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5 **COMMONWEALTH OF MASSACHUSETTS**

6
7 **SUFFOLK, SS.** **SUPERIOR COURT**
8 **BUSINESS LITIGATION SESSION**

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11 **BENJAMIN EDELMAN,**

12 **Plaintiff,**
13 **vs.**

14 **PRESIDENT AND FELLOWS OF HARVARD COLLEGE,**
15 **Defendants.**

16 *****

17 **DEPOSITION of NITIN NOHRIA, a witness called on**
18 **behalf of the Plaintiff, before Michele DeCoste, a**
19 **Professional Court Reporter and Notary Public, in and**
20 **for the Commonwealth of Massachusetts, at 65A Atlantic**
21 **Avenue, Boston, MA, on Friday, June 27, 2025,**
22 **commencing at 10:06 a.m.**

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24

<p>1 A We have met three times.</p> <p>2 Q And for how long each time, roughly?</p> <p>3 A Twice for about three hours and once for about an 4 hour.</p> <p>5 Q Was anyone other than counsel present when you 6 met with your attorneys?</p> <p>7 A No.</p> <p>8 Q Have you told me everything about who you talked 9 to in preparation for today's deposition?</p> <p>10 A Yes, I have.</p> <p>11 Q Do you know anything about the substance of what 12 anyone else has said in their depositions in this 13 case?</p> <p>14 A No, I do not.</p> <p>15 Q Have you spoken with anyone else who has been 16 deposed in this case about this case?</p> <p>17 A No, I have not.</p> <p>18 Q Are you currently employed at Harvard Business 19 School?</p> <p>20 A Yes, I am.</p> <p>21 Q How long have you been employed at Harvard 22 Business School?</p> <p>23 A I joined the faculty in 1988, and I have been 24 employed continuously by Harvard Business School</p>	Page 10	<p>1 school did its best intellectual work to make 2 sure that we fulfilled our mission of educating 3 leaders who make a difference in the world, to 4 being responsible for the ultimate decision of 5 promoting our faculty, which lies with the dean, 6 to the smallest things. So, like, when you're a 7 dean of the school, even though you're the dean 8 of the faculty, I'm really responsible for almost 9 everything that happens at the school during my 10 time.</p> <p>11 Q Did your role as dean include establishing 12 policies and procedures?</p> <p>13 A Yes, they did.</p> <p>14 Q Did that include establishing the principles and 15 procedures for the Faculty Review Board?</p> <p>16 A Yes, they did.</p> <p>17 Q What was your role in drafting and establishing 18 that document?</p> <p>19 A My role was to, as in all policies, was to 20 establish a Faculty Committee that would do the 21 work on behalf of the faculty and would prepare a 22 set of policies and procedures that would then be 23 accepted by the faculty and endorsed by me.</p> <p>24 Q So at what point in the process did you approve</p>	Page 12
<p>1 since then.</p> <p>2 Q What is your current title at Harvard Business 3 School?</p> <p>4 A I'm the George F. Baker Junior Professor of 5 Business Administration and the Harvard 6 University Distinguished Service professor.</p> <p>7 Q And if I say "HBS," will you understand that to 8 be "Harvard Business School"?</p> <p>9 A Absolutely, yes.</p> <p>10 Q Have you held any other positions at HBS over the 11 past ten years?</p> <p>12 A I was dean of our business school from July 1, 13 2010, to December 31, 2020.</p> <p>14 Q Would you also describe your position as dean as 15 dean of the faculty?</p> <p>16 A I was dean of the faculty, yes.</p> <p>17 Q Is that the full title of the position?</p> <p>18 A The full title of the position is dean of the 19 Faculty of Harvard Business School.</p> <p>20 Q What were your responsibilities and duties as 21 dean of the faculty at HBS?</p> <p>22 A My duties were to guide the school through -- 23 it's in all matters from preparing budgets that 24 the school approved to making sure that the</p>	Page 11	<p>1 or endorse that document?</p> <p>2 A I approved that process after the faculty had 3 provided its reactions to a draft report that had 4 been circulated to the faculty and after I was 5 convinced that the faculty was supportive of the 6 recommendations.</p> <p>7 Q So how did the faculty provide input on that 8 document?</p> <p>9 A The committee itself solicited faculty opinion as 10 we often do during the formulation of any of 11 these processes or procedures. By having 12 occasions for the faculty to come and weigh in on 13 the process, then a draft report is circulated to 14 the full faculty before a full Faculty Committee. 15 "Full faculty," meaning faculty are given the 16 opportunity to write in comments on the draft 17 report. And based upon a reading of those 18 comments, if it feels like the faculty is 19 supportive of the report, then it's in any case 20 the dean's final decision to move forward.</p> <p>21 Q So with respect to the principles and procedures 22 for the Faculty Review Board, are you saying that 23 there was a faculty meeting to discuss a draft of 24 that document, and then the faculty members</p>	Page 13

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<p>1 submitted written comments on that draft?</p> <p>2 A Yes.</p> <p>3 Q And who received those comments?</p> <p>4 A The school has a city associate dean who's</p> <p>5 responsible for all faculty appointments. In</p> <p>6 this case, it was Paul Healy. So, often, I, as</p> <p>7 dean, will ask the person who's responsible for</p> <p>8 the appointments process to consider those</p> <p>9 comments in addition to me. And then based upon</p> <p>10 a reading of those things, the final decision to</p> <p>11 endorse the process is mine.</p> <p>12 Q I just want to make sure that we're talking about</p> <p>13 the same thing. I'm intending to ask about the</p> <p>14 document that sets out the process and procedures</p> <p>15 for the Faculty Review Board rather than the</p> <p>16 substantive output of the Faculty Review Board.</p> <p>17 Is that also what you're talking about?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 You can answer.</p> <p>20 A I'm not sure. You may have to explain the</p> <p>21 distinction that you're trying to make because</p> <p>22 I'm not sure I understand it.</p> <p>23 Q So I'm not at this point asking about a Faculty</p> <p>24 Review Board Report about a particular faculty</p>	<p>1 principles and procedures for approval by the</p> <p>2 faculty, or were those the initial members of the</p> <p>3 Faculty Review Board?</p> <p>4 A I do not recall that difference.</p> <p>5 Q And who was on the committee that drafted the</p> <p>6 Conflict of Interest policy?</p> <p>7 A I do know that Ben Esty was on that committee.</p> <p>8 At this point, I do not have any recall of who</p> <p>9 else was on that committee.</p> <p>10 Q Did your role as dean include ensuring that</p> <p>11 policies and procedures were followed and</p> <p>12 enforced?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 You can answer. I'm just saying</p> <p>15 objection for the record.</p> <p>16 A All policies and procedures at Harvard Business</p> <p>17 School are developed to create a process that</p> <p>18 leads to recommendations to the dean. From what</p> <p>19 I understand, the dean, in almost all matters,</p> <p>20 has discretion to both amend the process as they</p> <p>21 see fit because in almost all cases the ultimate</p> <p>22 decision rests with me. And so my job is to make</p> <p>23 sure that we have good policies and practices,</p> <p>24 and good policies and practices that support</p>
<p>1 member. I'm asking about the document that</p> <p>2 established the FRB and set forth what its</p> <p>3 principles and procedures would be. Is that also</p> <p>4 what you're referring to when you're talking</p> <p>5 about --</p> <p>6 A Yes, that is process.</p> <p>7 Q Okay. Did your role as dean include</p> <p>8 establishing a conflict of interest policy at</p> <p>9 HBS?</p> <p>10 A Yes, it did.</p> <p>11 Q What was your role in drafting and establishing</p> <p>12 that?</p> <p>13 A Essentially, the same as the Faculty Board</p> <p>14 Report. Again, a committee was established to</p> <p>15 look into what a conflict of interest policy</p> <p>16 would be, and that committee then produced a</p> <p>17 draft of the report. A similar process was</p> <p>18 adopted to review and approve that.</p> <p>19 Q And with respect to the committee that drafter</p> <p>20 the Faculty Review Board principles and</p> <p>21 procedures, who was on that committee?</p> <p>22 A It was Amy Edmondson, Forest Reinhardt, Len</p> <p>23 Schlesinger, Angela Crispi.</p> <p>24 Q Now, are those the people who drafted the</p>	<p>1 decisions that, where I'm the ultimate</p> <p>2 decision-maker, I can endorse and keep it about.</p> <p>3 Q Okay. So as dean, you had discretion to depart</p> <p>4 from policies and procedures when you thought it</p> <p>5 was appropriate?</p> <p>6 A That is my understanding.</p> <p>7 Q What was your role in enforcing the conflict of</p> <p>8 interest policy?</p> <p>9 A My role? I want to make sure that I understand</p> <p>10 the question, so if you explain it more fully,</p> <p>11 then I may be able to give you an answer.</p> <p>12 Q Let me ask a more general question. What was the</p> <p>13 process of enforcing the conflict of interest</p> <p>14 policy?</p> <p>15 A People were required to embrace the policy to</p> <p>16 report on any infractions. If people reported</p> <p>17 on any infractions, then I would -- my office</p> <p>18 would look into those infractions, but there</p> <p>19 was no standard process that we had of reviewing</p> <p>20 the conflict of interest policy on an ongoing</p> <p>21 basis.</p> <p>22 Q Did you ever make determinations of whether a</p> <p>23 particular faculty member had or had not violated</p> <p>24 the conflict of interest policy?</p>

<p style="text-align: right;">Page 18</p> <p>1 A Again, I'm not sure I can give you an answer. If 2 you can repeat the question or explain more of 3 what you're looking for me to answer, I'm happy 4 to try and answer.</p> <p>5 Q Sure. So was there ever an accusation that a 6 faculty member had violated the conflict of 7 interest policy and you as dean determined either 8 yes, that faculty member did violate the conflict 9 of interest policy, or no, they did not?</p> <p>10 A There were questions that were raised about 11 conflict of interest policy, violations during 12 the course of appointments, process reviews. 13 Those matters were examined. I do not recall a 14 moment in which I made a specific determination 15 on a violation of a conflict of interest policy 16 unto itself.</p> <p>17 Q What did you do to make sure that the principles 18 and procedures of the Faculty Review Board were 19 followed?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A Again, I want you to explain what you are asking 22 in that question.</p> <p>23 Q So is it fair to say that the document with the 24 principles and procedures of the Faculty Review</p>	<p style="text-align: right;">Page 20</p> <p>1 work it could on behalf of the mission of the 2 school, to do excellent teaching, to conduct 3 extraordinary research, to act in ways that would 4 improve the reputation of the school. And that's 5 my principal role as dean, is to make sure that 6 the school's mission was being enacted in the 7 best way possible.</p> <p>8 Q Was it part of your role as dean to resolve 9 disagreements among the faculty?</p> <p>10 A To try and minimize them.</p> <p>11 Q Were there any significant disagreements among 12 the faculty during your time as dean that you had 13 to resolve?</p> <p>14 A I don't understand the word "resolve." because in 15 these -- if you've ever been a part of a faculty, 16 you never resolve anything. You do your best you 17 can to manage the disagreements among the 18 faculty. There are disagreements among the 19 faculty on many, many, many issues from 20 intellectual disagreements about work, judgments 21 that people make about -- almost any manner you 22 can think about. That's the nature of the 23 faculty. People disagree.</p> <p>24 Q Were there any situations that come to mind where</p>
<p style="text-align: right;">Page 19</p> <p>1 Board set out the process that the FRB was 2 supposed to follow?</p> <p>3 A Yes.</p> <p>4 Q Did you do anything to make sure that the FRB 5 followed that process?</p> <p>6 A As in every process at our business school, we 7 entrust following the process to a group of our 8 faculty members. This is true of our 9 Appointments Committee. This is true of anything 10 I do. Nothing other than trust the good judgment 11 of my faculty members to follow the process.</p> <p>12 Q Was part of your role as dean to oversee Faculty 13 Committees?</p> <p>14 A Please explain what you're trying to ask.</p> <p>15 Q As dean, did you oversee the faculty Review 16 Board?</p> <p>17 A What does "oversee" mean?</p> <p>18 Q In some sense did they report to you?</p> <p>19 A Everybody in the school reports to me. Even my 20 colleagues do.</p> <p>21 Q What did you see as the relationship between the 22 dean and the faculty at HBS when you were in the 23 dean's role?</p> <p>24 A My role was to enable our faculty to do the best</p>	<p style="text-align: right;">Page 21</p> <p>1 there were disagreements among the faculty about 2 how the school should proceed in a particular 3 matter and you had to make a decision about which 4 course to take?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 A That's too vague a question for me to answer.</p> <p>7 Q How did you approach disagreements among the 8 faculty?</p> <p>9 A By listening carefully.</p> <p>10 Q And then after you listen carefully, what would 11 you do to try and move things forward?</p> <p>12 A I have regular processes to meet with the faculty 13 in small groups. Those often provided occasions 14 to have faculty members hear each other so that 15 those disagreements were things that they shared 16 with each other. I found, often, when people had 17 the opportunity to hear each other, there was at 18 least an understanding that they might have of 19 their disagreements with each other, and 20 sometimes the temperature would come down just 21 from those kinds of conversations.</p> <p>22 Q As dean, did you make promotion decisions for 23 faculty?</p> <p>24 A Yes.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q And those decisions were informed by input from 2 the senior faculty, right?</p> <p>3 A Yes.</p> <p>4 Q Is it fair to say that you viewed promotion 5 decisions as a matter of faculty governance?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A I don't know. What do you mean by "faculty 8 governance"?</p> <p>9 Q Well, the tenured faculty comprised an 10 Appointments Committee to consider promotions, 11 right?</p> <p>12 A Yes, they did.</p> <p>13 Q And the Appointments Committee would vote on each 14 application for promotion, right?</p> <p>15 A Yes.</p> <p>16 Q And they would explain why they voted the way 17 they did?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 A The vote was the final step in a long process of 20 deliberation that the faculty engaged in.</p> <p>21 Q And when the senior faculty members voted, they 22 had an opportunity to write comments explaining 23 why they voted the way they did, right?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 the vote of the Standing Committee, a full 2 discussion will occur. So I listened carefully 3 to those discussions. I read the materials of 4 the faculty members that had been submitted. 5 Faculty members submit a personal statement. 6 This is one of the most important decisions that 7 I have to make. And it's not my decision in the 8 end. My decision is to make a recommendation to 9 the president of Harvard University. But since 10 this is one of the decisions in which the entire 11 responsibility to make that recommendation is 12 assigned to the dean, I took this work very 13 seriously and reviewed all of the information 14 that I had available before making the 15 recommendation.</p> <p>16 Q Did you ever go against the opinions of the 17 faculty in a tenure case?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 A There's always one person who disagrees.</p> <p>20 Q Did you ever go against the majority of the 21 opinion for a faculty tenure case?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 A By "majority," do you mean just numerically a 24 majority in terms of how they voted?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Did you consider the opinions of the faculty when 2 you were making decisions on promotions?</p> <p>3 A Yes.</p> <p>4 Q How did you consider those opinions?</p> <p>5 A Through the deliberations that the faculty had at 6 every stage of the process, from reading 7 carefully the report that the subcommittee 8 prepared, then reviewing the vote that the 9 Standing Committees, which consisted at any given 10 point in time, at least for -- we had two types 11 of standard committees, one for our professor 12 management practice appointments, and then 13 another one, which was the combination of all of 14 the subcommittees that we're looking at. And 15 that actually only began three years in -- three 16 or four years -- I don't remember the exact time 17 -- into my time as dean. So that was a further 18 process improvement that had been suggested 19 during my time as dean.</p> <p>20 So the Standing Committee's 21 recommendation. Then the full Appointments 22 Committee would meet. Discussions would occur of 23 the faculty based upon the reading that people 24 would do of the report of the subcommittee and</p>	<p style="text-align: right;">Page 25</p> <p>1 Q Yes.</p> <p>2 A No.</p> <p>3 Q If the Appointments Committee were unanimously in 4 favor of a candidate, it would be appropriate for 5 you to reject them for promotion?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A Yes.</p> <p>8 Q Under what circumstances would that be 9 appropriate?</p> <p>10 A If in my best judgment I felt it was against the 11 interests of the school, I would have to exercise 12 that responsibility as dean.</p> <p>13 Q Did you ever decline to recommend tenure for a 14 candidate when there was a consensus of the 15 Appointments Committee for promotion?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 A I don't know what you mean by word "consensus."</p> <p>18 Q Well, what would you consider a consensus of the 19 Appointments Committee?</p> <p>20 A There was no such bright line in my mind.</p> <p>21 Q Was there a threshold below where you believed 22 you had to approve a candidate?</p> <p>23 A No.</p> <p>24 Q Was there a threshold below which you believed</p>

