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1 COMMONWEALTH OF MASSACHUSETTS
2 SUFFOLK COUNTY SUPERIOR COURT
3 BUSINESS LITIGATION SESSION

4 _____
5 **BENJAMIN EDELMAN,**
6 **Plaintiff,**
7 **v.** **Civil Action No.**
8 **PRESIDENT AND FELLOWS OF HARVARD** **2384CV00395-BLS2**
9 **COLLEGE,**
10 **Defendants.**

11 _____
12 **DEPOSITION OF LEONARD A. SCHLESINGER**

13 **DATE:** **Tuesday, May 27, 2025**
14 **TIME:** **9:39 a.m.**
15 **LOCATION:** **Zalkind Duncan & Bernstein LLP**
16 **65A Atlantic Avenue**
17 **Boston, MA 02110**
18 **REPORTED BY:** **Jared Reding**
19 **JOB NO.:** **7309608**

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<p style="text-align: right;">Page 18</p> <p>1 members of the FRB at that meeting?</p> <p>2 A That she -- that she would be available to 3 assist us in the process, moving the process along, 4 and -- and making sure that we had everything we 5 needed to do our work.</p> <p>6 Q And you mentioned a positioning document 7 that you had received from the dean?</p> <p>8 A That's correct.</p> <p>9 Q Was that the FRB's principles and 10 procedures?</p> <p>11 A That's correct.</p> <p>12 Q Okay. I'm just going to have you take a 13 look at what we have already previously marked as 14 Exhibit 26. And when you're ready, I'm just going to 15 ask if you recognize this as being the document that 16 we were just discussing?</p> <p>17 A I assume that this is the final revised 18 version of it, and if so, then yes.</p> <p>19 Q When did you first meet Ben Edelman?</p> <p>20 A I probably had no -- no formal meeting with 21 him until he came to meet the FRB.</p> <p>22 Q Had you heard of him before the FRB began 23 its work?</p> <p>24 A It's a reasonably small community. You hear 25 about everybody. Yeah.</p>	<p style="text-align: right;">Page 20</p> <p>1 was a case where you might need a factfinder?</p> <p>2 A Not specifically. I don't recall it 3 specifically coming up.</p> <p>4 Q And when you discussed needing a factfinder, 5 what kind of work did you envision that they would do?</p> <p>6 A The -- the basic logic is when the 7 information that had to be collected exceeded the 8 capabilities of the group to do so.</p> <p>9 Q Okay. I am going to give you a document 10 that we've previously marked as Exhibit 41.</p> <p>11 A Sure.</p> <p>12 Q And I'm not going to make you read the whole 13 thing right now because it's pretty extensive. But 14 just looking at the document as a whole, do these 15 appear to be notes of FRB meetings, starting with a 16 meeting on September 4, 2015?</p> <p>17 A I can't vouch for representing the entire 18 meeting, but it certainly appears to be a transcript 19 of some of the meeting.</p> <p>20 Q Have you seen this before?</p> <p>21 A Yes.</p> <p>22 Q When did you see it?</p> <p>23 A In my prep.</p> <p>24 Q Okay. Were these notes shared with you at 25 the time when you were on the FRB?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Do you recall hearing anything specific 2 about him?</p> <p>3 A No.</p> <p>4 Q In 2015, who were the members of the FRB?</p> <p>5 A Amy Edmondson, me, Forrest Reinhardt, 6 Angela Crispin.</p> <p>7 Q And I think you mentioned that Jean 8 Cunningham was support staffed to the FRB?</p> <p>9 A That's correct.</p> <p>10 Q Did the FRB work with any kind of factfinder 11 in 2015?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: Not that I -- not that I 14 remember.</p> <p>15 BY MS. O'MEARA-COSTELLO:</p> <p>16 Q Is that something that you discussed doing 17 at any point?</p> <p>18 A We had contemplated it at points that we 19 might need one. But I don't believe in this case we 20 actually brought one in.</p> <p>21 Q When you say that you "contemplated that at 22 points" you might need one, do you mean that there 23 might be cases where that was called for?</p> <p>24 A Correct.</p> <p>25 Q Did you contemplate or discuss whether this</p>	<p style="text-align: right;">Page 21</p> <p>1 A Yes.</p> <p>2 Q Okay. And on the page with a Bates stamp in 3 the bottom corner of HBS0015509, so the page ending 4 09.</p> <p>5 A Sure. Yep.</p> <p>6 Q It appears to reflect an interview between 7 the FRB and Ben Esty; is that right?</p> <p>8 A Yes.</p> <p>9 Q And do you recall interviewing Ben Esty in 10 2015?</p> <p>11 A Yes.</p> <p>12 Q And does this -- it's a number of pages. 13 His interview, I think, it ends on the page ending 13. 14 Does this appear to reflect essentially accurately 15 what he communicated to the FRB?</p> <p>16 A As best as I can understand.</p> <p>17 Q Why did the FRB interview Ben Esty?</p> <p>18 A Because Ben Esty was involved in the process 19 of establishing the conflict of interest standards for 20 the institution.</p> <p>21 Q On the page ending 09, the fourth paragraph 22 up from the bottom says "Esty put together a 23 chronology, should treat this as confidential."</p> <p>24 A Hold on a second. Yep. Where do you have 25 that?</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q So fourth paragraph -- up from the bottom. 2 A Oh, I got it. Yes. Got it. 3 Q Do you recall Ben Esty having put together a 4 chronology? 5 A I remember him saying that. I don't 6 remember seeing the chronology. 7 Q That was going to be my next question is 8 whether that was a written document that he provided 9 to the FRB? 10 A No. I do not remember seeing one. No. 11 Q Okay. Is it possible that he was just 12 verbally sharing the chronology as opposed to giving 13 you a written document? 14 MR. MURPHY: Objection. 15 THE WITNESS: I can't confirm either, 16 but it's quite possible. 17 BY MS. O'MEARA-COSTELLO: 18 Q Were Ben Esty's statements to the FRB shared 19 with Ben Edelman? 20 A I -- I don't know the answer as a formal 21 kind of process issue. Certainly, some of the content 22 was. 23 Q And the content generally was about the 24 question of conflict of interest policies, and how 25 they applied to Ben's conduct with regard to his</p>	<p style="text-align: right;">Page 24</p> <p>1 (Off the record.) 2 THE REPORTER: We are back on the 3 record at 10:04 a.m. 4 BY MS. O'MEARA-COSTELLO: 5 Q I think you testified earlier that you have 6 seen these notes, Exhibit 41, at the time that these 7 were shared with you as a member of the FRB; is that 8 right? 9 A Yes. 10 Q Who was circulating these notes to you? 11 A They largely came through email, and -- and 12 largely came through Amy and/or Jean. 13 Q Do you know who was taking the notes? 14 A I do not. 15 Q Okay. Other than Ben Esty, did the FRB 16 interview anyone else about the Blinkx incident? 17 A We would have to go back to the documents to 18 find that out. 19 Q Do you believe that this document reflects 20 all of the interviews that the FRB conducted in 2015? 21 A With my most recent review of this document, 22 I believe it accurately covers the one we have -- the 23 ones we had, and I don't recall any other ones. 24 Q Okay. And were you aware of any prior 25 review of the Blinkx incident?</p>
<p style="text-align: right;">Page 23</p> <p>1 writing about a company called Blinkx. Is that a fair 2 summary? 3 MR. MURPHY: Objection. 4 You can answer. 5 THE WITNESS: Yes. 6 BY MS. O'MEARA-COSTELLO: 7 Q When you say that as a "formal process" 8 matter, you don't know if the comments were shared 9 with Ben, do you have any information about what 10 information was shared with Ben about the witnesses 11 who the FRB interviewed? 12 MR. MURPHY: Objection. 13 THE WITNESS: I do not. 14 BY MS. O'MEARA-COSTELLO: 15 Q Were you the person on the FRB who was 16 generally communicating with Ben about the process? 17 A I've had no communications with Ben. 18 Q Okay. Was there someone else on the FRB who 19 was communicating with Ben? 20 A Well, I assume the formal communications 21 came from Amy. 22 MS. O'MEARA-COSTELLO: Let's go off the 23 record for just a second. 24 THE REPORTER: Stand by. Sorry. 25 We are off the record at 10:03 a.m.</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: I don't understand the 3 question. 4 BY MS. O'MEARA-COSTELLO: 5 Q Well, was part of the FRB's work to review 6 Ben Edelman's conduct in the Blinkx incident? 7 A Yes. 8 Q Were you aware of whether anyone at HBS had 9 conducted a prior review of that incident? 10 A Well, clearly, as you can see from the 11 documents, Ben Esty talked about it. Whether that was 12 a formal review or not, I can't speak to. It wasn't 13 presented to us as a formal review. 14 Q Were you aware of whether Professor 15 Edelman's unit had conducted a review of the incident? 16 A There -- there are comments here which 17 were -- which were new to me about -- in the document 18 about a review that was conducted by two members of 19 the unit. 20 Q Who were the two members of the unit? 21 A The document references Max Bazerman and 22 Guhan Subramanian. 23 Q Did you talk to -- or did the FRB, rather, 24 talk to Max Bazerman in 2015? 25 A I don't recall speaking with Max or Guhan</p>

