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COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS

BENJAMIN EDELMAN,

Plaintiff,

Civil Action No.  
2384CV00395-BLS2

V.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE,

Defendant.

DEPOSITION OF

PAUL HEALY

Zalkind Duncan & Bernstein LLP

65A Atlantic Avenue

Boston, MA 02110

June 13, 2025

9:30 a.m. - 4:27 p.m.

REPORTED BY: Lori J. Atkinson

Job No. 7309623

<p style="text-align: right;">Page 10</p> <p>1 A. I was.</p> <p>2 Q. You were a tenured professor; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. When did you become tenured at the business</p> <p>5 school?</p> <p>6 A. When I joined the business school from MIT in</p> <p>7 1988 I think it was.</p> <p>8 Q. In addition to the senior associate dean role</p> <p>9 that you held in 2015, did you have other administrative</p> <p>10 roles that you held at the business school?</p> <p>11 A. Yes.</p> <p>12 Q. What were those?</p> <p>13 A. I was head of the doctor program. I was the head</p> <p>14 of my department or unit. I was senior associate dean</p> <p>15 in charge of research and I was senior associate dean in</p> <p>16 charge of faculty development.</p> <p>17 Q. Do you know when you held the role of senior</p> <p>18 associate dean in charge of faculty development?</p> <p>19 A. Are you referring to the role when I was in</p> <p>20 charge of the promotions process? There were two</p> <p>21 somewhat different titles that I -- somewhat different</p> <p>22 roles that I had which had very similar titles.</p> <p>23 Q. I think that is what I am asking about. I want</p> <p>24 to distinguish between those roles and understand what</p>	<p style="text-align: right;">Page 12</p> <p>1 really a process that I oversaw.</p> <p>2 Q. When you say that all the subcommittees would</p> <p>3 meet to review the cases, is that what you call the</p> <p>4 standing committee?</p> <p>5 A. Correct.</p> <p>6 Q. Other than you in your role -- in that time</p> <p>7 period in 2014 to 2018, other than you in your role as</p> <p>8 senior associate dean in charge of promotions, who else</p> <p>9 had an role in the tenure process?</p> <p>10 A. The unit head for the candidate involved is</p> <p>11 involved. The subcommittee members, so there would be</p> <p>12 three subcommittee members who would be chosen by the</p> <p>13 dean, appointed by the dean, to oversee the review case.</p> <p>14 Ultimately all of the senior faculty would weigh in. So</p> <p>15 everyone -- let me backup.</p> <p>16 There would be -- faculty in the school would be</p> <p>17 asked to write letters. But ultimately everybody who</p> <p>18 was a senior faculty member would weigh into the</p> <p>19 decision, and they would have a vote on whether the case</p> <p>20 would proceed or not.</p> <p>21 Q. And it was that group of faculty who have a vote</p> <p>22 called the appointments committee?</p> <p>23 A. Correct.</p> <p>24 Q. What policies govern the tenure process at HBS or</p>
<p style="text-align: right;">Page 11</p> <p>1 they were and when you held each of them.</p> <p>2 A. The role of senior associate dean in charge of</p> <p>3 the promotions process, I held from -- I held from 2014</p> <p>4 to 2018. Then in 2022 and '23 I was senior associate</p> <p>5 dean in charge of faculty development. We redesigned</p> <p>6 the administration of the school. That was one of the</p> <p>7 roles that I took on but it was not senior associate</p> <p>8 dean of the promotions process.</p> <p>9 Q. As senior associate dean in charge of promotions,</p> <p>10 the role that you held from 2014 to 2018, what were your</p> <p>11 responsibilities in that role?</p> <p>12 A. So I oversaw the overall process. Everything</p> <p>13 from communicating with the candidates who are coming up</p> <p>14 for promotion about what was involved and how they</p> <p>15 should prepare and what was expected in terms of</p> <p>16 documents they prepare. Creating a subcommittee that</p> <p>17 would review their case, overseeing -- in association by</p> <p>18 dealing with the dean of the school. And then being a</p> <p>19 member of an ex officio member of that subcommittee. So</p> <p>20 I would attend all the meetings that they had.</p> <p>21 Then subsequent to that, the process was that all</p> <p>22 of the subcommittees would meet to review the cases and</p> <p>23 then finally they would go to the fellow appointments</p> <p>24 committee, which I would chair. The whole process was</p>	<p style="text-align: right;">Page 13</p> <p>1 did in the time period when you held that role?</p> <p>2 A. There is something called Green Book, which</p> <p>3 governs the standards for promotion. There's also a</p> <p>4 faculty review board procedure, which was separate</p> <p>5 policy and principle documents.</p> <p>6 Q. The faculty review board policy, was that</p> <p>7 applicable to all tenure cases or just some tenure</p> <p>8 cases?</p> <p>9 A. There were tenure cases where there were serious</p> <p>10 concerns raised about -- one of the requirements of --</p> <p>11 three requirements, there is a research requirement,</p> <p>12 teaching and case writing requirement and it's then</p> <p>13 whether your behavior is consistent with the community</p> <p>14 standards. And only candidates where there was some</p> <p>15 prima facie evidence that they were concerned that they</p> <p>16 weren't that they violated that standard. Only in those</p> <p>17 cases would the faculty review board meet.</p> <p>18 Q. I'm going to show you a document that has been</p> <p>19 previously marked as Exhibit 5. Is that the HBS Green</p> <p>20 Book that governs the promotions process?</p> <p>21 A. Yes.</p> <p>22 Q. And does this process that is outlined here talk</p> <p>23 about the standing committee?</p> <p>24 A. No.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Is the standing committee a part of the process 2 that was added at some point? 3 A. Yes. 4 Q. When did the standing committee become part of 5 the tenure processor? 6 A. 2014, I think it was. 7 Q. How was that change made? 8 A. There was -- I, in conjunction with another 9 colleague at the school, Youngme Moon, in discussions 10 with Nitin worked to review the processes and rules that 11 we used -- not the standards that we have, which is 12 really what is covered by the Green Book, but the 13 specifics of how we implement those standards, to make 14 sure that or see whether there are ways we can improve 15 the integrity and the, I guess, the fairness of the 16 process. 17 And one of the outcomes of that was the creation 18 of a standing committee to ensure there was more 19 consistency across the subcommittee, the subcommittee is 20 three people. They would have different views on where 21 the standards are and having a standing committee who 22 oversee the work, the subcommittee, who the idea was to 23 have a more consistency across cases. 24 Q. Whose idea was it to make the change?</p>	<p style="text-align: right;">Page 16</p> <p>1 to be quite honest. It looks as though it was sent to 2 maybe all faculty. 3 Q. In the second paragraph, you describe the 4 creation of a standing committee; right? 5 A. Correct. 6 Q. Does the standing committee that you describe in 7 this email have any other name or is it always just 8 referred to as the standing committee? 9 A. This is referred to as the standing committee, 10 there is another standing committee that is relevant in 11 appointment cases, but that is actually related to the 12 ladder faculty, not to -- non-ladder faculty, I should 13 say, rather than to the tenure track faculty. 14 Q. Is that the standing committee on professors of 15 management practices and term faculty? 16 A. Yes. 17 Q. Can you tell me about what that standing 18 committee does? 19 A. Which one? 20 Q. The standing committee on professors and 21 management practice and term faculty? 22 A. Yes. That committee reviews professors of 23 management practice and people who are candidates in 24 professors and management practice, to make the</p>
<p style="text-align: right;">Page 15</p> <p>1 A. It was a combination of people; myself, Youngme 2 and Nitin. But it was approved by the appointments 3 committee. 4 Q. When you say Nitin, you are talking about Nitin 5 Nohria who was the dean of HBS at that point? 6 A. Correct. 7 Q. I'm going to show you what we have previously 8 marked as Exhibit 116. I'm going to give you a minute 9 to look at that and ask you whether that is an email 10 that you sent regarding the change to incorporate a 11 standing committee in the tenure process? 12 A. It is. 13 Q. Do you know who this email was sent to? 14 A. I believe it was -- if I remember right, it was 15 sent to senior faculty at the school, tenure faculty. 16 Q. If you look at the bottom paragraph on the first 17 page, it says, The refinement does not affect what you 18 were asked to submit in your promotion package, so there 19 is no action you need to take on your part. 20 A. That may have been send to everybody then. 21 Q. Is it possible that it was sent to a larger group 22 or to a group that included people who were in the 23 process of applying for promotion? 24 A. I think -- I forget exactly who it was sent to,</p>	<p style="text-align: right;">Page 17</p> <p>1 recommendation to the appointments committee on their 2 appointment. 3 Q. Is it the appointments committee that would make 4 that decision the same appointments committee that votes 5 on tenure cases? 6 A. Yes. 7 Q. Is that committee routinely referred to as the 8 standing committee without more? 9 A. Yes. 10 That being the standing committee for the -- 11 Q. Professors of management practice and term 12 faculty? 13 A. Yes. That is also referred to as the standing 14 committee. It is a little confusing. 15 Q. In regular conversation, if you spoke about the 16 standing committee to someone, which committee would you 17 expect them to understand that you were referring to? 18 MR. MURPHY: Objection. 19 You can answer. 20 A. It depends on who you talk to. If you talk to a 21 tenure track faculty member, I think they would assume 22 the standing committee was the standing committee 23 comprising the subcommittees. The appointments process 24 that year -- if it was a professor of management</p>

<p style="text-align: right;">Page 18</p> <p>1 practice, they would assume it was a standing committee  2 for professor of management practice, I think.  3 Q. Are there documents that use just the words the  4 standing committee to describe the standing committee on  5 professors of management practice and term faculty?  6 A. I think there are, yes.  7 Q. What documents are those?  8 A. I think the principles and policies associated  9 with the creation of the FRB refer to the standing  10 committee of professors of management practice.  11 Q. Are there any other documents that you would term  12 just the word the standing committee to refer to the  13 standing committee on professors of management practice  14 and term faculty?  15 A. I don't know.  16 Q. How would I determine whether other documents are  17 using the term in that way?  18 MR. MURPHY: Objection.  19 A. Do I answer or no?  20 MR. MURPHY: You can always answer unless I  21 tell you not to answer.  22 A. I presume I would review the documents -- without  23 having gone back -- I have been retired for two years.  24 I haven't been doing this job for seven years. So I</p>	<p style="text-align: right;">Page 20</p> <p>1 May of 2015?  2 A. I believe so.  3 Q. Was the feedback that you received in the  4 meetings that you described documented?  5 A. Yes, I think it was. I think there was at least  6 notes taken on what the main concerns were, yes.  7 Q. What were the main concerns that prompted you to  8 consider creating a standing committee?  9 A. There had been a number of controversial cases in  10 the school and I think, unfortunately, in any promotions  11 process, given confidentiality of the process, there was  12 always questions about the outcomes that people have.  13 Even more so, if the case does not go to the full  14 appointments committee, because then very few people see  15 what the concerns were raised about the case, and there  16 have been several and concerns raised about whether a  17 small number of people might have an impact on the  18 outcome of cases. That is what prompted the questions  19 around whether it would be possible to have a standing  20 committee that might provide more consistency across  21 cases.  22 Q. Were there specific experiences that impact  23 tenure cases that made you think that a standing  24 committee would be useful?</p>
<p style="text-align: right;">Page 19</p> <p>1 don't remember. Frankly, there may be other documents,  2 but I don't know off the top of my head.  3 Q. Looking at the top paragraph in Exhibit 116, you  4 say, As I mentioned in my recent email, Youngme and I  5 have been doing extensive outreach across the faculty  6 to identify ways we might enhance the promotions process  7 and the experience of those participate in it.  8 What kind of outreach did you do?  9 A. I met with -- Youngme and I met with senior  10 engineer faculty to get their feedback and input on the  11 process and ways that the process could be improved.  12 Q. Do you recall when did that outreach process take  13 place?  14 A. I believe it was 2014.  15 Q. Was the process documented in any way?  16 A. We would have notes at the time on the feedback  17 that the faculty meetings would have provided. And then  18 in our meetings, any recommendations -- we would have  19 made recommendations, there would have been documents  20 associated with those and that would then have been  21 distributed to the faculty with comments. So there  22 would have been a document process in that.  23 Q. Would that document have been distributed to the  24 faculty for comment before you sent this email out in</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I don't remember. Specific cases, I think there  2 were, but I don't remember the specific cases or have  3 them off the top of my fingertips.  4 Q. So for professors of management practice, am I  5 right that they are not tenure track?  6 A. You are.  7 Q. Term faculty are also not tenure track; is that  8 right?  9 A. Yes.  10 Q. What is the difference between professors of  11 management practice and term faculty?  12 A. Professors of management practice have a longer  13 contract and they are technically given more  14 responsibility within the school, administrative  15 responsibility.  16 Q. Are people who are hired into the school of  17 professors of management practice eligible for  18 promotion?  19 A. No. Do you mean promotions of tenure professor?  20 Q. No. I mean any kind of promotion from the role  21 at which they enter in the school?  22 A. No. That is the highest level that they could  23 achieve.  24 Q. Are there people who are hired at a lower rank</p>

<p style="text-align: right;">Page 22</p> <p>1 who then can be promoted to professor of management 2 practice? 3 A. Yes. It could be senior lecturer, for example. 4 In fact, quite often, people who have had lots of 5 experience and practice would come in as a senior 6 lecturer and then they might be reappointed as professor 7 of management practice. 8 Q. What about term faculty, are they eligible for 9 promotion? 10 A. Promotion to professor of management practice. 11 Q. So the professor of management practice is the 12 highest rank, but term faculty or lecturers might seek 13 promotion to that rank? 14 A. They might. 15 Q. What is the promotion process to the rank of 16 professor of management practice like? 17 A. So there is -- it is a similar to that for tenure 18 track faculty in that the standing committee -- the 19 difference is it is the standing committee that deals 20 with all of those cases. There aren't nearly as many in 21 a given year; there might be one or two. 22 They would go through sort of an analogous 23 process where they would talk with a unit head about the 24 candidate. They would write to faculty on the school</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. And the professor of management practice 2 is considered to be a full professor? 3 A. Yes. But it doesn't have some of the same 4 privileges as a professor of tenure track full professor 5 has. 6 For example, professors of management practice 7 don't participate in the promotions process. 8 Q. So the standing committee on professors of 9 management practice and term faculty -- I'm going to 10 keep saying the whole thing just for clarity -- do 11 tenure faculty serve on that committee or is it made up 12 of professors of management practice? 13 A. Can you repeat the question? 14 Q. The people who serve on the standing committee on 15 professors of management practice -- 16 A. Yes, they are tenured full professors. 17 Q. They are tenured full professors. Does anyone 18 who is not a tenured full professor ever serve on that 19 committee? 20 A. No. 21 Q. So there is a subcommittee used, but it is a 22 subset of the members of the standing committee? 23 A. Correct. 24 Q. Does the subcommittee, again, in the process of</p>
<p style="text-align: right;">Page 23</p> <p>1 typically, to review the candidate's work cases, writing 2 that they have had and teaching. They might write to 3 one or two people outside of the school, not in 4 practice, in the business community. Then they would 5 write a report that would be reviewed by the 6 appointments committee. There would be a discussion of 7 that case and a vote taken. That would be then a vote 8 to recommend for or against promotion to go to the dean. 9 Q. It sounds like there is not a subcommittee 10 involved in that process? 11 A. There is a subcommittee. But the subcommittee is 12 taken from the standing committee. The standing 13 committee is a little larger than the subcommittee. 14 People would get -- there would be group of three people 15 taken from the standing committee, the standing 16 committee might be five people and they would take three 17 from that. 18 Q. Who serves on the standing committee for 19 professors of management practice and term faculty? 20 A. What specific faculty? 21 Q. Not necessarily specific faculty, but is there a 22 requirement that you have a certain rank to be eligible 23 to serve on that faculty? 24 A. You have to be a full professor.</p>	<p style="text-align: right;">Page 25</p> <p>1 promotion to professor of management practice management 2 prepare a report? 3 A. Yes. 4 Q. Who does that report go to? 5 A. It goes to the appointments committee. 6 Q. Is there any process where that report is 7 reviewed by the full standing committee or does it go 8 directly to the appointments committee? 9 A. No, it goes directly to the appointments 10 committee. 11 I should say, by the way, in my role I was not -- 12 I was not involved with overseeing the standing 13 committee for professors of management practice. I was 14 only involved in the cases for tenure track faculty. 15 Promotion to associate. Promotion to full professor. 16 Q. Was there someone else who had a role like yours 17 who did oversee that process? 18 A. No. There was a chair of the standing committee. 19 I think that person reported directly to the dean. 20 Q. Ultimately is it the dean who makes the decision 21 about promotion for someone seeking a promotion to 22 professor of management practice? 23 A. Any appointment is at the discretion of the dean. 24 Q. For understanding -- professors of management</p>

