

**COMMONWEALTH OF MASSACHUSETTS**  
**Superior Court** **Suffolk, SS**  
**Business Litigation Session**

BENJAMIN EDELMAN,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action 2384CV00395-BLS2
	)	
PRESIDENT AND FELLOWS OF	)	
HARVARD COLLEGE,	)	
Defendant.	)	
	)	

**PLAINTIFF’S REPLY IN SUPPORT OF**  
**MOTION FOR PARTIAL SUMMARY JUDGMENT**

Harvard’s arguments against summary judgment are long on rhetoric and short on engagement with the policy language. Because the policy establishes a contract that Harvard’s undisputed conduct breached, this Court should grant Plaintiff summary judgment on Count I.

**A. The P&P created a contract.**

Harvard’s reliance on *Jackson v. Action for Bos. Cmty. Dev. Inc.*, 403 Mass. 8 (1988) is misplaced. *Jackson*, and other cases Harvard cites (*e.g. Grant v. Target Corp.*, 2017 WL 2434777 (D. Mass. Jun. 5, 2017)), asked whether a personnel manual created an exception to at-will employment. Plaintiff’s employment was undisputedly not at-will. (*See* SF 8-9.) *Jackson* was also essentially superseded by *O’Brien v. New England Tel. & Tel. Co.*, 422 Mass. 686, 692 (1996), and its progeny, including *Ferguson v. Host Int’l, Inc.*, 53 Mass. App. Ct. 96, 101 (2001). Harvard promulgated the P&P with notice to, and the assent of, its faculty (JA-211-12, 257, 598-606); the policy contains no disclaimer suggesting that its terms do not bind HBS (JA-366-369); Plaintiff reviewed and relied on it (SF 5); and members of the FRB understood that it bound them (JA-370). Applying the standard of reasonable expectation, these circumstances established that the P&P was part of Plaintiff’s employment contract. *See Wortis v. Trs. of Tufts Coll.*, 493 Mass. 648, 663

(2024); *see also* Pl.’s Opp. to Def.’s Mot. for Summary Judgment (“Pl.’s Opp.”) 8-12.

**B. Harvard breached the contract when the FRB failed to share the evidence it gathered.**

The P&P’s plain language required the FRB to share the evidence it gathered, and it did not. Harvard never explains what “the evidence gathered” could possibly mean if it does not include interview notes the FRB gathered as evidence. Harvard’s attempts to avoid the reality that it breached its contract with Plaintiff are riddled with strawmen and misplaced analogies.

Plaintiff does not argue that he was entitled to know the contents of his confidential tenure file. Had HBS not chosen to convene an FRB in 2017 to examine his conduct, then his tenure process would have been governed only by the Green Book, his adherence to HBS Community Values would have been assessed by the Subcommittee as occurs in every tenure case, and he would have had no entitlement to see materials gathered confidentially as part of that process. (JA-262-274.) Instead, HBS turned to a procedure designed for investigations of alleged misconduct which intentionally incorporated elements from other “conduct review matters,” including Title IX. (JA-753; Attach. 1.)<sup>1</sup> The language and structure of the P&P require the same procedure in *all* FRB cases, whether or not a faculty member is up for tenure, and entitle the faculty member to review the evidence gathered. (PSJ Memo. 11-14; Pl.’s Opp. 14-18.)

Harvard invokes increasingly far-fetched analogies to defend withholding witness identities and testimony. They all fail, because they all are governed by procedures that, unlike the P&P, say that evidence will not be provided. Again, interpretation of the contract here is governed by the standard of reasonable expectation: what meaning Harvard should reasonably expect the faculty member under review to give its language. *Wortis*, 493 Mass. at 662. Nominees for

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<sup>1</sup>The P&P’s requirement to share evidence makes it inapt for a routine tenure case without serious misconduct allegations. Indeed, Plaintiff alleges that its invocation in 2017 was inappropriate. (JA-1062-1063.) But having chosen to use the procedure, Harvard was bound by its rules.

judgeships (*see* Def. Opp. 5-6) would not reasonably expect access to the evidence gathered by the Judicial Nominating Commission, because the Executive Order governing the process says that they will *not* have access. In contrast, the P&P guarantees access to “the evidence gathered.”

Harvard simply compares unlike things and cites inapt authority. *United States v. Nixon*, 418 U.S. 683, 705 (1974) (discussing confidentiality relating to executive privilege) has no bearing on any question here. Harvard tries to analogize witnesses interviewed by the FRB to jurors, citing *Clark v. United States*, 289 U.S. 1, 13 (1933), but FRB witnesses are not like jurors—if anything they are more like trial witnesses, whose testimony is presumptively public. *See, e.g., Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604-606 (1982). Finally, Harvard cites *Wakefield Teachers Assoc. v. Sch. Comm. of Wakefield*, 431 Mass. 792, 802 (2000), where the SJC concluded that a disciplinary investigation of a teacher was exempt from *public* disclosure under the public records law—not exempt from disclosure to the subject of the investigation. *Id.* Put mildly, these precedents do not support Harvard’s position.

It is not surprising that HBS, drafting procedures to govern review of its own faculty for alleged misconduct, chose to promise basically fair procedures, including the right to review and respond to evidence—particularly as one impetus for the procedures was a concern that prior reviews were unfair. (JA-124-125.) It is natural that a policy governing investigations of misconduct should seek to protect the rights of members of a “community of scholars,” *Wortis*, 493 Mass. at 663, and to accurately find the truth. *See Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 605, 607 (D. Mass. 2016) (in student discipline case, denial of right to examine evidence and witness statements contributed to failure to provide “a fair and reasonable opportunity to be informed of the charges and to present an adequate defense”). Harvard could have created a process where confidentiality overrode fairness, but that is not how it balanced these interests in the P&P.

