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COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS
Business Litigation Session

BENJAMIN EDELMAN,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Civil Action 2384CV00395-BLS2

**AFFIDAVIT OF DAVID A. RUSSCOL IN SUPPORT OF PLAINTIFF'S
MOTION FOR SANCTIONS FOR SPOILIATION OF EVIDENCE**

I, David A. Russcol, state and declare:

1. I am counsel of record for the Plaintiff in the above-captioned action.
2. Attached hereto as Attachment A is a spreadsheet containing information about the documents produced by Harvard in this litigation. Harvard's document productions have been loaded into the Everlaw e-discovery platform. The spreadsheet contains metadata exported from Everlaw concerning each of those documents, which ultimately comes from the data provided by Harvard along with its productions. In order, the columns of the first tab of the spreadsheet are:
 - A. The starting Bates number of the document;
 - B. The ending Bates number of the document;
 - C. The file type of the document;
 - D. The number of pages in the document;
 - E. The creation date of the document;
 - F. The date received (where provided);

- G. The custodian(s) from whom the document was produced;
- H. The sent date (where provided);
- I. The subject line (if applicable);
- J. Email recipients (if applicable);
- K. Email sender (if applicable);
- L. Email cc recipients (if applicable);
- M. A formula which calculates the number of recipients (which is zero if it is not an email);
- N. A formula which returns TRUE if the email sender includes Edmondson, Crispi, Cunningham, Reinhardt, Gilson, or Schlesinger (i.e., one or more FRB members or staff), and otherwise FALSE;
- O. A formula which returns TRUE if the To: line includes Edmondson, Crispi, Cunningham, Reinhardt, Gilson, or Schlesinger, and otherwise FALSE;
- P. A formula which returns TRUE if the CC: line includes Edmondson, Crispi, Cunningham, Reinhardt, Gilson, or Schlesinger, and otherwise FALSE;
- Q. A formula which returns TRUE if any of the previous three columns are TRUE (i.e., if any FRB member or staff was in the To:, CC:, or From: lines), and otherwise FALSE;
- R. A formula which returns TRUE if the date received is between July 1, 2015, and December 1, 2017, i.e., dates in which the FRB may have been reviewing Plaintiff, and otherwise FALSE;
- S. A formula which returns TRUE if Amy Edmondson is included in any of the From:, To:, or CC: lines of an email, and otherwise FALSE;
- T. A formula which returns 1 if Amy Edmondson is among the custodians who produced the document, and otherwise 0.

3. The second tab of the spreadsheet is an Excel PivotTable which, based on the data in the first tab, lists all documents produced by Harvard that are emails, include one or more FRB members or staff in the To, From, or CC lines, include Amy Edmondson in the To, From, or CC lines, and were received from July 1, 2015, to December 1, 2017. If more than one email with the same subject and the same timestamp is listed, those are grouped together (so that duplicate copies of the same message are counted only once). The column "Max of EdmondsonCustodian" is 1 if Amy Edmondson is listed as a custodian for any copy of each message, and 0 if she is not.

4. As reflected at the top of the second tab, Harvard produced 355 email messages where Amy Edmondson was a sender, recipient, or carbon copy recipient, and one or more FRB members or staff were included, from July 1, 2015, to December 1, 2017. Amy Edmondson was a custodian for only 128 of those messages, meaning that she retained 36% of the known messages she sent or received. Dividing those up by time period, Prof. Edmondson produced 27% of the known messages from 2015 and 2016 (29 out of 108), and 40% of the known messages from 2017 (99 out of 247).

5. Attached as Attachment B is a list of 51 responsive email messages that were deleted by all Harvard custodians, on which Prof. Edmondson was included. Plaintiff is aware that these messages exist because each message was quoted in at least one later message that was retained by at least one custodian. If these messages included any attachments, the attachments were not available and have not been produced. Including these 51 additional messages in the universe of known messages, Edmondson's production is 128 of 406, or 32%.

6. Attached hereto are the following additional documents, which are true and correct copies of, respectively, communications with Harvard's counsel, deposition transcript excerpts, deposition exhibits, and Bates-labeled documents exchanged in discovery, as indicated below:

<u>Attachment</u>	<u>Document</u>
C	Oct. 4, 2022, Letter from Plaintiffs' Counsel to Jennifer Kirby, Esq.
D	July 16, 2025, Letter from Kaela M. Athay, Esq., to Plaintiffs' Counsel
E	July 29, 2025, Email from Kaela M. Athay, Esq., to Plaintiffs' Counsel
F	Excerpts from Transcripts of Deposition of Amy Edmondson
G	Excerpts from Transcripts of Deposition of Benjamin Edelman
H	Excerpts from Transcripts of Deposition of Paul Healy
I	Excerpts from Transcripts of Deposition of Leonard Schlesinger
J	Excerpts from Transcripts of Deposition of Stuart Gilson
K	Deposition Exhibit 30
L	Deposition Exhibit 32
M	Deposition Exhibit 34
N	Deposition Exhibit 35
O	Deposition Exhibit 36
P	Deposition Exhibit 37
Q	BGE003554
R	BGE003555
S	BGE004016
T	BGE004019
U	BGE013289
V	BGE013393
W	BGE013396
X	HBS0015005
Y	HBS0015089
Z	HBS0015506
AA	HBS0016170
BB	HBS0018240
CC	HBS0021467
DD	HBS0022699

Signed under the pains and penalties of perjury this 21st day of November, 2025.

A handwritten signature in black ink, appearing to read "D. Russcol", written in a cursive style.

David A. Russcol

ATTACHMENT A

[NATIVE]

ATTACHMENT B

Emails Produced Only As Quoted In Other Messages

<u>Date</u>	<u>Subject</u>	<u>Sender</u>	<u>Source Document</u>
7/30/15 7:36 PM	Did you see this one?	Edmondson	HBS0015485
7/30/15 8:39 PM	Did you see this one?	Cunningham	HBS0015485
7/31/15 6:14 PM	letter	Cunningham	HBS0019251
10/4/15 3:09 PM	promotion related request	Healy	HBS0023343
10/7/15 10:23 AM	Confidential -- files	Cunningham	HBS0019566
10/7/15 3:02 PM	Confidential -- files	Edmondson	HBS0019566
10/7/15 4:55 PM	Confidential -- files	Cunningham	HBS0019566
10/8/15 9:17 AM	Confidential -- files	Edmondson	HBS0019570
10/18/15 9:52 AM	Report: confidential	Reinhardt	HBS0023393
10/18/15 10:15 AM	Report: confidential	Edmondson	HBS0023393
10/18/15 12:22 PM	Report: confidential	Reinhardt	HBS0023393
10/18/15 12:32 PM	Report: confidential	Edmondson	HBS0023393
10/18/15 12:33 PM	Report: confidential	Reinhardt	HBS0023393
10/20/15 5:24 PM	letter excerpts	Cunningham	HBS0019581
10/22/15 2:27 PM	exhibit to include?	Edmondson	HBS0019686
10/22/15 3:54 PM	Updated files	Edmondson	HBS0015168
10/22/15 10:12 PM	Updated files	Schlesinger	HBS0015168
10/22/15 10:14 PM	Updated files	Edmondson	HBS0015168
10/22/15 10:21 PM	Updated files	Edmondson	HBS0015168
10/23/15 2:50 AM	Updated files	Reinhardt	HBS0015168
10/27/15 1:17 PM	Today	Edmondson	HBS0019733
7/5/17 2:45 PM	draft note to Ben	Edmondson	HBS0020386
7/6/17 8:30 AM	am ready to send other document to Ben	Edmondson	HBS0020398
7/6/17 3:23 PM	Receipt Notification: NoteToBenEdelman.docx RE: FRB Update and Request	Edmondson	HBS0023558
7/25/17 4:49 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	[REDACTED]	HBS0015856
7/25/17 4:51 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015856
7/25/17 4:51 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	[REDACTED]	HBS0015856
7/25/17 4:53 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015856

7/25/17 4:54 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	[REDACTED]	HBS0015856
7/25/17 4:55 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015856
7/25/17 9:48 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015859
7/25/17 9:59 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015864
7/25/17 10:05 PM	FRB Call: [REDACTED] [REDACTED] and Amy Edmondson	Edmondson	HBS0015868
8/1/17 3:36 PM	FRB Update and Request	Edmondson	HBS0016652
8/14/17 8:11 AM	notes	Edmondson	HBS0024311
8/14/17 12:29 PM	notes	Gilson	HBS0024311
8/14/17 5:52 PM	next steps	Edmondson	HBS0024373
8/14/17 7:02 PM	next steps	Edmondson	HBS0024374
8/17/17 4:01 PM	am assuming you got Len's notes too	Edmondson	HBS0024377
8/31/17 5:10 PM	Updated language	Cunningham	HBS0020530
8/31/17 6:49 PM	Updated language	Edmondson	HBS0020530
9/22/17 11:27 AM	Made one or two comments and micro edits.... Use this if you haven't already opened prior	Schlesinger	HBS0018582
10/7/17 11:43 AM	Virtually unchanged since Len's	Schlesinger	HBS0020801
10/7/17 11:44 AM	Virtually unchanged since Len's	Edmondson	HBS0020801
10/8/17 9:53 AM	Virtually unchanged since Len's	Edmondson	HBS0018745
10/8/17 9:54 AM	Virtually unchanged since Len's	Schlesinger	HBS0018745
10/8/17 9:59 AM	Virtually unchanged since Len's	Edmondson	HBS0018745
10/8/17 12:36 PM	Virtually unchanged since Len's	Schlesinger	HBS0018745
10/8/17 12:45 PM	cleaned up again... some typos fixed...	Schlesinger	HBS0018759
11/12/17 11:02 AM	Phone call or meeting?	Gilson	HBS0016159
11/12/17 10:45 PM	Phone call or meeting?	Gilson	HBS0016167

ATTACHMENT C



October 4, 2022

Via Electronic Mail (jennifer_kirby@harvard.edu)

Jennifer Kirby, Esq.
Harvard University Office of the General Counsel
Smith Campus Center
1350 Massachusetts Avenue, Suite 980
Cambridge, Massachusetts 02138

Re: Benjamin Edelman HBS Review by Faculty Review Board

Dear Attorney Kirby,

We represent Benjamin Edelman, a former Harvard Business School Associate Professor who was denied tenure in 2017. Professor Edelman's work at HBS was brilliant and unusually clearly tenure-worthy by the institution's own high standards. He was not awarded tenure, however, due to the mishandling of his review by a Faculty Review Board ("FRB") in violation of the governing contract ("Principles and Procedures for Responding to Matters of Faculty Conduct" or "P&P"). We write now to ask Harvard to make this matter right without forcing Professor Edelman to resort to litigation.

The chronology in brief: After negative publicity about Professor Edelman in 2014, in 2015 HBS appointed an FRB to consider whether he had engaged in misconduct that should affect the tenure process. Following the 2015 review, the Standing Committee of the Appointments Committee and Edelman agreed on a two-year delay in consideration of his tenure case. In 2017, with the reopening of the tenure case, the FRB launched a fresh probe. Instead of investigating new allegations or following up on the allegations that were used to justify its 2015 inquiry, the 2017 FRB made itself a clearinghouse for all possible grievances against Edelman. Contrary to the P&P, it did not give Edelman notice of the allegations against him or even basic information as to their substance, and failed to give either Edelman or the HBS Appointments Committee access to evidence that it gathered. By its own admission, it did "not ... investigat[e]" any allegation, but instead merely collected various opinions, a far cry from the "investigation" that P&P demands. Ultimately, the 2017 FRB report offered a laundry list of new allegations that Prof. Edelman had no meaningful opportunity to rebut. Despite the inflammatory and incorrect report, the faculty vote in Edelman's promotion case was still squarely in his favor. Nonetheless, directly as a result of the FRB's report, the vote failed to reach the two-thirds majority that Dean Nohria required in order to advance the tenure case.

Professor Edelman had a right under his contract with HBS to expect that the tenure process, including the FRB review, would be conducted in good faith and with basic fairness, and that the FRB review would comply with the governing P&P. Instead, HBS treated the FRB process as a

limitless forum for airing of petty grievances against Edelman, in violation of its own procedures.

1. Professor Edelman's Background

Professor Edelman joined the HBS faculty in 2007, with a summa cum laude A.B. from Harvard College, a J.D. from Harvard Law School, and a Ph.D. in Economics from the Harvard Graduate School of Arts and Sciences. He brought an unusually diverse set of research and professional interests, activities, and skills to his role at HBS. His research focused on competition, policy, and fraud in the contexts of online market design and networked businesses. This work included research focused on the game theory of online advertising, strategic behavior and fraud in online advertising, the special concerns raised by the largest online platforms, and strategies for fixing various aspects of online systems and services. In addition to academic research into these questions, Edelman used his unique background as a lawyer and advocate to focus on concrete strategies for improving the systems he studied, thinking creatively about how to make them fairer and better, for companies operating in online markets and for consumers. To wit, he was instrumental in selling a successful startup; his research about online malfeasance put three criminals in jail; less than two years into college, he was a sought-after expert witness in federal litigation making national headlines. He was and is the interdisciplinary jack-of-all-trades that HBS seeks and treasures.

Between 2007 and 2014, Professor Edelman thrived at HBS. His first major article was recognized as the best article in the intersection of computer science and economics *in a decade*. His teaching cases were widely used in other schools, and repeatedly awarded best in their categories. In 2010, Dean Nohria generously praised his efforts on online privacy in a lovely hand-written note, then in 2013 granted him the prestigious Marvin Bower fellowship. A Nobel laureate cited one of Edelman's papers in his prize lecture. In addition to these academic successes, he was an educational innovator, the first HBS faculty member to devise a way to use digital tools to modernize and replace classroom chalkboards. In 2012, he was promoted from Assistant Professor to a four-year appointment as Associate Professor, a change that followed a review of his work (including research, course development, teaching effectiveness, and contributions to the community) and a finding that there was a realistic expectation that he would meet the conditions for a tenured appointment after that period. During that review, Edelman received extremely favorable feedback on his work and on his chances for receiving tenure.

2. Negative Publicity in 2014

In January 2014, some commentators raised concerns about a blog post that Professor Edelman had written about the company Blinkx and its deceptive "adware." Edelman had written about Blinkx and its predecessors for nearly a decade, but he updated this research in part pursuant to a consulting agreement with a company that wanted to know Blinkx's current practices. Under this agreement, Edelman was free to publicize his findings. His blog post caused investor and public concern about Blinkx's practices. Rather than engage with the substance of the allegations, Blinkx hired publicists to attack Edelman and try to present his writing as some kind of conflict. In fact there was no conflict. For the prior decade and a half, Edelman had exposed bad actors like Blinkx; he was the world's leading expert on adware, serving dozens of clients including

eBay, New York Times, Verizon, and the United States of America. The post and its disclosure statement fully complied with HBS requirements expressed in the School's Conflict of Interest policy, and HBS never found any violation of that policy. Nonetheless, Edelman expanded the disclosure statement in response to the questions raised at the School's request .

More significant negative publicity came in December of 2014, when Professor Edelman was the subject of a series of derogatory articles on the website Boston.com regarding his communications with the Brookline Chinese restaurant Sichuan Garden. Edelman realized that the restaurant was advertising lower prices on its website than it actually charged consumers when they picked up their food; he raised concerns about this practice in emails to the restaurant's owner. Edelman's reasonable goal in this email correspondence was consumer protection; he demanded that the restaurant not only update its online prices but refund past overcharges which, cumulatively, were significant. Nonetheless, as Edelman later acknowledged, the tone of his emails was disproportionate and unfortunate. At the School's request, Edelman publicly apologized.

3. 2015 Faculty Review Board

Professor Edelman was scheduled for review for possible promotion to tenure in 2015. On July 16, 2015, he received notice from Senior Associate Dean of the Faculty Paul Healy that the Business School had convened an FRB to examine concerns about his conduct. The FRB process was new, having been approved by HBS faculty in April 2015 to establish a process to investigate allegations of "egregious, or persistent and pervasive," "faculty misconduct." In the context of tenure determinations, an FRB may be used to investigate "serious questions" about a candidate's conduct, and any such investigation must follow the P&P.

On July 31, 2015, Professor Amy Edmondson, the chair of the FRB, wrote to Professor Edelman with a "summary of the scope" of the FRB's proposed review. Although the P&P requires the chair of the FRB to draft a "summary of the allegation" to be investigated, Edmondson was decidedly unspecific. She wrote that the FRB would consider two specific incidents: "your blog posting about Blinkx," and "your interaction with Sichuan Garden." But in addition, she wrote, the FRB would consider "concerns . . . about your interactions with staff and other colleagues at the School, including around case copyright, travel arrangements, business cards, and classroom projectors." She gave no information about the details of these concerns, and did not allege that Edelman had violated any specific policies of the Business School in any of these interactions.

Neither Dean Healy nor Professor Edmondson gave Professor Edelman any notice as to the identity of the members of the FRB, nor any chance to object to their selection. Edelman would learn only when he was interviewed, well into the process, that the senior staff member on the FRB was the same staff member with whom he had disagreed about a reduction in the size of classroom projection screens—a disagreement that, probably not coincidentally, was one of the interactions that the FRB elected to investigate. Meanwhile, the staff member who denied Edelman's request to put the URL of his personal website on his business cards (apparently the "business cards" dispute referenced in the July 31, 2015 letter) was the primary staff support person for the FRB.

Professor Edelman submitted an initial statement to the FRB after receiving Professor Edmondson's letter, and agreed to be interviewed. In October 2015, the FRB issued a draft report. That report concluded that Edelman had not upheld the School's Community Values in the Blinkx or Sichuan Garden incidents, or in his interactions with others at the School. The report did not address either "business cards" or "copyright" issues at all. In addressing the projector dispute and travel arrangements, it relied on conclusory allegations and misleading, selectively chosen emails. In responding to the report, Edelman provided a fuller set of email correspondence that effectively rebutted the claim that he had acted inappropriately either in advocating against reduction of projector screen sizes in HBS classrooms or by assisting colleagues with their travel arrangements.

The 2015 FRB provided its report to the Standing Committee of the Appointments Committee, along with Professor Edelman's responses. Edelman was informed by colleagues who were present that some members of the committee were irritated by the report's focus on trivial instances of friction between Edelman and staff members at the school, particularly where Edelman was able to demonstrate that he was not meaningfully at fault in such interactions.

Ultimately, the Standing Committee recommended that Professor Edelman's tenure case be delayed for two years. During that time, he was asked to take a number of steps to demonstrate that he had internalized the lessons from the 2014 incidents, including joining the Leadership and Corporate Accountability ("LCA") teaching group, teaching LCA, relocating his office, and joining the Academic Technology Steering Group. Edelman undertook and excelled at each of these tasks.

4. 2017 Faculty Review Board

In 2017, it seemed a near certainty that Professor Edelman would be awarded tenure. His academic record, already excellent in 2015, had only improved. He had undertaken the difficult assignment of teaching LCA, with extraordinary results in terms of student feedback, classroom engagement and energy, and contribution to the "teaching group" of other faculty teaching the same material. He had worked hard to stay on good terms with members of the HBS community, including staff, and had successfully become a valued member of the LCA team. He had continued to devise creative solutions to problems in and out of the classroom at HBS, including materially assisting a colleague with a serious vision disability by inventing a technical innovation that allowed her to call on students in class despite her inability to see their raised hands. He was not the subject of any further negative publicity. In March of 2017, he wrote a thoughtful letter to the FRB describing what he had learned from the events it criticized in 2015, and the steps he had taken to successfully avoid any recurrence of such events. He also provided a long list of witnesses who could attest to this progress.

On July 6, 2017, Professor Edmondson wrote to Professor Edelman and stated that the FRB was reconvening and would be examining the following questions:

- "Whether you understand the aspects of your conduct—regardless of your intent—that made them problematic;
- Whether there is sufficient evidence of changed behavior;

- Whether there is a reasonable expectation that your changed behavior will be sustained in the future.”

She asked Professor Edelman to provide detailed examples of *how* he changed his thinking about activities and interactions with staff. And she asked for a shorter list of witnesses. Edelman fully complied with her requests for information.

On September 1, 2017, after the FRB had already interviewed Professor Edelman, Professor Edmondson wrote to Edelman to dramatically change the scope of the FRB’s inquiry. Suddenly, the FRB was examining, not Edelman’s 2014 activities or his subsequent learnings, but his outside activities. For one, Edmondson asked for a list of *all* of his outside activities from the past two years and an accounting of when and where he thought about disclosures or seeking approval from the dean. In particular, she asked Edelman to discuss class action litigation in which he was representing a class of plaintiffs suing American Airlines, and an article addressing the implications for consumers of consolidation among online travel agencies. She gave him just one week to defend his past two years’ worth of outside activities. At the end of the week, Edelman provided the requested information, noting that another faculty member involved in the litigation against American Airlines had in fact informed the dean about the matter, and pointing out that the OTA project’s disclosure had been approved by the Associate Dean for Faculty and Academic Affairs (who also served as staff to the FRB).

The FRB’s draft report, issued on or about September 27, 2017, found that members of Professor Edelman’s own unit were “uniformly and unambiguously enthusiastic about Professor Edelman as a colleague,” and gave concrete examples of the ways that he supported their own work and teaching. They also universally agreed that his conduct had changed and that he had become more reflective since 2015. Staff and colleagues from outside Edelman’s unit also offered extremely positive feedback. However, unspecified individuals interviewed expressed concern that Edelman was not sufficiently open to changing his mind; typical of these comments was that he “has worked on being less harsh, but his views are still quite clear to those who hear him.” Although the P&P required the FRB to disclose the evidence it gathered, the 2017 draft report treated all comments as anonymous. It did not disclose how many of the 21 people interviewed had expressed these concerns, or whether they were faculty or staff of the School. (It is possible that one or more comments came from members of the FRB or its supporting staff.) Most significantly, the FRB presented the comments without any context; they are essentially personal attacks on Edelman’s character, divorced from any facts that would allow readers to evaluate whether he was actually right or wrong. Without those facts and that context, Edelman could not offer a compelling reply to clear his name.

The draft report’s most serious criticism was the following:

What concerns the FRB most is the intimation that Professor Edelman manages up, interacting differently with at least some staff than he does with faculty colleagues, and differently with staff depending on whether other faculty members are present during the exchange.

Contrary to the requirements of the P&P, the FRB did not present *any* evidence supporting this assertion beyond a single anonymous, context-free quote that “With his superiors, he has more of a filter.” Such a serious allegation especially demands that the respondent be provided with the evidence that P&P promises. It is fundamental to our system of justice—the precepts of which

apply at least in part to proceedings such as this one—that an accused have a decent amount of information that gives notice and guidance as to how to respond.

The draft report also discussed, at length, purported concerns about Professor Edelman's outside activities. In particular, the report suggested that Edelman should have disclosed, in his written work about Google, that he had consulted with Microsoft in the past. Edelman learned of these allegations for the first time when he reviewed the draft report; they were not included in the scope of the FRB's review as framed on July 6, 2017, discussed in his FRB interview, or disclosed to him in the FRB's request for more information on September 1, 2017. In fact, his work for Microsoft did not require disclosure under the School's Conflict of Interest Policy; none of the work product at issue was funded by Microsoft, and in fact when the articles in question were written, Edelman did not have any ongoing relationship with Microsoft, financial or otherwise. The FRB's choice to raise questions about these disclosures only at the very end of its process violated the P&P's requirement that the FRB inform Edelman of the allegations against him at the outset of the FRB process, when he could better have mustered evidence to oppose the allegations and would more likely have been able to convince the FRB, or the Appointments Committee, that the allegations were incorrect.

Finally, the FRB complained about Professor Edelman acting as legal counsel for the suit against American Airlines, in which another HBS professor was the named plaintiff. The FRB went so far as to question whether "activities such as this . . . should be intertwined with Harvard and Harvard Business School," on the grounds that they could hypothetically lead to negative publicity for the school. In fact, however, the School has an established Policy on Outside Activities of the Faculty, and it does not prohibit such activities. Furthermore, shortly after joining the faculty, Edelman specifically sought advice about how to handle outside legal activities (a topic not discussed in any HBS policy, since most business school professors are not also practicing lawyers). A senior staff person—remarkably, staff to the FRB—instructed Edelman that acting as a lawyer was a permissible outside activity, and that it did not require any special treatment or reporting. In fact, in any case, the media coverage of the filing of the airline lawsuit was quite positive, and subsequent coverage of millions of dollars of refunds predictably even more so. The FRB's speculation of negative media publicity was, with time, proven incorrect. An orderly process—beginning with an affirmative allegation, and with no surprise allegations at the last minute—would more likely have gotten this right.

5. Denial of Tenure

The FRB's 2017 final report was provided to the Appointments Committee, made up of HBS tenured faculty. It was the only negative factor before that Committee; members of the Committee contemporaneously told Professor Edelman that evaluations of his research from both internal and external letter-writers were effusive, his teaching was well-regarded, and his impact on practice was exceptional.

Dean Nitin Nohria took the position, after the faculty's vote on Professor Edelman's candidacy for tenure, that he would advance the case for tenure to the University's President only if two-thirds of the faculty voted in favor of tenure. Edelman was informed that 43 of 73 voted in favor, just short of the required supermajority. He was also informed those who opposed his tenure

universally indicated that their opposition was based on the FRB's report. Edelman was not granted tenure and his appointment at HBS was not renewed.

6. Breach of contract

It is our professional opinion that Professor Edelman has strong legal claims against the University for breach of contract based on this sequence of events. The FRB failed to follow its own rules with respect to framing and notification of the allegations, by its own admission failed to conduct an investigation, failed to share the evidence it gathered with both Edelman and the Appointments Committee, and violated applicable legal principles requiring, at the least, basic fairness.

First, the P&P instructs that the FRB process may be invoked only where the allegations against a faculty member rise to a specific level of seriousness. The P&P states that it may be used to address "instances of *egregious* behavior and actions, or incidents that indicate a *persistent and pervasive pattern* of problematic conduct," (emphasis in original) in situations where "a more structured procedure may be needed to investigate a concern and determine whether misconduct has occurred." That the FRB here was convened in the context of the tenure process does not change this bar; where "no *serious* questions about conduct are raised," a promotion case should proceed without an FRB investigation. Even assuming that the Blinkx and Sichuan Garden incidents, which were fully investigated and addressed in 2015, rose to the required level, the School's 2017 use of the FRB process as a forum for generic evaluation of aspects of Professor Edelman's personal character was illegitimate, ruled out by the narrower scope specified by the P&P, and a breach of contract.

Second, in opening a proceeding, the P&P requires that an FRB "begin[] with drafting an allegation" and providing a "summary of the allegation" to the target of the investigation. (This requirement of a concrete written allegation explicitly applies even where the review occurs in the context of a tenure case.) In 2015, the FRB followed this requirement with respect to the Blinkx and Sichuan Garden matters. But the 2015 FRB failed to articulate any actual allegation meriting investigation with respect to the nebulous concerns it raised about Edelman's interactions with staff. For one, the FRB raised four such subjects in exactly *two words* each (obviously inadequate to make an actual allegation); tellingly, the FRB ultimately addressed two of these subjects in its report, but two others fell by the wayside without explanation. In 2017, the FRB did not provide Edelman with *any* notice of new allegations against him, instead at the outset suggesting that its role was to examine whether he had learned his lesson from the 2014 events. The 2017 FRB gave notice only of a generalized and subjective inquisition, not an allegation of misconduct that could be supported or rebutted.

Third, the FRB failed to "investigate" as the P&P required. The P&P instructs that an FRB must "investigate" "the allegation," through "factual inquiry, interviews, and the review of materials." Instead of the evidence-based review required, the 2017 FRB collected anonymous opinions, gossip, and innuendo. The 2017 FRB report stated that it "was not an investigation." But the P&P *required* the FRB to undertake an investigation, not simply provide a forum for airing of grievances about Professor Edelman.

Fourth, the P&P required the FRB to disclose the evidence it gathered during its inquiry to Professor Edelman, and to give him an opportunity to respond to that evidence. The P&P also required the FRB to include the evidence it gathered with its report, which would allow readers of the report to evaluate the evidence and reach their own conclusions. Closely related, the P&P insists that “Allegations should be articulated in writing and evidence presented clearly.” The FRB violated these contractual requirements when it failed to share, with Edelman or with the Appointments Committee, the identities of the witnesses it interviewed, the substance of their testimony, or the context for their remarks. Instead, the FRB offered a bulleted list of conclusory personal attacks, devoid of both names and context. Nothing in the P&P provides for anonymous witnesses or permits the FRB to limit its presentation of testimony to isolated snippets without context. The P&P simply does not permit the anonymized fishing expedition that the FRB undertook in 2017. Nor is there any practical excuse for the FRB’s failures. The FRB knows who it interviewed, and it could have told Edelman and its readers. Furthermore, we understand that interviews with the FRB were recorded, and recordings or transcripts could easily have been shared.

Fifth, the P&P required the FRB to confine itself to the allegation it articulated at the outset of the process. The P&P instructs that an FRB must investigate “the allegation”—necessarily meaning the allegation that it gave the respondent notice of, and an opportunity to respond. There was no excuse here for the FRB’s sudden change in focus; the topics the FRB added at the last minute (including Professor Edelman’s outside activities and his law practice) were at all times known to the FRB, and were required to be included at the outset if at all. Instead, in reliance on Professor Edmonson’s July 6, 2017 letter, Professor Edelman participated in the 2017 FRB process with the understanding that its purpose was to assess his progress since 2015, particularly with regard to his compliance with the requirements that he agreed to at that time. Only in Edmonson’s September 1, 2017 letter did the FRB ambush him with a series of new subjects. By that point his response was necessarily hurried by the tight timetable the FRB imposed, and the FRB declined to meaningfully revise its draft report no matter the errors Edelman pointed out. The P&P rules out this kind of fishing expedition and this haphazard and last-minute change in focus and scope.

These numerous departures from the governing procedures went to the heart of the FRB process’s fairness and undermined its ability to find the truth. The School’s conduct here did not remotely comply with the black letter of the P&P. Nor did the School’s conduct meet the “standard of reasonable expectation,” which here asks what meaning the university should reasonably expect a faculty member to give to the written terms of the P&P. *See, e.g., Sonoiki v. Harvard Univ.*, No. 20-1689 p. 20 (1st Cir. 2022); *Berkowitz v. President & Fellows of Harvard Coll.*, 58 Mass. App. Ct. 262, 269 (2003) (citing *Schaer v. Brandeis Univ.*, 432 Mass. 474, 478 (2000)). Nor did the School’s conduct comply with its underlying duty of good faith and fair dealing, which required it to conduct the FRB proceedings with “basic fairness.” *See Schaer*, 432 Mass. at 481. Where HBS staffed the FRB with people who had grievances against Professor Edelman, gave him no opportunity to object to its membership, and, we believe, based its conclusions in significant part on those members’ personal gripes and prejudices, the process cannot be said to have complied with basic fairness.

If this matter proceeds to litigation, we expect that a court will readily find that the 2017 FRB violated the School's contract with our client. We are also confident that discovery will bear out our understanding that the FRB's report was the overwhelming reason that members of the Appointments Committee gave for voting against Edelman's tenure, and was the clear reason that Professor Edelman's candidacy was not supported by the two-thirds majority that Dean Nohria required.

7. Request for Preservation of Relevant Documents

We are aware that you have previously corresponded with Professor Edelman about his concerns about the FRB and tenure process in his case, and that he has asked you to preserve documents related to this matter. We now reiterate that request and ask specifically that you ensure that the following documents, and any other legally relevant documents, are preserved.

- Documents, notes, communications, letters, emails, reports or records created by any Harvard employee related to Professor Edelman's candidacy for tenure or the 2015 and/or 2017 FRB processes, including but not limited to internal and external evaluations of Edelman and his work and documentation of the vote of the Appointments Committee.
- Documents, audio or video recordings, notes, memoranda, letters, reports, records, transcripts or summaries of all interviews conducted by the 2015 and/or 2017 FRB processes.
- Communications from or to any Harvard employee, staff member, or administrator concerning Edelman's candidacy for tenure or the FRB process.

Professor Edelman's October 19, 2021 letter specifically alerted you that some relevant documents might be stored on the hard drives of individual faculty and staff, not on centralized servers. Your reply of October 29, 2021 did not address that fact. We would appreciate your explicit confirmation of the steps taken to assure that documents are preserved.

8. Conclusion

HBS's failure to follow its own procedures, , its refusal to provide basic fairness during the FRB review, and the bad faith in which it undertook that process have deeply harmed Professor Edelman's career. Those failures also harmed the School itself; Edelman's record demonstrates his extraordinary qualification for the role he sought. Imagine how much teaching and learning during the COVID lockdown would have benefited from Edelman's creativity, tech savvy, and decade of experience using advanced technology for teaching.

As you know from prior correspondence with him, Professor Edelman has considered his options in this matter for some time. At this point, he is prepared to pursue his claims in court in order to seek specific performance of the contractual rights that the University disregarded.

We believe it is in the parties' interests to discuss a possible resolution to this matter before we file suit. We look forward to speaking with you, and, we suggest, meeting in person to see whether there is any prospect of resolving this matter without litigation.

Sincerely,

A handwritten signature in cursive script, reading "Ruth O'Meara-Costello". The signature is written in dark ink and is positioned above the printed name.

Harvey Silverglate
Ruth O'Meara-Costello
David A. Russcol

ATTACHMENT D



Kaela M. Athay
Manatt, Phelps & Phillips, LLP
Direct Dial: (617) 646-1449
KAthay@manatt.com

July 16, 2025

VIA E-MAIL

Ruth O'Meara-Costello
Law Office of Ruth O'Meara-Costello
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(617) 658-4264
ruth@ruthcostellolaw.com

Harvey A. Silvergate
David A. Russcol
Zalkind Duncan & Bernstein LLP
65A Atlantic Avenue
Boston, MA 02110
(617) 742-6020
drusscol@zalkindlaw.com

Dear David and Ruth:

We are writing to respond to the inquiries in David's April 24, 2025 letter, David's May 6, 2025 email, David's May 30, 2025 email, David's June 16, 2025 email, and Ruth's June 20, 2025 email.

Questions Concerning Litigation Holds and Documents Produced from "Purges" Folders

Litigation holds were put in place on the email accounts of Harvard's 11 custodians on the following dates:

- Jean Cunningham - 8/24/2021
- Amy Edmondson - 8/24/2021
- Paul Healy - 8/24/2021
- Nitin Nohria - 8/24/2021
- Angela Crispi - 2/24/2023
- Stuart Gilson - 2/24/2023
- Forest Reinhard - 2/24/2023
- Len Schlesinger - 2/24/2023
- Max Bazerman - 8/17/2023
- Kathleen McGinn - 8/17/2023
- Brian Hall - 6/26/2024



July 16, 2025

Page 2

Once a litigation hold is in place, items are preserved indefinitely, even when an item is deleted. To date, we have been unable to determine the identity of the user or the dates of any actions that resulted in the documents being produced from “Purges” folders. To the extent our continuing review provides additional information, we will provide an update.

As to the “low retention rate” of Prof. Edmonson’s emails, what Harvard has produced from her custodial file reflects relevant and responsive items collected from her email box that hit on the agreed upon search terms and any additional searches done in response to conferrals between the parties.

Havard confirms that the Litigation Holds it has placed on custodians’ accounts remain in place.

Questions Concerning Documents from Specific Custodians, Calendar Entries, and Other Issues

Prof. Gilson

As noted at the June 26 meet and confer, Prof. Gilson has conducted a search in his Comcast account for “Edelman” and observed no responsive hits.

Prof. Schlesinger

As we noted at the June 26 meet and confer, Prof. Schlesinger confirmed that he does not have a folder on his computer for the FRB, but was referring to an email subfolder. We collected his email box and have produced items that were relevant and responsive based on search term hits and additional searches run in response to conferrals between the parties.

Dean Healy

We have confirmed with Prof. Healy that the iPad he used during the relevant time period was wiped by him when his service as Senior Associate Dean ended in 2018. Prof. Healy has conducted a search of his personal Gmail account for “Edelman” and found no emails related to Plaintiff’s cases.

Dean Crispi

We have conducted additional searches of Dean Crispi’s and other custodians’ files related to Sichuan Garden communications and notes, and produced any relevant and responsive documents earlier today.

Dean Cunningham

We have conducted additional searches of Dean Cunningham’s notes (including handwritten notes and electronic notes). We have not found notes from the August 14, 2017 FRB interview of

manatt

July 16, 2025

Page 3

Plaintiff. However, we did locate certain other relevant and responsive documents and produced these earlier today.

Communications Related to 2017 FRB Interviews

We have also conducted searches for communications among Deans Crispi and Cunningham and Profs. Edmondson, Gilson, and Schlesinger related to 2017 FRB interviews, and produced relevant and responsive documents earlier today.

Communications Between Dean Healy, Dean Crispi, and Rae Mucciarone Related to Concerns for Tenure Candidates

We have also conducted a search of Deans Crispi's and Healy's custodial files for notes or communications related to communications with Rae Mucciarone regarding conduct concerns for tenure candidates. We located no responsive documents.

Calendar Entries

We have previously produced relevant calendar entries that were responsive to the agreed upon search terms. We have also conducted additional searches of the calendars for Deans Cunningham and Crispi and Profs. Edmondson, Gilson, and Schlesinger for the 2017 period during which the FRB was active prior to the issuance of its draft report to Plaintiff. We produced any relevant and responsive documents from those searches earlier today.

Additional Custodians

Harvard objects to adding additional custodians at this stage of discovery, including Liz (Connolly) DiCiccio.

Sincerely,

Kaela M. Athay

Kaela M. Athay

cc: Martin F. Murphy

ATTACHMENT E

David Russcol

From: Athay, Kaela <KAthay@manatt.com>
Sent: Tuesday, July 29, 2025 5:59 PM
To: David Russcol; Ruth O'Meara-Costello (forward)
Cc: Murphy, Martin
Subject: RE: Edelman v. Harvard - Harvard's opening content for discovery letter to court

David and Ruth,

In response to your opening content of the joint discovery letter, we intend to produce HBS0023965 with the redactions in the top email of the chain removed. The redactions in the rest of the chain will remain.

As to your July 21 email, our understanding is that HBS's ability to preserve, retain, and view the audit logs of forensic metadata regarding which user deleted and/or purged emails and when beyond the 90-day default retention timeframe depends on HBS electing to configure an audit retention policy with Microsoft that allows retention of such logs beyond 90 days, and having in place an advanced eDiscovery license. HBS has not configured an audit policy that goes beyond the default retention timeframe and does not have an advanced eDiscovery license in place. Therefore, the forensic metadata you seek is not available.

We have also found that, of the documents collected from Amy Edmondson that were from her Deleted Items or Purges email file paths, over 99% of them were not responsive to search terms or additional searches performed in response to additional requests.

As to the timing of the production of the specific documents you referenced, while these documents do reference "FRB", the agreed-upon search term was "Edelman" and ("FRB" or "Faculty Review Board"). Since these documents did not include a reference to "Edelman" they were not returned when the search terms were initially applied to the database.

Finally, we believe we have already conducted meet and confers covering all of these issues. We further believe that Harvard's reasoning concerning when to put litigation holds in place is protected by the attorney-client and work product privileges.

Kaela Athay
(She/They)
Associate

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From: David Russcol <drusscol@zalkindlaw.com>
Sent: Wednesday, July 23, 2025 5:50 PM

To: Athay, Kaela <KAthay@manatt.com>; Ruth O'Meara-Costello (forward) <ruth@ruthcostellolaw.com>
Cc: Murphy, Martin <MFMurphy@manatt.com>
Subject: RE: Edelman v. Harvard - Harvard's opening content for discovery letter to court

[EXTERNAL] Please do not reply, click links, or open attachments unless you recognize the source of this message and know the content is safe.

Kaela and Marty—

Attached is our opening content. We'll have to jointly figure out what kind of formatting makes sense.

Due to the agreed schedule, this includes a section on document retention about which we have not yet conferred, recognizing that Marty is away. We are happy to talk next week and make any needed modifications in light of that discussion. This does not yet include a section about Prof. Edmondson's email purges, as we are waiting for further clarification on that, and it may or may not be something the Court needs to address.

Best,

David A. Russcol	(857) 256-8720
Partner	drusscol@zalkindlaw.com
(he/him/his)	65A Atlantic Ave., Boston, MA 02110



From: Athay, Kaela <KAthay@manatt.com>
Sent: Wednesday, July 23, 2025 4:56 PM
To: Ruth O'Meara-Costello (forward) <ruth@ruthcostellolaw.com>; David Russcol <drusscol@zalkindlaw.com>
Cc: Murphy, Martin <MFMurphy@manatt.com>
Subject: Edelman v. Harvard - Harvard's opening content for discovery letter to court

Ruth and David,

Attached is Harvard's opening content for the Parties' discovery letter to the court.

Thanks,

Kaela Athay
(She/They)
Associate

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ATTACHMENT F

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK SUPERIOR COURT
BUSINESS LITIGATION SESSION

BENJAMIN EDELMAN,

Plaintiff,

v.

Civil Action

PRESIDENT AND FELLOWS OF

2384CV00395-BLS2

HARVARD COLLEGE,

Defendant.

VIDEOTAPED DEPOSITION OF

AMY EDMONDSON

DATE: Monday, April 21, 2025

TIME: 9:37 a.m.

LOCATION: Zalkind Duncan & Bernstein LLP

65A Atlantic Avenue

Boston, MA 02110

REPORTED BY: Jared Reding

<p style="text-align: right;">Page 26</p> <p>1 point?</p> <p>2 A It will begin it -- the fifth -- the third</p> <p>3 bullet point says "It will begin its work excluding</p> <p>4 collegueship."</p> <p>5 Q Right. And then looking at the fourth</p> <p>6 bullet point --</p> <p>7 A And then it says "It will prepare its report</p> <p>8 and recommendation including its vote based on the</p> <p>9 criteria excluding collegueship and adherence to</p> <p>10 community values." It also says "The FRB will give</p> <p>11 the report to the subcommittee and standing</p> <p>12 committee."</p> <p>13 Q So is your understanding of what's supposed</p> <p>14 to happen that the FRB prepares a report that</p> <p>15 addresses collegueship and community values, and the</p> <p>16 subcommittee or the standing committee prepares a</p> <p>17 report addressing the other criteria, and then both of</p> <p>18 those reports are provided to the appointments</p> <p>19 committee?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: I think that's right.</p> <p>22 BY MR. RUSSCOL:</p> <p>23 Q So because the fourth bullet point says that</p> <p>24 the subcommittee or standing committee are going to be</p> <p>25 looking at the criteria excluding collegueship and</p>	<p style="text-align: right;">Page 28</p> <p>1 to this policy; right?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Is that what it seems to say?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: Honestly, it's very --</p> <p>8 looks very legalese to me.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q As FRB chair have you had an occasion to</p> <p>11 review these principles and procedures?</p> <p>12 A Yes.</p> <p>13 Q I guess I should ask. When did you serve as</p> <p>14 FRB chair?</p> <p>15 A From 2015 until -- I think I still am.</p> <p>16 Q When was the last time that you reviewed the</p> <p>17 principles and procedures other than for preparing for</p> <p>18 this deposition?</p> <p>19 A I don't remember.</p> <p>20 Q Was it within the last year?</p> <p>21 A No. We haven't had a case.</p> <p>22 Q When was the last time that you had a case?</p> <p>23 A I don't remember.</p> <p>24 Q Was the last case Mr. Edelman in 2017?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 27</p> <p>1 adherence to community values, the subcommittee should</p> <p>2 not be considering the collegueship and community</p> <p>3 values issues that the FRB is looking at; right?</p> <p>4 A It does say that the FRB's conclusions will</p> <p>5 be provided to the appointments subcommittee or</p> <p>6 standing committee and included with that group's</p> <p>7 report. So you're asking --</p> <p>8 Q So the subcommittee for a particular</p> <p>9 candidate should not be considering the FRB's --</p> <p>10 strike that. The subcommittee should not be</p> <p>11 considering the collegueship and community values</p> <p>12 issues that the FRB is looking into; is that a fair</p> <p>13 statement?</p> <p>14 A Until it gets the FRB's report.</p> <p>15 Q Well, the subcommittee or standing committee</p> <p>16 is preparing its report, preparing its recommendation,</p> <p>17 and voting based on the criteria excluding</p> <p>18 collegueship and adherence to community values;</p> <p>19 right?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: The subcommittee vote,</p> <p>22 yes.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q And the same is true of the standing</p> <p>25 committee vote and report and recommendation according</p>	<p style="text-align: right;">Page 29</p> <p>1 Q So you think the last time that you would</p> <p>2 have reviewed the principles and procedures would have</p> <p>3 been the last time the FRB had a case?</p> <p>4 A Yes.</p> <p>5 Q Do you know if the FRB has had another case</p> <p>6 since the beginning of the pandemic in March 2020?</p> <p>7 A I don't -- I don't remember. Yeah, I -- I</p> <p>8 think so.</p> <p>9 Q Okay.</p> <p>10 A I'm now remembering some Zoom calls, so must</p> <p>11 have been.</p> <p>12 Q Okay. So do you personally have an</p> <p>13 understanding of what the subcommittee or standing</p> <p>14 committee is supposed to consider or not consider?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 THE WITNESS: In general?</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q If there's an FRB case.</p> <p>19 A Oh, no.</p> <p>20 Q Now, looking again at this fourth bullet</p> <p>21 point. It says that the standing committee will</p> <p>22 prepare its report and recommendation based on the</p> <p>23 criteria excluding collegueship and adherence to</p> <p>24 community values.</p> <p>25 MR. MURPHY: Objection.</p>

<p style="text-align: right;">Page 30</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q If the standing committee prepared its</p> <p>3 report and included information about collegueship</p> <p>4 and community values, in your view would that be</p> <p>5 consistent with these principles and procedures?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q How would that be consistent with what's</p> <p>10 written here?</p> <p>11 A It would be consistent if they -- in</p> <p>12 letters, which is the -- which is typical, the letters</p> <p>13 they have to review, people mentioned collegueship,</p> <p>14 it would be hard for them to ignore it I imagine.</p> <p>15 Q Did the FRB for Mr. Edelman receive</p> <p>16 information from those letters that you mentioned?</p> <p>17 A No.</p> <p>18 Q Not in 2017?</p> <p>19 A I don't think so.</p> <p>20 Q Did the FRB receive information in 2015 from</p> <p>21 letters that were written for Mr. Edelman?</p> <p>22 A No.</p> <p>23 Q How many faculty members come up for tenure</p> <p>24 in a typical year at HBS?</p> <p>25 A Five or six.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q Did you approach each FRB review with an</p> <p>2 open mind?</p> <p>3 A Yes.</p> <p>4 Q Did you approach the 2015 review of</p> <p>5 Mr. Edelman's case with an open mind?</p> <p>6 A Yes.</p> <p>7 Q Is it fair to say that you wanted to see</p> <p>8 where the evidence took you?</p> <p>9 A Yes.</p> <p>10 Q And did you approach the 2017 review of</p> <p>11 Mr. Edelman's case with the same open mind as in 2015?</p> <p>12 A Yes.</p> <p>13 Q Looking back at Exhibit 26, which is the</p> <p>14 final principles and procedures, again at page 3 of</p> <p>15 the document, I'll direct your attention to the first</p> <p>16 bullet point under Notes on Promotions, Reviews, and</p> <p>17 Reappointments. There's a reference to certain</p> <p>18 meetings that would occur annually or as otherwise</p> <p>19 needed. Do you see that?</p> <p>20 A Yes.</p> <p>21 Q So in the 2015 to 2017 timeframe, does that</p> <p>22 indicate that you and Angela Crispi and Paul Healy</p> <p>23 would meet at least annually based on the titles at</p> <p>24 that time?</p> <p>25 MR. MURPHY: Objection.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q And as a tenured faculty member are you</p> <p>2 typically aware of who is scheduled to apply for</p> <p>3 tenure in a given year?</p> <p>4 A In your unit.</p> <p>5 Q Only within your unit?</p> <p>6 A You get notice of who's coming up, but you</p> <p>7 would be aware of the ones in your unit.</p> <p>8 Q Were you aware when the FRB process was</p> <p>9 being developed that Mr. Edelman was expected to apply</p> <p>10 for tenure in 2015?</p> <p>11 A So when the process was being developed --</p> <p>12 Q Right.</p> <p>13 A Probably.</p> <p>14 Q Were the FRB principles and procedures</p> <p>15 adopted specifically to deal with Mr. Edelman's case?</p> <p>16 A No.</p> <p>17 Q When the FRB was first put into place what</p> <p>18 was the purpose of the FRB as you understood it?</p> <p>19 A To provide consistency across cases of</p> <p>20 alleged problematic behavior.</p> <p>21 Q And how was the structure and function of</p> <p>22 the FRB going to provide that consistency?</p> <p>23 A It would provide that consistency by having</p> <p>24 a reasonably stable group that would see multiple</p> <p>25 cases.</p>	<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: I don't remember.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Did you ever meet with Paul Healy in the</p> <p>4 2015 to 2017 timeframe to discuss whether concerns</p> <p>5 about conduct had been raised for upcoming candidates?</p> <p>6 A I don't recall.</p> <p>7 Q Did you meet with Angela Crispi in that</p> <p>8 timeframe to discuss those questions?</p> <p>9 A No.</p> <p>10 Q Have you ever met with Paul Healy to discuss</p> <p>11 whether concerns about conduct had been raised for</p> <p>12 upcoming candidates for promotion?</p> <p>13 A I don't recall.</p> <p>14 Q Is Paul Healy still the senior associate</p> <p>15 dean for faculty development?</p> <p>16 A No.</p> <p>17 Q Who currently has that title?</p> <p>18 A Forrest Reinhardt.</p> <p>19 Q Have you -- strike that. When did Forrest</p> <p>20 Reinhardt take on that role?</p> <p>21 A I don't remember.</p> <p>22 Q When was the last time that you met with the</p> <p>23 senior associate dean for faculty development, whoever</p> <p>24 it was, to discuss whether concerns about conduct had</p> <p>25 been raised for upcoming candidates?</p>

<p style="text-align: right;">Page 34</p> <p>1 A I don't remember.</p> <p>2 Q Was it this year?</p> <p>3 A No.</p> <p>4 Q Was it last year?</p> <p>5 A No.</p> <p>6 Q Have you ever had such a meeting where</p> <p>7 concerns about conduct were raised about someone other</p> <p>8 than Mr. Edelman?</p> <p>9 A Yes.</p> <p>10 Q Do you remember whether that was before or</p> <p>11 after the start of the pandemic?</p> <p>12 A No.</p> <p>13 Q How did you come to be the chair of the FRB</p> <p>14 in 2015?</p> <p>15 A The dean asked me to be.</p> <p>16 Q Was that Dean Nohria?</p> <p>17 A Yes.</p> <p>18 Q Did Dean Nohria say why you were chosen?</p> <p>19 A No.</p> <p>20 Q Did you receive any additional compensation</p> <p>21 or benefits for serving in that capacity?</p> <p>22 A No.</p> <p>23 Q What are the different steps that an FRB is</p> <p>24 supposed to take from the start of a review to the</p> <p>25 completion of its work?</p>	<p style="text-align: right;">Page 36</p> <p>1 A I think so.</p> <p>2 Q And then once the FRB concludes its fact</p> <p>3 finding, what happens next?</p> <p>4 A It -- a report is written.</p> <p>5 Q And to whom is that report given?</p> <p>6 A Think it's given to the dean and the person</p> <p>7 under review.</p> <p>8 Q So is it fair to say that the end product of</p> <p>9 an FRB review is the final report</p> <p>10 A Yes.</p> <p>11 Q So after the FRB submits and presents its</p> <p>12 final report, then its work is done with regard to</p> <p>13 that faculty member?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: I think it depends on</p> <p>16 what the report says is the next step.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q So does the report sometimes indicate</p> <p>19 further steps for the FRB?</p> <p>20 A I don't know exactly what that means.</p> <p>21 Q So what further work does the FRB have after</p> <p>22 the submission of a report?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: I think it depends on</p> <p>25 what the report says.</p>
<p style="text-align: right;">Page 35</p> <p>1 A Fact finding and meeting to discuss the fact</p> <p>2 finding.</p> <p>3 Q So what's the first thing that the FRB is</p> <p>4 supposed to do?</p> <p>5 A Write a document to the person in question</p> <p>6 to let them know there is a review.</p> <p>7 Q And what needs to be in that document?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: I'm not sure completely.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q After that document is sent to the faculty</p> <p>12 member, what happens next?</p> <p>13 A The -- the FRB meets to figure out a plan.</p> <p>14 Q And then after the FRB meets, what are the</p> <p>15 different steps that are taken for the fact-finding</p> <p>16 process you mentioned?</p> <p>17 A I guess it depends, but interviews,</p> <p>18 reviewing documents, whatever the fact finding</p> <p>19 entails.</p> <p>20 Q At what point in the process does the FRB</p> <p>21 interview the faculty member who's under review?</p> <p>22 A I think it's pretty early in the process,</p> <p>23 but I don't know if there's an exact point.</p> <p>24 Q Does the FRB ever interview that faculty</p> <p>25 member more than once?</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q What are the different possibilities?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q Who chose the members of FRB in 2015?</p> <p>7 A The dean.</p> <p>8 Q And was it also the dean who chose the</p> <p>9 members in 2017?</p> <p>10 A Yes.</p> <p>11 Q Did you know anything about the criteria for</p> <p>12 the FRB members?</p> <p>13 A I know there's some faculty and some staff,</p> <p>14 but otherwise I don't know -- I don't know that</p> <p>15 there's specific criteria.</p> <p>16 Q What was Dean Angela Crispi's role with</p> <p>17 respect to the FRB in 2015?</p> <p>18 A Was she -- I think she was a member.</p> <p>19 Q And did that role change at any point, or</p> <p>20 was she just a member throughout?</p> <p>21 A You mean is she -- a member throughout --</p> <p>22 Q Throughout the 2015 review of Mr. Edelman.</p> <p>23 A Yes, she was -- I -- I believe she was a</p> <p>24 member throughout.</p> <p>25 Q What about Dean Jean Cunningham's role?</p>