<p style="text-align: right;">Page 26</p> <p>1 practice are appointed for a term of years; is that 2 right? 3 A. Yes. 4 Q. What is the term usually? 5 A. I think it is five years with an opportunity for 6 the appointment. 7 Q. Who decides whether the professor of management 8 practice gets the appointment? 9 A. Similar process. There is a standing committee 10 with the subcommittee and they make recommendations to 11 the appointments committee. 12 Q. Who would make a recommendation to the dean? 13 A. To the dean. 14 Q. For term faculty, I understand that you said 15 earlier they are appointed for a shorter term of years; 16 is that right? 17 A. Yes. 18 Q. Is their reappointment process similar or 19 different? 20 A. It is much less, much less administrative 21 oversight. 22 It would be typically a unit head and then it 23 would attest to their teaching and role in the school 24 and that would then go through the appointment process</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Was the fact that Professor Edelman was going to 2 be a candidate for tenure in 2015, a factor in having a 3 standing committee in the tenure process that year? 4 A. No. 5 Q. Was it something that was discussed at all 6 between you and Youngme Moon and Nitin Nohria? 7 A. No. 8 MS. O'MEARA-COSTELLO: I'm going to show you 9 a document that we will have marked as Exhibit 132, so 10 we will mark this and then give it to you. 11 (Document marked as Exhibit No. 132 for 12 identification.) 13 BY MS. O'MEARA-COSTELLO: 14 Q. Can you identify what this document is? 15 A. It looks like a draft of a document that was sent 16 to the visiting committee, the board of advisors, and 17 the NAACSB, it is an accreditation organization for 18 business schools in the US, which talks about the 19 process that we have -- the process that we have gone 20 through in promotions and reviews. 21 Q. Is it fair to say that this is discussing changes 22 that the school has recently made to its promotions 23 process as of March of 2015? 24 A. Yes.</p>
<p style="text-align: right;">Page 27</p> <p>1 for ladder faculty, which I didn't have a role in. 2 Q. About how many faculty members at HBS are 3 candidates for tenure each year? 4 A. It varies widely. It could be as few as three; 5 it could be as many as seven or eight. 6 Q. As of May 2015, did you know Ben Edelman? 7 A. I did. 8 Q. How did you know him? 9 A. I knew him as another faculty member at the 10 school; I had interacted with him as another faculty 11 member. And then various administrative roles that I 12 had. 13 Q. Are you aware that his tenure case was scheduled 14 to be decided in 2015? 15 A. I found out about it when I took on the job. 16 Q. You took on the job in 2014; is that right? 17 A. Yes. 18 Q. So when you took on the job, you learned who was 19 upcoming as a candidate? 20 A. Well, I would learned who was upcoming for the 21 following year. It wasn't like a long-term, Here, is 22 the next five years. Here is the next year and then the 23 next year, it will be here are the candidates that are 24 up this year.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. When it uses the term standing committee in the 2 kind of last full paragraph on the page, is that 3 referring to the standing committee that was described 4 in Exhibit 116? 5 A. Yes, it is. 6 Q. And in the middle of that paragraph, it says, In 7 the first year of adoption, two standing committees were 8 formed. One with members of all associate promotion 9 subcommittees, which reviewed, discussed and voted on 10 all the associate cases, and the second that performed a 11 similar overview of all tenure cases. 12 Is the first year that it was adopted 2015? 13 A. Yes, I believe so. 14 Q. At the bottom of the page it says, The second 15 change was for cases heard by the full appointments 16 committee to be facilitated by the senior associate dean 17 for faculty development. 18 In 2014 to 2018, was that you or that was someone 19 else? 20 A. That was me. 21 Q. That was you. I'm a little confused about what 22 role you held at what point. I had understood that at 23 some point in 2022 to 2023, you were the senior 24 associate dean for faculty development.</p>

<p style="text-align: right;">Page 30</p> <p>1 A. So I think in 2022, 2023, there was a change in  2 administrative oversight at the school and there was a  3 new role created for the senior associate dean; I think  4 it was for research and faculty development as opposed  5 to just faculty development.  6 And under that role, which I was one of those  7 people appointed to that, you oversaw the faculty for  8 roughly a third of the faculty. But it was a much more  9 supportive role rather than overseeing the review  10 process. It is different roles. It is a little  11 confusing. I think there was a slight difference in  12 title, research and faculty development as opposed to  13 just faculty development.  14 Q. I want to make sure that I understand between  15 2014 and 2018, I had been thinking that your title was  16 senior associate dean for promotions?  17 A. No, I think it was faculty development.  18 Q. Okay. In that role --  19 A. I oversaw the promotions process.  20 Q. But the change that is being described here at  21 the very bottom of this page, where a case is heard by  22 the full appointments committee to be facilitated by the  23 senior associate dean for faculty development, is  24 discussing your involvement?</p>	<p style="text-align: right;">Page 32</p> <p>1 meeting, Can someone speak to the teaching side of the  2 case; just to raise it and get it started.  3 Q. On the second page -- I guess second paragraph on  4 the second page, it describe the creation of a faculty  5 review board at the school. Is that right?  6 A. Yes.  7 Q. Is that describing a new procedure as of  8 March 2016 when this document was produced?  9 A. Yes. It had been implemented before this, this  10 was a report that was given the following year.  11 Q. Was it implemented in 2015 for the first time?  12 A. Yes.  13 Q. Were you part of a working group that drafted the  14 FRB's principles and procedures?  15 A. I reviewed it, because of overlap where parts of  16 it, particularly the overlap with the promotions  17 process. But I wasn't part of the group that developed  18 it.  19 Q. Who was part of the group that developed it?  20 A. I'm not sure I remember everybody that was  21 involved. I'm pretty sure Amy Edmondson was involved  22 and I'm pretty sure Jean Cunningham was involved, but  23 I'm not sure beyond that.  24 Q. I'm going to show you what is previously marked</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Correct.  2 Q. What was the change that is being described, had  3 cases previously not been facilitated by the person in  4 your role?  5 A. No. They had been facilitated by the dean.  6 Q. What did it mean for you to facilitate the cases?  7 A. I would be the person who would lead the  8 discussion from the appointments committee on a  9 particular case. So which is a fairly -- I would call  10 -- I would be the person who would call on the faculty  11 who wanted to speak in the meeting. I also saw it as my  12 responsibility to make sure that all of the different  13 relevant topics were discussed in the meeting.  14 Q. So you are describing the meeting of the  15 appointments committee where members of the appointments  16 committee vote on tenure cases; is that right?  17 A. That's right.  18 Q. Is that also called the big room discussion?  19 A. Yes.  20 Q. What would you do to try to make sure that all  21 relevant topics were discussed?  22 A. So if, for example, there had been no discussion  23 of teaching, that is an important component about  24 promotion standards, I would ask at some point in the</p>	<p style="text-align: right;">Page 33</p> <p>1 as Exhibit 114.  2 Do you recognize what this document is?  3 A. Yes.  4 Q. What is it?  5 A. This looks like a presentation made to the  6 faculty or probably to the senior faculty regarding the  7 creation of the faculty review board.  8 Q. Do you know who made this presentation?  9 A. I don't remember.  10 Q. Look at page 3 of this document.  11 A. It says I was part of the working group. My role  12 was primarily to review and probably do more than  13 review, but help frame how this will be used for  14 promotions cases.  15 Q. So on page 3 it lists members of the working  16 group. Do you think that is an accurate list?  17 A. I would say, yes, I assume so.  18 Q. It doesn't conflict with your memory?  19 A. No, it doesn't. It jogs my memory.  20 Q. Did you participate in drafting the principles  21 and procedures that would govern faculty review board  22 cases?  23 A. Yes.  24 Q. If I say "FRB," do understand that to mean the</p>

<p style="text-align: right;">Page 34</p> <p>1 faculty review board?</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to show you what we have previously</p> <p>4 marked as Exhibit 26. And I'm going to ask you if you</p> <p>5 can identify it as the final version of the principles</p> <p>6 and procedures that govern the FRB?</p> <p>7 A. I'm assuming there were obviously a number of</p> <p>8 iterations of it, but I'm assuming this is the last one.</p> <p>9 Q. I believe on the last page there is a Bates at</p> <p>10 the bottom of the document that it was last revised</p> <p>11 April 2018. Would that support that this is probably</p> <p>12 the final version?</p> <p>13 A. My memory is not that good.</p> <p>14 Q. That is very fair.</p> <p>15 I will represent to you that we believe this is</p> <p>16 the final version of that document.</p> <p>17 A. Fair enough.</p> <p>18 Q. What role do you recall having in drafting this</p> <p>19 document?</p> <p>20 A. I remember being -- editing this document and</p> <p>21 having conversations with Jean more so than Amy, I</p> <p>22 think. I may have had conversations with Amy, too.</p> <p>23 Q. What do you recall about your conversations with</p> <p>24 Jean?</p>	<p style="text-align: right;">Page 36</p> <p>1 situations that might be considered in a promotions</p> <p>2 case, fairly to the candidate and to the school.</p> <p>3 Q. In the prior case that you described, what unit</p> <p>4 was that person in?</p> <p>5 A. [REDACTED]</p> <p>6 Q. Did you have concerns in that case about whether</p> <p>7 the [REDACTED] unit had given the person appropriate guidance?</p> <p>8 A. It was before my time as senior associate dean.</p> <p>9 I wasn't involved directly with the case. The case</p> <p>10 never came to the appointments committee, so I never saw</p> <p>11 the full information on the case.</p> <p>12 Q. When you took on the role as senior associate</p> <p>13 dean for faculty development in which you were</p> <p>14 overseeing promotions, was that case something that was</p> <p>15 discussed with you to -- you know, were you given</p> <p>16 information about it?</p> <p>17 A. So the person who was affected, the candidate,</p> <p>18 came to see me. I knew her quite well. She talked to</p> <p>19 me about her case and raised some of the concerns. So I</p> <p>20 was -- so I was aware from that standpoint, but I didn't</p> <p>21 know anything and still don't anything more about what</p> <p>22 specifically happened from the school standpoint.</p> <p>23 Q. When did she come and talk to you?</p> <p>24 A. I can't guaranty the accuracy on my date, but it</p>
<p style="text-align: right;">Page 35</p> <p>1 A. If I remember, it was about how we would</p> <p>2 implement something like this for the promotions and for</p> <p>3 the appointments cases.</p> <p>4 Q. What was the impetus for forming a working group</p> <p>5 and beginning to draft principles and procedures for an</p> <p>6 FRB?</p> <p>7 A. I think, first of all, there had been a</p> <p>8 controversial case in a few years prior that -- where</p> <p>9 community standards had come up and I think two concerns</p> <p>10 had been raised. One was there was no consistent</p> <p>11 advocacy of community standards across the school. We</p> <p>12 relied on senior faculty in the unit to apply those</p> <p>13 standards and to ensure that feedback was given to</p> <p>14 faculty if there was a concern raised.</p> <p>15 Second, we had no consistent way of evaluating</p> <p>16 cases or concerns about community standards violations</p> <p>17 and the promotions process, because -- first of all,</p> <p>18 they were unusual and they would typically be outsourced</p> <p>19 to the subcommittee and that subcommittee would really</p> <p>20 have had no experience about how to deal with them.</p> <p>21 So the concern was, Are we providing our junior</p> <p>22 faculty with feedback at the time that it is helpful for</p> <p>23 them to learn how to -- where concerns might have arisen</p> <p>24 and how to respond. And are we evaluating the</p>	<p style="text-align: right;">Page 37</p> <p>1 would be -- it could be [REDACTED] it could be early [REDACTED]</p> <p>2 Q. Before [REDACTED] is your best memory?</p> <p>3 A. Yes.</p> <p>4 Q. What concerns did she raise?</p> <p>5 A. She raised concerns about the feedback that she</p> <p>6 got that she was surprised about the issue had been</p> <p>7 raised. [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED] She might have also had questions about whether the</p> <p>11 -- she didn't know much -- there was a question about</p> <p>12 what the subcommittee had heard and whether that was --</p> <p>13 the fairness of that process.</p> <p>14 Q. Did she ask you to do anything after that</p> <p>15 meeting?</p> <p>16 A. No.</p> <p>17 Q. She didn't want you to look into what the</p> <p>18 subcommittee had heard?</p> <p>19 A. No. I, frankly, was not in a position to look</p> <p>20 into the subcommittees.</p> <p>21 Q. At that point, you were the senior associate dean</p> <p>22 for --</p> <p>23 A. For research.</p> <p>24 Q. -- for research?</p>



