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1 COMMONWEALTH OF MASSACHUSETTS
2 SUPERIOR COURT
3 SUFFOLK, SS
4 BUSINESS LITIGATION SESSION

5
6 BENJAMIN EDELMAN,
7 Plaintiff,
8 v. Civil Action No.
9 PRESIDENT AND FELLOWS OF HARVARD 2384CV00395-BLS2
10 COLLEGE,
11 Defendant.
12

13 DEPOSITION OF
14 STUART GILSON
15 DATE: Tuesday, April 29, 2025
16 TIME: 9:37 a.m.
17 LOCATION: Zalkind Duncan & Bernstein LLP
18 65A Atlantic Avenue
19 Boston, MA 02110
20 REPORTED BY: Robert Lombardi
21 JOB NO.: 7309585
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23
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<p>1 evidence, and this speaks to my initial reaction to 2 the incidents that were addressed in the first FRB 3 report.</p> <p>4 This -- I went in not feeling terribly 5 positive about what I read about the Chinese 6 restaurant and the -- the Blinkx incident, but I 7 didn't go in with a view that as a result of that, I 8 had already concluded how I would opine on the 9 questions that we were asked to consider as part of 10 the second FRB review.</p> <p>11 BY MR. RUSSCOL:</p> <p>12 Q Because the second FRB review wasn't 13 designed to opine on what happened in the Sichuan 14 Garden or Blinkx incidents; right?</p> <p>15 A Not directly. I mean, it was -- we -- we 16 obviously had to consider that as part of evaluating 17 whether or not he had been able to understand over the 18 two-year sort of probationary period, if you will, 19 what certain people may have found problematic about 20 some of his actions or choices or whether or not he 21 had changed his behavior over that two-year period and 22 whether we had confidence that he was likely to 23 continue to exhibit changed behavior going forward if 24 promoted.</p> <p>25 Q So were your priors after reading the 2015</p>	Page 38	<p>1 I had any priors in terms of me having, you know, 2 decided how I would come out on what the FRB two was 3 asked to consider.</p> <p>4 I mean, I had initial impressions of 5 the case because all I had seen was what was in the 6 public domain and then the first FRB report. Okay. I 7 hadn't discussed this with anybody. I had no other 8 evidence to go on, nor had I really in depth 9 considered what may have happened over those two years 10 between 2015 and 2017.</p> <p>11 So I came in -- I -- again, as I said, 12 I was mortified with what I was learning, but that in 13 my view didn't color my judgment about, you know, 14 going forward because we were not asked to evaluate or 15 re-litigate what happened as it was -- as was 16 discussed in the 2015 report.</p> <p>17 That was a starting point, but we were 18 tasked with something completely different -- was 19 based on our evaluation of the evidence, did we think 20 that his behavior had changed and was likely to remain 21 changed? And was he made aware or was he able to 22 become aware of what it was that might've troubled 23 other people or might've created negative reactions in 24 other folks?</p> <p>25 You know, despite how well-intentioned</p>	Page 40
<p>1 FRB report that you were mortified about Mr. Edelman's 2 behavior?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: Can you repeat the 5 question, please?</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Were your priors after reading the 2015 FRB 8 report that you were mortified by Mr. Edelman's 9 behavior?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: Well, I don't know if I 12 would describe it as my priors. It was -- it was my 13 reaction, you know, to reading that. I mean, I was 14 getting, you know, taunted by my relatives in Canada. 15 I mean, this -- this was all over the airwaves.</p> <p>16 And, you know, it brought significant 17 negative publicity to the school and just -- just a 18 terrible public reaction. That -- that was how I was, 19 you know, going into the case because that's the only 20 information that I had to go on.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q So did you have any priors after you read 23 the 2015 FRB report regarding Mr. Edelman?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: Well, I -- I don't think</p>	Page 39	<p>1 he may have been in making the particular actions or 2 choices that he did, did he understand that other 3 people might have a different reaction to that and a 4 negative reaction?</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q After reading the 2015 FRB report, did you 7 read Mr. Edelman's reflections document?</p> <p>8 A Yes, I did.</p> <p>9 Q What was your reaction to that document?</p> <p>10 A It was -- it was a mixed reaction, as I 11 recall, and there were -- you know, there 12 were -- there were parts of it where he had obviously 13 appeared to sort of take steps to try to change his 14 behavior or to learn from the experience -- Blinkx and 15 the Chinese restaurant.</p> <p>16 There were other parts of the document that 17 I didn't find to be terribly satisfying 'cause I 18 didn't find that it gave me insight into how he made 19 his decisions or, you know, why did he make those 20 decisions that had, you know, such negative 21 consequences for the school or staff or faculty within 22 the school.</p> <p>23 Q What does the word "priors" mean to you?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: Can you use it in a</p>	Page 41

