



November 17, 2017

Describe the process.

The FRB was formed, as you know, to impose consistency on the process of handling conduct related issues that surface from time to time related to members of the faculty.

A summary of the allegation, as it is known at the time, was written by me in a letter to Ben, giving him the opportunity to respond in writing. The full FRB was then aided by some fact finding, interviews, and review of available materials) and then met with Ben to ask clarifying questions. From this process, we wrote a report to capture our findings.

Next, Ben was given the opportunity to respond to the report in writing, and the FRB issued an updated report. The upshot of this was that the Dean decided to give Ben a two year extension – and a new teaching assignment in LCA. The FRB was alerted that we would be asked to reconvene at the end of the two years to assess the extent to which Ben had internalized and acted upon the lessons of this experience.

We realized that was a challenging, if not downright tricky, assignment.

The process started up again this summer. As Chair, I wrote to Ben asking for a summary of how he his progress in the two years. We then again met with him to interview and explore the themes in the report that you had a chance to read. We individually (divided up the list and) talked with 21 people whom Ben suggested we interview for evidence of his changed behavior and positive interactions at the school. In these interviews, we promise confidentiality. It is not analogous process to formal letters in the promotions process, but rather is a standard approach to conduct review cases at Harvard and other universities.

We then wrote our report, and again Ben had a chance to respond in writing, as you read, and we revised the report, and included a list of our changes for convenience and clarity of those who had read the first draft.

I know there were a lot of pages and you are busy people. So I want to clarify what we did and didn't do. We did NOT conduct an ethics review, are seek to determine whether Ben is a good colleague. We had three issues to address.

- 1) His behavior over the past 24 months.
  - a. The group was split – with more positive than negative, and equal intensity on both sides (the list of interviewees was supplied by Ben, with 2-3 added staff interviews that were consistent with the other staff interviews)
- 2) His adherence to our conflict of interest and disclosure policies
  - a. E.g. Microsoft/Google; OTA practices
- 3) His exercise of judgement related to institutional risk
  - a. E.g., AA class action suit.

In the 2017 review, the FRB was asked by the school (the Dean) to assess the degree to which Ben had internalized the lessons of the prior experience and its lessons. Three topics were addressed

Behavioral interactions, disclosure, and risk (seeking guidance/reporting)

I want to be very clear. The community is split on him on a personal level. The FRB is merely a scribe. We report on a portfolio of comments in two dozen interviews.

The FRB investigation was about judgment. It was not an ethics investigation. We were not in a position to judge the ethics of any of Ben's actions, nor to judge him as a person – positively or negatively. Our role was to assess three things

- 1) behavior in interactions with faculty and staff
- 2) adherence to the disclosure policies laid out in the COI policy
- 3) Risk to the institution

Microsoft/Google

AA

Disclosure – we tried to gain clarity on disclosure –specifically on how Ben decides when and what to disclose (and when to seek guidance)

Heads up on the Airbnb paper because of the possibility for publicity (probably positive).

Theme – we have a COI and disclosure policy designed to allow the reader to decide about COI, not the writer. Ben is inconsistent in his disclosures. A pattern of inconsistency. We are not sure he gets it. Having come through the 2015 review, it was somewhat puzzling to us that he did not err on the side of transparency.

Framing. We are not trying to stop people helping other people. It is that he has to recognize that his role in the institution ... confusing a kind act with his role as an officer of Harvard... some of the kind acts put the institution at risk. Not related to the case... teaching, leadership, inability to discern

“certitude”

Stu - [REDACTED] Thinks his colleagues are crazy. Alone the voice – AA suit is insane. What are they thinking. Ben has no self-control. I can't see this going forward. I think this is nuts.

Len 45-50 minutes with the standing committee

3 – 4 reactions.

Varying degrees of preparation.

Three themes

- 1) Who did we really talk to - to reach the conclusions
  - i. Wanting to understand if people outside the NOM – were enthusiastic
  - ii. How many faculty, how many staff.
  - iii. Range of negatives
  - iv. Examples of people in the middle
- 2) Disclosure on the google papers
  - a. My disclosure is exemplary
  - b. No one ever told me
  - c. Going to his colleagues for input on his disclosures – this isn't the barometer
- 3) American Airlines
  - a. Max not under review
  - b. Not about him or his ethical obligations or behavior – only about how he decided whether or not there was any risk to the institution

We are not trying to stop him from engaging the lawsuit, but asking why not get input (or at least heads up).

Are you saying there was suspicious or negative intent on Ben's part. No. We didn't have the ability to assess intent. We take his intent as provided. All were talking about here is a continuing question about his judgement.

Link to the law school. Maybe it's normal over there. No contact with them for years. We focus on his time here.

We slaved over the last paragraph.

Big trap. No ethical judgement.