<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. She came and talked to you in your role as senior</p> <p>3 associate dean for research rather than when you were in</p> <p>4 the role as senior associate dean for promotions?</p> <p>5 A. I think so. I think that was the timing of it.</p> <p>6 And I knew her reasonably well, so I think she came to</p> <p>7 see more as a friend actually, than officially. Just</p> <p>8 someone to talk about her frustrations with.</p> <p>9 Q. When you then took on the role as senior</p> <p>10 associate dean for faculty development, did you do</p> <p>11 anything to look into what had happened in that case?</p> <p>12 A. No, but I did talk with the dean about how we</p> <p>13 might address the situation in a way that is going to</p> <p>14 create better input or feedback for junior faculty and</p> <p>15 also a better process, a fairer process, for dealing</p> <p>16 with them when they come up in appointments committee</p> <p>17 meetings.</p> <p>18 Q. And is the faculty review board process that is</p> <p>19 described in Exhibit 26, is that one outcome of that</p> <p>20 discussion?</p> <p>21 A. That is the outcome of that discussion, as best I</p> <p>22 can remember.</p> <p>23 Q. Was there anything else that you agreed to change</p> <p>24 about the promotions process in response to that set of</p>	<p style="text-align: right;">Page 40</p> <p>1 making between violations of community values versus</p> <p>2 collegiality?</p> <p>3 A. Yes. Community standards violations or community</p> <p>4 values violations would deal with issues like respect</p> <p>5 for members of the community, integrity and honesty.</p> <p>6 Protecting the reputations of the university and school.</p> <p>7 Collegiality, the way I was referring to it there</p> <p>8 was, Do you go to seminars? Do you come into school --</p> <p>9 are you collegiate? If someone gives you a paper to</p> <p>10 read, do you read it? I wanted to distinguish between</p> <p>11 the two.</p> <p>12 I didn't see the need to have the faculty review</p> <p>13 board deal with issues about whether you are coming to</p> <p>14 seminars. That is actually visible and something that</p> <p>15 colleagues could refer to.</p> <p>16 MS. O'MEARA-COSTELLO: I'm going to have</p> <p>17 this marked as Exhibit 134.</p> <p>18 (Document marked as Exhibit No. 134 for</p> <p>19 identification.)</p> <p>20 BY MS. O'MEARA-COSTELLO:</p> <p>21 Q. Is that email correspondence between you and Jean</p> <p>22 Cunningham and also Youngme Moon and Amy Edmondson?</p> <p>23 A. Yes.</p> <p>24 Q. The email at the bottom -- or the last -- the</p>
<p style="text-align: right;">Page 39</p> <p>1 concerns?</p> <p>2 A. No, I think that was it.</p> <p>3 Q. Given that the faculty member who had that</p> <p>4 experience was a member of the [REDACTED] unit, do you know</p> <p>5 whether anyone followed up with the [REDACTED] unit about what</p> <p>6 kind of feedback they had been giving her?</p> <p>7 A. I don't know.</p> <p>8 Q. Did you suggest to someone that there should be</p> <p>9 follow-up?</p> <p>10 A. I forget.</p> <p>11 MS. O'MEARA-COSTELLO: I'm going to mark</p> <p>12 this as Exhibit 133.</p> <p>13 (Document marked as Exhibit No. 133 for</p> <p>14 identification.)</p> <p>15 BY MS. O'MEARA-COSTELLO:</p> <p>16 Q. This is an email that you sent on March 8th, 2015</p> <p>17 regarding edits to the FRB document?</p> <p>18 A. Yes.</p> <p>19 Q. And in it you express that you wanted the FRB to</p> <p>20 be concerned with violations of community values rather</p> <p>21 than the less serious issue of collegiality. Is that a</p> <p>22 fair summary?</p> <p>23 A. Yes.</p> <p>24 Q. Can you explain the distinction that you are</p>	<p style="text-align: right;">Page 41</p> <p>1 email dated March 20th at 2:54 sent by you on the second</p> <p>2 page, you write about having problems with the use of</p> <p>3 the word "collegiality" in the document.</p> <p>4 Are you making the same distinction there that</p> <p>5 you just described to me?</p> <p>6 A. Yes.</p> <p>7 Q. At the time that the FRB policy was being</p> <p>8 crafted, did you already know that it would be used to</p> <p>9 review Ben Edelman's case?</p> <p>10 A. I suspected it would.</p> <p>11 Q. What things did you suspect at that point that it</p> <p>12 would be reviewing?</p> <p>13 A. I was aware of the BlinkX case and the Sichuan</p> <p>14 restaurant situation.</p> <p>15 Q. Looking at Exhibit 26, which is the principles</p> <p>16 and procedures for the FRB on the third page of this</p> <p>17 document. On the third page there is a section</p> <p>18 entitled, Notes on Promotions, Reviews, and</p> <p>19 Reappointments. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. The first bullet point says, The senior associate</p> <p>22 dean for faculty development will meet annually or as</p> <p>23 otherwise needed with the chair of the FRB and the</p> <p>24 executive dean for administration to discuss whether</p>

<p style="text-align: right;">Page 42</p> <p>1 concerns about conduct have been raised for upcoming  2 candidates for promotion, review, and reappointment.  3 Correct?  4 Q. Did you hold that meeting in 2015?  5 A. Yes.  6 Q. To be clear, you at the time were the senior  7 associate dean for faculty development; right?  8 A. I was.  9 Q. And Amy Edmondson was the chair of the FRB;  10 right?  11 A. Yes.  12 Q. Who was the executive dean for administration in  13 2015?  14 A. Jean Cunningham.  15 Q. Do you know when you held that meeting in 2015?  16 A. I don't remember a specific date. It would have  17 been before any of the cases had started.  18 Q. What starts a case? Is it when the person  19 submits their materials?  20 A. Yeah. We know who our candidates that are going  21 to be -- that are due to come up based on their -- how  22 long they have been at the school, they are given a term  23 contract. So we know who would be slated to come up the  24 next year in normal circumstances. I would then go to</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Did she say who had given her feedback about how  2 Ben was interacting with staff?  3 A. No.  4 Q. Did you also discuss the other candidates for  5 tenure?  6 A. With Jean?  7 Q. With Jean in that meeting.  8 A. Yes.  9 Q. Were concerns raised about any of them?  10 A. No.  11 Q. In 2017, did you hold a meeting with Jean  12 Cunningham and Amy Edmondson to talk about candidates  13 for tenure?  14 A. Yes.  15 Q. When was that meeting held?  16 A. It would have been the same time before the case  17 was started.  18 Q. Were concerns raised about conduct for candidates  19 in that year?  20 A. There was an understanding, which arose from the  21 2015 case that the faculty review board would reconvene  22 to reconsider whether Ben had learned from the feedback  23 that he had been given from the previous review.  24 So we all recognized that sort of had been</p>
<p style="text-align: right;">Page 43</p> <p>1 Jean. I went to Jean and said, These are the people who  2 are coming up next, are there going to be any concerns  3 that are likely to be raised? And how serious would  4 they be?  5 Q. Was Amy Edmondson also part of that conversation  6 in 2015?  7 A. No.  8 Q. Just you and Jean?  9 A. I am pretty sure it was just Jean and myself.  10 Q. What do you recall discussing with Jean at that  11 meeting in 2015?  12 A. I recall the only person whose name sort of lit  13 up on that was Ben's. And she mentioned three things;  14 one was the BlinkX situation around the disclosures and  15 conflicts of interest. The second, the Sichuan  16 restaurant situation where it had gotten a lot of  17 publicity and I think almost all faculty were aware of  18 it. And the third that she mentioned that she had  19 received a lot of noise from -- or concerns had been  20 raised within -- with her about Ben sometimes  21 interacting with staff and whether he was always  22 respectful of staff. She felt that all three were  23 relevant, where there were concerns about community  24 values.</p>	<p style="text-align: right;">Page 45</p> <p>1 something that was on the table for the prior several  2 years and no other candidate for tenure at that stage or  3 associate raised a red flag to Jean with regard to  4 community standard questions.  5 Q. Who was at that meeting? Was it you, Jean, and  6 Amy?  7 A. Just myself and Jean.  8 Q. In the other years in which you were senior  9 associate dean for faculty development, so I guess 2016  10 and 2018, did you hold that meeting in those years?  11 A. I did.  12 Q. Who did you meet with?  13 A. Jean.  14 Q. And not Amy Edmondson in any of those years?  15 A. No.  16 Q. In 2016 or 2018, were there concerns raised about  17 any of the candidates?  18 A. No.  19 Q. Were you informed about whether FRBs were  20 convened between 2014 and 2018 outside of the tenure  21 process?  22 A. I don't think so. I don't remember exactly.  23 Q. You don't remember anyone consulting with you  24 about an FRB in that time period other than Ben?</p>

<p style="text-align: right;">Page 66</p> <p>1 A. No.</p> <p>2 Q. This report is the full output from the FRB in</p> <p>3 2015; is that right?</p> <p>4 A. I believe so.</p> <p>5 Q. There wasn't another document that the FRB</p> <p>6 generated that was provided to the standing committee or</p> <p>7 the appointments committee?</p> <p>8 A. No.</p> <p>9 Q. Did you have any concerns that the excerpts that</p> <p>10 you had Rae Mucciarone prepare were not included?</p> <p>11 A. No.</p> <p>12 Q. Is it fair to say that in 2015 the question of</p> <p>13 Ben's adherence to community standards was the area in</p> <p>14 which his tenure case was most contentious?</p> <p>15 A. Yes.</p> <p>16 Q. Would it be fair to say it was the only area in</p> <p>17 which it was contentious?</p> <p>18 A. Yes.</p> <p>19 Q. As you sit here today, does it concern you that</p> <p>20 neither the subcommittee nor the FRB included the parts</p> <p>21 of the letters that it received that discussed his</p> <p>22 conduct and adherence to community values?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 68</p> <p>1 else?</p> <p>2 A. I don't remember. I might well have discussed it</p> <p>3 with the Dean, but I don't remember beyond that</p> <p>4 discussing it with anyone.</p> <p>5 Q. Do you recall any of the substance of a</p> <p>6 discussion with the Dean about the FRB's report?</p> <p>7 A. I really don't.</p> <p>8 Q. At any point, did you give the FRB any input on</p> <p>9 its report?</p> <p>10 A. No.</p> <p>11 Q. Ultimately what happened with Ben Edelman's</p> <p>12 tenure case in 2015?</p> <p>13 A. The standing committee met and reviewed all of</p> <p>14 the materials from the subcommittee, the letters that</p> <p>15 were received from the outsiders and insiders, the FRB</p> <p>16 report and the appendices and also Ben's response. And</p> <p>17 there was a heated discussion.</p> <p>18 And they -- there were enough people on the</p> <p>19 standing committee that pushed for or would have liked</p> <p>20 to have seen Ben given a chance to address the issues</p> <p>21 and show that he had learned from the experiences</p> <p>22 particularly with BlinkX and the Sichuan restaurant.</p> <p>23 But also with his interactions with the staff. And that</p> <p>24 because some of them were very recent, there was no</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Regarding the four internal matters; projectors,</p> <p>2 travel arrangements, case copyright, and business cards,</p> <p>3 did you have reaction to the FRB's treatment of those</p> <p>4 topics in this report?</p> <p>5 A. No.</p> <p>6 Q. Did you think those topics were important?</p> <p>7 A. Yes.</p> <p>8 Q. Were all of those topics addressed in the 2015</p> <p>9 report?</p> <p>10 A. For example, I think there was more emphasis on</p> <p>11 -- some more than others, I think more emphasis ---</p> <p>12 there was more emphasis on the projector and the travel</p> <p>13 areas and than the others. I just assumed that those</p> <p>14 were more relevant or egregious when they did the</p> <p>15 investigation.</p> <p>16 Q. Did you read Ben's reply to the report?</p> <p>17 A. Yes.</p> <p>18 Q. Did you think that his reply effectively</p> <p>19 addressed the questions about his conduct in internal</p> <p>20 matters at HBS?</p> <p>21 A. They give his perspective on it. I could also</p> <p>22 appreciate that his perspective might be different than</p> <p>23 those of the staff that he was directly with.</p> <p>24 Q. Did you discuss the FRB's report with anyone</p>	<p style="text-align: right;">Page 69</p> <p>1 opportunity for him to actually have that chance. They</p> <p>2 were hoping that the school might give him an extension</p> <p>3 with a chance to address the issues. And I went to the</p> <p>4 dean and the dean talked to Amy and the FRB and agreed</p> <p>5 that was the approach that we would take.</p> <p>6 Q. Was it a subset of people at the meeting or on</p> <p>7 the standing committee who were asking for that</p> <p>8 extension?</p> <p>9 A. It was not all.</p> <p>10 Q. Was there a vote held on whether that was the</p> <p>11 appropriate approach?</p> <p>12 A. I think there might have been a poll on how many</p> <p>13 people approved of that. I don't remember the details</p> <p>14 of it. It was not an official poll.</p> <p>15 Q. Were there particular people who were promoting</p> <p>16 the idea of extension?</p> <p>17 A. Yes, there were.</p> <p>18 Q. Who were those people?</p> <p>19 A. I don't remember. I do remember that there were</p> <p>20 points of view expressed in the room, usually quite</p> <p>21 strongly. But I can't remember who in particular were</p> <p>22 expressing points of view at this stage.</p> <p>23 Q. And at this stage no one from Ben's unit would be</p> <p>24 in the room?</p>

<p style="text-align: right;">Page 74</p> <p>1 not notes that anyone took, as far as we know, during  2 the standing committee meeting but it appears to be  3 notes of a discussion among the members of the FRB about  4 that meeting. I will give you a minute to read through.  5 I think my questions are just going to be about the  6 first page.  7 (Pause in proceedings.)  8 A. Okay.  9 Q. So, first of all, just generally, does reading  10 this document refresh your recollection about any part  11 of what happened at the standing committee meeting?  12 A. A little bit.  13 Q. How so?  14 A. Well, it does give me recollection that Forest  15 was involved certainly in the discussion of the FRB and  16 what its role was. And it reminds me that there was a  17 lot more support at the end for this notion of a  18 two-year extension that I had remembered so, yeah.  19 Q. Is there anything as you read -- looking  20 specifically at the first four paragraphs here on the  21 first page, which appears to be an account from Forest  22 Reinhardt to the other members of the FRB and what  23 happened at the standing committee meeting. Is there  24 anything in those four paragraphs that you think is</p>	<p style="text-align: right;">Page 76</p> <p>1 he changed. I sincerely hoped that he would be able to  2 do that.  3 Q. What did you think might be a way that he would  4 demonstrate positively that he had changed?  5 MR. MURPHY: Objection.  6 A. Nitin and I really sat down and tried to craft a  7 set of assignments that we thought would help him  8 demonstrate that, which I'm sure you're aware of.  9 Q. Those included teaching in the LCA teaching  10 group; is that right?  11 A. Yes.  12 Q. He was also asked to join the academic technology  13 steering committee?  14 A. Yes.  15 Q. Did he do both of those things?  16 A. Yes.  17 Q. Was he asked to do anything else?  18 A. Yes. He was asked to move his office to the  19 fourth floor of a different building with a different  20 set of faculty and build a different set of  21 relationships where people who might be given a slightly  22 different perspective on some of the activities that got  23 him into trouble before. He was given the option of a  24 coach, a mentor.</p>
<p style="text-align: right;">Page 75</p> <p>1 incorrect?  2 A. No.  3 Q. There is nothing that doesn't accord with your  4 memory about what happened at the meeting?  5 A. No.  6 Q. Ultimately I believe you said it was the dean's  7 decision to delay Professor Edelman's case for two  8 years?  9 A. Correct.  10 Q. When that decision was made, did you have an  11 opinion whether he was likely to be awarded tenure in  12 2017?  13 A. I certainly hoped that he would be able to  14 address the issues and get promoted, yes.  15 Q. What factors did you think would make the  16 difference as to whether he would be awarded the tenure  17 or not?  18 A. I think he had to demonstrate positively that he  19 learned and internalized the lessons from the BlinkX  20 case and the Sichuan restaurant case and his  21 interactions with the staff. And he couldn't simply do  22 nothing. The fact that there would then be quiet from  23 there on from Ben would be enough to convince people  24 that he changed. He had to demonstrate positively that</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Was the mentor voluntarily?  2 A. Yes, we didn't require it.  3 Q. It sounds like those are conditions that you and  4 Nitin Nohria had determined?  5 A. Yes.  6 Q. Was anyone else involved in that discussion?  7 A. I think Angela and probably Jean weighed in as  8 well, but maybe separately.  9 MS. O'MEARA-COSTELLO: I'm going to show you  10 what we will mark as Exhibit 140.  11 (Document marked as Exhibit No. 140 for  12 identification.)  13 BY MS. O'MEARA-COSTELLO:  14 Q. Have you ever seen this document before?  15 A. I'm trying to -- whether this is my handwriting  16 or not.  17 Q. I will represent my belief is it might be Angela  18 Crispi's. I'm curious whether these were notes that  19 were shared with you?  20 A. No, I didn't receive this, but it is very  21 consistent with my discussion on this topic.  22 Q. So this is dated December 10th, 2015 and on the  23 top right corner it says, Nitin, Amy, Paul, Forest Len.  24 Do you recall meeting with a group of people</p>