Harvard relies on FRB remarks to witnesses that the FRB “would strive in the report to provide feedback in the aggregate, and to avoid comments or quotes that can be directly ascribed back to an individual.” (JA-492.) Any such commitment was beyond the FRB’s authority given the plain language of the P&P. The remark addressed only the FRB’s report, and did not purport to undo the P&P’s requirement to provide Plaintiff with the evidence gathered. The FRB also told witnesses the report would contain “a listing of interviews,” which it did not. (JA-416-425, 492.)<sup>2</sup>

Harvard claims the FRB did not present witness statements as “direct quotations.” (Def.’s Opp. 8.) The report strongly implied that bulleted language was taken exactly from witnesses, writing that they “made comments such as,” “us[ed] phrases such as,” or had concerns “expressed as” the following bullets. (JA-419-421.) Before litigation, everyone understood the words as quotes. (JA-744 (Crispi); Attach. 2 (Edmondson); JA-629-639 (Schlesinger); Attach. 3 (Nohria).)<sup>3</sup>

Harvard ignores harm from the FRB’s concealment of evidence. (Def.’s Opp. 9.) At summary judgment, Plaintiff’s burden is to show that the undisputed facts establish liability, not to establish a damages amount. Mass. R. Civ. P. 56(c). In what appears to be as much an attempt to smear Plaintiff as to put relevant evidence before the Court, Harvard quotes the most negative assessments of Plaintiff’s character at length, criticizing his desire to respond to them. (Def.’s Opp. 9-11.) It is circular and bizarre to suggest that existence of negative opinions excuses refusal to share evidence.<sup>4</sup> Plaintiff might not be able to “rebut [] negative *opinions*” (Def.’s Opp. 9), but he

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<sup>2</sup> Harvard claims Plaintiff conceded that some evidence may be withheld. (Def.’s Opp. 6, n. 3.) But Plaintiff’s deposition remark that “Not every subject of an investigation gets to see all the evidence” contrasted the P&P with *other, non-FRB*, proceedings with lower standards.

<sup>3</sup> In his deposition, FRB member Gilson used the word “quotes” seven times discussing these statements. (Attach. 4, Gilson Dep. 67:4, 112:12, 155:3-4, 155:11, 155:25, 156:21-22, 157:10.)

<sup>4</sup> Harvard falsely claims that “Plaintiff does not . . . contend that he was harmed” by concealment of the identities of witnesses with positive comments. (*See* Def.’s Opp. 9, n. 5.) Anonymizing positive witnesses harmed Plaintiff. Witnesses whose testimony was most relevant, including his

could have corrected facts and provided context to establish that the opinions were not well-founded. (*See* PSJ Memo. 12-14.) The P&P entitled Plaintiff to know what witnesses said.<sup>5</sup>

**C. Harvard breached the contract when it convened the 2017 FRB without an allegation, then expanded its scope to investigate a specific allegation without notice to Plaintiff.**

Harvard claims that the FRB “reconvene[d]” in 2017 and that “there was no need for a new allegation” because it was “continuing the work it began in 2015.” (Def.’s Opp. 14.) The P&P nowhere contemplates one FRB creating two reports, calling for “*a* draft report” (emphasis added). HBS contemporaneously called the proceedings “reviews,” plural. (Attach. 5.) Deans called the 2017 proceeding “another review” (JA-224-225; Attach. 6), not a continuation. The substance of the reports is in accord: in 2015, the FRB articulated specific incidents in which Plaintiff allegedly acted badly, but in 2017, it did not continue investigating those incidents. There was no basis to convene an FRB in 2017, and when it was convened, it did not draft an allegation or give Plaintiff notice of an allegation governing its “scope of work” (JA-945).

Months into its inquiry, after Plaintiff’s interview, the FRB came to focus on an allegation: that Plaintiff’s disclosures of past work for Microsoft on writing he published about Google were deficient. (SF 36-37; JA-205, 479-481, 967.) Even then, the FRB did not articulate that allegation to Plaintiff. (JA-483.) This was a violation of Plaintiff’s contractual right under the P&P to notice and an opportunity to respond to an allegation. (*See* JA-367-368.)

**D. Conclusion**

Plaintiff’s Motion for Partial Summary Judgment should be allowed.

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faculty support specialist and the LCA head, were not identifiable, and readers could not give their statements appropriate weight. (SF ¶¶ 52-55.)

<sup>5</sup> That the FRB did not include *every* negative quote about Plaintiff in its report is not evidence that its assessment was fair. Harvard makes no attempt to rebut Plaintiff’s analysis that it was not, nor to address evidence that its conclusions were predetermined and the evidence cited in its report chosen accordingly. (SF ¶¶ 21, 45, 48.)

Respectfully submitted,  
BENJAMIN EDELMAN,  
By his attorneys,



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Dated: December 19, 2025

**CERTIFICATE OF SERVICE**

I, David A. Russcol, 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 December 19, 2025.



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David A. Russcol

# **Attachment 1**

Volume I  
Pages 1 to 214  
Exhibits 193 - 214

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court  
Civil Action No.  
2384CV00395-BLS2

-----x  
BENJAMIN EDELMAN, :  
Plaintiff, :  
 :  
vs. :  
 :  
PRESIDENT AND FELLOWS OF HARVARD :  
COLLEGE, :  
Defendant. :  
-----x

DEPOSITION OF JEAN M. CUNNINGHAM, a witness  
called by counsel for the Plaintiff, taken pursuant  
to Rule 30 of the Massachusetts Rules of Civil  
Procedure before Carol H. Kusinitz, Registered  
Professional Reporter and Notary Public in and for  
the Commonwealth of Massachusetts, at the Offices of  
Zalkind Duncan & Bernstein LLP, 65A Atlantic Avenue,  
Boston, Massachusetts, on Wednesday, June 18, 2025,  
commencing at 9:32 a.m.

