

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss

**RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO
PLAINTIFF**

RESPONSES TO INTERROGATORIES

1. Please identify all persons other than counsel with whom you have discussed the allegations of your Complaint; the tenure process at Harvard Business School (“HBS”); HBS’ decision to convene of a Faculty Review Board in 2015 and work of the FRB; HBS’ 2015 decision to postpone consideration of your tenure application; the work of the Faculty Review Board in 2017; or HBS’s decision to deny tenure, including but not limited to colleagues or former colleagues, academics, and employees of print, internet, and social media and, for each such person, provide his/her name, residential and business address, telephone number, and the substance of your discussion.

RESPONSE 1:

Plaintiff objects to the interrogatory to the extent that it calls for the substance of communications that are protected by the attorney-client privilege, the work-product doctrine, or the marital privilege. Plaintiff further objects to providing contact information for current or former Harvard employees, as that information is equally or to a greater extent within the

possession of Harvard. Subject to and without waiving this objection, Plaintiff lists the following individuals:

Relatives - I regularly discussed events in my career including the topics outlined above with these individuals.

Sumin Koo – sumin.koo@gmail.com, 2223 108th Ave SE, Bellevue WA 98004, 857-719-6711
Daniel Edelman – 202-363-1472, dbedelman@hotmail.com - 4550 N. Park Ave., Apt. 712, Chevy Chase, MD 20815

Toby Edelman – 202-363-1472, tobysedelman@gmail.com - 4550 N. Park Ave., Apt. 712, Chevy Chase, MD 20815

Miriam Edelman – mgedelman@hotmail.com - 3601 Connecticut Ave NW, Unit 118, Washington DC 20008

Unit leadership in NOM – discussions included the extent and reasons for their support for my candidacy, the stated reasons for HBS' decisions, my reactions to those reasons and those decisions, the options available to me, and the pros and cons of each available option

Brian Hall – bhall@hbs.edu

Kathleen McGinn – kmcginn@hbs.edu

Max Bazerman – mbazerman@hbs.edu

Jerry Green – jgreen@hbs.edu

Deepak Malhotra – dmalhotra@hbs.edu

Jim Sebenius – jsebenius@hbs.edu

Guhan Subramanian – gsubramanian@hbs.edu

Other faculty in NOM – discussion included my case generally, developments in the FRB, options available to me, pros and cons

John Beshears – jbeshears@hbs.edu

Katie Coffman - katie.b.coffman@gmail.com

Christine Exley – cexley@hbs.edu

Leslie John – ljohn@hbs.edu

Mike Luca – mluca@hbs.edu

Kevin Mohan – kmohan@hbs.edu

Matthew Rabin – mrabin@hbs.edu

Joshua Schwarzstein - jschwarzstein@hbs.edu

Alison Wood Brooks – awbrooks@hbs.edu

HBS leaders

Nithin Nohria – nnohria@hbs.edu - his assessment of the reason for the failure of my 2017 promotion case; differences between the 2017 FRB versus FRB requirements; the impact of those differences

Paul Healy – phealy@hbs.edu - differences between the 2017 FRB versus FRB requirements; the impact of those differences; what information was most influential to Appointments Committee members

Other faculty in HBS – generally, my candidacy, the FRB, options available to me

Joe Badaracco – jbadaracco@hbs.edu

David Bell – dbell@hbs.edu
Shawn Cole – scole@hbs.edu
Josh Coval – jcoval@hbs.edu
Leemore Dafny – ldafny@hbs.edu
John Deighton - jdeighton@hbs.edu
Tom Eisenmann – teisenmann@hbs.edu
Chiara Farronato – cfarronato@hbs.edu
Frances Frei – ffrei@hbs.edu
Francesca Gino – francescagino@gmail.com
Lena Goldberg – lgoldberg@hbs.edu
Robin Greenwood
Sunil Gupta – sgupta@hbs.edu
Nien-he Hsieh - nhsieh@hbs.edu
Marco Iansiti – miansiti@keystonestrategy.com
Elon Kohlberg – ekohlberg@hbs.edu
Scott Kominers – skominers@hbs.edu
Joshua Margolis – jmargolis@hbs.edu
Nitin Nohria – nnohria@hbs.edu
Dennis Yao – dyao@hbs.edu
David Yoffie – dyoffie@hbs.edu
Feng Zhu – fzhu@hbs.edu

Others then or previously affiliated with HBS

David Fubini – dfubini@hbs.edu - options available to me, prospect of litigation, likely implications of litigation
Youngme Moon – ymoon@hbs.edu - her recollection of projector change and my role in that matter
John Wells – jwells@hbs.edu - his observations based on his time at HBS and his departure
Rae Mucciarone Horton – aspects of transition, likelihood of litigation
Jenny Sanford - sanford.m.jenny@gmail.com - her observations while a Faculty Support Specialist
Charlotte Tuminelli – ctuminelli@hbs.edu - her observations while a Faculty Support Specialist

Faculty elsewhere at Harvard

John Campbell - john_campbell@harvard.edu – errors in FRB process
Alan Garber - alan_garber@harvard.edu - errors in FRB process
Larry Lessig – lessig@pobox.com - legal strategy
David Parkes - parkes@eecs.harvard.edu - errors in FRB process, escalation methods within the university, prospect of litigation, possible candidacy elsewhere
Lawrence Summers - errors in FRB process, escalation methods within the university, prospect of litigation
Andrei Shleifer - ashleifer@harvard.edu - errors in FRB process, escalation methods within the university, prospect of litigation
Jonathan Zittrain – zittrain@law.harvard.edu - legal strategy

Faculty elsewhere – as to prospect of affiliation and employment at their institutions or elsewhere

Nava Ashraf - n.ashraf1@lse.ac.uk

Marshall Van Allstyne – mva@bu.edu

Florian Ederer - florian.ederer@gmail.com

John Friedman - john_friedman@brown.edu

Avi Goldfarb - Avi.Goldfarb@rotman.utoronto.ca

Joshua Gans - joshua.gans@gmail.com

Eric Clemons – clemons@wharton.upenn.edu

James Grimmelmann - james.grimmelmann@cornell.edu

Eric Holden - richard.t.holden@gmail.com

Ian Larkin - bakabakaian@gmail.com

Michael Ostrovsky - ostrovsky@stanford.edu

Parag Pathak - ppathak@mit.edu

Julian Wright - wright.economics@gmail.com

Richard Zeckhauser - richard_zeckhauser@harvard.edu

Other faculty

Alvin Roth – alroth@stanford.edu - errors in FRB process, escalation methods within the university, prospect of litigation