<p style="text-align: right;">Page 86</p> <p>1 associate dean?</p> <p>2 A. Not a lot.</p> <p>3 Q. Other than what you've already told me, do you</p> <p>4 have any memory of discussing Ben's situation with</p> <p>5 anyone else at HBS between 2015 and 2017?</p> <p>6 A. No, I don't remember.</p> <p>7 Q. Who is Valerie Porciello?</p> <p>8 A. Valerie is a staff member at the school and is</p> <p>9 someone who worked with me on the promotions process.</p> <p>10 And she had a significant administrative role and</p> <p>11 reported to both Jean and Angela on administrative</p> <p>12 matters within the school.</p> <p>13 Q. Did Valerie Porciello ever ask you about whether</p> <p>14 someone should talk to Ben about feedback from staff?</p> <p>15 A. I don't remember that.</p> <p>16 MS. O'MEARA-COSTELLO: I'm going to have</p> <p>17 this marked as Exhibit 142. Then I'm going to pass this</p> <p>18 over.</p> <p>19 (Document marked as Exhibit No. 142 for</p> <p>20 identification.)</p> <p>21 BY MS. O'MEARA-COSTELLO:</p> <p>22 Q. So I realize that you are not copied on the email</p> <p>23 on this chain. I will give you a minute to look them</p> <p>24 over and then I will have a couple of questions.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Do you remember discussions with Valerie about</p> <p>2 Ben's tenure case in 2017 more generally?</p> <p>3 A. No.</p> <p>4 If it was, it would have been procedural.</p> <p>5 Q. Who decided that the FRB would reconvene to</p> <p>6 review Ben in 2017?</p> <p>7 A. It was pretty much decided when the 2015 review</p> <p>8 was in and when he was given the extension.</p> <p>9 Q. Whose decision was it at that point?</p> <p>10 A. Nitin. I think we all recognized that there</p> <p>11 needed to be a follow-up review to ensure that -- to</p> <p>12 learn whether he actually internalized the messages from</p> <p>13 the prior review.</p> <p>14 Q. Did you inform Ben in 2015 that there would be</p> <p>15 follow-up review?</p> <p>16 A. I believe so.</p> <p>17 Q. When did you inform him of that?</p> <p>18 A. I think it was -- he was informed when he was</p> <p>19 told of the initial extension -- the initial extension</p> <p>20 and the idea of him doing certain activities or</p> <p>21 assignments that would help to show -- demonstrate his</p> <p>22 -- that he learned from the previous feedback.</p> <p>23 Q. Was that an in-person meeting?</p> <p>24 A. Yes, I think so. I think it was. That's my</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Okay.</p> <p>2 Q. These are emails on August of 2016 between</p> <p>3 Valerie Porciello and Angela Crispi, right?</p> <p>4 A. Yes.</p> <p>5 Q. They seem to be discussing about what to do about</p> <p>6 feedback that Angela had gotten from Rick and Steve.</p> <p>7 Does that seem accurate?</p> <p>8 A. That's what I would read, too.</p> <p>9 I would say there are two things. One is when to</p> <p>10 reach out to Ben about his review and the second is this</p> <p>11 feedback.</p> <p>12 Q. This feedback is also related to Ben, right?</p> <p>13 A. Certainly looks like it.</p> <p>14 Q. Angela suggests that maybe Valerie should reach</p> <p>15 out to you about how the handle the feedback?</p> <p>16 A. But then it says, Later I guess, I mostly lean</p> <p>17 towards feedback being gathered when the time comes.</p> <p>18 Q. The question is: Did Valerie ever talk to you</p> <p>19 about this topic?</p> <p>20 A. I don't remember.</p> <p>21 Q. Do you have any memory of Valerie ever raising</p> <p>22 any question to you about any feedback being given to</p> <p>23 Ben?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 89</p> <p>1 recollection any way.</p> <p>2 Q. Who else was at the meeting?</p> <p>3 A. I think the dean, I think. Again, I'm not -- ten</p> <p>4 years and ten years is a long time. But certainly my</p> <p>5 fairly strong recollection is that was communicated to</p> <p>6 him that there would be -- whether the term FRB was used</p> <p>7 or that there would be a review, there would have to be</p> <p>8 a review. I'm pretty sure that it was clear that it</p> <p>9 would have to be a review.</p> <p>10 We were clear to him that it wasn't simply</p> <p>11 staying out of trouble; I remember that feedback being</p> <p>12 very explicit. That he would actually have to</p> <p>13 demonstrate that he learned and internalized the</p> <p>14 messages that he received from the prior report.</p> <p>15 Q. Did you memorialize in any way in writing what</p> <p>16 the plan was for his case?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 A. I don't remember doing so.</p> <p>19 (Document marked as Exhibit No. 143 for</p> <p>20 identification.)</p> <p>21 BY MS. O'MEARA-COSTELLO:</p> <p>22 Q. Do you recognize that document?</p> <p>23 A. Yes.</p> <p>24 Q. What is that?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. That is just a letter confirming that he has been 2 extended. 3 Q. Do you think that there was any other written 4 communication to him about his next steps or what he was 5 expected to do or how it would be assessed? 6 A. I don't remember -- in particular I don't 7 remember how much or whether the specific assignments 8 were mentioned or whether that was all in orally or 9 written documentation. I forget. 10 Q. This letter notes that his tenure review date 11 will be delayed until Fall 2017 and it says new 12 materials could be submitted in Spring of 2017. Right? 13 A. Correct. 14 Q. Doesn't mention a 2017 FRB review? 15 A. Correct. Or any part of that review. 16 Q. In 2017, we discussed previously that you met 17 with Jean Cunningham about candidates who were upcoming 18 for a tenure review that year. 19 At that meeting, did you discuss Ben Edelman's 20 case again? 21 A. I think we might have. But I don't remember. I 22 think Jean said there was evidence of improvement, but 23 it wasn't quite as clear as maybe we hoped. But I don't 24 remember the details.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I don't think so. 2 Q. In early 2017, did you communicate with Ben about 3 his tenure process? 4 A. Yes. 5 Q. What was that communication? 6 A. I think we had an oral communication, so I would 7 typically meet with all the faculty that was going to be 8 reviewed and take them through the process to make sure 9 they understand how it works. 10 I didn't -- Ben and I realized that we really 11 didn't need to do that. He was pretty aware of the 12 process. But I think we spoke and I think I may have 13 followed up with a letter just informing him of when his 14 materials had to be submitted. 15 MS. O'MEARA-COSTELLO: All right. I ask 16 that this be marked as 144. 17 (Document marked as Exhibit No. 144 for 18 identification.) 19 A. I think in that discussion -- I think it was 20 around that time that we talked about him also 21 mentioning four people that the FRB should interview. 22 So it's clear to him at that stage that the FRB 23 would reconvene to see what he learned from the previous 24 experiences.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Did she discuss with you whether there were any 2 new allegations of misconduct between 2015 and 2017 that 3 a new FRB might have to review? 4 MR. MURPHY: Objection. 5 A. I don't remember. 6 Q. Do you remember anything else that she said about 7 his situation at that meeting? 8 A. No, I really don't. 9 Q. Do you recall whether -- discussing other 10 candidates for tenure in that year? 11 A. I certainly mentioned -- showed her the list of 12 all the candidates and asked her if there was anything 13 that I needed to be aware of. 14 Q. Was there anything that she thought that you 15 needed to be aware of on any of the other candidates? 16 A. No. 17 Q. Had concerns about conflict of interest issues 18 been raised for other candidates in 2017? 19 A. I think they were raised subsequent. I think it 20 was -- I think it was after I finished the job that 21 there was a candidate in another unit which had an 22 issue. 23 Q. But that is not something that would have been 24 discussed in that meeting in 2017?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. If you look at -- so this is an email from you to 2 Ben on January 11, 2017? 3 A. Yes. 4 Q. Is that an email setting up the meeting that you 5 are talking about where you -- 6 A. I believe so. 7 Q. -- discuss the tenure case? 8 And at that meeting, is your memory that you 9 discussed that there was an upcoming review by the FRB? 10 A. Yes. 11 Q. And did you ask him to prepare anything? 12 A. I don't believe so. 13 Q. Did you discuss the idea of him drafting a 14 statement to the FRB? 15 A. I may well have. I didn't ask him to prepare for 16 me, I asked him to prepare -- I think I might have asked 17 him to prepare it for the FRB when submitted his package 18 of material. 19 Q. You told him that when he submitted his package 20 of materials, which normally include, you know, his 21 academic work and so on, he should also include a 22 statement to the FRB? 23 A. Yes. 24 I think -- as I said, I think he suggested</p>

<p style="text-align: right;">Page 94</p> <p>1 including names of people that they could interview.</p> <p>2 MS. O'MEARA-COSTELLO: I will show you</p> <p>3 exhibit -- we will mark this as Exhibit 145.</p> <p>4 (Document marked as Exhibit No. 145 for</p> <p>5 identification.)</p> <p>6 BY MS. O'MEARA-COSTELLO:</p> <p>7 Q. This is an email exchange between you and Ben</p> <p>8 Edelman on January 24, 2017?</p> <p>9 A. Yes.</p> <p>10 Q. And on the top email you write, I checked in with</p> <p>11 Rae and she thinks we should make the deadline for</p> <p>12 handing in materials March 15th for everything that</p> <p>13 should give you even more time. She also liked your</p> <p>14 idea of listing some people the FRB could talk to, so I</p> <p>15 will formalize that in the letter.</p> <p>16 Is this an email that you sent to Ben following</p> <p>17 the meeting that you described?</p> <p>18 A. Yes.</p> <p>19 Q. It seems to confirm that at the time you thought</p> <p>20 it was Ben's to list people for the FRB to talk to?</p> <p>21 A. Correct.</p> <p>22 Q. Did you -- I know we talked about in 2017, you</p> <p>23 provided the FRB with excerpts from letters that the</p> <p>24 subcommittee received to discussed conduct issues,</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. So is that an email exchange from July 6, 2017,</p> <p>2 with Amy Edmondson?</p> <p>3 A. Yes.</p> <p>4 Q. Does that refresh your recollection about a</p> <p>5 discussion?</p> <p>6 A. Yes, it does.</p> <p>7 Q. It looks like in her bottom email at 8:26 a.m.</p> <p>8 she suggests that, Should any of the internal or outside</p> <p>9 letters reference these issues of conduct, that</p> <p>10 information will be shared with the FRB, it could not be</p> <p>11 considered by the AC subcommittee.</p> <p>12 A. Yes.</p> <p>13 Q. It looks like you agreed to that, right?</p> <p>14 A. Correct.</p> <p>15 Q. Is that what happened?</p> <p>16 A. Yes and no.</p> <p>17 Q. What did happen?</p> <p>18 A. One of the letter writers sent a letter</p> <p>19 originally and then later sent a new letter noting that</p> <p>20 there was a relationship between he and Ben that needed</p> <p>21 to be recognized and I forwarded that to the FRB.</p> <p>22 But I don't remember going -- having a process</p> <p>23 going through the letters in quite the same way that we</p> <p>24 did in the previous case to determine whether there were</p>
<p style="text-align: right;">Page 95</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Did you discuss with anyone how to how handle</p> <p>4 such letters in 2017?</p> <p>5 MR. MURPHY: Objection. You said 2017 in</p> <p>6 both questions.</p> <p>7 MS. O'MEARA-COSTELLO: I appreciate that.</p> <p>8 Thank you.</p> <p>9 BY MS. O'MEARA-COSTELLO:</p> <p>10 Q. Let me backup a little bit and ask the first</p> <p>11 question a little differently. I think that we</p> <p>12 discussed that in 2015, you had directed that excerpts</p> <p>13 from the letters received by the subcommittee that</p> <p>14 discussed conduct issues for Ben be provided to the FRB.</p> <p>15 Right?</p> <p>16 A. Yes.</p> <p>17 Q. In 2017, did you discuss with anyone how to</p> <p>18 handle letters that raised those issues?</p> <p>19 A. I don't remember doing so actually.</p> <p>20 MS. O'MEARA-COSTELLO: I will ask that this</p> <p>21 be marked as Exhibit 146.</p> <p>22 (Document marked as Exhibit No. 146 for</p> <p>23 identification.)</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 elements that needed to be -- paragraphs that needed to</p> <p>2 be taken out and forwarded to the FRB.</p> <p>3 Q. That faculty member that you described needing to</p> <p>4 make an additional disclosure about his relationship</p> <p>5 with Ben was that Max Bazerman?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A. Yes, it was.</p> <p>8 Q. After this email chain that we marked as</p> <p>9 Exhibit 146, did you communicate with anyone else about</p> <p>10 how you agreed to handle the letter?</p> <p>11 A. Not that I can remember.</p> <p>12 Q. Did you share this exchange with other HBS staff</p> <p>13 members who were working on the tenure process?</p> <p>14 A. I don't remember.</p> <p>15 Q. Do you remember giving them any direction about</p> <p>16 how letters raising conduct issues should be handled?</p> <p>17 A. I certainly gave the subcommittee instructions as</p> <p>18 before, the subcommittee wasn't to come to a conclusion</p> <p>19 about conduct issues that that was to reviewed by the</p> <p>20 FRB.</p> <p>21 Q. Do you know whether letters other than Max</p> <p>22 Bazerman's that addressed conduct issues were shared</p> <p>23 with the FRB?</p> <p>24 A. I don't.</p>