<p style="text-align: right;">Page 38</p> <p>1 What was her role with respect to the FRB in 2015?</p> <p>2 A I can't tell you the title of it, but she</p> <p>3 was part of it, part of the FRB, but maybe ex officio,</p> <p>4 I'm not sure. I don't know.</p> <p>5 Q Was she a formal member of the FRB?</p> <p>6 A I honestly don't know.</p> <p>7 Q Did her role change at all during the 2015</p> <p>8 review of Mr. Edelman?</p> <p>9 A I don't think so.</p> <p>10 Q Is it your understanding that there was one</p> <p>11 FRB review for Mr. Edelman in 2015 and another FRB</p> <p>12 review in 2017, or that there was one FRB review that</p> <p>13 continued through that period?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: I think it was one that</p> <p>16 continued.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q What was the FRB asked to do in 2015?</p> <p>19 A Fact find and review what we learned.</p> <p>20 Q Fact find and review what specifically?</p> <p>21 A You -- the matters related to the</p> <p>22 allegations that had been brought to the dean.</p> <p>23 Q And just to spell it out, what were those</p> <p>24 allegations that had been brought to the dean?</p> <p>25 A I think -- I mean, as I recall, it was</p>	<p style="text-align: right;">Page 40</p> <p>1 A No.</p> <p>2 Q What about in 2017? Did you go into the</p> <p>3 review with a preference for which way it would come</p> <p>4 out?</p> <p>5 A No.</p> <p>6 Q Have you ever served as a FRB chair or</p> <p>7 member for anyone other than Mr. Edelman?</p> <p>8 A Yes.</p> <p>9 Q Was the FRB process invoked for any faculty</p> <p>10 members other than Mr. Edelman prior to the end of</p> <p>11 2018?</p> <p>12 A I don't remember.</p> <p>13 Q Who would have that information?</p> <p>14 A The dean's office would have it.</p> <p>15 Q So Dean Nohria would know that?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 THE WITNESS: I assume so. There is a</p> <p>18 record of all of the reports.</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q Was it important for Mr. Edelman's FRB to</p> <p>21 consider the evidence and any responses by Mr. Edelman</p> <p>22 before reaching any conclusions?</p> <p>23 A Yes.</p> <p>24 Q Was it important to give Mr. Edelman notice</p> <p>25 of the allegations against him at the beginning of the</p>
<p style="text-align: right;">Page 39</p> <p>1 the -- the two separate things. One was the Sichuan</p> <p>2 Gardens incident, and the other was Blinkx conflict-</p> <p>3 of-interest concerns.</p> <p>4 Q And what was the FRB asked to do in 2017?</p> <p>5 A Assess -- look for evidence of learning</p> <p>6 and -- and change.</p> <p>7 Q Who asked the FRB to do that in 2017?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: I don't know. Would be</p> <p>10 one of the deans.</p> <p>11 BY MR. RUSSCOL:</p> <p>12 Q Do you -- when you say "one of the deans,"</p> <p>13 who are the different deans that it might have been?</p> <p>14 A Paul Healy or Nitin Nohria.</p> <p>15 Q But you don't recall at this point which one</p> <p>16 of them it was?</p> <p>17 A No.</p> <p>18 Q How did you approach your role as chair of</p> <p>19 the FRB starting in 2015?</p> <p>20 A How do I approach it?</p> <p>21 Q Yeah.</p> <p>22 A Wanted to do a good job.</p> <p>23 Q Did you enter into the role as chair in 2015</p> <p>24 with a preference for whether the outcome would be</p> <p>25 positive or negative for Mr. Edelman?</p>	<p style="text-align: right;">Page 41</p> <p>1 process?</p> <p>2 A I assume so.</p> <p>3 Q Was it important to give Mr. Edelman a fair</p> <p>4 opportunity to respond to the concerns that the FRB</p> <p>5 was looking into?</p> <p>6 MR. MURPHY: Objection</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q After you were asked to serve as chair of</p> <p>10 the FRB did you read the principles and procedures of</p> <p>11 the FRB?</p> <p>12 A Yes.</p> <p>13 Q Did you consult those principles and</p> <p>14 procedures while the FRB review of Mr. Edelman was</p> <p>15 going on?</p> <p>16 A I don't remember.</p> <p>17 Q Did you intend for the FRB to follow what</p> <p>18 the principles and procedures required?</p> <p>19 A Yes.</p> <p>20 Q In your view did the FRB, in its 2015 review</p> <p>21 of Mr. Edelman, comply fully with what the principles</p> <p>22 and procedures required?</p> <p>23 A Yes.</p> <p>24 Q Is the same true 2017?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q Are you familiar with HBS community values?</p> <p>2 A Yes.</p> <p>3 Q What are the HBS community values?</p> <p>4 A I don't -- I'm afraid I can't recite them.</p> <p>5 Q Was the FRB tasked with deciding whether</p> <p>6 Mr. Edelman upheld the HBS community values?</p> <p>7 A I think so.</p> <p>8 Q Did the FRB in 2015 reach any conclusions</p> <p>9 about that?</p> <p>10 A I -- I couldn't say.</p> <p>11 Q Did the FRB in 2017 reach any conclusions</p> <p>12 about whether Mr. Edelman upheld the HBS community</p> <p>13 values?</p> <p>14 A I don't know.</p> <p>15 Q Do you believe Mr. Edelman complied with HBS</p> <p>16 community values in his time at HBS?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q Did you ever have an opinion on that</p> <p>21 subject?</p> <p>22 A Possibly, but I don't remember.</p> <p>23 Q You don't remember whether you ever believed</p> <p>24 that he did or did not uphold HBS community values?</p> <p>25 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Would you say that you're closer to any of</p> <p>2 those members than any others?</p> <p>3 A No.</p> <p>4 Q Are there any of those FRB members with whom</p> <p>5 you never exchanged any one-on-one emails about FRB</p> <p>6 business?</p> <p>7 A I don't remember.</p> <p>8 Q Did you ever send any FRB-related emails</p> <p>9 solely to Professor Reinhardt?</p> <p>10 A I don't know.</p> <p>11 Q Did you ever send FRB-related emails solely</p> <p>12 to Professor Gilson?</p> <p>13 A Professor Gilson joined in 2017.</p> <p>14 Q Right. To be clear -- sorry, I should</p> <p>15 clarify my question. Over the entire 2015 to 2017</p> <p>16 period, so including both of Mr. Edelman's FRBs, did</p> <p>17 you email any of the other members individually more</p> <p>18 than any others?</p> <p>19 A I don't recall.</p> <p>20 Q Did you ever send FRB-related emails solely</p> <p>21 to Professor Gilson?</p> <p>22 A I don't know.</p> <p>23 Q Did you ever send FRB-related emails solely</p> <p>24 to Professor Schlesinger?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Did you have to comply with HBS community</p> <p>4 values in operating the FRB?</p> <p>5 A Yes.</p> <p>6 Q How did you communicate with other members</p> <p>7 of the FRB about the FRB's proceedings?</p> <p>8 A Well, in person and by email.</p> <p>9 Q When you emailed about FRB business, did you</p> <p>10 usually include all the members of FRB?</p> <p>11 A I think so.</p> <p>12 Q Did you always include all the members of</p> <p>13 FRB?</p> <p>14 A No. Sometimes it would be just Jean, I</p> <p>15 imagine.</p> <p>16 Q Were there times when you emailed only one</p> <p>17 of the faculty members of the FRB?</p> <p>18 A I don't remember.</p> <p>19 Q Do you remember if you emailed any one of</p> <p>20 the other faculty members individually more than any</p> <p>21 others?</p> <p>22 A No.</p> <p>23 Q Who were the members of the FRB in 2015?</p> <p>24 A Forrest, Angela, Len Schlesinger, and Jean,</p> <p>25 I guess. I don't remember who else.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q What evidence did the FRB gather during the</p> <p>2 proceedings about Mr. Edelman?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: Documents and interviews.</p> <p>5 Quite a few.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q So what documents did the FRB gather as part</p> <p>8 of the evidence?</p> <p>9 A Papers, emails, articles.</p> <p>10 Q And you mentioned interviews. Are those the</p> <p>11 interviews conducted by the FRB members?</p> <p>12 A Yes.</p> <p>13 Q And did the members take notes of those</p> <p>14 interviews?</p> <p>15 A Yes.</p> <p>16 Q Was that all part of the evidence that you</p> <p>17 were considering when framing the report?</p> <p>18 A Yes.</p> <p>19 Q So all of that was evidence that you</p> <p>20 gathered in the FRB process?</p> <p>21 A Right. Yes.</p> <p>22 Q Who kept the evidence that you gathered?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: Jean Cunningham, I think.</p> <p>25 //</p>

<p style="text-align: right;">Page 46</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Where was that evidence kept?</p> <p>3 A I don't know.</p> <p>4 Q Did the FRB use any kind of shared folder to</p> <p>5 keep track of its evidence?</p> <p>6 A I don't know.</p> <p>7 Q So you believe that Jean Cunningham would</p> <p>8 know that?</p> <p>9 A Probably.</p> <p>10 Q Is it fair to say you believe that Dean</p> <p>11 Cunningham was responsible for keeping track of the</p> <p>12 evidence?</p> <p>13 A I don't know, but I assume so.</p> <p>14 Q Did the FRB ever use a SharePoint folder to</p> <p>15 exchange documents?</p> <p>16 A Not to my knowledge.</p> <p>17 Q Did the FRB ever use Dropbox?</p> <p>18 A I have my own Dropbox, but I didn't have</p> <p>19 it -- I don't -- did not share it.</p> <p>20 Q Did the FRB members ever use Microsoft Teams</p> <p>21 to communicate?</p> <p>22 A No.</p> <p>23 Q Were any of the FRB's interviews in 2015 to</p> <p>24 2017 recorded or transcribed?</p> <p>25 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q In 2015 did you have a personal computer</p> <p>2 that was not issued by FR -- by HBS?</p> <p>3 A Well, I had a personal computer that I think</p> <p>4 was my old HBS computer.</p> <p>5 Q So as you sit here today, you don't recall</p> <p>6 whether you were using only the HBS-provided computer,</p> <p>7 or you may have been using another computer for FRB</p> <p>8 business?</p> <p>9 A If I was at home I might be using my home</p> <p>10 computer.</p> <p>11 MR. MURPHY: Objection.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Did you use any personal phones or other</p> <p>14 devices besides that computer you mentioned to conduct</p> <p>15 FRB business?</p> <p>16 A I don't think so.</p> <p>17 Q Did you use HBS licensed software such as</p> <p>18 Microsoft Office and Outlook to conduct FRB business?</p> <p>19 A I imagine so.</p> <p>20 Q Did you discuss FRB business on other</p> <p>21 programs or platforms such as text messages or</p> <p>22 iMessage or WhatsApp?</p> <p>23 A I don't think so.</p> <p>24 Q To your knowledge did any FRB member use a</p> <p>25 personal email account to conduct FRB business?</p>
<p style="text-align: right;">Page 47</p> <p>1 THE WITNESS: I don't remember.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Did you record any of the interviews you</p> <p>4 conducted?</p> <p>5 A No.</p> <p>6 MR. MURPHY: Objection.</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q Were there transcripts made of any</p> <p>9 interviews you conducted?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: I don't know. I don't</p> <p>12 think so.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q So how did you document the interviews that</p> <p>15 you conducted?</p> <p>16 A Jean was taking notes.</p> <p>17 Q Was Dean Cunningham present for all of the</p> <p>18 interviews that the FRB conducted?</p> <p>19 A I don't know.</p> <p>20 Q Was she present for the interviews that you</p> <p>21 conducted?</p> <p>22 A As -- that's what I recall.</p> <p>23 Q Did you use only HBS-issued computers when</p> <p>24 conducting FRB business?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 49</p> <p>1 A I don't know.</p> <p>2 Q As chair of the FRB were you responsible for</p> <p>3 making sure that the evidence gathered was retained?</p> <p>4 A I don't think so.</p> <p>5 Q Who do you believe was responsible for doing</p> <p>6 that?</p> <p>7 A I don't know.</p> <p>8 Q Did you do anything to make sure that the</p> <p>9 evidence gathered was retained?</p> <p>10 A I mean, I didn't -- I just retained -- I</p> <p>11 mean, I didn't do anything particular. I don't know</p> <p>12 what that means.</p> <p>13 Q What records did you keep from the FRB</p> <p>14 process?</p> <p>15 A The draft reports, the draft reports as they</p> <p>16 were being developed. I believe I still have them.</p> <p>17 Q Did you ever use any email account other</p> <p>18 than your HBS email account to communicate about FRB</p> <p>19 business?</p> <p>20 A Not that I recall.</p> <p>21 Q Did you take notes of interviews in 2017</p> <p>22 that you conducted in the FRB process?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: I don't recall.</p> <p>25 //</p>

<p style="text-align: right;">Page 50</p> <p>1 BY MR. RUSSCOL: 2 Q Do you believe that Dean Cunningham took 3 notes of the interviews you conducted in 2017? 4 A I do. 5 Q Are there any records pertaining to 6 Mr. Edelman's FRB that you didn't keep? 7 A That I didn't keep? 8 Q That you did not keep? 9 MR. MURPHY: Objection. 10 THE WITNESS: Well, I don't know what 11 you mean. 12 BY MR. RUSSCOL: 13 Q Are there any emails or other documents 14 related to Mr. Edelman's FRB that you deleted or threw 15 away? 16 A I don't know. I don't think so. 17 Q Did you retain all the emails you sent and 18 received that pertain to Mr. Edelman's FRB? 19 A I don't know. I get mailbox full things all 20 the time, so. 21 MR. RUSSCOL: So this will be the next 22 exhibit. Think it's 27. 23 THE REPORTER: Yes. 24 (Exhibit 27 was marked for 25 identification.)</p>	<p style="text-align: right;">Page 52</p> <p>1 message? 2 MR. MURPHY: Objection. 3 THE WITNESS: I don't know. I mean, 4 anything's possible. 5 BY MR. RUSSCOL: 6 Q Can you think of any reasons why you would 7 have deleted this message specifically? 8 A No. 9 Q How did you decide which emails to keep and 10 which emails to delete from the 2015 time period? 11 A I didn't decide, I mean. 12 Q Did you have any standard practices about 13 keeping or deleting emails? 14 A No. I'm very disorganized in that sense. 15 Q Did you ever go through and delete any 16 emails? 17 A I have deleted emails prior to a specific 18 time when I get a message from the school that I'm 19 full, that I can't receive any more emails until I 20 delete some. 21 Q So when you get that kind of message do you 22 then, you know, go -- look up to a particular date and 23 then delete everything older than that? 24 A I try, but it's hard to do. 25 MR. RUSSCOL: Mark this as the next</p>
<p style="text-align: right;">Page 51</p> <p>1 BY MR. RUSSCOL: 2 Q So is this document an email that was sent 3 to you by Jean Cunningham? 4 MR. MURPHY: Objection. 5 THE WITNESS: By Jean? Oh, here. You 6 mean the top? 7 BY MR. RUSSCOL: 8 Q The top. 9 A Yes, looks like it. 10 Q Are you aware that Harvard searched your 11 email account and those of other people to look for 12 documents related to this case? 13 A Yes. 14 Q Would you be surprised to learn that copies 15 of this message were produced from the email boxes of 16 Jean Cunningham and Forrest Reinhardt but did not seem 17 to be in your mailbox? 18 MR. MURPHY: Objection. 19 THE WITNESS: No. I'm not aware. 20 BY MR. RUSSCOL: 21 Q Do you know why Dean Cunningham and 22 Professor Reinhardt would have had this message and 23 you wouldn't have? 24 A No. 25 Q Is it possible that you deleted this</p>	<p style="text-align: right;">Page 53</p> <p>1 exhibit, 28. 2 (Exhibit 28 was marked for 3 identification.) 4 BY MR. RUSSCOL: 5 Q Is Exhibit 28 an email thread between you 6 and Forrest Reinhardt? 7 A Looks like it. 8 Q Looking at the first email that's on the 9 second page, I'd ask you to take a look at it and then 10 tell me if you recall what the context of this message 11 is. 12 A This is -- oh, it's from Forrest. 13 Okay. The context? I guess the report 14 being finished. 15 Q Well, was the FRB asked to provide a 16 statement after the end of Mr. Edelman's case in 2015? 17 And if so, to whom? 18 MR. MURPHY: Objection. 19 THE WITNESS: I don't know. I don't -- 20 I don't recall if we were asked to provide a 21 statement, or if so by whom, but this looks like a 22 statement. 23 BY MR. RUSSCOL: 24 Q Well, looking at the first page, and 25 Professor Reinhardt's message in the middle, there's a</p>

<p style="text-align: right;">Page 54</p> <p>1 reference to getting something to Paul and Nitin --</p> <p>2 A Paul and Nitin.</p> <p>3 Q So does that help clarify?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: I'm sorry, what's the</p> <p>6 question?</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q So does that statement help clarify whether</p> <p>9 you were asked to provide a statement, and if so who</p> <p>10 asked you for it?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q So in Harvard's data production, Professor</p> <p>15 Reinhardt had all four messages in this thread, but</p> <p>16 you had only the second one. Do you know why the</p> <p>17 other three messages were not found in your account?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Can you think of a reason why you would keep</p> <p>22 only the second message and not the last one that</p> <p>23 would show the whole discussion?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 56</p> <p>1 A No.</p> <p>2 Q Do you know how long messages stay in your</p> <p>3 deleted items folder if they aren't specifically</p> <p>4 cleared?</p> <p>5 A No.</p> <p>6 Q Are you aware of a folder in your Outlook</p> <p>7 account called recoverable items?</p> <p>8 A No.</p> <p>9 Q Are you aware that there is a folder where</p> <p>10 there are messages that have been deleted but can be</p> <p>11 recovered or undeleted if --</p> <p>12 MR. MURPHY: Objection.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q -- accidentally delete something?</p> <p>15 A No.</p> <p>16 MR. MURPHY: Apologies.</p> <p>17 Objection.</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q Are you aware of a folder in Outlook called</p> <p>20 "purses"?</p> <p>21 A Purges?</p> <p>22 Q Yes.</p> <p>23 A No.</p> <p>24 MR. RUSSCOL: The next exhibit, 29.</p> <p>25 //</p>
<p style="text-align: right;">Page 55</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Are you aware of a folder in your Outlook</p> <p>3 account called "deleted items"?</p> <p>4 A In my Outlook account?</p> <p>5 Q Yes.</p> <p>6 A No.</p> <p>7 Q Are you aware that there's a folder that has</p> <p>8 messages that have been recently deleted?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. RUSSCOL:</p> <p>12 Q Did you ever create a folder called "deleted</p> <p>13 items"?</p> <p>14 A No. Doesn't it do it automatically?</p> <p>15 Q Do you regularly clear out the deleted items</p> <p>16 in your Outlook?</p> <p>17 A Yes.</p> <p>18 Q How often do you do that?</p> <p>19 A Periodically when I notice that it's full.</p> <p>20 Q In the last ten years have you had any</p> <p>21 different practices regarding clearing your deleted</p> <p>22 items folder?</p> <p>23 A No.</p> <p>24 Q Have you ever gone into your deleted items</p> <p>25 folder and manually deleted particular messages?</p>	<p style="text-align: right;">Page 57</p> <p>1 (Exhibit 29 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q So I'm showing you Exhibit 29, which</p> <p>5 includes some examples of things that might be seen in</p> <p>6 Microsoft Outlook. Have you ever seen a dialogue like</p> <p>7 what's shown in Figure 1 when emptying out the deleted</p> <p>8 items in your Outlook account?</p> <p>9 A Not that I recall, but probably.</p> <p>10 Q Have you ever seen a dialogue in Outlook</p> <p>11 like what's shown in Figure 2?</p> <p>12 A No, not that I recall.</p> <p>13 Q So looking at Figure 3, and specifically</p> <p>14 referring to on the right underneath "deleted items"</p> <p>15 where it says "Recover items recently removed from</p> <p>16 this folder," do you see that there?</p> <p>17 A No, where? Deleted is on the -- oh, wait.</p> <p>18 Q Over here. Over here.</p> <p>19 A Oh, over here. "Recover items removed from</p> <p>20 this folder." Yes, I see that.</p> <p>21 Q Have you ever seen a message like that</p> <p>22 before?</p> <p>23 A Not that I recall.</p> <p>24 Q So have you looked at the second page --</p> <p>25 have you ever seen a screen like Figure 4, which</p>

<p style="text-align: right;">Page 62</p> <p>1 messages in that time period?</p> <p>2 A No.</p> <p>3 Q Did you intend to move any of these messages</p> <p>4 somewhere else in that time period</p> <p>5 A Not that I recall.</p> <p>6 Q Did you intend to interact with these</p> <p>7 messages in any way in that time period?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Do you have any explanation for why someone</p> <p>12 would have tried to permanently delete these messages?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q Once Mr. Edelman filed this lawsuit did you</p> <p>17 understand that you were required to preserve emails</p> <p>18 and other documents that were related to Mr. Edelman?</p> <p>19 A Yes.</p> <p>20 Q Did you have an understanding of that before</p> <p>21 Mr. Edelman filed the lawsuit?</p> <p>22 A No.</p> <p>23 Q After you understood that you had an</p> <p>24 obligation to preserve emails related to Mr. Edelman,</p> <p>25 did you delete any emails related to him?</p>	<p style="text-align: right;">Page 64</p> <p>1 February 16, 2015?</p> <p>2 A Yes.</p> <p>3 MR. RUSSCOL: And I'll make this the</p> <p>4 next exhibit, which is a screenshot, Exhibit 40.</p> <p>5 (Exhibit 40 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q So looking at Exhibit 40, do you see the</p> <p>9 screenshot showing that, in fact, you made the</p> <p>10 suggested edit, "Should such allegations arise as part</p> <p>11 of the promotion or reappointment process, the</p> <p>12 allegations would be reviewed by the FRB, not by the</p> <p>13 subcommittee or standing committee"?</p> <p>14 A I mean, it looks like that, but it's not my</p> <p>15 language, so it -- maybe someone wrote it and -- and</p> <p>16 asked me to enter it. I don't know.</p> <p>17 Q So --</p> <p>18 A I mean, it says "Amy Edmondson added."</p> <p>19 Q So you don't have any explanation of why it</p> <p>20 would show that you added that language?</p> <p>21 MR. MURPHY: Objection.</p> <p>22 THE WITNESS: No. I mean, I don't.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q But it's still --</p> <p>25 A It's just not my language.</p>
<p style="text-align: right;">Page 63</p> <p>1 A Not that I recall.</p> <p>2 Q But you're not sure?</p> <p>3 A I'm not sure, no.</p> <p>4 Q Were you present for the FRB's September 4,</p> <p>5 2015, interview of Ben Esty?</p> <p>6 A I don't remember.</p> <p>7 MR. RUSSCOL: Let's mark this as the</p> <p>8 next exhibit.</p> <p>9 MR. MURPHY: Can we take a break?</p> <p>10 MR. RUSSCOL: Yeah, sure. We can do</p> <p>11 that now.</p> <p>12 THE VIDEOGRAPHER: Time is 10:54.</p> <p>13 We're off the record.</p> <p>14 (Off the record.)</p> <p>15 THE VIDEOGRAPHER: Okay. We are back</p> <p>16 on the record. The time is 11:09.</p> <p>17 MR. RUSSCOL: I'd like to make this the</p> <p>18 next exhibit.</p> <p>19 (Exhibit 39 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q So I'd like you to take a look at that, and</p> <p>23 also refer back to Exhibit 25. So does Exhibit 39</p> <p>24 show that you sent a document to Jean Cunningham,</p> <p>25 subject "Edits" with the attached file name "FRB," on</p>	<p style="text-align: right;">Page 65</p> <p>1 Q It's still your testimony that you did not</p> <p>2 include that edit?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: I don't recall including</p> <p>5 that edit or creating that edit.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Did you ever have a meeting with Paul Healy</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 had been raised?</p> <p>11 A I don't recall.</p> <p>12 Q Do you recall ever having a meeting with</p> <p>13 Paul Healy about [REDACTED] and whether an FRB</p> <p>14 might be convened for him?</p> <p>15 A No, I don't recall.</p> <p>16 THE VIDEOGRAPHER: Excuse me. Can you</p> <p>17 pull your mic up just about an inch, please?</p> <p>18 THE WITNESS: Which one?</p> <p>19 THE VIDEOGRAPHER: The small -- the</p> <p>20 smaller one.</p> <p>21 THE WITNESS: Okay. How's that?</p> <p>22 THE VIDEOGRAPHER: Perfect. Thank you.</p> <p>23 MR. RUSSCOL: All right. Let's make</p> <p>24 this the next exhibit, I believe Exhibit 41.</p> <p>25 THE REPORTER: Yep.</p>

<p style="text-align: right;">Page 66</p> <p>1 (Exhibit 41 was marked for 2 identification.) 3 BY MR. RUSSCOL: 4 Q Do these appear to be notes from the 2015 5 FRB process for Mr. Edelman? 6 A They do appear to be that. 7 Q Are these notes that you took? 8 A No. 9 Q Do you know who took them? 10 A I think Jean Cunningham. 11 Q So I'd like to direct your attention to page 12 4 of the document, where it starts "Ben Esty" in the 13 middle. Do you see that? 14 A Mm-hmm. 15 Q Do you see where Professor Esty described 16 himself as the de facto co-chief compliance officer, 17 and you asked for his take on Blinkx? 18 A De facto -- oh, yes. I do. 19 Q Do you remember having that discussion with 20 him? 21 A Vaguely. 22 Q And in 2015 you knew that Mr. Edelman was a 23 lawyer; right? 24 A Yes. I think so. 25 Q Do you see directly below that where</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: No, Ben anticipated that. 3 BY MR. RUSSCOL: 4 Q Professor Esty anticipated that? 5 A Yes. I mean, that's what I see from here. 6 Q And you said that was true; right? 7 MR. MURPHY: Objection. 8 THE WITNESS: That's what the note 9 taker wrote. 10 BY MR. RUSSCOL: 11 Q Given Mr. Edelman's legal background, did 12 you consider a lawsuit to be a serious possibility if 13 he was denied tenure? 14 A I would hope not, but I guess it's always a 15 possibility whether or not you're a lawyer. 16 Q In the past three years have you had any 17 communication about Mr. Edelman with anyone who served 18 on the FRB in 2015 or 2017? 19 A I don't know. I don't recall. 20 Q Did the FRB in 2015 discuss an issue about 21 projectors? 22 A Yes. 23 Q What was that projector issue? 24 A I don't really know the details or recall 25 the details, but there was a change in projector</p>
<p style="text-align: right;">Page 67</p> <p>1 Professor Esty told you that you would be on the hot 2 seat should Mr. Edelman choose to sue, and he will 3 sue? 4 A I see that. 5 Q And you responded, in part, "That's true." 6 Do you see that? 7 A Mm-hmm. 8 THE REPORTER: I'm sorry. Yes or no? 9 THE WITNESS: Yes. Sorry. 10 BY MR. RUSSCOL: 11 Q Did Professor Esty say that to you and you 12 say that to him? 13 A It says it right here. 14 Q Is that consistent with your recollection of 15 that meeting? 16 A I don't recollect it, but I see it on the 17 notes. 18 Q Do you have any reason to doubt that those 19 things were said? 20 A No. 21 MR. MURPHY: Objection. 22 BY MR. RUSSCOL: 23 Q So as of September 4, 2015, you anticipated 24 that Mr. Edelman would sue Harvard if he was denied 25 tenure; right?</p>	<p style="text-align: right;">Page 69</p> <p>1 screens. 2 Q Was there a change in projectors that would 3 have resulted in the image size being smaller? 4 MR. MURPHY: Objection. 5 THE WITNESS: I don't -- it's a -- 6 BY MR. RUSSCOL: 7 Q Is it fair to say that there was some 8 controversy about that change? 9 A I think it's fair to say. 10 Q Was that issue sometimes referred to as 11 "projector gate"? 12 A I don't know. 13 Q Did the FRB interview any witnesses about 14 the projector issue? 15 A I think so. 16 Q Who did the FRB interview about that? 17 A The affected staff members I believe. 18 Q So that would have been IT staff? 19 A I'm not sure. 20 Q Would anything that the witnesses said about 21 the projector issue be captured in the witness notes? 22 MR. MURPHY: Objection. 23 THE WITNESS: Probably. 24 BY MR. RUSSCOL: 25 Q Did the FRB receive any other information</p>

<p style="text-align: right;">Page 70</p> <p>1 about the projector issue other than from witness 2 interviews? 3 A I don't know. 4 Q Did Dean Crispi provide the FRB with emails 5 related to the projector issue? 6 A I don't recall. 7 MR. RUSSCOL: So this will be the next 8 exhibit, 42. 9 (Exhibit 42 was marked for 10 identification.) 11 BY MR. RUSSCOL: 12 Q So I'd ask you to take a look at Exhibit 42, 13 and I'll direct your attention at first to the second 14 page. Based on what's on the second page, is it fair 15 to say that on October 31, 2015, Dean Healy forwarded 16 you an email from Professor Youngme Moon about the 17 projector issue? 18 A Yes. Looks like it. 19 Q And at the time the projector issue came up, 20 was Professor Moon the senior associate dean for the 21 MBA program? 22 A I don't remember. 23 Q Well, looking at the first full paragraph of 24 the email from Professor Moon, do you see where it 25 says "An IT issue that arose in MBA during my</p>	<p style="text-align: right;">Page 72</p> <p>1 from Professor Moon existed? 2 A I don't know. 3 Q This email wasn't referenced or incorporated 4 in the 2015 report; was it? 5 A I don't know. 6 Q Now, looking at the first page of this 7 document, do you see at the bottom there's a response 8 from you saying "This makes me a bit anxious"? 9 A Mm-hmm. I see it. 10 Q Why did receiving that new evidence make you 11 anxious? 12 A Well, I can read what it says here. I don't 13 remember the moment, but -- 14 Q Well, you wrote that it makes -- 15 A Makes it -- 16 Q -- it sounds as if Mr. Edelman was "Not in 17 any way the initiator projector gate"; right? 18 A Right. 19 Q And you wrote that you were likely to face a 20 need to revise; right? 21 A Yes. 22 Q And at that point did you think you likely 23 faced a need to revise because you realized that your 24 understanding of the projector situation had been 25 inaccurate?</p>
<p style="text-align: right;">Page 71</p> <p>1 tenure as SAD of MBA"? 2 A Yes. 3 Q So does that indicate that Professor Moon 4 was the senior associate dean for the MBA program at 5 the time? 6 MR. MURPHY: Objection. 7 THE WITNESS: It says "During my 8 tenure," but I don't know if her tenure was still 9 going on October 31. 10 BY MR. RUSSCOL: 11 Q Was she the senior associate dean of the MBA 12 program when the projector issue came up? 13 A It looks that way. 14 Q Was this email from Professor Moon some 15 evidence that the FRB obtained before its report was 16 finalized? 17 A October 31st? Yes. I think so. 18 Q And that email from Professor Moon was never 19 provided to Mr. Edelman through the FRB process; was 20 it? 21 A I don't know. 22 Q Well, if it wasn't in the report, then he 23 didn't receive it from the FRB. Is that fair to say? 24 A I -- probably. I don't know. 25 Q Did the FRB ever tell him that this email</p>	<p style="text-align: right;">Page 73</p> <p>1 A Incomplete, not inaccurate. But I -- I'm -- 2 I'm writing that to Forrest and Jean. 3 Q Did Professor Moon's email state that 4 Professor Moon herself was concerned about the 5 projector change? 6 A Let me see. I'm sorry, what's the question 7 about Professor Moon? 8 Q Didn't her email indicate that she was 9 concerned about the change? 10 A About the change -- 11 Q In projectors? 12 A Yes. 13 Q And didn't her email say that Professor Moon 14 sent a note to Steve Gallagher and then got the change 15 delayed for a year? 16 MR. MURPHY: Objection. 17 THE WITNESS: Sorry, I have to read it 18 more slowly. So the question is whether Youngme is 19 happy that it was delayed? Is that -- sorry. 20 BY MR. RUSSCOL: 21 Q That she reached out to Steve Gallagher and 22 got it delayed? 23 A Right. 24 Q And -- 25 A And she said "That's a good solution."</p>

<p style="text-align: right;">Page 74</p> <p>1 Q Right. So --</p> <p>2 A "Really good solution."</p> <p>3 Q Right. So did the 2015 FRB report state</p> <p>4 that Mr. Edelman sought to halt the project entirely</p> <p>5 and that the change happened later than originally</p> <p>6 planned because of cost?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q If the 2015 report did say that, then</p> <p>11 wouldn't this email contradict that?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: I don't -- I'm not sure</p> <p>14 it contradicts it.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q You don't think it -- so if the report said</p> <p>17 that the change happened later than originally planned</p> <p>18 because of cost, you don't think Professor Moon's</p> <p>19 statement that she got it delayed for a year and she</p> <p>20 thought it was a really good solution contradicts</p> <p>21 that?</p> <p>22 MR. MURPHY: Objection</p> <p>23 THE WITNESS: Contradicts what?</p> <p>24 BY MR. RUSSCOL:</p> <p>25 Q The statement in the FRB report that the</p>	<p style="text-align: right;">Page 76</p> <p>1 to revise the report in order to correct the</p> <p>2 incomplete understanding of the projector issue?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: The reason that would --</p> <p>5 I would think is it's November 1, and the dean is very</p> <p>6 eager to get our report, 'cause it's -- the time</p> <p>7 matters.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q So you think that you didn't correct</p> <p>10 incomplete understandings on this issue because there</p> <p>11 wasn't time to do that?</p> <p>12 A No.</p> <p>13 MR. MURPHY: Objection</p> <p>14 THE WITNESS: I think both Jean and</p> <p>15 Forrest didn't think it was needed.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q Did you think it mattered whether</p> <p>18 Mr. Edelman was the initiator of projector gate, as</p> <p>19 you put it?</p> <p>20 A No.</p> <p>21 Q You didn't think that mattered?</p> <p>22 A I didn't think that mattered, no.</p> <p>23 Q Why didn't that matter?</p> <p>24 A Because projector gate was not a very</p> <p>25 important issue.</p>
<p style="text-align: right;">Page 75</p> <p>1 change happened later than originally planned because</p> <p>2 of cost.</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: I don't know. Could be</p> <p>5 both.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Professor Moon was a senior faculty member</p> <p>8 who was in charge of the MBA program when the</p> <p>9 projector issue came up; right?</p> <p>10 A As far as I can -- can read here, yes.</p> <p>11 Q Did the FRB revise the report about the</p> <p>12 projector issue after receiving this information?</p> <p>13 A I don't recall.</p> <p>14 Q Well, looking at the first page of this</p> <p>15 document, you wrote about likely needing to revise,</p> <p>16 but then do you see Dean Cunningham and Professor</p> <p>17 Reinhardt indicating that a revision was not needed?</p> <p>18 A Yes.</p> <p>19 Q Does that refresh your recollection about</p> <p>20 whether a revision actually happened?</p> <p>21 A No, not directly. But if this is the last</p> <p>22 email, maybe so.</p> <p>23 Q Can you think of a reason why you wouldn't</p> <p>24 want to revise the incomplete understanding -- strike</p> <p>25 that. Can you think of a reason why you wouldn't want</p>	<p style="text-align: right;">Page 77</p> <p>1 Q What were the important issues in the FRB in</p> <p>2 2015?</p> <p>3 A I think the Sichuan Garden and the Blinkx.</p> <p>4 Q And the rest of what was in the report was</p> <p>5 not important?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: It's important, but it</p> <p>8 wasn't the most important, the top two.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q When Mr. Edelman was being considered for</p> <p>11 promotion in 2017, was the 2015 FRB report in the</p> <p>12 binders for appointments committee members to review?</p> <p>13 A I don't know.</p> <p>14 Q Were you a member of the appointments</p> <p>15 committee in 2017?</p> <p>16 A Yes.</p> <p>17 Q Did you review Mr. Edelman's binder in</p> <p>18 preparation for the appointments committee meeting</p> <p>19 that year?</p> <p>20 A Yes.</p> <p>21 Q Do you recall as you sit here today whether</p> <p>22 the 2015 FRB report was there?</p> <p>23 A I don't.</p> <p>24 Q Would you expect it to be there?</p> <p>25 MR. MURPHY: Objection.</p>

<p style="text-align: right;">Page 78</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Why not?</p> <p>4 A I don't know. I just -- I've been told I</p> <p>5 wasn't -- I wasn't supposed to be there. I mean, I</p> <p>6 was -- I was supposed to be on the road, but then</p> <p>7 something got cancelled, so I was there.</p> <p>8 Q You're saying you were there at the</p> <p>9 appointments committee meeting?</p> <p>10 A Right.</p> <p>11 Q I'm asking before the meeting did you review</p> <p>12 Mr. Edelman's binder?</p> <p>13 A I don't remember.</p> <p>14 Q Okay. On the first page of Exhibit 42 in</p> <p>15 the -- at the bottom in the first paragraph of your</p> <p>16 email, do you see where you wrote "Perhaps this was</p> <p>17 not the right one to pick, but from the data we had,</p> <p>18 it seemed as if it was"?</p> <p>19 A Yes.</p> <p>20 Q Did you write that?</p> <p>21 A Yes.</p> <p>22 Q The data you had was complaints from media</p> <p>23 services about Mr. Edelman making a ruckus over the</p> <p>24 projectors; right?</p> <p>25 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Why did you consider Mr. Edelman's approach</p> <p>3 to the projector issue problematic if he was</p> <p>4 expressing concerns that were shared by other faculty</p> <p>5 members and in a way that Professor Moon thought was</p> <p>6 helpful?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I don't know. Not sure I</p> <p>9 did, but.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Now, you mentioned earlier that Dean Crispi</p> <p>12 was a member of the FRB; right?</p> <p>13 A Yes.</p> <p>14 Q Wasn't she also involved in some situations</p> <p>15 that the FRB looked at?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 THE WITNESS: What do you mean?</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q Was Dean Crispi involved in discussions</p> <p>20 about the projector change personally?</p> <p>21 A I don't know.</p> <p>22 Q Was Dean Crispi involved in Mr. Edelman's</p> <p>23 efforts to help food service workers whom he thought</p> <p>24 were being underpaid?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: Yeah, I guess so. I</p> <p>2 mean, the interview data or the -- I don't know if</p> <p>3 it's the complaints, original complaints, or the</p> <p>4 interview data.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q So what would you consider the data that you</p> <p>7 had on that subject?</p> <p>8 A It would be the interview data or some other</p> <p>9 information from the staff.</p> <p>10 Q And by "The right one to pick," did you mean</p> <p>11 choosing an incident that would make Mr. Edelman look</p> <p>12 like a bad colleague?</p> <p>13 A No.</p> <p>14 Q Then what did you mean by "The right one to</p> <p>15 pick"?</p> <p>16 A Sorry. I don't know.</p> <p>17 Q Is it possible that this issue might not</p> <p>18 have been the right one to pick because it turned out</p> <p>19 that other people had raised the same issue and that</p> <p>20 Professor Moon viewed Mr. Edelman as a particularly</p> <p>21 helpful faculty member on that issue?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 THE WITNESS: I mean, are you saying</p> <p>24 because other people were upset about it also that</p> <p>25 it -- that means it's not problematic for the staff?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q Are you aware whether Dean Crispi provided</p> <p>2 firsthand information to the FRB about either of those</p> <p>3 topics?</p> <p>4 A I don't remember.</p> <p>5 Q If the notes and emails from the time</p> <p>6 indicate that she did, would you have any reason to</p> <p>7 doubt that?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Now, Dean Cunningham was -- I think you</p> <p>12 described her as maybe an ex officio member of the</p> <p>13 FRB?</p> <p>14 A I said I wasn't sure what her -- whether she</p> <p>15 was ex officio or official -- officio.</p> <p>16 Q Okay. But she had some association with the</p> <p>17 FRB?</p> <p>18 A Oh, yeah.</p> <p>19 Q Was she also involved in some situations</p> <p>20 that the FRB was looking at?</p> <p>21 A I don't know what you mean.</p> <p>22 Q Was Dean Cunningham involved in responding</p> <p>23 to the Blinkx situation?</p> <p>24 A I don't know.</p> <p>25 Q Was Dean Cunningham involved in responding</p>

<p style="text-align: right;">Page 82</p> <p>1 to the Sichuan Gardens situation in 2014?</p> <p>2 A I don't have direct knowledge of that, but</p> <p>3 she is in the dean's office.</p> <p>4 Q Did you ever discuss with Dean Cunningham</p> <p>5 her understanding of what happened within the dean's</p> <p>6 office relating to Blinkx or Sichuan Garden?</p> <p>7 A Her understanding of what happened in the</p> <p>8 dean's office?</p> <p>9 Q Yeah.</p> <p>10 A I'm not sure.</p> <p>11 Q Did you ever discuss with her her firsthand</p> <p>12 actions with regard to Sichuan Garden or Blinkx?</p> <p>13 MR. MURPHY: Objection</p> <p>14 THE WITNESS: I don't remember.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q If Dean Crispi or Dean Cunningham had any</p> <p>17 firsthand knowledge regarding the issues that the FRB</p> <p>18 was reviewing, did you try to compartmentalize that in</p> <p>19 any way?</p> <p>20 MR. MURPHY: Objection</p> <p>21 THE WITNESS: What do you mean?</p> <p>22 BY MR. RUSSCOL:</p> <p>23 Q Did you try to separate out their roles as</p> <p>24 member or staff of the FRB versus being a witness to</p> <p>25 things that happened?</p>	<p style="text-align: right;">Page 84</p> <p>1 be at an FRB meeting in 2015, and you said yes because</p> <p>2 of the shared history here, in part?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: So what's the question?</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q So didn't Dean Cunningham ask you whether</p> <p>7 she should be at a particular FRB meeting, and you</p> <p>8 said that it was much more pro than con given the</p> <p>9 shared history here?</p> <p>10 A Yes.</p> <p>11 Q Does that shared history include her having</p> <p>12 knowledge of relevant facts, including from her work</p> <p>13 responding to the Blinkx and Sichuan Garden incidents</p> <p>14 in 2014?</p> <p>15 MR. MURPHY: Objection</p> <p>16 THE WITNESS: I would think that's part</p> <p>17 of the shared history.</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q Did Dean Cunningham forward several emails</p> <p>20 to the FRB about those historical events regarding</p> <p>21 Mr. Edelman?</p> <p>22 A Is that what the attachment is?</p> <p>23 Q I'm not referring specifically to the</p> <p>24 attachment.</p> <p>25 A Oh.</p>
<p style="text-align: right;">Page 83</p> <p>1 A No, I mean.</p> <p>2 Q Did you rely on Dean Crispi and Dean</p> <p>3 Cunningham to give the FRB accurate information about</p> <p>4 what happened when they knew what happened?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q If Dean Crispi or Dean Cunningham was</p> <p>9 providing the FRB with information about what</p> <p>10 happened, were they acting as members or staff of the</p> <p>11 FRB or as witnesses or as both?</p> <p>12 MR. MURPHY: Objection</p> <p>13 THE WITNESS: I had never thought about</p> <p>14 it.</p> <p>15 MR. RUSSCOL: This will be the next</p> <p>16 exhibit. Think it's 43.</p> <p>17 THE REPORTER: Yep.</p> <p>18 (Exhibit 43 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q So is this an email thread between you and</p> <p>22 Jean Cunningham?</p> <p>23 A Looks like it.</p> <p>24 Q And looking toward the bottom of the</p> <p>25 message, didn't Dean Cunningham ask whether she should</p>	<p style="text-align: right;">Page 85</p> <p>1 Q I'm just asking in general.</p> <p>2 A I don't remember.</p> <p>3 Q Did Dean Cunningham report her impressions</p> <p>4 about Mr. Edelman to the FRB based on her interactions</p> <p>5 with him over the years?</p> <p>6 A I don't recall.</p> <p>7 Q Well, given that she had knowledge of</p> <p>8 relevant facts and was providing that to the FRB,</p> <p>9 isn't it fair to say that she was a witness to those</p> <p>10 things?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: A witness, yes. You said</p> <p>13 the facts. She had relevant facts.</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q I'd like to refer back to Exhibit 41. And</p> <p>16 specifically looking at page 13, which has the Bates</p> <p>17 Number in the lower righthand corner, 15518.</p> <p>18 A 5518.</p> <p>19 Q So looking in the middle of the page in</p> <p>20 between the two sets of asterisks, do you see where --</p> <p>21 well, just to be clear, does Len refer to Professor</p> <p>22 Schlesinger?</p> <p>23 A Yes.</p> <p>24 Q And does Angela refer to Dean Crispi?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q So wasn't Professor Schlesinger asking Dean 2 Crispi a factual question about how the projector 3 issue ended? 4 A It looks like it. 5 Q And Dean Crispi provided her recollection of 6 the facts? 7 A Yes. It's not a very clear statement, but 8 it looks like she's responding to his question. 9 Q Did Dean Crispi report her impressions about 10 Mr. Edelman to the FRB based on discussions with him 11 and about him over the years? 12 A I don't recall. 13 Q Well, at least in this one instance she was 14 providing her recollection of relevant events; is that 15 fair to say? 16 MR. MURPHY: Objection. 17 THE WITNESS: I think so. 18 BY MR. RUSSCOL: 19 Q And so, in that instance, wasn't she a 20 witness? 21 A Objection. 22 Q I don't really know what you mean by "a 23 witness." 24 A Well, she was giving -- given her -- strike 25 that. She was giving her recollection of historical</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. RUSSCOL: So this will be the next 2 exhibit. I think it's 44. 3 (Exhibit 44 was marked for 4 identification.) 5 BY MR. RUSSCOL: 6 Q So before I ask you about this document 7 itself, who is Steve Gallagher? 8 A Who is he? 9 Q Yeah. 10 A He's part of IT. 11 Q At this time in 2015 was Steve Gallagher the 12 chief information officer of HBS? 13 A I don't remember. 14 Q Did he have that title at some point? 15 A I don't know. 16 Q Did you understand him of having a role 17 similar to that? 18 A I -- I didn't -- I -- I assume so. 19 Q And who's Felix Oberholzer? 20 A He's a -- a professor in strategy. 21 Q And at that time was Professor Oberholzer on 22 the Academic Technology Steering Committee? 23 A I don't know. 24 Q Was Professor Edelman on that committee? 25 A I don't know.</p>
<p style="text-align: right;">Page 87</p> <p>1 events that were relevant to the FRB's consideration; 2 is that fair to say? 3 MR. MURPHY: Objection. 4 THE WITNESS: I don't really -- I mean, 5 there was a meeting mainly to get everyone on the same 6 page. This is what the notes say. Thirty-five 7 classrooms. That's all I have. 8 BY MR. RUSSCOL: 9 Q Did Dean Crispi forward you emails about the 10 projector situation? 11 A I don't recall. 12 Q How did you make sure that the information 13 Dean Crispi provided on the projector issue or other 14 issues told the whole story? 15 A I think there were other -- I mean, I think 16 there were interviews done by members of the FRB to 17 get different perspectives. 18 Q Did you ask Dean Crispi to share all of the 19 emails that she had on the projector issue? 20 A No. 21 Q Before the FRB finalized its report in 2015, 22 did you know that Steve Gallagher had written to Dean 23 Crispi after Professor Felix Oberholzer requested a 24 demonstration of the projector issue? 25 A Not to my recollection.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q Looking at the top email that appears to be 2 from Steve Gallagher to Angela Crispi, did Dean Crispi 3 share this email with FRB? 4 A I don't recall. March 2nd. 5 Q Would the information that Steve Gallagher 6 was inclined to change his approach based on Professor 7 Oberholzer's perspective have been relevant to the 8 FRB's consideration of that issue? 9 MR. MURPHY: Objection 10 THE WITNESS: I doubt it. 11 BY MR. RUSSCOL: 12 Q Why not? 13 A I just don't think the projector issue was 14 consuming that much of our attention. 15 Q Did you know, before the FRB finalized its 16 report, that the side-by-side comparison that Steve 17 Gallagher referred to occurred, and then the committee 18 agreed with Mr. Edelman's approach to the projector 19 issue? 20 MR. MURPHY: Objection. 21 THE WITNESS: I don't recall. 22 BY MR. RUSSCOL: 23 Q So the projector issue wasn't occupying a 24 lot of the FRB's time, but you referred to it in an 25 email as "projector gate"?</p>

<p style="text-align: right;">Page 90</p> <p>1 A Yes and yes.</p> <p>2 Q Was Dean Crispi formally interviewed as a</p> <p>3 witness?</p> <p>4 A I don't think so.</p> <p>5 Q Knowing now what Professor Moon wrote about</p> <p>6 the projector issue, do you think you would have had a</p> <p>7 different understanding of the projector issue if</p> <p>8 you'd interviewed her as a witness?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: If we'd interviewed</p> <p>11 Angela Crispi?</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q If you'd interviewed -- strike that. If you</p> <p>14 had interviewed Professor Moon as a witness?</p> <p>15 A I don't know. We didn't, so.</p> <p>16 Q Is it fair to say that in 2017 the FRB</p> <p>17 criticized Mr. Edelman for meddling in IT matters</p> <p>18 where staff said he was unwanted?</p> <p>19 A In 2017?</p> <p>20 Q In 2017.</p> <p>21 A I don't remember.</p> <p>22 Q Do you recall the final report including a</p> <p>23 quote that "Mr. Edelman jumped straight to solutioning</p> <p>24 without thinking through implications"?</p> <p>25 A I don't.</p>	<p style="text-align: right;">Page 92</p> <p>1 with IT issues?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 THE WITNESS: Interviews I think.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Was that also based on reports from Dean</p> <p>6 Crispi or Dean Cunningham?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I don't think so.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q Are you aware that Al Roth asked Mr. Edelman</p> <p>11 for IT help when he had a temporary disability?</p> <p>12 A No.</p> <p>13 Q Did Dean Cunningham tell you that she</p> <p>14 personally asked Mr. Edelman to stop providing IT help</p> <p>15 to Professor Roth?</p> <p>16 A No.</p> <p>17 Q Did Dean Cunningham tell you that according</p> <p>18 to Professor Roth's faculty assistant, Professor Roth</p> <p>19 personally requested Mr. Edelman's help?</p> <p>20 A Not that I recall.</p> <p>21 Q In 2017 did Dean Crispi report that Steve</p> <p>22 Gallagher told Mr. Edelman that he wanted Mr. Edelman</p> <p>23 to step back from something he was helping Professor</p> <p>24 Kohlberg with?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. RUSSCOL: This is going to be the</p> <p>2 next exhibit. Is that 45?</p> <p>3 THE REPORTER: Yep.</p> <p>4 (Exhibit 45 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Is Exhibit 45 the FRBs final report in 2017?</p> <p>8 A I think so.</p> <p>9 Q Looking on page 5, in the bottom set of</p> <p>10 bullet points, the third one down, do you see where it</p> <p>11 says "He leaves a lot of unproductive work for people</p> <p>12 since he jumps to solutioning without thinking through</p> <p>13 implications or engaging others"?</p> <p>14 A Yes.</p> <p>15 Q Did that refer to Mr. Edelman coming up with</p> <p>16 IT solutioning rather than going through standard</p> <p>17 channels?</p> <p>18 A I don't know. I don't remember.</p> <p>19 Q Looking at the bullet point below that,</p> <p>20 where it says "He's incapable of seeing why his</p> <p>21 preferred solution can't or won't be implemented,"</p> <p>22 what did that refer to?</p> <p>23 A I don't recall.</p> <p>24 Q What evidence did the FRB consider on the</p> <p>25 issue of whether Mr. Edelman was giving unwanted help</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. RUSSCOL: This is going to be the</p> <p>2 next exhibit, 46.</p> <p>3 (Exhibit 46 was marked for</p> <p>4 identification.)</p> <p>5 THE WITNESS: Thank you.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Have you ever seen this document before,</p> <p>8 Exhibit 46?</p> <p>9 A I'm not sure.</p> <p>10 Q Does it appear that this is information that</p> <p>11 Dean Crispi compiled for the purpose of a June 28,</p> <p>12 2017, FRB meeting?</p> <p>13 A It -- yes, it does appear to be that.</p> <p>14 Q Did Dean Crispi share this information with</p> <p>15 the FRB in June 2017?</p> <p>16 A I don't recall.</p> <p>17 Q So on the first page, after it says "Steve</p> <p>18 Gallagher held a candid and constructive conversation</p> <p>19 with Ben," do you see the second bullet point where it</p> <p>20 says "In the case of Professor Kohlberg, Steve</p> <p>21 explained that it was fine to assist Elon in</p> <p>22 submitting the initial request, but that his ongoing</p> <p>23 participation has been disruptive"?</p> <p>24 A Yes.</p> <p>25 Q Was that information shared with the FRB?</p>