Susan Athey – athey@stanford.edu errors in FRB process, escalation methods within the university, prospect of litigation

Andrei Hagiu – ahagiu@bu.edu - leaving HBS, transition

Kelly Shue - kellyshue@gmail.com - errors in FRB process, prospect of litigation

Steve Tadelis – stadelis@berkeley.edu - errors in FRB process, escalation methods within the university, prospect of litigation, why my candidacy at Berkeley was unsuccessful

Peter Berkowitz – berkowitz@hoover.stanford.edu - his experience from his litigation against Harvard

Professional colleagues – the FRB process generally, prospect and advisability of litigation, impact of litigation on professional trajectory

Wesley Brandi - wesleyb@ipensatori.com

Jimbo Brand – jamesbrandecon@gmail.com

Chris Brunet - chrisbrunet@protonmail.com

Peter Coles – pacoles@gmail.com

Damien Geradin - dgeradin@geradinpartners.com

Aaron Greenspan - aaron@greenspan.io

Dave Heiner - daviddh@truveta.com

Sonia Jaffe – sonia.jaffe@gmail.com, 617-331-3232

John Kelly - johnkelly@roku.com

Jacob LaRiviere – jacob.lariviere@gmail.com, 858-531-5170

Gary Leff - gary@viewfromthewing.com

Sam Lessin - samlessin@wlessin.com

Donald Ngwe – donald.ngwe@gmail.com, 917-848-7602

Kate O’Sullivan – kateos@microsoft.com

Michael Schwarz – schwarz.m@gmail.com

Personal contacts – my candidacy generally, prospect of litigation, burdens of litigation
Haleh Clapp – 310-430-8672
Alan Davenport - alan7808587@yahoo.com
Michael Fairchild – mjfairchild@hotmail.com, 10460 SE 23rd St, Bellevue WA 98004, 917-757-7335
David Kullman – kullman.david@gmail.com, 2003 102nd Pl SE Bellevue, WA 98004, 562-305-8244
Janina Kullman – 805-312-5569, 2003 102nd Pl SE Bellevue, WA 98004, 562-305-8244

Media advisors – case contours, media strategy

Heather Lylis - lylis@sunshinesachs.com
Ashley McCown - ashley@heleneandashley.com
Helene Solomon - helene@heleneandashley.com
Journalists – my perspective on the case
Hilary Burns - hilary.burns@globe.com
Elias Schisgall - elias.schisgall@thecrimson.com
Hiawatha Bray – Hiawatha.bray@globe.com

Students

Nathan Bruschi - nathan.l.bruschi@gmail.com - his perceptions based on prior interactions
Zhenyu Lai - zhenyu.lai@gmail.com - his perceptions based on prior interactions

Generally, my discussions about the specified subjects included discussion of the stated reasons for HBS' decisions, my reactions to those reasons and those decisions, the options available to me, and the pros and cons of each available option.

2. Please identify all persons and entities you know or have reason to believe possess any knowledge, documents, or information concerning any of the facts or allegations in your Complaint and for each such person, provide their residential and business address, and telephone number, and state in detail and with specificity the facts or allegations about which such person possesses such knowledge, documents, or information.

RESPONSE 2:

Plaintiff objects to this interrogatory to the extent that it calls for the substance of communications that are protected by the attorney-client privilege, the work-product doctrine, or the marital privilege. Plaintiff further objects to the interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant or proportionate to the needs of the case. Subject to and without waiving these objections, Plaintiff states as follows.

Each member of FRB, and staff to HBS – names and contact information known to HBS – know what information the FRB did and did not gather. At a minimum: Amy Edmonson, Len Schlesinger, Forest Reinhart, Stu Gilson, Angela Crispi, Jean Cunningham.

Each member of the Appointments Committee – names and contact information known to HBS – know how they evaluated the FRB report in voting on my case. I do not know the full membership of the Appointments Committee as it stood in the relevant period.

Each person interviewed by FRB in 2017, specifically including each person who uttered one or more of the anonymous complaints within the FRB's 2017 report – know what context they were talking about. I do not know who the FRB interviewed.

Nitin Nohria – knows who he spoke with about my case and what they said; his reasons for declining to bring my case to the President; what he said or wrote to the Appointments Committee about the disposition of my case

Senior faculty in NOM, Tom Eisenmann, Sunil Gupta, David Yoffie – know the merit of my work and their evaluation of my candidacy

[REDACTED] Brian Hall, [REDACTED], Willis Emmons, Stephen Gallagher, Elizabeth Clark, Katherine Targett, Youngme Moon, Jeanne Po, Benjamin Frey, Chris Tatton – know the need, alternatives, and benefit of the tool I built to help sight-impaired instructors, and the way I approached the task.

Willis Emmons – knows the benefits of my digital tool to replace chalkboards in teaching
Tom Eisenmann – knows my effort to teach software development to HBS students, knows the caliber of guests drawn to my MBA EC class

Nitin Nohria, Brian Hall – know the feedback provided to me at my promotion to Associate Professor

Paul Healy – knows how FRB impacted Appointments Committee members

Joe Badaracco – knows the quality of my LCA teaching and my contribution to the LCA teaching group

Youngme Moon, Jim Sebenius, Arthur Segal, Stephen Gallagher, Felix Oberholzer, Lynda Applegate, Willis Emmons, Elizabeth Clark, Rawi Abdelal, David Homa, John Korn, Brit Dewey - know my concerns about reduction in projection screen size, know how those concerns were received by ATSC

Rick Melnick, Margaret Mitropoulos, Deepak Malhotra, Mike Luca – knows my methods of purchasing air travel, the guidance I received about what is permissible, the tickets I helped other buy in compliance with the approvals I received

Jean Cunningham and Brian Kenny – know our discussion about business cards

Each member of the HBS senior faculty as it stood at the time – know what was discussed as to the unit's view of my candidacy

Carl Kesler, Tom Eisenmann, Brian Hall – know my concerns about case copyright, and the changes made in response to my concerns

The LCA teaching group, as it stood in both 2016 and 2017 – know my contributions to that team, including slides, teaching plans, and IT improvements

Jean Cunningham – knows my various discussions with her about disclosure requirements, annual reporting, COI policy, Blinkx, Sichuan Garden, hotel/OTA project, travel purchasing

3. Please state the basis of your claim in Paragraph 9 of the Complaint that your “career has been damaged” and that you have “experienced significant and longstanding reputational harm and emotional distress.”