<p style="text-align: right;">Page 74</p> <p>1 A I think it's what was turned over to you 2 guys as part of discovery. 3 Q Did you provide that Word document to Jean 4 Cunningham? 5 A Well, to her or somebody on the committee, I 6 assume, because excerpts of those transcripts were 7 included in the second report, so it seems likely that 8 I would've, yeah, whether to Jean or somebody else. 9 Q Did you type those excerpts from the 10 interviews into the report? 11 A No. 12 Q Do you remember whether you provided the 13 printed notes to either Jean Cunningham or someone 14 else on the committee by email or in paper form? 15 MR. MURPHY: Objection. 16 THE WITNESS: I'm sorry. I don't -- I 17 don't -- I just don't remember. 18 BY MR. RUSSCOL: 19 Q Were the -- strike that. Was the process 20 of -- 21 A Excuse me. 22 Q Was interviewing witnesses part of the FRB's 23 process of gathering evidence? 24 A I assumed it was because the -- the idea 25 that we would interview people was kind of raised --</p>	<p style="text-align: right;">Page 76</p> <p>1 them along with, you know, all other emails that are 2 past a certain shelf date. And I don't remember when 3 that time would be specifically. 4 BY MR. RUSSCOL: 5 Q But you weren't deleting FRB emails while 6 the FRB was still conducting business, were you? 7 MR. MURPHY: Objection. 8 THE WITNESS: I mean, not -- not in any 9 kind of a systematic way. I mean, sometimes when 10 you're engaged in -- you know, I mean, as part of 11 managing my email traffic and the -- the volume -- you 12 know, sometimes you go back and forth five or six 13 times with somebody. 14 And if I have a -- the -- you know, if 15 I sort of think to do so, I might delete a bunch and 16 just keep the most recent one that has the whole chain 17 just to free it up so that I spare myself having to 18 delete, you know, millions of emails later, but I 19 don't do that in any kind of systematic way. 20 So, you know, were there a few emails I 21 might've deleted along the way? But not for any 22 reason other than to sort of, you know, manage 23 the -- the number of emails that they may have 24 been -- you know, I -- I may have thought they're 25 redundant. But, you know, I -- I don't remember</p>
<p style="text-align: right;">Page 75</p> <p>1 don't know if it was in the first meeting -- but I 2 understood that that's one thing that we would all be 3 doing and, you know, the effort in which we would all 4 be sharing. 5 Q While the -- strike that. Did you retain 6 all the emails you sent and received that pertained to 7 Mr. Edelman's FRB? 8 MR. MURPHY: Objection. 9 THE WITNESS: Well, I mean, after I was 10 asked to not delete any emails of any kind, you know, 11 you guys have everything that was -- was there. 12 Again, as part of my regular practice, I don't keep 13 emails for, you know, years and years and years and 14 years. And so once I was informed that there was a 15 lawsuit or that I should not delete anything, I 16 complied with that for sure. 17 BY MR. RUSSCOL: 18 Q So within the first couple of years after 19 Mr. Edelman's FRB had concluded, did you retain all 20 the emails that you sent and received that pertained 21 to the FRB? 22 MR. MURPHY: Objection. 23 THE WITNESS: Well, I mean, I -- I 24 would've immediately, and then there came a point, 25 apparently, where I would've, you know, not retained</p>	<p style="text-align: right;">Page 77</p> <p>1 doing -- you know, deleting any specific emails. 2 BY MR. RUSSCOL: 3 Q While the FRB was conducting its business, 4 did you believe that litigation was likely if 5 Mr. Edelman did not get tenure? 6 A No. 7 Q I'm going to show you a document that's been 8 previously marked as Exhibit 73. Looking at the large 9 paragraph at the beginning, didn't you tell the FRB in 10 June 2017 that you needed to be thoughtful from a 11 legal perspective? 12 A Where am I looking here? 13 Q The first large paragraph where it says 14 "Gilson." 15 A Let's see. Just give me a chance to read 16 it. And so what's your question, again? 17 Q Didn't you tell the FRB in June 2017 that 18 there was a need to be thoughtful from a legal 19 perspective? 20 A So I -- I don't remember saying those exact 21 words. This is a -- this is a transcript 22 or -- whoever was taking the minutes. It may have 23 been just referring to the fact that, you know, we're 24 not a legal tribunal. I do remember I was upset at 25 reading what happened with the Blinkx issue.</p>

<p>1 Q So the issue of outside activities was 2 brought up in the middle of the FRB review; right?</p> <p>3 A Well, no. I -- I think, you know, the issue 4 of outside activities was always, you know, front and 5 center of what the FRB was looking at because that was 6 part of -- or that was very much part of the concerns 7 that were the center of the first report.</p> <p>8 Since we were asked to evaluate whether 9 we -- based on the evidence, we saw compelling 10 evidence that Ben had changed his approach, I think, 11 you know, the -- the -- you know, understanding what 12 his outside activities were and his approach to 13 accepting outside activities was something that we 14 felt we were charged with looking at.</p> <p>15 Q So did the FRB ask Mr. Edelman for a full 16 accounting of his outside activities at the beginning 17 of the FRB process?</p> <p>18 A Not -- not in March. I think that request 19 came out in -- what was it, July -- July -- I think 20 that request may have gone out sometime in August.</p> <p>21 Q So I want to make sure I understand your 22 perspective on this. So Mr. Edelman's outside 23 activities were always something that the FRB wanted 24 to look into and consider, but the request for 25 information about that didn't go to Mr. Edelman until,</p>	Page 82	<p>1 A Apparently, we did. Yes.</p> <p>2 Q After the FRB was informed about the 3 American Airlines lawsuit, was there any discussion 4 about whether to incorporate that topic within the 5 scope of the FRB review?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: Can you repeat the 8 question again, please?</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q After the FRB learned about the American 11 Airlines lawsuit, was there any discussion about 12 whether that should be included in the scope of the 13 FRB review?</p> <p>14 A I -- I believe we did have that discussion.</p> <p>15 Q And in what format was that discussion? Was 16 it in person or by email or some other way?</p> <p>17 A It may have been a combination. I know 18 there were emails that I remember seeing that 19 certainly made a reference to the AA suit, American 20 Airlines suit. I assume we would've talked about it 21 had we -- if we had a meeting prior to meeting Ben, 22 I'm sure it would've come up.</p> <p>23 I just don't remember whether we had a 24 meeting. We learned about it early in July, and we 25 met Ben in -- I think in the middle of August. So</p>	Page 84