<p style="text-align: right;">Page 94</p> <p>1 A I don't remember.</p> <p>2 Q Do you see below the bullet points where it</p> <p>3 refers to Mr. Edelman taking a step back from Elon's</p> <p>4 solution?</p> <p>5 A "Ask that Ben" -- you're saying "Ask that</p> <p>6 Ben reach out to Kate"?</p> <p>7 Q No, I'm saying below the bullet points.</p> <p>8 A Oh, sorry. Yes, I see that.</p> <p>9 Q Is that information that Dean Crispi shared</p> <p>10 with the FRB?</p> <p>11 A I don't remember.</p> <p>12 Q Did Dean Crispi mention to the FRB that the</p> <p>13 specific subject where IT staff didn't want</p> <p>14 Mr. Edelman involved was helping Professor Kohlberg</p> <p>15 with a hearing disability that affected his teaching?</p> <p>16 A I don't recall.</p> <p>17 Q Did Dean Crispi mention that Professor</p> <p>18 Kohlberg specifically wanted Mr. Edelman's continuing</p> <p>19 involvement?</p> <p>20 A No.</p> <p>21 Q Did the FRB ask Professor Kohlberg about the</p> <p>22 IT help that Mr. Edelman was providing him?</p> <p>23 A Not that I recall.</p> <p>24 Q When senior faculty members asked for</p> <p>25 Mr. Edelman's help with technical issues and he</p>	<p style="text-align: right;">Page 96</p> <p>1 Q It was unusual at that time for a promotion</p> <p>2 binder to have an FRB report; wasn't it?</p> <p>3 A Yes.</p> <p>4 Q That hadn't ever happened before</p> <p>5 Mr. Edelman; is that fair to say?</p> <p>6 A Yes.</p> <p>7 Q Is it fair to say that the standing</p> <p>8 committee and appointment committee members were</p> <p>9 likely to pay particular attention to what was in the</p> <p>10 FRB report?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q Was any of the opposition to Mr. Edelman's</p> <p>15 promotion based on his teaching or scholarship?</p> <p>16 MR. MURPHY: Objection</p> <p>17 THE WITNESS: I don't know.</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q Do you remember -- strike that. You were at</p> <p>20 the appointments committee meeting where Mr. Edelman's</p> <p>21 promotion was being considered in 2017; weren't you?</p> <p>22 A I don't remember it, but I was there.</p> <p>23 Q Do you remember anyone raising any</p> <p>24 objections to Mr. Edelman's qualifications on his</p> <p>25 teaching or his scholarship?</p>
<p style="text-align: right;">Page 95</p> <p>1 assisted them, do you think that demonstrates a lack</p> <p>2 of collegueship?</p> <p>3 A No.</p> <p>4 MR. MURPHY: Objection.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q Did that violate HBS's community values?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q Is one of the community values of HBS</p> <p>11 respect for the dignity of others?</p> <p>12 A Yes.</p> <p>13 Q Did it show respect for the dignity of</p> <p>14 Mr. Edelman's disabled colleagues to assist them with</p> <p>15 challenges they were facing due to their disabilities?</p> <p>16 A I would think so.</p> <p>17 MR. MURPHY: Objection.</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q When members of the standing committee and</p> <p>20 the appointments committee reviewed Mr. Edelman's</p> <p>21 promotion-related materials, was that in physical</p> <p>22 binders?</p> <p>23 A I think so.</p> <p>24 Q Did the binders include the FRB reports?</p> <p>25 A I think so.</p>	<p style="text-align: right;">Page 97</p> <p>1 A As I said, I don't remember it.</p> <p>2 Q In October 2015 do you recall receiving</p> <p>3 expert -- strike that -- excerpts from 17 internal and</p> <p>4 external letters that touched, in some way, on FRB</p> <p>5 matters for Mr. Edelman?</p> <p>6 A No.</p> <p>7 MR. RUSSCOL: Next exhibit. Forty-</p> <p>8 seven?</p> <p>9 THE REPORTER: Yes.</p> <p>10 (Exhibit 47 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Taking a look at the bottom part of this, do</p> <p>14 you see that Jean Cunningham, on October 20, 2015,</p> <p>15 sent you a file titled Edelman Letter Quotes?</p> <p>16 A Yes.</p> <p>17 Q And then do you see your response, "Only one</p> <p>18 colleague expresses what we seem to have come to see</p> <p>19 on the FRB"?</p> <p>20 A Yes.</p> <p>21 Q Does that refresh your recollection about</p> <p>22 whether you received excerpts from the letters from</p> <p>23 colleagues for Mr. Edelman?</p> <p>24 A Not really.</p> <p>25 Q As of October 20, 2015, what had you come to</p>

<p style="text-align: right;">Page 98</p> <p>1 see on the FRB?</p> <p>2 A I don't remember.</p> <p>3 Q Was it that you didn't think Mr. Edelman</p> <p>4 should become a tenured professor at HBS?</p> <p>5 A I was not judging that. We were looking for</p> <p>6 the FRB process for the dean, not the promotion</p> <p>7 process.</p> <p>8 Q Do you have -- strike that. What did you</p> <p>9 mean that "Only one colleague expresses what we seem</p> <p>10 to have come to see on the FRB"?</p> <p>11 A I don't know.</p> <p>12 Q Did you mean by that only one colleague</p> <p>13 shared any concerns about Mr. Edelman, the other 16</p> <p>14 letters were positive?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q Did you consider summarizing the information</p> <p>19 in these letter quotes in the FRB report in 2015?</p> <p>20 A I don't recall.</p> <p>21 Q Did Dean Cunningham send the letter quotes</p> <p>22 only to you and not to the other FRB members?</p> <p>23 A I don't remember.</p> <p>24 Q Was there any other time in 2015 or 2017</p> <p>25 when she sent evidence to only you and not other FRB</p>	<p style="text-align: right;">Page 100</p> <p>1 altered the SC discussion." That's what you wrote.</p> <p>2 What does SC refer to there?</p> <p>3 A I don't know, but probably subcommittee. I</p> <p>4 don't know. I mean, the subcommittee would have -- it</p> <p>5 doesn't make sense, 'cause the subcommittee would have</p> <p>6 had the -- the letters.</p> <p>7 Q Could SC refer to subcommittee or standing</p> <p>8 committee?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 BY MR. RUSSCOL:</p> <p>12 Q Well, whichever it was, you then continued</p> <p>13 "I hope that our report will alter it"; right?</p> <p>14 A "I hope that our report will alter it." I</p> <p>15 don't know what that means, but.</p> <p>16 Q Well, is it fair to say that you didn't</p> <p>17 expect the quotes to alter the SC discussion because</p> <p>18 you expected the either standing committee or</p> <p>19 subcommittee discussion to be positive?</p> <p>20 MR. MURPHY: Objection</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. RUSSCOL:</p> <p>23 Q In what way did you hope that your report</p> <p>24 would alter the discussion?</p> <p>25 A The report was the cumulated evidence and</p>
<p style="text-align: right;">Page 99</p> <p>1 members?</p> <p>2 A I don't know.</p> <p>3 Q Did you send this letter quotes file to the</p> <p>4 rest of the FRB?</p> <p>5 A I don't know.</p> <p>6 MR. RUSSCOL: Next exhibit, Exhibit 48.</p> <p>7 (Exhibit 48 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q So do you see that on October 25, 2015, you</p> <p>11 sent a file called "Edelman Letter Quotes" to Forrest</p> <p>12 Reinhardt?</p> <p>13 A I see that.</p> <p>14 Q And did you write about that file, "These</p> <p>15 quotes are largely positive"?</p> <p>16 A Yes.</p> <p>17 Q So the quotes from these letters for</p> <p>18 Mr. Edelman were largely positive; is that fair to</p> <p>19 say?</p> <p>20 A These quotes from the letters from the</p> <p>21 promotion packet.</p> <p>22 Q And your view --</p> <p>23 A Yes.</p> <p>24 Q Okay. And your view that you expressed at</p> <p>25 the time was that "These quotes may not have really</p>	<p style="text-align: right;">Page 101</p> <p>1 conclusions from a whole process that the subcommittee</p> <p>2 didn't have access to, so I would hope all that work</p> <p>3 would be somewhat meaningful to them.</p> <p>4 Q I believe you said a moment ago that what</p> <p>5 you were doing as part of FRB as of October 20th was</p> <p>6 for the deans and not related to promotions. Do you</p> <p>7 recall saying that?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Okay. So when we were talking about Exhibit</p> <p>12 47 a moment ago, I believe I asked you about what</p> <p>13 you'd come to see on the FRB and how it would impact</p> <p>14 Mr. Edelman's tenure case, and you expressed that you</p> <p>15 were focused on a report for the deans and not on the</p> <p>16 implications for promotion. Did I misunderstand you?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 THE WITNESS: Probably.</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q So what were you focused on as of October</p> <p>21 20th?</p> <p>22 A Completing a report of the FRB's process.</p> <p>23 Q And not on how that report would impact the</p> <p>24 standing committee or subcommittee's consideration of</p> <p>25 tenure?</p>

<p style="text-align: right;">Page 102</p> <p>1 MR. MURPHY: Objection.</p> <p>2 THE WITNESS: No. That wasn't the</p> <p>3 goal.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Okay. But then looking again at Exhibit 48,</p> <p>6 you hoped that your report would alter the discussion</p> <p>7 of the subcommittee or standing committee; isn't that</p> <p>8 right?</p> <p>9 A That's what it says. I don't recall what I</p> <p>10 mean.</p> <p>11 Q Now, these letter quotes that you -- strike</p> <p>12 that. These letter quotes were information that you</p> <p>13 and Professor Reinhardt were discussing in the context</p> <p>14 of the FRB work; is that fair to say?</p> <p>15 A Yes.</p> <p>16 Q And so that was evidence that was available</p> <p>17 to the FRB; wasn't it?</p> <p>18 A The quotes, yes. Well, I don't know</p> <p>19 actually. I can't -- I know -- at this moment it</p> <p>20 appears that Jean sent it to me, and I sent it to</p> <p>21 Forrest.</p> <p>22 Q Right. And you were both members of the FRB</p> <p>23 and considering it in the context of the FRB; right?</p> <p>24 A Correct.</p> <p>25 Q So that was evidence that had been gathered</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q That was input that you had before the</p> <p>3 report was finalized; wasn't it?</p> <p>4 A Correct.</p> <p>5 Q Now, before you sent this file to Professor</p> <p>6 Reinhardt, he asked you about incorporating the</p> <p>7 letters, and you wrote that it was tricky to do that.</p> <p>8 Do you remember that?</p> <p>9 A No.</p> <p>10 MR. RUSSCOL: Next exhibit, 49.</p> <p>11 (Exhibit 49 was marked for</p> <p>12 identification.)</p> <p>13 THE WITNESS: I see. Right. Right.</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q So looking down at the end of the second</p> <p>16 page and the third page of this document, do you see</p> <p>17 that this starts out as an email chain where you're</p> <p>18 circulating a draft FRB report and exhibits to the</p> <p>19 other FRB members?</p> <p>20 A Okay.</p> <p>21 Q Is that what it appears to be?</p> <p>22 A Just catching up. Slightly updated report.</p> <p>23 Okay. Exhibits and report draft. Yes.</p> <p>24 Q And then on the second page, Professor</p> <p>25 Schlesinger gives some feedback on the report; is that</p>
<p style="text-align: right;">Page 103</p> <p>1 as part of the FRB process?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q Is that fair to say?</p> <p>5 A I don't know, 'cause we -- we were given</p> <p>6 a -- I don't know whether it was part of the FRB</p> <p>7 process or just part of the promotion review process.</p> <p>8 Q Did you have a role in the promotion review</p> <p>9 process?</p> <p>10 A No.</p> <p>11 Q Did Professor Reinhardt have a role in the</p> <p>12 promotion review process?</p> <p>13 A I don't know. Probably would not have been</p> <p>14 on the subcommittee at that point.</p> <p>15 Q Did Dean Cunningham have a role in the</p> <p>16 promotion review process?</p> <p>17 A No.</p> <p>18 Q So seems likely that if this was a document</p> <p>19 that Dean Cunningham was sharing with you and you were</p> <p>20 sharing with Professor Reinhardt in the context of the</p> <p>21 FRB that it was related to the FRB process; isn't that</p> <p>22 right?</p> <p>23 MR. MURPHY: Objection</p> <p>24 THE WITNESS: It was more input to us.</p> <p>25 //</p>	<p style="text-align: right;">Page 105</p> <p>1 fair to say?</p> <p>2 A Yes.</p> <p>3 Q And then on the first page Professor</p> <p>4 Reinhardt responds and says that he's writing only to</p> <p>5 you. Do you see that?</p> <p>6 A Mm-hmm.</p> <p>7 Q Is that a yes?</p> <p>8 A Yes, sorry.</p> <p>9 Q And Professor Reinhardt asks -- he mentions</p> <p>10 that the report doesn't draw on the letters solicited</p> <p>11 in the promotion process; is that fair to say?</p> <p>12 A Yes.</p> <p>13 Q And he says he doesn't know what they say,</p> <p>14 but asks if you've seen the relevant portions of the</p> <p>15 letters?</p> <p>16 A So is this something other than what we were</p> <p>17 talking about just a few minutes ago?</p> <p>18 Q So just to clarify, looking back at the last</p> <p>19 few exhibits, so on -- for Exhibit 47, it shows that</p> <p>20 Dean Cunningham sent the letter quotes to you on</p> <p>21 October 20th, if you refer to that. And then Exhibit</p> <p>22 48 shows that you sent them to Professor Reinhardt on</p> <p>23 October 25.</p> <p>24 A Okay.</p> <p>25 Q So comparing those dates, do you see that --</p>

<p style="text-align: right;">Page 106</p> <p>1 A Oh. Okay. So here, this is the 23rd.</p> <p>2 Q So this is in between when you received them</p> <p>3 and when you sent them to Professor Reinhardt; is that</p> <p>4 fair to say?</p> <p>5 A Yes. Yes.</p> <p>6 Q So Professor Reinhardt asked about</p> <p>7 incorporating the letter quotes and wrote "I write</p> <p>8 this without knowing whether on balance that</p> <p>9 information is favorable to the person or not"?</p> <p>10 A Yes.</p> <p>11 Q And you responded that it was tricky for two</p> <p>12 reasons; right?</p> <p>13 A Right.</p> <p>14 Q And one of the reasons why you thought it</p> <p>15 was tricky was that only one person's comments</p> <p>16 expressed real concern. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q So it was tricky because you could say that</p> <p>19 one letter expressed concerns, but then you'd have to</p> <p>20 acknowledge that the other 16 letters were positive;</p> <p>21 right?</p> <p>22 A Right.</p> <p>23 Q And then the other reason it was tricky was</p> <p>24 that Mr. Edelman wasn't supposed to have access to the</p> <p>25 letters --</p>	<p style="text-align: right;">Page 108</p> <p>1 evidence gathered has to be shared with the person</p> <p>2 under review.</p> <p>3 MR. MURPHY: Objection.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Were you thinking about that?</p> <p>6 A No. I mean, not directly.</p> <p>7 THE VIDEOGRAPHER: You're hitting your</p> <p>8 microphone.</p> <p>9 THE WITNESS: What? Oh. I'm so sorry.</p> <p>10 THE VIDEOGRAPHER: I heard it though.</p> <p>11 THE WITNESS: Good. Good, good.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Did you consider summarizing the letters in</p> <p>14 some way that wouldn't have been attributable to</p> <p>15 particular writers?</p> <p>16 A I don't recall. I -- you know, I've been --</p> <p>17 I've been reading letters in promotion committee for</p> <p>18 20 years and have never seen a single negative</p> <p>19 colleagueship comment except for that one. So it's</p> <p>20 not a -- it's not a thing people usually do.</p> <p>21 Q Do you see in Professor Reinhardt's email</p> <p>22 that he suggests "At least point out their existence</p> <p>23 and refer those readers of our report to the letters</p> <p>24 themselves"? Do you see that?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 A To the letters.</p> <p>2 Q -- because they were confidential, but he</p> <p>3 was entitled to receive the report; right?</p> <p>4 A Right.</p> <p>5 Q When thinking about how to deal with that</p> <p>6 situation that you found tricky, did you refer to the</p> <p>7 principles and procedures for the FRB?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Did you ask Dean Healy how to handle the</p> <p>12 situation?</p> <p>13 A I don't recall.</p> <p>14 Q Did you ask anyone else for advice on how to</p> <p>15 handle that situation?</p> <p>16 A I don't recall.</p> <p>17 Q Did you have in mind the requirement in the</p> <p>18 principles and procedures that the FRB would have to</p> <p>19 share the evidence gathered with Mr. Edelman?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: The -- Ben will see the</p> <p>22 report? Is that what you're --</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q I'm asking specifically about the part of</p> <p>25 the principles and procedures that says that the</p>	<p style="text-align: right;">Page 109</p> <p>1 Q Did the FRB do that?</p> <p>2 A I don't -- I don't recall. I think not.</p> <p>3 Q Was your view that if you didn't mention the</p> <p>4 letter quotes in the report then you could avoid</p> <p>5 giving them to Mr. Edelman?</p> <p>6 A I -- I don't recall thinking about that.</p> <p>7 Q Well, if your understanding was that if that</p> <p>8 information was not included in the FRB's report, then</p> <p>9 Mr. Edelman wouldn't see that; is that fair to say?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: Is it fair to say? I</p> <p>12 guess. I don't know.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q What was the ultimate result of</p> <p>15 Mr. Edelman's promotion process in 2015?</p> <p>16 A 2015. The case -- he -- he withdrew the</p> <p>17 case, or somebody withdrew the case. The case didn't</p> <p>18 get heard.</p> <p>19 Q And the result was that he would have</p> <p>20 another two years before his case would be heard?</p> <p>21 A Correct.</p> <p>22 Q And after Mr. Edelman was given another two</p> <p>23 years to apply for promotion, is it fair to say you</p> <p>24 believe there should be interim checkpoints between</p> <p>25 2015 and 2017?</p>

<p style="text-align: right;">Page 110</p> <p>1 A I don't recall.</p> <p>2 MR. RUSSCOL: Next exhibit, Exhibit 50,</p> <p>3 I believe.</p> <p>4 (Exhibit 50 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Are these notes of a call held among the FRB</p> <p>8 members in 2015?</p> <p>9 A Doesn't have a date that I can see.</p> <p>10 Q Well, taking a look at the contents of the</p> <p>11 first page and the reference to a two-year delay, does</p> <p>12 that seem like --</p> <p>13 A Okay.</p> <p>14 Q -- it occurred in 2015?</p> <p>15 A I'm catching up. But yes, that would be</p> <p>16 2015 then if it says a two-year delay.</p> <p>17 Q And looking three paragraphs from the</p> <p>18 bottom, do you see where you're identified as saying</p> <p>19 that the standing committee made a recommendation to</p> <p>20 the dean of a two-year delay?</p> <p>21 A Two -- two-year delay, yes.</p> <p>22 Q And then at the bottom it looks like Dean</p> <p>23 Crispi is asking "Should there be a one-year check in</p> <p>24 with someone?" and then at the top of the next page</p> <p>25 you're identified as saying, "You're right, there</p>	<p style="text-align: right;">Page 112</p> <p>1 Q Did anyone say that?</p> <p>2 A I don't recall.</p> <p>3 Q Did any of the deans tell you that that</p> <p>4 would happen?</p> <p>5 A I don't remember.</p> <p>6 MR. RUSSCOL: This will be Exhibit 51.</p> <p>7 (Exhibit 51 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q Now, is Exhibit 51 a letter that you wrote</p> <p>11 to Mr. Edelman in 2017 to kick off the FRB process?</p> <p>12 A Looks like it.</p> <p>13 Q And at the end of the second paragraph, it</p> <p>14 states "Anticipating that the FRB would again be</p> <p>15 activated during summer/fall 2017 to review your</p> <p>16 conduct." Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Who anticipated that the FRB would be</p> <p>19 activated again?</p> <p>20 A Anticipating -- let's see. The standing</p> <p>21 committee -- the -- either the dean's office or the --</p> <p>22 or the chair of the promotions committee.</p> <p>23 Q When you say "promotions committee," does</p> <p>24 that mean the standing committee or the appointments</p> <p>25 committee?</p>
<p style="text-align: right;">Page 111</p> <p>1 should be interim checkpoints." Do you see that?</p> <p>2 A Mm-hmm. I see that.</p> <p>3 Q Is that an accurate representation of what</p> <p>4 happened on that call?</p> <p>5 A You mean the notes?</p> <p>6 Q Yes.</p> <p>7 A I assume so. I don't recall the call</p> <p>8 directly.</p> <p>9 Q Why did you believe that interim checkpoints</p> <p>10 were appropriate?</p> <p>11 A I think I was agreeing with Angela.</p> <p>12 Q Well, what did you think interim checkpoints</p> <p>13 meant?</p> <p>14 A I don't -- I don't recall.</p> <p>15 Q Do you know whether there were any interim</p> <p>16 checkpoints, as you described?</p> <p>17 A I don't know. I assume there were ongoing</p> <p>18 conversations.</p> <p>19 Q But you weren't involved with any of that?</p> <p>20 A Correct.</p> <p>21 Q As of the end of 2015, had the FRB concluded</p> <p>22 that there would be another FRB review about</p> <p>23 Mr. Edelman in 2017 no matter what he did from 2015 to</p> <p>24 2017?</p> <p>25 A I think that was an assumption.</p>	<p style="text-align: right;">Page 113</p> <p>1 A Appointments committee.</p> <p>2 Q Do you know who the chair of the</p> <p>3 appointments committee was in 2015?</p> <p>4 A Well, 2015 was Paul Healy.</p> <p>5 Q Would it always be the senior associate dean</p> <p>6 in Paul Healy's position?</p> <p>7 A Or the dean.</p> <p>8 Q Okay.</p> <p>9 MR. RUSSCOL: Next exhibit, Exhibit 52.</p> <p>10 (Exhibit 52 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Are these recommended actions and next steps</p> <p>14 for the FRB after Mr. Edelman's case was complete?</p> <p>15 A Looks like it.</p> <p>16 Q And the recommended actions don't include</p> <p>17 the FRB being in -- activated again in 2017; do they?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: These are recommended</p> <p>20 actions for Ben.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q Well, the next steps also don't include the</p> <p>23 FRB being activated again in 2017; do they?</p> <p>24 A They do not. They're not next. These are</p> <p>25 things that had to be done right away as I understand</p>

<p style="text-align: right;">Page 114</p> <p>1 it.</p> <p>2 Q Did Mr. Edelman agree in 2015 that there</p> <p>3 would be an FRB review in 2017?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Did Mr. Edelman ever communicate anything to</p> <p>8 you about whether or not he agreed to an FRB review in</p> <p>9 2017?</p> <p>10 A I don't recall.</p> <p>11 Q Who decided that there would be a further</p> <p>12 FRB proceeding about Mr. Edelman in 2017?</p> <p>13 A I don't know. Probably the dean.</p> <p>14 Q As of March 2017 was there any allegation</p> <p>15 that Mr. Edelman had engaged in boundary-crossing</p> <p>16 behavior?</p> <p>17 A As of March 2017? I don't know.</p> <p>18 Q You don't know --</p> <p>19 A I don't know.</p> <p>20 Q -- whether there was an allegation of that</p> <p>21 type?</p> <p>22 A I don't. I don't recall.</p> <p>23 Q Isn't that what you thought the FRB was</p> <p>24 aimed at when the principles and procedures were being</p> <p>25 drafted?</p>	<p style="text-align: right;">Page 116</p> <p>1 of March 2017 that fell into that category of cross-</p> <p>2 boundary behavior?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: Do you want me to start</p> <p>5 at the beginning?</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Yes.</p> <p>8 A So Blinkx and Sichuan Garden, and that was</p> <p>9 enough to generate concern, right. But are you asking</p> <p>10 whether -- what in between?</p> <p>11 Q I'm asking what the allegations were of</p> <p>12 cross-boundary behavior as of March 2017, all of them.</p> <p>13 A I don't -- I can't --</p> <p>14 MR. MURPHY: 2017? I'm sorry.</p> <p>15 MR. RUSSCOL: March 2017, yes.</p> <p>16 THE WITNESS: I can't recite everything</p> <p>17 from all of that.</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: Yeah.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Well, what do you remember were allegations</p> <p>22 of cross-boundary behavior?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: So that -- I don't think</p> <p>25 that's a term that reports uses.</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. MURPHY: Objection.</p> <p>2 THE WITNESS: I don't know that we had</p> <p>3 the term "boundary crossing," but it was put together</p> <p>4 to review allegations that came to the dean or</p> <p>5 someone's attention.</p> <p>6 MR. RUSSCOL: Okay. This will be the</p> <p>7 next exhibit, 53.</p> <p>8 (Exhibit 53 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Is this a draft of the document that</p> <p>12 eventually became the principles and procedures for</p> <p>13 the FRB?</p> <p>14 A Looks like it. There's no date, but I</p> <p>15 assume so. Oh, there's a date. Well, that's 2015.</p> <p>16 Yeah.</p> <p>17 Q And on the first page do you see that there</p> <p>18 is Comment Number 4 from AE saying "This is not about</p> <p>19 gotchas or making sure everyone is an absolute</p> <p>20 exemplar of community devotion, but about trying to</p> <p>21 prevent cross-boundary behavior."</p> <p>22 A I do.</p> <p>23 Q Did you write that comment?</p> <p>24 A I think so. It looks like it.</p> <p>25 Q What was Mr. Edelman alleged to have done as</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Well, it's something that you framed as</p> <p>3 being the purpose of what became the FRB; right?</p> <p>4 MR. MURPHY: Objection</p> <p>5 THE WITNESS: I didn't -- s</p> <p>6 Sorry. I'm sorry.</p> <p>7 I didn't design the purpose of the FRB.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q But as the principles and procedures were</p> <p>10 being developed, you made a statement of what the FRB</p> <p>11 would be about, and you said it was about trying to</p> <p>12 prevent cross-boundary behavior; right?</p> <p>13 A Well, let's see. I'm responding to LP,</p> <p>14 whoever that is. Here I'm trying to differentiate</p> <p>15 between basic requirements or baseline acceptability,</p> <p>16 non-negotiables or boundaries, and those other</p> <p>17 behaviors while are not exemplary are not grounds to</p> <p>18 trigger. Intent is to have people reporting every</p> <p>19 time we fail to meet our highest aspirations, and I</p> <p>20 said "I concur. It's not about that. But</p> <p>21 differentiating between non-negotiables or</p> <p>22 boundaries," so I think that's what I'm referring to.</p> <p>23 Right, the --</p> <p>24 Q So when you wrote that, what did you mean by</p> <p>25 cross-boundary behavior?</p>

<p style="text-align: right;">Page 118</p> <p>1 A I was agreeing with LP that not -- behaviors</p> <p>2 that were not the kind we would really want to have in</p> <p>3 our faculty.</p> <p>4 Q As of the start of the FRB process in spring</p> <p>5 2017 --</p> <p>6 A 2015.</p> <p>7 Q 2017 I'm referring to now.</p> <p>8 A Oh, oh, oh. Oh. Sorry. Sorry.</p> <p>9 Q Had there been serious questions raised</p> <p>10 about Mr. Edelman's conduct between the end of the</p> <p>11 2015 FRB process and that point in 2017?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: I think some people</p> <p>14 thought so.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q Who thought so?</p> <p>17 A I don't remember who thought so.</p> <p>18 Q Well, what were the serious questions that</p> <p>19 some people had raised about Mr. Edelman's conduct</p> <p>20 after the end of the first FRB process?</p> <p>21 A The -- I -- the one that comes to mind is</p> <p>22 the American Airlines suit, but I can't remember</p> <p>23 everything else that's in the 2017 process.</p> <p>24 Q Was the American Airlines lawsuit raised as</p> <p>25 an issue before the beginning of the 2017 FRB process?</p>	<p style="text-align: right;">Page 120</p> <p>1 Q Did you communicate it to Mr. Edelman in</p> <p>2 2015?</p> <p>3 A I don't recall.</p> <p>4 Q So you mentioned that questions about his</p> <p>5 conduct in between the two FRB processes were conveyed</p> <p>6 by the dean's office. Who --</p> <p>7 MR. MURPHY: Objection.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q Who specifically in the dean's office passed</p> <p>10 on those concerns?</p> <p>11 MR. MURPHY: Objection</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q Was there communication by email from</p> <p>15 someone in the dean's office about that?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 THE WITNESS: I don't know. I don't</p> <p>18 recall.</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q Did you have a meeting with anyone in the</p> <p>21 dean's office about questions about Mr. Edelman's</p> <p>22 conduct before the start of the 2017 FRB?</p> <p>23 A Objection.</p> <p>24 Q Not that I recall.</p> <p>25 A Did you meet or talk with Paul Healy about</p>
<p style="text-align: right;">Page 119</p> <p>1 A I don't remember the timing.</p> <p>2 Q Do you remember any other serious questions</p> <p>3 being raised about Mr. Edelman's conduct in between</p> <p>4 the beginning of the first -- I mean, in between the</p> <p>5 end of the first FRB process and the beginning of the</p> <p>6 second FRB process?</p> <p>7 A As I said, I don't remember.</p> <p>8 Q And you don't remember who raised any of</p> <p>9 those serious questions; right?</p> <p>10 A No. They didn't raise them to me.</p> <p>11 Q So how did you find out about them if they</p> <p>12 weren't raised to you?</p> <p>13 MR. MURPHY: Objection</p> <p>14 THE WITNESS: The dean's office</p> <p>15 would -- is responsible for instigating the process.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q How did that happen? How was that process</p> <p>18 instigated in 2017?</p> <p>19 A As I said before, this was all -- I think</p> <p>20 there was the -- always going to be the check in, what</p> <p>21 did we say, in -- see how it went, see how the two-</p> <p>22 year extension went.</p> <p>23 Q Was that communicated to Mr. Edelman in</p> <p>24 2015?</p> <p>25 A I don't -- I don't recall.</p>	<p style="text-align: right;">Page 121</p> <p>1 that subject -- the 2017 process?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 THE WITNESS: I don't remember.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Did you meet or talk with Dean Nohria before</p> <p>6 the start of the 2017 process about that?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: Don't remember.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q So you believe that there were serious</p> <p>11 questions about Mr. Edelman's conduct in between the</p> <p>12 two FRB processes, but the only thing that comes to</p> <p>13 mind at this point is the American Airlines lawsuit?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: I mean, he was going to</p> <p>16 come back up for -- for tenure, so there was always</p> <p>17 the requirement that the -- the subcommittee -- I mean</p> <p>18 the FRB would reconvene, so I don't recall the -- how</p> <p>19 many, if any, complaints there were.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Okay. Well, the principles and procedures</p> <p>22 say there's supposed to be a meeting between the FRB</p> <p>23 chair, the senior associate dean, and the executive</p> <p>24 dean to discuss those issues; right?</p> <p>25 MR. MURPHY: Objection,</p>

<p style="text-align: right;">Page 122</p> <p>1 THE WITNESS: If you say so.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q And you don't remember having a meeting with</p> <p>4 Paul Healy and Angela Crispi to discuss that?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 THE WITNESS: I don't remember.</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q Were there allegations that Mr. Edelman</p> <p>9 showed egregious behavior or a persistent and</p> <p>10 pervasive pattern of problematic conduct in between</p> <p>11 the end of the first FRB process and the beginning of</p> <p>12 the second FRB process?</p> <p>13 A I don't recall.</p> <p>14 Q Did the FRB have any evidence of misconduct</p> <p>15 by Mr. Edelman in between the two FRB processes before</p> <p>16 the 2017 FRB process started?</p> <p>17 A I don't recall.</p> <p>18 Q Did any of the FRB members or staff have</p> <p>19 personal knowledge of any allegations of misconduct</p> <p>20 against Mr. Edelman in between the two FRB processes?</p> <p>21 A I don't know.</p> <p>22 MR. MURPHY: Objection.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q Did you?</p> <p>25 A I don't recall.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q And at the top do you see that on March 31,</p> <p>2 2017, you responded to welcome Professor Gilson to the</p> <p>3 FRB, and you wrote "Of course we have no cases pending</p> <p>4 and perhaps will not have any for a good long time"?</p> <p>5 A Yes.</p> <p>6 Q So at that time there were no FRB cases;</p> <p>7 right?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: No new ones.</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Well, you also wrote that you didn't expect</p> <p>12 to have any for a good long time. Is that fair to</p> <p>13 say?</p> <p>14 A It's fair to say I wrote that.</p> <p>15 Q So you wrote that to Professor Gilson, but</p> <p>16 it was incorrect?</p> <p>17 A Yes, I think it was incorrect, 'cause it</p> <p>18 doesn't -- it doesn't sound like the one that's</p> <p>19 already underway is included.</p> <p>20 Q So you wrote to Professor Gilson that you</p> <p>21 had no cases pending and perhaps will not have any for</p> <p>22 a good long time, but there was a case that you were</p> <p>23 about to start up again; is that what you're saying?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: Well, we were not about</p>
<p style="text-align: right;">Page 123</p> <p>1 Q As of March 2017 did you personally believe</p> <p>2 that Mr. Edelman had engaged in egregious behavior</p> <p>3 between November 2015 and March 2017?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: Not that I recall.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q As of March 2017 did you believe that</p> <p>8 Mr. Edelman had engaged in a persistent and pervasive</p> <p>9 pattern of problematic conduct between November 2015</p> <p>10 and March 2017?</p> <p>11 A Not that I recall.</p> <p>12 Q As of March -- strike that. As of March 31,</p> <p>13 2017, do you remember writing that the FRB has no</p> <p>14 cases pending and perhaps will not have any for a good</p> <p>15 long time?</p> <p>16 A No.</p> <p>17 MR. RUSSCOL: The next exhibit, Exhibit</p> <p>18 54.</p> <p>19 (Exhibit 54 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q Do you see that at the bottom there's an</p> <p>23 email from Dean Nohria to Stuart Gilson inviting him</p> <p>24 to join the FRB?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 to start it up. It's only March. I think it started</p> <p>2 up in the summer if I recall.</p> <p>3 MR. RUSSCOL: Next exhibit, 55.</p> <p>4 (Exhibit 55 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q So is this an email that you sent to Jean</p> <p>8 Cunningham on April 20, 2017?</p> <p>9 A Looks like it.</p> <p>10 Q And it looks like it's a draft of a cover</p> <p>11 letter to the other FRB members; is that fair to say?</p> <p>12 A I think so.</p> <p>13 Q And so in the --</p> <p>14 A Oh, right. Correct. Yeah.</p> <p>15 Q In the second paragraph you write, "We are</p> <p>16 due to reconvene to revisit the Ben Edelman case;</p> <p>17 right?</p> <p>18 A Mm-hmm.</p> <p>19 Q Is that a yes?</p> <p>20 A Yes.</p> <p>21 Q And so in Exhibit 54, you wrote to Professor</p> <p>22 Gilson that there were no cases pending and perhaps</p> <p>23 will not have any for a good long time, but on -- in</p> <p>24 Exhibit 55 on April 20th you said "We're due to</p> <p>25 reconvene to revisit the Ben Edelman case." So did</p>

<p style="text-align: right;">Page 126</p> <p>1 something change in between March 21st and April 20th?</p> <p>2 MR. MURPHY: Objection.</p> <p>3 THE WITNESS: It looks like I made a</p> <p>4 mistake not considering that in my first message to</p> <p>5 Stu.</p> <p>6 MR. RUSSCOL: Can we go off the record?</p> <p>7 THE VIDEOGRAPHER: Time is 12:47.</p> <p>8 We're off the record.</p> <p>9 (Off the record.)</p> <p>10 THE VIDEOGRAPHER: Okay. We are back</p> <p>11 on the record. The time is 1:44.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Professor Edmondson, is it your</p> <p>14 understanding that in any FRB review the FRB has to</p> <p>15 start by drafting an allegation?</p> <p>16 A I think so.</p> <p>17 Q And how did you approach that task in 2017</p> <p>18 for Mr. Edelman?</p> <p>19 A I think it was the understanding from the</p> <p>20 prior FRB that we would meet again rather than write a</p> <p>21 new letter, because didn't need a new letter.</p> <p>22 Q Okay. So in 2017 there wasn't a separate</p> <p>23 allegation that Mr. Edelman had committed misconduct?</p> <p>24 A Not that I know of.</p> <p>25 Q Okay. Is it fair to say that an allegation</p>	<p style="text-align: right;">Page 128</p> <p>1 the FRB's review in 2015 and the start of the FRB's</p> <p>2 inquiry in 2017?</p> <p>3 A I don't think so.</p> <p>4 Q Did the FRB ever provide Mr. Edelman with</p> <p>5 new or different allegations than what's included in</p> <p>6 this document in 2017?</p> <p>7 A I don't think so.</p> <p>8 Q In August 2017 did Paul Healy forward you an</p> <p>9 email from a faculty member about Mr. Edelman's</p> <p>10 writings about Google and work for Microsoft?</p> <p>11 A I don't recall.</p> <p>12 MR. RUSSCOL: So this will be the next</p> <p>13 exhibit. What number are we up to?</p> <p>14 THE REPORTER: Fifty-six.</p> <p>15 (Exhibit 56 was marked for</p> <p>16 identification.)</p> <p>17 THE WITNESS: Oh, it must be --</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q So looking at the second and third pages, do</p> <p>20 you see that a faculty member whose name has been</p> <p>21 redacted sent Paul Healy some supplementary material</p> <p>22 related to Mr. Edelman and conflicts of interest?</p> <p>23 A Yes, I'm reading it now.</p> <p>24 Q And then on the second page did Paul Healy</p> <p>25 send it to you and Jean Cunningham on August 17, 2017?</p>
<p style="text-align: right;">Page 127</p> <p>1 is something that can be proven true or not true?</p> <p>2 MR. MURPHY: Objection</p> <p>3 THE WITNESS: I'm not sure.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q I'd like to direct your attention to Exhibit</p> <p>6 51, which was previously introduced. So this is the</p> <p>7 letter that you sent to Mr. Edelman to begin the FRB's</p> <p>8 inquiry in 2017; is that right?</p> <p>9 A It looks like it. It doesn't have a date,</p> <p>10 but.</p> <p>11 Q Is this letter an allegation?</p> <p>12 A What?</p> <p>13 Q Is this letter an allegation?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: I don't think so.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q Does it contain an allegation?</p> <p>18 A Let me read it. It contains the old</p> <p>19 allegations, the original allegations.</p> <p>20 Q What were those original allegations?</p> <p>21 A "Your conduct in the Blinkx and Sichuan</p> <p>22 Garden incidents did not uphold the school's community</p> <p>23 values. And" --</p> <p>24 Q And so did this document allege that there</p> <p>25 was any wrongdoing by Mr. Edelman between the end of</p>	<p style="text-align: right;">Page 129</p> <p>1 A Looks like it.</p> <p>2 Q Then did you discuss the contents of that</p> <p>3 email with Jean Cunningham?</p> <p>4 A I don't recall.</p> <p>5 Q Looking at the first page of the document,</p> <p>6 that quoted email from Jean, the third paragraph</p> <p>7 refers to "In talking with Amy." Does that refresh</p> <p>8 your recollection about whether you discussed it with</p> <p>9 Jean Cunningham?</p> <p>10 A No.</p> <p>11 Q So you don't recall whether --</p> <p>12 A I don't recall discussing it, but I can see</p> <p>13 it here.</p> <p>14 Q Did you believe that this conflict-of-</p> <p>15 interest issue that was raised by that faculty member</p> <p>16 was a new allegation that you weren't sure would be</p> <p>17 within the scope of the FRB work you were doing at the</p> <p>18 time?</p> <p>19 A I don't recall.</p> <p>20 Q Did Jean Cunningham write that it was, in</p> <p>21 effect, an allegation of wrongdoing in the second</p> <p>22 paragraph?</p> <p>23 A "It's, in effect, an allegation of a</p> <p>24 wrongdoing," yes.</p> <p>25 Q And looking at the third paragraph, was Dean</p>

<p style="text-align: right;">Page 130</p> <p>1 Cunningham indicating that she'd talked with you and 2 that you and she were not clear that this really fell 3 within the scope of the current FRB work, e.g., to be, 4 in a sense, considering new allegations? 5 A "We're not clear this really falls within 6 the scope of the current FRB work, or maybe it is. 7 We're not sure who we -- who should follow up with 8 whoever." 9 Q Did that accurately capture your thinking as 10 of the date of that email from Jean Cunningham on 11 August 24, 2017? 12 MR. MURPHY: Objection. 13 THE WITNESS: I don't recall. 14 BY MR. RUSSCOL: 15 Q Was the subject of Mr. Edelman's writings 16 about Google and work for Microsoft ultimately 17 considered in the FRB's 2017 report? 18 A I don't recall. 19 Q You don't remember whether that came up in 20 the report? 21 A I don't remember. 22 Q If it would be helpful, the report is 23 Exhibit 45 if you want to take a look. 24 A Oh, okay. 25 Q I'd direct your attention starting on page</p>	<p style="text-align: right;">Page 132</p> <p>1 contain an allegation that Mr. Edelman engaged in 2 misconduct under the principles and procedures of the 3 FRB? 4 A I think he's -- the person is saying "As 5 more evidence is amassed, I'm not quite sure what to 6 think, but I feel the need to be somewhat Bayesian in 7 my updating." Meaning "I'm passing it along to you to 8 see what you think." 9 Q So would you consider that an allegation 10 that the FRB could look into? 11 MR. MURPHY: Objection. 12 THE WITNESS: I think that's for the 13 dean to decide. 14 BY MR. RUSSCOL: 15 Q So as FRB chair, you didn't have a role in 16 deciding whether it was or was not an allegation -- 17 A No. 18 Q -- that the FRB could look into? 19 MR. MURPHY: Objection. 20 THE WITNESS: No. 21 BY MR. RUSSCOL: 22 Q When you got the email from Dean Healy on 23 August 17, 2017, what was the status of the FRB's 24 inquiry? 25 A I don't remember.</p>
<p style="text-align: right;">Page 131</p> <p>1 6. 2 A Oh, page 6. Yes. 3 Q So was the faculty member's concern and the 4 Wall Street Journal article that they refer to 5 discussed in the FRB's report? 6 A It looks like it is. 7 Q Who decided that that subject would be added 8 to the FRB's mandate? 9 A I don't remember. 10 Q After -- 11 A -- the other one. 12 Q After the email exchange that's in Exhibit 13 56 where Dean Healy says he's going to follow up with 14 that faculty member, did Dean Healy communicate with 15 you further about whether the FRB should consider this 16 issue? 17 A I don't remember. 18 Q Did you meet with Dean Healy after August 19 25th about Mr. Edelman? 20 A I don't recall. 21 Q How did you communicate with Dean Healy in 22 that time period? Was it by email, in person, by 23 phone, a combination, other ways? 24 A I don't remember. 25 Q Did this email from the faculty member</p>	<p style="text-align: right;">Page 133</p> <p>1 Q Do you recall if the FRB had already 2 interviewed Mr. Edelman? 3 A I do not recall. 4 Q Do you recall if the FRB had completed its 5 witness interviews? 6 A No. 7 Q After this email exchange, the FRB requested 8 more information from Mr. Edelman about his 9 disclosures. Do you recall that? 10 A No. 11 MR. RUSSCOL: Next exhibit. Is that 12 57? 13 THE REPORTER: Yep. 14 (Exhibit 57 was marked for 15 identification.) 16 THE WITNESS: Thank you. 17 BY MR. RUSSCOL: 18 Q Is this an email that you sent to 19 Mr. Edelman on September 1, 2017? 20 A Yes. 21 Q And in this email do you ask Mr. Edelman for 22 information about his outside activities and 23 disclosures? 24 A Yes. 25 Q Before this email, had the FRB asked</p>

<p style="text-align: right;">Page 134</p> <p>1 Mr. Edelman about those things?</p> <p>2 A I don't recall.</p> <p>3 Q Did you bring those things to Mr. Edelman's</p> <p>4 attention at all before this September 1st email?</p> <p>5 A I don't recall.</p> <p>6 Q Is it fair to say that it was two weeks</p> <p>7 between August 17th and September 1st from when you</p> <p>8 first learned of the issue to when you sent this email</p> <p>9 to Mr. Edelman?</p> <p>10 A I think that looks -- sounds right.</p> <p>11 Q And looking at the bottom of that message,</p> <p>12 did you ask Mr. Edelman for a response by September</p> <p>13 8th?</p> <p>14 A Yes.</p> <p>15 Q And you sent that on the Friday before Labor</p> <p>16 Day weekend; right?</p> <p>17 A Is that Labor Day weekend, the first?</p> <p>18 Q I can represent to you that Labor Day is on</p> <p>19 the first Monday in September.</p> <p>20 A Oh, yep. Okay.</p> <p>21 Q So --</p> <p>22 A So yes, it was the Friday before Labor Day</p> <p>23 weekend.</p> <p>24 Q And so you were asking him for a response to</p> <p>25 new issues within four business days?</p>	<p style="text-align: right;">Page 136</p> <p>1 A I don't know. "A complete listing of your</p> <p>2 outside activities, a complete listing of work</p> <p>3 products," oh, "and how you thought about them."</p> <p>4 That's true.</p> <p>5 Q And you were also asking Mr. Edelman to</p> <p>6 reflect on his role in the American Airlines</p> <p>7 litigation; right?</p> <p>8 A Yes.</p> <p>9 Q Is that a topic that had been brought up</p> <p>10 before September 1st?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: I don't remember.</p> <p>13 BY MR. RUSSCOL:</p> <p>14 Q What was the report on impact of OTA bias</p> <p>15 and consolidation on consumers that's referenced</p> <p>16 there?</p> <p>17 A I'm not sure. I don't remember. OTA bias.</p> <p>18 Q Is it fair to say that the final FRB report</p> <p>19 in 2017 centered mostly around Mr. Edelman's outside</p> <p>20 activities, including the American Airlines lawsuit</p> <p>21 and his work for Microsoft?</p> <p>22 A I don't think so, no.</p> <p>23 Q Looking back at the report, which is --</p> <p>24 A Forty-five.</p> <p>25 Q -- Exhibit 45, aren't about five pages of</p>
<p style="text-align: right;">Page 135</p> <p>1 A Correct.</p> <p>2 Q Was that consistent with the usual timeframe</p> <p>3 for a response to allegations in an FRB review?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: It's not -- it's not a</p> <p>6 response -- it's a list -- a complete listing of</p> <p>7 outside activities and work products, which should be</p> <p>8 already produced for the dean and on the CV anyway;</p> <p>9 right? So as I wrote, it's not a heavy lift, but if</p> <p>10 it is, if the timeframe isn't enough, we can clearly</p> <p>11 add more.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Well, you wrote that you hoped it was not a</p> <p>14 heavy lift, but looking in the middle of the page</p> <p>15 below the bullet points didn't you also realize that</p> <p>16 the complete listing of work products might be hard to</p> <p>17 fully reconstruct?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: I think it's an attempt</p> <p>20 to be, you know, helpful and not assume it's sitting</p> <p>21 there ready to go, but I don't know why it would be</p> <p>22 hard I guess, except for maybe the online stuff.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q Well, those two things in the bullet points</p> <p>25 weren't the only thing you were asking for; were they?</p>	<p style="text-align: right;">Page 137</p> <p>1 the report devoted to the disclosures and of the</p> <p>2 American Airlines lawsuit?</p> <p>3 A Where does it begin? Let's see. Oh.</p> <p>4 Almost.</p> <p>5 Q And is it fair to say that those things</p> <p>6 first came into the picture for the FRB after this</p> <p>7 August 17th email from Dean Healy?</p> <p>8 A I don't remember when they first came into</p> <p>9 the picture.</p> <p>10 Q Is it fair to say that the HBS conflict of</p> <p>11 interest policy set the school's expectations around</p> <p>12 disclosures and conflicts of interest?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 THE WITNESS: I think so.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q Is the conflict of interest policy relevant</p> <p>17 to whether a faculty member violated community values</p> <p>18 with respect to a particular disclosure?</p> <p>19 A I think so.</p> <p>20 Q So if an FRB is evaluating a faculty</p> <p>21 member's disclosure, shouldn't it start by analyzing</p> <p>22 the applicability of the conflict of interest policy</p> <p>23 to each of those disclosures?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: It's hard to say where it</p>

<p style="text-align: right;">Page 138</p> <p>1 should start.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Shouldn't that be a part of the discussion?</p> <p>4 MR. MURPHY: Objection.</p> <p>5 THE WITNESS: I don't know that I'm</p> <p>6 qualified to say whether it should or it shouldn't.</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q Well, don't you think it would be important</p> <p>9 for a reader of the FRB report to know whether or not</p> <p>10 any of the disclosures violated the conflict of</p> <p>11 interest policy?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: Yeah, I don't know.</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q Do you believe that a faculty member can</p> <p>16 comply with the conflict of interest policy but still</p> <p>17 be in violation of community values based on</p> <p>18 inadequate disclosures?</p> <p>19 A That sounds like a -- a puzzling question.</p> <p>20 Can you say it again?</p> <p>21 Q Sure. So do you believe that a faculty</p> <p>22 member can make a disclosure that fully complies with</p> <p>23 the conflict of interest policy, but nonetheless in</p> <p>24 making that disclosure violate HBS's community values?</p> <p>25 A Probably not fully -- that fully complies --</p>	<p style="text-align: right;">Page 140</p> <p>1 these -- reference these it would not be considered"</p> <p>2 it says.</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q So the subcommittee was supposed to focus on</p> <p>5 Mr. Edelman's research and teaching, but it wasn't</p> <p>6 supposed to address any conduct issues that the FRB</p> <p>7 was reviewing; right?</p> <p>8 A Yeah, I'm -- I mean, I wasn't on the</p> <p>9 subcommittee, but to the extent that they were able</p> <p>10 to, and that that was what they were told, then I</p> <p>11 would say yes.</p> <p>12 Q And that's what the principles and</p> <p>13 procedures for the FRB envision; right? There's that</p> <p>14 division of responsibility?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 THE WITNESS: I don't know how fully</p> <p>17 there's a division of responsibility, but think you</p> <p>18 could see it that way if you wanted to.</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q Well, what you conveyed to Dean Healy in</p> <p>21 this email is that if any internal or external letters</p> <p>22 made reference to conduct issues, then that</p> <p>23 information would be considered only by the FRB and</p> <p>24 not by the subcommittee; right?</p> <p>25 MR. MURPHY: Objection.</p>
<p style="text-align: right;">Page 139</p> <p>1 probably not.</p> <p>2 Q But you're not sure?</p> <p>3 A No, not sure.</p> <p>4 THE WITNESS: It's like there's a</p> <p>5 daycare center down there.</p> <p>6 MR. RUSSCOL: So let's make this the</p> <p>7 next exhibit, 58.</p> <p>8 (Exhibit 58 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q So taking a look at what's been marked as</p> <p>12 Exhibit 58, is that an email exchange between you and</p> <p>13 Paul Healy?</p> <p>14 A Looks like it.</p> <p>15 Q And focusing on the 2017 FRB review, is it</p> <p>16 fair to say that the subcommittee, considering</p> <p>17 Mr. Edelman's application for tenure, was supposed to</p> <p>18 evaluate Mr. Edelman's research and teaching but not</p> <p>19 address any conduct issues that the FRB was reviewing?</p> <p>20 MR. MURPHY: Objection.</p> <p>21 THE WITNESS: I -- I don't -- let's</p> <p>22 see. Let me look at it. "Extent to which they would</p> <p>23 be doing it, it would be independent of the conduct</p> <p>24 issue the FRB is reviewing," if that helps. "It would</p> <p>25 not be considered if the outside letters issue</p>	<p style="text-align: right;">Page 141</p> <p>1 THE WITNESS: I mean, I -- it -- "let</p> <p>2 me outline our assumptions," that seemed to imply</p> <p>3 that.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q So that was your understanding at the time?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: I think I was running it</p> <p>8 by -- by Paul.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q And then Paul's response was that you were</p> <p>11 both on the same page; right?</p> <p>12 A Right.</p> <p>13 Q So Dean Healy was confirming your</p> <p>14 assumptions that any conduct issues in the letters</p> <p>15 would be shared with the FRB and would not be</p> <p>16 considered by the subcommittee; right?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 THE WITNESS: I don't think it -- they</p> <p>19 wouldn't be considering it; they would be outsourcing</p> <p>20 it to us.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q So in the second bullet point you wrote "It</p> <p>23 would not be considered by the AC subcommittee";</p> <p>24 right?</p> <p>25 A Not initially.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q Well, and then --</p> <p>2 A Would have to consider it eventually.</p> <p>3 Q Well, the subcommittee wouldn't consider it</p> <p>4 thought; right? When the subcommittee -- let's start</p> <p>5 with that. The subcommittee wouldn't consider it;</p> <p>6 right?</p> <p>7 A Would consider it. Or did you say "would</p> <p>8 not"?</p> <p>9 Q Would not.</p> <p>10 A Yeah, I don't know. I mean, it says it</p> <p>11 would not be considered by them. Presumably, they'd</p> <p>12 have to consider it eventually.</p> <p>13 Q Well, doesn't it say in the third bullet</p> <p>14 point that the subcommittee report and the FRB report</p> <p>15 would be made available to the whole appointments</p> <p>16 committee; right?</p> <p>17 A Right.</p> <p>18 Q So then the full appointments committee</p> <p>19 would consider those issues, but the subcommittee</p> <p>20 would not in forming their report; is that fair to</p> <p>21 say?</p> <p>22 A Okay. Okay.</p> <p>23 Q Because the subcommittee wasn't going to</p> <p>24 consider those conduct issues that were under review</p> <p>25 by the FRB; right?</p>	<p style="text-align: right;">Page 144</p> <p>1 Mr. Edelman at some point?</p> <p>2 A I must have.</p> <p>3 Q And the subcommittee did receive information</p> <p>4 in the letters related to the Sichuan Garden and</p> <p>5 Blinkx incidents and Mr. Edelman's conduct and</p> <p>6 colleagueship; didn't it</p> <p>7 A I don't remember.</p> <p>8 Q Were any of those letters provided to the</p> <p>9 FRB?</p> <p>10 A I don't remember.</p> <p>11 MR. RUSSCOL: This is going to be the</p> <p>12 next exhibit.</p> <p>13 (Exhibit 59 was marked for</p> <p>14 identification.)</p> <p>15 THE WITNESS: Thank you.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q So taking a look at what's been marked as</p> <p>18 Exhibit 59, is this the subcommittee report for</p> <p>19 Mr. Edelman in 2017?</p> <p>20 A I don't have -- I -- I assume so. Don't</p> <p>21 remember it.</p> <p>22 Q Now, looking at page 19 of the document,</p> <p>23 they're marked in the lower right corner.</p> <p>24 A Sixteen, seventeen, eighteen, nineteen.</p> <p>25 Q So starting on page 19, do you see a section</p>
<p style="text-align: right;">Page 143</p> <p>1 A I guess so.</p> <p>2 Q Was any information from the internal or</p> <p>3 external letters shared with the FRB in 2017?</p> <p>4 A I don't remember.</p> <p>5 Q As far as you know, did the subcommittee</p> <p>6 follow the process that you and Dean Healy agreed upon</p> <p>7 in this email where the FRB would receive information</p> <p>8 related to conduct that was in the letters and the</p> <p>9 subcommittee wouldn't consider it?</p> <p>10 A I don't remember.</p> <p>11 Q Did you ever learn that Dean Healy had a</p> <p>12 change in his understanding of what was going to</p> <p>13 happen with those letters in the subcommittee process?</p> <p>14 A I don't recall.</p> <p>15 MR. MURPHY: Objection.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q Did you ever ask Dean Healy or anyone else</p> <p>18 to handle those letters in a different manner?</p> <p>19 A I don't recall.</p> <p>20 Q You're a member of the appointments</p> <p>21 committee; aren't you?</p> <p>22 A Yes.</p> <p>23 Q And you were in 2017?</p> <p>24 A Yes.</p> <p>25 Q Did you see the subcommittee report for</p>	<p style="text-align: right;">Page 145</p> <p>1 titled Letters Referencing Colleagueship?</p> <p>2 A Yes.</p> <p>3 Q And that section contains quotes from</p> <p>4 letters that are directly related to what the FRB was</p> <p>5 supposed to be reviewing; doesn't it?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: Wait, are you saying</p> <p>8 that -- it -- the people who wrote letters that</p> <p>9 mention these things -- they shouldn't have done that?</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q What I'm asking is whether this section</p> <p>12 includes quotes from the internal and external letters</p> <p>13 that relate to Mr. Edelman's colleagueship and</p> <p>14 community values.</p> <p>15 A It -- it appears that they do.</p> <p>16 Q And that wasn't what you and Dean Healy</p> <p>17 agreed on; was it?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: I don't think we were in</p> <p>20 a position to agree on -- on what the -- what the</p> <p>21 subcommittee would -- would do with the materials they</p> <p>22 got.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q Did you ever see the internal or external</p> <p>25 letters in your capacity as FRB chair?</p>