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<p>1 about the incident.</p> <p>2 Q Were you aware of whether that review</p> <p>3 generated a report?</p> <p>4 A If there was a report, I never saw one.</p> <p>5 Q Do you think you knew in 2015 whether there</p> <p>6 was a report?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I don't think I knew</p> <p>9 anything then that I don't know now.</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q If you look at the page in here that ends</p> <p>12 14, so page HBS15514, at the top of that page, it says</p> <p>13 "Additional meetings, interviews responsive to Brian's</p> <p>14 request, a few other senior faculty from NOM Unit,"</p> <p>15 and it lists a few names. Are these notes of a</p> <p>16 discussion among the FRB members about who else to</p> <p>17 interview?</p> <p>18 A As it continues, yes, but not at the</p> <p>19 inception of it.</p> <p>20 Q Okay. At the top of the page ending 14, it</p> <p>21 says "Remaining Questions. How does" -- in the first</p> <p>22 full paragraph that's not in bold. It says "Remaining</p> <p>23 Questions. How does Committee view its work?</p> <p>24 Traditional strategy of factfinding and conclusions</p> <p>25 may end up where Ben Esty said it will. More</p>	<p>Page 26</p> <p>1 THE WITNESS: So my response to it is</p> <p>2 just simply the work of just doing our factfinding and</p> <p>3 reaching a set of -- there's nothing mysterious about</p> <p>4 it. There's nothing unusual about it, as opposed to</p> <p>5 the use of the word "traditional," meaning not</p> <p>6 unusual.</p> <p>7 BY MS. O'MEARA-COSTELLO:</p> <p>8 Q Was the FRB trying to avoid a lawsuit?</p> <p>9 A No.</p> <p>10 MR. MURPHY: Objection.</p> <p>11 BY MS. O'MEARA-COSTELLO:</p> <p>12 Q What did you understand "more unintentional</p> <p>13 noise" to mean?</p> <p>14 A Well, I think the presumption here, going</p> <p>15 back to the earlier pages, was -- was we're not</p> <p>16 intending to have a lawsuit, but if we have a lawsuit,</p> <p>17 it's just more noise, and it wasn't intended.</p> <p>18 Q Did you think that the FRB was undertaking a</p> <p>19 traditional strategy of factfinding and conclusions?</p> <p>20 A Yes.</p> <p>21 Q Do you know whose statement that was saying</p> <p>22 "the traditional strategy of factfinding and</p> <p>23 conclusions may end up where Ben Esty said it will"?</p> <p>24 A No.</p> <p>25 Q At the very bottom of that same page in bold</p>
<p>1 unintentional noise." Did you have a concern about</p> <p>2 using a strategy of traditional factfinding and</p> <p>3 conclusions?</p> <p>4 A No.</p> <p>5 Q Was someone else on the FRB expressing that</p> <p>6 concern?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I think they were stating</p> <p>9 a belief, not a -- not a concern.</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q What was the belief that they were stating?</p> <p>12 A They were responding to Ben's earlier</p> <p>13 comment that -- that this would likely end up in a</p> <p>14 lawsuit.</p> <p>15 Q Were they hoping to avoid a lawsuit by</p> <p>16 avoiding a traditional strategy of factfinding and</p> <p>17 conclusions?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: I don't believe that ever</p> <p>20 came up.</p> <p>21 BY MS. O'MEARA-COSTELLO:</p> <p>22 Q What did you take the phrase "traditional</p> <p>23 strategy of factfinding and conclusions" to mean in</p> <p>24 this document?</p> <p>25 MR. MURPHY: Objection.</p>	<p>Page 27</p> <p>1 type, it says "Develop full Blinkx packet"?</p> <p>2 A Yes.</p> <p>3 Q Did the FRB put together a packet of</p> <p>4 documents related to Blinkx?</p> <p>5 A I don't recall.</p> <p>6 Q In the middle of that page, there's a</p> <p>7 little, like, almost exactly in the center of the</p> <p>8 page, there's a little arrow. Sorry. Still same page</p> <p>9 ending 14.</p> <p>10 A Oh, sorry.</p> <p>11 Q And it says "Can we get an alignment of</p> <p>12 people oriented towards saying that the AC process is</p> <p>13 going to be a very difficult process for reasons that</p> <p>14 will not be helpful to Ben's career, and that we need</p> <p>15 to put a structure of resources in place that he would</p> <p>16 find onerous and leave?" Do you see that?</p> <p>17 A I do.</p> <p>18 Q Do you know who made that statement at the</p> <p>19 meeting?</p> <p>20 A No. That's part of the process where I</p> <p>21 already told you I didn't know who said it.</p> <p>22 Q Do you think that all of these things are</p> <p>23 being said by the same person?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: I have no idea.</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 46</p> <p>1 the best of your knowledge, as a non-tenured faculty 2 member?</p> <p>3 A To the best of my knowledge, the 4 subcommittee is assigned to a particular case. To the 5 best of my knowledge, the Standing Committee 6 represents the arithmetic sum of the subcommittees, 7 and -- and reports to the Tenure Committee. But I 8 don't know the size, scale, process, or anything else.</p> <p>9 Q And when you say it "reports to the Tenure 10 Committee," is that the Appointments Committee?</p> <p>11 A The entire faculty, the entire tenure 12 faculty. Yes.</p> <p>13 Q Okay. And as a post-tenure faculty member, 14 you're not a part of the Appointments Committee?</p> <p>15 A I am not.</p> <p>16 Q Did any member of the 2015 FRB also serve on 17 the Standing Committee that evaluated Professor 18 Edelman's tenure case in 2015?</p> <p>19 A I don't believe so.</p> <p>20 Q Is it possible that Forrest Reinhardt did?</p> <p>21 A I don't know.</p> <p>22 Q And I'm going to show you a document that I 23 think we're going to mark as Exhibit 116. So I'll get 24 that marked for you and then hand it over.</p> <p>25 //</p>	<p style="text-align: right;">Page 48</p> <p>1 of the practice faculty by the regular faculty with a 2 process, which is strikingly like the one you 3 described here, at least as I understand it. But I 4 have nothing to do with it.</p> <p>5 Q Okay. When you hear the term "Standing 6 Committee," do you understand it to mean the committee 7 that is described in Exhibit 116?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: With respect to what?</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q With respect to, say, conversations at HBS 12 with other faculty?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 THE WITNESS: I can't answer it. I 15 don't understand, quite honestly, where you're drawing 16 that.</p> <p>17 BY MS. O'MEARA-COSTELLO:</p> <p>18 Q Looking back at Exhibit 41, which is the 19 long exhibit with notes from the FRB meetings, on the 20 page ending 22, so HBS15522, the second kind of 21 paragraph or bullet point from the bottom is a comment 22 that seems to be attributed to you. So I'll give you 23 a chance to just look at that.</p> <p>24 A Mm-hmm.</p> <p>25 Q Okay. So the comment that appears to me to</p>
<p style="text-align: right;">Page 47</p> <p>1 (Exhibit 116 was marked for 2 identification.)</p> <p>3 MR. MURPHY: Thank you.</p> <p>4 BY MS. O'MEARA-COSTELLO:</p> <p>5 Q All right. So I'm handing you what we've 6 marked as Exhibit 116.</p> <p>7 A Thank you. Okay.</p> <p>8 Q Okay. Have you ever seen that document 9 before?</p> <p>10 A No.</p> <p>11 Q Okay. Have you had a chance to read it?</p> <p>12 A Yes.</p> <p>13 Q Is that describing the Standing Committee 14 that you just described to me as --</p> <p>15 A It is a more precise definition of the 16 Standing Committee than I provided out of ignorance.</p> <p>17 Q Is there any other committee at HBS called 18 the "Standing Committee"?</p> <p>19 A Not that I know of.</p> <p>20 Q Is there a Standing Committee on professors 21 of management practice and term faculty at HBS?</p> <p>22 A I believe so. Once again, just by way of 23 background, my chair of the practice faculty came 24 after the professors at managerial practice was 25 constructed. That is managed entirely independently</p>	<p style="text-align: right;">Page 49</p> <p>1 be attributed to you is "low EQ and whatever counsel 2 he's gotten hasn't stemmed the problem." What does 3 "EQ" mean?</p> <p>4 A Emotional quotient.</p> <p>5 Q Okay. Can you describe a little bit more 6 what that means?</p> <p>7 A So there's -- there's IQ, which is 8 intelligence quotient. There's EQ, which is emotional 9 quotient, which is essentially an indicator of 10 emotional maturity.</p> <p>11 Q Ultimately, what happened with Professor 12 Edelman's tenure case in 2015?</p> <p>13 A I don't know. Oh, in 2015?</p> <p>14 Q In 2015?</p> <p>15 A In -- there was no tenure case. I mean, at 16 that point, we had the conversation with him to 17 postpone it for two years, which he accepted.</p> <p>18 Q Were you part of that conversation?</p> <p>19 A I was not.</p> <p>20 Q Was that something that the FRB made a 21 recommendation about?</p> <p>22 A Yes.</p> <p>23 Q How did the FRB make that recommendation?</p> <p>24 A I believe it's covered in the documents, but 25 if I look at the -- if I recall the conversations, it</p>

<p style="text-align: right;">Page 54</p> <p>1 recommend to Ben." Does that sound like something 2 that you think you said?</p> <p>3 A Yes.</p> <p>4 Q Okay. What would you have been referring 5 to?</p> <p>6 A I would've been -- if we are going to take a 7 two-year delay, what are we going to ask Ben to do and 8 not do, during that timeframe, to be able to 9 demonstrate his ability to have transcended our 10 concerns.</p> <p>11 Q What actions did you have in mind?</p> <p>12 A A whole range of actions that we actually 13 ended up talking about as a group and reaching a 14 resolution on as a committee.</p> <p>15 Q What were those actions?</p> <p>16 A I didn't specify them at that point. And so 17 subsequently, we laid out a whole agenda for him.</p> <p>18 Q Okay. Subsequently, what was the subsequent 19 agenda that you laid out, to the best of your memory?</p> <p>20 A The subsequent agenda included teaching LCA, 21 which is to get him into an entirely new teaching 22 group in the required curriculum, 'cause at that time, 23 he only had the -- the one experience in the RC. 24 Moving him, physically, from the NOM Unit over to 25 co-locate with the faculty that was teaching there.</p>	<p style="text-align: right;">Page 56</p> <p>1 specifically assigned to help?</p> <p>2 A I don't recall.</p> <p>3 Q Was the intention for those to be members of 4 his new teaching group?</p> <p>5 A It was a combination of the new teaching 6 group, other faculty, and then a possibility of an 7 executive coach.</p> <p>8 Q Did anyone tell the members of the new 9 teaching group that they should be assisting Ben in 10 this way?</p> <p>11 A I was not involved in that.</p> <p>12 Q Okay. I am going to give you a document 13 that has already been marked as Exhibit 50. And I'm 14 going to give you a minute to read that, and then I'll 15 just ask if this reflects the conversation that you 16 were just telling me about, where Forrest reported 17 back to the FRB about a meeting that he had with the 18 Standing Committee?</p> <p>19 A This appears to be a longer version of the 20 document we just reviewed.</p> <p>21 Q Is it your belief that this is also a more 22 detailed set of notes from November 11, 2015?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: I can't attest to the 25 date, but -- but I believe that. Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 An opportunity to take on an executive coach 2 to work on what we'd identified, or what you had 3 identified earlier on my comment, about some of the 4 EQ-related issues, and being able to demonstrate 5 changed behavior around the issues that we had 6 expressed concerns about.</p> <p>7 Q And at the bottom of this page, it 8 says -- again, there's, I think, a final set of 9 comments appear to be from you. It says "Len TG 10 assigned people to help"?</p> <p>11 A Yes.</p> <p>12 Q Does "TG" refer to teaching group?</p> <p>13 A Yes.</p> <p>14 Q And so that's referring to what you 15 described in terms of asking him to teach LCA?</p> <p>16 A Yes.</p> <p>17 Q When it says "assign people to help," what 18 did that mean?</p> <p>19 A It means at this point that he was going 20 into a new set of relationships with a new set of 21 faculty, and we needed to make sure that we understood 22 that we were all aligning around some people who would 23 be assisting him in the process of his behavioral 24 change.</p> <p>25 Q Okay. Were there people who were</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MS. O'MEARA-COSTELLO:</p> <p>2 Q But you think that both Exhibit 117 and 3 Exhibit 50 are referencing the same meeting or call?</p> <p>4 A Hold on. I can't attest to that being the 5 same because the -- the minutes you're presenting to 6 me here go way beyond what's in the notes.</p> <p>7 Q Do you think these were two different 8 meetings?</p> <p>9 A I don't know. But substantially more 10 detailed notes than this.</p> <p>11 Q I'm going to show you another document, and 12 we'll mark this as 118. (Exhibit 118 was marked for identification.)</p> <p>13 A Thank you.</p> <p>14 Q Do you recognize that document?</p> <p>15 A I've seen the document. I don't remember 16 what it was for.</p> <p>17 Q When have you seen the document?</p> <p>18 A In prep.</p> <p>19 Q Do you remember seeing it in 2015?</p> <p>20 A None of it surprises me in terms of the 21 message, but I don't recall the specific document.</p> <p>22 Q Just looking at the first sentence, it says 23 "The members of the faculty review board are pleased</p>