<p>1 you think, sometime in August?</p> <p>2 A Well, no. We were evaluating his outside 3 activities as we understood them, but I think what I 4 remember sort of triggered it in his March -- I think 5 the -- the explicit request for more information about 6 outside activities went out, I think, as a consequence 7 of learning about the American Airlines suit, which we 8 didn't really know very much about.</p> <p>9 And we were concerned about the potential 10 risks to the school that that kind of activity might 11 pose, and so we wanted to know more about that. I 12 think that's what triggered it.</p> <p>13 But, you know, an interest in what his 14 outside activities were was certainly there from the 15 very beginning. That was really what we were asked to 16 evaluate, so we had to be mindful of that.</p> <p>17 Q So did the FRB ask Mr. Edelman about that 18 when he was interviewed?</p> <p>19 A We did ask him about the American Airlines 20 suit, apparently. I don't remember specifically 21 asking that question in real time back then, given the 22 time that's passed, but we -- apparently, from what 23 documents I reviewed, apparently, we did ask him.</p> <p>24 Q When you interviewed him in person, you 25 asked him about the American Airlines lawsuit?</p>	Page 83	<p>1 assuming we had a meeting in between those two dates, 2 I assume we would've certainly discussed it.</p> <p>3 Q Do you know if you had a meeting between 4 those two dates?</p> <p>5 A I can't remember the dates of the specific 6 meetings.</p> <p>7 Q Do you recall whether the FRB met in person 8 in between the meeting at the end of June and when 9 Mr. Edelman was interviewed?</p> <p>10 A Yeah. You'd have to show me, you know, a 11 calendar or an email to refresh my memory, but I just 12 don't remember.</p> <p>13 Q Was there also a Wall Street Journal article 14 that was brought up that mentioned Mr. Edelman?</p> <p>15 A I think so, but I'd have to see the article 16 to be completely sure.</p> <p>17 Q So this document has been previously marked 18 as Exhibit 36.</p> <p>19 A Thank you.</p> <p>20 Q Is this an email thread that you were part 21 of in 2017?</p> <p>22 A Yeah. If you just give me a chance, 23 I'll -- I'll take a look at it here.</p> <p>24 Q Sure.</p> <p>25 A Apologies. Again, what's your question?</p>	Page 85

22 (Pages 82 - 85)

<p style="text-align: right;">Page 110</p> <p>1 Q Would it surprise you to learn that 2 Microsoft laid off its entire Windows Phone team in 3 May 2016 and stopped developing an operating system 4 around that time?</p> <p>5 A I had no knowledge of that.</p> <p>6 Q Do you think it's unreasonable for 7 Mr. Edelman to differentiate between areas where 8 Microsoft competes with Google and areas where 9 Microsoft doesn't compete with Google in making 10 judgment calls about what disclosures are appropriate?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: Well, as a, you know, 13 reasonable -- quote/unquote reasonable reader looking 14 at this now, I wouldn't know the details. And so I'd 15 say, well, just to be safe, I might disclose in both 16 cases because somebody like me, I -- I don't know 17 whether or not there's, you know, exact 18 overlap -- overlap like that in the businesses or not 19 at a particular time.</p> <p>20 And so I think our point was -- you 21 know, I think the committee's interpretation of the 22 rules was -- of the conflict of interest guidelines 23 was if there's any doubt that somebody might have, you 24 know, as -- as I have right now sitting here, the 25 appropriate thing to do would be to get the dean's</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: Based on firsthand 3 knowledge by whom? 4 MR. RUSSCOL: Witnesses. 5 THE WITNESS: No. of witnesses, but by 6 whom?</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q Was it important that the quotes be based on 9 the witnesses' firsthand knowledge?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: Well, I -- I recall that 12 the intention of including the -- the quotes or the 13 paraphrase was to capture what it was that the 14 witnesses or the -- the interviewees told each of us 15 separately.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q But the goal of including the quotes was to 18 make sure that the quotes reflected things that the 19 witnesses knew what they were talking about and not 20 repeating rumors or speculation. Is that fair to say?</p> <p>21 MR. MURPHY: Objection.</p> <p>22 THE WITNESS: I mean, I don't know that 23 we explicitly applied that screen, but I think it's 24 something that would've been front of mind in what we 25 excerpted.</p>
<p style="text-align: right;">Page 111</p> <p>1 permission or get feedback from the dean about "What 2 should I disclose?"</p> <p>3 It's just about asking a question of 4 the dean before deciding on one's own -- unilaterally 5 deciding on one's own what's appropriate.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Now, the criticism of the disclosures here 8 in the paragraph right after the bullet points is that 9 the reporting of disclosures is inconsistent. Did the 10 FRB consider whether there were differences among 11 these different articles that would justify treating 12 them differently for disclosure purposes?</p> <p>13 A I'm sorry. I was reading. You'll have to 14 repeat that.</p> <p>15 Q Did the FRB consider whether there were 16 differences among these articles that would justify 17 treating them differently for disclosure purposes?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: Yeah. I -- I don't 20 recall that I did. I don't know whether somebody else 21 in the committee might have, but --</p> <p>22 BY MR. RUSSCOL:</p> <p>23 Q Was it important that the quotes in the 24 final FRB report be based on firsthand knowledge of 25 witnesses?</p>	<p style="text-align: right;">Page 113</p> <p>1 I mean, the -- the idea was to sort of 2 convey kind of a balanced -- to the extent we were 3 able to, you know, provide a balanced sort of 4 perspective on both sides on the positive and the 5 negative.</p> <p>6 Because what struck us was that some 7 people were very positive about what Ben achieved, and 8 others were less so. And we felt we had to represent 9 both of those in the report.</p> <p>10 And we tried not to insert ourself into 11 deciding how much of one or the other to sort of 12 include. We tried to best we could sort of provide a 13 balanced perspective on both sides for readers of the 14 report to make their own judgements and to be 15 discussed in the appointments committee room.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q And by "balance," do you mean kind of equal 18 opportunity to positive and negative perspectives?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 THE WITNESS: Not kind of 21 a -- not -- not sort of anything, you know, based on 22 a -- sort of a numerical count.</p> <p>23 But we tried to sort of go through what 24 people said favorably and unfavorably about Ben and 25 then tried to make sure that we incorporated those,</p>

