

**Faculty Review Board
DRAFT CONFIDENTIAL REPORT
Summer 2017**

Overview

During Summer 2017, the Faculty Review Board (FRB)—comprising Angela Crispi, Amy Edmondson (chair), Stu Gilson, and Len Schlesinger—was convened to evaluate the extent to which Professor Ben Edelman demonstrated that he had internalized the feedback given to him following a 2015 FRB review. As outlined by the FRB in a July 6, 2017, note to Professor Edelman (see Exhibit 1),

The FRB now must assess:

- *whether you understand the aspects of your conduct—regardless of your intent—that made them problematic;*
- *whether there is sufficient evidence of changed behavior; and*
- *whether there is a reasonable expectation that your changed behavior will be sustained in the future.*

The FRB reviewed a March 2017 personal statement written by Professor Edelman in conjunction with the submission of his promotion package; requested and reviewed an additional statement; interviewed 21 individuals, drawn largely from a list that Professor Edelman had provided in that additional statement; received input from a handful of other faculty colleagues; met with Professor Edelman; and requested and reviewed a summary of and comments on his outside activities (see Exhibit 2 for his promotion package statement, Exhibit 3 for his additional statement, Exhibit 4 for the list of individuals to interview recommended by Professor Edelman, Exhibit 5 for the request for additional background on his outside activities and conflict of interest disclosures, and Exhibit 6 for his response).¹

Through this work, the FRB found examples of progress and improvement, including increased self-reflection, efforts to engage differently with staff, positive interactions with members of the FIELD 3 and LCA teaching groups and feedback from students in the LCA course, and efforts to support colleagues in their research and teaching at the School.

The FRB also discovered examples of activities and behaviors that cause continued concern, including whether Professor Edelman appropriately sought permission for and disclosed his outside activities and potential conflicts of interest, as well as the extent to which those activities constitute a real or perceived risk to the School and reputational harm to the faculty by association. Additionally, the FRB found some indications that his engagements with staff

¹ Note that while the FRB has reviewed the full list of outside activities, we are not including them here reflecting the long-standing practice that reports are considered confidential to the Dean.

remain uneven and that his interactions with them changed when other faculty members were present.

The FRB acknowledges the extent to which the concerns we have evaluated are open to interpretation: they are not easily characterized in a black-and-white way as directly in or out of compliance with a particular policy, or within or outside of defined bounds of faculty conduct and community values, but rather are often read (quite) differently by different individuals.

We discuss our work and our findings below.

Background

On July 16, 2015, Paul Healy, in his role as Senior Associate Dean for Faculty Development, wrote to Professor Edelman notifying him that concerns related to his conduct—and his ability to meet the standard of "Effective Contributions to the HBS Community" outlined in the *Policies and Procedures with Respect to Faculty Appointments and Promotions*—had been raised. Professor Healy referred the matter to the Faculty Review Board (FRB), then comprising Angela Crispi, Amy Edmondson (chair), Forest Reinhardt, and Len Schlesinger. On July 31, 2015, Professor Edmondson, in her role as chair, wrote to Professor Edelman indicating that the FRB would undertake a review to evaluate his "ability to foster a healthy and constructive academic community (by, for example, displaying respect for others and contributing to the teaching and research environment of the School)." In carrying out its work, the FRB would consider two incidents from 2014 (Professor Edelman's blog posting about Blinkx and his interaction with Sichuan Garden) as well as his interactions with staff and other colleagues at the School.

The report of the FRB's findings, from November 2015, noted:

...[T]he FRB finds that Professor Edelman did not uphold the School's Community Values, and his conduct in each instance did not meet the criteria for "Effective Contributions to the HBS Community." In his dealings with Sichuan Garden and with staff at HBS, he did not demonstrate respect for others or for their commitment to the School. His tone was overly harsh, his approach was dogged, and he demonstrated a lack of appreciation for a difference of views. In connection with Blinkx, he failed to recognize that as a faculty, integrity in our activities—both real and perceived—is at the core of what we do. Across all three areas, his actions reflected a repeated inability to understand and adopt not just the technical requirements of the School's policies, values, and standards, but the underlying principles they convey.

