <p>16 [REDACTED] she asks, Is he a Ted Kaczynski or a John</p> <p>17 Nash?</p> <p>18 Do you agree that that is a negative comment? At</p> <p>19 least one of those people is a negative comment?</p> <p>20 A. I'm not a fan of Ted Kaczynski. There's quite an</p> <p>21 interesting podcast last week about the people who are</p> <p>22 -- Ted Kaczynski had some ideas about artificial</p> <p>23 intelligence. If you put aside the violence, which is</p> <p>24 obviously totally unacceptable, his writings are</p>
<p style="text-align: right;">Page 215</p> <p>1 envisioned was so simple, I wish they had done it. But I</p> <p>2 wasn't scolding anyone. I wasn't rebuking anyone. I</p> <p>3 was offering a technical solution to a technical problem</p> <p>4 and speaking with technical professionals, whose job it</p> <p>5 was to make this offer as good as it possibly could be.</p> <p>6 I hope no one was offended. I meant it in the</p> <p>7 very best way possible. And if I ever had that job and</p> <p>8 someone came to me with an idea that was that good, I</p> <p>9 hope I would have the ability to listen to it and to do</p> <p>10 what was suggested.</p> <p>11 Q. But it's fair to say that [REDACTED] thought</p> <p>12 that you had rebuked the staff?</p> <p>13 A. No. He uses the word "may". He is imagining.</p> <p>14 Sometimes people imagine the worst version of me. The</p> <p>15 very disrespectful version that they think is out there.</p> <p>16 This has happened more than once.</p> <p>17 Someone says, Show me the email. I show them the</p> <p>18 email. They say, That's it? You didn't scold them.</p> <p>19 You weren't out of line at all, because the actual email</p> <p>20 is just fine. I didn't rebuke anyone.</p> <p>21 My position would be, no, I didn't. [REDACTED] was</p> <p>22 speculating about what he thought might have happened,</p> <p>23 but the actual record is otherwise.</p> <p>24 Q. Let's go to the next page. He says, You are</p>	<p style="text-align: right;">Page 217</p> <p>1 interesting to read. I think lots of people could learn</p> <p>2 from reading some of his writings.</p> <p>3 Q. The FRB report didn't mention Ted Kaczynski;</p> <p>4 right?</p> <p>5 A. It did not.</p> <p>6 Q. Or John Nash?</p> <p>7 A. It did not.</p> <p>8 Q. If you go to page 20481. That is the interview</p> <p>9 of [REDACTED], who we talked about earlier?</p> <p>10 A. I'm there, yes.</p> <p>11 Q. And you took issue with his comment that is</p> <p>12 recited in the report: I would not be proud to know</p> <p>13 that he was senior faculty member interacting with the</p> <p>14 business community.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. He also said, I have my doubts about his ability</p> <p>18 to resolve his behavioral issues.</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. That's not in the report, correct?</p> <p>22 A. It's not in the report.</p> <p>23 Q. That's negative, wouldn't you say?</p> <p>24 A. It is negative, although totally contrary to what</p>

<p style="text-align: right;">Page 218</p> <p>1 [REDACTED] said. Every meeting that I was in with    2 [REDACTED], [REDACTED] was not just in the meeting,    3 but running the meeting and leading the meeting. So I    4 think I would have been able to call that into some    5 question in that way.</p> <p>6 Q. Can we agree that the FRB did not include in its    7 report a number of negative comments that it heard    8 during the course of its interviews?</p> <p>9 A. I agree with that.</p> <p>10 MR. MURPHY: Can you mark this as the next    11 exhibit.</p> <p>12 (Document marked Exhibit No. 97 for    13 identification.)</p> <p>14 BY MR. MURPHY:</p> <p>15 Q. I'm showing you what been marked as Exhibit 97.    16 Do you see this is a series of emails between you    17 and Paul Healy in January of 2017?</p> <p>18 A. Yes.</p> <p>19 Q. On page 14307 there is a bunch emails about    20 scheduling; correct?</p> <p>21 A. I see that.</p> <p>22 Q. And in the January 24, 2017, 2:15 email near the    23 top right, in the middle of the first page, page 14306.    24 Paul writes to you, Ben, sorry again for the lateness on</p>	<p style="text-align: right;">Page 220</p> <p>1 going to the FRB?</p> <p>2 MS. O'MEARA-COSTELLO: Objection.</p> <p>3 A. I must have known that the submission was going    4 to the FRB. What they would do with it, whether a full    5 FRB proceeding would be open, I'm not sure.</p> <p>6 Q. Do you remember when before -- having seen that    7 document, do you remember when before January 21, 2017,    8 you knew that the FRB would be participating in your    9 tenure case in 2017?</p> <p>10 A. It seems like all of this pertains to a meeting    11 that was supposed to happen on January 24th. I'm not    12 sure. Sometime around then, January 12th to    13 January 24th, Paul and I met either rescheduled in    14 person or we just switched to telephone having had some    15 problem connecting in person. And he would have given    16 me the instruction to prepare a reflection, apparently,    17 by telling me that it would be delivered to the FRB.    18 The discussion would have gone from there.</p> <p>19 Q. In your complaint in this case you say that the    20 FRB contrary to the procedures, expanded the scope of    21 its review to include your outside activities.</p> <p>22 Is that fair?</p> <p>23 A. I think that's what the complaint says, yes.</p> <p>24 Q. If you take a look at Exhibit 45. Take a look in</p>
<p style="text-align: right;">Page 219</p> <p>1 my part. I also checked with Rae and she thinks we    2 should make the deadline for handing in materials March    3 15th for everything. So that should give you even more    4 time. She also liked your idea of listing some people    5 the FRB could talk to, so I will formalize that in the    6 letter.</p> <p>7 And then you responded, No trouble at all on    8 scheduling. It must be fate. I imagine you miss one    9 meeting every few years, about the same as me. Funny    10 that we did that as to these two meetings.</p> <p>11 I appreciate the schedule you proposed. More    12 time is useful so I can reflect on my first draft and    13 consult thoroughly with others -- plus stay focused on    14 teaching at the start of the term.</p> <p>15 I did read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. So is it fair to say that based on the    18 January 24th email from Paul Healy to you in the middle    19 of the page, that you knew as of January 24, 2017, that    20 the FRB was going to be doing some interviews in    21 connection with your tenure review?</p> <p>22 A. I think I must have.</p> <p>23 Q. So when you prepared your first submission to the    24 FRB about that reflection submission, you knew that was</p>	<p style="text-align: right;">Page 221</p> <p>1 particular at page 13 of the exhibit, which is 18891.    2 Is that a document that you submitted to the FRB on    3 March 15, 2017?</p> <p>4 A. That's what it says.</p> <p>5 Q. Do you have any doubt that that is what it is?</p> <p>6 A. I don't have any doubt.</p> <p>7 Q. Did anyone tell you what to include in this set    8 of reflections or was that your choice?</p> <p>9 A. I think it was my choice. I circulated to unit    10 colleagues, who I'm sure had ideas of how it could be    11 improved. The ideas could have included additions or    12 removals. I had all kinds of interim versions that I    13 included in my production and so we could try to figure    14 it out from there.</p> <p>15 Q. Were you comfortable with the submission that you    16 made?</p> <p>17 A. I was comfortable with the submission that I    18 made.</p> <p>19 Q. It wasn't submitted by you over your objection?</p> <p>20 A. It was not over my objection.</p> <p>21 Q. If you look at the page -- at the bottom of page    22 14, that is 18892.</p> <p>23 There is a section that is titled, Choice of    24 outside projects, methods and style.</p>