PRESENT:

Zalkind Duncan & Bernstein LLP (by David A.  
Russcol, Esq.) 65A Atlantic Avenue, Boston,  
MA 02110, drusscol@zalkindlaw.com,  
617.742.6020 - and -  
Law Office of Ruth O'Meara-Costello  
(by Ruth O'Meara-Costello, Esq.)  
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for the Plaintiff.

(Continued on Page 2)



<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. But you indicated that Mr. Edelman was</p> <p>3 being respectful in his email concerning classroom</p> <p>4 projectors?</p> <p>5 A. That's what I wrote, yes.</p> <p>6 Q. What did you discuss with Dean Nohria about</p> <p>7 launching a review process for Mr. Edelman?</p> <p>8 A. I don't know that I'm going to remember</p> <p>9 that conversation.</p> <p>10 Q. Do you remember anything that Dean Nohria</p> <p>11 said about that subject?</p> <p>12 A. No.</p> <p>13 Q. Did the review process that you referred to</p> <p>14 here eventually become the FRB?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 A. Without remembering the conversation, I</p> <p>17 can't say specifically.</p> <p>18 Q. Was the FRB created a few months after this</p> <p>19 email?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Was Mr. Edelman's situation a factor in the</p> <p>22 creation of the FRB?</p> <p>23 A. Yes.</p> <p>24 MR. RUSSCOL: I'd like to mark this as</p>	<p style="text-align: right;">Page 28</p> <p>1 A. (Reviewing document) It reads to me like</p> <p>2 initial ideation about what a process might include.</p> <p>3 Q. Is it fair to say that it includes some</p> <p>4 things that were eventually included in the FRB</p> <p>5 process?</p> <p>6 A. Yes.</p> <p>7 Q. And under "Approach," Number 1 is</p> <p>8 "Generally leverage the thought that has gone into</p> <p>9 the process for responding to allegations of sexual</p> <p>10 and gender-based harassment."</p> <p>11 Is that something that was discussed when</p> <p>12 the FRB process was being formulated?</p> <p>13 A. If I remember correctly, it was at about</p> <p>14 that time that the University had rolled out new</p> <p>15 Title IX procedures that were much more</p> <p>16 comprehensive than those that had been used in the</p> <p>17 past, and so I would assume that this statement</p> <p>18 reflects back on that process.</p> <p>19 Q. Do you recall that type of reflection on</p> <p>20 those Title IX processes occurring as the FRB</p> <p>21 process was being constructed?</p> <p>22 A. I'm not sure I understand that question.</p> <p>23 I'm sorry.</p> <p>24 Q. You were part of the discussions of what</p>
<p style="text-align: right;">Page 27</p> <p>1 Exhibit 194.</p> <p>2 (Document marked as Plaintiff's</p> <p>3 Exhibit 194 for identification)</p> <p>4 Q. Is Exhibit 194 notes that you took related</p> <p>5 to what eventually became the FRB process?</p> <p>6 A. (Reviewing document) I don't know. I</p> <p>7 don't know if these are my notes or not.</p> <p>8 Q. Do you have any reason to believe they're</p> <p>9 not your notes?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 A. I don't know that I would refer to</p> <p>12 myself -- so seeing the "Angela," "Jean," "Gabe" --</p> <p>13 so I don't know.</p> <p>14 Q. Is it possible that you had someone else's</p> <p>15 notes in your file?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. Do you often maintain copies of other</p> <p>19 people's notes on topics related to policies and</p> <p>20 procedures?</p> <p>21 A. It's possible to walk away from a meeting</p> <p>22 with materials that others had with them.</p> <p>23 Q. Does this document appear to be related to</p> <p>24 the process that eventually became the FRB?</p>	<p style="text-align: right;">Page 29</p> <p>1 the FRB process should look like, right?</p> <p>2 A. Yes.</p> <p>3 Q. In those discussions, did others bring up</p> <p>4 the idea of reflecting on the new Title IX processes</p> <p>5 in order to frame the FRB process?</p> <p>6 A. I think it was part of efforts to look for</p> <p>7 best practices in conduct review matters.</p> <p>8 Q. But do you have a specific recollection of</p> <p>9 that topic being discussed?</p> <p>10 A. Beyond this note, no.</p> <p>11 Q. Do you see at the top, under "Objectives,"</p> <p>12 Number 1 is "Respond to the Ben Edelman situation in</p> <p>13 particular"?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Does that suggest to you that someone</p> <p>16 involved with creating the FRB process believed it</p> <p>17 was a response to the Ben Edelman situation in</p> <p>18 particular?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 A. I can't speak to what others were thinking.</p> <p>21 MR. RUSSCOL: I'd like to mark this as</p> <p>22 Exhibit 195.</p> <p>23 (Document marked as Plaintiff's</p> <p>24 Exhibit 195 for identification)</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Looking at what's been marked as Exhibit              2 195, are these notes that you took?              3 A. (Reviewing document) Yes.              4 Q. Looking at the first page after the cover,              5 do you see that there are notes about Edelman?              6 A. Yes.              7 Q. Are these notes of a meeting or something              8 else?              9 A. (Reviewing document) I believe they were              10 probably from a meeting.              11 Q. Who was at that meeting?              12 A. I didn't write it down, so I can't say for              13 certain.              14 Q. Do you have any idea who was at that              15 meeting?              16 MR. MURPHY: Objection.              17 A. I would say Nitin.              18 Q. Do you see, in the second line, it says,              19 "Comparison to [REDACTED] situation"?              20 A. Yes.              21 Q. Does "[REDACTED]" refer to [REDACTED]?              22 A. Yes.              23 Q. What was the comparison that Dean Nohria              24 was making to the [REDACTED] situation?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. The FRB did not exist at that time.              2 Q. Was that part of the reason for              3 establishing an FRB?              4 MR. MURPHY: Objection.              5 A. Yes.              6 Q. Looking at the page with the Bates number              7 ending in 19, do these notes address both outlines              8 of what a collegueship review process might look              9 like and Mr. Edelman's situation in particular?              10 A. (Reviewing document) Yes, they appear to.              11 Q. Do you see below, a couple lines below "Ben              12 Edelman review," where there are lines to both "AC"              13 and "CRB"?              14 A. Yes.              15 Q. What does "AC" refer to?              16 A. The normal abbreviation is for Appointments              17 Committee.              18 Q. Do you recall any discussion in early 2015              19 about how FRB would relate to the Appointments              20 Committee?              21 A. As the FRB process was developed, its              22 intersection was discussed, yes.              23 Q. What discussions do you remember about              24 that?</p>
<p style="text-align: right;">Page 31</p> <p>1 MR. MURPHY: Objection.              2 A. There had been questions raised regarding              3 [REDACTED] conduct as well.              4 Q. Did the Dean indicate how Mr. Edelman              5 compared to [REDACTED]?              6 A. I don't remember.              7 Q. In the next line there's reference to Liza.              8 Who is Liza?              9 A. Liza is Liza Nascebmeni.              10 Q. And who is she?              11 A. She is a staff member who, at that time, I              12 believe, supported the student conduct review              13 process. So she was an MBA staff member who worked              14 on student conduct issues.              15 Q. What was the consideration about shifting              16 to a more thorough investigation?              17 A. Prior to that time, the Dean would              18 typically ask a senior faculty colleague to assist              19 them in reviewing conduct matters.              20 The student conduct review process was more              21 detailed, elaborate, and so this reflects the              22 difference.              23 Q. Did an FRB review [REDACTED]              24 situation?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. As with developing any process,              2 understanding how the two processes would intersect              3 was something that Paul Healy, as the Senior              4 Associate Dean responsible for promotions and tenure              5 at the time, would have been considering.              6 Q. What do you remember Paul Healy saying              7 about that?              8 A. I'm not going to remember a specific              9 conversation. It was a process of working out how              10 they should be considered together.              11 Q. Did Dean Nohria say anything about that?              12 A. Dean Nohria was not present at the meetings              13 of the working group to devise the process.              14 Q. Who was in the working group?              15 A. If I remember correctly, it was Youngme and              16 Amy and Paul, with me supporting them.              17 Q. And just for the record, when you say              18 "Youngme," do you mean Youngme Moon?              19 A. Youngme Moon, yes. Sorry.              20 Q. And "Amy" means Amy Edmondson?              21 A. Correct.              22 MR. RUSSCOL: I'd like to mark this as              23 Exhibit 196.              24</p>