Professor Edelman has consistently exhibited a tendency toward absolutism and extreme certainty that his view is the right view. His apparent certainty that his is the single right perspective, without regard for others' perspectives, was evident in his written and oral response to the committee and was mentioned (although not always as a weakness) by senior colleagues. We do not see persuasive evidence of accountability for personal behavior that would reflect evidence of learning. Although Professor Edelman might argue that his work is in fact "making a difference in the world" and is consistent with the

School's mission, we would suggest that how he goes about his work matters and is essential to our Community Values.

The FRB went on to assess the implication of its findings, including two areas of concern:

...[E]xternal, related to the potential for risk to the institution and "the public's trust in the independent and objective nature of our scholarship," and internal, related to respect for others inside the institution.

The report was given to the Standing Committee of the Appointments Committee, which recommended a 2-year extension on Professor Edelman's promotion case so that additional evidence would be available to determine whether he had internalized the lessons from the 2014 incidents and could demonstrate more respectful interactions with the staff.

Based on the advice of the FRB, Dean Nohria and Professor Healy arranged for Professor Edelman to:

- Join the Leadership and Corporate Accountability (LCA) teaching group during 2015-2016.
- Teach LCA during 2016-2017.
- Relocate his office to the 4th floor of Morgan Hall.
- Join the Academic Technology Steering Group.
- Gain access to coaching resources.

Recent Activities

Respect for others inside the institution. To assess the extent to which Professor Edelman now interacts with others in respectful ways consistent with the School's standards, members of the FRB met with 21 individuals, including colleagues in the NOM unit, members of the FIELD 3 and LCA teaching groups, other faculty members with whom Professor Edelman has engaged (e.g., in the Digital Initiative), and staff members in MBA, IT, and elsewhere at the School. These individuals were people who had been suggested by Professor Edelman as among those with whom he had worked closely. We also, throughout the course of the work, were contacted directly by and received input from a handful of individuals not included on Professor Edelman's list.

Members of the NOM unit were uniformly and unambiguously enthusiastic about Professor Edelman as a colleague, pointing to examples ranging from the support he provided to a sight-impaired junior colleague in devising an effective class participation tool, to his help in analyzing data sets or optimizing computer set-ups.

In assessing whether his conduct had changed since 2015, they made comments such as:

- He is much more reflective... it's as if he pauses now and decides whether to jump in.
- He is interested in how others see his work; he has sought out feedback on his teaching and his research.

- He seems to have worked hard to change; he is more sensitive to how he can be effective in this environment.
- He understands his instincts are not solid.
- He thinks about where to apply his energy.
- He is even more conscious of what he is dealing with and thinking about.
- He used to shoot a rabbit with a cannon; now he understands the benefits of restraint.

Although he did not pursue the coaching resources suggested to him (because, in his words, it would "take too much time to get to know me and the School"), Professor Edelman, during his meeting with the FRB, spoke to advice he had received from a number of colleagues, and most of his NOM colleagues indicated he had sought them out for input on teaching or research or for a second opinion.

Finally, unit colleagues in particular spoke to what they saw as Professor Edelman's fundamental character and the importance and merits of his work, using phrases such as:

- He focuses on making the world a better place.
- He has a sense of duty and obligation.
- He is above the bar in terms of honesty and integrity.
- He is always trying to help those who are weaker/victims/disadvantaged.
- He is unbelievably moral and caring.
- He is the most ethical person I know on the faculty.
- He persists in fighting people because it's the right thing to do.