<p style="text-align: right;">Page 114</p> <p>1 you know, views from both sides in the report to kind 2 of capture overall, you know, what issues seem to be 3 on -- on people's minds, who we spoke to.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q I'm going to show you a document that's been 6 previously marked as Exhibit 64. Now, the first few 7 lines of this document, "Report well done. Shame to 8 invest so much time," do those capture things that you 9 said at the first FRB meeting in June 2017?</p> <p>10 A Yeah. I -- I have no -- I can't remember.</p> <p>11 Q Do you remember saying anything in that 12 meeting about a staff member in AMP who was emotional?</p> <p>13 A Yeah. I don't. I was -- I was teaching an 14 AMP at the time, but I don't remember making any 15 comment like that.</p> <p>16 Q Do you know what the line refers to, 17 "Jonathan Gruber caught on NBER"?</p> <p>18 A No.</p> <p>19 Q Then below that where it says "Arrogant, 20 intellectual arrogance, inability to consider other 21 viewpoints," do those things reflect your perspective 22 on Mr. Edelman at the end of June 2017?</p> <p>23 A Mine?</p> <p>24 Q Yours.</p> <p>25 A Yeah. I don't -- I don't know if it -- it</p>	<p style="text-align: right;">Page 116</p> <p>1 not what we were there -- we're not there to 2 re-litigate what happened back in 2015, but it was to 3 look for evidence that Ben has come to understand that 4 regardless of his good intentions, which nobody 5 questions, that some of his actions or choices could 6 be perceived negatively by others.</p> <p>7 And that could result in certain costs, 8 including reputational costs coming back, being 9 imposed on the school staff or -- or faculty. And so 10 is he cognizant that that is how his actions and 11 choices could be perceived? That's -- that's what 12 we're focusing on.</p> <p>13 And so that's a completely different matter 14 from whether we think he may have acted 15 inappropriately back in 2015, okay. I mean, the 16 judgment was made by the first FRB that he had, and 17 that's why he was given a sort of a probationary 18 period to kind of address those concerns that the 19 initial committee had.</p> <p>20 But that wasn't why -- you know, 21 that -- that's not at all how I viewed my -- my role 22 on the committee. It was to evaluate those three 23 specific questions.</p> <p>24 So it became -- I -- I learned a lot more 25 about Ben. You know, I didn't even know what Ben</p>
<p style="text-align: right;">Page 115</p> <p>1 does or doesn't. I don't remember speaking those 2 words, certainly. I mean, I kind of learned about Ben 3 over the course of our deliberations. As I mentioned, 4 I sort of started out feeling very negative about what 5 had happened in the Chinese restaurant and Blinkx.</p> <p>6 Very quickly, I think, as part of being 7 involved in this process, that mattered much, much 8 less to me because really, I started to realize I 9 needed to focus on the question that was -- the 10 specific question that was before the FRB, which is 11 have we seen evidence -- and we asked to assess, you 12 know, whether he understands the aspects of his 13 conduct regardless of intent that made them 14 problematic, whether there is sufficient evidence of 15 changed behavior, and whether there was a reasonable 16 expectation that your changed behavior will be 17 sustained in the future.</p> <p>18 So at the beginning of my involvement, you 19 know, I -- I fully admit I came in having read about 20 the Chinese restaurant, having experienced the 21 blowback myself personally, and reading about the 22 Blinkx incident, it did create, you know, negative 23 feelings. And that's how I sort of entered the 24 process.</p> <p>25 But I think I very quickly understood that's</p>	<p style="text-align: right;">Page 117</p> <p>1 looked like before I started sitting on the committee. 2 I came to understand that he is tenacious, that he 3 tended to, as a default, assume that his position was 4 probably right as opposed to somebody that might 5 disagree with him.</p> <p>6 Is that arrogance? I don't recall ever 7 using that term, so I don't know whether this was 8 attributed to me or somebody else. But I think we all 9 were aware that, you know, Ben was very tenacious in 10 his views and holding onto certain precepts and 11 certain views.</p> <p>12 That's one of the things that we understand 13 created conflicts with respect to what the first FRB 14 was looking at, and so we were sort of obviously 15 cognizant of that and, you know, were mindful of 16 whether or not that quality might still be at the 17 forefront and might still create similar kinds of 18 conflicts going forward.</p> <p>19 Q Did you believe that Mr. Edelman should've 20 been fired after the Blinkx incident?</p> <p>21 A My initial reaction is -- I think I, you 22 know, may have mentioned someplace -- was I was 23 surprised that -- that that was forgiven, and this was 24 sort of me not ever hearing of anything like this 25 being done before.</p>

30 (Pages 114 - 117)