<p style="text-align: right;">Page 146</p> <p>1 A No. I mean, not in my capacity as FRB</p> <p>2 chair.</p> <p>3 Q But you would have seen them later on as a</p> <p>4 member of the appointments committee?</p> <p>5 A Right.</p> <p>6 Q So to the best of your recollection was the</p> <p>7 first time that you saw these quotes from these</p> <p>8 letters when you read either the subcommittee report</p> <p>9 or the letters themselves as an appointments committee</p> <p>10 member?</p> <p>11 A I don't remember.</p> <p>12 Q Did the FRB ever provide these quotes to</p> <p>13 Mr. Edelman?</p> <p>14 A These quotes?</p> <p>15 Q Yes</p> <p>16 A Not that I know of. Not that I recall.</p> <p>17 Q Is it fair to say that the principles and</p> <p>18 procedures for the FRB provide that a faculty member</p> <p>19 who's the subject of an FRB review will have an</p> <p>20 opportunity to respond to the allegations against</p> <p>21 them?</p> <p>22 A Yes.</p> <p>23 Q And that they'll have an opportunity to</p> <p>24 respond to the FRB's draft report?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. MURPHY: Thanks.</p> <p>2 THE WITNESS: Oh, thank you.</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q So looking at the first page of what's been</p> <p>5 marked as Exhibit 60, do you see in the middle where</p> <p>6 you wrote to Professor Reinhardt "I think</p> <p>7 unfortunately our FRB policies give him a chance to</p> <p>8 respond"?</p> <p>9 A Mm-hmm.</p> <p>10 Q Is that a yes?</p> <p>11 A That is a yes, sorry.</p> <p>12 Q Why was it unfortunate in Mr. Edelman's case</p> <p>13 that he had the right to respond?</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: Yeah, I don't recall, but</p> <p>16 I assume it was time pressure.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q Were there any other parts of the principles</p> <p>19 and procedures that you came to think were unfortunate</p> <p>20 as Mr. Edelman's case played out?</p> <p>21 A No.</p> <p>22 MR. MURPHY: Objection.</p> <p>23 BY MR. RUSSCOL:</p> <p>24 Q I'm sorry, I didn't hear your answer.</p> <p>25 A No, not that I recall.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q Is it an important part of the process that</p> <p>2 the faculty member should have the right to reply?</p> <p>3 A Of the FRB process?</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q Why is that important?</p> <p>7 A I suppose so they can clarify any</p> <p>8 misunderstandings or things that the report didn't</p> <p>9 capture accurately.</p> <p>10 Q And is it important that they have the right</p> <p>11 to reply before the report is finalized so that the</p> <p>12 FRB can make any necessary revisions to correct</p> <p>13 inaccuracies?</p> <p>14 A I would say so.</p> <p>15 MR. RUSSCOL: This will be the next</p> <p>16 exhibit.</p> <p>17 (Exhibit 60 was marked for</p> <p>18 identification.)</p> <p>19 MR. MURPHY: Do you need a water?</p> <p>20 THE WITNESS: I wouldn't turn it down,</p> <p>21 but I'm okay for now. I can wait.</p> <p>22 Thank you.</p> <p>23 MR. RUSSCOL: There is some more. If</p> <p>24 you go out and ask Angie, I'm sure she can get some</p> <p>25 more.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q In 2017 did you continue to believe that the</p> <p>2 right of the faculty member to reply was an important</p> <p>3 part of the FRB process?</p> <p>4 A Yes.</p> <p>5 Q In 2017 did Professor Schlesinger write that</p> <p>6 Mr. Edelman had to be given adequate time to respond,</p> <p>7 and you replied that it would be painful?</p> <p>8 A Professor what?</p> <p>9 Q Professor Schlesinger.</p> <p>10 A I don't recall. Is that -- is that in here?</p> <p>11 MR. RUSSCOL: Next exhibit, 61.</p> <p>12 (Exhibit 61 was marked for</p> <p>13 identification.)</p> <p>14 THE WITNESS: Wow.</p> <p>15 Thank you.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q So looking near the bottom of the first</p> <p>18 page, do you see where Professor Schlesinger wrote</p> <p>19 that "We should be moving to closure in the document</p> <p>20 so as to provide Ben with adequate time to respond"?</p> <p>21 A Wait a minute. Wait. "I am comfortable"?</p> <p>22 Is that --</p> <p>23 Q Yeah, in that sentence.</p> <p>24 A Yes.</p> <p>25 Q And then above that was your response,</p>

<p style="text-align: right;">Page 150</p> <p>1 "Agree, that is of course the next painful step." 2 A Mm-hmm. I see it. 3 Q Why would it be painful for Mr. Edelman to 4 respond to the FRB's draft report in 2017? 5 MR. MURPHY: Objection. 6 THE WITNESS: I think it's always 7 painful to respond to a report. 8 BY MR. RUSSCOL: 9 Q Did you anticipate that Mr. Edelman would 10 have significant criticisms of the draft report? 11 A I don't -- I don't recall. 12 Q Were there specific parts of the draft 13 report that you thought he was going to criticize? 14 A No. I mean, not that I recall. 15 Q Do you recall that Mr. Edelman submitted a 16 written response to the draft report in 2017? 17 A I know he did. I don't recall it exactly. 18 Q How did the FRB evaluate whether or not any 19 revisions were needed in light of his response? 20 A I don't recall. 21 Q Did the FRB discuss that topic? 22 A I don't recall. We must have. 23 Q Did Mr. Edelman bring up questions about 24 whether a conflict that's directly related to a 25 publication is treated differently from one that's not</p>	<p style="text-align: right;">Page 152</p> <p>1 specifically footnote 3, does the final report 2 indicate that a blog post called "Boarding Area" 3 criticized the American Airlines lawsuit by 4 Mr. Edelman? 5 A Wait, does the -- does the final report 6 indicate that? 7 Q Yes, I'm asking that -- final report. 8 A Looks like it -- by the headline of the 9 story -- right here at the top. Yes, both of those 10 are referenced. 11 Q Now, do you recall Mr. Edelman bringing up 12 in his response that the blog post referenced in 13 footnote 3 is actually from 2015? 14 A No. I don't. 15 Q Do you see the date in the web link for -- 16 A Yes. 17 Q -- footnote 3 showing that it was published 18 on July 15, 2015? 19 A Yes. 20 Q So that couldn't have been about the 21 American Airlines lawsuit that was filed in 2017; 22 could it? 23 A No. 24 Q Do you recall Mr. Edelman bringing that to 25 the FRB's attention in his response?</p>
<p style="text-align: right;">Page 151</p> <p>1 directly related under the conflict of interest 2 policy? 3 A I don't recall. 4 Q Do you recall that Mr. Edelman wanted the 5 FRB to discuss in detail the application of the 6 conflict of interest policy to the disclosures he 7 made? 8 A No. 9 MR. MURPHY: Objection. 10 BY MR. RUSSCOL: 11 Q Did the FRB revise its report regarding the 12 conflict of interest policies in 2017? 13 MR. MURPHY: Objection. 14 THE WITNESS: I don't recall. 15 BY MR. RUSSCOL: 16 Q Did the FRB revise its report at all between 17 the draft and final stages? 18 A I don't remember. 19 Q I'd like to go back to Exhibit 45, the final 20 2017 report, and specifically looking at page 10 of 21 that document. Now, one of the issues that was 22 discussed in the 2017 FRB report is the American 23 Airlines lawsuit; is that fair to say? 24 A Yes. 25 Q And looking at the top of page 10, and</p>	<p style="text-align: right;">Page 153</p> <p>1 A No, I do not. 2 Q Clearly, the FRB didn't revise its report to 3 take out that reference, did it? 4 A It's still here. 5 Q Did the FRB cite any other evidence to show 6 that there was criticism of Mr. Edelman's involvement 7 in the American Airlines lawsuit? 8 MR. MURPHY: Objection 9 THE WITNESS: I don't know. 10 BY MR. RUSSCOL: 11 Q Well, take a look at the top of page 10. Is 12 there any other evidence besides that blog post from 13 2015 that supports that? 14 MR. MURPHY: Objection. 15 THE WITNESS: Yeah, I don't -- I don't 16 know. I don't remember exactly when the concerns 17 arose, but this is -- witness by the headline of the 18 story -- Professor Bazerman included in his note -- so 19 what's the question? 20 BY MR. RUSSCOL: 21 Q Is there any other evidence that the FRB 22 cited in its final report besides that blog post from 23 2015 to support the idea that there was public 24 criticism of -- 25 A Oh. Oh, oh. Yeah.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q -- Mr. Edelman's involvement in the lawsuit.</p> <p>2 A Oh.</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: We don't seem to be</p> <p>5 citing any other public criticism.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q As the FRB's report was being finalized in</p> <p>8 2017, did you consider what exhibits needed to be</p> <p>9 included with it?</p> <p>10 A Did I?</p> <p>11 Q Yes.</p> <p>12 A No.</p> <p>13 Q Was there any discussion about which</p> <p>14 exhibits should be included?</p> <p>15 A Not that I recall. I think we tried to</p> <p>16 include everything that people might want to see, but</p> <p>17 I don't recall discussions about it.</p> <p>18 Q Who was responsible for putting the exhibits</p> <p>19 together?</p> <p>20 A I think Jean Cunningham put the exhibits</p> <p>21 together.</p> <p>22 Q Did you ever look back at the principles and</p> <p>23 procedures document to confirm whether the exhibits</p> <p>24 that were included with the report were consistent</p> <p>25 with those principles and procedures?</p>	<p style="text-align: right;">Page 156</p> <p>1 THE WITNESS: What do you mean by</p> <p>2 "formal"?</p> <p>3 MR. MURPHY: -- formal?</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q Formal and unbiased.</p> <p>6 A What do you mean by "formal"?</p> <p>7 Q Was it important for the interviews to all</p> <p>8 follow a set format and be recorded in notes or some</p> <p>9 other fashion?</p> <p>10 A I don't think it was important they all</p> <p>11 follow a set format, but I think it was important that</p> <p>12 there were notes taken.</p> <p>13 Q Did the FRB take any comments from emails or</p> <p>14 other contexts and present them as if they were said</p> <p>15 in an interview?</p> <p>16 A I don't recall if we took input from</p> <p>17 other -- from emails, but I don't think they would</p> <p>18 have been misrepresented if so.</p> <p>19 Q So looking at the bottom of page 3, it says</p> <p>20 that members of the FRB met with 21 individuals. Are</p> <p>21 the quotes that are reflected in the bullet points</p> <p>22 from the interviews with those 21 individuals?</p> <p>23 A To the best of my recollection.</p> <p>24 Q Do you remember who those 21 individuals</p> <p>25 were?</p>
<p style="text-align: right;">Page 155</p> <p>1 A Not that I recall.</p> <p>2 Q So looking again at Exhibit 45, the final</p> <p>3 report, and specifically about the bullet points that</p> <p>4 are included on pages 4 and 5, are those all quotes</p> <p>5 that are taken from the notes of an interview that an</p> <p>6 FRB member conducted in July or August of 2017 for</p> <p>7 that purpose?</p> <p>8 A Yes, I think so.</p> <p>9 Q Did the FRB have a set script for each</p> <p>10 interview?</p> <p>11 A I don't recall.</p> <p>12 Q Would it have been important to maintain</p> <p>13 some consistency across interviews by different</p> <p>14 people?</p> <p>15 A I don't -- well, I think they -- different</p> <p>16 people had different potential perspectives, I mean,</p> <p>17 viewpoints. You know, meaning different jobs. So</p> <p>18 would probably not be easy to have them all be exactly</p> <p>19 the same.</p> <p>20 Q Did the FRB -- strike that. Was it</p> <p>21 important for the interviews to be formal and</p> <p>22 unbiased?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: Formal and unbiased.</p> <p>25 MR. MURPHY: I'm sorry, did you say --</p>	<p style="text-align: right;">Page 157</p> <p>1 A No, not off the top of my head.</p> <p>2 Q Do you remember who you personally</p> <p>3 interviewed?</p> <p>4 A Not -- I didn't, but then we -- I did get</p> <p>5 some reminder of that in the -- you know, this month</p> <p>6 or last month.</p> <p>7 Q Does it sound right --</p> <p>8 A But I couldn't -- to it.</p> <p>9 Q Does it sound right that you interviewed</p> <p>10 Professors [REDACTED], [REDACTED], [REDACTED], [REDACTED],</p> <p>11 [REDACTED], and [REDACTED]?</p> <p>12 A Sounds reasonable.</p> <p>13 Q Do you know which people the other FRB</p> <p>14 members interviewed?</p> <p>15 A No.</p> <p>16 Q Was there anyone who was quoted in the</p> <p>17 report who wasn't interviewed by the FRB?</p> <p>18 A I don't know.</p> <p>19 Q Do you know how many people each of the</p> <p>20 other FRB members interviewed?</p> <p>21 A No.</p> <p>22 Q While this process was going on, do you know</p> <p>23 who specifically each one of them interviewed?</p> <p>24 A Probably.</p> <p>25 Q How was that information communicated to</p>

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1 you?
2 A I don't remember.
3 Q Were the 21 interviews a significant part of
4 the FRB's process of gathering evidence?
5 A What do you mean "significant"?
6 Q Were they a substantial part of the
7 evidence-gathering process?
8 A I think they were an important part.
9 MR. RUSSCOL: I think this is Exhibit
10 62.
11 THE REPORTER: Yep.
12 (Exhibit 62 was marked for
13 identification.)
14 BY MR. RUSSCOL:
15 Q Is this an email from Jean Cunningham to you
16 dated July 13, 2017?
17 A Yes.
18 Q And looking at the first two pages, is it
19 fair to say that Dean Cunningham started with the list
20 of people including those that Mr. Edelman had
21 identified and tried to develop a plan for
22 interviewing them?
23 A Yes.
24 Q Looking on page 2, in the middle of the page
25 where it says "Crispi equals," is it fair to say that

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1 Dean Cunningham was recommending that Dean Crispi
2 could narrow down her interviews to [REDACTED], [REDACTED],
3 [REDACTED], and then two to three more from IT?
4 A "I -- I'm guessing she'd be able to narrow
5 this down to [REDACTED], [REDACTED], [REDACTED], and two or
6 three more." That's what it says.
7 Q And Dean Cunningham felt that would be
8 enough to be representative and feel reasonable to
9 Mr. Edelman, but not all of them? Is that what she's
10 expressing?
11 A That's what she's expressing, yes.
12 Q Did you agree with that?
13 A Yes. I think I did.
14 Q Did Dean -- strike that. Did Dean Crispi
15 interview Mr. [REDACTED], [REDACTED], [REDACTED], and
16 two to three more people from IT?
17 A I don't know.
18 Q Did you ever know that?
19 A I probably did know that.
20 Q Is it fair to say that there had been some
21 indications of conflicts between Mr. Edelman and the
22 IT department by that time?
23 A By that time?
24 Q Yes.
25 A I -- it's kind of outside my wheelhouse.

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1 Q Well, we talked earlier about the projector
2 issue back in 2015; right?
3 A Correct.
4 Q And there had been other times when
5 Mr. Edelman had had some controversies with the IT
6 department; is that fair to say?
7 A From perspective of other people saying so,
8 yes. No direct -- I have no direct knowledge of it.
9 Q And at that time was [REDACTED] fairly
10 high up in the IT department?
11 A I -- I don't know. I assume so.
12 Q So do you think it would be important to get
13 [REDACTED]'s perspective on those conflicts between
14 Mr. Edelman and others in IT?
15 A I'm not sure.
16 Q Do you know if anyone from the FRB
17 interviewed [REDACTED]?
18 A I don't.
19 Q Are you aware that out of 21 interviewees,
20 only four of them were staff?
21 A No.
22 Q Did you do anything to make sure that the
23 breakdown of staff members was representative?
24 MR. MURPHY: Objection.
25 THE WITNESS: Not that I recall.

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1 Representative of -- of --
2 BY MR. RUSSCOL:
3 Q Representative of the perspective of staff
4 generally.
5 A Oh, no.
6 Q Did Dean Crispi give you notes from her
7 interviews?
8 A I don't recall.
9 Q Were any notes from interviews with
10 witnesses provided to Mr. Edelman in the FRB process?
11 A I don't know.
12 Q Do you recall that the FRB received some
13 emails from Ben Esty before its 2017 report was
14 finalized?
15 A No, I don't recall.
16 Q Did the FRB provide Mr. Edelman with copies
17 of any emails from faculty members as part of the FRB
18 process?
19 A Did -- did -- sorry, say that again?
20 Q Did the FRB provide Mr. Edelman with copies
21 of any emails from other faculty members as part of
22 the FRB process?
23 A I don't recall.
24 Q Isn't it true that the only ways that the
25 FRB provided Mr. Edelman with any of the evidence it

<p style="text-align: right;">Page 162</p> <p>1 had gathered was by sending him copies of the draft 2 and final reports? 3 A If you say so. 4 Q Do you recall the FRB providing Mr. Edelman 5 with any evidence in any other fashion? 6 A I don't recall. 7 Q Referring back to the quotes in the final 8 FRB report, Exhibit 45. Who selected the interview 9 quotes to include in the report? 10 A I think we all had a hand in it. 11 Q Did the faculty members of the FRB send 12 their interview notes to Dean Cunningham? 13 A I don't know. 14 Q Did you take any notes in 2017? 15 A I don't recall. I know I relied on Jean, 16 very -- her very good, fast note taking. 17 Q Did you make sure that the interview quotes 18 included in the draft report were accurate? 19 A Accurate from the notes? 20 Q Yes. 21 A Yes. 22 Q How did you do that? 23 A Cut and paste probably. I don't remember. 24 Q Did you paste the quotes from the notes into 25 the report?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q During the FRB process was there ever an 2 exchange of hardcopy documents? 3 A Back then I think we were almost always 4 meeting in -- in person, so probably. 5 Q So you think you may have been referring to 6 printouts in person? 7 A Probably. Think so. 8 Q Did you ever do anything to make sure that 9 the quotes from interviews were presented in proper 10 context to capture what the interviewees meant? 11 A I think so. 12 Q What did you do to do that? 13 A Well, we -- we tried to be representative as 14 best we could without creating a incidentally long 15 report. Tried to be representative of what we heard 16 in the report, so it's just a selection in every case. 17 It's not every single word we didn't record. 18 Q And as the FRB report was being drafted, was 19 there any indication of which quotes came from which 20 interviewers or which interviewees? 21 MR. MURPHY: Objection. 22 THE WITNESS: I don't recall. 23 BY MR. RUSSCOL: 24 Q Does it sound right that Dean Cunningham 25 sent you her initial 2017 draft report on September</p>
<p style="text-align: right;">Page 163</p> <p>1 A I don't think so, no. 2 Q Did you go back to the interview notes to 3 compare them? 4 A No. 5 Q Did you ever compare any version of the 6 report to the underlying interview notes? 7 A Yes, all along in the process of -- it was 8 put together slowly, so there was back and forth at 9 that point. 10 Q But you personally looked at a draft of the 11 report and looked at the interview notes and compared 12 them to confirm that the quotes were accurate? 13 A Think -- I think so, best as I remember. 14 Q Did anyone else do that as far as you know? 15 A You know, I -- I don't know, but -- I don't 16 know. I mean, everybody had access to the drafts, had 17 the opportunity to check them. 18 Q Did everyone have access to the interview 19 notes? 20 A I don't recall. Probably. 21 Q How were the interview notes circulated? 22 A I don't recall. 23 Q Would it have been by email? 24 A I don't know honestly. Could be email or in 25 paper.</p>	<p style="text-align: right;">Page 165</p> <p>1 17, 2017? 2 MR. MURPHY: Objection. 3 THE WITNESS: I -- doesn't sound right 4 or wrong. 5 MR. RUSSCOL: Going to be the next 6 exhibit. 7 UNIDENTIFIED SPEAKER: What number? 8 MR. RUSSCOL: Sixty-two. 9 THE REPORTER: Sixty-three, actually. 10 MR. RUSSCOL: Oh, 63? 11 THE WITNESS: I only have 61. 12 MR. RUSSCOL: Oh, yeah, 63. 13 (Exhibit 63 was marked for 14 identification.) 15 THE WITNESS: I don't have a 62 I don't 16 think. 17 MR. MURPHY: I do. 18 THE WITNESS: Oh, you do? Okay. It 19 got lost. Somewhere in here. Oh, there it is. 20 BY MR. RUSSCOL: 21 Q I'd ask you to take a look at this and see 22 if it seems to be the initial draft of the 2017 FRB 23 report that Dean Cunningham sent to you. 24 A It does seem to be that. 25 Q What did you think of that initial draft?</p>

<p style="text-align: right;">Page 166</p> <p>1 A I don't recall.</p> <p>2 Q Had the FRB met to discuss its conclusions</p> <p>3 in between the completion of interviews on August 14th</p> <p>4 and this initial draft?</p> <p>5 A I don't recall.</p> <p>6 Q Is it fair to say that this initial draft</p> <p>7 included both positive quotes and negative quotes</p> <p>8 about Mr. Edelman from interviews?</p> <p>9 A Yes.</p> <p>10 Q Did Dean Cunningham do a good job of</p> <p>11 summarizing the feedback that you'd received?</p> <p>12 A I think so.</p> <p>13 Q Was it important that quotes in the report</p> <p>14 be based on firsthand knowledge?</p> <p>15 A That, I don't know.</p> <p>16 Q Would it have been appropriate for quotes</p> <p>17 included in the report to be based on rumors or</p> <p>18 speculation?</p> <p>19 A I'm sorry, just saw the -- shoot a rabbit.</p> <p>20 I don't think that would be appropriate, rumors or</p> <p>21 speculation.</p> <p>22 MR. RUSSCOL: Think this will be</p> <p>23 Exhibit 64.</p> <p>24 THE REPORTER: Yep.</p> <p>25 //</p>	<p style="text-align: right;">Page 168</p> <p>1 personally as opposed to writing to them or something.</p> <p>2 Q And below that it says that FRB wanted to</p> <p>3 develop the same set of questions and each of you do</p> <p>4 one to two interviews; right?</p> <p>5 A Right.</p> <p>6 Q So does that indicate that there was a plan</p> <p>7 to develop a standard set of questions to ask</p> <p>8 different interviewees?</p> <p>9 A I don't think this qualifies as a plan. I</p> <p>10 think this is just capturing conversation as it</p> <p>11 unfolds. You know, what people say, which is pre --</p> <p>12 pre plan.</p> <p>13 MR. RUSSCOL: Next document. Exhibit</p> <p>14 65.</p> <p>15 (Exhibit 65 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q So is Exhibit 65 an interview script that</p> <p>19 was circulated among the FRB members in 2017?</p> <p>20 A Looks like it.</p> <p>21 Q And so there were some standard questions</p> <p>22 that each interviewer was going to ask; right?</p> <p>23 A Well, suggested or helpful questions.</p> <p>24 Q And --</p> <p>25 A I don't think "standard" is necessarily the</p>
<p style="text-align: right;">Page 167</p> <p>1 (Exhibit 64 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q Now, are these notes from the first FRB</p> <p>5 meeting in 2017?</p> <p>6 A I don't know.</p> <p>7 Q Are they notes from an FRB meeting in 2017?</p> <p>8 A Again, I don't know.</p> <p>9 Q So looking at the bottom of the second page,</p> <p>10 do you see where it says "Our job is to assess whether</p> <p>11 Ben understands what went wrong and whether there's</p> <p>12 change that is genuine and sustainable"?</p> <p>13 A I see that, yes.</p> <p>14 Q Does that indicate that this was a meeting</p> <p>15 during the 2017 FRB process?</p> <p>16 A It -- it would seem to.</p> <p>17 Q And looking at the top of the next page, did</p> <p>18 the FRB discuss that personal interaction of witnesses</p> <p>19 is important?</p> <p>20 A Looks like it.</p> <p>21 Q So is it fair to say that you were looking</p> <p>22 for witnesses who personally interacted with</p> <p>23 Mr. Edelman and could speak to their firsthand</p> <p>24 knowledge?</p> <p>25 A Or it's interacting with the witnesses</p>	<p style="text-align: right;">Page 169</p> <p>1 right word.</p> <p>2 Q And was the first suggested question to have</p> <p>3 the interviewee describe how long they've known</p> <p>4 Mr. Edelman and how often they interacted with him and</p> <p>5 in what context?</p> <p>6 A It looks like it.</p> <p>7 Q So it was important for the FRB to</p> <p>8 understand the basis of knowledge of each of the</p> <p>9 interviewees; right?</p> <p>10 MR. MURPHY: Objection.</p> <p>11 THE WITNESS: Probably helpful.</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q Is it fair to say that people who had more</p> <p>14 interactions and closer interactions with Mr. Edelman</p> <p>15 could be more informative regarding their firsthand</p> <p>16 knowledge about him?</p> <p>17 MR. MURPHY: Objection.</p> <p>18 THE WITNESS: It depends. No, I don't</p> <p>19 think it's fair.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Why not?</p> <p>22 A Well, because people who have more</p> <p>23 interaction with him have -- have more -- what's the</p> <p>24 word I'm looking for? I mean, people who -- the</p> <p>25 interactions -- I think we were, in many ways, more</p>

<p style="text-align: right;">Page 170</p> <p>1 interested in interactions with people who don't have</p> <p>2 so much interaction, because that's important to</p> <p>3 assess.</p> <p>4 Q Why is that important to assess?</p> <p>5 A Because that's how --- that has a potential</p> <p>6 impact on the -- the reputation of the school, and</p> <p>7 presumably people in your own family and close friends</p> <p>8 already know you and have a positive interaction of</p> <p>9 you.</p> <p>10 Q So why was it important to hear from people</p> <p>11 who didn't interact with Mr. Edelman very much in</p> <p>12 order to protect the reputation of the school?</p> <p>13 A I think we wanted to know how they were</p> <p>14 experiencing him as a colleague.</p> <p>15 Q And with respect to each interviewee, you</p> <p>16 wanted to know how that person experienced Mr. Edelman</p> <p>17 as a colleague; right?</p> <p>18 A Correct.</p> <p>19 Q Looking back at the 2017 report, Exhibit 45,</p> <p>20 on page 6. At the top of the page do you see a bullet</p> <p>21 point, "With his superiors he has more of a filter"?</p> <p>22 A Yes.</p> <p>23 Q Do you know who said that?</p> <p>24 A No.</p> <p>25 Q Do you know whether that quote was based on</p>	<p style="text-align: right;">Page 172</p> <p>1 do you see where it says "Second third hand"?</p> <p>2 A Mm-hmm.</p> <p>3 Q Is that a yes?</p> <p>4 A Yes.</p> <p>5 Q So don't these notes indicate that it's</p> <p>6 second- and third-hand information that Professor</p> <p>7 ██████ believed Mr. Edelman to be indelicate and</p> <p>8 understood he might treat an assistant differently</p> <p>9 from how he treats a superior?</p> <p>10 A I think you'd have to ask Stu.</p> <p>11 Q Well, looking at the second bullet point,</p> <p>12 "With his superiors he has more of a filter" isn't the</p> <p>13 whole quote; is it?</p> <p>14 A No.</p> <p>15 Q The full quote is "With his superiors he has</p> <p>16 more of a filter, as we all probably do"; isn't it?</p> <p>17 A That is the whole quote on this page.</p> <p>18 Q Did you ever know that Professor ██████ added</p> <p>19 those words, "as we all probably do"?</p> <p>20 A No, and I don't know what else he said after</p> <p>21 that or before it either.</p> <p>22 Q Do those additional words change the meaning</p> <p>23 of Professor ██████'s comment that "With his superiors</p> <p>24 he has more of a filter"?</p> <p>25 MR. MURPHY: Objection.</p>
<p style="text-align: right;">Page 171</p> <p>1 firsthand knowledge?</p> <p>2 A No.</p> <p>3 Q Who's ██████?</p> <p>4 A He's a professor.</p> <p>5 MR. RUSSCOL: So this will be Exhibit</p> <p>6 66.</p> <p>7 (Exhibit 66 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q Now, looking at the -- at this document, and</p> <p>11 particularly the handwritten notations at the top, are</p> <p>12 these interview notes of Professor Gilson from the</p> <p>13 2017 FRB?</p> <p>14 A Looks like it.</p> <p>15 Q And looking at page 5 of the document, where</p> <p>16 it says "██████" at the top, in the second bullet</p> <p>17 point do you see where it says "With his superiors he</p> <p>18 has more of a filter"?</p> <p>19 A Mm-hmm.</p> <p>20 Q Is that a yes?</p> <p>21 A Yes, sorry.</p> <p>22 Q So does it seem like that is the source of</p> <p>23 the bullet point in the final report?</p> <p>24 A It does.</p> <p>25 Q Now, looking at the top bullet point here,</p>	<p style="text-align: right;">Page 173</p> <p>1 THE WITNESS: I don't think so. I</p> <p>2 think it's something you say.</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q Well, isn't it an indication that having</p> <p>5 more of a filter with one's superiors is common and</p> <p>6 normal and not necessarily a violation of community</p> <p>7 values?</p> <p>8 A It's certainly not a violation of community</p> <p>9 values to have a filter with your superior. It can be</p> <p>10 a violation of community values to fail to have a</p> <p>11 filter with people below you.</p> <p>12 Q As you sit here today do you believe that</p> <p>13 the quote in the FRB report is a fair and accurate</p> <p>14 representation of what Professor ██████ told Professor</p> <p>15 Gilson, even though it omits that the information was</p> <p>16 second or third hand and that we all probably do have</p> <p>17 more of a filter with superiors?</p> <p>18 MR. MURPHY: Objection.</p> <p>19 THE WITNESS: I do.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Were these interview notes from Professor</p> <p>22 Gilson part of the evidence that the FRB gathered in</p> <p>23 its inquiry?</p> <p>24 A I think so.</p> <p>25 Q Was it important for the quotes that made it</p>

<p style="text-align: right;">Page 174</p> <p>1 into the report to pertain to interactions with 2 Mr. Edelman during the 2015 to 2017 period, given the 3 focus on what had changed since 2015? 4 A I don't know that everybody who was 5 interviewed was specifically told, "Only talk about 6 experiences since 2015." So I don't know. 7 Q Well, that's the issue that the FRB was 8 focused on; right? 9 A Yes. 10 Q But you're not sure if the interviewees were 11 similarly focused on that time period? 12 A Well, let's see. Nope. It says the FRB is 13 tasked with that assessment. I mean, we -- it says 14 that we told everybody, or we intended to tell 15 everybody, that we're specifically interested in his 16 conduct over these past two years. 17 Q Okay. So the quotes in the report should 18 have focused on that last two years time period; 19 right? 20 A They should have, yes. 21 Q Did the 2017 report include any quotes 22 describing Mr. Edelman's behavior prior to the fall of 23 2015? 24 A I don't know. 25 Q Looking back at the report, Exhibit 45, at</p>	<p style="text-align: right;">Page 176</p> <p>1 BY MR. RUSSCOL: 2 Q Are these Dean Crispi's interview notes? 3 (Exhibit 67 was marked for 4 identification.) 5 A I don't know. 6 Q Do they appear to be interview notes with 7 four staff members? 8 A Yes. 9 Q Did Dean Crispi interview the staff members 10 in 2017? 11 A I think so. 12 Q Do you see at the top of the second page 13 where there's a bullet point that starts "Can have a 14 tendency to threaten to take something to the next 15 level"? 16 A Mm-hmm. 17 Q Is that a yes? 18 A Yes. Sorry. 19 Q And does that seem to be the source of the 20 bullet point in the report we were just looking at? 21 A It would seem to be. 22 Q Now, again, that's not the full contents of 23 that bullet point; is it? 24 A No. 25 [REDACTED]</p>
<p style="text-align: right;">Page 175</p> <p>1 page 5. In the middle of the page, the first bullet 2 point, do you see where it says "He can have a 3 tendency to threaten to take something to the next 4 level"? 5 A Mm-hmm. I do. 6 Q Do you know who said that? 7 A No. 8 Q Do you know what they're referring to? 9 A No. 10 Q Would you assume it was something within the 11 previous two years? 12 MR. MURPHY: Objection. 13 THE WITNESS: I wouldn't assume one way 14 or the other. 15 BY MR. RUSSCOL: 16 Q So even though you believe that the 17 interviewees were instructed to focus on the last two 18 years, and that's what the FRB was focusing on, you 19 aren't sure whether that particular comment pertains 20 to the previous two years? 21 A "He can have a tendency" seems to be -- 22 describe a general tendency to me. 23 MR. RUSSCOL: So what number are we at? 24 THE REPORTER: Sixty-seven. 25 //</p>	<p style="text-align: right;">Page 177</p> <p>1 notes, that "Mr. Edelman can have a tendency to 2 threaten to take something to the next level, but he 3 has taken a step back"? 4 A That's what the note says. 5 Q But that's not in the -- 6 A I didn't hear her. 7 Q That's not in the FRB report; is it? 8 A No. 9 Q Two bullet points below that, do you see 10 where it says "I've seen him change his behavior 11 unless I'll just do it"? 12 A I see it. 13 Q Don't both of those things indicate that 14 Mr. Edelman had changed his behavior and was not just 15 threatening to take something to the next level 16 anymore? 17 MR. MURPHY: Objection. 18 THE WITNESS: Maybe, but "He has a hard 19 time thinking about other perspectives" is right above 20 it, "With [REDACTED] [ph] went backwards a bit," "Seems 21 to be trying, can be" -- it seems -- you know, I think 22 she's doing a good job of trying to be balanced. 23 BY MR. RUSSCOL: 24 Q But that balance of Ms. [REDACTED] statements 25 isn't reflected in the final report where it just says</p>

<p style="text-align: right;">Page 178</p> <p>1 "He can have a tendency to threaten to take something 2 to the next level" -- 3 MR. MURPHY: Objection. 4 BY MR. RUSSCOL: 5 Q -- is that fair to say? 6 A It doesn't -- it doesn't have some of the 7 worse ones either. So I can't say whether the balance 8 of [REDACTED] is reflected or not, really. 9 Q Well, when [REDACTED] said "I've seen him 10 change his behavior," that wasn't consistent with the 11 FRB's conclusion that Mr. Edelman hadn't changed his 12 behavior; was it? 13 MR. MURPHY: Objection. 14 THE WITNESS: We didn't have that 15 conclusion. 16 BY MR. RUSSCOL: 17 Q Was that conclusion something that was 18 discussed before the report was finalized? 19 A What do you mean? 20 Q Did the FRB discuss a conclusion that 21 Mr. Edelman had not changed his behavior in the 22 process of developing the report? 23 A I recall we discussed that we couldn't 24 really develop that conclusion. 25 Q So in essence, the conclusion was that there</p>	<p style="text-align: right;">Page 180</p> <p>1 just talking about, do you see a bullet point that 2 says "He's abrupt. He lacks grace. He's more apt to 3 pressure others. He asks questions the way you might 4 in a seminar"? 5 A Yes. 6 Q Do you know who said that? 7 A No. 8 MR. RUSSCOL: So Exhibit 68. 9 (Exhibit 68 was marked for 10 identification.) 11 BY MR. RUSSCOL: 12 Q Is Exhibit 68 notes of interviews that you 13 conducted for the FRB in 2017? 14 A Looks like it. 15 Q Looking at page 2, under [REDACTED], 16 bullet point Number 2, do you see where it says "He's 17 abrupt. He lacks grace"? 18 A Yes. 19 Q Does that seem to be the source for that 20 bullet point in the final report? 21 A It does. 22 Q And again, that's not all that Professor 23 [REDACTED] said about that; is it? 24 A No. 25 Q Didn't he go onto say, "But he's</p>
<p style="text-align: right;">Page 179</p> <p>1 was no conclusion? 2 MR. MURPHY: Objection. 3 THE WITNESS: "We find ourselves unable 4 to say with full conviction that the issues raised 5 following the 2015 review have been satisfactorily 6 resolved. We represent to the best of our ability the 7 views and facts to which we had access as input." 8 BY MR. RUSSCOL: 9 Q So the FRB in 2017 didn't come to any 10 conclusion; did it? 11 A It came to the conclusion that we could not 12 state that the issues had been satisfactorily 13 resolved. 14 Q So did you conclude that Mr. Edelman had 15 engaged in misconduct? 16 MR. MURPHY: Objection. 17 THE WITNESS: That's not what I said. 18 BY MR. RUSSCOL: 19 Q I'm asking if you concluded that. 20 A No, we did not conclude that. 21 Q Did the FRB in 2017 conclude that 22 Mr. Edelman had violated HBS's community values? 23 A No. 24 Q Going back to page 5 of the final report, 25 Exhibit 45, right below the bullet point that we were</p>	<p style="text-align: right;">Page 181</p> <p>1 intellectually sharp, asks great questions, accepting 2 of an alternative argument. He agrees to disagree"? 3 A Yes. That's what it says. 4 Q Don't the statements that Professor 5 [REDACTED] believed Mr. Edelman accepted alternative 6 arguments and agreed to disagree contradict the FRB's 7 perspective that Mr. Edelman wasn't willing to 8 consider alternative views? 9 MR. MURPHY: Objection. 10 THE WITNESS: I think it depends on how 11 you interpret it. Agreeing to disagree, in my mind, 12 is about deciding you're not worth pushing, but he's 13 not budging. 14 BY MR. RUSSCOL: 15 Q Well, Professor [REDACTED] also said 16 Mr. Edelman was accepting of an alternative argument; 17 right? 18 A Of its existence, yes. 19 Q And the FRB didn't include these statements 20 in the report; did it? 21 A No. 22 Q Looking at the first two pages of these 23 notes, and particularly the dates, I guess there isn't 24 a date on the first one -- 25 A No.</p>

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1 Q -- but the date of July 27th for the [REDACTED]
2 [REDACTED] interview, before August 1st of 2017 were
3 the only two interviews you'd conducted with [REDACTED]
4 [REDACTED] and [REDACTED]?
5 A I don't remember.
6 MR. RUSSCOL: This will be Exhibit 69.
7 (Exhibit 69 was marked for
8 identification.)
9 BY MR. RUSSCOL:
10 Q So is this an email, Exhibit 69, an email
11 that you sent to the other FRB members on August 1,
12 2017?
13 A Yes.
14 Q And --
15 A "I've done two of six," yes.
16 Q Yeah. So as of then, you said you've done
17 two of your six interviews --
18 A Yup.
19 Q -- and you wrote "One of my two interviews
20 wants to canonize our candidate; the other believes
21 him to be such a genius, allowances must be made." Do
22 you see that?
23 A Yes.
24 Q Which of those refers to Professor
25 [REDACTED]?

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1 A I -- I don't know, but probably the second
2 one.
3 Q Meaning then that Professor [REDACTED] wanted
4 to canonize him?
5 A Yes.
6 Q And then after that you wrote "sigh." What
7 did you mean by "sigh"?
8 A Our -- there, I sighed. Our job isn't to
9 decide -- I mean, we -- we don't -- the FRB does not
10 believe in a genius allowance.
11 Q What do you mean by "a genius allowance"?
12 A I think it means you -- if you're super
13 smart you don't have to follow the conduct rules.
14 Q Was it part of the FRB's goal for the report
15 to reflect the substance and weight of the evidence
16 that it gathered?
17 A Yes.
18 Q So is it fair to say that the FRB was trying
19 to include quotes that were representative of the
20 supporting evidence?
21 A Yes.
22 Q And so the report didn't include all the
23 positive things people said about Mr. Edelman; right?
24 A It didn't include all the positive or all
25 the negative.

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1 Q And it didn't disproportionately pick out
2 negative things that people said either?
3 A No.
4 Q I think we discussed earlier the FRB only
5 interviewed four staff members. Of those four staff
6 members, did you know that two of them, including
7 Mr. Edelman's faculty assistant, had only positive
8 things to say about him?
9 A Did I know that? I'm not sure.
10 Q Well, you can take a look at the notes,
11 which are in Exhibit 67.
12 Didn't [REDACTED] say that he had nothing
13 but positive things to say?
14 A That's what the note says.
15 Q And near the bottom of his section doesn't
16 it say "When I know I'll interact with him, I'm glad"?
17 A Yes, it does.
18 Q And looking at the next section, was
19 [REDACTED] Mr. Edelman's faculty support
20 specialist?
21 A Looks like it.
22 Q Do you see anything negative that she had to
23 say about Mr. Edelman?
24 A I do not.
25 Q Did you know that the two staff with only

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1 positive comments were quoted only once or twice each
2 in the FRB report, while the two staff who had some
3 negative things to say were quoted four times each?
4 A No.
5 Q Did Mr. Edelman identify several other staff
6 members who the FRB did not interview?
7 A I don't know.
8 Q The report doesn't indicate how well each
9 staff member knows Mr. Edelman; does it?
10 A I don't think so.
11 Q Is it fair to say that Mr. Edelman's faculty
12 support specialist would have had fairly extensive
13 dealings with Mr. Edelman?
14 A I imagine so.
15 Q Is it fair to say that she would have been
16 an important witness concerning the assertion that he
17 treated subordinates less well than he treated people
18 of equal or greater status?
19 A Maybe.
20 Q Don't you think appointments committee
21 members would have found it useful to know which
22 quotes came from staff who dealt with him more
23 frequently?
24 MR. MURPHY: Objection.
25 THE WITNESS: No.

<p style="text-align: right;">Page 190</p> <p>1 Q So you haven't had --</p> <p>2 A And that's not a relationship that's as</p> <p>3 common I think, versus research.</p> <p>4 Q The FRB report in 2017 mentioned bifurcation</p> <p>5 among responses. What did the FRB mean by that?</p> <p>6 A I think what you're referring to is that</p> <p>7 there were strong positives and strong -- strongly --</p> <p>8 strongly held and felt positives, and strongly held</p> <p>9 and felt negatives.</p> <p>10 Q Did the FRB mean to convey that there were</p> <p>11 roughly equal numbers of positive and negative</p> <p>12 responses?</p> <p>13 A I think we meant to convey that they were</p> <p>14 equally important sources of input. I don't recall</p> <p>15 being interested in the quantitative exact numbers.</p> <p>16 Q Did anyone in the FRB look at those</p> <p>17 quantitative numbers to figure out how many of the</p> <p>18 interviews were positive and how many were negative?</p> <p>19 A We divided up the interviews and we brought</p> <p>20 back our findings, our data, and worked hard to</p> <p>21 capture accurately the overall sense that we gained</p> <p>22 from those interviews.</p> <p>23 Q Isn't it true that most of the interviews</p> <p>24 were strongly positive towards Mr. Edelman?</p> <p>25 A That is not my sense, no.</p>	<p style="text-align: right;">Page 192</p> <p>1 Q Did you speak to the appointments committee</p> <p>2 on behalf of the FRB during its consideration of</p> <p>3 Mr. Edelman's promotion?</p> <p>4 A I don't think so.</p> <p>5 Q Did you speak to the appointments committee</p> <p>6 at all?</p> <p>7 A What do you mean? About this or --</p> <p>8 Q Did you -- were you at the appointments</p> <p>9 committee meeting for Mr. Edelman?</p> <p>10 A I don't remember, but I've been told I was.</p> <p>11 Q Do you recall speaking at that meeting?</p> <p>12 A I don't.</p> <p>13 Q So you're saying that you don't remember</p> <p>14 being at that meeting, but you've been told you were</p> <p>15 at that meeting?</p> <p>16 A That's right. Yes.</p> <p>17 Q But you don't have any firsthand</p> <p>18 recollection of being there?</p> <p>19 A No. I -- I thought I had missed it.</p> <p>20 Q Are these at least in part notes that you</p> <p>21 prepared --</p> <p>22 A Yeah.</p> <p>23 Q -- for the appointments committee meeting?</p> <p>24 A Yeah. I mean, maybe I prepared them for</p> <p>25 someone else. I don't know.</p>
<p style="text-align: right;">Page 191</p> <p>1 Q What is your sense?</p> <p>2 A That it was somewhat balanced.</p> <p>3 Q There were roughly equal numbers of positive</p> <p>4 and negative interviews?</p> <p>5 A I can't comment on the equal numbers. Keep</p> <p>6 in mind that we interviewed people that Ben listed for</p> <p>7 us to interview, along with a few others, I think.</p> <p>8 MR. RUSSCOL: I think this will be</p> <p>9 Exhibit 70.</p> <p>10 (Exhibit 70 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. RUSSCOL:</p> <p>13 Q So please take a look at the document that's</p> <p>14 been marked as Exhibit 70, and then let me know if</p> <p>15 it's something that you wrote.</p> <p>16 A Not sure -- what is what this is? I'm not</p> <p>17 sure what this is.</p> <p>18 Q Well, that was my question for you. Did you</p> <p>19 write this document?</p> <p>20 A It sounds like me.</p> <p>21 Q Does the timing listed at the top of</p> <p>22 November 17, 2017, help you recall what the context of</p> <p>23 this was?</p> <p>24 A Well, it's probably around the time of the</p> <p>25 appointments committee meetings.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q Did anyone ask you to give prepared remarks</p> <p>2 during the appointments committee meeting?</p> <p>3 A I don't think so. I don't remember.</p> <p>4 Q So you don't remember if you read this</p> <p>5 document, or something like it, or gave it to someone</p> <p>6 else to read --</p> <p>7 A I don't.</p> <p>8 Q -- at the appointments committee meeting?</p> <p>9 A I'm pretty sure I didn't.</p> <p>10 Q You're pretty sure you didn't what?</p> <p>11 A Read it.</p> <p>12 Q But you think you may have given it to</p> <p>13 someone else?</p> <p>14 A I don't know. I really don't remember.</p> <p>15 But, I mean, they're -- these are rough. These</p> <p>16 wouldn't be fully ready for being read. They're</p> <p>17 rough. They look like rough notes to me.</p> <p>18 Q Did you see anything in these notes that you</p> <p>19 disagreed with?</p> <p>20 A That I disagreed with?</p> <p>21 Q Yes.</p> <p>22 A No, I don't think so. Let's see. Keep --</p> <p>23 third page. It sounds like I'm jotting something down</p> <p>24 on the third page, just capturing things, but I don't</p> <p>25 know. November 17th, the -- 2017. I don't -- I mean,</p>

<p style="text-align: right;">Page 202</p> <p>1 evidence that the FRB gathered?</p> <p>2 A Say it again?</p> <p>3 Q Was the list of the witnesses that were</p> <p>4 interviewed part of the evidence that the FRB</p> <p>5 gathered?</p> <p>6 MR. MURPHY: Objection.</p> <p>7 THE WITNESS: I don't think we provided</p> <p>8 the list.</p> <p>9 BY MR. RUSSCOL:</p> <p>10 Q I want to look again at the final report.</p> <p>11 A Yep.</p> <p>12 Q Exhibit 45.</p> <p>13 A You mean page 45?</p> <p>14 Q No, Exhibit 45 at page 10.</p> <p>15 A Oh. Page 10. Oh, Exhibit 45, sorry. Yes.</p> <p>16 Q Yeah.</p> <p>17 A Right. Not our exhibits.</p> <p>18 Q So I'm looking at page 10 in the Summary</p> <p>19 section, the second paragraph. So it says "There were</p> <p>20 a number of individuals within the group interviewed,"</p> <p>21 and then the next sentence says "They experienced</p> <p>22 Professor Edelman's interactions as disrespectful."</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q What number of the individuals that FRB</p>	<p style="text-align: right;">Page 204</p> <p>1 colleagues' data collected.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q Did you do anything to verify that data that</p> <p>4 was collected?</p> <p>5 A No. As I said, I trusted my colleagues.</p> <p>6 Q So looking later in that sentence, there's a</p> <p>7 reference to not always meeting standards of</p> <p>8 disclosure that pose a reputational risk and damage to</p> <p>9 the school. Who expressed those concerns in their</p> <p>10 interviews?</p> <p>11 A Definitely more than one -- I mean, multiple</p> <p>12 people, but I don't remember who.</p> <p>13 Q Who would know who expressed those concerns</p> <p>14 in their interviews?</p> <p>15 A I don't know.</p> <p>16 Q So you were trusting your colleagues to make</p> <p>17 sure that the report accurately captured the</p> <p>18 interviews?</p> <p>19 A Yes.</p> <p>20 MR. MURPHY: Objection.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q Which colleagues were you trusting to do</p> <p>23 that?</p> <p>24 A All of them.</p> <p>25 Q So all of the FRB members and Dean</p>
<p style="text-align: right;">Page 203</p> <p>1 interviewed reported experiencing Professor Edelman's</p> <p>2 interactions as disrespectful?</p> <p>3 A I don't know.</p> <p>4 Q Who would know that?</p> <p>5 A I don't know the -- "They experienced</p> <p>6 interactions as disrespectful and his work as not</p> <p>7 always meeting standards of disclosure, imposing</p> <p>8 reputational risk and damage to the school as well as</p> <p>9 to themselves as members of the school's faculty." So</p> <p>10 you know, it's a -- that -- that collection -- that</p> <p>11 collection of concerns -- that sentence is doing a lot</p> <p>12 of work. But I don't know how many off the top of my</p> <p>13 head.</p> <p>14 Q Do you remember any specific person</p> <p>15 reporting that they experienced Professor Edelman's</p> <p>16 interactions as disrespectful?</p> <p>17 A No. I didn't -- I don't remember, no.</p> <p>18 Q Who would know how many people and which</p> <p>19 people reported that?</p> <p>20 A I don't know.</p> <p>21 Q Shouldn't you know that as the chair of the</p> <p>22 FRB?</p> <p>23 MR. MURPHY: Objection.</p> <p>24 THE WITNESS: I was doing my best as</p> <p>25 chair to capture -- to trust and capture my</p>	<p style="text-align: right;">Page 205</p> <p>1 Cunningham?</p> <p>2 A Yes.</p> <p>3 THE WITNESS: It's pretty loud, isn't</p> <p>4 it?</p> <p>5 MR. RUSSCOL: This is going to be the</p> <p>6 next exhibit, 71 I think.</p> <p>7 THE REPORTER: Yep.</p> <p>8 (Exhibit 71 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. RUSSCOL:</p> <p>11 Q Is this the FRB's draft report from 2017?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: Looks like it.</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q Looking at page 5 of this document, in the</p> <p>16 last full paragraph do you see where it says "What</p> <p>17 concerns the FRB most is the intimation that Professor</p> <p>18 Edelman manages up, interacting differently with at</p> <p>19 least some staff than he does with faculty colleagues,</p> <p>20 and differently with staff depending on whether other</p> <p>21 faculty members are present during the exchange"?</p> <p>22 A I see that.</p> <p>23 Q What evidence supported that statement?</p> <p>24 A I don't recall.</p> <p>25 Q Would all of the evidence supporting that</p>