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<p style="text-align: right;">Page 26</p> <p>1 promotion was impossible?</p> <p>2 A No.</p> <p>3 Q How many times did you decline to recommend a</p> <p>4 candidate for tenure after they went through an</p> <p>5 Appointments Committee vote?</p> <p>6 A I do not recall.</p> <p>7 Q What was the highest vote percentage in the</p> <p>8 Appointments Committee among candidates you did</p> <p>9 not recommend for tenure?</p> <p>10 A I do not recall.</p> <p>11 Q What was the lowest vote percentage in the</p> <p>12 Appointments Committee among candidates you did</p> <p>13 recommend for tenure?</p> <p>14 A Again, I do not recall.</p> <p>15 Q I want to go back to something that you said</p> <p>16 earlier. You had discretion to depart from</p> <p>17 policies and procedures in particular cases. Did</p> <p>18 you do that in the case of Ben Edelman?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 A I do not know what deviation you have in mind, so</p> <p>21 I do not know how to answer that question.</p> <p>22 Q Did you deviate in any way from established</p> <p>23 policies or procedures in your discretion as dean</p> <p>24 in the case of Ben Edelman?</p>	<p style="text-align: right;">Page 28</p> <p>1 controversy, I wanted to make sure that I</p> <p>2 understood what the data looked like from the</p> <p>3 past.</p> <p>4 Q And which case was that?</p> <p>5 A This was Ben's case.</p> <p>6 Q Just for the record, Ben Edelman?</p> <p>7 A Ben Edelman's case.</p> <p>8 Q Looking at the numbers in the second page, do</p> <p>9 those appear to include the decisions that you</p> <p>10 made in 2017?</p> <p>11 A I don't know. Again, the question, this looks</p> <p>12 like data from 2006 to 2017. I don't know</p> <p>13 whether it includes the cases from that year or</p> <p>14 not.</p> <p>15 Q Do these numbers include some decisions from</p> <p>16 before you were dean?</p> <p>17 A Yes, they do.</p> <p>18 Q Did you promote most candidates for tenure who</p> <p>19 had at least a 65% vote in the Appointments</p> <p>20 Committee?</p> <p>21 A Are you asking a numerical question? The data is</p> <p>22 in front of you.</p> <p>23 Q Yes, I'm asking a numerical question.</p> <p>24 A The numerical answer to that question would be</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. MURPHY: Objection.</p> <p>2 A Not to my knowledge.</p> <p>3 MR. RUSSCOL: I will ask to mark this</p> <p>4 document as the next exhibit, which I believe is</p> <p>5 217.</p> <p>6</p> <p>7 (Exhibit Number 217, Email With</p> <p>8 Attachment, was Marked for</p> <p>9 Identification.)</p> <p>10</p> <p>11 Q So I will ask you to take a look at that and see</p> <p>12 if you can identify that as an email that</p> <p>13 Paul Healy sent you on November 27, 2017, and the</p> <p>14 attachment to that email.</p> <p>15 A Yes.</p> <p>16 Q Did you ask Paul Healy to put together the</p> <p>17 numbers for you that are reflected in the</p> <p>18 attachment?</p> <p>19 A Yes.</p> <p>20 Q Why did you ask him to do that?</p> <p>21 A I just wanted to look at the data.</p> <p>22 Q Was there any particular reason you wanted to</p> <p>23 look at that data on November 27, 2017?</p> <p>24 A For a case that had generated a lot of</p>	<p style="text-align: right;">Page 29</p> <p>1 that I promoted -- at least in my time from this</p> <p>2 data, everybody who had votes that were 75% or</p> <p>3 more.</p> <p>4 Q And you also promoted everyone or almost everyone</p> <p>5 who had a 65% vote or more, right?</p> <p>6 A I did not.</p> <p>7 Q So referring just to the tenure promotions, isn't</p> <p>8 there only one person who was denied tenure with</p> <p>9 a 65% or higher vote?</p> <p>10 A That is empirically correct.</p> <p>11 Q Was that one denial while you were dean?</p> <p>12 A I don't know.</p> <p>13 MR. RUSSCOL: I'll ask that this be</p> <p>14 marked as Exhibit 218.</p> <p>15</p> <p>16 (Exhibit Number 218, Packet of</p> <p>17 Documents, was Marked for</p> <p>18 Identification.)</p> <p>19</p> <p>20 Q Is the first page of Exhibit 218 an email that</p> <p>21 Paul Healy sent you on December 5, 2017?</p> <p>22 A Yes.</p> <p>23 Q And I'll represent to you that the rest of the</p> <p>24 exhibit is the attachment, which is a</p>

<p style="text-align: right;">Page 34</p> <p>1 that the faculty publishes on an ongoing basis, 2 so that may have been another way for me to learn 3 the faculty as well.</p> <p>4 Q Do you recall having any personal interactions 5 with Mr. Edelman before 2014?</p> <p>6 A I know I met with him, but I do not have any 7 recollection of any specific interactions with 8 him.</p> <p>9 Q By the beginning of 2014, did you have an opinion 10 of him as a faculty member?</p> <p>11 A If you could ask that question with more 12 specificity, I could give you a good answer.</p> <p>13 Q How was Mr. Edelman as an HBS faculty member as 14 of the beginning of 2014?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A Again, I am not sure I know how to answer that 17 question.</p> <p>18 Q Well, did you have an opinion about his research 19 as of the beginning of 2014?</p> <p>20 A Not a fully-informed opinion, but I had read some 21 things that Ben had written. So based upon that, 22 I had some opinions of some of the work that he 23 had done.</p> <p>24 Q To the extent that you were informed about his</p>	<p style="text-align: right;">Page 36</p> <p>1 partially-informed opinion, as you say, about 2 Mr. Edelman's teaching, what was that opinion as 3 of the beginning of 2014?</p> <p>4 A That he was not a conventional case method 5 teacher at Harvard Business School, that he had 6 -- he was a decent teacher.</p> <p>7 Q Did you have an opinion about Mr. Edelman's 8 colleagueship as of beginning of 2014?</p> <p>9 A I had heard from some folks that he could 10 occasionally be difficult or prickly.</p> <p>11 Q Is that something that you've heard about other 12 HBS faculty members?</p> <p>13 A Yes.</p> <p>14 Q Did you have any other opinion about his 15 colleagueship as of the beginning of 2014?</p> <p>16 A No.</p> <p>17 Q Did your opinions of Mr. Edelman on any of those 18 dimensions change after the beginning of 2014?</p> <p>19 A You are focused on the date 2014. I don't 20 remember 2014 as some bright line in my mind, so 21 you'd have to tell me what it is that occurs in 22 2014 that would force me to have a different 23 opinion.</p> <p>24 Q So was there an incident with Mr. Edelman</p>
<p style="text-align: right;">Page 35</p> <p>1 research, what was your opinion of his research 2 at that time?</p> <p>3 A That he did good work.</p> <p>4 Q Did you have an opinion of his teaching as of the 5 beginning of 2014?</p> <p>6 A Again, not a very informed opinion, but I had 7 some opinion of his teaching based on students 8 that I would encounter as dean. I met with 9 students at breakfast. I asked them about people 10 that they had as teachers, and so I would learn 11 something from students and faculty members about 12 people's teaching. I also met with unit heads of 13 every unit on a regular basis in which they 14 shared with me the progress that every faculty 15 member who was untenured in the unit was making.</p> <p>16 So through those kinds of mechanisms, I 17 would gain information on faculty members, and 18 that's how I had some priors on faculty members. 19 But as I said, I was careful to recognize that 20 these were singular data points, and that's why 21 we had the appointments process to make sure that 22 we fully assess faculty members at important 23 junctures in their career.</p> <p>24 Q So to the extent that you had a</p>	<p style="text-align: right;">Page 37</p> <p>1 involving a company called "BlinkZ"?</p> <p>2 A Yes.</p> <p>3 Q Do you know when that happened?</p> <p>4 A I don't know the exact date.</p> <p>5 Q Was there an incident involving a Chinese 6 restaurant that involved Mr. Edelman?</p> <p>7 A Absolutely. I remember that very well.</p> <p>8 Q Okay. I'll represent to you that both those 9 things happened in 2014. So with that in mind, 10 after the beginning of 2014, did your opinion of 11 Mr. Edelman on the dimensions of research, 12 teaching and colleagueship change?</p> <p>13 A These incidents clearly created a firestorm. The 14 Chinese restaurant situation, for sure. I don't 15 think I have received more emails pertaining to a 16 faculty member in my time as dean ever around 17 that incident. So it was hard at that point to 18 not have to think through what was going on with 19 Ben Edelman as a colleague. The BlinkX incident 20 had also occurred and had been brought to my 21 attention, but I will say that in relative terms 22 the Chinese restaurant incident was a tsunami of 23 incoming.</p> <p>24 Q Did your opinions of Mr. Edelman's research or</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 teaching change after the beginning of 2014?</p> <p>2 A No, they did not.</p> <p>3 Q So understanding that the BlinkX and Szechuan</p> <p>4 Garden incidents were significant ones, after</p> <p>5 those incidents, did your opinions of</p> <p>6 Mr. Edelman's colleagueship change over time?</p> <p>7 A These were incidents that made it very clear that</p> <p>8 we needed to look carefully at his collection.</p> <p>9 Q And what was your opinion of Mr. Edelman's</p> <p>10 colleagueship right after the Szechuan Garden</p> <p>11 incident?</p> <p>12 A At a minimum, he had led many people to believe</p> <p>13 that he had acted in a manner that they thought</p> <p>14 was unbecoming of a faculty member at Harvard</p> <p>15 Business School.</p> <p>16 Q So that describes other people's views about</p> <p>17 Mr. Edelman's colleagueship. Did your view of</p> <p>18 his colleagueship change over time after that?</p> <p>19 A I have, as dean, been very careful throughout my</p> <p>20 time as dean to make sure that I don't insert my</p> <p>21 opinion into matters too quickly. I learned a</p> <p>22 long time ago that it is important when things</p> <p>23 get -- when you hear of things, that those things</p> <p>24 are properly investigated, that there's a real</p>	<p style="text-align: right;">Page 40</p> <p>1 your handwriting at the end, can you please read</p> <p>2 what you wrote underneath your signature on the</p> <p>3 last page?</p> <p>4 A (Reading):</p> <p>5</p> <p>6 "It is heartening to see the</p> <p>7 progress you continue to make on</p> <p>8 your research on online business</p> <p>9 and the impact it has had on our</p> <p>10 understanding of how these firms</p> <p>11 may discriminate or in other ways</p> <p>12 ignore applicable laws. I'm also</p> <p>13 glad that you have enjoyed</p> <p>14 teaching at LCA and are finding</p> <p>15 ways of bringing your research</p> <p>16 into this course. Thank you for</p> <p>17 your service on the ATSC and for</p> <p>18 all you're doing to help faculty</p> <p>19 with disabilities."</p> <p>20</p> <p>21 Q Did you write handwritten notes to all faculty on</p> <p>22 these letters?</p> <p>23 A Yes, I did.</p> <p>24 Q So at this time, at the time you wrote this</p>
<p style="text-align: right;">Page 39</p> <p>1 process that's conducted to get to the bottom of</p> <p>2 matters, and that I should form opinions after</p> <p>3 I've had the opportunity to have my colleagues</p> <p>4 fully investigate and explore things rather than</p> <p>5 forming opinions quickly or prematurely.</p> <p>6 Q Is it fair to say that after the Szechuan Garden</p> <p>7 incident Mr. Edelman was given another two years</p> <p>8 of his appointment?</p> <p>9 A Yes.</p> <p>10 Q What was your opinion of his colleagueship after</p> <p>11 those two years?</p> <p>12 A Again, I didn't form a personal opinion on his</p> <p>13 colleagueship.</p> <p>14 MR. RUSSCOL: I would like to mark this</p> <p>15 as the next exhibit. It is 219.</p> <p>16</p> <p>17 (Exhibit Number 219, Letter, was</p> <p>18 Marked for Identification.)</p> <p>19</p> <p>20 Q So looking at Exhibit 219, can you identify what</p> <p>21 this is?</p> <p>22 A At the end of every year, I write letters that</p> <p>23 are annual letters to every member.</p> <p>24 Q And just to make sure that I'm correctly reading</p>	<p style="text-align: right;">Page 41</p> <p>1 letter, you understood that Mr. Edelman was</p> <p>2 enjoying teaching LCA, right?</p> <p>3 A Yes, I had personally taught LCA and I was</p> <p>4 involved in the creation of that course, so</p> <p>5 therefore, I had many colleagues who I knew in</p> <p>6 the LCA course and had learned from them that Ben</p> <p>7 was enjoying teaching LCA.</p> <p>8 Q Did you ask any of those colleagues how</p> <p>9 Mr. Edelman was doing at LCA?</p> <p>10 A I did not.</p> <p>11 Q So did they bring it up to you?</p> <p>12 A Yes, they did.</p> <p>13 Q Who specifically brought that up to you?</p> <p>14 A I do not remember.</p> <p>15 Q Who were the colleagues that you knew were</p> <p>16 teaching LCA with Mr. Edelman?</p> <p>17 A The person whom I remember is Joe Badaracco</p> <p>18 because he had taught LCA for a long time. I</p> <p>19 don't specifically remember other members of the</p> <p>20 teaching group at the time.</p> <p>21 Q And at that time, you knew that Mr. Edelman was</p> <p>22 serving on the ATSC, right?</p> <p>23 A The acronym currently escapes me myself, but at</p> <p>24 that time I would have remembered what the ATSC</p>

<p>1 stood for.</p> <p>2 Q What is the Academic Technology Steering 3 Committee?</p> <p>4 A That is the correct interpretation of that. I'm 5 being really honest with you. Like, when you're 6 in a part of an institution, you understand all 7 the acronyms. As soon as you leave the 8 institution, these acronyms become distant 9 memory.</p> <p>10 Q So what is the Academic Technology Steering 11 Committee?</p> <p>12 A We had created a committee of faculty and staff 13 to oversee the ongoing evolution of technology at 14 Harvard Business School.</p> <p>15 Q And when you wrote this letter, what did you know 16 about Mr. Edelman's service on the ATSC?</p> <p>17 A That he was serving on it. It was part of what 18 we had encouraged him to do. And I remember 19 there was a particular thing that he had done to 20 help someone who was sight impaired, and that had 21 become something that people brought to my 22 attention, and that's what I viewed as a positive 23 thing to have done, and that's why I noted that 24 on this letter.</p>	Page 42	<p>1 disrespectful to Harvard staff with expertise in 2 disability accommodations?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 A I am not.</p> <p>5 Q Are you aware that Dean Crispi included 6 Mr. Edelman's efforts to help a site-impaired 7 colleague as a situation that FRB should 8 investigate in 2017?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 A I do not.</p> <p>11 Q Are you aware that Dean Crispi included 12 Mr. Edelman's efforts to help a hearing-impaired 13 colleague as a situation that FRB should 14 investigate in 2017?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A I am not aware. And, broadly, I can say that the 17 range, scope and what a committee at Harvard 18 Business School chooses to investigate on any 19 dimension. Whether it's for the academic work, 20 the Appointments Committee, or in the case of the 21 FRB, that is not something that I weigh in on or 22 attend to. That's the responsibility of the 23 committee.</p> <p>24 Q Would knowing that about Dean Crispi give you any</p>	Page 44
<p>1 Q Is that your reference to "helping faculty with 2 disabilities"?</p> <p>3 A Yes.</p> <p>4 Q Who is the site-impaired colleague you 5 referenced?</p> <p>6 A I do not remember.</p> <p>7 Q Was it Christine Exley?</p> <p>8 A With your jogging of the name, that would be my 9 best recollection, but I'll be honest, even that 10 doesn't -- I can't say with certainty that that's 11 who I have in mind.</p> <p>12 Q Did you know if Mr. Edelman had helped other 13 faculty with disabilities?</p> <p>14 A I did not.</p> <p>15 Q Did you view Mr. Edelman's activities, helping 16 faculty with disabilities as positive for the HBS 17 community?</p> <p>18 A Yes.</p> <p>19 Q Are you aware that others viewed those activities 20 as disrespectful to Harvard staff with expertise 21 in disability accommodations?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 A I'm not aware of that.</p> <p>24 Q Are you aware that Angela Crispi viewed that as</p>	Page 43	<p>1 concern about her impartiality as a member of the 2 Faculty Review Board?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 A I have no understanding of the context in which 5 she may have asked for this.</p> <p>6 Q Do you believe that Mr. Edelman violated HBS 7 community values with regard to his efforts on 8 behalf of a site-impaired colleague?</p> <p>9 A I don't know how to answer that question.</p> <p>10 Q Is there anything -- strike that.</p> <p>11 To the extent that you're aware of 12 Mr. Edelman's efforts on behalf of the site 13 impaired colleague, is there anything about that 14 that violates HBS community values in your view?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A Again, I don't know how to answer that question.</p> <p>17 I learned from someone that Ben helped someone in 18 this situation and I wrote him a note saying 19 thank you.</p> <p>20 Q When the Faculty Review Board was tasked with 21 investigating a faculty member, who decided what 22 they would investigate?</p> <p>23 A They would.</p> <p>24 Q So would that be up to the Chair of the FRB?</p>	Page 45