<p style="text-align: right;">Page 118</p> <p>1 So I was -- I was pretty shocked, you know. 2 I mean, a hedge fund or hedge funds that specialize in 3 shorting stock of companies, and then, you know, Ben 4 does research for them.</p> <p>5 Granted, you know, they say, "We don't want 6 you to publish this," but I think a reasonable person 7 looking at this might conclude that the hedge fund 8 would certainly benefit from having this negative sort 9 of analysis of Blinkx being made public.</p> <p>10 And it was Ben's decision whether or not to 11 make it public. He wasn't explicitly paid for that. 12 But in terms of the optics and concern about whether 13 or not this might create blowback on the school or 14 create a negative impression, at least in some 15 people's minds, seemed pretty apparent to us that, 16 yeah, it could.</p> <p>17 And so it might've been -- it might've been 18 a sensible thing at the time to inquire with the dean, 19 "Do you think this might, you know, create some 20 blowback or have negative repercussions for the 21 school?"</p> <p>22 Q So was it your opinion as of the first 23meeting of the FRB that Mr. Edelman should've been 24 fired over the Blinkx incident?</p> <p>25 A I don't know that it was my opinion that he</p>	<p style="text-align: right;">Page 120</p> <p>1 Exhibit 73, which we looked at earlier. If these are 2 notes that Dean Cunningham took from the June 28, 3 2017, FRB meeting, do you have any reason to doubt 4 that they're accurate?</p> <p>5 A I -- I'm unable to affirm whether they're 6 accurate or inaccurate. You know, she's transcribing 7 in real time, so I -- I can't say whether or not she 8 captured accurately in any kind of transcription like 9 this done in real time -- you know, with all due 10 respect to our court reporter -- whether it's all 11 captured accurately or not.</p> <p>12 I know -- I have no reason to think that she 13 would've deliberately mischaracterized anything, but 14 whether she captured everything exactly as it was 15 spoken, I have no way of knowing.</p> <p>16 Q So did you tell the other FRB members that 17 you came into the report with priors?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: Yeah. I -- I don't 20 recall saying anything like that. I may 21 have -- possibly, I was referring to, you know, Ben's 22 prior behavior as documented in the first FRB report. 23 It doesn't sound like something that I would say, 24 that -- what -- that I came with -- came in with a 25 bias or priors.</p>
<p style="text-align: right;">Page 119</p> <p>1 should be fired. It was surprised that the FRB 2 had -- and the dean had decided to not act on that. 3 And then, you know, after we sort of got into our 4 deliberations as part of producing the second report, 5 it's pretty irrelevant for what I was asked to do, 6 right.</p> <p>7 Regardless of whether or not he should've 8 been fired or not fired, the fact of the matter is he 9 wasn't, and the dean and the FRB concluded that he 10 deserved a second chance. And it's not my place to 11 judge that. You know, what's done is done.</p> <p>12 And that's not -- I was tasked with doing. 13 I was not tasked with re-litigating what happened with 14 Blinkx. I was asked to evaluate as -- along with the 15 other committee members did he exhibit, you know, 16 meaningful change in his approach to how he thinks 17 about accepting, you know, assignments or conducting 18 his work.</p> <p>19 Q Looking a little further down on Exhibit 64, 20 there's the word "seething." Were you seething at the 21 reflection document that Mr. Edelman submitted to the 22 FRB in spring 2017?</p> <p>23 A No. I don't remember saying that. I don't 24 remember being seething.</p> <p>25 Q All right. Well, I'd like to look back at</p>	<p style="text-align: right;">Page 121</p> <p>1 That just wouldn't be a sensible thing 2 to say in a meeting like this, so possibly -- you 3 know, maybe it's a reference to prior behavior, you 4 know, as documented in the first FRB. I really can't 5 tell you. I don't remember saying that.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q So if Dean Cunningham recorded in this 8 document that you said you came to the report with 9 priors, you think she got that wrong?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: If she said that I said 12 that?</p> <p>13 MR. RUSSCOL: Yes. What --</p> <p>14 THE WITNESS: I mean, without there 15 being a audio recording, I can't say whether she's 16 right or wrong. I just don't remember saying anything 17 like that, and I -- and I honestly think I was 18 probably referring to -- you know, I -- I come in with 19 prior knowledge of what Ben had done before.</p> <p>20 But -- yeah. And -- and I don't recall 21 at all coming into this engagement with a clear cut 22 conclusion in mind about whether or not I would -- how 23 I'd address those or answer those questions that the 24 FRB was asked to consider. I hadn't yet -- I mean, 25 this is the -- you know, I hadn't heard all the</p>

<p style="text-align: right;">Page 122</p> <p>1 evidence yet.</p> <p>2 We were -- you know, we were discussing</p> <p>3 this in an active way all throughout the date on which</p> <p>4 the report was finally filed. One thing I sort of at</p> <p>5 a high level remember is that we were actively going</p> <p>6 back and forth over all these issues, you know,</p> <p>7 throughout all of our meetings.</p> <p>8 Nobody, including myself, had reached a</p> <p>9 firm conclusion, you know, early in this process.</p> <p>10 I -- I think we were all open to all information.</p> <p>11 This predates the disclosure of the American Airlines</p> <p>12 suit. That certainly caused some of us concern, but I</p> <p>13 think this was really an ongoing process.</p> <p>14 And our -- our views about this and any</p> <p>15 conclusions were still unformed, and -- and they</p> <p>16 were -- these were being developed -- you know, each</p> <p>17 of us individually as we considered the evidence as it</p> <p>18 came in. And based on our collective discussions and</p> <p>19 debating things going back and forth, these things</p> <p>20 evolved over time.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q Do you see in the middle of the paragraph</p> <p>23 the sentence "Understanding to be thoughtful from a</p> <p>24 legal perspective," and then that sentence ends "but</p> <p>25 think he's irredeemable"?