<p style="text-align: right;">Page 206</p> <p>1 statement be in the interview notes?</p> <p>2 A Yes, I think so.</p> <p>3 Q Do you recall which interviews it was based</p> <p>4 on?</p> <p>5 A No, I do not.</p> <p>6 Q Who would know what it was based on?</p> <p>7 A I don't know.</p> <p>8 Q Comparing that to page 5 of the final</p> <p>9 report, at the bottom do you see that the final report</p> <p>10 softens the language and instead just states that some</p> <p>11 mentioned a concern that Professor Edelman may manage</p> <p>12 up?</p> <p>13 A Yes.</p> <p>14 Q Was there more than one person who expressed</p> <p>15 that concern?</p> <p>16 A I don't recall, but I -- I think so.</p> <p>17 Q So earlier, we looked at a quote from</p> <p>18 Professor ██████ about managing up I believe.</p> <p>19 A Right.</p> <p>20 Q Do you believe that there's other evidence</p> <p>21 to support that?</p> <p>22 A I do.</p> <p>23 Q Do you recall what it is?</p> <p>24 A No, but I do recall talking about it as a --</p> <p>25 as a phenomenon that we -- that people mentioned.</p>	<p style="text-align: right;">Page 208</p> <p>1 Review Board meeting on July 31, 2015?</p> <p>2 A Looks like it.</p> <p>3 Q And about a third of the way down do you see</p> <p>4 a comment attributed to you, "But collegiality more</p> <p>5 generally, do we want this person as a senior</p> <p>6 colleague?"</p> <p>7 A I see it, yes.</p> <p>8 Q Did you say that?</p> <p>9 A I don't recall.</p> <p>10 Q Do you have any reason to believe that Dean</p> <p>11 Cunningham's notes were inaccurate?</p> <p>12 A No. But they're not -- not a transcript for</p> <p>13 sure.</p> <p>14 Q Did you discuss that concept in the context</p> <p>15 of the FRB?</p> <p>16 A Let's see. "This round felt like a</p> <p>17 personnel file." I'm trying to see what the context</p> <p>18 is. So it looks like someone -- I don't know who</p> <p>19 said -- can you tell what -- who the first -- I guess</p> <p>20 I don't know what the -- who said the first thing, but</p> <p>21 looks like someone is raising a concern about this</p> <p>22 from a legal perspective. So two others -- issues</p> <p>23 elevate an importance of institutional impact, and so</p> <p>24 I'm asking whether is this -- we're -- we're talking</p> <p>25 about collegiality more generally, is that what we're</p>
<p style="text-align: right;">Page 207</p> <p>1 Q But if people mentioned it, then it would</p> <p>2 have been included in the interview notes; right?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: Maybe.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q Do you think you would have relied on</p> <p>7 something that was said in interviews but not captured</p> <p>8 in the interview notes?</p> <p>9 MR. MURPHY: Objection.</p> <p>10 THE WITNESS: I don't think so, no.</p> <p>11 MR. RUSSCOL: So this will be Exhibit</p> <p>12 72.</p> <p>13 (Exhibit 72 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q So I'd like to direct your attention --</p> <p>17 first of all, based on the cover page, do these appear</p> <p>18 to be notes of Jean Cunningham?</p> <p>19 A Based on the cover page, yes.</p> <p>20 Q Okay.</p> <p>21 A Black and red.</p> <p>22 Q I'd like to direct your attention to the</p> <p>23 page with the Bates Number ending in 36.</p> <p>24 A Twenty-nine, thirty-two, thirty-six.</p> <p>25 Q So do these appear to be notes of a Faculty</p>	<p style="text-align: right;">Page 209</p> <p>1 talking about.</p> <p>2 Q And was wanting or not wanting Mr. Edelman</p> <p>3 as a senior colleague a factor that was considered by</p> <p>4 the FRB?</p> <p>5 A No. No, I think it's more what I just said,</p> <p>6 which is that this is a -- are we -- are we talking</p> <p>7 about collegiality more generally versus, whatever,</p> <p>8 this legal perspective. That's what the question mark</p> <p>9 is for I think. I don't recall at the moment, but</p> <p>10 that's what I would interpret.</p> <p>11 Q So looking above there, someone is raising a</p> <p>12 question of whether it's late to be getting these</p> <p>13 issues to the FRB, whether it may not have been</p> <p>14 discussed with Mr. Edelman or with his unit; right?</p> <p>15 A I don't know. I -- I can't tell. I can</p> <p>16 tell it says "Is it late to be getting to the FRB?"</p> <p>17 Q So you're saying that the FRB didn't</p> <p>18 consider do we want this person as a senior colleague</p> <p>19 as part of its review?</p> <p>20 A I think that's accurate, yeah. I believe at</p> <p>21 this point we're just trying to figure out why we're</p> <p>22 meeting, what are we doing here, what's the goal?</p> <p>23 Q What was the goal at that point?</p> <p>24 A I think the dean asked us to convene, and I</p> <p>25 don't know exactly at what point in the process this</p>

<p style="text-align: right;">Page 210</p> <p>1 is.</p> <p>2 Q Well, if it was in -- if it was July 31st,</p> <p>3 then where in the process does that put it?</p> <p>4 A I don't -- I don't remember when it started,</p> <p>5 but it was during the summer. I don't remember</p> <p>6 exactly when we began, but I think it was earlier in</p> <p>7 the summer. So I'm not -- I'm not sure what this</p> <p>8 meeting is for, but -- let's see. Let me see if I</p> <p>9 read on if I can figure it out.</p> <p>10 I don't know what the copyright -- I don't</p> <p>11 remember a copyright issue.</p> <p>12 Q So these notes indicate that you reference</p> <p>13 the concept of "Do we want this person as a senior</p> <p>14 colleague?" but your testimony is that the FRB didn't</p> <p>15 consider that as a factor in its deliberations?</p> <p>16 MR. MURPHY: Objection.</p> <p>17 THE WITNESS: I -- I did -- I -- I did</p> <p>18 my best to explain it before, but I -- I think I'm</p> <p>19 checking on whoever said the business about legal</p> <p>20 issue. I'm trying to -- it says my -- oh, look, can</p> <p>21 go earlier. Maybe that'll give some insight. But</p> <p>22 instead of whatever it was, instead of this legal</p> <p>23 perspective, I'm saying, "But collegiality more</p> <p>24 generally, is that the perspective you're -- you're</p> <p>25 asking us to consider?"</p>	<p style="text-align: right;">Page 212</p> <p>1 A I don't recall.</p> <p>2 Q Did you say anything like that?</p> <p>3 A I don't recall. This is a --</p> <p>4 Q Do you have any reason --</p> <p>5 A -- someone's notes --</p> <p>6 Q Do you have any reason to doubt that Dean</p> <p>7 Cunningham's notes of this meeting are accurate?</p> <p>8 A They're not -- they're -- again, they're not</p> <p>9 a transcript, but I do -- don't doubt their accuracy</p> <p>10 to capture as best she could what was happening.</p> <p>11 Q As of June 28, 2017, was it obvious to you</p> <p>12 that Mr. Edelman shouldn't be on the senior faculty?</p> <p>13 A It was obvious that it was risk -- risky.</p> <p>14 And I've always grown up with the -- we give the</p> <p>15 candidate the benefit of doubt -- associate in the</p> <p>16 school the benefit of doubt at -- at full. You know,</p> <p>17 so risk -- I'm clear there's risk.</p> <p>18 Q And it indicates here that the process</p> <p>19 didn't make it easy for him to not be on the senior</p> <p>20 faculty; is that what it's capturing?</p> <p>21 A Not our FRB process, our -- our promotion</p> <p>22 process, I think.</p> <p>23 Q In what way does the promotion process not</p> <p>24 make it easy for that to happen?</p> <p>25 A Well, I think it doesn't necessarily ask</p>
<p style="text-align: right;">Page 211</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q At that point in -- on July 31, 2015, did</p> <p>3 you have an opinion about whether you wanted</p> <p>4 Mr. Edelman as a senior colleague?</p> <p>5 A This is 2015? No. I did not.</p> <p>6 Q Did you have an opinion on that subject by</p> <p>7 the summer of 2017?</p> <p>8 A I don't recall.</p> <p>9 MR. RUSSCOL: So this will be -- are we</p> <p>10 at 73?</p> <p>11 THE REPORTER: Yeah.</p> <p>12 (Exhibit 73 was marked for</p> <p>13 identification.)</p> <p>14 THE WITNESS: Thank you.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q So are these notes from the FRB meeting of</p> <p>17 June 28, 2017?</p> <p>18 A Looks like it.</p> <p>19 Q Looking at the second page, about two thirds</p> <p>20 of the way down, do you see a statement attributed to</p> <p>21 you saying "At some level it is obvious that we</p> <p>22 shouldn't have him on the senior faculty, but our</p> <p>23 process doesn't make it easy for that to happen"?</p> <p>24 A I do see it, yes.</p> <p>25 Q Did you say that?</p>	<p style="text-align: right;">Page 213</p> <p>1 people to assess the issues that we're assessing here.</p> <p>2 Q How does it not ask the appointments</p> <p>3 committee or the dean to assess those things?</p> <p>4 A I don't --</p> <p>5 MR. MURPHY: Objection.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. RUSSCOL:</p> <p>8 Q So --</p> <p>9 A I mean, I suppose it's not really true. The</p> <p>10 dean can assess them in a variety of ways.</p> <p>11 Q So in what way does the promotion process</p> <p>12 not make it easy for that to happen?</p> <p>13 A I wouldn't read too much into that. It's</p> <p>14 just -- this -- this has been a lot of -- this was a</p> <p>15 lot of work. I mean, this is a lot of time, a lot of</p> <p>16 work, for many people. So it certainly -- I wouldn't</p> <p>17 call it easy.</p> <p>18 Q The FRB process?</p> <p>19 A Yeah.</p> <p>20 Q And it wasn't easy to go through that</p> <p>21 process; right?</p> <p>22 A Right.</p> <p>23 Q It wasn't easy to go through that process</p> <p>24 and have Mr. Edelman not be a senior faculty member;</p> <p>25 right?</p>

<p style="text-align: right;">Page 214</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: What's the question? 3 BY MR. RUSSCOL: 4 Q It wasn't easy to go through that process 5 and have the result be that Mr. Edelman was not a 6 senior faculty member? 7 MR. MURPHY: Objection. 8 THE WITNESS: I'm sorry, that just -- 9 that question doesn't make sense to me. 10 BY MR. RUSSCOL: 11 Q Well, you were saying that it was obvious 12 that Mr. Edelman shouldn't be on the senior faculty -- 13 A At some level it's obvious, given -- if you 14 look at all of these notes, the concerns people have 15 that his behavior is not predictable and can 16 periodically create real problems for the dean, and so 17 at some level, you know, a dean should not be having 18 to field phone calls from people in the community or 19 alumni that are expressing frustration. That's not a 20 normal thing the dean would have to do about faculty 21 members. So when that happens, I think it's probably 22 unusual. 23 Q And so you believe that the outcome of the 24 process should be that Mr. Edelman wouldn't be on the 25 senior faculty?</p>	<p style="text-align: right;">Page 216</p> <p>1 Q I'd like to direct your attention to Exhibit 2 61. 3 A Sixty-one? 4 Q Sixty-one. So do you see near the middle of 5 the page the email that you sent on September 24, 6 2017? 7 A Yes. 8 Q The one that starts "Agree"? 9 A Yes. 10 Q And at the end of that message did you write 11 "My prediction is that he will see our slant loud and 12 clear"? 13 A Yes. 14 Q What did you mean by that? 15 A Our concerns. 16 Q So what did you mean by "slant"? 17 A Oh. Just our -- our feelings after this 18 long process. 19 Q And what were your feelings after the long 20 process at that point? 21 A That we really didn't have a hell of a lot 22 of confidence that he had learned and changed. 23 Q Did you mean that the FRB's 2017 report had 24 a slant against Mr. Edelman? 25 A No.</p>
<p style="text-align: right;">Page 215</p> <p>1 A No. 2 MR. MURPHY: Objection. 3 THE WITNESS: I don't believe that. I 4 believe that the process should exist, and people -- 5 thoughtful people should read it and follow it and 6 make their own judgments, come to their own judgments. 7 BY MR. RUSSCOL: 8 Q So just above that in the notes from the 9 same FRB meeting, someone indicated that the FRB was 10 looking for affirmative evidence that Mr. Edelman has 11 changed his behavior. Do you see that? 12 A I do. 13 Q And then below that it says "At face value 14 we don't see the evidence." Do you see that? 15 A I do. 16 Q Who said that? 17 A I don't know. I don't remember, if any, I 18 mean. And it's not quite true, 'cause we did not stay 19 out of the papers. What is the date of this? June. 20 Q Was June 28, 2017, the first FRB meeting of 21 2017? 22 A I don't know. I don't recall. 23 Q Had the FRB started conducting interviews as 24 of that point? 25 A I don't know. I don't remember.</p>	<p style="text-align: right;">Page 217</p> <p>1 MR. MURPHY: Objection. 2 THE WITNESS: I did not. 3 BY MR. RUSSCOL: 4 Q So then what slant was he supposed to see? 5 A Well, if you're using "slant" to mean 6 "bias," which I am not, then -- you know, our -- our 7 conclusion -- which I think is pretty clear at the 8 end; that we can't come to the conclusion as requested 9 that -- that the issues raised following the 2015 10 review have been satisfactorily resolved. 11 Q And you predicted in that email that 12 Mr. Edelman would see the slant; right? 13 A That is what it says, yes. 14 Q Did you hope that Mr. Edelman would see the 15 writing on the wall and withdraw his application for 16 tenure? 17 A No. 18 Q Did you think that there had been writing on 19 the wall in that direction since 2015? 20 A No. I had held out hope. 21 Q Held out hope of what? 22 A That there would be a more -- more visible 23 change and at least been very careful for those two 24 years. 25 Q I'd like to refer to Exhibit 42.</p>

<p style="text-align: right;">Page 218</p> <p>1 A 2015.</p> <p>2 Q So in this, on the bottom of the first page</p> <p>3 in the email you sent dated November 1, 2015, you</p> <p>4 wrote that "Mr. Edelman does not seem to be seeing the</p> <p>5 writing on the wall." Do you --</p> <p>6 A I'm sorry, where is that?</p> <p>7 Q The bottom --</p> <p>8 A Oh, there it is. Got it. Got it. Got it.</p> <p>9 Q Do you see that?</p> <p>10 A Yes.</p> <p>11 Q What was the writing on the wall that he</p> <p>12 didn't seem to be seeing at that time?</p> <p>13 A I don't know. Let's see. I'm responding --</p> <p>14 wait a minute. I'm responding to [REDACTED], or Paul.</p> <p>15 Am I forwarding Paul? I'm not sure. I don't recall.</p> <p>16 Q Was the writing on the wall that Mr. Edelman</p> <p>17 wasn't going to get tenure?</p> <p>18 A No.</p> <p>19 Q Well, as of 2015, you thought Mr. Edelman</p> <p>20 posed a risk to the institution and you wanted him to</p> <p>21 leave; didn't you?</p> <p>22 A No. I -- I captured what many people had</p> <p>23 expressed as serious concerns about the risk to the</p> <p>24 institution. This was -- to go back and remember,</p> <p>25 this is in the aftermath of the Sichuan Garden and</p>	<p style="text-align: right;">Page 220</p> <p>1 either.</p> <p>2 Q But someone on the FRB thought that you</p> <p>3 needed to put in a structure that he would find</p> <p>4 onerous and leave; right?</p> <p>5 MR. MURPHY: Objection.</p> <p>6 THE WITNESS: I don't recall, nor do I</p> <p>7 know what everyone else was thinking.</p> <p>8 BY MR. RUSSCOL:</p> <p>9 Q Is that basically what the school did by</p> <p>10 delaying Mr. Edelman's tenure case for two years and</p> <p>11 giving him a variety of different things to do before</p> <p>12 he could apply again?</p> <p>13 MR. MURPHY: Objection.</p> <p>14 THE WITNESS: No, I think it's the</p> <p>15 opposite. I think if the case had been heard that</p> <p>16 fall it would have -- it was still so raw that the --</p> <p>17 the -- that the Sichuan and the Blinkx were so raw, I</p> <p>18 think people would -- I think it would have been dead</p> <p>19 and I think the dean tried to rescue it.</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q In March 2017 did you still believe that</p> <p>22 Mr. Edelman posed a risk to the institution?</p> <p>23 A I don't recall.</p> <p>24 Q In March 2017 did you want Mr. Edelman to</p> <p>25 leave the school?</p>
<p style="text-align: right;">Page 219</p> <p>1 then the Blinkx issues that were very visible at the</p> <p>2 time. They're long -- long ago now.</p> <p>3 Q I'd like to refer to Exhibit 41, and</p> <p>4 specifically to the page that ends in 15514. Do you</p> <p>5 see the statement attributed to you about two thirds</p> <p>6 of the way down where -- saying that he poses a risk</p> <p>7 to the institution?</p> <p>8 A I do.</p> <p>9 Q So you believed that he posed a risk to the</p> <p>10 institution at the time of that meeting?</p> <p>11 A I think so.</p> <p>12 Q And above that, there's a question. "Can we</p> <p>13 get an alignment of people oriented towards saying</p> <p>14 that the AC process is going to be a very difficult</p> <p>15 process for reasons that will not be helpful for Ben's</p> <p>16 career and that we need to put a structure of</p> <p>17 resources in place that he would find onerous and</p> <p>18 leave?" Do you see that?</p> <p>19 A I do.</p> <p>20 Q Is that something you said?</p> <p>21 A I don't think so.</p> <p>22 Q Is that something someone else said?</p> <p>23 A I don't know, but --</p> <p>24 Q Were those your feelings at the time?</p> <p>25 A No, and it's not my way of wording things</p>	<p style="text-align: right;">Page 221</p> <p>1 A I don't recall.</p> <p>2 Q Earlier there was a discussion of the script</p> <p>3 to be used for interviews, and specifically telling</p> <p>4 the interviewees that the quotes were not to be</p> <p>5 identified. Do you recall that?</p> <p>6 A I do.</p> <p>7 Q Is it part of the principles and procedures</p> <p>8 that witness interviews are not for identification?</p> <p>9 A I think so, yeah.</p> <p>10 Q Why don't you take a look at Exhibit 26,</p> <p>11 which is the principles and procedures, and let me</p> <p>12 know where in that document you find that principle.</p> <p>13 A I'm assuming it's not there if you're --</p> <p>14 MR. MURPHY: Objection.</p> <p>15 THE WITNESS: -- asking me to do that.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q Well, please take a look.</p> <p>18 A Okay.</p> <p>19 So far, there's several references to</p> <p>20 confidentiality, but I'll keep going.</p> <p>21 MR. MURPHY: If you're going to mark</p> <p>22 something up, why don't you mark up my copy rather</p> <p>23 than the original one.</p> <p>24 THE WITNESS: Okay. All right. Okay.</p> <p>25 MR. MURPHY: If that's okay with you,</p>

<p style="text-align: right;">Page 222</p> <p>1 David?</p> <p>2 MR. RUSSCOL: Sure.</p> <p>3 THE WITNESS: I was just looking for</p> <p>4 the places where it says there's confidentiality and</p> <p>5 privacy, but maybe that's not what you asked.</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q Was there anything --</p> <p>8 A -- that you asked.</p> <p>9 Q Is there anything in there that says that</p> <p>10 the identities of witnesses have to be kept</p> <p>11 confidential from the person who is under review?</p> <p>12 MR. MURPHY: Objection.</p> <p>13 THE WITNESS: I would interpret "Every</p> <p>14 reasonable effort should be made to protect the</p> <p>15 reputations of the individuals involved" and</p> <p>16 "Information should be shared only as an -- as need-</p> <p>17 to-know basis" and the -- "Respect the -- advisors are</p> <p>18 expected to respect the confidentiality of the</p> <p>19 process."</p> <p>20 BY MR. RUSSCOL:</p> <p>21 Q Don't you think there's a need for the</p> <p>22 person who's under review to know who said what in</p> <p>23 order to meaningfully respond to it?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 224</p> <p>1 A Out in -- I don't remember, but I'm going to</p> <p>2 say few years ago, four years ago, something like</p> <p>3 that.</p> <p>4 Q What was your compensation for that?</p> <p>5 A I don't remember.</p> <p>6 Q Can you give a range?</p> <p>7 A Not easily. I don't know, 'cause it's a</p> <p>8 while ago, so.</p> <p>9 Q Okay.</p> <p>10 A But I could certainly look it up.</p> <p>11 MR. RUSSCOL: All right. I don't have</p> <p>12 any further questions for today.</p> <p>13 MR. MURPHY: No questions.</p> <p>14 THE VIDEOGRAPHER: Okay. Time is 4:50.</p> <p>15 We're off the record.</p> <p>16 THE REPORTER: All right. Real quick,</p> <p>17 while we're still on the audio record.</p> <p>18 Mr. Russcol, standard delivery for your</p> <p>19 order of the transcript?</p> <p>20 MR. RUSSCOL: Yeah, that's fine.</p> <p>21 THE REPORTER: Mr. Murphy, do you need</p> <p>22 to order a copy?</p> <p>23 MR. MURPHY: Yes, please.</p> <p>24 THE REPORTER: Okay.</p> <p>25 And does anyone else -- Ms. O'Meara,</p>
<p style="text-align: right;">Page 223</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Did you ever discuss with Paul Healy whether</p> <p>3 the witnesses' identities should be disclosed to</p> <p>4 Mr. Edelman?</p> <p>5 A I don't recall.</p> <p>6 Q Did you ever discuss that with anyone else?</p> <p>7 A I don't think so. I don't recall.</p> <p>8 MR. RUSSCOL: All right. Let's go off</p> <p>9 the record.</p> <p>10 THE VIDEOGRAPHER: Time is 4:40. We're</p> <p>11 off the record.</p> <p>12 (Off the record.)</p> <p>13 THE VIDEOGRAPHER: Okay. We are back</p> <p>14 on the record. The time is five -- sorry, 4:49.</p> <p>15 BY MR. RUSSCOL:</p> <p>16 Q Professor Edmondson, have you ever done any</p> <p>17 work for Microsoft?</p> <p>18 A Yes.</p> <p>19 Q How many times?</p> <p>20 A I don't remember. Maybe twice. I'm not</p> <p>21 sure.</p> <p>22 Q What sort of work have you done for</p> <p>23 Microsoft?</p> <p>24 A Just talks.</p> <p>25 Q When was the last time you did that?</p>	<p style="text-align: right;">Page 225</p> <p>1 you don't need one; right?</p> <p>2 MS. OMEARA-COSTELLO: I'll share with</p> <p>3 David. We're on the same page.</p> <p>4 THE REPORTER: Just making sure.</p> <p>5 MR. MURPHY: Standard delivery for me</p> <p>6 too.</p> <p>7 THE REPORTER: Perfect. All right.</p> <p>8 MR. MURPHY: David, are you going to</p> <p>9 keep the exhibits? Because I would like those. And I</p> <p>10 think it makes sense for me to have real copies of</p> <p>11 those rather than ones with my handwriting --</p> <p>12 MR. RUSSCOL: Right.</p> <p>13 THE REPORTER: Let me just finish</p> <p>14 taking us off the audio record really quick.</p> <p>15 MR. MURPHY: Okay.</p> <p>16 THE REPORTER: Just give me one second.</p> <p>17 All right. We're off the record at</p> <p>18 4:51 p.m.</p> <p>19 (Signature reserved.)</p> <p>20 (Whereupon, at 4:51 p.m., the</p> <p>21 proceeding was concluded.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

ATTACHMENT G

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Pgs. 1-353
Exs. 80-113

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS

BENJAMIN EDELMAN,

Plaintiff,

Civil Action No.
2384CV00395-BLS2

V.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

VIDEOTAPED DEPOSITION OF

BENJAMIN EDELMAN

APRIL 30, 2025

9:08 a.m. - 7:29 p.m.

Manatt Phelps & Phillips LLP

One Beacon Street Suite 28-200

Boston MA 02108

REPORTED BY: Lori J. Atkinson

Job No. 7295754

<p style="text-align: right;">Page 50</p> <p>1 side of the road waiting for an Uber when Dean Nohria 2 called me slightly after the appointed time. I think I 3 wedged the phone between my ear and my shoulder and did 4 take notes contemporaneously to my laptop. At least I 5 touch type pretty well, so I could actually do that. 6 That's my recollection. 7 It is possible that I did it some other way like 8 scribbled long hand and then typed it into my computer 9 at the first opportunity. 10 MR. MURPHY: Let's mark the next exhibit as 11 Exhibit 82. 12 (Document marked as Exhibit No. 82 for 13 identification.) 14 BY MR. MURPHY: 15 Q. Do you recognize what has been marked as 16 Exhibit 82? 17 A. Yes. It looks like the notes I took 18 contemporaneously of that discussion with Dean Nohria, 19 according to the date on the second page, September 5, 20 2017. 21 Q. Dean Nohria said, Don't have good news. Not able 22 to move forward with promoting to tenure. Not enough of 23 a faculty vote for me to do so. Correct? 24 A. That's what it says.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Did you ever tell you that if there had been more 2 votes in favor of your candidacy for tenure from the 3 members of the appointments committee, he would have 4 recommended you to President Faust to receive tenure? 5 A. I have some information about that but not from 6 anything he said to me. 7 Q. He did not say that to you? 8 A. He did not say that to me. 9 Q. Did he tell you whether he personally believed 10 that you would pose a reputational risk to the school if 11 you became a tenured professor at HBS? 12 A. He didn't speak to that subject. 13 Q. The phrase is here in these notes, Dug yourself 14 in the hole from the 2015 incidents. 15 Did I read that correctly? 16 A. Yes. 17 Q. Do you remember anything else about what he said 18 about that? 19 A. I remember biting my tongue with respect to 2015, 20 which was an error by him, not an error by me in my note 21 taking. It was an error by him. He said the wrong 22 year. That's okay. He has a lot on his mind; he's the 23 dean. 24 But it's pretty close to the core of the weakness</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Do you remember, if you take a moment to take a 2 look at this note, anything else this Dean Nohria said 3 other than what is on this page? 4 A. I don't remember anything that he said other than 5 what I wrote down in my notes. 6 Q. He phrases -- your note say, Not enough of a 7 faculty vote for me to do so. 8 Do you remember anything more about what he said 9 about that? 10 A. I have other information about what he told other 11 people about that. But I don't remember anything 12 further from this discussion. 13 Q. Did Dean Nohria ever tell you that -- what his 14 personal views were about whether you should get tenure? 15 A. No. 16 Q. Did he ever say if the faculty vote had been 17 different he would have recommended you for tenure? 18 A. He did not say that. 19 Q. Did he say whether he personally believed that 20 you demonstrated a sufficient evidence that you had seen 21 the message and learned the lessons from the 2015 and 22 2014 incidents? 23 A. I don't think that he spoke to that subject one 24 way or the other.</p>	<p style="text-align: right;">Page 53</p> <p>1 in my case to know what happened and when it happened, 2 which is relevant, because that speaks to the information 3 provided by it not having happened subsequently. I 4 would have liked him to get the year right. I took a 5 little bit of offense, though, to be sure, not too much. 6 Q. You certainly didn't say anything to him? 7 A. I certainly did not. 8 Q. What did you understand him to mean when he said 9 the 2015 incidents? 10 A. I took him to be referring to BlinkX and Sichuan 11 Garden. 12 Q. You did not understand him to mean your 13 interactions with staff? 14 A. In fact, I understood him to be saying that he 15 judged all of the other matters in both the 2015 and 16 2017 reports to be kind of inconsequential. 17 Q. Did you speak to Dean Nohria again about your 18 tenure case after this conversation in 2017? 19 A. I spoke to him in the Spring 2018, either 20 February or March, I'm sure the date is in multiple 21 places. And that was the only other time I discussed it 22 with him, quote/unquote, live in person or 23 telephonically. 24 Q. You remember that was the meeting in his office</p>

<p style="text-align: right;">Page 54</p> <p>1 that you described earlier; correct?</p> <p>2 A. That's right.</p> <p>3 Q. Tell us what you remember about that meeting?</p> <p>4 A. I brought to that meeting a copy of the P&P</p> <p>5 document, which I had color highlighted using a PDF</p> <p>6 editor. I had used the same color to refer to sections</p> <p>7 of the P&P that I thought had related ideas. For</p> <p>8 example, every place where it mentioned the evidence</p> <p>9 gathered, which I believe is two separate places. I</p> <p>10 used the same color of highlighting in those places.</p> <p>11 In the meeting I brought him his own copy of the</p> <p>12 document, as a leave behind, I left it. I think he kept</p> <p>13 it. It was produced. I went through each of the</p> <p>14 colored areas. I said, Let's talk about the thing</p> <p>15 highlighted in yellow. Here is what it says you were</p> <p>16 supposed to do. You, the school, institutionally, the</p> <p>17 FRB and you didn't do it. Here is how you didn't do it.</p> <p>18 And here is how that was harmful to my candidacy. And</p> <p>19 I'm mad. I want it to done right. You should have</p> <p>20 followed the rules.</p> <p>21 I told him that in no uncertain terms. No longer</p> <p>22 holding back. No longer concealing the fact that I</p> <p>23 thought this was a legal matter and a contractual</p> <p>24 dispute. And telling him that I thought there was</p>	<p style="text-align: right;">Page 56</p> <p>1 in Microsoft Word at number of minutes and try to get a</p> <p>2 sense from that.</p> <p>3 Q. What does the second page of Exhibit 83 say?</p> <p>4 A. Notes for Nohria; suggesting, perhaps, I wrote it</p> <p>5 in two stages. Perhaps I wrote the first portion of it</p> <p>6 and then came back and put into the -- I guess I'm not</p> <p>7 sure, the last paragraphs could be my own remarks of</p> <p>8 something that I thought would be useful to say, that</p> <p>9 would have been logical for me to say.</p> <p>10 Who is it -- just a week into it? Is it me? How</p> <p>11 could I know how long he was into it? Funny. Even</p> <p>12 contemporaneous notes can be confusing.</p> <p>13 Q. At least with the exception of that last</p> <p>14 paragraph it says, If aspiration is to fix it, not</p> <p>15 obvious to me how.</p> <p>16 The first six paragraphs, was your plan on what</p> <p>17 you intended to say to Dean Nohria?</p> <p>18 A. In substance. Perhaps sugarcoat some portion of</p> <p>19 it. But not sugarcoat other portions of it. I wanted</p> <p>20 to leave no doubt about the firmness of my view. I</p> <p>21 think that is conveyed by what is written here.</p> <p>22 Q. You would agree that there is nothing in here</p> <p>23 about litigation?</p> <p>24 A. I don't think I needed to use the word</p>
<p style="text-align: right;">Page 55</p> <p>1 really no choice for the school, but to admit that they</p> <p>2 had done it wrong and to redo it in strict conformance</p> <p>3 with the governing contract.</p> <p>4 MR. MURPHY: 83.</p> <p>5 BY MR. MURPHY:</p> <p>6 Q. Do you recognize what has been marked as</p> <p>7 Exhibit 83.</p> <p>8 (Document marked Exhibit No. 83 for</p> <p>9 identification.)</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. These would have been my notes for myself. These</p> <p>13 are my notes for myself in preparation for that meeting.</p> <p>14 I would say this is -- I take that back. Initially</p> <p>15 glancing at the top of this, I thought it was my plan</p> <p>16 for what I would like to say. Even as I knew I hadn't</p> <p>17 brought notes like this into the meeting.</p> <p>18 Looking at it more carefully, especially the last</p> <p>19 paragraph, I think this might be notes from after the</p> <p>20 meeting, because the last paragraph appears to be</p> <p>21 remarks from Nitin rather than remarks from me. If I</p> <p>22 wanted to figure it out, the first thing I do is check</p> <p>23 the metadata to see what the document says about both</p> <p>24 its created time and its last modified time. Even look</p>	<p style="text-align: right;">Page 57</p> <p>1 "litigation" for it to be amply clear.</p> <p>2 Q. Did you use the word litigation with Dean Nohria?</p> <p>3 A. The prospect of litigation was definitely</p> <p>4 discussed explicitly.</p> <p>5 Q. What words did you use when you said that?</p> <p>6 A. I remember less what I said. I remember</p> <p>7 something that he said that makes me certain that we</p> <p>8 discussed the possibility of litigation.</p> <p>9 Q. What do you remember him saying?</p> <p>10 A. I remember him saying, You will never sue us.</p> <p>11 Because if you do, the hit to your reputation will be</p> <p>12 even worse.</p> <p>13 Q. That was something that you recall here as you</p> <p>14 sit here today. Correct?</p> <p>15 A. I've recalled it for a long time.</p> <p>16 Q. Was it an important thing -- from your</p> <p>17 perspective, if he said that, that would be an important</p> <p>18 thing to write down. Correct?</p> <p>19 A. It was almost -- it was so important you don't</p> <p>20 have to write it down paradoxically. The things you</p> <p>21 have to write down are the things of intermediate</p> <p>22 importance.</p> <p>23 I don't need to write down the day that I was hit</p> <p>24 by a car while riding my bicycle. I will remember that</p>

ATTACHMENT H

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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 70</p> <p>1 A. Right.</p> <p>2 Q. Was Forest Reinhardt on the standing committee in</p> <p>3 2015?</p> <p>4 A. I think he was. And if memory serves me</p> <p>5 correctly, he was.</p> <p>6 Q. Was he also a member of the FRB?</p> <p>7 A. Yes, he was.</p> <p>8 Q. Did he take a position on the question of whether</p> <p>9 there should be an extension?</p> <p>10 A. I don't remember.</p> <p>11 It may also be that people -- you know, people</p> <p>12 change their minds over the course of that meeting, so</p> <p>13 what someone started with, a position that he started</p> <p>14 with might have migrated by the time the discussion</p> <p>15 ended.</p> <p>16 Q. Is there anyone that you remember taking a</p> <p>17 particularly strongly position in either direction?</p> <p>18 A. No.</p> <p>19 Q. Do you remember whether Forest Reinhardt spoke</p> <p>20 about the FRB's work at the standing committee in 2015?</p> <p>21 A. I think he might have. But I don't remember the</p> <p>22 details of what he said.</p> <p>23 Q. Do you recall whether he spoke about the FRB's</p> <p>24 report?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Do you recall whether it was the idea of someone</p> <p>2 specific to delay the case for two years?</p> <p>3 A. I'm sure there was someone who probably mentioned</p> <p>4 it first. But I don't remember who. I do recall that</p> <p>5 once that possibility had been opened that there were</p> <p>6 quite a lot of people that seemed to like the idea.</p> <p>7 Q. Did you take any notes at the meeting?</p> <p>8 A. I may have taken some.</p> <p>9 Q. Do you know what you did with the notes that you</p> <p>10 took?</p> <p>11 A. When I finished my job in this role, because</p> <p>12 everything is so confidential, I basically got rid of</p> <p>13 all the materials that I had. And because I really</p> <p>14 didn't want responsibility of protecting them, ensuring</p> <p>15 that they were secure.</p> <p>16 Q. Is that something that you did when you left your</p> <p>17 role as senior associate dean for faculty development?</p> <p>18 A. Correct.</p> <p>19 Q. As opposed to when you retired a number of years</p> <p>20 later?</p> <p>21 A. No, no. Right after I finished the job, I was</p> <p>22 happy to get rid of that responsibility.</p> <p>23 Q. When you say that you got rid of the documents,</p> <p>24 did you have them shredded? What exactly was done?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. I don't.</p> <p>2 Q. Was there a group of faculty within the meeting</p> <p>3 who wanted to see Ben receive tenure in 2015?</p> <p>4 A. Again, my memory on this is tempered by ten years</p> <p>5 plus.</p> <p>6 I think there probably were a relatively small</p> <p>7 minority who felt that they were less concerned about</p> <p>8 the issues that had been raised. But I think most</p> <p>9 people there had some concerns, to the level of deep</p> <p>10 concerns, which would be hard to overcome and concerns</p> <p>11 with a hope that Ben could address the situation.</p> <p>12 Q. Was the question whether to extend the case</p> <p>13 versus taking a vote on whether he should receive tenure</p> <p>14 in 2015?</p> <p>15 A. I did not go forward with the vote given the</p> <p>16 situation, because then we would have had to go to</p> <p>17 process. I really didn't know at that stage whether the</p> <p>18 dean would be open to the idea of an extension. So the</p> <p>19 way I left it with them was that I would go talk to the</p> <p>20 dean about whether this was even a possibility.</p> <p>21 If it wasn't, obviously, then we would have had</p> <p>22 to go down a different path. Given the dean was open to</p> <p>23 it and given the FRB was open to it, that meant that</p> <p>24 that was an avenue in which we chose to pursue.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Most of the documents would be on -- I had an</p> <p>2 iPad that I would take to various meetings. The iPad</p> <p>3 would include my notes on the meeting. It would include</p> <p>4 the letters that we received on each of the candidates.</p> <p>5 It would include draft reports. And, obviously, I</p> <p>6 didn't want that to be -- I felt that that was really</p> <p>7 confidential information, so I had it deleted.</p> <p>8 Q. Does that mean that you just had everything on</p> <p>9 the iPad completely wiped?</p> <p>10 A. Completely wiped the iPad, yes.</p> <p>11 Q. If you had taken notes during the standing</p> <p>12 committee meeting for Ben's case, would that have been</p> <p>13 on that iPad?</p> <p>14 A. Yes.</p> <p>15 Q. Was it backed up to anything?</p> <p>16 A. No.</p> <p>17 Q. Was anyone else taking notes that you were aware</p> <p>18 of?</p> <p>19 A. No. Let me be clear, I'm not aware of anyone</p> <p>20 taking notes. That I'm not aware.</p> <p>21 Q. Not that you know for sure that no one else was?</p> <p>22 A. I'm pretty sure no one was taking notes.</p> <p>23 Q. I'm going to show you what we previously marked</p> <p>24 as Exhibit 50. I will represent to you that these are</p>

<p style="text-align: right;">Page 166</p> <p>1 A. Or anything they want to highlight. Because they 2 are highlighting it, it means they think that there is 3 merit for further discussion on these points. 4 Q. In this case, are you person who is running this 5 meeting? 6 A. Yes. 7 Q. Did you ask [REDACTED] that question? 8 A. I'm pretty sure I did. I ask everyone. I can't 9 remember exactly. But I'm pretty sure I asked Ben and 10 [REDACTED], at least, I'm pretty sure I asked Amy to give an 11 overview of their reports and what aspects might be 12 useful for us to discuss. 13 Q. Do you recall whether there was anything that [REDACTED] 14 [REDACTED] did want to highlight from the subcommittee's 15 work? 16 A. I think he said, if I remember rightly -- I think 17 he said much what I have said earlier that the 18 subcommittee found Ben's research work compelling and 19 important and it covers three areas which makes it 20 particularly unique. 21 There was some questions about the teaching, 22 Ben's teaching styles are rather a different style from 23 most of the faculty at HBS, but they were able to 24 conclude that he met the standard. And then to say that</p>	<p style="text-align: right;">Page 168</p> <p>1 right? 2 A. Yes. 3 Q. Did he speak in the meeting? 4 A. I don't remember. I don't he was -- if he did 5 speak, I don't think he was a dominant speaker, that he 6 spoke for a long period of time. But I don't remember 7 beyond that. 8 Q. I think you said that Amy Edmondson was sitting 9 at the front of the room with the subcommittee? 10 A. I think so. 11 Q. Did Stuart Gilson sit with her? 12 A. I forget. I don't think so, but I don't remember 13 precisely. 14 Q. Did Dean Nohria attend this meeting? 15 A. Yes. 16 Q. Where did he sit? 17 A. He would sit in the front. Usually the dean 18 would sit on one side and then the chair of the 19 subcommittee, in this case Amy, might sit on the other 20 side or might sit in the row behind the dean. 21 Q. Other than [REDACTED], Amy Edmondson and [REDACTED] 22 [REDACTED], was there anyone else who kind of gave remarks 23 at the beginning of the meeting? 24 A. I don't remember.</p>
<p style="text-align: right;">Page 167</p> <p>1 the third element was where the subcommittee didn't get 2 to spend its time. That is probably where more prudent 3 for discussions. 4 Q. You said that you also asked Amy Edmondson to 5 speak early on in the meeting? 6 A. Yes. 7 Q. What did you ask her to do? 8 A. I asked her to give context. Again, I don't 9 remember the exact details behind what she said. But 10 since it was the first case, I'm guessing -- I suspect 11 that she went through and explained why we have an FRB. 12 What it's role is. And how it works. And in the 13 aspects of Ben's case, the two reports that people see 14 and how they emerged. 15 Q. Was there anyone other than the two of them that 16 made remarks at the outset of the meeting? 17 A. Usually, I'm pretty sure that this happened in 18 this case as well, the chair of the unit that the 19 candidate is from also makes a set of remarks. 20 I think that -- I think [REDACTED] did. If I 21 remember rightly, his remarks were pretty passionately 22 supportive of Ben's case. 23 Q. And Stuart Gilson is the other member of the 2017 24 FRB who sits on the appointments committee; is that</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Is there anyone else who in the normal course of 2 an appointments committee meeting would address the 3 room? 4 A. I think that the members of Ben's unit were all 5 strongly supportive of his case I think many of them did 6 speak -- I forget whether they spoke throughout the 7 meeting or whether their comments came more at the 8 beginning. I think that, you know, at least other-- 9 some other faculty might feel a little frustrated, they 10 feel like they've been road blocked. That the members 11 of the unit are taking all their time and not letting 12 questions come up naturally in the course of a meeting. 13 At some point if that is the case, I would have to say 14 are there other concerning questions that people have 15 outside of the unit. 16 Q. At some point is there an open discussion that 17 all members of the appointments committee can join in? 18 A. Yes. Most of the meeting. 19 Q. How long was the discussion in Ben Edelman's 20 case? 21 A. I don't remember exactly. My guess is it would 22 be about 90 minutes. 23 Q. How much of that discussion was about the subject 24 matter addressed in the FRB's report?</p>

<p style="text-align: right;">Page 174</p> <p>1 addressed.</p> <p>2 Q. So if someone had a concern about conduct that</p> <p>3 had not been addressed by the FRB, for example, it</p> <p>4 wouldn't be appropriate to be raising that for the first</p> <p>5 time in the appointments committee meeting?</p> <p>6 A. It would not.</p> <p>7 Q. You don't remember anyone attempting --</p> <p>8 A. I don't remember anyone attempting to do that</p> <p>9 with the benefit of eight years absent.</p> <p>10 Q. You and every other witness in this case.</p> <p>11 Do you remember anyone expressing concerns about</p> <p>12 the FRB process?</p> <p>13 A. I don't.</p> <p>14 Q. Do you remember anyone saying that they thought</p> <p>15 that the FRB report had gotten something wrong?</p> <p>16 A. I don't remember explicitly, but it wouldn't</p> <p>17 surprise me that some of the members of NOM might have</p> <p>18 said it.</p> <p>19 Q. Do you remember any concerns that anyone</p> <p>20 expressed about the FRB's report?</p> <p>21 A. No.</p> <p>22 Q. Do you remember anyone having questions for the</p> <p>23 members of the FRB who were present?</p> <p>24 A. I think there were, but I don't remember the</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Correct.</p> <p>2 MS. O'MEARA-COSTELLO: I'm going to show you</p> <p>3 what we -- I'm going to ask that we mark this as</p> <p>4 Exhibit 157.</p> <p>5 (Document marked as Exhibit No. 157 for</p> <p>6 identification.)</p> <p>7 BY MS. O'MEARA-COSTELLO:</p> <p>8 Q. I'm going to give you time to look it over and</p> <p>9 ask you when you have had time to review it whether this</p> <p>10 is a transcription that was prepared of comments that</p> <p>11 appointments committee members made when voting on Ben's</p> <p>12 case for promotion?</p> <p>13 A. Yes. It is the voting sheets that were handed</p> <p>14 out.</p> <p>15 Q. On page 4 of this document, in middle of the</p> <p>16 page, faculty member 20. Do you see where I'm looking?</p> <p>17 A. Yes.</p> <p>18 Q. Writes a note that says, I changed my vote from</p> <p>19 the standing committee, and I changed that vote from my</p> <p>20 prior. A point for the standing committee process in a</p> <p>21 case like this one, having Len present in the room but</p> <p>22 not the unit makes an enormous difference. I would</p> <p>23 likely have stayed negative with a similar conduct</p> <p>24 conversation.</p>
<p style="text-align: right;">Page 175</p> <p>1 details. I think there were questions about process or</p> <p>2 about how the FRB did certain things.</p> <p>3 Q. Do you remember what the specific concerns were?</p> <p>4 A. I don't.</p> <p>5 Q. When those concerns were expressed, did the</p> <p>6 members of the FRB who were present respond to them?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember anything about what they said?</p> <p>9 A. No.</p> <p>10 Q. I think I know the answer to this question, but</p> <p>11 did anyone take notes on the meeting?</p> <p>12 A. Sometimes -- I'm not sure if they did in this</p> <p>13 case. Sometimes the dean will have a pad and jot down</p> <p>14 something. But I don't know if he did in this case or</p> <p>15 not.</p> <p>16 Q. Were you taking notes?</p> <p>17 A. No.</p> <p>18 Q. You were talking?</p> <p>19 A. I was listening and trying to process things and</p> <p>20 make sure that the conversation was productive.</p> <p>21 Q. Does anyone take minutes at appointments</p> <p>22 committee meetings?</p> <p>23 A. No.</p> <p>24 Q. They are not recorded; correct?</p>	<p style="text-align: right;">Page 177</p> <p>1 Do you agree that having one person at the</p> <p>2 standing committee made a difference to the vote?</p> <p>3 A. I don't know. I'm not even sure Len was there</p> <p>4 for the whole time.</p> <p>5 Q. I think you said before that you thought he was</p> <p>6 there for some of the meeting; is that still your</p> <p>7 memory?</p> <p>8 A. That is still my memory.</p> <p>9 Q. If you look at the bottom comment from faculty</p> <p>10 member 6.</p> <p>11 A. Okay. Do you want me to go over the page?</p> <p>12 Q. I actually think on the next page on the top of</p> <p>13 page 3, I think that is someone else's comment. It is</p> <p>14 not redacted because they didn't list their name,</p> <p>15 apparently.</p> <p>16 So the question I had was the third sentence of</p> <p>17 that comment says, I do feel FRB had way too much power</p> <p>18 in this meeting. Amy spoke more than anyone and I</p> <p>19 believe could have created a bias.</p> <p>20 Do you agree that Amy spoke more than anyone?</p> <p>21 A. I'm almost sure that is probably true.</p> <p>22 The reason being that if people have questions</p> <p>23 about FRB, Amy will be the one that will answer them.</p> <p>24 So most people when they speak in those meetings will</p>

<p style="text-align: right;">Page 178</p> <p>1 speak once. So if someone is asking Amy questions about 2 FRB, of course she would be speaking more than other 3 people at the meeting. 4 Q. She would have been speaking more than members of 5 the subcommittee, for example? 6 A. Yes. Typically, the subcommittee doesn't speak 7 much actually in these meetings. 8 Q. Is it true that the FRB had power in the meeting? 9 A. I'm not sure I would have put it that way. I 10 would have said that the FRB report had an impact on 11 what people thought about the case. Does that mean that 12 they had power? It had an impact. 13 Q. Did anyone express the concern to you that 14 faculty member 6 is expressing here that they thought 15 that the FRB had too much power in the meeting? 16 A. I don't remember. There might have been one or 17 two people, but I don't remember. 18 Q. In 2018, did you meet with Ben Edelman about 19 concerns that he had about the FRB process? 20 A. Yes. 21 Q. What did you discuss with him in that meeting? 22 A. I don't remember now. This is after the process 23 right? After the case? 24 Q. Yes. I think this would have been in 2018 after</p>	<p style="text-align: right;">Page 180</p> <p>1 (Document marked as Exhibit No. 158 for 2 identification.) 3 A. Okay. 4 Q. This is an email correspondence -- an email 5 between -- an email from you to Nitin Nohria on May 9, 6 2018? 7 A. It is. 8 Q. At this point were you the still the senior 9 associate dean for faculty development? 10 A. I think I was. I think they may have announced 11 that Gary was going to take over my role, I think. I 12 couldn't be a hundred percent on that. 13 Q. This was likely pretty close to the end of your 14 tenure? 15 A. Yes. 16 Q. Does this refresh your recollection as about 17 whether Ben had already met with Nitin Nohria about the 18 concerns that he had? 19 A. No. It makes it sound like he met with me first. 20 Whether he met with Nitin, I'm not sure. 21 Q. It does say at the beginning, While you were in 22 India, Ben Edelman met with me to discuss the concerns 23 he raised with you over the FRB report? 24 A. Yeah. So he may have raised with Nitin first.</p>
<p style="text-align: right;">Page 179</p> <p>1 the decision had been made? 2 A. Got it. 3 Again, if my memory serves me correctly, I think 4 he had concerns about -- particularly the staff 5 questions that were raised about his interactions with 6 the staff that those were anonymous. And that they may 7 have swayed some of the appointments committee against 8 him and that if he had a few more votes that would have 9 perhaps swung his case, had a different outcome for his 10 case. 11 Q. Did you understand at the time that you had that 12 meeting with him that Ben was considering litigation? 13 A. I think I assumed he might consider litigation. 14 At that stage I thought -- the next step for him 15 was to go and talk to the president and to appeal to the 16 university. So I didn't know whether he would go so far 17 as that stage of bringing a lawsuit. 18 Q. It sounds like you thought it was a possibility? 19 A. Yeah. 20 Q. At the time that you spoke with him, had he 21 already spoken with Dean Nohria? 22 A. I don't know. 23 MS. O'MEARA-COSTELLO: I will show you what 24 we will mark as Exhibit 158.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Do you have a memory of discussing them with 2 Nitin Nohria before the meeting with Ben? 3 A. No. 4 Q. It also says that he indicated that he is 5 seriously considering suing the school over his 6 concerns. 7 Does that refresh your recollection about what 8 you understand about his intentions? 9 A. Yes, it does jog my memory. 10 Again, I thought that the next step would be for 11 him to actually go to the president rather than suing. 12 Q. Is that something that you and he discussed or 13 was that what you thought made sense? 14 A. That is the process. 15 Q. The process would be to talk to the president? 16 A. The first is to appeal the case to the president. 17 Q. Then you indicated that you would look at the 18 faculty feedback. Is that referring to the information 19 that is in Exhibit 157? 20 A. Yes. 21 Q. At the time that you looked at it, was it typed 22 or did you have to go through people's handwritten 23 notes? 24 A. I forget.</p>

ATTACHMENT I

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY SUPERIOR COURT
BUSINESS LITIGATION SESSION

BENJAMIN EDELMAN,

Plaintiff,

v.

Civil Action No.

PRESIDENT AND FELLOWS OF HARVARD

2384CV00395-BLS2

COLLEGE,

Defendants.

DEPOSITION OF LEONARD A. SCHLESINGER

DATE: Tuesday, May 27, 2025

TIME: 9:39 a.m.

LOCATION: Zalkind Duncan & Bernstein LLP

65A Atlantic Avenue

Boston, MA 02110

REPORTED BY: Jared Reding

JOB NO.: 7309608

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

ATTACHMENT J

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT
SUFFOLK, SS
BUSINESS LITIGATION SESSION

BENJAMIN EDELMAN,

Plaintiff,

v.

Civil Action No.

PRESIDENT AND FELLOWS OF HARVARD

2384CV00395-BLS2

COLLEGE,

Defendant.

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

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 A Let's see. Yep.
10 Q So does that mean that you spent more than a
11 day a week on average on outside activities last year?
12 A No. I don't think it does.
13 Q Then how can you explain how you earned that
14 amount without spending more than a day a week on
15 outside activities?
16 A Well, part of my compensation from expert
17 witnessing, I work with a consulting firm, and I get a
18 percent. I'm an affiliate of the firm, and so I get a
19 percent of their billings for the work that they do in
20 support of my testimony.
21 Q Do you believe that you did spend more than
22 a day a week on outside activities last year?
23 A I don't believe so, and I think as a -- as a
24 sort of a average number over time, I'd say definitely
25 not. For example, this year I'm not doing any expert

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1 witnessing work. As far as I know, I've got one live
2 case. But I've -- you know, we're through April, and
3 I haven't done a single hour. So it varies a lot from
4 year to year.
5 Q All right. I'd like to show you a document
6 that will be marked as the next exhibit, and we're
7 going to start at Exhibit No. 74 to be consistent with
8 numbers we've been using in other depositions.
9 (Exhibit 74 was marked for
10 identification.)
11 So do you see -- well, strike that. Is this
12 an email that is exchanged between you and the other
13 FRB members in 2017?
14 A -- look here. Your question was is this an
15 email from me?
16 Q Is this an email exchange between you and
17 the other FRB members?
18 A It -- it appears to be. Well, Amy's email,
19 which is a reply to my email, is addressed to
20 everybody. I can't see whether or not I was just
21 emailing her or whether I would've CC-ed. I -- I do
22 say "Hi, all," so I presume that I was CC-ing
23 everybody.
24 Q And do you see in the middle of the page
25 that your email seems to have been sent from your

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1 Comcast account?
2 A Yes, I do.
3 Q And do you see at the bottom, it says "Sent
4 from my iPad"?
5 A Yes.
6 Q Is your Comcast email stored on your iPad?
7 MR. MURPHY: Objection.
8 THE WITNESS: I don't know if it is or
9 not.
10 BY MR. RUSSCOL:
11 Q Do you know if it was in 2017?
12 A Don't know.
13 Q Do you have the same iPad that you did in
14 2017?
15 A No.
16 Q When did you replace it?
17 A I typically replace my iPad every -- once
18 every two years.
19 Q Do you have a specific recollection of when
20 you replaced the iPad that you had in 2017?
21 A No.
22 Q Would HBS have records of that?
23 A I have no idea.
24 Q Did you purchase the replacement through
25 HBS?