<p style="text-align: right;">Page 102</p> <p>1 Those are some of the factors that we would consider.  2 If there is obviously someone that shows bias ahead of  3 time, we would exclude them.  4 Q. Have there been situations where someone showed  5 bias ahead of time and were excluded?  6 A. I think more that there are people who are -- you  7 know, there are some faculty members who have -- who are  8 known to have very high standards, which are unrealistic  9 standards. And be careful -- cautious where to put them  10 on subcommittees. Obviously, everyone has to play a  11 role. But you could easily -- if you are not careful in  12 the way that you choose people in the subcommittee, you  13 could be unfair towards the candidate and the school.  14 Q. Are there ever times when people, for example,  15 have strong ideas about someone's area of study or the  16 validity of a particular scholarly approach that might  17 affect whether they were suitable to be on the  18 subcommittee?  19 A. So we ask candidates ahead of time if there are  20 people that they think are inappropriate to write  21 letters on them. And if that is the case we will -- we  22 can't have half the field not write those letters on  23 you. But if there is one person that is showing a bias  24 against your work -- and it could be internal, it could</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. If you from the unit, are you even in the room  2 for the standing committee discussions --  3 A. No.  4 Q. You are not there?  5 A. Right.  6 Q. During the FRB's 2017 investigation, did you have  7 any further conversations with Amy Edmondson other than  8 the email exchange that we just looked at?  9 A. Not during the process. I didn't have much even  10 after. Other than procedurally whether the review was  11 on time was the most important consideration from my  12 perspective. I assumed that they were doing their job  13 and the only question was whether their work was going  14 to be completed in time, so that we would be able to  15 have our meetings that were needed.  16 Q. Did you ever provide information to the FRB?  17 A. Yes.  18 Q. When was that?  19 A. So there were at least two incidents or two  20 emails that I received that I forwarded to the FRB. One  21 I already mentioned was an email that Max Bazerman sent  22 me about the lawsuit that he was involved with Ben on  23 American Airlines. And the second was an email from  24 [REDACTED], who was a faculty member in finance and</p>
<p style="text-align: right;">Page 103</p> <p>1 external -- we would make sure to factor that in.  2 Q. If a candidate had identified an internal person  3 that is inappropriate to write a letter about them,  4 would you generally also exclude that person from the  5 subcommittee?  6 A. Yes.  7 Q. Is there any kind of similar thought given to  8 whether standing committee members are appropriate for a  9 particular case?  10 A. No. The standing committee -- the standing  11 committee is all of the subcommittees. We focus on  12 trying to get the subcommittee right and then hope that  13 the law of large numbers works for the standing  14 committee to do its job.  15 Q. Is there ever a process for someone recusing  16 themselves from a tenure case?  17 A. Yes.  18 Q. What is that process?  19 A. So if you are a coworker, for example, I recused  20 myself from running the case for someone who was a  21 co-authored and who I mentored. That would be -- that  22 would be common. That would be most likely. Obviously,  23 if you are on standing committee, you are recused if you  24 are from the unit.</p>	<p style="text-align: right;">Page 105</p> <p>1 sent me an email about Ben's name being mentioned on  2 potential conflicts of interest with regards to research  3 and outside activities; I think in the Wall Street  4 Journal. And the job for these was for the FRB, I  5 forwarded that information to the FRB.  6 MS. O'MEARA-COSTELLO: I'm going to ask that  7 we mark this as Exhibit 147.  8 (Document marked as Exhibit No. 147 for  9 identification.)  10 BY MS. O'MEARA-COSTELLO:  11 Q. Is that the email that you described from  12 [REDACTED]?  13 A. Yes.  14 Q. What was your expectation of what the FRB would  15 do with this information?  16 A. I think the main question that it raised is  17 around whether there had been adequate disclosure that  18 Ben has provided on research that he has done given that  19 he has been working for companies in the industry, which  20 goes directly to the BlinkX example that arose in the  21 2017 review.  22 Q. Specifically it raised an issue about whether --  23 about his work for Microsoft and his writing about  24 Google, right?</p>



<p style="text-align: right;">Page 106</p> <p>1 A. Correct.</p> <p>2 Q. Did you discuss with the FRB members what they</p> <p>3 would do with the information?</p> <p>4 A. No. I think I asked Jean at some point, because</p> <p>5 she is the person who is the most knowledgeable about</p> <p>6 our conflict of interest policy, whether they had --</p> <p>7 there was the concern. That was -- the way she</p> <p>8 expressed it, it is really more about whether there was</p> <p>9 adequate disclosure.</p> <p>10 Q. At the time she was also the staff person</p> <p>11 supporting the FRB; right?</p> <p>12 A. Yes.</p> <p>13 Q. Did she express to you anything about what the</p> <p>14 FRB's next steps would be with regarding to the</p> <p>15 information that you shared?</p> <p>16 A. No.</p> <p>17 Q. Did you respond to [REDACTED] about this?</p> <p>18 A. I believe I did, but I don't remember what I</p> <p>19 said. I'm guessing what I just said to you, the</p> <p>20 question is we don't have any problem with faculty</p> <p>21 members doing outside work, but really are they</p> <p>22 adequately disclosing that work or their relationships</p> <p>23 in their academic work, so that readers can be apprised</p> <p>24 of any potential conflicts of interest.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Does anything about reading this exchange refresh</p> <p>2 your memory at all about how you followed up with</p> <p>3 [REDACTED]?</p> <p>4 A. I think -- I don't recall the exact follow-up</p> <p>5 that I had with [REDACTED] but my vague recollection is</p> <p>6 that I thanked him for providing the material and</p> <p>7 pointing out that doing work with Microsoft or whoever</p> <p>8 is not something that runs against their conflict of</p> <p>9 interest. It runs against our community standards.</p> <p>10 The big question is, obviously the expectation</p> <p>11 would be when we engage in outside activities, that we</p> <p>12 are diligent in recognizing that footnote and the work</p> <p>13 that we do that might be relevant.</p> <p>14 Q. I'm going to show you what has been previously</p> <p>15 marked as Exhibit 38. And you are not copied on this,</p> <p>16 but it is an email between Amy Edmondson and Ben Edelman</p> <p>17 copying Jean Cunningham dated September 1st 2017.</p> <p>18 Have you ever seen that before?</p> <p>19 A. I think I saw it as part of materials that I was</p> <p>20 given in preparation for this. I don't remember whether</p> <p>21 I saw before then or not.</p> <p>22 Q. So were you -- did you have any awareness at the</p> <p>23 time that the FRB as of September 1st, 2017 was asking</p> <p>24 Ben for the information that it lists here?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. I'm going to show you what we previously marked</p> <p>2 as Exhibit 56.</p> <p>3 (Pause in the proceedings.)</p> <p>4 A. Yes.</p> <p>5 Q. So is this an email exchange in August of 2017</p> <p>6 where you forward [REDACTED] email to Jean</p> <p>7 Cunningham and Amy Edmondson?</p> <p>8 A. Yes.</p> <p>9 Q. Jean Cunningham responds and says, In reading --</p> <p>10 I assume that is [REDACTED] email -- it</p> <p>11 seems related to but also in a sense outside of the</p> <p>12 purview of the current FRB mandate.</p> <p>13 Did you have an understanding after this response</p> <p>14 of what would happen next?</p> <p>15 A. No.</p> <p>16 Q. In the second paragraph of her email she suggests</p> <p>17 that the example cited is one that could be raised about</p> <p>18 -- then she lists another HBS professor.</p> <p>19 A. Yes.</p> <p>20 Q. Did you think that was a fair comparison?</p> <p>21 A. I would trust Jean, because she would have more</p> <p>22 information -- I have no information about what</p> <p>23 faculty's outside activities are. So the fact that she</p> <p>24 drew the parallel, I'd trust her judgment on this.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I don't remember whether I was made aware of that</p> <p>2 or not at that time.</p> <p>3 Q. Do you remember having a discussion about whether</p> <p>4 this subject matter fell within the FRB's scope at the</p> <p>5 time?</p> <p>6 A. No. Once I passed it on, I pretty much left it</p> <p>7 to the FRB to determine how that information should be</p> <p>8 used and whether it was indeed relevant.</p> <p>9 Q. This is sent Friday, September 1st, 2017; right?</p> <p>10 A. Correct.</p> <p>11 Q. So the following Monday would have been Labor</p> <p>12 Day; is that right?</p> <p>13 A. If you say so.</p> <p>14 Q. It is usually the first Monday in September,</p> <p>15 right?</p> <p>16 A. Okay. Fair enough.</p> <p>17 Q. And if you look at the last paragraph they are</p> <p>18 asking that the information be submitted by the end of</p> <p>19 next week, September 8th?</p> <p>20 A. Yes.</p> <p>21 Q. That would be four business days from when this</p> <p>22 letter was sent, right?</p> <p>23 A. Correct.</p> <p>24 Q. Were you aware of the FRB setting that deadline?</p>

<p style="text-align: right;">Page 118</p> <p>1 that his collegiality was good.</p> <p>2 Q. Wouldn't that also have been relevant to what the</p> <p>3 FRB was looking into?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 A. No.</p> <p>6 Q. You don't think that any of these quotes were</p> <p>7 relevant to the FRB's work in 2017?</p> <p>8 A. Given where -- the types of issues that the FRB</p> <p>9 focused on, I'm not convinced that these were directly</p> <p>10 relevant to those.</p> <p>11 Q. So having taken a minute and reviewed them, you</p> <p>12 think that none of these was relevant to the FRB's work</p> <p>13 in 2017?</p> <p>14 A. I don't think -- there is one that talks about</p> <p>15 spectacular lack of judgment, but which I think was what</p> <p>16 was raised by the FRB report. It doesn't really provide</p> <p>17 much detail. I think the FRB report and the FRB review</p> <p>18 was a more thorough oversight of these.</p> <p>19 Q. Understanding that this is intended as a thorough</p> <p>20 oversight of these, I think the question I'm asking is a</p> <p>21 little bit different. I am asking whether these would</p> <p>22 have been relevant to the work that the FRB was doing?</p> <p>23 A. I don't think they were.</p> <p>24 Q. Did you discuss with Amy Edmondson at any point</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Do you understand that I'm asking?</p> <p>2 A. Fairness in what way?</p> <p>3 Q. Let me ask a different way.</p> <p>4 Did anyone raise a concern to you about whether</p> <p>5 it was appropriate for the FRB to be reviewing Ben's</p> <p>6 conflict of interest disclosure?</p> <p>7 A. I don't remember anyone raising that question.</p> <p>8 Q. Did anyone raise a concern about whether</p> <p>9 different faculty were being treated similarly with</p> <p>10 respect to questions about conflict of interest?</p> <p>11 A. I don't remember. They may have. From my</p> <p>12 perspective, given the BlinkX episode, which was</p> <p>13 directly related to conflict of interest, it seemed</p> <p>14 appropriate to actually judge whether Ben had</p> <p>15 internalized the message from that review.</p> <p>16 Hopefully the FRB did evaluate that.</p> <p>17 Q. Did you communicate with Ben Esty about how Ben</p> <p>18 Edelman's tenure case was handled?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you remember communicating with Ben Esty at</p> <p>21 all around conflict of interest issues in 2017 or so?</p> <p>22 A. Ben Esty -- I do remember Ben Esty having a</p> <p>23 strong opinion about conflict of interest. I think --</p> <p>24 it jogged my memory it may have well have related to</p>
<p style="text-align: right;">Page 119</p> <p>1 that these letter excerpts would be in the subcommittee</p> <p>2 report?</p> <p>3 A. I don't recall doing so.</p> <p>4 Q. Am I right that Josh Coval was the chair of the</p> <p>5 subcommittee in this case or the standing committee?</p> <p>6 A. No.</p> <p>7 Q. He was not the chair of the subcommittee?</p> <p>8 A. I don't believe so.</p> <p>9 Q. Did you communicate with the chair of the</p> <p>10 subcommittee in writing about what should be in the</p> <p>11 subcommittee's report?</p> <p>12 A. I don't believe so. I don't remember. If you</p> <p>13 don't have a record of it, I probably didn't.</p> <p>14 Q. Do you remember having an in-person conversation</p> <p>15 about whether there should be some discussion of</p> <p>16 collegiality in the subcommittee's report?</p> <p>17 A. I don't remember. Clearly that email suggests</p> <p>18 that I did. I will acknowledge that. But I don't</p> <p>19 remember explicitly acknowledging that or asking them</p> <p>20 for that.</p> <p>21 Q. Did anyone raise concerns about the fairness of</p> <p>22 the FRB's review of Ben's conflict of interest</p> <p>23 disclosure?</p> <p>24 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 121</p> <p>1 Ben. But I don't remember exactly. I'm sure I would</p> <p>2 have listened to Ben's description of what upset him.</p> <p>3 But I'm not sure how much I would have responded other</p> <p>4 than to say that there was an FRB investigation or FRB</p> <p>5 review reconvening and that he would have a chance to</p> <p>6 talk about it when the time comes.</p> <p>7 Q. Do you recall Ben Esty raising conflicts of</p> <p>8 interest concerns about any other HBS faculty during</p> <p>9 this period?</p> <p>10 A. I think he did. Ben was pretty clear on conflict</p> <p>11 of interest being an issue broadly within the school.</p> <p>12 But if you ask me to name a specific faculty member, I</p> <p>13 can't recall anyone.</p> <p>14 Q. Did Ben Esty raise concerns to you during this</p> <p>15 time period about how HBS was addressing conflict of</p> <p>16 interest issues for faculty, not necessarily which</p> <p>17 faculty he thought had issues, but about the process?</p> <p>18 A. Yes. If I remember rightly, he did raise</p> <p>19 concerns about HBS -- whether HBS was adequately</p> <p>20 addressing conflict of interest.</p> <p>21 Q. What were the concerns that he raised?</p> <p>22 A. I don't know.</p> <p>23 MS. O'MEARA-COSTELLO: I'm going to ask that</p> <p>24 we mark this as Exhibit 150.</p>