<p style="text-align: right;">Page 222</p> <p>1     Correct?</p> <p>2     A. I see that.</p> <p>3     Q. It starts by saying, Well, before the FRB's</p> <p>4     report, I had already begun to read things certain of my</p> <p>5     outside activities.</p> <p>6     Did I read that correctly?</p> <p>7     A. Yes.</p> <p>8     Q. If you continue to look at that paragraph and the</p> <p>9     following paragraph, you were the one who raised the</p> <p>10    question of your outside activities to the FRB in the</p> <p>11    very first submission to them in 2017. Correct?</p> <p>12    A. I wouldn't put it quite that way.</p> <p>13    Q. Well, this is the first submission to the FRB in</p> <p>14    2017; correct?</p> <p>15    A. Yes.</p> <p>16    Q. It's your submission; correct?</p> <p>17    A. Yes.</p> <p>18    Q. It includes a discussion by you about your</p> <p>19    outside activities, correct?</p> <p>20    A. Yes.</p> <p>21    Q. Is it your testimony that you were surprised when</p> <p>22    the FRB in 2017 reviewed your outside activities?</p> <p>23    A. I was genuinely surprised when in September of</p> <p>24    2017, after my interview was complete, I later learned</p>	<p style="text-align: right;">Page 224</p> <p>1     aspect of the timing and by what I saw as a significant</p> <p>2     expansion at that stage.</p> <p>3     Q. You were interviewed by the FRB in 2017; correct?</p> <p>4     A. I was.</p> <p>5     Q. Did you make any notes of that interview?</p> <p>6     A. I don't think so.</p> <p>7     Q. Can you tell us what you recall about it?</p> <p>8     A. I recall discussing American Airlines. Why I</p> <p>9     filed that case. What I expected of it.</p> <p>10    I recall discussing LCA teaching. Discussing,</p> <p>11    frankly, how much I had come to enjoy LCA teaching. I'm</p> <p>12    sure I told them that it was the best teaching that I</p> <p>13    had ever done. Both in terms of what the students</p> <p>14    thought about it and what I thought about it and how</p> <p>15    grateful I was for having had that opportunity.</p> <p>16    Beyond that, I don't really recall other specific</p> <p>17    subjects.</p> <p>18    Q. How long did the meeting last?</p> <p>19    A. More than 45 minutes, less than 90 minutes.</p> <p>20    Q. Do you remember where it was?</p> <p>21    A. It was in one of the Morgan Hall conference rooms</p> <p>22    on the HBS campus.</p> <p>23    Q. All the members of the FRB were there?</p> <p>24    A. I don't specifically recall one way or the other.</p>
<p style="text-align: right;">Page 223</p> <p>1     after all other interviews were complete, I was asked to</p> <p>2     substantially expand on my submission to the FRB on</p> <p>3     subjects for which they had never previously requested</p> <p>4     any information from me. Yes, I was surprised by that.</p> <p>5     Q. Those subjects related to your outside</p> <p>6     activities; correct?</p> <p>7     A. That's true.</p> <p>8     Q. Those outside activities were a subject that you</p> <p>9     raised in your very first submission. Can we agree on</p> <p>10    that?</p> <p>11    A. I discussed them. Whether I raised them -- I</p> <p>12    reported what I was doing differently in that regard.</p> <p>13    Q. Was it reasonable for you to expect, given your</p> <p>14    submissions, inclusion of your outside activities that</p> <p>15    the FRB wouldn't examine your outside activities?</p> <p>16    MS. O'MEARA-COSTELLO: Objection.</p> <p>17    A. I would not have been surprised by discussion of</p> <p>18    my outside activities at some earlier stage in the</p> <p>19    process.</p> <p>20    What I was surprised by was the, in my view, the</p> <p>21    quite late and untimely addition of that subject. As I</p> <p>22    say, in the beginning of September with four business</p> <p>23    days for me to reply. That level of lateness, after my</p> <p>24    interview, post Labor Day, I was surprised by that</p>	<p style="text-align: right;">Page 225</p> <p>1     Q. Was Jean Cunningham also there?</p> <p>2     A. I don't know.</p> <p>3     Q. Is there any particular reason you didn't take</p> <p>4     any notes of this?</p> <p>5     A. I guess the person speaking, my focus was on my</p> <p>6     oral answers rather than -- no one was giving me any</p> <p>7     information. I was there to give information to the</p> <p>8     FRB, but not to receive any information so there</p> <p>9     wouldn't have been a need for me to take notes.</p> <p>10    Maybe to memorialize what I had said, but I</p> <p>11    should know what I'd say on these fundamental subjects.</p> <p>12    Q. Do you recall whether the FRB asked you about the</p> <p>13    American Airlines case or about -- or whether you told</p> <p>14    them about it for the first time?</p> <p>15    I'm sorry, that was a bad question.</p> <p>16    Do you recall whether the FRB asked you about the</p> <p>17    American Airlines case or whether you brought that</p> <p>18    subject up?</p> <p>19    A. I'm not sure.</p> <p>20    Q. You can take a look at the FRB report, which is</p> <p>21    Exhibit 45.</p> <p>22    There is a section at the bottom that reflects</p> <p>23    your statements to the FRB. Do you see that? Page</p> <p>24    18887, page 9.</p>

<p style="text-align: right;">Page 226</p> <p>1 A. I see the paragraph that begins, Professional 2 Edelman described. 3 Q. Then there is another paragraph that follows, 4 Professor Edelman also noted that. 5      Correct? 6 A. I see that, yes. 7 Q. Could you take a moment and look at those two 8 paragraphs. And my question is: Do you think there is 9 anything incorrect about what the FRB wrote down about 10 what you said? 11 A. There is one sentence that I think I'd have to 12 say I disagree with. 13      The statement that risk to reputation did not 14 factor into his decision-making during the interview he 15 acknowledged that there could be PR risk to Harvard. 16      I'm not sure what they are referring to. I'm not 17 sure that the prior sentences of that paragraph support 18 this sentence, if they are intended to -- maybe not are 19 intended to. 20      But overall I found that all muddled and I didn't 21 intend to say anything like that in my interview. 22 Q. The last sentence of the paragraph is in quotes. 23 It says, I can't sit on my hands when I know about 24 something like this.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Correct. 2      So that was your response to those -- to that 3 paragraph about American Airlines; correct? 4 A. Yes. 5 Q. Otherwise, you also took issue with the FRB's 6 citation to a website called, Boarding Area; correct? 7 That is footnote 3. 8 A. I took issue with the citation in footnote 3, 9 yes. 10      MS. O'MEARA-COSTELLO: What page? 11      MR. MURPHY: Now we're back on 18888. 12 BY MR. MURPHY: 13 Q. You did that because the citation was from 2015; 14 correct? 15 A. I did that, because the citation did not support 16 the proposition for which it was cited. The sentence is 17 the American Airlines case already has been connected 18 back to the school and to Harvard University. 19      And the citation offered no such thing. The 20 citation was just wrong. 21 Q. The citation was to an administrative proceeding 22 that connected you to Harvard University; correct? 23      MS. O'MEARA-COSTELLO: Objection. 24 A. I agree that the citation was to an</p>
<p style="text-align: right;">Page 227</p> <p>1 Did I read that correctly? 2 A. Yes. 3 Q. Did you read that to the FRB? 4 A. I think I did. 5 Q. You had an opportunity to respond to this report; 6 correct? 7 A. I did. 8 Q. You did respond to the information about American 9 Airlines; correct? 10 A. I responded to some of it. I think I responded 11 to this claim here that I, quote/unquote, acknowledged a 12 PR risk to Harvard. And explained why I thought both 13 that it wasn't true and also that I didn't think that I 14 had so acknowledged. 15 Q. So if you turn to page 18916. Right after the -- 16 first of all, is that part of your reply to the faculty 17 board FRB questions -- 18 A. Yes. 19 Q. -- dated October 5, 2017? 20      If you take a look at the first full paragraph 21 after the numbered paragraphs. About halfway through -- 22 actually the whole paragraph is your response to that 23 reputational risk paragraph, correct? 24 A. And the next paragraph, too.</p>	<p style="text-align: right;">Page 229</p> <p>1 administrative proceeding that mentioned me, Harvard 2 University and, of course, the underlying substance of 3 what the proceeding was about. 4 Q. And the Sichuan Garden matter? 5 A. It did. 6 Q. Ultimately the person who made that post took it 7 down at your request; correct? 8 A. He did. I wrote to him and told him my view 9 about it and he immediately and apologetically took it 10 down. 11 Q. The basic chronology that is set forth in the 12 American Airlines section of the 2017 report, do you 13 agree that that's correct? 14      MS. O'MEARA-COSTELLO: Is that pages -- 15      MR. MURPHY: That's a good question. It 16 begins on page 7. The second example relates to a class 17 action. 18      MS. O'MEARA-COSTELLO: Thank you. 19 A. I think the FRB got some important aspects of the 20 chronology totally wrong. 21 Q. Please explain? 22 A. On page 10, for example, the FRB says, They are 23 continued that I can be, quote, Quick to act on my 24 perceptions of wrongdoings by others.</p>