<p style="text-align: right;">Page 58</p> <p>1 that the dean and senior associate dean offered Ben 2 Edelman a two-year extension and that he accepted it."</p> <p>3 Does this appear to be a statement by the FRB about 4 the two-year extension?</p> <p>5 A Yes.</p> <p>6 Q Do you know to whom this statement was 7 directed?</p> <p>8 A No. That was what I was talking about. I 9 don't know who it was addressed to.</p> <p>10 Q Okay. Do you have any memory of the FRB 11 preparing the statement?</p> <p>12 A I remember the messaging of the FRB. This 13 reflects the conversation with the FRB. I just don't 14 recall this specific document.</p> <p>15 Q Do you recall the FRB preparing a statement 16 about the two-year extension?</p> <p>17 A No.</p> <p>18 Q Do you recall any discussion within the FRB 19 about the idea of preparing a statement?</p> <p>20 A I remember a conversation about what our 21 expectations were. They get reflected in this 22 document. What I don't precisely remember is the 23 translation from A to B.</p> <p>24 Q All right. I'm going to show you another 25 document.</p>	<p style="text-align: right;">Page 60</p> <p>1 captured in conversation with Nitin and Paul." Do you 2 recall any discussion in the FRB about a need to make 3 sure that your views were recorded?</p> <p>4 A Yes.</p> <p>5 Q Had you been part of conversations with 6 Nitin Nohria about your views on the two-year 7 extension?</p> <p>8 A No.</p> <p>9 Q Had you been part of a conversation with 10 Paul Healy about your views on the two-year extension?</p> <p>11 A Yes.</p> <p>12 Q Okay. When was that conversation?</p> <p>13 A I can't recall.</p> <p>14 Q Sometime around the time that this extension 15 was decided upon?</p> <p>16 A Yes, yes.</p> <p>17 Q Were the other members of the FRB present 18 for that conversation?</p> <p>19 A I can't recall.</p> <p>20 Q Might it have been a private conversation 21 with just you and Paul Healy?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 THE WITNESS: I still can't recall.</p> <p>24 BY MS. O'MEARA-COSTELLO:</p> <p>25 Q Do you have any memories of kind of the</p>
<p style="text-align: right;">Page 59</p> <p>1 A Sure.</p> <p>2 Q And so I believe this will be 119. There's 3 two there. Okay. I am going to hand you this.</p> <p>4 (Exhibit 119 was marked for 5 identification.)</p> <p>6 A Thank you.</p> <p>7 Q Is that an email dated November 25, 2015, 8 from Amy Edmondson to you, Angela Crispri, and Jean 9 Cunningham?</p> <p>10 A That's correct.</p> <p>11 Q Okay. And the subject is "Follow-up memo 12 drafted by Forrest and me"?</p> <p>13 A Yes.</p> <p>14 Q And it has an attachment titled "FRB Memo 15 Post-Case 1 FR.docx"?</p> <p>16 A Yes.</p> <p>17 Q Okay. Does this appear to be an email 18 transmitting a version of Exhibit 118?</p> <p>19 A I can't be absolutely certain, but I would 20 think so.</p> <p>21 Q It's fair to say that it appears that it is?</p> <p>22 A Yes.</p> <p>23 Q And in that email, she writes "Forrest and I 24 had discussed the need for a follow-on recommendation 25 to make sure our views are recorded rather than just</p>	<p style="text-align: right;">Page 61</p> <p>1 circumstances in which that conversation took place?</p> <p>2 A I recall an FRB conversation about this 3 topic. I don't recall the exact timing, and I do 4 recall having had a conversation with Paul Healy about 5 it. Again, I don't quite understand the order, 6 remember the order, or the context.</p> <p>7 Q At the time that you were talking with Paul 8 Healy, do you recall whether an extension had been 9 actually decided on? Or whether it was just a 10 proposal that was on the table?</p> <p>11 A I don't recall.</p> <p>12 Q What do you recall telling Paul Healy in 13 that conversation?</p> <p>14 A To the extent that I recall the 15 conversation, any of the content of it, it was about 16 feeling good about the thoughts about the two-year 17 delay. But I don't recall whether it came before or 18 after.</p> <p>19 Q Do you remember anything about what Paul 20 said to you in that conversation?</p> <p>21 A No. Other than -- no.</p> <p>22 Q Okay. In this email, Exhibit 119, Amy 23 Edmondson asks for feedback, essentially. She says 24 "Let us know what you think." Do you recall whether 25 you had any feedback on the memo that she drafted?</p>

<p style="text-align: right;">Page 62</p> <p>1 A Normally, my practice would be to have 2 feedback. But I can't recall specifically in this 3 instance.</p> <p>4 Q Did you agree that it was important to 5 record the FRB's views?</p> <p>6 A Yes.</p> <p>7 Q Why?</p> <p>8 A Because lots changed in the school. The 9 Standing and -- the Standing Committee and the 10 subcommittee, which I didn't understand, would likely 11 change over time. And the FRB would change over time, 12 and it was important, and the dean could change. And 13 so it was important in all of those situations to make 14 sure that we accurately recorded what our intent was.</p> <p>15 Q Was this statement, Exhibit 118 --</p> <p>16 A Yes.</p> <p>17 Q Was that statement ever shared with Ben 18 Edelman?</p> <p>19 A I don't know.</p> <p>20 Q Did you ever discuss with anyone whether it 21 should be?</p> <p>22 A I don't recall.</p> <p>23 Q In the middle of the large paragraph that's 24 in the middle of the page, so the first page of 25 Exhibit 118, there's a large paragraph, and then in</p>	<p style="text-align: right;">Page 64</p> <p>1 A That's correct.</p> <p>2 Q Can you give me an example of something that 3 you would've accepted as affirmative evidence of 4 changed behavior?</p> <p>5 MR. MURPHY: Objection</p> <p>6 THE WITNESS: At this point, no.</p> <p>7 BY MS. O'MEARA-COSTELLO:</p> <p>8 Q If I'd asked you in 2015, do you think you 9 would've had something in mind?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: I would think I would 12 have had.</p> <p>13 BY MS. O'MEARA-COSTELLO:</p> <p>14 Q Is that something that you wrote down or 15 communicated in some way to anyone?</p> <p>16 A If it was within the context of the FRB 17 minutes, I would've raised it. Yes.</p> <p>18 Q And so anything that you were hoping to see 19 would've been in the minutes of the FRB, you believe?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: I believe much of it is 22 covered in the next paragraph of that note.</p> <p>23 BY MS. O'MEARA-COSTELLO:</p> <p>24 Q And the next paragraph says that he 25 should -- "He will need to play a different role in</p>
<p style="text-align: right;">Page 63</p> <p>1 the middle of that paragraph, it says "As we noted in 2 the report, we would like to have affirmative evidence 3 that Ben has changed his behavior, not merely that he 4 has managed to stay out of the papers." Do you see 5 that?</p> <p>6 A That's correct.</p> <p>7 Q Is that an accurate statement of what you 8 wanted to see?</p> <p>9 A Yes.</p> <p>10 Q What did you think would constitute 11 affirmative evidence that he had changed his behavior?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: So there -- there are two 14 basic dimensions here. One is the absence. The 15 absence of problems, a la the Blinkx problem, and the 16 Sichuan Garden problem. The absence of -- of the 17 kinds of issues that we were talking about relative to 18 his membership in the community. So one is the 19 absence of those. The second is evidence. Evidence 20 of community-oriented behavior that went beyond the 21 absence of bad behavior.</p> <p>22 BY MS. O'MEARA-COSTELLO:</p> <p>23 Q And that second piece is what you're 24 referring to as "affirmative evidence" of changed 25 behavior; right?</p>	<p style="text-align: right;">Page 65</p> <p>1 the intellectual and administrative life of the 2 school"; right?</p> <p>3 A That's correct.</p> <p>4 Q It suggests that he should join one of the 5 RC Teaching Groups?</p> <p>6 A That's correct.</p> <p>7 Q Do you know whether he did that?</p> <p>8 A Yes, he did.</p> <p>9 Q And possibly also membership on one of the 10 school's administrative bodies. Do you know whether 11 that's something that he did?</p> <p>12 A He did. But not the APC.</p> <p>13 Q The APC was one example of something?</p> <p>14 A That's correct.</p> <p>15 Q Okay. And so he joined a different 16 administrative body?</p> <p>17 A That's correct.</p> <p>18 Q And at the end, you write "We hope that he 19 will be willing to invest his time in such 20 assignments"?</p> <p>21 A Yes.</p> <p>22 Q Was he willing to invest his time in those 23 assignments?</p> <p>24 A To the extent that I understand it, yes.</p> <p>25 MS. O'MEARA-COSTELLO: All right. So,</p>

<p>1 David, do you have the time?</p> <p>2 MR. MURPHY: Yeah. We were going about</p> <p>3 an hour and a half, so maybe take a break if we could?</p> <p>4 MS. O'MEARA-COSTELLO: Maybe let's take</p> <p>5 a break for a minute. So let's go off the record,</p> <p>6 and --</p> <p>7 THE REPORTER: All right. We are off</p> <p>8 record at 11:04 a.m.</p> <p>9 (Off the record.)</p> <p>10 THE REPORTER: We are back on record at</p> <p>11 11:22 a.m.</p> <p>12 BY MS. O'MEARA-COSTELLO:</p> <p>13 Q I wanted to ask you to look back at</p> <p>14 Exhibit 50.</p> <p>15 A Sure.</p> <p>16 Q And this is notes of an FRB call with</p> <p>17 Forrest Reinhardt, where he's reporting back about the</p> <p>18 meeting of the Standing Committee; is that right?</p> <p>19 A It appears that.</p> <p>20 Q Okay. And the first sentence is attributed</p> <p>21 to Forrest. It says "Standing Committee met</p> <p>22 yesterday." What Standing Committee is that referring</p> <p>23 to?</p> <p>24 A I'm assuming it is the Edelman Standing</p> <p>25 Committee, but he doesn't say that specifically.</p>	Page 66	<p>1 knowledge, was Ben Edelman's the first matter that the</p> <p>2 FRB examined?</p> <p>3 A Yes.</p> <p>4 Q And in 2017, is it fair to say that the FRB</p> <p>5 turned back to looking at Ben Edelman?</p> <p>6 A Yes.</p> <p>7 Q In between 2015 and 2017, did the FRB handle</p> <p>8 other matters?</p> <p>9 A Yes.</p> <p>10 Q How many?</p> <p>11 A I can't -- I can't -- more than one. But I</p> <p>12 can't recall how many.</p> <p>13 Q Did any of those matters involve people who</p> <p>14 were currently candidates for tenure?</p> <p>15 A No.</p> <p>16 Q When you say, "more than one," how many can</p> <p>17 you specifically recall?</p> <p>18 A I can recall one with precision, and -- and</p> <p>19 I'm foggy on others.</p> <p>20 Q When you say that you're "foggy on others,"</p> <p>21 are you sure that there were others? Or --</p> <p>22 A I'm not sure.</p> <p>23 Q Okay. So the one that you can recall with</p> <p>24 precision, what was the nature of the conduct that was</p> <p>25 alleged?</p>	Page 68
<p>1 Q Is that the Standing Committee that is</p> <p>2 convened as part of the tenure process?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: We had concluded earlier</p> <p>5 that there were only two Standing Committees, and</p> <p>6 one -- only one, that related to tenure process</p> <p>7 faculty, so I assume so.</p> <p>8 BY MS. O'MEARA-COSTELLO:</p> <p>9 Q Okay. And I think that we had discussed</p> <p>10 that Exhibit 116, the email from Paul Healy, describes</p> <p>11 a Standing Committee that's involved in the tenure</p> <p>12 process?</p> <p>13 A That's correct.</p> <p>14 Q Okay. Is that what you understood Forrest</p> <p>15 to be discussing in Exhibit 50?</p> <p>16 A That's what I would assume.</p> <p>17 Q So turning to 2017, you were still a member</p> <p>18 of the FRB in 2017; right?</p> <p>19 A That's correct.</p> <p>20 Q Okay. And was Ben Edelman's FRB in 2015 the</p> <p>21 first matter that the FRB examined?</p> <p>22 A It's the first one I examined. Yes.</p> <p>23 Q Had there been an FRB before 2015?</p> <p>24 A I don't -- I don't believe so.</p> <p>25 Q Okay. And so, to the best of your</p>	Page 67	<p>1 MR. MURPHY: Objection.</p> <p>2 THE WITNESS: It was a set of</p> <p>3 allegations being made by a doctoral student relative</p> <p>4 to the behavior of two tenured faculty members.</p> <p>5 BY MS. O'MEARA-COSTELLO:</p> <p>6 Q And how did the FRB proceed in that case?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: In much the same -- in</p> <p>9 much the same way that we described for Ben Edelman.</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q What was the allegation that the -- I'm</p> <p>12 sorry. Did you say it was a PhD student?</p> <p>13 A It was a PhD student, yes.</p> <p>14 Q What was the allegation that the PhD student</p> <p>15 made?</p> <p>16 A It was allegations relative to the behavior</p> <p>17 of two faculty members relative to timely, accurate</p> <p>18 feedback, and appropriation of work.</p> <p>19 Q Did the FRB reach a conclusion about whether</p> <p>20 the faculty members had, in fact, engaged in the</p> <p>21 behavior that the graduate student described?</p> <p>22 A Yes.</p> <p>23 Q What was the conclusion?</p> <p>24 A No.</p> <p>25 Q So to be clear, the conclusion was that they</p>	Page 69