Page 61

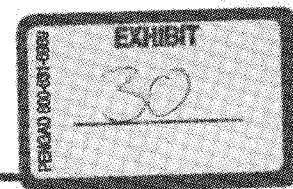
1 A Probably.
2 Q Do you sometimes delete messages from your
3 Comcast account?
4 A Well, just like my Harvard account, with my
5 Comcast account, I kind of manage it and, you know,
6 sort of clean up my email box, you know, pretty
7 regular basis, you know. One or two times a year, I
8 kind of get rid of older emails.
9 Q So when you get rid of older emails, do you
10 delete all emails within a certain date?
11 A Probably. I mean, it's not sort of a
12 systematic rule that I apply, but, you know,
13 my -- largely under pressure from my wife. She claims
14 that I keep too many emails, and it slows down
15 everything.
16 So I'm constantly -- you know, usually,
17 once, like, at the end of the year, maybe sometimes in
18 the summer if I've got nothing else to do, I'll just
19 go through, and I just clean it up, get rid of, you
20 know, older emails, emails that -- you know, me
21 thanking my assistant for, you know, making a student
22 appointment or something like that.
23 Q When you clean up your emails the way you
24 just described, do you select all emails for a certain
25 time period, or do you go through and select which

<p style="text-align: right;">Page 62</p> <p>1 emails to delete and which ones to keep?</p> <p>2 A So it -- it's probably a combination in the</p> <p>3 sense that, you know, if I've got emails that are, you</p> <p>4 know, more than, you know, a couple years old or just</p> <p>5 a year old, many times I'll just get rid of them.</p> <p>6 Or if it's, you know, junk email, you know,</p> <p>7 Comcast emails, you know, emails from wine</p> <p>8 merchants -- you know, I buy a lot of wine</p> <p>9 online -- I'll just get rid of it all. So some of</p> <p>10 it's selective. Some of it is just trying to, you</p> <p>11 know, just get rid of a bunch of stuff that's just</p> <p>12 going to sit there and clutter things up.</p> <p>13 Q Did you ever delete any emails related to</p> <p>14 Mr. Edelman or the FRB from your Comcast account?</p> <p>15 A I never deleted anything explicitly, you</p> <p>16 know, with that in mind. I mean, the reason that -- I</p> <p>17 have no doubt the reason this ended up here is just</p> <p>18 because when you're, you know, on an iPhone or on an</p> <p>19 iPad, sometimes when you have multiple accounts, it'll</p> <p>20 default to the Comcast account. I'm constantly</p> <p>21 checking for that. Sometimes one gets through.</p> <p>22 And I do a number of cases where -- when I</p> <p>23 send something up by Comcast, and then I get emails</p> <p>24 back. And my -- my wife complains that I've got the</p> <p>25 Harvard stuff, you know, contaminating the -- the</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. RUSSCOL:</p> <p>2 Q Was it common for an appointments committee</p> <p>3 meeting to take three hours?</p> <p>4 A Usually, appointments committee meetings are</p> <p>5 about an hour and a half per candidate, and we might</p> <p>6 see two candidates in an afternoon.</p> <p>7 Q You wrote in your email that you wanted to</p> <p>8 make sure that you were familiar with the negative and</p> <p>9 the critical feedback that the FRB got about</p> <p>10 Mr. Edelman. Is that fair to say?</p> <p>11 MR. MURPHY: Objection.</p> <p>12 THE WITNESS: Can you repeat the</p> <p>13 question, please?</p> <p>14 BY MR. RUSSCOL:</p> <p>15 Q You wrote that you wanted to make sure you</p> <p>16 were familiar with the negative and critical feedback</p> <p>17 that the FRB received about Mr. Edelman. Is that fair</p> <p>18 to say?</p> <p>19 MR. MURPHY: Objection.</p> <p>20 THE WITNESS: I don't know if I'm -- I</p> <p>21 mean, I don't, you know, recall specifically writing</p> <p>22 this email. I'm sort of looking at it now and trying</p> <p>23 to reconstruct what I might've been thinking.</p> <p>24 But I think given how I write, I mean,</p> <p>25 it may very -- be possible I wanted to see -- we may</p>
<p style="text-align: right;">Page 63</p> <p>1 Comcast account, so I'll just -- my replies subsequent</p> <p>2 to that, I'll flip back to HBS just to make sure that</p> <p>3 it stays within the HBS domain.</p> <p>4 Q Do you share this Comcast account with your</p> <p>5 wife?</p> <p>6 A Yeah.</p> <p>7 Q So looking at the date in the middle of the</p> <p>8 message, the email that you sent was dated Sunday,</p> <p>9 November 12, 2017; right?</p> <p>10 A Well, from Amy, it was Sunday. I don't know</p> <p>11 if she replied on the -- I guess it was on the same</p> <p>12 day. Yeah, Sunday.</p> <p>13 Q And you wrote that the Edelman case was</p> <p>14 going "to be heard this Thursday"; right?</p> <p>15 A That's what I read. Yeah.</p> <p>16 Q So does that indicate that the appointments</p> <p>17 committee meeting for Mr. Edelman was scheduled on</p> <p>18 Thursday, November 16, 2017?</p> <p>19 A Thirteen, fourteen, sixteen -- it would</p> <p>20 imply that. Yeah.</p> <p>21 Q And you wrote "three hour." Does that</p> <p>22 indicate that the meeting was scheduled to take three</p> <p>23 hours?</p> <p>24 MR. MURPHY: Objection.</p> <p>25 THE WITNESS: I assume so.</p>	<p style="text-align: right;">Page 65</p> <p>1 be asked to elaborate on some of the negative</p> <p>2 feedback, which would make sense because we were asked</p> <p>3 to address whether or not, you know, Ben had addressed</p> <p>4 some of what would -- the first FRB report identified</p> <p>5 as problematic behavior. But the -- the word</p> <p>6 "critical" appears in the next sentence.</p> <p>7 And it may be a reference to that same</p> <p>8 negative feedback, but it -- I -- just reading it here</p> <p>9 and because it's in a different sentence, I</p> <p>10 suspect -- really -- really talking about critical</p> <p>11 feedback, meaning important feedback or the feedback</p> <p>12 that might -- might garner the most attention or</p> <p>13 discussion amongst the faculty. So that could include</p> <p>14 positive feedback as well. That -- that would be my</p> <p>15 suspicion.</p> <p>16 BY MR. RUSSCOL:</p> <p>17 Q So in the second sentence, you wrote that</p> <p>18 you anticipated some might ask you to elaborate on</p> <p>19 some of the negative feedback; right?</p> <p>20 A Yeah, yeah.</p> <p>21 Q And of the FRB members, only you and</p> <p>22 Professor Edmondson were also on the appointments</p> <p>23 committee; right?</p> <p>24 A We were the -- yeah. Because we were the</p> <p>25 only tenured faculty who were on the FRB.</p>

<p style="text-align: right;">Page 70</p> <p>1 was finalized you personally had any communications 2 with any standing committee members about the FRB 3 report? 4 A Not that I recall. 5 Q Did you have any communications with any 6 appointments committee members other than Professor 7 Edmondson about the FRB report between when it was 8 finalized and the appointments committee meeting? 9 A None that I would remember, no. 10 Q What records did you retain from your time 11 on the FRB relating to Mr. Edelman? 12 A I mean, initially, I would've had some 13 written documents, you know, probably drafts printed 14 out, you know, some -- some printed documents, and 15 then everything that was online that I, you know, 16 produced as part of discovery to you guys. 17 Q In terms of printed documents, where did you 18 keep those documents? 19 A They would've all -- kept them in my office. 20 Q Did you have a particular folder for them? 21 A Probably. 22 Q Did you delete or destroy any files or 23 documents that were in that folder since the FRB 24 report was finalized? 25 A No -- well, since the -- the order went out</p>	<p style="text-align: right;">Page 72</p> <p>1 year, every two years, but, you know, I have limited 2 storage capacity and things. I have boxes piled up on 3 the floor. I used to. I just went through another 4 purge, getting rid of my old journals and stuff. It's 5 just a matter of, you know, making the office usable. 6 Q You mentioned a directive to not delete 7 anything. What are you referring to? 8 A I remember getting an email from -- I guess 9 it would be Harvard's counsel -- notifying us that Ben 10 had brought suit, and so we shouldn't delete anything 11 that might be connected to the case, including emails. 12 And so I complied with that. 13 Q When did you get that directive? 14 A I don't remember the date. I mean, it 15 would've been -- it was either 2024, 2023. I don't 16 remember how far back that went. 17 Q Was it after Mr. Edelman had already filed 18 the lawsuit? 19 A I -- I don't remember the timing. 20 Q What computers or devices did you use to 21 store the materials from the FRB? 22 A It was the -- well, I have one laptop, 23 basically. It's a -- it's an Apple device, like 24 a -- well, it's -- it's an Apple laptop. 25 Q Was that also true in 2017? Sorry. Let me</p>
<p style="text-align: right;">Page 71</p> <p>1 to not delete anything, but I didn't have any sort of 2 paper records in my files, you know, seven years 3 later. I don't really keep those things very long. 4 I mean, I have -- you know, I sit on 5 dozens -- probably dozens of subcommittee and other 6 committees, and they all have lots of files. And I 7 clean those out regularly just because they take up 8 space. 9 Q What do you do with those files when you 10 clean them out? 11 A We have -- because they're sensitive files, 12 it may have been a shredding service that we use, or I 13 might've -- anything that's, you know, sensitive 14 nature, I have it sort of -- I have my assistant to 15 have it -- I don't know who does it, but there's a 16 service. 17 Q And how often do you go clean things out 18 that way? 19 A I mean, it's -- it's kind of like my emails. 20 You know, things pile up and get to be unmanageable, 21 and then finally, I get frustrated. And I just do a 22 purge. I can't tell you when -- you know, how long I 23 would've kept those files, but I have, you know, no 24 files of any kind of committee going back that far. 25 Sometimes I do it -- I don't know -- every</p>	<p style="text-align: right;">Page 73</p> <p>1 clarify. Did you also have just one laptop in 2017 2 that was an Apple? 3 A I've been using Apple for a long, long time, 4 so I assume it must've been. Yeah. 5 Q Do you still have the laptop that you had in 6 2017? 7 A No. 8 Q How often do you replace your laptop? 9 A Usually once every two years. 10 Q Did you take notes of interviews in 2017 11 when you interviewed witnesses separate from other FRB 12 members? 13 A I did. 14 Q What did you do with those notes? 15 A I didn't keep them 'cause I'd sort of had 16 phone conversations with -- again, was it five or six 17 people -- and I just wrote everything down. And then 18 my handwriting is illegible, and so I then 19 immediately -- while things were still fresh, I would 20 then transcribe it into my -- into a Word document. 21 And then I just didn't keep the notes. 22 Q Okay. So you transcribed the handwritten 23 notes into a Word document? 24 A Correct. 25 Q What did you do with that Word document?</p>

<p style="text-align: right;">Page 74</p> <p>1 A I think it's what was turned over to you</p> <p>2 guys as part of discovery.</p> <p>3 Q Did you provide that Word document to Jean</p> <p>4 Cunningham?</p> <p>5 A Well, to her or somebody on the committee, I</p> <p>6 assume, because excerpts of those transcripts were</p> <p>7 included in the second report, so it seems likely that</p> <p>8 I would've, yeah, whether to Jean or somebody else.</p> <p>9 Q Did you type those excerpts from the</p> <p>10 interviews into the report?</p> <p>11 A No.</p> <p>12 Q Do you remember whether you provided the</p> <p>13 printed notes to either Jean Cunningham or someone</p> <p>14 else on the committee by email or in paper form?</p> <p>15 MR. MURPHY: Objection.</p> <p>16 THE WITNESS: I'm sorry. I don't -- I</p> <p>17 don't -- I just don't remember.</p> <p>18 BY MR. RUSSCOL:</p> <p>19 Q Were the -- strike that. Was the process</p> <p>20 of --</p> <p>21 A Excuse me.</p> <p>22 Q Was interviewing witnesses part of the FRB's</p> <p>23 process of gathering evidence?</p> <p>24 A I assumed it was because the -- the idea</p> <p>25 that we would interview people was kind of raised -- I</p>	<p style="text-align: right;">Page 76</p> <p>1 them along with, you know, all other emails that are</p> <p>2 past a certain shelf date. And I don't remember when</p> <p>3 that time would be specifically.</p> <p>4 BY MR. RUSSCOL:</p> <p>5 Q But you weren't deleting FRB emails while</p> <p>6 the FRB was still conducting business, were you?</p> <p>7 MR. MURPHY: Objection.</p> <p>8 THE WITNESS: I mean, not -- not in any</p> <p>9 kind of a systematic way. I mean, sometimes when</p> <p>10 you're engaged in -- you know, I mean, as part of</p> <p>11 managing my email traffic and the -- the volume -- you</p> <p>12 know, sometimes you go back and forth five or six</p> <p>13 times with somebody.</p> <p>14 And if I have a -- the -- you know, if</p> <p>15 I sort of think to do so, I might delete a bunch and</p> <p>16 just keep the most recent one that has the whole chain</p> <p>17 just to free it up so that I spare myself having to</p> <p>18 delete, you know, millions of emails later, but I</p> <p>19 don't do that in any kind of systematic way.</p> <p>20 So, you know, were there a few emails I</p> <p>21 might've deleted along the way? But not for any</p> <p>22 reason other than to sort of, you know, manage</p> <p>23 the -- the number of emails that they may have</p> <p>24 been -- you know, I -- I may have thought they're</p> <p>25 redundant. But, you know, I -- I don't remember</p>
<p style="text-align: right;">Page 75</p> <p>1 don't know if it was in the first meeting -- but I</p> <p>2 understood that that's one thing that we would all be</p> <p>3 doing and, you know, the effort in which we would all</p> <p>4 be sharing.</p> <p>5 Q While the -- strike that. Did you retain</p> <p>6 all the emails you sent and received that pertained to</p> <p>7 Mr. Edelman's FRB?</p> <p>8 MR. MURPHY: Objection.</p> <p>9 THE WITNESS: Well, I mean, after I was</p> <p>10 asked to not delete any emails of any kind, you know,</p> <p>11 you guys have everything that was -- was there.</p> <p>12 Again, as part of my regular practice, I don't keep</p> <p>13 emails for, you know, years and years and years and</p> <p>14 years. And so once I was informed that there was a</p> <p>15 lawsuit or that I should not delete anything, I</p> <p>16 complied with that for sure.</p> <p>17 BY MR. RUSSCOL:</p> <p>18 Q So within the first couple of years after</p> <p>19 Mr. Edelman's FRB had concluded, did you retain all</p> <p>20 the emails that you sent and received that pertained</p> <p>21 to the FRB?</p> <p>22 MR. MURPHY: Objection.</p> <p>23 THE WITNESS: Well, I mean, I -- I</p> <p>24 would've immediately, and then there came a point,</p> <p>25 apparently, where I would've, you know, not retained</p>	<p style="text-align: right;">Page 77</p> <p>1 doing -- you know, deleting any specific emails.</p> <p>2 BY MR. RUSSCOL:</p> <p>3 Q While the FRB was conducting its business,</p> <p>4 did you believe that litigation was likely if</p> <p>5 Mr. Edelman did not get tenure?</p> <p>6 A No.</p> <p>7 Q I'm going to show you a document that's been</p> <p>8 previously marked as Exhibit 73. Looking at the large</p> <p>9 paragraph at the beginning, didn't you tell the FRB in</p> <p>10 June 2017 that you needed to be thoughtful from a</p> <p>11 legal perspective?</p> <p>12 A Where am I looking here?</p> <p>13 Q The first large paragraph where it says</p> <p>14 "Gilson."</p> <p>15 A Let's see. Just give me a chance to read</p> <p>16 it. And so what's your question, again?</p> <p>17 Q Didn't you tell the FRB in June 2017 that</p> <p>18 there was a need to be thoughtful from a legal</p> <p>19 perspective?</p> <p>20 A So I -- I don't remember saying those exact</p> <p>21 words. This is a -- this is a transcript</p> <p>22 or -- whoever was taking the minutes. It may have</p> <p>23 been just referring to the fact that, you know, we're</p> <p>24 not a legal tribunal. I do remember I was upset at</p> <p>25 reading what happened with the Blinkx issue.</p>

ATTACHMENT K



From: Reinhardt, Forest
Sent: Sunday, October 25, 2015 6:26 PM EDT
To: Edmondson, Amy
Subject: RE: Now it's working!

I only saw three, and I don't think you need to do anything about any of them. I was looking at your draft of 320 pm Friday. Privileged

From: Edmondson, Amy
Sent: Sunday, October 25, 2015 5:23 PM
To: Reinhardt, Forest
Subject: Re: Now it's working!

if you have time Privileged
and see if you think I should do anything to respeond further (or jsut delete?)

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

Author of *Teaming: How organizations learn, innovate and compete in the knowledge economy* (Jossey-Bass, 2012)

On Oct 25, 2015, at 5:18 PM, Reinhardt, Forest <freinhardt@hbs.edu> wrote:

Got it. Thanks.
I think that sending the report to NN tonight seems sensible.

From: aedmondson@hbs.edu [<mailto:aedmondson@hbs.edu>]
Sent: Sunday, October 25, 2015 5:10 PM
To: Reinhardt, Forest
Subject: Now it's working!

You have received 1 secure file from aedmondson@hbs.edu.
Use the secure link below to download.

As you will see, these quotes are largely positive, and may not have really altered the SC discussion. I hope that our report will alter it.

I wonder if I should send the report to NN tonight?

Secure File Downloads:

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Click link to download:

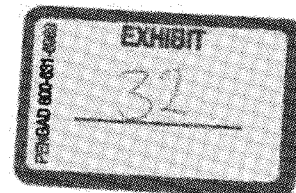
edelman letter quotes.pdf

308.30 KB, Fingerprint: c6deb71eb1664a2e253093df911bd035 (What is this?)

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ATTACHMENT L



From: Reinhardt, Forest
Sent: Sunday, November 1, 2015 4:53 PM EST
To: Edmondson, Amy
Subject: confidential

Hi Amy. I know that he gets to respond to what we already sent him. My question was: suppose we revise our report in reaction to his response, then does he also get to respond to that revision? As he probably told you, Paul wants the standing subcommittee to review our report, plus the 3-person subcommittee's report, on Tues Nov 10, and if this is going to happen we do not have time to revise, send to candidate, and revise again. If we are going to do anything beyond delivering to this standing subcommittee our original report and his response, I don't see how we fit this into the fall appointments calendar. It might, however, not be the worst thing if it slipped to spring.

Happy to talk in person tomorrow if useful. Cheers, Forest

From: Edmondson, Amy
Sent: Sunday, November 01, 2015 4:45 PM
To: Reinhardt, Forest
Cc: Cunningham, Jean
Subject: Re: FYI, for you and FRB, for the record

I think, unfortunately, our FRB policies give him a chance to respond... and I guess it's up to us to figure out whether or what to change. I am so glad to get your response...

thanks for your wisdom.

Amy C. Edmondson
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Author of *Teaming: How organizations learn, innovate and compete in the knowledge economy* (Jossey-Bass, 2012)

On Nov 1, 2015, at 3:56 PM, Reinhardt, Forest <freinhardt@hbs.edu> wrote:

Hi

Of course we could produce a new report without the projector history but I do not think this advisable. Independent of who was the instigator are issues about internal process and respect for colleagues. We thought two weeks ago that these were worth bringing to our colleagues' attention. I don't see what's changed.

More broadly, I am not sure that we are "likely to face a need to revise." If we did, would we send the candidate the revised version so that he can respond to that? Where would it end? I thought the original report was what we wanted our colleagues to read. I don't see that this has changed either.

From: Cunningham, Jean
Sent: Sunday, November 01, 2015 12:45 PM
To: Edmondson, Amy
Cc: Reinhardt, Forest
Subject: Re: FYI, for you and FRB, for the record

I still think it is appropriate to include. I didn't think BE being the instigator was key; rather, it still reinforces the point that there are channels for and means of resolving issues and differences of opinion at the School. Ben's standard path is not one of compromise -- on the contrary. Welcome Forest's reaction.

On Nov 1, 2015, at 11:22 AM, Edmondson, Amy <aedmondson@hbs.edu> wrote:

Hi Forest and Jean

This makes me a bit anxious. What about each of you? It makes it sound as if BE was not in any way the initiator of projectorgate ... of course the PRIMARY concerns are our first two, but we wanted our colleagues to understand the internal issues too. Perhaps this was not the right one to pick, but from the data we had, it seemed as if it was.

I can imagine revising the report without the projector but what do you think? I also note that we are likely to face a need to revise, and that BE does not seem to be seeing the writing on the wall.

Amy

Amy C. Edmondson
Novartis Professor of Leadership and Management
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Author of *Teaming: How organizations learn, innovate and compete in the knowledge economy* (Jossey-Bass, 2012)

On Oct 31, 2015, at 5:59 PM, Healy, Paul <phealy@hbs.edu> wrote:

4. After a year had passed, Steve told me he was ready to transition to the new projectors, which I was 100% ok with, given that IT had by then alerted all faculty and trained them on how to revise their slides for the new projection system.

5. Around this time, Ben told me he still didn't believe the new projectors should be put in, but I told them I had already approved the transition and considered it a closed matter. My sense is that Ben and Steve continued to have a lot of back-and-forth about it, but I was no longer involved at that point, since in my mind, the decision had already been made.

Here's the email exchange with Steve Gallagher from back in August 2013. As I said, Steve managed to delay the transition for a year, which I felt was a really good solution:

From: [REDACTED]
Sent: Friday, August 23, 2013 12:57 PM
To: Gallagher, Stephen
Cc: Dewey, Brit; Tobiason, Jessica
Subject: RE: classroom projectors

this is fantastic news!!
a sincere thank you, on behalf of the entire MBA teaching faculty...

[REDACTED]

[REDACTED]

From: Gallagher, Stephen
Sent: Friday, August 23, 2013 12:00 PM
To: [REDACTED]
Cc: Dewey, Brit; Tobiason, Jessica
Subject: RE: classroom projectors

We have developed and tested a mitigation strategy that addresses all of the concerns expressed. I just spoke with Ben, and he also endorses the approach. I'll send out more details later in the day, but suffice it to say that screen real estate will not be lost and PowerPoint templates may remain in the legacy 4:3 ratio without "letter-boxing" or "pillaring."

-Steve

From: [REDACTED]
Sent: Thursday, August 22, 2013 5:25 PM
To: Gallagher, Stephen
Cc: Dewey, Brit; Tobiasson, Jessica
Subject: classroom projectors

Hi Stephen,

I hope your summer is going well and you are settling into HBS seamlessly.

I am currently on vacation and trying to stay away from email until Monday, but in the past 24 hours I've gotten deluged with emails from my faculty colleagues who are really quite upset about a change to the classroom projectors. Apparently, Media Services has upgraded the center projectors ... which means that slides now need to be 16:10 ratio instead of the 4:3 ratio we've historically used. If faculty continue to use the old ratio, the screens are 30% smaller in image; even if they change to 16:10, the screens are 16% smaller in image.

Three things:

1. Changing all of one's slides from 4:3 to 16:10 is a non-trivial work for faculty. I use slides for every class and i'm sure I'm not alone in this. Having changed the formatting of slides before, I can tell you that it is not a matter of simply clicking a button; rather, each and every image, chart and diagram needs to be resized to avoid distortion. Like I said, I've done this before, and it is a real pain in the neck, I promise you. What's particularly disturbing is that we have received no proactive set of instructions and guidance for how to make the transition from Media Services; in fact, the only such guidance we are receiving is from a particularly helpful faculty member (Ben Edelman).

2. The fact that faculty are learning about this now -- a week before classes begin -- is really less than optimal. They are understandably very upset about it. We should have received word far in advance. Is there anything we in MBA can do to facilitate better communication about things like this?

I understand that this particular upgrade was probably a no-brainer from a technical standpoint, but believe me, it is a big deal from a teaching standpoint.

3. Is it too late to put in a solution that would not require faculty to switch from the 4:3 format? Or at the very least, delay the change for a semester to give faculty time to adjust? Based on communication with Ben Edelman, I am under the impression that there is a way we could use the upgraded projectors and yet reconfigure them to retain the full 4:3 projection surface.

I realize the timing is tight to make changes here. But I would appreciate the consideration.

Thanks much.



ATTACHMENT M



From: Edmondson, Amy
Sent: Friday, September 1, 2017 9:14 AM EDT
To: Cunningham, Jean
Subject: Re: Updated language

Happy to do it. Just leaving Belmont Hill now driving home in a minute will take it from there. Although I have my laptop I could do it right here from the car as well before I get out of the parking space now that I think of it. Should I update the FRB?

Sent from my iPhone
Please excuse brevity and errors

On Sep 1, 2017, at 8:52 AM, Cunningham, Jean <jcunningham@hbs.edu> wrote:

I think work for hire has a known connotation, but research for hire is equally fine and perhaps even stronger.

And I had a complete brain freeze yesterday, believing you and I were seeing one another end of day Friday (for some reason I've been confused all week). I think mailing something to Ben this morning, if you're able to do so, is absolutely fine. I was just reacting to the 5pm on Friday phenomenon.

I wonder too if a brief update to the FRB would make sense. See what you think.

Thanks!

* * * * *

Angela, Stu, and Len,

I wanted to update you briefly on where things stand with the Ben Edelman case. After our last meeting, and with the beginnings of a draft report underway, Paul reached out based on concerns a colleague had forwarded to him arising from a Wall Street Journal article. In it, the potential for conflict of interest in the legal profession was discussed, and one business school faculty member -- Ben -- was mentioned by name. While the article may have had it wrong, it was a reminder that a more careful look at Ben's outside activities -- including how he thinks about getting approval, whether they carry reputational risk, and how he discloses them -- seemed important. More recently, Stu forwarded along two pieces about the American Airlines suit as well, which further emphasize the need (<http://viewfromthewing.boardingarea.com/2015/07/15/harvard-professor-who-went-after-chinese-restaurant-files-dot-complaint-against-american-airlines-for/> and <https://topclassactions.com/lawsuit-settlements/lawsuit-news/814089-american-airlines-class-action-lawsuit-challenges-bag-fees/>). Finally, after our last meeting,

Privileged

Privileged

So we're reaching out to Ben to ask for additional detail, and will do additional analysis based on his submission. Assuming that comes in next week, Jean will find us a time to reconvene shortly thereafter to discuss the findings. We'll soon be bumping up against the deadlines of the promotions process, and I know all our calendars get busier quickly.

Don't hesitate to reach out with any questions or concerns.

Best,

Amy

From: Amy Edmondson <aedmondson@hbs.edu>
Date: Thursday, August 31, 2017 at 6:49 PM
To: Jean Cunningham <jcunningham@hbs.edu>
Subject: Re: Updated language

I wonder... should "work for hire" be "research for hire"? or is this a term that means that to our colleagues?

Amy C. Edmondson
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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)

From: "Cunningham, Jean" <jcunningham@hbs.edu>
Date: Thursday, August 31, 2017 at 5:10 PM
To: "Edmondson, Amy" <aedmondson@hbs.edu>
Subject: Updated language

Here you go.

* * * * *

Dear Ben,

Thank you very much for your recent meeting with the Faculty Review Board – it was helpful to hear your perspective on the last two years.

As we have continued with our work, one area where we feel we still need greater clarity is around your outside activities, with the related issues of appropriate reporting and disclosure and the extent to which potential reputational risks to Harvard Business School and Harvard are being raised and evaluated as you pursue this work.

While we recognize that Outside Activities reporting typically is considered confidential to the Dean, given the centrality of this issue to the last FRB review and to our evaluation now, and with Nitin's approval, we are writing to ask that you provide additional detail. Specifically, I would ask you to submit for the approximately two years following your initial FRB review:

- a complete listing of your outside activities, including client names and litigation
- a complete listing of all work products in the public domain (e.g., articles, reports, presentations)

I realize the latter may be hard to fully reconstruct, and a good faith effort here will do; mainly I hope you will think about your "output" as including more than, for example, cases and articles.

Then, with this information as a backdrop, it would be helpful to understand how you thought about the issues noted above – when and where to seek advice or approvals on your outside activities, and when and how to include disclosures on your output. As an example, it would be helpful to understand the role you are playing in the litigation with American Airlines. Members of the FRB have, for instance, questions about why the suit was not approved first by the dean, both because of the type of activity it entailed and because Harvard Business School was implicitly if not explicitly drawn into the suit given your and Max's HBS affiliation. Similarly, your report on "Impact of OTA Bias and Consolidation on Consumers" shares at least some similarities with Blinkx in that a third party provided funding for the work. How, in your mind, does it differ? What would you say to colleagues who raise the concern of faculty members engaging in "work for hire"?

Please know that the FRB will treat your outside activities as confidential; we will report on this issue using specifics as required but without, we trust, breaching privacy, and you of course will have an opportunity to review the draft report and offer feedback and comments before it is shared with the dean.

We are hopeful you might be able to submit this summary by the end of the week (8 September) with the hope that it is not a heavy lift; do let me know if that time frame feels unreasonable.

Best,

Amy

ATTACHMENT N



From: Edmondson, Amy
Sent: Friday, September 1, 2017 1:43 PM EDT
To: Crispi, Angela
CC: Gilson, Stuart; Schlesinger, Len; Cunningham, Jean
Subject: Re: FRB Update
Attachments: image001.jpg

Agreed

I suppose it having a law office as an HPS professor itself brings up the possibility that there will be multiple reputational and/or conflict of interest challenges

Sent from my iPhone
Please excuse brevity and errors

On Sep 1, 2017, at 1:18 PM, Crispi, Angela <acrispi@hbs.edu> wrote:

Thanks, Amy. This is all helpful. I admit to having a hard time getting my head around:

Bazerman is represented by Benjamin Edelman of the Law Offices of Benjamin Edelman, and Linda M. Dardarian, Byron Goldstein and Raymond Wendell of Goldstein Borgen Dardarian & Ho. Bazerman is represented by Benjamin Edelman of the Law Offices of Benjamin Edelman, and Linda M. Dardarian, Byron Goldstein and Raymond Wendell of Goldstein Borgen Dardarian & Ho.

<https://www.avvo.com/attorneys/02445-ma-benjamin-edelman-1369422.html#contact>

From: Gilson, Stuart
Sent: Friday, September 01, 2017 12:00 PM
To: Edmondson, Amy <aedmondson@hbs.edu>; Schlesinger, Len <lschlesinger@hbs.edu>; Crispi, Angela <acrispi@hbs.edu>
Cc: Cunningham, Jean <jcunningham@hbs.edu>
Subject: Re: FRB Update

This may (or may not) be additional helpful background: Article on a recent \$7.5M settlement of a class action lawsuit brought against Uber by the law firm Goldstein, Borgen, Dardarian & Ho – which is the same law firm that Ben is working with in his suit against American Airlines.

<https://www.consumeraffairs.com/news/judge-grants-final-approval-of-75-million-settlement-between-uber-and-former-drivers-070517.html>

Amy, would you be able to forward the WSJ article you mentioned in your email?

Thanks

Stu

Professor Stuart Gilson
Steven R. Fenster Professor of Business Administration
Harvard Business School
Soldiers Field
Boston, MA 02163
office: 617-495-6243
fax: 617-496-7357
e-mail: sgilson@hbs.edu

<image001.jpg>

From: Amy Edmondson <aedmondson@hbs.edu>
Date: Friday, September 1, 2017 at 9:46 AM
To: Len Schlesinger <lschlesinger@hbs.edu>, Stuart Gilson <sgilson@Hbs.edu>, Angela Crispi <acrispi@hbs.edu>
Cc: "Cunningham, Jean" <jcunningham@hbs.edu>
Subject: FRB Update

Angela, Stu, and Len,

I wanted to update you briefly on where things stand with the Ben Edelman case. After our last meeting, and with the beginnings of a draft report underway, Paul reached out based on concerns a colleague had forwarded to him arising from a Wall Street Journal article. In it, the potential for conflict of interest in the legal profession was discussed, and one business school faculty member -- Ben -- was mentioned by name. While the article may have had it wrong, it was a reminder that a more careful look at Ben's outside activities -- including how he thinks about getting approval, whether they carry reputational risk, and how he discloses them -- seemed important.

More recently, Stu forwarded along two pieces about the American Airlines suit as well, which further emphasize the need (<http://viewfromthewing.boardingarea.com/2015/07/15/harvard-professor-who-went-after-chinese-restaurant-files-dot-complaint-against-american-airlines-for/> and <https://topclassactions.com/lawsuit-settlements/lawsuit-news/814089-american-airlines-class-action-lawsuit-challenges-bag-fees/>).

inally, after our last meeting,

Privileged

So we're reaching out to Ben to ask for additional detail, and will do additional analysis based on his submission. Assuming that comes in next week, Jean will find us a time to reconvene shortly thereafter to discuss the findings. We'll soon be bumping up against the deadlines of the promotions process, and I know all our calendars get busier quickly.

Don't hesitate to reach out with any questions or concerns.

Best,

Amy

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 O



From: Edmondson, Amy
Sent: Friday, September 1, 2017 3:25 PM EDT
To: Schlesinger, Len; Gilson, Stuart; Crispi, Angela
CC: Cunningham, Jean
Subject: Re: FRB Update

This writer makes a good point in his rhetorical question closing the article

'Edelman appears to pretend he's jousting at the windmills of consumer fairness, but could this possibly be the most important customer facing item to work on?'

Sent from my iPhone

Please excuse brevity and errors

On Sep 1, 2017, at 9:46 AM, Edmondson, Amy <aedmondson@hbs.edu> wrote:

Angela, Stu, and Len,

I wanted to update you briefly on where things stand with the Ben Edelman case. After our last meeting, and with the beginnings of a draft report underway, Paul reached out based on concerns a colleague had forwarded to him arising from a Wall Street Journal article. In it, the potential for conflict of interest in the legal profession was discussed, and one business school faculty member -- Ben -- was mentioned by name. While the article may have had it wrong, it was a reminder that a more careful look at Ben's outside activities -- including how he thinks about getting approval, whether they carry reputational risk, and how he discloses them -- seemed important.

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inally, after our last meeting

Privileged

Privileged

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Don't hesitate to reach out with any questions or concerns.

Best,

Amy

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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 P



From: Edmondson, Amy
Sent: Friday, September 1, 2017 9:46 AM EDT
To: Schlesinger, Len; Gilson, Stuart; Crispi, Angela
CC: Cunningham, Jean
Subject: FRB Update

Angela, Stu, and Len,

I wanted to update you briefly on where things stand with the Ben Edelman case. After our last meeting, and with the beginnings of a draft report underway, Paul reached out based on concerns a colleague had forwarded to him arising from a Wall Street Journal article. In it, the potential for conflict of interest in the legal profession was discussed, and one business school faculty member -- Ben -- was mentioned by name. While the article may have had it wrong, it was a reminder that a more careful look at Ben's outside activities -- including how he thinks about getting approval, whether they carry reputational risk, and how he discloses them -- seemed important.

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inally, after our last meeting, Privileged

Privileged

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Don't hesitate to reach out with any questions or concerns.

Best,

Amy

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 Q

From: Ben Edelman <ben@benedelman.org>

To: sdatar@hbs.edu

Subject: errors in Edelman 2017 FRB

Date: Fri, 30 Jul 2021 15:00:00 +0000

Attachments: baller_to_edelman_2020-02-14.pdf

Srikant,

Congratulations on your new role. I hope you're doing as well as can be in this unusual time.

I'm reflecting on the 2017 FRB proceedings against me, and their impact on my promotion case. Last year, just before COVID shuffled priorities, I asked attorney Morris Baller to look at this with fresh eyes -- yielding an external perspective grounded in the plain language of governing policies. His assessment confirms some of the problems I flagged to Nitin as I was leaving. Baller's letter is attached, and supporting documents are [here](#). More generally, the passing of time and this preliminary outside review leave me increasingly confident that the process was mishandled, and doubtful that anyone could seriously argue it was done right. With the FRB report importantly flawed, the subsequent Appointments Committee evaluation of my case is correspondingly under question, and does not call for the deference ordinarily given to such a vote.

I don't know what you thought about the handling of my FRB and promotion case at the time, but if you were concerned then, or if Baller's letter presents questions you cannot easily dismiss, I hope you'll think through what should be done. The obvious instinct is to call in the lawyers, as to be sure I have already. But this needn't come to that; every process risks mistakes, and the FRB's newness made mistakes especially easy. In a community of scholars grounded in truth and integrity, the correct response to a mistake is to admit it and fix it, not sweep it under the rug. If the unavoidable conclusion is that the 2017 FRB fell short of HBS's commitments, then you uniquely have the authority to find a solution. As you'd expect, I have thought about what a solution would look like, but I'll save that for a later date.

I also want to alert you to the need to preserve documents pertaining to my FRB and subsequent evaluation. It should be straightforward to assure preservation of documents stored centrally, including the FRB's notes, interview recordings, drafts, and correspondence; my Subcommittee's notes and correspondence; outside letter-writers' submissions; and vote sheets from the Appointments Committee. Other important documents are probably decentralized, including in the email accounts of senior faculty and key staff, so HBS should identify custodians and search terms to assure preservation.

Respectfully,

Ben Edelman

ATTACHMENT R

LAW OFFICE OF MORRIS J. BALLER

MORRIS J. BALLER

MORRISJBALLER@GMAIL.COM

From: Morris J. Baller
Of Counsel, Goldstein, Borgen, Dardarian & Ho

To: Benjamin Edelman

Date: February 14, 2020

Subject: Analysis of Procedural Deficiencies in “Faculty Review Board” Review of Professor Benjamin Edelman

You have asked me for my analysis—informed by my many years of experience in the representation of employees who complain of unfairness, discrimination, or other violations of their legal rights in relation to their employment—of the process after which the Harvard Business School evaluated you under its Faculty Review Board (FRB) procedure and subsequently denied you tenure at HBS in 2017. This Memorandum constitutes that analysis.¹

Professor Edelman was the subject of a FRB proceeding immediately before his review for tenure at Harvard Business School in 2017. The FRB is obliged to follow procedures laid out in a “Policies & Procedures” (P&P) document duly enacted and promulgated. But the FRB did not follow those procedures. The difference was material: Prof. Edelman’s scholarship, publication record, and teaching excellence more than satisfied HBS’s tenure standards; the negative FRB report was by all counts the primary factor, if not the sole factor, that led to the subsequent failure of his candidacy for tenure. This memo evaluates Prof. Edelman’s claims including governing authority and the key facts and documents.

P&P as binding contractual obligation

After the full HBS faculty voted to enact the FRB P&P, and after HBS indicated that faculty were bound by it, HBS was obligated to comply with that document’s requirements. Broadly, universities’ procedural commitments are contracts, which faculty accept through employment. Courts routinely hold that universities must follow these commitments. For example, *Decker v. Worcester Junior College* held that where a college or university has adopted a “formal procedure [and] communicated it to its faculty,” it is “bound to the terms of that procedure.” 369 Mass. 960, 961, 336 N.E.2d 909 (1975) and cases cited. Rare is the published decision in which a university breached procedural commitments that were as clear-cut as those adopted by HBS for FRB proceedings. More often, disputes arise when a complaining faculty member seeks something beyond the plain language of a policy, as when the complainant’s action calls for assessing the complainant’s “reasonable expectations” and otherwise interpreting the policy. (See e.g. *Berkowitz v. President & Fellows of Harvard College*, 58 Mass. App. 262, 789 N.E.2d 575 (2003); *Schaer v. Brandeis University*, 432 Mass. 474, 735 N.E.2d 373 (2000); *Barry v. Trustees of Emmanuel College*, 2019 WL 499774 at *6-8 (D. Mass. 2019).) Indeed, courts have read *Decker* to call for a “general promise of fairness” even where that entails procedural

¹ For clarity for others reading this memo, I refer to you hereafter as “Professor Edelman.”

protections not promised in the plain language of the governing policy. (See e.g. *Doe v. Amherst College*, 238 F.Supp.3d 195 (2017).) Ultimately, there is no serious dispute that the unambiguous written rules and procedures must be followed and have the force of contract.

After a complainant demonstrates a breach, a court is likely to draw reasonable inferences in favor of the non-breaching party as it evaluates what might have happened had it not been for the breach. There is unavoidable difficulty in determining what might have happened—especially where, as here, the breach occurs at the first step of a two-step process. Recognizing a plaintiff’s difficulty in making such a showing, courts shift the burden of proof to the *breaching party* to show that the result would have been the same regardless. As recently stated by the Massachusetts Supreme Judicial Court, “the party in breach bears the burden of proving that its performance under the contract would have been futile.” *Balles v. Babcock Power Inc.*, 476 Mass. 565, 577, 70 N.E.3d 905, 915–16 (2017). HBS is particularly unlikely to satisfy this standard—both because of the demanding burden in general, and because of the specifics Edelman offers as to the closeness between the breaches and the harm he suffered (discussed later in this memo).

Courts similarly follow contract law principles of remedies in their approach to universities that breach their procedural commitments. While contract law tends to favor money damages, courts have seen the wisdom of specific performance—ordering a university to redo its proceedings in compliance with its procedural commitments. See e.g. *Fellheimer v. Middlebury College*, 869 F. Supp. 238, 244-246 (D. Vt. 1994) (finding that a college had failed to follow its own procedures, ordering the expunging of disciplinary findings against a student, and offering the college the opportunity to bring new charges consistent with its procedures).

Key documents

Prof. Edelman laid out his broad concerns in his June 19, 2018 letter to Provost Garber (Ex. A to this Memorandum, including fourteen attachments), which prompted Garber’s June 29, 2018 answer (Ex. B), Edelman’s October 1, 2018 reply (Ex. C), and Garber’s October 23, 2018 answer (Ex. D). This analysis is based on a careful review of those documents.

Violations of the FRB Policies and Procedures

The absolute and undisputed obligation to provide “the evidence gathered”

The P&P obliged the FRB to provide both the subject of an investigation and the readers of the FRB’s report with “the evidence gathered” (Ex. A1 ¶¶6-7, yellow highlighting). This provision is twice repeated in the P&P, clearly and unambiguously, leaving no room for alternatives. But this provision plainly was not followed. Quite the contrary, the FRB’s 2017 report on Prof. Edelman relies in large part on conclusory derogatory allegations totally devoid of context (Ex. A14 ¶¶23-25). Nothing more is required to establish a breach.

In his letter to Provost Garber and the exhibits attached to that letter, Prof. Edelman amply connects this breach to the FRB’s conclusions. In that correspondence, Prof. Edelman explained how plausible contexts would have changed a reasonable reader’s evaluation of the situation. (Ex. A ¶23.) Prof. Edelman points out that if the FRB was criticizing a situation in which he was

correct, and if his efforts were widely and reasonably seen as important, the context would cause readers to see his actions as positive rather than negative. Prof. Edelman suggests that at least half the derogatory comments in Ex. A14 ¶¶23-25 plausibly resulted from a project in which he pushed HBS IT staff and contractors to make an accommodation for a colleague with a serious disability. Prof. Edelman was clearly correct about the technical feasibility of that effort and probably correct about the legal need to do so, and he thinks most people would see this effort as important. But he does not know the context in which these derogatory comments were made, and he could not prove that those comments arose out of this situation. Thus he could not rebut the comments using information about the context and the merits of his position. This speaks directly to the P&P commitment that FRB provide “the evidence gathered.” The subject of a FRB investigation is supposed to know what the FRB is talking about, not wonder or speculate, nor ask readers to engage in hypothesis or inference to evaluate the situation.

For evidence of how the FRB should have discharged its P&P duty to provide “the evidence gathered,” we need look no further than the FRB’s 2015 report about Prof. Edelman (Ex. A4). There, the FRB offered specific allegations with context. Notably, Prof. Edelman was able to disprove important portions of the 2015 report. For example, where accused of improprieties in certain reimbursements (Ex. A4 p.6), he showed that he sought and received advance written approval from the HBS CFO (Ex. A5 pp.7-9 and exhibits 7 and 8 therein). Where accused of improper tone in requesting that classroom projection screens not be reduced in size (Ex. A4 pp.5-6), he showed nuanced prior discussions (Ex. A5 pp. 5-6 and exhibits 2-6) including contemporaneous email from the then-Dean of the MBA program, calling him “a freaking genius” in this area, for which she was “SO grateful” (emphasis in original) (Ex. A5 exhibit 2). The 2015 report thus shows why “the evidence gathered” is so important—that facts taken out of context can and indeed actually did yield a conclusion opposite from that reached with the benefit of context.

Prof. Edelman raised these concerns in 2018 correspondence with Provost Garber (Ex. A), who offered two responses (Ex. B). First, Provost Garber said a “review” associated with a promotions case should be handled differently than an “allegation of misconduct” (Ex. B ¶6). But as Prof. Edelman explained in his reply (Ex. C ¶3), the P&P specifically explains the relationship between FRB proceedings and promotions discussions. See Ex. A1 ¶¶13-16, especially the ¶15 instruction that FRB proceedings incidental to promotion cases are to proceed “as outlined above.” There, “above” references the preceding sections of P&P—assuring the subject of an investigation that a FRB proceeding will indeed follow the P&P, even if the FRB occurs incidental to promotion. Provost Garber seems to have overlooked this section of P&P, and his suggestion of an FRB somehow stepping outside the P&P requirements is unsupported by, indeed contradicted by, the P&P itself.

Second, Provost Garber’s response asserts that the FRB’s scope and subject in 2017 made it unnecessary to share “the evidence gathered” (Ex. B ¶7). In particular, Provost Garber says the 2017 FRB sought to determine “how colleagues experienced” Prof. Edelman which, Provost Garber suggests, turns only on colleagues’ subjective opinions but not the facts or circumstances leading to those assessments. This argument is even more tenuous, for several reasons. One,

Provost Garber's reasoning is entirely without support in the P&P. To the contrary, the P&P says exactly the opposite, insisting on "the evidence gathered" without exception of any kind. Two, to the extent the scope of the 2017 FRB was as Provost Garber suggests, that scope is itself improper for the reasons detailed in the next section of this memorandum. Three, Provost Garber makes strong and unsupported assumptions about what "the evidence gathered" would have shown. If the context was as Prof. Edelman believes (Ex. A ¶23), the evidence would have substantially cleared his name—showing him as a diligent advocate for a disabled colleague. Anyone who "experienced" Prof. Edelman negatively, despite him being right and advocating for an indisputably good cause, would be very much in question—such an "experience" objectively unreasonable. In his correspondence with Provost Garber (Ex. A ¶23), Prof. Edelman offered a representative example: Consider the derogatory comment that Edelman's "preferred solution can't or won't be implemented" comment, Ex. A14 ¶24 point 4. That comment would be undermined by context showing that in fact Edelman's solution could have been implemented, and ultimately was implemented to universal acclaim. Having all but admitted breaching its P&P obligation to provide the evidence gathered, HBS should not expect favorable inferences about what the evidence might have shown. Rather, inferences should be drawn in favor of Prof. Edelman.

Ultimately, HBS cannot escape that the P&P required it to provide Prof. Edelman with the evidence against him. The obligation is clear, simple, and intuitive. The P&P allows no alternatives. Having failed so blatantly and without any proper reason to follow its own procedures, and with a clear causal link from this breach to the FRB's ultimate finding, HBS should be required to correct that failure as discussed in the final section of this memo.

FRB sequence, rigor, and scope

Among the procedural commitments in P&P is an overarching insistence that an FRB proceeding be orderly and that FRB follow a scope that is both predetermined and proper. The 2017 FRB failed in each of these respects—not only falling short of basic notions of fairness, but also violating P&P commitments.

In principle, FRB might be authorized to conduct comprehensive investigations with no predetermined scope, expanding wherever the evidence leads. But the P&P specifically rules out such an approach by requiring the FRB to state "the allegation" at the outset (Ex. A1 ¶6 bullet 1, green highlighting), then limiting the FRB's scope to the same "the allegation" (Id. bullet 2). One might object that this limitation prevents an FRB from performing the sort of comprehensive investigation HBS might reasonably seek. However, HBS has other methods at its disposal to conduct such investigations. Through P&P, HBS chose to waive that flexibility and to limit FRB proceedings in the ways that P&P promises. Furthermore the P&P itself explains why those limitations are wise—that FRB is only for problems that are "egregious" or "persistent and pervasive" (Ex. A1 ¶5). In contrast, if a problem is so obscure that it becomes known only midway through an investigation, that problem is not so serious as to justify the weighty FRB process or the deference that process is understood to call for.

A fair reading of the 2017 FRB report and Prof. Edelman's response suggests actual error resulting from shifting subjects. For example, only late in the 2017 process did the FRB begin to ask about Prof. Edelman's work as an attorney – and in that late effort, significantly mischaracterized his activities. In particular, the FRB failed to engage with (or even mention) the fact that he had previously sought Dean's Office permission for service as an attorney, and had received such permission without any restriction whatsoever. (Ex. A13 ¶13.) Meanwhile, the FRB similarly mischaracterized the evidence supposedly indicating a negative public response to that work or supposed reputational risk to HBS. (See Ex. A1 ¶30. Of the three sources the FRB cited (Ex. A14 footnotes 2 through 4), one was, as Prof. Edelman calls it, "snarky" in its title but neutral to positive in its body; one was entirely neutral and never even mentioned HBS; and a third was about another subject entirely. See Prof. Edelman's reply to FRB, Ex. A13 ¶14. Thus, at most one of the three sources supports the FRB's contention, and even that only partially.) In fact, far from reputational harm, Prof. Edelman's recent legal work attracted unusual *praise* from the presiding judge (a Reagan appointee who has questioned class litigation), who commended Prof. Edelman and co-counsel for "exemplary" work deserving higher-than-normal fees. FRB's first mention of these sources (and first mischaracterization of them) occurred in its 2017 report, by which point the FRB was manifestly disinclined to revisit its sources or conclusions, whereas the P&P calls for an orderly process that would have given Prof. Edelman timely notice so he could flag the errors from the outset. (Ex. A ¶30.)

The FRB's 2017 criticism of supposed conflict between Prof. Edelman's outside activities and research (Ex. A14 ¶29-36) was similarly a late addition to its agenda, and equally flawed. As Prof. Edelman explained in his reply to FRB (Ex. A13 ¶6-9), the supposed conflict arose out of a prior relationship, which had ended before the supposedly-related research, and hence must be analyzed under a different HBS policy. Inexplicably, FRB never mentioned that the supposed conflict was a past conflict rather than a contemporaneous conflict, nor did FRB engage with (or even mention) the differing standards. All of this would have come out more clearly—and in each instance, to Prof. Edelman's benefit—had FRB followed the proper sequence specified by P&P, beginning with identifying all areas of concern at the outset.

When Prof. Edelman alleged that the FRB had improperly and untimely expanded its scope, Provost Garber replied that the FRB's 2017 scope was "evidence of changed behavior" which he saw as "a searching examination of a faculty member's candidacy" without "artificial[] constraint[ts]" (Ex. B ¶8). But such a scope is impermissible under P&P. In particular, P&P simply does not authorize such broad investigations. Rather, P&P authorizes only investigation of an "allegation" of "misconduct" (Ex. A1 ¶5-6). Under the plain language of P&P, not every possible area of concern is in scope for FRB. In particular, a general suggestion of supposed character flaws is out of scope for the FRB procedure. Moreover, an "allegation" of "misconduct" requires alleging that a person *did something specific*—ruling out broad allegations requiring a person to prove a negative in order to clear his name. If HBS wanted to evaluate Prof. Edelman's character more generally, P&P left open every avenue *except* FRB. Perhaps reports of supposed character flaws would have been seen as relevant and appropriate considerations by the Appointments Committee, or perhaps such reports would have been seen as improper personal attacks or mischaracterizations of the weight of the evidence. Either way,

such reports would have reached the Appointments Committee without the imprimatur and supposed rigor of FRB.

Nor did Provost Garber engage with Prof. Edelman's allegation of errors resulting from FRB failing to follow its process. Of course any fact-finding effort risks error. But Prof. Edelman has alleged something more—that these errors resulted from FRB deviating from its procedural commitments, as it added subjects beyond the initial allegation and as it investigated without the precision that P&P call for. Here too, Prof. Edelman offered a clear link from P&P commitment, to FRB violation of that commitment, to a negative conclusion in the FRB report, and harm to him. (Ex. A ¶¶29-30)

HBS might argue that Prof. Edelman's interpretation of P&P reads too much into "the allegation," such as insisting that the "the allegation" be "written" at the start of the process be the same as the "the allegation" that is later "investigate[d]"; and insisting that only "allegation[s]" of "misconduct" are in scope for FRB. (All quotes from Ex. A1 ¶¶6 bullets 1-2.) But Edelman's interpretation reads P&P with word-by-word attention to detail, as is proper for carefully drafted and contractually binding documents, and consistent with HBS's long tradition for its other carefully-written policies for faculty review. Ultimately P&P is a creature of HBS's own creation, and standard contract principles interpret any ambiguity in a document in favor of the party that did not draft it.

Overall color and inference

Taken as a whole, the FRB proceeding against Prof. Edelman lacks basic attributes of fairness. A selection of the deficiencies: After Prof. Edelman used the FRB process and the evidence produced in it to clear his name in 2015, FRB responded by withholding the evidence associated with the 2017 report—by all indications, correctly anticipating that if Prof. Edelman were denied access to this evidence, he would be prevented from offering a persuasive alternative interpretation of the same facts, as he had so effectively done in 2015. When the initial 2017 investigation provided little to criticize, FRB added surprise allegations about additional subjects. Though Prof. Edelman's reply alerted FRB to particularly serious errors in these sections of their draft report, the FRB declined to revise their draft report in relevant respects. Meanwhile, staff to FRB had at least an appearance of conflict of interest. (Here too, Prof. Edelman offers compelling specifics. Ex. A ¶¶42-49.)