The feedback from non-NOM colleagues, and from staff, also included positive comments. In terms of his interactions with others, many here, too, commented that Professor Edelman seemed to try hard to be helpful—from purchasing food for meetings or organizing lunches, to solving IT issues or developing IT tools, to upgrading airline tickets. Some, who had not met Professor Edelman before 2015 but had heard about the Chinese restaurant issue, expressed their pleasant surprise about his contributions to teaching groups, initiatives, and other activities, making comments such as:

- My perception is that he was a valued member of the teaching group.
- When I know that I'll interact with him, I'm glad.
- I've found him good to work with; he's a methodical and scientific thinker.
- He has great ideas and they come from a good place.
- He's earnest, committed, and participatory.
- I consider him a very good to exemplary colleague; he got along with everyone.
- I believe his intentions are good, and that's important.

In terms of positive evidence that his behavior had changed, the FRB heard comments such as:

- He asks great questions, and is accepting of an alternative argument—he agrees to disagree, and knows when not to push it.

- He is more sensitive to how he can be effective in this environment; he seems to have worked hard to change.
- My conclusion was that he had learned an important lesson. He won't stop going after the big guys, but we shouldn't want him to.
- He's learned over time that how he presents matters.
- He's open to redirection.
- He got the pushback early on, and adjusted his behavior.

However, members of the FRB also heard some feedback from the non-NOM individuals interviewed that expressed concern:

- He has a hard time thinking about other perspectives.
- He can have a tendency to threaten to take something to the next level.
- In conversations, he can be abrasive, arrogant, and stubborn; he is not empathetic to another side or point of view. I've never seen him change his mind in any conversation I've witnessed.
- With his superiors, he has more of a filter.
- I would not be proud to know that he was a senior faculty member interacting with the business community.
- He's abrupt. He lacks grace. He's more apt to pressure others—he asks questions the way you might in a seminar.
- He has worked on being less harsh, but his views are still quite clear to those who hear him.
- He can be disruptive; he lacks understanding of an appropriate path to a goal.
- We learned his style. He's grown some, but we also learned how to deal with him.
- He goes off on tangents or down rabbit holes, and he doesn't know as much as he thinks he knows.
- He leaves a lot of unproductive work for people since he jumps to solutioning without thinking through implications or engaging others.
- He's incapable of seeing why his preferred solution can't or won't be implemented.
- Sometimes he's unable to be reasonable.

What struck the FRB members here was the depth of passion on each side: those who admire Professor Edelman *really* admire Professor Edelman, and those who have concerns—even those who have gotten to know and engage with Professor Edelman only over the last two years—express their concerns with equal intensity. What concerns the FRB most is the intimation that Professor Edelman manages up, interacting differently with at least some staff than he does with faculty colleagues, and differently with staff depending on whether other faculty members are present during the exchange. Moreover, among staff, while there was (as noted) appreciation by some for Professor Edelman's efforts to improve his interactions, there also was a sense that staff had worked to develop coping mechanisms—a kind of "we've tried to figure out how to manage this" approach.

That these patterns remain evident even during a time when Professor Edelman might perceive himself to be "on notice" was troubling to the FRB, as was the perception that hierarchical

faculty/staff engagement—in the words of one interviewee, an approach that harkens back to an older model of "I'm smarter than you are, and you're inferior"—would be deemed permissible at the School.

Outside activities and conflict of interest. The FRB provides two illustrative examples that point to potential concerns related to Professor Edelman's work, outside activities, and disclosure.

The first stems from an article that was forwarded to the FRB by a faculty member, published in the Wall Street Journal on July 12, 2017, entitled *Hidden Influence: Google Pays Scholars to Influence Policy*. The story describes the company's payment for academic research, and goes on to note "[this] has long been a tool of influence by U.S. corporations.... Several of the [tech] companies are also active in funding academic research. Microsoft has paid Harvard business professor Ben Edelman, the author of papers saying Google abuses its market dominance."

To be clear and fair, neither the Outside Activities nor the Conflict of Interest policy at HBS (or at Harvard) prohibits faculty members from accepting paid or unpaid work with organizations who work in related industries; to the contrary, faculty members are encouraged to pursue outside activities that will deepen their understanding of practice and thus inform their research and teaching. What the Conflict of Interest policy requires is disclosure—specifically, "faculty members are required to disclose publicly all paid and unpaid outside activities, sources of external funding, and material financial holdings that are directly related to a work product that is available to the public."