<p>1 had not engaged in the behavior?</p> <p>2 A That is correct.</p> <p>3 Q And as a result of that conclusion, I'm</p> <p>4 assuming there was no discipline imposed?</p> <p>5 A That's correct.</p> <p>6 Q Did the FRB write a report in that instance?</p> <p>7 A I don't recall.</p> <p>8 Q Did the FRB engage an external factfinder</p> <p>9 for that matter?</p> <p>10 A No.</p> <p>11 Q Did the FRB work with anyone outside of the</p> <p>12 FRB and its regular support staff internally to HBS?</p> <p>13 A It involved reaching out to members of the</p> <p>14 Faculty of Arts and Sciences for more detail.</p> <p>15 Q Were the members of the Faculty of Arts and</p> <p>16 Sciences that you reached out to essentially</p> <p>17 witnesses?</p> <p>18 A Yes.</p> <p>19 Q Okay. They weren't participating in</p> <p>20 factfinding?</p> <p>21 A That's correct.</p> <p>22 Q Did the FRB interview the tenured faculty</p> <p>23 members who were involved?</p> <p>24 A Yes.</p> <p>25 Q And did the FRB share information about its</p>	Page 70	Page 72
<p>1 investigation with those faculty members?</p> <p>2 A Yes.</p> <p>3 Q What information did it share?</p> <p>4 A About the specifics of the allegation to</p> <p>5 understand the -- the context that was being set for</p> <p>6 our interview with the faculty.</p> <p>7 Q Did that include -- had you interviewed the</p> <p>8 graduate student?</p> <p>9 A Yes.</p> <p>10 Q Did you share information about what the</p> <p>11 graduate student had said in his interview with the</p> <p>12 faculty members?</p> <p>13 A I can't recall.</p> <p>14 Q Did you gather documents related to the</p> <p>15 allegations that the graduate student was making?</p> <p>16 A Yes.</p> <p>17 Q Do you recall, broadly, what documents you</p> <p>18 gathered?</p> <p>19 A Minutes of telephone calls, and -- and draft</p> <p>20 of papers.</p> <p>21 Q Did you share those documents with the</p> <p>22 faculty members?</p> <p>23 A Yes.</p> <p>24 Q You mentioned interviewing members of the</p> <p>25 Faculty of Arts and Sciences?</p>	Page 71	Page 73
<p>1 A One.</p> <p>2 Q One member of the Faculty of Arts and</p> <p>3 Sciences. Did you interview any other witnesses other</p> <p>4 than the --</p> <p>5 A No. Not that I recall.</p> <p>6 Q Did you share anything with the faculty</p> <p>7 members about what the member of the Faculty of Arts</p> <p>8 and Sciences that you interviewed had said?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: Not that I recall.</p> <p>11 BY MS. O'MEARA-COSTELLO:</p> <p>12 Q And I apologize if I already read this, but</p> <p>13 did you draft a report?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: I don't recall.</p> <p>16 BY MS. O'MEARA-COSTELLO:</p> <p>17 Q Do you have any memory of how you</p> <p>18 communicated your findings?</p> <p>19 A No.</p> <p>20 Q Do you know to whom the findings were</p> <p>21 communicated?</p> <p>22 A Yes.</p> <p>23 Q And to whom?</p> <p>24 A We reported to the dean. So whenever we're</p> <p>25 done, whatever format it was done, was done to the</p> <p>1 dean.</p> <p>2 Q Was it also communicated to the, I think,</p> <p>3 you said two faculty members who were involved?</p> <p>4 A To the two faculty members and the doctoral</p> <p>5 student.</p> <p>6 Q Okay. Did the membership of the FRB change</p> <p>7 between 2015 and 2017?</p> <p>8 A Yes.</p> <p>9 Q How did it change?</p> <p>10 A Forrest stepped down and was replaced by Stu</p> <p>11 Gilson.</p> <p>12 Q When the FRB examined the matter of the two</p> <p>13 faculty members that you just described to me, was Stu</p> <p>14 Gilson a member of the FRB at that point?</p> <p>15 A No.</p> <p>16 Q Forrest Reinhardt was still a member then?</p> <p>17 A To my best of my recollection, yeah.</p> <p>18 Q All right. I am going to show you an</p> <p>19 exhibit that has been previously marked as Exhibit 51.</p> <p>20 A Okay. I'll put these aside.</p> <p>21 MS. O'MEARA-COSTELLO: I have these</p> <p>22 copies for you guys.</p> <p>23 MR. MURPHY: Thank you.</p> <p>24 BY MS. O'MEARA-COSTELLO:</p> <p>25 Q And when you've had a chance to look at it,</p>		

<p style="text-align: right;">Page 74</p> <p>1 I'm just going to ask if you recognize that document?</p> <p>2 A Yes.</p> <p>3 Q And what is that?</p> <p>4 A What is the document?</p> <p>5 Q Yes.</p> <p>6 A The document is a note from -- from the FRB to Ben to communicate that we got his -- his initial submission to the FRB, and we had a bunch of incremental questions to address beyond what he had presented in his statement.</p> <p>11 Q Okay. And in the middle of the first page of that document, it says "The FRB now must assess," and it lists three bullet points that the FRB intends to examine; is that fair to say?</p> <p>15 A Yes.</p> <p>16 Q And are those the three areas that the FRB understood to be within the scope of its inquiry in 2017?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. O'MEARA-COSTELLO:</p> <p>22 Q Sorry. That was a "yes"?</p> <p>23 A Yes.</p> <p>24 Q And as to those three areas, at the time that this letter was sent to Ben, had the FRB begun to</p>	<p style="text-align: right;">Page 76</p> <p>1 your conduct, regardless of your intent, that made them problematic?" How did the FRB approach gathering evidence about that question?</p> <p>4 A Well, in some respects, we were often -- we were driven by the framing of the issue by Ben in his response.</p> <p>7 Q Okay. But in terms of the FRB's procedural work --</p> <p>9 A It would be both continuing -- a continuing process of interviews on specific issues or specific people.</p> <p>12 Q What people did you interview to try to determine whether Ben understood the aspects of his conduct that made them problematic?</p> <p>15 A I can't give you the names at this point. I don't recall the list.</p> <p>17 Q What kind of evidence did you hope to find that would tell you whether he understood that his conduct was problematic?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: I think we would be looking at his pattern of behavior over the two years, and -- and the extent to which anything might have occurred during that timeframe, which gave us pause, given the concerns that were expressed in 2015.</p>
<p style="text-align: right;">Page 75</p> <p>1 gather evidence about them?</p> <p>2 A We began the process with Ben's response that generated a conversation.</p> <p>4 Q And as to these three areas, how did the FRB approach gathering evidence in 2017?</p> <p>6 A I don't recall the specifics of the process.</p> <p>7 Q Did the FRB discuss how it might proceed?</p> <p>8 A Once we got Ben's note, it basically was an open invitation to decide the extent to which we would rely on his list of interviewees to be helpful in the process.</p> <p>12 Q And what did you decide about his list of interviewees?</p> <p>14 A We concluded it was a very long list and that we would be delighted to choose a selection from that.</p> <p>17 Q And in this letter, you asked Ben to prioritize who you should speak to; is that fair to say?</p> <p>20 A Yes, yes.</p> <p>21 Q Did the FRB consider the idea of working with a factfinder in 2017?</p> <p>23 A No.</p> <p>24 Q And looking at those three bullet points, the first is "Whether you understand the aspects of</p>	<p style="text-align: right;">Page 77</p> <p>1 BY MS. O'MEARA-COSTELLO:</p> <p>2 Q Looking at the second bullet point, "Whether there's sufficient evidence of changed behavior?"</p> <p>4 What kind of evidence did you look for on that question?</p> <p>6 A I think it -- I can't recall what specifics.</p> <p>7 Q And the third bullet point, "Whether there's a reasonable expectation that your changed behavior will be sustained in the future?" Again, what kind of evidence were you looking for on that question?</p> <p>11 A It goes back to the conversation we had before the break, around that this was just simply more than the absence of efforts to -- to tackle issues that would get him into trouble, but an affirmative step to actually change behavior. So it was an issue of affirmative behavior rather than avoidance.</p> <p>18 Q What kind of affirmative behavior would have convinced you that there was a reasonable expectation that Ben's changed behavior would be sustained in the future?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 THE WITNESS: It's difficult to answer that.</p> <p>25 //</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 BY MS. O'MEARA-COSTELLO:</p> <p>2 Q I'm going to show you a document that we 3 previously have marked as Exhibit 73. So I'll give 4 you a moment to look at that, and then I'll have some 5 questions.</p> <p>6 A Yep.</p> <p>7 Q Okay. Are these notes from the FRB's 8 meeting on June 28, 2017?</p> <p>9 A I would presume so.</p> <p>10 Q Have you seen these before?</p> <p>11 A Yes.</p> <p>12 Q Did you see these in 2017?</p> <p>13 A Yes.</p> <p>14 Q And do they generally appear to be accurate 15 from your recollection of that meeting?</p> <p>16 A Yes.</p> <p>17 Q At the top of the first page, the first 18 paragraph starts "Gilson comes into the report with 19 priors." Do you see that?</p> <p>20 A I do.</p> <p>21 Q Is that paragraph describing statements that 22 Professor Stuart Gilson made during that meeting?</p> <p>23 A Since they're attributed to him, yes.</p> <p>24 Q And he says that he "comes into the report 25 with priors," and then he goes on to express fairly</p>	<p style="text-align: right;">Page 80</p> <p>1 you see that?</p> <p>2 A That's correct.</p> <p>3 Q Okay. And then below that, it says "Three 4 things from the report." Is this paragraph still you 5 talking?</p> <p>6 A Yes.</p> <p>7 QOkay. And so it says "Three things from the 8 report. Took a 12-second course on active listening. 9 Helpful tool, but not profound insight. So curious as 10 to how others perceive him. Is he just in remission?"</p> <p>11 Did you say that?</p> <p>12 A I did.</p> <p>13 Q What did he mean by "Is he just in 14 remission"?</p> <p>15 A There are two parts to it, so let me -- let 16 me respond to both of those. The comment about the 17 12-second course in active listening was, as you 18 remember, he elected to not take coaching. And having 19 elected to not take coaching, the insight that he had 20 identified in his documents that really changed and 21 shaped the way in which he saw the world was an 22 interaction that he had with a colleague who suggested 23 that he reframe what he hears from people as part of 24 the process of being able to respond to it.</p> <p>25 That's active listening. So that's an</p>
<p style="text-align: right;">Page 79</p> <p>1 strong views about Professor Edelman. Is that a fair 2 summary?</p> <p>3 A Yes.</p> <p>4 Q Did it give you any concern that Professor 5 Gilson already held these strong views about Professor 6 Edelman?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: You'd have to ask him. I 9 mean, from my perspective, if you look at my words, I 10 immediately went into a process conversation that 11 never changed, so I never responded to it.</p> <p>12 BY MS. O'MEARA-COSTELLO:</p> <p>13 Q So aside from whether you responded to it 14 verbally in that meeting, did it give you a concern?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 THE WITNESS: Not at the time.</p> <p>17 BY MS. O'MEARA-COSTELLO:</p> <p>18 Q Did it ever give you a concern?</p> <p>19 A As long as we had a good process that 20 involved solid conversation with data, no.</p> <p>21 Q Okay. All right. In the middle of the 22 page, there's two paragraphs that I think are 23 attributed to you. First, a paragraph "Taught same 24 section as B.E. this past semester" where you talk 25 about teaching, I think, the same course as Ben. Do</p>	<p style="text-align: right;">Page 81</p> <p>1 accurate description of what it was he was suggested 2 to do. And I was suggesting that active listening is 3 absolutely helpful, but not particularly profound at 4 that point. The second sentence relates to, "I'm 5 curious as to how others perceive him. Is he just in 6 remission?"</p> <p>7 Which is I wanted to get to a bunch of other 8 people who were experiencing them, both people in the 9 past and people currently, to get a sense of the 10 question that we've been talking about all morning, 11 which is, is this just a person who is engaging in 12 avoidance behavior, or is affirmatively changing their 13 behavior?</p> <p>14 Q Okay. Was the active listening -- what you 15 described as a 12-second course in active listening -- 16 is that the only thing that he said in his statement 17 had changed?</p> <p>18 A That was the primary behavioral insight that 19 he referred to from interaction with others.</p> <p>20 Q So farther down on this same page, the next 21 statement that's attributed to you, says "Schlesinger 22 would like data from some of the instances he's 23 raised. Jeanne Po and the IT Group, Joe Badaracco and 24 the LCA Teaching Group over the entire semester, calls 25 to the dean's office." Is that a statement that you</p>