# **Attachment 2**

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**From:** Edmondson, Amy  
**Sent:** Friday, September 22, 2017 7:50 AM EDT  
**To:** Schlesinger, Len; Crispi, Angela; Gilson, Stuart  
**CC:** Cunningham, Jean  
**Subject:** Re: Confidential draft report

Quick thought about the volume of comments point – I think that in fact, collectively, we did hear more positive (in part because the sample was hand picked by BE) but that didn't negate the importance of the negative.

And, I wondered whether moving(or repeating) the quotes used as summary commentary to the bullet list might partly take care of the issue of them getting buried or not fully defended.

**Amy C. Edmondson**  
**Novartis Professor of Leadership and Management**  
**HARVARD BUSINESS SCHOOL**  
**Boston, MA 02163**

**Author of Building the Future: Big Teaming for Audacious Innovation (Berrett-Koehler, 2016);**  
**Teaming: How organizations learn, innovate and compete in the knowledge economy (Jossey-Bass, 2012)**

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**From:** "Schlesinger, Len" <lschlesinger@hbs.edu>  
**Date:** Thursday, September 21, 2017 at 7:06 PM  
**To:** "Edmondson, Amy" <aedmondson@hbs.edu>, "Crispi, Angela" <acrispi@hbs.edu>, "Gilson, Stuart" <sgilson@hbs.edu>  
**Cc:** "Cunningham, Jean" <jcunningham@hbs.edu>  
**Subject:** RE: Confidential draft report

Here are my thoughts. Delighted to discuss them if it would be helpful..len

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**From:** Edmondson, Amy  
**Sent:** Thursday, September 21, 2017 6:06 PM  
**To:** Schlesinger, Len <lschlesinger@hbs.edu>; Crispi, Angela <acrispi@hbs.edu>; Gilson, Stuart <sgilson@hbs.edu>  
**Cc:** Cunningham, Jean <jcunningham@hbs.edu>  
**Subject:** Confidential draft report

Angela, Stu, and Len,

I'm writing to ask for your input on the draft report summarizing our work and discussions on the BE case. We are hurtling toward the date when Paul will become anxious about the appointments process and how this work ties into it, and we need to give Ben time to draft a response, so I'm hoping you might be able to turn this around quickly -- ideally by early next week. The "track changes" feature should be turned on in the file; you can add either notes or comments, and if you *reply all* Jean will (generously and efficiently) take care of assimilating everyone's thoughts. In other words, best if we work on this simultaneously rather than sequentially.