RESPONSE 3:

Plaintiff states as follows in response to the interrogatory.

My hope for my career was to secure a tenured position at HBS. I have a wide breadth of interests, and my position at HBS allowed me significant freedom to pursue the intellectual topics that interested me, through research and through teaching. It is difficult to identify another job with similar breadth and flexibility. In addition, I genuinely valued both the challenge and the public benefit of teaching in the demanding HBS environment, and I felt I learned a lot from it. It is difficult to identify another teaching role of comparable style, difficulty, or benefit.

When I did not receive tenure, I sought tenured or tenure-track positions at other similarly elite business schools. I was not hired for those positions. I ultimately accepted a position at Microsoft, but it is a very different position, which does not permit me to pursue many aspects of my job at HBS that I loved, including teaching and research on topics outside of the interests of a single company.

My reputation has been significantly damaged by HBS’s denial of tenure and the related circumstances. Seeing my strong fit with HBS and my failure to receive tenure at HBS, some faculty at other schools said they assumed I must have committed some grave misconduct. My denials, and correspondence from my supporters, were insufficient to dispel their view. In addition, the FRB’s 2017 report, circulated to the full tenured faculty of HBS, significantly damaged my reputation among the HBS faculty.

I structured my professional activities with an eye to what HBS valued. For example, I wrote a quantity of academic articles appropriate for promotion at HBS, but insufficient for a tenured position elsewhere. I wrote HBS teaching materials that are not valued at other academic institutions, and I invested substantial time learning to teach in the demanding way required by HBS, again not valued elsewhere. My breadth of knowledge was useful in HBS, but is less useful in most corporate roles. My HBS-specific investments are all wasted in seeking careers elsewhere.

I have experienced significant emotional distress as a result of the FRB process and the consequent denial of tenure. Prior to 2017, I considered myself a very happy person, seeing the best side of every situation, and pleased with the relationship between hard work and professional advancement. I woke up each morning excited and energized by the work to be done, and pleased with my role, my station in life, and the opportunities available to me.

I no longer have that overall positive sentiment on life. Of course there is a lot to be grateful for, but also an important aspect of unfairness, arbitrariness, and injustice causing my career to be less than it should be. I had high goals for what I hoped to accomplish in my career—both for myself and as an advocate for consumer protection in online spaces. Feeling that I have not and will not accomplish those goals is extraordinarily painful for me, as a person who cares deeply about and has worked hard for professional success.

4. Please identify the company “that wanted to know Blinkx’s current practices” referred to in Paragraph 22 of the Complaint, describe the nature of your consulting arrangement with the company, including when the consulting engagement began, how long it persisted, and the nature of compensation you received.

RESPONSE 4:

Plaintiff objects to this interrogatory on the basis that it seeks information which Plaintiff is barred from disclosing by a confidentiality agreement with a third party. Plaintiff further objects on the grounds that the interrogatory seeks information that is not relevant or proportionate to the needs of the case.

Subject to and without waiving these objections, Plaintiff states as follows.

I prepared my report for my client in December 2013 to January 2014. I was paid \$10,000.

5. Please state the basis of your claim in Paragraph 22 of the Complaint that your “post and its disclosure statement fully complied with HBS requirements expressed in the School’s Conflict of Interest policy . . .”

RESPONSE 5:

Plaintiff states as follows in response to this interrogatory.

The essence of the COI Policy is that in certain circumstances, an author is to include a disclosure in a work product to alert the reader to the author’s related activities. Whether or not the COI Policy actually applied to this work, I judged that such a disclosure *was* appropriate based on my own principles, and I included such a disclosure from the start, consistent with my standard and longstanding practice.

From day one, my disclosure included the information that was relevant and permissible. In the interest of brevity and focus on what I judged most important, I chose two simple declarative sentences that I thought sufficed. Later, the HBS COI Officer suggested including three additional pieces of information, and I added that information the same day she offered those suggestions. But in my view, the additions conveyed minimal additional substance:

1. The COI Policy calls for stating the time period of the outside activity. My initial disclosure did not include this information. But the time period of that work was the month of publication and the prior calendar month – just what a reader would expect in light of the length and content of the document. (It doesn’t look like a document written in a day. Nor did it look like it took a year. Of course it cited documents prepared up to a decade earlier, but those are distinct documents cited, not part of this document.) Thus, an explicit statement of the time period adds little to the disclosure.

2. The COI Policy calls for providing the client's name unless a confidentiality agreement precludes doing so. A confidentiality agreement did preclude me from identifying the client. My initial disclosure stated that my "client ... prefers not to be listed by name" but did not mention the confidentiality agreement as such. In my judgment, a reasonable reader would (correctly) expect that a client commissioning some form of research would have a contract formalizing their preferences – such that their "prefer[ence]" would indeed be embodied in a contract. Thus an explicit statement of the contract's confidentiality provision would add little to the disclosure.

With the addition of these two pieces of information, everyone agrees that my disclosure complied with the COI Policy. Could the initial absence of these pieces of information have made my initial disclosure noncompliant? I insist not, because the additional information carried minimal importance as outlined above.

To the extent that some readers were dissatisfied with my disclosure, it was primarily because they wanted to know who had asked me for related work – what specific company. For better or worse, the COI Policy allows information to be withheld because a contract so requires, as it did in this case. My decision to honor my client's confidentiality, exactly as the COI Policy explicitly authorizes, cannot be a violation of the COI Policy.