<p style="text-align: right;">Page 234</p> <p>1 A. That might it be exactly.</p> <p>2 Q. However it is, it is correctly set out in the 2017</p> <p>3 FRB report?</p> <p>4 A. I think so, yes.</p> <p>5 Q. That Harvard Business School professor was</p> <p>6 Professor Bazerman; correct?</p> <p>7 A. That's right.</p> <p>8 Q. Did anyone besides you and Professor Bazerman</p> <p>9 know before you filed this suit that you were planning</p> <p>10 to do that?</p> <p>11 A. Yes.</p> <p>12 Q. Let me ask a different question. Did anyone at</p> <p>13 Harvard Business School, besides you and Professor</p> <p>14 Bazerman, know in advance that you were planning to do</p> <p>15 that?</p> <p>16 A. I think some people did.</p> <p>17 Q. Who knew?</p> <p>18 A. This all came up because Professor Bazerman</p> <p>19 mentioned it to me at NOM morning coffee. A bit of a</p> <p>20 ritual in our academic unit. At a certain time in the</p> <p>21 morning, people come out, drink coffee, eat fruit, enjoy</p> <p>22 each other's company.</p> <p>23 Those weren't all that well-attended in the</p> <p>24 summers especially, but doctoral students attended. I'm</p>	<p style="text-align: right;">Page 236</p> <p>1 A. I kind of remember that. I can't remember the</p> <p>2 names of the students, but they were economics Ph.D. or</p> <p>3 business economics students associated with our group.</p> <p>4 Q. Did you talk to any other professors at HBS</p> <p>5 before you filed this suit?</p> <p>6 A. I don't recall it. I probably wouldn't have been</p> <p>7 keeping it secret. It wasn't a secret, consistent with</p> <p>8 the client's interest, which it would have been. I</p> <p>9 would have been happy to talk about it with anyone.</p> <p>10 Plus I would have been excited to talk about it. I</p> <p>11 don't specifically recall who I talked to.</p> <p>12 Q. If you take a look page 6714. Do you see that</p> <p>13 this is an email to you -- from you to Professors</p> <p>14 Malhotra, Hall, and McGinn, and Bazerman?</p> <p>15 A. Yes.</p> <p>16 Q. If you go to the last paragraph -- last full</p> <p>17 paragraph. It says, For example, I spoke with several</p> <p>18 affected passengers who said they work on or consult or</p> <p>19 otherwise are affiliated with companies who dislike</p> <p>20 class action lawsuits, so even though they believe the</p> <p>21 case has merit and they know they were overcharged in</p> <p>22 principle want to support the effort, they are not</p> <p>23 willing to take public positions on this issue.</p> <p>24 Did I read that correctly?</p>
<p style="text-align: right;">Page 235</p> <p>1 sure other people were there. It would be unusual for</p> <p>2 Max and me to be chatting alone. The two of us, though,</p> <p>3 extroverts maybe, we wouldn't stand there and chat. It</p> <p>4 would take some more people to have quorum at coffee.</p> <p>5 So there would have been other people there at</p> <p>6 the moment where Max said, You know, I was charged for</p> <p>7 these bags that probably shouldn't have been charged</p> <p>8 for. And I said, Hey, I've been considering class</p> <p>9 action litigation about that; let's work it up.</p> <p>10 And the doctoral students would have been very</p> <p>11 curious. Our students were excellent; highly</p> <p>12 inquisitive, always interested in things outside of the</p> <p>13 norm. And a pending class action or an idea for a class</p> <p>14 action, would have been of great interest and doctoral</p> <p>15 students would have wanted to talk about the economic</p> <p>16 model. How do the lawyers get paid? Who decides? What</p> <p>17 does it mean to even have a class action?</p> <p>18 Students from other countries would be curious.</p> <p>19 And I'm sure an extended discussion and a little bit of</p> <p>20 civil procedure would have even been taught to these</p> <p>21 economics Ph.D. doctoral students.</p> <p>22 Q. Is that something that you remember or is that</p> <p>23 something that you are supposing happened based on the</p> <p>24 ordinary course of events?</p>	<p style="text-align: right;">Page 237</p> <p>1 A. Yes.</p> <p>2 Q. All that's to say, Max ended up being the only</p> <p>3 person who is willing to step forward and speak up for</p> <p>4 the unwary.</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. Bad timing relative to my review, perhaps, but I</p> <p>8 have been unwilling to let strategic considerations like</p> <p>9 that stand in the way of doing what's right. There are</p> <p>10 also some attorney ethics principles broadly on point.</p> <p>11 Can you explain to us what you meant by those</p> <p>12 last two sentences?</p> <p>13 A. Between 2015 and 2017, there was an obvious</p> <p>14 question of what my activities should be. Should I</p> <p>15 crawl into a hole and not come out, so that no one had</p> <p>16 any negative interactions with me for sure, because no</p> <p>17 one had any interactions with me?</p> <p>18 I chose not to do that. I wanted to live my life</p> <p>19 to the fullest and to do the things that gave me joy and</p> <p>20 professional satisfaction. And give the school a</p> <p>21 realistic sense of what I would probably be like in the</p> <p>22 coming years if they decided to keep me around.</p> <p>23 That is the way I approached it. It certainly</p> <p>24 wasn't the only approach. Frankly, I'm not sure what my</p>

60 (Pages 234 - 237)

<p style="text-align: right;">Page 238</p> <p>1 unit recommended. Brian Hall was always of the crawl 2 into a hole and don't come out for a while, which wasn't 3 what I wanted to do. I kept my own counsel on that. 4 So part of what I was trying to convey in the 5 first of those two sentences is I've been unwilling to 6 turn down opportunities that make sense to me just 7 because I'm under review. If it's something that I want 8 to do, and it's permitted, then I want to do it. 9 With the benefit of hindsight, of course, it's 10 perfectly clear, I could have written to Jeanne or to 11 the dean's office at HBS, told them what was coming. I 12 think I could have convinced them that there was no 13 reputational risk to the school. No material 14 reputational risk and, indeed, reputational benefit. 15 I think they would have been open to reasoning 16 had I just asked them. But I was thinking primarily 17 about the instance in which I had been told many years 18 earlier that I didn't need to ask. Wanted to save my 19 requests to Jean Cunningham for the things that were 20 within the scope of her assigned responsibilities. She 21 seemed to have plenty of responsibilities, piling on one 22 more strange thing, each email in her inbox has a 23 certain kind of cost. It is half an hour later she can 24 go home to her family that night.</p>	<p style="text-align: right;">Page 240</p> <p>1 that moment, because they had been case subject. If 2 anything, my very favorite teaching cases that were sent 3 out in my packet were teaching cases about a particular 4 aspect of American Airlines. 5 On the other hand, that was really a different 6 corporate personality prior to a bankruptcy and a 7 hostile takeover. The people who were running American 8 Airlines as of summer of 2017 were not the same people 9 who had been running it in the era of the cases that I 10 had written, or the many remarkable cases that HBS 11 faculty had written over the decades. Cases with which 12 I was quite familiar. Because, one, I had read them 13 all. Some of them were on microfilm and I had to get 14 them in a way that you get materials on microfilm. 15 Ans also I had organized a visit by the great Bob 16 Crandall, the CEO of American Airlines in the 1980's. 17 Who used to live in Marblehead and came into campus and 18 spent the day with HBS faculty and staff. I did quite a 19 bit of preparation to host him. And in the course of 20 that preparation needed to familiarize myself with all 21 aspects of the school's historic relationship with 22 American Airlines. 23 What I learned, though, from all of that, was 24 that the new American Airlines, which was really the US</p>
<p style="text-align: right;">Page 239</p> <p>1 I ask her about the things that I'm supposed to 2 ask her, according to the rules. And the things that I 3 don't need to ask her according to the rules, I don't 4 ask her. 5 Q. Did you consider asking her in this instance? 6 A. I don't think I considered it. 7 Q. Did you consider asking the dean? 8 A. I don't remember considering it. 9 Q. When the suit garnered publicly, did you consider 10 saying anything to the dean yourself rather than through 11 Professor Bazerman? 12 A. We discussed whether I should say something to 13 the dean, to Paul Healy, or Jeanne -- or to any 14 combination of those or perhaps others. Whether I 15 should do that. Whether Max should do it. Whether 16 Brian Hall or someone else should do it. 17 And the guidance of the people that you see in 18 this thread was that Max should do exactly what he went 19 on to do and that I should do nothing and so that's what 20 I did. 21 Q. Did you take any steps to investigate whether 22 Harvard Business School had any kind of relationship 23 with American Airlines before you filed this? 24 A. I knew quite a bit about American Airlines at</p>	<p style="text-align: right;">Page 241</p> <p>1 Airways management team, that had, as I said, hostilely 2 taken over American Airlines, was not cut from the same 3 cloth as the old American Airlines management team. 4 Soon all the people that I knew who had worked 5 there, they all left. I knew of no way in which they 6 had any connection to HBS, whatsoever. I knew of no 7 case writing support. No buddies who worked there. I 8 think I had just no evidence of any connection between 9 the school and American Airlines. 10 I didn't inquire through executive education, for 11 example, to ask have they paid us to send any of their 12 executives to be educated in our programs. But in terms 13 of the major substantive ways that companies partner 14 with the schools like in supporting case writing, I was 15 confident that they were not. 16 Q. Did you make any inquiries at all to check on 17 what American Airlines's current relationship with 18 Harvard Business School might be? 19 A. I felt I had some information about that from my 20 contact from case writing, who was mid to senior 21 executive at the company and had been kind of forced out 22 as part of the hostile takeover. 23 Q. When was your last case about American Airlines 24 written?</p>

