

CN

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, SS
Business Litigation Session

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

**AFFIDAVIT OF MARTIN F. MURPHY
IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SPOILATION SANCTIONS**

I, Martin F. Murphy, hereby depose and state under oath and upon personal knowledge:

1. I am one of the counsel of record for Defendant President and Fellows of Harvard College.
2. Attached as Exhibit 1 are true and accurate copies of pages from the transcript of Amy Edmondson, conducted on April 21, 2025.
3. Attached as Exhibit 2 is a true and accurate copy of the document bearing the beginning Bates number BGE013303.
4. Attached as Exhibit 3 is a true and accurate copy of the document bearing the beginning Bates number HBS0021516.
5. Attached as Exhibit 4 is a true and accurate copy of the document bearing the beginning Bates number HBS0021528.
6. Attached as Exhibit 5 is a true and accurate copy of the document bearing the beginning Bates number HBS0021535.
7. Attached as Exhibit 6 is a true and accurate copy of the Affidavit of Kaela M. Athay in support of Harvard's Opposition to Plaintiff's Motions for Spoliation Sanctions.

8. Attached as Exhibit 7 are true and accurate copies of pages from Harvard's Responses and Objections to Plaintiff's First Set of Interrogatories.

9. Attached as Exhibit 8 are true and accurate copies of Harvard's Responses and Objections to Plaintiff's First Set of Requests for Production.

10. Attached as Exhibit 9 is a true and accurate copy of the document bearing the beginning Bates number BGE012545.

11. Attached as Exhibit 10 is a true and accurate copy of the document bearing the beginning Bates number HBS0012944.

12. Attached as Exhibit 11 is a true and accurate copy of the document bearing the beginning Bates number HBS0018277.

13. Attached as Exhibit 12 are true and accurate copies of pages from the transcript of Benjamin Edelman, conducted on April 30, 2025.

14. Attached as Exhibit 13 is a true and accurate copy of the document bearing the beginning Bates number HBS0015836.

15. Attached as Exhibit 14 is a true and accurate copy of the document marked as Deposition Exhibit 45.

16. Attached as Exhibit 15 is a true and accurate copy of the document marked as Deposition Exhibit 64.

17. Attached as Exhibit 16 is a true and accurate copy of the document marked as Deposition Exhibit 73.

18. Attached as Exhibit 17 is a true and accurate copy of the document marked as Deposition Exhibit 79.

19. Attached as Exhibit 18 is a true and accurate copy of the document marked as Deposition Exhibit 96.

20. Attached as Exhibit 19 is a true and accurate copy of the document marked as Deposition Exhibit 121.

21. Attached as Exhibit 20 is a true and accurate copy of the document marked as Deposition Exhibit 130.

22. Attached as Exhibit 21 is a true and accurate copy of the document marked as Deposition Exhibit 157.

23. Attached as Exhibit 22 is a true and accurate copy of the document marked as Deposition Exhibit 182.

24. Attached as Exhibit 23 is a true and accurate copy of the document marked as Deposition Exhibit 183.

25. Attached as Exhibit 24 is a true and accurate copy of the document bearing the beginning Bates number HBS007588.

26. Attached as Exhibit 25 is a true and accurate copy of the document bearing the beginning Bates number HBS0007705.

27. Attached as Exhibit 26 is a true and accurate copy of the document bearing the beginning Bates number HBS0007743.

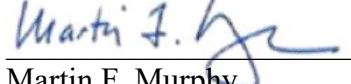
28. Attached as Exhibit 27 is a true and accurate copy of the document bearing the beginning Bates number HBS0007726.

29. Attached as Exhibit 28 is a true and accurate copy of the document bearing the beginning Bates number HBS0007725.

30. Attached as Exhibit 29 are true and accurate copies of pages from the transcript of Stuart Gilson, conducted on April 29, 2025.

31. Attached as Exhibit 30 is the Affidavit of Christopher Pringle in support of Harvard's Opposition to Plaintiff's Motions for Spoliation Sanctions.

Signed under the pains and penalties of perjury this 15th day of December 2025


Martin F. Murphy

CERTIFICATE OF SERVICE

I, Martin F. Murphy, hereby certify that I have caused a true and correct copy of the foregoing document to be served on counsel of record for Plaintiff by email on December 15, 2025.

/s/ Martin F. Murphy
Martin F. Murphy

Exhibit 1

Page 1

1 COMMONWEALTH OF MASSACHUSETTS
2 SUFFOLK SUPERIOR COURT
3 BUSINESS LITIGATION SESSION

4 _____
5 BENJAMIN EDELMAN,
6 Plaintiff,
7 v. _____ Civil Action
8 PRESIDENT AND FELLOWS OF 2384CV00395-BLS2
9 HARVARD COLLEGE,
10 Defendant.

11 _____
12 VIDEOTAPED DEPOSITION OF

13 AMY EDMONDSON

14 DATE: Monday, April 21, 2025
15 TIME: 9:37 a.m.
16 LOCATION: Zalkind Duncan & Bernstein LLP
17 65A Atlantic Avenue
18 Boston, MA 02110
19 REPORTED BY: Jared Reding

20
21
22
23
24
25

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

<p style="text-align: right;">Page 58</p> <p>1 allows you to recover or purge messages that have been 2 deleted from the deleted items folder?</p> <p>3 MR. MURPHY: Objection.</p> <p>4 THE WITNESS: Not that I recall.</p> <p>5 BY MR. RUSSCOL:</p> <p>6 Q Have you ever selected to purge items and 7 seen something like Figure 5, which says that messages 8 will be permanently deleted?</p> <p>9 A Not specifically.</p> <p>10 Q Are you aware that in order for a message to 11 end up in the purges folder a user would have to 12 delete the message, then go into the deleted items 13 folder and clear the whole folder, as shown in in 14 Figure 1, or delete the specific message, as shown in 15 Figure 2, and then click on the notification in Figure 16 3 to look at the recoverable deleted items, then 17 choose in Figure 4 to purge them, and then confirm the 18 deletion in Figure 5?</p> <p>19 A No.</p> <p>20 MR. MURPHY: Objection.</p> <p>21 BY MR. RUSSCOL:</p> <p>22 Q Are you aware that, even after messages are 23 permanently deleted, they won't actually be deleted if 24 the organization has put a litigation hold in place to 25 prevent relevant files from being permanently deleted?</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. RUSSCOL: So Exhibit 30 is, for the 2 record, Bates Number HBS0015698. 3 (Exhibit 30 was marked for 4 identification.)</p> <p>5 Again, for the record, Exhibit 31 is 6 Bates Number HBS0015700. 7 (Exhibit 31 was marked for 8 identification.)</p> <p>9 Exhibit 32 is Bates Number HBS0015790. 10 (Exhibit 32 was marked for 11 identification.)</p> <p>12 I guess I'm short a copy of that one. 13 This is an extra copy of that one. 14 (Exhibit 33 was marked for 15 identification.)</p> <p>16 Exhibit 34 is Bates Number HBS0015894. 17 (Exhibit 34 was marked for 18 identification.)</p> <p>19 Exhibit 35 is Bates Number HBS0015897. 20 (Exhibit 35 was marked for 21 identification.)</p> <p>22 Exhibit 36 is HBS0015901. 23 (Exhibit 36 was marked for 24 identification.)</p> <p>25 Exhibit 37 is HBS0018518.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. MURPHY: Objection.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. RUSSCOL:</p> <p>4 Q Are you aware that a litigation hold was put 5 in place for Mr. Edelman's case</p> <p>6 A Yes.</p> <p>7 Q Do you know when that litigation hold was 8 implemented?</p> <p>9 A No.</p> <p>10 Q Without revealing the substance of any 11 communications with counsel, did any counsel for 12 Harvard ever contact you about a litigation hold with 13 regard to Mr. Edelman?</p> <p>14 A Yes, I think so.</p> <p>15 Q When did that occur?</p> <p>16 A I don't know.</p> <p>17 Q Did you ever go through and delete and purge 18 any emails related to Mr. Edelman or the FRB?</p> <p>19 A Not on purpose, no.</p> <p>20 Q So I'm going to show you nine messages that 21 I'll have individually marked as exhibits. I'll 22 represent to you that they were all found in your 23 Purges folder, and I'll ask you to take a few minutes 24 to look at them, and then I'll have some questions for 25 you. Here's the first one.</p>	<p style="text-align: right;">Page 61</p> <p>1 (Exhibit 37 was marked for 2 identification.)</p> <p>3 And Exhibit 38 is HBS0020533.</p> <p>4 (Exhibit 38 was marked for 5 identification.)</p> <p>6 BY MR. RUSSCOL:</p> <p>7 Q So is it fair to say that all of Exhibits 30 8 through 38 are email messages that you either sent or 9 received?</p> <p>10 A Yes.</p> <p>11 Q And some of them are from the 2015 time 12 period, but others are from the 2017 time period?</p> <p>13 A Looks that way.</p> <p>14 Q Do you remember looking at any of these 15 messages at any time after the summer of 2018?</p> <p>16 A No.</p> <p>17 MR. MURPHY: I'm sorry, David. Were 18 you intending to exclude prep or not?</p> <p>19 BY MR. RUSSCOL:</p> <p>20 Q Did you intend to look at any -- or strike 21 that. Do you remember looking at any of these 22 messages at any time after the summer of 2018 before 23 you met with counsel?</p> <p>24 A No.</p> <p>25 Q Did you intend to delete any of these</p>

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

Exhibit 2

From: "Edelman, Benjamin"
To: "Hall, Brian" <bhall@hbs.edu>
Subject: RE: Catching up
Date: Thu, 24 May 2018 23:50:26 +0000
Importance: Normal

Brian,

Thanks for checking in.

Microsoft made an offer that I judged to be preferable to the HKS fellowship. A big plus is that that lets me do something different for the next year. I was not looking forward to twiddling my thumbs, nor excited about doing more of the same kind of research I've been doing, which was researched geared towards what I took to be valued at HBS. Separately I felt it would be beneficial to spend some time away from campus for a while. So I'm commuting to Redmond weekly. At least there are flat beds on this unusual flight, though it's a hardship for the family on multiple levels.

A tenured appointment at HKS, beginning in summer 2019, would still be attractive. I have limited information about how likely that is. I notified Richard Zeckhauser that I wouldn't be accepting the fellowship and told him why, focusing on my need to do something different and to get away for a while. I took him to have reduced interest in me, for a full appointment, when he learned I was accepting a corporate job for the next year. That is understandable and not unexpected, though not my preference or my intention.

After appropriate reflection, I'm convinced that my case was importantly mishandled by FRB – ultimately, in violation of FRB's P&P commitments. I have discussed that with Nitin and with Paul Healy. They are not prepared to revisit the case. I will be asking the provost to look into this in the way provided by university policies. That process will be getting underway soon. I know you and Kathleen feel strongly that this approach is unwise. Others who I trust feel that it is appropriate in light of the seriousness of the FRB's missteps. Ultimately I am guided by my own assessment of what is proper under university rules and what I feel is proper.

Always happy to talk. Tomorrow morning by phone is fine. I'm not on campus often these days.

Ben

From: Hall, Brian
Sent: Thursday, May 24, 2018 6:53 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Subject: Catching up

Hi Ben,

How are you? Any closure on the potential HKS visit?

I would love to catch up and hear how you are doing. Are you free to talk tomorrow morning by phone? And/or have lunch on tues or wed of next week?

I hope all is well.

Best,

Brian

Brian J. Hall

Chair: Negotiation, Organizations and Markets (NOM) Unit, Harvard Business School

Albert H. Gordon Professor of Business Administration

Faculty Chair: Global Initiative, Middle East and North Africa (MENA) region

Baker 459, Boston MA 02163

Office: (617) 495-5062

Fax: (617) 495-7670

Email: bhall@hbs.edu

NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

Exhibit 3

From: Garber, Alan M
Sent: Saturday, June 30, 2018 7:35 AM EDT
To: Edelman, Benjamin
CC: Nohria, Nitin; Garber, Alan M
Subject: RE: promotion matter for your review
Attachments: AG to B Edelman 062918.pdf

Dear Ben,

Thank you for your memo and the additional materials. Please see my response in the attached document.

Best,

Alan

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

From: Edelman, Benjamin <bedelman@hbs.edu>
Sent: Tuesday, June 19, 2018 11:42 AM
To: Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

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

June 29, 2018

Dear Professor Edelman:

Thank you for your memorandum and the accompanying exhibits, which I have carefully considered.

I should start by explaining the nature of my review. I did not attempt to assess independently whether you should have been awarded tenure based on the evidence considered in the tenure evaluation; that judgment belongs to the Business School. Rather, my review sought to determine whether HBS's handling of your case was consistent with its established tenure procedures and did not otherwise present concerns about fundamental fairness. With this in mind, I have determined that there is no basis for me to interfere with the School's decision.

Tenure represents a substantial commitment on the part of the University. That is why the University seeks to evaluate a candidate across multiple dimensions, including teaching, scholarship and, in the words of the Green Book, "effective contributions to the HBS Community." The nature of the commitment requires that the decision be informed, as also noted in the Green Book, by "the best possible information, judgment and advice." The tenure process seeks broad input, and, to encourage candor, much of that information is transmitted through confidential communications not shared with the candidate. In this sense, the tenure process differs fundamentally from a disciplinary process focused on determining whether a particular rule was violated and whether sanctions should follow. This distinction helped inform my review of the material you submitted.

In your case, the Business School sought to determine, in follow up to its 2015 evaluation of various issues, a set of behavioral issues described in a July 6, 2017 note to you from the Faculty Review Board. This work was in the context of the School's requirement that a successful tenure case present "persuasive evidence" that the faculty member has made and will make effective contributions to the HBS community. After conducting its review, the FRB reached a number of conclusions, which it shared with you in draft form. The FRB's report, which included your response and other materials you had submitted, were in turn provided to the Standing Committee and the Appointments Committee, whose consideration of your case ultimately helped inform the Dean's decision not to advance an affirmative recommendation to the University.

In your memorandum, you raise three main issues with the handling of your case, which I address more specifically below.

The Evidence Gathered. Focusing on 12 bulleted quotations, you contend that the FRB failed to disclose “the evidence gathered” and therefore deprived you of the opportunity to respond. If I understand your position, you believe that the FRB should have identified who made what comment and the “context” from which those comments emerged – presumably so that you could have offered a different view of the underlying events. Your reference to “evidence gathered” assumes that a “review” associated with a promotions case is to be handled by the FRB in the same way as an “investigation” of allegations of misconduct. Looking both at the language of the FRB procedures and the important difference between a tenure decision and a misconduct investigation, I do not share that interpretation.

In any event, the FRB was concerned about the nature and quality of your interactions with colleagues. It was not seeking to conduct an investigation into specific events, but instead to understand how colleagues experienced you and your contributions to the HBS community, as well as whether you had demonstrated appreciation for the effect that aspects of your conduct have on your colleagues. On that dimension, the FRB’s report was clear – and the bulleted quotes reflected equally clearly the concerns raised by colleagues about their interactions with you. Further “context” might have permitted you to offer greater information about your perspective, but it would not have – and could not have – meaningfully spoken to ways in which people perceived their interactions with you. In my view, by specifically identifying concerns expressed by members of the HBS community, the FRB met its responsibilities.

The Allegation. You next contend that the FRB failed to state the allegation at the outset, and cite the FRB’s examination of the Microsoft case and your role as counsel. The 2015 FRB review focused on various issues, including your compliance with both the letter and spirit of HBS rules. The FRB’s July 6, 2017 letter made it clear that the review intended to assess whether “there is sufficient evidence of changed behavior” on your part, which appropriately put you on notice, for example, that your handling of conflicts issues would be considered as part of the FRB’s work. While your memorandum indicates that you disagree with the FRB’s assessment of this and other situations, the merits are not for me to evaluate – and, in any event, your response was included in the material sent to the Appointments Committee. Both the Appointments Committee and the Dean had access to your perspective as they considered your case. Finally, I again note that a tenure review is intended to be a searching examination of a faculty member’s candidacy, and I do not share your view that the FRB should have been artificially constrained in the scope of its work. Nor do I read either the FRB principles or the Green Book as imposing such a constraint.

The Composition of the FRB. You also complain about the composition of the FRB. I have not seen evidence that you raised this concern at any time during the work of the FRB. To act on the basis of your objections at this point, only after you have learned the outcome of the tenure review, would be procedurally inappropriate. In any case, you admit that your concerns about the objectivity of Angela Crispi, a member of the FRB, and Jean Cunningham, staff to the FRB, are speculative.

Ultimately, the Business School was seeking to determine whether your case presented “persuasive evidence” that you have made and would make effective contributions to the

community. This is appropriately a high standard given the commitments a university makes when offering tenure to a member of the faculty. In determining that your case did not meet that standard, the Business School employed a fundamentally fair process that, in my judgment, was in accordance with its procedures.

Sincerely yours,

Alan M. Garber
Provost, Harvard University

Exhibit 4

From: Edelman, Benjamin
Sent: Monday, October 1, 2018 7:13 PM EDT
To: Garber, Alan M
CC: Nohria, Nitin
Subject: RE: promotion matter for your review
Attachments: Edelman to Garber - 2018-10-01.pdf

Provost Garber,

Thank you for your response. Attached is my reply to your letter of June 30.

Thanks,

Ben Edelman

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

From: Garber, Alan M <alan_garber@harvard.edu>
Sent: Saturday, June 30, 2018 7:36 AM
To: Edelman, Benjamin <bedelman@hbs.edu>
Cc: Nohria, Nitin <nnohria@hbs.edu>; Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

Dear Ben,

Thank you for your memo and the additional materials. Please see my response in the attached document.

Best,

Alan

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

From: Edelman, Benjamin <bedelman@hbs.edu>
Sent: Tuesday, June 19, 2018 11:42 AM
To: Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

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

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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

October 1, 2018

Provost Garber,

I appreciate your quick response to my letter of June 19. After considerable thought, I remain both unconvinced and troubled by your reasoning.

You state the issue as whether HBS's handling of my case "was consistent with its established tenure procedures and did not otherwise present concerns about fundamental fairness." (I take "established" to reference the Green Book, which you mentioned three times.) But I claimed violation not of established promotion procedures or the Green Book, but of the Principles and Procedures for Responding to Matters of Faculty Conduct (P&P), the rules which govern HBS's Faculty Review Board ("FRB"). As you know, the P&P makes numerous specific procedural commitments. The FRB's failure to follow those commitments is what prompted me to write in June, and what still concerns me.

Applicability and interpretation of FRB P&P. You interpret the P&P's procedural protections as meaning something less in the context of a promotion decision: "the tenure process differs fundamentally from a disciplinary process..." (June 19 letter at 1). But the P&P allows no such distinction, and you overlook a crucial P&P commitment which is squarely on point. See P&P at 3, "Notes on Promotions, Reviews, and Reappointments," instructing that in certain promotions cases, "the FRB will ... undertake a review ... *as outlined above*" (emphasis added) (with "above" referencing the preceding sections of the P&P, which set out the FRB procedure in full). Through this provision, the P&P instructs FRB to provide the same procedural safeguards across all its investigations, whether in the ordinary course or incidental to promotion. Tellingly, the P&P never even mentions the Green Book. Notably you do not say what you believe the P&P's procedural protections P&P *do mean* in the tenure context, just that they were not violated by the FRB in my case. In any event, your interpretation of the P&P commitments, supposedly meaning less in the tenure context, cannot be reconciled with the text.

Your interpretation of P&P is also at odds with the HBS faculty's intent in establishing FRB. In a faculty meeting of April 29, 2015, the full HBS faculty discussed the procedures that should apply when investigating allegations of misconduct, *especially* for promotion decisions. Proponents of the FRB specifically explained what they envisioned for promotion cases: The new process would separate review of the academic merits (for which the Green Book creates a well-established process) from allegations of wrongdoing. For the latter, they said the FRB's structured process would better protect the rights of the subject of an investigation, and also assure rigorous and correct evaluation. The distinction between the Green Book and the P&P stemmed from what some saw as the mishandling of several prior promotion cases, where some thought the Promotions Committee had fallen short of widely-held aspirations of rigor and fairness. The bottom line is that the faculty intended FRB P&P, and not Green Book, to govern discipline matters incidental to promotion—exactly as the P&P instructs.

Moreover, fairness requires full compliance with the procedural safeguards that P&P promises. First, questions of conduct tend to be fact-intensive, as they were in my case. The Appointments Committee and even FRB are in no way perfect at uncovering the facts; they might overlook something a candidate uniquely knows. Hence the P&P's insistence that the FRB provide the evidence at issue—letting the candidate respond as effectively as possible, including with the context that puts allegations in a different light. Second, allegations of misconduct are potentially fatal to a promotion case. Such high stakes call for careful compliance with every procedural commitment designed to increase both accuracy and fairness. Third, it is manifestly unfair to promise specific procedural protections, then forego those protections arbitrarily. A proper search for the truth requires following every stated procedural commitment without exception.

Edelman to Garber
October 1, 2018
Page 1 of 4

The procedural guarantees of the P&P may be counterintuitive. In most circumstances you are well-served by your familiarity with established promotion processes. But my June 19 letter alleges defects in a first-of-its-kind procedure that is remarkably different. Analysis of my claim should be grounded in a rigorous reading of the text of P&P, perhaps informed by discussions incidental to its adoption, but appropriately removed from Green Book, traditions, and instinct. I urge you to reconsider my June 19 letter from that perspective.

Evidence, causation, and harm. You discount the effect on my promotion case from evidence being withheld from me, and you argue that whatever procedural violation occurred, it made no difference. Let me offer five responses.

First, my June 19 letter offered ample reasoning connecting the violations of P&P commitments to the FRB's conclusion. Consider my paragraph beginning; "Without knowing the context" in which I pointed out specific information which was supposed to be provided to me. In particular, I identified specific circumstances that might have sparked the out-of-context conclusory remarks, and I explained how the full context would likely have put the interactions in a different light. Indeed, many of the derogatory remarks could have arisen out of my efforts to insist that HBS assist a colleague with a serious disability, and then my personal effort to assist her despite objections from HBS IT staff. If FRB had revealed that the derogatory comments arose from this situation, I am confident that most readers would have concluded my actions were praiseworthy. The causal link—from information withheld from me, to my response, to a reader's interpretation—is amply clear.

Second, my prior experience reveals the importance of the information that was improperly withheld. Consider the 2015 FRB, which (properly) provided evidence in sufficient detail that I knew the specific situations at issue and could respond persuasively. I hope you'll reread the relevant portions of the 2015 FRB report (Exhibit 4 at 5-6) and my reply (Exhibit 5 Addendum at 5-9). As you'll see, the 2015 report made stinging allegations that appeared compelling. But my reply demonstrated that the "improper" financial transactions were in fact approved in advance by appropriate HBS staff. So too for incorrect allegations about projectors—where FRB said my efforts were "inconsistent with the School's Community Values and did not constitute effective contributions to the HBS community" (Exhibit 4 at 10), but in fact HBS leaders contemporaneously praised my work in the strongest possible terms (Exhibit 5 Addendum at 12-15: "I am SO grateful... You are a freaking genius..." from the then-Dean of the MBA Program Youngme Moon). Knowing the situations where the FRB in 2015 alleged I was out of line, I was able to provide the context and evidence which proved decisive to assessment in that year. The P&P obligation to provide the evidence against me was pivotal in 2015, and must not be discarded now.

Third, fairness requires that when one party promulgates a procedure by which it is to be bound in its dealings with another, then for whatever reason deviates from that procedure, inferences should be drawn against the party that deviated. Applying that principle to my case, you should take a broader view of what might have happened had the FRB done what P&P requires. Your June 29 letter is quick to assert what "could not have" happened. That is manifestly unjust. Instead, you should give me the benefit of the doubt as to what might have happened if FRB had followed the P&P.

Fourth, the P&P is absolute in its insistence that FRB provide the subject of an investigation not just with the evidence at issue, but with "the evidence gathered" (be it interview notes, recordings, emails, or otherwise), in its totality and in the form in which it was *gathered*. The 2017 FRB did nothing close. The right to review evidence gathered is fundamental to the protections established by the P&P—arguably, the most fundamental change from prior processes. Denying that right is no mere technical violation, and it cannot reasonably be regarded as harmless error. You cannot waive away this flagrant violation of FRB's procedural obligations.

Edelman to Garber
October 1, 2018
Page 2 of 4

Separately, you argue that “further ‘context’” might have enabled me to “offer greater information about [my] perspective, but it would not have—and could not have—meaningfully spoken to ways in which perceived their interactions with [me]” (June 19 letter at 2, emphasis added). Here too, I urge you to read the P&P more carefully. Notably, the P&P does not authorize the FRB to investigate anyone’s “perceptions” or even the accused’s “perspective.” Rather, the P&P calls for an FRB to investigate an “allegation” to determine “whether misconduct has occurred” (P&P at 1, emphasis added). Even if colleagues’ perceptions of me were somehow in scope for FRB, and even if a complainant or the FRB framed such a concern as an “allegation” of “misconduct,” the sole question for FRB would be whether the allegation was *correct*. That question goes to the truth of the matter (namely, as whether my conduct was objectively proper under the circumstances), not merely colleagues’ perceptions (such as their subjective opinions). My submission of crucial information about context—for example, showing that the discussions occurred as I assisted a colleague with a disability, and that any tension resulted in large part from HBS staff declining to assist—would surely have been relevant and probably persuasive.

Other matters. There is plenty more to discuss. For example, we might usefully assess whether “evidence of changed behavior” is an “allegation” as the dictionary defines that term, or otherwise within the meaning of P&P—and, if not, what that means about the proper scope of the 2017 FRB. We could examine the P&P provisions that I claim disallow “fishing expeditions” and shifting allegations, and the indications that FRB’s late-added allegations created both a heightened risk of error and, indeed, actual error. We could evaluate whether, as you claimed, the right to reply cures the harm resulting from the FRB’s violations of applicable procedural commitments. We could also discuss the composition of the FRB, including my allegation of two staff with at least an appearance of conflict of interest, your suggestion that I should have raised that allegation during the FRB process, and any textual support there might be for your suggestion. (So far, I have found none.) If you were inclined to explore the correctness of the FRB’s factual findings, there would be still more to consider. (For example, the FRB claimed “reputational risk” in a lawsuit against American Airlines in which I serve as cocounsel. In fact that case has achieved an exceptional response from class members who will shortly receive tens of millions of dollars of refunds, favorable media coverage from journalists and bloggers, and even praise from the presiding judge, a Republican appointee who is broadly skeptical of class actions but was uncharacteristically positive in his appraisal of my and colleagues’ work.) I stand ready to discuss all of this and more. But it seems to me that the above matters are the most fundamental. If, as I claim, you erred in your interpretation of P&P, the proper next step is for you to redo your analysis accordingly.

I take the subtext of your letter to be that the University’s decisions are final, and your review is intentionally both narrow and predisposed towards approval of what was done. Clearly the University has a substantial interest in the finality of promotion decisions, and there is an undeniable instinct for HBS, and for you, to circle the wagons and paper over any shortfalls. Before contacting you, I spoke with multiple HBS senior faculty who told me they thought my review process was flawed, and who even shared my conclusion that applicable rules were not followed—but who said it is pointless to complain because the University does not reexamine decisions or admit error. I was alarmed to hear this—not just for the immediate impact on me, but because a commitment to finality over truth is so obviously contrary to our namesake “*veritas*” and to shared notions of fairness. I see no harm to admitting that a new process was applied incorrectly, that the 2017 FRB did not follow applicable procedures, or that procedural deficiencies created, at least, an appearance of impropriety. These things happen, especially with a new process, all the more when busy faculty juggle dozens of commitments. The proper response in such a circumstance is to admit the error, not try to bury it. I wrote to you seeking the *independent* review that fairness requires. You purport to endorse such a review, and I hope your methodology and substance live up to it—for example, not just accepting the assertions of HBS leaders, but carefully evaluating the underlying documents to decide for yourself.

Edelman to Garber
October 1, 2018
Page 3 of 4

I am also conscious of the passing of time. If you contend that I am obliged to pursue this matter in a particular way, following a particular procedure, or in a particular time (other than that proscribed by applicable law), please provide the requirements that you believe govern.

Regards,
Benjamin Edelman

Edelman to Garber
October 1, 2018
Page 4 of 4

Exhibit 5

From: Garber, Alan M
Sent: Tuesday, October 23, 2018 1:43 PM EDT
To: Edelman, Benjamin
CC: Nohria, Nitin; Garber, Alan M
Subject: RE: promotion matter for your review

Dear Ben,

Thank you for your follow up correspondence, which I have carefully considered. For various reasons, including those set forth in my June letter to you, I continue to see no basis for me to intervene in the Business School's evaluation of your tenure candidacy. I wish you the very best for your future endeavors.

Best,

Alan

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

From: Edelman, Benjamin [mailto:bedelman@hbs.edu]
Sent: Monday, October 1, 2018 7:13 PM
To: Garber, Alan M <alan_garber@harvard.edu>
Cc: Nohria, Nitin <nnohria@hbs.edu>
Subject: RE: promotion matter for your review

Provost Garber,

Thank you for your response. Attached is my reply to your letter of June 30.

Thanks,

Ben Edelman

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

From: Garber, Alan M <alan_garber@harvard.edu>
Sent: Saturday, June 30, 2018 7:36 AM
To: Edelman, Benjamin <bedelman@hbs.edu>
Cc: Nohria, Nitin <nnohria@hbs.edu>; Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

Dear Ben,

Thank you for your memo and the additional materials. Please see my response in the attached document.

Best,

Alan

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

From: Edelman, Benjamin <bedelman@hbs.edu>
Sent: Tuesday, June 19, 2018 11:42 AM
To: Garber, Alan M <alan_garber@harvard.edu>
Subject: RE: promotion matter for your review

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,

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

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Alan

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Subject: RE: promotion matter for your review

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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.

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

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To: Garber, Alan M <alan_garber@harvard.edu>
Subject: promotion matter for your review

Provost Garber,

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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

Exhibit 6

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss
Business Litigation Session

BENJAMIN EDELMAN,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 2384CV00395-BLS2
)	
PRESIDENT AND FELLOWS OF)	
HARVARD COLLEGE,)	
)	
Defendant.)	
)	

AFFIDAVIT OF KAE LA M. ATHAY
IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SPOILATION SANCTIONS

I, Kaela M. Athay, hereby depose and state under oath and upon personal knowledge:

1. I am an associate attorney at Manatt, Phelps & Phillips, LLP ("Manatt"), and am one of the counsel of record for Defendant President and Fellows of Harvard College.
2. I oversaw the collection of documents from Harvard custodians, including those of Amy Edmondson, Stuart Gilson, and Paul Healy.

3. For the above-captioned matter, Manatt uses DISCO as its eDiscovery Platform to collect, review, and produce Harvard documents. Over the course of discovery, Harvard produced over 5,400 documents to Plaintiff. These documents had a cumulative Bates-numbered page range from 1 to 24,985, and include the following:

- a. Notes from the 2015 and 2017 FRB witness interviews;
- b. Comments and edits on the multiple drafts of the respective 2015 and 2017 FRB Reports shared among the FRB members;
- c. Notes of FRB meetings;
- d. Notes of the personal impressions of FRB members regarding Plaintiff's written and oral statements, including those of Gilson;
- e. Voting sheets from the 2017 Standing and Appointments Committees;

- f. The summary of the 2017 Standing Committee's deliberations; and
- g. Emails between and among FRB members in 2015 and 2017.

4. Plaintiff included as part of his Motion for Spoliation Sanctions against Harvard a chart of 51 messages that he claims were deleted by Harvard custodians. *See Russcol Aff.*, ¶5 and Atch. B.

a. Of these 51 messages, seven were produced to Plaintiff in their original iteration:

i. The message sent by custodian Jean Cunningham on 7/30/15 at 8:39 PM as part of the thread at HBS0015485 was originally produced at HBS0023014.

ii. The message sent by Cunningham on 7/31/15 at 6:14 PM as part of the thread at HBS0019251 was originally produced (with its attachment) at HBS0023064 and HBS0023065.

iii. The message sent by Cunningham on 10/7/15 at 10:23 AM as part of the thread at HBS0019566 was originally produced at HBS0019410 (with a Sent timestamp of 10:21 AM instead of the 10:23 AM Received timestamp).

iv. The message sent by Cunningham on 10/7/15 at 4:55 PM as part of the thread at HBS0019566 was originally produced at HBS0019565.

v. The message sent by Edmondson on 10/22/15 at 2:27 PM as part of the thread at HBS0019686 was originally produced at HBS0019720 (with a Sent timestamp of 3:27 PM instead of 2:27 PM).

vi. The message sent by Edmondson on 10/27/15 at 1:17 PM as part of the thread at HBS0019733 was originally produced at HBS0019745 (with a Sent timestamp of 2:17 PM instead of 1:17 PM).

vii. The message sent by Gilson on 11/12/17 at 10:45 PM as part of the thread at HBS0016167 was originally produced at HBS0016811 (with a Sent timestamp of 5:45 PM instead of the 10:45 PM Received timestamp).

b. Of the remaining 44 messages, 20 were not originally included in Harvard's productions because these messages did not hit upon search terms or other searches and therefore were not pulled into Harvard's document review universe as standalone messages. Harvard is willing to produce the original iterations of messages. Twenty-two messages are not among the documents collected from Harvard by Manatt. However, because each of these messages is embedded in later versions of their respective email threads, they were produced to Plaintiff as part of those threads. *See Russcol Aff.*, Atch. B.

5. Using the DISCO platform to review metadata associated with Edmondson's email file, Manatt can see that over 293,000 items were in the Recoverable Items\Purges folder of her email file when collected from Harvard. The overwhelming majority of these were not produced to Plaintiff because they were not responsive to agreed-upon search terms or additional searches conducted by Manatt.

6. There are over 170 email files that Harvard has produced that include both Gilson and Edmondson in either the To, From, or CC email fields during the period in 2017 when the FRB was active.

Signed under the pains and penalties of perjury this 15th day of December 2025.



Kaela M. Athay

CERTIFICATE OF SERVICE

I, Martin F. Murphy, hereby certify that on December 15, 2025, I caused a true and correct copy of this document to be sent, via email, to counsel of record for Plaintiff.

/s/ Martin F. Murphy
Martin F. Murphy

Exhibit 7

RESPONSES CONTAIN CONFIDENTIAL AND IDENTITY NOT TO BE PUBLICLY
DISCLOSED DISCOVERY MATERIAL SUBJECT TO PROTECTIVE ORDER

COMMONWEALTH OF MASSACHUSETTS

**Superior Court
Business Litigation Session**

Suffolk, SS

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

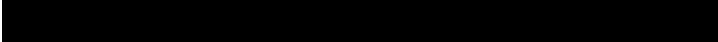
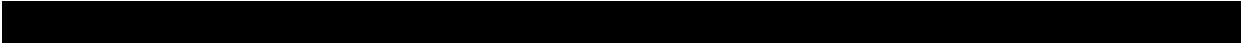
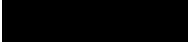
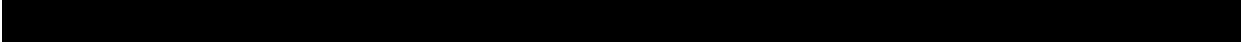
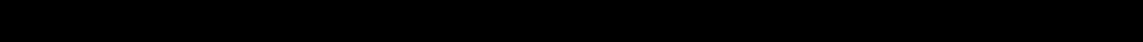
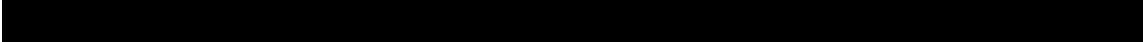
**DEFENDANT'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

President and Fellows of Harvard College (“Harvard” or “Defendant”) hereby responds to Benjamin Edelman’s (“Plaintiff” or “Edelman”) First Set of Interrogatories as follows:

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Harvard objects to the definition of “document” to the extent it is broader in scope than the term is defined in Mass. R. Civ. P. 34(a)(1).
2. Harvard objects to the use of the terms “Harvard” and “Defendant,” and the definitions of “you” and “your” and “agent[s], contractor[s], and/or employee[s]” to the extent that they include former employees and predecessors in interest.
3. Harvard objects to the General Instructions to the extent they require Harvard to go beyond what is required by Mass. R. Civ. P. 26 and 33 and Superior Court R. 30A.

RESPONSES CONTAIN CONFIDENTIAL AND IDENTITY NOT TO BE PUBLICLY
DISCLOSED DISCOVERY MATERIAL SUBJECT TO PROTECTIVE ORDER



INTERROGATORY NO. 8:

Identify each FRB investigation or inquiry conducted from 2015 to 2018, and the following information for each:

- a. the complainant(s) (if any);
- b. the respondent(s);
- c. the members of the FRB;

**RESPONSES CONTAIN CONFIDENTIAL AND IDENTITY NOT TO BE PUBLICLY
DISCLOSED DISCOVERY MATERIAL SUBJECT TO PROTECTIVE ORDER**

- d. any support staff for the FRB;
- e. what dates the process began and concluded;
- f. whether the investigation or inquiry was related to a tenure review; and
- g. whether the respondent was provided with copies of documents and witness statements gathered by the FRB.

RESPONSE TO INTERROGATORY NO. 8:

Harvard objects to this Interrogatory as overbroad and unduly burdensome. Harvard further objects on the basis that it seeks information that is not relevant and not reasonably likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 9:

Identify each individual who was interviewed by, or provided information to, the FRB associated with Plaintiff's tenure review in 2017.

RESPONSE TO INTERROGATORY NO. 9:

Harvard objects to this Interrogatory on the basis that it is overbroad and unduly burdensome to the extent it requires Harvard to identify documents that Plaintiff has requested to be produced. Harvard further objects on the basis that it seeks information that is covered by the attorney client privilege, work product doctrine, or any other privilege or immunity. The individuals included in this Response are Confidential – Identity Not to be Disclosed individuals as defined by the Protective Order. Subject to and without waiving the foregoing, Harvard responds to this Interrogatory as follows.

The following individuals were interviewed by or directly provided information to the 2017 FRB, listed in alphabetical order by last name:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- Benjamin Edelman
- Paul Healy
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Exhibit 8

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss

BENJAMIN EDELMAN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2384CV00395-BLS2
)	
PRESIDENT AND FELLOWS OF)	
HARVARD COLLEGE,)	
)	
Defendant.)	
)	

**HARVARD'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Massachusetts Rule of Civil Procedure 34 and Superior Court Rule 30A, Defendant President and Fellows of Harvard College (“Harvard”) hereby responds and objects to Plaintiff’s First Request for Production of Documents, dated April 18, 2024 (the “Requests,” and each a “Request”), as follows:

GENERAL OBJECTIONS

1. Harvard objects to Plaintiff’s General Instructions to the extent they individually or taken together impose burdens or obligations beyond those specified in the Massachusetts Rules of Civil Procedure and/or the Superior Court Rules.
2. Harvard objects to the Requests to the extent they seek the production of information protected from discovery by any privilege or immunity including, without limitation, the attorney-client privilege and/or the work product doctrine. In the event any privileged or immune document is produced by Harvard, its production is inadvertent and does not constitute a waiver of any privilege or immunity.

3. Harvard objects to the Requests to the extent that any one of them seeks information that is vague, overbroad, unduly burdensome, and not relevant or proportional to the needs of the case. To the extent outlined in response to each individual Request below, and unless otherwise indicated, Harvard will produce only responsive non-privileged, non-duplicative documents located after a reasonable search (consistent with the Production Specifications appended as Exhibit A) from January 1, 2014 until June 30, 2018. To be clear, Harvard's use of the phrase "reasonable search" herein means that Harvard will run agreed-upon searches on the agreed-upon data sources of agreed-upon custodians. Harvard will comply with its obligations under the Massachusetts Rules of Civil Procedure and Superior Court Rules.

4. Harvard reserves the right to object to Plaintiff's Definitions to the extent they are inconsistent with either (1) the definitions set forth by Harvard or (2) the ordinary and customary meaning of such words and phrases. Harvard also objects to Plaintiff's purported Definitions to the extent they seek to impose upon Harvard any obligations broader than, or inconsistent with, the Massachusetts Rules of Civil Procedure and/or the Superior Court Rules.

5. Harvard objects to Plaintiff's definition of the term "document" as vague, ambiguous, overbroad, and unduly burdensome to the extent it seeks to impose burdens or obligations beyond those specified by the Massachusetts Rules of Civil Procedure and/or the Superior Court Rules. Harvard also objects to the definition of the term "document" to the extent it seeks information that is not necessary to the prosecution or defense of this action, or is protected by the attorney-client privilege, attorney work-product doctrine, or any other privilege or immunity recognized by statute or applicable rule or case law.

6. Harvard objects to the Requests to the extent they conflict with or fail to conform to the Massachusetts Rules of Civil Procedure and/or the Superior Court Rules.

Exhibit 9

From: "Edelman, Benjamin"
To: "Healy, Paul" <phealy@hbs.edu>
Subject: RE: Thinking of you
Date: Wed, 06 Dec 2017 00:08:04 +0000
Importance: Normal

Paul,

Thanks for the note and for your thoughts. I'm still thinking through what comes next, but I may take you up on the very generous offer in your last sentence.

Thanks,

Ben

From: Healy, Paul
Sent: Tuesday, December 05, 2017 5:28 PM
To: Edelman, Benjamin <bedelman@hbs.edu>
Subject: Thinking of you

Ben:

I just wanted to tell you how I feel for you over the outcome of your tenure decision. You have been part of the Harvard community for so long and have contributed much to it. I admire and respect your openness to taking on the assignments to address the concerns that were raised in 2015. This was a very difficult decision, and I will miss you for all you contribute to the school. Please do not hesitate to reach out if there is anything I can do to help you in the coming days and weeks.

Best

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

Exhibit 10

From: Erik Brynjolfsson
Sent: Friday, January 26, 2018 10:35 AM EST
To: Yoffie, David
CC: Michael Cusumano (cusumano@MIT.EDU); Hall, Brian
Subject: Re: Ben Edelman

Hi David,

Yes, I did speak briefly with Nitin about Ben. I agree he's a terrific researcher and might be great at MIT.

Michael: let me know if you're free for a short phone call next week to discuss what we might be able to do.

Erik

On Fri, Jan 26, 2018 at 3:02 PM, Yoffie, David <dyoffie@hbs.edu> wrote:

Hi Erik and Michael,

I wanted to alert you to Ben Edelman's availability. (Erik – I heard that Nitin may have already discussed Ben's situation with you.)

I think that HBS made a terrible mistake with Ben. His research is fantastic and his outside letters from top people in the field were fantastic. Honestly, I think Ben is brilliant. I was a huge supporter of his case. I cannot think of anyone in our technology field who has comparably mastered computer science, economics, and law. I suspect that Ben will end up in a top five school, but he'd prefer to stay in Boston, if possible. He would be a great fit for MIT, if you have a slot.

I'd be happy to talk on the phone about why the case did not go through at HBS. Brian Hall, the chair of his department, would also be happy to give you further insight.

Let me know if you'd like to talk.

Regards,

David

David B. Yoffie

Max & Doris Starr Professor of International Business Administration

Harvard Business School

Boston, MA 02163

Tel: 617-495-6363

Asst: 617-495-6522

http://www.hbs.edu/dyoffie

Recent Book: Strategy Rules: Five Timeless Lessons from Bill Gates, Andy Grove and Steve Jobs



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|||||

Erik Brynjolfsson

<http://digital.mit.edu/erik>

Exhibit 11

From: Nohria, Nitin
Sent: Monday, February 5, 2018 9:17 AM EST
To: Michael A Cusumano
Subject: Re: Confidential

Dear Michael,

Thanks very much for the heads-up on how MIT views an appointment for Ben. Let's see if other Harvard schools show an interest. I am certainly grateful for all you did to explore this at MIT.

Best,
Nitin

From: Michael A Cusumano <cusumano@mit.edu>
Sent: Friday, February 2, 2018 11:23 AM
To: Nohria, Nitin
Subject: FW: Confidential

Nitin –

Just a heads up that I have suggested the HBS faculty advocates of Ben throw this back to you. David Yoffie, Brian Hall, and Marco Lansiti all asked Erik B and I to help, but we cannot find a way forward here at Sloan. I am not really in a position to give you advice, but I would be interested to hear the views of your fellow deans or senior faculty in relevant areas at the Kennedy School or Harvard Law School.

Best always,

Michael

Professor Michael A. Cusumano
MIT Sloan School of Management

100 Main Street, Room E62-438
Cambridge, MA USA 02142-1347

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Telephone: 617-253-2574, Fax: 617-253-2660

MIT Assistant: Sumaiya Rahman sumaiyar@mit.edu Tel. 617-253-6679
MIT Web Page: <http://web.mit.edu/cusumano/www/>

Recent Book: Strategy Rules: Five Timeless Lessons from Bill Gates, Andy Grove and Steve Jobs

Founding Director, Tokyo Entrepreneurship & Innovation Center@TUS

Center Video: <https://www.youtube.com/watch?v=v8Kkp40HNzk>

Center Website: <http://www.tus.ac.jp/teic/>

Tokyo University of Science (TUS) Business School: New MOT Program (2018)

Information: <http://most.tus.ac.jp/newmot/> and <http://most.tus.ac.jp/newmot/leaflet/>

From: Hall, Brian [<mailto:bhall@hbs.edu>]
Sent: Friday, February 02, 2018 11:07 AM
To: Michael A Cusumano; miansiti@hbs.edu
Cc: Yoffie, David; Erik Brynjolfsson; Gino, Francesca; Scott Stern
Subject: Re: Ben Edelman

Hi Michael, Erik and Scott,

Thanks for the thoughtful note, and for the careful consideration of Ben.

I also appreciate that you would still consider having him if another good option doesn't present itself, with a full understanding of the caveats you mention. But we will work towards finding another solution as you suggest.

Thanks again for being so thoughtful about this.

Best,
Brian

Brian J. Hall

Chair: Negotiation, Organizations and Markets (NOM) Unit, Harvard Business School

Albert H. Gordon Professor of Business Administration

Faculty Chair: Global Initiative, Middle East and North Africa (MENA) region

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Email: bhall@hbs.edu

NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: Michael A Cusumano <cusumano@mit.edu>

Date: Friday, February 2, 2018 at 10:36 AM

To: Marco Iansiti <miansiti@hbs.edu>, Brian <bhall@hbs.edu>

Cc: David Yoffie <dyoffie@hbs.edu>, Erik Brynjolfsson <ebrynjolsson@mit.edu>, Fran Gino <fgino@hbs.edu>, Scott Stern <sstern@mit.edu>

Subject: RE: Ben Edelman

Marco and Brian:

(And I will add Scott Stern to the thread, as part of the TIES Group discussions.) There is serious opposition here at Sloan to a visiting or tenure-track faculty appointment for Ben, for multiple reasons, including a lack of senior slots in relevant areas but certainly not only that. We have already spent a fair amount of time discussing the case in the past few days. In my view, and I

believe Erik and others share this view, there does not seem to be a future for him here at Sloan. Ben needs to be where at least one senior faculty member knows him very well and can be a strong personal as well as professional advocate. He has not built strong ties with anyone at Sloan. If for some reason Ben does not find a place to go next year, and he does not want to stay at HBS, then perhaps we could consider a one-year visit, to help a colleague. But even that might be difficult. We would have to discuss the pluses and minuses among ourselves, again. I think he would be better off trying to visit the Kennedy School or Harvard Law School, and trying to build some ties there.

HBS has sometimes reversed itself on decisions or found other ways to accommodate faculty who were denied tenure on the first go-around. I can think of at least two cases. So, if I were you, I would mobilize some other senior faculty and press Nitin to find another solution that keeps Ben at HBS or at Harvard, such as with a move to the Kennedy School or Law School. As I understand it, Ben has a strong advocate at Stanford, and other schools, such as Berkeley, are also interested. He is clearly an extraordinary talent and a productive scholar, and we will continue to use his materials in our classes. Here at MIT, we all hope something works out for Ben, and soon.

Michael

From: Iansiti, Marco [<mailto:miantsiti@hbs.edu>]
Sent: Friday, February 02, 2018 9:21 AM
To: Hall, Brian
Cc: Erik Brynjolfsson; Michael A Cusumano; Yoffie, David; Erik Brynjolfsson; Gino, Francesca
Subject: Re: Ben Edelman

Hi Erik - hope all is good. Had a long conversation Wednesday with Mike Cusumano about Ben. Please reach out or call directly any time as you think through this. He is truly an amazing guy and I really wish we had kept him with us for the long haul. I am a strong advocate.

All the best,

Marco

On Jan 31, 2018, at 1:21 PM, Hall, Brian <bhall@hbs.edu> wrote:

Hi Erik and Michael,

Thanks for the nice reply.

I hope you don't mind if I add Marco Lansiti and Francesca Gino (who is replacing me as NOM unit head shortly.....an upgrade for NOM in every way!) to the conversation.

They both have good insight on Ben.

Best,
Brian

Brian J. Hall

Chair: Negotiation, Organizations and Markets (NOM) Unit, Harvard Business School

Albert H. Gordon Professor of Business Administration

Faculty Chair: Global Initiative, Middle East and North Africa (MENA) region

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Fax: (617) 495-7670

Email: bhall@hbs.edu

NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: Erik Brynjolfsson <erik.brynjolfsson@gmail.com>
Date: Wednesday, January 31, 2018 at 8:39 AM
To: Michael A Cusumano <cusumano@mit.edu>
Cc: Brian <bhall@hbs.edu>, David Yoffie <dyoffie@hbs.edu>, Erik Brynjolfsson <ebrynj@mit.edu>
Subject: Re: Ben Edelman

I agree with Michael.

Ben is super smart and has done amazing work. Michael and I will meet today to see where he might fit at MIT.

Erik

On Tue, Jan 30, 2018 at 10:18 PM, Michael A Cusumano <cusumano@mit.edu> wrote:

Thanks for the additional details, Brian. Ben is fortunate to have you and David as such strong advocates. I just got back from Tokyo. Erik B. and I will meet on Wednesday afternoon to discuss.

Michael

Professor Michael A. Cusumano
MIT Sloan School of Management

100 Main Street, Room E62-438
Cambridge, MA USA 02142-1347

Email: cusumano@mit.edu

Telephone: [617-253-2574](tel:617-253-2574), Fax: [617-253-2660](tel:617-253-2660)

MIT Assistant: Sumaiya Rahman sumaiyar@mit.edu Tel. [617-253-6679](tel:617-253-6679)
MIT Web Page: <http://web.mit.edu/cusumano/www/>

Recent Book: [Strategy Rules: Five Timeless Lessons from Bill Gates, Andy Grove and Steve Jobs](#)

Founding Director, Tokyo Entrepreneurship & Innovation Center@TUS

Center Video: <https://www.youtube.com/watch?v=v8Kkp40HNzk>

Center Website: <http://www.tus.ac.jp/teic/>

Tokyo University of Science (TUS) Business School: New MOT Program (2018)

Information: <http://most.tus.ac.jp/newmot/> and <http://most.tus.ac.jp/newmot/leaflet/>

From: Hall, Brian [mailto:bhall@hbs.edu]
Sent: Tuesday, January 30, 2018 12:17 PM
To: Michael A Cusumano; Yoffie, David
Cc: Erik Brynjolfsson
Subject: Re: Ben Edelman

Hi Michael and Erik,

Thanks for the replies to David re Ben Edelman. I hope you don't mind if I add a bit to David's perspective since Ben is in the Negotiation, Organization and Markets (NOM), where I am department chair. As David noted, Ben has an amazingly strong record as an economist whose work spans market design, internet economics, computer science and law. He had extremely strong support from a very broad range of HBS faculty, including the NOM department.

Some key facts:

1. The outside letters for Ben were unanimous, extremely strong and from the very best people in his field. These letters would have gotten him tenure at ANY business school, and he was way over the bar. His work on market design and “internet economics” is path-breaking. Al Roth called him the first “internet economist.” He is brilliant.
2. The issues that got him denied tenure are basically public knowledge. Anybody can google them. There are no dark secrets or hidden problems. His justice streak got a bit out of kilter and his letter to a restaurant owner (who was cheating customers by posting incorrect prices on the web) went viral on the internet. He was right about the issue but his email had a harsh tone, was falsely framed by a reporter who wanted a good story, and it went viral on social media in a very unfortunate way. Ben LEARNED from it, and I have no doubts that his activism going forward will take into account his painful learnings. Indeed, it already has. He is awesome in all kinds of amazing ways, including rather remarkable stories about how he improves the computer teaching tools used by our faculty (which he does in his “spare” time). Almost everyone close to him views his character as a significant asset, not a liability.
3. His “impact” is amazing. Some believe that Ben exceeded ALL three of our “audience” bars: impact from academic research, impact from practitioner-oriented research, and impact through course development and cases. Tenure at HBS requires that you are over bar for one audience, while demonstrating the potential to exceed one of the other audience bars. Ben’s academic research put him way over the first bar. And he probably would have exceeded both other bars (as a FIRST audience) if the HBS tenure standards had required him to do so. I don’t recall anyone ever having achieved such (“first bar”) impact on all three audiences.

Ben is brilliant, amazing and would be an incredible asset to any business school. I am optimistic that he will end up at a top business school. And I think he is willing to visit places (the first year would be free since HBS will pay) to demonstrate his good citizenship.

I am happy to talk in person (617) 710-2986 if that would be helpful.

Thanks,
Brian

Brian J. Hall

Chair: Negotiation, Organizations and Markets (NOM) Unit, Harvard Business School

Albert H. Gordon Professor of Business Administration

Faculty Chair: Global Initiative, Middle East and North Africa (MENA) region

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NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: Michael A Cusumano <cusumano@mit.edu>
Date: Friday, January 26, 2018 at 5:39 PM
To: David Yoffie <dyoffie@hbs.edu>
Cc: Erik Brynjolfsson <ebrynjoe@mit.edu>, Brian <bhall@hbs.edu>
Subject: Re: Ben Edelman

Thanks, David. I am still in Japan but will be at MIT on Wednesday next week. Will try to talk with Erik then or before.

Sent from my iPhone

On Jan 26, 2018, at 11:02 PM, Yoffie, David <dyoffie@hbs.edu> wrote:

Hi Erik and Michael,

I wanted to alert you to Ben Edelman's availability. (Erik – I heard that Nitin may have already discussed Ben's situation with you.)

I think that HBS made a terrible mistake with Ben. His research is fantastic and his outside letters from top people in the field were fantastic. Honestly, I think Ben is brilliant. I was a huge supporter of his case. I cannot think of anyone in our technology field who has comparably mastered computer science, economics, and law. I suspect that Ben will end up in a top five school, but he'd prefer to stay in Boston, if possible. He would be a great fit for MIT, if you have a slot.

I'd be happy to talk on the phone about why the case did not go through at HBS. Brian Hall, the chair of his department, would also be happy to give you further insight.

Let me know if you'd like to talk.