Had I concluded that the COI Policy squarely applied to the situation at hand, I would have complied strictly with its every requirement including as to time period, acknowledgement of a confidentiality agreement, and nature of the activity. But in fact I concluded the opposite – namely, that this situation was probably outside the literal meaning of the COI Policy, and instead in a zone where I had discretion about whether to make a disclosure and what form a disclosure would take. I reached that conclusion based on the definition of "directly related" outside activities. Notably, the COI Policy by its terms *only* requires disclosures as to outside activities "directly related" to a work product. See the COI Policy on page two:

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 (emphasis added)

On page three, the COI Policy defines "directly related":

means the work product mentions or refers to a person, organization, or company from which a faculty member has derived income for services or had a significant pro bono involvement in the prior three years, or had a material financial holding in the prior year (emphasis added)

Certainly I had no income from Blinkx, nor any other affiliation with them. Except in my disclosure, the article did not mention or refer to the companies that asked that I update certain prior research. Under the plain language of the definition of "directly related," my work was outside that definition and hence outside the COI Policy's disclosure requirement. Harvard could have written the requirement more broadly, but did not.

Some people might say the second through fourth sentences of the COI Policy's "directly related" bullet somehow compel disclosure. I have three responses to that. First, while the first sentence of the "directly related" bullet defines that term, sentences two through four are simply remarks. In particular, those three sentences do not define, redefine, or expand the defined term "directly related." Rather, those sentences establish a distinct term "relatedness", which the policy never attaches to any disclosure requirement. Compare "judgment call" and "should" (page three, as to "related") versus "are required to" (page two, as to "directly related"). Because sentences two through four *encourage* a faculty member to make a "judgment call" about an

optional disclosure, a faculty member’s failure to do so—or decision to do so with slightly different information than what the COI Policy requires in “directly related” situations—cannot be a violation.

Second, my view of relatedness was informed by my relationship with the client. In particular, the writing on my web site was not paid for or requested by any party. My January 2014 client did not require me to post that article or any article. In fact, they did not even expect or suggest that I post; they merely wanted my findings. It was *I* who insisted on the *right* to post, consistent with my standard practice of not agreeing to confidentiality of material derived solely from public sources, and consistent with my standard practice of sharing the newsworthy facts that I find.

Third, my view of relatedness was informed by my many writings about Blinkx and its predecessors, over almost a decade. Indeed, my January 2014 post consisted in large part of work I had done wholly unrelated to the client that requested the 2014 update, most of it before my first contact with them. I first wrote about 180solutions (later renamed Zango; the key adware company that Blinkx subsequently acquired) in July 2004, *nine and a half years earlier*. I later helped dozens of companies uncover fraud by Zango, amounts that I understand total millions of dollars. Separately, I assisted in the FTC’s 2011 litigation against Zango and filed formal public comments in that matter (all unpaid). Many of the associated materials are on my public site, and many are linked from my January 2014 article. Thus, my January 2014 article is best understood as a compendium of and update to my many lines of research about Blinkx’s various businesses. It would be a mistake to conclude from the 2014 consulting engagement that the entire January 2014 article is the output of that brief consulting. Quite the contrary: The clients hired me because they had read the prior work, and they thought that the prior work uniquely positioned me to prepare an update as to subsequent developments.

In short, I chose to publish the article about Blinkx because of my commitment to transparency and not at the behest of a client, and the article built on and extended work I had been doing long before the client engaged me. These factors made me believe it was unlikely that greater disclosure would materially impact a reader’s assessment of my work, and the COI Policy gave only suggestions, not requirements, for what disclosures should be made as to non-“directly related” activities.

Despite these multiple reasons why I concluded that the COI Policy did not *require* a disclosure, I elected to make a *voluntary* disclosure. I deemed both appropriate (something I would have done with or without the COI Policy) and sufficient to address any suggestion that such disclosure was required under the COI Policy.

A separate basis to conclude that I complied with the HBS COI policy is that HBS never contemporaneously found otherwise. The COI policy specifies that “the Dean” may “determine[e] if a conflict exists” and take action if it does. The Dean never made any such determination or took any such action. My contemporaneous discussions with the Dean’s designated Conflicts of Interest Officer did not result in the Dean making any finding of noncompliance with the COI Policy. When the COI Officer told one journalist that I had been found not to be in compliance with the COI Policy, I immediately pointed out to the COI Officer that only the Dean was empowered to make such a determination, that he had not done so, and that she was incorrect to state otherwise – all of which she agreed with.

After Blinkx publicists styled my work as a conflict of interest, many people began to see it that way. The facts above were not widely discussed at the time. Many people accepted the claim, from Blinkx’s publicists, that some person or company had “paid” me to write “the

article.” This just isn’t true. In talking about this matter, many people analyzed a hypothetical situation in which investors commission a faculty member to write a report criticizing a specific company. They contemplate a contract requiring such a report, and a faculty member doing that work to earn the associated payment. It is an interesting hypothetical, but it is not the situation at hand. A full understanding of the actual facts in my view supports the conclusion that I complied with the HBS COI requirements.

6. Please describe the nature of any consulting arrangement you had with Microsoft while a member of the HBS faculty, including in your answer for each such consulting arrangement the date upon which the arrangement commenced; the date it terminated; the nature of services provided; and the compensation you received.

RESPONSE 6:

Plaintiff objects to the interrogatory on the basis that it calls for information that is protected by the attorney-client privilege and work-product doctrine and is subject to a confidentiality agreement. Plaintiff further objects on the grounds that the interrogatory is overbroad, unduly burdensome, and seeks information that is not relevant or proportional to the needs of the case. Subject to and without waiving these objections, Plaintiff states as follows.

I disclosed the non-privileged information that I was able to share about my work projects for Microsoft via contemporaneous annual Outside Activities disclosures and in response to inquiries from the 2017 FRB. I anticipate producing my disclosure statements and communications with the FRB in documentary discovery.

7. Please state the basis of your claim in Paragraph 64 that “the work products the FRB identified did not have to contain a disclosure regarding Plaintiff’s work for Microsoft under the terms of HBS’ Conflict of Interest Policy.”

RESPONSE 7:

Plaintiff states as follows in response to the interrogatory.

The HBS COI Policy only “require[s]” disclosure of matters that are “directly related.” See Answer to Interrogatory 5. But with the exception of an unusual situation in which Google acquired a company that had already engaged my services, I never derived income from Google. Thus my work products pertaining to Google never met the “directly related” test in the COI Policy.

The FRB focuses its critique on my relationship with Microsoft. Clearly Google and Microsoft compete, and reasonable people might say they are “related” in that sense. But the

COI Policy definition of “directly related” does not attach to this situation, and hence no disclosure could be “required” under the COI Policy. Hence my contention that the work products “did not have to” contain a disclosure.