In a discussion with Prof. Edelman, preserved in his contemporaneous notes, HBS Dean Nohria told Prof. Edelman he had "dug himself in a hole with the 2015 (sic.) incidents" (actually referring to 2014)—indicating, correctly, that there were no serious concerns about any other aspect of Prof. Edelman's conduct. Had the FRB report left its findings at that, the FRB might have facilitated a proper and informed vote by the Appointments Committee. Furthermore, such a report would have facilitated Prof. Edelman seeking an appointment at another university, which could have evaluated his candidacy on the merits, without any lingering suggestion of misconduct. Instead, the 2017 FRB report offers a jumble of incorrect allegations that would lead any other university to be skeptical of Prof. Edelman's candidacy, preventing him from

circulating the FRB report as he seeks another academic position. Prof. Edelman is fortunate that P&P disallows most of the FRB's improper tactics.

Remedies

There should be no suggestion that FRB met its obligations under the P&P. This prompts the question of what remedy is appropriate. That question is beyond the scope of this memo. But let me make some initial observations.

When trying to right a breach of contract, courts broadly attempt to put the non-breaching party in the position it would have been, had the other party not breached. *Fellheimer v. Middlebury College*, supra, is squarely on point—holding that after a college failed to follow its own procedures, the resulting findings must be expunged, setting the stage for the college to bring new charges under the correct procedure if it so chose.

Applying *Fellheimer*'s approach to Prof. Edelman's case would require retracting the flawed FRB report, then redoing that report correctly, and also redoing any subsequent proceedings that relied on the FRB report (most notably, evaluation by the HBS Promotions Committee). Clearly such an effort would raise weighty questions of how to retract and redo, including how to avoid making the same errors again and how to create confidence that the harm from prior errors was corrected. A full correction would also need to establish to reasonable certainty that those who remember the 2017 FRB report truly considered the genuine merits as revealed in a corrected FRB report, because it would be easy for Promotions Committee members to remember and repeat their prior votes, finding pretextual reasoning to justify what was in effect a preordained decision.

Ultimately, once it is established that HBS's 2017 FRB violated its commitments, the burden is on HBS to establish that subsequent corrective processes in fact corrected those breaches and undid the harms of those breaches.

ATTACHMENT S

From: Ben Edelman <ben@benedelman.org>

To: "Kirby, Jennifer" <jennifer_kirby@harvard.edu>

Subject: RE: errors in Edelman 2017 FRB - document preservation

Date: Thu, 04 Nov 2021 15:00:00 +0000

Attachments: Edelman_to_Kirby_2021-11-04.pdf

Ms. Kirby,

See attached letter.

Thank you,

Ben Edelman

On Fri, Oct 29, 2021 at 5:51 AM Kirby, Jennifer <jennifer_kirby@harvard.edu> wrote:

Dear Mr. Edelman,

As your attorney has provided his consent (below), I am responding to the questions in your letter from last week.

You asked for specific details about document preservation. In light of applicable confidentiality requirements and privileges, I cannot share the details of document preservation with you. Regarding the FRB report, Harvard considers this report confidential, as indicated on the report itself, and would not share the report with third parties.

Best,

Jen

Jennifer Kirby

University Attorney

617-495-9699

From: Mike Baller <mballer@gbdhlegal.com>

Sent: Friday, October 22, 2021 3:01 PM

To: Kirby, Jennifer <jennifer_kirby@harvard.edu>
Subject: FW: Communication with Benjamin Edelman

WARNING: Harvard cannot validate this message was sent from an authorized system. Please be careful when opening attachments, clicking links, or following instructions. For more information, visit the HUIT IT Portal and search for SPF.

See below, resending to corrected address.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Mike Baller <mballer@gbdhlegal.com>

Date: 10/22/21 11:43 AM (GMT-08:00)

To: jennifer.kirby@harvard.edu

Cc: ben@benedelman.org

Subject: Communication with Benjamin Edelman

Dear Ms. Kirby,

I understand that you would like to communicate with Benjamin Edelman directly, but hesitate to do so because of my involvement. Please feel free to communicate directly with him; I have no objection to your doing so.

Morris J. Baller

Sent from my Verizon, Samsung Galaxy smartphone

ATTACHMENT T

November 4, 2021

Ms. Kirby,

I write to respond to your reply of October 29.

I accept your hesitance to reveal the search methods used. Nonetheless, I am left wondering whether documents were in fact retained appropriately in light of the litigation that is now reasonably anticipated.

As you know, a party that negligently loses evidence known to be relevant for an upcoming legal proceeding is routinely held accountable for any prejudice that results. See e.g. *Fletcher v. Dorchester Mut. Ins. Co.*, 437 Mass. 544, 549–550, 773 N.E.2d 420 (2002); *Kippenhan v. Chaulk Servs., Inc.*, 428 Mass. 124, 127, 697 N.E.2d 527 (1998), *Nally v. Volkswagen of Am., Inc.*, 405 Mass. 191, 197–198, 539 N.E.2d 1017 (1989). If in due course I file suit and the University has, due to a failure to exercise due care, failed to retain relevant documents, I will be entitled to sanctions and remedies for the destruction of evidence. I will seek an adverse inference based on the most favorable set of facts that might reasonably be supported by the evidence lost due to deficient document retention. Lest we reach that unfortunate scenario, let me elaborate on the search methods necessary to retain relevant documents.

As to custodians: There can be no serious disagreement that a document retention effort must cover those materials stored centrally as part of FRB records and the standard promotion process (including the documents listed in my July 30 email to Dean Datar, paragraph four). But based on what we know about the substance of anticipated litigation, a diligent document retention effort must do more to preserve relevant documents, and in particular must include the FRB faculty and staff, the sources the FRB consulted, and the Appointments Committee. Taking each of those custodians in turn --

First, in this dispute about the correctness of FRB methods, FRB members (including both faculty and staff) are particularly obvious custodians of potentially relevant documents. Documents in the custody of the FRB members would reveal what evidence the FRB gathered (despite its failure to provide that evidence to me as required by P&P), and what scope the FRB was initially assigned and when and how that scope expanded beyond “the allegation” specified for investigation pursuant to the governing rules. Documents within the custody of FRM members could also support my contention that certain FRB staff had a conflict of interest as I alleged in correspondence with Provost Garber in 2018.

Second, document preservation must necessarily include all persons the FRB itself deemed relevant through its interviews or other consultations. The FRB’s decision to consult these persons creates a presumption that they have relevant information, and documents in the possession of those persons will help confirm completeness of documents provided in or via the FRB. Documents in their possession are also likely to indicate whether the FRB’s summary of their remarks is correct and supported by the underlying facts.

Third, document preservation must include Appointments Committee members because they were the primary and intended recipients of the FRB report. Documents in their possession include their contemporaneous remarks about the FRB report, which will indicate whether and how the FRB report influenced them as well as whether the FRB report deficiencies were influential in their decisions. Appointments Committee members’ contemporaneous remarks about my candidacy

more generally will indicate whether there were significant concerns other than those arising out of the FRB, and hence whether and how the FRB report influenced the subsequent decision on my candidacy for promotion.

As to search terms: The obvious approach is my last name. A search for my first name, alone, would probably be materially overinclusive. A search for my first name and last name, together, would risk under-inclusiveness in light of the many ways of referring to me, such as both first name and last name, title and last name, or last name alone.

As to time period: I suggest retaining documents from January 1, 2015 through my departure on June 30, 2018. January 1, 2015 is comfortably before first FRB, hence naturally pulling in some discussions that led to the first FRB. There is a reasonable case for including some earlier documents, particularly for those sources the FRB consulted, whose basis for remarks to FRB may be events that occurred prior to 2015. As to the end date: Clearly any retention effort needs to continue through the Appointments Committee decision on my case. I have reason to believe there was significant subsequent discussion of the appropriateness among Appointments Committee members about the appropriateness of the FRB's approach and the correctness of the subsequent Appointments Committee vote. Any retention effort needs to continue sufficiently beyond the Appointments Committee vote to preserve such discussions. If your search indicates that such discussions continued after my departure on June 30, 2018, document preservation would need to cover a correspondingly-extended time period. Ultimately, once a search is underway, it is easy to gather and include a somewhat longer period, all the more since this discussion covers only preservation, not relevance for production.

Finally, your message of October 29 failed to acknowledge my October 19 remarks (paragraph 4) about email stored on a decentralized basis. I urge you to assure that document retention includes emails stored on individual computers. Surely preservation is easier when all emails are stored on central servers. But where faculty and staff store messages on University-owned equipment, configured in that way by University staff for the University's convenience, there can be no serious suggestion that such messages are exempt from preservation obligations.

Thank you,
/s/
Ben Edelman

ATTACHMENT U

From: "Edelman, Benjamin"

To: "Healy, Paul" <phealy@hbs.edu>

Subject: FRB P&P "the allegation"

Date: Sat, 28 Apr 2018 11:51:54 +0000

Importance: Normal

Paul,

Thanks for making time to discuss my concerns yesterday, all the more so on short notice.

Reflecting on our discussion, I realized that I didn't respond optimally to your remarks about the "the allegation" wording in P&P. You suggested that FRB's 2017 effort was intended to assess evidence of changed behavior since 2015. Indeed, the FRB's 2017 July 6, 2017 email to me framed the question that way (in the three bullet points of that email). For an inquiry framed as seeking evidence of changed behavior, almost anything could be in scope, as you pointed out. But reading the FRB P&P, I think it requires more specificity in the initial allegation and scope of review – not just that the FRB specify the general subject it is examining (such as evidence of changed behavior), but rather that the FRB's focus be a specific "the allegation" (calling for a listing, at the outset, of specific factual circumstances giving rise to concern, broadly as specified in the last paragraph of P&P page 1, and indeed as exemplified in the 2015 FRB initial message to me).

No doubt there are multiple ways to understand aspects of the P&P, and further complexity from the 2017 FRB continuing the 2015 review, which isn't exactly what the P&P contemplates. But I wanted to make sure I have fully articulated my assessment so you can consider it appropriately.

Thanks,

Ben

ATTACHMENT V

From: "Edelman, Benjamin"

To: "Garber, Alan M" <alan_garber@harvard.edu>

Subject: RE: promotion matter for your review

Date: Tue, 19 Jun 2018 15:41:47 +0000

Importance: Normal

Attachments: Edelman_-_FRB_Failed_to_Follow_Its_Principles_and_Procedures_-_2018-06-19.pdf;
Edelman_-_FRB_Failed_to_Follow_Its_Principles_and_Procedures_-_2018-06-19_-_exhibits.zip

Provost Garber,

Attached is a memo summarizing my concerns, as well as the attachments that support the subjects raised in the memo.

I appreciate your willingness to look into this, and I look forward to your thoughts.

Thanks,

Ben Edelman

-----Original Message-----

From: Edelman, Benjamin

Sent: Monday, June 11, 2018 4:21 PM

To: 'Garber, Alan M' <alan_garber@harvard.edu>

Subject: RE: promotion matter for your review

Thank you. I'll get this to you shortly -- I anticipate, next week.

-----Original Message-----

From: Garber, Alan M [mailto:alan_garber@harvard.edu]

Sent: Monday, June 11, 2018 4:05 PM

To: Edelman, Benjamin <bedelman@hbs.edu>

Cc: Garber, Alan M <alan_garber@harvard.edu>

Subject: RE: promotion matter for your review

Dear Ben,

Thanks for following up. I take seriously matters of promotion at Harvard, and the integrity of our Schools' processes are therefore of the utmost importance. I'd like to take you up on your offer of a memo that in a few pages sets forth the basis for your belief that HBS did not follow its processes, and identifies specific procedural irregularities and provisions in the HBS policies that you believe may have been violated.

Best,

Alan

-----Original Message-----

From: Edelman, Benjamin [mailto:bedelman@hbs.edu]
Sent: Monday, June 11, 2018 11:28 AM
To: Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

Provost Garber,

Thank you for looking at this, and also for the update.

I couldn't tell from your message how you plan to familiarize yourself with this matter. It strikes me that I am probably better equipped than others to opine on the irregularities as I see them, the specific procedural commitments that I claim weren't followed, and the documents and other evidence that support my contention. I don't expect anyone at HBS to be able to make the case for me. (Indeed, many people have incentives to do exactly the opposite.) Of course it's useful for you to get the school's position. But since I'm the complainant, I would expect the burden to be on me to make a complaint that guides a possible further inquiry. My instinct is to provide that in memorandum form, though it gets legalistic and frankly argumentative pretty quickly, and that's truly not my preference.

So: If you see a way I can appropriately and helpfully guide your early inquiries towards the subjects I believe are most important, I'd be happy to do so and would appreciate that opportunity. But I'll await your guidance.

Thanks,

Ben Edelman

-----Original Message-----

From: Garber, Alan M [mailto:alan_garber@harvard.edu]
Sent: Friday, June 08, 2018 3:59 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Cc: Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

Dear Ben,

Apologies for not responding sooner. I expect to reply next week after I've had a chance to familiarize myself with this matter.

Best,

Alan

-----Original Message-----

From: Edelman, Benjamin <bedelman@hbs.edu>
Sent: Thursday, May 31, 2018 6:49 PM
To: Garber, Alan M <alan_garber@harvard.edu>
Subject: promotion matter for your review

Provost Garber,

I'm an associate professor at HBS. My recent academic review, for possible promotion to tenure, had some notable irregularities that leave me seeking a further look. I understand that your office oversees disputes as to promotion cases, and my colleague Jerry Green encouraged me to proceed directly to you. (When you or colleagues check with him in due course, I think he'll tell you his grave concerns.) In short: I'd like to ask that you or an appropriate colleague to assess the handling of my case, following your standard process for such matters.

It seems natural to begin with me summarizing the basis of my concern - what I think was mishandled, what rules I think were violated, and how that affected the ultimate disposition of my case. I would prefer to begin by offering these remarks orally, in a meeting, lest a written submission seem overly lawyerly. But I will proceed as you instruct.

Thanks,

Ben Edelman

ATTACHMENT W

HBS FRB Failed to Follow Its Principles & Procedures: Analysis and Impact

Benjamin G. Edelman – June 19, 2018

My recent review, for possible promotion to tenure, failed due to a negative report by the HBS Faculty Review Board (FRB), a new process never previously applied to a promotion case. Perhaps it's no surprise that a new process has room to improve, but my concern is much narrower—namely, that the 2017 FRB in important respects failed to follow its own policies, to my detriment.

The FRB is governed by a “Principles and Procedures” document (April 28, 2015) (“P&P”) (attached as Exhibit 1), but the FRB in multiple respects did not do what the P&P required. For one, the P&P obliges the FRB to provide the subject of an investigation with “the evidence gathered” so the subject has the information necessary to respond, yet the 2017 FRB report instead offered a series of derogatory comments without evidence, examples, or any other context. (See pages 4-5.) Second, the P&P obliges the FRB to state “the allegation” at the outset, ruling out fishing expeditions and preventing the confusion and unfairness that late additions tend to create—but in each of these respects, the 2017 FRB did the opposite. (See pages 5-7.) The FRB’s abrogation of these commitments was prejudicial to my evaluation: Without the evidence necessary to understand and contextualize the allegations, and with new allegations arising so late in the process, I could not rebut the draft report in the way the P&P promises. The FRB’s flawed 2017 report thus gave the HBS Promotions Committee a false sense of my case, directly precipitating the mixed vote that prevented further evaluation of my candidacy.

In my view, the Provost’s Office could appropriately review multiple aspects of my case. I focus in this document on the errors closely grounded in the P&P commitments, and I reserve other concerns about the process for the appendix (page 7). If the Provost’s Office opens a review of my case, there are certain additional subjects, not related to FRB and not discussed in this document, which might also merit attention.

* * *

Let me begin with a brief narrative of my time at Harvard.

My Harvard experience and prior review

I came to Harvard during spring 1998, before finishing my senior year of high school, to serve as a technical assistant for several law school faculty. I began the College that fall, eventually earning an A.B. *summa cum laude*, then later an A.M., a J.D., and finally a Ph.D. in Economics. In 2007, I joined the faculty at HBS, where I have been ever since. My affiliation with Harvard thus stretched twenty years without interruption.

Through 2014, my work and character were in every instance assessed favorably. After a Boston Globe profile featured my research on certain online misbehavior, a handwritten note from Dean Nohria praised my efforts. At my promotion to Associate Professor, I was told that I had been among the strongest cases in the group’s recollection, and that I could have been considered for tenure at that time.

Events of 2014

2014 brought two PR disasters. First, I published research about certain deceptive advertising software (“adware”), showing that a British company called Blinkx was tricking consumers and overcharging advertisers. Responding to my findings, Blinkx recast my effort as insider trading or stock manipulation.

In that way, Blinkx managed to shift the focus from its misconduct to (its false characterization of) my motives—prompting widespread public criticism of me.

Second, in a series of emails, I sharply criticized a nearby restaurant which was intentionally overcharging customers, advertising low prices on its web site (for customers to see when ordering by phone), then charging more upon pickup. In response, the restaurant provided my emails to a journalist who published them online. This too prompted widespread criticism.

My “Statement to Faculty Review Board” (August 15, 2015) (Exhibit 2) gives my initial reflections on these incidents, including greater detail about what happened. There is no doubt that I was out of line in both incidents. The Blinkx posting drew in part on research I prepared for two investors, and I failed to consider the way some people might view that relationship. In the restaurant emails, my tone was needlessly harsh and by all counts out of line. That said, a person wanting a full understanding of the situations will not find it even in the voluminous attachments to this document. (In response to the restaurant incident, HBS insisted at the time that I not try to defend myself on the merits, lest that lengthen the media cycle. I was also advised not to defend the merits of my actions before the FRB.) Indeed, there are notable counterarguments and mitigating factors. As to Blinkx: The company had a history of threatening critics—even demanding that investment banks reassign analysts who offered negative recommendations—which arguably provides important context for Blinkx’s criticism of me. One might also look at the merits; by all indications my allegations were correct. I’m also struck by Blinkx’s lineage, as a spinoff of Autonomy, whose acquisition by HP led to a \$9 billion write-down and criminal charges. Meanwhile, as to the restaurant, the overcharges were both lengthy (provably several years) and large (several hundred thousand dollars), and the restaurateur was far from the “mom and pop” he styled himself to the media. One might also consider the impropriety of publishing personal emails from a customer (unlawful in Europe, Canada, and Australia; the US is arguably an outlier in having no such protection), and the fact that at all times I used a personal email account (nowhere mentioning my HBS affiliation). None of this excuses the important errors I made, and I credit that public perception matters even if the merits are otherwise.

2015 review

I was scheduled for review in 2015, for possible promotion to tenure. Under a policy established in 2015, HBS convened a FRB to evaluate my conduct. The FRB’s opening letter to me, dated July 31, 2015 (Exhibit 3), followed the P&P in laying out the planned scope of inquiry: The two incidents discussed in the preceding paragraph, as well as four internal matters. The FRB examined evidence, interviewed me, and prepared a draft report (Exhibit 4). I felt the draft report’s discussion of the Blinkx and restaurant matters were basically fair (Exhibit 4 pages 2-5). I was concerned, however, about the FRB’s critique of two internal matters. First, the FRB criticized my actions in response to a HBS IT plan to reduce classroom projection screen size (Exhibit 4 pages 5-6). In my response (Exhibit 5), I established not just that I was right on the merits (that a reduction of as much as 31% would be harmful and had no significant offsetting benefit) (Exhibit 5 at pages 5-7), but also that my tone and style were at all times appropriate (including in the numerous emails in Exhibit 5 at pages 16-20) and even that key HBS leaders at the time thanked me for my efforts and praised what I had done (Exhibit 5 at pages 12-15: “I am SO grateful... You are a freaking genius...” from the then-Dean of the MBA Program). With these facts, I thoroughly rebutted any suggestion that I had been out of line.

Second, the FRB criticized certain supposedly improper travel payments, wherein I received payment for upgrading colleagues from coach to business class (Exhibit 4 page 6). In my response, I established that I sought and obtained advance financial office approval for transactions that I recognized as irregular

(Exhibit 5 at pages 7-9). Moreover, my efforts were necessitated only by HBS reneging on its written commitment to provide business class travel to faculty traveling to overseas teaching. Furthermore, I was assisting a colleague, not seeking luxury travel for myself. (See Exhibit 5 at page 8 paragraph 1.)

Reviewing the FRB's draft report as well as my reply, the HBS Standing Committee (an interim committee that reviews each year's promotion cases) had grave concerns and, I was told at the time, specifically criticized the internal aspects of the FRB's report. Ultimately the Standing Committee recommended, and the Dean agreed, that I be extended for two years and re-reviewed in 2017.

A striking facet of the FRB's 2015 report is that the harshest critique of me was not for the 2014 PR disasters, but for alleged internal matters and for the pattern that supposedly could be traced from those incidents through to alleged internal misconduct. Indeed, I think the FRB would have struggled to make a case against me based on the 2014 PR disasters. Terrible as those situations were, they were also quite removed from my academic merit; there are strong arguments that my actions were not as bad as media coverage alleged; and I sense that many or most people would struggle to oppose a promotion based on, ultimately, bad PR. It is no coincidence, in my view, that the FRB directed its toughest criticism elsewhere.

It is also useful to reflect on the procedure that allowed me to respond to the 2015 draft FRB report and, ultimately, clear my name of key allegations made there. In my view, this was possible thanks to two key protections in the P&P—protections that were, in fact, followed in 2015. First, the FRB gave me a meaningful opportunity to reply, including providing the specifics of its concerns and the evidence supporting those concerns. The FRB could have stated its concerns by alleging simply "Ben exceeded the proper bounds of activity for a junior faculty member" (as to projectors) and "Ben violated applicable policies" (as to travel). Had the FRB chosen this vague approach, I would have been unable to mount a persuasive opposition. Instead, knowing the details of the situation, I was able to clear my name by presenting the details of the specific activities at issue and by explaining why my conduct was at all times appropriate. Second, the FRB set its agenda at the start, and stuck with it. Had the FRB shifted to new allegations after I mustered a strong response, I would probably have been unable to mount an effective defense for lack of the time or process to address the new matters. As I explain in the balance of this document, 2017 proved to be exactly the opposite in both respects: The FRB impermissibly withheld the evidence and context I needed to mount a defense, and added allegations well beyond its statement of planned investigation scope.

2016-2017 activities and 2017 review

As part of my extension incidental to the 2015 review, I accepted a new MBA teaching assignment, the first-year ethics course Leadership and Corporate Accountability ("LCA"). This was a major undertaking, requiring mastery of 28 new teaching cases, discarding my decade of experience building and teaching my own course on a different subject. It was made more difficult with an infant in the home—and, surprisingly, no paternity leave available to me. Meanwhile, the irony of me teaching the ethics course was lost on no one, least of all my students. Despite these challenges, I rose to the occasion, finding it a meaningful and productive experience. Moreover, by all accounts I excelled. My LCA teaching in spring 2017 was easily the best teaching I had achieved to date and the most enriching for me and for students, as manifest in student engagement, depth of discussions, feedback from colleagues, and my own enjoyment.

In 2017, as part of my submission for review, I prepared an updated personal statement (Exhibit 6) as well as a reflection on prior FRB feedback (Exhibit 7). The FRB interviewed me and asked two rounds of

written follow-up questions (Exhibits 8 and 9) to which I responded (Exhibit 10 and 11), culminating in a 2017 draft written report (Exhibit 12).

The FRB's 2017 draft report offered three key criticisms of me: First, it reported "concern[s] about [my] style" and "lack of consideration for other points of view" (page 5). Second, it criticized my allegedly deficient disclosures on six work products (pages 6-7). Third, it criticized my work as a class action attorney challenging certain baggage fees, with particular concern for the fact that another HBS professor served as plaintiff in that case (pages 7-10). I responded to the report (Exhibit 13), but the FRB made no material revisions (yielding the final report in Exhibit 14).

My case proceeded to the Promotions Committee. I gather my academic merits were viewed favorably and were found to be well above the requirements for promotion. As to questions of character, I'm told discussions were mixed. Among those who have interacted with me directly, I'm told the assessments were precise, grounded in evidence, and favorable. Among those who evaluated me primarily based on the FRB report, I'm told the assessments were more general, less closely connected to evidence, but distinctly unfavorable. A trusted senior colleague, who previously held a position of leadership in the University, told me he found the discussion the most upsetting promotion decision he had seen in his academic career, as the lack of evidence from critics was, to his eye, out of line and improper.

I am told that 43 of 73 votes supported my promotion (approximately 59%). In reporting the vote to the Promotions Committee, Dean Nohria conveyed his understanding that no HBS dean has recommended the promotion of a candidate who obtained less than 2/3 support from the Promotions Committee. On that basis, he said that he declined to bring my case to the President.

* * *

Violations of applicable commitments

Let me now turn to the procedural flaws in the FRB's 2017 report and my primary concerns about the handling of my review.

FRB P&P commitment to disclose "the evidence gathered" so candidate can reply in substance

The FRB is obliged to follow the P&P, which requires a FRB draft report to "include the evidence gathered." The P&P instructs that a candidate is to "have an opportunity to review" and respond to this evidence. By the plain language of the P&P, "the evidence gathered" is not just a synthesis, summary, or assessment, but rather "the evidence" in the form it was "gathered." See Exhibit 1, yellow highlighting.

The P&P gives the FRB no discretion about disclosing "the evidence gathered" to the subject of the investigation. In notable contrast, the P&P gives the FRB discretion about disclosures to "the person making [an] allegation," which the FRB need do only "if applicable and appropriate." But for the target of the investigation, the P&P is clear: the target "will have an opportunity to review ... the evidence gathered" (emphasis added).

This discrepancy was prejudicial. Without knowing the context of the 12 derogatory bulleted quotations in the FRB 2017 report (Exhibit 14 pages 5-6), I could not oppose those characterizations by providing reasons why my actions were appropriate. Notably, in the right circumstances, almost all of these quotations would characterize praiseworthy acts. Consider, for example, the FRB's criticism that I am "incapable of seeing why [my] preferred solution can't or won't be implemented." Reviewing my 2015-2017 activities, I could not figure out what this quote referred to. My best guess was that this quote

arose out of my efforts to assist a junior colleague who suffers from a vision disability that prevents her from seeing students' hands raised in the classroom. Indeed, when I learned about her problem, I insisted that new software could let her use tabletop buttons to know which students wanted to participate. To my disappointment, HBS technical and administrative staff initially argued that this could not be done because, supposedly, hardware and software could not be configured in the way I envisioned. In response, I insisted it could, should, and must—and I was unabashed in citing well-established principles of disability law (requiring that HBS make “reasonable accommodations” which, I argued, this was). Ultimately, HBS IT contractors provided a way for me to access the buttons, and I wrote software which successfully did exactly what I said it could (even playing students' names through a wireless earpiece). If it turned out that this quote or others arose out of that situation, I am confident that I could convince most readers that I was in the right and that my actions supported the most important values of HBS (including diversity, inclusion, and compliance with law). If the contexts of the twelve quotes were provided to me, I think I could have eliminated at least half the items on the list, leaving the remainder tenuous or worse. Instead, I had to reply without knowing the context or specifics, which prevented me from responding in full. Failing to provide the required disclosure, the FRB crippled my rebuttal of this section.

One might counter that the P&P's commitment to disclose evidence is contrary to complainant privacy. There are four reasons why this is not plausible. First, complainants have a limited privacy interest in their remarks about professional colleagues in a professional environment. Second, the importance of the FRB review to the candidate is manifestly greater than any privacy interest of any complainant. Consider the grave threat to the candidate's professional standing, versus the limited harm a complainant faces in revealing truly-held concerns. Third, such a privacy critique would be most persuasive if somehow calibrated to the circumstances (i.e. substance of the complaint and rank of complainant), whereas the FRB withheld information about every one of the bulleted quotations. Finally, the plain language of the P&P leaves no room for arguments about complainant privacy because the plain language of the P&P specifically requires disclosure.

Other errors in the FRB reports make it particularly important that the FRB allow opposition in substance so readers can decide for themselves. As discussed above, the FRB's 2015 report presented internal concerns which I demonstrated were incorrect. Crucially, I was able to assemble that rebuttal only because the FRB told me enough about its concerns for me to reply in substance. Meanwhile, mistakes are also apparent in portions of the FRB's 2017 report. (For details, see the Appendix at heading “failure to retract errors.”) The FRB's errors, in both 2015 and 2017, undermine any suggestion that a reader defer to the FRB's assessment of the evidence. The errors also demonstrate why the P&P requires that a candidate receive “the evidence gathered” against him.

FRB P&P commitment to state “the allegation” at the outset

The P&P obliges the FRB to declare in advance what it is looking for, tell the candidate, and then examine that specific concern. See the commitment to provide “a summary of the allegation” at the outset, and the FRB's authority then to “investigate *the allegation*” (emphasis added) (Exhibit 1, green highlighting). This commitment provides several important benefits. One, it rules out fishing expeditions. In dozens of interviews, a zealous investigation can probably find derogatory information about almost anyone. By requiring that the FRB state “the allegation” in advance, the FRB rules out such an approach. Two, this commitment notifies the candidate about applicable concerns from the outset. With the benefit of such notice, a candidate can begin to begin to respond to the allegation from the start of discussions with FRB. The candidate also gets correspondingly more time to collect his or her

thoughts and prepare a response. (In contrast, the FRB at various stages granted me as few as five business days to reply.) Three, this commitment assures an orderly, logical process well-positioned to identify the relevant facts and policies. In contrast, shifting and late-added allegations increase the likelihood of confusion and error.

One might counter that the FRB should be free to investigate as it sees fit, including considering information that arises midway through the process. Portions of the P&P support this position: “the FRB procedure is designed to be flexible”; “it can be difficult to anticipate every circumstance [so the FRB] will use their best efforts and judgment.” But “flexible” “judgment” cannot retract the affirmative commitments explicitly stated elsewhere in P&P. Meanwhile, the P&P specifically instructs that the FRB is for situations that are “egregious” or “persistent and pervasive.” Any problem discovered only midway through a FRB is unlikely to meet that demanding standard. The best interpretation of the P&P is that any problem properly calling for FRB review must be stated to the candidate at the outset.

One might counter that “the allegation” can be written broadly, such as whether a candidate met certain green book (promotion) criteria or whether there is evidence of changed behavior (as the FRB framed its effort in its message to me of July 6, 2017, Exhibit 8). But the P&P provides guidance: The FRB is to provide “the allegation”—not just the question or the standard by which the question will be judged.

Just as one might worry, the FRB’s late-added allegations created a report that is at best confusing, and ultimately affirmatively misleading. Consider the FRB’s discussion of my work for Microsoft and my allegedly-deficient disclosures on certain work products which, the FRB argued, related to that work. The conflict, such as it might be, was at most a *past conflict*—past work perhaps sufficiently close to current research that disclosure is required. But the FRB report, Exhibit 14 at pages 6-7, offers no discussion of the fact that the Microsoft work ended months to years before publication of the work products at issue. The FRB report thus leaves readers with the incorrect sense that the conflict was contemporaneous, i.e. work products published at the same time as ongoing outside activity. Nor did the FRB report alert the readers to the fact that HBS policies set different standards for disclosures resulting from ongoing outside activities versus past activities. A reader who takes the FRB report at face value would not learn that the supposed conflict resulted from prior work (not contemporaneous work), nor that the applicable policies differ. Meanwhile, even as the FRB criticized certain disclosures (the past related work which FRB mis-presented as a contemporaneous conflict), the FRB nowhere mentioned that when the Microsoft work was ongoing, I always provided satisfactory disclosures, including going well beyond what any HBS policy required and even making disclosures before the creation of any HBS policy on this subject. I take this muddle to result from the FRB raising these conflict concerns so late in the process—too late for the FRB members to fully work through the issues, and too late for FRB to explain the situation clearly to readers. My efforts to identify the key facts and policies, in my reply to the FRB’s draft report (Exhibit 13 at pages 1-2), were manifestly insufficient and untimely; by the time I had the right to reply, the FRB clearly viewed its draft report as nearly final, and the FRB was making only small revisions. The P&P was wise to require that the FRB set its agenda at the outset, and the FRB’s muddled, incomplete, and ultimately mistaken discussion of past versus contemporaneous conflicts is the predictable consequence of its shifting agenda.

Indeed, the FRB’s late-added allegations were prejudicial to my case. Certainly the FRB’s 2017 report raised concerns that were nowhere in its 2015 report or its prior communications. For example, only in the FRB’s 2017 draft report did I learn that the FRB had concerns about disclosures pertaining to my work with Microsoft—work that began in 2003, four years before I joined HBS, and got no criticism in

2015 nor any mention in any prior 2017 FRB correspondence. Only in the FRB's 2017 interview did I learn that FRB was interested in my service as an attorney—a subject which I specifically brought to the attention of the Dean's Office in 2008 (Exhibit 11, page 2, second full paragraph), but about which I was specifically told no disclosure or approval was required (Id.), and about which HBS had never previously expressed any concern. Learning of these issues so late in the process, with the FRB ultimately demanding a response in just six business days, I struggled to mount a full opposition, not to mention have a fair opportunity to influence the FRB's assessment or help the FRB fully understand the issues and properly explain them to the Promotions Committee.

Interpretation of P&P

One might counter that the quoted provisions of P&P do not mean what I say they mean. I think my interpretation is the most natural reading of the plain language. I think my interpretation is particularly natural in light of the P&P's purpose in setting out processes that both are fair and are seen as fair. At most, one might argue that the provisions at issue are ambiguous, allowing two or more interpretations. But a longstanding legal principle instructs that when one party drafts a document that binds another, any ambiguities in the document are interpreted in favor of the party that did not draft it. Based on this principle, if the P&P is ambiguous, my interpretation would prevail.

Impact of these deficiencies on handling of my promotion case

The FRB's procedural errors do not change the core FRB assessments of the 2014 PR disasters. But they call into question substantially all the new material in the FRB's 2017 report (Exhibit 14). The derogatory quotations on pages 5-6 all come into question for failure to provide "the evidence." The critique of improper disclosures on research (allegedly) related to Microsoft (pages 6-7) is out of scope relative to "the allegation" stated at the outset. The critique of my service as an attorney (pages 7-10) is similarly out of scope.

Meanwhile, the projector and travel sections of the 2015 report were manifestly incorrect, as I established in my 2015 reply. It was improper for the FRB to present the Promotions Committee with allegations that had already been amply disproven. This material should have been removed before circulation to the Promotions Committee.

Correcting these errors, the Promotions Committee would still have received a 2017 report that said that I made two important errors in 2014. But the report would not have offered evidence that the problems were systematic, far-reaching, or ongoing. Presented with such a report, the Promotions Committee would probably have reached a different conclusion.

The impact of FRB errors is particularly acute due to the closeness of the Promotions Committee vote. Just six more positive votes would have brought me to the 2/3 level understood to put a decision in the Dean's hands. The statements of Dean Nohria, both before and after the vote, indicated that he was receptive to supporting my case had 2/3 of the Promotions Committee voted in support. And his support for my case would have been that much stronger if grounded in a positive 2017 FRB assessment, a correspondingly positive Promotions Committee discussion untainted by the improper material resulting from the FRB's procedural errors, and a correspondingly favorable Promotions Committee vote. Had the FRB prepared a proper 2017 report following its own procedures, I would have had a fair opportunity to rebut any new allegations just as I rebutted the mistaken projector and travel allegations in 2015. Such a report and rebuttal would have set the stage for a positive decision on my promotion. This plausible alternative provides ample reason to find the FRB's errors prejudicial.

HBS FRB Failed to Follow Its Principles & Procedures
Appendix: Other FRB Errors in Handling of My Case

This appendix notes other errata in the handling of my case—errata not closely grounded in FRB P&P or other governing documents, yet contrary to (what I take to be) widely-held notions of fairness and propriety.

Failure to retract errors

The relationship between a candidate and the FRB is unavoidably adversarial: The FRB presents allegations, and the candidate attempts to offer context, explanation, or counterargument. But the FRB has striking advantages: Its document gets more prominence before the Promotions Committee; FRB members are senior faculty who vote on the case and who know colleagues who are voting; FRB members personally appear before the Promotions Committee and have the opportunity to speak, and the candidate does not. For all these reasons, fairness requires that the FRB use its power prudently and properly. When the FRB makes allegations that are later revealed to be incorrect or even misleading, the FRB should revise its report to make clear which allegations are fairly supported by the evidence.

In contrast, in multiple instances, the FRB failed to retract errors in its reports, including allegations substantially disproven via additional evidence, as well as allegations manifestly contrary to the FRB's own evidence.

In the body of this document, I presented the serious errors in the FRB's 2015 report (Exhibit 4), making incorrect allegations about projectors and about certain travel payments. In 2015, the Standing Committee apparently criticized the FRB's findings in these regards. Yet these findings were nonetheless presented to the Promotions Committee intact, in the binder with other materials pertaining to my case, with no indication there that the allegations had been thoroughly debunked to everyone's satisfaction.

Second, in its 2017 report, the FRB criticized my service as an attorney challenging airline bag fees in excess of the applicable contracts. (See Exhibit 14 pages 7 to 10.) The FRB cited three articles as evidence of supposed reputational risk from my lawsuit. But a closer look reveals weaknesses in all three citations: the first article was at most snarky in its title but entirely neutral in the body (plus it nowhere even mentioned me), the second was in every respect neutral, and the third discussed an entirely separate matter (with a date of publication two years before the litigation at issue, making it obviously impossible that this article discussed what FRB said it did). See my reply to FRB (Exhibit 13 page 2). First, the incorrect citation—to a source plainly not supporting the FRB's claim—should have been removed. Arguably the other two citations were also importantly flawed—their substance quite different from what the FRB claimed. Then this entire section of the FRB's 2017 report, one of its three main criticisms of me, would stand entirely without evidence. I brought these errors to the FRB's attention in my reply to FRB (Exhibit 13 page 3). Nonetheless the FRB declined to make revisions, even to remove the incorrect citation.

One might also question the FRB's treatment of the Microsoft work and allegedly-deficient disclosures on certain work products. In my view, the FRB's approach to that subject was sufficiently off-base as to be fairly called "error": failing to alert readers that if this was a conflict at all, it was a past conflict rather than a contemporaneous one; failing to mention the differing policy requirements that apply in the two circumstances. At the very least, the FRB's muddled approach strained the limits of busy readers:

Understanding the real situation required not just reading the FRB's report, but also reading my response and probably then rereading the FRB's report. This is a needlessly convoluted process, error-prone, and necessitated only by FRB's failure to correctly present the actual chronology, situation, and governing policy. Perhaps the FRB initially missed the difference between contemporaneous and past conflicts. But once I laid this out in my reply of October 5, 2017 (Exhibit 13 at pages 1-2), the FRB should have revised its report to present and evaluate the genuine situation.

Composition of FRB

A fair review committee consists of members who are unbiased and are seen as unbiased. If committee members had some idiosyncratic or personal reason to want to undermine a candidacy, their service on a review committee would be improper.

In this respect, I have no reason to suspect any defect in the *faculty* who served on the FRB. When I asked, Dean Nohria confirmed that he carefully selected faculty who did not have prior interactions with me. Their judgment of me was thus to be grounded solely in the evidence they gathered through the FRB process. So far as I know, the FRB faculty members met this standard and suffered no improper factors tainting their participation.

The same cannot be said of the two *staff* who supported the FRB, Jean Cunningham and Angela Crispi. They are trusted senior staff members, well known within HBS and widely trusted for the School's most important and most sensitive administrative matters. Nonetheless, my prior interactions with them call into question their ability to evaluate me fairly and impartially. Without attempting to "litigate" the merits of the respective situations, let me briefly summarize three incidents that call into question the ability of these staff to fairly evaluate me.

First, as to Jean: In 2009, a senior colleague had a temporary medical disability that required him to lie in bed for weeks, but he could not use a standard computer while following his doctor's orders. He sought my assistance in obtaining and configuring equipment that he could use safely and productively. I made appropriate arrangements to assist him. In an email, which I retained, Jean asked me to cease this effort. I told her, by telephone, that the colleague was not using HBS funds, that he was my friend, that I'd like to honor his preference to get assistance from me (rather than from HBS IT staff), and that I could not see a proper reason for HBS to stand in the way. Jean probably knows that I remember this incident. She might also suspect that, if promoted, I would seek to reduce her influence in order to prevent her from blocking such assistance by me or others in the future.

Second, as to Jean: In the aftermath of Blinkx accusing me of conflict of interest, Jean told a reporter that I had violated an applicable HBS policy. In fact the policy's plain language says only the Dean, personally, can determine that a violation occurred. He had not done so (and, indeed, never did). In a telephone call, I told Jean that she herself had violated the policy by falsely stating that I had violated it, and I told her that I wished she had not made the improper statement to the reporter. Jean probably knows that I remember this incident. She might suspect that, if promoted, I would seek to reduce her influence in order to prevent her from making further misstatements to the detriment of faculty.

Third, as to Angela: As I sought to understand the process that had approved IT's decision to dramatically reduce classroom projection screen size—a decision I found inexplicable—I learned that Angela was a member of the relevant committee. I contacted her by email to present my concerns and an alternative. She replied with a stern message insisting that the decision was correct and final. In fact,

I later managed to persuade HBS MBA program leaders to reopen the question, and when they saw my demo in a classroom, they quickly decided to cancel the change—meaning the decision was neither correct nor final. Angela probably knows that I remember this incident. She might suspect that, if promoted, I would seek to reduce her influence in order to assure that decisions about classroom equipment are made primarily by people with specialized knowledge about applicable technology and pedagogy.

There are surely other ways to interpret these incidents, and different ways to understand how these incidents might shape the way Jean and Angela think about me. But the bottom line is that their assessments of me probably are, and certainly are reasonably understood to be, tainted by these interactions. If staff are to *de facto* serve on FRB, Jean and Angela were not appropriate choices.

One might argue that FRB staff support was intended primarily or solely to ease the administrative workload of the faculty members of that committee. But there are indicators within the FRB report that Jean wrote much of the document—telltale signs of word choice and sentence structure that match other documents bearing her name as author. Drafting the report, or any portion of it, gives a distinctive power that goes well beyond administrative support. Moreover, I understand that Jean and Angela were present during many or most discussions, giving them distinctive influence on the process. Whatever their actual role, the factors herein create an appearance of partiality. In my view, they should have recused themselves and withdrawn from service on FRB.

ATTACHMENT X

Addendum
Summary of Standing Committee Deliberations¹

A Standing Committee—comprised of ten faculty members who served on faculty appointment subcommittees this season—met on October 17 to discuss and vote on Ben Edelman’s case. Paul Healy chaired the meeting. The following faculty members were present:

F065
F025
F046
F020
F074
F009
F021
F005
F058
F034

Everyone in attendance believed that Ben passed our standards for scholarship, course development, and teaching. The discussion centered on the Faculty Review Board (FRB) report.

To learn more about the evidence that underpinned the FRB report, Len Schlesinger—one of the members of the FRB—was asked to join the meeting. Len provided additional context about the interviews conducted by the FRB, the issues that were reported, and the specific concerns that this information presented to the board. He described why the FRB members had been unable to conclude that Ben’s behavior passed our collegueship standard.

After Len left the meeting, the committee heard from F010 (by telephone) who presented her perspective as a member of the NOM group regarding Ben’s behavior and collegueship. F010 account was very positive.

The standing committee then spent an additional hour discussing Ben’s behavior, collegueship, and implications for the school. At the end of the discussion, a vote was taken on a motion to promote Ben Edelman to professor. The results were as follows:

Agree: 5

Disagree: 5

¹ Summarized by F034

ATTACHMENT Y

From: Healy, Paul
Sent: Wednesday, May 16, 2018 4:17 PM EDT
To: Nohria, Nitin
CC: Cunningham, Jean
Subject: Re: Ben / next steps

Agreed.

P

On May 16, 2018, at 4:15 PM, Nohria, Nitin <nnohria@hbs.edu> wrote:

That's always his choice.

On May 16, 2018, at 4:04 PM, Healy, Paul <phealy@hbs.edu> wrote:

Sounds like Ben is preparing to go to the next level.

P

Begin forwarded message:

From: "Edelman, Benjamin" <bedelman@hbs.edu>
Subject: Ben / next steps
Date: May 16, 2018 at 1:46:58 PM EDT
To: "Healy, Paul" <phealy@hbs.edu>
Cc: "Mucciarone, Rae" <rmucciarone@hbs.edu>, "Nohria, Nitin" <nnohria@hbs.edu>

Paul,

Thanks for thinking about this and for rereading the comments. I appreciate the re-review you performed but, as you know, that addresses only a portion of the concern I raised. On my mind:

1. A flawed report would likely influence discussions and votes in ways not apparent on the comment sheets. Rereading the comment sheets is an easy place to begin, but arguably only the beginning of righting the P&P discrepancies.
2. "A significant majority of those who voted against [my] case" is not obviously the right standard for the question at hand. If just half a dozen votes flipped from no to yes, I'd be above 2/3 yes's, and Nitin's stated basis for decision would no longer apply.

3. Your message indicates considering only one of the two P&P discrepancies I reported. I'm convinced that the P&P's prohibition on fishing expeditions, as embodied in the commitment to state "the allegation" at the outset, is genuine and important, and plainly wasn't followed. I know you interpret that phrase differently. Given the careful parsing of every word of the green book, I am comfortable with a similar approach to P&P. Moreover, any ambiguity in P&P should be interpreted in favor of the subject of an FRB investigation.
4. I remain troubled by errors the FRB didn't correct, even when specifically brought to their attention. Recall the FRB's 2015 internal allegations which I thoroughly debunked in my 2015 reply, to the satisfaction of the Standing Committee. Yet those allegations were presented to the Promotions Committee as if they were well-founded. I have similar concerns about certain of the 2017 material as discussed in my October 5, 2017 reply (especially page 3). Nothing in P&P explicitly obliges FRB to correct errors, and maybe there's some way they might argue these weren't errors but rather different interpretations. I think they have a real uphill battle in these areas given the evidence.

My sense remains that the FRB procedural errors were plausibly pivotal in that a proper FRB, complying with P&P in the areas I raised, would plausibly have produced a report that yielded quite a few more positive votes, bringing me well above 2/3. Of course it's hard to prove what might have been. But I've thought about that too. You won't be surprised to hear that most dispute resolution systems need mechanisms for handling counterfactuals.

Your message doesn't suggest any further prospects for reevaluation within HBS. Nitin's message of April 24 offered the same bottom line. That's certainly the school's right, but the gravity of the situation – including my assessment of the seriousness of the P&P violations, and the close connection between the P&P violations and what most troubled me about the FRB treatment of my case – leaves me thinking about appropriate next steps. As you know, the university has a process for receiving complaints from faculty who allege mishandling of promotions cases. I plan to proceed accordingly in short order, broadly raising the concerns I conveyed to you and Nitin, separately, these past two months. If you see a reason why that's not proper, or any reason why I should delay, please let me know.

Thanks,

Ben

From: Healy, Paul
Sent: Tuesday, May 15, 2018 3:28 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Cc: Mucciarone, Rae <rmucciarone@hbs.edu>; Nohria, Nitin <nnohria@hbs.edu>
Subject: Re: FRB P&P "the allegation"

Ben,

Sorry about the delay in getting back to you. I had a trip to Melbourne that took me out of the office for a week.

I've given careful thought to our conversation and, at your suggestion, re-read the comments submitted at the time your case was reviewed. As you know, the confidentiality of our tenure process means that I cannot get into specifics with you. But, I can provide you with feedback that "respect for others," the category that seems to cover your questions related to the FRB process, was not mentioned as a concern by a significant majority of those who voted against your case.

I hope that you find this helpful.

Best

Paul

On May 15, 2018, at 9:40 AM, Edelman, Benjamin <bedelman@hbs.edu> wrote:

Paul,

Do you have a sense of when you'll be ready to discuss further? I'm mindful of the nearing end of the university's fiscal year and appointment year, which has potential bearing on when and how we proceed.

Thanks,

Ben

From: Healy, Paul
Sent: Saturday, April 28, 2018 2:19 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Subject: Re: FRB P&P "the allegation"

Ben:

Many thanks for the additional information. I will be away for the coming week but will look further into your concerns when I return.

P

On Apr 28, 2018, at 7:51 AM, Edelman, Benjamin <bedelman@hbs.edu> wrote:

Paul,

Thanks for making time to discuss my concerns yesterday, all the more so on short notice.

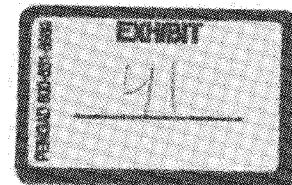
Reflecting on our discussion, I realized that I didn't respond optimally to your remarks about the "the allegation" wording in P&P. You suggested that FRB's 2017 effort was intended to assess evidence of changed behavior since 2015. Indeed, the FRB's 2017 July 6, 2017 email to me framed the question that way (in the three bullet points of that email). For an inquiry framed as seeking evidence of changed behavior, almost anything could be in scope, as you pointed out. But reading the FRB P&P, I think it requires more specificity in the initial allegation and scope of review – not just that the FRB specify the general subject it is examining (such as evidence of changed behavior), but rather that the FRB's focus be a specific "the allegation" (calling for a listing, at the outset, of specific factual circumstances giving rise to concern, broadly as specified in the last paragraph of P&P page 1, and indeed as exemplified in the 2015 FRB initial message to me).

No doubt there are multiple ways to understand aspects of the P&P, and further complexity from the 2017 FRB continuing the 2015 review, which isn't exactly what the P&P contemplates. But I wanted to make sure I have fully articulated my assessment so you can consider it appropriately.

Thanks,

Ben

ATTACHMENT Z



FRB meeting -- 4 September 2015

> Some probability that we all may embarrass the institution -- what is our assessment of the probability that *he* will embarrass the institution again?

Schlesinger: Seemed to flat out discount any concerns coming from faculty and staff. Completely glossed over those.

Edmondson: Taking our concerns seriously -- he must -- and working hard to adopt a productive tone. "Handling it" well. But it's as much "processing" issues as it is "conduct" issues -- he's been consistently misunderstood, and never considers that others' intentions may be good too.

Schlesinger: Blinkx -- didn't understand the impact he would have. But he skipped over the pain around the disclosure as well, and the fact that he's not able to disclose to the dean. So troubled by Blinkx. By the time I got to the Chinese restaurant, found it fascinating that he went after the proprietor. Walk away saying "we might own that."

Edmondson: Big underlying concern -- he explains that he is doing what's best, and sometimes it backfires for him when he's misunderstood. But his concept of what's best is a theory -- it's a view that needs to be tested.

Crispi: Struck by first two paragraphs -- trying to reduce the likelihood of anything like this ever happening again, versus promising that they won't. But happy about litigation, and incarcerating two people?

[REDACTED]

> apologies for not being able to be there in person.

Wants to provide a window into experience in working with Ben. Less familiar with Blinkx case; more with restaurant and dealings with staff.

Have been around Ben for 9 years; he can be stubborn and difficult. He is not at all dishonest; have never seen him play fast and loose. Blinkx may or may not be a counterexample of that, but as unit head, million little things that come up and sometimes people are slippery with the truth. Sometimes he is almost too black and white.

Thinking about Amy's research on psychological safety -- as unit head, creating that for junior faculty. Do they feel free to speak their mind? Are we creating the right context? Ben is not like that at all -- not wired to think about this, or what people will think of him. Ben is somewhat robotic in his speech patterns, lawyerly in tone, hard to tell what he is thinking or meaning, doesn't read social cues very well. He's not strong on this dimension. Ben needs to learn and understand that context matters, and style matters. If you're sending a letter to Google and to a small Chinese restaurant, they should have a very different tone. Ben's not naturally good at this.

But he is working at it, and trying. The Chinese restaurant situation was a big wake-up call to him – he thought he was doing something right, but it was a disaster. Likewise with Blinkx – never seen him do something for money, or that was dishonest. Sense from talking to him that he has one criteria: I have rights to do certain things, and if I'm not breaking the rules, I can do them. There were lots of ways to make lots more money than he did. He believes in the principles of his rights to publish, for example. He's come around to the view that the perception of things matters a lot – if people perceive you have a conflict of interest, being way to the other side and out of the gray zone is important. He has a desire going forward to keep what he does for money, and his writings, separate.

What gets Ben up in the morning is making the world a better place – the world, HBS, technology, projectors, whatever. That's what he's motivated by. He is wired in ways that are different, and we need to understand that. Hope you'll have an opportunity to talk to Jean, who works in the dining facility. Who came up after the restaurant incident and found out he's doing taxes for a group of the RA staff, and was advocating for a number of them around their health care. He's clumsy at it, but he wants to get better. And I think he's motivated by the right things. In my experience, Ben is a good guy who's motivated by the right things in wanting to make the world a better place. Will need to learn that the world won't adjust for him, and he will need to adjust for it.

Amy: Has he gotten coaching and feedback along the way? What kinds has he gotten and how has he responded to it?

Within the unit, I, for example, have received letters with the same tone Ben used with the restaurant. And in unit meetings, don't want to squash him – I want to encourage psychological safety among the junior faculty. But not privy to many of his interactions within the School. Occasionally got a call from the Dean's Office and would try to talk to him. Blinkx was one example, and then Chinese restaurant – but largely didn't view it as a big problem, but rather Ben being Ben. But then you saw all the details – horrible, and horrible timing. There were very hard conversations.

Len: What do you mean by a hard conversation?

Being pretty straightforward about how other people view your behavior. Ben's response was always, "but this is what I was trying to do." Kathleen and I were pretty clear that the world's view mattered too. Projector issue – think Ben handled himself a lot better after these other two incidents.

Len: This was never an issue in the unit, it seems, until the 2 incidents. So no discussion during his associate professor review?

No; senior faculty would have talked about the IT tools, contributions he might make. Tone with which he comes to things, and challenges he would raise in the unit, people took in the context of Ben trying to do the right thing, and people didn't want to misinterpret it. Two incidents made everyone realize he's missing some real things.

Hope you will talk to senior colleagues as well – they also have seen this up close, every single day. He's an active part of the community.