<p style="text-align: right;">Page 246</p> <p>1 where he retroactively waived it.</p> <p>2 Q. You later participated in another class action</p> <p>3 lawsuit against American Airlines called Clear, correct?</p> <p>4 A. Yes.</p> <p>5 Q. What was your role in that lawsuit?</p> <p>6 A. I thought of the case and referred it to</p> <p>7 co-counsel who did the day-to-day work on it.</p> <p>8 Q. For your work on that case you received [REDACTED]</p> <p>9 is that correct?</p> <p>10 A. That sounds right.</p> <p>11 MR. MURPHY: Exhibit 99, please.</p> <p>12 (Document marked Exhibit No. 99 for</p> <p>13 identification.)</p> <p>14 BY MR. MURPHY:</p> <p>15 Q. Showing what you what's been marked as</p> <p>16 Exhibit 99. Did you -- do you know what this is?</p> <p>17 A. I have seen this previously, yes.</p> <p>18 Q. It's an article that appeared in the Wall Street</p> <p>19 Journal on July 14, 2017?</p> <p>20 A. Yes.</p> <p>21 Q. And it mentions you; correct?</p> <p>22 A. Yes.</p> <p>23 Q. It is mostly an article about Google; correct?</p> <p>24 A. I agree.</p>	<p style="text-align: right;">Page 248</p> <p>1 fourth sentences as supporting the topic sentence. But</p> <p>2 the sentence about me does not, by its terms, support</p> <p>3 the topic sentence.</p> <p>4 The topic sentence says, The companies are</p> <p>5 funding academic research.</p> <p>6 The second sentence about me says, Microsoft paid</p> <p>7 me to do something. And also, by the way, I wrote some</p> <p>8 papers that said something.</p> <p>9 But unlike sentences three and four, sentence</p> <p>10 two, doesn't say that Microsoft paid me to write the</p> <p>11 papers. And it doesn't say that, because, of course, it</p> <p>12 wouldn't be true. And the Wall Street Journal, a good</p> <p>13 newspaper, doesn't routinely write things that aren't</p> <p>14 true.</p> <p>15 But somehow people who read this in a hurry,</p> <p>16 perhaps including the FRB and some members of the</p> <p>17 appointments committee, kind of skipped over all of</p> <p>18 that, and took this to say something quite different</p> <p>19 than what it actually says.</p> <p>20 Q. Did you do anything in response to your concerns</p> <p>21 when you saw this?</p> <p>22 A. I did not. I considered writing to the</p> <p>23 journalist, who I know, Jack Nicas -- I think that is</p> <p>24 how you pronounce his name -- is someone that I have</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. But on page 5 of 12, it says, Several of the</p> <p>2 companies also are -- let me go back. I will go back to</p> <p>3 page 4.</p> <p>4 It says, The tech industry -- at the bottom --</p> <p>5 now includes the world's top five companies by market</p> <p>6 value. And then it lists them; correct?</p> <p>7 A. I see that.</p> <p>8 Q. Then there is a chart, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Then it says, Several of the companies are also</p> <p>11 active in funding academic research. Microsoft has paid</p> <p>12 Harvard Business Professor Ben Edelman, the author of</p> <p>13 papers saying Google abuses its market dominance.</p> <p>14 Did I read that correctly?</p> <p>15 A. You read that correctly.</p> <p>16 Q. Were you concerned when this article came out?</p> <p>17 A. I was concerned.</p> <p>18 Q. Why were you concerned?</p> <p>19 A. First and foremost I thought the paragraph that</p> <p>20 you just quoted was kind of all messed up in ways that</p> <p>21 are apparent to someone who reads the paragraph</p> <p>22 carefully and in a lawyerly way.</p> <p>23 The first sentence, the topic sentence, states a</p> <p>24 proposition. And I think I will accept the third and</p>	<p style="text-align: right;">Page 249</p> <p>1 been in touch with periodically.</p> <p>2 But it is not great to be hassling a journalist,</p> <p>3 even when they are wrong and you can prove it and I</p> <p>4 didn't do that.</p> <p>5 Q. Did the article come to the attention of the FRB?</p> <p>6 A. I know that it did, yes.</p> <p>7 Q. As a result, did the FRB raise certain questions</p> <p>8 about the disclosures in your work?</p> <p>9 A. I think that is right. As a result, the FRB</p> <p>10 received this article and then subsequent to that</p> <p>11 thought about it, delayed a while, and eventually asked</p> <p>12 some questions to me about the disclosures in my work.</p> <p>13 Q. And we have looked previously at the section of</p> <p>14 the FRB report on Microsoft.</p> <p>15 That is Exhibit 45, correct?</p> <p>16 A. Yes.</p> <p>17 Q. That section begins on page 6, correct?</p> <p>18 A. Yes.</p> <p>19 Q. It focuses on your disclosures; correct?</p> <p>20 A. It does.</p> <p>21 Q. Were you concerned when the article appeared that</p> <p>22 it might remind people of the BlinkX controversy?</p> <p>23 A. No, I wouldn't say that that connection, such as</p> <p>24 it is, was something that I was thinking about.</p>

<p style="text-align: right;">Page 250</p> <p>1 Q. You had done a substantial amount of work for 2 Microsoft during the period when you were a Harvard 3 Business School professor; correct?</p> <p>4 A. I had done work for Microsoft at the beginning -- 5 maybe when I was a college student, certainly when I was 6 a law student and a graduate student and continuing, 7 yes, through most of my time, so not all of my time as a 8 faculty member at HBS.</p> <p>9 Q. When did you last do work for Microsoft as a 10 Harvard Business School professor?</p> <p>11 A. I recently consulted my notes in order to refresh 12 my recollection, consulted Microsoft's billing records, 13 produced all of the sources say October 2015.</p> <p>14 MR. MURPHY: Mark this as the next exhibit. 15 (Document marked Exhibit No. 100 for 16 identification.)</p> <p>17 BY MR. MURPHY:</p> <p>18 Q. Do you recognize what has been marked as 19 Exhibit 100?</p> <p>20 A. I do.</p> <p>21 Q. What is it?</p> <p>22 A. It's a production that Microsoft made in response 23 to a subpoena from Harvard in this matter.</p> <p>24 Q. When you got this, did you get it as an Excel</p>	<p style="text-align: right;">Page 252</p> <p>1 anyone in any walk of life could say [REDACTED] is not 2 significant.</p> <p>3 On the other hand, over ten years, you slice it 4 up and, as I say, it wasn't my largest client in many 5 years.</p> <p>6 Q. You wrote a number of papers about Google; 7 correct?</p> <p>8 A. I wrote many papers about Google, yes.</p> <p>9 Q. And Google and Microsoft compete, correct?</p> <p>10 A. It is true that some aspects of Google compete 11 with some aspects of Microsoft. They are both huge 12 companies, of course.</p> <p>13 Q. Did the FRB report in 2017 incorrectly describe 14 your disclosures relating to Microsoft in the articles 15 that you wrote that mention Google?</p> <p>16 A. I thought there were some important errors in 17 that section of the FRB report, yes.</p> <p>18 Q. Let me kind of focus on a more narrow question, 19 if I may. If you look at page 6.</p> <p>20 Did you believe that -- let's take the first one. 21 The first one is an article entitled, Google, Mobile and 22 Competition: The Current State of Play.</p> <p>23 And the disclosure that is described is, He has 24 no current clients adverse to Google with respect to the</p>
<p style="text-align: right;">Page 251</p> <p>1 file?</p> <p>2 A. I think I did.</p> <p>3 Q. Did you sum the total of the dollars in the 4 column?</p> <p>5 A. I did.</p> <p>6 Q. What number did you get when you did that?</p> <p>7 A. I don't remember. I know it was more than [REDACTED] 8 [REDACTED] and less than [REDACTED]</p> <p>9 Q. Do you have a recollection as to the amount of 10 money that you were paid by Microsoft during the period 11 when you were a Harvard Business School professor?</p> <p>12 A. My recollection is that it was about [REDACTED] 13 I think this was summed to a number that was about [REDACTED] 14 [REDACTED]</p> <p>15 Q. Thank you.</p> <p>16 Is that amount something that was significant to 17 you at the time?</p> <p>18 A. Over this time period, which you will see, 19 actually goes back to 2005, when I was not a faculty 20 member at HBS. If it is [REDACTED] over ten years, that 21 is [REDACTED] per year.</p> <p>22 Probably in some years, Microsoft was my largest 23 client and in many years it was not my largest client. 24 It both was and wasn't significant. I don't see how</p>	<p style="text-align: right;">Page 253</p> <p>1 practices discussed here.</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Was that the disclosure that was contained in the 5 article?</p> <p>6 A. Yes.</p> <p>7 Q. The next one, Android and Competition Law: 8 Exploring and Assessing Google's Practices in Mobile.</p> <p>9 The disclosure statement that is identified is, 10 No potential conflict of interest was reported by the 11 authors.</p> <p>12 Was that the disclosure statement that was 13 contained in the article?</p> <p>14 A. I believe so.</p> <p>15 Q. Dominant Platforms keynote. The third bullet 16 point at the top of page 1885, a video. September 27, 17 2016. No apparent disclosure.</p> <p>18 Was that correct?</p> <p>19 A. I'm not sure. I'd want to go back and rewatch 20 the video, which takes a little bit of time. I haven't 21 done that.</p> <p>22 Q. Do you know whether you raised in your reply to 23 the FRB any objection to its description of your 24 disclosure?</p>