<p style="text-align: right;">Page 82</p> <p>1 made or a set of statements that you made?</p> <p>2 A It appears to be.</p> <p>3 Q Okay. That seems to reflect that you're</p> <p>4 looking for data about instances that Ben raised in</p> <p>5 his statement; is that right?</p> <p>6 A I'm looking to check against those three</p> <p>7 primary categories to validate his assertions.</p> <p>8 Q Okay. And is that something that you</p> <p>9 intended to do through interviews?</p> <p>10 A Yes.</p> <p>11 Q What kind of data were you hoping to get?</p> <p>12 A Well, in all of these cases -- in all of</p> <p>13 these cases, Ben made a number of assertions about the</p> <p>14 experience, the experience working with the IT Group,</p> <p>15 and going forward, the experience working within the</p> <p>16 LCA Teaching Group, and his experience interacting</p> <p>17 with the dean's office and Jeanne. So there was an</p> <p>18 opportunity to either check on, validate, or reshape</p> <p>19 those assertions by collecting additional data.</p> <p>20 Q Did you collect that data as the FRB's</p> <p>21 process moved forward?</p> <p>22 A Yes.</p> <p>23 Q Was that data shared with Professor Edelman?</p> <p>24 A I believe that data was shared as part of</p> <p>25 our process.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Who did it gather that data from?</p> <p>2 A Jean Cunningham.</p> <p>3 Q Was that data shared with Ben?</p> <p>4 A I don't recall.</p> <p>5 Q Was any information about the FRB's</p> <p>6 interviews shared with Ben other than the information</p> <p>7 contained in the FRB's draft report and final report?</p> <p>8 A It was at that level of abstraction to avoid</p> <p>9 the identification of individuals.</p> <p>10 Q And was it only in the actual form of the</p> <p>11 draft and final reports? Or was there another</p> <p>12 occasion when data was transmitted to him?</p> <p>13 A I don't recall.</p> <p>14 Q Was there a particular reason that it was</p> <p>15 important to talk to Jeanne Po?</p> <p>16 A I don't remember who she is.</p> <p>17 Q Okay.</p> <p>18 A So I'm sure it was.</p> <p>19 Q Fair enough. Is the IT Group the</p> <p>20 administrative body that Ben joined?</p> <p>21 A I believe there are two parts to the IT</p> <p>22 Group. One is the issue relative to the -- the size</p> <p>23 of the screens that we talked about earlier that had</p> <p>24 not gotten yet resolved. And then -- and then his</p> <p>25 role as a member of the -- the Technology Steering</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Who would've shared that data?</p> <p>2 A It would've been shared in the context of</p> <p>3 our -- our reports and conclusions.</p> <p>4 Q Okay. Did the report say what Jeanne Po</p> <p>5 told the FRB?</p> <p>6 A I don't recall specifically.</p> <p>7 Q Did the report share what the IT Group told</p> <p>8 the FRB?</p> <p>9 A Not with attribution.</p> <p>10 Q What about Joe Badaracco? Did the FRB's</p> <p>11 report share what Joe Badaracco told the FRB?</p> <p>12 A Not with attribution.</p> <p>13 Q What about the LCA? Other members of the</p> <p>14 LCA Teaching Group?</p> <p>15 A Not with attribution.</p> <p>16 Q Is Joe Badaracco the head of the LCA</p> <p>17 Teaching Group?</p> <p>18 A He was at the time.</p> <p>19 Q At the end of this, you say "Calls to the</p> <p>20 dean's office." Do you know what that means?</p> <p>21 A Yeah. Referring to Ben's assertions about</p> <p>22 proactively calling the dean's office on issues of --</p> <p>23 of concern that required reporting to the dean.</p> <p>24 Q Did the FRB gather data on that topic?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 Committee.</p> <p>2 Q Okay. I think we talked before that he was</p> <p>3 going to do two things, and one was going to be join</p> <p>4 the LCA Teaching Group and --</p> <p>5 A And he joined the IT Steering Committee.</p> <p>6 Q The IT Steering Committee is the</p> <p>7 administrative body that he was going to join?</p> <p>8 A I think it included a span of faculty</p> <p>9 issues. But yes.</p> <p>10 Q Okay. And was it important to know how he</p> <p>11 did at interacting with the other members of the IT</p> <p>12 Group?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 THE WITNESS: Given our desire to learn</p> <p>15 about behavior change, we perceived that it was.</p> <p>16 BY MS. O'MEARA-COSTELLO:</p> <p>17 Q Okay. And was it important to know how he</p> <p>18 did in the LCA Teaching Group in particular?</p> <p>19 A Yes.</p> <p>20 Q Why was that?</p> <p>21 A Because those were the things that we had</p> <p>22 asked him to do as part of the 2015 to 2017 timeframe.</p> <p>23 Q And so was it important to assess how well</p> <p>24 he had done at carrying out those roles?</p> <p>25 A That's correct.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q These notes are dated June 28, 2017; right?</p> <p>2 A Yes.</p> <p>3 Q At that point, had the FRB interviewed any</p> <p>4 witnesses?</p> <p>5 A I have not gone through my calendar, so I</p> <p>6 can't answer that.</p> <p>7 Q On the next page, in the middle of the page,</p> <p>8 there's a set of statements that I think are</p> <p>9 attributed to you. It says "Schlesinger," and it</p> <p>10 starts --</p> <p>11 A You don't have to pronounce the C-H.</p> <p>12 Q I'm sorry.</p> <p>13 A No problem. My mother got it wrong too.</p> <p>14 Q Well, tell me how I should be saying it.</p> <p>15 A Just S-L-E-S.</p> <p>16 Q S-L-E-S?</p> <p>17 A Yes.</p> <p>18 Q Schlesinger?</p> <p>19 A Yeah. Much easier.</p> <p>20 Q Okay. I apologize for that, and I --</p> <p>21 A No need to apologize. It's the first</p> <p>22 correction.</p> <p>23 Q And then it says "Understanding of AC role</p> <p>24 means we need a freestanding report." Do you see that</p> <p>25 statement?</p>	<p style="text-align: right;">Page 88</p> <p>1 A Yes.</p> <p>2 Q Going back to your comment, the first</p> <p>3 sentence of that set of comments from you, where it</p> <p>4 says "Understanding of AC role means we need a</p> <p>5 freestanding report, not just an update."</p> <p>6 A Yes.</p> <p>7 Q What was the basis for your understanding</p> <p>8 that the FRB needed to prepare a freestanding report?</p> <p>9 A Because I was operating under the assumption</p> <p>10 that we could not guarantee that we had the same</p> <p>11 Standing Committee, or the same subcommittee. So as a</p> <p>12 consequence, just merely updating a report would not</p> <p>13 be useful to them. And unless we could guarantee that</p> <p>14 was, in fact, the case, we ought to feel that we had</p> <p>15 an obligation to write a new report.</p> <p>16 Q On the last page of the document, so the one</p> <p>17 that's Bates stamped HBS2385.</p> <p>18 A Yep.</p> <p>19 Q In the middle of the page, there's a comment</p> <p>20 seemingly attributed to Amy Edmondson, it says</p> <p>21 "Edmondson: Stu's brief and unidentified example</p> <p>22 pains me to think about the number of people whose</p> <p>23 work life has been affected by him." Do you know what</p> <p>24 she's referring to when she says "Stu's brief and</p> <p>25 unidentified example"?</p>
<p style="text-align: right;">Page 87</p> <p>1 A Yes.</p> <p>2 Q And then there's a few other sentences</p> <p>3 before the next comment from, it seems, Amy Edmondson.</p> <p>4 Is this whole little section things that you said?</p> <p>5 A I don't know that I got all the way down to</p> <p>6 the conclusion, but I can certainly attest to the</p> <p>7 first three sentences.</p> <p>8 Q Tell me what you're -- just for clarity.</p> <p>9 Can you tell me what you're referring to as "the first</p> <p>10 three"?</p> <p>11 A Yes. So I can attest to having said, "What</p> <p>12 is the new evidence? Do we now have compelling</p> <p>13 information? And we want affirmative evidence that</p> <p>14 he's changed his behavior, not just that he stayed out</p> <p>15 of the papers." I can't recall having said, "At face</p> <p>16 value, we don't see the evidence," whether that was me</p> <p>17 or somebody else.</p> <p>18 Q Okay. Did someone say that at that meeting?</p> <p>19 A I would believe so. But I don't recall who.</p> <p>20 Q All right. And it looks like Amy Edmondson</p> <p>21 responds to that by saying "At some level, it is</p> <p>22 obvious that we shouldn't have him on the senior</p> <p>23 faculty, but our process doesn't make it easy for that</p> <p>24 to happen." Is that something that you recall her</p> <p>25 saying?</p>	<p style="text-align: right;">Page 89</p> <p>1 A No memory of it.</p> <p>2 Q Do you know how did the FRB approach</p> <p>3 conducting interviews in 2017?</p> <p>4 A We -- the part that I recall vividly, is we</p> <p>5 made a master list of all of the interviews that we</p> <p>6 wanted to have in the community that were linked to</p> <p>7 Ben's list and priorities, and other people we wanted</p> <p>8 to hear from, and we agreed to do them all</p> <p>9 individually, and then report back.</p> <p>10 Q Did that list include people that the FRB</p> <p>11 identified independently of Ben's list as well?</p> <p>12 A In addition to Ben's list. Yes.</p> <p>13 Q And do you know who you personally</p> <p>14 interviewed?</p> <p>15 A I can't guarantee that I know them all, but</p> <p>16 I remember some of them.</p> <p>17 Q To back up a little bit, did you divide up</p> <p>18 the longer list that you made?</p> <p>19 A That's correct. Yes.</p> <p>20 Q Okay. And so each member of the FRB had</p> <p>21 some interviews --</p> <p>22 A Had anywhere between four and six</p> <p>23 interviews. Yeah.</p> <p>24 Q Okay. And I'm going to just give you an</p> <p>25 exhibit that, I guess, we haven't previously marked.</p>

23 (Pages 86 - 89)