<p style="text-align: right;">Page 46</p> <p>1 A And all of the members of the FRB alongside the 2 Chair. It's a collaborative process. The Chair 3 oversees the FRB, but the FRB acts as any other 4 committee at Harvard Business School does, which 5 is every member, as an independent person, can 6 ask for evidence, can ask them for other things. 7 This is true of every part of our Appointments 8 Committee and every other Review Committee that 9 we have.</p> <p>10 Q So that's not a decision that you would make as 11 dean?</p> <p>12 A No.</p> <p>13</p> <p>14 (Exhibit Number 220, Email, was 15 Marked For Identification.)</p> <p>16</p> <p>17 Q So understanding that this is not an email that 18 you were copied on, I'll ask you to take a look 19 at it, and I have a questions about the page.</p> <p>20 A Yes.</p> <p>21 Q Now, was Brian Hall the unit head for 22 Mr. Edelman's unit in the spring of 2017?</p> <p>23 A Yes, he was.</p> <p>24 Q And as you mentioned before, did you regularly</p>	<p>1 is more self-aware of how he was experienced in 2 that timeframe”?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 A I do not have any recollection.</p> <p>5 Q Was that something that you believed in early 6 2017?</p> <p>7 A I do not recall.</p> <p>8 Q Do you see the reference to Mr. Edelman's ability 9 to self-monitor?</p> <p>10 A Yes.</p> <p>11 Q Is that something that you had any awareness of 12 in early 2017?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 A Again, I cannot recall.</p> <p>15 Q Do you see that those are things that Brian Hall 16 is representing that he has in his notes in the 17 meeting with you?</p> <p>18 A Yes.</p> <p>19 Q Do you have any reason to doubt that Professor 20 Hall accurately captured what you said in the 21 meeting with him?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 A I have no reason to know whether Professor Hall 24 kept accurate notes of his meetings or not. I</p>
<p style="text-align: right;">Page 47</p> <p>1 meet with unit heads about faculty in their 2 unit?</p> <p>3 A Yes, I did.</p> <p>4 Q Do you see about halfway down that Mr. Hall was 5 referencing things that you said to him in a 6 meeting?</p> <p>7 A Is this the line where Brian writes, (Reading):</p> <p>8</p> <p>9 “Or as Nitin put it to me in our 10 most recent meeting”?</p> <p>11</p> <p>12 Q Right, that's what I'm referring to, those 13 sentences, yes.</p> <p>14 A Yes.</p> <p>15 Q So did you tell Brian Hall in early 2017 that 16 Mr. Edelman was more self-aware of how he was 17 experienced?</p> <p>18 A These are Brian Hall's notes.</p> <p>19 Q So they're Brian Hall's notes, but I'm asking you 20 whether you recall saying that or something like 21 that?</p> <p>22 A I generally do not have any recollection of what 23 I said to Brian Hall in that note.</p> <p>24 Q Do you recall saying anything like “Mr. Edelman</p>	<p style="text-align: right;">Page 49</p> <p>1 didn't review his other notes, so I have no way 2 to know the onset of this.</p> <p>3 MR. RUSSCOL: I would like to mark this 4 as Exhibit 221.</p> <p>5</p> <p>6 (Exhibit Number 221, BlinkX 7 Letter, was Marked for 8 Identification.)</p> <p>9</p> <p>10 Q Are you familiar with something called BlinkX?</p> <p>11 A Yes, I am.</p> <p>12 Q What was BlinkX?</p> <p>13 A It was a company that wrote me a note.</p> <p>14 Q How did BlinkX first come to your attention?</p> <p>15 A Through this letter.</p> <p>16 Q Had it come to your attention through press 17 inquiries before this letter in March 2014?</p> <p>18 A I do not recall.</p> <p>19 Q Is this an email from the then CEO of BlinkX that 20 was brought to your attention in March 2014?</p> <p>21 A Yes, it was.</p> <p>22 Q So after the CEO of BlinkZ asked to meet with 23 you, you wrote, (Reading):</p> <p>24</p>

13 (Pages 46 - 49)

<p>1 "This is very troubling."</p> <p>2</p> <p>3 Do you see that?</p> <p>4 A Yes, I do.</p> <p>5 Q What did you think was troubling at that time?</p> <p>6 A These allegations were serious allegations. I 7 found them troubling.</p> <p>8 Q Did you ever meet with the CEO of BlinkZ?</p> <p>9 A I did not.</p> <p>10 Q Did you ever ask to meet with the CEO of BlinkZ?</p> <p>11 A I did not.</p> <p>12 Q Was there any follow-up after this email?</p> <p>13 A I don't know. With regard to whom? There's a 14 lot of follow-up that we did to make sure that 15 the FRB would review this matter and that the 16 school would look into this matter.</p> <p>17 Q Was there any follow-up as far as you're aware 18 with the CEO of BlinkZ?</p> <p>19 A Again, if you asked the question, did I follow up 20 with the CEO of BlinkZ? Is that what you're 21 asking?</p> <p>22 Q Yes.</p> <p>23 A I did not.</p> <p>24 Q Are you aware if anyone else responded to the CEO</p>	Page 50	Page 52
<p>1 of BlinkX?</p> <p>2 A I do not know that.</p> <p>3 Q Did you ever hear anything further about the 4 request for a meeting with the CEO of BlinkX?</p> <p>5 A I do not recall.</p> <p>6 Q So I think you said that a meeting did not 7 happen, right?</p> <p>8 A A meeting did not happen.</p> <p>9 Q Did you draw any conclusions based on the fact 10 that a meeting didn't happen?</p> <p>11 A No.</p> <p>12 Q Now, in this email, Mr. Mukherjee alleges that 13 Mr. Edelman had made inaccurate and materially 14 misleading statements about BlinkX, right?</p> <p>15 A Yes.</p> <p>16 Q Did you ever investigate whether there was any 17 merit to that?</p> <p>18 A This is the task that I assigned the FRB to look 19 into.</p> <p>20 Q We may have discussed this before, but what role 21 did you have in the establishment of the Faculty 22 Review Board or FRB?</p> <p>23 A I formed the committee and charged them with the 24 responsibility to come up with the process that</p>	Page 51	Page 53

<p>1 in 2014?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 A I think I described to you truly and honestly the 4 way the circumstances unfolded, which is there 5 was a case which had already triggered the need 6 to reexamine the process. Groups of people had 7 been already formed to reexamine what the process 8 was like, and then the incidents occurred. It 9 was very clear that we would need some mechanism 10 to review the process. So having that work 11 completed was important.</p> <p>12 Q In January 2015, did you instruct Gene Cunningham 13 to establish a process to review Mr. Edelman?</p> <p>14 A If you have something that specifically says that 15 I did that, then the answer is yes, but I do not 16 have, again, a perfect recall of dates.</p> <p>17 Q I'm showing you what has been previously marked 18 as Exhibit 193.</p> <p>19 A Can I read this now, or do you need to --</p> <p>20 Q Yes, please do.</p> <p>21 A Okay.</p> <p>22 Q So looking at the top email on the first page, do 23 you see that Gene Cunningham wrote to Angela 24 Crispi on January 21, 2015, (Reading):</p>	<p>Page 54</p> <p>1 Q Who did you decide to make the Chair of FRB?</p> <p>2 A Amy Edmondson.</p> <p>3 Q Why did you choose her?</p> <p>4 A Amy was a deeply-respected senior faculty member 5 of the school. She was famous for having done 6 research on psychological safety. I thought that 7 she would be someone who would do a thoughtful 8 job.</p> <p>9 Q Did you consider anyone else for Chair of that 10 committee?</p> <p>11 A I don't recall right now. But in forming any 12 group, there's almost always a range of faculty 13 members that you consider. And all I remember is 14 that I chose Amy at the end.</p> <p>15 Q Who were the other initial members of FRB?</p> <p>16 A Forest Reinhardt -- to the best -- again, to the 17 best of my recollection, Forest Reinhardt, Angela 18 Crispi.</p> <p>19 Q And then why did you choose each of them?</p> <p>20 A So I chose Len because he had previously been 21 president of Babson, so he is someone whom I felt 22 had tremendous administrative experience, someone 23 who would bring the perspective that I as dean 24 would at the end also have to make. So he</p>
<p>1 "Nitin and I spoke yesterday about 2 launching a review process for 3 Ben"?</p> <p>4</p> <p>5 A Yes.</p> <p>6 Q Does that refresh your recollection about 7 whether you spoke to Gene Cunningham in January 8 2015 about launching a review process for 9 Mr. Edelman?</p> <p>10 A Based on this, I am sure that I must have had 11 that conversation with Gene.</p> <p>12 Q In that same email, Dean Cunningham refers to his 13 challenge as a colleague. Is that what you 14 thought needed to be reviewed in 2015?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A Those are, as I mentioned to you, based on the 17 Chinese restaurant situation, many concerns have 18 been raised about his behavior as a colleague. 19 And that was what I had in mind, in addition to 20 the BlinkX incident that also clearly needed to 21 be reviewed carefully.</p> <p>22 Q Did you decide who would be the initial members 23 of FRB?</p> <p>24 A Yes, I did.</p>	<p>Page 55</p> <p>1 understood what the roles and responsibilities 2 and obligations as someone who is in a position 3 that I had might enjoy, so might have to wrestle 4 with. So I thought that we were fortunate to 5 have him at the school. He was also a 6 longstanding faculty member at the school who had 7 done many, many things at Harvard Business School 8 in the past, so I thought that his experience 9 at the school would be useful as well.</p> <p>10 Do you want me to tell you about each 11 of the others?</p> <p>12 Q Yes.</p> <p>13 A Forest Reinhardt, again, had a reputation for 14 being a straight shooter. I don't remember at 15 this time whether he was unit head or not, but he 16 was one of the people who had been head of 17 things. So he was, again, someone who had 18 administrative responsibility at the school, was 19 viewed by very many people as -- you know, we're 20 a small community, so people have a view of 21 Forest being a straight arrow, if you will. And 22 so I thought that he would be a good member for 23 something like this.</p> <p>24 And Angela Crispi, because in many of</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 these issues, we wanted to make sure that the 2 community represented the staff. And the way the 3 school works is that just as the faculty would 4 report technically to me, the staff directly 5 reported to her, and then she reports to me. So 6 that's the way the school functions, so I thought 7 that she would be able to provide the opportunity 8 to make sure that the staff perspective was 9 represented in these matters as well.</p> <p>10 Q What made a person qualified to be on the FRB?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 A A credible senior faculty person or staff person 13 at the school.</p> <p>14 Q Did you consider anyone else to be a member of 15 the FRB in 2015?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 A Again, can you ask the question with more 18 specificity?</p> <p>19 Q Do you recall considering any other possible 20 members of FRB and then deciding not to choose 21 them for FRB?</p> <p>22 A I'm sure there may have been. There must have 23 been other names that one considers in the 24 formation of any committee.</p>	<p style="text-align: right;">Page 60</p> <p>1 A Likely, that would be the case.</p> <p>2 Q Did you choose, as FRB members, faculty who had 3 no prior substantial interactions with Mr. 4 Edelman?</p> <p>5 A It's impossible to compose such a committee at 6 Harvard Business School. We are a very small 7 committee. Almost everybody at the school has 8 had interactions with our faculty members in some 9 way or another.</p> <p>10 Q Did you ask any of the FRB members whether they 11 had had significant interactions with 12 Mr. Edelman?</p> <p>13 A I did not.</p> <p>14 Q Did you ask them if they had any opinions about 15 Mr. Edelman?</p> <p>16 A I did not.</p> <p>17 Q Did you want all the faculty members to be 18 open-minded and fair to Mr. Edelman?</p> <p>19 A Absolutely.</p> <p>20 Q Is it fair to say you didn't want them coming in 21 with strong biases against Mr. Edelman?</p> <p>22 A Whatever biases they may have, I want them to 23 make sure that they engage in the process fairly.</p> <p>24 Q Did you ask Angela Crispi if she had had prior</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Did you choose anyone from the NOM Unit to be on 2 the FRB in 2015?</p> <p>3 A No, I did not.</p> <p>4 Q Is there a reason why you didn't choose anyone 5 from the NOM Unit?</p> <p>6 A No particular reason for not choosing someone 7 from the NOM Unit.</p> <p>8 Q Is it fair to say that you understood, when you 9 established FRB in 2015, that its first case 10 would be Mr. Edelman's?</p> <p>11 A Yes. Not its first case. That something would 12 have happened before the appointments process 13 occurred, but conditional or nothing else 14 happened because you never know. These things 15 appear from -- I don't predict -- when I hear 16 about a Chinese Garden situation or when a letter 17 from Blinkx arrives, had something like that 18 occurred from when the committee was formed and 19 before Ben's case had to be heard, I imagine that 20 would have then become the first case that the 21 FRB had to consider.</p> <p>22 Q So unless a new case arose before the FRB could 23 consider Mr. Edelman's case, Mr. Edelman's case 24 would be the first?</p>	<p style="text-align: right;">Page 61</p> <p>1 interactions with Mr. Edelman by the time that 2 you asked her to be on that FRB?</p> <p>3 A I did not ask her that question specifically.</p> <p>4 Q Are you aware that Gene Cunningham worked with 5 the FRB as a staff member?</p> <p>6 A Yes.</p> <p>7 Q Did you ask her about her previous interactions 8 with Mr. Edelman?</p> <p>9 A No, I did not, though I knew she had.</p> <p>10 Q Did it concern you that Dean Cunningham was 11 working with the FRB and she'd had prior 12 interactions with Mr. Edelman?</p> <p>13 A No. As I said, I expected many people on the FRB 14 may have had some prior interactions with 15 Mr. Edelman.</p> <p>16 Q What interactions with Mr. Edelman were you aware 17 that Dean Cunningham had?</p> <p>18 A The interactions I am aware of are not -- I don't 19 know what direct interactions she had with him, 20 but I do know that, as you just shared with me, 21 the BlinkX letter that Gene was involved in 22 looking into the BlinkX letter and Gene was 23 involved in working with Brian Kenny to respond 24 to the media barrage that we were in the middle</p>

<p>1 of during the Chinese Garden situation.</p> <p>2 Q Did you expect Dean Cunningham to bring her</p> <p>3 personal experience to the FRB'S work in</p> <p>4 considering those matters?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 A Again, I don't know the question. If you explain</p> <p>7 your question further, then I will...</p> <p>8 Q Did you believe at that time that it was helpful</p> <p>9 that she had personal knowledge of these two</p> <p>10 issues that the FRB was going to be looking at?</p> <p>11 A That was not on my...</p> <p>12 Q Did you view it as a negative that you had that</p> <p>13 personal knowledge?</p> <p>14 A I did not view it as a positive or a negative.</p> <p>15 Q In 2017, did you replace Forest Reinhardt as a</p> <p>16 member of the FRB with Stuart Gilson?</p> <p>17 A Yes, I did.</p> <p>18 Q Why did you remove Professor Reinhardt from the</p> <p>19 FRB?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A "Remove" is a strong word. "Replace" may a</p> <p>22 better word.</p> <p>23 Q Okay. So why did you replace Professor Reinhardt</p> <p>24 as a member of FRB?</p>	Page 62	<p>1 opinions about Mr. Edelman?</p> <p>2 A I did not.</p> <p>3 Q Did you ask anyone on the FRB if they formed a</p> <p>4 view about whether Professor Edelman should</p> <p>5 receive tenure prior to their FRB service?</p> <p>6 A I did not.</p> <p>7 Q Did you ask any FRB members that in 2017?</p> <p>8 A I did not.</p> <p>9 MR. RUSSCOL: I would like to mark this</p> <p>10 as the next exhibit.</p> <p>11</p> <p>12 (Exhibit Number 222, Handwritten</p> <p>13 Note, was Marked for</p> <p>14 Identification.)</p> <p>15</p> <p>16 Q Is Exhibit 222 notes that you took?</p> <p>17 A They are in my handwriting, yes.</p> <p>18 Q When are these notes from?</p> <p>19 A I have no idea.</p> <p>20 Q What do these notes say?</p> <p>21 A They say, (Reading):</p> <p>22</p> <p>23 "Should we rely just on [REDACTED]</p> <p>24 [REDACTED] two, FRB, how quickly</p>	Page 64
<p>1 A It had long been the practice at the school that</p> <p>2 when, for any reason, a candidate was reviewed</p> <p>3 again, you wanted to have some fresh perspective</p> <p>4 on the case as well as some continuity on the</p> <p>5 case. So it was always the dean's obligation to</p> <p>6 decide what would be the balance of continuity</p> <p>7 and fresh eyes on the case. So I felt that in</p> <p>8 this case, in this circumstance, having at least</p> <p>9 one fresh eye would be helpful.</p> <p>10 Q Did Professor Reinhardt communicate anything to</p> <p>11 you about Mr. Edelman before you decided to</p> <p>12 replace him?</p> <p>13 A No.</p> <p>14 Q Why did you choose Professor Gilson to replace</p> <p>15 Professor Reinhardt?</p> <p>16 A Professor Gilson enjoyed very much the same</p> <p>17 reputation of the school in the appointments</p> <p>18 process that Professor Reinhardt did, straight</p> <p>19 arrow, diligent in his work, thoughtful,</p> <p>20 careful.</p> <p>21 Q Did you consider replacing any other members of</p> <p>22 the FRB at that time?</p> <p>23 A I don't recall.</p> <p>24 Q Did you ask Professor Gilson if he had strong</p>	Page 63	<p>1 do we get the process going;</p> <p>2 three, how do we give credit for</p> <p>3 his good behavior"?</p> <p>4</p> <p>5 Q And at the top, it says, "Ben Edelman"?</p> <p>6 A It says, "Ben Edelman."</p> <p>7 Q What did you mean by "Should we rely just on [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 A That when we gather evidence from LCA, should we</p> <p>10 talk to other members of the teaching group</p> <p>11 beyond [REDACTED].</p> <p>12 Q And what did you mean about how quickly do we get</p> <p>13 the FRB process going?</p> <p>14 A Just what's the timing of it, how quickly can we</p> <p>15 get the work done. This was always a question</p> <p>16 on any process at the school.</p> <p>17 Q And what did you mean about giving credit for</p> <p>18 good behavior?</p> <p>19 A How do we make sure that the good things that Ben</p> <p>20 had done also were accounted for.</p> <p>21 Q Reviewing these notes, do you have a sense of</p> <p>22 whether they're from the first time that FRB was</p> <p>23 viewing Mr. Edelman or the second time?</p> <p>24 MR. MURPHY: Objection.</p>	Page 65