<p style="text-align: right;">Page 254</p> <p>1 MS. O'MEARA-COSTELLO: Objection.</p> <p>2 A. I don't recall raising anything like that. I</p> <p>3 don't presume my own perfection, as I drafted it, I'd go</p> <p>4 and check it again.</p> <p>5 Q. Next one: Spontaneous Deregulation: How to</p> <p>6 Compete With Platforms That Ignore the Rules.</p> <p>7 That is the Harvard Business Review publication,</p> <p>8 correct?</p> <p>9 A. It is.</p> <p>10 Q. Is that an accurate description of the</p> <p>11 disclosure?</p> <p>12 A. I think that is the disclosure that appeared in</p> <p>13 that article, correct.</p> <p>14 Q. The next one is a blog post entitled, EC</p> <p>15 Statement of Objections on Google's Tactics in Mobile.</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. And it says, No disclosure statement.</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Did the FRB correctly describe the circumstances</p> <p>22 there?</p> <p>23 A. I don't recall. But I also don't recall</p> <p>24 complaining about it, so I'm just not sure.</p>	<p style="text-align: right;">Page 256</p> <p>1 wrongs to occur.</p> <p>2 Did I read that correctly?</p> <p>3 A. I see that.</p> <p>4 Q. In addition, Professor Edelman did not seem to</p> <p>5 understand that conflicts of interest, real or</p> <p>6 perceived, could arise not only when he had been paid</p> <p>7 directly by the company for his work, but as a result of</p> <p>8 past work for clients in the same industry or field.</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Did you take that sentence, the one about</p> <p>12 conflicts of interest, real or perceived, arising from</p> <p>13 past work into account when you made the disclosures</p> <p>14 that we have just seen relating to Microsoft in -- in</p> <p>15 the articles that we just reviewed?</p> <p>16 A. I really wasn't thinking about these two</p> <p>17 sentences now.</p> <p>18 Q. Why not?</p> <p>19 A. I was guided by the school's conflict of interest</p> <p>20 policy, which I took to be a comprehensive and</p> <p>21 authoritative complete statement of the school's</p> <p>22 policies and expectations with respect to disclosures.</p> <p>23 Q. And the conflict of interest policy, is it fair</p> <p>24 to say, that in certain instances, clearly requires</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. And the final one is a publication entitled</p> <p>2 Design of Search Engines Services: Channel</p> <p>3 Interdependence in Search Engine Results.</p> <p>4 And it describes the disclosure. I won't read</p> <p>5 the whole thing.</p> <p>6 Is that description of the disclosure accurate?</p> <p>7 A. I think that is the disclosure that appeared in</p> <p>8 that article, yes.</p> <p>9 Q. Do you recall that in the 2015 FRB report they</p> <p>10 spoke about a concern to be mindful not only of past</p> <p>11 work for clients?</p> <p>12 A. I'm not sure what you're referring to. Maybe I</p> <p>13 should review the report?</p> <p>14 Q. Do have you -- I think it's Exhibit 6.</p> <p>15 A. I have that here.</p> <p>16 Q. If you turn to page 15709.</p> <p>17 Turning your attention to the second paragraph.</p> <p>18 It states, In terms of managing his outside activities,</p> <p>19 the FRB found that Professor Edelman did not appear to</p> <p>20 understand that his own zeal for righting a wrong could</p> <p>21 call into question the integrity of his writings as well</p> <p>22 as the integrity of faculty work more broadly and the</p> <p>23 reputation of the School - that a single-minded focus on</p> <p>24 redressing one wrong could, nevertheless enable other</p>	<p style="text-align: right;">Page 257</p> <p>1 disclosures; correct?</p> <p>2 A. I agree with that.</p> <p>3 Q. And in certain instances it urges faculty members</p> <p>4 to exercise their discretion about whether to make</p> <p>5 disclosures?</p> <p>6 A. I agree that it leaves it up to the faculty</p> <p>7 members to decide based on a variety of factors and</p> <p>8 ultimately the faculty member's own judgment, decision</p> <p>9 making.</p> <p>10 Q. Those factors include the reasonable reader test;</p> <p>11 correct?</p> <p>12 A. I think the expectations of a reasonable reader</p> <p>13 are discussed, perhaps repeated within that policy. I'm</p> <p>14 not sure I would have said that that is the test.</p> <p>15 I guess I just need to look back at the policy.</p> <p>16 I wouldn't want to summarize it without it in front of</p> <p>17 me.</p> <p>18 Q. Under that test, is it fair to say that faculty</p> <p>19 members are encouraged to report other relationships or</p> <p>20 activities that a reasonable reader could perceive to</p> <p>21 have influence or that give the appearance of</p> <p>22 potentially influencing the submitted work?</p> <p>23 MS. O'MEARA-COSTELLO: Objection.</p> <p>24 A. If you are reading from the policy and you</p>