Regards,

David

David B. Yoffie

Max & Doris Starr Professor of International Business Administration

Harvard Business School

Boston, MA 02163

Tel: 617-495-6363

Asst: 617-495-6522

http://www.hbs.edu/dyoffie

Recent Book: Strategy Rules: Five Timeless Lessons from Bill Gates, Andy Grove and Steve Jobs

<image001.png>

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|||||

Erik Brynjolfsson

http://digital.mit.edu/erik

Exhibit 12

1 Vol. I
2 Pgs. 1-353
Exs. 80-113

4 COMMONWEALTH OF MASSACHUSETTS

6 Superior Court Suffolk, SS
7 BENJAMIN EDELMAN,
8 Plaintiff, Civil Action No.
9 V. 2384CV00395-BLS2
10 PRESIDENT AND FELLOWS OF
11 HARVARD COLLEGE,
Defendant.

15 VIDEOTAPED DEPOSITION OF

16 BENJAMIN EDELMAN

17 APRIL 30, 2025

18 9:08 a.m. - 7:29 p.m.

19 Manatt Phelps & Phillips LLP

20 One Beacon Street Suite 28-200

Boston MA 02108

23 REPORTED BY: Lori J. Atkinson
24 Job No. 7295754

<p style="text-align: right;">Page 26</p> <p>1 Q. I will represent to you that the metadata that 2 came with this said that it was created on November 12, 3 2015. Does that sound correct to you? 4 A. It does. 5 Q. We have seen a number of notes like this in your 6 production. Can you tell us what this is? 7 A. Yes. It had become apparent to me, certainly by 8 the 2015 FRB, that litigation was likely if the matter 9 didn't come to a resolution that was satisfactory to me. 10 So I began to contemporaneously record all discussions 11 that I believed to be important. 12 And, in general, I tried to record 13 contemporaneously the important parts of each of those 14 discussions. Not just the fact that the discussion 15 occurred, but the important parts of what people said to 16 me and where applicable what I said in response. 17 I tried to do it in a way that would have very 18 clear metadata, and would even be tamper-evident if I 19 were to go back and change it, you would see that in the 20 metadata. Tried to do it first class in the best 21 possible way, without using any particular formalities. 22 It is just Notepad. It is a text file, but it was done 23 with an eye to creating a record that I thought we might 24 need at a time like today.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes. 2 Q. Could you tell us whether you remember anything 3 other than those words about what he said? 4 A. Again, I could put it into complete sentence form, 5 but I would really just be adding filler words to turn 6 this into a normal sentence that a person would actually 7 utter. 8 Q. Please do that, if you would? 9 A. If these events had happened two years ago, the 10 evaluation process would have told me that these are 11 serious concerns and I have to learn from them. Because 12 it happened with this sort of unusual time, all within 13 the last 12 months, I didn't have the opportunity to 14 prove just how unrepresentative these events might be, 15 might not be, of my overall candidacy, and hence the 16 committee's struggle to figure out what to do next. 17 Q. He said in essence that this was on you to prove 18 that this stuff would not happen again. Is that 19 correct? 20 A. I think that was my overall impression. Whether 21 he said it quite that way, I'm not sure. Certainly 22 wasn't expecting anyone to give me any gifts or do me 23 any favors. The burden on the candidate is to establish 24 the case for promotion and I wanted to establish that.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. If we take a look at what has been marked as 2 Exhibit 80. The first two lines say, Standing committee 3 focused on BlinkX, Sichuan Garden, concern serious. 4 Are those things that Associate Dean Healy said 5 to you? 6 A. I think that is selected keywords from what he 7 would have said. I think I probably could reconstruct 8 the complete sentence version of that, but maybe it is 9 apparent. 10 Q. Why don't tell us what that note indicates he 11 said? 12 A. I'd say approximately, he said the standing 13 committee met to consider your case last week, the 14 discussion focused on BlinkX and Sichuan Garden. 15 Everyone who participated in the discussion was 16 concerned. They thought the problems were serious. 17 Q. The next two lines, If this had happened two 18 years ago, would have told me serious, have to learn 19 from them. Because happened with this timing, no 20 opportunity to prove. 21 Did I read that correctly? 22 A. That's what it says. 23 Q. Are you referring here to something Dean Healy 24 said?</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. It says below, a few lines down, Nitin said he 2 wanted -- says want to check with FRB, they were all 3 onboard with it. 4 Did I read that correctly? 5 A. Yes. 6 Q. Can you tell us -- is that something that Paul 7 Healy said? 8 A. I think that is my distilled version in note 9 taking form of what Paul Healy said. 10 Q. Can you provide any more context about what he 11 said there? 12 A. Yes. Sometimes discussions had already turned to 13 the prospect of an extension, which I don't see as 14 clearly laid out in the block of text above. As to the 15 possibility of an extension, Nitin, whose approval would 16 be needed for any extension, wanted to get a reaction 17 from the FRB to the possibility of an extension. And 18 Nitin, in fact, did check with the FRB. And they all 19 were supportive of the proposed extension. 20 Q. The next line says, Fair to me and fair to the 21 school. 22 Can you recall whether -- is that something that 23 Paul Healy said? 24 A. It's a distilled note taking version of it.</p>

Exhibit 13

From: Edmondson, Amy
Sent: Sunday, April 2, 2017 4:34 PM EDT
To: Gilson, Stuart
Subject: Re: Faculty Review Board

True...

Amy C. Edmondson
Novartis Professor of Leadership and Management
Senior Associate Dean, Culture & Community
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)

On Apr 2, 2017, at 4:11 PM, Gilson, Stuart <sgilson@hbs.edu> wrote:

Hi Amy

Well at least it is one of the most interesting committees one could sit on. Looking forward to working together!

Best

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

<F993F088-822F-4DFE-8DEC-9E48F1BA7C4B[33].jpg>

From: Amy Edmondson <aedmondson@hbs.edu>

Date: Friday, March 31, 2017 at 11:26 AM

To: "Nohria, Nitin" <nnohria@hbs.edu>

Cc: Stuart Gilson <sgilson@Hbs.edu>

Subject: Re: Faculty Review Board

Dear Stu

It would be a sincere pleasure to work with you - and get your wise perspective in this process. Of course, we have no cases pending, and perhaps will not have any for a good long time. It is impossible, I think, to predict.

Warm regards,

Amy
Amy C. Edmondson
Novartis Professor of Leadership and Management
Senior Associate Dean, Culture & Community
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)

On Mar 31, 2017, at 11:09 AM, Nohria, Nitin <nnohria@hbs.edu> wrote:

Dear Stu,

I'm writing to ask you to serve as a member of the Faculty Review Board. As you may recall, in 2015 we adopted "Principles and Procedures for Responding to Matters of Faculty Conduct" as a means of evaluating and adjudicating concerns raised against faculty members (I've attached the document outlining both that we approved as a faculty). Thankfully, many issues are resolved before reaching the FRB, and the number of cases since its formation has been small. Yet the FRB has proven effective already in building trust in a process that is fair and thoughtful, even as we constantly seek to fine-tune and enhance our approach as we gain more experience.

We now are a few years after the FRB's launch, and so that we might realize the right balance of institutional memory and fresh perspective, it is time to make the first shift in membership. I would like to ask you to serve as one of the faculty members on the FRB, currently chaired by Amy Edmondson. Amy and I very much hope you will say yes; your standing among your colleagues in terms of your judgment and perspective make you an ideal person to take on this role.

Amy can answer any questions you might have, and I, too, am happy to provide any background that would be helpful.

I look forward to hearing from you.

Best,

Nitin
<FRB_28April2015_Final.pdf>

Exhibit 14

FRB 2017 Report available at
<https://www.edelman-v-harvard.org/sj-docs/ja-exh-26.pdf>
with hyperlinks and bookmarks



**Faculty Review Board
CONFIDENTIAL REPORT
October 2017**

Overview

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

The FRB now must assess:

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

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

This process was not an investigation, and we did not seek to pass judgment on the particular outside activities and work that Professor Edelman pursued. Instead, we looked at Professor Edelman's interactions and activities over the past two years using the narrower lens of the feedback he received in 2015 to determine whether there was sufficient evidence of learning and changed behavior.

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

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

The FRB also discovered examples of activities and behaviors that cause continued concern, including whether Professor Edelman appropriately sought guidance on and disclosed his outside activities and potential conflicts of interest. Additionally, it heard unease voiced by colleagues about the extent to which those activities constitute a real or perceived risk to the School and reputational harm to the faculty by association. Additionally, the FRB found some indications that Professor Edelman's engagements with staff remain uneven and that his interactions with them changed when other faculty members were present.

The FRB acknowledges the extent to which the concerns we have evaluated are viewed differently by different members of the community. Those who count themselves close to and among Professor Edelman's supporters often recount relying on their knowledge of him and their appreciation for his motives in assessing his conduct. Others whose opinions are perhaps less favorable seem to rely more on their direct experience, weight more heavily the issue of reputational risk, and weigh his adherence to both community values and norms in their assessment.

We discuss our work and our findings below.

Background

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

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

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

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

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

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

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

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

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

Recent Activities

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

Members of the NOM unit were uniformly and unambiguously enthusiastic about Professor Edelman as a colleague, pointing to examples ranging from the support he provided to a sight-

impaired junior colleague in devising an effective class participation tool, to his help in analyzing data sets or optimizing computer set-ups.

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

- He is much more reflective... it's as if he pauses now and decides whether to jump in.
- He is interested in how others see his work; he has sought out feedback on his teaching and his research.
- He seems to have worked hard to change; he is more sensitive to how he can be effective in this environment.
- He understands his instincts are not solid.
- He thinks about where to apply his energy.
- He is even more conscious of what he is dealing with and thinking about.
- He used to shoot a rabbit with a cannon; now he understands the benefits of restraint.

Although he did not pursue the coaching resources suggested to him, Professor Edelman, during his meeting with the FRB, spoke about advice he had received from a number of colleagues, and most of his NOM colleagues indicated he had sought them out for input on teaching or research or for a second opinion.

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

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

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

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

- I believe his intentions are good, and that's important.

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

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

However, members of the FRB also heard some feedback from the non-NOM individuals interviewed who expressed concern about his style, including both one-on-one interactions and his effectiveness as part of a group or committee. These were expressed as:

- He can have a tendency to threaten to take something to the next level.
- He's abrupt. He lacks grace. He's more apt to pressure others—he asks questions the way you might in a seminar.
- He can be disruptive; he lacks understanding of an appropriate path to a goal.
- We learned his style. He's grown some, but we also learned how to deal with him.
- He has worked on being less harsh, but his views are still quite clear to those who hear him.
- I would not be proud to know that he was a senior faculty member interacting with the business community.
- Sometimes he's unable to be reasonable.

Others noted concerns about his certainty and lack of consideration for other points of view:

- In conversations, he can be abrasive, arrogant, and stubborn; he is not empathetic to another side or point of view. I've never seen him change his mind in any conversation I've witnessed.
- He has a hard time thinking about other perspectives.
- He leaves a lot of unproductive work for people since he jumps to solutioning without thinking through implications or engaging others.
- He's incapable of seeing why his preferred solution can't or won't be implemented.
- He goes off on tangents or down rabbit holes, and he doesn't know as much as he thinks he knows.

Finally, some mentioned a concern that Professor Edelman may manage 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, as expressed in the following:

- With his superiors, he has more of a filter.

This feedback may seem at odds with Professor Edelman's track record of going after firms that have violated consumer rights, or of offering help to HBS community members. It nonetheless reflects how some people experience him in contexts where they have to work together.

Moreover, what struck the FRB members was the depth of passion on each side: those who admire Professor Edelman *really* admire Professor Edelman, and those who have concerns—even those who have gotten to know and engage with Professor Edelman only over the last two years—express their concerns with equal intensity.

That these patterns remain evident even during a time when Professor Edelman knew and understood that he had to behave better was troubling to the FRB, as was the persistence of an approach, in the words of one interviewee, that harkens back to an older model of "I'm smarter than you are, and you're inferior."

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

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

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

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

- Edelman, Benjamin. "Google, Mobile and Competition: The Current State of Play." *CPI Antitrust Chronicle* (Winter 2017) – "He has no current clients adverse to Google with respect to the practices discussed herein."
- Edelman, Benjamin, and Damien Geradin. "Android and Competition Law: Exploring and Assessing Google's Practices in Mobile." *European Competition Journal* 12, nos. 2-3 (2016): 159–194 – "Disclosure statement: No potential conflict of interest was reported by the authors."

- Dominant Platforms keynote (video) – September 27, 2016 – no apparent disclosure.
- Edelman, Benjamin, and Damien Geradin. "Spontaneous Deregulation: How to Compete with Platforms That Ignore the Rules." *Harvard Business Review* 94, no. 4 (April 2016): 80–87 – "Benjamin Edelman is an associate professor at Harvard Business School and an adviser to various companies that compete against major platforms."
- EC Statement of Objections on Google's Tactics in Mobile. (April 2016 blog posting) – no disclosure statement.
- Edelman, Benjamin, and Zhenyu Lai. "Design of Search Engine Services: Channel Interdependence in Search Engine Results." *Journal of Marketing Research (JMR)* 53, no. 6 (December 2016): 881–900 – "Although the first author advises Microsoft on subjects unrelated to this article and the second author was previously an intern at Microsoft Research, this article was not prepared at the request of or funded by any third party."

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

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

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

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

The second example relates to a class action complaint, Bazerman V American Airlines, Inc, filed on July 13, 2017, by plaintiff Max Bazerman and alleging that American Airlines (AA)

fails to honor contracts it enters into with its passengers—specifically, related to fees for checked bags.

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

Dear Nitin and Paul:

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

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

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

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

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

With appreciation,

Max

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

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

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

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

The FRB was particularly interested to understand how Professor Edelman had chosen the particular path he did.

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

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

The American Airlines case already has been connected back to the School and to Harvard University, as witnessed by the headline of the story that Professor Bazerman included in his July 18, 2017, note, and by articles such as "Harvard Professor Who Went After Chinese Restaurant Files DOT Complaint Against American Airlines For..."³ and "American Airlines Class Action Lawsuit Challenges Bag Fees,"⁴ which notes that "Bazerman is represented by Benjamin Edelman of the Law Offices of Benjamin Edelman, and Linda M. Dardarian, Byron Goldstein and Raymond Wendell of Goldstein Borgen Dardarian & Ho." Given his prior history with situations that had complicated consequences for him and for the School, the FRB is concerned that he did not engage the Dean, the Dean's Office, or Brian Kenny (who Professor Edelman had contacted in advance of the Airbnb article), before the suit was filed. It gave us continuing reason to be concerned that Professor Edelman can be quick to act on his perceptions of wrongdoing by others, without first reaching out to understand different points of view.

Summary

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

At the same time, there were a number of individuals within the group interviewed—individuals whom Professor Edelman himself had identified—who were less certain, not about the work, but about his methods, the extent to which he had internalized feedback from the 2015 review, and his willingness and ability to seek guidance from others in the future. Moreover, they experience Professor Edelman's interactions as disrespectful and his work as not always meeting standards of disclosure that pose reputational risk and damage to the School, as well as to themselves as members of the School's faculty.

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

We are mindful that the issues raised here rely on judgment—one's assessment of Professor Edelman's interactions, of potential risk and reputational benefit, and of the degree to which his activities are core and central to his research or outside activities that should be more thoughtfully connected to the Harvard name.

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

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

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

Exhibit 1

Dear Ben,

I am writing on behalf of the Faculty Review Board (FRB) – comprising Angela Crispi, Stu Gilson, Len Schlesinger, and myself (chair) – to let you know that we met last week to review your "Reflection on Feedback from Faculty Review Board" dated March 15, 2017.

As you know, in 2015, at the request of Paul Healy in his role as Senior Associate Dean for Faculty Development, the FRB was tasked with assessing your ability to meet the standards outlined in the *Policies and Procedures with Respect to Faculty Appointments and Promotions*. As articulated in our October 2015 report, the FRB found that your conduct in the Blinkx and Sichuan Garden incidents, as well as in interactions with staff, did not uphold the School's Community Values and did not meet the School's green book criteria for "Effective Contributions to the HBS Community." We recommended that these concerns be taken into account during the promotions process. In November 2015, the Standing Committee then recommended deferring your case for two years to enable you to demonstrate whether you had indeed internalized lessons learned, anticipating that the FRB would again be activated during summer/fall 2017 to review your conduct.

The FRB now must assess:

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

With appreciation for the thought you have put into drafting your initial reflection, after reviewing the document, we would like to ask for your thoughts on these and the following questions:

1. Your response provided examples of outcomes you believe to be more in line with the School's Community Values and with the guidance you received from the FRB report and from a number of senior colleagues. Your reflection focuses more on the "what" than the "how." We would find it helpful if you might comment or provide (more detailed) examples that give us a better window into *how* you thought about your activities and how you interacted with staff. Put differently, if a previous challenge was the disconnect between your perception of your actions and behaviors, and how others perceived your actions and behaviors, how have you gained confidence that you now are on a better path? What does it mean to pick projects "with significantly greater care"?
2. You have provided a comprehensive listing of suggested individuals to whom the FRB might speak. While we will make every effort to be thorough, with the passage of time since your reflections were submitted in March, are there individuals you would prioritize who may be best able to speak to your conduct?

It would be helpful to receive your response before the end of July and, ideally, your prioritized listing earlier if possible. Our plan is to schedule conversations over the next few weeks and,

after your additional input, with you as well. We aim to have a draft report for your review as the new term begins.

As a reminder, consistent with the FRB principles and procedures (attached), you are able to designate an advisor who might join you for meetings or interviews, or review any written materials. To be clear, we will be letting Brian Hall know about the upcoming work from a logistics and process perspective, but we will not be sharing documents or information with him.

If you might let me know when we can reasonably expect to hear back from you – we are mindful of the potential for longstanding summer plans – it would be helpful; we want to move forward expeditiously and thoroughly but thoughtfully. We then can schedule time for you to meet with the FRB.

Ben, please don't hesitate to reach out with any questions. I look forward to hearing from you.

Best,

Amy Edmondson

Reflection on Feedback from Faculty Review Board

Benjamin G. Edelman

March 15, 2017

Reflecting on the 2015 report of the Faculty Review Board and about my time at HBS more generally, I took a moment to review the school's mission as elaborated in the community values statement:

The mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence, and lifelong learning.

The FRB's 2015 concerns link most closely to the community values call for trust and mutual respect. I was saddened and alarmed by the FRB's report that some staff previously found me disrespectful, and guided by the FRB's assessment, I have tried to change my style to make sure my interactions accurately and unambiguously reflect my respect and concern for others. I took some solace in the FRB's recognition my positive intentions, but I credit that good intentions are not enough. Showing respect to everyone I work with, and having them perceive me as respectful, is crucial in each and every interaction, without exception, even if it means moving more slowly or forgoing some opportunities.

Drawing in part on the FRB's report, I have also thought carefully and critically about the subjects I work on and the way I approach them. Broadly, I think I have improved in my efforts to pick subjects that are (and are seen to be) appropriate; I now choose my methods and style more carefully in order to make sure my work is seen as constructive; and I explicitly pause to consider other points of view. Meanwhile, my winter 2017 LCA teaching is providing a valuable opportunity for me to reflect on key areas the FRB considered. And my new office location, with LCA colleagues, immerses me in a different environment where it has been particularly natural to see the world from a different perspective. In this document, I provide an update each of these topics in turn.

Improving my approach to internal projects

I previously attempted to convey to the FRB my longstanding and ongoing passion for improving and updating our software and systems to help make HBS the best it can be. My prior and updated personal statements, both at heading "Contribution to the HBS Community," list my efforts in this area. These range from large (participation tracking software at peak used by more than half the faculty, and once credited by Dean Nohria as importantly reducing the disparity in grades for male versus female students) to small (quick tools to help colleagues with one-off requests). There have always been obvious tensions in this work. For one, it's untraditional for HBS faculty to write software, and while some have done so in the past (notably including Jan Hammond and Frances Frei writing earlier versions of the participation tracker), this has been a greater focus for me. Meanwhile, changing software architecture makes it more difficult for faculty to get involved: As we move away from freestanding files on individual computers, towards applications running on servers, we naturally become more reliant on centralized IT—leaving less room for faculty to build improvements even if they have programming skills. Nonetheless, I haven't turned away from these efforts, but instead have tried to do this work better and smarter.

In particular, I have attempted to focus my software efforts on areas where I can be most helpful, which necessarily includes respecting others' decisions even if I disagree. In that regard, a notable experience occurred in summer 2016 when, in preparation for the Canvas rollout, I alerted IT leaders to some important limitations in their proposed implementation. I was particularly concerned that 70 clicks

were required for a RC course assistant to copy a changed template through to the 10 sections, especially since this process must be repeated every time there is new material to distribute – every supplement added or typo corrected. In short order, I built a script that reduced the process to two clicks. IT staff examined my approach, evaluated it at some length, and decided they preferred to retain the approach they had planned. (They were concerned that my tool might malfunction in unforeseen circumstances. Their approach had the notable benefit of being entirely supported by Canvas's developer, while my approach was an unofficial "hack.") I disagreed, but it was their decision to make. I have not pursued this matter further.

Yet even as I hoped for more from some aspects of Canvas, I haven't turned away from the IT team that managed that rollout. Quite the contrary, I remain in contact with these staff roughly once per month, sending specific suggestions that I gather are sometimes quite useful. In one suggestion, sent just last month, I suggested improvements for tracking student absences, combining four separate systems where such information is currently stored. IT's Jeanne Po replied the next day to thank me for my suggestions, mentioning that "As always, it is extremely helpful," and adding that my effort was also "timed so perfectly" as her team was also thinking about this subject. We may never know whether my suggestions went beyond what her team was already planning, but her unsolicited thanks meant a lot to me as I continue to evaluate whether I'm on the right track.

Meanwhile, I've found particular satisfaction in helping a sight-impaired colleague use novel IT to teach without special staff assistance, specifically by repurposing classroom "polling" buttons to let students register their interest in speaking and even convey the urgency of their interest. For her, this was a big step forward: I gather she was not looking forward to having a staff member handle calls or whisper names in her ear, whereas my software makes her independent. Indeed, with the urgency feature, there's a sense in which the software lets her prioritize calls better than fully-sighted instructors. As you might expect, the process had twists and delays, taking almost a year from initial articulation of the concept until first use in the classroom. But I think we reached an outcome that's better than anything my colleague had hoped for. Furthermore, my software could be useful to other sight-impaired instructors as well as to anyone wanting the urgency/priority feature. (In fact, Josh Coval first proposed this feature and says he wanted it for years.) I hope this tool demonstrates two things: First, the substantive result is something I am proud of—a major service to a colleague in need. Second, this process entailed close work with multiple Media Services staff, and even with their outside AV contractor. It seems the ultimate burden on Media Services was relatively low—modest cost and modest staff time. I hope their experience, working on this with me and with the affected instructor, is something they see positively too.

Based on the FRB's report in 2015 and knowing a further review would soon follow, it would have been easier and arguably safer to stop trying to get involved in IT improvements—mindful that any such efforts could backfire or could be seen as out of line. Indeed, both before and after the FRB's report, multiple colleagues questioned why I spend time on these internal projects. I understand their reasoning, but I tried to take something more nuanced from the FRB's assessment—not that it's improper to try, but that I needed to redouble my efforts to make sure that I do it properly and leave others feeling fully respected and as good about me as I do about the underlying purpose.

Choice of outside projects; methods and style

Well before the FRB's report, I had already begun to rethink certain of my outside activities. My November 2015 reply to the FRB summarized some of those changes, and I have continued in the same direction. In response to the Blinkx matter, I became increasingly skeptical of relationships that might

create an appearance of a conflict of interest, even when clearly permissible under law and even when otherwise a good match for my skills and interests. I have declined several such projects and expect to continue to decline them in the future. I'm confident that there are ways to do such work without creating a risk of an appearance of conflict, most naturally by declining payment of any kind from any source, or perhaps through improved disclosures that leave no doubt what I'm doing or why. But mindful of public concern at the way I handled the Blinkx matter, I have stayed away from such projects.

As to consumer protection projects, I have continued to follow the approach I conveyed in 2015, namely picking my focus areas with significantly greater care. I previously told the FRB about some of the litigation matters I originated, including efforts to protect first advertisers, and later consumers, from a variety of improper charges. I have been pleased to see the interested public broadly receptive to these efforts, some of which have led to substantial refunds to victims. My newest consumer protection efforts include some embodied in class action litigation, and I anticipate (and have seen early signs seeming to confirm) public support. For example, airlines' growing fees are notoriously unpopular, and where I can demonstrate that such fees are not just arbitrary but indeed unlawful (for example, breaching some regulatory duty or prior contractual commitment), it seems the interested public shares my goal of reducing the fees and even compelling airlines to provide refunds. Consider also my May 2016 online article about Uber billing errors—overcharging consumers, promising "refunds" but delivering credits, and adding undisclosed restrictions to seemingly-simple promotions. With proof in screenshots on my site, with my tone appropriate throughout, and with my explicit focus on refunds for everyone affected, these were straightforward discussions about contract terms and truth in advertising, not a tirade or impassioned debate. Meanwhile, I was pleased to see Uber change its practices to cease the overcharges I revealed. I count that as a success, and while it's incomplete (victims only refunded if they read my article, realized what happened, and contacted Uber to request benefits), I don't plan to pursue it further.

Considering other points of view

The FRB found me deficient in understanding and accepting other points of view. I took the feedback to heart and have made changes, including a new approach that allows me to deliberately and thoughtfully consider others' perspectives. Specifically, I try to mitigate my strong instincts by pausing to assess the counterarguments. For tougher cases, I endeavor to pause further to restate the counterarguments in my own words, as persuasively as I can, stepping into the shoes of whoever I'm talking to, or into those of a possible future critic who assesses a given project. This builds in part on a suggestion I received from Jan Rivkin, and I've found it an effective and rigorous way to deepen my appreciation of multiple points of view.

Importantly, even when this process hasn't changed my mind about the "right" answer or the best answer, it has helped me see other perspectives and has broadened the set of questions where I recognize that reasonable people can disagree. For example, this approach led me to conclude that even as I disagreed with IT's approach to certain aspects of the Canvas rollout, it was their decision to make and I needed to leave them to it.

Impact of teaching LCA

Since January 2017, I've been teaching LCA. There was an unavoidable irony to this assignment. Nonetheless, in my view the course is going extraordinarily well. I have much to say about the course substance, depth of the cases and questions, and teaching group, all of which I have found impressive and satisfying. But perhaps much of that goes beyond the interests and scope of the FRB.

For FRB purposes, a particularly relevant facet is the relationship between course concepts and my prior activities. For example, my experience in the Blinkx matter connected directly to questions that arise in the course—what methods equity analysts may lawfully and ethically use to assess company prospects, a question that arose in the final pasture of our discussion of insider trading in *Martha Stewart*. It was tempting to leave my saga out of the teaching plan. (One key worry: What insight could come from discussing my own activities, when students with negative views would inevitably feel limited in what they could say with me facilitating discussion?) Nonetheless, I concluded that I needed to explore my experience, including what I did and how others saw it—not just because it was personally relevant, but because some students were likely to know about it already, and I couldn't ignore the elephant in the room. Whatever trepidations I had, the pasture was compelling. Students were intrigued, and they were quick to apply their skills to assess the situation. I'm not one to be emotional in teaching, but this discussion brought me closer to these students than I've ever felt to others.

Looking ahead, I see other areas where my personal experience—and the activities the FRB examined—are bound to come into the classroom. Should my restaurant pricing experience find its way into the *responsibilities to customers* module, as I teach it in my section? Here too, given my amply documented experience which the students of course know, I think it has to. I wouldn't wish this on other instructors, but nonetheless it will make a reasonable mini-pasture. Separately, some of my class action litigation efforts, seeking refunds for consumers or advertisers or others, will also arise. Writing weeks before those sessions, I cannot yet state precise teaching purposes or takeaways. But between the process of preparing to teach and the insights from students, I'm confident that I'll emerge with a richer understanding of what I'm doing, whether it makes sense, and how it should be adjusted.

Sitting with LCA instructors and others in general management

In my new office with LCA instructors, the world looks somewhat different. Where NOM colleagues might discuss the latest paper in AER or methods for improving identification in field experiments, the northwest quadrant of Morgan 4 is more likely to talk about an ethical dilemma in the news or a possible addition to the LCA curriculum. More generally, sitting with a different group provides a natural opportunity to see the world in a different light and to rethink my prior perspective in light of the focus of those now around me. It's a big change, but ultimately I feel comfortable in both places.

Moving to Morgan also has benefits beyond LCA colleagues. People I'd previously see every few weeks are suddenly just down the hall. Baker always felt a bit distant from the core of HBS, and Morgan 4 is the very opposite of that.

Suggestions on additional sources and evidence

Both when I first read the FRB's report, and again as I reread it more recently, I remarked that the report did not discuss the perspectives of the faculty or staff with whom I have worked most closely. In the accompanying addendum, beginning on the next page, I list a variety of such faculty and staff, the contexts in which I have worked with them, and what I believe the FRB might learn from consulting with them. I intentionally omit most faculty and staff affiliated with NOM in light of the FRB's prior sense that evaluations are most useful when they come from outside the unit.

I hope that these colleagues can provide insight into my approach and a useful perspective on the concerns raised in the original FRB report.

Other Staff and Faculty with Extended Observations Yielding Possible Insight on My Character

Faculty outside my unit:

Tom Eisenmann ran a teaching group as Peter Coles and I took over his EC course in 2008-2009. We also worked together on questions of Independent Project structure and overlapping students, EC courses for "tech tribe" students, skills-based teaching (particularly software design), faculty rights in case publications, and online distribution of cases. We often discuss research due to overlapping interests. From dozens of discussions going back to the very beginning of my time at HBS, I think Tom has a full sense of who I am, what I'm interested in, and what I'm likely to do in the future.

John Deighton and Sunil Gupta led focused Exec Ed programs in which I taught perhaps half a dozen times, often with one of them observing. John and I also presented jointly at faculty reunions on approximately a dozen occasions—offering provocatively opposite assessments of the effectiveness of online marketing. From these sessions, as well as overlapping research interests which we've also discussed at some length, I think John and Sunil are particularly well positioned to assess who I am and where I'm headed.

Marco Lansiti and Shane Greenstein lead the Digital Initiative, in which I have participated as a regular and active seminar participant (among other things). We often discuss research due to overlapping interests. From these activities, as well as overlapping research interests which we've also discussed at some length, I think Marco and Shane are well positioned to assess my approach and my prospects.

Jeff Polzer was FIELD 3 course-head when I taught in that course during winter 2015. Other senior track faculty in the FIELD 3 teaching group included Mike Toffel (2015) and Cynthia Montgomery (2016). I think they would report that I was a well-liked participant in the teaching group, making substantive contributions relating to my skills and research (for example, strategies and guidance for teams working on software-based businesses and particularly marketplaces) as well as administrative contributions to facilitate delivery of a complex, logistics-intensive course.

Mike Toffel, in his capacity of TOM course-head, in fall 2016 inquired about a random-call tool I had made previously, as he thought that tool could help add excitement to the final day of TOM. In a quick discussion, we concluded that a new tool would be even more effective. I wrote it quickly, and I understand that he and some other members of the teaching group used it the next day. I think Mike would report that he was pleased to receive a tool that did everything he wanted, reliably and easily, on an unusually tight timetable.

Joshua Coval, [REDACTED] and [REDACTED] are familiar with my ongoing efforts to integrate my software with built-in classroom hardware (specifically, polling buttons) both to assist sight-impaired instructors [REDACTED] and to facilitate market-based call prioritization (Coval). I think they're all pleased that the software now exists and provides the features we discussed at length. I think [REDACTED] who in winter 2017 is using the software intensively, will report that it transformed her approach to teaching and increased her confidence in the classroom.

[REDACTED] and I also worked at some length to devise other IT improvements that make the most of her vision. For example, I reworked the ergonomics of her office workspace, including loaning her stopgap equipment before official HBS accommodation equipment became available. I devised an

unobtrusive software solution to let her view seminar slides on a tablet, at a distance and angle that work for her, without requiring that the presenter do anything extra. I think Christine will report that these benefits improved her comfort and productivity and allowed her to feel like a full participant in seminars.

Youngme Moon led the MBA program during the period in which I first raised concerns about proposed reduction in classroom projector screen size. I think she'll report that she was alarmed by the changes, all the more so because changes were made without IT telling her or seeking or receiving her approval. She may remember thanking me for discovering the problem before the semester began, with enough time left for her to undo the change without impact to a single class (and indeed without most faculty learning about the issue or needing to spend a moment thinking about it). Some of her contemporaneous emails on this subject are in Exhibit 2 to my Reply to FRB (November 6, 2015).

Richard Nolan and Robert Austin led a focused Exec Ed program in which I taught repeatedly. I think they'll report that I was an effective instructor. They may recall that after I taught a case they wrote, *The iPhone at IVK*, I then wrote and published a teaching note for that case—I gather, a rarity, in that few faculty write teaching notes for other instructors' cases.*

Arthur Segel and John Macomber led a focused Exec Ed program in which I taught once, and we have repeatedly discussed overlapping research interests as well as connections between our courses and research. I think they'll report that I was an effective instructor and that we have enjoyed exploring related interests.

David Parkes (the George F. Colony Professor of Computer Science and Area Dean for Computer Science) leads the SEAS expansion into Allston. For several years, we have discussed transportation options to link the Allston and Cambridge campuses, drawing on my research and casewriting as to certain transportation innovations. I think David will report that my remarks changed the way he thinks about transportation options and convinced him to look into novel options he would otherwise have rejected without serious consideration.

Shawn Cole teaches a required course for HBS-HKS joint degree candidates, and in both 2016 and 2017 invited me to guest-teach in that course. I think Shawn will report that my sessions were effective and well-received.

Mitch Weiss and I have repeatedly discussed a range of overlapping research and course development interests at the intersection of technology and public policy, as well as course development associated with technological skill-building and entrepreneurship (grounded in our joint FIELD 3 teaching in 2015). I think Mitch will report that in FIELD 3 I was well-liked and a full contributor, and that our subsequent discussions have helped guide some of the most challenging aspects of his course development.

Joe Badaracco is the Course Head of LCA, in which I am currently teaching. I have also worked closely with Lena Goldberg on developing new teaching materials. Within the teaching group, I have worked most closely with Nien-hê Hsieh on teaching plans and pedagogy. In the first few weeks of teaching, I

* A colleague asks why I wrote a teaching note for someone else's case. I thought my teaching plan might be helpful for others looking for teaching ideas for this material. I do not claim that my substantive contribution was extraordinary or even notable enough to be starred in my review packet (which it is not). Nonetheless, for FRB purposes, I think this document demonstrates my longstanding contributions to the HBS community. Notice that I published this note in 2010, years before Blinkx or restaurant pricing raised the prospect of a FRB review or similar scrutiny.

was pleased to see that David Fubini substantially adopted my one-page bring-to-class teaching plan for the second day of the Enron case. When I proposed an alternative approach to the final pasture of the Martha Stewart case, Amy Schulman reported successfully using my approach. I think all will report that I am an effective and well-liked member of the teaching group. I hope they'll also report that my technical contributions have improved the group's operations.

Philip Heymann (the James Barr Ames Professor of Law at the Harvard University Law School), Harry Lewis (Gordon McKay Professor of Computer Science and the Director of Undergraduate Studies in Computer Science at Harvard University), and Scott Kominers (in his then-capacity of instructor of the Harvard Economics Department graduate course in Market Design) teach or taught courses elsewhere in the university. Each invited me to guest-teach in their respective courses. I think they will all report that my sessions were effective and well-received.

Staff:

FSSs and their managers, including Imelda Dundas, can assess my work with the FSSs to whom I was assigned. I think they will report that I was able to work productively with all the FSSs assigned to me. They may remember that I happily accepted even FSSs who had difficulty working productively with other faculty.

Jenny Sanford, my FSS during 2015-2016, and later my part-time RA, can assess the way I conducted myself in response to media coverage in 2015, as well as my interactions with FSSs. I think Jenny will report that I was humble but composed, and that I was well-liked by FSSs.

Paul Craig of HBS IT can assess my work on campus-wide educational software, including my efforts on Learning Hub specifications and requirements, finding and documenting bugs, suggesting improvements, and devising workarounds for key limitations. I think Paul will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users. More recently, my primary contact for such matters has been Jeanne Po, and I hope she will convey a similar assessment.

Niel Francisco and Michael Soulios of HBS IT can assess our joint work on various desktop support anomalies such as computer encryption complexities and support for faculty with special needs, as well as routine matters such as desktop support and loaners. I think they will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users.

Media Services classroom technicians, including Matthew Briggs and Paul Shoemaker, can assess my work with the technicians assigned to my classrooms, including my responses to occasional failures in classroom technology and my classroom technology innovations now used by others. I think they'll report that despite my unusual classroom equipment, I was respectful, easy to work with, and accepting of the inevitable glitches.

Willis Emmons (and historically Tara Abbatello) of the Christensen Center can assess my efforts in software to measure and analyze participation, including the groups I interacted with in designing and improving this software and my approach to feedback and requests. I think Willis will report that my participation tracker implemented a vision he had articulated for years, but that he had been unable to obtain for lack of technical resources. I think Willis will report that I was respectful and easy to work with, and that I went above and beyond to provide the best possible features to all faculty and staff.

Lee Gross in the MBA Registrar's office can assess our interactions as we coordinated my software's efforts to gather course and enrollment information from Registrar systems. I think Lee will report that I was respectful and easy to work with, and that I was careful not to intrude on her time or make unwarranted special requests of the Registrar. Lee may recall that when she occasionally needed to confirm the way IT systems presented information to faculty (to troubleshoot displays seen by other faculty), she contacted me, and I always promptly and happily provided the information she requested.

FIELD 3 staff, including Kari Limmer and historically Annie Hard (now at HKS Center for Public Leadership) and Greg Freed, can assess my participation in the FIELD 3 teaching group, including the software I built to improve productivity for faculty and staff as well as to streamline activities within the classroom. I think they will report that I was respectful and intently focused on improving systems for students, faculty, and staff. Kari may remember that Greg used some of my tools even outside of FIELD 3, finding that my tools could equally be applied in other parts of FIELD to streamline work by faculty as well as FSSs and especially FIELD staff.

Response to Faculty Review Board Questions – “How”

Benjamin G. Edelman

July 31, 2017

The FRB’s July 6, 2017 letter commented that my March 15 submission discussed more of the “what” (what I have done differently, after prior FRB guidance) and not enough of the “how” (how I have thought about my activities and approach). In this response, I seek to provide the additional information the FRB requested.

I mentioned in March that I have come to think increasingly carefully and critically about the subjects I work on and the way I approach them (paragraph three, first sentence). I choose these words with care, and I intend each word to have meaning that speaks to the “how” of my approach. In this statement, let me expand on each word in turn.

1) “Carefully.” There are some projects that are worth pursuing due to their substantive importance, and others not. My guiding principle is to be thoughtful, now more than ever, in what issues I choose to work on.

Sometimes this is easy. I suspect most people would agree that it was a worthy activity for me to help a colleague with a sight impairment whose teaching would be much improved via software I knew how to write. The factors that most swayed my thinking:

- a) The project was within my ability. (Had it been otherwise, it would have been a nonstarter no matter the other merits.)
- b) It mattered to the beneficiary. The importance of teaching independently, without unusual support staff in the classroom, is apparent. The school’s other proposals to this colleague, such as no MBA teaching or teaching only with a staff person or faculty colleague handling some aspects of in-the-classroom duties, were manifestly inferior and not her preference.
- c) My contribution was pivotal, in the sense that no one else was going to do it.

I was also influenced, though less so, by the opportunity to learn something from the project (including thinking critically about my own call patterns, as well as continuing to improve my skills at software engineering) and by the opportunity to work in partnership with Media Services staff.

Sometimes it’s less clear. For example, last year I discovered that certain Uber “free ride” offers were actually \$15 discounts (making a ride only discounted, but not “free,” if the price was more than \$15). I thought this was worth fixing—millions of users affected; collectively a large amount of money at issue; potential to distort competition if competitors honored their respective marketing offers while Uber was able to attract more passengers via a false promise. At the same time, I also considered the counterarguments—that it’s no big deal for middle-class passengers to save a few bucks, all the more so when they are themselves choosing to support a service with a tumultuous legal history; that Uber’s \$15 discount is generous and nothing to complain about. I ultimately concluded that the problems were worth documenting in the context of an online article which also presented several other Uber errors. I sought to retain a levelheaded, dispassionate tone, and to provide abundant screenshots showing what happened. Through those mechanisms, I sought to keep the focus on the substance of the practice at issue, not on me or my motives.

Some years ago, I took pride in pursuing issues that no one else did—specifically because I knew that if I didn't, no one else would. I remember and credit the reasoning that led me to that approach, but it's no longer right for me: My substantive interests have shifted, and those issues are no longer of greatest personal or professional interest. They're incompatible with the increasing demands on my time. And there's a strong argument that small problems just aren't important enough.

These days, in choosing a problem to try to fix or a subject to work on, I try to consider a combination of the number of people who might benefit, the seriousness of the harm they are suffering or the improvement I can offer, and, where applicable, the blameworthiness of the putative victims versus putative perpetrator. I also consider the feasibility of the project—whether I can in fact do what I set out to do; how I'd give up, and with what backup plan if things don't work out as I hoped. The bottom line is that there are a lot of problems I decline to try to solve.

2) "Critically." The crux of the task, in this regard, is to anticipate, understand, and engage with other points of view. In March, I mentioned Jan Rivkin's suggestion that I restate counterarguments in my own words, as persuasively as I can, as if I were an attorney or other advocate speaking in favor of that position. I've found this a powerful approach, and I use it increasingly regularly.

I've found that I usually have the ability to make strong arguments on both sides of a question—perhaps the desired result of legal training. A necessary next step is to make a considered judgment of which argument is stronger, or if a question truly is a toss-up, to acknowledge it as such. My March 15 submission noted one situation where this approach led me not to pursue my suggestion, concluding that while I disagreed with IT's approach to a certain aspect of the Canvas rollout, it was better to leave this to IT staff to do as they see fit. I found this a genuinely difficult choice: I was sad to see the school ask our FSS colleagues—among the lower-status members of our community—to click 70 times to do a task I could help them do with two. Relatedly, I felt it demeaning to ask our administrative support staff to do repetitive, low-value work (and I was surprised that others didn't see it similarly). Meanwhile, I was disappointed by the barrier to teaching and learning if the longer process led course-heads to forego some updates because it was administratively burdensome to push the updates to all affected sections. Indeed, to this day I wonder whether I made the right decision. Nonetheless, on reflection, I stand by the approach I chose. Notably, I got there via a period of explicit introspection (not to mention discussions with senior colleagues) that led me away from the approach that was my initial instinct.

3) "The subjects." In a hierarchy of subjects, I suspect it's uncontroversial to place physical, emotional, health and other special harms above business-to-consumer economic harms, and in turn above business-to-business economic harms—of course trying simultaneously to give proper consideration to the magnitude of the harm. On reflection I notice that my recent research embodies this shift in priorities.

My early work at HBS focused almost exclusively on economic harms—analyses of prices, payments, and other events naturally measured in dollars. Perhaps that's the standard result of training in economics. But in general, it seems to me that the case for taking a vigorous, spirited position is stronger when the subject is in some important respect "more than money," and correspondingly weaker when the value at issue is purely economic.

I have increasingly tried to be attuned to aspects of my research that relate to these bigger questions, and I think I have found some. For example, when Airbnb designed its site in a way that is distinctively disadvantageous to both guests and hosts of disfavored minority groups, I was pleased to write about the problem and push the company to make changes. Arguably it all comes back to economics—a disfavored host can usually get a guest, despite his race, by offering a lower price. (In fact I measured

Response to Faculty Review Board Questions – "How"
July 31, 2017
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just how much lower a price he'd likely need to offer.) And a guest who is willing to pay extra can probably find a room (if not through Airbnb, then in a hotel). But the connection to race and the important larger societal questions gave the project a greater sense of purpose and, in my view, a greater urgency.

Even within economic harms, I've tried to be more thoughtful about my choice of issues. A decade ago, I looked at length at business-to-business harms—one company overcharging another, for example through nefarious or at least negligent online advertising practices. Whatever else one says about those problems, in general companies have some reasonable defenses at their disposal, including consultants, experts, and ultimately litigation (though I have written about the important limits of these strategies). In contrast, when a company overcharges consumers or takes some other harsh action towards consumers, the consumer's options are usually considerably narrower.

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

4) “The way.” I don’t want to be a bully or a jerk, nor to be viewed as such, and it was alarming to hear that some people perceive me in that way.

In this regard, I periodically look back at my 2014 emails with Sichuan Garden. My tone there was far out of line and, in my view, really not normal for me. I’ve tried to understand what led to my unusual and unseemly approach. From our prior discussions, the FRB may recall that I concluded that the owner was engaged in intentional misconduct—not just keeping an old menu up inadvertently (as media tended to report), but intentionally advertising lower prices than he intended to charge, because he benefited from doing so. I recognize that not everyone shares this diagnosis, and evidence is mixed, but my conclusion in this regard clearly shaped my approach and tone. Whether I was right or wrong, my diagnosis actually didn’t much matter; my tone should have been more respectful no matter what I thought the owner had done or why. This was an important lesson.

The FRB previously reported concerns about the style of my interactions with certain HBS staff. Clearly the right style depends on the subject matter, who I’m talking to, and the overall context, and I’ve tried to be aware of these factors in all I do. My sense has always been that a careful, precise, technical analysis is appropriate when talking to a technical professional about a technical subject. Some of these interactions took place via email, so I reread some of the relevant emails. For example, I reread my February 12, 2015 message to Rawi Abdelal about projector changes I thought he’d want to know about

(presented in my November 6, 2015 submission as Exhibit 4). My message was precise, quantitative, and analytical, and I also presented the opposing point of view but, to be sure, critiqued each argument firmly. No doubt some people would find my message off-putting. Rawi, at least, did not. (He replied "Many thanks for your note and the thoughtful reflections.") I thought my style was appropriate in light of the nature of the question at hand (ultimately an engineering matter which called for technical analysis), Rawi's stature relative to my own (more senior), and his request for this information (which, as the first paragraph of the message mentions, was incidental to us discussing it in person). Meanwhile, the FRB rightly flagged the increased care necessary when interacting with people of lower status, lest they feel personally or professionally slighted. I have tried to be particularly attuned to this risk. I have had some technical correspondence with HBS staff, for example with the TSS technicians who resolve desktop computer problems. Even when discussing complicated subjects—for example, troubleshooting unexplained hardware problems that run contrary to all our experience—we've been cordial. (I'd be happy to gather these emails for FRB review.) I like and respect them, and I hope that they feel the same way.

A separate set of "the way" questions arises out of relationships that might be seen as creating a conflict of interest. I mentioned in my March statement that I've raised my personal bar, declining projects that might appear to create a conflict of interest even if clearly permissible under law, even if fully disclosed, and even when otherwise a good match for my skills and interests (March 15 statement, paragraph spanning pages 2-3). I've also tried to be a steward for impeccable disclosure practices at HBS. In the FRB's October 2015 report, at page 47, Jean Cunningham mentioned in passing that I was one of just two faculty to participate in COI small group meetings, and that I brought substantive contributions. More recently, I have encouraged HBR online editors to prioritize improvements to their online publishing environment to allow superior article-specific disclosures of potential conflicts. (At present, the HBR.ORG platform allows only one disclosure per author, applied to all the author's articles on HBR.ORG, which falls short of my personal sense of best practice and also short of what I take the HBS COI policy to request.) Finally, I have further sought guidance from Jean periodically, including in April 2017, December 2015, and September 2015, about conflicts, disclosures, and related matters. With my increasing focus on this area, I think I've substantially reduced the likelihood of further concerns here.

I mentioned in my August 15, 2015 submission that I would not expect HBS to wish to retain me if every year brought media uproar like the two incidents in 2014, nor could I imagine remaining a happy and positive person if such incidents reoccurred. Since then, I have taken significant steps to see that they do not, and they have not. I have become more thoughtful about the possible externalities from, and perspectives on, my actions; and these experiences have redoubled my commitment to using my research and skills to make the Internet a safer and better place, and to making sure my role in the HBS community is, and is seen to be, positive. I thank the FRB for its effort in evaluating these subjects.

Prioritized Faculty and Staff with Extended Observations Yielding Possible Insight on My Character

In my March 15, 2017 submission, I provided a list of faculty and staff with whom I have worked in a variety of capacities. As the FRB requested last week, I prioritized this list to emphasize those who I consider most informative, based on a combination of the scope of my interaction with them, the recency, and the nature and subject.

In the reworked list below, I mark with asterisks the people whose assessments I think would be most informative, and I resequence entries to begin with those I'd consider the highest priority. I also add a bit of additional discussion, marked in underline, where there are relevant new developments or other clarifications, but I also removed some suggestions (and some details) that now seem less important. I retain the separation between faculty and staff, as I sense the FRB seeks to talk to members of both groups. I hope these expanded annotations can give additional context to help the FRB assess which perspectives would be most useful.

Where I present multiple faculty and staff in the same paragraph, I intend to convey that they know me from the same context—for example, two senior colleagues who jointly led a focused Exec Ed program in which I taught. I don't presume that they have the same view of me merely because we interacted in the same context, but that's one natural possibility. Given the limited time available to the FRB, it might be natural to choose (at most) one person from within each of these groups.

Faculty:

Tom Eisenmann* ran a teaching group as Peter Coles and I took over his EC course in 2008-2009. We also worked together on questions of Independent Project structure and overlapping students, EC courses for "tech tribe" students, skills-based teaching (particularly software design), faculty rights in case publications, online distribution of cases, and the joint HBS-SEAS degree program. We often discuss research due to overlapping interests. From dozens of discussions going back to the very beginning of my time at HBS, I think Tom has a full sense of who I am, what I'm interested in, and what I'm likely to do in the future. I suggest that Tom is a particularly appropriate person for FRB to interview based on the duration of our interactions and wide range of subjects discussed including research, teaching, school policies, and efforts to adjust school policies.

John Deighton* and Sunil Gupta led focused Exec Ed programs in which I taught perhaps half a dozen times, often with one of them observing. John and I also presented jointly at faculty reunions on approximately a dozen occasions—offering provocatively opposite assessments of the effectiveness of online marketing. From these sessions, as well as overlapping research interests which we've also discussed at some length, I think John and Sunil are particularly well positioned to assess who I am and where I'm headed.

Marco Iansiti* and Shane Greenstein* lead the Digital Initiative, in which I have participated as a regular and active seminar participant (among other things). We often discuss research due to overlapping interests. From these activities, I think Marco and Shane are well positioned to assess my approach and my prospects.

Joe Badaracco* is the Course Head of LCA, in which I am currently teaching. Even before I joined LCA, I had interacted with Joe repeatedly including on my first interview/job-talk visit (when I spent half a day with LCA faculty), to discuss his suggestions for Participation Tracker improvements (as early as fall 2007), and to discuss shared research interests. As the course-head of the course I now teach, and the de facto leader of the hallway where I now reside, Joe is uniquely positioned to assess my contributions and my interaction with the teaching group and others.

In the LCA teaching group, I have also worked closely with Lena Goldberg* on developing new teaching materials. Within the teaching group, I worked most closely with Nien-hê Hsieh on teaching plans and pedagogy. In the first few weeks of teaching, I was pleased to see that David Fubini* substantially adopted my one-page bring-to-class teaching plan for the second day of the Enron case, and we continued to collaborate closely on teaching plans and action questions, more so as the semester continued. I think all will report that I am an effective and well-liked member of the teaching group. I hope they'll also report that my technical contributions have improved the group's operations. Given the stated purpose of my move to LCA—for others in the school to get to know me and be able to assess me—I particularly hope that the FRB will speak with at least some of the other LCA instructors with whom I taught this fall.

Joshua Coval*, [REDACTED] and [REDACTED] are familiar with my ongoing efforts to integrate my software with built-in classroom hardware (specifically, polling buttons) both to assist sight-impaired instructors [REDACTED] and to facilitate market-based call prioritization (Coval). I think they're all pleased that the software now exists and provides the features we discussed at length. I think [REDACTED] who in winter 2017 used the software intensively, will report that it transformed her approach to teaching and increased her confidence in the classroom. I know the FRB is interested in views from faculty outside my unit, and Josh seems to me a strong candidate in that respect. I recognize that the FRB probably hesitates both to consult junior faculty and also probably hesitates to consult further faculty inside NOM. Nonetheless, given the scope of my work with [REDACTED] and the unusual nature of the work, I hope the FRB will consider trying to speak with her.

Jeff Polzer* was FIELD 3 course-head when I taught in that course during winter 2015. Other senior ladder faculty in the FIELD 3 teaching group included Mike Toffel (2015) and Cynthia Montgomery* (2016). I think they would report that I made substantive contributions relating to my skills and research (for example, strategies and guidance for teams working on software-based businesses and particularly marketplaces) as well as administrative contributions to facilitate delivery of a complex, logistics-intensive course. As course-head, Jeff was uniquely positioned to assess my contributions and my interaction with the teaching group. I know the FRB is interested in views from faculty outside my unit, which I take to signal interest not just in views that cross unit boundaries but also spanning research methods and overall approach. In those regards, Cynthia might be a particularly useful person to talk to.

Mike Toffel, in his capacity of TOM course-head, in fall 2016 inquired about a random-call tool I had made previously, as he thought that tool could help add excitement to the final day of TOM. In a quick discussion, we concluded that a new tool would be even more effective. I wrote it quickly, and I understand that he and some other members of the teaching group used it the next day. I think Mike would report that he was pleased to receive a tool that did everything he wanted, reliably and easily, on an unusually tight timetable.

Youngme Moon led the MBA program during the period in which I first raised concerns about proposed reduction in classroom projector screen size. I think she'll report that she was alarmed by the changes, all the more so because changes were made without IT telling her or seeking or receiving her approval.

She may remember thanking me for discovering the problem before the semester began, with enough time left for her to undo the change without impact to a single class (and indeed without most faculty learning about the issue or needing to spend a moment thinking about it). Some of her contemporaneous emails on this subject are in Exhibit 2 to my Reply to FRB (November 6, 2015).

Arthur Segel and John Macomber led a focused Exec Ed program in which I taught once, and we have repeatedly discussed overlapping research interests as well as connections between our courses and research. I think they'll report that I was an effective instructor and that we have enjoyed exploring related interests.

David Parkes (the George F. Colony Professor of Computer Science and Area Dean for Computer Science) leads the SEAS expansion into Allston. For several years, we have discussed transportation options to link the Allston and Cambridge campuses, drawing on my research and casewriting as to certain transportation innovations. I think David will report that my remarks changed the way he thinks about transportation options.

Shawn Cole teaches a required course for HBS-HKS joint degree candidates, and in both 2016 and 2017 invited me to guest-teach in that course. I think Shawn will report that my sessions were effective and well-received.

Mitch Weiss and I have repeatedly discussed a range of overlapping research and course development interests at the intersection of technology and public policy, as well as course development associated with technological skill-building and entrepreneurship (grounded in our joint FIELD 3 teaching in 2015). I think Mitch will report that in FIELD 3 I was a full contributor, and that our subsequent discussions have helped guide some of the most challenging aspects of his course development.

Staff:

Willis Emmons* (and historically Tara Abbatello) of the Christensen Center can assess my efforts in software to measure and analyze participation, including the groups I interacted with in designing and improving this software and my approach to feedback and requests. I think Willis will report that my participation tracker implemented a vision he had articulated for years, but that he had been unable to obtain for lack of technical resources. I think Willis will report that I was respectful and easy to work with, and that I went above and beyond to provide the best possible features to all faculty and staff. Willis can also discuss our shared work on other aspects of academic technology, and most recently our overlapping time on the Academic Technology Steering Committee: he can report how he saw me interact with committee staff.