Reinhardt: Ben's been here for 8 years, right? Has he ever been part of a teaching group? When did Negotiation stop being an RC course?

██████ Think he taught at least one time while it was still an RC course. Remember being part of the teaching group and he was part of it, but only early on. There would have been informal teaching groups even if it wasn't RC.

Reinhardt: CV only shows one year, then it looks like he moved to the EC after that.

██████ Moved into Tom Eisenmann's course, and then that morphed into his own course. Think he sat in when Tom was teaching, but they never taught together. He may have mentored him a bit. It wasn't just Ben, but Ben and Peter Coles. They worked together quite a bit.

Crispi: Ben mentions that he feels as though he's become more thoughtful. How have you seen that play out? What are you seeing?

██████ In day-to-day interactions, I'd say I saw him maturing even before – less stubborn, more thoughtful. All generally came to respect him. He really hasn't caused any problems within the unit; we all like and respect him, and think he says what he thinks. Can go into his office with any IT problem and he'll fix it. For a number of us, he has our frequent flier passwords – he knows all the rules about airlines, and if a certificate is going to expire, he'll find someone to use the miles to help them out. Shows zero favoritism, whether senior or junior person. Sometimes that gets him into trouble too.

Back to specific question: humility in talking about things like Blinkx and restaurant – initially he just thought he was right, and if he was right about the issue... think he genuinely realizes he has some difficulties seeing things the same way other people see them. Generally misses context in ways that others are sensitive to, and think that has been humbling to him. Sees it as something he needs to learn from, and get better at it. Ben has been a wunderkind since the beginning – the idea that he has a deficiency is new, and not much experience with failures.

Edmondson: You mentioned the projectors. What was your involvement there?

██████ Ben wanted me to know about this – saw it as another example where Ben could handle it in a way that wouldn't be helpful. Talked with him about how to achieve a good outcome – didn't tell him not to get into it; Ben should be Ben, and if he cares about it, he should get into it. But talked about it being a situation he could handle, or in such a way that he makes people feel not respected.

Reinhardt: You mentioned yourself, Deepak, and Kathleen as folks who have had conversations with him. Are others in your unit less involved in giving him developmental guidance? Or having conversations?

Jim, Guhan, and Jerry less inclined to mentor people in that way. Francesca more, but only recently. Max sees Ben's motivations and appreciates them so much; so allergic to people currying favor with the powerful so he loves Ben because he doesn't do that. Kathleen, Deepak, and I most attuned to how the world will see things.

Reinhardt: Does he have colleagues outside the unit with whom he is close? What does his social world look like?

Marco. Probably Tom Eisenmann. Connected exceedingly well with Al Roth. Maybe David Yoffie he's mentioned a few times. Ben shows up for work every day, but he goes to his office and does his thing. Many of his interactions are by email, and he's responsive. But he doesn't naturally foster relationships.

Last comments: Given all the noise that Ben has made, see how natural it would be to run. Hope that you'll talk to people like Jean who have seen the other side of Ben. And senior, and even junior, colleagues. A lot of people have amazing respect for him. It's more of an inability to see things than bad intentions, but understand you need to get to the bottom of it.

Edmondson: One note – you, too, are allowed to speak up... if Ben says something that is unhelpful to the junior faculty, point is that people should be and are learning. So you can say something.

Happy to do whatever will be helpful to you guys. Thanks for doing this – experience on CRB. Several years work drafting COI and OA policies, and then a few more as the *de facto* co chief compliance officer. Responded to a range of things, even this past year.

Edmondson: Helpful to get your take on Blinkx.

Put together a chronology – should treat this as confidential. You all will be on the hot seat should Ben choose to sue, and he will sue.

Edmondson: That's true, and that's also a damning statement to make about a colleague.

Will focus on Blinkx; but having been in Hong Kong when the Chinese restaurant was unfolding, this was a global issue. It was not easy to explain when people wanted to talk about that and not the Capital Campaign – it was distracting. People were more interested in that than in FIELD.

Chronology: COI policy evolution – Ben was one of two faculty members to attend a small group discussion as the policy was being drafted. He had detailed questions, and clearly had read it carefully. Fast forward: Ben hired in December by two separate investment companies. Work started and results expected by January 2014. Same month, hedge funds set up short positions. In January results go up on personal blog, though identified as an HBS faculty

member. Piece ends with a recommendation. Includes disclosure. Bloomberg comes into play; Ben brought into loop, and clear consensus that the disclosure was inadequate.

Ben's wording is very careful: they did not change their position after I released my story. You have to watch what he says; he gets down to words. First he said there was one client, then he said there were two.

Changed his disclosure; don't think it went far enough, and don't think he's been compliant on many things he has published. Minimalist at best. Don't think he's compliant, but have not done the thorough investigation.

Future of capitalism.com quote — found that very troubling. Don't think you go to a client without understanding how the work will be used. Ben had worked with at least one of these clients before. They knew full well he would publish. And he knew full well if he made the company money, they would hire him again. If the company is asking you to dredge up information, you can be sure they're not betting long. Either disingenuous or irresponsible. Quoted as saying "I don't care what people do with my work."

Schlesinger: This statement flies in the face of his personal statement: all of my activities are designed to make the world a better place.

[REDACTED] This statement floored me — so antithetical to what I thought the faculty should be doing in terms of outside activities.

[REDACTED] Privileged

[REDACTED] Privileged

risk.

But first week was a gray hair week — a lot of

Edmondson:

[REDACTED] Privileged

[REDACTED] Privileged

[REDACTED] Ben wanted to call it his research. Intimately tied to his work... but there was payment, there was a contract guiding the work.

Reinhardt: How do you know the client was one he had worked for before?

[REDACTED] Disclosure issue — correspondence with client, series of emails of a contractual nature. But never a signed document, which the policy requires.

Policy says two things: at the end of the day you should be guided by the interested reader test. Would they want to know that you had a paid relationship related to this work product? If you're paid by Microsoft to trash Google? Second part says an OA that is directly related to a work product — if you are working for a firm or competitor, anyone who would have an economic interest — you need to disclose.

Went through two years of permutations around the policy, and need case law to build up. But would an interested reader want to know that Ben was paid by a hedge fund to do this work? I think so.

Five quick statements:

Ben is an exceptionally smart, incredibly talented guy who has skills this School could use. In awe of his energy and talents. But:

> he follows the letter, not the spirit, of the law, and that's a problem for our faculty – we will never get the letter of the law down perfectly for our faculty. Parses words narrowly and in his favor. Want a faculty that has a culture of protecting the institution ahead of personal gain, and even to the detriment of their income. Need to protect the brand and not live by the exact wording of something. He will pick up on the "we agreed to abide by" statement of community values – and say that he never agreed to abide by them. Sometimes that is very valuable. His legal background, and mind.

> don't think he protects the institution the way I'd like my colleagues to. Comment on chronology is indicative; Chinese restaurant is another example. Thinking, before you act, that you are part of a group. Concern about culture, spirit, brand – not sure that gets better after tenure.

> Blinkx – did not make an appropriate disclosure, willingly amended (but still some concerns). Made a speech in April – with warnings – and not clear that he made appropriate disclosures there. Generally minimalist. Spent hours on this, and received a declaration he would be most careful next time.

> don't believe his current disclosures are consistent with our policy. Current Google – advises clients adverse to Google. Don't think he goes far enough... doesn't have to be 100 words, but this feels minimalist.

Worked with him carefully on this, and now this is level of disclosure.

> his general disclosure on his blog – blanket or work product – it has to be work product, and it has to be specific. Blanket doesn't go far enough – you need to tell the reader all the details. Links, click-throughs, and generalities not in the spirit of what we want to achieve. Same with Blinkx update in April. He's smart enough to know what that policy means – but he is reading his disclosure in a way to say it is consistent, but he's smart enough to know that it isn't.

> don't think he is consistent with our policies on annual disclosure (not privy to). Always understood that you describe clients and days – but he claims it is too tedious to fill out the forms. He doesn't have a problem with tedious. Didn't feel like he was living in the spirit of the social contract around annual reporting.

Schlesinger: Was there any point in the process where we decided, as an institution, that we were "done" with the Blinkx issue?

██████████ A lot of activity in February, March, and some in April. Talk: I wasn't paid to do any of the slides in this deck. That misses the point – it's whether there was any related work for hire. He's a brilliant guy – if he could harness his energy he would be great, but he's just dangerous. Hate saying that – we need people with his skill set.

Started his presentation that he's the sheriff of the internet – we don't give people tenure for that.

Sorry to sound frustrated – a lot of time spent here. Greek tragedy – such talent, and find it so upsetting that we can't harness this in a productive way.

If you read the FT – all saying, "what is Harvard doing?" Broad brush – that's why the spirit of the policy is so important. We need people to think about whether what they do could damage the School, their colleagues, and then the individual third.

Reinhardt: Restaurant situation shows the futility of trying to develop a contract to dictate all the faculty's activities – no way to anticipate that one.

██████████ COI/OA group debated this – should there be an articulation of philosophy, of culture, of aspirations of the faculty? We need people who don't need to be forced into the culture, but can instinctively and naturally see the value of it.

Edmondson: If you study the internet, you should know how things go viral.

██████████ One last issue around compliance – Privacy Puzzles at Google post in February 2013 with no disclosures whatsoever.

People may see the policy differently, but it's relatively clear.

Schlesinger: Reality, you seem to be saying, is that we look at the behavior post February I have no reason to legitimately conclude there has been learning of the kind we would be concerned about relative to putting the community at risk.

██████████ He has created a finely defined world where he is always in the right. But we don't live there.

Crispi: Do you think it's a matter of his tone, understanding of context is so different that we should create an allowance for it?

██████████ Don't think we should give an allowance – dangerous behavior that injures us all, and hard to justify that when there's no learning and repeated issues from the micro to the macro. The market manipulation charge, had that come back to HBS, would have cost the University hundreds of millions. It's like a duty to inform – we know this risk exists.

Schlesinger: In looking at Ben's blog, would say there has been very little learning about the issues that put the community at risk.

Don't know quite how to think about the world Ben lives in. He sees the unique and clever ways – high energy. But can't separate it from what it comes with – that's the Greek tragedy. So much that makes him so powerful, but he's a zealot, and on a mission to save the world. And on his crusade, screw you if he has to step on a few things along the way. Everyone wants to be remembered, and do good, and have impact. But he does good *and* bad, and he doesn't know when he's putting us at risk.

Crispi: Wondering about where the allowance ends.

Plenty of quirky people here, and we cut lots of people some slack. But they exist within the guidelines, and they don't pose us risk.

Edmondson: He believes he isn't benefitting – that consulting rate so low as to be immaterial.

Yes, but the companies hire him again.

Separate question here about conflict of commitment – whether what he's doing is more than the 50 days allocated to the faculty.

Edmondson: Tragic, or a poor fit with an institution that is so about our place in the world? We are not a place of "come in and do your thing." HBS is different.

When you're at HBS, even when you whisper, you're speaking through a megaphone. The obligation is ten times more important with this platform.

Was hugely grateful that we had the COI policy when the Blinkx issue arose – nice to have something in place. Big question was whether this was research (inside) or consulting (outside).

Schlesinger: He seems to be changing his own definition over time.

It is his research – but when you have this intersection with consulting, you have to be triply careful.

Schlesinger: Can't have a strict constructionist view when you're in this territory.

(end of

Additional meetings/interviews

Responsive to [REDACTED] request – a few other senior faculty from NOM unit ([REDACTED])

Remaining questions: how does committee view its work? Traditional strategy of fact-finding and conclusions may end up where [REDACTED] said it will... more unintentional noise.

Observation: don't know that Ben will ever make enough progress to warrant an appointment as a senior faculty member, but uncomfortable with us getting into an assessment of the psychodynamics of his learning.

Has engineered significant risk for the institution, and we are being asked to decide what that risk profile is going forward. Quite comfortable, now, saying that extremely uncomfortable putting his case forward to the AC as a "less risky" proposition.

> he has been completely protected and nurtured by a unit that has not exposed him to the rest of the institution ("it's just Ben" "we know Ben"). Ben has been under wraps – transition from being an Associate to Full implies an institution-wide responsibility that can't be satisfied by the unit. Or by the report. FRB can't take the place of this.

> new learning today – set of inconsistencies between the learning presented in his statement and the behavior that transcends the Blinkx issue. This is not someone who's being careful.

If he didn't do anything for 5 years, would that be enough?

> Can we get an alignment of people oriented toward saying that the AC process is going to be a very difficult process for reasons that will not be helpful to Ben's career... and that we need to put a structure of resources in place that he would find onerous and leave.

Will he be expecting a report that he can parse and repudiate? In ways that he will view as helpful to him and his career?

Amy: One of the issues here is that it isn't actually collegiality -- everyone loves him because he gets them free stuff. We're saying that he poses a risk to the institution.

Forest: Expectation that we can do this in the same time frame as the AC may not be the least bit realistic – if there is an FRB procedure, it will have to start earlier, or the person by definition has to be delayed. Remedy may need to be postponement – made more difficult by his isolation in unit where people are telling him he is great.

Angela: Conversation with [REDACTED] reinforced sense of Ben being isolated, and treated with kid gloves, within his unit.

Schlesinger: Low level of awareness of what constitutes acceptable behavior.

Sense that there is a lot of work we need to do – fact finder to engage; it's to be dotted and t's to be crossed. Would prefer not to go down that path.

Develop full Blinkx packet

Don't want [REDACTED] harmed, but figure out how to incorporate some of those perspectives.

Ask Ben Edelman to meet with the group

Privileged

> Should there be a conversation with Paul? Could there be evidence of learning in the next two years that would change our assessment?

Unit has not intervened much at all. [REDACTED] intervention was pretty significant.

Report: reflects on incidents, perspectives, assessment that there hasn't been learning and the risk remains high absent significant interventions.

Should the recommendation to the dean recommend that he be concerned about risk moving forward?

Should the recommendation say that individuals outside the unit serve as an advisory group to Ben moving forward, and to be more aggressive about feedback and coaching than has been done in the past? There's no structure that exists, so it would need to be created.

Before or after faculty meeting

Wednesday 9th – 1-3:30 on Wednesday, and afterwards as well (5-7pm) –

Privileged

[REDACTED] and then some time for the group

16th at 4:30pm – let Ben know he needs to be there

9 September -- [REDACTED] (by phone)

Amy: Interested on aspects of his conduct as a colleague in the unit; 2 more salient events -- Blinkx and Chinese restaurant -- that were in the headlines. Any thoughts on those events or on Ben as a colleague would help us.

Len: Engaging with a sample of senior leadership in the unit -- observations on the 8 years.

[REDACTED] Know next to nothing about the Blinkx case; Guhan and Max were going to look into it more, but on that one, what I know is third hand. Know there are different views on it. Spoke to them individually afterwards -- clear that we collectively didn't have much to make the basis of a judgment. Max thought it was a misdemeanor, and Guhan a misdemeanor plus.

A sense of Ben: [REDACTED] -- Ben is one of these peculiar people who is fiercely bright, with a very strong sense of right and wrong. When he senses wrong in the world it is hard for him not to go after it. I don't sense vindictiveness around it. I talk to him a fair bit -- in the corridors, etc. Sympathetic ear on tech issues -- he is enormously constructive on the substance of these issues. Process is another matter -- recent screen projector issue -- for a lot of people who have a lot of slides it would cause a problem. Ben got into this characteristically by measuring all the classrooms. Brian and I told him he doesn't need to piss more people off. It was clear that Steve and others were well-minded and trying to do the right thing. Ben had enormously helpful input, but came across as hard and uncompromising. Acted as an oil on the waters kind of way. Think it was quite characteristic. I like Ben, but he is an acquired taste. When he goes after something he is kind of relentless -- analyzing something, coming up with a lot of options, and then pushing them in ways that are counterproductive. That was true in the restaurant case -- saw it and winced. Got 100 emails from people around the world asking who is this creep. At the end of the day it wasn't about him or his individual bill, but rather the systematic over charging over a number of years and many clients. Ben was tone deaf in understanding how to manage this. Searing enough for him personally -- he was genuinely chastened (and should have been) that the tone was wrong, and the whole thing was inappropriate -- even if there were a few hundred thousand dollars involved. I value him because he's smart in two or three areas that are unusual: first class economist, knows the internet and strategy in a way that's unusual, and then the online world -- he has a deep and technologically informed understanding. This is an unusual combination and I value it. It comes across sometimes in a wierdo way -- I understand you're traveling to Australia and I can get you a ticket for 1/3 the price. Probably true, but the time spent to do this -- I don't want to spend the time on a cheaper ticket.

Generally benign -- I don't know if he's cut corners on things. When I read his personal statement, and about his uncovering shady characteristics and activities that are later validated by outside parties.

Sense that he needs adult supervision but is trainable. Feel a bit like the patron saint of lost causes, and this may be one of those.

Forest: Could you describe on the mentorship he's received over the past 8 years? Who helps him be more effective in the unit and the School, besides you? It sounds like you've done a lot.

Al Roth was quite central when Ben was here; think they overlapped for 4 years or so, and he and Al interacted a lot. Clear in terms of intellect, mutual respect – not sure they wrote together, but would have described Al as a strong, positive, ongoing influence on Ben. To some extent Max has done a little bit, and I know he interacts with Jerry Green. My mentorship – I often talk to him about intellectual questions that arise, but spent more time talking with him about Negotiations when I was course head. He had aspects of the course figured out in spades; less sensitivity to process. Don't think he taught this for more than 2 or 3 years – it wasn't an unhappy experience, and it quite significantly opened his eyes to negotiation as being more than something that just happens in the underlying structure. Don't think Kathleen, Guhan, not Matthew Rabin – not sense he's getting senior mentorship. I'm more of a social mentor.

Sense that he worked a fair amount with Peter Coles – they did a course together. Has worked with Mike Luca. See him actively engage with others, but not clear if it's mentorship. Others may have a fuller view.

Angela: Do you have evidence that Ben has learned or grown from the incidents that have happened thus far?

Short answer is yes. Restaurant incident registered – not just political correctness, but something very real in how you approach issues (context, etc.). Had some long conversations with him and clear that he was giving this real thought – "that clobbered me." Projector thing was pretty positive – know he was exercised about it, and I was sympathetic to it (teach across the river a fair bit). There have been some incidents where I've had to adapt to the new format. Would like to think you could turn it over to an assistant, or run it through a program – but it takes a while to format and fix all these. A great deal of work involved. Ben had a more elaborate analysis from the point of students in the sky deck and two screens on the side and various options. When he started taking this on as an issue, and he was coming up for promotion, and Brian suggested that he let that sleeping dog lie. Clear that he felt strongly about it. Understood that going ahead will marginally degrade the student experience over many years, and that it would involve work for the faculty. But having heard advice, even knowing that it might not be the best solution, decided to let it go. He kept coming back to me – a bit of time now could save a lot of time later – so I did. Became the primary spokesperson in the meeting with TSS, and Felix and Lynda were there. Ended up speaking on behalf of what Ben had done but turning to him a fair amount. He realized that I might be more effective.

It was at a time when he'd been severely warned against wrecking relationships or being too much of a pain – but think he approached it genuinely seriously.

Lots of other areas where he takes on things that he thinks are wrong. Can't tell whether those are in a prosecutorial spirit or what.

Forest: Projector meeting – struck by "civil and polite."

[REDACTED] Don't know what these usually are like. Do know Ben has a lot of ideas – the participation tracker, for example – decided just to write one himself. Not sure if there was actual animosity. But know he thinks there are multiple ways where he thinks things can be done better, and he gets nowhere. Not sure if it's bureaucratic inertia or just that he annoys people. Sense that other meetings aren't productive – but sense this one was, and that it was handled in a relatively positive way.

Get the sense that getting an email from Ben as an IT person is not a joy – he knows a lot more than they do.

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Len: How did the projector issue ultimately end?

Angela: There was a meeting, mainly to get everyone on the same page. Sense that he was missing the picture – 35 classrooms.

Len: First example of senior mentorship.

* * * * *

[REDACTED]

Amy: Would welcome perspective on collegueship in unit, and issues that have garnered attention in the press.

[REDACTED] As a colleague in the unit, he's unsurpassed – helpful. Perspective as a junior and a senior faculty member. Never worked on a project together – not a coauthor. But always very friendly, open door. Francesca Gino is the other personal like this – always happy to be helpful. No issues personally with tone; haven't observed anything. No difference talking to junior colleagues or staff. As a unit member, easily does his share of work and the non-contractual things we do for one another. A bit a-emotional, I guess, but doesn't bother me. Different level of emotionality.

When it comes to the other issues – the Chinese restaurant I was well aware of as it happened real time. Blinkx I wasn't aware of at the time.

On the Chinese one... my sense of Ben – as I look at all the things he has done wrong, I have never had reason to doubt his intention. No one walks around saying they are going to be mean... but it's not self-oriented intention. Restaurant was exemplar of situation where Ben doesn't need a few extra dollars, and he's not stingy. Money wasn't the issue. But when he gets into the mode of "this isn't right" – I've never seen him be animated about things for him, but he gets very animated when he sees something going wrong.

Example today: One of our newest hires has a visual health issue. Talking to her today, mentioned resources. Ben stopped by and was able to find her some extra doc cameras from the floor and set them up so she could read her stuff better. Not at all surprising to me.

How he goes about it... starts out in kind of formal letter of complaint manner. His persistence wasn't surprising. Elements of tone and approach. He wasn't trying to be an obnoxious HBS professor – not tossing that around, though clearly using his expertise. First person to say this was my wife – don't see what's wrong, so annoying when this happens. Can understand people who say this was bullying. But people who know him don't see it this way – maybe tied to his a-emotional, EQ not as high. I think he gets that now, and could have gotten that sooner. I've had conversations with him... didn't know about Blinkx or the other issues or whether he was thinking about them. But this – sometimes it takes a punch in the face. When you're disagreeing with someone, what you're saying and how you're saying it are confusing. Here, hundreds of people giving him a better signal. But have had sense through conversations over past few months that he gets it – not just generally, but intellectually. Doesn't think he was wrong, but would approach it in a very different way, from the initial point.

Blinkx – looked at situation, you probably know more of the facts. Ben does two things often, and they got intertwined – but not in a way that seems egregious. One thing is that people pay him for his advice. And he exposes bad behavior – academically, for practitioners, as his cases. In this case, these two things got linked together... not that by exposing he gets money, but that the same set of information he exposed was used by these companies. You'd need a bit of an elaborate scheme to say that he did it with negative intent.

Amy: Positive – exposing Blinkx, or enabling a client to gain.

██████ Bad versions – one would be positive for the client – took a step that would help them. That seems elaborate. The other would be that he'd build a reputation for doing work and exposing people and other people would come to him to do that work. Don't think that's the case – he just sees something bad and goes after it. But it's not driven by personal gain. Remember year 1, walking into his office, with a sheet on his white board. Didn't know most of the words on it. One of them said "coupons" and he said "these are companies that are engaging in deceptive practices and defrauding consumers – and these are the ones I've put out of business." The only thing I would tie together here with the restaurant is that I don't see any bad intention. The part about writing about bad stuff, and exposing the restaurant, was "this is bad stuff and we should expose it."

Apart from the tone, didn't see the emails as egregious as others did, though I can see how others did. If you set that aside, I think what he tries to do is awesome – his heart is in the right place, his skills are being used to create value. He just does it all the time. We could tell him not to – don't think he would agree. But don't think that would be net value creating. Would be if he did it more sensitively. He just tries to do good.

If he gets promoted and needs to be given feedback, think that would be an appropriate conversation to continue having.

Forest: Chinese restaurant – sense that he has learned from it – over the past month?

[REDACTED] No, over the past few months. Haven't been around much in the last month. Have, more recently, asked him "how are you doing" the last few times I've seen him. The first few weeks were crazy; he was getting death threats.

* * * * *

Observations:

Len: They all have the same core story. But surprised by the range of perspective. With [REDACTED] for example, wouldn't walk away with the sense that he was deeply involved in the restaurant issue.

Forest: Not consistent – seems like Amy's letter has triggered another round of conversations. [REDACTED] did say the last month.

Len: Confused by the Max and Guhan investigation of Blinkx – not clear what the follow-up was. Would assume the senior faculty spend time talking about the strategy for cases coming up – not clear that is obvious here.

Edmondson: Not clear that investigation is scholarly work.

Angela: And the "good colleague" isn't research or academically based; it's administrative – doc camera, cheap airline ticket. Seems like varying levels of intervention after something happens – different forms.

Amy: And a lot.

Angela: But it never seems to translate from one situation to the next – and makes you wonder what is next.

Len: Goes back to earlier – if we're doing counseling at the point of lifetime employment, it's too late.

Forest: It's a really idiosyncratic unit – divorced physically, no RC course. They are super isolated, and he's isolated within that bubble.

Amy: Exposes bad behavior and it happens to coincide with payment – he could expose short selling.

Forest: Fundamental idea of negotiation that two well-intentioned people can get together; same implicit assumption in the case method (if someone disagrees she is not intellectually inadequate or morally bankrupt).

Len: Strongly developed sense of right and wrong; dog with a bone – doesn't let go. If he tromps on social norms, organizational norms, or even institutional norms – violations at three levels with three different consequences.

Watched the YouTube video – it wasn't quite as bad as what [REDACTED] says. He didn't define himself as the sheriff of the internet – put up a picture. Did say quite clearly that he doesn't get promoted on this kind of work, and the School allows him to do it on the side. Went through Blinkx slides, with Blinkx representatives in the audience – not sure why he'd do this. Did say "lots of people hire me for lots of reasons, and I don't have to know – why they hire me is not my business."

Excerpting that one sentence – we have a fundamental disagreement about what the School allows you to do, and the risk it puts the School at.

(1) Know that the issue has not been resolved/fixed; don't know what issues the future will bring. Can highlight the fact there is a risk.

(2) Can highlight that he has been isolated in a unit – tenure gives him an institutional stage. Consequences of shifting from a local to a more cosmopolitan stage in the School.

(3) We can't provide clarity or certainty, or predict in a meaningful way, whether he will behave. But clear that it will require a powerful intervention and not sure what that is.

(4) Differences of perspective around disclosure and work. Do we have a complete difference of opinion about your responsibilities as a faculty member to disclose to the dean, and to the readers of your work? Sounds like there is a debate.

(5) Parsing of words – much else has been an embarrassment, but this was a true liability for the School. Seems obvious that the short sellers played in December, not January – but don't know what the report was, when it was provided. So have to rely entirely on Ben's assertions that the client acted with integrity.

Forest: But he said nothing about the client and beforehand.

Amy: "I don't have to know" – the best way to not get exposed by him is to hire him.

Angela: White board with names, personal statement – the fact that he's intentionally going after businesses.

Len: [REDACTED] after meeting last week – marvelous that Ben is the sheriff of the internet. But that's not an academic role, and not something he should get tenure for. A role that he chooses on his own – but we usually have regulators and elected officials who play that role. We can't tell him not to play sheriff. But should we be evaluating this as part of the promotion process?

Armchair predictions.

Amy: Plus our sense of the two events -- they're in the past now. Yes he used his own email address, but as someone who studies the internet, couldn't he have anticipated that these would go viral?

Len: Went to his benedelman.org site and spent a fair amount of time there. Looked at all of the Blinkx material -- it goes through the summer. Goes on and on. I just don't think like him -- if he's counseled that this is a hot potato, wouldn't you back down? Why put all this stuff out there?

Blinkx hired an expert and concluded that the findings were inappropriate. In the video, Ben goes through this and says the expert couldn't find it because he didn't use the right technology. You need to demonstrate empirically on a portfolio of computers. Stock has continued to drop. Whole event was juvenile -- organizer called out the Blinkx attendees, asked if they wanted better seats or to respond.

Reasonable to believe Ben is right. Whether it's intentional is unclear.

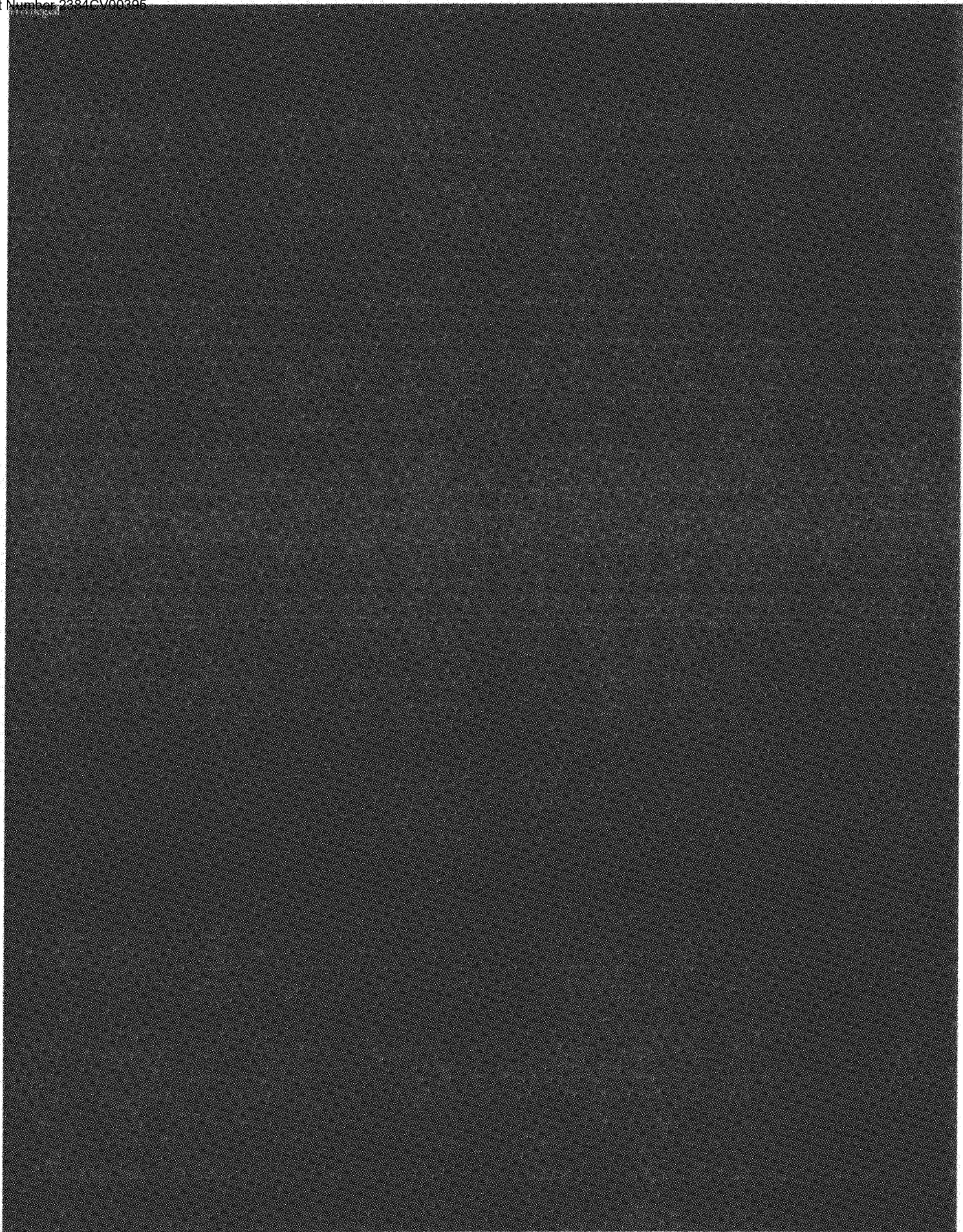
Angela: Can't see the future, but we've seen a pattern, and I have no evidence of an "aha" moment.

Len: Do we have a coach at his side every time he sees an injustice?

Angela: Example from this morning -- where did the cameras come from? If in the dog house, is this what you should do?

Len: Low EQ, and whatever counsel he's gotten hasn't stemmed the problem. What I'm most concerned about is the issues of disclosure and outside activities.

Forest: Don't want to talk about EQ, but lots else we can cover and talk about.

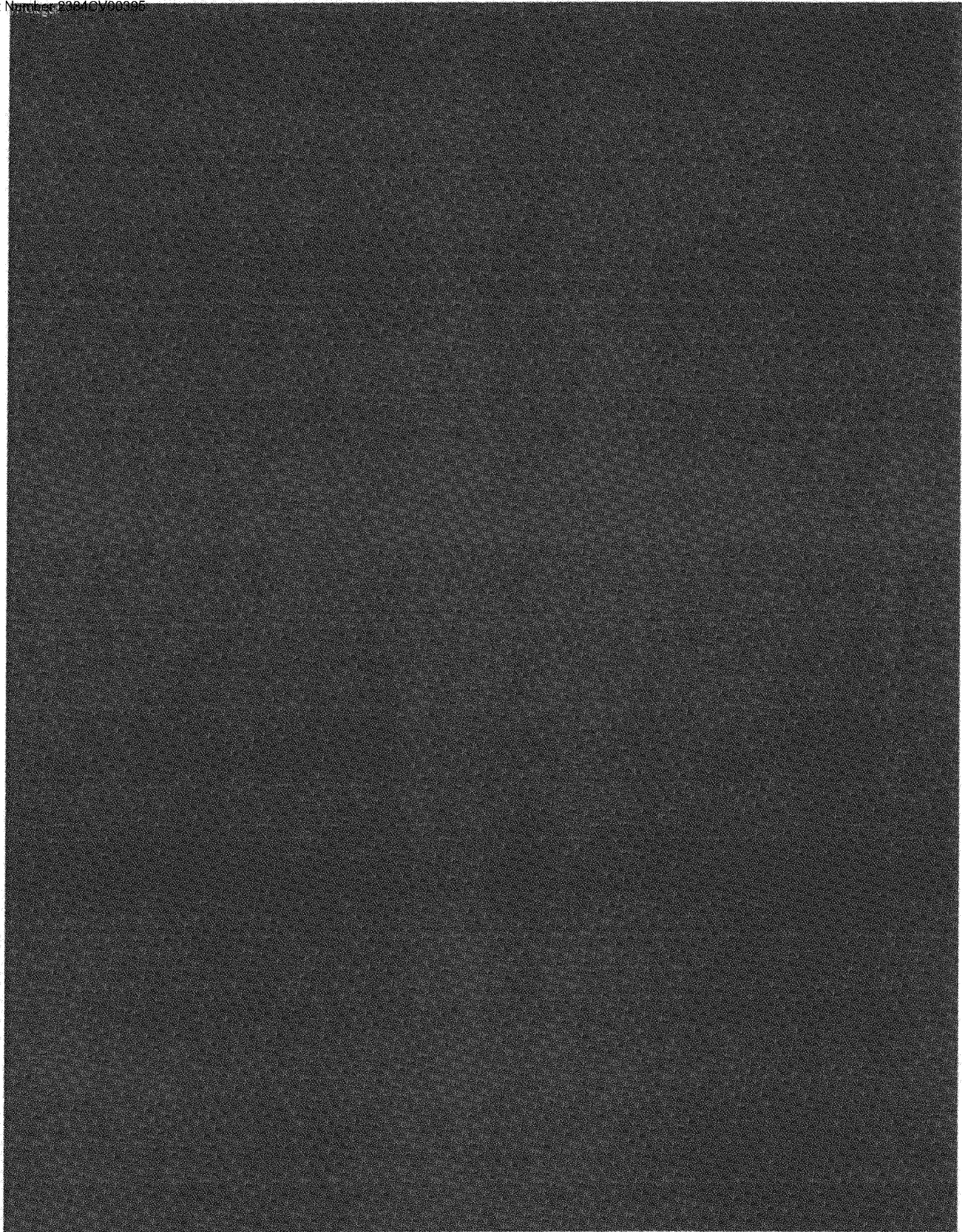


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FRB with [REDACTED] 9/11

Overall, incredibly proud to be Ben's colleague. Can think of no one like him other than Al Roth as comparable. Most generous colleague. Principled. Bluntly honest, and I appreciate blunt honesty. He has never in my experience been anything but supportive and positive as a colleague. I find him a fantastic colleague on intellectual dimensions, personal dimensions, and proud to associate my name with him.

In terms of recent events: He is fiercely ethical and determined to use his skills and his research – which he understands are a unique combination – to make specifically online markets more fair and more transparent. He makes a hell of a lot of money doing that. He has been unique in the extent to which he has been able to shape the online marketplace and make it safer for us to buy things, and even to do an internet search. He has done a lot of positive things, with very little attention around it. Two more recent events with negative publicity. Brian and Guhan and Max were closer.

Blinkx: Works with lots of clients where he helps them look at the online marketplace. He has a standard agreement that he is able to disclose his findings and publish his result. In terms of the hired gun language, you can't expect that you will hire him and he'll put something on his web site. But when he finds something, he retains the right to publish it. That's what he did with Blinkx, and that's the disclosure he included on his publication. The initial disclosure looked good to me, and the additional one went even further. He couldn't disclose the company name because he had a confidentiality agreement. I look at it that the world is a better place because he did what he did.

The Sichuan Garden one: small business owner who is ripping everyone off who orders online. The small business owner deceptively released selective emails, and consistently refused to do what Ben asked him to do. The guy was obviously smart – it takes a lot of guts to expose myself as a liar, and my business as ripping off customers, and the public is going to side with me. The only way he was able to do that was because Ben was a Harvard professor. Ben was not using his Harvard connection. Was this worth anyone's time? Maybe not; we know people who have ordered from this restaurant who saw one price on the menu and were charged another and did nothing. But this is what Ben does. There was lots that was not included in the public dialogue – that Ben had written to the Brookline officials to see if anything could be done. Should Ben have used the lawyerly language that he did? Probably not. But he exposed wrongdoing. I looked at it that night, Brian called me, and I thought "Oh, Ben, why bother?" People who thought he cared about a dollar as opposed to he's doing it for a reason. We've talked a lot about this in the subsequent days – some advice to him to only take on the big guys because it makes you look like a bully if you take on the little guys because you're so strong. And his response was "then what? are the little guys able to do whatever they want because the dollars aren't big enough?" This is what he does, and it's a reasonable perspective.

What ties both of these together: These are situations in which there is no question as to who was doing the wrongdoing. And yet the backlash is against Ben for doing it in clumsy ways.

Let me tie this back to the overall: I usually tell junior faculty to say no to more things. Ben says yes to everything, and the most minute things – like the screens in the classroom. It doesn't mean that they are unimportant, it's just that we don't have the capacity to deal with them. Ben seems to have the capacity, and to have endless capacity to deal with everything that he sees as problematic in the world.

Mentoring – he's somewhat unique. Let me mention the other tie-in here: "this is like the other case NOM has had." There couldn't be fewer similarities. In that case, there was dishonesty and cruelty and no one working closely would defend the behavior. Ben is the opposite – the more you work with him, the more you like and want to continue to work with him. He's also bizarrely coachable. If I were as smart and competent as he is I might not take advice on how to behave. But he understands that he doesn't think the way others think. And he understands that others see him in ways he is blind to. He just accepts it. He's not pliable, and not going to change his ways or stop doing what he does. But in terms of the style with which he accomplishes what he accomplishes, he's really open to it.

I have found him really irritating at times. He's sat down at the end of doctoral meetings and told me all the things that are wrong with the handouts. Is he irritating, yes. Is he a wonderful, honest, and principled colleague, yes.

Mentoring and working with junior faculty: It's a little strange because he's not necessarily more junior than the people he mentors. He worked pretty closely with Peter Cole and tried very hard to coach him on cases and papers; Peter had other things he wanted to do with his life, and we lost him. He didn't really want to be an academic. Peter wasn't junior to Ben, but Ben was mentoring him. He's working with Mike Luca and will be co-teaching the course. He will read your papers and give you feedback. He has worked with me on various sets of analysis – that is not my area of expertise and he's been great with that. He's been fantastic with all of his colleagues, junior or senior. He doesn't work as closely with the psychologist types in our group – like Amy – as he does with the economists. He helps with everything – he's been great working with Doctoral students. There's a doctoral student who basically lives in the conference room at the end of the hall. The kind of person that you can rely on.

Any networks in the University or in other parts of the institution? Don't know – Al still thinks of himself as a mentor to Ben, and there are some other major economists with whom he exchanges papers – every once in a while he'll come in and read a comment he's received.

Feel as though there was a change after these incidents? He learned a lot – he completely acknowledged that he should have not engaged with this guy directly in the way that he did. He completely learned from that, and realizes he was played and wasn't aware at the time that he was being played. He gets that he doesn't see social signals. He definitely learned in that sense. Is he a changed person? No. One of the pieces of counsel we gave him originally was not to pick up on little guys. He quite thoughtfully said that wouldn't be the right outcome, and I ended up agreeing with him.

Does he listen, does he learn, does he want to make sure that he doesn't make these mistakes, or doesn't make mistakes period, absolutely. I don't think he's a changed person. He very much

wants to make sure there isn't fraud or any kind of deceitful activity going on online, and he wants to make sure he does things right and is perceived as doing things right. He gets that you can't have public PR campaigns against you and still be fully effective. But he won't stop trying to do what he's doing.

Totally bummed that it came to this – I'm a huge fan, and I fully support him. But glad to see you're putting in the time and effort to get it right.

(end of call)

Amy: Social psychologist so I should know this, but I still am surprised... what people believe as facts that are not facts. It's not a crime, or fraud, to have the wrong prices on a menu.

Schlesinger: If someone as smart as Ben can be played by a Chinese restaurateur, who knows who else will try to play him.

Reinhardt: Staggers me that he thinks the lesson is, "I got bagged." And all the people around you are telling you "You got bagged."

Schlesinger: One theme that emerges out of the people who have counseled him is that he's an acquired taste – you have to know him over time before you can appreciate him. He doesn't know how to be anything other than blunt or honest.

Amy: Blinkx may have been engaged in fraudulent behavior. But short sellers were too. He is very precise about his language – but I don't know when his first information was first given to the client (December into January). [REDACTED] says the short positions were set up in December. And I'm not sure I want to investigate at that level of detail. But the question isn't whether they did anything at the time of publication. It's when they got information, and what they did with it.

Angela: Alignment within unit among the senior faculty around him – can smell a problem ahead.

Amy: Message in talk – this isn't my research, and I'm able to do it on the side.

Len: [REDACTED] was the first to say he makes a lot of money doing what he does.

Amy: Our concern is not how he treats his colleagues. It's more around exposure.

Forest: We don't object to him doing a host of things. We do object to the lack of transparency – we don't know if anything bad happened on that side.

Len: I am incredulous that someone who is pushing for transparency on everything else in the world is so opaque here.

Amy: And it's his agreement, not theirs.

Len: So we are left to conclude that this is a good guy, who is as honest as the day is long, so don't worry.

Potential questions: topic areas for conversation.

Page 1 line 3 – favorable developments in my outside activities – want to understand how he defines an outside activity.

Next paragraph: made me a better person and reduced the likelihood of something like this happening again – what have you learned, and what specifically have you done to reduce the likelihood of something happening?

Incidents and issues were not directly related to research – confused by characterization of work in video, and what constitutes the totality. What is work, teaching responsibilities, outside activities.

Last paragraph: I help advertisers uncover schemes that drain their marketing budgets.

Motivated by paving the way for them to pass on savings to consumers. How are you making that leap – no causal logic. Don't know if they do.

Page 2 – help the world – how can you say that when you are explicit about not understanding the motivations of your clients, and not needing to know? Huge disconnect between characterization of God's work but holding the people he's doing the work for exempt from disclosure.

Dealing with "the facts" six lines down – facts firmly contradict these conclusions... gave critics needless support. Help me understand how you have learned from this and how you offset the perception that you are a hired gun moving forward.

December to January when asked to prepare an update and finds that it all is quite active – walk through time line and chronology – when did he find it out, when did he disclose to client.

Page 3, 3rd paragraph – literally inaccurate – client paid for Edelman's research, not his article; these could not be disaggregated.

Last line – clients here could not have known what I would find or whether I would choose to write about it publicly – how did you know? If you were duped by a Chinese restaurant owner... Here are two clients who do know, it is tied to what they want to do in the market, and they're looking for a confirmation. It's short money to hire Ben. They have to assume he'll write about it – he has in the past.

Disclosure – want to know when. Additional disclosure – "to my knowledge" is because you didn't ask.

Page 4 – taken opportunity to consult more often with HBS officials – who, how often, what. Why more hesitant? What does that mean?

Page 5 – my suspicions were piqued – wanted to keep it that way – how do you know? We are completely reliant on his analysis.

Curious about what he has learned.

Page 6 – role with the School – if I have acted in ways to make others feel as though I didn't respect them, I am sorry. Is it your conclusion based on interactions with others at the School that there are no issues? That everything else is wonderful? There are lots of emails asking him to stand back.

Last paragraph (entire thing): different from colleagues. How do we think about that relative to uniform responsibilities as a member of the community? I'm different.

> exact quote from video and from capitalism piece.

Angela: Inclination is to let Ben take the floor and see what he says. Can we avoid the ferocious game of tennis?

Forest: Ask him to provide additional context. What have you learned? Why should we, who don't know you, think things have changed?

Amy: Videotape doesn't inspire a lot of confidence – the arrogance, and put off by the host, too.

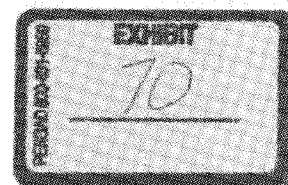
Forest: Others who are enablers – [REDACTED] too.

Amy: Mistaking bluntness for honesty. Not the same.

Forest: No sense that he learned anything in looking at the video.

Angela: Assurances or evidence that he has changed. What specific things has he done, can he do, will he do, to decrease the risk to the University? No examples of action. Keeps repeating "trust me, I've changed."

ATTACHMENT AA



November 17, 2017

Describe the process.

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

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

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

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

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

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

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

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

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

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

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

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

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

Microsoft/Google

AA

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

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

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

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

“certitude”

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

Len 45-50 minutes with the standing committee

3 – 4 reactions.

Varying degrees of preparation.

Three themes

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

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

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

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

We slaved over the last paragraph.

Big trap. No ethical judgement.

ATTACHMENT BB

From: Edelman, Benjamin
Sent: Wednesday, May 16, 2018 1:46 PM EDT
To: Healy, Paul
CC: Mucciarone, Rae; Nohria, Nitin
Subject: Ben / next steps

Paul,

Thanks for thinking about this and for rereading the comments. I appreciate the re-review you performed but, as you know, that addresses only a portion of the concern I raised. On my mind:

1. A flawed report would likely influence discussions and votes in ways not apparent on the comment sheets. Rereading the comment sheets is an easy place to begin, but arguably only the beginning of righting the P&P discrepancies.
2. "A significant majority of those who voted against [my] case" is not obviously the right standard for the question at hand. If just half a dozen votes flipped from no to yes, I'd be above 2/3 yes's, and Nitin's stated basis for decision would no longer apply.
3. Your message indicates considering only one of the two P&P discrepancies I reported. I'm convinced that the P&P's prohibition on fishing expeditions, as embodied in the commitment to state "the allegation" at the outset, is genuine and important, and plainly wasn't followed. I know you interpret that phrase differently. Given the careful parsing of every word of the green book, I am comfortable with a similar approach to P&P. Moreover, any ambiguity in P&P should be interpreted in favor of the subject of an FRB investigation.
4. I remain troubled by errors the FRB didn't correct, even when specifically brought to their attention. Recall the FRB's 2015 internal allegations which I thoroughly debunked in my 2015 reply, to the satisfaction of the Standing Committee. Yet those allegations were presented to the Promotions Committee as if they were well-founded. I have similar concerns about certain of the 2017 material as discussed in my October 5, 2017 reply (especially page 3). Nothing in P&P explicitly obliges FRB to correct errors, and maybe there's some way they might argue these weren't errors but rather different interpretations. I think they have a real uphill battle in these areas given the evidence.

My sense remains that the FRB procedural errors were plausibly pivotal in that a proper FRB, complying with P&P in the areas I raised, would plausibly have produced a report that yielded quite a few more positive votes, bringing me well above 2/3. Of course it's hard to prove what might have been. But I've thought about that too. You won't be surprised to hear that most dispute resolution systems need mechanisms for handling counterfactuals.

Your message doesn't suggest any further prospects for reevaluation within HBS. Nitin's message of April 24 offered the same bottom line. That's certainly the school's right, but the gravity of the situation – including my assessment of the seriousness of the P&P violations, and the close connection between the P&P violations and what most troubled me about the FRB treatment of my case – leaves me thinking about appropriate next steps. As you know, the university has a process for receiving complaints from faculty who allege mishandling of promotions cases. I plan to proceed accordingly in short order, broadly raising the concerns I conveyed to you and Nitin, separately, these past two months. If you see a reason why that's not proper, or any reason why I should delay, please let me know.

Thanks,

Ben

From: Healy, Paul
Sent: Tuesday, May 15, 2018 3:28 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Cc: Mucciarone, Rae <rmucciarone@hbs.edu>; Nohria, Nitin <nnohria@hbs.edu>
Subject: Re: FRB P&P "the allegation"

Ben,

Sorry about the delay in getting back to you. I had a trip to Melbourne that took me out of the office for a week.

I've given careful thought to our conversation and, at your suggestion, re-read the comments submitted at the time your case was reviewed. As you know, the confidentiality of our tenure process means that I cannot get into specifics with you. But, I can provide you with feedback that "respect for others," the category that seems to cover your questions related to the FRB process, was not mentioned as a concern by a significant majority of those who voted against your case.

I hope that you find this helpful.

Best

Paul

On May 15, 2018, at 9:40 AM, Edelman, Benjamin <bedelman@hbs.edu> wrote:

Paul,

Do you have a sense of when you'll be ready to discuss further? I'm mindful of the nearing end of the university's fiscal year and appointment year, which has potential bearing on when and how we proceed.

Thanks,

Ben

From: Healy, Paul
Sent: Saturday, April 28, 2018 2:19 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Subject: Re: FRB P&P "the allegation"

Ben:

Many thanks for the additional information. I will be away for the coming week but will look further into your concerns when I return.

P

On Apr 28, 2018, at 7:51 AM, Edelman, Benjamin <bedelman@hbs.edu> wrote:

Paul,

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Reflecting on our discussion, I realized that I didn't respond optimally to your remarks about the "the allegation" wording in P&P. You suggested that FRB's 2017 effort was intended to assess evidence of changed behavior since 2015. Indeed, the FRB's 2017 July 6, 2017 email to me framed the question that way (in the three bullet points of that email). For an inquiry framed as seeking evidence of changed behavior, almost anything could be in scope, as you pointed out. But reading the FRB P&P, I think it requires more specificity in the initial allegation and scope of review – not just that the FRB specify the general subject it is examining (such as evidence of changed behavior), but rather that the FRB's focus be a specific "the allegation" (calling for a listing, at the outset, of specific factual circumstances giving rise to concern, broadly as specified in the last paragraph of P&P page 1, and indeed as exemplified in the 2015 FRB initial message to me).

No doubt there are multiple ways to understand aspects of the P&P, and further complexity from the 2017 FRB continuing the 2015 review, which isn't exactly what the P&P contemplates. But I wanted to make sure I have fully articulated my assessment so you can consider it appropriately.

Thanks,

Ben

ATTACHMENT CC

From: Cunningham, Jean
Sent: Thursday, May 17, 2018 1:58 PM EDT
To: Ellen Berkman; Robert Iuliano
Subject: FW: Ben / next steps (confidential)

Privileged and Confidential



Thanks.

From: Paul Healy <phealy@hbs.edu>
Date: Wednesday, May 16, 2018 at 4:04 PM
To: Nitin Nohria <nnohria@hbs.edu>
Cc: Jean Cunningham <jcunningham@hbs.edu>
Subject: Fwd: Ben / next steps

Sounds like Ben is preparing to go to the next level.

P

Begin forwarded message:

From: "Edelman, Benjamin" <bedelman@hbs.edu>
Subject: Ben / next steps
Date: May 16, 2018 at 1:46:58 PM EDT
To: "Healy, Paul" <phealy@hbs.edu>
Cc: "Mucciarone, Rae" <rmucciarone@hbs.edu>, "Nohria, Nitin" <nnohria@hbs.edu>

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ATTACHMENT DD

From: Nohria, Nitin
Sent: Wednesday, October 25, 2017 2:45 PM EDT
To: Healy, Paul
CC: Cunningham, Jean; Mucciarone, Rae; Porciello, Valerie
Subject: Re: Follow Up

Paul,

Not Responsive



Best,

Nitin

On Oct 25, 2017, at 11:03 AM, Healy, Paul <phealy@hbs.edu> wrote:

Nitin, Jean, Rae and Valerie:

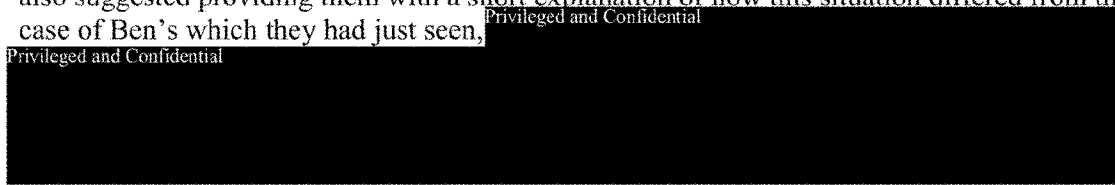
Not Responsive



Not Responsive

Ice
also suggested providing them with a short explanation of how this situation differed from the case of Ben's which they had just seen.

Privileged and Confidential



My sense is that he is more concerned about Ben Edelman's case, and making sure that we have handled the cases in an appropriate and defensible manner. He supports [REDACTED] case, and has deep reservations about Ben's case, and fears that there will a legal follow up if Ben does not get promoted and we do not have tight policies to defend ourselves.

Paul

Paul Healy
James R. Williston Professor of Business Administration
Senior Associate Dean of Faculty Development
Harvard Business School, Soldiers Field Road, Boston MA 02163
Ph: 617-495-1283