Nonetheless, consistent with my personal practice long predating the HBS COI Policy, when I distributed work product critiquing Google I always included a disclosure mentioning my work for various Google competitors and critics (including, often, mentioning Microsoft by name). There are dozens of such examples, which the FRB did not discuss despite their strong support for the proposition that when disclosures were appropriate, I was diligent and early to include them.

The 2017 FRB report identifies six distinct work products where, the FRB said, my disclosure of work for Microsoft was “inconsistent.” In fact I was *entirely consistent*: When a work product pertained to Microsoft or a key Microsoft competitor, during the period in which I was advising Microsoft on some subjects, I *always* disclosed the fact of my work for Microsoft.

In contrast, after my work for Microsoft ended, I ceased such disclosures, though some disclosures were nonetheless published in this period due to drafts prepared/submitted during the time when my work for Microsoft work was ongoing.

As to all six of the work products the FRB listed, my Microsoft consulting had already ended. Thus there was *no overlap in time* between the Microsoft consulting and the work products at issue. At most the “conflict,” such as it might be, is between research and prior consulting, not contemporaneous consulting—a fact which the FRB report fails to consider, evaluate, or even mention.

As to the second, the work was not only unrelated to Microsoft, but also unrelated to Google or any other material competitor of Microsoft. This was particularly far from the “directly related” test.

As to the fourth and sixth: Disclosure *was* provided and indeed was quoted within the FRB report. The broad “advisor to various companies that compete against” language was recommended and approved by HBR editors and appeared prudent based on the range of subjects covered in the article, the multiple relationships with multiple companies, and the need for brevity in a disclosure within the HBR format.

As in the Blinkx matter, the Microsoft-Google matters are not “directly related” but, at most, “related.” Thus, the COI Policy made it my “judgment call” whether to include a disclosure and, if so, what information to include. I made that decision to the satisfaction of all publishers/editors involved, with timely submission to HBS (including the DRFD submission process and annual reporting process). I would have been receptive to a timely suggestion that additional disclosure was appropriate or, some might have argued, required. But under the COI Policy, it was my decision, and “did not have to” (in my Complaint) correctly describes how the COI Policy speaks to this situation.

8. Please describe in detail each consulting or other compensated engagement you had while a member of the HBS Faculty, including in your answer for each such consulting arrangement the date upon which the arrangement commenced; the date it terminated; the nature of services provided; and the compensation you received.

RESPONSE 8:

Plaintiff objects to the interrogatory on the basis that it calls for information that is protected by the attorney-client privilege and work-product doctrine, and information that is subject to confidentiality obligations to third parties. Plaintiff further objects on the grounds that the interrogatory is overbroad, unduly burdensome, and seeks information that is not relevant or proportional to the needs of the case. Subject to and without waiving these objections, Plaintiff states as follows.

I disclosed the non-privileged information that I was able to share about my outside consulting or other compensated engagements via contemporaneous annual Outside Activities disclosures and in response to inquiries from the 2017 FRB. I anticipate producing my disclosure statements and communications with the FRB in documentary discovery.

9. Please state the basis for your claim in Paragraph 25 of the Complaint that there was “a perception, widely shared among HBS faculty, that certain prior investigations of alleged faculty misconduct had been handled at best haphazardly, and perhaps incorrectly . . .”

RESPONSE 9:

The Plaintiff states as follows in response to this interrogatory.

The Complaint is based on what I was told by multiple faculty members. I recall these questions quietly discussed among faculty at the time the FRB policy was introduced—faculty asking each other “why this policy?” and “why now?”

Multiple people told me that they perceived the FRB resulted at least in part from concerns about the way [REDACTED]’s collegiality had been investigated. They told me that there was concern about these subjects being evaluated in the full Appointments Committee, where no single person is responsible for gathering information, where there is limited opportunity to push back on incorrect allegations, where it is difficult to gather more evidence and reconvene. They told me that there was a perception of excessive politics, serious allegations difficult to investigate with the appropriate care, and a desire for a more rigorous procedure. I do not recall specifically who conveyed these ideas.

10. Please state the basis for your claim in Paragraph 38 of the Complaint that “members of the committee were irritated by the [FRB] report’s focus on trivial instances of friction between Plaintiff and HBS staff . . .”

RESPONSE 10:

Plaintiff states as follows in response to this interrogatory.

I do not recall who told me this. It would have been one or more senior faculty who were familiar with the view of the Standing Committee.

11. Please describe in detail the conversation with a “senior staff person” referred to in the last sentence of Paragraph 67 of your Complaint, including in your response the name of this person, the date of the conversation, the place the conversation occurred, the words spoken in that conversation (in as much detail as you recall), the substance of the conversation, and further state whether you have any notes of that conversation.

RESPONSE 11:

Plaintiff states as follows in response to the interrogatory.

On January 16, 2008, I wrote to Jean Cunningham. Subject line: “Questions about outside activity reporting.” Message body: “In completing my faculty reporting & planning forms, I find myself with a few quick questions about reporting of outside activities. I’m told you may be the expert on these. Is that right? I can jot them down in a quick email, or we can discuss by phone, as you prefer..”

Receiving no reply, I wrote to the HBS Dean’s Office (via a role account or distribution list) on January 24, 2008 and asked:

Following up on the DRFD Faculty Reporting and Planning form, and the school’s policies on outside activities more generally, it strikes me that I might helpfully elaborate on some of my outside activities in greater detail than the Reporting form allows.

I don’t have anything that fits squarely within the list of activities that should be discussed with the Dean in advance. But in the spirit of advance discussion of expert testimony, it might be appropriate to consider the litigation matters in which I serve as co-counsel.

Separately, since most consulting relationships require a contract, a strict reading of the “activities that involve signing a contract” bullet point suggests I (and many others!) are overdue for a check-in -- though I gather that’s not how the quoted text is generally interpreted.

I’d be happy to make these disclosures in writing, i.e. a brief memo (one page?) to supplement my Reporting submission. Or if standard practice is to meet to discuss such matters, that’s certainly fine too.

Again I received no reply.