Paul Craig* of HBS IT can assess my work on campus-wide educational software, including my efforts on Learning Hub specifications and requirements, finding and documenting bugs, suggesting improvements, and devising workarounds for key limitations. I think Paul will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users. More recently, my primary contact for such matters has been Jeanne Po*, and I hope she will convey a similar assessment.

Media Services classroom technicians, including Matthew Briggs* and Paul Shoemaker*, can assess my work with the technicians assigned to my classrooms, including my responses to occasional failures in classroom technology and my classroom technology innovations now used by others. I think they'll

report that despite my unusual classroom equipment, I was respectful, easy to work with, and accepting of the inevitable glitches.

Niel Francisco* and Michael Soulios of HBS IT can assess our joint work on various desktop support anomalies such as computer encryption complexities and support for faculty with special needs, as well as routine matters such as desktop support and loaners. I think they will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users. I marked Niel with a star because our interactions were more recent.

Julianne Nolan, my current FSS as well as the LCA course assistant, can assess my current workplace approach, my style in requests to her, and my overall approach in the office suite and teaching group.

FSSs and their managers, including Imelda Dundas, can assess my work with the FSSs to whom I was assigned. I think they will report that I was able to work productively with all the FSSs assigned to me.

Jenny Sanford, my FSS during 2015-2016, and later my part-time RA, can assess the way I conducted myself in response to media coverage in 2015, as well as my interactions with FSSs.

Lee Gross in the MBA Registrar's office can assess our interactions as we coordinated my software's efforts to gather course and enrollment information from Registrar systems. I think Lee will report that I was respectful and easy to work with, and that I was careful not to intrude on her time or make unwarranted special requests of the Registrar. Lee may recall that when she occasionally needed to confirm the way IT systems presented information to faculty (to troubleshoot displays seen by other faculty), she contacted me, and I always promptly and happily provided the information she requested.

FIELD 3 staff, including Kari Limmer and historically Annie Hard (now at HKS Center for Public Leadership) and Greg Freed, can assess my participation in the FIELD 3 teaching group, including the software I built to improve productivity for faculty and staff as well as to streamline activities within the classroom. I think they will report that I was respectful and intently focused on improving systems for students, faculty, and staff. Kari may remember that Greg used some of my tools even outside of FIELD 3, finding that my tools could equally be applied in other parts of FIELD to streamline work by faculty as well as FSSs and especially FIELD staff.

Sunday, September 24, 2017 at 4:55:16 PM Eastern Daylight Time

Subject: FRB Update

Date: Friday, September 1, 2017 at 9:44:34 AM Eastern Daylight Time
From: Edmondson, Amy
To: Edelman, Benjamin
CC: Cunningham, Jean

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 "research 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 next 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

Supplemental Response to Faculty Review Board Questions – Outside Activities

Benjamin G. Edelman
September 8, 2017

The FRB's September 1, 2017 message posed several questions about my outside activities. In separate documents, I list my recent outside activities and recent work products. In this supplemental response, I turn to the broader questions the FRB asked.

First, as to when and where to seek advice or approvals on outside activities: I begin with the HBS Policy on Outside Activities of the Faculty. In many respects, the policy is unambiguous, and I seek to follow it strictly. When it appears to be ambiguous, I have consulted with Jean Cunningham and sought her guidance on its meaning. I have also discussed these questions with trusted faculty colleagues, most often senior faculty in my unit, though also colleagues in other units who I have reason to believe have relevant experience.

As to how to include disclosures on my output: I have long included disclosures within my output, including disclosures that predate HBS policy calling for this approach. Compare my "Labels and Disclosures in Search Advertising" (discussing certain Google practices and beginning with an unavoidable top-of-page disclosure with distinctive background color discussing my consulting work for companies that compete with Google; <http://www.benedelman.org/news/110910-1.html>, dated November 9, 2010) with the HBS 2012 Conflict of Interest policy (which, as I understand it, began the official requirement to include such disclosures where applicable). In fact I had posted relevant disclosures on online articles as early as 2004 or perhaps earlier, though my word choice, format, and placement have evolved based on my developing assessment of readers' expectations and the nature of relationships that call for disclosure. Relatedly, I have also twice mentioned efforts to improve the HBR.ORG content management system to provide better and more relevant disclosures. (See my November 6, 2015 Reply to Faculty Review Board at page 3, second bullet. See also my July 31, 2017 Response to FRB Questions at page 4, paragraph beginning "A separate set.") These efforts indicate the depth of my commitment to superior disclosures and my efforts not just to follow applicable rules and guidelines, but to lead.

As to when to include disclosures on my output: In my view, the HBS Policy on Outside Activities of the Faculty appropriately states the circumstances in which disclosure is appropriate. Restating the general approach as I understand it: Disclosure is appropriate, and indeed compulsory, when an outside activity is directly related to a work product, in a way that affects, or could reasonably be seen to, affect objectives or financial interests. Of course people may see "directly related," "affects," and even "objectives or financial interests" differently. Historically my approach to these questions has been grounded in the training I received as an attorney, including in the attorney ethics course required as part of the HLS curriculum. Subsequent events, including FRB guidance, have broadened my understanding, as I discussed in greatest detail in my November 6, 2015 Reply to FRB.

The FRB asked about my work in litigation adverse to American Airlines. First, the FRB asked about the role I am playing. I thought of the case while casually reviewing the applicable contracts and practices to assist friends and family. After I uncovered the violations and determined that they were appropriate for class action litigation, I identified co-counsel appropriate for the day-to-day work in the case. I

drafted most of the complaint and handed the case off to them. I expect that I'll work on some of the key legal strategy and drafting, but I do not expect to be involved in the minutiae of the case.

The FRB next asked whether I considered seeking approval from the Dean for my work on this lawsuit. I considered it but determined that it was not necessary. First, I was guided by the plain language of the applicable policies. In general, litigation does not trigger any of the specific categories listed in the HBS Policy on Outside Activities of the Faculty. Closest is the requirement of Dean's approval for service as an expert witness. But neither of the stated reasons (risk to reputation, scheduling inflexibility) obviously applies. (Service as an attorney tends to prompt fewer personal attacks than service as an expert, where opposing experts often criticize each other by name. Indeed, my prior litigation projects have yielded positive to neutral public response, reducing my sense of reputational risk from these projects and correspondingly reducing my assessment of the likelihood that Dean approval was necessary or appropriate. Meanwhile, co-counsel handle all court appearances and other day-to-day aspects of the litigation, so there is no sense in which this case will impact my academic duties in the way that OA Policy worries for service as an expert.) Moreover, service as an attorney simply is not service as an expert, and thus falls outside the plain language of this provision of the OA policy.

Second, I was guided by my 2008 disclosures and subsequent discussions with Jean Cunningham. In January 2008, I wrote to the "Office of the Dean" role account (officedean@hbs.edu) specifically pointing out my work as an attorney, noting that this was outside the scope of activities calling for Dean's approval, and seeking guidance. I received no reply. In October of that year, I discussed that question among others with Jean Cunningham. Jean gave specific guidance about service as an expert but did not indicate that work as an attorney required advance approval. Leaving that discussion, my understanding was that I do not need to seek approval for service as an attorney, and that has been my approach ever since.

Third, I was guided by senior colleagues. I sought their guidance (as discussed below) and proceeded as they directed.

Fourth, I was comforted by my limited role in the case, serving solely as an attorney. In some matters, concern arises in large part from shifting between multiple roles—for example, doing certain research for investors interested in Blinkx, then writing an article grounded in some of the same findings. Here, I have made no public statements about American Airlines bag fees, and I do not intend to do so, except in the limited ways typical for an attorney. Indeed, this has been my standard approach to litigation matters for some years. See e.g. my single public posting about Facebook overcharging kids and parents, "Refunds for Minors, Parents, and Guardians for Purchases of Facebook Credits" (<http://www.benedelman.org/news/071216-1.html>), in a formal lawyerly style, jointly written with co-counsel, simultaneously and identically posted to co-counsel firm web sites. This narrower single role reduces some concerns.

Although I concluded that the Dean's permission was not required for my work in this case, Max Bazerman and I nonetheless decided to alert the Dean to the project. Reflecting on the dual connection between the case and HBS (my role as an attorney, and Max's role as plaintiff), we both noted that this was unusual and would benefit from up-front discussion with others. In July 2017 we discussed the subject with Brian Hall and other senior colleagues whose judgment we trusted. In a lengthy email thread, we decided that Max would revise his letter as to my promotion case to mention this relationship with me (lest anyone think my representation of him affected his letter); that he would notify Paul Healy (in his capacity as Senior Associate Dean for Faculty Development); that he would pre-commit to give to charity any proceeds he received from the case; and that he would tell the Dean,

request guidance, and propose to discuss by phone or in person as the Dean saw fit. Max tells me that he promptly did all of those things (though I gather the Dean elected not to follow up). Thus, the Dean did know about this project, has been consulted, and did not object. Paul Healy replied to thank Max for mentioning this unusual relationship, but expressed no particular concern.

Incidental to these steps, we also considered several alternatives. For example, we discussed consulting with Jean Cunningham, but concluded that communication directly with the Dean was appropriate (albeit without extended explicit deliberation on this point). We also discussed my participation in some of the steps discussed above, such as me separately contacting the Dean, but we decided Max alone would proceed as discussed above. Among the factors that led us to that decision: As discussed above, we saw my role as plainly permissible under applicable policies, while more unusual questions arose from the dual relationship between me and Max (me serving as his attorney in the AA bag fee case, but at the same time, him writing a letter as to my promotion).

The FRB asked about my article entitled "Impact of OTA Bias and Consolidation on Consumers" and suggested that piece "shares at least some similarities with Blinkx in that a third party provided funding for the work."

First, as I've mentioned previously, I wouldn't characterize the Blinkx project as a client "provid[ing] funding for the work." For the Blinkx project, a client paid me to do a portion of the research later summarized in my online posting. Other portions of the research in that posting came years before, and some came after. Notably, it was my decision whether to post my findings online or otherwise tell the public. Indeed, as we have discussed, the client did not request that I post my findings, and in fact the client's initial request was for confidentiality, while I insisted on the *right* to tell the public given the possible importance of the findings and the fact that my work would rely only on publicly-available information that need not end up confidential. Many readers skipped over these aspects of the relationship, and I have learned that some readers place little or no weight on these factors. Indeed, my thinking on these subjects has evolved, as I explained in detail in my November 6, 2015 Reply to Faculty Review Board (at page 2, heading "Further learnings from Blinkx experience"). Nonetheless, I pause on this point to redouble my efforts to state the facts accurately: No one paid me to post the Blinkx research to my web site, nor did any contract or agreement require me to do so.

Turning to the Blinkx project versus this more recent project about OTA search bias --

Despite the similarity that FRB identifies, I see the projects quite differently.

For one, my disclosure practices differ sharply between the two projects. The FRB no doubt recalls that my initial Blinkx disclosure was both insufficient and inartful: The first version omitted some information that should have been included, and also allowed incorrect interpretations that led some readers to misunderstand my relationship with the investors who had previously asked me about Blinkx. In contrast, for the search bias paper, my relationship with AHLA was fully and carefully disclosed from the outset. I drafted a first disclosure for the OTA bias paper, but mindful of my own fallibility and Jean Cunningham's special expertise and work in this area, I consulted with her by email months before publication, and I implemented verbatim the revision that she suggested.

Turning to substance, the OTA bias paper also offered distinctive benefits for my professional development. For one, the relationship with AHLA provided superior access to key managers (a benefit not included in my relationship with the investors who asked about Blinkx). In particular, the AHLA

arranged for me to interview relevant managers including marketing, strategy, and general management leaders at hotel chains, large hotel franchisees, and individual hotels. At my request, AHLA also arranged for me to interview selected mid-level staff who handle OTA relationships on a day-to-day level. I could have obtained some of this access on my own, but it would have been much more difficult, more time-consuming, and less likely to reach the senior leaders with greatest insight.

Relatedly, the OTA bias project is distinctively related to my academic work. For one, I have written about search bias—largely, though not exclusively, in general-purpose search engines such as Google—for more than a decade. Furthermore, my recent work about “price coherence” (vertical price restrictions) connects closely to the way OTAs obtained market power over hotels and the way they prevent hotels from escaping their high fees and harsh terms. AHLA managers were familiar with both these lines of research when they approached me, and the special fit made the project seem a particularly good match on both sides. The Blinkx article also built on some of my prior work (examining Zango, an adware company that Blinkx acquired after an FTC enforcement action and bankruptcy), but that prior work was largely during graduate school and most readily understood as an outside activity.* In contrast, the OTA bias work is much closer to my core, recent research.

Meanwhile, it seems to me that the best public discussion of novel regulatory and policy topics occurs through academic analysis embodied in work for which faculty authors are typically paid. I share the FRB’s general concern about some aspects of this process. But it seems to me that the alternative is worse. I see little sign that, for example, FTC staff or congressional staff are well positioned to independently explore the OTA market in the depth and detail necessary to form a robust opinion. Instead, analysis by faculty helps frame the issues they need to look at. Close relationships between faculty and affected firms help assure that that framing is as timely and insightful as possible. Finally, competitive dynamics effectively compel firms to seek faculty assistance. Indeed, on the specific subject of OTA bias, the subject of my recent article, OTA’s have been diligent in seeking top talent. For example, Susan Athey, now of Stanford GSB, joined Expedia’s Board of Directors, I gather in large part to guide Expedia’s efforts in this area. With Expedia recruiting top Stanford faculty to assist with this subject, it seems to me entirely proper for the targeted hotels to have access to similar talent to respond in kind. If only Expedia has specialized assistance, and hotels do not, policy outcomes will be predictably lopsided. Tech firms arguably already have some big advantages—easier access to capital, greater market concentration that lets them better organize their arguments—and in my view the search for truth is better served by assuring that small firms, such as advertisers, are diligently and skillfully assisted.

Arguably there are also important distinctions grounded in the motives of my clients. Some people objected to my Blinkx work because my clients were (or were presumed to be) investors who were, in the basest sense, betting against a company and hoping that its stock would drop. They stood to profit at the expense of other investors—in some sense, taking money from other investors. Here, customers (hotels) are complaining about the tactics of certain dominant suppliers (OTAs). They stand to “profit” only by getting to keep money that they would otherwise pay as commissions or fees. To those who disliked the prospect of investors betting against a company, it may be more palatable for companies to seek to reduce their payments to suppliers. The fact that two huge companies control 95% of the OTA market probably makes their situation that much more sympathetic, particularly given increasing public concern about monopoly and oligopoly.

* Some of my adware testing led to academic publications. A representative article that used adware testing to address questions of management: “Risk, Information, and Incentives in Online Affiliate Marketing.” Journal of Marketing Research (JMR) 52, no. 1 (February 2015): 1–12. (Lead Article.) (With Wesley Brandi.)

Finally, my approach to this project was influenced by the fact that HBS rules nowhere prohibit such work and, indeed, plainly allow it. These rules were recently discussed at length and updated with care. During that process, I read the rules, internalized them, and followed them. I credit that there's always a penumbra around any set of rules; some grey areas require interpretation. But I don't think this is in a grey area. In discussing the rules, it was always apparent that outside organizations sometimes pay faculty for outside activities including speaking, testimony, and other writings. The required approach, under the OA and COI policies, is disclosure, which I did. We collectively approved the rules with the understanding that in situations such as this, robust disclosure suffices.

My advance consultation with Jean, as to the disclosure text, also led me to believe that she, at least, saw this project as well within the bounds of the HBS OA policy and also within the bounds of appropriate faculty conduct. She took a full business day to read my draft document, then indicated that she had read it in its entirety and found it interesting, and even offered a bit of other commentary in addition to her guidance on disclosures. Jean nowhere suggested that the project was out of line, was impermissible under the OA or COI policy, or should be withheld or suspended.

Finally, the FRB asked about the concern of "research for hire." I think we're all alarmed by some of what we have learned about certain faculty members' ties to certain companies. I've thought about this for years, beginning while a graduate student before joining HBS. I devised my personal lines that I will not cross and have not crossed. Most notably (with the exception discussed below), I never give any companies right to control (such as approve, veto, or forcibly revise) anything I write about them, with them, with their support, or even using data they provide. (My final requirement differs from many colleagues, who accept company data subject to data sharing agreements that let a company approve or reject a publication at the conclusion of the project—a relationship that makes faculty authors predictably subservient to company requirements, and all but assures results favorable to the companies they work with.)

Indeed, I have followed these principles at personal cost. For example, some years ago, Groupon approached me, seeking my assistance investigating an advertising fraud that cost it millions of dollars. Their standard consulting agreement included a non-disparagement clause that would have prevented me from giving frank advice to students wanting to know my view of the company's prospects. In negotiations with Groupon attorneys, I asked that the clause be removed. When they refused, I declined to assist them. My duties as a faculty member came first.

I say that I "have not crossed" these lines, but there is a notable exception: Our casewriting policies require me (and all other faculty authors) to agree not to publish a case using information learned during casewriting, unless the case subject approves. I've long been concerned about that requirement, worrying that it forecloses cases that explore sensitive or disputed subjects. Despite that worry, I understand the rationale for our approach, and of course I value the superior access the policy helps us retain.

My bottom line, then, is that questions of outside activities and conflict of interest are complex and multifaceted. In my view, the discussions during revision to OA and COI policy were appropriately nuanced, and the revised policies seem to me to strike the right balance between the competing objectives. If a colleague sees my work as "research for hire," I'd encourage that person to look again, and also to think carefully about the plausible alternatives for work that all but requires close relationships with companies. I would also hope that that person would see the benefits that come

from some of my outside activities—for example compelling Facebook to provide refunds to certain parents and kids; compelling Yahoo to let advertisers reject its most noxious advertising placements. I think a fair examination of those activities would reveal my level of care when choosing to work closely with companies, versus when choosing to oppose apparent corporate misconduct. Ultimately I am comfortable with—and proud of—the approach I have taken, the substance of my findings and recommendations, and the work I have done.

Reply to Faculty Review Board Questions
Benjamin G. Edelman
October 5, 2017

I appreciate the FRB's attention and the significant time and effort expended, particularly interviewing a broad group of the faculty and staff I have worked with. I am grateful for this opportunity to reply to the draft report.

Reading the FRB's draft report, I was pleased to see confirmation that many colleagues like what I've been doing and think I've been doing it well enough that FRB subjects shouldn't impede promotion. I was disappointed to read that some people don't think I've changed enough or as fast as they'd like, but happy to read that there was substantial consensus that I'm moving in the right direction.

I also felt the FRB's draft report makes some errors and material omissions, particularly in its treatment of the Microsoft disclosures and the American Airlines lawsuit risks. I discuss each of those in turn.

Let me begin with some broad thoughts on the way I approached the last two years. Knowing that the FRB review was coming up, I could easily have sought to avoid any possible controversy, even if that meant doing much less or foregoing opportunities that I would otherwise pursue. Some colleagues encouraged exactly this. But after careful consideration, I felt the honest way forward was to continue to be me—to learn from the FRB's 2015 guidance and adjust accordingly, but continue with the full range of projects that are the reason why I chose this career. I think my approach should influence the FRB's assessment: Had I turned away from every project that had the potential to create controversy, the FRB would have much less basis to assess how I've changed.

In parallel, I sought more guidance from senior colleagues, increasingly including those outside my unit, about both priorities and methods. Relatedly, I carefully considered the suggestion of outside coaching. Examining my decision not to use an outside coach, the FRB reports one factor I mentioned in an interview: that a coach might "take too much time to get to know me and the School." But that's an importantly incomplete summary of the considerations that I shared with the FRB. In interview remarks, I conveyed three separate reasons. First, I was mindful of the difficulty of familiarizing an outsider with the multifaceted relationships and tradeoffs including, yes, the time required to build a deep understanding. Second, a coach would be most effective after seeing my discussions and interactions first-hand, yet that was manifestly infeasible. Third, I found new sources of guidance from senior colleagues outside my unit. I discussed the possibilities and challenges of an external coach in several detailed emails with Angela Crispi in February-April 2016, and her suggestions further shaped my thinking. These considerations reveal that my decision was multifaceted and that I certainly sought and accepted coaching. Perhaps something would have been gained from an outside coach, but I don't think the FRB should draw an adverse inference from my choosing internal rather than external guidance.

Disclosure of work with Microsoft

The FRB criticizes my failure to disclose work for Microsoft, citing six examples during 2016-2017. Crucially, I did zero work for Microsoft during that time; my most recent work for Microsoft was a project completed in October 2015. The conclusion of my work for Microsoft was the reason I felt disclosure was no longer required on articles pertaining to Microsoft competitors.

The COI policy gives clear guidance about treatment of completed prior activities that are "directly related": Disclosure is compulsory for such a project within the past three years. If a faculty member

consults for Google in 2015, then writes a case or article about Google in 2017, the COI policy requires disclosure.

But my situation is quite different. In particular, my work for Microsoft (largely about advertising fraud) does not seem to me to be “directly related” to my writings about Google. Because many of my Google writings explored competition questions—how antitrust enforcement agencies should view Google practices—I nonetheless treated my work for Microsoft as falling within the broad purview of the COI policy, and I disclosed the Microsoft work in the way contemplated by that policy (indeed, often more prominently than that policy required). But once my Microsoft work ended, mindful of the fact it was not “directly related” to Google in the first place, I concluded that further disclosures were no longer appropriate. My conclusion was informed by my assessment of what a reasonable reader would consider important, by the increasingly distant relationship between current Google antitrust versus historic Microsoft advertising fraud, and by the fact that the COI policy offered no requirements to the contrary. Had I interpreted the rules to call for disclosure about the historic work, or had anyone suggested that such disclosure was required or appropriate, I would have added it without hesitation. Moreover, I would happily do so going forward if that is how the FRB interprets the disclosure rules.

The FRB calls my disclosures “inconsistent,” which seems to suggest oversight or inattention. But I included appropriate disclosures consistently when my work with Microsoft was ongoing. My September 8 response to FRB noted my 2010 “Labels and Disclosures in Search Advertising”¹ which, I pointed out, began with a superior disclosure (at top of page, with distinctive background color for emphasis) discussing my work with companies that compete with Google. I provided similar disclosures on a range of other Google-related publications from 2010 to 2015.² My historic disclosures, including consistent inclusion and prominent placement, reveal my commitment to this effort. And my numerous voluntary disclosures well before the HBS COI policy indicate that this commitment was personal and truly-held, not merely satisfying the School’s minimum requirements.

American Airlines lawsuit

I’ve considered reputational risk far more carefully since the media blow-ups of 2014, and I am committed to doing work that is seen as positive, including via approval processes for projects that create material risks. But in the American Airlines litigation in which I represent Max Bazerman (and seek to represent others similarly overcharged), Max and I carefully considered this concern and saw no significant reputational risk—rather, both substantive and reputational benefit to the School.

In assessing possible reputational risk, I began by considering public attitudes towards the general subject. Bag fees are notoriously unpopular, and there’s growing public concern about airlines’ customer service more generally, so we expect public sentiment largely on our side—especially about extra fees demonstrably contrary to contract.

My assessment of likely positive public response was shaped by positive public reception to my prior aviation consumer protection efforts.³ Representative media coverage is listed in the appendix “Favorable public perception of my prior aviation consumer protection efforts.”

My decision not to seek approval or guidance from the Dean or the School’s communication professionals was also informed by the factors mentioned in my September 8 response to FRB. I mentioned the plain language of applicable policies (not requiring approval), Jean’s guidance in 2008 (no approval needed for service as an attorney), Max’s assessment, and my role as an attorney (making no reference to my HBS affiliation and otherwise staying far from COI concerns).

As evidence of the supposed reputational risk, the FRB cites three articles. In my view, these articles do not support the FRB's conclusion of significant reputational risk. Considering each in turn:

- 1) "American Airlines Pissed Off the Wrong Harvard Business School Professor" (fn2). While the title is arguably snarky or otherwise negative, the body of the piece is neutral to positive, offering a straightforward summary of the case with zero suggestion that it is in any way improper. Indeed, Max's HBS affiliation is mentioned only once in the body of the article, for description and identification. I am nowhere mentioned, nor is my HBS affiliation mentioned.
Of the 16 comments on that article, not one offered a personal attack, questioned our motive, criticized the School, or suggested that we had done anything improper. All either wrote in favor of our effort, or offered remarks that were unrelated or neutral.
- 2) A brief piece at Top Class Actions (fn4) summarizes the case in neutral terms. Notably, this piece nowhere mentions HBS. In that regard, this piece stands contrary to the FRB's claim that every piece of news coverage about this case "automatically connects back to the School." By its plain language, this piece does no such thing.
- 3) The FRB cites a July 15, 2015 post from blogger Gary Leff (fn3). But that post discusses a 2015 administrative complaint (not a lawsuit) which I filed with the Department of Transportation when I noticed certain other (allegedly) unlawful airline practices.⁴ That post is entirely unrelated to my 2017 class action on behalf of Max Bazerman and others overcharged for checked bags.

In support of its conclusion of reputational risk to the School, the FRB also cites my interview remarks about two people who were overcharged by American yet declined to serve as class representatives. But their concerns don't mean that the project is risky for me, Max, or HBS. The first person was applying for a mortgage and thought that computerized review of his mortgage might react unfavorably to a pending lawsuit. The second person wasn't just "high profile" (the FRB's summary) but, as I explained in my interview, a professional speaker whose corporate clients dislike class actions. He told me, and I told FRB, that he declined to serve as a class representative because does not want to disaffect his corporate clients. These concerns do not apply to me, Max, or HBS.

Had I thought that this project would create significant reputational risk to the School (as opposed to the reputational benefits that I continue to believe are much more likely), I would have consulted with Jean, as I did on other matters (including those discussed at section "The purpose and frequency of my consultations with Jean," below). Informed by the factors described above, I did not think that this project rose to that level.

"With his superiors, he has more of a filter."

The FRB reported one person commenting that I interact differently with those of higher status. That's a serious allegation, and it clearly influenced the FRB's thinking (one of two bulleted negative comments the FRB then discussed in prose). The nature of this allegation could carry disproportionate influence: Senior faculty may worry that even if their experiences with me have been positive, I treat staff or junior colleagues worse, rendering their personal experiences unrepresentative.

This allegation was surprising and disappointing to me, as it goes so strongly against who I am and who I try to be. Moreover, I think this allegation is in tension with other aspects of my interactions with those of lower status. I've offered some examples earlier in the FRB process. The accompanying appendix

"Distinctive interactions with staff, junior colleagues, and students" offers a voluminous list, including many that will be new to the FRB.

I am proud of the activities listed in the appendix, but I do not claim that any number of good deeds outweigh the deficiencies that the FRB reports. Rather, I offer these examples for two specific purposes. First, I think the quantity and variety demonstrate my commitment to lower-status members of our community, including that this commitment is longstanding and truly held. Second, I think these examples demonstrate that lower-status members of our community in fact come to me, and feel comfortable coming to me, on the most sensitive subjects and for their most difficult problems. The fact is, I care about the entirety of our community, including people who others tend to overlook. Reflecting on specifics, I realized that I know the janitor who cleans Baker Library common areas during the work day, the person who washes dirty dishes in Faculty Commons, and the person who *used to* wash dirty dishes in Faculty Commons. And I don't just know their names; I've had conversations with them and know a bit about them, and they know me and we like each other. I'd be pleased to learn that other faculty have similarly taken the time to build relationships with the cleaning staff, but my sense has long been that I'm unusual in this regard.

I'm sure FRB members will have views about which of the listed efforts are truly laudable, which less so, and which merely humdrum or maybe not worth doing at all. I particularly hesitated with requests that entail tension between staff versus RA or Harvard, as I feel genuine loyalty both to my friends and colleagues, and to the School and its vendors. Nonetheless, I want to support people coming to me in their times of need, on subjects that are important to them, sometimes with nowhere else to turn. With that in mind, I have tried to err on the side of saying yes.

I have never sought any credit for my efforts to help lower-status members of our community. I offer these examples with the greatest of hesitation, swayed primarily by the difficulty of offering any other response to the concerns the FRB conveyed.

The purpose and frequency of my consultations with Jean

The FRB also questioned why I consulted with Jean on only some recent projects. In short, I consulted with Jean when I saw specific reason to do so, using my judgment to try to identify which subjects rose to the level that she would want to be involved. As to Airbnb, I anticipated exceptional public interest plus the sensitive subject of race discrimination. As to the article about bias by online travel agents, I saw heightened sensitivity in the paid request from an outside organization, where disclosure was compulsory, and I wanted Jean's guidance on wording as well as overall approach. In contrast, the work products listed on page 6 of the FRB's draft report raised none of these concerns. To the extent that I considered these in any depth, the benefit of disclosure would have seemed particularly limited, both due to the passage of time and the distinct subject matter. The fact that my prior Microsoft disclosures had always been viewed as satisfactory or indeed exemplary, getting no criticism whatsoever in the FRB's detailed 2015 review, further reduced my sense that this was an area Jean was concerned about or interested in. Finally, I followed guidance from the respective publishers (CPI, ECJ, HBR, JMR) and discussed with coauthors (Gerdin, Lai). They all considered this routine, reducing my sense that further consultations would be useful.

Concluding thoughts

I'm proud of the way I've spent my two-year extension. Teaching LCA was transformative—not just new colleagues and new material, but a framework for formalizing themes I've long thought about, genuine benefits to my research, and in multiple respects by far the most effective teaching I've ever done.

Meanwhile, I've thought increasingly carefully and critically about the subjects I work on, and the lack of further media blow-ups is consistent with the suggestion 2014 was a fluke not likely to recur. I've also worked to improve my methods and style, including declining to meddle in matters better handled by others, even if I would have approached the questions differently (including the various examples in my March 15 submission to FRB). The FRB's assessment seems to confirm that I've made progress and that many people noticed it. My changes are genuine, and I think my efforts over the past two years have fully lived up to, or indeed surpassed, reasonable expectations.

Appendix: Favorable public perception of my prior aviation consumer protection efforts

My assessment of likely positive public response to my recent American Airlines / bag fee lawsuit was shaped by positive public reception to my prior aviation consumer protection efforts.³ Representative media coverage:

- Christopher Elliott, "You've never heard of these people but they've changed the way you fly," Washington Post, June 1, 2017⁵—praising my efforts to "show[] air travelers how to negotiate the federal government's often confusing complaint system" and tabulating the recoveries the federal government has collected from airlines based on my complaints.
- Kelly Yamanouchi, "Fliers' right to video gets push from recent airline incidents," Atlanta Journal-Constitution, July 11, 2017⁶—favorably summarizing my Petition for Rulemaking asking the Department of Transportation to invalidate airline rules purporting to prohibit passengers from recording disputes; quoting multiple passengers who agree.
- Public comments on my DOT Petition for Rulemaking as to passenger right to record⁷—listing 32 comments received to date, unanimously in support: "I support this petition," "It is appalling that there is any question...", "I agree with this petition...", and similar.

Appendix: Distinctive interactions with staff, junior colleagues, and students

As to staff, within or related to their official duties:

- 1) My "Teaching Schedule Exporter"⁸ simplified, accelerated, and reduced FSS errors in the dull yet crucial task of copying irregular MBA teaching schedules into Outlook.
- 2) My "BookMe" self-service scheduler⁹ eased office hours and lunch scheduling including automatic confirmations, calendar entries, and reminders, reducing burden on FSS's.
- 3) My "Sequential Slideshows" tool¹⁰ streamlined FIELD staff efforts to show a series of student presentations (such as multiple FIELD 3 team presentations).
- 4) My "Countdown Timer"¹¹ streamlined FIELD staff coordination of limited class time, replacing a commercial predecessor that was distracting and uncustomizable.
- 5) My "Bulk View of VTS and IRS"¹² let FIELD staff see all students' submissions more quickly, replacing 90+ clicks with ~10. This tool was also used in FIELD 1, a course in which I had no role.
- 6) My "Hives Seatchart Maker" let FIELD staff prepare seating charts for Batten rooms, eliminating manual copy-and-paste of student names and photos.
- 7) My web-based mail merge tool let FSS's more easily send customized messages to FIELD 3 student teams, avoiding the error-prone copy and paste previously used by most FSS's.
- 8) The "freeze" feature, which I designed and which Media Services staff and their contractor built at my suggestion, is available in all MBA and exec ed classrooms. This feature is used by FIELD staff, I gather among others, to more effectively use all three classroom projectors to efficiently convey complex information to students.
- 9) I devised a procedure to let FSS's print student flashcards directly onto cardstock, eliminating the need for cutting paper and taping or gluing onto cardstock. My FSS shared this procedure on Slack, to immediate praise and thanks from other FSS's.
- 10) I repeatedly assisted various FSS's in troubleshooting case template errata, and I gathered bugs and suggestions for review by appropriate IT staff.
- 11) An FSS came to me to discuss ongoing difficulty working with her assigned faculty member. I encouraged her and suggested steps she could take to work productively.
- 12) For two of a colleague's research assistants, with whom I had not otherwise worked, I reviewed applications National Science Foundation graduate fellowships, and suggested specific improvements. Both received the fellowships they sought.
- 13) I offered expiring upgrades to staff traveling for FIELD2, suggesting that upgrades could be "a nice treat" for staff who usually fly coach.
- 14) As IT staff designed various tools (including RIS, Learning Hub, Canvas, video tools, and course materials archives), they sought my suggestions about features, requirements, and architecture. After the tools launched, I sent bug reports and suggestions with clarity and specificity. In various emails, they generously thanked me for these efforts.

- 15) On several instances, staff in the registrar's office sought my assistance when they needed to check how software systems show certain information to faculty. They indicated that they chose to request this assistance from me, alone, because they knew I could precisely describe what I saw and because they perceived, correctly, that I'd be happy to help.

As to food-service workers, relating to their employment:

- 1) A handful of food-service workers, who joined Harvard so long ago that they were direct Harvard employees (not employees of RA), contacted me to report that Harvard refused to provide them with certain benefits widely provided to others including short-term disability insurance and dental insurance. At their request, I helped them put their concerns into writing, including referencing relevant principles of law, giving their arguments increased clarity and precision. After multiple letters with my assistance, among other efforts, they obtained the benefits they sought, effective January 1, 2011 and continuing to this day.
- 2) Various food-service workers contacted me about matters affecting them collectively. For example, they were alarmed that when colleagues needed urgent medical attention, RA managers repeatedly refused to assist. (In one instance, a RA manager deposited a worker at the HBS Cumnock clinic, specifically designated as not providing urgent care. In another instance, a RA manager refused to call an ambulance, leading an employee to drive himself to a hospital where he immediately underwent emergency surgery.) I assisted concerned staff in writing a letter reporting their concern. In response, RA managers explicitly affirmed that workers needing urgent medical attention may obtain it, that managers will call an ambulance whenever a worker so requests, and that managers will notify emergency contacts.
- 3) Various food-service workers contacted me to request assistance with their individual disagreements with RA, Harvard, or their union. In a representative matter, a computer error led a RA staff member to be paid less than the applicable contract promised, a difference of \$0.20 to \$0.60 per hour, for ten years. I assisted her in tabulating the amount at issue and writing a letter which led to her obtaining a portion of the amount by which she had been underpaid. To her disappointment, RA declined to pay her the full amount of the error. At her request, I then referred her to a local attorney who practices in this field.

As to staff (including food-service workers), personal matters:

- 1) I assisted multiple staff including food-service workers and FSS's in preparing their tax returns. For those with sufficient computer skills, I provided computers with TurboTax, and I answered their questions about tricky portions of their returns. For those uncomfortable with the process, I typed in their information for them. I began this effort in 2008, and my records indicate 92 tax returns (46 federal and 46 state) for 11 different staff members (and, often, their spouses), saving them each the \$150+ (per year) that H&R Block and similar services regularly charge.
- 2) When a food-service worker was accused of assault, an accusation which he vigorously denied, I guided him towards practical next steps. Following my guidance, he was able to resolve the accusation.
- 3) When a staff member bought a used car with multiple concealed defects, I guided her through her rights under Massachusetts law, including helping her write a letter that led to the repair of all defects at no additional cost to her.

- 4) When I found myself with excess computer screens (bought with personal funds, not HBS funds), I offered the extras as long-term loans to FSS's. This allowed some FSS's to have two screens, for increased productivity and comfort, years before DRFD authorized the purchase of a second screen with School funds. At peak, every NOM FSS had a second screen provided by me.
- 5) I formalized the practice of bringing seminar snack leftovers back to the NOM suite for FSS's to enjoy, an effort which had previously been sporadic but is now routine.
- 6) When I saw others leaving behind a mess in common areas such as faculty kitchens, hallways, and conference rooms, I made a point to clean up, including washing dishes, discarding leftovers, wiping down tables, and the like, all on numerous occasions.
- 7) When a food-service worker was reassigned to a position and schedule that were not workable for her, I rewrote her resume, improving her prospects in seeking a new position elsewhere.
- 8) When a food-service worker's landlord sought a 60% rent increase, I wrote a letter challenging that increase as excessive and harsh. With my letter, she negotiated both a delay and a reduction of the proposed increase.
- 9) Several staff members sought my suggestions to reduce cost of air travel, including last-minute bereavement travel that was otherwise unduly costly. On three occasions, I provided free tickets via redemption of my frequent flier points.

As to junior colleagues (assistants, associates, and senior lecturers) within their professional work:

- 1) I designed software to let a sight-impaired colleague use tabletop polling buttons for calling.¹³
- 2) I devised an unobtrusive software solution to let a sight-impaired colleague view seminar slides on a tablet, at a distance and angle that work for her, without requiring that the presenter do anything extra.
- 3) I provided my "Real-Time On-Screen 'Chalkboard' Class Notes" tool¹⁴ to two junior colleagues whose temporary and permanent disabilities prevented them from writing with chalk. The faculty member with a temporary disability used the tool until his temporary disability ended. The faculty member with the permanent disability used it throughout her time at HBS and continues to use it at another university.
- 4) Multiple colleagues sought my guidance on company NDAs, data sharing agreements, and the like.
- 5) Three colleagues use my "courtesy copy"¹⁵ tool to more broadly distribute selected cases.
- 6) A colleague sought my assistance in regaining access to a software program, important in his teaching, that was designed for Windows 95, well over a decade earlier. On one day's notice, I managed to get the program running and extract key files so he could use the core features on a modern computer.
- 7) A colleague sought my assistance in processing an unusually large database which he was unable to open using standard tools or with assistance from Research Computing.
- 8) Multiple colleagues sought my advice on the scope of "fair use" reproduction of portions of others' copyrighted material.

- 9) Multiple colleagues sought my guidance on both technical challenges and legal concerns associated with collecting data from the Internet by "scraper."
- 10) Multiple colleagues sought short-term loans of cables, chargers, adapters, and similar accessories, all of which I bought in extra quantity and variety for others' use as needed.
- 11) I repeatedly hosted dinners at my home for all junior unit colleagues in my discipline and all the doctoral students and local coauthors they were collectively working with (20+ people).

As to junior colleagues, personal matters:

- 1) When a colleague's elderly father-in-law faced an unexpected but large charge from a hospital, more than three hundred thousand dollars, the colleague came to me seeking guidance. I "ghost-wrote" a letter giving words to the family's concerns. My letter pushed the hospital and insurance company towards a resolution of the charges without further effort (or payment) by my colleague or his father.
- 2) When a colleague's spouse faced complications during a medical procedure due to possible physician malpractice, I guided the colleague and spouse through research, investigation, filing complaints and pursuing disciplinary action, and considering legal action.
- 3) When a colleague's landlord sought to retain a security deposit due to supposed infractions, I identified the landlord's violation of applicable Massachusetts law as to how such deposits must be handled, and I helped him write a letter that yielded the immediate return of his entire deposit.
- 4) When a colleague's landlord sought a penalty after she broke the lease early, I guided her towards fruitful arguments to avoid that expense. She was ultimately able to leave the property without penalty.
- 5) When a colleague leased a property to a tenant during the colleague's temporary appointment away from Boston, and the tenant caused extra expense through negligence, I helped the colleague resolve the dispute informally but fairly.
- 6) When a colleague was the victim of online fraud that placed \$5,000+ of disputed charges on his credit card, and when his card issuer denied responsibility, I assisted him in filing a more persuasive credit card dispute that ultimately made him whole.
- 7) When a colleague worried that her financial advisor was stealing from her, she came to me seeking guidance. I helped her evaluate the evidence and devise next steps.
- 8) When a colleague received a series of harassing emails, I analyzed message metadata for evidence of who sent the messages, and I helped her evaluate her legal and practical options.
- 9) When a colleague received a traffic violation with a surprisingly large financial penalty, I examined the notice of violation and identified a fatal defect. Via the approach I suggested, the violation and penalty were immediately dismissed.
- 10) When Amazon threatened to ban a colleague for (allegedly) excessive returns, I guided him towards an unofficial mechanism to submit evidence that his returns were appropriate in quantity and reason. My method led to an apology from Amazon and no penalty to his account.

- 11) When a colleague was involuntarily downgraded from business class to coach due to a cabin crew strike and associated complications, I wrote a letter on his behalf which led to him obtaining the refund to which he was entitled under law and contract.
- 12) Numerous colleagues repeatedly sought my assistance in using frequent flier upgrades and redemptions to travel at lower cost, in greater comfort, or with family.

As to students:

- 1) I devised software to let a sight-impaired MBA student see my slides and on-screen "board work" using the student's standard laptop and wifi. The student said the system worked well—far better, he indicated, than alternatives he had tried in other classes at HBS and elsewhere. Moreover, my solution required no special hardware, nor any special effort by Media Services or anyone else.
- 2) When several MBA students suffered water damage to their personal possessions due to a sprinkler malfunction in the building where they lived, I alerted them to their rights under law. Using the reasoning I provided, they recovered the entirety of their loss from the party at fault.
- 3) When an undergraduate research assistant's low-income parents struggled to rent a car to help her move out of her apartment, I guided them towards a cost-effective option within their budget.
- 4) Two MBA students came to me, separately, to discuss concerns relating to "hitting the screen"—each indicating that she thought language and cultural barriers were as much to blame as her genuine knowledge. Over the subsequent months, I met with each of them repeatedly, offering guidance on course selection, participation, and strategy for exams and papers.
- 5) I repeatedly hosted dinners at my home for all Business Economics "non-finance" doctoral students (30+ people).

¹ <http://www.benedelman.org/news/110910-1.html>

² Examples: Testimony of Benjamin Edelman, presented to the United States House of Representatives Committee on the Judiciary, Task Force on Competition Policy and Antitrust Laws, June 27, 2008, <http://www.benedelman.org/publications/ppc-competition-071008.pdf> (with a large bold-faced heading "Disclosures" listing unrelated work for Microsoft and service as cocounsel in two unrelated cases).

"Tying Google Affiliate Network," <http://www.benedelman.org/news/092810-1.html>, September 28, 2010 (with an unavoidable top-of-page disclosure, with distinctive background color for emphasis, disclosing both my unrelated work for competitors and my service as cocounsel in litigation against Google)

³ <http://www.benedelman.org/airfare-advertising/>

⁴ DOT-OST-2015-0137, <https://www.regulations.gov/docket?D=DOT-OST-2015-0137>

⁵ https://www.washingtonpost.com/lifestyle/travel/youve-never-heard-of-these-people-but-theyve-changed-the-way-you-fly/2017/06/01/847ce1a6-358f-11e7-b373-418f6849a004_story.html

⁶ <http://www.mvaic.com/business/fliers-right-video-gets-push-from-recent-incidents/iKpxLoeoGdcsg4LV4uORGL/>

⁷ <https://www.regulations.gov/docket?D=DOT-OST-2017-0084>

⁸ <http://www.people.hbs.edu/protected/benedelman/clasestocalendar/>

⁹ <http://people.hbs.edu/protected/benedelman/bookme/>

¹⁰ <http://people.hbs.edu/protected/benedelman/sequentialslideshows/>

¹¹ <http://people.hbs.edu/protected/benedelman/timer/>

¹² <http://people.hbs.edu/protected/benedelman/field3/vtsview/>

¹³ <http://people.hbs.edu/protected/benedelman/buttons/>

¹⁴ <http://www.benedelman.org/boardnotes/>

¹⁵ <http://people.hbs.edu/protected/benedelman/courtesycopy/>

Faculty Review Board
Addendum to Confidential Report
October 10, 2017

The FRB received Professor Edelman's October 5th reply to the "Draft Confidential Report." We have modified the report in areas where his reply suggests that our initial framing may not have been fully understood as we intended, as well as to add further context to arguments for transparency and clarity purposes (these changes are listed at the end of this document).

We also wish to offer the following thoughts to better communicate our thinking.

The introduction to the School's Outside Activities policy includes the following statement:

HBS faculty members share a *primary interest* in advancing the School's mission and core values. These values include assurance of personal and institutional integrity; independent, objective, and ethical scholarship; accountability for actions and conduct; and preservation of the School's standing as an institution worthy of public trust. Arguably, the School's greatest asset is its reputation for scholarly integrity in the creation and dissemination of knowledge, a reputation that benefits all members of the Harvard community.

The policy document goes on to offer a series of guiding principles, including:

In any outside activities, a faculty member is expected to preserve the School's mission, core values, and reputation. While it is the faculty member's responsibility to understand and comply with the School's policies, no set of formal policies can cover all circumstances that may arise as opportunities for outside activities emerge and evolve. Faculty members are expected to use good judgment in carefully evaluating which activities to pursue. They are encouraged to inform and seek advice from the Dean for activities or questions not covered by current policies.

It has emphatically not been our aim during this review to investigate or judge the ethical or other merits of "what" Professor Edelman does, nor to question the integrity of his actions and motives. To the contrary, we take at face value his assertions that he is motivated by a genuine desire to redress wrongs where he sees them, and, as clearly noted in our report, we found strong confirmation of that sentiment among many of the faculty colleagues and staff members with whom we spoke. Moreover, we saw clear examples of how his efforts have in some cases led to measurable and positive change: his research publication about Airbnb, for instance, exposed racial discrimination in booking practices and led to prompt action by the company.

Rather, consistent with the guiding principle noted above, our objective was to understand *how* Professor Edelman decides whether he should engage in an activity or project, and *how* he balances the potential positive social impact of the activity against the potential reputational or other risks that it could pose to the School. At the time of the 2015 review, the FRB noted: "[Professor Edelman's] actions reflected a repeated inability to understand and adopt not just the

technical requirements of the School's policies, values, and standards, but the underlying principles they convey. Professor Edelman has consistently exhibited a tendency toward absolutism and extreme certainty that his view is the right view." Our task in this review was to assess whether this tendency had changed.

We thus found the conflict of interest disclosures and the American Airlines case illustrative.

Professor Edelman's October 5th response speaks to this issue. It notes, with respect to his disclosure on publications relating to work with Google and the question of whether to disclose prior work for Microsoft:

My conclusion was informed by my assessment of what a reasonable reader would consider important, by the increasingly distant relationship between current Google antitrust versus historic Microsoft advertising fraud, and by the fact that the COI policy offered no requirements to the contrary. Had I interpreted the rules to call for disclosure about the historic work, or had anyone suggested that such disclosure was required or appropriate, I would have added it without hesitation. Moreover, I would happily do so going forward if that is how the FRB interprets the disclosure rules.

The FRB's understanding of the intent of the Conflict of Interest policy is not for the individual faculty member to unilaterally pre-determine what is or isn't a conflict of interest, nor what might pass the reasonable reader test; to the contrary, the goal is to ensure that faculty members provide sufficient information in publications about their outside activities and interests, so that **readers** can make that judgment themselves. This calls for erring on the side of disclosure and, in cases of ambiguity, seeking the input of the Dean. Because Professor Edelman did not seek input from the Dean or the Dean's Office related to his disclosures as a means of testing his judgment—something we had hoped he might have done, especially in response to the feedback in 2015—it was not possible for anyone to suggest that such disclosure would be appropriate. Thus, we were puzzled by Professor Edelman's statement that he would have disclosed more, "had anyone suggested that such disclosure was required or appropriate."

The American Airlines case similarly was considered only in terms of its usefulness as information on Professor Edelman's decision-making. The FRB did not consider the merits or appropriateness of the class-action lawsuit; members of the faculty are free to pursue work that falls within the bounds of the Outside Activities policy, and here, too, Professor Edelman points to the potential positive social value of the suit (which others might view similarly). Rather, we sought to assess whether Professor Edelman, again based on the feedback he had received in 2015, was more open to engaging others in identifying and assessing the potential institutional risk of the suit. While Professor Edelman points to "the plain language of the applicable policies (not requiring approval), Jean Cunningham's guidance in 2008 (no approval for service needed as an attorney), Max's assessment, and my role as an attorney (making no reference to my HBS affiliation and otherwise staying far from COI concerns)" as reasons for not doing so, he nonetheless acknowledged during his meeting with the FRB that the case could pose institutional risk.

The FRB was aware that institutional risks are borne by others in the institution—notably the Dean, the Dean's Office, and the Marketing and Communications group. When events happen that trigger public and alumni outcry, these are the groups who must respond to them—as they were required to do following the Chinese restaurant issue, facing an unprecedented number of emails and calls. This rationale motivated the FRB's surprise at Professor Edelman's lack of, at the very least, an early alert that the School's name might find its way to being attached to the case and our concern that he has not yet internalized the principles of the Conflict of Interest policy.

A major part of the response Professor Edelman provided to the FRB in his reply to our draft report is the lengthy Appendix outlining assistance to staff members, faculty members, and students. The FRB notes that a number of these interactions are clearly consistent with HBS promotions standards for "Effective Contributions to the HBS Community," notably related to advancing the teaching and research environment of the School. Here, we especially commend examples such as helping a sight-impaired colleague to use tabletop polling buttons for cold calling and to view seminar slides on a tablet, hosting dinners at his home for junior colleagues and doctoral students, developing tools to make the work of an FSS easier, and advising MBA students who hit the screen. Many of the remaining examples, while generous in their intent, are outside the defined scope of collegueship. Moreover, at least some examples further illustrate the "how" challenge with which we grappled. The solutions—e.g., travel upgrades, tax preparation support, and interventions on behalf of dining staff—Professor Edelman provides, while beneficial to an individual, sometimes create institutional challenges and burdens. This broader context does not seem to have been considered by Professor Edelman. We wish that he might occasionally have sought guidance on this work or even allowed others to try to resolve the issues at hand.

The FRB does not deny that Professor Edelman is doing important work that is making a difference. We celebrate his intellect, ingenuity, drive, and commitment to making a positive difference in the world. But we also believe that *how* he does so matters. We particularly note the continued variability in his interactions with others, his reluctance to seek broad input, and his inability to balance the letter and spirit of the School's policies. The FRB committee members uniformly were troubled by these issues. While recognizing his many positive contributions, we struggled to find a pattern of evidence—following the findings and feedback of the 2015 review—that would allow us to say, with conviction, that the issues had been satisfactorily resolved or that he meets the School's standards for collegueship.

List of changes made in the Summer 2017 FRB report

- 1) Added, on page 1, two sentences to clarify the nature and intent of the FRB report, immediately following the description of our process and the prior events that triggered this report:

This process was not an investigation, and we did not seek to pass judgment on the particular outside activities and work that Professor Edelman pursued. Instead, we looked at Professor Edelman's interactions and activities over the past two years using the narrower lens of the feedback he received in 2015.

- 2) Added the modifier "positive" in front of "feedback from students in the LCA course," in the last paragraph on page 1.
- 3) Made several edits to sharpen and clarify the first paragraph on page 2, for instance changing *permission to guidance*, which is a more appropriate description of what we ask of HBS faculty. Specifically, we changed from the original:

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

To the revised:

The FRB also discovered examples of activities and behaviors that cause continued concern, including whether Professor Edelman appropriately sought guidance on and disclosed his outside activities and potential conflicts of interest. Additionally, it heard unease voiced by colleagues about the extent to which those activities constitute a real or perceived risk to the School and reputational harm to the faculty by association. Additionally, the FRB found some indications that Professor Edelman's engagements with staff remain uneven and that his interactions with them changed when other faculty members were present.

- 4) Similarly, in the following paragraph, we made several edits to sharpen and clarify the meaning, and changed it from the original wording:

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

to

The FRB acknowledges the extent to which the concerns we have evaluated are viewed differently by different members of the community. Those who count themselves close to and among Professor Edelman's supporters often recount relying on their knowledge of him and their appreciation for his motives in assessing his conduct. Others whose opinions are perhaps less favorable seem to rely more on their direct experience, weight more heavily the issue of reputational risk, and weigh his adherence to both community values and norms in their assessment.

- 5) On page 4, after noting Professor Edelman did not pursue the coaching resource offered, we deleted the unnecessary, "because, in his words, 'it would take too long to get to know me.'"
- 6) On page 5, we clustered the less positive feedback from our interviews into three categories, to match the structure of the positive feedback from our interviews.
- 7) Also on page 5, we removed the point about staff who had "worked to develop coping mechanisms" out of concern that it might inadvertently introduce inappropriate language.
- 8) On the top of page 6, we added a paragraph acknowledging that the concerns raised about Professor Edelman are at odds with his work and his efforts to support members of the community, and we clarified wording in the third paragraph.
- 9) On page 9, we removed reference to Professor Schlesinger, consistent with usage of "the FRB" throughout the remainder of the report, and we dropped the specific questions.
- 10) On page 10, we edited slightly the paragraph referring to the American Airlines suit, to be clear that our observation is merely to point out that Professor Edelman did not take advantage of opportunity to seek input before filing the suit. We changed the word "troubled" to "concerned" and removed some extraneous text.
- 11) Finally, we edited the Summary paragraphs to be clear that we acknowledge and appreciate the intentions behind Professor Edelman's work. The FRB review focused on potential impact, not on intentions, and was designed to explore whether and when Professor Edelman finds it useful engage others in assessing reputational risks. As noted in our final paragraph, the FRB viewed among its tasks as presenting to the Dean and our senior colleagues the views and facts to which we had access during this review.

Exhibit 15



Report well done
Shame to invest so much time

Staff member in AMP - emotional

Jonathan Gruber - caught on NBER

Arrogant, intellectual arrogance, inability to consider other viewpoints

Egocentric view of the world, destructive, corrosive...

Seething

Hit right notes, came to the right conclusion... guilty but you have to tread lightly

Brian had to work with him to include the words I am sorry in the email exchange.

Genuine motivation is to help the world. Refers to it as a matter or the issues

He is a saint

Shows contempt for his readers

Likelihood

Len - someone gave him a 12 second course in active listening. So he uses this to avoid

Need data from IT and from [REDACTED]

Angela - didn't take us up on the coach...

Staff input - he will perennially be a handful. If he gets tenure, we're in for it... when there are senior faculty in the room, he can bite his tongue and hold back. When faculty are not in the room it's a different story. That certitude.

[REDACTED] will call him and say you need to call me...

Stu - less willing to accept the status quo on carts compared to other faculty member!

Angela - he needs to be reigned in...

Jean - Swore to Rick that he would not do creative reports anymore.

Disclosure statement - urged him to use more specific language... he agreed to do it.

He will never reflexively do the right or diplomatic thing.