<p>1 A I do not have a recollection.</p> <p>2 Q Is it fair to say that this is a scan of a</p> <p>3 handwritten document?</p> <p>4 A Yes.</p> <p>5 Q What physical form is this kept in?</p> <p>6 A I had these moleskin notebooks that I often</p> <p>7 almost always took notes in as I was in meetings</p> <p>8 or as I was making reflections. And so I</p> <p>9 imagined this is a page from that, though</p> <p>10 looking at it, I can't be sure, but that's where</p> <p>11 the vast majority of my handwritten notes should</p> <p>12 be found.</p> <p>13 Q And did you tear the pages out of those</p> <p>14 notebooks, or did you keep the notebooks</p> <p>15 together?</p> <p>16 A All notebooks were together.</p> <p>17 Q Would seeing the original notebook enable you to</p> <p>18 determine when these notes were from?</p> <p>19 A Only if there were dates on the pages before or</p> <p>20 after. I also had multiple notebooks. Sometimes</p> <p>21 they may not be in chronological order either.</p> <p>22 Q Are these notes of a meeting?</p> <p>23 A I don't know. There are times I wrote notes</p> <p>24 during meetings. There are times I wrote notes</p>	Page 66	Page 68
<p>1 to myself to remember to say things to people.</p> <p>2 So the notebooks serve multiple types of</p> <p>3 note-taking purposes.</p> <p>4 MR. RUSSCOL: I would like to mark this</p> <p>5 as 223.</p> <p>6</p> <p>7 (Exhibit Number 223, Handwritten</p> <p>8 Note with Redactions, was Marked</p> <p>9 for Identification.)</p> <p>10</p> <p>11 Q So most of this is redacted, but are these</p> <p>12 handwritten notes that you took?</p> <p>13 A Yes.</p> <p>14 Q When did you meet with Brian Hall about</p> <p>15 triggering the FRB process for Mr. Edelman?</p> <p>16 A I do not recall.</p> <p>17 Q Do you know what year it was?</p> <p>18 A Again, I imagine this is around the time of him</p> <p>19 coming up for promotion, but I don't know the</p> <p>20 exact date. I would guess somewhere between 2014</p> <p>21 and early 2015.</p> <p>22 MR. RUSSCOL: Let's go off the record.</p> <p>23</p> <p>24 (Whereupon, a brief discussion was held</p>	Page 67	Page 69

<p style="text-align: right;">Page 70</p> <p>1 whether something is enough or not enough is not 2 determinative. My job as dean is to make sure 3 that we have a process by which our colleagues 4 thoroughly look at situations. They then give me 5 their informed view. And that's when I have to 6 form a final view.</p> <p>7 Q Would succeeding at the LCA course and getting 8 positive student evaluations have been enough to 9 demonstrate that kind of progress you were 10 looking for?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 A Again, it's the kind of data that I would hope 13 that a subcommittee would look at.</p> <p>14 Q Would helping disabled colleagues teach have been 15 a positive factor?</p> <p>16 A Again, these are the kinds of data that you hope 17 the FRB would examine again,</p> <p>18 Q How did you intend to evaluate the question -- 19 strike that.</p> <p>20 Specifically, when you were considering 21 the extension in 2015, how did you intend to 22 evaluate the question in 2017 of whether 23 Mr. Edelman had made the kind of progress you 24 were looking for?</p>	<p style="text-align: right;">Page 72</p> <p>1 A Yes.</p> <p>2 Q Looking at the bottom of the page, do you see 3 where it says, (Reading): 4 5 "Every six months a conversation, 6 straight talk"?</p> <p>7 8 A Yes.</p> <p>9 Q Do you understand what that referred to in the 10 context of discussions in December 2015?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 A I don't specifically remember, but the line above 13 that is coach, and when we had a discussion of a 14 coach, the discussion was that we needed someone 15 who might -- usually that's my experience of what 16 good coaches do is they're people who can -- 17 they're not involved in the matter. They have no 18 ax to grind. They can be the kind of person who 19 provides straight talk.</p> <p>20 Q In the 2015-to-2017 timeframe, did you ever give 21 feedback to Mr. Edelman directly?</p> <p>22 A Not that I recall.</p> <p>23 Q Do you see in the lower right where it says, 24 (Reading):</p>
<p style="text-align: right;">Page 71</p> <p>1 A To have another FRB look at the facts thoroughly 2 and develop a recommendation as the FRB had done 3 in 2015.</p> <p>4 Q What did you expect other faculty or staff to do 5 with regard to Mr. Edelman between 2015 and 2017?</p> <p>6 A Behave as they would to any colleague.</p> <p>7 Q Did you ask any particular faculty or staff to 8 mentor Mr. Edelman or keep tabs on his progress?</p> <p>9 A Not specifically.</p> <p>10 Q Did you meet with Paul Healy and Angela Crispin 11 about Mr. Edelman in December 2015?</p> <p>12 A I don't recall, but I imagine that you have 13 something that will refresh my memory.</p> <p>14 Q I'm showing you what's been previously marked as 15 Exhibit 140.</p> <p>16 A Thank you.</p> <p>17 Q So I'd ask you to take a look at this and see if 18 it refreshes your recollection of a meeting on 19 December 10, 2015, that included you and Paul 20 Healy and members of the FRB.</p> <p>21 A They're not my notes.</p> <p>22 Q Right, but did these notes of someone else who 23 was there refresh your recollection of the 24 meeting around that time?</p>	<p style="text-align: right;">Page 73</p> <p>1 "Nitin will meet with Ben. Nitin 2 will talk to Brian"?</p> <p>3 4 A Yes.</p> <p>5 Q Did you meet with Mr. Edelman after this?</p> <p>6 A I met with Ben to tell him what he needed to do 7 over this period of time.</p> <p>8 Q And did you talk to Brian Hall after this 9 meeting?</p> <p>10 A Yes.</p> <p>11 Q What did you talk about with Brian Hall after 12 this meeting?</p> <p>13 A I don't recollect other than, in broad terms, 14 what we hope would be the set of assignments and 15 activities that Ben would undertake so that we 16 could get evidence of the things that we hope to 17 get evidence of by the time the review was done 18 again.</p> <p>19 Q What did you discuss with Mr. Edelman when you 20 met with him after this meeting?</p> <p>21 A And I don't have a specific recollection, but I 22 remember talking to him about some of the 23 specifics that are on this sheet.</p> <p>24 Q Such as that he would teach LCA?</p>

<p style="text-align: right;">Page 78</p> <p>1 Mr. Edelman?</p> <p>2 A It was intended to be a resource.</p> <p>3 Q When you made that offer, did you believe it</p> <p>4 would reflect negatively on Mr. Edelman if he did</p> <p>5 not accept it?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A No.</p> <p>8 Q Would it have been appropriate for the FRB to</p> <p>9 draw a negative inference against Mr. Edelman</p> <p>10 because he chose not to work with the coach?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 A Again, I do not put myself in the minds of the</p> <p>13 FRB.</p> <p>14 Q Moving ahead in time, after the FRB process was</p> <p>15 complete, the Appointments Committee voted on</p> <p>16 Mr. Edelman's tenure case in November 2017,</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q And you decided not to recommend him for tenure</p> <p>20 in late 2017, right?</p> <p>21 A Yes.</p> <p>22 Q In March 2018, did Mr. Edelman meet with you to</p> <p>23 discuss the FRB and his tenure case?</p> <p>24 A Again, I don't recollect that meeting</p>	<p style="text-align: right;">Page 80</p> <p>1 Q What do you remember about that meeting with</p> <p>2 Professor Gilson?</p> <p>3 A That I met with him.</p> <p>4 Q Do you --</p> <p>5 A I genuinely do not remember. It has been so long</p> <p>6 ago, I'm happy, if you refresh my mind, to then</p> <p>7 opine on any of these meetings. I am simply</p> <p>8 being honest with you. I'm not trying to be</p> <p>9 difficult. It is such a long time ago, I do not</p> <p>10 remember the specifics of this meeting if I'm</p> <p>11 going to be honest.</p> <p>12 Q After you made the decision about Mr. Edelman's</p> <p>13 tenure, did you hear criticism from the NOM Unit</p> <p>14 about how the FRB process went?</p> <p>15 A I'm sorry, I just did not hear that.</p> <p>16 Q Did you hear criticism from the NOM Unit about</p> <p>17 how the FRB process went?</p> <p>18 A I heard criticisms from people in the NOM Unit.</p> <p>19 Q Who in the NOM Unit do you remember hearing</p> <p>20 from?</p> <p>21 A I cannot remember specifically.</p> <p>22 Q I'm showing you what has been previously marked</p> <p>23 as Exhibit 78.</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 specifically, but I do know that some point after</p> <p>2 the process I met with Ben.</p> <p>3 Q What do you remember about that meeting, sitting</p> <p>4 here?</p> <p>5 A Nothing.</p> <p>6 Q Did Mr. Edelman give you any documents in that</p> <p>7 meeting?</p> <p>8 A Again, I do not recall the meeting. I recall the</p> <p>9 meeting occurring. I don't recall the specifics</p> <p>10 of the meeting.</p> <p>11 Q Do you remember him giving you a copy of an FRB</p> <p>12 principles and procedures document with color</p> <p>13 highlighting of where he thought the FRB had</p> <p>14 committed violations?</p> <p>15 A I do not recollect that, but I imagine that he</p> <p>16 could have.</p> <p>17 Q After that meeting with Mr. Edelman, did you do</p> <p>18 to follow-up on the meeting?</p> <p>19 A I do not recollect, but it is my practice, if</p> <p>20 people say things to me, I do my best to follow</p> <p>21 up.</p> <p>22 Q After you met with Mr. Edelman, you asked Stuart</p> <p>23 Gilson to meet with you about Mr. Edelman's case?</p> <p>24 A I remember meeting Stuart.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q I'll ask you to review this. I can represent to</p> <p>2 you that this document was written by Stuart</p> <p>3 Gilson.</p> <p>4 A So this is Stuart writing?</p> <p>5 Q Yes.</p> <p>6 A Yes.</p> <p>7 Q Does reading this document refresh your</p> <p>8 recollection about meetings with Mr. Edelman and</p> <p>9 Professor Gilson in March 2018?</p> <p>10 A It allows me to imagine what the conversation</p> <p>11 with Stu may have been like if these are his</p> <p>12 notes.</p> <p>13 Q But as you sit here, you don't have a</p> <p>14 recollection of that conversation?</p> <p>15 A Not particularly.</p> <p>16 Q In March 2018, was it your opinion as shown at</p> <p>17 the end of the second paragraph that the FRB was</p> <p>18 extremely thorough and balanced in how it</p> <p>19 approached the difficult task given to it?</p> <p>20 A Again, what I do know is that when I read the</p> <p>21 2017 report I felt that a thorough job had been</p> <p>22 done. This suggests, as I agreed to, that Ben</p> <p>23 had met with me to report on concerns that he had</p> <p>24 with the FRB and the process following, and it</p>

21 (Pages 78 - 81)

<p style="text-align: right;">Page 82</p> <p>1 looks like I met with Stu to make sure that he 2 felt, as a new member to the committee, that he 3 felt what I did, that the procedures and 4 processes were followed thoroughly and fairly.</p> <p>5 Q What was your opinion that the procedures had 6 been followed thoroughly and fairly based on?</p> <p>7 A The reading of the report.</p> <p>8 Q Did you do anything other than reading the report 9 to form an opinion about whether the FRB's work 10 was thorough and fair?</p> <p>11 A No. That's the only way I assess how any 12 committee ends up doing this work. This is true 13 for the Appointments Committee Report that was 14 written simultaneously on the subcommittee of the 15 Appointments Committee that viewed the other 16 merits of the case. So as dean, I never asked 17 any committee how it does its work other than to 18 make sure that the final report exhibits the 19 thoroughness that I would expect.</p> <p>20 Q Did you believe it was important that the FRB 21 members not reach prior conclusions before they 22 completed the process?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 A I believed that the FRB process should look at</p>	<p style="text-align: right;">Page 84</p> <p>1 have talked to Paul Healy. I often consulted him 2 on all these matters.</p> <p>3 Q And at the end of that paragraph you wrote that 4 you concluded that the process was followed and 5 the decision you arrived at was consistent with 6 HBS standards, right?</p> <p>7 A Yes.</p> <p>8 Q Why did you reach that conclusion?</p> <p>9 A Because I took one more step to examine carefully 10 the concerns that Ben had raised, and I thought I 11 had done my fair job of reexamining everything 12 and came to the same conclusion.</p> <p>13 Q Before the FRB Report was presented to the 14 Appointments Committee in 2017, did anyone 15 contact you to express concerns about the 16 fairness of the process?</p> <p>17 A I don't recollect.</p> <p>18 Q Did anyone contact you in that timeframe to 19 request revisions to the FRB Draft Report?</p> <p>20 A I do not recall.</p> <p>21 Q Did members of the NOM Unit meet with you in 22 October 2017 to express their views about the FRB process?</p> <p>24 A I do not recall.</p>
<p style="text-align: right;">Page 83</p> <p>1 all of the evidence and arrive at a conclusion at 2 the end of the process.</p> <p>3 Q So did you think it was important that the FRB 4 members start the process with an open mind?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 A I would hope that anybody who takes undertake 7 such work begins the process with an open mind.</p> <p>8 Q I'd showing you what has been previously marked 9 as Exhibit 86.</p> <p>10 A Thank you.</p> <p>11 Q Is this an email exchange that you had with 12 Mr. Edelman in April 2018?</p> <p>13 A Let me read it.</p> <p>14 Q Okay.</p> <p>15 A Yes. Thank you.</p> <p>16 Q So in the second paragraph, at the top, you wrote 17 that you spoke to some key people involved. 18 Which key people did you speak to about the 19 processes that you reference in this email?</p> <p>20 A Very clearly, I spoke to Stu Gilson, based upon 21 what you've just shared with me. I do not recall 22 who else I may have spoken to.</p> <p>23 Q Did you talk to Paul Healy?</p> <p>24 A I do not specifically recall. I imagine I may</p>	<p style="text-align: right;">Page 85</p> <p>1 Q We discussed earlier that there was a change in 2 the composition of the FRB in 2017, right?</p> <p>3 A Yes.</p> <p>4 MR. RUSSCOL: I would like to mark this 5 as the next exhibit.</p> <p>6</p> <p>7 (Exhibit Number 224, Email, was 8 Marked for Identification.)</p> <p>9</p> <p>10</p> <p>11 Q So as we discussed earlier, one reason you wanted 12 to change FRB'S membership is because you wanted 13 to inject some fresh perspective to avoid any 14 claims that the group was locked in a point of 15 view about Mr. Edelman, right?</p> <p>16 A Yes.</p> <p>17 Q Did you have reason to be concerned that the FRB 18 might be locked in a point of view at that 19 point?</p> <p>20 A No.</p> <p>21 Q Had someone suggested to you that the FRB was 22 locked in a point of view at that point?</p> <p>23 A No.</p> <p>24 Q Other than replacing Professor Reinhardt with</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 Professor Gilson, did you do anything else to 2 make sure that FRB was not locked in the point of 3 view?</p> <p>4 A Other than giving them the charge to do the work 5 thoroughly and diligently, no.</p> <p>6 Q Did you remind FRB members of the need to be 7 open-minded?</p> <p>8 A I hope I don't need to remind my colleagues of 9 doing that.</p> <p>10 Q Did you ever ask to see the evidence that the FRB 11 gathered or relied upon in 2015?</p> <p>12 A No.</p> <p>13 MR. MURPHY: Objection.</p> <p>14 Q Did you do that in 2017?</p> <p>15 A No.</p> <p>16 Q I'm showing you what's been marked as Exhibit 73. 17 And I can represent to you that these are Gene 18 Cunningham's notes of an FRB meeting on the date 19 indicated at the top. Are you aware that 20 Professor Gilson's first --</p> <p>21 A Can I read it, please?</p> <p>22 Q Oh, sure.</p> <p>23 I'm asking about the first page of this 24 document.</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. MURPHY: Objection.</p> <p>2 A Again, I'm pleased that any colleague would 3 represent fully and honestly what their views 4 were and then would adopt an open mind, which is 5 what I see case in reading of this still trying 6 to do.</p> <p>7 Q Are you aware that Professor Edmondson at that 8 same FRB meeting said "at some level it is 9 obvious that we shouldn't have Mr. Edelman on the 10 senior faculty"?</p> <p>11 A I'm not aware of that.</p> <p>12 Q Does that reflect the kind of open-minded 13 approach that you were looking for?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 A I was not present, so I don't know how to take 16 any one thing in context.</p> <p>17 Q Would you want someone on the FRB to start out 18 believing it's obvious that the person under 19 review shouldn't be on the faculty?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A I don't know how to answer that question.</p> <p>22 Q So for context, this was the first FRB meeting in 23 2017 and they had not started conducting 24 interviews yet. Does it concern you that two</p>
<p style="text-align: right;">Page 87</p> <p>1 A Okay, I read this page.</p> <p>2 Q Were you aware before reading that just now that 3 Professor Gilson's first remarks after he joined 4 the FRB in 2017 concluded that he had came in 5 with priors, that he thought BlinkX alone should 6 have been enough to fire Mr. Edelman and that 7 Mr. Edelman was irredeemable?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 A I do not remember that.</p> <p>10 Q I'm showing you now what's been marked as Exhibit 11 64. I'd ask you to take a look at the first page 12 of that document.</p> <p>13 A Okay.</p> <p>14 Q So I can represent to you that this document was 15 created by a member of the FRB the same day of 16 that meeting on June 28, 2017. Are you aware 17 that Professor Gilson also expressed in his first 18 FRB meeting that it was shame to spend so much 19 time on Mr. Edelman and that he was seething at 20 what he saw as Mr. Edelman's arrogance?</p> <p>21 MR. MURPHY: Objection.</p> <p>22 A I'm not aware.</p> <p>23 Q Does that reflect the kind of open-minded 24 approach you were looking for?</p>	<p style="text-align: right;">Page 89</p> <p>1 members of the FRB, including its Chair, had 2 already concluded that Mr. Edelman should have 3 been fired or shouldn't be on the senior 4 faculty?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 A Again, as I've said to you, I am completely 7 unaware of the deliberations of the subcommittee 8 of the FRB. In the end, I look at the work that 9 they've done,. Whatever priors people show up 10 with, which is true of every one of our 11 processes, I trust my colleagues to then look at 12 the evidence carefully, to assess the evidence, 13 and to arrive at conclusions that they can 14 represent for me and the rest of the faculty to 15 read that are credible and grounded in what 16 everybody would then have confidence in.</p> <p>17 Q So it doesn't concern you because you trusted 18 your colleagues to put aside their priors and 19 biases?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A Yes, as I do in every situation that I entrust my 22 faculty. It is not customary at our business 23 school to ask any colleague "What are your priors 24 and biases" on any matter before you entrust them</p>