The FRB, then, looked to determine whether Professor Edelman had made appropriate disclosures during the period October 2015 through September 2017, examining the following output related to the Wall Street Journal piece and Professor Edelman's work with Microsoft:

- Edelman, Benjamin. "Google, Mobile and Competition: The Current State of Play." *CPI Antitrust Chronicle* (Winter 2017) – "He has no current clients adverse to Google with respect to the practices discussed herein."
- Edelman, Benjamin, and Damien Geradin. "Android and Competition Law: Exploring and Assessing Google's Practices in Mobile." *European Competition Journal* 12, nos. 2-3 (2016): 159–194 – "Disclosure statement: No potential conflict of interest was reported by the authors."
- Dominant Platforms keynote (video) – September 27, 2016 – no apparent disclosure.
- Edelman, Benjamin, and Damien Geradin. "Spontaneous Deregulation: How to Compete with Platforms That Ignore the Rules." *Harvard Business Review* 94, no. 4 (April 2016): 80–87 – "Benjamin Edelman is an associate professor at Harvard Business School and an adviser to various companies that compete against major platforms."
- EC Statement of Objections on Google's Tactics in Mobile. (April 2016 blog posting) – no disclosure statement.
- Edelman, Benjamin, and Zhenyu Lai. "Design of Search Engine Services: Channel Interdependence in Search Engine Results." *Journal of Marketing Research (JMR)* 53, no. 6 (December 2016): 881–900 – "Although the first author advises Microsoft on subjects unrelated to this article and the second author was previously an intern at

Microsoft Research, this article was not prepared at the request of or funded by any third party."

Professor Edelman's reporting of disclosures is, at best, inconsistent. Although it is not our intent that he be held to a higher standard than his colleagues, here, again, one might expect the need for appropriate disclosures to be top of mind for Professor Edelman during this time period, given the express concern raised by the FRB about "the public's trust in the independent and objective nature of [his] scholarship."

We would note, too, that the test offered through the Conflict of Interest is that of the reasonable reader: "a set of circumstances that reasonable observers would believe creates an undue risk that an individual's judgment or actions regarding a primary interest of the School will be inappropriately influenced by a secondary interest, financial or otherwise." It goes on to clarify features of an appropriate disclosure:

Although the exact placement and wording of the disclosure is left to the faculty member's discretion, the disclosure statement should be readily observable and should include the organization's name (the ultimate beneficiary in the case of an intermediary such as a consulting firm), the nature of the activity, and the dates of service in the case of relevant outside activities, and a statement regarding the entity's name and the existence of a material financial holding in the case of financial holdings.

We would suggest that rather than providing information so that a reader might determine potential conflict, Professor Edelman instead omits many of the required elements, and himself seeks to make that determination ("He has no current clients adverse to Google with respect to the practices discussed herein"). Although he did interact with Jean Cunningham in the Dean's Office three times during the 2015-2017 period related to his research and publications (with advance notice about the publication of his Airbnb paper, with a question about a research protocol for a study that was fielded by Professor Jan Rivkin and Jean, and with a question about disclosure for his April 2017 "Impact of OTA Bias and Consolidation on Consumers" article), none of the above outputs or their disclosures (or lack thereof) were pre-vetted.

The second example relates to a class action complaint, *Bazerman V American Airlines, Inc*, filed on July 13, 2017, by plaintiff Max Bazerman and alleging that American Airlines (AA) fails to honor contracts it enters into with its passengers—specifically, related to fees for checked bags.

The complaint was brought to the attention of Dean Nohria and Professor Healy by Professor Bazerman five days later, on July 18, 2017:

Dear Nitin and Paul:

I delivered a review letter on Ben Edelman on 6/30/17, explicitly revised from two years earlier. I just sent in a revision, and I wanted to make sure that you both had full information on why I revised the letter.