[REDACTED] - all valuable input

LCA teaching group - [REDACTED]

Jean - [REDACTED]

Map a portfolio of connections to go after and engage.

Lack of sufficient evidence that Ben internalize

Affirmative evidence that Ben has changed his behavior, not just stayed out of trouble.

Jean - I would come back to the APC process - doesn't lay out specifics. Part of the test is whether they can show evidence of internalizing feedback and changing their behavior. Exec Coaching would have allowed him to take more positive actions.

Failure to give credit for the tracking software

Len - can we be very clear about the domain we're looking at - to assess character and change.

Our job is to assess whether Ben understands what went wrong, and whether there is change that is genuine and sustainable... first step of 12 step process... no evidence.

Personal interaction of witnesses is important.

Develop same set of questions – each of us do 1-2 interviews.

**Your input on understanding what went wrong; and the evidence to support that your behavior has changed in a way that is genuine and sustainable.
Acknowledging the issue.**

Mean spirited to people beneath him and not to those above him

Repeated pattern – senior faculty think about him versus staff -

No peers, no contemporaries

Mike Lupa – was out at Stanford this year – discrepancy in tolerance for IRB issues on the airbnb study

IRB – could they be duplicitous

This is what our task is this summer. Talk.

We met.

New composition

Reviewed document

Starting our interviews

Know it all... but he thinks he knows more than he does.

Exhibit 16



Meeting of the FRB – 28 June 2017 (Crispi, Edmondson, Gilson, Schlesinger)

Gilson: Comes into the report with priors – had followed earlier situation, interaction more recently with staff member in EE who was emotional about difficulty of working with him on a program. Thinks Blinkx alone should have been enough to fire him. NBER-like qualities of arrogance; behavioral extreme is the norm among this cohort, but inability to consider other viewpoints, destructive, corruptive – this is typical for this group. So seething while coming into the report; thinks it does a masterful job of striking a very careful balance. Understand need to be thoughtful from a legal perspective, but think he's irredeemable. Response is just as arrogant as the original report... that Brian and Deepak had to browbeat him into an apology says it all. "The issues" and "the matter" when referring to Blinkx and Chinese restaurant. Tried to give him the benefit of the doubt – but new report is dismissive and arrogant; sense that he feels contempt for others.

Schlesinger: Transition from the report from 2 years ago to where we are now.

Edmondson: You've echoed how this group experienced him and felt 2 years ago. Helpful to have your perspective as a member of the Finance unit – you didn't find this overblown, which is reassuring.

Gilson: Challenge is that there are other (senior/tenured) faculty members flaunting the rules [REDACTED] example).

Schlesinger: Taught same section as BE this past semester; students thought he did a fine job vis-à-vis the course, but the students thought his self-disclosure was odd.

Three things from the report: took a 12-second course on active listening – helpful tool, but not profound insight. So curious as to how others perceive him – is he just in remission? Or do people experience him differently? Was he just jumping through hoops?

Edmondson: Letter – he can't be wrong.

Schlesinger: Would like data from some of the instances he's raised – [REDACTED] and the IT group, [REDACTED] and the LCA teaching group over the entire semester. Calls to the Dean's Office?

Post-report menu – it can't just be absence of issue because he's avoiding opportunities.

Edmondson: Saw [FOIA] earlier – question about role of subcommittee.

Gilson: Do we know how much he earned through the Blinkx work?

Crispi: A few observations based on feedback he received (move office, change teaching, etc.). Provided him with executive coaching information – not clear that he pursued (though it was characterized as optional), and interesting if he didn't.

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IT and staff side: perception that he will perennially be a handful; if he gets tenure, we're going to have him forever. IT governance group – when Lynda and Felix are there, you see the glimmers of arrogance, but sense that he is more measured and biting his tongue. When faculty are not in the room, very much a different story – the moral certitude of "I am right and you are wrong." AppleTV, Kaltura, Canvas, rolling carts – litany of issues, and no detail is too small.

Edmondson: Essence of an organization – role clarity matters.

Crispi: Moments where [REDACTED] has given him a call to say time out – you need to stop, you need to come to me instead, you shouldn't jump to solutioning. He takes the feedback in, but doesn't stop him from doing the exact same thing again. Truly trying, but constantly needs to have people putting the boundaries around him.

Edmondson: IQ points – but he should have been able to put together a better letter.

Cunningham: Check-in on airbnb case, and check-in on a disclosure; continued issues with Financial Office.

Schlesinger: So attempts, but sense that change will never be reflexive behavior. Check-in with LCA teaching group; [REDACTED]

Cunningham: List of names from Brian and Kathleen.

Schlesinger: Understanding of AC role means we need a free-standing report, not just an update. Probably worthwhile to try to map a portfolio of connections that we'll try to engage.

> What is the new evidence?
> Do we now have compelling information?
> Want affirmative evidence that he has changed his behavior, not just that he has stayed out of the papers.

At face value, we don't see the evidence.

Edmondson: At some level, it is obvious that we shouldn't have him on the senior faculty; but our process doesn't make it easy for that to happen.

Gilson: Participation tracker – does he take credit for work that isn't actually his?

Schlesinger: How do we get at character? Most of the names Ben has provided are tied to a faculty role, not to his behavior, so not clear how to assess their relevance.

Crispi: What if we put it to Ben and ask him to prioritize from whom we get the feedback?

Schlesinger: Want to be sure we are specific about the domain of our work – utility to reminding his colleagues, and him, about what we're looking for, and invite them to revisit their lists.

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Edmondson: Intrigued by [REDACTED] – senior folks who could provide helpful input.

Crispi:

- > Is there an understanding of what went wrong?
- > Is there evidence of changed behavior?
- > Do we believe it will be sustained/maintained in the future?

- > Devise a script for questions; divide and conquer and have folks go out and do conversations, either taping or creating audio scripts.

Know we need [REDACTED] and [REDACTED] know [REDACTED], get [REDACTED] from FIELD 3 teaching group; potentially Youngme.

> Letter to Ben: Ask him to revisit his listing as well as the specific questions; looking for the "hows" of what happened, rather than just his sense of the results.

Edmondson: Stu's brief and unidentified example – pains me to think about the number of people whose work life has been affected by him.

Gilson: Sense that he is mean-spirited to those who are beneath him.

Schlesinger: Think we'll get this through the [REDACTED] conversations. [REDACTED] also could be interesting – what he's seen at McKinsey.

Crispi: Still struck that there's no peer group – no contemporary.

Schlesinger: Mike Luca seems to be the one example.

Edmondson: I can generate a handful of questions as an interview protocol.

Schlesinger: Would like everyone to have the same understanding of what we're trying to assess.

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Exhibit 17

FRB/BE Talking Points

- Our goal is to assess whether BE has changed the behaviors that were deemed problematic in the first FRB report, and has he internalized the advice he received
- The behavior in question concerns three things:
 - How does he treat others, is he able to acknowledge different points of view, see things from the other side? (prompted by Shezuan Garden & IT staff interactions)
 - Disclosure of potential conflicts (prompted by Blinkx)
 - Process for how he decides to take on certain activities that could potentially have negative reputational consequences for HBS, Harvard, and the community
- In sum: Does he exercise reasonable judgment in making decisions, the consequences of which could impact the HBS, Harvard, and the community?
- With both areas of concern, the common thread is that BE appears to believe that he is always right, knows better than others, so doesn't seek feedback or guidance from other parties or credit their (opposing) point of view
- AA Class Action:
 - Why file lawsuit vs. publish article or blog post (as in Blinkx)?
 - He acknowledges reputational risk, but no disclosure at all to Dean
- Positives to remember:
 - BE hasn't caused another scandal or incident during his "probation"
 - Lots of people believe he has improved/changed his ways
 - He did seek feedback from Jean C re: COI disclosure for OTA paper (but: he DIDN'T so reach out re: AA suit, so he is INCONSISTENT, and that's concerning)
- Note: Anecdotes about how helps janitors, etc. may indicate he is a caring person who is generous with his time, but:
 - These are not really relevant to his promotion case or the role of the FRB, and
 - These actions could actually carry institutional risks for HBS
- Negatives:
 - He still appears to believe that he is always right, knows better than others (e.g., how to interpret the COA/OA guidelines)
 - In his written remarks he discounts any reputational risk to HBS, but in our interview he conceded there did exist such risk
 - WHY would you pursue the AA suit, or not consult the Dean's office, when you are on probation??!!
- Bottom line: We encountered an extreme divergence of (generally very strongly-held) views about these questions



Exhibit 18



HARVARD | BUSINESS | SCHOOL

ANGELA Q. CRISPI |
EXECUTIVE DEAN FOR ADMINISTRATION

The following information has been compiled for the purpose of the June 28, 2017 Faculty Review Board meeting and includes a record of staff and faculty reflections on and intersections with Associate Professor Ben Edelman between September 2016 through April 2017, organized in reverse chronological order.

April 2017

Harbus interview (attached)

- Reflecting on the media coverage following the confrontation with local Boston small businesses Ben noted, "...to be sure, my tone was out of line. These days I try to be more careful that my approach reflects my true purposes and conveys what I am trying to achieve."

████████ held a candid and constructive conversation with Ben.

- █████ asked that Ben refrain from acting as an agent or A/V problem solver for other faculty members except in pre-agreed and coordinated ways with Media Services (e.g. assisting █████)
- In the case of █████ █████ explained that it was fine to assist █████ in submitting the initial request, but that his on-going participation has been disruptive.
- Asked that Ben reach out to Kate (or █████) when he wants to explore how to pursue some of his ideas (versus going directly to Media Services staff).
- Discussed Prof. Badaracco's situation and agreed this was a situation where good intentions went wrong. Steve further explained how this resulted in our services being viewed negatively

Ben was very collegial, and he graciously received the feedback. As a follow-up, the Media Services team aims to find a graceful way to allow him to step back from █████ solution.

████████ observed that Ben brings a lot of energy and creativity to bear and asked his team to continue partnering with Ben while keeping the boundaries clarified.

March 2017

Intersections with Media Services team:

1. LCA and Kaltura - Professor Edelman encouraged a workflow that was not actually using the KMS in the classroom at all, but when it went poorly in classroom execution by several faculty the ultimate blame went to Kaltura. Professor Edelman then wrote negative remarks about Kaltura and our efforts to all of LCA. (can forward emails if you have not seen these threads)
2. Apple TV in the classroom suggestion - stemmed from the above threads was the mention of how one could bring an Apple TV into a classroom and it would be fine

1



3. [REDACTED] hearing assist need – We received a ticket from Ben Edelman requesting microphones at each desk in a classroom for a faculty member that was having difficulty hearing students due to a hearing impairment. We responded and he did give us the name of the faculty member, [REDACTED] Ben Frey worked directly with [REDACTED] audiologist a year or so ago and we came up with a working classroom solution in collaboration with renting equipment and borrowing some from the Harvard Law School. We know how to assist [REDACTED] but when we tried to set-up a meeting he said that he wanted Professor Edelman to be a part of the discussion.
4. The rolling cart - This request, to store the cart somewhere in Aldrich, boomeranged back to me at least 3 times.
5. Voting app – in all fairness this has died down but can't be forgotten.

How do we gain his confidence and teach him to direct inquiries before he starts solutioning? We do not need him to solution for IT or spread any negative opinions of IT that he may have. We simply need him to direct his colleagues to us so that we can learn about their needs.

Email exchange with Angela Crispi

Angela provided Ben with a framework and guidance on engaging an executive coach (attached).

February 2017

Observations from [REDACTED]

- Leaves a lot of work for people doing things
- Not being badly behaved
- Well intentioned

January 2017

Observations from [REDACTED]

- When Linda and Felix in room more in control
- Comes across as arrogant
- Long emails, inappropriate
- Absorbs meetings

December 2016

Email exchange with [REDACTED]

[REDACTED] and Ben exchanged emails regarding classroom polling software (attached).

Observations from [REDACTED]

- Felix and Linda not at meeting so like the cover not there
- Started to go off the rails
- Doesn't know as much as he thinks he knows
- Goes off on tangents – course evaluation as examples
- Dropping in jargon
- Takes them in an unproductive path and then people tune you out
- Unintentionally and well intentioned
- No filter can't always stop yourself but bite your tongue more.

October 2016

Ben suggests solutions for Assistant Professor [REDACTED]

1. Ben Edelman has developed a way to connect slides shown in HBS classrooms to a device like an iPad. It seems likely to work.

2. For seminar talks, an effective approach has just involved informing the audience to verbally interrupt. If I am not teaching a large MBA class, then the need to solve this problem is minimal. If I am teaching a large MBA class, Ben Edelman has developed some very nice software that uses the polling systems in classes to keep track of who has a question. An algorithm then determines which person should be called – and that person's name is played into my ear via Bluetooth.

Observations from [REDACTED]

- People can see making effort and noticed
- People are glad to see he's trying
- Reading a situation
- Well intentioned contrib. has achieved its objective
- Establishing authority

2015-16

Recommendation actions

- Teach LCA beginning in 2016-17
- Join LCA teaching group in 2015-16
- Relocate office to Morgan Hall 4th floor
- Join IT Strategy Board chaired by Bob Dolan and Steve Gallagher
- Retain an executive coach if he wants one

Next steps

1. NN to ask Paul Healy to talk to Joe Badaracco about LCA
2. NN to update Brian Hall on planned recommendations before meeting with Ben
3. NN to meet with Ben
4. AC to talk to Valerie Porciello about office and possible teaching assignment in LCA
5. AC to talk to Bob Dolan and Steve Gallagher about IT Strategy Board

September 2016

Nitin Nohria and Paul Healy

- Check in
- Habits over a lifetime
- Learn to take feedback from staff not just Felix, organizational realities they are dealing with
- By mid October (how's it going, here's what seeing, do you need/want a coach?)
- Stay
- Are you learning?
- Eventually tell NN+PH every 4-6 weeks
- Have Joe and others be observant
- He deserves the feedback

Observations from [REDACTED]

- Jury is out
- Academic technology steering committing meeting observation
 - Features with Canvas
 - Section content management feature
 - Started to go down same path
 - Math wizard
 - Wouldn't let go – yes a legitimate concern
 - Email follow-ups

- [REDACTED] - yellow flags
- [REDACTED] - stepped in and said stop – he did
- He latches on to things!
- Decent contributor
- Feel we see him catching himself. one year ago he would have not taken no as an answer
- Doing some small innovations w [REDACTED] – visually impaired faculty, hearing encouraging things
- Don't know if he has a coach
- He walks to the line and backs off – that's better.

Feedback on B. Edelman
Summer 2017

[REDACTED] - 7/25/17

- Had multiple issues
- Nothing but positive things to say
- Interaction goes way back
- Worked closely with him on participation tracker
- Most recently developing tools and apps for CE
- A debrief with her and KM – very moving
- At times has a rough edge to him
- Good colleague and went above and beyond
- He always contacts us if working on something with pedagogy
- Incorporates feedback
- Learned over time that how he presents matters
- On ATSC with him, he's been perceptive
- Taught in LCA for first time
- Had ideas and sought advice on how to approach teaching plan
- Wanted feedback on how to present it
- Reached out to understand at deeper level impact for teaching group
- Haven't met since taught LCA; was euphoric and eager to be in a teaching group
- Had to learn a lot of new stuff; never grit his teeth
- "When I know I will interact with, I'm glad"
- He'll have new perspectives and think out of the box and I love that.

[REDACTED] **Faculty Support Specialist (7/21/17)**

- Supported Ben this past year while juggling David Garvin and Joe Badaracco
- Has found Ben to be good to work with
- He is a methodical and scientific thinker, who has very specific ways that he likes things to be done.
- Often asks if she has time to take something on so is accommodating
- He sometimes leaves candy for others around the office
- He has even said it can be helpful to get others opinions
- He was helpful with the LCA teaching group so saw him in action there too.
- He seemed to enjoy the cases he taught.
- They set up together tools for LCA with dropbox

[REDACTED] **Director, Learning Technologies and Instructional Design Services (7/18/17)**

- Interacted with him on several efforts over the years – Canvas and Kaltura to be specific.
- Also interacted when developing in class polling for [REDACTED]
- Interactions have been in person and over email
- Also had interacted with him since she was the service owner for seat charts which he launched.
- He has great ideas and they come from a good place
- Appreciates that he really tries
- He has a hard time thinking about other perspectives

- Can have a tendency to threaten to take something to the next level, but he has taken a step back
- "If you don't make the customization, I will."
- I've seen him change his behavior and less "I'll just do it."
- With [REDACTED] went backwards a bit.
- A noble cause
- He seems to be trying
- Can be disruptive
- He is earnest and we appreciate his desire for change
- Lacks understanding of an appropriate path to a goal
- Has a clear vision of what he wants to achieve.

[REDACTED] (8/10/17)

- Is aware of the concerns with him and had interactions over 3 years with FIELD; only ran into him once this year since FIELD 3 ended
- Looking back, she had the unique vantage point of working with him teaching group meetings
- Earnest, committed, participatory
- So smart; blows everyone out of the water with his knowledge
- Tendency to go down rabbit holes that others are not interested in
- Open to redirection
- Responsibly engaged
- Not persistent in an inappropriate way
- Helpful in finding productive solutions
- Worked well with teams and students
- Very committed to their success; occasionally tried to help them
- 1 student issue in particular with vendor squawking and causing a fuss
- He clearly understood the students opinion but saw we needed to have a 2 way relationship with the vendor; he didn't fight the battle; made it clear how he felt but tried to balance the situation
- With his expertise in IT, her team had a rocky start with him; he could write code overnight but we can't move that nimbly
- Always wanted quick solutions
- We learned his style
- Sometimes such a pain but well intentioned
- Made some solutions for us
- It always a process with him but he is receptive to feedback
- Tony Mayo gave him lots of coaching
- Over the arch of two years he did less harping
- He's grown some but we learned how to deal with him
- So justice oriented
- A quirky guy
- Bag of leftovers at a catering event – started spouting how much RA charges
- Admire his morals; he wants the right thing
- Often "why are we talking about this?"

FRB/BE - Interview Notes

[REDACTED] (7/26/17)

- [REDACTED] first interacted with BE in exec program for media managers, asked BE to teach. BE is not impressed with our teaching norms, created special slides, was a disaster.
- Is amazed he's never been able to put an MBA course together, hasn't been able or willing to teach using our pedagogy
- But in LCA has been super successful, is enjoying it, students love the course and teaching ratings are increasing. [REDACTED] has interacted with BE re: "adjusted" teaching ratings (controlling for superstar teachers in other sections, courses that in general score more poorly, etc.) - he seems to have discovered a subject that's close to his heart. [REDACTED] is happy it's happened
- BE sits on IT/MBA/faculty steering committee [REDACTED] has seen both the good and the bad of BE.
 - Good: is engaged, cares about the outcome, highly knowledgeable about IT.
 - Bad: Incapable of seeing why his preferred solution can't/won't be implemented, but doesn't come from a bad place, he really believes his way is the right and only way. But he can't see why some things are just not feasible for the IT group, or are not best for other EC instructors. Displays really limited judgment; doesn't understand the consequences of his own actions, unable to be reasonable.
 - Recent example: There is overwhelming demand by faculty to be videotaped, but IT faces capacity constraints. But BE has a particular view, doesn't understand why all faculty and classes can't be videotaped given technology that's available to support this (could videotape every class continuously, edit later). IT argues [REDACTED] agrees) this is not practical, yet BE pushes back, not empathetic to other side or point of view, can't relate to others. In conversations, BE is abrasive, arrogant, stubborn
- [REDACTED] has never seen BE change his mind in any conversation that he's ever witnessed
- Mind boggling to [REDACTED] that BE can't develop his own EC course given how relevant his expertise is re: current issues (technology/legal)
- Is not obvious to [REDACTED] that BE's success in LCA will be maintained
- No lack of engagement whatsoever, can go to BE with anything and ask for help
- The world is B&W to BE.
- Unable to restrain himself. Comes from a good place, but no sense of what's appropriate. Is unable to see other side's point of view (contrary to HBS, where the case method is based upon finding common ground, trying to understand the perspective of those who disagree with you)
- [REDACTED] is concerned that BE's approach harkens back to the "older model" of faculty/staff interactions (I'm smarter than you are, you are inferior), has no sense that BE can/can/will change, risk of creating a bad environment, fostering heightened fear of failure

- [REDACTED] should be having this kind of discussion at the Associate review, not when someone is coming up for Tenure

[REDACTED] (7/26/17)

- BE is an unbelievably moral and caring person, but can come across as lawyerly, blunt and almost disrespectful
- Has learned from Chinese Restaurant (CR) episode: BE has viewed this as getting more "data" (Mr. Spock as opposed to Captain Kirk), has learned that what/how you say things, when you push back or just let it go - these matter. Obvious to the rest of us, but he is wired differently. Has cognitive disconnects similar to children on the "spectrum": doesn't read body language, sense cues, know what's inappropriate to say. Has poor social skills
- But is the least manipulative/Machiavellian person on the planet
- Acts very nice towards, tries to help to the victims/weaker/disadvantaged (so when I pushed [REDACTED] whether this extended to his interactions with HBS staff, he responded: with the incident around reducing # of clicks to enter class participation, BE may rebuke staff who disagree with him, but in his mind he's working to help other staff who are "victimized" by having to do the extra work)
- To understand him, need to factor in 3 important contexts: (1) he's trained as lawyer, as were both his parents, (2) he comes from a very justice-oriented family (aunt Marion Wright Edelman was a black civil rights activist, knew MLK), (3) 1/3 to 1/2 of his research is about bad stuff on the internet (Sheriff of the Internet), so he has an activist mindset
- In CR case, his immature perspective was based on his view that the owner was ripping off customers who would never know. BTW, he never identified himself as a Harvard professor, owner figured it out and played BE brilliantly, he is no babe in woods (was on GC)
- Jan Rifkin's advice to BE was to repeat back - aloud - the argument of the other person before you state your own view, so you better understand what the other person's perspective is - [REDACTED] says BE told him this was incredibly helpful
- Blinkx incident:
 - [REDACTED] response was much less confident to my question about the Blinkx incident, and how he [REDACTED] would explain that in terms of cognitive disconnects.
 - [REDACTED] rationale/defense of BE: He could have made a gazillion dollars by shorting Blinkx's stock, but chose not to do so; Blinkx's stock has stayed low since, suggesting that BE was right about the company; he only accepted a speaking fee of \$10K which is small potatoes to BE, he might not even have noticed it given how much income he makes (i.e., it was not about the money - and, in general, it's never about the money with BE, he lives modestly and will probably give most of it away at the end); and this episode was a wake-up call for BE that this was not appropriate. (SG: less charitably, he got caught).
 - BE's response to Blinkx incident has been to set up a series of filters to prevent this from happening again (more discipline, report more to the Dean, will be more transparent, will become more consumer focused,

with think more in advance about potential conflicts of interest) BE doesn't think like other people, he is totally unique/one of a kind

- [REDACTED] believes the incident "was all legally and ethically ok" and BE wasn't trying to do anything sleazy, now recognizes this created "the appearance of conflict"
- Going forward BE's focus will be on class actions where individual consumers are being screwed a small dollar amount, but across lots of consumers it amounts to a lot of money
- Is incapable of being two-faced, couldn't fake it
- BE isn't desperate to stay at HBS, has lot of options (other top business schools, private practice/doing his thing full-time)
- BE makes a lot of his money bringing class action lawsuits (with several partners) against companies that screw individual consumers by a small dollar amount, so they wouldn't bother to sue, but across all the consumers who are being victimized the dollar amounts at stake are huge.
- Has no charm, won't try to charm his way out of anything
- Is principled, but needs to learn to respect other (principled) people's points of view, that you can't argue them to death, but sometimes have to agree to disagree
- Persists in fighting people because that's the right thing to do

[REDACTED] (8/3/17)

- Lives close to BE, sees him walking around the Brookline reservoir
- On whole BE was an excellent colleague in LCA, saw no behavior that was akin to what he did with the local Chinese restaurant (David Scharfstein also lives in area, confirms the restaurant has been doing that for years)
- [REDACTED] was alerted to the issues, kept his eyes open
- Thought BE was between "very good" to "exemplary" colleague: agreed to do case writing, got better snacks for the teaching group meetings, got along with everybody
- Only slight flaw: Is on the spectrum, sometimes when in one-on-one, eyes will stop blinking and he'll go on and on (but could describe a number of our colleagues)
- Sat in one class, had very good rapport with students, wasn't too tough, challenged them and pushed back, didn't put anyone down
- BE turned out to really like LCA, students liked his approach, he would like to teach LCA indefinitely, was willing to teach 2 sections (even though not required to)
- [REDACTED] was aware why BE was put in LCA, did wonder if BE would try hard to exhibit his best behavior. Did seem that BE was trying to be careful (who wouldn't in that situation?), but JB had the sense that he wasn't seeing a "performance," was just seeing Ben. Feels that way with a "fair degree of confidence."
- Gives a "green light" on this.

[REDACTED] (8/8/17)

- 2nd/3rd hand: knows BE to be "indelicate," understands he might treat an assistant differently from how he treats a superior ([REDACTED] doesn't like that). [REDACTED] believes it's not done out of disrespect, but rather BE is not good at being delicate - if he thinks something is unfair or wrong, he can come across as harsh at times
- With his superiors he has more of a filter (as we all probably do)
- This aside, this is not a person who's looking out only for himself, or who is trying to cut corners or pull a fast one; rather, he will waste a tone of time b/c he believes what is "right" should be pursued over what is "wrong" - even if it's what we would consider to be a trivial issue
- He's just wired that way
- [REDACTED] believes BE's intentions are good, which is the most important thing in [REDACTED] view
- Had interaction with BE within last 3 years regarding his key role in developing a new system to allow students to "raise their hands" electronically (motivated by vision-impaired students, [REDACTED]). Great idea that [REDACTED] will even try, allows instructor to collect data on whose hands went up, identify bias in calling patterns. BE spent way too much time building this thing, went out of his way to develop this based on a conversation or two that he had with people; [REDACTED] interactions with BE over this, providing feedback (while [REDACTED] was on leave), could not have been better
- [REDACTED] has no problem with BE being tenured as long as his intentions are good, and [REDACTED] is extremely confident that BE is coming from the very best place
- One risk of tenuring someone is not an issue with BE, i.e., that the "real you" will come out after you get tenure. With BE, the "real you" is already out there. [REDACTED] views this as a strong positive.

[REDACTED] 8/10/17

- Wonders if we've considered if BE has a behavioral dysfunction (has heard lots of tech CEOs like Bill Gates are "on the spectrum"), must be other examples of this at Harvard
- Her sense is that he sees the world differently, really is something going on here, best route could be a really, really good therapist who knows about this in high-performance individuals
- This is not something he can self-correct (as with a jerk who is told he needs to stop being like that). There's something here in the wiring, in the cards he was dealt, it's not just about "clean up your act."
- BE seems lonely, isolated, carries it with him
- Is he a Ted Kaczynski or a John Nash?
- [REDACTED] believes he wants to be helpful and to engage, but she's also seen enough of the oddness that it's not just typical bad behavior, rather a disability of some kind - and if it's a disability, should we deal with this any differently from how we deal with physical disabilities (like vision impairment) - the school has gone out of its way to accommodate and support faculty who are going blind; should the same flexibility be shown to someone suffering from a mental disability? Does this raise certain legal issues?
- [REDACTED] is really torn: she really likes the guy, and found him to be really helpful
- THE FOLLOWING SHOULD NOT BE CITED IN REPORT B/C WOULD IDENTIFY [REDACTED] Taught FIELD with BE in the year it was announced it would be cancelled, so [REDACTED] suggested having a party for the teaching group to celebrate their time together at a lunch/party/etc. So BE took ownership of organizing this, created a dedicated Wiki for people to sign up, and then he unilaterally announced the date/time/place the event would be held. However on this date Jill and Tony (who headed the course) couldn't make it, which [REDACTED] thought was awkward and inappropriate b/c the event was obviously meant to thank them (it should have been obvious that their attendance was a given). [REDACTED] was struck that this nuance never occurred to BE, rather he picked the date based on maximizing attendance. So he was very well intentioned, but didn't occur to him that you wouldn't just add up the number of attendees. Jill later said to [REDACTED] "I'm not surprised, given that BE was in charge." (This was not said with any anger.)
- [REDACTED] takeaway: Hope we can accommodate quirks; I like him as a colleague, like his helpfulness and generosity; I like talking to him. She wants her comments to be taken as a net positive. He contributes in a whole variety of ways to the School.
- BE invested a lot in FIELD, was very generous with [REDACTED] in sharing notes, insights
- Re: Chinese restaurant episode: the restaurant owner was no dummy; after this happened, [REDACTED] own local Chinese restaurant adjusted its posted prices to eliminate inconsistency with online prices - so BE had an impact!
- [REDACTED] Would "give me the creeps" if this would be a barrier to getting tenure
- Worries that junior faculty at HBS are overly obsequious to senior faculty (relative to other schools), are too worried what senior faculty think. So if BE is

fired over the Chinese restaurant episode, what will this do to junior faculty
paranoia over senior faculty?

Faculty Review Board Notes

NOM

7/18/17

- Current Interactions with BE
 - Different building/different course
 - Less time
 - Occasionally for coffee a Nom event
- i.e. CANVAS IT suggestions – asked for advice on how to handle – but now less often than the past
- No outside interaction
- Like and respect what he does
- Pretty comfortable with him
- Maybe 1x a month?

+ and -'s

- No negative interactions with him
- All neutral a positive
- No concerns > pleased that he still reaches out
- He is even more conscious of what he is dealing with and thinking about

Interactions are good – tried to do the right thing – a month a two of self-reflection after FRB report

Saw me maybe every other day—

Getting to conclusion of process

- he understands his instincts are not solid

Habits are habits for a reason → so how to handle behavior change until it becomes a habit

- "If I am trying and having these negative consequences, need to be mindful of the things to do to fix it"
- emblematic of the shift to new habits → he is much more cautious, these days
- Don't want to "Rip out his soul"

Feedback

- Standard sr./jr. faculty conversations
- Looking for a 2nd opinion (now increasingly routine)
- No emotional issues observed for the 2 years

LCA

- Think the course was a really positive experience
- NOM coffee time was the major time for interaction
- He seemed energized by LCA

Concerns

-think he is in better shape and above the bar for our standards

Honesty ++

Integrity ++

Respect for others - neutral

Junior faculty look to him

Community

- Assume he makes his fair share and actually does more than others
- Willingness to help colleagues is extraordinary
- There are things he doesn't need to do but does simply as a great colleague who can.
- #1 among non-senior faculty

What he made for the [REDACTED] Structure was amazing – his instinct is to help while most of us are still feeling badly I simply gave advice to her and he really addressed it – just to help a coworker

- His instinct is simply to help
 - o It's an emotional and empathetic self
 - o Not just a critique but action
 - o Will simply solve the problem

Cost benefit analysis

There is a level beyond which we should not tolerate – he is now way below it given the benefits he offers

[REDACTED] 7/18/17

Interactions

- On sabbatical 15-16 – in Barcelona so very little interaction.
- Disappointed his office had moved
- Can ask him anything – IT brings up plug ins – could ask him to do it will IT 2 Weeks
- How does he do it?
- No tenure track faculty in his new hallway
- Now meet about 1x a week – talk over case ideas for LCA
- Observed the teacher 2x in LCA
- We will back and forth regularly

Brian takes over for Francesca – now I step in to appointments process

Put his stuff in March

This could have happened earlier – find this problematic and it interferes with letters process

Interaction Patterns

- Thinking he has evolved – he is trying to understand the way people respond to him
- 100% honest to the core
- Truth → cares about the integrity of the system around him → has seemingly endless capacity → he has an obligation to correct wrongs
- How could that be wrong?
- Szechuan Gordon – creating externalities that act in opposition to my objectives – assumes all players think and act the same
- Question now is what purpose am I actually serving and how can I do things differently
 - o Possible ways to be perceived as wrong – always follows the letter of the law
 - o Now he steps back and how it might be perceived
 - o Example → HBR request on UBER
 - o When ors should be punished – translates to himself – little wrongs not a good use of his time
 - o How big is the wrong
- Used to shoot a rabbit with a cannon → now understands benefits to restraint
- Ben doesn't care about "friction" – he is skilled to appreciate it and now is more conscious of it
- He relies heavily on Brian and me
 - o Especially post process of FRB last time
 - o Has very strong views

- Key Questions for him today – i.e. American Airlines
 - o Is it big, am I unique, should I use my power for it → looked online → MAX stepped forward to have his name on it
- When he's got a question, then he checks in with us

Szechuan Gordon situation

- Blinks followed a letter of law – never dishonest
- Absolutely responds to feedback
 - a) Responding to us
 - b) Doesn't let go – i.e. or seems to not
- He hasn't and shouldn't change
- If he knows you don't have resources he will help you

Works with difficult FSS's – message re: lower status folks.

University Themes – really involved

- Not a committee
- Works with David Parke and has suggestions for SEAS/HBS

Student Interactions

- Highlights his own inadequacies and his own processing
- Fully respectful of the students

Summary

Making the world a better place and HBS is a beneficiary

- Could make a lot more money
- Has really learned from being here
- A powerful force for good
- A powerful intellect
- Actually engages in learning how to adjust his behavior
- The nature of the tenure process is you can't guarantee anything. This is a good bet for a long term learning process

[REDACTED] (Field 3)

7/19/17

Taught Winter 2015 (Toffel and Montgomery as well)

History

- Know him for a long time well before Field 3 – Max on his dissertation committee, also there is my wife in his unit
 - o Welcomed as a spouse – I went to lots of seminars with him
- Substantive discussions about lots of things
- About legal issues i.e. Google free lunch as a taxable benefit
- More often what kind of monitors and technology to acquire

Field 3 – I did not staff the course teaching group – was happy to have him.

- He and the other faculty worked on our interaction part of the course infrastructure.
- My interactions with him were quite similar to interchanges with other faculty

Big Picture – he was great to have as a teacher and as a member of the Field 3 teaching group.

Distinctive areas of Knowledge and Expertise

- a) Startup experience
- b) Knowledge of technology
- c) Legal background
- d) Interaction with companies more broadly

- Teaching group and student got access to his depth of expertise
- Mostly a blessing -> sometimes goes too far
- My feedback to him:
 - ➔ I want to work with IT after (not during) the course
 - ➔ Idea is perfect for the summer, not for now
- IT would bring up something (IT related)> potentially controversial and difficult...would always offer to help. – responsive with both faculty and staff
- It all worked well
- With Keri Limmer on legal issues that were surfaced by faculty and students
- If students were going to create an app – he has expertise → shares with students across sections.
- * i.e. would want students to talk to the customer – Ben's experience is true. He sold a company without interaction with customers so confronted the “absoluteness” of our advice.
- He probably restrained himself in the teaching group but provided feedback to me.
- Interaction with staff – he managed it i.e. classroom set up – occasionally through an extended email exchange
 - o My role as course head was to clarify – how possible is his idea with 3 days to go and faculty wanting different things

Summary

- Got the pushback early on – adjusted his behavior
- No concerns for collegueship ...
- He might uphold standards more than most of us in ways that are challenging on us (legal and economics)
 - i.e. Szechuan Gardens -- there is a standard that he's been an advocate for – Ben is on top of that – and he does not see the gray area.
- He doesn't cut corners at all
- My big message to him is to "pick your battles"
- * It is easy to frame his behavior as not cooperating with us, holding us to our own standards
- His capacity for work is extraordinary

- I see why people react to him in different ways the more you know him, the more clearly you see intent, initiatives and standards.

[REDACTED] MKT

Exec Ed/Reunions

7/21/17

Awareness

- Heard about him as an expert witness initially
- He was an opposing expert while in doctoral program (Berkman Center)
- In early stages not a lot of contact but our interests are close

Exec Ed

- Invitation to Digital Marketing Exec Ed Program
- Who reached out to who (-not clear)
- Brought a new topic – affiliate marketing, invited him to teach a class
- Had him do it over 3 years
- We diverged and the topic became less relevant to the program

Reunions

- Ben raised the idea of a joint session as we were both invited (there was topic overlap)
- I did the positives and he said the internet was poisonous
- More dueling lectures than a debate
- I see what's good – he sees what's bad and we're both right
- He goes for the difficulties and potential abuses
 - o His position on Google for example
- An early run in with Google, wanted to hear views on privacy, etc.
- Law School and HBS
 - o I offered up Ben and they turned it down. So they moved the entire session to the Law School
 - o Falling out between him and the Berkman Center. Makes his presence there difficult

Intersections

- No writing together
- Have lunch occasionally – he knows what I do. No question his take is quite different

Teaching

- I viewed his teaching [REDACTED] – he has been difficult to coach
- We use him because "people rave about him"
- Marstin Sorrell came to campus to see him and he was prosecutor like in is teaching.
- Taught Trip Advisor in MBA class when Google was scraping arranged for him to see Ben
 - Lots of reasons to use him in:
 - o Classroom
 - o But some people wonder why, seems indicative of his polarizing approach
 - o He doesn't write on the board

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HBS0020473

- Pre section ____ the tech → this is how I work
- Seems a bit of an automaton and pre-staged
- He is a mixed bag = with respect to content → he has definitely heard (he lectures like a lawyer and did not allow for the class to reach a conclusion)
- New case Skinny Wallet that he taught
 - Now up to 2 sessions because he wants to get his stuff out and can't get enough personal perspective time in a single class.
- Ratings were polarized

Interactions with others

- Hangs on every word anybody uses
- So strong in his critiques it generates discomfort among exec ed. students
- He is interested in problems that have a flavor of injustice (unfairness)

Community Standards - Respect has always been shown

- He has to be careful he is given his POV
- He's less respectful (lacking charm) than virtually all of us faculty are
- Goes beyond the norm and sets up a luncheon
- Less than evenhanded with Google – I don't think that is his job – that is why we debate
- Always there to help
- *has lunches every summer at Digital Initiative
- Goes beyond it and sets up a luncheon

Summary

My Debriefs after Exec Ed – some love you, but some are frightened of you

*He is fundamentally disrespectful to institutions -- truly believes that large organizations like Google (not individuals) are bad.

He has worked on being less harsh but his views are still quite clear to those who hear him.

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HBS0020474

[REDACTED] LCA

7/28/17

- Never met Ben outside of 1st LCA teaching group
- Saw him on a weekly basis (vast majority of interactions) in LCA group.
- Electronic communication on teaching group plans towards back half of the course
- Taught next door to me as well

Reflections

- o + really smart in a narrow bend
- o Intellectually understands online markets in a way that knows his bounds
- o A lawyer (3 in the room); quite likely the weakest in the room on the topic – some question re: teaching
- Very quick to be modest about his teaching ability (happened so frequently it became disingenuous)
- Believe he is on the spectrum more than personality ... he sometimes does not understand how he would be viewed
- Example- Session at Law School [REDACTED] missed session due to AA discussion – BE says out loud upon my return, hope you didn't let him drink at lunch – why say that?
- A micro example
 - o Throughout course – always talking about his other roles – "I could sue, wonder should I sue," almost that he had a business on the side
 - o A most disruptive element of teaching group (despite the fact that he is brand new)
 - o Always troubled by his teaching plans – last 15 minutes for him to discuss his views on similar issues
 - o Have no idea whether he actually discussed it in class
- His use of computer raises a more theater like approach than a classroom
- Grandstanding
- Can you have an engaging conversation while at the keyboard?
- Note: * [REDACTED] surprised at how well it went and BE will teach 2 sections next year

Summary

- I have been in 5 teaching groups – he is 2 standard deviations different from the mean – with an orientation toward self and unique view
- Often less focused on the learning vs. his skill set
- Gave him a lot of forgiveness because I thought he has an affliction
 - o I would be warned by others
- He went out of his way to be the IT nerdy guy in the teaching group
- Started to get better food that costs less for teaching group
- Addressed all of our video problems

- I would not be proud to know that he was a senior faculty member interacting with the business community → I have my doubts about his ability to resolve his behavioral issues

[REDACTED]

Known him since we hired him. Not active in decision to hire him, but I interact with him a lot. Less in past two years bc of office move.

Haven't coauthored, but have watched him teach, and know him well.

Ben is the most ethical person I know on the faculty. I completely mean that. Focuses on making the world a better place more than anyone else I know. Surpasses even me and my high standards.

Any negatives? No doubt that he didn't do a good cost benefit analysis on Chinese restaurant situation. Blinkx - I believe our COI standards are too weak, but he acted within them. I would want something different than that. I don't think he was after the money.

I think FRB got the internal stuff wrong. He stands up for people who need others to stand up for him.

NOM unit is Psych and Behavioral Economics really. Ben and I clash on what we should be recruiting for.... I remember saying to him in a recruiting meeting, have you ever voted for one of the behavioral candidates. He said that is a good question, I need to think about that. He has rigid views of things, fact based, but he argues back sometimes and sometimes rethinks things.

In past two years? He's been pretty remarkable in moving to the LCA course and working with people who have different styles than his own, and he's adapted reasonably well. Would be delighted to work with him on an ethics types course.

Given him Feedback? Yes. On research, teaching, the ethical issues.

Among the most respectful people I know in terms of staff interactions.

He does speak up when faculty do things that are bad, so people might not like him. But I find I am either on his side, or neutral.

Green book: phenomenally well. He contributes in more unique ways.
e.g. Doesn't like the recruiting process in first round for economics, so he doesn't participate by way of mutual agreement, but he provides software for someone with handicap so he is phenomenal. Given his productivity and doing things to make the world a better place, his quirks are minor issues to deal with.

Anything else? Two years ago he should have simply been promoted. I can't imagine him meeting the 2 year trial better than he has in these two years. No decision is more important to the NOM unit than this one over the next 6 months.

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HBS0020484

[REDACTED] July 27

- 1) I knew him first through his research – his seminal paper on google auction... I knew of his work on policy (ads) related to google before I knew him.
 - a. Seemed like he has an obsessive personality.
 - b. I came to visit and I wanted to know what he's like. I went out of my way to get to know him. Decided he wasn't a problem.... Good member of the Digital initiative.
 - c. Abrasive isn't the right word. Just direct, I guess. Poor bedside manner, but students like it because it's authoritative. I have no problem dealing with it (I am married to a physician)
- 2) He's abrupt. He lacks grace. He's more apt to pressure others – he asks questions the way you might in a seminar. But he's intellectually sharp. Asks great questions. Accepting of an alternative argument. He agrees to disagree. He's been open that he dislikes the screen size but has decided not to push it.
- 3) We argued a little about google. He argues like a lawyer – I'm used to it because of my policy background. He does things for the DI.
He has a sense of duty and obligation that I can tap.
He has a Self-centered personality

We might still collaborate on research; I can put up with his cynical side because he has good judgement.

He made contributions to IT tools...

Airline mileage pool. He gets people (including [REDACTED]) Free upgrades

He writes a lot of cases.

[REDACTED] 8-4-17

- 1) How long? Since 2010 when I joined NOM. Interaction? Changed over the years... used to be my neighbor – frequent interactions about research, office, teaching, etc. Really valued those interactions.
 - a. Since then I see him less often but email about a joint research project that is going slowly – maybe once a month
 - b. And I observed him teach a new case
- 2) Positives – never had a negative interaction with Ben. Loved being his office neighbor because we are so different. Which is one of the good things about HBS. How different we are. He is deep in topics I know nothing about. I'm working on a book and he comes over to celebrate – chapter on perspectives. He put me in touch with other accidents transcripts. You mention X and he somehow has deep knowledge and he connects you with people.

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HBS0020485

- 3) Feedback? Yes. In two different ways. Sometimes with other colleagues, on papers. But it's interesting that he reached out, even though I am not an economist. He's interested in how others see his work. Which is great. I also have given him feedback on his teaching. He sought it out. He also asked for advice, in terms of how I would teach a class, etc. With new teaching assignment, he asked me for help (bc of my expertise on ethics).
 - a. This new course fits him well – totally unexpected. Students liked him and respected him. He talked about why he was teaching the course and what had happened to him, in the first session.
 - b. What surprised me – always been open to my feedback and sought it... but for classes I was surprised by his asking what was not good, what could I have improved or approached the problem differently
 - c. He was looking for ways he could approach a problem differently – perhaps as a result of this experience.
- 4) Interactions with others?
 - a. Definitely with colleagues
 - b. Yes with staff, through NOM events
 - c. Seminars... always very polite and incredibly helpful
 - d. Strange people coming into his office, ie people from faculty commons... he has an innate desire to fix problems, to help
 - e. He is much more reflective... it's as if he pauses now. Decides whether to jump in or not
- 5) Meeting with myself, Brian, and Ben... about what is he learning from a personal standpoint... is there anywhere we can be helpful in thinking through your reflections.
 - a. We all note that he exerts quick judgments. Now he thinks is this something I should get involved with or apply my energy elsewhere
 - b. Most of us see things that maybe bother us or don't work but we don't deal with it. Somehow Ben thinks if an issue deserves attention he just does it ... example of [REDACTED] in classroom....
 - c. Now he exerts judgment over whether to intervening ...
 - d. Criteria? Example? IT dept... decided to back off.... Impact would not be as important as helping [REDACTED]
- 6) I was Annoyed that I was losing my office neighbor, but I am impressed by what the last two years have done for Ben.
 - a. by how his teaching assignment has helped him. He has become different quite remarkable to see...

[REDACTED] 8.14

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HBS0020486

Interactions? he's down the hall, I run into him casually... casual conversations about what he's up to. Research, things. We've also interacted on behalf of DI, seminars and projects. He's organizing summer lunches for the initiative.

Positives and negatives? Usually I interact with him on a one on one basis. He's always super nice and helpful. He goes out of his way to help me out. Looked at my computer set up. Wrote me a detailed memo to help me ergonomically, provided detailed links to accessories on Amazon that I can get. I didn't get any of those Ben emails he used to send. Always good behavior, very professional at all times. For the initiative... he didn't get blasted for doing anything wrong (which had happened in the past).

No negatives at all.

Feedback? Not in recent times.

He's been sweet and thoughtful.

Interact with others? ... he's been really kind

In the past, he was much harsher, in email. But I haven't seen that at all.

Anything else? More sensitive to how he can be effective in this environment. He seems to have worked hard to change. He's changed the way he teaches... not doing computer notes anymore, but that is rumor ... talk to Len or someone... he's adapted a lot. He doesn't come across as arrogant or anything.... But maybe he just hasn't had a reason to...

8.14

Interactions: Co-taught FIELD 3 two years ago. 2015. He and I were both new to the TG so learning together. I found him to be a very thoughtful colleague in talking about teaching and technology, and was always good at suggesting things to make things better in the moment, and in the future. Phrased in a productive way. Not critiquing. I was delighted and kind of amazed. Because I hadn't had interactions with him before that except around research and things in the news. All very positive. All things I didn't expect.

Interactions with others? Similarly, my perception is that he was a valued member of the teaching group

additional examples? Yes, he was an early creator of the spread sheet for tracking ... I was an early user. A remarkable contribution to the school.

Calling patterns and bias reduction – I don't know as much about it, but I thought it was a good way of thinking about the school. He has a whole body of software freely available that can

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HBS0020487

make people better, and all is available to everyone. E.g., a countdown timer ... he provided me with a website link with tools

Anything else? Yes, Restaurant thing – on one hand, totally over the top in his escalation. But what got lost was that he doesn't need the 4 dollars. It was about people getting cheated.... His heart was in a generous place.

8.14

Tell me about the frequency and nature of your interactions with Ben Edelman. Would be interested in positive and negative interactions:

Our relationship was tighter a few years ago when he took over the elective I built and repurposed it and made it his own. We worked closely on the handoff. What I've done on platforms, etc. He came to me for help when writing cases and notes... ended up coaching him on career stuff too, and positioning for his packet.... Sort of a mentoring relationship.

I hadn't really spent time with him during the Chinese restaurant.... And I watched with interest as he got into deeper trouble with his response.

Protective Order

Did I recuse myself. I think I might have. I cant

remember.

Thought the extra time and the move into LCA was a wonderful one. Being part of a teaching group would be a good thing. He had not had that before. ... subject matter good too, to get his wheels turning.

A lot of interactions with him around the DI. He's not a leader of the initiative formally but has been one of the most active non-tenured people. I would say over the years each time he gets himself into a kerfuffle over something at the school (case footers, projectors etc.). He comes to me and I try to help him understand how people might react the way he does.

He's always right but he's tone deaf in how persistent he is, etc.

My conclusion was that he learned an important lesson... I didn't think he would ever back pedal when he thinks he's got someone in his sites (ie Uber).... He knew how big companies responded... but not little companies

He wont stop going after the big guys. And we should not want him to....

Contrast to colleagues who get in trouble doing litigation consulting... conflicts not disclosed, or inconsistencies... I don't think that will happen to him. He isn't sloppy in that way. He wont tarnish the brand in that way.

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My view 2 years ago is that he learned an important lesson, he will keep doing this, but we want him to, and he wont go after the little guys. We should have someone here who says Uber has broken a bunch of laws. It took incredible chutzpah to do that as his promotion packet was out... but it speaks volumes that he was willing to do that.

I haven't seen anything over the two years that persuades me that he hasn't become more cautious and thoughtful.

The academic work has always been amazing....

Every two years we will see something like going after some company... but there are worse things than that.

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Exhibit 19



August 14, 2017

Ben Edelman Conversation with FRB

1. What was put in place 2 years ago, how did it help?

- LCA - Felt more like an opportunity – not anxious to have 22 preps; but was the best thing after all
- Mistreated by employees
- Canvas – “sore subject, we will fix it someday”
- Would add some interesting items to the course; articles
- One student got it right – send emails to justice department (a powerful end of the class) – bribery in Africa became bribery in New Jersey (airlines)
- Trying to come up with other stuff for the students and putting it in dropbox
- Inevitable stagnation and it was nice to refresh it

Me

He must have loved LCA – “the sheriff,” morals, the oppressed; “incredibly obvious”

Suggestion of coaching but decided not to pursue it – getting to know me would take time, got some opinions from senior members of the faculty and so I got plenty of guidance over the years

Me

This is telling; doesn't think he needs help or professional development? He's above it?

[REDACTED] was right, “he has a hard time thinking about others perspectives”

A know it all

2. Anything else about the 2 years?

- I kept my distance from some situations
- Some things I know it and I can prove it but I sit on my hands
- UBER has been out of line for awhile; they got ahead doing things illegally; no one ever heard of my friend who started HALO
Professional drivers who know my opinion; they wrote to me and I had lunch with them; interesting to get their first hand views
- Try to go after “bad asses”, trying to make a difference in small ways
- Don't like how they run the company; 2 DUIs
- Don't have the staff to run the airline effectively; gave big early retirement
- Need smart lawyers if you want to run things effectively
- Had to get into the middle of how they screwed this up.
- Tie them up in their own
- I like this – seems like I am beating up a company
- What's most important for me is getting money back fro people who shouldn't have been charged
- “Happened personally” – flying 100K miles and trying to check 3 bags; computer out of sync with what marketers were promoting; found many complaints being posted
- I tried to understand the underlying managerial and technology mismatch
- I can't sit on my hands when I see I must right a wrong

- I like the company to recognize the fallacy of their own systems

Me

What was the "eating horses" tirade?

Find him weary/tedious – baggage and tickets with the airlines; UBER drivers

Goes down rabbit holes

Writes a story – lets others take it on (3 years ago when I met him I asked him if he'd like to be the CIO – no, no, no)

A flame thrower

Doesn't see things that are broader implications for the school – American, etc.

"Do my own taxes"

Me

He's the faculty's handyman

Arrogant – above the coaching,

He doesn't seem worthy of being an HBS faculty member

3. What did you learn from ATSC? As a Junior faculty member

- Could meet more; a few more times
- Many deep questions; so much to do
- Procedural perspectives
- Fascinating governance questions
- What is the situation where we
- IT staff struggling with a lot – deal with how to structure an IT system to the mundane
- Deep respect for the difficulty of the IT jobs
- Think I have been helpful – video recording; Felix should write to all of the faculty if can't be recorded
- Room came around to see it my way
- Felix will have to struggle with these types of questions

Me

Nothing that showed real learning over 2 years

He had the gift of things others might wish for – unit shift, new office, LCA, ATSC, coaching

Never - "I gained a broad perspective" "I learned"

Decided not to have a coach

No ATSC learning other than the "room came around to my view"

No LCA learnings – "...a stagnant course..."

I don't see that he has internalized anything

Me

If he's tenured, get ready! He will be a never ending handful for the Dean and others

He won't "sit on his hands"; he will no longer bite his tongue

Find him disingenuous "deep respect for the IT staff"; brings in candy

Exhibit 20



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
F069
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 colleagueship standard.

After Len left the meeting, the committee heard from F019 (by telephone) who presented her perspective as a member of the NOM group regarding Ben's behavior and colleagueship. F010 account was very positive.

The standing committee then spent an additional hour discussing Ben's behavior, colleagueship, 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

Exhibit 21

**EXHIBIT INTENTIONALLY OMITTED –
IMPOUNDMENT REQUESTED**

Exhibit 22



6/28/17

FRB

Past overview

- tone: harsh
- approach: dogged
- lack of appreciation for different views

Overall

- constantly have to keep boundaries clarified
- he will forever be a handful; SG, FOG
- know it all; doesn't know as much as he thinks he knows
- jury is out

- + well intentioned
- + Making an effort
- + He's trying, catches himself
- + Biting his lip
- + Graciously receives feedback
- + brings energy + creativity
- + better when fac. in the room
- + decent contributor

Hopes

- take feedback from ~~the~~ staff / not just faculty
- refrain from acting as an agent or AV problem solver
- stop badmouthing IT (spreads negative opinions)
- direct inquiries before he starts solutioning - direct ideas to IT so can learn (support - rework - integrate - map up)
- recognize organizational realities IT must work with

Situations

- LMS + Kaltura
- Apple TV
- Rolling cart
- Voting app
- Canvas

- ongoing participation is disruptive
- comes across as arrogant
- when Linda + Felix in room, more in control (when FOG says ^{stop})
- long, inappropriate emails
- takes people down unproductive paths then tune him out
- tangents
- droppingargon
- hard time letting go - email follow ups
- latches onto things

Exhibit 23

12/28/17

[FRB]

Amy

Len

Stu

Jean

- arrogant
corrosive
embodies NBER,

Ben needs to
know we met -

* Faculty reaction

~ meet w/ [REDACTED] - teaching group

organized
realities

- How was his letter -
- did he get a coach - no mention of it
- will he ever be reflectively better

People

How will the process go forward?
Map a portfolio of
Has he demonstrated?

What we're looking for! The domain we
are looking for
How broad should this be

Some statement

Was their understanding?
Was their charged behavior?
Is it sustainable?
How did you get

Luca

Process

[REDACTED]

[REDACTED]

[REDACTED]



Exhibit 24

FRB 2015 Report available at
<https://www.edelman-v-harvard.org/sj-docs/ja-exh-14.pdf>
with hyperlinks and bookmarks

Faculty Review Board
FINAL CONFIDENTIAL REPORT
November 2015

Overview

This document presents the results of a review of concerns related to Professor Benjamin (Ben) G. Edelman's conduct raised in conjunction with his case for promotion to tenure (see **Exhibit 1**) and referred to the Faculty Review Board (FRB). At Dean Nohria's request, the FRB was convened in accordance with HBS policy. We considered two incidents that occurred during 2014: the first, in January, involved Professor Edelman's blog posting about Blinkx, and the second, in December, related to interactions with a local restaurant, the Sichuan Garden. In addition, we considered concerns that had been raised about a range of interactions between Professor Edelman and staff at HBS (see **Exhibit 2**). Over the summer and early fall, the FRB reviewed documents and other materials, including Professor Edelman's statement to the FRB (**Exhibit 3**) and his personal statement submitted in conjunction with his promotion package (**Exhibit 4**), and conducted a series of interviews to evaluate these incidents.