If you'd find it helpful to meet or jump on a conference call, just say the word. I realize this now reflects other inputs -- like Ben's Supplemental Response -- that we hadn't seen before our last meeting.

Thanks,

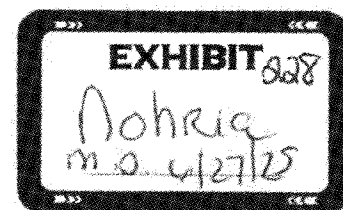
Amy

p.s. if you don't have -- or want me to send -- Ben's supplemental response materials, let me know and I will do so asap.

**Amy C. Edmondson**  
**Novartis Professor of Leadership and Management**  
**HARVARD BUSINESS SCHOOL**  
**Boston, MA 02163**

**Author of Building the Future: Big Teaming for Audacious Innovation (Berrett-Koehler, 2016);**  
**Teaming: How organizations learn, innovate and compete in the knowledge economy (Jossey-Bass,**  
**2012)**

# **Attachment 3**



Ben Edelman

- Evidence - quotes - from where  
and in what  
context
- What will be investigated - a  
fishing
-

# **Attachment 4**



COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

SUFFOLK, SS

BUSINESS LITIGATION SESSION

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BENJAMIN EDELMAN,

Plaintiff,

v.

Civil Action No.

PRESIDENT AND FELLOWS OF HARVARD

2384CV00395-BLS2

COLLEGE,

Defendant.

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DEPOSITION OF

STUART GILSON

DATE: Tuesday, April 29, 2025

TIME: 9:37 a.m.

LOCATION: Zalkind Duncan & Bernstein LLP

65A Atlantic Avenue

Boston, MA 02110

REPORTED BY: Robert Lombardi

JOB NO.: 7309585

<p style="text-align: right;">Page 66</p> <p>1 Q And so you wanted to be able to recall and  2 describe that negative feedback that the FRB had  3 received because you expected to get requests to  4 elaborate on it; right?</p> <p>5 A I wasn't counting on it, but in -- it's the  6 nature of these discussions that you get probing  7 questions from faculty directed to all sides of a  8 case.</p> <p>9 You know, even regular promotion cases, you  10 know, there are -- there are things that go into the  11 plus column, things that people put into the negative  12 column. You get usually a pretty robust discussion on  13 both sides.</p> <p>14 And, you know, some of the -- the positive  15 and the negative feedback would've come from  16 interviews, and the FRB kind of parsed out -- we split  17 amongst ourselves -- you know, the whole set of  18 faculty or staff that we talked to, each of us took a  19 portion. I think I had five or six people who I  20 talked to.</p> <p>21 So I think my concern was, you know, if I'm  22 being asked about this, I wanted to be able to respond  23 if asked. I -- I don't know that necessarily I would  24 be asked because there would be, you know, members of,  25 you know, Ben's unit who were in the room as well and</p>	<p style="text-align: right;">Page 68</p> <p>1 A I mean, I think it's likely we discussed  2 what everybody learned in their interviews. I  3 honestly can't remember if I reviewed specific notes  4 or transcripts that other people had taken. I may  5 have, but I just don't remember.</p> <p>6 Q In your email, you were wondering if it made  7 sense to have a joint meeting or call before the  8 appointments committee meeting. Did that meeting or  9 call happen?</p> <p>10 A I -- I don't remember.</p> <p>11 Q You don't recall whether there was a meeting  12 or call with the FRB before the appointments committee  13 meeting?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: No. I really don't  16 remember.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q Other than when you were interviewing  19 witnesses, did you discuss FRB business with anyone  20 outside the FRB before the final report was issued?</p> <p>21 A No. Well, I mean -- eventually discussed,  22 as you know, with the dean, but that was after the  23 report was issued. So I don't remember that I had any  24 communication with the dean. Amy may have as chair,  25 but I don't remember myself having any sort of contact</p>
<p style="text-align: right;">Page 67</p> <p>1 other people that knew Ben. So, you know, everybody  2 would probably speak up.</p> <p>3 But were I to be asked to elaborate on some  4 of those quotes, since I didn't conduct those  5 interviews, I didn't probably feel that I, you know,  6 could provide meaningful background on that, or I -- I  7 couldn't meaningfully elaborate on those if I hadn't  8 conducted those interviews myself.</p> <p>9 So I think probably what I was doing is just  10 asking for some additional input if it would be  11 helpful for me in explaining anything to the -- you  12 know, the full appointments committee.</p> <p>13 Q And what did you do to familiarize yourself  14 with the feedback on Mr. Edelman in preparation for  15 the appointments committee meeting?</p> <p>16 A I -- I really can't recall now, you know,  17 everything that I would've done prior to the meeting.  18 I -- I almost certainly would've reread the report and  19 all the supporting documents that were attached to it.</p> <p>20 Q You mentioned that some of the interviews  21 were conducted by other FRB members. Did you read the  22 notes that they had taken of those interviews?</p> <p>23 A Yeah. I can't recall.</p> <p>24 Q Did you ever see the notes that other FRB  25 members had taken of their witness interviews?</p>	<p style="text-align: right;">Page 69</p> <p>1 with anybody else.</p> <p>2 Q Between the issuance of the final report and  3 the appointments committee meeting, did you discuss  4 FRB business with anyone outside the FRB?</p> <p>5 A Not that I remember. I don't think I  6 would've.</p> <p>7 Q Did you discuss the FRB's report with any  8 standing committee members?</p> <p>9 A Yeah. I -- I don't remember. I mean,  10 ordinary subcommittee reports on faculty candidates,  11 you know, where you -- the subcommittee evaluates the  12 candidate's materials and then makes a recommendation  13 to the appointments committee about whether or not the  14 person should be promoted or not, and then that is the  15 basis for a discussion.</p> <p>16 That -- those kinds of reports have to be  17 vetted with the standing committee, which consists of  18 the subcommittee members of all the subcommittees that  19 have been created to assess all of the candidates who  20 are coming up in that season.</p> <p>21 I don't remember whether the FRB report was  22 vetted with the standing committee or not, to be  23 honest. I -- I don't think so, but I don't -- I don't  24 remember.</p> <p>25 Q Do you remember whether after the FRB report</p>