<p>1 So I think that makes this 120.</p> <p>2 (Exhibit 120 was marked for</p> <p>3 identification.)</p> <p>4 THE REPORTER: Yeah.</p> <p>5 BY MS. O'MEARA-COSTELLO:</p> <p>6 Q Okay. I'll give you a minute to look at</p> <p>7 that, and then I'll have a question. First of all,</p> <p>8 asking whether you can identify what it is?</p> <p>9 A I think it is exactly what it says it is.</p> <p>10 Faculty Review Board Notes.</p> <p>11 Q Did you keep a calendar in 2017?</p> <p>12 A Yes.</p> <p>13 Q Was that something that you kept on a</p> <p>14 computer?</p> <p>15 A Yes.</p> <p>16 Q What software were you using to keep your</p> <p>17 calendar?</p> <p>18 A Outlook Calendar.</p> <p>19 Q Would your meetings with FRB witnesses be</p> <p>20 reflected there?</p> <p>21 A Yes. Sorry.</p> <p>22 Q And looking through this document that we've</p> <p>23 marked as Exhibit 120, are these notes of the</p> <p>24 interviews that you conducted for the FRB in 2017?</p> <p>25 A I don't know if this is all of them, but</p>	Page 90	Page 92
<p>1 these all appear to be ones that I did.</p> <p>2 Q Okay. Do you recall doing any that are not</p> <p>3 reflected here?</p> <p>4 A I can't recall.</p> <p>5 Q Okay. So this seems to show interviews with</p> <p>6 [REDACTED], [REDACTED], [REDACTED], [REDACTED],</p> <p>7 [REDACTED] [REDACTED], and [REDACTED]?</p> <p>8 A That's correct.</p> <p>9 Q And do you recall interviewing anybody other</p> <p>10 than those people?</p> <p>11 A I don't recall.</p> <p>12 Q How did you conduct these interviews?</p> <p>13 A I believe, wherever possible, they were</p> <p>14 live.</p> <p>15 Q Okay. They were in-person, not on the</p> <p>16 phone?</p> <p>17 A That's correct.</p> <p>18 Q Was someone else with you for the</p> <p>19 interviews?</p> <p>20 A No.</p> <p>21 Q Did you take these notes?</p> <p>22 A I took -- I took a set of handwritten notes.</p> <p>23 These were not mine. They were converted to a</p> <p>24 typeset.</p> <p>25 Q Who converted them to typed notes?</p>	Page 91	Page 93

<p style="text-align: right;">Page 102</p> <p>1 willingness to help colleagues." And that is 2 something that's repeated multiple times by people in 3 the NOM Unit with a fair degree of regularity. 4 Q So I'm actually, I think, trying to ask a 5 slightly different question. 6 A Sure. 7 Q Which is less about how do people score him 8 on different attributes, and more about were there 9 kind of factual examples that people gave you of his 10 conduct that you thought were important? 11 A There was -- all of my observations were 12 rooted in systematic patterns of anecdotes that came 13 from the interviews. 14 Q Okay. 15 A So in other words, there was no what I would 16 call "knockout punch," either positive or negative, 17 that came from the interviews. 18 Q I think that the distinction I'm trying to 19 make is less, you know, that some people had kind of 20 overarching views of his character, like [REDACTED] saying 21 he gets great marks for honesty and integrity, and 22 more are there kind of specific examples of conduct 23 that you could trace to the last two years that you 24 thought were important? 25 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 104</p> <p>1 A The broad patterns of feedback were, I 2 believe, were embedded in the report to Ben. 3 Q Okay. But they weren't ever -- nothing was 4 shared outside of the report itself? 5 MR. MURPHY: Objection. 6 THE WITNESS: At the individual -- I 7 don't believe so. 8 BY MS. O'MEARA-COSTELLO: 9 Q Okay. The FRB interviewed Ben; right? 10 A Interviewed? 11 Q Interviewed Ben Edelman? 12 A Yes. 13 Q In that interview, was anything communicated 14 to him about what people had said about him in their 15 interviews? 16 A I'd have to get to the notes. I can't 17 recall. 18 Q Did the FRB interview Professor Edelman 19 once? Or more than once? 20 A I'd have to go to my calendar. So I don't 21 recall. 22 Q Do you recall being present for an interview 23 with Professor Edelman in 2017? 24 A Yes. 25 Q Was everyone from the FRB present for that</p>
<p style="text-align: right;">Page 103</p> <p>1 THE WITNESS: Most of the NOM Unit 2 interviews in this case, [REDACTED] and [REDACTED] were -- 3 [REDACTED] being closer, [REDACTED] having less relevant 4 data -- [REDACTED] seemed to indicate that he thought 5 there was progress. [REDACTED] thought there was 6 amazing progress, although he didn't need any 7 improvement. 8 [REDACTED] reflected on -- on winter 2015 9 data in the teaching group and found him -- found him 10 quite helpful and had no concerns. I'll leave it at 11 that. And [REDACTED] who was, in some respects, the 12 person who would've had the most substantive time with 13 him as a member of the teaching group at that point, 14 had a significantly adverse reaction to him with lots 15 of examples. 16 BY MS. O'MEARA-COSTELLO: 17 Q Were any of those examples from [REDACTED] 18 ever communicated to Ben? 19 A I don't know. 20 Q The FRB interviewed Ben; right? 21 A No. I don't know in terms of -- oh, I 22 thought you were asking whether [REDACTED] shared that 23 with Ben. 24 Q Oh, no. I'm asking about whether the FRB 25 shared the content of that interview with Ben.</p>	<p style="text-align: right;">Page 105</p> <p>1 interview? 2 A I don't know. 3 Q Do you recall what questions the FRB asked 4 Professor Edelman? 5 A No. 6 Q What did you think of his performance at his 7 interview? 8 MR. MURPHY: Objection. 9 THE WITNESS: Since I can't recall 10 anything else, it's hard to recall the quality of the 11 performance. 12 MS. O'MEARA-COSTELLO: I will ask that 13 we mark this as Exhibit 121. 14 (Exhibit 121 was marked for 15 identification.) 16 BY MS. O'MEARA-COSTELLO: 17 Q And actually, before I give you this, I'm 18 going to ask a question. I asked you about your 19 calendar entries from the time that you were on the 20 FRB? 21 A Right. 22 Q Does your current Outlook calendar go back 23 as far as 2017? 24 A I haven't tested it, but I would assume so. 25 Q Okay. You haven't switched systems or --</p>

<p style="text-align: right;">Page 106</p> <p>1 A No, no. It's all been -- it's all been the 2 same. Same FRB file, same calendar. So as long as 3 the calendar allows me to go back, it would be there. 4 Q Okay. All right. I'm showing you what 5 we've marked as Exhibit 121, and I'll let you look at 6 that. And then I'm going to ask if it seems to be 7 notes of the FRB's interview with Ben Edelman. Do 8 these appear to be the notes from Ben Edelman's 9 interview with the FRB in 2017?</p> <p>10 A I don't know if it's a full rendition, but 11 clearly, this is part of it.</p> <p>12 Q Okay. And have you ever seen this before?</p> <p>13 A Yes.</p> <p>14 Q Okay. Was this shared with you in 2017?</p> <p>15 A I don't recall.</p> <p>16 Q Did you see it in your preparation for this 17 deposition?</p> <p>18 A Yes.</p> <p>19 Q Do you have any memory of seeing it before 20 you prepared for this deposition?</p> <p>21 A No.</p> <p>22 Q Do you know whose notes are in italics?</p> <p>23 A No. I'm always curious about who "me" is.</p> <p>24 Q It's not you?</p> <p>25 A It's not me. Let the record show "me" is</p>	<p style="text-align: right;">Page 108</p> <p>1 A I don't know is what I'm saying. Yeah. 2 Q Did the FRB ask him about disclosures on his 3 writings about Google during this interview? 4 A Not during this interview. 5 Q And did the FRB ask him about his decision 6 to file suit against American Airlines? 7 A Not in this interview. 8 Q Did the entire FRB conduct any interviews 9 together in 2017 other than Ben's?</p> <p>10 A I don't recall.</p> <p>11 Q Did you interview Ben Esty in 2017?</p> <p>12 A I was in that interview.</p> <p>13 Q In 2017? Or in 2015?</p> <p>14 A 2017.</p> <p>15 Q Okay. Sorry. I'm asking about whether 16 there was an interview with Ben Esty, who was 17 interviewed in 2015?</p> <p>18 A Oh, do I believe he was interviewed again in 19 2017?</p> <p>20 Q Yes. That's what I'm asking.</p> <p>21 A We have too many Bens. Yes.</p> <p>22 Q Yes. I saw you looking at these notes, and 23 I thought, "I think we're thinking about different 24 Bens whose last names start with E" --</p> <p>25 A Okay. Why don't we go back to the first</p>
<p style="text-align: right;">Page 107</p> <p>1 not me.</p> <p>2 Q And do you recall, this seems to reflect, 3 essentially, three questions that the FRB asked 4 Professor Edelman? They're numbered here as 1, 2, 5 and 3. Do you recall whether you asked additional 6 questions?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: As I said, I don't recall 9 whether this was the full interview or not.</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q Do you have any specific memory of asking a 12 question other than these?</p> <p>13 A I do not.</p> <p>14 Q Do you have a specific memory of anyone 15 asking a question other than these three?</p> <p>16 A I do not.</p> <p>17 Q Did the FRB ask Professor Edelman about his 18 compliance with HBS conflict of interest policies 19 during his interview?</p> <p>20 A I do not recall that.</p> <p>21 Q Did the FRB ask Professor Edelman about his 22 work for Microsoft in his interview?</p> <p>23 A I don't -- in this session, I don't believe 24 so.</p> <p>25 Q Was there a second session?</p>	<p style="text-align: right;">Page 109</p> <p>1 question so that I answer it properly?</p> <p>2 Q So did the FRB interview Ben Esty in 2017 as 3 opposed to 2015 when we've discussed the --</p> <p>4 A I don't recall.</p> <p>5 Q Okay. Do you recall communicating with him 6 about the 2017 FRB in any form?</p> <p>7 A With Ben Esty?</p> <p>8 Q Ben Esty?</p> <p>9 A I don't recall.</p> <p>10 Q All right. I'm going to show you an exhibit 11 that we'll mark as 122. (Exhibit 122 was marked for 13 identification.)</p> <p>14 A So there's no way to do depositions in an 15 environmentally sensitive way; is there?</p> <p>16 Q We have done them on Zoom, and you know, it 17 does cut down on the paper. It's not preferable in 18 all ways.</p> <p>19 A Okay.</p> <p>20 Q Is that an email from Ben Esty to you dated 21 August 14, 2017?</p> <p>22 A Yes.</p> <p>23 Q And the subject line reads "A little more 24 info on UrbanHail"; right?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 114</p> <p>1 lawsuit?</p> <p>2 A I think -- I think the issue of gaining</p> <p>3 exposure, okay, to the lawsuit, ran much the same kind</p> <p>4 of risk with a larger organization that was raised in</p> <p>5 the Sichuan Garden case, in terms of -- in terms of</p> <p>6 Harvard Business School faculty members aggressively</p> <p>7 trying to seek settlements from companies.</p> <p>8 And that, essentially, the headline wouldn't</p> <p>9 be "Plaintiff's attorney invests substantial energy to</p> <p>10 fight malfeasance," but it's "Harvard Business School</p> <p>11 professor sues the airlines over baggage fees."</p> <p>12 Q There's a pretty big difference between</p> <p>13 Sichuan Garden and American Airlines; isn't there?</p> <p>14 A No question.</p> <p>15 MR. MURPHY: Objection.</p> <p>16 BY MS. O'MEARA-COSTELLO:</p> <p>17 Q Did you know that Ben had brought past class</p> <p>18 actions against Google, Yahoo, Apple, and Facebook?</p> <p>19 A Yes.</p> <p>20 Q And were you aware of whether there had been</p> <p>21 negative media coverage in those cases?</p> <p>22 A No.</p> <p>23 Q You weren't aware? Or --</p> <p>24 A I wasn't aware.</p> <p>25 Q Okay. Would knowing that the media coverage</p>	<p style="text-align: right;">Page 116</p> <p>1 Q When it says "the suit," is it discussing</p> <p>2 the lawsuit that Ben Edelman filed as --</p> <p>3 A Yes.</p> <p>4 Q -- an attorney against American Airlines?</p> <p>5 A Sorry. Yes.</p> <p>6 Q Sorry. Again, I know it's a very artificial</p> <p>7 feeling, but I have to finish the question so the</p> <p>8 record's clear.</p> <p>9 A Yes. I'm sorry. Yeah. I apologize.</p> <p>10 Q Why did you share that with the members of</p> <p>11 the FRB?</p> <p>12 A Coming off of the conversations in August</p> <p>13 with Ben, and in general, I wanted to make sure I was</p> <p>14 doing sufficient diligence on the situation so I could</p> <p>15 help me -- help me, in my own personal role as a</p> <p>16 member of the FRB, understand his behavior and his</p> <p>17 logic.</p> <p>18 Q Was there something in the discussion on the</p> <p>19 forum that you found to be particularly notable?</p> <p>20 A I would have to go back to that link to</p> <p>21 actually tell you. But I thought the fact that he was</p> <p>22 on there multiple times was that point I wanted the</p> <p>23 committee to know.</p> <p>24 Q Did you ever ask Ben Edelman about his</p> <p>25 participation on that chat board?</p>
<p style="text-align: right;">Page 115</p> <p>1 of those lawsuits was generally positive have shaped</p> <p>2 your view of whether there was reputational risk to</p> <p>3 the American Airlines lawsuit?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: I'd have to go through</p> <p>6 the specifics to answer that.</p> <p>7 BY MS. O'MEARA-COSTELLO:</p> <p>8 Q What do you mean when you say "the</p> <p>9 specifics"?</p> <p>10 A You'd have to show me the -- the lawsuits,</p> <p>11 you'd have to show me the coverage, and then I'd have</p> <p>12 to compare them.</p> <p>13 Q I'm going to ask that we mark this as</p> <p>14 Exhibit 123, and then I'll give you a copy.</p> <p>15 (Exhibit 123 was marked for</p> <p>16 identification.)</p> <p>17 A Thanks.</p> <p>18 Q Is that a September 1, 2017, email on the</p> <p>19 bottom from you to the other members of the FRB and</p> <p>20 Jean Cunningham, sending them a link to an online</p> <p>21 forum?</p> <p>22 A Yes.</p> <p>23 Q And the subject line is "Chat board on the</p> <p>24 suit and the issue"; right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 A I did not.</p> <p>2 Q As far as you know, did anyone on the FRB?</p> <p>3 A I don't know.</p> <p>4 Q All right. I'm going to show you -- this</p> <p>5 was 123. I'm going to show you another document in a</p> <p>6 minute, after we have it marked as Exhibit 124.</p> <p>7 (Exhibit 124 was marked for</p> <p>8 identification.)</p> <p>9 A Thank you.</p> <p>10 Q Is this an email from [REDACTED] to you dated</p> <p>11 August 29, 2017?</p> <p>12 A It is.</p> <p>13 Q Okay. And the subject line is "AA stuff,"</p> <p>14 and he writes "I assume you or the committee has seen</p> <p>15 how this lawsuit is being portrayed on the web";</p> <p>16 right?</p> <p>17 A Mm-hmm.</p> <p>18 Q And then he links --</p> <p>19 THE REPORTER: I'm sorry. That's a</p> <p>20 "yes"?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MS. O'MEARA-COSTELLO: Yes.</p> <p>23 BY MS. O'MEARA-COSTELLO:</p> <p>24 Q And then he provides a link to a website</p> <p>25 called viewfromthewing.boardingarea.com?</p>