<p>1 a task. You have to entrust them with the task 2 and have confidence that they will conduct that 3 task with integrity.</p> <p>4 Q Who decided that the FRB would review 5 Mr. Edelman's case in 2017?</p> <p>6 A This was what was anticipated from the very 7 outset. This was anticipated in 2015.</p> <p>8 Q Who anticipated it in 2015?</p> <p>9 A The FRB did. I did as we -- the extension could 10 not be granted without this anticipation.</p> <p>11 Q So whose decision was it to convene the FRB for 12 Mr. Edelman in 2017?</p> <p>13 A All decisions to begin committees at the end are 14 mine.</p> <p>15 Q Did Mr. Edelman agree in 2015 that the FRB would 16 consider his case in 2017?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 A In what manner?</p> <p>19 Q Did he express in 2015 that he agreed that the 20 FRB would consider his case in 2017?</p> <p>21 A Again, I have no specific recollection. My only 22 -- what I clearly know is that it was 23 unambiguously the case that the FRB would have to 24 write another report on what basis would we give</p>	Page 90	<p>1 recollections of many things, but I followed 2 quite specifically in that conversation when I 3 told him about LCA, when I told him about what we 4 needed to do, I imagine in that meeting I also 5 shared with him that the review, that another 6 review were going to be done at the end of two 7 years.</p> <p>8 Q Did you meet with Mr. Edelman to convey to him 9 the terms of his two-year extension?</p> <p>10 A Yes.</p> <p>11 Q Do you remember when that meeting was?</p> <p>12 A I do not. I remember it was shortly after the 13 FRB had written its report. The Standing 14 Committee had then recommended that maybe a 15 two-year extension would be something that would 16 be helpful. I remember the discussion had 17 occurred where the FRB then also felt comfortable 18 making that recommendation to me. And then I 19 think we've already reviewed some meetings that 20 occurred to decide what might be the ways in 21 which Ben could do some things that would provide 22 evidence to people that he had learned from this 23 incident, and I then met with Ben to share that 24 with him.</p>	Page 92
<p>1 a two year-extension and not have another report 2 conducted, another report written because this 3 report had not been made available to the full 4 Appointments Committee to make a decision, the 5 2015 report. And so in any subsequent thing, a 6 minimum thing that the faculty would ask is, "So 7 what have we learned in the intervening two years 8 if you're giving the person an extension." That 9 is what Appointments Committees are required to 10 do after they -- when extensions are granted. So 11 this is just a routine matter at the school, that 12 if an extension is given, then the committee is 13 required to take the time to fully review the 14 case again.</p> <p>15 Q Did you convey to Mr. Edelman in 2015 that it was 16 the FRB that was going to be doing that review in 17 2017?</p> <p>18 A I almost certainly must have. Again, I don't 19 have specific recollection of all of these 20 things, but I can't imagine not having said that.</p> <p>21 Q But as you sit here today, you don't have a 22 specific recollection of telling him that?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 A I don't. As you have seen, I don't have specific</p>	Page 91	<p>1 Q Was anyone else in the meeting with Mr. Edelman?</p> <p>2 A Again, I don't recall, but I usually have all of 3 my meetings with faculty members one-on-one.</p> <p>4 Q Was Paul Healy in that meeting?</p> <p>5 A I don't remember.</p> <p>6 MR. RUSSCOL: I'd like to mark this as 7 the next exhibit, 225.</p> <p>8</p> <p>9 (Exhibit Number 225, Email, was 10 Marked for Identification.)</p> <p>11</p> <p>12 Q Looking at Exhibit 225, is that an email that you 13 sent to Mr. Edelman on January 28, 2016?</p> <p>14 A Yes, it is.</p> <p>15 Q Was that after you met with Mr. Edelman to 16 discuss what would happen over the next two 17 years?</p> <p>18 A It clearly seems to be, yes.</p> <p>19 Q Is it fair to say that this email includes action 20 items for Mr. Edelman related to his two-year 21 extension?</p> <p>22 A Some action items.</p> <p>23 Q And you told him that he would have the 24 opportunity to join LCA, right?</p>	Page 93

24 (Pages 90 - 93)

<p>1 A Yes.</p> <p>2 Q And in this email you confirmed that he should 3 reach out to Joe Badaracco about that?</p> <p>4 A Yes. Joe Badaracco, at that time, was the head 5 of LCA, and force heads decide the faculty in a 6 new teaching group.</p> <p>7 Q And you asked him to join the IT Advisory Group?</p> <p>8 A Yes.</p> <p>9 Q Is that another name for the Academic Technology 10 Steering Committee?</p> <p>11 A Sounds like that.</p> <p>12 Q And you asked him to contact Angela Crispri about 13 that, right?</p> <p>14 A Yes.</p> <p>15 Q And you've offered Mr. Edelman the chance to work 16 with an executive coach, right?</p> <p>17 A Yes.</p> <p>18 Q And as we discussed, that was optional, right?</p> <p>19 A Yes.</p> <p>20 Q There's nothing in this email about the FRB 21 meeting in 2017, is there?</p> <p>22 A No.</p> <p>23 Q Are you aware that --</p> <p>24 A There's nothing in this meeting about him moving</p>	<p>Page 94</p> <p>1 Okay, yes.</p> <p>2 Q Looking at the third paragraph of this document, 3 do you where it says -- do you see that Professor 4 Edmondson wrote to Mr. Edelman on September 1, 5 2017, that you gave approval for the FRB to ask 6 Mr. Edelman for additional detail on his outside 7 activities?</p> <p>8 A Yes.</p> <p>9 Q Did you get approval for the FRB to do that?</p> <p>10 A I asked for Gene to ask -- so the outside 11 activities report is confidential to the dean.</p> <p>12 It is not reviewed by other people. So to gain 13 access to it, you have to ask the dean for 14 permission. I was asked whether this should be 15 something that we should include, and I said, 16 "Given that outside activities are in the purview 17 of what the FRB is looking at, yes."</p> <p>18 Q So who asked you about it?</p> <p>19 A Gene came to say that there are things that the 20 FRB wants to examine that pertain to Ben's 21 outside activities, and I said, "If that's what 22 they need to look into, yes."</p> <p>23 Q Did Professor Edmondson ask you anything about 24 that?</p>
<p>1 to another floor or any other things either, so 2 it's not a complete email.</p> <p>3 Q Are you aware that in the late summer of 2017 the 4 FRB expanded the scope of its review to include 5 the American Airlines lawsuit and Mr. Edelman's 6 outside activities including his writings about 7 Google?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 A Again, I do not determine the scope of the FRB. 10 The FRB was tasked to fully investigate whether 11 they felt comfortable to say that Ben Edelman now 12 met our collegueship standard.</p> <p>13 Q Were you consulted on the scope of its inquiry at 14 that time?</p> <p>15 A No.</p> <p>16 Q Were you consulted on whether the FRB should 17 review Mr. Edelman's outside activities?</p> <p>18 A No.</p> <p>19 Q I'm showing you now what was previously marked as 20 Exhibit 38.</p> <p>21 A Okay.</p> <p>22 Q So looking at the third paragraph of this 23 document --</p> <p>24 A Just one minute.</p>	<p>Page 95</p> <p>Page 97</p> <p>1 A No.</p> <p>2 Q Did Dean Cunningham tell you what specifically 3 the FRB was looking at?</p> <p>4 A No.</p> <p>5 Q So were you aware at that time in September 2017 6 that the FRB was looking into the American 7 Airlines lawsuit?</p> <p>8 A I don't know exactly when I became aware of that, 9 but at some point I became aware of it because 10 Max had written me a letter about this incident.</p> <p>11 I don't know the timing of when that letter came 12 to me relative to when this review was being 13 done.</p> <p>14 Q Before Professor Bazerman wrote a letter to you 15 about that, were you aware that the FRB was 16 looking into the American Airlines lawsuit?</p> <p>17 A I did not.</p> <p>18 Q In September -- strike that.</p> <p>19 As of September 1, 2017, were you aware 20 that the FRB was looking into Mr. Edelman's 21 writings about Google?</p> <p>22 A Again, I generally did not have any insight into 23 what the FRB was examining on. Its job was to 24 conduct a full and thorough fulsome report that</p>

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<p style="text-align: right;">Page 98</p> <p>1 would allow me and others to believe that Ben met 2 the standards of collegueship at the school. 3 And just like the Appointments Committee was 4 reviewing his intellectual work and had full rein 5 to decide how they do these things, these are 6 matters that we delegate to the subcommittees and 7 the dean is not involved till the very final 8 stage of reviewing the final report and then 9 seeing how the discussion unfolds.</p> <p>10 Q Do you recall that there was a Wall Street 11 Journal article that mentioned Mr. Edelman as 12 someone who was paid by Microsoft and was writing 13 about Google?</p> <p>14 A I do not recall that.</p> <p>15 Q Was it the role of the FRB to decide whether that 16 sort of issue was an allegation that the FRB 17 could investigate?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 A Absolutely.</p> <p>20 Q Would it surprise you to learn that Professor 21 Edmondson believed that it's your decision to 22 decide that?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 Q Sorry, we need a verbal answer.</p>	<p style="text-align: right;">Page 100</p> <p>1 FRB Report in 2017?</p> <p>2 A On all reports, I offer minor editorial comments.</p> <p>3 It is ultimately in the judgment of the Chair of 4 the committee and the committee itself to accept 5 or reject my comments.</p> <p>6 Q Are you aware that the FRB prepared a draft 7 report that Mr. Edelman was able to comment on, 8 and then after that report they prepared a final 9 report?</p> <p>10 A I'm not aware. I expect the FRB followed the 11 processes of keeping Mr. Edelman informed as they 12 were supposed to.</p> <p>13</p> <p>14 (Exhibit Number 226, Email, was 15 Marked for Identification.)</p> <p>16</p> <p>17 Q Looking at the first page of this document, do 18 you see that Gene Cunningham wrote to the FRB 19 that the final version of the FRB Report included 20 feedback from you and Paul Healy?</p> <p>21 A Yes.</p> <p>22 Q Do you believe that's accurate?</p> <p>23 A Yes.</p> <p>24 Q Do you see that Dean Cunningham writes that it</p>
<p style="text-align: right;">Page 99</p> <p>1 A So tell me what the question is again.</p> <p>2 Q Would it surprise you that Professor Edmondson 3 testified that it's the dean's decision whether 4 that sort of thing is an allegation that the FRB 5 could investigate?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A Again, I don't know what she said. And so if she 8 said that, that's her point of view. That is not 9 my understanding.</p> <p>10 Q I'm showing you now what's been marked as Exhibit 11 45. And without reading the whole thing, because 12 it is quite lengthy, does it appear to be the 13 FRB'S final report in 2017?</p> <p>14 A Yes, it does.</p> <p>15 Q Did you see this document at some point?</p> <p>16 A I saw it once before it was finally delivered to 17 the faculty.</p> <p>18 Q When did you see it before it was delivered to 19 the faculty?</p> <p>20 A I don't remember the exact date, but it must have 21 been -- typically, these reports are prepared, 22 all reports, and I take one final look at them, 23 and then they are released to the faculty.</p> <p>24 Q Did you ask the FRB to make any changes to the</p>	<p style="text-align: right;">Page 101</p> <p>1 was intentionally not described as such to Ben?</p> <p>2 A Yes, she writes that.</p> <p>3 Q Why were the changes intentionally not described 4 as being from you and Paul Healy to Mr. Edelman?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 A I have no idea.</p> <p>7 Q Did you ask Dean Cunningham to not describe them 8 that way?</p> <p>9 A No.</p> <p>10 Q Were you trying to hide your involvement in the 11 drafting of the FRB Report?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 A Absolutely not. Again, I did not draft the 14 report. As with all reports, I simply offer, at 15 the very end of the report, minor editorial 16 suggestions on places where I think the report 17 could be clearer.</p> <p>18 Q So looking at the penultimate page of the 19 attachment, page 10 --</p> <p>20 A This is (indicating)?</p> <p>21 Q Yes, page 10 of that document. It's labeled page 22 10 at the bottom.</p> <p>23 Do you see, under the Summary section, 24 there are a few track changes?</p>

<p style="text-align: right;">Page 102</p> <p>1 A Yes.</p> <p>2 Q Did you propose any of those track changes under 3 the Summary section?</p> <p>4 A Again, I do not recall, but if this is the 5 document that reflects the edits that I 6 proposed throughout, yes, they could very well be 7 mine.</p> <p>8 Q What was your intention in imposing the 9 suggestions that you made to the report?</p> <p>10 A Again, to be clear about my reading of the report 11 and to make sure that the faculty had the 12 opportunity to understand clearly what the FRB 13 was concluding.</p> <p>14 Q Looking at one of the track changes there on page 15 10, did you believe in 2017 that faculty members 16 experienced Professor Edelman's interactions as 17 disrespectful?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 A The rest of the report says that.</p> <p>20 Q So the basis for that conclusion is just the rest 21 of the information of the report?</p> <p>22 A Yes. The only job that I have at this point is 23 to make sure that the report reads as clearly as 24 it could and arrives at conclusions that reflect</p>	<p style="text-align: right;">Page 104</p> <p>1 well as your response to him?</p> <p>2 A Yes.</p> <p>3 Q Did you write to Professor Bazerman that you only 4 received the final version of the FRB Report?</p> <p>5 A Yes.</p> <p>6 Q In fact, you received a report before it was 7 final, right?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 A It is the final version, except with my -- it's 10 the same as the final version I receive of all 11 reports. My insinuation there was -- or my 12 clarity there is that I don't get involved in the 13 process; that, if anything, as the committee is 14 prepared, this process has to be heard by them. 15 Those things have to be brought directly to the 16 committee.</p> <p>17 Q Is it fair --</p> <p>18 A This is true. Again, as you can see, this is 19 what I say here is analogous to the Appointments 20 Subcommittee. If people have things that they 21 want to raise about anything while the process is 22 underway, they have to first bring it to the 23 attention of the appropriate committee so that 24 that matter can be fully digested, absorbed, and</p>
<p style="text-align: right;">Page 103</p> <p>1 the work that has been done. I provide these 2 kinds of comments on every report, including 3 appointments, Committee Reports. They are all 4 minor suggestions, and they are that. The 5 subcommittee has, in the end as the FRB did, the 6 right to say, "Do not." That does not comport 7 with our conclusions, and they can reject my 8 suggestions.</p> <p>9 Q Do you know if the FRB rejected any of your 10 suggestions?</p> <p>11 A I do not know that.</p> <p>12 Q Are you aware of any instances where a 13 subcommittee rejected your suggestions?</p> <p>14 A Yes. Not specifically, but I know that there are 15 times when people say, "We don't think that that 16 reflects what we want to conclude."</p> <p>17 MR. RUSSCOL: I would like to mark this 18 as the next exhibit.</p> <p>19</p> <p>20 (Exhibit Number 227, Email, was 21 Marked for Identification.)</p> <p>22</p> <p>23 Q So, generally, is this the email you referenced 24 earlier that you got from Professor Bazerman as</p>	<p style="text-align: right;">Page 105</p> <p>1 put in the context of all of the work of the 2 subcommittee.</p> <p>3 Q Is it fair to say Professor Bazerman was upset 4 about the draft report?</p> <p>5 A You can ask him.</p> <p>6 Q Was it your impression after receiving this email 7 that he was upset about it?</p> <p>8 A He uses the word "I'm appalled."</p> <p>9 Q What did you hope the FRB would do about 10 Professor Bazerman's concerns?</p> <p>11 A That they would review them carefully as I expect 12 them to review anything that is brought to their 13 attention.</p> <p>14 Q Did you think that Professor Bazerman's concerns 15 had any validity?</p> <p>16 A I did not form any opinion about Professor 17 Bazerman's concerns.</p> <p>18 Q Did you follow up with Professor Bazerman after 19 this to see if the FRB had addressed his 20 concerns?</p> <p>21 A No, as I did not with anybody else who may have 22 raised any concern about Professor Edelman one 23 way or the other.</p> <p>24 Q So you referred those concerns to the FRB and let</p>