The FRB's mandate in this instance is to evaluate whether a promotion candidate meets the School's criteria for "Effective Contributions to the HBS Community." As set forth in our "Policies and Procedures With Respect to Faculty Appointments and Promotions," "[a]ll successful candidates must uphold HBS Community Values, accept a fair share of School responsibilities, and contribute to the community." Our statement of Community Values defines a set of principles that all stakeholders of the School—students, program participants, faculty, staff, and alumni—agree to abide by as members of the HBS community. These principles, also referred to as our Community Standards, are the following:

- Respect for the rights, differences, and dignity of others
- Honesty and integrity in dealing with all members of the community
- Accountability for personal behavior

In addition, as our promotions criteria make clear (page 6, section 13), "[a]ll recommendations for promotion... must be supported by persuasive evidence that the following requirements are met:

- The candidate displays honesty, integrity, and respect for others, including faculty, students, and staff.
- The candidate accepts his or her fair share of the School's administrative, mentoring, and teaching responsibilities.
- The candidate contributes to the teaching and research environment of the School.
- The candidate advances the School's mission and those activities that support and foster it."

This report is organized into **Findings** and **Assessment**. In the Findings section, we evaluate whether the conduct outlined in the July 31, 2015 letter to Professor Edelman is consistent with our Community Values and our criteria for Effective Contributions to the Community. In our Assessment section, we examine whether Professor Edelman's prior conduct, which we found was inconsistent

with our values and criteria, is likely to recur or whether there are tangible signs that Professor Edelman has learned from these incidents and experiences.

Findings

This section presents findings in three categories: Blinkx, Sichuan Garden, and interactions within HBS. Each section includes a brief summary along with exhibits that provide greater detail.

Blinkx – January-April 2014

On January 28, 2014, Professor Edelman posted "The Darker Side of Blinkx" to his benedelman.org website (see **Blinkx Exhibit 1**, Original Post). The piece alleged deceptive advertising practices by a UK company named Blinkx and reported on investigative work Professor Edelman had done to uncover these practices as part of a paid consulting project.

The Blinkx stock price fell dramatically soon after the blog posting, and prominent media reports speculated that several large investment firms had sold the Blinkx stock short (see, e.g., **Blinkx Exhibit 2**, "Harvard Prof's Blog Post Slashes Blinkx Stock Price 21%").

The matter first came to the School's attention when a *Bloomberg News* reporter contacted Marketing & Communications to inquire about the posting and with the following questions (see **Blinkx Exhibit 3**):

My main questions are: What is Harvard Business School's policy about a professors (sic) publishing a report financed by an investment company that has a stake in its outcome? What is your view of Professor Edelman's disclosure of his consulting agreement in his blog post? Was it adequate to satisfy HBS's conflict-of-interest policy? If so, why? And, if not, why not? Should he have noted that the consulting agreement was with an investment firm that may have a stake in the outcome of his research? If no, why not? And, if so, why?

The conflict of interest statement Professor Edelman had included on his blog post was:

I prepared a portion of this article at the request of a client that prefers not to be listed by name. The client kindly agreed to let me include that research in this publicly-available posting.

Beginning with the outreach from the Bloomberg reporter and in the ensuing days, staff from Marketing & Communications and the Dean's Office, with input from the chair of the working group that implemented the School's Conflict of Interest and Outside Activities policies, interacted among themselves and with Professor Edelman to respond to numerous media inquiries. In addition, HBS evaluated its potential responsibility in the event charges of market manipulation were brought against Professor Edelman.

On February 4th and 5th, Professor Edelman updated and expanded his disclosure on the blog:

This article draws in part on research I prepared for a client that sought to know more about Blinkx's historic and current practices. At my request, the client agreed to let me include portions of that research in this publicly-available posting. My work for that client yielded a portion of the research presented in this article, though I also conducted significant additional

research and drew on prior work dating back to 2004. My agreement with the client did not oblige me to circulate my findings as an article or in any other way; to my knowledge, the client's primary interest was in learning more about Blinkx's business, not in assuring that I tell others. By agreement with the client, I am not permitted to reveal its name, but I can indicate that the client is two US investment firms and that I performed the research during December 2013 to January 2014. The client tells me that it did not change its position on Blinkx after reading my article.¹

As the HBS Conflict of Interest policy makes clear, "HBS faculty members share a primary interest in advancing the School's mission and core values, which include assurance of personal and institutional integrity; independent, objective, and ethical scholarship; accountability for actions and conduct; and preservation of the School's standing as an institution worthy of public trust. Arguably, the School's greatest asset is its reputation for scholarly integrity in the creation and dissemination of knowledge, a reputation that benefits all members of the Harvard community." Faculty members thus are expected to disclose their underlying relationships if those relationships could be seen as reflecting on the impartiality of their work.

In his response to the FRB's initial letter notifying him of the review, Professor Edelman reports understanding the seriousness of the issues that were raised. He characterized his Blinkx disclosure as an example of "bad judgment."² He also noted that it led to people seeing him "as a hired gun serving short selling investors"—a view, as he noted, "media attention tended to endorse." He asserted that certain statements in the media reports, such as the suggestion that "the client . . . paid for Edelman's article," were "literally and importantly inaccurate." According to Edelman, the client paid for some of the research, but not for the article.² He continued, explaining that the clients "couldn't have known what I would find or whether I would choose to write about it."

Professor Edelman concedes that his initial disclosure on the blog was "arguably ambiguous." Professor Edelman's statement to the FRB also recognized that he "should have provided superior clarity." He promised to be more careful in the future and to "consult more often with appropriate HBS staff."

While HBS faculty are required to report outside activities to the Dean, we learned that Professor Edelman had himself crafted the confidentiality agreement that precluded him from revealing the client's name. We also learned that, consistent with his prior practices, Professor Edelman insisted upon the right to publish findings he would discover during the consulting project ("I accepted the project, subject to my standard requirement that information drawing solely on public sources must remain freely available for me to share with others if I wish, and cannot be subject to a confidentiality agreement.").

In assessing Professor Edelman's assurance that he would provide greater clarity and be more thoughtful in the future when hired as a consultant, the FRB reviewed video from the UK Investor

¹ The FRB was unable to determine from Professor Edelman's carefully worded revised disclosure whether the client (i.e., the two investment firms) changed positions on Blinkx *before* receiving Professor Edelman's report (possible under the wording that was used), *after* receiving Professor Edelman's report but before reading his blog (also possible under the wording that was used), or not at all.

² We do not credit the distinction Professor Edelman is trying to make between a client who paid for the research that would result in probable publication, versus paid for an article that summarizes the research.

Show in April 2014—three months after the incident first came to light. There, Professor Edelman reiterated his approach to consulting in response to questions from the audience and moderator: "I'll give [the information] to you, do what you want with it, I don't care what you do with it, but if there's anything notable, I will probably write about it on my site just as I have always done."³ Professor Edelman's statement at the UK Investor Show seemed to contradict his representation to the FRB that his clients could not have known that he would write up the findings.

In any event, Professor Edelman's long-standing practice of explicitly asserting, in advance, his right to publish the findings of not just his research work, which is expected of our faculty, but also his outside consulting work made it possible that clients would anticipate this possibility (or even count on its probability) in hiring him. Professor Edelman failed to recognize the possible intersection between his publication activities and the ability of a client to engage in market timing, and his initial disclosure did nothing to inform readers of the possibility that his client, which hired him to conduct the research, could benefit from his findings because it had a stake in the subject of his research. HBS's Conflict of Interest policy imposes "a requirement to disclose outside activities and financial holdings as a way to promote transparency and, as a result, to enhance the public's trust in the independent and objective nature of our scholarship. Public disclosure of relevant outside activities and financial interests helps consumers of the relevant work (i.e., readers and listeners) to identify potential conflicts and interpret work products with appropriate care. In the end, greater transparency should enhance the credibility and impact of our scholarly work."

Finally, it is worth noting that the FRB met with senior faculty members from the NOM Unit. They emphasized Professor Edelman's good intentions and suggested he was a victim of circumstance, misunderstanding, and even ensnarement. They further expressed the view that his good intentions outweighed the problematic consequences of his actions. Nonetheless, they thought he could benefit from additional coaching and development.

Sichuan Garden – December 2014

In December 2014, Professor Edelman engaged in a series of email exchanges with the owner of a Brookline restaurant, the Sichuan Garden. Noticing the discrepancy between prices on the menu published on-line and those charged when he picked up his take-out food, Professor Edelman initiated an email exchange with the restaurant owner, requesting a refund. The exchange was sent by the owner to boston.com and soon went viral (see **Restaurant Exhibit 1**). Many of the stories and the thousands of comments posted in response to the stories portrayed Professor Edelman's insistence on a \$4 refund as out of touch with the challenges facing a small business and characterized his tone as arrogant.

Faculty, staff, alumni, and students at HBS and Harvard soon found themselves faced with questions about the incident from colleagues, from family members, and from others. The Dean's Office received dozens of emails suggesting that the exchange reinforced negative stereotypes about Harvard and its faculty and expressing significant dismay that HBS was being portrayed this way (see **Restaurant Exhibit 2**). The School's externally facing groups (e.g., Publishing, Executive Education) fielded numerous inquiries from clients expressing concern. Even faculty speaking at global events in support of the Capital Campaign reported that it was challenging to divert questions about this issue back to the desired agenda of HBS innovations.

³ http://www.dailymotion.com/dm_50fbf1d73b7c9; at 46:55.

Countless hours, across the organization, were devoted to responding to notes and comments. An MBA student, concerned that the incident reinforced negative stereotypes about the School, launched a program, encouraging donations to a Boston Food Bank, with the hope that something positive would come out of the incident; the program raised more than \$6,500 (see **Restaurant Exhibit 3**).

With assistance from his Unit colleagues, Professor Edelman eventually crafted an apology to the restaurant owner (see **Restaurant Exhibit 4).**

In his written response to the FRB, Professor Edelman apologized for his "hard tone" in the email, recognizing that the interested public could readily have gotten a negative view of him as a result. He also argued that his tone had the effect of obscuring the merits of the case, which were, in his view, considerable.

Professor Edelman argued in his FRB response that he sensed that "the restaurant's conduct was intentional"—in contrast to the media characterizations of the menu prices as a "mistake"—which motivated him to spend the time to try to change the restaurant owner's behavior. He estimated that the restaurant had likely collected "tens of thousands of dollars" from the menu discrepancy, assuming that customers would have made different selections had they seen the new prices of a dollar more per item.

Professor Edelman's senior colleagues in NOM again emphasized his good intentions and desire to save customers from fraud, while acknowledging his poor judgment and lack of foresight to consider how the exchange might be perceived by others. Some saw Professor Edelman as the victim of a clever restaurateur, seeking to leverage and publicize the situation, given Harvard's visibility and brand.

HBS internal/staff interactions

This category encompasses interactions with staff related to issues ranging from travel policy to classroom technology, case copyright, and business cards. Each has been characterized by the approach the FRB witnessed in the Blinkx and Sichuan Garden incidents: a desire to redress what is seen as a wrong and persistence in realizing that goal.

Professor Edelman acknowledges awareness of these extended staff interactions, noting, "in every instance, my primary motivation was to make HBS the best that it can be." He asks us to acknowledge his "notable successes" in these efforts, which, for example, he points out, helped us avoid a "significant blunder" HBS would have otherwise made (related to a planned change in classroom projectors explained below). Professor Edelman also recognized in his response that, although he sees his "purpose as positive ... others might feel differently, particularly when I opine on areas that are beyond the scope of responsibility of a faculty member."

We reviewed a number of extended interactions between Professor Edelman and different staff members. The two examples below are illustrative of his interactions with others.

One set of interactions began in 2013 when Media Services started to plan an update of classroom projectors. Concerned that the planned change, as Professor Edelman explained in his statement to the FRB, "would have reduced usable projection screen size in all MBA classrooms by 31% with zero

notice to faculty—making some slides unreadable, harming learning, and perhaps rattling some instructors or otherwise impeding their efforts at the crucial start of the fall semester," he communicated his concerns first with Kate Targett (Director of Media Services). Following that interaction, emails were sent or meetings were held with Steve Gallagher and Angela Crispi as well as various faculty members engaged in MBA Program leadership and the Academic Technology Steering Committee, including Professors Youngme Moon, Rawi Abdelal, and Felix Oberholzer-Gee. Professor Edelman initially sought to halt the project entirely; when that was not deemed feasible, he requested that a single classroom (his) be exempted from the upgrade (see **HBS Exhibit 1**). Ultimately, the project did move ahead, although it happened later than originally planned (because of cost), and Professor Edelman was not given a personal exemption.

A second set of interactions related to travel. Professor Edelman had begun selling business class upgrades to NOM colleagues, allowing them to book international travel at a reduced rate (and, in Professor Edelman's mind, help his colleagues to "save [their] limited research budget for other expenses") (see **HBS Exhibit 2**). While this effort was undertaken to save the School money, managing the expense reimbursement forms took considerably longer than average for the Financial Office staff and the staff at Harvard University (who had to process additional payments to Professor Edelman). The School's CFO, Rick Melnick, spoke with Professor Edelman, and he agreed to stop the practice. While we appreciate Professor Edelman agreed to cease the practice of selling upgrades for business travel, this was not the first time he was approached about his complicated travel practices. Previously, Professor Edelman had booked travel—both for himself and for colleagues—that entailed purchasing multiple tickets and using partial legs, a practice that is generally not encouraged and indeed may be prohibited by many airlines. This, too, had resulted in a call from the CFO, as the reimbursements were hard to untangle and it was difficult to track which legs were used when over multiple months. Moreover, while we understand that Professor Edelman is no longer monitoring upgrades for business-related travel, the FRB learned that he continues to monitor and use expiring upgrades across the NOM faculty, now largely for non-HBS travel.

* * *

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

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

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

See **Page 11** for a **Table of Contents** of the full set of exhibits included with this report.

Assessment

In this section, we assess the implications of our findings. We identify two areas of concern: external, related to the potential for risk to the institution and "the public's trust in the independent and objective nature of our scholarship," and internal, related to respect for others inside the institution. In terms of the external risk, there are two types. One relates to **conflicts of interest** or the **appearance of the same**, exemplified by the Blinkx incident, and the other relates to **perceptions of character and image**, exemplified by the Sichuan Garden incident as well as his interactions with staff at HBS.

In this regard, we sought to answer the following inter-related questions:

- 1) Did the issue ultimately get resolved in a satisfactory way? What is the evidence of learning that will shape future actions? Has learning associated with one incident led to different behavior in another?
- 2) Given the above, what is the risk going forward? Will closer supervision be sufficient? Or will the fact of Professor Edelman's having a broader platform post-promotion (and the assurances of tenure) increase the risk of similar incidents in the future? What assurances do we have that he has changed?

The FRB anticipated that its fact-finding work and interviews would lead it to one of three possible assessments: (1) no concerns, (2) concerns, along with sufficient confidence that learning and change had occurred such that any risks moving forward were mitigated, and (3) concerns that should be taken into account in the promotions process. The FRB agreed—after lengthy review and discussion—that we had arrived at the third option. We were unanimous in our assessment that neither option (1) nor (2) captured our views.

Blinkx, Outside Work, and Disclosure

With respect to the Blinkx events (consulting work, blog, and subsequent London talk), the FRB appreciates Professor Edelman's acknowledgement that he "should have provided superior clarity." Yet, we are not confident that superior clarity has been or will be provided in the future. Professor Edelman's handling of his conflict of interest disclosure during his London talk, months after the incident, reinforced our view that he fails to understand the fundamental concept of conflict of interest disclosure, or to appreciate the importance of disclosure to the integrity of his work and, ultimately, the work of the full faculty.

The incident raises questions for the FRB about whether Professor Edelman's approach to managing and reporting on outside work is compliant not only with the letter and the spirit of HBS policies on Conflict of Interest and Outside Activities but also with our Community Values. The FRB is aware that Professor Edelman has filed annual reports regularly, but we urge the Dean to review the reports to ensure they are both comprehensive and appropriately transparent before the Appointments.

Committee's review of his case is completed. We also recommend assessing the congruence between the personal NDAs that Professor Edelman requires clients to sign and the HBS and University policies.

In terms of managing his outside activities, the FRB found that Professor Edelman did not appear to understand that his own zeal for righting a wrong could call into question the integrity of his writings, as well as the integrity of faculty work more broadly and the reputation of the School—that a single-minded focus on redressing one wrong could, nonetheless, enable other wrongs to occur. In addition, Professor Edelman did not seem to understand that conflicts of interest, real or perceived, could arise not only when he had been paid directly by a company for his work, but as a result of past work for clients in the same industry or field.

The FRB is concerned that the issues raised by the Blinkx episode and with Professor's Edelman's approach to disclosures relating to his consulting work would not resolve themselves simply with a potential change of status from untenured to tenured professor. We are concerned that the Dean's Office and other HBS and University officials may have to expend a disproportionate number of future hours on risks posed by the conduct of a single faculty member, particularly with regard to his outside activities.

The FRB was also concerned about Professor Edelman's approach to transparency. We struggled with the apparent contradiction between Professor Edelman's insistence on transparency for adware companies and restaurants and his reluctance to embrace transparency in his own agreements with clients or disclosures to readers. He fails to appreciate that "[i]n the end, greater transparency should enhance the credibility and impact of our scholarly work."

We also struggled with the seemingly contradictory assertions by Professor Edelman that he is working to make the world better (and HBS should trust his interpretation of what will and will not make the world better) and that he does not have to care about his consulting clients' goals and intentions. We were unable to understand how he resolves competing values or to determine whether he is able to see values that do not align with his position. For instance, when the value of reducing company advertising budgets (and/or helping companies—and indirectly consumers—reduce spending on deceptive ad practices) is pitted against the value of avoiding helping investment companies gain from short-selling stocks as a result of advantageous access to information, which "value" is more important in making a better world cannot be easily determined. Both values may be important, and we do not have confidence that he gives weight, or perhaps even recognizes, competing values presented by complex situations.

In the aftermath of the Blinkx blog and media inquiries, Professor Edelman was coached by senior colleagues and agreed on the need to be more thoughtful about his consultancies and his disclosures about his consultancies. Yet, Professor Edelman's decision to participate in the April UK Investors Show and the tone set at that conference by him (and the moderator) seemed to the FRB to be at odds with this assertion.

A small additional point: the extent of Professor Edelman's outside work policing the internet for clients and for the world struck us as potentially extremely high. We wondered whether it was necessary (or even possible) to determine that this work involves fewer than 400 hours a year (roughly a day a week). It was framed by Professor Edelman, variably, as outside work, as research, as a hobby, and as something he does instead of sleeping, giving the FRB the impression that he may spend a great deal more time than is optimal for HBS faculty on outside work.

Conduct in Community/External interactions

The FRB also is not persuaded that incidents like the one involving Sichuan Garden will not recur.

Professor Edelman stated that he was deeply sorry that it happened and that he learned the hard way that as a Harvard faculty member he was vulnerable to press exposure, which was reassuring. We also found, however, that Professor Edelman continued to believe he was in the right, pointing to price discrepancies and insisting the restaurateur reimburse past customers. He noted in his letter and his in-person comments to the FRB that the restaurant was large and successful—not an unsophisticated small business, as portrayed widely. He emphasized in his response that "the facts firmly contradict" the conclusion that he (Professor Edelman) was acting selfishly and that Sichuan Garden was unaware of its practices that cheat customers. Professor Edelman, along with his senior colleagues interviewed, indicated that it would be difficult for him to avoid taking similar action in the future, although Professor Edelman stated that he would try to be more careful about his tone.

We were somewhat concerned by Professor Edelman's senior unit colleagues' framing of the event as one in which a company that was "ripping everyone off who orders online" engaged in "deceptively" releasing "selected emails" while consistently "refusing to do what Professor Edelman asked him to do." Their expressed view that the restaurant owner was taking advantage of Professor Edelman because "he was a Harvard Professor" may have merit, but it overlooks the broader ramifications of his interactions for him and for the School. While the FRB recognizes that there are two sides to every interaction and does not have reason to doubt that Professor Edelman was trying to do the right thing, we believe that it is incumbent upon faculty to be sensitive to how we interact with the community, locally and around the world. In short, we do not question his good intentions; we question his judgment in his interactions with a local business—particularly coming so soon after the Blinkx incident, when the issue at heart (e.g., how he was or could be perceived by others) was so similar.

With respect to the internal HBS staff interactions, we have concerns about the extent of Professor Edelman's awareness of the impact his actions have on staff colleagues, their workload, and their need to balance broader School-wide considerations. It is often difficult to see the full picture, in which many dimensions (cost, impact, staff time) must be considered together. Professor Edelman is laudably committed to "making the School better" and yet seems not to recognize that his views of what makes the School better are his opinions (not facts) and that those on the other side of each issue very likely also believe their side has merit—and that following Professor Edelman's different advice might not, in their view (informed by their roles or expertise), actually improve the School.

Assessment of learning, change, and risk of recurrence

In its discussions about all three sets of events, the FRB had concerns about the extent of post-event learning and thus about the risk of recurrence. As noted, we have concerns about Professor Edelman's tendency toward absolutism, which appears to influence his judgment about whom to protect, what to report, and what constitutes a conflict or the appearance of a conflict. (This behavioral trait shows up in his writing and his interviews with us as well as in his senior colleagues' descriptions of his behavior.)

We found a consistent pattern in Professor Edelman's responses: apology followed by reiteration of the merits of his side of the story. For those on the receiving end, this kind of apology often falls

short—and feels insincere, even if intended sincerely. His tenaciousness in reemphasizing the rightness of his side of a story makes it hard for us to be confident that he has learned, that he has changed in a deeper way, or that he is accountable for his personal behavior. We would like to see more evidence that he truly recognizes the other side of each story, views himself less like a victim, and has become more aware of his own contribution to the problematic situations. In terms of his own learning from these events, we are convinced that Professor Edelman regrets the publicity and perceptions surrounding his actions, but we are not persuaded that he regrets the actions themselves or sees any real problem in the approaches that he took.

When we considered Professor Edelman's certainty, together with his tenaciousness, we were left with a concern about whether he is able, without close guidance, to know when to let go of an issue and recognize an alternative perspective, for the broader good of the institution and/or the community members within and outside the institution. These characteristics, as reflected in the Blinkx and Sichuan Garden matters as well as in his interactions with others at HBS, made us question whether Professor Edelman can make effective contributions to the HBS community in accordance with our Community Values.

For the reasons described above, the FRB finds that Professor Edelman's conduct in connection with Blinkx and Sichuan Garden as well as his interactions with staff, as exhibited by the projector and travel examples, was inconsistent with the School's Community Values and did not constitute effective contributions to the HBS community.

Summary of Recommendations

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

The decision to award tenure represents a substantial commitment by the School to a faculty member. Absent very unusual circumstances, the faculty member will be part of the HBS community for decades and will help shape the culture and direction of the School. For these reasons and the reasons expressed herein, our review of Professor Edelman's conduct raises issues that, in our view, warrant careful consideration by colleagues as part of his promotion case. Specifically:

- We ask that the Dean review Professor Edelman's Outside Activities disclosure to gain confidence on behalf of the School that the disclosures are appropriate and that his current activities are aligned with the School's policies and mission.
- We ask our senior colleagues to consider these issues and our findings when reviewing Professor Edelman's case for promotion.

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HARVARD | BUSINESS | SCHOOL

PAUL M. HEALY |

JAMES R. WILLISTON PROFESSOR OF BUSINESS ADMINISTRATION
SENIOR ASSOCIATE DEAN FOR FACULTY DEVELOPMENT

16 July 2015

Benjamin G. Edelman
Baker Library | Bloomberg Center 445

PERSONAL AND CONFIDENTIAL

via secure file transfer to bedelman@hbs.edu

Dear Ben,

As you know, promotion decisions at Harvard Business School are evaluated on multiple dimensions. Our focus is not solely on intellectual contributions, although those are of vital importance. We also expect that candidates will help foster a healthy and constructive academic community by, for example, displaying respect for others and contributing to the teaching and research environment of the School. These are among the expectations outlined in the *Policies and Procedures with Respect to Faculty Appointments and Promotions* under the heading, “Effective Contributions to the HBS Community.”

As we have begun our work on your promotion case, concerns about your conduct—and about your ability to meet this standard—have been raised.

The *Principles and Procedures for Responding to Matters of Faculty Conduct* (attached for your reference) offer guidance about how the School should consider conduct-related issues in the context of a promotion decision. The Faculty Review Board, comprising three faculty members and a senior administrator, is responsible for undertaking a review of cases raising “a question of whether the candidate meets the School’s criteria for ‘Effective Contributions to the HBS Community.’”

As outlined in the *Principles and Procedures*, I have referred this aspect of your case to the Faculty Review Board, which will be responsible for drafting and providing you with a summary of the concerns (“the allegation, as it is known at the time”).

You’ll next hear from Amy Edmondson, the chair of the FRB; in the interim, she and I are available to respond to any questions you might have.

Best regards,

A handwritten signature in black ink that reads "Paul Healy".

Paul M. Healy



H A R V A R D | B U S I N E S S | S C H O O L

AMY C. EDMONDSON |
NOVARTIS PROFESSOR OF LEADERSHIP AND MANAGEMENT

July 31, 2015

Benjamin G. Edelman
Baker Library | Bloomberg Center 445

Dear Ben,

I am writing to follow up on Paul Healy's letter to you of July 16, 2015, informing you that the Faculty Review Board (FRB) has been asked to review concerns about your conduct, especially as it relates to your ability to foster a healthy and constructive academic community (by, for example, displaying respect for others and contributing to the teaching and research environment of the School).

Consistent with the process outlined in our "Principles and Procedures for Responding to Matters of Faculty Conduct," in my role as Chair of the FRB I am contacting you now to provide a summary of the scope of our review (what the "Principles and Procedures" refers to as the allegation).

The FRB will consider two incidents that occurred during 2014: the first, in January, involving your blog posting about Blinkx, and the second, in December, relating to your interaction with Sichuan Garden. These incidents raised questions about your conduct, including the impact of your actions on HBS, the members of its community, and others. In addition, concerns have been raised about your interactions with staff and other colleagues at the School, including around case copyright, travel arrangements, business cards, and classroom projectors. Over the coming weeks we will review documents and conduct interviews to evaluate these incidents and interactions, and others that may come to our attention over the course of the review.

You can, if you wish, submit a written statement to the FRB at this time; we would ask that you do so by August 15, 2015, but please feel free to let me know before that date if additional time is needed. Should you choose not to provide a statement, your next opportunity to provide input to the FRB in writing will be after we have written a draft report and findings. We expect that we will want to interview you and will be in touch to request a meeting.

Best regards,

A handwritten signature in black ink, appearing to read "Amy Edmondson".

Amy Edmondson

Statement to Faculty Review Board

Benjamin G. Edelman
August 15, 2015

In many ways, 2014 was a great year for me—several key articles finished, submitted, revised, and accepted; my EC course remaining strong, including insightful company guests on an unprecedented eight adjacent days; favorable developments in my outside activities, including litigation to help parents claim refunds from Facebook for kids' unauthorized purchases, as well as incarceration of two perpetrators I caught stealing from eBay; and my wife's pregnancy that led to our new baby Charles, born just a week ago.

These positive developments were tempered by the Blinkx and Sichuan Garden matters, of which the FRB is well aware. These alarmed me for their effect on the way people thought about me and my activities, and for the negative coverage that reflected poorly on HBS. I have apologized for both incidents, then tried to learn something from the experiences, making me a better person and reducing the likelihood of anything like this happening again. I explore these subjects in the sections that follow, then turn briefly to the internal HBS discussions also mentioned in Amy Edmonson's letter of July 31. I look forward to an interview where we can discuss further.

Relationship To My Research Agenda

While the incidents at issue are not directly related to research, I suspect the FRB's understanding of my activities will be advanced by understanding how my outside activities link to my research and my objectives more broadly. Who really cares about \$4, or about some adware maker, a continent away, bugging hapless users with a few extra ads? It's a fair question, and as I dealt with the fallout from these activities, it was natural to ask whether I was focusing my effort appropriately.

My choice of activities—and the reason why I found myself taking actions that others surely find puzzling—is informed by a personal imperative, and a perceived responsibility, to apply my skills for the broader benefit of society. This approach is manifested in part in my research: Flipping through my CV, you'll see that each article has a significant element in this vein. For example, my article "Price Coherence and Excessive Intermediation" (Quarterly Journal of Economics 2015) explores contracts and practices that cause higher gross prices, offset (in part) by rebates and benefits that only sophisticated consumers tend to claim, yielding higher prices for the unsophisticated consumers—who are likely to be least able to pay. My "Pricing and Efficiency in the Market for IP Addresses" (American Economics Journal: Microeconomics 2015) similarly is importantly normative—assessing market rules to encourage networks to upgrade to the newest type of address numbers, in order to add capacity for the Internet to expand. A similar narrative motivates substantially every article I have written.

A similar focus permeates my outside activities. When I help advertisers uncover schemes that drain their marketing budgets [1], I am motivated not just by reducing their expenses, but by paving the way for them to pass savings to consumers, and simultaneously undermining the incentives for fraudsters to infect users' computers with deceptive software which users invariably struggle to remove. My work uncovering false and deceptive airline fees [2] similarly benefits consumers who face unexpected charges when they try to redeem accumulated points or miles. My class action litigation efforts compelled Apple to offer full refunds to all parents whose children had made unauthorized purchases on phones or tablets (sometimes hundreds or thousands of dollars with just a few taps) [3], and I continue work on a similar effort as to Facebook (where the problem seems to be even larger). [4]

I realize that this claimed "help the world" purpose may sound like a cliché, and it may also sound self-serving, but it is my genuine motivation.

Broader Learnings from Recent Media Attention

I've tried to find something positive in the Blinkx and Sichuan Garden issues—at least, some learning that can help me improve. A first takeaway is to be sure that my research and other activities are consistently focused in a positive direction I can be proud of. In fact, I was trying to do this as to both Blinkx and Sichuan Garden, as I explain in somewhat greater detail in the subsequent sections. Nonetheless, a positive purpose is a crucial starting point and not to be taken for granted. The interested public would surely have reached a more negative view if my true purpose had been (and hence was surely seen to be) selfish, commercial, or otherwise viewed as improper.

A second insight is that regardless of my motivation, I need to ensure that my work is seen as positive. While Blinkx and Sichuan Garden are obvious exceptions that I need to learn from, I have had success in the past. Consider, for example, my efforts to protect computers from spyware and adware [5] as well as my self-service letter-writing tool to help consumers obtain refunds from Groupon and similar services. [6] These have been well received. However, in both the Blinkx and Sichuan Garden matters, many people saw me as selfish—as a hired gun (as to Blinkx) and primarily motivated by a desire for a tiny personal refund (Sichuan Garden). In my view the facts firmly contradict these conclusions, but people nonetheless reached these views and thus a dim view of me and HBS. Importantly, my ambiguous disclosure (Blinkx) and harsh tone (Sichuan Garden) gave critics needless support. In both matters, concern about my motives seemed to prevent many people from assessing the merits of my position or the problem I was trying to solve. I should have taken a different approach: In the case of Blinkx, I should have provided superior clarity in my initial disclosure of relevant paid activities. In the case of Sichuan Garden, I should have used a different tone in corresponding with a small business, and I should have left zero doubt that my primary objective was obtaining refunds for everyone overcharged.

Blinkx Research, Consulting Engagement, and Online Article

Let me begin with a bit of context. For more than a decade, I have studied adware (deceptive software that sneaks onto users' computers and shows extra advertising). My work has had significant impact including multiple government investigations, private litigation, bankruptcy, and liquidation.

In 2004, I began examining a company variously known as nCase, 180solutions, Zango, and more. [7] The company faced class action litigation and a FTC complaint and consent order, both fairly traced to my research and findings. Ultimately the company entered bankruptcy, and some of its assets were bought by a British advertising technology firm called Blinkx. Based in part on Blinkx's statements at the time, I thought these adware activities were much reduced, and I was focused on other lines of research, so I wrote little on my site about this adware for some years.

In December 2013, two investment firms noticed my prior work and asked me to prepare an update. I accepted the project, subject to my standard requirement that information drawing solely on public sources must remain freely available for me to share with others if I wish, and cannot be subject to a confidentiality agreement. In my project for these investors, I found that this company's adware was still quite active and using the same methods I and others had previously critiqued. Reflecting on that finding, I decided to write about it on my public web site. The result was the article I posted to bendelman.org on January 28, 2014 [8], nearly four thousand words plus videos and screenshots. My posting prompted substantial reaction from advertisers and ad networks (who wanted to avoid participating in and funding these tactics), security researchers (who wanted to help remove such software from users' computers), and investors (who soured on Blinkx's prospects). Blinkx management

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responded by questioning my motives—positioning me as a hired gun serving short-selling investors—and media attention tended to endorse this view.

I wrote this article with the best of intentions—thinking I was reporting truthful information of interest to consumers (whose computers were under attack by an organized adversary) as well as advertisers (budgets and reputations at risk) and regulators (who typically lack sufficient resources to uncover such problems on their own). Looking back, I think my confidence in my objectives and in the substance of the research blinded me to the way the story could be flipped around to focus on my supposedly-improper motives. It was a painful but important learning. In this respect, at least, I now consider myself much more aware.

Numerous news articles made statements like “the client who paid for Edelman’s article,” and even some HBS colleagues and staff used phrases like this. Although a convenient shorthand, this is literally and importantly inaccurate. Crucially, the article I posted to my web site simply was not required by any contract with investors or anyone else. My agreement with clients obliged me to conduct certain research and to provide them with my findings, but I was *not* obliged to write about this on my web site. Indeed, thinking back to the various companies that have retained me over the years, in only a minority of cases did I consider the findings important enough to merit online posting or other publication. The clients here couldn’t have known what I would find or whether I would choose to write about it publicly.

Furthermore, the involvement of a client, such as it was, was always disclosed. I included the following disclosure included in the original version of the article as initially posted to my site:

I prepared a portion of this article at the request of a client that prefers not to be listed by name. The client kindly agreed to let me include that research in this publicly-available posting.

At the time of the posting, I considered this an appropriate disclosure because its meaning appeared to be clear, and because I had used it, verbatim, in another project in January 2013. I thought this was unambiguous: “a portion of the article” came from a client request, but not all of it; the plain language specifically indicated that the article and the client work were not coextensive. But clearly this was widely misinterpreted, in part because it was arguably ambiguous (could “portion” mean “all” or “99%”?), though also (some journalists told me) because the Blinkx public relations team presented my disclosure to support their narrative of my acting in concert with hostile investors. In an attempt to reduce this ambiguity, and in consultation with appropriate HBS staff, I substantially expanded the disclosure both to emphasize the separation between the paid work and the article, and to say more about the nature of the paid work:

This article draws in part on research I prepared for a client that sought to know more about Blinkx’s historic and current practices. At my request, the client agreed to let me include portions of that research in this publicly-available posting. My work for that client yielded a portion of the research presented in this article, though I also conducted significant additional research and drew on prior work dating back to 2004. My agreement with the client did not oblige me to circulate my findings as an article or in any other way; to my knowledge, the client’s primary interest was in learning more about Blinkx’s business, not in assuring that I tell others. By agreement with the client, I am not permitted to reveal its name, but I can indicate that the client is two US investment firms and that I performed the research during December 2013 to January 2014. The client tells me that it did not change its position on Blinkx after reading my article.

In response, I have made several important changes to my approach to online articles and to research in any way connected to client requests. First, I am more cautious—taking more time to consider the impact and the various things that might go wrong. If disclosures are appropriate, I’ll surely be more

careful to consider the draft text from multiple points of view—not just the literal accuracy of the disclosure, but also whether it might accommodate other meanings different from what I intended. I've already taken the opportunity to consult more often with appropriate HBS staff.

Relatedly, this matter sharpened my understanding of possible appearances of a conflict of interest. I'm now more hesitant to write anything in any way related to what a client previously requested. It's not that I see anything fundamentally wrong with that, particularly when the research all comes from public sources and when an appropriate disclosure is provided. Indeed, this caution may result in me not sharing some information with the public (even if I know it would be of interest). But the Blinkx experience reveals a set of potential problems that I had not previously considered.

Sichuan Garden Correspondence

In December 2014, I checked the web site of Sichuan Garden, a restaurant near my Brookline home. I selected desired items, called in my order (their web site does not support online ordering), and paid upon pickup. Later, I noticed that I had been charged more than expected: Each line on my receipt was one dollar more than the amount specified in the online menu. I contacted the restaurant to inquire and, based on what I learned, to attempt to get the restaurant to provide refunds to all affected customers. Our email exchange went poorly: I found the restaurant owner evasive, and rather than refunding me or anyone else, he forwarded most of our email exchange to Boston.com which published the messages. [9]

Reading the messages, most people quickly reached the conclusion that I'm a jerk (or worse). Other publications picked up the story, as did social media, and the public response was intense. By all indications, the story reached millions of people; halfway around the world, my mother-in-law found it front page news on Yahoo Singapore. I received death threats, a bag of feces at my home, obscene voicemails, and more—though, to be sure, also plenty of supportive messages, especially from people who had noticed that they had been overcharged elsewhere, as well as from those who read the messages and concluded that I was primarily seeking to assist others.

Indeed, the messages themselves make clear that my primary purpose was obtaining refunds for everyone affected. For one, four dollars is obviously insufficient to justify the time required to send one email, not to mention several. Furthermore, a close read of the email exchange reveals my statement of my intent, calling on the restaurant owner to "notify other affected customers" so they could claim refunds. Boston.com didn't publish my complaint to the Brookline town officials (importantly, submitted days before the Boston.com article), but that message was even more explicit. In relevant part:

... Is there someone in the Brookline government who might assist [in obtaining] appropriate refunds to affected customers? ...

I explained the broader principle to a journalist:

We all rely on trust in our daily lives—that when sales tax is added, it actually applies and equals the specified amount; that the meter in a taxi shows the correct amount provided by law and correctly measures the actual distance; that when you order takeout, the price you see online matches the amount you pay in the restaurant. We take most of this for granted, and it would be a lot of trouble to all have to check these things day in and day out. That's exactly why we should be concerned when folks fall short—because hardly anyone ever checks, so these problems can go unnoticed and can affect, in aggregate, large amounts.

Much media attention has framed the restaurant's inaccurate online menu as a "mistake." That is not my view. In fact, I sensed that the restaurant's conduct was intentional, and that made me willing to

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spend (what I expected would be) a few minutes to try to get the problem fixed. Notice that the restaurant owner's initial reply indicated that the "website prices [had] been out of date for quite some time"—indicating he knew about the discrepancy, to his benefit and customers' detriment, before I wrote. (I later learned that customers had been complaining about the restaurant's pricing and alerting restaurant staff as early as 2010. [10]) Furthermore, even after my inquiry flagged the issue and even after I explicitly suggested that the restaurant owner update the web site, he indicated no interest in doing so; instead, he offered to email me a replacement menu, which would do nothing to help others. My suspicions were piqued: It seemed that he not only knew the online menu was inaccurate, but he wanted to keep it that way. I'm confident that I would have reacted differently had he immediately admitted the problem and fixed the online menu for everyone.

Some people responded to this media coverage by suggesting that I should limit my consumer protection efforts to uncovering malfeasance by big companies. Certainly I have not been shy in taking on big companies, including the Apple and Facebook matters mentioned above, trademark litigation that was at one point the most successful class action against Google [11], the first successful third-party consumer complaint in the history of deregulated air travel in the United States [12], and plenty more. My first-hand view of misbehavior by big firms has led me to wonder who pursues violations by small firms. Consider: If small companies correctly anticipate that no one will enforce consumer protection laws against them, or that occasional enforcement will entail no penalties (and indeed there were no penalties for Sichuan Garden here, nor refunds to the thousands of affected customers), they have no incentive to comply with applicable law. Instead, their gains (and consumers' losses) then grow unchecked; in fact, over the 4+ years at issue here, reasonable estimates indicate that Sichuan Garden collected at least tens of thousands of dollars extra. As I look back on my motivations in continuing the restaurant correspondence even when the owner's position was clear, I think I was inclined to persist exactly because I anticipated that the legal system is unable to deter misbehavior in this circumstance. A timeless proverb asks, "If not me, then who?"—and my haste in following this good advice blinded me to the need to adjust my style and tone to the situation at hand.

Despite my good intentions, my tone and approach were out of line. Among other things, I gave insufficient weight to the fact that I was corresponding with a restaurant owner who, despite multiple locations and media accolades, is not a corporate goliath. And while I intended my tone to be polite but firm, the formality of my messages was far from standard customer correspondence.

Internal HBS Interactions

Amy Edmonson's letter of July 31 also mentions that concerns have been raised about my interactions with staff and colleagues about case copyright, travel arrangements, business cards, and classroom projectors. I don't yet know the FRB's specific concerns or what others have reported, so I'll be correspondingly brief in this initial statement.

In every instance, my primary motivation was to make HBS the best it can be. In fact, I think I've helped us make some important advances. For example, in 2008 I flagged a crucial sentence in our then-applicable case footer that claimed readers could not exercise the rights they are guaranteed by the fair use doctrine under copyright law. Noting a contemporaneous federal complaint against numerous top content providers and publishers about a similar overarching claim of rights [13], I thought it particularly important that this sentence be revised and removed. In a few emails with Linda Olsen, I arranged a correction for all of my then-existing cases; this improvement was later deployed to the case template and to all other authors' new cases and revisions. Similarly, my 2009-2011 concerns about case copyright and my discussions with Paul Healy (then Senior Associate Dean for Research) led to the 2011 "faculty rights in the use of cases" policy, which consists in large part of text that I had drafted [14], and

largely responds to the concerns I had raised. Shortly thereafter, the case submission process was revised to include an explicit copyright transfer agreement, consistent with applicable law as I understand it, as well as with a longstanding policy from the Provost's Office. [15]

Turning beyond copyright, I think I've also had some other notable successes. For example, my efforts in classroom projectors helped us avoid a significant blunder in fall 2013 that would have reduced usable projection screen size in all MBA classrooms by 31% with zero notice to faculty—making some slides unreadable, harming learning, and perhaps rattling some instructors or otherwise impeding their efforts at the crucial start of the fall semester. After I raised the issue, MBA program leadership encouraged Media Services to undo the change, restoring prior functionality without any student and indeed any faculty member knowing what had almost happened.

I haven't been shy in speaking up when I see areas for improvement, even on subjects where faculty usually do not seek to be involved. Though I see my purpose as positive, I recognize that others might feel differently, particularly when I opine on areas that are beyond the ordinary scope of responsibility of a faculty member (and a junior one at that). I've always considered it a cooperative effort with everyone trying to do what's best for the school—even as it's not always obvious what that is, particularly when decisions are multifaceted and when multiple factors interact.

The four areas Amy mentioned are actually just a few of the areas where I've tried to improve aspects of HBS. For example:

- Over the years, I assisted various faculty members with short-term disabilities (two people) and permanent disabilities (two people) that impeded teaching and/or research. I also assisted a student with a permanent disability that impeded learning. Of course this is well outside my official role, and at first I was hesitant to assist for multiple reasons, but I quickly learned that some people perceived that I could in some way complement standard channels—aspiring to be some combination of faster, more creative, and more flexible.
- My Participation Tracker [16] improved data collection and analysis for faculty and FAs, saving time, recommending call lists of at-risk students, and tabulating data to explore participation patterns. In a faculty meeting, Dean Nohria once credited that tool as a factor helping to reduce grade disparities for female students—though I wouldn't have been so bold as to take credit for any portion of that improvement.
- My calendar exporter [17] continues to save dozens of hours of FA time each semester while running with perfect accuracy. (Knock on wood!) I wrote this tool after seeing the unfortunate case of an FA error in a colleague's calendar, causing him to miss a session of his own course, which was quite disruptive to learning and to his relationship with his students.

I hope these, at least, have been viewed as positive.

I know I'm not the first to make unusual contributions. Indeed, my Participation Tracker replaced a first version by Jan Hammond and an upgrade by Frances Frei. I do think the level and scope of my internal efforts reveal not just my commitment to the HBS community but also my longstanding determination to make a difference in the ways I am distinctly able.

Throughout these efforts, I have aspired to maintain an appropriate tone. If I have acted in ways that caused others to feel I did not respect them, I am sorry for that, and it was not my intention. I have every desire to learn from these experiences also.

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August 15, 2015
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At this important stage in my career, and with the unfortunate media coverage in two instances in 2014, I fully understand the school's need to assess my actions. In some ways I think of myself as rather different than most of my colleagues—certainly choosing different ways to spend my free time, and less willing to accept the status quo in so many areas, both within and beyond HBS. I would not expect HBS to wish to retain me if every year brought media uproar like the two incidents last year, nor could I imagine remaining a happy and positive person if such incidents reoccurred. I have taken significant steps to see that they do not, and I hope I can demonstrate to the FRB that I adequately understand the problem and that my efforts at learning and improving are both genuine and appropriate. These experiences have also led me to be more thoughtful about the possible externalities from, and perspectives on, my actions; and these experiences have redoubled my commitment to using my research and skills to make the Internet a safer place for consumers. I look forward to further discussions as the committee sees fit.

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Personal Statement
of
Benjamin G. Edelman
March 24, 2015

My research addresses competition, policy, and fraud in the contexts of online market design and other networked businesses. I strive to influence multiple audiences: scholars of economics, computer science, and law; practitioners who build and use online marketing services and online marketplaces; regulators who oversee these systems; and instructors in business, law, and computer science.

In this statement, I review my major research to date, including both the academic contributions and the ways my work has been used by practitioners. I then present my publication strategy, contribution to educators, and benefits to the HBS community. Finally, I describe my plans for the coming years. The accompanying itemization *Impact on Practitioners – Selected Examples* lists other instances in which my research directly influenced practice, public policy, and, in some instances, law enforcement.

Research Overview

I organize my research into four broad categories: the game theory of online advertising, strategic behavior and fraud in online advertising, the special concerns raised by the largest online platforms, and fixing various aspects of online systems and services.

Several themes span these topics. First, my work is grounded in economics and incentives; I examine how system rules shape behavior, and what changes would result from alternative rules. Furthermore, my work considers practices that distinctively arise online; I study systems grounded in robust information technology and low transaction costs. The details matter: for example, “small” changes to auction rules can flip bidders’ incentives; graphic design elements redirect the focus of web site users; shifting legal doctrines shape participants’ rights and responsibilities. While much of my work is descriptive (for example, understanding the equilibrium resulting from certain pricing mechanisms), portions are explicitly normative (flagging problems and suggesting options for improvement).

My research to date is embodied in 17 peer-reviewed articles, 23 other articles (including solicited articles and book chapters), 23 cases (plus two abridgements), ten supplements, 17 teaching notes, three module notes and technical notes, and various working papers. In *Publication Strategy* (page 9), I discuss my choice of publication venues as well as the reasons for my somewhat unorthodox choice to distribute some research primarily on my own web site.

I use multiple methods including formal economic modeling, analysis of archival data, and online laboratory experiments.

Online Advertising: A Game-Theoretic Perspective

Most of my research explores the online advertising ecosystem, a large market now well beyond \$100 billion per year. So far, most users appear unwilling to pay directly for many online sites or services. Yet users are content to see ads, which have become the primary source of funding for most online resources.

My work was among the earliest economic analyses of rules and incentives in the *sponsored search* marketplaces that fund search engines and related sites that include text advertising. I study these systems to advise platform designers on sensible improvements, compare strategies for those who buy

advertising placements from these systems, and assess the welfare consequences of changes in system rules.

Historically, online advertising platforms have lacked strong norms governing system design, ad selection, or even the calculation of advertisers' payments. The resulting flexibility invites innovation, but also leaves substantial room for error. For example, in *Strategic Bidder Behavior in Sponsored Search Auctions* (Decision Support Systems 2007), Michael Ostrovsky and I examined pricing mechanisms for sponsored search auctions. Comparing first-price and second-price payment rules*, we demonstrated the instability inherent in an open, repeated, multi-unit first-price auction—auction rules that leave each advertiser wanting to change its bid. With data from early Yahoo ad auctions, we concluded that Yahoo's early use of such a mechanism cost the company at least 7% of search ad revenue during the affected period.

Evaluating sponsored search auction design requires distinguishing between outcomes that are plausible equilibria, versus outcomes that lead advertisers to change their bids in short order. In *Internet Advertising and the Generalized Second Price Auction ("EOS")* (American Economic Review 2007), Michael Ostrovsky, Michael Schwarz, and I coined the term "generalized second-price auction" to characterize modern search ad auctions. We then characterized equilibria and compared revenue across possible equilibria—the groundwork for welfare analysis in this market. In *Greedy Bidding Strategies for Keyword Auctions* (with Matthew Cary, *et al*) (ACM Electronic Commerce 2007), I showed that bidder outcomes naturally converge to the equilibrium presented in EOS. In extensions, I considered the role of reserve prices (*Optimal Auction Design and Equilibrium Selection in Sponsored Search Auctions*, American Economic Review 2010, with Michael Schwarz) and competition between multiple ad platforms (work in progress).

This line of work has attracted substantial interest from both economists and computer scientists, and it remains the fundamental treatment of equilibria in sponsored search. A diverse subsequent literature explores topics such as bidding strategy, pricing, targeting, and competition, relying on EOS for a basic notion of equilibrium.

I bring the game theory of online advertising to the classroom in two teaching cases: *Google Inc.* (with Tom Eisenmann; most recent update *Google Inc. in 2014*) and *Microsoft adCenter* (with Peter Coles). These cases draw on EOS and related concepts to assess likely dynamics in the market for Internet search. For example, EOS equilibrium results imply that an ad platform with many advertisers will collect disproportionately large revenues and hence enjoy an advantage when recruiting publishers to show the platform's advertisements. If an incumbent has such a strong advantage, how can a new platform gain traction? In the *AdCenter* case, students take the perspective of Microsoft as a late entrant attempting to gain market share despite Google's far larger advertiser base. One key challenge: It seems untenable for Microsoft to win share by merely copying Google, yet many efforts to differentiate would serve primarily to create incompatibility and deter advertisers from joining.

As new advertising systems become available, I've found opportunities to extend this line of research. For example, in *To Groupon or Not to Groupon: The Profitability of Deep Discounts* (with Sonia Jaffe and Scott Kominers; Marketing Letters, forthcoming), I assess the profitability of Groupon-style discount vouchers. When Groupon launched, many consumers, merchants, and analysts applauded its ability to bring the efficiency of online marketing to retail storefronts. In addition, consumers relished large discounts rarely seen elsewhere. But my formal model questioned these benefits. For one, I pointed

* In a first-price auction, a winning bidder pays its own bid. In a second-price auction, a winning bidder pays the bid of the next-highest bidder.

out that a discounter's price discrimination feature necessarily shrinks as it grows more widespread. I also examined the marginal cost, return visits, and incrementality required to make Groupon profitable for merchants, foreshadowing merchants' conclusion that these discounts were usually untenable.

Powerful Platforms

Examining early electronic markets, both scholars and practitioners saw the prospect of "disintermediation," suggesting that lower communication costs would allow buyers and sellers to transact directly. In fact outcomes have been mixed: Lower communication costs also let intermediaries operate more broadly and more profitably. Consumers often buy merchandise at eBay or Amazon Marketplace, book plane tickets on Expedia, find small sellers via Google AdWords advertising, and obtain new software through Apple and Google app stores—powerful platforms whose policies and requirements shape online opportunities. My research examines platform rules to assess concerns about certain tactics.

A notable feature of many intermediaries is that consumers pay nothing extra to use them—plane tickets are the same price whether bought from United.com or Expedia; a retail purchase has the same price whether the customer pays cash or uses a credit card; and the same is true of restaurant ordering and reservations (contacting a restaurant directly versus through an intermediary), various forms of insurance and financial services, and myriad others. While unpriced intermediation can also occur offline (real estate is a notable example), electronic commerce seems to distinctively facilitate this market structure, which has become increasingly widespread. In *Price Coherence and Excessive Intermediation* (*Quarterly Journal of Economics*, forthcoming), Julian Wright and I model markets where a purchase through an intermediary is constrained to have a price no higher than direct purchase or purchase through any other intermediary. We find that this market structure encourages overuse of intermediaries' services, even by consumers who value an intermediary's benefit below the production cost (reducing welfare). Consumers may not notice the harm, as it is embedded in higher costs of goods and services, but if affected consumers could jointly agree to forego intermediation, that agreement would make them better off. Notably, we show that these effects persist under competition among sellers and among intermediaries, and indeed competition can increase the size of the effects and the circumstances in which they arise.

This line of research was inspired by my discussions with protagonists in the *Distribution at American Airlines* case sequence: Noticing the pathologies of this market structure, they wondered whether other markets were similarly affected, and my discussions with them prompted me to examine other such markets and the problems more generally. My updated *American Airlines* teaching note now explores the impact of price coherence. Related themes also arise in my *Zillow* and *OpenTable* cases. Julian and I also present these ideas to practitioners in *Price Restrictions in Multi-sided Platforms: Practices and Responses* (*Competition Policy International*, forthcoming).

Most companies, large and small, find themselves dependent on powerful online platforms, often facing high prices and important non-price restrictions that transfer significant surplus to the platforms. My *Mastering the Intermediaries* (HBR 2014) and *Market Power of Platform-Mediated Networks* technical note offer strategies for firms in this position. For example, when a platform needs to be comprehensive (for example, Amazon aspires to sell every book, or Kayak to list every flight), a platform becomes vulnerable to even a small supplier withholding content. I also identify other strategies firms can use to reduce dependence on a platform, including supporting or creating an alternative platform, or redoubling their efforts to bypass a platform and reach consumers directly.

A related stream of my research on powerful platforms focuses on Google, whose super-dominance in search and search advertising is a natural concern for both consumers and advertisers. Some of my writings about Google have been particularly influential. First, *PPC Platform Competition and Google's "May Not Copy" Restriction*[†] (and my associated Congressional testimony) reveals a contractual provision by which Google creates extra costs for advertisers that also buy placements from Google's competitors. When Google failed to offer a pro-competitive explanation for the provision, the Department of Justice cited this restriction as a reason for its objection to a proposed transaction between Google and Yahoo. The European Commission later cited this restriction as a focus of its ongoing investigation of Google. This material also offers an "ah-ha" moment in teaching the *adCenter* case (described above).