</p>	<p style="text-align: right;">Page 124</p> <p>1 significantly changed and that there was no risk of,</p> <p>2 you know, further problematic decisions going forward.</p> <p>3 Q And would the statement that he's</p> <p>4 irredeemable be consistent with that open-minded</p> <p>5 approach that you described?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: Yeah. I -- I can't</p> <p>8 really answer because I don't -- yeah. I -- I can't</p> <p>9 honestly answer because I don't remember saying that.</p> <p>10 What I do remember is that I didn't come in -- I came</p> <p>11 in with negative feelings, again, based on what had</p> <p>12 happened in Blinkx and the Chinese restaurant.</p> <p>13 But I made a very deliberate point of</p> <p>14 focusing on what we were asked to evaluate as part of</p> <p>15 the second FRB review, and, you know, I -- I went in</p> <p>16 with the view of giving him the benefit of a doubt,</p> <p>17 that -- nothing to be gained by, you know, coming to a</p> <p>18 fixed conclusion at the beginning.</p> <p>19 We -- I -- I don't even think we'd</p> <p>20 interviewed people yet, so I'm still in the process of</p> <p>21 gathering information and forming my own thoughts.</p> <p>22 So regardless of how negative -- or,</p> <p>23 you know, regardless of how negative I may have felt</p> <p>24 about what had transpired based on what the first FRB</p> <p>25 report was evaluating, you know, what I do recall</p>
<p style="text-align: right;">Page 123</p> <p>1 A Uh-huh.</p> <p>2 THE REPORTER: Sorry. Is that a yes?</p> <p>3 THE WITNESS: I see it. I see it.</p> <p>4 Yes.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q So the statement is attributed to you that</p> <p>7 Mr. Edelman was irredeemable at that time; right?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: I don't remember saying</p> <p>10 that.</p> <p>11 BY MR. RUSSCOL:</p> <p>12 Q Did you believe that at the time?</p> <p>13 A I mean, no. What I remember thinking is</p> <p>14 that this is a very difficult case, that you have to</p> <p>15 be -- make a real -- make a point of making sure that</p> <p>16 you don't let what was discussed in the first FRB</p> <p>17 report color your judgment in coming to a conclusion</p> <p>18 that shows up in the second FRB report.</p> <p>19 Because we were not, again, asked to</p> <p>20 re-litigate what happened in the first FRB report.</p> <p>21 That's background information that's relevant,</p> <p>22 clearly. You can't ignore it.</p> <p>23 But we were tasked with something completely</p> <p>24 different, which is to, you know, evaluate whether, in</p> <p>25 our view, we were convinced that his behavior had</p>	<p style="text-align: right;">Page 125</p> <p>1 thinking is, "Okay. This is -- this is difficult.</p> <p>2 This is -- we got to take this seriously, and, you</p> <p>3 know, I'm not going to, you know, vote for</p> <p>4 conviction."</p> <p>5 You know, at the very beginning, the</p> <p>6 idea is we should be open. We should consider the</p> <p>7 evidence. We hadn't yet conducted interviews with</p> <p>8 people. We'd only begun our discussions in earnest</p> <p>9 about the merits and the issues around this case, and</p> <p>10 we had a lot of work to do. So I think everything was</p> <p>11 a work in progress.</p> <p>12 So I think I don't remember saying</p> <p>13 "irredeemable," and I think that does not characterize</p> <p>14 at all -- if -- if it were attributed to me, it does</p> <p>15 not characterize at all the view that I took with me</p> <p>16 going forward as part of the FRB process.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q So you're denying that you told the other</p> <p>19 FRB members that you thought Mr. Edelman was</p> <p>20 irredeemable on June 28, 2017?</p> <p>21 MR. MURPHY: Objection.</p> <p>22 THE WITNESS: Well, like I said, I</p> <p>23 could see these are attributed to me, but I don't</p> <p>24 remember saying that at all.</p> <p>25 //</p>

<p>1 BY MR. RUSSCOL:</p> <p>2 Q Are you denying saying that?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: I'm saying I don't remember saying it at all.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q So it's possible that you did say it?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I can't say if it's possible or not possible. I just don't remember.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q You don't remember one way or the other whether you said it?</p> <p>11 A I don't remember one way or --</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: I don't remember having said that.</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q Do you see in the third line that the statement is attributed to you "NBER-like qualities of arrogance"? What is NBER?</p> <p>16 A It's the National Bureau of Economic Research.</p> <p>17 Q Do you believe that the people there are arrogant?</p>	<p>Page 126</p> <p>1 there's that kind of doggedness and intensity, and I 2 was just trying to better understand what's going on 3 in his head.</p> <p>4 Q Did you express the opinion in that meeting 5 that Mr. Edelman was arrogant like what you're 6 describing for the NBER?</p> <p>7 A May have been. I mean, I think we make this 8 point in the -- in the second report that we were 9 hoping to see that when he says something or takes an 10 action that other people perceive negatively, we're 11 hoping to see evidence that he was open to their frame 12 of mind and their interpretation.</p> <p>13 And, you know, we sort of came out of this, 14 I think, noting that many times he -- he might give up 15 the argument, but he still thinks that he's right. Or 16 the -- at least that was the impression that was left 17 with us. I think we shared that collectively.</p> <p>18 So did I use the term "arrogance"?</p> <p>19 Possibly, again, you know, early in our evaluation, 20 but again, you know, we were hoping to see evidence 21 that when he's -- sort of takes certain actions or 22 makes certain choices that he understands that there 23 may be others out there who view the consequences of 24 those differently.</p> <p>25 And again, recognizing that, you realize</p>