Marla and I flew from Phoenix to Boston in February, and for a strange combination of reasons (unconnected to Ben), checked two bags. American Airlines charged us \$25/bag, even though I was pretty sure I was entitled to free baggage check. I am skipping details, but if interested, you can find them at <http://www.universalhub.com/files/bazerman-complaint.pdf>. When I got back to HBS, I was telling Ben about this, and he quickly figured out that AA systematically charges people for baggage fees that they do not owe, and he began the process of creating a potential class action law suit, with me as the lead plaintiff – resulting in the complaint mentioned a sentence earlier. Most of this happened with little involvement by me.

I thought that this was a non-public event, but then was referred to <http://www.universalhub.com/2017/american-airlines-pissed-wrong-harvard-business>² by a former HBS exec ed student. I do not believe that I did anything wrong, nor do I think that Ben has done anything wrong. But, I can imagine incorrect information diffusing about this story. These events led me to revise my letter, and earlier today, I sent in the revision. I have attached the highlighted version of the letter I just submitted, with all changes since the 6/30 letter highlighted.

As I note in the letter, I have committed to donate all proceeds that I potentially receive from this case to a pre-specified charity. But, just for clarity, there is a chance that Ben could earn a significant amount of money. Of course, I would be careful to not benefit financial [sic], even indirectly. The main goal of the letter revision is to be as transparent as possible about my legal connection to Ben.

I would be happy to discuss this situation with either of you, or anyone else you would like to have in the loop. I am in Vermont through 7/29, but can be reached at 617 797-4459. I will be in town 7/30-8/3.

With appreciation,

Max

Professor Healy acknowledged receipt of Professor Bazerman's note; given its focus on Professor Bazerman's review letter and its informational tone, it was not forwarded to the members of the FRB.

When the FRB met with Professor Edelman on August 14, 2017, however, this was one of the outside activities the members asked him about; Professor Edelman had referred to the lawsuit in his July 31, 2017, "Response to the FRB Questions" letter:

After careful consideration, I recently elected to file a class action lawsuit against American Airlines as to its imposition of baggage fees contrary to its prior promises to customers (in contracts, tariffs, and onscreen purchase promises), seeking refunds for

² "American Airlines Pissed Off the Wrong Harvard Business School Professor." Universal Hub story posted on July 15, 2017, 12:23pm.

everyone who was overcharged. I decided to pursue this matter in part in light of the large amount of money at issue—as much as \$200 to check a bag that the airline had specifically promised would be included at no additional charge, times many tens or hundreds of thousands of passengers affected. I was also mindful of the virtual impossibility of passengers pursuing these claims on their own. (Beyond the usual impediments, some of the key promises appeared in on-screen statements during booking, but passengers had no reason to preserve these promises in screenshots, so would struggle to prove what the airline had promised.) I have no illusions about the beneficiaries: Some of our claims pertain to “elite” frequent fliers (who fly often and who are particularly likely to be well-to-do business travelers) and those with business and first-class tickets—as some of American’s false promises distinctively affected these groups. Even coach air travelers without elite status are surely wealthier than average Americans. Nonetheless, the principle of honoring written contractual commitments is one that I hold dear, and I am hopeful that others will see this similarly. Note that this is not a charitable activity: If the case is successful, my co-counsel and I will ask the court to award us payment for our efforts at market rates.

Professor Schlesinger, given his service management background, was particularly interested to understand how Professor Edelman had chosen the particular path he did. Had he brought the issue to American’s attention? Had he alerted others? Did he consider publishing his findings instead?

Professor Edelman described learning about the issue in August 2016 when he was personally affected by it and, in fact, reaching out to the company at that time. He received a response he described as “lawyerly” and “obviously wrong”; rather than writing an “obnoxious response,” however, he “stumbled into an online forum where others were complaining.” Professor Edelman noted that the magnitude of the problem—total excess charges as high as \$100 million—as well as his sense that no one else would put the pieces together to figure out the problem, combined with his desire to see passengers reimbursed, was what drove him to file a suit.