Second, my *Secret Ties in Google's "Open" Android*[†] analyzes Google's contractual provisions that device manufacturers must accept in order to install Google's popular Android operating system on smartphones and tablets. Broadly, Google ties its services together to assure their use even in sectors where there are competitors. In particular, a manufacturer must install *all* the Google apps Google specifies in order to install even a single Google app. A manufacturer might prefer to preinstall Bing Search, Mapquest Maps, or Skyhook's geolocation service, perhaps anticipating a genuine customer preference for these services, or seeking a bounty that those companies would pay for installation. (Competition would likely push device makers to share such payments with consumers, which would in turn reduce the up-front price of devices.) Instead, Google insists that its own search, maps, geolocation service, and other services be installed, prominently and as defaults. These requirements apply to any manufacturer that wishes to offer, among others, YouTube and the Google Play app store—services for which there are no clear competitors. Notably, these contract restrictions are themselves subject to NDA, so they were largely unknown until I managed to gain access to them. (My article explains their presence in an obscure supplement to certain litigation records.) When I posted the contracts to my web site, they became front-page news in the Wall Street Journal, and my analysis spurred formal competition investigations on this subject in Canada, Europe, India, and Russia.

Inspired in large part by Google's mobile application practices, *Leveraging Market Power through Tying: Does Google Behave Anti-Competitively?* ([Journal of Competition Law and Economics](#), forthcoming) considers Google's use of tying more generally. For example, Google repeatedly required advertisers to accept certain new advertising services, including services of uncertain or disputed value, in order to obtain Google's popular AdWords search engine advertising. Similarly, Google required consumers to receive links to Google's other services (YouTube videos, maps, local results, etc.) even if they only wanted search. (Google's perpetual presentation of links to its other services stands in contrast to computer operating systems, where users have long been unable to uninstall or hide unwanted programs as well as operating system components.) While these tactics assured and accelerated the adoption of Google's new services, they also raise competition concerns, including the prospect of deterring entry by would-be competitors. My *Google Inc.* in 2014 teaching note offers a teaching plan to develop these concepts through class discussion: Students take the role of Google product managers attempting to launch new services and to increase their odds of success by leveraging Google's dominance in related sectors. Through small-group brainstorming and brief presentations to the class, students see that Google is well-positioned to succeed in a variety of markets adjacent to or dependent on search and advertising. But they simultaneously wonder about the impact on competition and competitors: If Google is uniquely positioned to win, will others even try to compete?

[†] I use this symbol to identify papers posted to my web site and intended primarily for online distribution. In *Publication Strategy* (p. 8), I explain why I prefer this format and distribution for certain work.

A related line of research questions the benefits brought by platforms that are largely well-regarded. For example, in *Consumers Pay More When They Pay with Bitcoin*,[†] I was among the earliest to question both Bitcoin's supposed savings and its other touted benefits (which were, at that time, understood to be compelling). My subsequent *Bitcoin (Journal of Economic Perspectives, forthcoming)* broadens the analysis with a critical evaluation of Bitcoin's privacy, speed, and reliability. For example, I point out the tension between Bitcoin's publicly-available transaction register and its privacy promise: If a Bitcoin user learns a counterpart's name from one transaction, it can easily see all the counterpart's other transactions. I also flag the various costs that result as add-ons try to add privacy, dispute resolution, and other features to match incumbent payment systems, further calling into question Bitcoin's price advantage.

Gaming, Strategic Behavior, and Fraud in Online Advertising

Online advertising is unusual in that it is delivered purely electronically. For lack of easy monitoring of whether online advertising has been provided, many traditional methods of auditing and verification fall short. Furthermore, reduced transaction costs let online advertising flow through a lengthy chain of intermediaries. For example, a small site might sell placements to a broker, which passes the traffic onward to an aggregator, then to an ad network, which relies on still other networks en route to the advertiser. These indirect placements reduce accountability. For one, many sources of traffic are often grouped together, mixing good traffic with bad—making it that much harder for advertisers to notice problems. When an advertiser does notice, complex relationships impede response: Even if an advertiser bans a particular site or broker, that source can change its name and reapply, or join another aggregator still in good standing. These challenges form the backdrop for my research exploring the many ways fraudsters can game online advertising markets.

Approximately half the recent writings on my public web site, benedelman.org, document methods and perpetrators of advertising fraud. In these postings, I seek both to inform practitioners and to set the stage for further work in academic journals. For example, *CPA Advertising Fraud: Forced Clicks and Invisible Windows*[†] presents a series of scams that successfully target even the advertising systems widely believed to be most immune to fraud: piece-rate systems that pay sites not for *displaying* ads or for users *clicking* ads, but for sending users who actually make *purchases*. Despite the apparent robustness of piece-rate payments, I show that in fact these systems still suffer from fraud. In *Risk, Information, and Incentives in Online Affiliate Marketing (Journal of Marketing Research 2015)*, Wesley Brandi and I measure the scope of fraud and identify management structures that increase the risk of fraud in affiliate marketing. Moreover, other advertising pricing models face similar problems. For example, in *How Google and Its Partners Inflate Measured Conversion Rates and Increase Advertisers' Costs*,[†] I uncover fraudulent Google partners that manipulate reported traffic analyses—causing both Google and advertisers to conclude that the partners are providing valuable traffic (users who make purchases), when in fact the ads are just a complicated ruse. I advise some of the web's top advertisers and ad networks on methods of uncovering these and other frauds, and I operate a software system that detects these schemes automatically. (I explain my approach in an article on my site: *Introducing the Automatic Spyware Advertising Tester*.[†])

Most advertising fraud stems from incentives created by advertisers' own systems. Indeed, advertisers are often so slow to detect fraud that fraudsters can profitably perpetrate it knowing they will be paid before they are discovered. In *Deterring Online Advertising Fraud Through Optimal Payment in Arrears (Financial Cryptography 2009)*, I suggest an alternative approach: By paying partners only after an appropriately-calculated delay, advertisers can catch more fraud before the fraudsters are paid. With the resulting savings, advertisers can offer all partners a bonus sufficient to make them accept the delay—leaving all both advertisers and legitimate partners better off, while pushing fraudsters to target

others or give up. In a simple algebraic model, I demonstrate when this strategy is workable, and I assess the savings using data from a top ad network.

Who are the perpetrators of online frauds? In online advertising, most frauds are not fully investigated, and large and detailed samples are rarely available. But other contexts can offer insight. In *Social Comparisons and Deception Across Workplace Hierarchies: Field and Experimental Evidence* (Organization Science, forthcoming), Ian Larkin and I explore gaming at the web's largest working paper repository. We find gaming particularly prevalent when papers are near ranking discontinuities. For example, authors are more likely to fake downloads to get their papers onto top-10 lists. (Authors correctly anticipate that a paper ranked 10 (in a given field) gets much more visibility than number 11.) We also find that gaming is more likely when an author observes success by a peer (same department, institution or subject area). But at SSRN and at online advertising systems, platform operators have discretion to change the information they share with participants. Our results suggest that platform operators should modify information disclosure and prominence to reduce competitive pressure and attenuate participants' inclination to engage in fraud.

Audiences

This line of work offers a novel context to test longstanding theories. In addition to its substantive exploration of affiliate marketing fraud, *Risk, Information, and Incentives in Online Affiliate Marketing* (Journal of Marketing Research, forthcoming) examines timeless questions about outsourcing, incentives, and the boundary of the firm. Based on advertisers' structured statements of contact information for their affiliate marketing programs, I draw inferences about the management structure of those programs, then find patterns that link types of management structure to types of fraud. In general, outsourced managers prove to be more effective at finding clear-cut violations that all industry participants recognize as improper; I interpret this as a benefit of specialization, in that their focus on this form of marketing helps them learn about clear-cut misbehavior. That said, on questions understood to be borderline, in-house managers make decisions better aligned with advertisers' interests, consistent with agency costs of outsourcing. Notably, my crawlers uncover frauds that are concealed even from the advertiser victims—a significant improvement on the academic context in which such questions have previously arisen in the organizational economics literature.

I've found that this area of research is deeply tied to public policy, as many online scams distinctly arise from efforts at gaming. I believe this work uniquely fits my interests and capabilities, as it combines economic incentives (to anticipate likely areas of fraud and design countermeasures), law (to assess parties' rights and responsibilities, and identify legal responses), and software design (to recognize fraud and uncover it efficiently).

This line of work also has direct benefits to advertisers and the public. For example, court filings reveal that the FBI learned about certain online marketing fraud (the same practice explored in my eBay teaching materials) from my reports. Facing my direct-observation evidence of their infractions, the perpetrators pled guilty and are incarcerated as of the date of submission of this statement. While criminal proceedings are unusual, other fraud write-ups on my web site routinely yield refunds to advertisers. Usually no individual advertiser has enough at stake to pursue the claim individually; instead, fraudsters typically take a small amount from each of many advertisers. My approach thus addresses a collective action problem that otherwise allows fraud to continue unchecked.

In a series of articles, I have reworked these ideas for both IT professionals and marketers. In *Online Advertising: Rustlers and Sheriffs in the New Wild West* (in Beautiful Security, O'Reilly Media, 2009), I develop a taxonomy of advertising frauds targeting both advertisers and consumers, emphasizing

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March 24, 2015
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responses by the engineers who design security systems. In *Accountable? The Problems and Solutions of Online Ad Optimization* ([IEEE Security & Privacy](#) 2014) and *Lessons: Pitfalls and Fraud in Online Advertising Metrics* ([Journal of Advertising Research](#) 2014), I explore the organizational underpinnings of advertising fraud, including the reasons why advertisers and their vendors fail to uncover or prevent these problems. In *The Dark Underbelly of Online Advertising* ([Harvard Business Review](#) and [HBR Online](#) 2009), I offer strategies for general managers to identify and prevent improper ad placements.

I also explore these ideas in the classroom through several teaching cases. These issues are most prominent in my *eBay Partner Network* teaching case (with Ian Larkin). There, fraud provides an “ah ha” revelation of the divergence between the incentives of a merchant versus its advertising network and its marketing affiliates. This insight spurs discussion on revising contract terms to better align incentives.

Fixing the Online Economy

In a final set of projects, I have worked to improve a variety of other online markets. My efforts are split between documenting specific problems and designing systems and incentives to improve outcomes.

Anyone wanting to get online—whether on a home cablemodem or a high-speed office connection—takes for granted that more connections are available. But connections are hardly guaranteed. Every computer on the Internet needs a number from a finite set of IP addresses, and addresses are running short. In *Running Out of Numbers: Scarcity of IP Addresses and What To Do About It* ([Auctions, Market Mechanisms, and Their Applications](#) 2009), I analyze the incentives impeding the transition to a more capacious numbering system, and I suggest a market-oriented reallocation system that could mitigate short-run scarcity while easing the transition. My recommended approach was the basis for the transfer system implemented throughout North America by the American Registry for Internet Numbers, and my analyses led to a rethinking of the approaches initially proposed in Asia and Europe. In *Pricing and Efficiency in the Market for IP Addresses* ([American Economic Journal: Microeconomics](#), forthcoming), Michael Schwarz and I analyze a generalization of this policy and develop a formal model to prove its efficiency properties.^g

Web site operators also take for granted that their sites appear as intended upon a user’s request. That, too, is under attack. Many companies, libraries, and schools block web sites, and some countries limit the access within their borders. These filters suffer from a range of errors and often “overblock” sites that were not intentionally prohibited. I was the first to run large-scale studies of national and commercial Internet filtering programs and the web sites they block. In 2001-2002 litigation challenging certain Internet filters in libraries and public schools, I posted thousands of examples of sites misclassified as sexually-explicit, when in fact they were unobjectionable. In the subsequent *Documentation of Internet Filtering in Saudi Arabia*[†] and *Documentation of Internet Filtering in China* ([IEEE Internet Computing](#) 2003), Jonathan Zittrain and I determined what web sites were blocked in selected countries. My methods laid the groundwork for a dozen studies by the OpenNet Initiative (a multi-university research collaboration), which continued the testing methodology I pioneered.

From the perspective of service providers, a fundamental challenge in the online economy is finding a way to claim a fair portion of the value customers receive. Indeed, online services feature a striking variety of pricing schemes: Many are completely free, while others provide unlimited services for a flat fee, and still others charge fees proportional to usage. Often resources move between these categories over time. What services “belong” in which category? In *Priced and Unpriced Online Markets* ([Journal of Economic Perspectives](#) 2009), I offer answers grounded in service costs, transaction costs, and complementary products.

My writing in this vein often seeks to influence regulators and inform public opinion. The following articles enjoyed particularly direct responses from practitioners and policy-makers:

- *Adverse Selection in Online “Trust” Certifications* ([International Conference on Electronic Commerce 2009](#)) analyzed online “safety” certifications issued without verifying sites’ true behaviors. As a result, the sites that sought and received certification were *less* trustworthy than uncertified sites. In response to my analysis, the certifying organization sharply increased its oversight.
- *Domains Reregistered for Distribution of Unrelated Content*[†] documented a Montreal company that renewed domain names after prior owners had allowed the registrations to expire. The company then used those domains to show sexually-explicit material—charging prior registrants large fees to remove the explicit images and reclaim their domains. My article led to the company to abandon this tactic, which saved more than four thousand web sites approximately one thousand dollars each.
- *Spyware Showing Unrequested Sexually-Explicit Images*[†] rigorously documented a series of popups showing explicit images without a user doing anything to request explicit content. Previously, such occurrences had not been preserved in a way that reliably confirmed that the problem was real. My article (and further examples I provided directly to FTC staff) formed the basis of FTC litigation against Penthouse’s AdultFriendFinder, which paid partners who presented explicit offers in popup windows, often to users uninterested in such material.
- *False and Deceptive Display Ads at Yahoo’s Right Media*[†] demonstrated brazenly unlawful advertising at a top display ad network. In a representative example, a geographically-targeted ad proclaimed “One of your friends from Boston has a crush on you”—a complete fabrication. Other dubious ads charged users to apply for green cards (actually free), promised “free” ringtones (actually yielding charges through users’ phone bills), and claimed users’ computers needed repair (though there was no specific reason to think they did). Using Right Media’s own taxonomy, freely available to anyone who knew where to look, I confirmed that more than 35% of the network’s advertising featured characteristics the company itself deemed to be deceptive. My findings prompted an investigation by the Washington State Attorney General, which in turn led Right Media to end the most deceptive practices.

This project also yielded teaching materials. In fact I found these problems while planning a case about Right Media’s banner ad network. When I found the problems, I shifted the case to focus on the company’s efforts to classify ads and its possible duty to remove deceptive ads. My *Ad Classification at Right Media* teaching case puts students in the role of managers attempting to satisfy diverse web site publishers as well as ad networks and advertisers. Should they remove deceptive ads? Insist that such ads are only shown to publishers that specifically approve them? Or embrace the deceptive ads to prevent a competitor from seizing the opportunity? Students consider these and other options.

Building on some of the work in the second and third entries above, *Red Light States: Who Buys Online Adult Entertainment?* ([Journal of Economic Perspectives 2009](#)) explores online adult entertainment, including the sector’s use of new technologies, its *sui generis* regulation, and patterns in subscription demographics.

I have also uncovered a series of privacy violations by major software vendors. In *Facebook Leaks Usernames, User IDs, and Personal Details to Advertisers*,[†] I demonstrated that Facebook revealed to advertisers the usernames and user ID numbers of those who clicked the advertisers’ listings—information Facebook had specifically and repeatedly promised to keep confidential. In *Google Toolbar Tracks Browsing Even After Users Choose “Disable”*,[†] I showed that Google continued to track user

behavior even after users “disable[d]” Google’s Toolbar and even after the Toolbar disappeared from view. In *Upromise Savings – At What Cost?*[†], I caught Upromise sending customer credit card numbers, expiration dates, and even CVV codes (among other information) without any encryption whatever, allowing easy eavesdropping even from purportedly “secure” sites. Each vendor ceased the corresponding practice after I reported the problem, and the FTC later filed suit against Upromise based on my findings. My *Selected Privacy Breaches, 2009-2010* case explores potential explanations for these widespread problems, asking students to assess managers’ decisions before privacy breaches to consider whether more should have been done.

In striving to improve various aspects of online policy, a significant portion of my work has required finding and documenting behaviors that are concealed or, in any event, little-known. (Consider the various unsavory activities and privacy gaffaws described above.) But other projects arise from practices seemingly hiding in plain view. For example, for more than a decade, search engines labeled advertisements with the vague reference “sponsored links.” Sophisticated users knew what that label meant, but that knowledge was not universal. In *“Sponsored Links” or “Advertisements”? Measuring Labeling Alternatives in Internet Search Engines* (Information Economics and Policy 2012), Duncan Gilchrist and I show that vulnerable users (with low income, low education, and less online experience) click significantly fewer ads when they are shown a clear “paid advertisement” label. Yet this improved label leads them to more accurately report how many advertisements they clicked—suggesting that the “sponsored” label did not provide the information they needed to make an informed decision.

Another widespread problem that often goes unnoticed: More than one million typosquatting domains ensnare users who mistype well-known web site addresses, thereby showing advertisements which delay users’ attempts to reach desired sites and also billing advertisers for any resulting clicks. In *Measuring the Perpetrators and Funders of Typosquatting* (Financial Cryptography 2010), Tyler Moore and I design software to help inventory these sites—examining the advertisements they show, assessing the market concentration among registrants and their various service providers and partners, and estimating advertisers’ costs for these tricky ad placements.

Publication Strategy

My publication strategy reflects the audiences I seek to influence. I have largely sought to publish in economics journals, but I have also published in marketing, psychology, computer science, and law journals. (Note that computer science articles often appear in the peer-reviewed proceedings of selective computer science conferences, rather than in journals.)

Online publication provides an important way for me to reach practitioners, regulators, and the general public. First, online distribution offers unmatched speed, which is useful for presenting fast-changing problems. (Online distribution also offers superior reach, including news stories and blogs that link directly to my site.) In addition, I’ve found that online publication uniquely lends itself to the diverse formats I provide; for example, it allows for screen-capture video and other appendices that confirm the details of the fraud reports I assemble. I attempt to mitigate some of the resulting loss of peer review by circulating drafts to trusted colleagues, both academics and practitioners. Note that my online articles are not typical off-the-cuff “blog” posts; my full-length online articles often reach several thousand words and feature a dozen appendices of screen-capture video, screenshots, network logs, or other records.

My online publications have attracted a substantial audience. My measurement software reports that the benedelman.org site has received more than five million page-views since its inception in 2004. At

benedelman.org/media , I maintain a listing of all news stories, blogs, and other coverage about my work. With one entry per line, the list now fills 86 single-spaced pages.

Course Development

In spring 2009, Peter Coles and I took over *Managing Networked Businesses* from Tom Eisenmann. With Tom's generous support, we reworked the course in light of our research interests and teaching preferences. In fall 2010, we retitled the course *Online Economy: Strategy and Entrepreneurship*. The course draws in part on content and frameworks we and Tom previously developed for MNB, though the course now focuses solely on online businesses, in part based on student feedback. Since Peter's departure from HBS, I have taught the course on my own.

Much of the first half of *Online Economy* considers the challenge of mobilization: motivating users to join a platform that is most valuable when many others participate. My approach to this material differs from (but complements) Tom's MNB mobilization module in that we emphasize specific strategies such as providing a product with standalone value and expanding from a niche. The *Mobilizing Networked Businesses* module note organizes many of the mobilization strategies explored in my course. In *How To Launch Your Platform* ([HBR](#) 2015), I present these strategies to practitioners.

The course then turns to expansion, including all manner of online advertising as well as intermediaries more broadly. After building an understanding of online marketing basics, we turn to questions of measurement including both the basic question of whether customers are buying and the more subtle question of whether these customers would have purchased even without an advertising campaign. This leads to questions of intermediaries' incentives, including the methods used to align intermediaries with customers but also the contexts where incentives diverge. We focus on powerful intermediaries, most notably Google, though also powerful intermediaries in travel and payments. We assess companies' options when intermediaries impose unpalatable prices or terms.

The course then turns to questions of monetization, including who to charge and how much may plausibly be given away for free. We examine opportunities to align monetization with platform goals, so that paying a fee serves not only to enrich a platform operator but also to signal quality or commitment. With this design perspective, we turn to the key requirements for successful online markets, including achieving thickness, preventing congestion, mitigating asymmetric information, and ensuring participants' safety.

Students' primary written deliverable for the course is a paper/project. The majority of students analyze startups or business plans they hope to start, or small companies they are considering joining. I support their efforts with extensive one-on-one feedback: During my teaching semester, I regularly offer more than one hundred office hours appointments.

My course's approach to network structure is grounded in the economics literature on market design—and these ideas, along with my own research, provide a useful lens to examine many of the cases we consider in class. For example, the congestion Al Roth sees in matching physicians to medical residency programs is not unlike the difficulty a jobs site faces when job-seekers apply to literally hundreds of jobs that do not match with their interests (a problem considered in my teaching case *The Ladders*, with Brian Hall and Peter Coles). Similarly, I explore strategic use of reserve prices in *Optimal Auction Design* ([American Economic Review](#) 2010), and similar controversial behavior arises in both the *Google* and *American Airlines* teaching cases.

Online Economy also benefits from drawing upon—and educating students about—relevant legal principles. When is a web host liable for harmful material uploaded by users? For copyright-infringing

material? Students' intuition is often incorrect, especially since online businesses enjoy several protections unavailable to their offline counterparts. The *Right Media* teaching note provides an approach to explore some of these concepts in class discussion. Similar themes permeate my research, for example in *Least-Cost Avoiders in Online Fraud and Abuse* ([IEEE Security and Privacy](#) 2010).

I also aim to ensure that *Online Economy* cases are current and tackle the emerging technologies students will encounter when they leave HBS. Five recent additions:

- Set in the context of smartphone-based vehicle dispatch, *SaferTaxi: Connecting Taxis and Passengers in South America* considers questions of growth rates, including whether both sides of a two-sided platform need to grow at the same speed and which side to favor in an early marketing push.
- *Optimization and Expansion at OpenTable* examines the reservation service's tense relationship with restaurants, resulting from nearly two decades of flat pricing despite the influx of low-priced competitors. Students consider whether a mobile payment system might rehabilitate restaurants' relationship with OpenTable, including improving waiters' productivity by avoiding low-value back-and-forth credit card exchanges. Is OpenTable better positioned for this opportunity than competitors such as POS vendors, smartphone makers, and credit card issuers?
- In *Pivots and Incentives at LevelUp*, students assess a mobile payment service that helps small businesses send targeted offers to individual consumers. After negative experiences with other online marketing services, businesses are skeptical, and some question whether LevelUp is sending customers who would have come anyway. Students explore potential adjustments to LevelUp's offer structure in order to demonstrate incremental value to merchants.
- *Reinventing Retail: ShopRunner's Network Bet* explores mid-sized merchants' efforts to compete with Amazon Prime. Is it realistic to ask customers to pay another annual fee, even one that covers dozens or hundreds of stores? With no up-front fee, ShopRunner is more attractive to consumers—but then has no annual fee to help offset merchants' shipping costs.
- Tracking service *Monitter* offered a popular free web tool to track discussions on Twitter until a Twitter policy change blocked access to data and rendered the tool nonfunctional. Students assess options to resuscitate the service and consider whether the founder-CEO should refocus elsewhere. In a broader discussion, students examine other business that are highly dependent on a single large supplier of data, referrals, or other key resources.

The *Mobilizing Networked Businesses* module note surveys the mobilization module. A technical note, *The Market Power of Platform-Mediated Networks*, formalizes key takeaways from the final third of the course. The *Online Economy - Selected Course Frameworks* handout for students summarizes the structure of the course.

I genuinely enjoy teaching, and have worked hard at it. I think I am effectively conveying the most relevant material in an engaging way, and I've also found teaching a useful method to advance my research. Some new ideas come from students' assessments; a frank assessment from a student often reveals a new approach or a weakness of an existing line of thinking, and preparing to teach can reveal an unstated assumption or a countervailing factor.

Contribution to the HBS Community

I have sought to contribute to the HBS community by building tools that support the school's teaching mission, and by facilitating the improvement of similar tools created by HBS IT staff.

No credit given to Hammond and Frei

My best-known software contribution is the Participation Tracker, a program for tracking and analyzing MBA classroom participation. Features include robust tabulation of participation trends, prioritized call lists (emphasizing students who have not spoken recently), integration with classcards, automatic updates from registrar data (as to changes in seating and enrollment), and full customizability for instructors hoping to build additional features. This tool was widely used between 2008 and 2012 by a total of 301 faculty and FAs. Beginning in 2011, HBS IT offered a replacement, with my support in feature design and improvement. The HBS-provided Participation Tracker replacement was among the most successful parts of the 2011 implementation of Learning Hub, I think because my prior work had demonstrated the required features, layout, and workflow in a way that reduced the required experimentation by IT and its vendors.

My Teaching Schedule Exporter copies MBA teaching schedules directly to Exchange/Outlook, thereby eliminating slow and error-prone manual steps. 109 faculty and FAs have used this tool.

When teaching RC Negotiation some years ago, I built tools to support both pedagogical and administrative functions. For example, the Deepport case explores possible coalitions in a multi-party negotiation; I wrote a quick program that allows instructors to show the parties' interests in any combination to facilitate rapid, seamless assessment of possible coalitions. My tool remains widely used by faculty teaching Deepport. Separately, my poll processors mitigated the perils of late-arriving data through robust automation, reliable display of incomplete submissions, one-click updates with the latest poll data, and automatic preparation of formatted charts and tables that matched the requirements of the teaching plan. Through these improvements, faculty could accept late-night submissions of students' negotiation outcomes, yet nonetheless prepare reliable, well-formatted charts and tables tabulating outcomes to facilitate class discussion.

During FIELD 3 teaching in winter 2015, I built a series of tools to streamline support for that course. Surprised by the manual process for making seat charts of students in Batten hives, I wrote a script to automate this task (as it is for Aldrich classrooms), eliminating ten to twenty FA hours of copy-and-paste per year. As students began submitting project proposals and other documents to the "Virtual Team Space" tool, I noticed that at least three clicks were needed to review each team's submissions (54+ clicks for one instructor to review updates from all teams, a task that is repeated often). My consolidated viewer merges the data to a single screen, reducing the task to a bit of scrolling. (My tool can also be used in FIELD 1 and 2.) Most recently, I built a web-based mail merge tool for efficient customized messages to student teams, avoiding the error-prone copy and paste previously used by most faculty and FAs. I'm looking for further such opportunities as the course proceeds.

My IT-related contributions are indexed at <http://people.hbs.edu/protected/bedelman/software> .

In a series of requests to various IT staff, I have sought to improve numerous aspects of campus technology. For example, I spearheaded the projector "freeze" function that lets instructors use all three classroom projectors with a single source (to show large documents and diagrams, student groupings, etc.). I also offered detailed and specific feedback on course tools, new collaboration systems, and various design guidance to balance security with ease of use. I am particularly proud of my efforts to improve the Research Information System tool that distributes faculty research to the public. As that system was being planned, I offered detailed feedback to designers and developers. After launch, I proposed feature improvements and flagged some surprisingly widespread errors. For

example, I uncovered blunders that caused search engines to see gibberish placeholder text instead of information about unit activities; that led Google and Google Scholar to misreport authorship and citation data for faculty articles; that sent readers to HBP pages with multiple oversized advertisements that were more prominent than the faculty publications that users requested; and that mistakenly but systematically presented members of the public with links to teaching notes and “N” cases not available for use outside HBS. I suggested simple quick fixes for each of these problems, and my changes have, for the most part, been implemented.

After discussions in 2010-2011 created “faculty rights in the use of cases,” allowing any faculty member to provide a copy of a case to any individual person, I built a tool to accept these requests. If a prospective reader requests a case, my tool provides it automatically and without delay, though only after the reader accepts my restrictions on use (including confirming that the case will not be used in the classroom). The tool provides the requested document by e-mail attachment with a cover message to further discourage arbitrary redistribution. I have offered this tool to all interested HBS faculty, and it is now used by Tom Eisenmann, among others. Our experiment is intentionally small—to date, we have provided approximately 500 case copies to about 300 readers. Nonetheless, our efforts set the stage for HBS to expand its methods of distributing cases online. Our efforts also help assess the extent to which limited no-charge case availability reduces revenues from case sales. Our preliminary experience suggests that the effect is small: There is little evidence that these readers would have navigated the HBP registration process and paid HBP fees to obtain cases through standard channels. Indeed, a sizable minority of our readers are instructors who could have obtained free case previews through HBP’s Premium Educator program, but found my courtesy copy tool faster or more convenient.

In response to a person or persons leaking copies of the first HBX exam and making that exam available on the web, I am assisting HBX staff in finding the responsible parties. My contributions included devising the general strategy for investigation, sketching the sanctions that Harvard University can hold over the sites that unlawfully sold this material in order to motivate them to reveal their sources and collaborators, and forensically testing the sites and software that distribute the exam in search of identifying details. These efforts are ongoing.

I began IT-related efforts at HBS primarily because I sensed that I could be helpful thanks to my skills and my understanding of teaching needs. I was also motivated by a notion of efficiency: I knew that my systems would save faculty and staff orders of magnitude more time than I spent to build the tools. I later found that these projects yield unexpected research benefits. For example, my Participation Tracker sat at the intersection of Windows and the web; in some areas, my design decisions tracked Microsoft’s challenges in moving its applications to the web. Similarly, my Schedule Exporter epitomizes the customizability possible in “thick client” IT environments of a decade ago, but interestingly more difficult in new web-based systems that impede many kinds of extensions. More generally, my understanding of online strategy and IT is grounded in my first-hand experience designing and writing software, so it has been natural to provide a portion of that software to the HBS community.

I have also served the HBS community as an instructor in FIELD 3 (2015), a member of the Business Economics doctoral program committee (2014-2015) and NOM recruiting committee (2010-2012) and as a two-time PRIMO sponsor (2011, 2012). As of winter 2015, I have sponsored 75 HBS MBA Independent Projects, Field Studies, and Independent Student Research projects.

Lessons from Recent Media Attention

Millions of people recently read my December 2014 correspondence with a neighborhood restaurant. The media response and subsequent discussions provided a natural time to reevaluate the work I’m

doing and the way that it is perceived. Though I think I was correct on the merits, I'm deeply saddened by the way the story played out, including the negative publicity my actions brought to the school and university at large. Below, I share my lessons from this experience.

First, I feel that it is imperative, and a personal responsibility, to apply my skills for the broader benefit of society. In general, I think I have done so, for example by protecting consumers and advertisers from problems both known and unknown to them. My correspondence with the restaurant stemmed from similar ideals; I sought to end a problem that had continued for more than four years, and I had hoped to assist in getting refunds for everyone affected (though Boston.com published only a subset of the relevant emails, notably omitting most of my efforts in this vein and preventing many people from learning about this aspect of my motivation). I explained the broader principle to a journalist:

We all rely on trust in our daily lives—that when sales tax is added, it actually applies and equals the specified amount; that the meter in a taxi shows the correct amount provided by law and correctly measures the actual distance; that when you order takeout, the price you see online matches the amount you pay in the restaurant. We take most of this for granted, and it would be a lot of trouble to all have to check these things day in and day out. That's exactly why we should be concerned when folks fall short—because hardly anyone ever checks, so these problems can go unnoticed and can affect, in aggregate, large amounts.

A second insight is that regardless of my motivation, I need to ensure that my work is *seen* as positive. Here, too, I've been successful in the past. Consider, for example, myriad emails from consumers grateful for my efforts to protect them from spyware and adware. However, as a result of the restaurant correspondence, many people saw me as selfish and concluded that I was primarily motivated by a desire for a personal refund. ~~The facts don't support this perspective, but people nonetheless had this view, and my emails gave critics needless support. More broadly, many people interpreted my attempts at persuasion as a form of bullying, which is not what I intended and is not the role I intended to take. Yet, here there is at least a sense in which they're right: I did intend to make the restaurant submit to my will, as I asked that they fully comply with the law and compensate everyone affected.~~ I continue to believe that this is a worthy effort, and when I previously pushed other companies to comply with the law, I rarely saw similar pushback. But here, most people viewed the same principle quite differently. In most of my public disputes, the amount at issue is at least in the tens of millions of dollars (and sometimes a hundred times that), whereas here the amount at issue (for all affected consumers) was probably just a few hundred thousand dollars. I should have taken a different approach in this circumstance, especially in tone.

I should have been more thoughtful in anticipating the way outside observers might interpret these emails. I now understand that effectiveness in these projects requires not just doing what is right, but also being understood and perceived as such, even by observers who have only a subset of information and who may arrive with their own preconceptions. Better word choice and a different style and focus could have prevented this distracting blow-up.

Looking Forward

My work in the coming years will remain at the intersection of economics, information technology, and public policy. I anticipate continuing to publish articles in a variety of journals (including economics, computer science, and law), along with online articles intended for practitioners, policy-makers, and a general audience. Some articles will build models of new online markets and marketplaces; other articles will test those models and estimate key parameters; selected articles, largely distributed online, will uncover specific activities of public concern.

I see my future work broadening in at least three respects. First, I hope to continue to develop innovative methodologies for online research. I consider my *"Sponsored Links"* or *"Advertisements"* paper (with Duncan Gilchrist) an example in that regard: We show authentic-looking, interactive search results to our experimental subjects, but our rewriting proxy adjusts result format to test a variety of conditions (namely, alternative advertisement labels). This flexible method can be used for any measurement of changes to a web site, crucially not requiring cooperation from that site. This approach should prove useful in research in economics, marketing, psychology, and law.

The *"Sponsored Links"* or *"Advertisements"* paper also reflects a shift in my research towards blending methods from economics, computer science, and psychology. For example, by comparing the number of advertisements a user *reports* seeing with the number of advertisements a user *actually* saw (which my proxy knows because it counts advertisements as it sends them to users), I can assess a user's recall. An improvement in recall suggests a genuine increase in understanding—that an altered label not only reduces clicks on advertisements (which could be good or bad) but also helps users more accurately report what they see. By combining increased recall with basic demographic patterns (larger effects for users with low education, low online experience, and/or low income), I can make more powerful statements about the effects and beneficiaries of alternative labels.

Finally, I've found myself increasingly influenced by NOM colleagues who study organizational economics. *Risk, Information, and Incentives in Online Affiliate Marketing* ([Journal of Marketing Research](#) 2015) offers one foray in this direction, assessing the management structures that best protect advertisers against various types of fraud. *Social Comparisons and Deception Across Workplace Hierarchies: Field and Experimental Evidence* ([Organization Science](#), forthcoming) similarly prompts a reconsideration of certain organizational design decisions, noting the potentially-harmful effects of "top 10" lists and other institutions that might seem automatic and benign. In future work, I plan to continue to revisit the organizational underpinnings of outcomes both good and bad. For example, in a novel dataset I am assembling with computer scientist Michael Weissbacher, I can measure the number of intermediaries placing a given advertiser's ad into a given web site, which allows us to check whether reduced transaction costs (through standardized online advertising marketplaces) facilitate either simplified relationships (disintermediation as advertisers buy directly) or instead an increase in intermediation (as intermediaries' costs drop). It seems that many of the worst pathologies of online markets are ultimately grounded in organizational design, so I see significant opportunities in applying organizational economic theory to the improvement of online markets.

It's easy to say I share the mission of HBS. But consider the specifics. My discussions with American Airlines case protagonists led to my price coherence paper, which I consider my best paper in some years. Preparing the Right Media case, I stumbled into that ad network's inclusion of widespread deceptive advertising, wrote it up on my web site, and spared the public from these practices. Similarly my AdCenter casewriting alerted me to Google's restrictions on data import/synchronization, which in turn prompted my congressional testimony on this subject and ultimately raised the issue before competition regulators on four continents. Teaching has offered similar benefits for research. For example, year after year, my students asked "What if Google does it?" and noted the many ways Google could prevent their startups from getting a fair chance. Students' concern (and my experience advising them) helped me see the problems of Google's dominance well before this subject became mainstream.

Employed anywhere else or in any other capacity, I would not have had reason to talk to these practitioners, learn about their problems, and reframe those issues for others to consider. HBS teaching similarly offered unrivaled connection to practice that made my research more relevant and more impactful. I am grateful to have had these opportunities and look forward to decades more.

The Darker Side of Blinkx

January 28, 2014

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Video and advertising conglomerate Blinkx tells investors its "strong performance" results from "strategic initiatives" and "expanding demand, content, and audiences." Indeed, Blinkx recently climbed past a \$1.2 billion valuation. At first glance, it sounds like a great business. But looking more carefully, I see reason for grave doubts.

My concerns result in large part from the longstanding practices of two of Blinkx's key acquisitions, Zango and AdOn. But concerns extend even to Blinkx's namesake video site. In the following sections, I address each in turn. Specifically, I show ex-Zango adware still sneaking onto users' computers and still defrauding advertisers. I show the ex-AdOn traffic broker still sending invisible, popup, and other tainted traffic. I show Blinkx' namesake site, Blinkx.com, leading users through a maze of low-content pages, while charging advertisers for video ads systematically not visible to users.

The Legacy Zango (Adware) Business

In April 2009, Blinkx acquired a portion of Zango, a notorious adware vendor known for products that at various times included 180 Search Assistant, ePipo, Hotbar, Media Gateway, MossySky, n-Case, Pinball, Seekmo, SpamBlockerUtility, and more. Zango was best known for its deceptive and even nonconsensual installations -- in write-ups from 2004 to 2008, I showed Zango installing through security exploits (even after design updates purportedly preventing such installations by supposed rogue partners), targeting kids and using misleading statements, euphemisms, and material omissions, installing via deceptive ActiveX popups. These and other practices attracted FTC attention, and in a November 2006 settlement, Zango promised to cease deceptive installations as well as provide corrective disclosures and pay a \$3 million penalty.

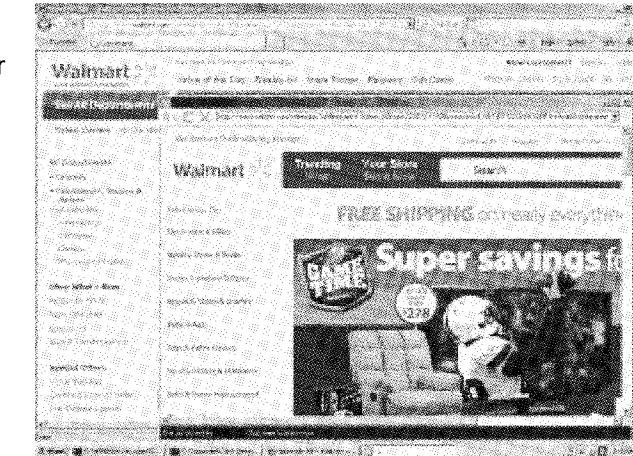
Few users would affirmatively request adware that shows extra pop-ups, so Blinkx and its distributors use deceptive tactics to sneak adware onto users' computers. In a representative example, I ran a Google search for "Chrome" (Google's well-known web browser), clicked an ad, and ended up at Youdownloaders.com -- a site that bundles Chrome with third-party advertising software. (The Youdownloaders footer states "The installers are compliant with the original software manufacturer's policies and terms & conditions" though it seems this claim is untrue: Chrome Terms of Service section 5.3 disallows copying and redistributing Chrome; 8.6 disallows use of Google's trademarks in a way that is likely to cause confusion; 9.3 disallows transfer of rights in Chrome.) In my testing, the Youdownloaders installer presented offers for five different adware programs and other third-party applications, among them Weather Alerts from desktopweatheralerts.com. Installation video.

I consider the Youdownloaders installation deceptive for at least four reasons: 1) A user's request for free Chrome software is not a proper circumstance to tout adware. The user gets absolutely nothing in exchange for supposed "agreement" to receive the adware; Chrome is easily and widely available for free, without adware. It is particularly one-sided to install five separate adware apps -- taking advantage of users who do not understand what they are asked to accept (including kids, non-native speakers, and those in a hurry). 2) On the Weather Alerts page of the installation, on-screen statements mention nothing of pop-up ads or, indeed, any advertising at all. In contrast, the FTC's settlement with Zango requires that disclosure of advertising practices be "clear and prominent," "unavoidable," and separate from any license agreement -- requirements not satisfied here. 3) The Youdownloaders user interface leads users to think that the bundled installations are compulsory. For example, the "decline" button (which lets a user reject each adware app) appears without the distinctive shape, outline, color, or font of an ordinary Windows button. 4) Users are asked to accept an objectively unreasonable volume of agreements and contracts, which in my testing include at least 14 different documents totaling 37,564 words (8.5 times the length of the US Constitution).

Tellingly, Blinkx takes considerable steps to distance itself from these deceptive practices. For example, nothing on Blinkx's site indicates that Weather Alerts is a Blinkx app or shows Blinkx ads. The Desktopweatheralerts.com site offers no name or address, even on its Contact Us form. Weather Alerts comes from a company called Local Weather LLC, an alter ego of Weather Notifications LLC, both of Minneapolis MN, with no stated affiliation with Blinkx. Weather Notifications' listed address is a one-bedroom one-bathroom apartment -- hardly a standard corporate office. Nonetheless, multiple factors indicate to me that Desktop Weather Alerts is delivers a version of Zango adware. For

one, Desktop Weather Alerts popups use the distinctive format long associated with Zango, including the distinctive browser buttons at top-left, as well as distinctive format of the advertisement label at bottom-left. Similarly, many sections of the license agreement and privacy policy are copied verbatim from longstanding Zango terms. Within the Weather Alerts EXE, strings reference 180search Assistant (a prior Zango product name) as well as 180client and various control systems long associated with Zango's ad-targeting system. Similarly, when Weather Alerts delivers ads, its ad-delivery communications use a distinctive proprietary HTTP syntax both for request (to showme.aspx, with a HTTP POST parameter of epostdata= providing encoded ad context) and response (a series of HTML FORM elements, most importantly an INPUT NAME=ad_url to indicate the popup to open). I have seen this syntax (and its predecessors) in Zango apps for roughly a decade, but I have never seen this syntax used by any advertising delivered by other adware vendors or other companies. Moreover, when a Blinkx contractor previously contacted a security vendor to request whitelist treatment of its adware, the Blinkx representative said "The client is Blinkx ... Your engine ... was flagging **their** installer package SWA as SevereWeatherAlerts..." (emphasis added). Notice the Blinkx representative indicating that SWA (another Local Weather program, virtually identical save for domain name and product name) is "their" app, necessarily referring to Blinkx. Finally, in a February 2014 presentation, Blinkx CEO Brian Mukherjee included the distinctive Local Weather icon (present throughout the LW app and in LW's installation solicitations) as part of the "Blinkx Ecosystem" -- further confirming the link between LW and Blinkx. Taken together, these factors give good reason to conclude that Local Weather is applications are powered by Blinkx and part of the Blinkx network. Furthermore, in my testing Blinkx is the sole source of advertising for Weather Alerts -- meaning that Blinkx's payments are Weather Alerts' primary source of revenue and primary reason for existence. (Additions made February 13, 2014, shown in grey highlighting.)

Meanwhile, Zango-delivered advertising remains a major cause of concern. Zango's core advertising product remains the browser popup -- a disruptive form of advertising unpopular with most users and also unpopular with most mainstream advertisers. Notably, Zango's popups perpetrate various advertising fraud, most notably 'lead stealing' affiliate windows that cover merchant sites with their own affiliate links. If the user purchases through either window, the Zango advertiser gets paid a commission -- despite doing nothing to genuinely cause or encourage the user's purchase. (Indeed, the popup interrupts the user and thereby somewhat discourages a purchase.) At right, I show a current example: In testing of January 19, 2014, Blinkx/Zango sees a user browsing Walmart, then opens a popup to Blinkx/LeadImpact (server lipixeltrack) which redirects to LinkShare affiliate ORsWWZomRM8 and on to Walmart. Packet log proof. Thus, Walmart ends up having to pay an affiliate commission on traffic it already had -- a breach of Walmart's affiliate rules and broadly the same as the practice for which two eBay affiliates last year pled guilty. I've reported Zango software used for this same scheme since June 2004. As shown at right and in other recent examples, Zango remains distinctively useful to rogue affiliates perpetrating these schemes. These rogue affiliates pay Blinkx to show the popups that set the scheme in motion -- and I see no sign that Blinkx has done anything to block this practice.



Blinkx/Zango software continues to defraud affiliate merchants.

Rather than put a stop to these practices, Blinkx largely attempts to distance itself from Zango's legacy business. For one, Blinkx is less than forthright as to what exactly it purchased. In Blinkx's 2010 financial report, the first formal investor statement to discuss the acquisition, Blinkx never uses the word "Zango" or otherwise indicates the specific company or assets that Blinkx acquired. Rather, Blinkx describes the purchase as "certain net assets from a consortium of financial institutions to facilitate the growth of the video search and advertising businesses." If a reader didn't already know what Blinkx had bought, this vague statement would do nothing to assist.

Even when Blinkx discusses the Zango acquisition, it is less than forthcoming. UK news publication The Register quotes an unnamed Blinkx spokeswoman saying that Blinkx "purchased some technical assets from the bank [that foreclosed on Zango] including some IP and hardware, which constituted about 10 per cent of Zango's total assets." Here too, readers are left to wonder what assets are actually at issue. A natural interpretation of the quote is that Blinkx purchased trademarks, domain names, or patents plus general-purpose servers -- all consistent with shutting the controversial Zango business. But in fact my testing reveals the opposite: Blinkx continues to run key aspects of Zango's business: legacy Zango installations continue to function as usual and continue to show ads, and Blinkx continues to solicit new installations via the same methods, programs, and partners that Zango previously used. Furthermore, key Zango staff joined Blinkx, facilitating the continuation of the Zango business. Consider Val Sanford, previously a Vice President at Zango; her LinkedIn profile confirms that she stayed with Blinkx for three years after the

acquisition. I struggle to reconcile these observations with the claim that Blinkx only purchased 10% of Zango or that the purchase was limited to "IP and hardware." Furthermore, ex-Zango CTO Ken Smith contemporaneously disputed the 10% claim, insisting that "Blinkx acquired fully 100% of Zango's assets."

Blinkx has been equally circumspect as to the size of the ex-Zango business. In Blinkx' 2010 financial report, Blinkx nowhere tells investors the revenue or profit resulting from Zango's business. Rather, Blinkx insists "It is not practical to determine the financial effect of the purchased net assets.... The Group's core products and those purchased have been integrated and the operations merged such that it is not practical to determine the portion of the result that specifically relates to these assets." I find this statement puzzling. The ex-Zango business is logically freestanding -- for example, separate relationships with the partners who install the adware on users' computers. I see no proper reason why the results of the ex-Zango business could not be reported separately. Investors might reasonably want to know how much of Blinkx's business comes from the controversial ex-Zango activities.

Indeed, Blinkx's investor statements make no mention whatsoever of Zango, adware, pop-ups, or browser plug-ins of any kind in any annual reports, presentations, or other public disclosures. (I downloaded all such documents from Blinkx' Financial Results page and ran full-text search, finding no matches.) As best I can tell, Blinkx also failed to mention these endeavors in conference calls or other official public communications. In a December 2013 conference call, Jefferies analyst David Reynolds asked Blinkx about its top sources of traffic/supply, and management refused to answer -- in sharp contrast to other firms that disclose their largest and most significant relationships.

In March-April 2012, many ex-Zango staff left Blinkx en masse. Many ended up at Verti Technology Group, a company specializing in adware distribution. Myriad factors indicate that Blinkx controls Verti: 1) According to LinkedIn, Verti has eight current employees of which five are former employees of Zango, Pinball, and/or Blinkx. Other recent Verti employees include Val Sanford, who moved from Zango to Blinkx to Verti. 2) Blinkx's Twitter account: Blinkx follows just nineteen users including Blinkx's founder, various of its acquisitions (including Prime Visibility / AdOn and Rhythm New Media), and several of their staff. Blinkx follows Verti's primary account as well as the personal account of a Verti manager. 3) Washington Secretary of State filings indicate that Verti's president is Colm Doyle (then Directory of Technology at Blinkx, though he subsequently returned to HP Autonomy) and secretary, treasurer, and chairman is Erin Laye (Director of Project Management at Blinkx). Doyle and Laye's links to Blinkx were suppressed somewhat in that both, at formation, specified their home addresses instead of their Blinkx office. 4) Whois links several Verti domains to Blinkx nameservers. (Details on file.) Taken together, these facts suggest that Blinkx attempted to move a controversial business line to a subsidiary which the public is less likely to recognize as part of Blinkx.

The Legacy AdOn Business

In November 2011, Blinkx acquired Prime Visibility Media Group, best known for the business previously known as AdOn Network and MyGeek. I have critiqued AdOn's traffic repeatedly: AdOn first caught my eye when it boasted of relationships with 180solutions/Zango and Direct Revenue. New York Attorney General litigation documents later revealed that AdOn distributed more than 130,000 copies of notorious Direct Revenue spyware. I later repeatedly reported AdOn facilitating affiliate fraud, inflating sites' traffic stats, showing unrequested sexually-explicit images, and intermediating traffic that led to Google click fraud.

Similar problems continue. For example, in a February 2013 report for a client, I found a botnet sending click fraud traffic through AdOn's ad-feeds.com server en route to advertisers. In an August 2013 report for a different client, I found invisible IFRAMEs sending traffic to AdOn's bing-usa.com and xmladfeed.com servers, again en route to advertisers. Note also the deceptive use of Microsoft's Bing trademark -- falsely suggesting that this tainted traffic is in some way authorized by or affiliated with Bing, when in fact the traffic comes from AdOn's partners. Moreover, the traffic was entirely random and untargeted -- keywords suggested literally at random, entirely unrelated to any aspect of user interests. In other instances, I found AdOn receiving traffic directly from Zango adware. All told, I reported 20+ distinct sequences of tainted AdOn traffic to clients during 2013. AdOn's low-quality traffic is ongoing: Advertisers buying from AdOn receive invisible traffic, adware/malware-originating traffic, and other tainted traffic that sophisticated advertisers do not want.

Industry sources confirm my concern. For example, a June 2013 Ad Week article quotes one publisher calling AdOn "just about the worst" at providing low-quality traffic, while another flags "crazy traffic patterns." In subsequent finger-pointing as to tainted traffic to OneScreen sites, OneScreen blamed a partner, Touchstorm, for working with AdOn -- wasting no words to explain why buying from AdOn is undesirable. Even intentional AdOn customers report disappointing quality: In comments on a posting by Gauher Chaudhry, AdOn advertisers call AdOn "the reason I stopped doing any PPV [pay-per-view] ... this is bot traffic", "junk", and "really smell[s] like fake traffic." Of 31 comments in this thread, not one praised AdOn traffic quality.

Recent statements from AdOn employees confirm undesirable characteristics of AdOn traffic. Matthew Papke's LinkedIn page lists him as Director of Contextual Ads at AdOn. But his page previously described AdOn's offering as "pop traffic" -- admitting undesirable non-user-requested pop-up inventory. His page called the traffic "install based" -- indicating that the traffic comes not from genuine web pages, but from adware installed on users' computers. See screenshot at right. All of these statements have been removed from the current version of Matthew's page.



An AdOn staff member touts multiple incriminating characteristics of AdOn traffic.

High Value Pop traffic

Matthew Papke
Director of Contextual Media at Lead Impact

AdOn Network over has 500M users on it's install based network. Traffic is very high quality and suited for both targeted and run of network campaigns. USA and non-US traffic available.

email or skype me for more info.

mattp@adonnetwork.com
Matthew

Problems at Blinkx.com: Low-Quality Traffic, Low-Quality Content, and Invisible Ads

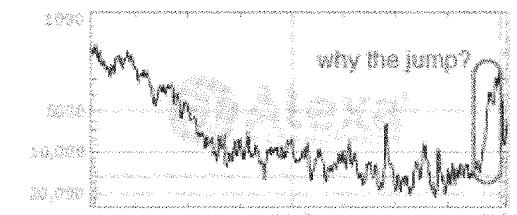
Blinkx's namesake service is the video site Blinkx.com. Historically, this site has been a bit of an also-ran -- it's certainly no YouTube! But Alexa reports a striking jump in Blinkx popularity as of late 2013: Blinkx's traffic jumped from rank of roughly 15,000 worldwide to, at peak, rank of approximately 3,000. What could explain such a sudden jump?

In my automated and manual testing of Zango adware, I've recently begun to see Zango forcing users to visit the Blinkx site. The screenshot at right gives an example. My test computer displayed Blinkx full-screen, without title bar, address bar, or standard window buttons to close or minimize. See also a partial packet log, wherein the Blinkx site attributes this traffic to Mossysky ("domain=mossysky"), one of the Zango brand names. It's a strikingly intrusive display -- no wonder users are complaining, about their computers being unusable due to Blinkx's unwanted intrusion. See e.g. a December 2013 Mozilla forum post reporting "my computer has been taken over by malware, half the links are inaccessible because of hovering links to Blinkx," and a critique and screenshot showing an example of these hovering links. On a Microsoft support forum, one user reports Internet Explorer automatically "opening ... numerous BLINKX websites" -- as many as "20 websites open at one time, all Blinkx related."

Moreover, Alexa's analysis of Blinkx visitor origins confirms the anomalies in this traffic. Of the top ten sites sending traffic to Blinkx, according to Alexa, six are Blinkx servers, largely used to forward and redirect traffic (networksad.com, advertisermarkets.com, networksads.com, advertiserdigital.com, blinkxcore.com, and networksmarkets.com). See Alexa's Site Info for Blinkx.com at heading "Where do Blinkx.com's visitors come from?"

Strikingly, Zango began sending traffic to Blinkx during the winter 2013 holiday season -- a time of year when ad prices are unusually high. Zango's popups of Blinkx seem to have ended as suddenly as they began -- consistent with Blinkx wanting extra traffic and ad revenue when ad prices are high, but concluding that continuing this practice at length risks excessive scrutiny from both consumers and advertisers.

Meanwhile, examining Blinkx.com, I'm struck by the lack of useful content. I used the Google search site:blinkx.com to find the parts of the Blinkx site that, according to Google, are most popular. I was directed to tv.blinkx.com, where the page title says users can "Watch full episodes of TV shows online." I clicked "60 Minutes" and received a page correctly profiling the excellence of that show ("the granddaddy of news magazines"). But when I clicked to watch one of the listed episodes, I found nothing of the kind: Requesting "The Death and Life of Asheboro, Stealing History, The Face of the Franchise," I was told to "click here to watch on cbs.com" -- but the link actually took me to a 1:33 minute home video of a dog lying on the floor, "Husky Says No to Kennel", syndicated from YouTube, entirely unrelated to the top-quality 60 Minutes content I had requested. (Screen-capture video.) It was a poor experience -- not the kind of content likely to cause users to favor Blinkx's service. I tried several other shows supposedly available -- The Colbert Report,



Alexa reports a sharp jump in Blinkx traffic in late 2013.



Zango adware caused my computer to display this page from the Blinkx site, full-screen and without standard window controls.

The Daily Show with Jon Stewart, Family Guy, and more -- and never received any of the listed content.

In parallel, the Blinkx site simultaneously perpetrated a remarkable scheme against advertisers: On the video index page for each TV show, video advertising was triggered to play *as I exited each page* by clicking to view the supposed video content. Because the supposed content opened in a new tab, the prior tab remained active and could still host a video player with advertising. Of course the prior tab was necessarily out of visibility: Blinkx's code had just commanded the opening of a new tab showing the new destination. But the video still played, and video advertisers were still billed. Screen-capture video.

Industry sources confirm concerns about Blinkx ad visibility. For example, a [December 15, 2013 Ad Week piece](#) reported Vindico analysis finding just 23% of Blinkx videos viewable (defined as just 50% of pixels visible for just one second). By Vindico's analysis, an advertiser buying video ads from Blinkx suffers three ads entirely invisible for every ad visible even by that low standard -- a remarkably poor rate of visibility. In contrast, mainstream video sites like CBS and MSN enjoyed viewability rates two to four times higher.