<p style="text-align: right;">Page 106</p> <p>1 the FRB deal with them in their process?</p> <p>2 A Yes. That's the job of the committee and the job</p> <p>3 of the dean in relationship with the committee.</p> <p>4 The committee is supposed to do these</p> <p>5 investigations fully and thoroughly and then</p> <p>6 write a report. I, as I said, provide editorial</p> <p>7 comments in the final report. And that's the</p> <p>8 process I follow on every process at the school.</p> <p>9 Q I'd like to refer back to Exhibit 45, the final</p> <p>10 report.</p> <p>11 A Yes.</p> <p>12 Q Now, on pages four through six of the final</p> <p>13 report, do you see several sets of bullet</p> <p>14 points?</p> <p>15 A Yes, I do.</p> <p>16 Q In 2017, what did you understand those bullet</p> <p>17 points to be?</p> <p>18 A As examples of the kinds of things that the FRB</p> <p>19 learned of in its interactions with the people</p> <p>20 they spoke to.</p> <p>21 Q Do you see on the first page, in the middle of</p> <p>22 the page, that the FRB wrote, that they</p> <p>23 interviewed 21 individuals? Sorry, on the first</p> <p>24 page.</p>	<p style="text-align: right;">Page 108</p> <p>1 heard, to be precise.</p> <p>2 Q I'm sorry, I didn't hear the last part.</p> <p>3 A So I'm saying I just that they learned in the</p> <p>4 interviews.</p> <p>5 Q So looking at page four, just before the top set</p> <p>6 of bullet points, do you see where it says,</p> <p>7 (Reading):</p> <p>8</p> <p>9 "They made comments such as"?</p> <p>10</p> <p>11 A Yes.</p> <p>12 Q Does that suggest to you that each of those</p> <p>13 bullet points was a comment that one of the</p> <p>14 individuals made?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A Again, as I said, my understanding is that these</p> <p>17 are comments that are either verbatim or closely</p> <p>18 paraphrased versions of what people must have</p> <p>19 said to people in the interviews.</p> <p>20 Q Is that still your understanding of what they</p> <p>21 are?</p> <p>22 A Yes.</p> <p>23 Q Did you do anything to confirm that the final FRB</p> <p>24 Report accurately reflected the evidence that the</p>
<p style="text-align: right;">Page 107</p> <p>1 A Yes.</p> <p>2 Q What did you understand it to mean that they</p> <p>3 interviewed 21 individuals?</p> <p>4 A That they interviewed 21 -- I'm not trying to be</p> <p>5 difficult, but faculty members interview people</p> <p>6 and they talk to them and they try and learn from</p> <p>7 those conversations the best they can. They do</p> <p>8 that for academic work. They do that for every</p> <p>9 kind of thing.</p> <p>10 Q Did you understand that to mean that FRB members</p> <p>11 spoke to those 21 individuals in person or by</p> <p>12 phone?</p> <p>13 A Or in writing or however they chose to do it.</p> <p>14 Q Looking back at the bullet points on pages four</p> <p>15 through six, did you understand that each of</p> <p>16 those bullet points was a comment that one of the</p> <p>17 21 faculty or staff members that the FRB</p> <p>18 interviewed made to an FRB member in an</p> <p>19 interview?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A I understood these to be either direct or</p> <p>22 paraphrase versions of what people heard in the</p> <p>23 interviews -- or learned in the interviews since</p> <p>24 I don't know whether the interviews were all</p>	<p style="text-align: right;">Page 109</p> <p>1 FRB gathered?</p> <p>2 A Again, that's the job of the FRB.</p> <p>3 MR. RUSSCOL: I'd like to mark this as</p> <p>4 the next exhibit.</p> <p>5</p> <p>6 (Exhibit Number 228, Handwritten</p> <p>7 Note, was Marked for</p> <p>8 Identification.)</p> <p>9</p> <p>10 Q Looking at Exhibit 228, is this your</p> <p>11 handwriting?</p> <p>12 A Yes, it is.</p> <p>13 Q What do these notes say?</p> <p>14 A It says, (Reading):</p> <p>15</p> <p>16 "Evidence," quotes, "from where</p> <p>17 and in what context, what will be</p> <p>18 investigated? Be efficient."</p> <p>19</p> <p>20 Q When did you take these notes?</p> <p>21 A I don't remember. If I had to guess, it's</p> <p>22 probably after meeting with Ben in which you</p> <p>23 raised concerns about the process.</p> <p>24 Q Was one of the things that Mr. Edelman said was</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 126</p> <p>1 A Yes.</p> <p>2 Q And the subcommittee also attaches the letters</p> <p>3 themselves so that those quotes can be put into</p> <p>4 context, right?</p> <p>5 A Yes.</p> <p>6 Q Did the FRB attach original -- strike that.</p> <p>7 Did the FRB attach interview notes or</p> <p>8 other documentation of what witnesses said so</p> <p>9 that their quotes could be put into context?</p> <p>10 A We have the full FRB Report in front of us, so</p> <p>11 based on that, no.</p> <p>12 Q Did you attend the Appointments Committee meeting</p> <p>13 for Mr. Edelman?</p> <p>14 A Yes.</p> <p>15 Q Did you consider making a statement to that</p> <p>16 meeting about what bar Mr. Edelman needed to meet</p> <p>17 on the issue of community standards or</p> <p>18 colleagueship?</p> <p>19 A I did not.</p> <p>20 Q You didn't make that statement, or you didn't</p> <p>21 consider it?</p> <p>22 A The preamble was intended to provide context</p> <p>23 Q And you didn't consider providing additional</p> <p>24 context beyond that preamble?</p>	<p style="text-align: right;">Page 128</p> <p>1 evidence and decides whether he meets a</p> <p>2 colleagueship standard.</p> <p>3 Q But didn't Mr. Edelman need to do something</p> <p>4 affirmative in order to demonstrate that he made</p> <p>5 progress from what happened in 2014?</p> <p>6 A He was given all the opportunities to conduct</p> <p>7 himself like a good colleague and have two years</p> <p>8 of data to show people that they could now assert</p> <p>9 that he was a colleague who met the standards of</p> <p>10 what we expect of people ion our community</p> <p>11 centers.</p> <p>12 Q How did you expect faculty members on the</p> <p>13 Appointments Committee to evaluate the community</p> <p>14 standards questions for Mr. Edelman's case?</p> <p>15 A Based upon the reports that were submitted by the</p> <p>16 FRB.</p> <p>17 Q In 2017, were you following the progress of</p> <p>18 Mr. Edelman's tenure case as it developed?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 A If you can explain that more or ask the question</p> <p>21 more precisely.</p> <p>22 Q Were you following the progress of Mr. Edelman's</p> <p>23 tenure case when it was at the Standing</p> <p>24 Committee?</p>
<p style="text-align: right;">Page 127</p> <p>1 A It's very uncommon for the dean to stand up and</p> <p>2 say anything before a committee begins his</p> <p>3 deliberations.</p> <p>4 Q Do you recall it ever happening that the dean got</p> <p>5 up at an Appointments Committee meeting and made</p> <p>6 a statement?</p> <p>7 A I can't recall.</p> <p>8 Q In some sense in 2017 was Mr. Edelman being asked</p> <p>9 to prove a negative that he would not engage in</p> <p>10 behavior like the BlinkX or Szechuan Garden</p> <p>11 incidents?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 A Mr. Edelman was not being asked to do anything,</p> <p>14 as I can tell. The subcommittee was asked to</p> <p>15 gather all the evidence to establish that</p> <p>16 Mr. Edelman met the community colleagueship</p> <p>17 standards of the school. We don't ask on any</p> <p>18 matter. Mr. Edelman produces his body of</p> <p>19 intellectual work, and then someone else decides</p> <p>20 whether it meets our standards. He teaches, and</p> <p>21 then someone else decides whether he meets our</p> <p>22 teaching standard. In the same spirit, he</p> <p>23 conducts himself as a colleague, and then it's</p> <p>24 for others to look at the totality of that</p>	<p style="text-align: right;">Page 129</p> <p>1 A At each stage, the people report to me what</p> <p>2 happens, and those are all moments at which the</p> <p>3 dean does get, so I only was involved at the</p> <p>4 junctures at which I am routinely involved. So</p> <p>5 there was nothing different about Mr. Edelman's</p> <p>6 case relative to other cases. So after every</p> <p>7 Standing Committee vote, I'm informed of that</p> <p>8 vote because, if the vote is not affirmative of</p> <p>9 moving the case forward, then I have to weigh in</p> <p>10 whether the case should go forward, whether the</p> <p>11 candidate should be told. Those are all matters</p> <p>12 that I have to weigh in on. But other than that,</p> <p>13 I was not involved in any way different from what</p> <p>14 I would be involved in any case.</p> <p>15 Q So at what junctures is the dean informed of the</p> <p>16 progress of a tenure case?</p> <p>17 A So the first is when the subcommittee produces a</p> <p>18 report with a vote. If that vote is not</p> <p>19 affirmative, then the dean has to -- typically,</p> <p>20 in this particular case, the senior associate</p> <p>21 dean during this time would have been Paul Healy</p> <p>22 -- has to inform the candidate and the unit head</p> <p>23 that the subcommittee has not agreed to move</p> <p>24 forward with the case is to give the opportunity</p>

<p style="text-align: right;">Page 134</p> <p>1 Mr. Edelman's Appointments Committee meeting?</p> <p>2 A Not that I recall.</p> <p>3 Q Did the Chair of Mr. Edelman's subcommittee speak</p> <p>4 at the beginning of the meeting?</p> <p>5 A I imagine they must have, but not that I recall</p> <p>6 specifically. It would be customary for the</p> <p>7 Chair of the subcommittee to say something.</p> <p>8 Q Did anyone speak at the beginning of the meeting</p> <p>9 on behalf of the FRB?</p> <p>10 A Not that I recall.</p> <p>11 Q Did Paul Healy say anything at the beginning of</p> <p>12 the meeting?</p> <p>13 A Not that I specifically recall.</p> <p>14 Q Is there anything that you do specifically recall</p> <p>15 someone saying during that meeting?</p> <p>16 A To be honest, no.</p> <p>17 Q Is it fair to say that some members of the</p> <p>18 Appointments Committee supported Mr. Edelman's</p> <p>19 application for tenure and there were others who</p> <p>20 were opposed?</p> <p>21 A Yes.</p> <p>22 Q What did the people who supported Mr. Edelman say</p> <p>23 at that point at this committee meeting?</p> <p>24 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q Do you recall anyone speaking at that meeting</p> <p>2 more than anyone else?</p> <p>3 A I do not.</p> <p>4 Q Okay. Was Professor Gilson at that meeting?</p> <p>5 A Again, I don't have a specific recollection.</p> <p>6 Q In 2017, who was the president of Harvard?</p> <p>7 A President Drew Faust.</p> <p>8 Q Did you ultimately decide to recommend</p> <p>9 Mr. Edelman to President Faust for promotion to</p> <p>10 full professor?</p> <p>11 A I decided to recommend against his being promoted</p> <p>12 to full professor.</p> <p>13 Q Why did you make that recommendation?</p> <p>14 A Because I concluded that he had not met our</p> <p>15 standards for being a member of our community</p> <p>16 that we could have faith would meet collegiality</p> <p>17 standards and community standards over the long</p> <p>18 run.</p> <p>19 Q Why specifically did you believe he hadn't met</p> <p>20 that standard?</p> <p>21 A I read the report of the FRB carefully, and my</p> <p>22 view was that he continued to have blind spots in</p> <p>23 relationship to how others might see situations</p> <p>24 that he would see differently; that on issues</p>
<p style="text-align: right;">Page 135</p> <p>1 A I don't specifically recall, but as you can see</p> <p>2 from the various reports, there were people who</p> <p>3 thought he had done great academic work. There</p> <p>4 were people who thought that he had shown</p> <p>5 progress in learning from the incidents that</p> <p>6 occurred in 2014. And there were people who said</p> <p>7 the other set of things.</p> <p>8 Q What factors did the people who oppose tenure for</p> <p>9 Mr. Edelman rely on?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 A Again, they relied on their combination of</p> <p>12 reading his intellectual work and academic work</p> <p>13 and the faculty -- the reports that were</p> <p>14 presented to them. I don't ask people what</p> <p>15 factors they rely upon. They make these</p> <p>16 determinations based upon all of the information</p> <p>17 that they have available to them.</p> <p>18 Q Do you recall anyone expressing opposition to</p> <p>19 Mr. Edelman in that meeting based on something</p> <p>20 other than what was in the FRB Report?</p> <p>21 A I do not recall.</p> <p>22 Q Was Amy Edmondson at that meeting?</p> <p>23 A I don't specifically remember, but I imagine she</p> <p>24 must have been.</p>	<p style="text-align: right;">Page 137</p> <p>1 where it would have been very easy to check in</p> <p>2 with someone else, he would personally make</p> <p>3 determinations for when it was correct for him to</p> <p>4 check in and when it was not; and that he</p> <p>5 continued to be excessively self-confident about</p> <p>6 his opinion relative to consulting others and</p> <p>7 paying careful attention to what their views</p> <p>8 might be, which is the heart of what our</p> <p>9 community encourages in our classrooms and</p> <p>10 encourages of each other.</p> <p>11 Q When you say that he had blind spots in areas</p> <p>12 where others might see things differently, what</p> <p>13 did you have in mind?</p> <p>14 A Several things that go all the way back to the</p> <p>15 Chinese restaurant situation, where it was very</p> <p>16 clear that other people thought he was bullying</p> <p>17 someone and he didn't think -- he couldn't</p> <p>18 imagine why anybody would believe that, that some</p> <p>19 people may have thought that if he had any</p> <p>20 economic relationship with someone who had done a</p> <p>21 study, he couldn't imagine that if he just</p> <p>22 published the study because he thought it</p> <p>23 represented his academic integrity that someone</p> <p>24 else might imagine that it didn't, that if he</p>