<p>1 A No, not all of them, but there is -- you know, these are economists who have conferences and seminars, and certainly not -- not everybody who's in the NBER. But I think when one attends the seminars, there's a certain high level of confidence that many participants in these seminars have in their own views, and they're very aggressive in arguing points.</p> <p>2 And I think my sort of comment here was just trying to understand. Ben seems to be very tenacious in his viewpoints. It seems kind of, you know, consistent with the culture of the NBER, which is -- I think exhibits the same level of tenacity in terms of how people argue over ideas.</p> <p>3 People stick to their guns. They're -- they're very aggressive in arguing their points. Just trying to understand where Ben's coming from.</p> <p>4 So maybe it's just -- I thought, you know, it's interesting. There's sort of a consistency, you know. He's in the NBER. That kind of seems to be a characteristic that one observes many times when these -- these folks get together.</p> <p>5 I'm -- I don't intend to generalize 'cause I don't know everybody in the NBER. It's just been my observation when I do show up for conferences that</p>	<p>Page 127</p> <p>Page 129</p> <p>1 that there may be some doubt or uncertainty about how 2 your actions are going to be perceived, and so what 3 you should do is go to the dean and make sure that 4 those actions are consistent with the school's norms 5 and policies.</p> <p>6 Q Do you see that in this opening paragraph of these notes, the word "arrogance" or "arrogant" is attributed to you three times?</p> <p>7 A You mean in that first paragraph?</p> <p>8 Q Yes.</p> <p>9 A Yeah, I do.</p> <p>10 Q So did you use that word to describe Mr. Edelman in that meeting?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: Yeah. Well, you know, if I use it that many times, it may be what I felt, absolutely, at the beginning.</p> <p>13 MR. MURPHY: Can we talk about lunch?</p> <p>14 MR. RUSSCOL: Sure. Let's go off the record.</p> <p>15 THE REPORTER: Time is 12:59 p.m.</p> <p>16 Eastern. We're off the record.</p> <p>17 (Off the record.)</p> <p>18 THE REPORTER: Okay. Time is 1:54 p.m.</p> <p>19 Eastern. We're back on the record.</p>

<p style="text-align: right;">Page 198</p> <p>1 thought, you know, rather than me go and, you know, 2 recreate the wheel, I would just ask to my fellow 3 committee members, you know, "Just make sure that 4 we're portraying this accurately."</p> <p>5 Q We've talked a lot today about reputational 6 risk. Is it possible for an HBS professor to do good 7 scholarship that offends some subset of the 8 population?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: Usually, good scholarship 11 will offend half of the academic profession, so yes.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Should HBS professors avoid doing all 14 activities that might be controversial?</p> <p>15 A I mean, it's -- I assume -- without wanting 16 to generalize, it's probably in many cases a judgment 17 call, but there's -- there's nothing per se that's 18 wrong about doing controversial research. But, you 19 know -- you know, one wants to factor in if there are 20 any costs or, you know, risks created by the research.</p> <p>21 You know, it's -- and you could imagine, you 22 know, just hypotheticals, right, you know, various 23 kinds of medical research. Can imagine, you know, 24 controversial medical research that might be abhorrent 25 to the institution. And that -- that's not a parallel</p>	<p style="text-align: right;">Page 200</p> <p>1 attention to the school.</p> <p>2 Q What about a lawsuit alleging that American 3 Airlines overcharged passengers for baggage fees would 4 make it especially likely to cause reputational 5 blowback for Harvard Business School?</p> <p>6 A What is it that would?</p> <p>7 Q Yes.</p> <p>8 A Okay. So again, this is about -- you know, 9 we -- we basically had to engage in an exercise in 10 risk assessment, right, and we had to be convinced 11 that, yeah, there -- there could be potential risks 12 that are presented by doing the -- you know, bringing 13 a class action lawsuit.</p> <p>14 Reasonable people might disagree about what 15 the likelihood of those risks ever materializing are, 16 and some might think the risks are greater. Some 17 might think the risks are trivial or non-existent.</p> <p>18 But to the extent that there exist risks of 19 any kind, that, for us, was the trigger that, you 20 know, one needs to either, you know, get the guidance 21 or the permission of the Dean's Office if there's any 22 doubt, right.</p> <p>23 So for me personally, for example, I guess 24 thinking sort of more long term, and then one -- more 25 short term with respect to this, I -- I didn't know,</p>
<p style="text-align: right;">Page 199</p> <p>1 to what Ben is doing, obviously.</p> <p>2 But I'm just saying that as a general 3 matter, you know, should we allow controversial 4 research? Sure. But, you know, in a reasonable way, 5 you know, provided there aren't extenuating 6 circumstances that may give one pause about that 7 research.</p> <p>8 So it really depends on the kind of research 9 and the circumstances in which the research is being 10 done, what the nature of the controversy is. I -- I 11 think I'd want to know all the details of the 12 particular case.</p> <p>13 Q Are more members of the HBS community 14 employees of American Airlines or passengers of 15 American Airlines?</p> <p>16 A I would have to assume passengers.</p> <p>17 Q So is it fair to say that a lawsuit that 18 benefited American Airlines passengers would help more 19 members of the HBS community than it harmed?</p> <p>20 A That would depend, I guess. You know, 21 thinking about, you know, the economics of balancing 22 benefits and costs, it would depend on whether there 23 are any offsetting costs on the faculty, such as, you 24 know, reputational costs if that lawsuit were to blow 25 back and bring, you know, unwanted or negative</p>	<p style="text-align: right;">Page 201</p> <p>1 for example -- we didn't do our own due diligence on 2 this.