Putting the Pieces Together

Comparing Blinkx's revenues to competitors, I am struck by Blinkx's apparent outsized success. See the table at right, finding Blinkx producing roughly twice as much revenue per employee as online video/display ad networks and advertising technology companies which have recently made public offerings. Looking at Blinkx's sites and services, one doesn't get the sense that Blinkx's service is twice as good, or its employees twice as productive, as the other companies listed. So why does Blinkx earn twice as much revenue per employee? One natural hypothesis is that Blinkx is in a significantly different business. While other services make significant payments to publishers for use of their video content, my browsing of Blinkx.com revealed no distinctive content obviously licensed from high-quality high-cost publishers. I would not be surprised to see outsized short-term profits in adware, forced-visit traffic, and other black-hat practices of the sort used by some of the companies Blinkx has acquired. But neither are these practices likely to be sustainable in the long run.

Reviewing Blinkx's statements to investors, I was struck by the opacity. How exactly does Blinkx make money? How much comes from the legacy Zango and AdOn businesses that consumers and advertisers pointedly disfavor? Why are so many of Blinkx's metrics out of line with competitors? The investor statements raise many questions but offer few answers. I submit that Blinkx is carefully withholding this information because the company has much to hide. If I traded in the companies I write about (I don't!), I'd be short Blinkx.

This article draws in part on research I prepared for a client that sought to know more about Blinkx's historic and current practices. At my request, the client agreed to let me include portions of that research in this publicly-available posting. My work for that client yielded a portion of the research presented in this article, though I also conducted significant additional research and drew on prior work dating back to 2004. My agreement with the client did not oblige me to circulate my findings as an article or in any other way; to my knowledge, the client's primary interest was in learning more about Blinkx's business, not in assuring that I tell others. By agreement with the client, I am not permitted to reveal its name, but I can indicate that the client is two US investment firms and that I performed the research during December 2013 to January 2014. The client tells me that it did not change its position on Blinkx after reading my article. (Disclosure updated and expanded on February 4-5, 2014.)

I thank Eric Howes, Principal Lab Researcher at ThreatTrack Security, and Matthew Mesa, Threat Researcher at ThreatTrack Security, for insight on current Blinkx installations.

	Q3 '13 Headcount	'13 Revenue (\$mm)	revenue / headcount (\$k)
Tremor	287	\$148	\$517
YuMe	357*	\$157	\$440
RocketFuel	552	\$240	\$434
Criteo	452	\$240	\$532
Blinkx	265**	\$246***	\$927

* Q3 '13 headcount not available. 357 is 2012 year-end. S&M spend up ~50% in 2013. Adjusted revenue/headcount is \$293k

** Q3 '13 headcount not available. 265 is 2012 year-end. S&M spend up ~15% in 2013. Adjusted revenue/headcount is \$803k.

*** 2013 revenue estimate based on Bloomberg consensus estimates



Peter Cohan Contributor

I write about tech stocks and the startup economy.

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TECH 2/03/2014 @ 8:50AM 9,180 views

Harvard Prof's Blog Post Slashes Blinkx Stock Price 21%

Can one person move a stock? The answer depends on the person, the message, and the stock. In the case of Blinkx, a British online video and advertising company, the answer is **Yes**.

For Blinkx, a professor published an analysis that raised serious questions about the company's revenue reporting and business model. And Blinkx's response — based largely on an attack on the professor's professionalism — did not counter the effect of his message. On January 30, the blog was published and Blinkx's stock fell 31% while recovering about 9% of its value in February 3 trading in London.

The professor is Harvard Business School Associate Professor, Benjamin Edelman, whom I have interviewed regarding Groupon, Facebook and Google. Interestingly, none of those columns seem to have had a negative effect on those companies' stock prices.

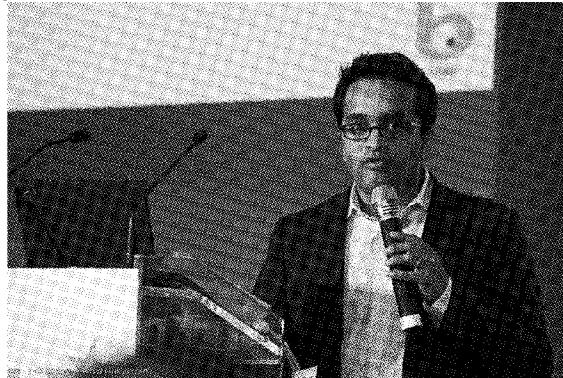
But Edelman's January 30 blog, *The Darker Side of Blinkx*, appears to have slammed Blinkx's stock price. In that post, Edelman argued that Blinkx acquired two companies — Zango and AdOn — that generate adware revenues by doing things like "defrauding advertisers" in a variety of ways such as billing them for "tainted traffic."

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Suranga Chandratillake (Photo credit: Wikipedia)

Edelman's blog provides a detailed argument about how "ex-Zango adware is still sneaking onto users' computers and still defrauding advertisers. I show the ex-AdOn traffic broker is still sending invisible, popup, and other tainted traffic. I show Blinkx' namesake site, Blinkx.com, leading users through a maze of low-content pages, while charging advertisers for video ads systematically not visible to users."

Edelman — a graduate of Harvard's law school and its economics PhD program — also claimed in the blog that a client who he refused to name, paid him to do the analysis.

Blinkx issued a [statement on January 30](#). First it attacked Edelman. The statement noted, "As a matter of course, the Company does not normally comment on such matters. However, blinkx has noted a recent blog post by a Consultant paid by unnamed third parties, in which he discloses, 'I prepared a portion of this article at the request of a client that prefers not to be listed by name.' blinkx strongly refutes the assertions made and conclusions drawn in the blog post."

The statement went on to say that everything in its recent financial statements and forecast is fine. "The Company confirms there has been no material change to the operational and financial performance or outlook for the business, and that Fiscal Q3 trading was in line with management expectations," noted the statement.

I asked Blinkx to comment on the following questions:

- What are Blinkx's revenues by product line?
- What percentage of Blinkx's revenues come from its legacy Zango and AdOn businesses?



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- Why are Blinkx's revenues per employee so much higher than those of competitors such as Tremor, YuMe, and RocketFuel?
- Since Blinkx CEO, Suranga Chandratillake, worked at Autonomy, is there any chance that Blinkx shares the accounting challenges that led to HP's \$8.8 billion write-down after its \$11 billion purchase of Autonomy?

Blinkx did not respond to my request on the record. However, on February 3, a source close to Blinkx who did not want to go on the record so as not to "embroil himself personally" did respond to the questions.

The source said that Blinkx's revenue accounting is accurate — split as reported between ad hoc (premium) and conventional (commodity). In a February 3 response to Blinkx, Edelman said that "investors should be asking about *non-adware* versus *adware*."

The Blinkx source said that the company did not buy revenues when it made those acquisitions — just people and technology.

Edelman noted that Zango's ex-chief technology officer, Ken Smith, disputed Blinkx's claim, writing: "Blinkx acquired fully 100% of Zango's assets."

And Blinkx's anonymous source said that it has filters to keep those legacy ads from appearing.

Edelman disputes that: "Certainly it's clear that Blinkx adware is still operating. I showed a screenshot and packet log of the adware running (cheating Walmart). And I showed a screen-capture video of the adware still getting installed (through quite a sneaky method — pretending to be part of Chrome). This is not consistent with Blinkx shutting down the legacy Zango business."

The Blinkx source said he would send me a paragraph explaining the filters and I will post it as soon as I get it from him.

He said that Blinkx earns higher revenues per employee — \$927 compared to \$440 for YuMe, according to Edelman — for three reasons:

- Blinkx spun out of Autonomy in 2007 as a "dividend in specie to Autonomy shareholders" so it did not need to make investments to build its

technology – he estimated the value of Blinkx's intellectual property at \$50 million;

- These competitors had to hire developers and marketers to build the business and Blinkx's has a direct sales business and does not have to hire more bodies as they do; and
- Blinkx's has been around for longer and unlike these Silicon Valley competitors is run for profit and has a four year head start.

Edelman does not buy this explanation. He notes, "Blinkx is in a materially different business than them. Specifically, Blinkx's adware business serves popups that cover others' sites, for which Blinkx need not license content or do much work. The others have to create genuine content or pay publishers to use publishers' content. To my eye, this is a more plausible explanation than Blinkx being twice as effective as its competitors at generating revenue."

Finally the Blinkx source told me that Autonomy's accounting issue with HP is a completely separate from Blinkx. He noted that HP sold its remaining Blinkx shares in the third quarter of 2013.

Before I heard from Blinkx, Edelman offered a challenge to its January 30 statement. In a February 2 interview, Edelman argued that Blinkx is still not being upfront about how it generates revenue; that Blinkx's adware violates FTC standards; that he did not do anything wrong; and that there may be a fundamental similarity between Autonomy's accounting issues and Blinkx's reporting.

Edelman thinks that Blinkx does not acknowledge its adware revenues. He told me, "I don't think we really know how Blinkx makes most of its money. We know the businesses Blinkx likes to talk about. But then my article points out that Blinkx is in the adware business too. You'd never know that from Blinkx's web site or statements to investors."

Edelman is concerned about Blinkx's financial disclosure. He said, "It seems to me that this omission in Blinkx's financial statements is one key problem – failure to accurately characterize what Blinkx actually does, or how much of the business comes from the various components."

He argues that Blinkx's adware installation violates FTC standards. He noted, "The adware installation I demonstrated falls short of FTC's *unfair and deceptive* standards for bundled advertising software – standards the FTC first articulated in a settlement with Zango, which Blinkx later acquired!"

Edelman defended his conduct. "My client requested that I research what Blinkx does and how. I insisted on the right to tell others, on my web site and otherwise. The client agreed to that. I was not obliged to do so. There's nothing improper about this, and it's entirely consistent with work I've done for many companies. Information is fundamentally non-rivalrous – I can tell other people what I've learned and the client still has the benefit of those learnings," argued Edelman.

Edelman believes that Blinkx is attacking him and his client instead of commenting on the substance of his allegations. According to Edelman "What's most notable, in my view, is that Blinkx tries to make this research about me personally and about my client, rather than discussing the serious allegations and compelling proof. I'd rather focus on substance. Tellingly, Blinkx has not denied the allegations in specificity."

Edelman believes that Blinkx's stock fell because his argument persuaded investors. Said Edelman, "I gather Blinkx's stock dropped because investors saw my evidence and shared my concern that Blinkx's business is less robust and less secure than they had previously thought."

Edelman thinks that Autonomy and Blinkx share a failure to be completely forthright about their businesses. Explained Edelman, "I'm not an expert on the prior Autonomy practices that led to HP's litigation. But there is a fundamental similarity – being less than forthright about what a company does, how, and with what financial results."

And he believes that Blinkx's stock should move on what he sees as shaky merits. "Nonetheless, I think Blinkx deserves to rise or fall on its own merits, not the prior businesses of some

managers or even its founder. Problem is, Blinkx's merits are themselves looking pretty shaky," concluded Edelman.

What happened here? I would guess that Edelman's client is a hedge fund that got together with some others to short Blinkx stock before he posted his blog. Statistics from British financial regulators suggest that "several hedge funds had built sizable [short] minority stakes in Blinkx" before January 30, according to the *New York Times*.

I'd guess that Blinkx's share price was overwhelmed by the power of those short sellers. And if Edelman is right that there is nothing improper in what he did — I would like him to at least disclose whether his client is a hedge fund — those hedge funds may have identified a way to beat the market: Hire Edelman to research nefarious online marketing practices of relatively-thinly-traded public companies and short their shares before Edelman publishes his findings.

Meanwhile, Blinkx's off-the-record responses to Edelman's substantive questions about its business model and reporting strike me as somewhat vague. Will British regulators investigate further?

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Tuesday, October 6, 2015 3:34:56 PM Eastern Daylight Time

Subject: Re: Hot potato

Date: Wednesday, February 5, 2014 8:04:18 AM Eastern Standard Time
From: Aisner, Jim
To: Cunningham, Jean
CC: Kenny, Brian

I'm wondering if the best way to keep this story from happening is for Ben to go off the record with the reporter to set him straight. This is where off the record can help. Unfortunately we are now in a he said she said situation. What do you both think ?

Sent from my iPhone

On Feb 4, 2014, at 8:48 PM, "Cunningham, Jean" <jcunningham@hbs.edu> wrote:

Ben says the reporter is misinformed, and -- this he considered off the record -- that the company had no interest or holdings, or no anticipation of interest or holdings. He said it's Blinkx that is stirring up these rumors.

From: <Aisner>, Jim Aisner <jaisner@hbs.edu>
Date: Tuesday, February 4, 2014 8:42 PM
To: Brian Kenny <bkenny@hbs.edu>, Jean Cunningham <jcunningham@hbs.edu>
Subject: RE: Hot potato

According to the reporter, John Hechinger, the sponsoring company had a vested interest in seeing the stock price go down so that it could benefit from shorting the stock. I don't know if that's true or not, but I do worry about even the perception of a conflict of interest here. I think that's where Ben and HBS could run into trouble when this article appears. On the other hand, Ben does have the reputation of slaying dragons and standing up for good things like privacy against big, bad companies, so that may be in his favor....He wears a white hat, so why should this case be any different. That's my best-case scenario. BTW, I have in my emails file the HBS document of several years ago on Conflict of Interest (COI)....According to the original email that went with it, it is a public document, so I emailed the COI paper to John Hechinger so that he could see our detailed policy for himself....Is that the most recent version??

From: Kenny, Brian
Sent: Tuesday, February 04, 2014 8:12 PM
To: Cunningham, Jean
Cc: Aisner, Jim
Subject: Re: Hot potato

Thanks for the context. I think your suggestion to direct him back to Ben to give him a chance to respond to what certainly sounds like an accusatory line of questions. But I think we should also respond in a school voice to the question of whether or not his disclosure satisfies our policy (to which I think the answer is yes). That at least gives him some air cover. Let's talk tomorrow.

Brian

Brian Kenny
Chief Marketing and Communications Officer
Harvard Business School

617-495-6336

From: <Cunningham>, Jean Cunningham <jcunningham@hbs.edu>
Date: Tuesday, February 4, 2014 6:14 PM
To: Brian Kenny <bkenny@hbs.edu>
Cc: "Aisner, Jim" <jaisner@hbs.edu>
Subject: Re: Hot potato

I just had a quick conversation with Ben. A few takeaways, off the record, and perhaps we should put heads together tomorrow on the right way to respond to the reporter:

Of all the HBS faculty members, Ben is someone I know to have read (and dissected) the COI policy -- he was one of 2 faculty members to show up for the small group discussions with substantive questions. He reads *everything* carefully. And with his background, he is deliberate and incredibly thoughtful about how he expresses himself.

He put a lot of thought into the disclosure statement at the bottom. With hindsight, he might wish to have phrased it slightly differently. But he believes it conveys everything that should be conveyed: he received compensation for a portion of his work. The angle the Bloomberg reporter is pushing is what he thinks Blinkx has suggested to the reporter. Unfortunately, it's not true (e.g., the company didn't stand to benefit from having the results published) (though we can't say that quite so definitively, going back to the confidentiality agreement). And interestingly, it was Ben that pushed the company to allow him to publish his findings, not vice versa -- this is Ben in missionary mode, wanting to disseminate the results of his work as broadly as possible.

My vote would be to point the reporter back to Ben -- Ben said he has spoken with him already, though not on this particular angle of the story. On the questions of disclosure, we can go down that path if we need to (e.g., the "reasonable reader" test mapped against confidentiality agreements)... but I'd prefer not to if this is a myth that Ben is in other ways able to dispel.

Does that make sense?

From: <Kenny>, Brian Kenny <bkenny@hbs.edu>
Date: Tuesday, February 4, 2014 3:46 PM
To: Jean Cunningham <jcunningham@hbs.edu>
Subject: Fwd: Hot potato

Hi Jean. Not sure if you saw the original article by Ben Edelman that prompted this inquiry from Bloomberg. If not, Jim's note below provides some context. I think we should prepare a response for this but I don't know if Ben's disclosure satisfies the school's requirements. I've asked Jim to stall the writer as long as possible.

I'm heading for Penn Station right now to catch my train home so I will be a little hard to get for a while.

Brian

Sent from my iPad

Begin forwarded message:

From: "Aisner, Jim" <jaisner@hbs.edu>
Date: February 4, 2014 at 2:05:45 PM EST
To: "Kenny, Brian" <bkenny@hbs.edu>
Subject: Hot potato

This just in from Bloomberg....have you seen the article that talks about Edelman's on a company, resulting in a large drop in its stock price/value? Apparently, and I may not have this exactly right, sponsored by a financial firm that would profit if the stock went down (shorting the stock). Bloomberg has the situation in its sites....Probably needs to be discussed with Jean, no?????

From: John Hechinger (BLOOMBERG/ NEWSROOM:)

[mailto:jhechinger@bloomberg.net]

Sent: Tuesday, February 04, 2014 1:48 PM

To: Aisner, Jim

Subject: RE: bloomerg

Thanks, this is helpful. My main questions are: What is Harvard Business School's policy about a professors publishing a report financed by an investment company that has a stake in its outcome? What is your view of Professor Edelman's disclosure of his consulting agreement in his blog post? Was it adequate to satisfy HBS's conflict-of-interest policy? If so, why? And, if not, why not? Should he have noted that the consulting agreement was with an investment firm that may have a stake in the outcome of his research? If no, why not? And, if so, why?

I hope that helps.

Thanks,

John

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

From: jaisner@hbs.edu

To: [John Hechinger \(BLOOMBERG/ NEWSROOM:\)](mailto:John Hechinger (BLOOMBERG/ NEWSROOM:))

At: Feb 4 2014 13:33:37

Greetings, John. Here is the conflict of interest document I have "in stock," so to speak...My understanding is that it's a public document. I or one of my colleagues will check to make sure it is the most up to date version. Could you send me a few sample questions on this? That will help me go after someone, although I can't guarantee I will be able to....Thanks.

Conflict of Interest (COI) Policy

Introduction

The mission of Harvard Business School is to educate leaders who make a difference in the world. Faculty members accomplish this mission by creating managerially-relevant knowledge, teaching the art and science of general management, and communicating important ideas to people around the world.

HBS faculty members share a *primary interest* in advancing the

School's mission and core values, which include assurance of personal and institutional integrity; independent, objective, and ethical scholarship; accountability for actions and conduct; and preservation of the School's standing as an institution worthy of public trust. Arguably, the School's greatest asset is its reputation for scholarly integrity in the creation and dissemination of knowledge, a reputation that benefits all members of the Harvard community. In its efforts to create and disseminate managerially-relevant knowledge, the School encourages faculty members to engage with outside organizations through a variety of activities ranging from research and teaching to consulting and other advisory work. Such interactions promote intellectual exchange, enhance professional development, and further our mission of societal service. Contact with outside organizations is particularly important for HBS faculty because it provides opportunities for collaboration on case studies and other forms of field research, provides access to new and unique types of data, and serves as a proving ground for new theories, frameworks and ideas. Indeed, contact with outside organizations—including companies, government agencies, regulatory agencies, and non-profit organizations—is a critical part of the School's commitment to being at the forefront of management practice.

Although valuable from a scholarly perspective, a faculty member's relationship with outside organizations creates opportunities for personal gain, financial or otherwise. At times, these *secondary interests* may conflict with the faculty member's primary interest in and obligations to the School and its mission. Such conflicts can damage scholarly credibility and reduce impact particularly if not managed carefully or eliminated. For this reason, the School has established several policies, including this policy on Conflicts of Interest, to ensure that faculty members do not engage in activities or behaviors that compromise the School's reputation for scholarly integrity or erode the public's trust in the institution.¹

¹ In addition to this COI policy, faculty members must abide by the HBS policies on Outside Activities and on Faculty Involvement in Student Ventures as well as Harvard University's Policy on Individual Financial Conflicts of Interest (amended and approved on 5/23/2012). These policies describe the range and extent of permitted activities.

Faculty members who are contemplating or are receiving external funding from

government agencies such as the National Science Foundation (NSF) or other entities should consult with the Dean's Office regarding the possibility of additional COI reporting or disclosure requirements.

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**Policy
on
Conflicts
of
Interest**

This policy specifically addresses the potential for conflicts of interest—real and perceived—between a faculty member's primary interest in and obligations to the School and any secondary interests stemming from personal or financial involvement with outside organizations, or other personal endeavors. A conflict of interest is defined as: **a set of circumstances that reasonable observers would believe creates an undue risk that an individual's judgment or actions regarding a primary interest of the School will be inappropriately influenced by a secondary interest, financial or otherwise.**

Because conflicts of interest can harm both individual and institutional reputations, the School has adopted a two-part policy to govern potential conflicts of interest. The first part of the policy is preventative. The educational and research activities of the School should be motivated by an objective concern for the advancement of knowledge. Accordingly, faculty members should not permit outside activities and/or financial holdings to compromise their independence, objectivity, or judgment. They should also refrain from actions that could discredit their scholarly or other University-related work, and should avoid activities where the prospect of personal gain could inappropriately influence their actions or judgment. The second part of the policy is a requirement to disclose outside

activities and financial holdings as a way to promote transparency and, as a result, to enhance the public's trust in the independent and objective nature of our scholarship. Public disclosure of relevant outside activities and financial interests helps consumers of the relevant work (i.e., readers and listeners) to identify potential conflicts and interpret work products with appropriate care. In the end, greater transparency should enhance the credibility and impact of our scholarly work. Consistent with University policies, HBS requires *disclosure* of all potential conflicts through public and/or private mechanisms as described below. Although disclosure does not resolve a potential conflict of interest, it is a critical step in limiting the impact of such a conflict. A more complete response may require management or elimination of a potential conflict (see the section below on ***Policy Implementation and Oversight***). For this reason, faculty members should inform relevant organizations of the School's disclosure policy and consider whether a particular engagement has the potential to create a conflict of interest before agreeing to participate in an outside activity or to acquire a material financial holding in a company.

Public Disclosure

Requirements

As of July 1, 2012, faculty members are required to disclose publicly all paid and unpaid outside activities, sources of external funding, and material financial holdings that are directly related to a work product that is available to the public. For purposes of clarity, the following definitions apply:

? *outside activities* refers to activities such as speaking engagements, teaching, consulting, or other advisory work done outside of Harvard University. It also includes executive teaching assignments done through HBS for incremental compensation;

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? *sources of external funding* includes but is not limited to sponsored research or the reimbursement of travel or other research-related expenses;
? *material financial holdings* include direct ownership of stock, debt obligations, derivative instruments, or other financial instruments (including intellectual property, patents, copyrights, and licenses) with a market value greater than \$10,000. When market values are not readily determined, investments totaling more than \$10,000 are considered *material*;
? *work product* includes but is not limited to written documents (including HBS cases, teaching notes, and subject notes), electronic publications and communications (e.g., blogs but not email correspondence), oral communications (in person or by video), and Harvard classes;
? *directly related* means the work product mentions or refers to a person, organization, or company from which a faculty member has derived income for services or had a significant *pro bono* involvement in the prior three years, or had a material financial holding in the prior year.² To the extent a work product refers to a subject, competing firm or organization, or an industry that is related to an outside activity or a material financial holding, faculty members face a judgment call on the question of "relatedness."
To facilitate this determination, a "related" person, organization, or company is defined as one whose policies, stated objectives, or financial interests are, or could reasonably be, affected by the work product. In these instances, faculty members should disclose the related activity or financial holding particularly if the work product is intended to inform or shape public policy. If in doubt, faculty members should seek advice from the Dean's Office to resolve questions of relatedness.³
? *available to the public* means all teaching and speaking engagements (inside or outside of Harvard University) and all work products—including working papers, case drafts, and seminars—available to other people whether inside or outside of Harvard University.

Although the exact placement and wording of the disclosure is left to the faculty member's discretion, the disclosure statement should be readily observable and should include the organization's name (the ultimate beneficiary in the case of an intermediary such as a consulting firm), the nature of the activity, and the dates of service in the case of relevant outside activities, and a statement regarding the entity's name and the existence of a material financial holding in the case of financial holdings. If a signed confidentiality agreement precludes certain disclosures, the faculty member must acknowledge the existence of the agreement and provide as much information as permissible under the agreement. The public disclosure requirement applies to all faculty members, including retired or emeritus

faculty members and people with fractional appointments, as well as any co-authors or

² The 3-year and 1-year horizons shall be determined based on when the work product becomes available to the public, and shall remain on the work product forever.

³ To guide disclosure decisions, faculty members are encouraged to apply the "reasonable reader/listener" test as paraphrased from the International Committee of Medical Journal Editors: report other relationships or activities that a reasonable reader could perceive to have influenced, or that give the appearance of potentially influencing, the submitted work.

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collaborators even if they are not employed by HBS in which case the HBS faculty member should take reasonable steps to ensure compliance on joint work. Should a faculty member's spouse, partner, or dependent child have a related activity or a material financial holding (either individually or collectively), this fact should also be disclosed by the faculty member. Visiting professors and visiting scholars with appointments lasting six months or more, and all people with teaching appointments, must also comply with this policy. Faculty members are also required to disclose publicly all outside

activities and material financial holdings that pertain to University-related activities such as teaching, mentoring, advising, or serving on committees. These disclosures should be done orally or, to the extent possible, in writing before engaging in the relevant activity.

Comprehensive

Internal

Reporting

(Confidential)

In addition to the public disclosure requirements, and consistent with current policy, faculty members must file and update comprehensive reports with the Dean's Office in which they disclose all outside activities, including those subject to confidentiality agreements, as well as all related and material financial holdings (i.e., financial holdings related to specific work products or University activities) and external funding sources. These reports will be updated annually and at the commencement of a new outside activity, the acquisition of a material financial holding, or the receipt of a new external funding source; will be reviewed by the Dean's Office and, if required, by Harvard University officials; and will be kept confidential.

Policy

Implementation

and

Oversight

The Dean's Office is responsible for implementing, monitoring, and enforcing this policy. As part of this obligation, the Dean's Office will review all faculty members on a periodic basis to ensure compliance with the public disclosure and internal reporting requirements, and to ensure specific conflicts have been identified, managed, and/or eliminated. In disputed cases, the Dean bears ultimate responsibility for determining if a conflict exists, if a management plan is sufficient to address an existing or potential conflict, and if a faculty member should terminate a conflicted activity.

The Dean may appoint or designate a Conflicts of Interest Officer (COIO) to assist with implementation, to advise faculty on specific interpretation and implementation issues, and to monitor compliance. The Dean's Office and the COIO are available to advise faculty on the management of existing or potential conflicts as well as the

process for complying with this policy. The Dean will also appoint a COI Committee to provide advice on general policy and implementation issues. This committee will review the COI Policy annually and bring it to the Faculty for review and re-approval within three years.

Reviewed by the HBS faculty on 30 May 2012 and approved by Harvard University Conflict of Interest Standing Committee on 16 July 2012

From: John Hechinger (BLOOMBERG/ NEWSROOM:)
[mailto:jhechinger@bloomberg.net]
Sent: Tuesday, February 04, 2014 12:29 PM
To: Aisner, Jim
Subject: bloomerg

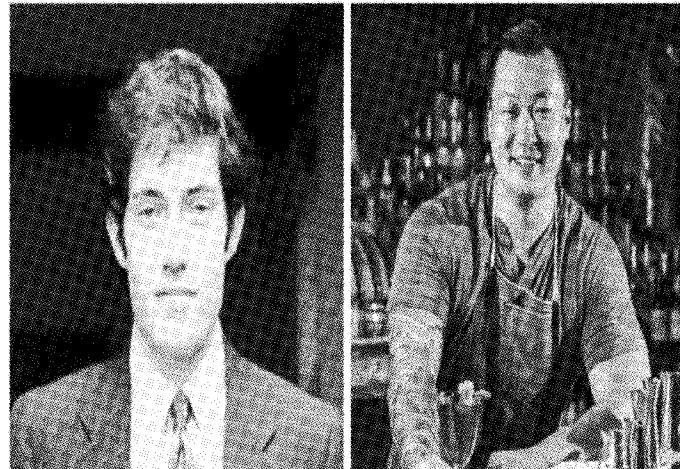
Hi Jim,

Were you ever able to get a copy of the HBS conflict-of-interest policy? Also, I realize I may owe you a link to blog I was asking about: <http://www.benedelman.org/>. It would be great if someone there could let me know HBS's thoughts.

Thanks,
John

John Hechinger
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Ben Edelman, Harvard Business School Professor, Goes to War Over \$4 Worth of Chinese Food



Ben Edelman (left) and Ran Duan (right)

By Hilary Sargent

Boston.com Staff | 12.09.14 | 3:28 PM

Ben Edelman is an associate professor at Harvard Business School, where he teaches in the Negotiation, Organizations & Markets unit.

Ran Duan manages The Baldwin Bar, located inside the Woburn location of Sichuan Garden, a Chinese restaurant founded by his parents.

RELATED LINKS

- [**Ben Edelman: 'I Am Sorry'**](#)
- [**Sichuan Garden 'Overwhelmed' by Outpouring of Support**](#)
- [**Who Is Ben Edelman, Sheriff of the \(Chinese Food\) Internet?**](#)
- [**Nothing Does More for a Small Business Than Being Attacked by a Harvard Business School Professor**](#)
- [**Harvard Business School Students: Ben Edelman Is Not Us**](#)

Last week, Edelman ordered what he thought was \$53.35 worth of Chinese food from Sichuan Garden's Brookline Village location.

Edelman soon came to the horrifying realization that he had been overcharged. By a total of \$4.

If you've ever wondered what happens when a Harvard Business School professor thinks a family-run Chinese restaurant screwed him out of \$4, you're about to find out.

(Hint: It involves invocation of the Massachusetts Consumer Protection Statute and multiple threats of legal action.)

From: Ben Edelman [REDACTED]
Sent: Friday, December 05, 2014 2:47 PM
To: Sichuan Garden [REDACTED]
Subject: Re: pricing accuracy question

I submitted the message below through your web site at <http://sichuangardenrestaurant.com/contact> but have not received a reply. Please advise:

Hi,

I ordered takeout from you this evening. Below are my notes on what I ordered, then the price quoted on your web site <http://sichuangardenrestaurant.com/cuisine>, then the price on the receipt. Could you clarify the differences?

It seems like an increase of \$1 on each and every item.

Shredded Chicken with Spicy Garlic Sauce 10.50 11.50

Sautéed Prawns with Roasted Chilli & Peanut 13.95 14.95

Stir Fried Chicken with Spicy Capsicum 12.95 13.95

Braised Fish Filets & Napa Cabbage with Roasted Chilli
15.95 16.95

Phone number on the order: [REDACTED] Receipt specifies
6:45pm #51.

From: Ran Duan [REDACTED]
Sent: Friday, December 05, 2014 3:04 PM
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

Hey Ben,

I apologize about the confusing. Our websites prices has been out of date for quite some time. I will make sure to update it, if you would like I can email you a updated menu

Sent from my iPhone

From: Ben Edelman [REDACTED]
Sent: Friday, December 05, 2014 3:18 PM
To: Ran Duan [REDACTED]
Subject: Re: pricing accuracy question

Thanks for the reply and for explaining what went wrong. We enjoyed the food, but we don't need to trouble you for an updated menu.

Under Massachusetts law it turns out to be a serious violation to advertise one price and charge a different price. I urge you to cease this practice immediately. If you don't know how to update your web site, you could remove the web site altogether until you are able to correct the error.

In the interim, I suggest that Sichuan Garden refund me three times the amount of the overcharge. The tripling reflects the approach provided under the Massachusetts consumer protection statute, MGL 93a, wherein consumers broadly receive triple damages for certain intentional violations.

Please refund the \$12 to my credit card. Or you could mail a check for \$12 to my home:

Ben Edelman
[REDACTED]

From: Ran Duan [REDACTED]
Sent: Friday, December 05, 2014 5:27 PM
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

Thank you for understand, this situation.

We are a mom and pop restaurant and we pride our selves on hard work and authentic Sichuan cuisine

I will honor the website price and honor you the \$2.00

Let me know if that works for you

From: Ben Edelman [REDACTED]
Sent: Saturday, December 06, 2014 9:33 AM
To: Ran Duan [REDACTED]
Subject: Re: pricing accuracy question

Your restaurant overcharged me \$4, not \$3.

It strikes me that merely providing a refund to a single customer would be an exceptionally light sanction for the violation that has occurred. To wit, your restaurant overcharged all customers who viewed the web site and placed a telephone order – the standard and typical way to order takeout. You did so knowingly, knowing that your web site was out of date and that consumers would see it and rely on it. You allowed the problem to continue, in your own words, “for quite some time.” You don’t seem to recognize that this is a legal matter and calls for a more thoughtful and far-reaching resolution. Nor do you recognize the principle, well established in applicable laws, that when a business intentionally overcharges a customer, the business should suffer a penalty larger than the amount of the overcharge – a principle exactly intended to punish and deter violations.

I have already referred this matter to applicable authorities in order to attempt to compel your restaurant to identify all consumers affected and to provide refunds to all of them, or in any event to assure that an appropriate sanction is applied as provided by law. I’m most familiar with the applicable Boston authorities, and less so with the Brookline counterparts, but at least in Boston this is taken seriously, and

I understand that fines are common for price advertising violations.

I will accept whatever refund you elect to provide, be it \$4 or \$12, but I accept that refund without prejudice to my rights as provided by law.

From: Ran Duan [REDACTED]
Sent: Saturday, December 06, 2014 12:20 PM
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

Thank you for notifying the authorities, I will wait for the notice of authorities, and have them advise us on how to handle and resolve this situation best,

Once again I apologize about the confusion, we did not over charge you . We charges you standard fee which every customer is charged. I understand how frustrating it must be to go to sichuangardenrestaurant.com the website of our Woburn location. And then see a outdated menu. It was our error on not only making it clear on updated prices. I have contacted the company that designed our website and we will make sure to have a updated price within the next few days.

like I said I will honor the websites price which is a \$4 difference , you seek out \$12 which is fine. I have no problem paying that penalty and giving you proper compensation. once the authorizes notify me on how to hand this situation best. I will provide all fines. I just want to make sure we go through the proper channels now since this is active case.

I will keep you updated on this situation and our websites status so you know know we are doing our best to resolve this situation and to make sure this doesn't happen again.

Thank you

From: Ran Duan [REDACTED]
Sent: Saturday, December 06, 2014 1:14 PM
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

So I just got off the phone with the website design company, they took off our current menu to update. I figured i would reach out and show you the steps we are doing to resolve this

I also reach out to a professional on legal advise, They advised me based on the disclaimer on the website on price variants on locations which has been there since the conception of our website . we are covered and protected and should not comply to your request.

From: Ben Edelman [REDACTED]
Sent: Saturday, December 06, 2014 3:55 PM
To: Ran Duan [REDACTED]
Subject: Re: pricing accuracy question

Are you represented by an attorney in connection with this matter W? If so, as an attorney, I am bound by Massachusetts attorney ethics rules to communicate only with that attorney and not with you. In that case, please provide me with the name, address, and email of the attorney, and I will proceed accordingly.

I dispute that there is any disclaimer a company may lawfully put on a web site that allows the company to knowingly and for an extended period advertise prices lower than the prices it actually charges.

From: Ran Duan [REDACTED]
Sent: Saturday, December 06, 2014 4:36 PM
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

Our website states that "price subject to change based on location" highlighted in a read box . You went to our Woburn restaurants website a completely different location different menus, diffent management. different owner structures. That I have no control. The Brookline location has its own website sichuangardenbrookline.com granted it has been down for quite some time. I do not manage or control that location or policy's

Our restaurant prides it self on quality food and we work hard to deliver that standard. We are a mom a pop restaurant, we work hard to make a honest living and we do not rip people off. We do not have a proper budget for media, website updates / all the bells that most chain and high end restaurants have.

I have told you exactly how I am going to resolve this situation and have already acted by fixing our website and by honoring the website prices, unfortunately that wasn't good enough and you notified the authorities so this is out of my hands now. I can only wait for them to see how we can get this resolved.

Like I said, I apologize for the confusion, you seem like a smart man, But is this really worth your time?

If you choose to take any legal actions please feel free to mail all documents to our Woburn location at 2 Alfred st Woburn ma 01801, I will then hire the right legal team to handle and resolve this situation

From: Ben Edelman [REDACTED]
Sent: Sunday, December 07, 2014 2:23 PM
To: Ran Duan [REDACTED]
Subject: Re: pricing accuracy question

I disagree that the menu I reviewed in any way indicated it was for Woburn only. I kept a screenshot. It just doesn't say that. Quite the contrary, the page plainly gives both the Woburn and Brookline locations and addresses, right on the bottom of the page -- information that's still there even with your "currently updating" revision. The fact is, I was looking at the right page -- a page that purported to be a menu and price list for your location.

Consistent with my claim that I was looking at the right page, you might reread our full email discussion. Your initial messages in this thread exactly admitted that the website was incorrect and, of course, that I was looking at the right page. Friday: "Our websites prices has been out of date for quite some time." "I will honor the website price." Saturday: "So I just got off the phone with the website design company, they took off our current menu to update." "...the disclaimer on the web site..." None of these statements gave any suggestion that there are multiple web sites or that I was not looking at the right site or right page. You came up with that theory later.

Notwithstanding the disclaimer "Menu and Prices may vary by location," you'll find that restaurants can't advertise one price and systematically -- by your own admission "for some time" -- charge higher prices. "May vary" might excuse certain small changes or deviations, with the web site updated as soon as possible. Increasing the price of each and every item, and not updating the site for a long period -- that just won't fly. I count myself fortunate to live in a state that deems that practice unlawful.

You're right that I have better things to do. If you had responded appropriately to my initial message -- providing the refund I requested with a genuine and forthright apology -- that could have been the end of it. I would have counted on your honesty to correct the web site and to notify other affected customers. Instead, you're making up excuses such as the remarkable but plainly false suggestion that I was on the wrong web site. The more you try to claim your restaurant was not at fault, the more determined I am to seek a greater sanction against you.

I still think the right resolution on your part is to a refund to me in more than the amount by which I was

overcharged. On reflection, I suggest making my order half-price -- that's appropriate thanks for my bringing this matter to your attention, since it seems you wouldn't have recognized the urgency of correcting the web site had I not pushed you to do so. When appropriate authorities ask you about this, I'm sure they'll be pleased to see that you have provided generous more-than-refunds to all customers who flagged the problem.

From: Ran Duan [REDACTED]
Date: December 7, 2014 at 2:48:34 PM EST
To: Ben Edelman [REDACTED]
Subject: Re: pricing accuracy question

Once again thank you for bringing it to my attention, I will wait for proper authorities to direct me on how to resolve this situation, Once they direct me on how to resolve this situation with you, we will be able to honor the price that they advise me on, I will make a note that you seek out 50% off your total meal bill. I have no issues with honoring 50% off your total bill if the authorities see fit. I hope you understand I want to go through the proper channels so we can resolve this properly.

I will keep you updated as soon as they contact me

Surprised yet? We were, too.

In addition to teaching at HBS, Edelman also operates a consulting practice where he advises clients like Microsoft, the NFL, the New York Times, and Universal Music on "preventing and detecting online fraud (especially advertising fraud)." (That's from Edelman's own website, which it seems safe to presume is always kept up to date.)

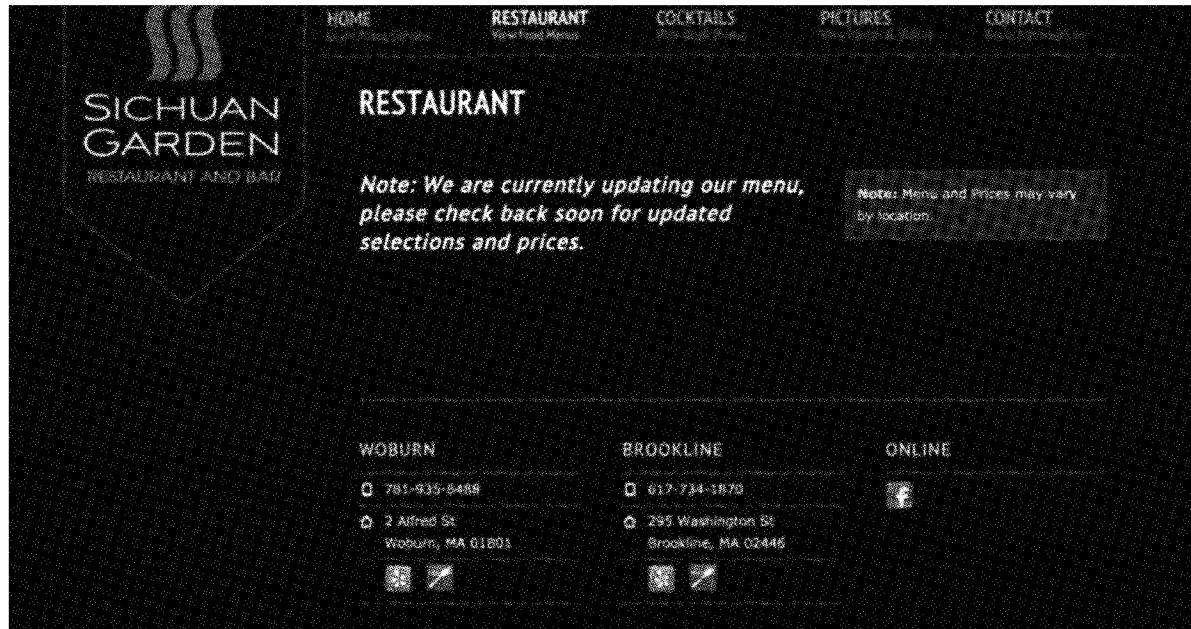
He graduated summa cum laude from Harvard College. He has a Ph.D. in economics from Harvard University, and a law degree from Harvard Law School.

Ran Duan moved to the U.S. from China when he was 3-years-old. His father had hoped to support the family with a career as an opera singer, but

when that didn't pan out, Duan says "like all Chinese families we decided to open up a restaurant."

Sichuan Garden opened its doors in Brookline in the early 1990s. A second location followed in Woburn.

Despite the restaurant's successful expansion, Duan admitted that Sichuan does not have the budget for teams devoted to public relations or a website that is updated as regularly as it should be.



Screenshot of Sichuan Garden's website as of December 9.

"I personally respond to every complaint and try to handle every situation personally," said Duan, who was profiled by Boston Magazine in June and featured in GQ Magazine last month as "America's Most Imaginative Bartender."

The exchange with Edelman stood out to Duan. "I have worked so hard to make my family proud and to elevate our business. It just broke my heart."

Edelman told Boston.com that investigating pricing discrepancies by neighborhood restaurants isn't something he does every day.

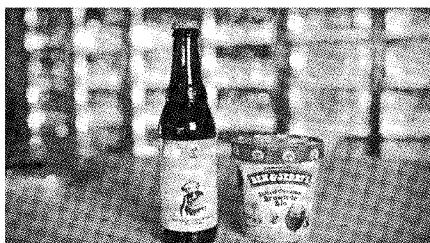
"I mostly look for malfeasance by larger companies," he said. "It certainly seems like a situation that could call for legal redress. But this is a small

business in the town where I reside."

As for the troves of angry customers likely looking for recourse? Edelman pointed Boston.com to Massachusetts General Law, Section XV, Chapter 93A, Section 9. (Translation: If you didn't pass the Massachusetts bar, but still feel as though you must do SOMETHING, then just gather all the receipts you've saved, along with all screenshots you took and saved of the website menu in case that dinner order ever ended up in court, find a lawyer whose fees aren't likely to exceed the few dollars you're seeking, and ... voila?)

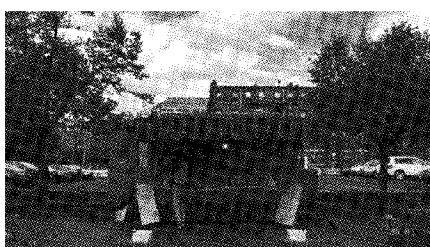
As for Edelman, he alerted town officials in Brookline about the matter, but told Boston.com he doesn't expect them to take action. He plans to "take a few days" before deciding whether to pursue any further legal action against the restaurant.

Oh and the food? Edelman admitted: "It was delicious."



Ben & Jerry's now has beer, ice cream, AND beer-flavored ice cream
10.22.15 | 12:37 PM

Getting ready for Halloween with Tito's 10.22.15 | 12:19 PM



11 restaurants to try near BU 10.22.15 | 11:28 AM

From an alumnus, 12/10/04 at 1:01am:

I'm sure the coverage today on [boston.com](http://www.boston.com/food-dining/restaurants/2014/12/09/harvard-business-school-professor-goes-war-over-worth-chinese-food/KfMaEhab6uUY1COCnTbrXP/story.html) has already triggered quite a bit of activity at HBS:
<http://www.boston.com/food-dining/restaurants/2014/12/09/harvard-business-school-professor-goes-war-over-worth-chinese-food/KfMaEhab6uUY1COCnTbrXP/story.html>

If it isn't obvious, this type of behavior is truly embarrassing for me, as an alumnus and as someone who is proud of Harvard Business School.

I'm sure this is being handled appropriately, but I wanted to make sure to note that this type of behavior is damaging nationally. Worse, the faculty member in question is now on the record defending his actions, rather than apologizing.

<http://www.businessinsider.com/ben-edelman-defends-his-decision-to-fight-restaurant-overcharge-2014-12>

It likely goes without saying, but as a faculty member, Ben Edelman represents both the school, and to an extent, the alumni who attended the school. Not only do I lack confidence that he will represent us collectively well in the future, his lack of judgement, both in the heat of the moment as well as in follow on communication indicates that he is likely unsuitable for a leadership position. This behavior is bullying, masked in a thin guise of pseudo-legal rhetoric. I shudder to think at his behavior under the secure protection of tenure.

I know these issues are tough to deal with, and I trust you'll forward this communication to the appropriate committee or review board.

Adjunct faculty member, University of Toronto, 12/10/14, 9:14am

I am sure you have received quite a few emails with regards to the recent media interest in Ben Edelman's recent discussion with a local restaurant around a \$4 overcharge. Not notwithstanding the inherent discriminatory undertones that arise from the unequal nature of the exchange in terms of written English, the significant abuse of knowledge combined with an utter lack of civility and compassion for the less fortunate leaves a particularly bitter taste in my mouth.

For reference: <http://time.com/3627282/harvard-professor-chinese-takeout-ben-edelman/>

As a junior faculty at another institution, I feel such behaviour would not be deemed appropriate by my senior faculty and supervisors. I understand in my work that there is a level of decorum and that I have a responsibility to represent my faculty and university at the very highest level in all my interactions both personally and professionally. In particular, our privilege at being faculty instills upon us a sense of civic responsibility and consciousness in dealing with our community, particularly with those less fortunate than ourselves.

I am certain that a school such as HBS shares the same view of its faculty members and am writing to you to urge sanction and discipline on the part of Professor Edelman. His documented behaviour is unbecoming and falls well below the level I would expect of a fellow academic, and for that, there should be consequences commensurate to the deed.

I would love a reply to learn a bit more about your discipline process and measures that you will be taking, but do not expect one as I imagine you are busy and bound by internal confidences. That said, I will close by saying my view of HBS has been severely tarnished based on Professor Edelman's actions; this change is by no means irrevocable, but would only be re-mediated by seeing your school do the right thing in this situation.

In any event, please accept my most sincere professional regards.

(<http://bostinno.streetwise.co>)

HBS Students Are Fighting Against the Negative Stereotypes Reinforced by a Professor

And they're doing it \$4 at a time.

(<http://bostinno.streetwise.co/author/laurlandry/>)
(<http://bostinno.streetwise.co/author/laurlandry/>)
12/10/14 @9:34am in Education
(<http://bostinno.streetwise.co/community/edu/>)

13.9K

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Harvard Business School's reputation took a hit Tuesday after Boston.com (http://www.boston.com/food/dining/restaurants/2014/12/09/harvard-business-school-professor-goes-war-over-worth-chinese-food/K1MAEhab6uUY1COCnTbrXP/story.html) published an article about a professor who engaged in a long-winded war with a family-owned Chinese restaurant over a mere \$4. <http://twitter.com/intent/tweet?url=http://www.boston.com/food/dining/restaurants/2014/12/09/harvard-business-school-professor-goes-war-over-worth-chinese-food/K1MAEhab6uUY1COCnTbrXP/story.html&text=HBS+Students+Are+Fighting+Against+the+Negative+Stereotypes+Reinf>

This tweet by Jeffrey Toobin, who's a staff writer at *The New Yorker* (<http://www.newyorker.com/contributors/jeffrey-toobin>) and the senior legal analyst for CNN (<http://www.cnn.com/>), says it all:



Jeffrey Toobin
@JeffreyToobin

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Ben Edelman, Harvard Business School Professor Goes to War Over \$4 Worth of Chinese Food

Ben Edelman, Harvard Business School Professor Goes to War Over \$4 Worth of Chinese Food

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But Harvard students don't want the world to hate Harvard, which is why MBA candidate Jon Staff launched a fundraiser to help fight hunger (<https://fundrazr.com/campaigns/budBf/sh/c4IWI4>).

"Negative stereotypes of Harvard and HBS were reinforced by an article in Boston.com today that revealed an HBS professor's disrespectful treatment of a local business owner over a discrepancy of \$4 for Chinese [food]," reads the fundraiser. "In accordance with our community values, we are calling on Harvard students to flip the script by donating \$4 to provide food for those in need."

The HBS professor in question is Ben Edelman, who, in addition to teaching at the School, runs a consulting business focused on "preventing and detecting online fraud (especially advertising fraud)," per his website (<http://www.benedelman.org/bio/>). His client list includes the NFL, the *Washington Post*, Universal Music Group and the City of Los Angeles.

(Update: Edelman has issued an apology, which can be found here (<http://bostinno.streetwise.co/2014/12/10/apology-to-sichuan-garden-from-harvard-business-school-professor-ben-edelman/>)).

The debacle started after Edelman realized Sichuan Garden's (<http://www.sichuangardenbrookline.com/>) Brookline location charged him \$4 more than expected based on the restaurant's website prices. Ran Duan, who manages The Baldwin Bar in Sichuan Garden, which is owned by his parents, responded to Edelman via email, saying the website prices had been out of date, but would be updated as soon as possible.

The conversation went from there, with Edelman referencing the Massachusetts Consumer Protection Statute and threatening legal action. Duan remained calm, eventually responding:

I have told you exactly how I am going to resolve this situation and have already acted by fixing our website and by honoring the website prices, unfortunately that wasn't good enough and you notified the authorities so this is out of my hands now. I can only wait for them to see how we can get this resolved.

The email correspondence (<http://www.boston.com/food-dining/restaurants/2014/12/09/harvard-business-school-professor-goes-war-over-worth-chinese-food/KfMaEhab6uUY1COCnTbrXP/story.html>) is lengthy, and clearly hit a nerve with the HBS community. Forty dollars were raised in the fundraiser's first five minutes. At the time of publication, \$278 had been raised.

Proceeds will benefit The Greater Boston Food Bank (<http://www.gfb.org/>), which will match all donations received before December 31.

Edelman could not be immediately reached for comment.

Image via Fundrazr.com (<https://fundrazr.com/campaigns/budBf/sh/c4IWI4>)

Read More:

Brookline (<http://bostinno.streetwise.co/topic/brookline/>), Fundraiser (<http://bostinno.streetwise.co/topic/fundraiser/>), Harvard (<http://bostinno.streetwise.co/topic/harvard/>), Harvard Business School (<http://bostinno.streetwise.co/topic/harvard-business-school/>), News (<http://bostinno.streetwise.co/topic/news/>)

Thursday, October 22, 2015 2:33:15 PM Eastern Daylight Time

Subject: Re: draft

Date: Wednesday, December 10, 2014 4:15:29 PM Eastern Standard Time
From: Kenny, Brian
To: Malhotra, Deepak
CC: Hall, Brian, Edelman, Benjamin, Cunningham, Jean

Good advice. Thanks for other information Ben. It's helpful to have that context. Let me know when this is posted and send a link. [Boston.com](#) has you as the lead article right now so if you send them the same message they will surely post it. You will likely be called for interviews but I would let the statement stand for itself for now.

Thanks, Brian

Brian C. Kenny
Chief Marketing and Communications Officer

Harvard Business School
Cotting House 103
Soldiers Field
Boston, MA 02163
T 1.617.495.6336
F 1.617.496.8180
E bkenny@hbs.edu

On Dec 10, 2014, at 4:12 PM, "Malhotra, Deepak" <dmalhotra@hbs.edu> wrote:

One other thought... if your apology to Ran is genuine please make sure you make it sound that way as well on the phone to him. Be honest, but As always with genuine apologies, it is better not to hedge or put caveats etc. When he speaks to the media after you call him what will he say? Especially given he is unlikely to be positively biased, how will he remember and report what you did and did not today? Will he be able to say "ben called me and gave me a genuine apology and I accept"? could he be even more positive than that? Keep that in mind.

Prof. Deepak Malhotra
Harvard Business School
www.DeepakMalhotra.com
Twitter: www.Twitter.com/Prof_Malhotra

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

From: "Hall, Brian" <bhall@hbs.edu>
Date: 12/10/2014 4:07 PM (GMT-05:00)
To: "Edelman, Benjamin" <bedelman@hbs.edu>, "Kenny, Brian" <bkenny@hbs.edu>
Cc: "Malhotra, Deepak" <dmalhotra@hbs.edu>, "Cunningham, Jean" <jcunningham@hbs.edu>
Subject: Re: draft

Ben,

Thanks. Very helpful. I think you should go ahead and send it and also email Ran (and call him if you can reach him).

With regard to the apology to the community, that is of course your choice. And it sounds like the Dean's office prefers that, if you write something, it should come from you directly rather than via Nitin. Which I get, this is not his apology but yours. But if it were me, I would definitely do it. Lot of people here in the HBS community are angry and mad and feel that they have been injured in some way (even the time alone spent on it is a lot) and so I think that a simple apology would go a long way and is the right thing to do.

Either way, I think the public apology to Ran is great.

Happy to talk.

Best,

Brian

Brian J. Hall

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NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: <Edelman>, Ben Edelman <bedelman@hbs.edu>

Date: Wednesday, December 10, 2014 at 3:54 PM

To: Brian Kenny <bkenny@hbs.edu>

Cc: Brian Hall <bhall@hbs.edu>, Deepak Malhotra <dmalhotra@hbs.edu>, Jean Cunningham <jcunningham@hbs.edu>

Subject: RE: draft

Brian,

Here's the (proposed) final text:

Having reflected on my interaction with Ran Duan, including what I said and how I said it, it's clear that I was very much out of line. I aspire to act with great respect and humility in dealing with others, no matter what the situation. Clearly I failed to do so. I am sorry, and I intend to do better in the future.

I have reached out to Ran and will apologize to him personally as well.

Happy to distribute in the way you now propose. It will take me a moment to get it onto my web site – but soon, maybe ~15 minutes.

I haven't yet sent this to the [Boston.com](#) reporter or anyone else. I also have a request from the Harbus but will hold off replying to them until this is ready.