<p style="text-align: right;">Page 138</p> <p>1 took on a lawsuit that he didn't think that it 2 would be worth just talking to someone to see if 3 that was an okay thing, whether that might end 4 up dragging him into a situation in which the 5 amount of work involved or effort involved 6 would create challenges or whether it would 7 create any reputation issues.</p> <p>8 These are just things where you don't 9 have to say whether you should do it or not, but 10 just having the ability to talk to someone to get 11 a second opinion, to listen to that opinion 12 carefully, to weigh those matters would allow you 13 to make better decisions and he repeatedly seemed 14 to not want to do that.</p> <p>15 Q In terms of the lawsuit that you mentioned, does 16 that refer to the American Airlines lawsuit?</p> <p>17 A That's the other example in this situation.</p> <p>18 Q And Professor Bazerman served as the plaintiff in 19 that lawsuit, right?</p> <p>20 A Yes.</p> <p>21 Q Did Professor Bazerman consult with anyone in the 22 Dean's Office before beginning that lawsuit?</p> <p>23 A Not that I'm aware of.</p> <p>24 Q Was it inappropriate for Professor Bazerman to</p>	<p style="text-align: right;">Page 140</p> <p>1 by the end of this period, I was -- by 2017, I 2 couldn't feel confident that he had fully 3 internalized what he said he was going to 4 internalize.</p> <p>5 Q So in which situations did Mr. Edelman not check 6 in with others when you felt he should have?</p> <p>7 A So the American Airlines case was clearly an 8 example where he could have easily checked in 9 with people. Having been advised about 10 inconsistent disclosures on the BlinkX 11 circumstance, the disclosures that were brought 12 to Microsoft and Google are, again, places where 13 he could have easily erred on the side of caution 14 and on the side of being more disclosing rather 15 than not. So I think that there are -- what I 16 saw and what I think the FRB saw, which I agreed 17 with, was while there were places where he showed 18 signs of improvement, there still remained many 19 places where it would have been easy for him to 20 continue to consult, benefit from others' points 21 of view, that he just for whatever certain 22 reasons continued to not think it was appropriate 23 to do. And those situations would create, to my 24 mind, risk for the institution that as a tenured</p>
<p style="text-align: right;">Page 139</p> <p>1 serve as a plaintiff in that lawsuit without 2 consulting with the Dean's Office?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 A Again, I was not reviewing Professor Bazerman.</p> <p>5 Q Well, we saw earlier that Professor Bazerman 6 conveyed his view to you by email that if 7 Mr. Edelman had acted inappropriately with regard 8 to that lawsuit, then it was effectively accusing 9 him of misconduct, too, right?</p> <p>10 A Again, I am not -- the conclusion that I arrived 11 at was not that there was misconduct involved in 12 this case. The conclusion that I arrived at was 13 that the advice that we had given to Ben at the 14 end of 2014 is that relying on his own views of 15 situations was not something that he should count 16 upon because, repeatedly, his own interpretation 17 of those situations had gotten him and the school 18 into places that we would not wish for. He 19 acknowledged that himself. He said, "I've 20 learned from the situation. In the future, I 21 will reach out to people. I will try and learn 22 what someone else's point of view would be. I 23 will consult with people." I remember 24 distinctly him making those promises to me, and</p>	<p style="text-align: right;">Page 141</p> <p>1 faculty member where you get permanent 2 employment, and it's very difficult at that point 3 to check or monitor your behavior, those would 4 create undue risk for the institution, which it 5 was my job as dean to protect as much as my job 6 was to promote faculty members who we would 7 celebrate.</p> <p>8 Q You mentioned Mr. Edelman's disclosures. And the 9 FRB looked at some of Mr. Edelman's writings in 10 the disclosures that he made, right?</p> <p>11 A Yes.</p> <p>12 Q And the FRB described them as inconsistent, 13 right?</p> <p>14 A Yes.</p> <p>15 Q Did you review those publications?</p> <p>16 A I did not, but again, I reviewed the findings of 17 the FRB, and I had no reason to think that those 18 findings were in any way wrong.</p> <p>19 Q Why did you think that the American Airlines 20 lawsuit posed a risk to the school?</p> <p>21 MR. MURPHY: Objection.</p> <p>22 A It could pose a risk to the school in ways that I 23 was not 100% sure of, but it just felt like 24 here's a matter that has been brought into the</p>

<p style="text-align: right;">Page 142</p> <p>1 press. Is it being brought into the press in a 2 way that is good or bad for the repetition of the 3 school? If it drags on and it takes a lot of 4 time and energy, does that create a conflict of 5 commitment in terms of -- one of the reasons why 6 outside activities are constrained at the school 7 is that we want to make sure that people engage 8 in outside activities that are bounded, that are 9 not too time consuming, that don't end up putting 10 them in situations where it creates a conflict 11 between them and their work responsibilities at 12 the school. So there are all of these potential 13 challenges that this kind of work might have that 14 present risks to what the school would hope its 15 faculty members abide by.</p> <p>16 Q Is the question of whether Mr. Edelman's work on 17 the American Airlines lawsuit would overcommit 18 him in terms of outside activities something that 19 the FRB considered?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 A Again, I don't know what they considered and what 22 they didn't consider.</p> <p>23 Q Do you recall there being anything in the report 24 about that?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q Did you know anything about the American 2 Airlines lawsuit besides what was in the FRB 3 Report?</p> <p>4 A I did not.</p> <p>5 Q Did you discuss Mr. Edelman's case with President 6 Faust?</p> <p>7 A Yes, I did.</p> <p>8 Q What did you say about it?</p> <p>9 A Again, I don't recall the specifics.</p> <p>10 Q What did President Faust say?</p> <p>11 A Again, I don't recall the specifics of that.</p> <p>12 MR. RUSSCOL: I would like to mark this 13 as the next exhibit.</p> <p>14</p> <p>15 (Exhibit Number 232, Email, was 16 Marked for Identification.)</p> <p>17</p> <p>18 Q Looking at Exhibit 232, is this an email that you 19 wrote on November 17, 2017?</p> <p>20 A Yes.</p> <p>21 Q Was that the day after the Appointments Committee 22 vote for Mr. Edelman?</p> <p>23 A Yes.</p> <p>24 Q Who is Susan Deavor?</p>
<p style="text-align: right;">Page 143</p> <p>1 A I think the report -- again, I don't have -- I 2 can go back and review the report to see what 3 they specifically said about that. All I know is 4 that, at a minimum, they were concerned that he 5 had -- in this particular instance, given that 6 he'd been advised that it would be good to 7 consult people before you undertake activities, 8 that he had not chosen to consult anyone.</p> <p>9 Q Was it your understanding, based on the FRB 10 Report, that the American Airlines lawsuit had 11 been the subject of negative press?</p> <p>12 A No. It was that it was subject to some press.</p> <p>13 Q Does anything that is subject to press pose a 14 risk to the institution?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A No. But if it becomes like the Chinese Garden 17 situation, it does. And I don't know, when a 18 situation first shows up, whether it's going to 19 become like that or not. So after the fact, 20 it's much too late to determine that. So you 21 just have to be careful about things that have 22 that quality that could spin out of control in 23 ways that generate negative publicity by 24 reasonable-minded people.</p>	<p style="text-align: right;">Page 145</p> <p>1 A Susan Deavor is my executive assistant.</p> <p>2 Q Was the bottom part of this message that starts 3 with "Dear Drew" conveyed to President Faust as 4 you asked?</p> <p>5 A I imagine, yes.</p> <p>6 Q Had you previously discussed Mr. Edelman's case 7 with President Faust before you sent this email?</p> <p>8 A In 2014, President Faust had written to me quite 9 concerned about what was going on with the Ben 10 Edelman case.</p> <p>11 Q In 2017, before you sent this email, had you 12 discussed Mr. Edelman's case with President 13 Faust?</p> <p>14 A I had only -- we have regular meetings as I had 15 with my unit heads. President Faust would meet 16 with me regularly. Part of my discussions with 17 her during that case, during those discussions 18 would be "Who is coming up for tenure this year," 19 because she wanted to have a sense of what 20 workload she would have to deal with because 21 she's the ultimate decision-maker. And so in the 22 meeting that occurred, I imagine in the early 23 fall when I usually gave her a heads up on who 24 the cases were for the upcoming appointments</p>

<p style="text-align: right;">Page 146</p> <p>1 process, I would have said that we have these 2 cases coming up for promotion, including Ben 3 Edelman's.</p> <p>4 Q Do you see in the middle of that long paragraph 5 that you wrote, (Reading):</p> <p>6</p> <p>7 “There's no doubt he's an 8 outstanding scholar in an 9 important field”?</p> <p>10</p> <p>11 A Yes.</p> <p>12 Q Was that your opinion of Mr. Edelman's 13 scholarship at that time?</p> <p>14 A Yes, as it was of the Subcommittee Report.</p> <p>15 Q And you felt that the faculty votes didn't 16 provide a clear mandate in either direction? Is 17 that what you wrote?</p> <p>18 A Yes, that's what I wrote.</p> <p>19 Q And was that your feeling at the time?</p> <p>20 A My feeling at the time was that it was not in the 21 category of, if you think of 80/20 rules either 22 in the space of no way should we promote this 23 person and in the category of the preponderance 24 of the votes were in favor of the person. So</p>	<p style="text-align: right;">Page 148</p> <p>1 would have accepted your recommendation?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 A I don't know that. I cannot presume to know what 4 President Faust -- she's the ultimate 5 decision-maker, and she makes recommendations 6 based on her best judgment as I do in making 7 recommendations to her.</p> <p>8 Q Did you ever have the president of Harvard 9 overrule you in a tenure matter?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 A Happily, during my time, no.</p> <p>12 Q What was the Appointments Committee vote in 13 Mr. Edelman's tenure case in 2017?</p> <p>14 A I do not remember the vote, but I could easily 15 remember it if the vote was presented to me.</p> <p>16 Q Go back to Exhibit 218, the spreadsheet that --</p> <p>17 A In the middle of it that is not redacted, right?</p> <p>18 That is the one that we're looking at together?</p> <p>19 Q That's right. So --</p> <p>20 A (Reading):</p> <p>21</p> <p>22 “Edelman Benjamin, non-tenure, 23 4/2017, 41, 29, 2.”</p> <p>24</p>
<p style="text-align: right;">Page 147</p> <p>1 this was in that category of there wasn't a 2 mandate unambiguously to promote or to not 3 promote.</p> <p>4 Q And at the end of this message that you asked to 5 be conveyed to President Faust, you wrote that 6 you wanted her advice, right?</p> <p>7 A Yes.</p> <p>8 Q Did you get her advice?</p> <p>9 A I did not get her advice until we met again.</p> <p>10 Q Eventually, did she give you her advice?</p> <p>11 A Eventually, all I wanted to make sure that on a 12 matter like this was that after I made her a 13 recommendation that she would give me counseling 14 whether I had thought about the matter clearly or 15 not so that I could learn from the recommendation 16 that I made.</p> <p>17 Q Did she eventually give you that type of advice?</p> <p>18 A Yes, she thought that I had made a sound 19 recommendation.</p> <p>20 Q Did you take any notes of any meeting that you 21 had with President Faust regarding Mr. Edelman?</p> <p>22 A Not that I recall.</p> <p>23 Q Did you have any doubt that, if you recommended 24 Mr. Edelman for tenure, that President Faust</p>	<p style="text-align: right;">Page 149</p> <p>1 Q So that's 41 in favor, 29 against, and 2 2 abstentions?</p> <p>3 A Yes.</p> <p>4 Q So of the faculty who did not abstain, is that a 5 58.5% vote in favor?</p> <p>6 A Yes.</p> <p>7 Q Did you consider that a close vote?</p> <p>8 A I considered that a very difficult vote to move 9 forward on the basis of.</p> <p>10 Q And as you said earlier, not a clear mandate in 11 favor or against?</p> <p>12 A Yeah, nothing -- I mean, at some level, anything 13 that isn't like 85 or 90% is not a clear mandate.</p> <p>14 And as you can see from these cases, anything 15 that's below a majority is very rarely enough of 16 a mandate, certainly for tenure. So this is in 17 that category of no clear mandate where you have 18 to exercise your best judgment.</p> <p>19 Q How did the Appointments Committee's vote impact 20 your decision not to recommend Mr. Edelman's 21 promotion?</p> <p>22 A It was one additional factor amongst all of the 23 things that I had to weigh to make the 24 recommendation.</p>

<p style="text-align: right;">Page 150</p> <p>1 Q If the vote had been 65% in favor, would that 2 have impacted your thinking? 3 A That's a hypothetical question that I don't know 4 how to answer. 5 Q If the vote in favor had been greater than 80%, 6 would that have significantly impacted your 7 thinking? 8 MR. MURPHY: Objection. 9 A If the vote had been above 80%, I think I would 10 have -- the evidence that would likely have 11 produced that vote would be quite different. So 12 there's a whole combination of things that 13 generate these votes. It's not like the votes 14 are based upon -- you can pick a draw and 15 different votes come out of the process. The 16 vote reflects a combination of all things. And 17 so you weigh all of these things as a holistic 18 picture to try and make a determination. So if 19 the votes were 80%, I imagine the data would have 20 been different. 21 Q After the Appointments Committee meeting, did you 22 talk to faculty who had different views about 23 Mr. Edelman to understand their reasoning? 24 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 152</p> <p>1 consultation. 2 Q So did you talk with Paul Healy after the 3 Appointments Committee vote? 4 A Again, I don't have a specific recollection, but 5 I would be surprised if I didn't. 6 Q Do you remember what Paul Healy's view was? 7 A I do not. 8 Q I'm showing you what has been previously marked 9 as Exhibit 21. 10 A Okay. 11 Q What is this document? 12 A These are notes that I think I'm writing to 13 myself to get ready to announce the decision to 14 the full faculty, to the full Appointments 15 Committee. 16 Q To announce the decision about Mr. Edelman? 17 A Yes. And other people who are up for - so all 18 decisions are announced to the center for 19 tenure. 20 Q So did you make comments along these lines to 21 an Appointments Committee meeting around that 22 time? 23 A Again, I do not recollect what I specifically 24 said. These are notes that I made in</p>
<p style="text-align: right;">Page 151</p> <p>1 A Again, I don't recall specifically. All I know 2 is that there were people who reached out to me 3 with their views in different ways. I do not 4 specifically recall having conversations with 5 individuals about it. 6 Q Did you ever do that in a promotion case, solicit 7 the views of faculty members after a Performance 8 Committee meeting? 9 A While that is very much something that deans 10 could do, I was loathed to do that in most 11 circumstances. 12 Q Why? 13 A I felt that there was a risk of my getting 14 informed or biased by people after the process, 15 and it was wiser for me to -- everybody had an 16 opportunity to weigh in as the process unfolded, 17 and that was the best place to get the most 18 informed views. I also had the benefit of 19 consulting after the process with the person in 20 Paul Healy's role. So that was often the person 21 whom I would, in fact, consult with subsequent to 22 the votes being in. But I largely tried to make 23 that the principal person whom I consulted as 24 opposed to going out more broadly for</p>	<p style="text-align: right;">Page 153</p> <p>1 preparation. 2 Q So do these notes reflect your thinking at that 3 time? 4 A These are notes that I was writing to prepare 5 myself about how to think about this matter. 6 Q Did you advise the faculty on the Appointments 7 Committee to put their faith in a multi-step 8 deliberation voting process? 9 MR. MURPHY: Objection. 10 A Again, I don't specifically remember doing that, 11 but I always -- I remember saying that to the 12 faculty. Actually, at the end of every 13 appointment season, I would thank people and say, 14 "We have a very involved review process that 15 takes tremendous effort from many people at 16 multiple stages. The goodwill and the tremendous 17 amount of effort that our faculty members put in 18 every stage is what we rely upon, and that should 19 give us, in the end, confidence in the 20 information that we gather in the decision -- it 21 gives me confidence in the decisions that I feel 22 that I can recommend to the president and should 23 give us collective confidence in how we move forward. This used to be something that I</p>

<p>1 literally remember saying at the end of every 2 process. It was an opportunity to truly thank 3 the people and to make sure that we 4 collectively had confidence in the decisions that 5 we made for a very long process of deliberation 6 every year.</p> <p>7 Q What were the parts of the multi-step 8 deliberation and voting process in Mr. Edelman's 9 case?</p> <p>10 A In his case, it was twice over a multi-step 11 deliberation process. First, in 2014 when people 12 did the work and then again in 2017 when people 13 did the work. And it was all of those steps. In 14 addition, in 20- -- in this case, we had the work 15 of an FRB beyond the standard work of an 16 Appointments Subcommittee.</p> <p>17 Q So did that process include the subcommittee, the 18 Standing Committee, the FRB and the Appointments 19 Committee work?</p> <p>20 A As well as the letters that people write, the 21 interviews that people participated in, the -- so 22 there's a lot of work that goes into one of these 23 things. I mean -- at some point someone counted 24 -- there's hundreds and hundreds of hours that go</p>	Page 154	<p>1 typically say, "You have to decide." Whereas if 2 I was to turn down a case with more than 80% of 3 the votes, it would be I have to explain why I 4 made that decision. And if it was below 65%, I 5 would have to explain why I made the affirmative 6 case. Whereas between 80% and 65%, since the 7 faculty didn't have a clear point of view, it was 8 really a zone in which they said, "We can't 9 decide. You do."</p> <p>10 Q Did faculty members express that view to you?</p> <p>11 A No. This was my own understanding of how I 12 thought about what my role was, that while I 13 ultimately was responsible for the decision, if I 14 voted against a decision that was outside of the 15 zone, I would have to explain myself to a faculty 16 that would be surprised. But if I made a 17 decision in this zone, people would understand 18 that we haven't been able to offer clear guidance 19 to the dean, so the dean has to make a decision 20 that we were unable to make on our own.</p> <p>21 Q You wrote in these notes, (Reading):</p> <p>22</p> <p>23 "We have turned people down for 24 not meeting our community</p>	Page 156
<p>1 into the input that people provide. So that in 2 the end, it's amazing that all of that input is 3 provided to inform a single decision-maker to 4 make a recommendation to the president and then 5 for the president on the basis of that to make a 6 decision about whether someone gets tenure or 7 not.</p> <p>8 Q Did you believe that the processes you described 9 were effective in Mr. Edelman's case?</p> <p>10 A Yes, I did.</p> <p>11 Q Was the FRB Report an important factor in your 12 decision not to recommend Mr. Edelman for 13 tenure?</p> <p>14 A Yes, it was.</p> <p>15 Q Do you agree with the statement in Exhibit 21 16 that tenure requires a super majority?</p> <p>17 A The reason why I'm pausing is that in strict 18 sense it doesn't require, but ordinarily, tenure 19 is granted when there is a super majority.</p> <p>20 Q Was it your belief in November/December 2017 that 21 the zone of discretion for the dean was 80% to 22 65%?</p> <p>23 A The meaning I would attach to those terms is that 24 those are the circumstances in which the faculty</p>	Page 155	<p>1 standards."</p> <p>2</p> <p>3 Was Mr. Edelman turned down for tenure for not 4 meeting community standards?</p> <p>5 A Yes.</p> <p>6 Q And the community standards issues were the ones 7 addressed by the FRB, right?</p> <p>8 A Yes.</p> <p>9 Q So because of the community standards issues 10 that the FRB looked into, you decided not to 11 recommend Mr. Edelman for a promotion, is that 12 right?</p> <p>13 A So, again, I am required, and I looked at all of 14 the evidence in its totality. We have three 15 standards that faculty members need to meet, an 16 intellectual standard, a teaching standard, and 17 our community standards. The subcommittee that 18 looked at the first two matters unanimously 19 concluded that he met the standards. While there 20 was some discussion on his teaching capabilities, 21 the subcommittee as well as the Appointments 22 Committee, my overall sense was felt that he met 23 that as well. And then on the community 24 standards, the FRB didn't conclude affirmatively</p>	Page 157