30 (Pages 114 - 117)

<p style="text-align: right;">Page 118</p> <p>1 A Yes. 2 Q Okay. And there then appears to be a date 3 of 2015/7/15; right? 4 A Yes. 5 Q In fact, was that blog post regarding the 6 2017 lawsuit against American Airlines? 7 A I don't know. 8 Q Okay. And then below, [REDACTED] also 9 provides you with a link to the website flyertalk.com; 10 right? 11 A Yes. 12 Q Is that the same link that you sent on to 13 the other members of the FRB in Exhibit 123? 14 A Exactly as sent to me. Yes. 15 Q Why did [REDACTED] send this just to you? 16 A I don't know that he sent it just to me. 17 Q In this Exhibit 124, at least he doesn't 18 appear to be copying anyone else; right? 19 A That's correct. 20 Q Was there some reason for him to send things 21 to you directly rather than to the FRB as a whole? 22 MR. MURPHY: Objection. 23 THE WITNESS: None that I'm aware of. 24 BY MS. O'MEARA-COSTELLO: 25 Q Is there a reason that you chose to cut and</p>	<p style="text-align: right;">Page 120</p> <p>1 are at least six years old." And then there's a link 2 to the website techrights.org; right? 3 A That's correct. 4 Q Do you recall what issues you're referencing 5 when you say "These issues are at least six years 6 old"?</p> <p>7 A I do. 8 Q What are those? 9 A They're in reference to the Wall Street 10 Journal article talking about faculty being paid by 11 large organizations and raising questions about the 12 underlying ethics of that work. 13 Q Do you recall who it was that Ben Edelman 14 was working for that raised those questions? 15 A The article made an allegation relative to 16 Microsoft. 17 Q Did you ever share this article that you're 18 circulating to the other FRB members with Ben Edelman? 19 A I have no idea. 20 MS. O'MEARA-COSTELLO: All right. I'm 21 going to ask that we mark this as Exhibit 126. 22 (Exhibit 126 was marked for 23 identification.) 24 MR. MURPHY: Thank you. 25 THE WITNESS: Thank you.</p>
<p style="text-align: right;">Page 119</p> <p>1 paste the -- actually, let me back up a little bit. 2 Were you aware of the flyertalk.com forum from any 3 other source besides this email from [REDACTED] ? 4 A Not -- not that I recall. 5 Q Okay. Why did you choose to cut and paste 6 the link to flyertalk.com into a new email rather than 7 forwarding this email to the FRB? 8 MR. MURPHY: Objection. 9 THE WITNESS: We would have -- we would 10 have to go back to the various sites for me to 11 understand it. So I can't explain it at this point. 12 BY MS. O'MEARA-COSTELLO: 13 Q Okay. I'm going to show you one more email, 14 and I think this will be Exhibit 125. 15 (Exhibit 125 was marked for 16 identification.) 17 A Thank you. Yes. 18 Q Is this an email from you to the other 19 members of the FRB in 2017 and Jean Cunningham dated 20 September 7, 2017? 21 A Yes. 22 Q And the subject line is "This is an earlier 23 article that has a bit more detail than the Wall 24 Street Journal" -- I interpret "WSJ" to be Wall Street 25 Journal -- "piece circulated earlier. These issues</p>	<p style="text-align: right;">Page 121</p> <p>1 BY MS. O'MEARA-COSTELLO: 2 Q So I think this is an email exchange among 3 members of the FRB? 4 A It is. 5 Q And the bottom email is the one that we were 6 just looking at that we marked as Exhibit 125 from you 7 to the other members of the FRB. And then on the 8 first page, it looks like Stuart Gilson replies to it 9 on the same day, September 7, 2017, and sends along 10 three more articles; is that fair to say? 11 A About completely different topics. 12 Q About completely different topics? 13 A So I don't see it in any way, shape, or form 14 as a response to my email. 15 Q Except insofar as he pressed Reply All on 16 your email? 17 A And it happened on the same day. Yes. 18 Q Yes. And what are the articles that Stuart 19 Gilson sent along about? 20 A He's sending three articles that relate to 21 the earlier 2015 issue relative to Blinkx. 22 Q Okay. Is it fair to say that this full 23 exchange is happening after Ben Edelman had already 24 been interviewed by the FRB in 2017? 25 A You'd have to go to the calendar.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q Well, looking at Exhibit 121, that seems to 2 indicate that the Ben Edelman conversation with FRB 3 happened on August 14, 2017? 4 A Yeah. Then the answer would be yes. 5 Q Okay. And so is it fair to say that none of 6 these articles were discussed with Ben at his 7 interview? 8 A That would be a reasonable -- view. 9 Q Do you have any recollection otherwise? 10 A I do not. 11 Q Did the FRB reach out to Ben to ask him to 12 comment on any of these articles? 13 MR. MURPHY: Objection. 14 THE WITNESS: I don't believe so. 15 MS. O'MEARA-COSTELLO: Okay. I'm going 16 to ask that we mark this as Exhibit 127. Okay. 17 (Exhibit 127 was marked for 18 identification.) 19 THE WITNESS: Thank you. 20 BY MS. O'MEARA-COSTELLO: 21 Q I'm going to show you that. And when you've 22 had a chance to look at it, I'm going to ask if it 23 appears to be the Tech Rights article that you had 24 circulated to the FRB members in the email we were 25 just looking at?</p>	<p style="text-align: right;">Page 124</p> <p>1 A I did not. 2 Q Did you believe that this article had 3 bearing on the question of whether Ben had learned 4 from his experiences in 2014 and 2015? 5 MR. MURPHY: Objection. 6 THE WITNESS: What I believed was that 7 it was a continuing stream of press that puts him in 8 the news in an unflattering light, which doesn't get 9 us to the answer to your question. 10 BY MS. O'MEARA-COSTELLO: 11 Q Well, this is press from 2011; right? 12 A That's correct. 13 Q Did you consider that it had bearing on the 14 questions that the FRB was examining in 2017? 15 MR. MURPHY: Objection. 16 THE WITNESS: No. 17 BY MS. O'MEARA-COSTELLO: 18 Q How did the -- 19 MS. O'MEARA-COSTELLO: Well, actually, 20 can we just pause for a second? What time is it? 21 It's 12:45. Maybe this is a good time to break for 22 lunch. I think I'm going to be shifting topics. 23 THE WITNESS: We get lunch? 24 MR. MURPHY: We get to walk outside. 25 MS. O'MEARA-COSTELLO: Let's go off the</p>
<p style="text-align: right;">Page 123</p> <p>1 A It is. 2 Q Okay. This is authored by -- actually, 3 first of all, were you familiar with the website Tech 4 Rights? 5 A I was not. 6 Q And this appears to be an article from 7 August 30, 2011; is that right? 8 A Which was my reference in my note. 9 Q Yes. And it's written by a Dr. Roy 10 Schestowitz? 11 A Yes. 12 Q Do you know who that is? 13 A I have no idea. 14 Q In 2017, did you know who he was? 15 A I had no idea. 16 Q Is he someone whose opinion you had reason 17 to credit? 18 A I have no idea. 19 Q Did you read the comments on the article? 20 A I did. 21 Q Did you note that there was a comment from 22 B. Edelman? 23 A Yes. 24 Q Okay. Did you ever ask Ben Edelman about 25 this article?</p>	<p style="text-align: right;">Page 125</p> <p>1 record. 2 THE REPORTER: All right. We're off 3 the record at 12:45 p.m. 4 (Off the record.) 5 THE REPORTER: All right. We are back 6 on record at 1:33 p.m. 7 MS. O'MEARA-COSTELLO: All right. 8 Thank you. 9 BY MS. O'MEARA-COSTELLO: 10 Q So I wanted to start asking about the FRB's 11 2017 report. How did the FRB approach the task of 12 generating a report? 13 A So there are two parts that -- most of which 14 we've already covered. One was the explicit 15 recognition that we needed to make sure that we were 16 providing a report that would be useful regardless of 17 whatever changes existed in either the Standing 18 Committee or the subcommittee, whatever that might be, 19 and whoever that might be. 20 The second is that we don't get trapped into 21 the process of re-reviewing the case. That our 22 perception was that we had a task that was 23 inextricably tied to reviewing the questions that got 24 portrayed for Ben in 2015 when we extended the -- when 25 we extended his term for two years. And to that</p>