In October 2008, seeing media coverage of a matter in which I served as cocounsel, Jean Cunningham contacted Brian Hall (my unit head) expressing interest or concern. I then forwarded to Brian and Jean my January 24 message. After that, I met with Jean in person at least once about this subject. (An electronic meeting invite specified my office, October 23, 2008, 11am.) We may also have spoken one or more times by phone. She told me that service as an attorney is not an activity that requires specific written approval by the HBS Dean. In contrast, I understood that service as an expert witness does require such approval, as called out in the annual reporting form or its instructions or associated policies.

When we spoke in person or by phone, Jean explained the rationales for that difference: First, expert witness work entails obligations in which a faculty member loses control over his/her schedule (i.e. must appear to testify at trial on a specific date, regardless of teaching obligations). Second, that expert obligations had more often arisen among HBS faculty, whereas few to no HBS faculty had served as an attorney, so the question hadn't arisen and there simply wasn't a policy about it.

On October 23, 2008, at Jean's instruction, I prepared a memo for her entitled "Outside Activities – Benjamin Edelman – October 2008." It listed each of the litigation matters I was involved in, with details about case concept, timing, and my role. It also listed my consulting matters. Jean did not indicate that any further approval was required, that I needed to proceed in a materially different way going forward, or that I needed to submit a similar/updated statement like this at any point in the future. Based on this discussion, I continued to participate in new litigation matters without advance specific notice to, or approval from, HBS.

12. Please state the basis for the claim in Paragraph 72 of the Complaint that "Dean Nohria took the position, after the faculty's vote on Plaintiff's candidacy for tenure, that he would advance Plaintiff's claim for tenure to the University's President only if two-thirds of the faculty voted in favor of tenure."

RESPONSE 12:

Plaintiff states as follows in response to the interrogatory.

One or more members of the Appointments Committee told me that this was among Dean Nohria's remarks in an email to the Appointments Committee or in oral remarks to the Appointments Committee about the disposition of my case.

I do not have notes on this subject. I did find notes of a December 5, 2017 discussion with Brian Hall that I memorialized as "11 more yes's than no's" "yield something like 60%, whereas lal prior votes have been above 2/3" (sic).

13. Please describe in detail any and each conversation you had with Dean Nohria about your candidacy for tenure (including but not limited to the conversation described in Paragraph 77 of the Complaint), including in your response the date(s) and place(s) of each such conversation, the words spoken in each such conversation (in as much detail as you recall), the substance of each such conversation, and further state whether you have any notes of each such conversation.

RESPONSE 13:

Plaintiff states as follows.

Dean Nohria called me on my mobile phone on December 5, 2017. I took notes during the call, attempting to capture his exact words as best I could. Copying here verbatim, without revision to correct typos:

don't have good news

not able to move forward with promoting to tenure

not enough of a faculty vote for me to do so

breaks my heart

wish i had better news

remarkable in so many ways

dug yourself in a hole from 2015 incidents

for several people your actions over last two years felt i had done enough

for others it didn't

i am heartbroken as i imagine you are

there's a lot of goodness that people see in you

not enough of a vote for me to go forward

have to make a decison on behalf of whole faculty

personally, willing to do anything i can to be helpful to you oing forward

many other ppl on faculty committed to same thing

sad call for me to make

imagine it's even worse for you

if there's ever anything i can do to be helpful, let me konw

On March 20, 2018, I spoke with Dean Nohria in person in his office. I provided him with a printout of the FRB P&P, color-highlighted, and I explained each violation I saw, grounded in the highlighted text. He told me he would get back to me in a week. He replied on April 24, 2018 by email.

14. Please identify the members of the Appointments Committee who you claim in Paragraph 74 of the Complaint told you that “members of the faculty who spoke against [your] promotion indicated that their opposition was primarily or solely based on the FRB’s report[,]” including in your response the date and place of each such conversation, the words spoken in each such conversation (in as much detail as you recall), the substance of each such conversation, and further state whether you have any notes of each such conversation.

RESPONSE 14:

Plaintiff states as follows.

Multiple members of the Appointments Committee told me this. I recall at least Brian Hall, Kathleen McGinn, Deepak Malhotra, and Francesca Gino all conveying substantially these facts. I do not have notes on this subject.

15. Please identify S1 and S2 referred to in Paragraphs 78-82, and state the basis of your allegations made in those Paragraphs concerning those individuals.

RESPONSE 15:

Plaintiff states as follows:

S1: Angela Crispi

S2: Jean Cunningham

The allegations in Paragraph 79 sentences 1 and 2 are based on contemporaneous discussions with Angela Crispi, including her strongly-worded email of February 17, 2015 which includes the quote included within complaint paragraph 79.

The allegations in Paragraph 79 sentences 3 to 5 are based on my experience of what actually occurred, including the April 9, 2015 in-person meeting and live demo, at which I was present, in which MBA program leaders looked at the change to classroom projectors and decided to reverse the “final” decision Crispi had communicated to me. Felix Oberholzer’s April 12, 2015 email with subject line “Widescreen projection” describes the decision to implement the exact method I proposed: “will overthrow to the current aspect ratio. This sets us up to make the transition to the new standard at a time when we decide that the benefits outweigh the costs.” Felix’s message, changing and overruling what Crispi had previously said was “final,” is the basis of my statement that the decision was not “final” after all.

Contemporaneous emails with Jean Cunningham are the basis for the allegations in Paragraph 80. My colleague [REDACTED] was the person at issue. Jean Cunningham instructed that I not assist him with technology to mitigate his short-term disability. See her February 18, 2009 email with subject line “Hold, please”.

The allegations in paragraph 81 are based on a contemporaneous phone call with Jean Cunningham.

The allegations in paragraph 82 are based on contemporaneous emails with Jean Cunningham and Brian Kenny.

16. Please identify all persons who you expect will offer testimony on your behalf, including the subject matter on which such person is expected to testify.

RESPONSE 16:

Plaintiff objects to the extent that this interrogatory seeks to impose greater obligations than required under the Massachusetts Rules of Civil Procedure and other applicable rules. Plaintiff objects to the interrogatory as premature, and further states that he has not identified the persons that he expects to call as witnesses in this matter. Plaintiff will provide a list of witnesses when required by court rule or order.

17. Please identify all persons whom you expect to call as an expert witness at trial and for each state:

- a. The person's qualifications and field of expertise;
- b. The subject matter on which such person is expected to testify;
- c. The substance of all facts and opinions to which such person is expected to testify; and

- d. A detailed summary of the grounds for each such opinion, including the identity of each document upon which such person has relied or is expected to rely in formulating such opinion.