<p style="text-align: right;">Page 110</p> <p>1 Q Would it surprise you to learn that  2 Microsoft laid off its entire Windows Phone team in  3 May 2016 and stopped developing an operating system  4 around that time?  5 A I had no knowledge of that.  6 Q Do you think it's unreasonable for  7 Mr. Edelman to differentiate between areas where  8 Microsoft competes with Google and areas where  9 Microsoft doesn't compete with Google in making  10 judgment calls about what disclosures are appropriate?  11 MR. MURPHY: Objection.  12 THE WITNESS: Well, as a, you know,  13 reasonable -- quote/unquote reasonable reader looking  14 at this now, I wouldn't know the details. And so I'd  15 say, well, just to be safe, I might disclose in both  16 cases because somebody like me, I -- I don't know  17 whether or not there's, you know, exact  18 overlap -- overlap like that in the businesses or not  19 at a particular time.  20 And so I think our point was -- you  21 know, I think the committee's interpretation of the  22 rules was -- of the conflict of interest guidelines  23 was if there's any doubt that somebody might have, you  24 know, as -- as I have right now sitting here, the  25 appropriate thing to do would be to get the dean's</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. MURPHY: Objection.  2 THE WITNESS: Based on firsthand  3 knowledge by whom?  4 MR. RUSSCOL: Witnesses.  5 THE WITNESS: No. of witnesses, but by  6 whom?  7 BY MR. RUSSCOL:  8 Q Was it important that the quotes be based on  9 the witnesses' firsthand knowledge?  10 MR. MURPHY: Objection.  11 THE WITNESS: Well, I -- I recall that  12 the intention of including the -- the quotes or the  13 paraphrase was to capture what it was that the  14 witnesses or the -- the interviewees told each of us  15 separately.  16 BY MR. RUSSCOL:  17 Q But the goal of including the quotes was to  18 make sure that the quotes reflected things that the  19 witnesses knew what they were talking about and not  20 repeating rumors or speculation. Is that fair to say?  21 MR. MURPHY: Objection.  22 THE WITNESS: I mean, I don't know that  23 we explicitly applied that screen, but I think it's  24 something that would've been front of mind in what we  25 excerpted.</p>
<p style="text-align: right;">Page 111</p> <p>1 permission or get feedback from the dean about "What  2 should I disclose?"  3 It's just about asking a question of  4 the dean before deciding on one's own -- unilaterally  5 deciding on one's own what's appropriate.  6 BY MR. RUSSCOL:  7 Q Now, the criticism of the disclosures here  8 in the paragraph right after the bullet points is that  9 the reporting of disclosures is inconsistent. Did the  10 FRB consider whether there were differences among  11 these different articles that would justify treating  12 them differently for disclosure purposes?  13 A I'm sorry. I was reading. You'll have to  14 repeat that.  15 Q Did the FRB consider whether there were  16 differences among these articles that would justify  17 treating them differently for disclosure purposes?  18 MR. MURPHY: Objection.  19 THE WITNESS: Yeah. I -- I don't  20 recall that I did. I don't know whether somebody else  21 in the committee might have, but --  22 BY MR. RUSSCOL:  23 Q Was it important that the quotes in the  24 final FRB report be based on firsthand knowledge of  25 witnesses?</p>	<p style="text-align: right;">Page 113</p> <p>1 I mean, the -- the idea was to sort of  2 convey kind of a balanced -- to the extent we were  3 able to, you know, provide a balanced sort of  4 perspective on both sides on the positive and the  5 negative.  6 Because what struck us was that some  7 people were very positive about what Ben achieved, and  8 others were less so. And we felt we had to represent  9 both of those in the report.  10 And we tried not to insert ourself into  11 deciding how much of one or the other to sort of  12 include. We tried to best we could sort of provide a  13 balanced perspective on both sides for readers of the  14 report to make their own judgements and to be  15 discussed in the appointments committee room.  16 BY MR. RUSSCOL:  17 Q And by "balance," do you mean kind of equal  18 opportunity to positive and negative perspectives?  19 MR. MURPHY: Objection.  20 THE WITNESS: Not kind of  21 a -- not -- not sort of anything, you know, based on  22 a -- sort of a numerical count.  23 But we tried to sort of go through what  24 people said favorably and unfavorably about Ben and  25 then tried to make sure that we incorporated those,</p>