<p style="text-align: right;">Page 158</p> <p>1 that he met our community standards. And based 2 on the other evidence that I had from the full 3 faculty vote, the comments, and at that time my 4 listening to the conversation, all of the 5 evidence that I had, I concluded that he did not 6 meet our community centers.</p> <p>7 Q Are you aware of a president of Harvard 8 University ever rejecting the recommendation of 9 an HBS dean on a tenure case?</p> <p>10 A Again, I am not aware of all of the prior deans 11 and their decisions before the president, so I 12 cannot say anything about that. All I know is 13 that, in my time, I was fortunate that the 14 recommendations that I made were approved by the 15 president. I do know that the president has 16 turned down recommendations made by other faculty 17 at various points in the history of her.</p> <p>18 Q But you're not aware of that happening at HBS?</p> <p>19 A No. Again, I don't know one way or the other. I 20 have not been involved in the entire history of 21 appointments at Harvard Business School.</p> <p>22 Q Now, the vote of the Appointments Committee was 23 below the 65% threshold, right?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 A The same way as I did in making the decision this 2 time., I still would have looked at all of the 3 evidence carefully and arrived at a conclusion 4 that reflected my best judgment.</p> <p>5 Q I'm showing you what's been previously marked as 6 Exhibit 82. I'd ask you to review this, and I 7 can represent to you that these are notes 8 Mr. Edelman took of a phone call on December 5, 9 2017, where you informed him that he wasn't going 10 to be promoted.</p> <p>11 A Yes.</p> <p>12 Q Do these look like things that -- well, let me 13 take a step back. 14 Did you have a phone call with 15 Mr. Edelman on or about that date?</p> <p>16 A Yes, I did.</p> <p>17 Q Did these look like things you said in that 18 conversation?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 A I truly do not recall what I said. These are 21 Ben's notes.</p> <p>22 Q Is there anything in this document that you 23 definitely did not say?</p> <p>24 A I cannot say that. I do not recall what I said</p>
<p style="text-align: right;">Page 159</p> <p>1 Q But it wasn't that far from 65%, right?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 Q It's nearly 60%?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 A Again, at 60%, you could say 55% is not that 6 close to 65%, 55%. You could say 50% is not that 7 close to these percentage. So I don't know how 8 one makes -- draw these lines. Again, as I said, 9 this was not a bright line. This is just the 10 data that I had gathered that made me feel that, 11 okay, these are the places where the faculty 12 essentially has turned over its entire judgment 13 to me, and I need to make the judgment goal on 14 behalf of the faculty. Whereas in other matters, 15 the faculty has spoken reasonably clearly and if 16 I -- and while I still own the decision, I have 17 to explain myself very clearly as to why I acted 18 against what I thought the preponderance of their 19 view was.</p> <p>20 Q If the Appointments Committee vote for 21 Mr. Edelman had been in that 65% to 80% zone, how 22 would you have thought about exercising your 23 discretion?</p> <p>24 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 161</p> <p>1 to him.</p> <p>2 Q Did you view the decision that you had to make as 3 one you were making on behalf of the whole 4 faculty?</p> <p>5 A I am the dean of the faculty. While I own the 6 decision, in the end, I have to make a decision 7 where I am giving our faculty members a person 8 with tenure who will be a member of our faculty 9 long after I'm dean. So every decision, I hope, 10 that any dean makes is with that in mind, which 11 is we make decisions that affect the wellbeing of 12 our institution long after we are dean.</p> <p>13 Q Did you tell Mr. Edelman that you weren't able to 14 move forward to promoting him to tenure because 15 there wasn't enough of a faculty vote for you to 16 do so?</p> <p>17 A Again, I do not remember what I said in that 18 meeting.</p> <p>19 Q Did you tell Mr. Edelman that he dug himself into 20 a hole from the 2015 incidents?</p> <p>21 A Again, I generally do not remember what I said to 22 him. These are his notes.</p> <p>23 Q Was it your view at that time that he had dug 24 himself into a hole with the BlinkX and Szechuan</p>

<p style="text-align: right;">Page 162</p> <p>1 Garden incidents?</p> <p>2 A That was the beginning of the need to create an</p> <p>3 FRB in the first instance. Had those incidents</p> <p>4 not occurred, we would not have had to create an</p> <p>5 FRB. None of this long drawn out process</p> <p>6 would've been necessary. So clearly those</p> <p>7 incidents were the triggers of what turned out to</p> <p>8 be a very difficult set of things for</p> <p>9 Mr. Edelman and for the school.</p> <p>10 Q Was the two-year extension an opportunity for</p> <p>11 Mr. Edelman to dig himself out of that hole?</p> <p>12 A I think the two years was an opportunity for</p> <p>13 Mr. Edelman to find a way to persuade the school</p> <p>14 that he met the standards of being a good</p> <p>15 colleague. In the end, that's all we do. Our</p> <p>16 appointments standards are not anything other</p> <p>17 than here are three standards that you have to</p> <p>18 meet to gain the privilege of a lifetime</p> <p>19 employment at Harvard Business School with very</p> <p>20 little oversight or discretion, very little</p> <p>21 oversight that we exercise thereafter. It's a</p> <p>22 decision in which we always want to be fair to</p> <p>23 the institution, but it's a very important</p> <p>24 decision for the institution as well. So those</p>	<p style="text-align: right;">Page 164</p> <p>1 Q But the Standing Committee did?</p> <p>2 A The FRB brought the issue to the Standing</p> <p>3 Committee?</p> <p>4 Q How many tenure cases have you been involved in</p> <p>5 over your time at HBS, either as dean or as a</p> <p>6 member of the Appointments Committee?</p> <p>7 A I cannot give you an exact number. Again, that's</p> <p>8 -- if you wanted an exact number, that's</p> <p>9 information that can be readily ascertained and</p> <p>10 given to you as a matter of fact, as opposed to</p> <p>11 my speculating here.</p> <p>12 Q Is it fair to say dozens?</p> <p>13 A Absolutely. It certainly exceeds dozens.</p> <p>14 Q How did Mr. Edelman's case compare with other</p> <p>15 cases that you considered in terms of research</p> <p>16 and scholarship?</p> <p>17 A It was a strong case in terms of research and</p> <p>18 scholarship.</p> <p>19 Q Would you put it in the top quarter of cases in</p> <p>20 terms of scholarship?</p> <p>21 A Again, we don't try to rank order our cases. I</p> <p>22 would say it was well above the bar of what we</p> <p>23 expect at the point of scholarly contributions.</p> <p>24 So that was not a matter in which there are times</p>
<p style="text-align: right;">Page 163</p> <p>1 are the three things that we always want to meet:</p> <p>2 "Does the person meet our intellectual</p> <p>3 standards," "Does the person meet our teaching</p> <p>4 standards," "And does the person meet our</p> <p>5 community standards."</p> <p>6 And in 2015, we all felt what the FRB</p> <p>7 and the Appointments Committee felt was that this</p> <p>8 had all happened suddenly. Had people given Ben</p> <p>9 enough opportunity to be aware that these are</p> <p>10 issues that are important for him to be a tenured</p> <p>11 member of a faculty. And having now made him</p> <p>12 aware of these incidents, would he be able to act</p> <p>13 in ways that allowed people to feel confident</p> <p>14 that he met our community centers? That's what, I</p> <p>15 think, the sense in which this was a whole, which</p> <p>16 is this led to real question marks about whether</p> <p>17 he was a person who could meet her community</p> <p>18 standards, and by the end of 2017, he had to</p> <p>19 affirmatively prove that he did.</p> <p>20 Q Did the Appointments Committee consider</p> <p>21 Mr. Edelman's case in 2015?</p> <p>22 A The full Appointments Committee?</p> <p>23 Q Yes.</p> <p>24 A No.</p>	<p style="text-align: right;">Page 165</p> <p>1 in which one has to really investigate that</p> <p>2 carefully. I think in Mr. Edelman's case,</p> <p>3 everybody felt confident that he had met the</p> <p>4 intellectual standards that we wish to have for a</p> <p>5 tenured colleague.</p> <p>6 Q And was Mr. Edelman's case also over the bar in</p> <p>7 terms of his teaching?</p> <p>8 A So there was more of a -- we had to really make</p> <p>9 sure that it met that standard. There were</p> <p>10 people who felt it didn't, there were people who</p> <p>11 felt it did. But in the end, more people -- we</p> <p>12 were persuaded that yes, he did meet our teaching</p> <p>13 standard.</p> <p>14 Q How many other cases had the FRB handled before</p> <p>15 the end of 2017 besides Mr. Edelman's?</p> <p>16 A I can't recall if there were other cases that</p> <p>17 came before the FRB. By 2017, there could not</p> <p>18 have been any because in 2017, in the preamble,</p> <p>19 we are writing to the full Appointments Committee</p> <p>20 saying this is the first case that is coming</p> <p>21 before you in which there's an FRB Report. So I</p> <p>22 imagine that that was the -- at least in terms of</p> <p>23 an FRB that came to the full Appointments</p> <p>24 Committee.</p>

<p style="text-align: right;">Page 170</p> <p>1 report, the FRB didn't explain why it believed 2 Mr. Edelman's past work for Microsoft was 3 directly related to his writing about Google as 4 that term is defined in the conflict of interest 5 policy, did it?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 A I'm struggling to know how to answer your 8 question.</p> <p>9 Q Well, does the conflict of interest policy refer 10 to the term "directly related" as a concept that 11 is relevant to what disclosures a faculty member 12 should make?</p> <p>13 A It also says that anything that would cause a 14 reasonable person to have doubt is something that 15 faculty members should pay attention to. This 16 was the matter that came forward in the BlinkX 17 situation quite clearly, where Mr. Edelman felt 18 that his disclosure of having some financial 19 relationship with the hedge fund was not material 20 because he wrote the letter -- he wrote what he 21 wrote independent of the payment that he may have 22 received for them and was in no way influenced by 23 that. But reasonable people may say, "Let us 24 decide whether that would influence your thing or</p>	<p style="text-align: right;">Page 172</p> <p>1 for Microsoft and would have let the other 2 person decide that, does that influence whether 3 they're directly related or unrelated." And 4 there are some -- on one occasion where he does 5 write that. So the inconsistencies is what's 6 surprising.</p> <p>7 Q Did you consider whether the different 8 publications were materially different in a way 9 that would change what Mr. Edelman should have 10 disclosed?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 A Again, I'm not parsing these things. It just 13 feels to me that good judgment would have allowed 14 someone to say, "Why not disclose," and 15 especially good judgment from someone who in the 16 past felt that non-disclosure was okay, but then 17 learned that it may not have been to some other 18 people. One would hope that in this 19 circumstance, too, he would err on the side of 20 being more disclosing rather than not. And my 21 colleagues, who reviewed this case carefully, 22 were equally surprised by this inconsistency. So 23 I did not read all of the papers -- I trust they 24 did -- to make this determination.</p>
<p style="text-align: right;">Page 171</p> <p>1 not."</p> <p>2 Here, too, if you're writing against 3 Google and you're being paid by Microsoft, 4 reasonable people could conclude that that 5 constitutes a conflict of interest. There's no 6 strict sense in which the conflict of interest 7 policy says here's a bright line. It says let's 8 make sure that we are acting in ways in which the 9 reader has adequate information so that they're 10 not concerned that there may be a conflict of 11 interest -- or imagine that there's a conflict of 12 interest.</p> <p>13 Perceived conflicts of interests are 14 something that we should make every effort to 15 avoid. And that was the issue that became 16 manifested in the BlinkX situation. And one 17 would have imagined that, given how clearly that 18 incident was and how much Ben himself said, "I 19 learned from that situation" -- I remember both 20 in writing and in conversation when he said, 21 "I've learned from that incident and I will be 22 much clearer and more careful in my disclosure." 23 So it seems like just out of an abundance of 24 portion, having a disclosure that said, "I work</p>	<p style="text-align: right;">Page 173</p> <p>1 Q I'd love to refer to page seven of Exhibit 45. 2 Do you see that the second bullet point is an 3 article in The Harvard Business Review?</p> <p>4 A Yes.</p> <p>5 Q Are you aware that at that time The Harvard 6 Business Review didn't allow an author to make a 7 different disclosure for each article?</p> <p>8 A I'm not aware of.</p> <p>9 Q Is that something you had ever heard discussed?</p> <p>10 A I'm not aware of. I don't remember that.</p> <p>11 Q Is that something that would have been helpful to 12 know in order to understand why in that 13 particular instance there may not have been a 14 specific about Microsoft?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A Again, I am not looking at any of these in a 17 specific instance-by-specific instance 18 circumstance. I looked at the overall spirit of 19 what was said here and the overall spirit of what 20 was said here is that having in the past learned 21 that disclosure is to your benefit when people 22 might have a view that your disclosure creates a 23 real or perceived conflict of interest. It would 24 have been advisable for Professor Edelman to</p>

<p style="text-align: right;">Page 174</p> <p>1 provide more disclosure rather than less 2 consistently as best he could. And that's what I 3 was looking -- that's the sense in which I'm 4 looking at this document, in its totality, not -- 5 because I didn't, in the same spirit, look at 6 each interview with each person. I didn't look 7 at each individual item on anything. I'm reading 8 the report as a whole and making a judgment about 9 whether the report as a whole satisfies me, about 10 whether he meets our community standards 11 differently than or in the same way as the FRB, 12 which concluded that it did not</p> <p>13 MR. RUSSCOL: I'd like to mark this as 14 the next exhibit.</p> <p>15 What number is that?</p> <p>16 THE COURT REPORTER: 233.</p> <p>17</p> <p>18 (Exhibit Number 233, Email, was 19 Marked for Identification.)</p> <p>20</p> <p>21 Q Is Exhibit 233 an email that you sent to Amy 22 Edmondson on October 25, 2017?</p> <p>23 A Yes, I did.</p> <p>24 Q And you wrote that someone raised questions about</p>	<p style="text-align: right;">Page 176</p> <p>1 A I have no idea. 2 Q Did you learn at the time that this email was 3 misaddressed? 4 A I did not. I'm embarrassed that it was. 5 MR. RUSSCOL: Let's go off the record. 6 7 (Whereupon, a brief discussion was held 8 off the record.) 9 10 (Short break.) 11 12 MR. RUSSCOL: Let's go back on. 13 Q In 2015, did the FRB and the Standing Committee 14 recommend a two-year extension for Mr. Edelman? 15 A Yes. 16 Q At that time did you receive the FRB's report? 17 A Yes. 18 Q And did you read it at that time? 19 A Yes. 20 Q And was that part of your decision-making in 21 approving that extension? 22 A Yes. 23 Q Are you aware generally of the outside activities 24 that HBS faculty members engaged in?</p>
<p style="text-align: right;">Page 175</p> <p>1 whether all promotion candidates were treated 2 equally and fairly, right? 3 A Yes. 4 Q Who raised those questions? 5 A I do not recall. 6 Q Did Ben Esty raise questions about that? 7 A Again, I do not recall. 8 Q It looks like that person was comparing 9 Mr. Edelman's situation to another candidate's 10 situation, is that fair to say? 11 A There were many other candidate situations. I 12 don't know who he has in that. 13 Q So understanding that parts of the email are 14 redacted, as you sit here today, do you know who 15 the other person was that Mr. Edelman was being 16 compared to? 17 A I generally do not. 18 Q Did you intend to copy this message to Gene 19 Cunningham? 20 A Yes. 21 Q Did you, in fact, copy this message to James 22 Cunningham? 23 A It looks like by mistake I did. 24 Q Who is James Cunningham?</p>	<p style="text-align: right;">Page 177</p> <p>1 A All faculty members report are required to 2 disclose their outside activities. I hope 3 they've disclosed them fully and accurately, but 4 based upon what they report, that's the range of 5 outside activities that I do have some awareness 6 of. 7 Q So what types of outside activities do faculty 8 members disclose? 9 A Faculty members disclose a range of outside 10 activities from consulting work, serving on 11 Boards, non-profit work, anything that involves a 12 commitment of time or a commitment, whether it's 13 paid or unpaid, because the school says the norms 14 of our outside activity have been that you can do 15 about a day a week of outside work, so a total of 16 about 50 days of outside work. And the report of 17 outside activities has meant to be a combination 18 of two things, to get some sense about whether 19 the work that faculty members are doing on the 20 outside might violate that norm, which is a norm 21 of not creating conflicts of commitment relative 22 to their primary obligations to Harvard Business 23 School, or engage in activities that present 24 risks to other kinds of conflict that they may</p>