</p> <p>3 But suppose that there was -- you know, 4 suppose United -- suppose American Airlines had a 5 relationship with the school in terms of, you know, 6 developing an executive program, for example, that 7 might be staffed by Harvard faculty.</p> <p>8 You know, if a faculty member were to bring 9 a class action lawsuit against American Airlines, 10 might management of American Airlines decide, "Well, 11 if they're going to sue us like this, with all the 12 public attention that it brings, maybe we don't want 13 to send our executives to Harvard classrooms"? Or 14 were there, perhaps, Harvard faculty that maybe were 15 doing research American Airlines, right?</p> <p>16 I mean, the nature of research at Harvard is 17 that you interact with companies on a very sort of 18 intimate basis, you know, visiting the company, 19 getting data from the company, and having interviews 20 with company executives in order to write case studies 21 or maybe to provide data that gets incorporated into, 22 you know, academic scholarship.</p> <p>23 And if news were to get out that somebody in 24 a Harvard faculty is suing American Airlines, could 25 that jeopardize those relationships? I mean, I don't</p>

<p style="text-align: right;">Page 202</p> <p>1 know whether those relationships existed, but to the 2 extent that that was a risk, that was concerning to 3 me.</p> <p>4 And then, I guess, this just might reflect 5 my paranoia about the media, but imagine 6 that -- and -- and again, I'm not passing judgment at 7 all, nor were my colleagues on the FRB passing 8 judgment on whether or not class action lawsuits are 9 an inappropriate form of consulting activity.</p> <p>10 But, you know, again, maybe perhaps 11 reflecting my view about risks, especially with the 12 media, that -- you know, if a series of class action 13 lawsuits were to be brought against major companies 14 over time, you know, even if, you know, Ben's Harvard 15 affiliation wasn't, you know, revealed, you know, 16 would it be possible for an enterprising reporter to 17 connect the dots and realize, "My gosh. There's this 18 one individual who's bringing all these lawsuits 19 against the university"?</p> <p>20 Would that blow back and result in negative 21 publicity? I -- I don't know, but in my judgment, do 22 I think it's a risk? I think you'd find that the 23 other members of the committee felt similarly. Yeah.</p> <p>24 What if it happens? We don't know that it's 25 likely to happen, but I think we better -- you know,</p>	<p style="text-align: right;">Page 204</p> <p>1 correspondence I may have seen prior to our 2 deposition -- I guess we interviewed Max.</p> <p>3 And as I'm trying to sort of recollect 4 events way back then, I think we may have spoken to 5 him. I don't remember specifically what we would've 6 asked him or how the meeting went, so it's kind of a 7 vague memory at this point. But I -- I understand 8 that we -- we did talk to him. It would've made 9 sense, I guess.</p> <p>10 Q To the extent that there was a concern about 11 jeopardizing relationships with American Airlines, 12 wouldn't the same concern have applied to Professor 13 Bazerman as to Mr. Edelman?</p> <p>14 A The same concern that undertaking this 15 lawsuit might cause blowback from the company?</p> <p>16 Q Yes.</p> <p>17 A Yeah. It could be a concern. It -- it's 18 sort of in a different context, right, because the FRB 19 was evaluating a junior faculty member who was coming 20 up for tenure. You know, Max is already a full 21 professor, so there was that -- you know, there's a 22 different context there. But -- but as a principle, 23 you're -- yeah, I agree.</p> <p>24 Q At the end of Exhibit 77, there's some 25 discussion of whether Mr. Edelman met the school</p>
<p style="text-align: right;">Page 203</p> <p>1 as part of exercising sound judgment about managing 2 the risks in this case, it would make sense probably 3 to consult the dean just to see whether or not, you 4 know, he has concerns.</p> <p>5 Q And with respect to the hypothetical concern 6 you mentioned about HBS having a relationship with 7 American Airlines, no one from the HBS did any due 8 diligence to see if that hypothetical risk was 9 actually relevant, did they?</p> <p>10 A I don't know who or -- who may have or may 11 not have done due diligence. We didn't on that, on 12 the -- on the FRB.</p> <p>13 Q Did you ask Mr. Edelman if he did any due 14 diligence on that?</p> <p>15 A Yeah. Unfortunately, I just don't remember.</p> <p>16 Q Did you ever discuss that question with Paul 17 Healy or Nitin Nohria?</p> <p>18 A I didn't interact with Paul or -- or Nitin. 19 I interacted with Nitin after the appointments 20 committee meeting was held a few months later, but I 21 never interacted with either gentleman while the 22 committee was in session or progress.</p> <p>23 Q Did you ask Professor Bazerman about that?</p> <p>24 A So I -- I understand from some of the email 25 correspondence, whether it was -- I think it was email</p>	<p style="text-align: right;">Page 205</p> <p>1 standards for collegueship, and you proposed 2 softening the last sentence because you acknowledged 3 that Mr. Edelman had arguably been a good colleague to 4 a number of his colleagues; right?</p> <p>5 A Let me see here. And I'm sorry. Can you 6 repeat the question, then, just so I'm --</p> <p>7 Q You proposed softening the last sentence 8 because you acknowledged that Mr. Edelman had arguably 9 been a good colleague to a number of his colleagues; 10 right?</p> <p>11 A Correct.</p> <p>12 Q So you thought it overstated things to say 13 that the FRB struggled to find evidence that 14 Mr. Edelman met the school's standards for 15 collegueship full stop, wouldn't you say?</p> <p>16 A Well, I think I was sort of recognizing here 17 that there are different dimensions to how one defines 18 and evaluates collegueship, and so to use a single 19 term to describe all of that, I -- I think, you know, 20 what we kind of concluded in the report, that, you 21 know, there was mixed evidence. And that's what was 22 kind of -- that's what we kind of, you know, grappled 23 with.</p> <p>24 In certain respects, you know, Ben's 25 way -- the way in which he conducted himself with</p>