<p style="text-align: right;">Page 154</p> <p>1 Q How did you understand the parenthetical in 2 the second bullet point that "With his superiors, he 3 has more of a filter, as we all probably do"?</p> <p>4 A Well, to interpret it literally, he would be 5 implying that we all have a filter when dealing with 6 our superiors. We all probably have a filter that we 7 apply when dealing with our superiors. That's how I 8 would interpret that reading it here now.</p> <p>9 Q So isn't that an indication that having more 10 of a filter with superiors is common and normal?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: Well, that may be what he 13 was implying, but it's not something that I would 14 agree with or I would think, you know, all people 15 would necessarily agree with.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q But that's what Professor [REDACTED] was 18 reporting; right?</p> <p>19 A Well, it's very likely what he would've 20 said. That's why it's in the transcript.</p> <p>21 Q Now, the FRB report in 2017, "Someone is 22 stating with his superiors, he has more of a filter." 23 Do you know whether that quote refers to Professor 24 [REDACTED] based on your interview notes?</p> <p>25 A So I see at the top of page 6 of Exhibit 45,</p>	<p style="text-align: right;">Page 156</p> <p>1 don't know that everybody would agree with the premise 2 that we all probably do.</p> <p>3 I don't know whether or not this was an 4 attempt to summarize the essence of multiple quotes or 5 references to this that people may have made, and 6 there -- and it was -- it was thought that this was a 7 more accurate summary of the essence of what multiple 8 people may have said.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q But did it capture what Professor [REDACTED] told 11 you, given that he attached a qualifier to it?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: Yeah. I can't really 14 comment on how people might react to that. Some might 15 view it one way; some might view it a different way.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q Some might say that it's an inaccurate 18 summary of Professor [REDACTED]'s statement?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 THE WITNESS: I don't know that I would 21 characterize it as inaccurate because what is quoted 22 is an accurate quote from the original. It's 23 incomplete. It doesn't include the parenthetical.</p> <p>24 BY MR. RUSSCOL:</p> <p>25 Q At a minimum, it's taken out of context;</p>
<p style="text-align: right;">Page 155</p> <p>1 the first part of the sentence is included in 2 the -- the last -- the first bullet shown at the top 3 of page 6. So that would appear to be a quote, but 4 it's -- none of the quotes are attributed to 5 individual people in the report.</p> <p>6 Q And looking back at the bottom of page 5 to 7 the top of page 6, that quote is the only quote listed 8 as support for a concern that Professor Edelman may 9 manage up and interact differently with some staff 10 than he does with faculty colleagues; right?</p> <p>11 A Right. So there's one quote provided in one 12 bullet. The preceding text refers to plural.</p> <p>13 Q Right. So that one quote is the only one 14 that's provided in the report; right?</p> <p>15 A That appears to be the case. Yeah.</p> <p>16 Q And you noted that the quote omits the 17 parenthetical "as we all probably do"; right?</p> <p>18 A Yes.</p> <p>19 Q Is incorporating that quote without the 20 parenthetical a fair representation of what Professor 21 [REDACTED] told you?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 THE WITNESS: Well, I -- I -- you know, 24 I -- I would say it's incomplete. It's not the full 25 body of the quote. Is it fair or not? I mean, I</p>	<p style="text-align: right;">Page 157</p> <p>1 right?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 THE WITNESS: I don't know. I think 4 that would be something that the individual -- each 5 individual who reads it would have to judge.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Did the individuals who were reading the 8 FRB's report have any of the context in order to judge 9 it?</p> <p>10 A Well, again, it's an incomplete quote, so it 11 doesn't include the parenthetical. But it 12 still -- it's an accurate representation of -- of part 13 of what [REDACTED] said in the -- in the transcript.</p> <p>14 It's not the whole thing. I don't know what 15 the -- you know, what -- for what reason it would've 16 been -- would not have been included. I wasn't 17 involved in that, so --</p> <p>18 Q Were the interview notes attached to the FRB 19 report?</p> <p>20 A You mean what's in Exhibit 66?</p> <p>21 Q Yes.</p> <p>22 A I don't believe they were.</p> <p>23 Q Were the interview notes provided to 24 Mr. Edelman?</p> <p>25 A I don't recall. I don't think so.</p>

# **Attachment 5**

Not Responsive

Not Responsive

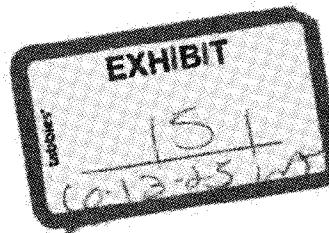
For the third candidate, Jean conducted no review. However, a Faculty Review Board review on the candidate was actually under way during the summer, prompted by a prior report on concerns about whether the candidate met the School's Community Values standard, which included a serious concern about a conflict of interest matter. As a result, reviews were undertaken by the FRB in 2015 and 2017, which discussed some conflict of interest disclosures for this candidate.

One question you might have is whether the concerns you raised about conflict of interest were comparable to those for the candidate whose case came before the FRB.

Privileged and Confidential

As I informed you earlier in the summer, I have begun alerting faculty up for review about our conflict of interest policy and encouraging them to reach out to Jean if they have any questions about their own situations. I also notified them that we would probably begin informal reviews of conflict of interest disclosures. I understand that we are in the process of hiring ...

However, it is less clear to me what elements of compliance with School policies should be formally incorporated in our promotions process. We have always worked cooperatively with faculty to help them become compliant with School policies. Only in egregious cases where faculty willfully and persistently violated our policies would the matter be raised with a review subcommittee or the FRB. Given the concern you raised did not fall into this category, it would



seem to contravene our established norms to raise the matter for this particular candidate and in this year. [REDACTED]

[REDACTED]

[REDACTED] I am happy to raise the question you raise on these matters with the full Appointments Committee once we have completed the cycle of cases this year. But I am very nervous about appearing to change the process in mid-cycle with notifying our colleagues.