<p style="text-align: right;">Page 126</p> <p>1 extent, this was simply a continuation of the work of 2 that FRB.</p> <p>3 Q In terms of the mechanics, did someone kind 4 of do a first draft to share with the group?</p> <p>5 A I don't remember. It wasn't me, though.</p> <p>6 Q That was going to be my next question. Did 7 you at some point receive --</p> <p>8 A I remember enough to know it wasn't me.</p> <p>9 Q So at some point, did you receive a draft 10 from someone else in the group?</p> <p>11 A Or -- or multiple drafts were circulated.</p> <p>12 Yes.</p> <p>13 Q Okay. All right. I'm going to show you a 14 document -- and just a second. I'm going to show you 15 a document, and I will represent to you that it's a 16 Word document with tracked changes that we've printed. 17 And we'll mark that -- sorry. Give me a second to 18 sort out all the documents in this folder and give 19 everyone copies. 128. Okay. And we'll mark that as 20 128.</p> <p>21 (Exhibit 128 was marked for 22 identification.)</p> <p>23 A Thank you.</p> <p>24 Q Okay. Oh, yeah. And I'm going to just put 25 in the record also that this is produced to us as</p>	<p style="text-align: right;">Page 128</p> <p>1 Q The fifth unpaginated page. 2 A Yes.</p> <p>3 Q It has bullet points at the top, and the 4 first one reads "He's abrupt"?</p> <p>5 A Yes.</p> <p>6 Q Do you have the page?</p> <p>7 A I have the page.</p> <p>8 Q Okay. At the bottom of that first 9 paragraph, there's a comment which appears to be 10 struck through, which reads "I am concerned that the 11 length of the positive comments overwhelms the less 12 than positive feedback. Given the conclusion of the 13 report, I think there needs to be an effort to 14 introduce more material here." Is that a comment that 15 you made?</p> <p>16 A It is.</p> <p>17 Q Okay. And is it your understanding that the 18 bullet points above it that appear to have been 19 inserted into this draft, so they're in a different -- 20 in the sort of tan color text --</p> <p>21 A Burnt sienna.</p> <p>22 Q Were those inserted in response to that 23 comment of yours?</p> <p>24 A I would assume so. But I don't know that 25 this was the final draft.</p>
<p style="text-align: right;">Page 127</p> <p>1 HBS0007724.docx because we downloaded the native file. 2 That native file doesn't have the Bates number on it. 3 So the Bates number is on the exhibit, but --</p> <p>4 MR. MURPHY: Would you mind just saying 5 that again, Ruth?</p> <p>6 MS. O'MEARA-COSTELLO: You know what? 7 I will give you this native document placeholder that 8 I have in my file.</p> <p>9 MR. MURPHY: Thank you. Sorry.</p> <p>10 BY MS. O'MEARA-COSTELLO:</p> <p>11 Q So is this a draft of the FRB's report that 12 was circulated to you?</p> <p>13 A Yes.</p> <p>14 Q Okay. And did you make comments on the 15 draft?</p> <p>16 A Yes.</p> <p>17 Q What was your reaction to this draft?</p> <p>18 A I thought it was a very good draft.</p> <p>19 Q Did you have any concerns about the accuracy 20 of any of the information in the report?</p> <p>21 A I didn't evidence concerns about the -- the 22 "veracity and accuracy" of the report. Yes.</p> <p>23 Q If you look at the fifth page of the 24 document, and unfortunately, they're not numbered.</p> <p>25 A Yes. The fifth page not paginated.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q Okay. I'm going to show you -- sorry. 2 MS. O'MEARA-COSTELLO: What was this? 3 This was --</p> <p>4 THE REPORTER: 128.</p> <p>5 MS. O'MEARA-COSTELLO: 128. Okay. All 6 right. In that case, I'm going to ask that this next 7 one be marked 129, and I will put on the record that 8 this one is HBS0015942.</p> <p>9 (Exhibit 129 was marked for 10 identification.)</p> <p>11 BY MS. O'MEARA-COSTELLO:</p> <p>12 Q Again, it was produced to us by Harvard, and 13 that's the Bates number. But because we printed out 14 the native document, it doesn't have the Bates number 15 on it. And give me just a minute to -- copies for 16 everyone else.</p> <p>17 A Thank you.</p> <p>18 Q Okay. Is that an apparently later draft of 19 the report?</p> <p>20 A It is certainly a later draft. Yes.</p> <p>21 Q Okay. If you look at page 5, so the same 22 unpaginated problem, but if you count to page 5 in 23 this, it starts with the same bullet point "He's 24 abrupt." Does that add some additional bullet points?</p> <p>25 A It appears to add two.</p>

<p style="text-align: right;">Page 134</p> <p>1 about 2015. But thinking now about 2017, was there a 2 subcommittee considering Professor Edelman's tenure 3 case in 2017?</p> <p>4 A I don't know.</p> <p>5 Q Would there normally have been in the --</p> <p>6 A I don't know how it works. Sorry.</p> <p>7 Q Okay.</p> <p>8 A I'm a very lucky man.</p> <p>9 Q I am going to assume then that you did not 10 have any interactions with any subcommittee that might 11 have been considering his tenure case in 2017.</p> <p>12 A I never met with a subcommittee.</p> <p>13 Q Was there a Standing Committee considering 14 Professor Edelman's tenure case in 2017?</p> <p>15 A Yes.</p> <p>16 Q Did you have any interactions with that 17 committee?</p> <p>18 A Yes. I was the member of the committee who 19 got to meet with the Standing Committee 'cause no one 20 else was available.</p> <p>21 Q Okay. Was that an in-person meeting?</p> <p>22 A It was an in-person meeting, yes. In a 23 conference room in Morgan Hall.</p> <p>24 Q Did you have remarks prepared for the 25 Standing Committee?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q If you look at pages 4 to 5 of the report, 2 there's a number of bullet points. They purport to 3 reflect comments from interviews that the FRB 4 conducted; is that fair to say?</p> <p>5 A Yes.</p> <p>6 Q Did the Standing Committee ask you anything 7 about those quotations?</p> <p>8 A No.</p> <p>9 Q What questions did they ask you about the 10 report?</p> <p>11 A No profound questions. I mean, what they 12 were asking me to do was go substantially beyond the 13 scope of our conclusions, and I just was not 14 interested in doing that.</p> <p>15 Q What did they want to know that was beyond 16 the scope of your conclusions?</p> <p>17 A The simplest way -- the simplest way I could 18 define it was they wanted the answer, and -- and the 19 reality of it was that the answer was that we were 20 unable to answer. And that's not a very satisfying 21 scenario for people to play with, because quite 22 honestly, it imposed on the Standing Committee the 23 responsibility to interpret the entire package of 24 data, the academic, the teaching, and the citizenship.</p> <p>25 Q You said that many of the questions that you</p>
<p style="text-align: right;">Page 135</p> <p>1 A No. I made myself available to rehash the 2 conclusions of the committee and to take questions.</p> <p>3 Q Had you made any notes or prepared anything 4 to say?</p> <p>5 A None.</p> <p>6 Q What do you recall about the meeting with 7 the Standing Committee?</p> <p>8 A There were a lot of people. I got asked a 9 lot of questions. Many of them had an edge, and I 10 attempted to answer them as best I could, and then 11 they kicked me out.</p> <p>12 Q What questions do you recall being asked?</p> <p>13 A They were asking precise questions about -- 14 about issues that we had talked about, where I was 15 able -- essentially, I never went beyond the report to 16 kind of highlight the things that we thought they 17 should be looking at.</p> <p>18 Q I'm going to show you what we've previously 19 marked as Exhibit 45, and I'm just going to ask if you 20 can identify this as being the final version of the 21 FRB's 2017 report?</p> <p>22 A That's much better just by virtue of the 23 fact that it has page numbers.</p> <p>24 Q Yeah. That is a real improvement.</p> <p>25 A As best I can tell. It's -- yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 were asked had an edge?</p> <p>2 A No. Like "give us the answer."</p> <p>3 Q Okay. So that's what you're referring to 4 then?</p> <p>5 A Yeah.</p> <p>6 Q Okay. Did they ask you anything about who 7 the FRB had interviewed?</p> <p>8 A Not that I recall.</p> <p>9 Q Did they ask you about Professor Edelman's 10 disclosures of his work for Microsoft?</p> <p>11 A I don't recall any details, specific 12 line-item issues, that came up in the conversation.</p> <p>13 It was at a fairly high level of abstraction.</p> <p>14 Q About how long were you there?</p> <p>15 A I think about 45 minutes. It seemed like 16 longer.</p> <p>17 Q Do you recall anything about that meeting 18 that you haven't already told me?</p> <p>19 A Someone was on the meeting -- someone was at 20 the meeting on telephone, and -- and I, at one point, 21 just wanted to know who was on the phone 'cause we 22 were having a fairly sensitive conversation. That -- 23 that really was about it. And then I do remember, 24 ultimately, at the end of the day, [REDACTED], who was 25 chairing the meeting, saying goodbye.</p>

<p style="text-align: right;">Page 142</p> <p>1 A It could be. 2 Q Okay. 3 A But I -- but I don't have a profound memory 4 of it. And -- and also, quite honestly, the reason I 5 say, "It could be," which is I don't think that I 6 would've engaged in a substantive conversation about 7 the Google papers 'cause I don't think that was a 8 central issue in the conversation. 9 Q Might people on the Standing Committee have 10 asked you about the Google Papers? 11 MR. MURPHY: Objection. 12 THE WITNESS: I have no memory of that. 13 BY MS. O'MEARA-COSTELLO: 14 Q Where it says "three themes," the one that's 15 listed first is "Who did we really talk to to reach 16 the conclusions?" And then there are subpoints with 17 what appear to be questions about who the FRB talked 18 to. Are those questions that you were asked at the 19 Standing Committee? 20 A Yes. 21 Q So did the Standing Committee, first of all, 22 ask about if people outside the NOM -- that's Ben's 23 unit, right? -- were enthusiastic? 24 A I don't recall whether they would use the 25 word "enthusiastic." They wanted to know the</p>	<p style="text-align: right;">Page 144</p> <p>1 middle." Were you asked about whether there were such 2 people? 3 A I have no memory of being asked that. 4 That's why I continue to maintain that there's a 5 pretty high probability of these were not my notes 6 going into the session. 7 Q Well, I think I'm wondering, not if they 8 were your notes going into the session, but if they 9 were your notes that you took or that someone else 10 took on what you said happened at the session? 11 A The only person who would've been there 12 taking notes on behalf of the committee or the school 13 would be Paul Healy. So you would have to ask him. 14 Q Okay. But you reported back to the FRB in 15 some fashion on what had happened at the meeting? 16 A That's correct. 17 Q Could these have been notes on what you told 18 the FRB? 19 MR. MURPHY: Objection. 20 THE WITNESS: I -- I think I would've 21 been more likely to do it from memory. 22 BY MS. O'MEARA-COSTELLO: 23 Q So I'm actually not asking, "Did you write 24 this?" I'm asking more could these be notes that 25 someone else took on things that you said?</p>
<p style="text-align: right;">Page 143</p> <p>1 population that we had talked to. 2 Q Okay. And whether or not they used the word 3 "enthusiastic," did they want to know sort of how 4 people outside NOM felt versus people inside NOM? 5 A Which I -- again, whether this was mine or 6 not, I don't believe it is, I could easily refer them 7 back to the report 'cause the report was quite 8 explicit about it. 9 Q The report was explicit that people within 10 NOM were enthusiastic? 11 A Were more enthusiastic than the other 12 population. Yes. 13 Q Okay. It also then says "How many faculty? 14 How many staff?" Were you asked about how many 15 faculty versus staff the FRB had spoken to? 16 A I don't recall that. 17 Q And then it says "Range of negatives." Do 18 you know what that refers to? 19 A Not -- not unless you want me to make 20 something up now. No. 21 MR. MURPHY: No. 22 BY MS. O'MEARA-COSTELLO: 23 Q I don't. 24 A Yeah. No. 25 Q And then it says "Examples of people in the</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: No. Because I already 3 told you we didn't get into a conversation on the 4 Google papers that I recall. 5 BY MS. O'MEARA-COSTELLO: 6 Q Do you have any idea what these notes are 7 referring to? 8 A Well, I suggested earlier these were either 9 reports that were provided by Amy to the Appointments 10 Committee or by Amy to the dean. That was my original 11 articulation, but I don't know that for a fact. 12 Q Did you meet with -- actually, strike that. 13 I think we established that you're not a 14 member of the Appointments Committee; right? 15 A That is correct. 16 Q And you were not a member of the 17 Appointments Committee in 2017? 18 A That's correct. 19 Q Amy Edmondson was a member of the 20 Appointments Committee; right? 21 A That's correct. 22 Q Did you meet with Professor Edmondson to 23 help her prepare for the Appointments Committee 24 meeting regarding Professor Edelman's tenure case? 25 A I had no connection to that at all.</p>