<p style="text-align: right;">Page 258</p> <p>1 represent that that's what it says, then that's what it 2 says. 3 I don't have it in front of me. I haven't 4 memorized it. 5 Q. Does that sound right? 6 A. It sounds right. I'd want to read it in context. 7 It is a tricky policy in that different parts of it 8 interact in different ways, defined terms, what have 9 you. I would be especially worried about taking 10 something out of context in that document. 11 Q. Fair enough. I think we have agreed that there 12 are some circumstances in which there's an absolute 13 requirement of disclosure and some where it is left to 14 the faculty member's judgment; correct? 15 A. I agree with that. 16 Q. Do you agree that in evaluating your candidacy 17 for tenure in 2017, the appointments committee and the 18 dean, could themselves ask questions intending to 19 evaluate the quality of the judgments that you made? 20 A. I agree that they are entitled to evaluate the 21 quality of my judgment, yes. 22 Q. Do you believe that reasonable people can 23 disagree about the quality of another person's judgment? 24 A. As an abstract matter people disagree about lots</p>	<p style="text-align: right;">Page 260</p> <p>1 off the record. 2 (Break in the proceedings.) 3 THE VIDEOGRAPHER: We back on the record. 4 The time is 5:03. 5 BY MR. MURPHY: 6 Q. Thank you. Could I direct your attention again 7 to Exhibit 6. This is the 2015 FRB report; correct? 8 A. Yes. 9 Q. It includes a number of exhibits, am I right 10 about that? 11 A. Yes. 12 Q. If you turn to page 15758. There is series of 13 exhibits that relate to the Sichuan Garden controversy, 14 correct? 15 A. Yes. 16 Q. And do you agree that the documents that run 17 between 15758 and 15770, all relate to the Sichuan 18 Garden controversy? 19 A. Yes. 20 Q. The email exchanges that are quoted, the pages 21 that follow on December 5th, December 6th, December 7th, 22 are those genuine email exchanges between you and Mr. 23 Duan? 24 A. They are selectively excerpted, as I mentioned</p>
<p style="text-align: right;">Page 259</p> <p>1 of things. With respect to these six disclosures, I 2 felt I had some awfully strong arguments about why these 3 were at the very periphery of the conflict of interest 4 policy and disclosure really wasn't needed. Although I 5 certainly would have been open to providing disclosure 6 had anyone timely, contemporaneously, suggested that I 7 needed to. 8 Q. More generally, did you believe that the members 9 of the appointments committee voting on your tenure 10 case, that reasonable members could disagree about 11 whether your activities posed a reputational risk to the 12 school? 13 A. I would have been happy to have the question 14 posed that way without interference by an FRB report 15 that purported to have studied the question for months 16 by experts with evidence and careful procedures. 17 I was concerned, though, by the prospect that 18 either anyone would defer to that report, flawed in the 19 ways I've discussed, or would reach a conclusion based 20 on that report and what the report said or purported to 21 have found, which I thought was importantly flawed. 22 MR. MURPHY: Can we take a break. Go off 23 the record for a little bit. 24 THE VIDEOGRAPHER: The time is 4:47. We are</p>	<p style="text-align: right;">Page 261</p> <p>1 before lunch. But subject to that they are genuine. 2 Q. Each is complete? 3 A. Each is complete. But some are completely 4 missing. 5 Q. Did you supply the missing emails to the FRB in 6 2015? 7 A. I don't think so. 8 Q. Why not? 9 A. In general, I supplied either materials that they 10 requested from me or materials that I thought were 11 directly exculpatory, helpful to me, in putting on my 12 case. And I am not sure that it was apparent to me how 13 the missing emails might have been helpful then. Even 14 if I think I know now, it wasn't apparent to me then. 15 Q. There is a series of pages that follow the email 16 -- those emails were embedded in the Boston.com story by 17 Hilary Sargent; correct? 18 A. Yes. 19 Q. And do you agree that that is the copy of the 20 article that Boston.com posted on December 9th? 21 A. Right. Subject to the weirdness of how web pages 22 change, it had some article references embedded within 23 that are references that appeared on the date when the 24 FRB preserved the web page. But the core of the web</p>

<p style="text-align: right;">Page 262</p> <p>1 page, the article portion is preserved.</p> <p>2 Q. There is a series -- the page that follows there</p> <p>3 is a series of emails that were received from -- by</p> <p>4 Harvard Business School from various folks; correct?</p> <p>5 A. I see that, yes.</p> <p>6 Q. Do you have any reason to question the</p> <p>7 authenticity of those?</p> <p>8 A. I don't have any reason to question the</p> <p>9 authenticity.</p> <p>10 Q. There is a story that follows HBS in the pages</p> <p>11 that begin at 15769. HBS students are fighting against</p> <p>12 the negative stereotypes reinforced by a professor and</p> <p>13 they are doing it \$4 at a time.</p> <p>14 Did I read that correctly?</p> <p>15 A. I see that.</p> <p>16 Q. Is that, your perspective, a story that ran on</p> <p>17 BostonHub -- on BostonHub.streetwise?</p> <p>18 A. I'm not quite sure what to call the site, but</p> <p>19 anyway I think it appeared on the internet at the URL</p> <p>20 specified.</p> <p>21 Q. That embeds the Jeffrey Toobin tweet; correct?</p> <p>22 A. Yeah, I think does.</p> <p>23 Q. The tweet is: Here is why people hate (a) at</p> <p>24 Harvard and (b) lawyers. Correct?</p>	<p style="text-align: right;">Page 264</p> <p>1 (Document marked Exhibit No. 101 for</p> <p>2 identification.)</p> <p>3 BY MR. MURPHY:</p> <p>4 Q. Do you have what has been marked as Exhibit 101?</p> <p>5 A. Yes.</p> <p>6 Q. Going back the first page of the 8178 page, is</p> <p>7 that email from you to Mr. Howes?</p> <p>8 A. Yes.</p> <p>9 Q. That is dated January 24, 2014; correct?</p> <p>10 A. Yes.</p> <p>11 Q. That is before your publication of the BlinkX</p> <p>12 blog, correct?</p> <p>13 A. That's true.</p> <p>14 Q. And you say here, Eric, Some investors recently</p> <p>15 asked me about current practices of BlinkX. The company</p> <p>16 that acquired, at the least, some Zango assets and, I</p> <p>17 think, continued to run much of the Zango business.</p> <p>18 After I finish the research for them, I sought and</p> <p>19 received their permission to write this up for the web.</p> <p>20 My draft is here.</p> <p>21 Did I read that correctly?</p> <p>22 A. That's what it says.</p> <p>23 Q. And there is a link to a URL; correct?</p> <p>24 A. That's right.</p>
<p style="text-align: right;">Page 263</p> <p>1 A. I see that.</p> <p>2 Q. Who is Eric Howes?</p> <p>3 A. Eric Howes is a security researcher, who I worked</p> <p>4 with at various points in my research about online</p> <p>5 advertising security and advertising fraud, who I was in</p> <p>6 touch with within the scope of this docket on the</p> <p>7 subject of BlinkX. What he knew about BlinkX. What I</p> <p>8 knew about BlinkX. Whether there was anything that we</p> <p>9 might work on together as to BlinkX.</p> <p>10 Q. Why did you contact him about BlinkX?</p> <p>11 A. I was having some trouble in the media after I</p> <p>12 posted the BlinkX article. And there multiple</p> <p>13 dimensions of the problems I was having. Some people</p> <p>14 thought I was wrong on the facts. Not too many people</p> <p>15 thought I was wrong on the facts. Some people</p> <p>16 questioned my motives and possible conflicts of</p> <p>17 interest.</p> <p>18 Eric Howes through his further professional</p> <p>19 activities as a security expert, was especially</p> <p>20 well-positioned to evaluate whether I was right on the</p> <p>21 facts and to help me muster additional evidence that</p> <p>22 might eliminate any doubt.</p> <p>23 MR. MURPHY: If I could ask you to mark this</p> <p>24 as Exhibit 101.</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. What did that URL -- what would that URL have</p> <p>2 taken Mr. Howes to if he clicked on it?</p> <p>3 A. At this time, it would have given him a draft of</p> <p>4 whatever it was I was thinking about posting. To be</p> <p>5 sure, a work in progress, not done.</p> <p>6 That was one of the methods that I used in this</p> <p>7 period to circulate drafts to trusted people that I was</p> <p>8 working with in some capacity.</p> <p>9 Q. At that point, if someone went to your website,</p> <p>10 they would not have been able to see this draft;</p> <p>11 correct?</p> <p>12 A. That's right. You could think of the secret URL</p> <p>13 as itself sort of acting as a password. Knowing the</p> <p>14 secret URL, would give you access to the thing that</p> <p>15 other people didn't know how to ask for. Not the best</p> <p>16 kind of password, but anyway, I judged it to be</p> <p>17 satisfactory at the time.</p> <p>18 Q. Was Mr. Howes someone that you trusted?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any reason to mislead him or provide</p> <p>21 misinformation to him?</p> <p>22 A. No.</p> <p>23 Q. What you said to him here is that after you</p> <p>24 finished your research for the investors, you sought and</p>