RESPONSE 17:

Plaintiff objects to the interrogatory as premature, and further objects to the extent that it imposes disclosure obligations beyond those contained in Mass. R. Civ. P. 26(b)(4). He further states that he has not yet identified persons whom he expects to call as an expert witness at trial.

18. Please described in detail any job search you conducted after learning that Harvard would not grant you tenure, including in your response:

- a. The names of the institutions with whom you had any contact concerning prospective employment and the identity of the individual or individuals with whom you spoke;
- b. The dates of each such contact; and

c. A description of how your discussions with any such institution proceeded, including whether the discussions resulted in any offer of employment, and, if so, the specific position offered, including whether the position was tenured or not.

RESPONSE 18:

Plaintiff states as follows.

In spring 2018, I was offered a fellowship at Harvard Kennedy School, but it was non-ladder-track, with no assurance of tenure or even a specific timetable for being considered. I was advised that another HBS faculty member had recently moved to HKS with a promise of accelerated consideration for tenure, and it hadn't worked out.

In spring 2018, I contacted faculty at Stanford, MIT, and the University of Pennsylvania to inquire about opportunities there. None were forthcoming. I discussed by phone with Eric Clemons who told me about some impediments to my candidacy, including that his department at Wharton already had sufficient senior faculty, that his department had a shortage of physical space, and that Wharton could not be seen as taking in faculty who had failed to achieve tenure at HBS.

In spring 2018, I accepted a position at Microsoft based on my judgment that this position was satisfactory in many respects, would best mitigate my economic damages, and would give me an opportunity to consider a different career path and a different way forward.

In fall 2018, I applied to a position at Berkeley Haas School of Business: "Associate/Full Professor and Faculty Director of the Institute for Business & Social Impact." It was a plausible match based on both tech and ethics. My application was unsuccessful. Steve Tadelis told me that a senior position at Berkeley Haas requires three publications in top-five journals, and I was deemed to have only two.

19. Please describe in detail any communications you received from others about potential employment after learning that Harvard would not grant you tenure, including in your response:

a. The names of the institutions who contacted you concerning prospective employment and the identity of the individual or individuals with whom you spoke;

b. The dates of each such contact; and

c. A description of how your discussions with any such institution proceeded, including whether the discussion resulted in any offer of employment, and, if so, the specific job title and position offered, including whether the position was tenured or not.

RESPONSE 19:

Plaintiff states as follows.

I accepted a position at Microsoft based on my judgment that this was satisfactory in many respects and would best mitigate my economic damages while providing a position from which to evaluate my career plans and consider the options available to me. I judged that the Microsoft position was more promising than any academic institution where I could reasonably expect to obtain a tenured position, based on the less-than-promising discussions summarized in response to the prior interrogatory. I therefore did not conduct a full academic job search. I also judged that the Microsoft position was probably preferable to most commercial employment I could reasonably expect to obtain, and I therefore did not conduct a full commercial job search.

In spring 2018, I spoke with Richard Zeckhauser about the possibility of a non-tenured position at HKS. I understood that a one-year appointment would probably be available, and that anything beyond that was uncertain. Shawn Cole told me that there might be a HKS policy against granting tenure to those who are visiting. Larry Summers told me that HKS is concerned about HBS sending it those faculty who did not get tenure at HBS.

On May 24, 2018, I spoke with a recruiter for Amazon about a job there as an economist. But by that point I had substantially accepted the position at Microsoft.

In fall 2018, I applied to a faculty position at Berkeley Haas School of Business: “Associate/Full Professor and Faculty Director of the Institute for Business & Social Impact.” I later spoke with Steve Tadelis about why my application was unsuccessful.

Since 2018, I have had various discussions with other prospective employers. I spoke with Amazon on multiple instances, but they never had a position with scope, rank, and compensation attractive in light of my position at Microsoft. My contacts were Allison Giles, Jessica French, Pat Bajari, and Paul Vixie. Discussions stretched from May 2018 through September 2023.

I spoke with Roblox, as to a position as Chief Economist and Chief of Policy, but they ended discussions after uncertainty with my fit with their gaming sector. My contacts were Grant Clay, Steve McBride, Manuel Bronstein, and Courtney Hamilton. These discussions were in July to September 2023.

I spoke with Exxon Mobil, as to a position as Chief Economist, but they ended discussions after concluding that they preferred a candidate with more experience in their sector. My contacts were Delaney Crampton and Chris Birdsall. These discussions were in April to July 2023.

I spoke with Keystone Strategy in November 2023 to June 2024. Discussions did not reach closure on exact role, compensation, or mutual interest. My contacts were Marco Iansiti, Greg Richards, and Ross Sullivan.

20. For each employment you have had since January 1, 2018, set forth the name of the employer, your job title or position, your compensation, and a description of your job duties.

RESPONSE 20:

Plaintiff states that he has held the following position:

Microsoft

Internal title: Partner, Economist

External title (current): Chief Economist for Web Experiences, Strategy, and Policy

Compensation: Initial base salary of \$250,000, increased periodically, reaching \$297,000 as of December 2023. Bonus and stock additional.

Duties: Advise Microsoft about a variety of questions at the intersection of software, strategy, economics, and public policy.

21. Please describe in detail each consulting or other compensated engagement you had since January 1, 2018, including in your answer for each such consulting arrangement the date upon which the arrangement commenced; the date it terminated; the nature of services provided; and the compensation you received.

RESPONSE 21:

Plaintiff objects to the interrogatory to the extent that it seeks information that is protected by the attorney-client privilege or that involve confidential information of third parties. Subject to and without waiving this objection, Plaintiff states as follows:

I ended most consulting as I joined Microsoft. I received payment for certain legal matters already underway, and I accepted new matters to the extent permissible under Microsoft policy. Copying from my notes, with remarks as to services provided in the right column.