<p style="text-align: right;">Page 122</p> <p>1 (Document marked as Exhibit No. 150 for 2 identification.) 3 BY MS. O'MEARA-COSTELLO: 4 A. Okay. 5 Q. Is that an email exchange between you and Ben 6 Esty in October of 2017? 7 A. It is. 8 Q. Obviously, it is redacted, so that may in some 9 places make it hard to understand the full context. But 10 looking at the first email from -- I'm going to keep 11 saying Ben Esty to avoid confusion -- looking at the 12 first email from Ben Esty to you at 12:56 p.m., he 13 writes, I think it is unfair that only one candidate up 14 for tenure has had a formal review of his or her 15 compliance with our COA/OA [sic] policies. 16 Which is the candidate who had a formal review of 17 his or her compliance with COA/OA policies? 18 MR. MURPHY: Objection. 19 A. I presume it is Ben Edelman. 20 Q. COA is conflict of interest; right? 21 MR. MURPHY: Objection. 22 A. COI. 23 Q. I'm sorry, it is COI. He says, COI slash OA, I 24 interpret that to mean conflict of interest slash</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. The last sentence on that page says, Only in 2 egregious cases where faculty willfully and persistently 3 violated our policies would the matter be raised with a 4 review subcommittee or the FRB. 5 What is a review subcommittee? 6 A. A subcommittee that evaluates the candidate, 7 three person. 8 Q. So it is the subcommittee that is a regular part 9 of the tenure process? 10 A. Correct. Presumably if it became a serious issue 11 that might prompt an FRB review. 12 Q. Between 2015 and 2017 was there an allegation 13 that Ben Edelman had been willfully and persistently 14 violating HBS conflict of interest or outside activities 15 policies? 16 A. Not that I'm aware of. 17 Other than there was that Wall Street Journal 18 article, but it wasn't clear from that -- it raised 19 questions, but it didn't actually provide an explicit 20 answer about whether there was a conflict of interest 21 disclosure problem. 22 Q. If you look back at Exhibit 56. 23 A. Yes. 24 Q. So the third page of that document is the email</p>
<p style="text-align: right;">Page 123</p> <p>1 outside activities. Is that correct? 2 A. Correct. 3 Q. Do you recall whether he thought there were other 4 candidates for tenure who also should have had such a 5 review? 6 A. I don't remember specifically. 7 Q. He writes, In the absence of formal reviews for 8 the other two candidates, one could interpret the 9 selective enforcement of our community standards in a 10 single candidate as discriminatory. 11 Is that a concern that you share? 12 A. No, I don't. The reason I don't is that there 13 were external allegations raised about Ben Edelman's 14 outside work that -- and his previous conflict of 15 interest disclosures that made it a question worth 16 investigating. 17 I think that for us to have begun a process which 18 evaluates everybody on that would have been challenging. 19 And would not have -- we would at least had to have a 20 full appointments committee assessment of it before 21 implemented something like that. 22 Q. I'm looking at the first page where it is a 23 response from you to Ben Esty? 24 A. Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 from [REDACTED] to you? 2 A. Yes. 3 Q. And the quotation that is in there about Ben just 4 says, Several of the companies are also active in 5 funding academic research, Microsoft has paid Harvard 6 business professor, Ben Edelman, the author of papers 7 saying Google abuses its market dominance. 8 Was there anything further about Ben Edelman in 9 the Wall Street Journal article? 10 A. Not that I'm aware of. 11 Q. This sentence doesn't seem to say that he failed 12 to disclose a conflict of interest? 13 A. It raises a question whether he did. 14 Q. It doesn't say whether he did or didn't, right? 15 MR. MURPHY: Objection. 16 A. At least in my mind, it raises the question as to 17 whether they did -- it is alleging conflict of interest 18 over this particular writing of papers on market 19 dominance and to my read would be, Did he in fact 20 provide full disclosure of that? 21 Q. Well, is this sentence the only thing that you 22 knew about whether there was a conflict of interest 23 based on Ben's work for Microsoft? 24 A. Yes. I didn't know anything about it at the time</p>

<p style="text-align: right;">Page 150</p> <p>1 the 2017 -- 2017 standing committee that they would</p> <p>2 necessarily have be on the 2015 committee.</p> <p>3 Q. Did the subcommittee members get changed</p> <p>4 essentially every year that are specific to the</p> <p>5 candidate for tenure?</p> <p>6 A. Correct.</p> <p>7 Q. Do you recall whether there was overlap between</p> <p>8 the membership of the standing committee in 2015 and</p> <p>9 2017?</p> <p>10 A. I do believe there was some. If you ask me</p> <p>11 exactly who and I do think there was some, but there was</p> <p>12 some but I don't know how much.</p> <p>13 Q. In terms of topics of discussion, it sounds like</p> <p>14 there was discussion of Ben's research and scholarship.</p> <p>15 What was the discussion about his research and</p> <p>16 scholarship at that meeting?</p> <p>17 A. Really confirming the subcommittee's conclusion</p> <p>18 that his research was really excellent and more than met</p> <p>19 our standards for promotion to full professor.</p> <p>20 Q. Was that question a contentious question?</p> <p>21 A. No.</p> <p>22 Q. Was there discussion of his teaching?</p> <p>23 A. There was.</p> <p>24 Q. What was the discussion of his teaching?</p>	<p style="text-align: right;">Page 152</p> <p>1 A. You mean the process the FRB went through?</p> <p>2 Q. Was there discussion about the report and</p> <p>3 everything that was contained in it? So the information</p> <p>4 that the FRB had gathered and the FRB's conclusion?</p> <p>5 A. Yes.</p> <p>6 Q. What do you recall about that discussion?</p> <p>7 A. Again, I think that there were divided opinions</p> <p>8 in the room about that. There were people who felt the</p> <p>9 issues that were raised were serious about Ben's</p> <p>10 judgment, and there were those who felt these issues</p> <p>11 were -- he answered their questions satisfactorily.</p> <p>12 Q. Do you recall specific people who took either of</p> <p>13 those views?</p> <p>14 A. No, I don't.</p> <p>15 Q. In 2017 was there any member of the standing</p> <p>16 committee who also served on the FRB?</p> <p>17 A. I don't think so.</p> <p>18 Q. Was Forest Reinhardt still on the standing</p> <p>19 committee in 2017?</p> <p>20 A. I don't remember. He was off the FRB at the</p> <p>21 stage. So he might have been, but you asked the</p> <p>22 question -- I don't believe one of the current member of</p> <p>23 the FRB was on the standing committee.</p> <p>24 Q. Do you remember at all whether Forest Reinhardt</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I think there was more noise or more concerns</p> <p>2 raised about his teaching, that just as the subcommittee</p> <p>3 concluded that he met the standard that wasn't that he</p> <p>4 soared over a bar. There was a little bit of discussion</p> <p>5 on that. I think that the bulk of concern was obviously</p> <p>6 around the community standards question.</p> <p>7 Q. Did the standing committee generally agree that</p> <p>8 Ben's teaching met the standard for tenure?</p> <p>9 A. Yes.</p> <p>10 Q. How long was the discussion?</p> <p>11 A. I don't remember. At least 90 minutes.</p> <p>12 Q. Do you remember whether it was unusually short or</p> <p>13 unusually long?</p> <p>14 A. I'm sure it was unusually long.</p> <p>15 Q. What do you recall of the discussion on the</p> <p>16 question of community values?</p> <p>17 A. I just recall that people were split on that</p> <p>18 question. There were some people who felt there was</p> <p>19 enough evidence that he changed or didn't put a lot of</p> <p>20 weight on the earlier concerns and there were some</p> <p>21 faculty for whom these were serious issues and who felt</p> <p>22 that it disqualified him from being a tenure professor</p> <p>23 at HBS.</p> <p>24 Q. Was there discussion of the FRB's report?</p>	<p style="text-align: right;">Page 153</p> <p>1 was or wasn't?</p> <p>2 A. I don't.</p> <p>3 Q. Was there discussion on the standing committee</p> <p>4 about Ben's outside activities?</p> <p>5 A. I don't remember.</p> <p>6 Q. Was there a discussion about whether Ben had</p> <p>7 adequately disclosed conflict of interest?</p> <p>8 A. Yes, I believe there was discussion about that.</p> <p>9 Q. What do you recall about that discussion?</p> <p>10 A. Again, conflicting views on the seriousness of</p> <p>11 disclosure -- the adequacy of the disclosures that he</p> <p>12 provided.</p> <p>13 Some people felt that he hadn't provided adequate</p> <p>14 disclosure and it was poor judgment on his part not to</p> <p>15 provide the disclosures for those Google article that he</p> <p>16 wrote, given his very recent consulting work with</p> <p>17 Microsoft. And there are others who thought it was a</p> <p>18 more gray area and were willing to give him -- or were</p> <p>19 less concerned about it.</p> <p>20 Q. Was there a discussion at all about how his</p> <p>21 disclosures compared to the disclosures of other faculty</p> <p>22 members?</p> <p>23 A. I don't remember that.</p> <p>24 We tend to deal with facts or try to deal with</p>

<p style="text-align: right;">Page 154</p> <p>1 facts. Throwing out that it is worst than others,  2 better than others, would have required more factual  3 based analysis.  4 Q. And that is not an analysis that the FRB referred  5 to, right?  6 A. No.  7 Q. Did the standing committee discuss what HBS's  8 conflict of interest policy said?  9 A. I don't remember.  10 Q. Did the standing committee discuss Ben's  11 interpersonal interactions with others at HBS?  12 A. I'm sure they would have.  13 Q. Do you have any memory of what was discussed?  14 A. Again, I think that -- I don't.  15 Q. Was there a discussion of the FRB report's --  16 actually, let me rephrase that.  17 Was there a discussion about what the FRB's  18 report said about his interactions with the staff?  19 A. Can you elaborate a little bit more on that. In  20 the sense of is it a discussion on were the people -- on  21 the comments that were made by the FRB or whether people  22 were questioning the FRB's comments and allegations.  23 Q. So I am asking more whether anyone discussed the  24 material included in the report about Ben's interactions</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And so he spoke to the committee?  2 A. Yes. I think that was at the behest of -- the  3 standing committee had the opportunity to ask for  4 someone to attend the meeting to give them more  5 information. So it could be a person from the unit. In  6 this case, I think it was from the FRB just to give them  7 a better understanding of how the process was unfolded  8 and if there are particular details on papers, for  9 example, someone who is an expert in those papers.  10 Q. In Ben's case did the standing committee ask  11 anyone else to attend outside of its membership?  12 A. No.  13 Q. Did Len have prepared remarks that he made?  14 A. I forget. I think he did. I think he might  15 have, but I don't remember exactly what they were.  16 Q. What did he say?  17 A. I think if I -- again, my memory is pretty vague  18 on this. I think he went back over what the process  19 that they went through, as an FRB, to try to make an  20 assessment of whether Ben internalized the message from  21 2015.  22 Q. About how long did he speak?  23 A. I don't remember. I don't think it was very  24 long, maybe 10 to 15 minutes.</p>
<p style="text-align: right;">Page 155</p> <p>1 with the staff?  2 A. Yes. Yes. That -- the issues that were raised  3 by the FRB were certainly discussed in the meeting.  4 Q. Was there discussion about Ben's role in a  5 lawsuit against American Airlines?  6 A. Yes.  7 Q. What was said about that?  8 A. I think the -- again, there were -- it was a  9 mixed opinion on it. I think that the people who were  10 -- had concerns -- raised concerns that the lawsuit  11 involved another faculty member as well as Ben and that  12 it had potential to affect the reputation of the school  13 or could have public implications for the school.  14 And given the feedback he had gotten from 2015,  15 why wouldn't you just go talk to the dean. I think also  16 that Ben's response to that FRB allegation or FRB  17 concern was sort of very letter of the law and technical  18 rather than focusing on being a good member of the  19 community. And if there is a question, why not ask.  20 I think it led people to being more concerned  21 about his judgments.  22 Q. Was Len Schlesinger there?  23 A. Len was there part of it to talk through the FRB  24 review.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Did members of the standing committee ask him  2 questions?  3 A. Yes.  4 Q. What questions?  5 A. I don't remember exactly.  6 Q. Do you remember any of the questions?  7 A. No.  8 Q. Did anyone ask him about who the FRB interviewed?  9 A. No, I'm pretty sure they didn't do that.  10 Q. Did anyone ask about whose quotations were in the  11 FRB's report?  12 A. No.  13 Q. Did anyone ask about additional context for the  14 quotations?  15 A. No.  16 Q. Did anyone express any concern about the use of  17 anonymous quotes?  18 A. No.  19 Q. Did anyone express any concern about any aspect  20 of the FRB's process?  21 A. I don't recall any. That doesn't mean they might  22 not have but I don't recall any.  23 Q. Was someone from Ben's unit present at the  24 standing committee meeting?</p>