<p style="text-align: right;">Page 274</p> <p>1 Bright Wire. Do you know what Bright Wire was?</p> <p>2 A. I don't.</p> <p>3 Q. The bottom email says that on January 26th --</p> <p>4 this is a week before you published your blog; correct?</p> <p>5 A. I see January 22nd.</p> <p>6 Q. Did you published your blog on the 29th?</p> <p>7 A. I think that is right.</p> <p>8 Q. You sent him a link to a blog post to -- called</p> <p>9 understanding BlinkX, with a URL; correct?</p> <p>10 A. Yes.</p> <p>11 Q. You said, As discussed, you agreed not to</p> <p>12 redistribute the article or any of its contents until I</p> <p>13 published to my site.</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. And he says, Hey, Ben, thanks will hold until you</p> <p>17 publish.</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. Does any of that jog your about who John Cooper</p> <p>21 is or what Bright Wire is?</p> <p>22 A. I can draw inferences from it, but it doesn't</p> <p>23 actually refresh my recollection.</p> <p>24 Q. What inferences do you draw?</p>	<p style="text-align: right;">Page 276</p> <p>1 A. Yes.</p> <p>2 Q. That is about a Blog post that you published on</p> <p>3 January 28th?</p> <p>4 A. I'm not sure the exact date I published. Here it</p> <p>5 says January 30th.</p> <p>6 Q. If you go back to page 15737.</p> <p>7 Is that a copy of your blog post?</p> <p>8 A. It seems to be.</p> <p>9 Q. This is not the blog post that was originally</p> <p>10 published; correct?</p> <p>11 A. The only revision that I remember was a revision</p> <p>12 to the disclosure, which appears on 15741, this</p> <p>13 indicates, according to the parenthetical, on the last</p> <p>14 line of the disclosure that this is the updated version</p> <p>15 of the disclosure.</p> <p>16 Q. Do you have a copy of your original blog post?</p> <p>17 A. I don't think I have a copy of the file with the</p> <p>18 original disclosure. I have copy of what the disclosure</p> <p>19 was and I have a copy of the file as it now stands and</p> <p>20 it can be reconstructed, but I don't think I have that</p> <p>21 file.</p> <p>22 Q. The publication in this blog post describes --</p> <p>23 caused what you've described as a fire storm; correct?</p> <p>24 A. I think I did use that word, yes.</p>
<p style="text-align: right;">Page 275</p> <p>1 A. It sounds like he is a journalist of some sort.</p> <p>2 Q. Have you in other occasions sent articles -- I'm</p> <p>3 sorry -- sent documents you have prepared to journalists</p> <p>4 on an embargoed basis?</p> <p>5 A. Yes, many times.</p> <p>6 Q. You know what that means, correct?</p> <p>7 A. Yes.</p> <p>8 Q. What does it mean?</p> <p>9 A. It means that I provide access to the journalist</p> <p>10 in advance so that they can have a meaningful</p> <p>11 opportunity to learn more about the subject and consider</p> <p>12 the in-depth reporting that they might want to do before</p> <p>13 covering it upon release.</p> <p>14 Q. Does that appear to you what you are doing here?</p> <p>15 A. Yes.</p> <p>16 Q. Did you do that with the complaint in this case?</p> <p>17 A. I might have.</p> <p>18 Q. Now, if you turn to the 2015 FRB report, that is</p> <p>19 Exhibit 6, and go to page 15742.</p> <p>20 That was one of the exhibits to the FRB -- the</p> <p>21 2015 FRB report, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And 15742 contains an article by Peter Cohan of</p> <p>24 Forbes; correct?</p>	<p style="text-align: right;">Page 277</p> <p>1 MR. MURPHY: If we can mark this as</p> <p>2 Exhibit 104.</p> <p>3 (Document marked as Exhibit No. 104 for</p> <p>4 identification.)</p> <p>5 BY MR. MURPHY:</p> <p>6 Q. Who is Ed Bott?</p> <p>7 A. Ed Bott is a very well-known journalist that I</p> <p>8 worked with on many subjects over many years.</p> <p>9 Q. You had an email exchange with Ed Bott on</p> <p>10 April 1st, 2014, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall this email exchange?</p> <p>13 A. No.</p> <p>14 Q. If you go to the first one, you see that on</p> <p>15 April 1st at 6:25 a.m., you say, Long time, as I</p> <p>16 mentioned in my message in February, I'm back on the</p> <p>17 adware beat; I stumbled into the rebirth of Zango</p> <p>18 adware.</p> <p>19 Did I read that correctly?</p> <p>20 A. That's what it says.</p> <p>21 Q. It goes onto say in -- I'm not going to read</p> <p>22 every sentence. Then I wrote about this, Investors</p> <p>23 soured on the company, at which point BlinkX attacked me</p> <p>24 personally. You'll see a firestorm of February</p>

70 (Pages 274 - 277)

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<p>1 articles. I'm told BlinkX had several publicists  2 working on this behind the scenes.  3 Did I read that correctly?  4 A. Yes, that's what it says.  5 Q. Mr. Bott responded; correct?  6 A. He did.  7 Q. Then you sent him, on an embargoed basis, an  8 updated -- I'm sorry, a new different -- a different  9 URL. Correct?  10 A. Yes.  11 Q. What was that URL about?  12 A. I think I decided at that point that I wanted to  13 write something else about some other aspect of BlinkX.  14 Q. The last sentence of your email says -- the last  15 two sentences. All a hobby, very much at my peril, in  16 that I really should, quote/unquote, be one hundred  17 percent focused on academic writings for my tenure case,  18 submission due in a year. Can't resist the temptation  19 to write about adware.  20 A. Well, I had conflicting priorities, especially at  21 this period in my life. I was preparing to submit my  22 packet for tenure review. I think it is no surprise  23 that most people, a year out from submitting a packet  24 for tenure review at an elite research university, are</p>	Page 278	<p>1 I would still be fine.  2 Q. Can you tell us what the difference is between  3 the kind of writing that you are doing here on your blog  4 and what you described as, Academic writings for my  5 tenure case, in this email that is marked as Exhibit  6 104?  7 A. Sure. I can try. Different people have  8 different perspectives on academic disciplines and so  9 forth.  10 The papers that HBS views as, quote/unquote,  11 scholarly, are published in scholarly or scientific  12 journals; typically with a peer review process.  13 Typically, fundamentally analytical trying to understand  14 some kind of pattern. Perhaps grounded in data, but  15 still analytical prep, regression or some other  16 methodology of drawing insight from a pattern of data  17 points.  18 These articles on my website, continued a  19 tradition that is very different. It is much more  20 journalistic, frankly. Finding something interesting  21 and explaining to people. Finding something that  22 shouldn't be possible at all. A security exploit where  23 someone is attacked, their computer doesn't do what it  24 was supposed to do. And it shouldn't be possible. A</p>	Page 280
<p>1 concerned; is their packet good enough? I kind of  2 thought mine was going to be good enough on the merits  3 and wanted to maintain the skills that I had previously  4 honed at some length.  5 On the other hand, however good I thought my  6 packet was, maybe I should make it better. One more  7 article, two more articles; it is worth the work with  8 the high stakes of lifetime appointment of tenure. So I  9 was pulled in different directions between different  10 professional opportunities.  11 And saw some humor in it, maybe a dark kind of  12 humor, in that this blog post about BlinkX had suddenly  13 exploded, as we've discussed at length, and caused so  14 much harm to my promotion prospects. Rather than being  15 a nice side project or fun in some way, suddenly doing  16 some real damage, and here I was, perhaps a bit  17 ironically, doubling down and doing another one like  18 that.  19 Q. So by April 1, 2014, had you already concluded  20 that the controversy about BlinkX was likely to impact  21 your tenure prospects?  22 A. I thought it might. Although, to be sure, this  23 was the first media disaster of 2014 not the second.  24 And I thought my candidacy was sufficiently strong that</p>	Page 279	<p>1 well-designed computer shouldn't be attacked in that way  2 and yet here it is.  3 I enjoyed both styles of inquiry. I valued the  4 fact that I was able to do both while I was a professor  5 at HBS. I had been able to do both as a grad student,  6 too. As a college student, even, I enjoyed access to  7 both and enjoyed moving back and forth between them and  8 sometimes found the insights from one were valuable in  9 the other and vice versa.  10 Q. In the academic community at large, not focused  11 simply on Harvard, would you agree that academic writing  12 for peer-reviewed journals is the most likely kind of  13 writing that would assist in someone getting tenure?  14 A. I think that has been the standard path for most  15 people for a long time. In reviewing the letters about  16 my candidacy, I was pleased to see some of these letter  17 writers remark on how different I was.  18 One letter said, Ben doesn't take the safe path.  19 Another said, Ben has the skills and the determination  20 to do the difficult work that academics are capable of,  21 but don't care to do.  22 I appreciated those letter writers recognizing  23 that what I was doing was valuable, was difficult,  24 should be given some kind of credit, if only a paragraph</p>	Page 281