Professor Edelman also noted that, before Professor Bazerman agreed to serve as plaintiff, he had reached out to a number of passengers who had aired complaints on online chat rooms to ask them to play that role. He said that the others had turned him down, with one expressing concern, for example, about being involved in legal action while applying for a mortgage, and another high-profile individual worried about the adverse publicity of being associated with litigation against a company. Contrary to Professor Edelman’s statement in his September 8, 2017, “Supplemental Response to FRB Questions” that “risk to reputation” (at least at the individual level) did not factor into his decision-making, during the interview he acknowledged that there could be PR risk to Harvard. He also noted a belief that he had to move forward anyway: “I can’t sit on my hands when I know about something like this.”

Independent of whether or not one feels that Professor Edelman (and Professor Bazerman) are pursuing a noble endeavor, the American Airlines case raises what the FRB views as a fundamental issue: the extent to which activities such as this are and should be intertwined with Harvard and Harvard Business School. A suit filed by an HBS faculty member, with another

HBS faculty member involved among the defense, automatically connects back to the School and to Harvard University, as witnessed by the headline of the story that Professor Bazerman included in his July 18, 2017, note, and by articles such as "Harvard Professor Who Went After Chinese Restaurant Files DOT Complaint Against American Airlines For..."³ and "American Airlines Class Action Lawsuit Challenges Bag Fees,"⁴ which notes that "Bazerman is represented by Benjamin Edelman of the Law Offices of Benjamin Edelman, and Linda M. Dardarian, Byron Goldstein and Raymond Wendell of Goldstein Borgen Dardarian & Ho." With an understanding that there was potential reputational risk (as evidenced by the refusal of a number of complainants to serve as plaintiff), and risk to Harvard Business School and Harvard University (as acknowledged by Professor Edelman), the FRB is troubled that Professor Edelman did not seek guidance or input before the suit was filed, whether from the Dean or the Dean's Office, or Brian Kenny and the Marketing & Communications group (who Professor Edelman had contacted in advance of the Airbnb article).

Summary

The FRB appreciates the steps Professor Edelman has taken during the last two years; clearly there are signs of effort and improvement both in his interactions with others and in his approach to outside activities and conflict of interest, as reflected back throughout the interviews with colleagues and with Professor Edelman himself. Many expressed genuine admiration for him, the work he is doing, and its importance, including for the School.

However, there were a number of individuals within the group interviewed—individuals whom Professor Edelman himself had identified—who were less certain about his methods, the extent to which he had internalized feedback from the 2015 review, and his willingness and ability to seek guidance from others in the future. Moreover, they experience Professor Edelman's work as not just posing but causing reputational risk and damage to the School, as well as to themselves as members of the School's faculty. These individuals point to the difference between actions that champion the rights of innocents by, for example, publishing findings for free, versus activism where the potential for personal profit (even if not realized) raises questions of motive.

This bifurcation among responses troubles us; while it is common to see disagreement among colleagues, and while we don't expect anyone to be liked by everyone, the depth of enthusiasm *and* dismay was noticeable and unusual.

Moreover, much as we might wish to be able to provide a final tally of results, and a quantitative assessment that leads to a clear conclusion, we are mindful that the issues raised here rely on judgment—one's assessment of Professor Edelman's motives and actions, of potential risk and reputational benefit, and of the degree to which these activities are core and central to his research or outside activities that should be less connected to the Harvard name.

³ "Boarding Area" – <http://viewfromthewing.boardingarea.com/2015/07/15/harvard-professor-who-went-after-chinese-restaurant-files-dot-complaint-against-american-airlines-for/>, accessed 22 September 2017.

⁴ "Top Class Actions" – <https://topclassactions.com/lawsuit-settlements/lawsuit-news/814089-american-airlines-class-action-lawsuit-challenges-bag-fees/>, accessed 22 September 2017.

We therefore find ourselves unable to say, with full conviction, that the issues raised following the 2015 review have been satisfactorily resolved. In this report, we chose to present to the best of our ability the views and facts to which we had access, as input to our colleagues.