<p style="text-align: right;">Page 158</p> <p>1 A. No.</p> <p>2 Q. Do you recall what -- did the standing committee</p> <p>3 in 2017 hold a vote?</p> <p>4 A. Yes.</p> <p>5 Q. Did you communicate -- what was the result of</p> <p>6 that vote?</p> <p>7 A. I don't remember. Normally these votes are</p> <p>8 overall the majority is for promotion, usually, because</p> <p>9 they've gotten this far. I do remember it was split</p> <p>10 whether it was 50/50 or 45/55; I don't remember.</p> <p>11 Q. Did you communicate what the vote was to Ben</p> <p>12 Edelman?</p> <p>13 A. I don't remember.</p> <p>14 Q. Do have any memory whether you and he would have</p> <p>15 discussed his option for next steps following the vote?</p> <p>16 A. Yes, we would have.</p> <p>17 Q. Do you remember that conversation at all?</p> <p>18 A. I do remember parts of it, yes.</p> <p>19 Q. Why don't you tell me what you remember about</p> <p>20 that communication?</p> <p>21 A. I think I would have talked to him -- again, I</p> <p>22 don't remember -- I'm basing it more on what I remember.</p> <p>23 Normally say rather than a specific memory of this</p> <p>24 particular conversation. What I would normally do is</p>	<p style="text-align: right;">Page 160</p> <p>1 definitely -- I would have gone back to Nitin to tell</p> <p>2 Nitin where things stood.</p> <p>3 I might have reached out to Amy, but I don't</p> <p>4 recall doing so.</p> <p>5 Q. Is the next step after the standing committee,</p> <p>6 the appointments committee meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do anything to prepare for the</p> <p>9 appointments committee meeting?</p> <p>10 A. Yes.</p> <p>11 Q. Tell me about tell me about that process?</p> <p>12 A. So I'm going to be running the meeting, so I want</p> <p>13 to make sure that I'm conversant with all of the</p> <p>14 letters, the report, the FRB reports. Everything that</p> <p>15 is being available to the faculty, so that I am at least</p> <p>16 as informed as they are.</p> <p>17 Then I probably -- I might well have talked to</p> <p>18 Nitin about the meeting given that it's likely to be a</p> <p>19 difficult meeting for many of the cases that we would</p> <p>20 have held. And my main objective was to make sure that</p> <p>21 the meeting was a fair meeting for Ben -- to Ben and</p> <p>22 fair to the school.</p> <p>23 Q. Did you communicate with Amy Edmondson in advance</p> <p>24 of the appointments committee meeting?</p>
<p style="text-align: right;">Page 159</p> <p>1 talk about the various aspects of the case. The</p> <p>2 strengths of the case. In his case the research,</p> <p>3 particularly his research, which would have been viewed</p> <p>4 as strong. The teaching. And then lastly the community</p> <p>5 values. And I would have pointed out the concerns and</p> <p>6 where the standing committee came out in the end. And</p> <p>7 then noted that he has several options. Could choose to</p> <p>8 withdraw. He could choose to continue in which case the</p> <p>9 -- his case would come forth to the full appointments</p> <p>10 committee. I think I left it with him to talk with his</p> <p>11 own senior colleagues and anyone he wanted to to</p> <p>12 determine which of those two steps he wanted to follow.</p> <p>13 Q. Did you make a recommendation of any kind?</p> <p>14 A. I don't recall that I made a recommendation. I</p> <p>15 usually would not make a recommendation.</p> <p>16 I will tell people that if the standing committee</p> <p>17 vote was close or negative, that there is a pretty good</p> <p>18 chance that it is not going to go through. And if you</p> <p>19 really think it's not going to go through, do you really</p> <p>20 want to go ahead? It is up to each individual member to</p> <p>21 decide what they want to do.</p> <p>22 Q. Did you discuss the outcome of the standing</p> <p>23 committee vote with anyone on the FRB?</p> <p>24 A. I don't remember. I don't think I did. I</p>	<p style="text-align: right;">Page 161</p> <p>1 A. I think I might have. I think I might have asked</p> <p>2 Amy to talk about it. I asked Amy to talk about the FRB</p> <p>3 reviews and what they did.</p> <p>4 Because remember it is a new process and there</p> <p>5 aren't very many cases that we see where this -- has</p> <p>6 that screen, so a lot of faculty would be unfamiliar</p> <p>7 with it. So I recall asking Amy to talk about the</p> <p>8 process and what they did and what went on in the</p> <p>9 beginning of the meeting.</p> <p>10 MS. O'MEARA-COSTELLO: I'm going to show you</p> <p>11 -- have this marked as Exhibit 155.</p> <p>12 (Document marked as Exhibit No. 155 for</p> <p>13 identification.)</p> <p>14 BY MS. O'MEARA-COSTELLO:</p> <p>15 Q. I'm going to ask you to look at that and see is</p> <p>16 that an email exchange between you and Amy Edmondson in</p> <p>17 October of 2017?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Is that setting up the discussion that you just</p> <p>20 talked about?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall anything else about the meeting</p> <p>23 that you had with Amy Edmondson before the appointments</p> <p>24 committee meeting?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. No.</p> <p>2 MS. O'MEARA-COSTELLO: Okay. Let's take a</p> <p>3 break.</p> <p>4 (Break in the proceedings.)</p> <p>5 BY MS. O'MEARA-COSTELLO:</p> <p>6 Q. So how are materials prepared for the</p> <p>7 appointments committee members to review?</p> <p>8 A. So a copy of them is made and they are filed in</p> <p>9 the dean's -- there is a conference room next to the</p> <p>10 dean's office and that is called the dean's reading room</p> <p>11 at that stage. So senior faculty sign in. Go in there.</p> <p>12 Read. Make notes if they want. And then attend the</p> <p>13 meeting.</p> <p>14 Q. And what materials are included in that packet?</p> <p>15 A. It would be all of the materials that would have</p> <p>16 gone to the standing committee, so it would be the</p> <p>17 subcommittee report -- I forget whether the 2015</p> <p>18 subcommittee report was included or not. But certainly</p> <p>19 the 2017 subcommittee committee report. All of the</p> <p>20 letters, the internal and outside letters. The FRB</p> <p>21 reports from 2015 and 2017. Ben's responses to both of</p> <p>22 those. I think that's it.</p> <p>23 Q. And was this the first time that the appointments</p> <p>24 committee members were seeing FRB reports included in</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Yes.</p> <p>2 Q. Was this included in the tenure packet that</p> <p>3 appointments committee members reviewed?</p> <p>4 A. Yes.</p> <p>5 Q. Is this something that you and Nitin Nohria</p> <p>6 drafted?</p> <p>7 A. I think I drafted it and Nitin reviewed it.</p> <p>8 Q. Did you attend the appointments committee</p> <p>9 discussion?</p> <p>10 A. I did.</p> <p>11 Q. Where are meetings of the appointments committee</p> <p>12 held?</p> <p>13 A. The reason I'm hesitating is they moved them at</p> <p>14 one point. They are in the basement of Conant Hall,</p> <p>15 that's right, there is a larger classroom.</p> <p>16 Q. Is that where they are held now or where they</p> <p>17 were held in the past?</p> <p>18 A. I forget where they are held right now. They</p> <p>19 were definitely held there in the past.</p> <p>20 Q. In 2017 is that where they would have been held?</p> <p>21 A. I think so, yes.</p> <p>22 Q. You described it as a classroom, how is that room</p> <p>23 setup?</p> <p>24 A. It is a tiered room. It is a large classroom, so</p>
<p style="text-align: right;">Page 163</p> <p>1 the tenure process?</p> <p>2 A. I think so.</p> <p>3 Q. I think you just said that were both the 2015 and</p> <p>4 2017 reports included?</p> <p>5 A. I think so.</p> <p>6 Q. Were the appointments committee members provided</p> <p>7 with any context about the FRB reports?</p> <p>8 A. I forget. I might have written an email to the</p> <p>9 appointments committee beforehand to alert them. I</p> <p>10 think I did. I don't remember. You are pulling</p> <p>11 something out which makes me wonder if I did. I think I</p> <p>12 did, actually, just to give them a head's up of what to</p> <p>13 expect.</p> <p>14 MS. O'MEARA-COSTELLO: I am going to give</p> <p>15 you a document. We will mark this as Exhibit 156.</p> <p>16 (Document marked as Exhibit No. 156 for</p> <p>17 identification.)</p> <p>18 (Pause in the proceedings.)</p> <p>19 A. Okay.</p> <p>20 Q. This is a document titled Preamble to Ben Edelman</p> <p>21 Reports.</p> <p>22 Does reviewing it refresh your recollection about</p> <p>23 what was done to provide appointments committees members</p> <p>24 with context about the FRB reports?</p>	<p style="text-align: right;">Page 165</p> <p>1 it more than -- a typical classroom would hold 90 to 95</p> <p>2 students. This room would hold more, maybe 170. It is</p> <p>3 a bigger less intimate room. It is tiered. They would</p> <p>4 be down -- blackboard and front and a desk down at the</p> <p>5 bottom.</p> <p>6 Q. Do people who have a role in the discussion sit</p> <p>7 anywhere particular in the room?</p> <p>8 A. Usually the subcommittee or the chair of the</p> <p>9 subcommittee would sit in the front row. Usually the</p> <p>10 person in my role would ask them if they want to add</p> <p>11 anything to the report. Or to highlight any specific</p> <p>12 aspect of the case. The same would have been true in</p> <p>13 this case for Amy. People often have their standard</p> <p>14 seats in these rooms; they sit in the same spot every</p> <p>15 meeting.</p> <p>16 Q. You said that the chair of the subcommittee sits</p> <p>17 in the front?</p> <p>18 A. Typically, yes.</p> <p>19 Q. Who was the chair of the subcommittee for Ben's</p> <p>20 case?</p> <p>21 A. Bob Simons.</p> <p>22 Q. You said that often the chair of the subcommittee</p> <p>23 will be asked if they have anything to add to their</p> <p>24 report?</p>

<p style="text-align: right;">Page 166</p> <p>1 A. Or anything they want to highlight. Because they</p> <p>2 are highlighting it, it means they think that there is</p> <p>3 merit for further discussion on these points.</p> <p>4 Q. In this case, are you person who is running this</p> <p>5 meeting?</p> <p>6 A. Yes.</p> <p>7 Q. Did you ask [REDACTED] that question?</p> <p>8 A. I'm pretty sure I did. I ask everyone. I can't</p> <p>9 remember exactly. But I'm pretty sure I asked Ben and</p> <p>10 [REDACTED] at least, I'm pretty sure I asked Amy to give an</p> <p>11 overview of their reports and what aspects might be</p> <p>12 useful for us to discuss.</p> <p>13 Q. Do you recall whether there was anything that [REDACTED]</p> <p>14 [REDACTED] did want to highlight from the subcommittee's</p> <p>15 work?</p> <p>16 A. I think he said, if I remember rightly -- I think</p> <p>17 he said much what I have said earlier that the</p> <p>18 subcommittee found Ben's research work compelling and</p> <p>19 important and it covers three areas which makes it</p> <p>20 particularly unique.</p> <p>21 There was some questions about the teaching,</p> <p>22 Ben's teaching styles are rather a different style from</p> <p>23 most of the faculty at HBS, but they were able to</p> <p>24 conclude that he met the standard. And then to say that</p>	<p style="text-align: right;">Page 168</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Did he speak in the meeting?</p> <p>4 A. I don't remember. I don't he was -- if he did</p> <p>5 speak, I don't think he was a dominant speaker, that he</p> <p>6 spoke for a long period of time. But I don't remember</p> <p>7 beyond that.</p> <p>8 Q. I think you said that Amy Edmondson was sitting</p> <p>9 at the front of the room with the subcommittee?</p> <p>10 A. I think so.</p> <p>11 Q. Did Stuart Gilson sit with her?</p> <p>12 A. I forget. I don't think so, but I don't remember</p> <p>13 precisely.</p> <p>14 Q. Did Dean Nohria attend this meeting?</p> <p>15 A. Yes.</p> <p>16 Q. Where did he sit?</p> <p>17 A. He would sit in the front. Usually the dean</p> <p>18 would sit on one side and then the chair of the</p> <p>19 subcommittee, in this case Amy, might sit on the other</p> <p>20 side or might sit in the row behind the dean.</p> <p>21 Q. Other than [REDACTED], Amy Edmondson and [REDACTED]</p> <p>22 [REDACTED] was there anyone else who kind of gave remarks</p> <p>23 at the beginning of the meeting?</p> <p>24 A. I don't remember.</p>
<p style="text-align: right;">Page 167</p> <p>1 the third element was where the subcommittee didn't get</p> <p>2 to spend its time. That is probably where more prudent</p> <p>3 for discussions.</p> <p>4 Q. You said that you also asked Amy Edmondson to</p> <p>5 speak early on in the meeting?</p> <p>6 A. Yes.</p> <p>7 Q. What did you ask her to do?</p> <p>8 A. I asked her to give context. Again, I don't</p> <p>9 remember the exact details behind what she said. But</p> <p>10 since it was the first case, I'm guessing -- I suspect</p> <p>11 that she went through and explained why we have an FRB.</p> <p>12 What it's role is. And how it works. And in the</p> <p>13 aspects of Ben's case, the two reports that people see</p> <p>14 and how they emerged.</p> <p>15 Q. Was there anyone other than the two of them that</p> <p>16 made remarks at the outset of the meeting?</p> <p>17 A. Usually, I'm pretty sure that this happened in</p> <p>18 this case as well, the chair of the unit that the</p> <p>19 candidate is from also makes a set of remarks.</p> <p>20 I think that -- I think [REDACTED] did. If I</p> <p>21 remember rightly, his remarks were pretty passionately</p> <p>22 supportive of Ben's case.</p> <p>23 Q. And Stuart Gilson is the other member of the 2017</p> <p>24 FRB who sits on the appointments committee; is that</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Is there anyone else who in the normal course of</p> <p>2 an appointments committee meeting would address the</p> <p>3 room?</p> <p>4 A. I think that the members of Ben's unit were all</p> <p>5 strongly supportive of his case I think many of them did</p> <p>6 speak -- I forget whether they spoke throughout the</p> <p>7 meeting or whether their comments came more at the</p> <p>8 beginning. I think that, you know, at least other--</p> <p>9 some other faculty might feel a little frustrated, they</p> <p>10 feel like they've been road blocked. That the members</p> <p>11 of the unit are taking all their time and not letting</p> <p>12 questions come up naturally in the course of a meeting.</p> <p>13 At some point if that is the case, I would have to say</p> <p>14 are there other concerning questions that people have</p> <p>15 outside of the unit.</p> <p>16 Q. At some point is there an open discussion that</p> <p>17 all members of the appointments committee can join in?</p> <p>18 A. Yes. Most of the meeting.</p> <p>19 Q. How long was the discussion in Ben Edelman's</p> <p>20 case?</p> <p>21 A. I don't remember exactly. My guess is it would</p> <p>22 be about 90 minutes.</p> <p>23 Q. How much of that discussion was about the subject</p> <p>24 matter addressed in the FRB's report?</p>



<p style="text-align: right;">Page 170</p> <p>1 A. I can't tell you the exact amount. I could say 2 that it would be a significant portion. If there are 3 questions or concerns raised in any report, that is 4 where the focus of the discussion is going to go. 5 Q. That was essentially the only thing in the tenure 6 packet that raised that kind of concern, right? 7 A. Yes. 8 There would certainly have been some time given 9 to recognize his accomplishments, his research 10 accomplishments, and to talk about his teaching and his 11 cases. I think much more so in normal cases that is 12 where the dominant discussions takes place and the issue 13 of community standards and citizenship receives a very 14 light -- is there any concern here? If not, we move on. 15 In this case that was the dominant concern. 16 Q. Did you offer any kind of prepared remarks? 17 A. I think I did, actually. I think I gave a little 18 preamble similar to what you just shared with me. How 19 we go about to just put in context where we are. 20 Q. Said something similar to what we looked at? 21 A. Something similar to that, yes. 22 Q. Is that something that you wrote out ahead of 23 time? 24 A. I probably made a few notes on things that I</p>	<p style="text-align: right;">Page 172</p> <p>1 attributes of Ben. 2 Then the people who were more skeptical and 3 concerned would raise questions about his judgment. And 4 about his judgment over in more recent times, I think 5 particularly over whether -- why had he given -- he was 6 sort of on probation or was under review, why wasn't he 7 more forthcoming about disclosing the details regarding 8 Microsoft given -- he himself concluded, I think, that 9 the Microsoft work had finished in 2015 and the work 10 that he was on working on Google had been in 2015, he 11 would have disclosed something. 12 But it was published in 2016. He had probably 13 had been working on it in 2015, why not disclose? 14 People were just puzzled why he didn't do that. Or why 15 given the situation with the American Airlines, why 16 didn't he go talk to the dean? People were just -- were 17 puzzled about why. 18 Then when he referred to those episodes, justify 19 his position, he really sort of focused on a technical 20 argument. Here is technically why I was in the letter 21 of the law; rather than acknowledging that probably the 22 better judgment would have been to just disclose it. 23 I think it had played -- the people who had 24 concerns looked back on the history with BlinkX and with</p>
<p style="text-align: right;">Page 171</p> <p>1 wanted to cover on a piece of paper, but then would have 2 just talked extemporaneously. 3 Q. Do you know what happened to the piece of paper? 4 A. It went into the bin. I'm sure it went into the 5 bin. 6 Even if I make notes -- I'm not sure if I did -- 7 I had a pretty clear sense of what I wanted to say from 8 having done that. I may have well relied on, This is my 9 set of notes for whatever. 10 Q. When you say this, you are referring to 11 Exhibit 156? 12 A. Correct. 13 Q. In the more open part of discussion of the 14 meeting, what do you remember people saying? 15 A. I remember people raising concerns -- if there 16 were concerns, let me backup. 17 The meeting was divided just as the standing 18 committee was divided. There are many faculty at the 19 school who have had very positive experiences with Ben. 20 Ben has helped them on occasion. And they know that -- 21 they have read his work and they know that he is 22 brilliant, so, yeah, there is a lot to like. So people 23 who were supporters of his, made sure that that message 24 got across. That people got to hear the many positives</p>	<p style="text-align: right;">Page 173</p> <p>1 the Sichuan restaurant and asked the question, Well, has 2 he really learned much from that? 3 I think it was some discussion on the staff 4 interactions. Tenure process interactions. But less so 5 I think than the other two elements is my recollection. 6 Again, it has been ten years so -- or eight years, I 7 should say. 8 Q. Of the people who were against granting tenure in 9 the case, were there people whose reasons were unrelated 10 to the matters that the FRB had investigated? 11 MR. MURPHY: Objection. 12 A. I don't remember any. 13 Q. Go ahead. 14 A. There is a norm that you can't raise something in 15 the room that is new. So we have a norm, you can't just 16 say, Wait a minute, I know something about this, this is 17 new information. 18 Because that allows someone to derail the 19 conversation and there is no way of validating it at the 20 time. So there is that rule that we have that if anyone 21 does raise that, we would typically say, Look, that is 22 not suitable for the discussion. 23 Which is why it is so important ahead of time to 24 actually make sure that every question or concern is</p>