Finally, in the interests of being transparent with our senior colleagues, I intend to share the reflections of the email with them.

Paul

# **Attachment 6**



Vol. I  
Pgs. 1-196  
Exs. 132-159

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS

BENJAMIN EDELMAN,

Plaintiff,

Civil Action No.  
2384CV00395-BLS2

V.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE,

Defendant.

DEPOSITION OF

PAUL HEALY

Zalkind Duncan & Bernstein LLP

65A Atlantic Avenue

Boston, MA 02110

June 13, 2025

9:30 a.m. - 4:27 p.m.

REPORTED BY: Lori J. Atkinson

Job No. 7309623

<p style="text-align: right;">Page 78</p> <p>1 about Ben Edelman in that time frame?</p> <p>2 A. I don't remember if we met together or whether</p> <p>3 we individually met with Nitin or not. I don't</p> <p>4 remember.</p> <p>5 Q. You don't recall a meeting between the FRB and</p> <p>6 you and Nitin?</p> <p>7 A. That it may well have taken place, but I don't</p> <p>8 remember.</p> <p>9 Q. On the top left there is a set of note -- sort of</p> <p>10 bullet point notes starting with move office, change</p> <p>11 assignment, and in the middle of that it says, Needs to</p> <p>12 be observed interacted, supported. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Was that something that you discussed as a need</p> <p>15 that Ben would have between 2015 and his review in 2017?</p> <p>16 A. Certainly if the goal was to put him in a</p> <p>17 position where he would be interacting with people and</p> <p>18 they would be able to then observe whether his</p> <p>19 interactions with staff in particular had changed.</p> <p>20 Q. Was there a plan at any point about who would be</p> <p>21 observing Ben during that period?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Below that --</p> <p>24 A. Let me backup. It wouldn't surprise me if Nitin</p>	<p style="text-align: right;">Page 80</p> <p>1 expressed to you about this time period between 2015 and</p> <p>2 2017?</p> <p>3 A. I think that everyone I talked to thought that</p> <p>4 whatever assignments Ben was asked to do had to be fair</p> <p>5 and given a fair chance of success.</p> <p>6 Q. What do you think was needed for the test to give</p> <p>7 him a fair chance of success?</p> <p>8 A. I can be maybe more explicit about some of them.</p> <p>9 In the LCA course, the LCA course faculty leader lead a</p> <p>10 discussion on the conflicting relationships between</p> <p>11 shareholders, employees, customers and society. And</p> <p>12 their legal responsibility to manage legally, ethically,</p> <p>13 economically to those. There is a lot of tension</p> <p>14 between those.</p> <p>15 The hope was that that would give -- put Ben in a</p> <p>16 situation where he would start to appreciate the wide</p> <p>17 range of different stakes and motivations that can arise</p> <p>18 and in leading a conversation would make him more open</p> <p>19 to different perspectives and the idea that one needs to</p> <p>20 be respectful of different points of view aside from</p> <p>21 one's own.</p> <p>22 In assigning him to work with moving his office,</p> <p>23 it was around the idea that he would be with a set of</p> <p>24 faculty or surrounded by a set of faculty who might not</p>
<p style="text-align: right;">Page 79</p> <p>1 had talked to the head of the LCA or the head of that</p> <p>2 committee to sort of give them a head's up to both</p> <p>3 provide guidance for Ben and to be willing to observe</p> <p>4 his demeanor and behavior. But I wasn't personally</p> <p>5 involved with that.</p> <p>6 Q. Did you discuss ever with Nitin whether that had</p> <p>7 happened?</p> <p>8 A. No.</p> <p>9 Q. Was the head of the LCA teaching group [REDACTED]</p> <p>10 [REDACTED]?</p> <p>11 A. Yes.</p> <p>12 Q. And the head of the academic technology steering</p> <p>13 committee was that [REDACTED]?</p> <p>14 A. I have thought it was initially -- it may have</p> <p>15 become that. Initially I thought it was Bob Dolan, but</p> <p>16 I may be wrong on that.</p> <p>17 Q. You didn't personally speak to either of those</p> <p>18 people?</p> <p>19 A. I did not.</p> <p>20 Q. Looking again at the bullet points, the second</p> <p>21 one from the bottom, it says, Needs a genuinely fair</p> <p>22 test. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall that being an idea that anyone</p>	<p style="text-align: right;">Page 81</p> <p>1 be quite as -- or who would have a different perspective</p> <p>2 of some of the activities that he engaged in the past</p> <p>3 and would give him a different perspective.</p> <p>4 In the case of the IT group that -- the strategic</p> <p>5 IT group membership, these are topics that he cared</p> <p>6 deeply about. And being on that committee would give</p> <p>7 him a chance to interact with staff and faculty and</p> <p>8 something that he cared deeply about. And where there</p> <p>9 had been concerns raised in the past, give him a chance</p> <p>10 to reshape the narrative.</p> <p>11 Then the coaching one was that when there were</p> <p>12 questions that could arise and judgment issues, there</p> <p>13 would be someone else that he could take advantage of to</p> <p>14 help him think through that who was independent.</p> <p>15 Q. How did you envision that question of whether he</p> <p>16 had in fact observed these lessons being evaluated?</p> <p>17 A. It was our recognition that there would need to</p> <p>18 be another review done and that the faculty review board</p> <p>19 would reconvene to assess whether these interactions</p> <p>20 that he has had since 2015 had the effect that we had</p> <p>21 hoped.</p> <p>22 Q. Did you have a vision of how that would be</p> <p>23 assessed by the FRB, though?</p> <p>24 MR. MURPHY: Objection.</p>