<p style="text-align: right;">Page 282</p> <p>1 in their letter, because, yes, it is not published in 2 scholarly journal.</p> <p>3 Q. You have published some of that kind of material 4 that you describe as academic writings, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Could you give us a brief summary of what those 7 have been?</p> <p>8 A. Sure. I have published theory, which is to say 9 using economic theory, economic reasoning, to address 10 practical questions. I have published empirical 11 economics, where some set of data is analyzed. Those 12 are the two main forms of economic writing that I have 13 published in scholarly journals.</p> <p>14 Of course, I have also published in a couple of 15 other disciplines, a little bit of law, a little bit of 16 marketing, what have you.</p> <p>17 Q. How many peer-reviewed articles and top journals 18 have you published?</p> <p>19 A. I guess it depends on how you count top journals.</p> <p>20 Q. How would you count?</p> <p>21 A. The most recent timing, which I was asked to 22 consider the question, was by UC Berkeley, which was 23 evaluating my candidacy. Which told me that for their 24 purposes, they count the AER and the quarterly journal</p>	<p style="text-align: right;">Page 284</p> <p>1 Q. Do you have them on retainer?</p> <p>2 A. I paid them a lump sum that was styled as a 3 retainer for an indefinite period and they let me know 4 when I need to pay them more.</p> <p>5 Q. Those are the individuals that are identified in 6 your interrogatory answer; correct?</p> <p>7 A. I think they are identified in the interrogatory, 8 yes.</p> <p>9 Q. They haven't told you yet that their retainer is 10 used up?</p> <p>11 A. That's true, they have not.</p> <p>12 Q. So they are still on the payroll?</p> <p>13 A. I guess that is one way to think about it.</p> <p>14 Q. We looked at the article from Forbes. You also 15 received questions about your BlinkX post from the New 16 York Times. Is that correct?</p> <p>17 A. I don't remember actually. There were lots of 18 questions. If you have an email that says so, I'm sure 19 it's genuine. I would just want to look at it to 20 refresh my recollection.</p> <p>21 (Document marked as Exhibit No. 105 for 22 identification.)</p> <p>23 BY MR. MURPHY:</p> <p>24 Q. With respect to Exhibit 105, is this an exchange</p>
<p style="text-align: right;">Page 283</p> <p>1 of economics, two journals, of which I had published 2 once each, as, quote/unquote, top journals. And they 3 said I had those two. They rejected my candidacy on 4 that basis, because they said their absolute minimum was 5 three in that list of journals.</p> <p>6 Q. AER is American Economic Review?</p> <p>7 A. That's correct.</p> <p>8 Q. In Exhibit 104, you criticize BlinkX for having 9 several publicists working on this behind the scenes.</p> <p>10 Why did you criticize BlinkX for doing that?</p> <p>11 A. I would have preferred to discuss the substance 12 of the findings, which I thought were serious 13 allegations. They were provably true or provably false. 14 They were falsifiable, so let's have a scientific 15 discussion about what is actually occurring. And 16 instead they wanted to talk about kind of everything 17 except that.</p> <p>18 Q. Do you have publicists working on this matter?</p> <p>19 A. I have engaged publicists on this matter, but I 20 don't think they are doing anything.</p> <p>21 Q. Have they done anything?</p> <p>22 A. I think they suggested some journalists that I 23 could talk to at the outset of the matter. Gave me some 24 names, email addresses, and phone numbers.</p>	<p style="text-align: right;">Page 285</p> <p>1 that you had with an individual named Mark Scott?</p> <p>2 A. Seems to be, yes.</p> <p>3 Q. Do you recall this?</p> <p>4 A. I really don't.</p> <p>5 Q. This is January 31, 2014, at 8:09. He writes, Hi 6 Ben, good to speak to you just now. I wanted to confirm 7 whether the client you wrote the piece for holds a stake 8 in BlinkX.</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. You wrote back, I don't know. I didn't ask and 12 they didn't offer. Incidentally, they requested the 13 research without knowing what I would find.</p> <p>14 What did you mean by that?</p> <p>15 A. I think I meant exactly what it says. Could you 16 maybe restate the question?</p> <p>17 Q. Sure. How did you know they didn't know what 18 you'd find?</p> <p>19 A. I guess they could have somehow have known what I 20 would find. If they knew the underlying practices of 21 BlinkX better than I did, they could, in principle, have 22 known. But what they represented to me was that they 23 didn't know and that they wanted my assistance in order 24 to check.</p>

<p style="text-align: right;">Page 286</p> <p>1 Q. And you'd agree that what you told Mr. Scott, in 2 Exhibit 105, is inconsistent with what you told Mr. 3 Howes in Exhibit 101, where you said, After I finish the 4 research for them, I sought and received their 5 permission to write this up for the web?</p> <p>6 MS. O'MEARA-COSTELLO: Objection.</p> <p>7 A. I'm not sure if it's inconsistent. I told you 8 already what I wrote to Mr. Howes in that respect. It 9 seems to be just wrong. I got some of the timeline 10 wrong.</p> <p>11 Q. Mr. Scott writes back, Thanks. And would you 12 have published the research on your own if they hadn't 13 paid you to write it?</p> <p>14 And you responded, Had it not been for their 15 request, I don't know if it would have been priority for 16 me to work on these questions right now.</p> <p>17 Did I read that correctly?</p> <p>18 A. That's what it says.</p> <p>19 Q. And the article that Mr. -- Mr. Scott did write 20 an article that was published in the New York Times; 21 correct?</p> <p>22 A. I don't recall. I would need to see it.</p> <p>23 (Document marked as Exhibit No. 106 for 24 identification.)</p>	<p style="text-align: right;">Page 288</p> <p>1 thought they were gone and instead they are back and 2 they are doing this stuff just as much as ever.</p> <p>3 I was frustrated that what I had been working on 4 previously hadn't had the benefits for the public that I 5 had hoped it would have.</p> <p>6 Q. As the days progressed after the publication of 7 the blog post, did the controversy surrounding that blog 8 post increase?</p> <p>9 A. I think that is a fair summary, correct.</p> <p>10 Q. If you take a look at Exhibit 6 of the FRB report 11 at page 17 -- I'm sorry, that is not right.</p> <p>12 Do you recall that HBS received an inquiry from 13 Bloomberg about the blog post?</p> <p>14 A. Yes.</p> <p>15 Q. Tell me what you recall about that?</p> <p>16 A. There is a journalist, I think the last name 17 Hechinger, who had questions about some aspects of the 18 blog post and HBS's view about my activity in writing 19 that post.</p> <p>20 Q. Was it of concern to you that Bloomberg was 21 contacting HBS about your blog post?</p> <p>22 A. I wouldn't say it was a concern, no.</p> <p>23 Q. If you could turn to page 15757 of Exhibit 6. 24 Do you see that Mr. Hechinger wrote to Jim</p>
<p style="text-align: right;">Page 287</p> <p>1 BY MR. MURPHY:</p> <p>2 Q. I'm showing you what has been marked as 3 Exhibit 105. Do you recognize this as -- 106 -- pardon 4 me -- as a New York Times article. Headline, Critic of 5 Online of Ad Firm BlinkX is part of the controversy?</p> <p>6 A. I see the place of publication and the title. I 7 don't really remember it specifically. I see what it 8 appears to be.</p> <p>9 Q. Initially, is it fair to say, that you were 10 hoping that your blog post about BlinkX would get wide 11 attention?</p> <p>12 A. Yes.</p> <p>13 Q. Why?</p> <p>14 A. I think anyone writing wants to be read. No 15 point playing to an empty room. But for this line of 16 work specifically, there was something about the 17 internet that I thought was broken. I thought I had a 18 distinctive set of skills that could help fix it. I was 19 proud of the skills that I had brought to bear.</p> <p>20 I was proud of the decade I had spent working on 21 these issues. I was a little bit frustrated that this 22 company that I thought had been liquidated in bankruptcy 23 caused by FTC proceedings caused by my complaint had 24 come back, as far I knew, literally from the dead. I</p>	<p style="text-align: right;">Page 289</p> <p>1 Aisner, Hi Jim, were you ever able to get a copy of the 2 HBS conflict of interest policy? Also, I realize I may 3 owe you a link to the blog that I was asking about.</p> <p>4 And then there is a link to your blog.</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Jim Aisner?</p> <p>8 A. He's a staff in HBS who specializes in some 9 aspect of communications and public relations.</p> <p>10 Q. Is he a person that you dealt with before early 11 February 2014?</p> <p>12 A. Yes, occasionally.</p> <p>13 Q. If you go to page 15750, you see that Mr. Aisner 14 responded to Mr. Hechinger by providing a copy of the 15 conflict of interest policy. Correct?</p> <p>16 A. I see that.</p> <p>17 Q. As far as you know, is that a true and accurate 18 copy of the policy?</p> <p>19 A. The formatting looks quite damaged as presented 20 here. But I have no reason to think the text is messed 21 up.</p> <p>22 Q. Then Mr. Hechinger responded by saying, Thanks. 23 This is helpful. My main questions are: What is 24 Harvard Business School's policy about professors</p>