February 2018 - EEMS - \$1000 – ad fraud report

July 2018 – Hong Kong University - \$170

May to July 2018 – eBay Content Network - \$11000 – ad fraud reports

February 2018 – Mosaic Research - \$1000 – expert call

February 2018 – ARIN - \$2520 – IP address consulting services

March 2018 – Guidepoint – \$900 - expert call

March to May 2018 – Pepperjam - \$3000 – ad fraud reports

April 2018 – Intuit – \$500 - ad fraud report

August 2018 - Center for Advanced Studies, Ludwig-Maximilians-Universität München - \$3000 – honorarium

November-December 2018 – eBay Partner Network - \$15000 – ad fraud analysis

November 2018 – Boni and Zack law firm – \$1596.20 – Huddleston v. American Airlines referral fee

January-September 2019 – Brookings - \$10000 book chapter honorarium

February 2019 – AOL – \$1500 - ad fraud reports

April 2019 – Docomo - \$10000 – honorarium

June 2019 – MCP - \$600 – teleconference

June 2019 – AER - \$100 – honorarium for refereeing

July 2019 – Goldstein law firm - \$572697.04 – Bazerman v. American Airlines referral fee

September 2019 – September 2020 – Goldstein law firm - \$105442.64 – Twilio referral fee

January 2020 – JLE - \$110 - referee

August 2022 to May 2024 - Ackermann & Tilajef law firm – referrals in work-from-home expense reimbursement litigation - \$58538.85

March 2023 Nathan Research Group \$754.33

July 2023 Giskan Solotaroff & Anderson law firm – Cleary v. American Airlines referral fee - \$675000

22. Please describe in detail any academic work you have performed since January 1, 2018, including any research or teaching you have done since 2018 and any published work, identifying such work by title, publication, and publication date, and including any peer-reviewed or other articles you have published.

RESPONSE 22:

Plaintiff states as follows:

My current employment does not call for academic publications. Pursuant to Mass. R. Civ. P. 33(c), I will produce copies of my recent publications, which are available on <https://www.benedelman.org/archives/> using the “Archives by Year” function.

23. Please describe in detail why you believe that, were HBS to consider you as candidate for tenure now—six years after leaving HBS—you would be granted tenure.

RESPONSE 23:

Plaintiff states as follows:

My candidacy should be considered based on my academic vitae as it stood in Fall 2017—the quantity and rate of publications as it stood then, plus my experience and achievements since that time. I am advised that my outside letter-writers and subcommittee report were very positive. (From my contemporaneous notes of Brian Hall remarks: “astoundingly positive, off-the-charts positive, as strong as anything i (Brian) have ever seen ever” and “subcommittee report one of the strongest he's ever seen”, respectively. Other contemporaneous documents are in accord.) My teaching was excellent. My work was highly relevant to questions in modern management and policy. The FRB findings were both incorrect in substance and flawed in process, so if the FRB process were corrected, I would clear my name and my candidacy would be strong.

In addition, since leaving HBS, I have developed skills and an expanded portfolio that are relevant both to teaching and research at HBS. I have run nearly a dozen lab experiments showing

the productivity benefits of Microsoft's new AI tools – work at the intersection of IT, AI, economics, and tech-enabled advanced lab experiments. The substantive findings are of interest to business professionals wanting to use AI optimally. The methodology is of interest to faculty and research-oriented students wanting to run online lab experiments efficiently and at scale. Most of my other work at Microsoft has been less public and is subject to confidentiality restrictions, but my expanded corporate experience is highly relevant to business education and business research – including issues in competitive strategy, business ethics, leadership, and operations. Time in corporate employment is valuable for multiple aspects of HBS faculty activities, and I see this addition to my vitae as a genuine addition to what I bring to the school.

24. Please list and describe with particularity the lost professional opportunities you claim you have experienced.

RESPONSE 24:

Plaintiff states as follows:

As a tenured faculty member, I would be eligible to take a leave of absence for up to two years, confident in my job remaining available upon my return. I surely would have taken a leave to join the Biden administration's fight against misconduct by certain tech companies—as, for example, Susan Athey recently did. That service in turn would have positioned me for further professional advancement.

As a faculty member, I would have continued my mix of academic and non-academic writing, including uncovering new and notable bad behavior by various companies. I would have positioned myself as a marquee expert in competition law matters, comparable to Susan Athey and Fiona Scott Morton.

As a faculty member, I would have had the opportunity and satisfaction of continuing to teach, and of building relationships with the distinguished students who complete the HBS MBA program. I would have continued to enjoy the distinctive access to business leaders that is routinely available to HBS faculty but not available to me in my current employment.

As a faculty member with the benefit of tenure, I would have had time and freedom to devote to a startup, with the potentially-extraordinary returns that can provide.

25. Please list and describe with particularity the amount of damages you claim against Harvard, and for each such amount, describe how such damages were calculated.

RESPONSE 25:

Plaintiff objects to the extent that this interrogatory calls for speculation or a legal conclusion. See Answer to Interrogatory 24. Plaintiff is, in part, unable to meaningfully respond to this interrogatory without information as to compensation for tenured professionals at HBS. Broadly, Plaintiff experienced a reduction in total earnings relative to his trajectory prior to 2017 and relative to what he would have earned, in total earnings from all sources, had he received

tenure at HBS. Plaintiff expects to retain an expert on this subject, and to supplement this answer as discovery proceeds.

26. Please state whether you seek or plan to seek damages for emotional distress and, if you do, identify each and every person from whom you have received medical, psychiatric, psychological, or emotional treatment, consultation, therapy, or assistance at any time from 2014 to the present, and for each such person, set forth his or her address, telephone number and current employer, if known.

RESPONSE 26:

Plaintiff states that he does not intend to seek damages for emotional distress.

Sworn to and signed under the pains and penalties of perjury this 4 day of July, 2024.

Benjamin Edelman

Benjamin Edelman

As to objections:

Ruth O'Meara-Costello

Ruth O'Meara-Costello (BBO# 667566)
Law Office of Ruth O'Meara-Costello
875 Massachusetts Ave., Suite 31
Cambridge, MA 02139
617-658-4264
ruth@ruthcostellolaw.com

Harvey A. Silvergate (BBO# 462640)
David A. Russcol (BBO# 670768)
Zalkind Duncan & Bernstein LLP
65A Atlantic Ave.
Boston, MA 02110
617-742-6020
has@harveysilvergate.com
drusscol@zalkindlaw.com

CERTIFICATE OF SERVICE

I, Ruth O'Meara-Costello, hereby certify that I have caused a true and correct copy of the foregoing document to be served on counsel of record for Defendant by email on July 4, 2024.



Ruth O'Meara-Costello