<p style="text-align: right;">Page 174</p> <p>1 addressed.</p> <p>2 Q. So if someone had a concern about conduct that</p> <p>3 had not been addressed by the FRB, for example, it</p> <p>4 wouldn't be appropriate to be raising that for the first</p> <p>5 time in the appointments committee meeting?</p> <p>6 A. It would not.</p> <p>7 Q. You don't remember anyone attempting --</p> <p>8 A. I don't remember anyone attempting to do that</p> <p>9 with the benefit of eight years absent.</p> <p>10 Q. You and every other witness in this case.</p> <p>11 Do you remember anyone expressing concerns about</p> <p>12 the FRB process?</p> <p>13 A. I don't.</p> <p>14 Q. Do you remember anyone saying that they thought</p> <p>15 that the FRB report had gotten something wrong?</p> <p>16 A. I don't remember explicitly, but it wouldn't</p> <p>17 surprise me that some of the members of NOM might have</p> <p>18 said it.</p> <p>19 Q. Do you remember any concerns that anyone</p> <p>20 expressed about the FRB's report?</p> <p>21 A. No.</p> <p>22 Q. Do you remember anyone having questions for the</p> <p>23 members of the FRB who were present?</p> <p>24 A. I think there were, but I don't remember the</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Correct.</p> <p>2 MS. O'MEARA-COSTELLO: I'm going to show you</p> <p>3 what we -- I'm going to ask that we mark this as</p> <p>4 Exhibit 157.</p> <p>5 (Document marked as Exhibit No. 157 for</p> <p>6 identification.)</p> <p>7 BY MS. O'MEARA-COSTELLO:</p> <p>8 Q. I'm going to give you time to look it over and</p> <p>9 ask you when you have had time to review it whether this</p> <p>10 is a transcription that was prepared of comments that</p> <p>11 appointments committee members made when voting on Ben's</p> <p>12 case for promotion?</p> <p>13 A. Yes. It is the voting sheets that were handed</p> <p>14 out.</p> <p>15 Q. On page 4 of this document, in middle of the</p> <p>16 page, faculty member 20. Do you see where I'm looking?</p> <p>17 A. Yes.</p> <p>18 Q. Writes a note that says, I changed my vote from</p> <p>19 the standing committee, and I changed that vote from my</p> <p>20 prior. A point for the standing committee process in a</p> <p>21 case like this one, having Len present in the room but</p> <p>22 not the unit makes an enormous difference. I would</p> <p>23 likely have stayed negative with a similar conduct</p> <p>24 conversation.</p>
<p style="text-align: right;">Page 175</p> <p>1 details. I think there were questions about process or</p> <p>2 about how the FRB did certain things.</p> <p>3 Q. Do you remember what the specific concerns were?</p> <p>4 A. I don't.</p> <p>5 Q. When those concerns were expressed, did the</p> <p>6 members of the FRB who were present respond to them?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember anything about what they said?</p> <p>9 A. No.</p> <p>10 Q. I think I know the answer to this question, but</p> <p>11 did anyone take notes on the meeting?</p> <p>12 A. Sometimes -- I'm not sure if they did in this</p> <p>13 case. Sometimes the dean will have a pad and jot down</p> <p>14 something. But I don't know if he did in this case or</p> <p>15 not.</p> <p>16 Q. Were you taking notes?</p> <p>17 A. No.</p> <p>18 Q. You were talking?</p> <p>19 A. I was listening and trying to process things and</p> <p>20 make sure that the conversation was productive.</p> <p>21 Q. Does anyone take minutes at appointments</p> <p>22 committee meetings?</p> <p>23 A. No.</p> <p>24 Q. They are not recorded; correct?</p>	<p style="text-align: right;">Page 177</p> <p>1 Do you agree that having one person at the</p> <p>2 standing committee made a difference to the vote?</p> <p>3 A. I don't know. I'm not even sure Len was there</p> <p>4 for the whole time.</p> <p>5 Q. I think you said before that you thought he was</p> <p>6 there for some of the meeting; is that still your</p> <p>7 memory?</p> <p>8 A. That is still my memory.</p> <p>9 Q. If you look at the bottom comment from faculty</p> <p>10 member 6.</p> <p>11 A. Okay. Do you want me to go over the page?</p> <p>12 Q. I actually think on the next page on the top of</p> <p>13 page 3, I think that is someone else's comment. It is</p> <p>14 not redacted because they didn't list their name,</p> <p>15 apparently.</p> <p>16 So the question I had was the third sentence of</p> <p>17 that comment says, I do feel FRB had way too much power</p> <p>18 in this meeting. Amy spoke more than anyone and I</p> <p>19 believe could have created a bias.</p> <p>20 Do you agree that Amy spoke more than anyone?</p> <p>21 A. I'm almost sure that is probably true.</p> <p>22 The reason being that if people have questions</p> <p>23 about FRB, Amy will be the one that will answer them.</p> <p>24 So most people when they speak in those meetings will</p>

<p style="text-align: right;">Page 178</p> <p>1 speak once. So if someone is asking Amy questions about  2 FRB, of course she would be speaking more than other  3 people at the meeting.  4 Q. She would have been speaking more than members of  5 the subcommittee, for example?  6 A. Yes. Typically, the subcommittee doesn't speak  7 much actually in these meetings.  8 Q. Is it true that the FRB had power in the meeting?  9 A. I'm not sure I would have put it that way. I  10 would have said that the FRB report had an impact on  11 what people thought about the case. Does that mean that  12 they had power? It had an impact.  13 Q. Did anyone express the concern to you that  14 faculty member 6 is expressing here that they thought  15 that the FRB had too much power in the meeting?  16 A. I don't remember. There might have been one or  17 two people, but I don't remember.  18 Q. In 2018, did you meet with Ben Edelman about  19 concerns that he had about the FRB process?  20 A. Yes.  21 Q. What did you discuss with him in that meeting?  22 A. I don't remember now. This is after the process  23 right? After the case?  24 Q. Yes. I think this would have been in 2018 after</p>	<p style="text-align: right;">Page 180</p> <p>1 (Document marked as Exhibit No. 158 for  2 identification.)  3 A. Okay.  4 Q. This is an email correspondence -- an email  5 between -- an email from you to Nitin Nohria on May 9,  6 2018?  7 A. It is.  8 Q. At this point were you the still the senior  9 associate dean for faculty development?  10 A. I think I was. I think they may have announced  11 that Gary was going to take over my role, I think. I  12 couldn't be a hundred percent on that.  13 Q. This was likely pretty close to the end of your  14 tenure?  15 A. Yes.  16 Q. Does this refresh your recollection as about  17 whether Ben had already met with Nitin Nohria about the  18 concerns that he had?  19 A. No. It makes it sound like he met with me first.  20 Whether he met with Nitin, I'm not sure.  21 Q. It does say at the beginning, While you were in  22 India, Ben Edelman met with me to discuss the concerns  23 he raised with you over the FRB report?  24 A. Yeah. So he may have raised with Nitin first.</p>
<p style="text-align: right;">Page 179</p> <p>1 the decision had been made?  2 A. Got it.  3 Again, if my memory serves me correctly, I think  4 he had concerns about -- particularly the staff  5 questions that were raised about his interactions with  6 the staff that those were anonymous. And that they may  7 have swayed some of the appointments committee against  8 him and that if he had a few more votes that would have  9 perhaps swung his case, had a different outcome for his  10 case.  11 Q. Did you understand at the time that you had that  12 meeting with him that Ben was considering litigation?  13 A. I think I assumed he might consider litigation.  14 At that stage I thought -- the next step for him  15 was to go and talk to the president and to appeal to the  16 university. So I didn't know whether he would go so far  17 as that stage of bringing a lawsuit.  18 Q. It sounds like you thought it was a possibility?  19 A. Yeah.  20 Q. At the time that you spoke with him, had he  21 already spoken with Dean Nohria?  22 A. I don't know.  23 MS. O'MEARA-COSTELLO: I will show you what  24 we will mark as Exhibit 158.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Do you have a memory of discussing them with  2 Nitin Nohria before the meeting with Ben?  3 A. No.  4 Q. It also says that he indicated that he is  5 seriously considering suing the school over his  6 concerns.  7 Does that refresh your recollection about what  8 you understand about his intentions?  9 A. Yes, it does jog my memory.  10 Again, I thought that the next step would be for  11 him to actually go to the president rather than suing.  12 Q. Is that something that you and he discussed or  13 was that what you thought made sense?  14 A. That is the process.  15 Q. The process would be to talk to the president?  16 A. The first is to appeal the case to the president.  17 Q. Then you indicated that you would look at the  18 faculty feedback. Is that referring to the information  19 that is in Exhibit 157?  20 A. Yes.  21 Q. At the time that you looked at it, was it typed  22 or did you have to go through people's handwritten  23 notes?  24 A. I forget.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. You also -- you went through and sort of</p> <p>2 categorized people's explanations for why they voted</p> <p>3 against Ben's case into different groups; right?</p> <p>4 A. Yes.</p> <p>5 Q. You say that the category most likely to reflect</p> <p>6 Ben's concern over the report is concern for others;</p> <p>7 right -- or respect for others? Sorry.</p> <p>8 A. Yes.</p> <p>9 Q. You find that five people discussed respect for</p> <p>10 others?</p> <p>11 A. Correct.</p> <p>12 Q. How did you decide which faculty were expressing</p> <p>13 concerns over respect for others?</p> <p>14 A. I went through and read the comments, to the best</p> <p>15 of my ability. I looked -- I can't remember whether I</p> <p>16 looked to what seemed to be the bulk of their answer or</p> <p>17 whether there were -- it was any mention of those. I</p> <p>18 forget.</p> <p>19 Q. You also put 12 people in the category of risk</p> <p>20 for the school?</p> <p>21 A. Yes.</p> <p>22 Q. Is whether Ben's conduct posed a risk for the</p> <p>23 school something that was addressed by the FRB?</p> <p>24 A. I interpreted risk for the school as public risk</p>	<p style="text-align: right;">Page 184</p> <p>1 A. Yes.</p> <p>2 Q. The last category is concern over American</p> <p>3 Airline case. Again, that is something that is</p> <p>4 addressed in the FRB's report, right?</p> <p>5 A. Correct.</p> <p>6 Q. Other than the FRB's reports, were there</p> <p>7 materials in the binders that appointments committee</p> <p>8 members reviewed that deal with the question of whether</p> <p>9 Ben posed a risk for the school?</p> <p>10 A. No, I don't think so.</p> <p>11 Q. What about whether Ben displayed poor judgment,</p> <p>12 were there other materials on that topic in the binder?</p> <p>13 A. No.</p> <p>14 Q. What about lack of transparency around conflict</p> <p>15 of interest?</p> <p>16 A. No.</p> <p>17 Q. What about the -- well, actually -- strike that.</p> <p>18 Are you aware of anyone at HBS suggesting that</p> <p>19 Ben might have some sort of mental disability or</p> <p>20 condition that affected his conduct?</p> <p>21 A. No.</p> <p>22 Q. Were you aware of anyone at HBS suggesting that</p> <p>23 Ben might be on the Autism spectrum?</p> <p>24 A. Only the -- one of the comments that came through</p>
<p style="text-align: right;">Page 183</p> <p>1 for the school, for example, arising from the BlinkX</p> <p>2 case where there was public disclosure or behavior, the</p> <p>3 Sichuan restaurant, or conflict of interests.</p> <p>4 Q. Are those things that were also addressed in the</p> <p>5 FRB's reports?</p> <p>6 A. Yes.</p> <p>7 Q. Then you put eight people in the category of poor</p> <p>8 judgement?</p> <p>9 A. Yes.</p> <p>10 Q. Were questions about Ben's judgment also</p> <p>11 addressed in the FRB's report?</p> <p>12 A. Yes.</p> <p>13 Q. Then you have a separate category of lack of</p> <p>14 transparency around conflicts of interest, you put eight</p> <p>15 people in that category. Is that also something that is</p> <p>16 addressed in the FRB's report?</p> <p>17 A. Yes.</p> <p>18 Q. The respect for others, you put five people in</p> <p>19 that category, right?</p> <p>20 A. Yes.</p> <p>21 Q. Teaching not up to standards that is not</p> <p>22 something that is addressed in the FRB report; right?</p> <p>23 A. Correct.</p> <p>24 Q. You have two people in that group?</p>	<p style="text-align: right;">Page 185</p> <p>1 raised that possibility, but I hadn't heard anyone speak</p> <p>2 about it with me over the time I was at the school.</p> <p>3 Q. When you say one of the comments that came</p> <p>4 through, do you mean in Exhibit 157 the comments of the</p> <p>5 faculty at the appointments committee?</p> <p>6 A. It was number 7 that you mentioned.</p> <p>7 Q. Faculty member number 7?</p> <p>8 A. It was one of them. Number 6 on Page 2, is the</p> <p>9 one that you referred me to.</p> <p>10 Q. I see that. Was it something that was discussed</p> <p>11 at all at the appointments committee meeting?</p> <p>12 A. No.</p> <p>13 Q. In doing your work as the senior associate dean</p> <p>14 for faculty development, did you consistently use your</p> <p>15 HBS email for that work?</p> <p>16 A. As much as I could. I have two emails. I have a</p> <p>17 Gmail as email and an HBS email. I try to use my HBS</p> <p>18 email as much as I can. Sometimes when you respond --</p> <p>19 someone sends you an email to the other one, it goes</p> <p>20 from the other account.</p> <p>21 Q. Did you ever make a conscious decision to use</p> <p>22 your Gmail correspondence to anyone about Ben's tenure</p> <p>23 case?</p> <p>24 A. No.</p>