I've had quite a few such discussions over the years. Found most Marriott UK hotels overcharging most US customers by 6% two years ago (nonconsensual currency conversion fee without customer opt-in as required by card network rules). Last month I found Lyft charging a "Massport fee" (by all indications retained by Lyft, not paid to Massport) for all pickups from Logan, as well as overstating toll fees. Usually I'm looking at big companies and manage to get in touch with their general counsels. Certainly there are instances as to smaller companies or sole proprietors – I remember a California taxi charging an unlawful credit card surcharge a decade ago. (That one I referred directly to the regional taxi commissioner, no correspondence with the driver or company.) Then there are the various adware companies I put out of business, ad fraud perpetrators, two people in jail at this moment and one released some years ago, etc. I don't think it's out of the question that someone would find and surface such an email thread. That said, this one was unusual in that my tone got out of line (for which I have little explanation) and we were unable to reach a resolution (whereas in general I think I manage to help the company come around to fixing things appropriately).

Ben

From: Kenny, Brian
Sent: Wednesday, December 10, 2014 3:51 PM
To: Hall, Brian
Cc: Edelman, Benjamin; Malhotra, Deepak; Cunningham, Jean
Subject: Re: draft

Thanks for providing more context. I spoke with Jean and we agree that rather than having Nitin send this out, it may be better to use less formal channels. AOM can make staff aware of it. MBA can, in whatever way they deem appropriate (assuming they feel it's appropriate) let students know. Ben you may consider reaching out in whatever way you feel is appropriate to your faculty colleagues. So informal channels of communication all around.

Ben please let me know when you've posted this and send a link.

THanks, Brian

Brian C. Kenny
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E bkenny@hbs.edu

On Dec 10, 2014, at 3:34 PM, "Hall, Brian" <bhall@hbs.edu> wrote:

Hi Ben,

Deepak just left. I like your rewrite and I suggest going with it with one exception: I would add "very" to sorry. Assuming you are very sorry, it sets a really humble tone and that is what is most missing in your email exchange with Ran.

With regards to the suggestion by Brian Kenny, this has totally blown up in the Dean's office to the point where folks are so angry that it would be almost bizarre for the dean not to make a statement to the community about it. So it is so much better if the Dean can simply point to your public apology, noting that you asked him to share it.

Unfortunately, and not your intention, but everyone in the HBS community will have received messages about this from others. I can forward to you some of the ones sent to me. So silence to the community isn't really an option. It would be ignoring the elephant in the room that says "What are you going to do about the fact that HBS looks like an abusive institution?" So I agree with Brian that having you do a handoff to Nitin addresses it. When someone is sorry and they take full responsibility, that is what everyone is looking for in such a case. Since you are sorry, then it can only help both you and HBS (and the larger community of people who are angry with you).

Sorry for being so blunt but just trying to give the advice that I think is most helpful.

Best,

Brian

PS Call if you like.

Brian J. Hall

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<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: <Edelman>, Ben Edelman <bedelman@hbs.edu>

Date: Wednesday, December 10, 2014 at 3:25 PM

To: Deepak Malhotra <dmalhotra@hbs.edu>, Brian Hall <bhall@hbs.edu>

Subject: RE: draft

Got your resend. Thanks. My prior draft:

Having reflected on my interaction with Ran Duan, including what I said and how I said it, it's clear that I was very much out of line. I aspire to act with great respect

and humility in dealing with others, no matter what the situation. Clearly, I did not do so, and I am sorry for that.

I have reached out to Ran and will apologize to him personally as well.

Your proposal:

Having reflected on my interaction with Ran Duan, including what I said and how I said it, it's clear that I was very much out of line. I aspire to act with great respect and humility in dealing with others, no matter what the situation. Clearly, as my behavior showed, I failed to do so. I am sorry, and I intend to do better in the future.

I have reached out to Ran and will apologize to him personally as well.

My revision:

Having reflected on my interaction with Ran Duan, including what I said and how I said it, it's clear that I was very much out of line. I aspire to act with great respect and humility in dealing with others, no matter what the situation. Clearly I failed to do so. I am sorry, and I intend to do better in the future.

I have reached out to Ran and will apologize to him personally as well.

(Rationale: "As my behavior showed" doesn't add anything.)

Brian Kenny suggested that I ask the dean to send it to the whole community. That seemed a bit much to me – I was thinking I'd post to my web site and email to the reporter who wrote the piece on [Boston.com](#). Views?

From: Hall, Brian
Sent: Wednesday, December 10, 2014 1:21 PM
To: Malhotra, Deepak; Edelman, Benjamin
Subject: Re: draft

I like it but it needs to be followed, in my view, by the I am sorry or I am deeply sorry or something that you(Ben) are comfortable with. This is important. The Dean's office and admissions office and alumni office and the faculty are all being inundated with angry emails about the arrogance and the bullying tone of the exchange. This is a good time to muster all the humility and "I am sorry" that you have. Sorry for being so strong on this but this is an email that will be read by many many people and be with you for a long time.

Brian J. Hall

Albert H. Gordon Professor of Business Administration, Harvard Business School
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Email: bhall@hbs.edu

NOM website:

<http://www.hbs.edu/faculty/units/nom>

Assistant: Elizabeth Sweeny

Email: esweeny@hbs.edu

Office: (617) 495-6039

From: <Malhotra>, Deepak Malhotra <dmalhotra@hbs.edu>

Date: Wednesday, December 10, 2014 at 1:15 PM

To: Brian Hall <bhall@hbs.edu>, Ben Edelman <bedelman@hbs.edu>

Subject: RE: draft

Yes... also, the words "I am sorry" has to be in it.

Prof. Deepak Malhotra

Harvard Business School

www.DeepakMalhotra.com

Twitter: www.Twitter.com/Prof_Malhotra

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

From: "Hall, Brian" <bhall@hbs.edu>

Date: 12/10/2014 1:13 PM (GMT-05:00)

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

Cc: "Malhotra, Deepak" <dmalhotra@hbs.edu>

Subject: Re: draft

I don't like it. It isn't strong enough. The second part needs to be a clearer apology. I like Deepak's much much better and this is important. For you and for the school and for the world. If the wordiness is too much OK, but then I think you need to add something like. "And I failed miserably at doing this and I am deeply sorry for that." or something to that effect. Others (Deepak and I and anyone else you want to bring in) will be MUCH BETTER at understanding how this will be read by the world, so I hope you won't press send without checking in.

Brian J. Hall

Albert H. Gordon Professor of Business Administration, Harvard Business School

Unit Head, Negotiation, Organizations and Markets

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NOM website:

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Assistant: Elizabeth Sweeny
Email: esweeny@hbs.edu
Office: (617) 495-6039

From: <Edelman>, Ben Edelman <bedelman@hbs.edu>
Date: Wednesday, December 10, 2014 at 1:02 PM
To: Brian Hall <bhall@hbs.edu>
Cc: Deepak Malhotra <dmalhotra@hbs.edu>
Subject: RE: draft

> the part about attacking publicly sounds to us like it is a bit of a hedge.....where no hedge is appropriate

OK. Agreed. Your new second sentence doesn't quite work for me – too many clauses and too wordy. Pls speak up asap if you object to the revision below.

I'll be checking with Brian Kenny re proposed method for release.

Having reflected on my interaction with Ran Duan, including what I said and how I said it, it's clear that I was very much out of line. I aspire to act with great respect and humility in dealing with others, no matter what the situation.

I have reached out to Ran and will apologize to him personally as well.

To: restaurant
Subj: Ben Edelman apology

Hi Ran,

I want to call and personally apologize for how I approached my interaction with you. Can we set up a time to talk? What number should I call?

Thanks,

Ben Edelman

Thursday, October 22, 2015 2:36:18 PM Eastern Daylight Time

Subject: FW: Edelman Classroom Screen size - Your help request INC0027993 has new comments.

Date: Wednesday, January 21, 2015 7:27:09 PM Eastern Standard Time
From: Gallagher, Stephen
To: Crispi, Angela, O'Brien, Andrew
CC: Cunningham, Jean, Porciello, Valerie, Dewey, Brit

Angela and Andy,

You may recall that we delayed the Aldrich projection upgrades to high definition for more than one year based on concerns raised by Ben Edelman. We then worked with Ops to determine that it would take \$1.9m to upgrade all of the screens and associated millwork to modestly increase the screen size.

We recently informed Ben that we were now proceeding with our original plan after piloting the new technology in Aldrich 209 and having received the green light from the new Academic Technology Steering Committee. As you can see from the request below, Ben is now requesting that we work with Ops to increase the screens in one room just for him. He has also thoroughly detailed his rationale.

My inclination is to simply say no to Prof. Edelman, but I want to put it before you first.

-Steve

Additional comments

Kate,

I'm considering submitting a request for increase in screen size for a single classroom, where I'd teach my EC course in future years.

Could you give me a sense of the increased screen sizes that were determined to be feasible (albeit costly) in the proposal previously prepared? What size projection surfaces would have resulted from that proposal? Ideally I'd like to compare those sizes to what is currently in place (4:3) and what we'll have with the impending move to 16:10 with reduced screen height. This will let me assess the benefits of the proposal. If the proposal got as far as sketches or measurements, confirming that the larger screens would fill the front-of-room space to the utmost, I'd like to review those also.

Then there's the question of downsides of the proposal. Clearly cost is one important downside, but if we're changing only a single room, where we know the larger screens will be used intensively (by me; and maybe eventually by others who care about screen size and would request that room for their own EC courses), the cost is less onerous. Stephen Gallagher told me that the anticipated cost, for all of Aldrich, was \$1.9 million. I believe that would have covered 16 classrooms. Since these are mostly costs for equipment (new screens) and cabinetry, rather than control systems, I'd expect costs to be proportional to the number of rooms modified. Does \$120k (roughly \$1.9m divided by 16) seem about right for cost for one room?

A second possible concern is inconsistency across rooms. In general it's very handy that rooms are largely identical. Would larger screens, in a single room, cause an important inconsistency harmful to instructors, students, or Media Services? My instinct is no – that faculty would prepare content in the same format (16:10), that control systems would be identical, that no one would be affected adversely. If I'm missing some adverse effects, I'd want to know about those problems before submitting this request.

Page 1 of 4

Finally, what would be the timing for considering this request? \$120k is still significant, so it might need to be included in a budget for the upcoming fiscal year.

Incidentally it strikes me that there are several ways to proceed within the general framework of enlarging and widening screens. Broadly, the center screen could be widened, the side screens could be widened, or both. My instinct is to focus on the side screens, where I've felt most squeezed. Perhaps the center screen could remain as is, avoiding the cost of replacing it and its cabinet. That said, if we are to keep the same projector mounts in the same places (avoiding cost in moving projector mounts and redoing ceiling panels), the centerlines of the screens probably have to stay as is, which may add some constraints. Lots of subtlety here. If you've thought about these issues and the various alternatives, I'd like to understand the details.

Thanks,

Ben

From: Edelman, Benjamin
Sent: Thursday, December 11, 2014 10:40 AM
To: 'HBS Information Technology'
Subject: RE: INC0027993 - RE: Classroom Projector Upgrades: Timeline Change

Fair enough. Thanks for these details, which are useful. I'm glad to hear the proposed plan enjoys such a broad consensus – if that's truly the case, I can't and won't stand in the way.

From: HBS Information Technology [<mailto:hbs@service-now.com>]
Sent: Thursday, December 11, 2014 9:44 AM
To: Edelman, Benjamin
Subject: INC0027993 - RE: Classroom Projector Upgrades: Timeline Change

Hello Professor,

I recognize that the loss of screen real estate is a concern of yours and I won't begin to assume that the benefits will win you over, but moving to widescreen offers higher-quality image projection (images will be brighter, crisper and in true HD resolution) and will also bring HBS up to date with current industry standards.

Currently "overthrowing" the center screen to re-create the 4:3 image does draw questions from users on the dimness and blurriness in projection quality. Alternatively being able to use the projectors at their native resolution has been a noticeable enhancement in a number of classrooms where it has been in place for some time, including the pilot being run in Aldrich 209 this term. We have received only positive feedback in these areas.

Your concerns have been taken very seriously throughout the decision process, and as you know the widescreen rollout project was paused to try and address them. While replacing the 4:3 screens with 16:10 might be "ideal", ultimately the proposal HBS IT and HBS Operations put together to refit the front of the classrooms was too costly and did not receive approval from the Dean's office.

At this month's Academic Technology Steering Committee (which was held in Aldrich 209 to draw additional feedback) the team agreed to move forward with the conversion this summer. That meeting included IT/DRFD/MBA/Doctoral senior leadership, as well as a number of faculty

members: Rawi Abdelal, Lynda Applegate, Willis Emmons and Felix Oberholzer. We will continue to be transparent and communicative with the community about the upcoming change, and will also offer training, how-to guides and hands-on support to convert 4:3 slides to widescreen format.

I do hope that you will find some benefit with the updated image quality despite the compromise in screen real estate.

Kate

Ref:MSG0110855

2014-12-11 10:42:55 EST - Benjamin Edelman
reply from: bedelman@hbs.edu

Additional comments

Fair enough. Thanks for these details, which are useful. I'm glad to hear the proposed plan enjoys such a broad consensus – if that's truly the case, I can't and won't stand in the way.

From: HBS Information Technology [<mailto:hbs@service-now.com>]
Sent: Thursday, December 11, 2014 9:44 AM
To: Edelman, Benjamin
Subject: INC0027993 - RE: Classroom Projector Upgrades: Timeline Change

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I do hope that you will find some benefit with the updated image quality despite the compromise in screen real estate.

Kate

Thursday, October 22, 2015 2:36:48 PM Eastern Daylight Time

Subject: FW: Classroom A/V upgrade request
Date: Thursday, February 12, 2015 1:11:17 PM Eastern Standard Time
From: Gallagher, Stephen
To: Crispi, Angela

Here is my last message to Ben.

From: Gallagher, Stephen
Sent: Thursday, February 12, 2015 10:12 AM
To: 'Edelman, Benjamin'
Subject: RE: Classroom A/V upgrade request

Ben,

I will further discuss this when I next meet with Angela Crispi; however, I don't want to give you a false sense of optimism. Note that both Felix and Rawi are on the Academic Steering Committee that approved moving forward. Your concerns were also discussed at that time.

Also, Office 2013 is planned to be deployed to faculty and staff this summer. The new default for PowerPoint is the wide aspect ratio.

-Steve

Thursday, October 22, 2015 2:37:09 PM Eastern Daylight Time

Subject: FW: Aldrich/Hawes Screens Update
Date: Monday, February 17, 2014 4:55:03 PM Eastern Standard Time
From: Gallagher, Stephen
To: Crispi, Angela
CC: Porciello, Valerie, Melnick, Richard, O'Brien, Andrew

FYI...

From: <Gallagher>, Stephen Gallagher <sgallagher@hbs.edu>
Date: Monday, February 17, 2014 3:52 PM
To: "Moon, Youngme" <ymoon@hbs.edu>
Subject: FW: Aldrich Screens Update

Youngme,
I share with you the below exchange between myself and Ben Edelman. You may recall that not long after I started last summer, Ben expressed concern regarding the transition to new higher resolution projectors and the migration to the standard HD aspect ratio of 16:10 in all of the classrooms. This transition resulted in the existing screens not dropping as low; however, the pixel density and brightness (i.e. visual clarity) were substantially enhanced. At the end of the day, I believe the viewing experience in the classrooms is substantially improved when these enhancements are fully implemented. We have only received positive feedback from those who have noticed the changes in the existing upgraded classrooms.

Ben did not agree that the loss of screen real estate was acceptable. Given his concerns, we agreed to "dumb-down" the projectors for one year (which was still an enhancement over the old projectors) and explore installing incrementally wider screens. As described below, this resulted in a \$1.9m capital request that was formulated by Ops and IT. Concurrent to this process, we have initiated a program to provide assistance to faculty and staff who (optionally) want to migrate 4:3 slides and content to 16:10. As I also describe below, Ex Ed opted to retain the new aspect ratio and fully HD projectors, and we've received no negative feedback.

I think (and hope) that Ben appreciates that we put some effort into addressing his request that we widen the existing screens. Since that is now unlikely, I just want to give you a heads-up on the status. The email thread below provides more details.

-Steve

From: <Gallagher>, Stephen Gallagher <sgallagher@hbs.edu>
Date: Monday, February 17, 2014 3:32 PM
To: "Edelman, Benjamin" <bedelman@hbs.edu>
Subject: Re: Aldrich Screens Update

Hi Ben,
I understand your concerns; however, we do need to conclude our migration off of a legacy aspect ratio. Note that Office 2013 defaults to the new ratio, and I am eager to roll our Office 2013 as soon as HBS application compatibility issues have been addressed. Executive Education also opted out of the interim solution we left in Aldrich during this year, and we've only received positive feedback given the higher quality of the projectors that allows for clearer views from the sky deck. For your info, the state of the screens across campus is listed below.

Ops and IT really did do some real prep work to pull together the capital request. As you can imagine, the wood work was indeed a substantial cost. There really is not a good way for us to create a

reasonable automated way for us to create a toggle option between the ratios and drop heights given the optics and software controlling the projectors.

I wish I had a better response for you.

-Steve

The rooms with 16:10

McCollum: 101, 102, 201, 202

Hawes: 301, 302, 303

Cumncock: 220, 230, 102, 103

Tata: 100, 200

Williams Room: A, B, C

Burden

Batten Hall: Lobby, classroom 122

The Taj Lands End classroom

Rooms with 16:9

Batten Hall – All Hives (LCD displays)

Ald 112

Shanghai Center

Rooms still on 4:3

Hawes 1st, 2nd floor

Aldrich ground, 1st, 2nd floor

Spangler Auditorium

Baker Lib: 102, 103

Steve Gallagher | Chief Information Officer | Harvard Business School | **617-495-6014**

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

Date: Friday, February 14, 2014 6:09 PM

To: Stephen Gallagher <sgallagher@hbs.edu>

Subject: RE: Aldrich Screens Update

Thanks for the update. That is quite an extreme cost. I wouldn't expect much interest at that price.

I remain on the fence about the net benefit of moving from 4:3 to 16:9. Some aspects of device compatibility are certainly easier with 16:9 throughout. It doesn't always make much difference, though – I've always found it easy to teach from a 16:9 laptop, on our 4:3 projectors, with a 16:9 confidence monitor. I don't feel the increased resolution is particularly useful for anything I do in the classroom, and from what I know of others' teaching styles, I can't think of others who would really benefit from that either. But reduced screen space is a clear detriment for the way I use the classroom, and for some of the detailed slides I know some instructors feel they need to use.

I've seen rooms configured with variable screen drop height – one setting for users who need one amount of drop, another for users who need something else. From there, it's all projector optics and software – broadly, letting 4:3 users (and anyone who cares most about square feet) have what is in place this year; letting 16:9 users have what was planned for this year. It seems like the projectors can handle this change in software alone, without moving the projector mount or manually adjusting the lens. I expect there would be a fair amount of complexity in control systems and UI, and I don't know all the details well

enough to be sure this would ultimately work out. But it is remarkable to spend so much on projectors and end up with fewer square feet than we had beforehand.

From: Gallagher, Stephen
Sent: Friday, February 14, 2014 5:45 PM
To: Edelman, Benjamin
Subject: Aldrich Screens Update

Hi Ben,

I just want to give you an update on the status of the request to upgrade the Aldrich screens to be wider – maximizing all possible space between the screens and on the edges of the classrooms. The project costs include the associated millwork required above the screens to accommodate the new rollers, etc. Operations did receive a budgetary estimate for this portion of the work. In all, the entire capital request totals \$1.9m. Andy O'Brien's team was very supportive in pulling together the facilities related cost estimates.

The request has been put forward to Rick Melnick, Angela Crispi, and Nitin. Needless to say it is competing with many other capital requests. At this time, it does not appear the \$1.9m will be approved.

The budget discussions do continue, and I'll let you know if anything changes.

-Steve

Thursday, October 22, 2015 2:37:24 PM Eastern Daylight Time

Subject: RE: plans for classroom projector changes - seeking your feedback

Date: Tuesday, February 17, 2015 6:40:07 PM Eastern Standard Time

From: Crispi, Angela

To: Edelman, Benjamin

Dear Ben,

Thanks very much for your email. I've hesitated for a bit in replying because I wasn't quite sure how to frame my response, to be honest. I want to be nothing less than respectful of you and of the concerns you have raised. But I also need to be clear that we won't be moving forward with this. You have articulated your case clearly (and repeatedly), but a decision has been made and is final. There's no additional action that can be made at this point; no tailoring of a single classroom that makes sense from a School-wide perspective. While everyone at HBS tries their hardest when issues are raised to find a creative solution or provide an accommodation (and the same has been true here), in this situation it is neither feasible nor desirable over the long term. And while we realize the changeover to the new equipment will necessitate some additional work for faculty and faculty assistants, from the beginning the plan has been to provide ample lead time for the switch to minimize the inconvenience. Should there be issues for your faculty assistant in particular, you might suggest that she talk with Imelda Dundas about how to manage them.

Sensitive as you are to workload, Ben, I hope you understand the time your continued focus on this issue is consuming organizationally. Perhaps everyone's effort to be polite has led you to believe there remains an opening. There is not, and thus I ask and urge that you put this matter to rest.

If you still wish to talk I would be happy to do so. I wanted to be clear, though, from the start, where I stand, balancing as I must a range of factors and considerations.

Best,
Angela

From: Edelman, Benjamin

Sent: Thursday, February 12, 2015 10:36 AM

To: Crispi, Angela

Subject: plans for classroom projector changes - seeking your feedback

Angela,

Stephen Gallagher and I have recently been discussing certain planned changes to MBA classrooms, including the reduction of projection display surface. I'm trying to find an alternative that avoids the significant pedagogical and administrative harms of their current plan. (Among other issues, the current plan would reduce display surface by 1/6 and would cause a large amount of work for faculty and FAs in reworking content.)

Stephen mentioned your involvement in these discussions. That makes sense given the size of the change and the implications.

Could we discuss briefly by phone? I think a few minutes would suffice and would make a big difference as I assess what (if anything) is possible at this point.

Thanks,

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Ben

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Thursday, October 22, 2015 2:24:22 PM Eastern Daylight Time

Subject: FW: purchased upgrades

Date: Friday, July 27, 2012 7:04:27 PM Eastern Daylight Time

From: Melnick, Richard

To: Cunningham, Jean

I had a very honest call with Ben today. He seemed shocked (and disturbed) at the idea that his travel was taking so much time on both sides of the river. He said he would stop doing these trips that save so many out of pocket \$. Hopefully you won't hear about this while I'm gone.

Glad to discuss more when I'm back.

Rick

From: Melnick, Richard

Sent: Friday, July 27, 2012 2:04 PM

To: Edelman, Benjamin

Subject: FW: purchased upgrades

I appreciate your willingness to do your travel differently going forward. You have saved the university \$ on a cash basis, but as I mentioned, there has been a lot of offsetting admin. cost. In my office and across the river. If you do end up needing additional funding for your research, I would expect your research director will be understanding and will want to encourage your efforts.

Hope your summer is going well. Congratulations on your promotion to Associate Professor.

Regards,

Rick

From: Melnick, Richard

Sent: Friday, July 27, 2012 2:01 PM

To: Edelman, Benjamin

Cc: Luca, Michael; Melnick, Richard

Subject: RE: purchased upgrades

Thanks for the call.

Mike—you should submit an expense report that includes the amount you paid to Ben.

Ben—this amount will be reported to our payroll manager who will be required to include it as income to you by the University (this will not be grossed up).

When the reimbursement is sent in, please include documentation that shows the savings to the university from using these upgrades vs. buying the alternate ticket.

Thanks

Rick

From: Edelman, Benjamin
Sent: Monday, July 23, 2012 11:09 AM
To: Melnick, Richard
Cc: Luca, Michael
Subject: purchased upgrades

Rick,

Mike Luca recently purchased a pair of upgrades from me – letting him get to Australia in business class for about a third of what an ordinary business class ticket would have cost. (He prefers to save his limited research budget for other expenses.)

I was planning to invoice Mike and suggest that he pay me by personal check, then submit my invoice for reimbursement by HBS. But I remembered our prior emails on this subject (below) and your preference for a different approach. What do you suggest here?

Thanks,

Ben Edelman

From: Melnick, Richard
Sent: Saturday, July 03, 2010 1:25 PM
To: Edelman, Benjamin
Cc: Mitropoulos, Margaret
Subject: RE: deepak's expense report

Good to know. Happy 4th!

Rick

Richard P. Melnick
Chief Financial Officer
Harvard Business School
Soldiers Field
Boston, MA 02163
Phone: (617) 495-6214
Fax: (617) 496-3799
Email: rmelnick@hbs.edu

From: Edelman, Benjamin
Sent: Friday, July 02, 2010 5:24 PM
To: Melnick, Richard
Cc: Mitropoulos, Margaret
Subject: RE: deepak's expense report

Rick,

Thanks for the note. I absolutely intended to report this as income, and it's of little tax consequence whether the university reports it on my W2 versus me reporting it as miscellaneous income. So this is just fine by me and not at all unexpected.

Thanks,

Ben

From: Melnick, Richard
Sent: Friday, July 02, 2010 5:04 PM
To: Edelman, Benjamin
Cc: Mitropoulos, Margaret
Subject:深派克的费用报告

I'm writing about Deepak's expense report that includes his purchase of upgrades from you. When we reimburse him for the \$1,068 of upgrades, the university will require us to report that amount as income to you. This is considered a 3rd party pay and this is required for people on the payroll.

Just wanted you to be aware of this. I'm out next week but will be back the following week if you have any questions.

Rick

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Reply to Faculty Review Board

Benjamin G. Edelman
November 6, 2015

I appreciate the FRB's attention and the significant time and effort expended. I am particularly grateful for this opportunity to reply to the draft report.

I found much to agree with in the FRB's draft, and I was pleased to see the FRB conclude that my motivations were laudable. But I was disappointed that I didn't persuade the FRB that I've learned from the experiences the FRB examined. I do feel I have learned and that I understand my errors. In brief:

- I significantly changed my approach to outside activities after the Blinkx matter. I have accepted no further client requests that present the concerns that arose there, nor am I willing to do so. I came away from the Blinkx matter with a new understanding of potential for actual conflicts, a better understanding of circumstances causing an appearance of conflict, and an unforgettable lesson in the consequences of missteps and the importance of getting this right. As I discuss in the next section, I also reached a more nuanced view of the approach I wish to follow, notably different from my prior approach grounded in legal training. Combining these factors, I don't think I will make this sort of error again.
- While I still occasionally speak up when I see consumer protection problems, here too I have changed my approach. I had always aspired to be respectful in such efforts (although I recognize that I totally failed in the case of the Sichuan Garden correspondence), but that experience revealed the critical importance of an appropriate tone in every instance, without fail. Furthermore, I am now much more hesitant to pursue any problem emanating from a small company, where disputes are more likely to get personal and where no privacy policy assures confidentiality. Relatedly, I think I'd now be quicker to end a discussion that's going badly. This hasn't happened yet, but if I find a problem that a company doesn't want to fix, it's now clear that I should let it go or to alert an appropriate regulator, but not try to force them to fix it.
- In internal matters, I have become more aware about the way other people see me and my efforts. I don't think any notable internal matters have arisen since the FRB reported internal concerns, so I haven't had specific reason to proceed differently. But my thinking has been influenced by the guidance I've received from colleagues and from the FRB process, including more detail about how others perceived my actions and about the additional work I caused for certain staff.

Meanwhile, as I explain in detail in the accompanying Addendum, additional facts provide a notably different perspective on my internal activities. As to projectors, I present messages in which multiple HBS leaders praised my efforts, and in fact MBA leaders twice followed the approach I recommended, an important fact notably omitted from the FRB's draft report. As to travel, I offer messages in which finance department staff specifically approved the upgrades criticized in the FRB's draft report, nowhere suggesting that my approach was burdensome or in any way improper. As to both subjects, my emails show me considering multiple factors including impact on staff and others. Looking closely at these emails, I see how they could have been better, yet they are friendly and respectful and for the most part received replies that were friendly, respectful, and even appreciative.

There is no doubt that I have room to improve, especially in my interactions with others. I am conscious of the burden I have imposed on others, and I recognize the particular importance of improvements in this regard.

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Further learnings from Blinkx experience

The Blinkx experience was painful, embarrassing, and something I never want to repeat again. Moreover, I understand why others saw my conduct as out of line, including the inference that investors controlled me or used me for their benefit, that I should have known this was likely to occur, that my approach compromised the substance of my work, and that these problems spill over onto others. I agree with many of these points and, even for the aspects I would put differently, I recognize and credit the concerns. The FRB's draft report expressed its concern about implications for the School if such a thing reoccurred, but the implications for me are also serious. As I noted at the end of my August statement, I couldn't remain a happy person if something like this happened again, and the School and I are aligned in our commitment that nothing that can be seen as a conflict of interest ever happen again.

The FRB expressed skepticism about my willingness to keep client names confidential and my willingness to assist investors who ultimately seek to profit from my work. My prior approach to these subjects was grounded in my legal training. For one, that training made it seem routine to assist a client while keeping its name confidential; in my experience, lawyers routinely accept confidential client projects and require confidentiality from experts and consultants. Furthermore, the HBS COI policy specifically allows faculty to undertake confidential projects. As a result, I did not view confidentiality as any sort of red flag.

Relatedly, legal training led me to a narrow understanding of concerns relating to investor research: Well-established doctrines allow and endorse investors conducting research from public sources—and profiting, sometimes handsomely, from their discoveries. The reasoning in these cases is that society wants to encourage such research, so we allow investors to enjoy the fruits of their efforts. For these reasons, I had thought my efforts were permissible, and I jumped to that (false) conclusion without adequately considering the counterarguments.

Importantly, my view of these subjects changed significantly after the Blinkx experience. I now understand the higher standards required for me, both to protect my own good name and to protect the school and others, in light of the possibility of a genuine conflict of interest and certainly the prospect of an appearance of conflict. I also understand the need to consider not just what a contract literally requires, but what both sides expect based on the overall circumstances and prior experience. I remember the factors that previously led me to my prior conclusion, but make no mistake about it: I now see things differently.

The FRB's draft report conveys concern at the way I approached remarks at an April 2014 conference. I did consider the sensitivities of that session in advance, and I went as far as to send Jean Cunningham a draft slide as well as the narrative explanation I intended to provide along with that slide. She replied "I appreciate the thoughtfulness you are bringing to this and the background that you have provided," and went on to offer extended further suggestions. I don't claim to have fully succeeded in implementing the principles she recommended, but our discussion reveals that I was making efforts and, I think, considering the right factors. As to the specific section of the conference video that the FRB critiqued (footnote 3): I was responding to a question from the audience, the inaudible section of the recording from 44:25 to 44:45, asking about the factors motivating my article about Blinkx. In light of the question, my answer was explicitly backward-looking, explaining the prior work dating back nearly a decade, the more recent client request, the article, and the relationship between the client request and the article. I was not endeavoring to provide a statement of my then-current approach or how my thinking had changed. But bearing in mind the multiple relevant audiences—some people interested in substantive findings, but also others, including HBS colleagues, more interested in conflict principles—I now see that I should have expanded my remarks to discuss the broader questions.

I know that the FRB wants *tangible* evidence of learnings and actions. I struggled with this, as the events are recent and it's not easy to convey evidence of my state of mind, but I note the following:

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- I've consulted with Jean repeatedly on questions of web site disclosure and outside activities. One result of the Blinkx experience was that I've checked with her more often, including in February 2014, April 2014, and September 2015. I've followed her guidance in each case.
- I've always sought to include appropriate disclosures in my publications (even before the revised HBS COI policy clarified requirements in this regard), and I've become increasingly firm in doing so. For example, when a HBR article proof omitted a disclosure I had requested, I requested a revised proof to confirm that the disclosure would be included in print. (February 2015) When HBR.ORG's platform proved unable to provide the disclosure I sought, I found a way to fit my requirements within its limitations. I then sent my HBR contact a specification for improving the platform to fix this problem for all authors in the future. (June 2014)

The FRB's draft report suggests that my learnings from the Blinkx experience were limited or incomplete because my correspondence with Sichuan Garden had an improper tone. I credit the FRB's narrative that in both incidents, I failed to anticipate how others would see the situation. In fact I've come to see the incidents similarly for the reasons the FRB explains. But as of fall 2014, my understanding of the Blinkx matter was much narrower. At that time, I thought the key learnings were about conflict of interest, appearance of conflict, and outside activities. In casual emails to a local business, seeking to fix what I initially thought was an unintended oversight, I wasn't thinking about Blinkx or what I learned there. Perhaps I should have been thinking about that, and with the benefit of hindsight it's easy to see the connection. Today I think I would see the sensitivity, pause, and find a different approach. But I was disappointed to see the FRB conclude from the Sichuan Garden matter that I had failed to reach appropriate learnings from Blinkx.

In footnote 1, the FRB's draft report asks whether the client changed its investment position at any time after reading my report. From the clients' subsequent statements to me, I learned that they did not. I apologize for the ambiguity, which I had not recognized until reading the FRB's report. In fact, no one else asked about this, nor did Jean Cunningham raise it when she approved my revised disclosure.

The FRB's draft report notes that unit colleagues advised me in my thinking about both Blinkx and Sichuan Garden. I sense the FRB felt such assistance was in some way improper, but that isn't how I thought about it. Rather, I thought guidance from trusted friends and colleagues would be helpful, especially since their distance might provide a more balanced perspective. Jean Cunningham and Brian Kenny were also included in some of these discussions, allowing me to draw on their special training and experience.

Looking ahead

Most of the FRB's draft report recognizes the subtleties of my activities, including crediting that my motivations may have been good even as the FRB quite reasonably questions aspects of my methods and approach. Against that backdrop, and with all the care in the FRB's inquiry, I hoped the FRB's conclusion would capture more of the nuance, including my purpose and the totality of my activities. What does a person need to think about me to conclude that I will be an effective member of the faculty? Conversely, what would a person need to believe to conclude that my shortfalls are so disabling, and so impossible for me to correct through additional effort and guidance, as to warrant effective disqualification for promotion?

How does one reconcile the deficiencies in my character, as reported by FRB, with my unusual contributions to the School as sketched on page six of my August statement and enumerated in Exhibit 1? While the FRB indicates that I give insufficient attention to the views of others, my participation tracking software was exactly intended to help our most vulnerable students (as Dean Nohria previously

indicated that he felt it did). My efforts to design hardware and software accommodations for colleagues with disabilities confirm a similar focus on helping those in need. And my newest software improves efficiency for support staff whose needs are arguably sometimes overlooked.

One might ask similar questions about my externally-focused efforts. I have repeatedly sought to uncover wrongdoing, mostly by large companies, often with significant money at issue and with inherently adversarial elements. (My *Impact on Practitioners – Selected Examples* document lists and summarizes 22 of these efforts.) In the majority of these instances, my efforts were validated or vindicated by appropriate legal or regulatory authorities or by the companies' subsequent admissions, often resulting in commitments to cease the behavior I flagged and even to provide redress to consumers. In most of these efforts, no issues were raised about potential Outside Activities or Community Values concerns. I credit the FRB's finding that in the Blinkx and Sichuan Garden areas, my approach was improper. And I do suggest that some number of positive efforts can "outweigh" those that cause concerns. But I think two problematic incidents are less readily viewed as a pattern when considered among literally dozens of efforts viewed favorably.

I have made some serious mistakes, which have been costly to both HBS and to me. I unequivocally apologize for those mistakes. But I disagree with the conclusion that I have not learned from these mistakes. These unfortunate experiences provided me with irrefutable proof that I must learn and must do better. If I am promoted and am able to remain a part of this community, I will continue the line of work I have described, attempting to make HBS and the world a better place in the ways that I am able. But I now have a much better understanding that *how* I do this work is crucially important, and my advocacy going forward will reflect this important learning and the changed perspective that it provides.

Addendum: Additional facts as to internal concerns

The FRB's initial inquiry offered only a sketch of concerns as to internal matters, and my initial written submission didn't speak to those questions in detail since I did not know the specifics. I believe there are a number of facts, perhaps unknown to the FRB, that may affect the FRB's conclusions. I am conscious of the FRB's admonition against apology followed by reiteration of the merits. I struggled with that tension in drafting my initial submission, in our interview, and especially in this reply. My apologies are sincere and unequivocal. I also am confident that the FRB wants their report to reflect the fullest set of facts possible, within the reasonable constraints of time and accessibility.

Classroom projector changes

The FRB's summary of my projector-related concerns simplifies discussions stretching nearly two years, from August 2013 through April 2015. I provide details on the timeline and my perspective to clarify what I hoped to achieve, what I did achieve, and how others told me that they viewed my efforts. I think this additional material shows me to be importantly guided by feedback from MBA leadership, less dogged than the FRB's draft report suggests. And contrary to the draft report's conclusion that I fail to appreciate differing views, the emails show me affirmatively acknowledging others' perspectives and searching for adjustments that would satisfy most or all objectives.

Two weeks before fall 2013 teaching, I toured my EC classroom, and I was surprised to see that usable screen space had shrunk dramatically. By email, I alerted four unit colleagues and five colleagues in other departments, all instructors whose teaching methods I knew would be distinctively affected.

I initially viewed the change as a *fait accompli*, telling colleagues that Media Services staff "have their reasons for the change, and it seems we'll be stuck with it" (Exhibit 2, bottom-most message). While "stuck with it" demonstrates my negative view, bluntly stated in an email to friends, the email also confirms that I was prepared to accept the change and that I understood proponents' reasoning.

One colleague forwarded my message (adding his own concerns) to Youngme Moon, who then oversaw the MBA Program. Youngme was genuinely appreciative. Her reply:

I, too, am learning about this for the first time and I am upset, not only on behalf of the faculty, but for myself personally (this is going to create a huge headache for me).

This is obviously under IT's governance, not MBA's domain, but the fact that they made these changes without telling us is frustrating.

When I return to campus next week I will talk to head of IT about it.

Inspired by Youngme's indication of concern, I began to look into possibilities. I was thrilled to devise a software change that let us use the new projectors to fill existing screens fully, with no shrinkage in usable screen space. In an important sense, this gave the best of both worlds. We could keep the new projectors Media Services had bought at considerable expense, getting the benefit of their reliability, silence, and brightness. Yet we could also fill the entire screen with no reduction in size. I passed this recommendation to Media Services staff, and my approach was implemented before the semester began. Youngme was exceptionally generous in her praise:

I am SO grateful that you alerted me to this. I am also grateful that you were able to help Media Services come up with such a win-win solution. You are a freaking genius when it comes to this stuff. I'm really so grateful, Ben.

As I recall this period, there was important tension between faculty and staff, in that faculty were surprised to learn of this change just before the semester began. Youngme summarized the concern:

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

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).

But I left these IT governance questions to Youngme and others, as I recognized that this subject was well beyond my role. Notice that the email trail has nothing from me on this subject.

Against that backdrop, you can imagine my surprise when in December 2014 I learned that Media Services staff again wanted to reduce classroom screen size by implementing much the same change that I had critiqued in 2013. By spring 2015, I managed to convene Felix Oberholzer-Gee, CIO Steve Gallagher, several other interested faculty, and others for a brief in-person demonstration in a classroom. Seeing the change in person, including seeing how other instructors' slides (not mine) would appear before and after, they were convinced—reaching the same conclusion that I, Youngme, and others had in August 2013. A decision email from Felix (Exhibit 3) indicates that he ultimately concluded that the proposed change carried costs that did not outweigh the benefits.

The ultimate result, not mentioned in the FRB's draft report, is that to this day, all HBS MBA classrooms still use the approach I proposed in August 2013.

A separate question is my decision, in spring 2015, to reengage with this issue. It would have been easy for me to turn away from it, and I was tempted to do so. Consider: I was up for review; I saw the obvious risk of annoying senior colleagues with an issue they considered resolved; I knew my case would be complicated by the Blinkx and Sichuan Garden episodes. Indeed, as I mentioned in our interview, multiple senior colleagues admonished me to cease all discussions related to screen size. What I told them then, and what I still believe, is that this was an issue worth fighting for—hundreds of thousands of student-hours over the coming years * and, as Youngme affirmed from personal experience, also hundreds of hours of faculty time to try to make the best of the change (Exhibit 2: “I’ve done this before, and it is a real pain in the neck”). I decided to proceed because I felt it was worth the personal risk. Perhaps I was chasing a benefit that was too small relative to the value of Felix’s time, Steve’s time, and others. But my decision reflected my attempt to put what I saw as the school’s interest (especially student learning and faculty time) ahead of what I recognized was my personal interest.

An additional reason for my spring 2015 efforts to bring projectors back onto the agenda was my sense that the faculty who approved IT’s proposal did not have all appropriate information. Willis Emmons told me that in a fall 2014 meeting that approved the planned change, IT staff said the change was “required” because new projectors were widescreen-only and could not fill the old screens. I knew this to be incorrect, as my fall 2013 efforts had established a method of using new projectors to fill the old screens. Meanwhile, when I spoke briefly with Rawi Abdelal and, at his request, sent him a summary of the issues, he replied that he “really didn’t know any of” the information I conveyed (Exhibit 4), again confirming that decision-makers might benefit from additional facts and further discussion. Willis also conveyed to me his understanding, based on IT leaders’ statements in the fall 2014 meeting, that IT would assist in converting slides to the widescreen format. In contrast, when I inquired to IT, I learned that only training was available, but no assistance in actually doing the work. (See Exhibit 5.) These facts convinced me that MBA leaders had made decisions based on incomplete or incorrect information,

* My calculation: 1820 students, approximately 300 Aldrich class sessions per student per year, 1.3 hours per session, adjusted for a projector in use only 10% of the time, implies 70,980 student-hours per year.

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which led me to believe they would appreciate the additional information I sought to provide. My message to Rawi (Exhibit 4) indicates that I recognized the competing factors; after three paragraphs explaining IT's reasoning ("IT presents..."), I compared the benefit of "the proper process running its course" with the prospect of "a full understanding" with the additional information I sought to provide.

The FRB's draft report noted my request that a single classroom be exempted from the reduction in screen size, a request which the FRB seems to view unfavorably. But I sought nothing more than leaving a classroom exactly as it was, and I proposed this stopgap only after every other option was rejected. I thought such a classroom could be used by all the EC instructors who wanted larger screens or otherwise found the change disruptive. (In an email to Steve Gallagher, I proposed assigning that single room to instructors "who (like me) care more about the projection surface size"—with no suggestion that the classroom would be mine alone. See Exhibit 6.) I explicitly considered the potential complexity of different room types (Exhibit 6 paragraphs 6 and 8) but found no apparent technical challenges for this difference. My approach was informed by knowing that other classrooms have been customized (sometimes at considerable expense) for compelling pedagogical reasons. All that's to say, my request for a waiver wasn't intended to slight anyone or even create additional work. Moreover, my proposal would have achieved the benefits Media Services staff favored in most classrooms, while offering the benefits I identified in the single room to be preserved—an approach I saw as a compromise, attempting to address the objectives of everyone involved.

The FRB expressed interest in evidence of my efforts to improve my interactions with staff. My 2015 projector discussions provide such an example. Recognizing the sensitivity, I consulted with senior colleagues, including my unit head Brian Hall and colleague Jim Sebenius (whose teaching method I knew was distinctively affected). Together, we assessed whether the proposed projector change was substantively significant for faculty, staff, and students. After we concluded that it was, they guided me in making my analysis and suggestions more persuasive and constructive, to reduce the risk that my efforts would be seen as adversarial and critical. That I consulted with colleagues does not mean I succeeded in my efforts to be seen as constructive. But these advance consultations reflected learning, a change from my prior approach, and a heightened appreciation for tone and process.

Travel

The FRB's summary of my travel-related activities misses some important context that I think calls into question the conclusion that I gave insufficient consideration to burden on staff.

Let me begin with upgrades. The FRB flagged two instances in which HBS paid me for upgrades I provided to colleagues traveling on HBS business. I knew that these were irregular transactions, and I used this approach only when 1) a colleague's requirements seemed to leave no other option, and 2) appropriate HBS staff specifically approved this approach.

Emails confirm that in both instances mentioned in the FRB's HBS Exhibit 2, staff approved the purchase before travel (in one instance) and before I submitted the reimbursement (in the other). (Details below.) The FRB's draft report concluded that I gave insufficient care to staff workload, but notice my polite, brief advance inquiries and specific approvals. Had I been told that a method was improper or burdensome, I would have continued to search for alternatives.

(It should go without saying, but let me be explicit: When I used upgrades for my own HBS travel, I never sought any payment from HBS. Nor did I seek payment from HBS when using personal frequent flier miles for HBS travel, as I have occasionally, when savings are compelling. I recall two such instances, both during 2011, wherein I redeemed more than a hundred thousand personal miles in order to save the school approximately \$10,000—an action that I'm proud of, that was not required or even suggested by any policy, and which, so far as I know, created no significant burden on HBS staff.)

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In the first upgrade instance, in 2010, a colleague came to me with an unusual problem. He had agreed to teach Exec Ed in Europe, but then HBS changed its travel policy: rather than covering business class airfare, the new policy limited reimbursement to \$2,500, insufficient for nonstop round-trip business class travel on his preferred dates. He did not want to withdraw from the program after participants had registered in part based on his participation. He did not want to fly coach, which would have impacted his effectiveness upon arrival or required him to leave Boston early (reducing family time). He also did not want to pay the difference out-of-pocket. In an email, he called the options "horrible," and he thought I might know an alternative. After every other method proved unworkable, I mentioned the possibility of buying an upgrade from me. At my suggestion, he checked with Margaret Mitropoulos in the HBS Financial Office, who confirmed that he could buy an upgrade so long as the total documented cost did not exceed the \$2,500 maximum. (See Exhibit 7.) With that confirmation, combined with HBS's sharp focus on reducing travel expense in that period and in light of the policy change announced after he had accepted international teaching, we thought this was a reasonable way forward. Notably, Rick Melnick's July 2010 email to me (in the FRB's HBS Exhibit 2) seemed to recognize that, under the circumstances, our approach was prudent. Notice that Rick's message nowhere suggested that we had violated any policy or even that we should not do the same thing again if good cause arose.

In one other instance, good cause did arise. A different colleague wanted to travel to/from Australia, but was alarmed by a \$10,000+ price in business class. After exhausting all other options, including indirect routings, long layovers, and inconvenient flight times, I noted the prospect of an upgrade which ultimately saved HBS some \$7,000+. Here again, before the reimbursement request was submitted, I sought guidance about how to proceed. (See FRB's HBS Exhibit 2, "planning to invoice... What do you suggest?" explicitly indicating that I would take no action until Rick approved.) Again Rick recognized the large savings, and nothing in his email suggests that he viewed my approach as improper in this circumstances. Nor did his email suggest that my approach was unduly time-consuming or burdensome.

The FRB is correct that Rick alerted me to the complications resulting from trips in which I intentionally used only a portion of the ticketed segments. After he told me about the burden on him and colleagues, I substantially ceased this method. My discussion with Rick was always cordial, and in one entertaining moment at a faculty dinner, his wife even asked me for details of my approach (which she must have heard about from him in general terms), as she wanted to attempt these same methods to reduce her personal travel expenses. Rick's July 27 email to me (in HBS Exhibit 2: "appreciate your willingness to do your travel differently ... you have saved the university \$ on a cash basis...") gives his first-hand report from our discussion, in which I agreed to proceed as he requested. His follow-up to Jean (HBS Exhibit 2: "He seemed shocked (and disturbed) at the idea that his travel was taking so much time") matches my recollection of the call. I don't think these facts are easily reconciled with the FRB's conclusion that I gave insufficient attention to impact on staff. For example, Rick's "shocked and disturbed" indicates that I didn't *know*; far from indicating that I didn't care, as FRB concluded, "disturbed" correctly reports that I *did* care. Nor are Rick's messages consistent with the suggestion in the FRB's report that my approach was improper. Notice, for example, Rick's reference to "these trips that save so many out of pocket \$" and zero reference to any violation of policy.

Finally, the suggestion that I am not sensitive to staff workload or tradeoffs is further belied by my 2007 correspondence with Margaret Mitropoulos of the HBS Finance Department. Prior to accepting my HBS offer, I sought to understand HBS travel policies so that I could ask to include, in my offer letter, any customizations I considered appropriate. (Ultimately I concluded that no changes were needed, thanks to the clarification she provided.) I sent Margaret four questions and received her reply, both shown in Exhibit 8. The correspondence reveals my attention to staff workload ("I wouldn't use this approach lightly, because I realize that it makes accounting more complicated. But I hope it would be available where savings are substantial") as well as my recognition that a policy may be appropriate for its

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simplicity or ease of application even if it is arguably imperfect in individual cases ("I understand the simplicity of the apparent HBS rule -- easier to make a simple rule for all of North America than to have complicated exceptions"). I think I've been true to the principles laid out in my 2007 discussion with Margaret, including only using nonstandard methods when the savings were significant savings, exactly as I told Margaret I would, and exactly as she said I could. This correspondence (and my matching practices) demonstrate my attention, from the outset of my time at HBS, to the competing interests of saving money and reducing staff workload. Where I received advance permission to use these methods, I don't think I should be faulted for doing exactly what was described as permissible.

Finally, given the FRB's interest in my use of upgrades, I'd like to note a few passengers I have been able to upgrade. In every instance I provided upgrades without requesting or receiving payment of any kind. While most upgrades were my own, a minority came from a colleague. All were within the past 3 years.

- A visiting faculty member was commuting between our campus in Boston and his family in another city. I provided him with approximately half a dozen domestic upgrades.
- I upgraded multiple guests visiting campus for my EC course, including guests coming from California as well as from South America. After I was unable to upgrade one guest on his way to/from campus, I upgraded him and his family on a long-haul flight on a subsequent vacation.
- I upgraded a senior HKS faculty member traveling to teach in Australia.
- I once tried to provide expiring upgrades to faculty and staff traveling for FIELD2. That attempt proved unsuccessful when FIELD staff did not have time to tell me which travelers were flying on eligible airlines. (Exhibit 9 shows my offer and the response I received.)

These upgrades do not directly bear on the FRB's concern about burden on HBS staff, but they add color to the subject. I credit that some of my efforts created extra work for HBS staff, but at least my related activities sometimes managed to surprise and delight others, both within and beyond HBS.

Quantity of outside activities and approach towards outside activities

The FRB's draft report asked about my compliance with the school's cap on outside activities. I think it's apparent that my research is unusually closely linked to my outside activities. This sometimes yields ambiguities at the boundaries. If a policy-maker seeks my guidance, based in part on a scholarly publication, is that an outside activity? It extends beyond the narrowest requirements of research, so perhaps it is not research. Yet I've understood presenting and disseminating research to be part of research, and I count policy-makers and practitioners as a valuable audience. Meanwhile, remarks or presentations to policy-makers are usually pro bono, and my work for any individual policy-maker is always less than ten days per year, not triggering the "significant" clause of the HBS Outside Activities policy (heading Definition of Outside Activities, point 2). These factors, among others, reduce the activity I have classified as Outside Activities within the meaning of that policy.

The FRB's draft report captured much of my excitement for my "work policing the Internet": "It was framed by Professor Edelman, variably, as outside work, as research, as a hobby, and as something he does instead of sleeping." However strange it may sound, this work has indeed spanned all these categories. In assessing time requirements, the FRB should consider that I use automated software to perform routine work, yielding massive efficiencies and productivity increases at certain tasks.

The FRB's draft report suggests additional verification that I comply with the Outside Activities policy and maximum. I am happy to assist however I can. As early as 2008, I offered to supplement my yearly submission (through the relatively limited Annual Reporting tool) with a brief memo. (See Exhibit 10.) At Jean's suggestion, we instead met in person and discussed some unusual aspects of my activities. In one instance, Jean later asked for details about my outside activities, beyond the aggregate information provided in the Annual Reporting tool. I replied the same day to provide the information she requested.

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These efforts reveal my longstanding commitment to understanding HBS rules, complying, and providing all appropriate information to confirm my compliance, as well as seeking additional guidance when I anticipate that it might be useful. Relatedly, I note Jean's assessment in her February 4, 2014 email (within FRB Blinkx Exhibit 3), reporting that I was one of only two faculty to participate substantively in conflict of interest meetings, and affirming my focus on these issues. That's not to say that I succeeded in navigating the challenges and requirements, nor does it establish that I learned from my shortfalls or anticipated every problem, but I do think these facts demonstrate my sincere and longstanding effort on questions of outside activities and related matters.

Exhibit 1: My Internal Efforts to Improve HBS and Assist Members of Our Community

I know that no number of positive efforts can “outweigh” the serious deficiencies the FRB examined. Nonetheless, I think my internal efforts reveal the depth of my commitment to making the School the best it can be. While some are widely known, most have been behind the scenes. I offer this listing to give the FRB a better sense of some of my internal efforts—most of which, I hope, raised no concerns.

I assisted various faculty members with short-term disabilities (two people) and permanent disabilities (three people) that impeded teaching and/or research. I also assisted a student with a permanent disability that impeded learning.

My participation tracker improved data collection and analysis for faculty and FAs, saving time, recommending call lists of at-risk students, and tabulating data to explore participation patterns.

My calendar exporter continues to save dozens of hours of FA time each semester, entering complicated MBA teaching schedules into faculty calendars with just a few clicks.

My new FIELD software produces seatmaps for the Batten Hives, replacing what had been a manual copy-and-paste task for FAs. I also prepared software to streamline several FIELD 3 class sessions, keeping sessions synchronized and avoiding awkward gaps between presentations.

I designed the projector “freeze” function, now available in all MBA and Exec Ed classrooms, that lets an instructor use all screens from a single source (such as showing different slides on the three screens).

I offered detailed and specific feedback on course tools, including specifications for Learning Hub design and improvement, as well as finding and documenting bugs for quick resolution.

I offered detailed and specific feedback for the F&R tool that distributes faculty research to the public. After launch, I proposed improvements and uncovered some important errors, including one that led search engines to see gibberish placeholder text instead of information about unit activities.

After 2010-2011 discussions led to the “faculty rights in the use of cases” policy that allowed any faculty member to provide a copy of a case to any individual person, I built a tool to accept and respond to those requests. My tool is now used by several other faculty and available to anyone interested.

After someone leaked copies of the first HBX exam and sold it on the web, I assisted HBX in finding the responsible party, including designing the general strategy, identifying an attorney with relevant experience, and devising methods to uncover the root source of the leak.

My negotiation-related software supports recurring teaching needs for that course, including showing parties’ interests in any combination to facilitate rapid assessment of possible coalitions, as well as processing late-arriving poll data to make auto-updating charts and tables.

My HBS Software & Technology page, <http://people.hbs.edu/protected/bedelman/software/>, indexes and organizes most of my internal software efforts.

I noticed a statement in case footers claiming readers could not exercise rights guaranteed by the fair use doctrine of copyright law. I arranged for this statement to be removed from new and updated cases.

In a series of brainstorming emails in the MBA student culture effort, I offered guidance on reducing incentives for excessive alcohol consumption, including simple policy interventions to discourage all-you-can-drink events and to provide an alternative for those who prefer to drink less or not at all.

I have sponsored a total of 77 MBA Independent Projects, Field Studies, and ISRs.

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Exhibit 2: 2013 Emails pertaining to projectors

From: Moon, Youngme
Sent: Friday, August 23, 2013 12:56 PM
To: Edelman, Benjamin
Subject: RE: classroom projectors

I just heard from Gallagher as well. I am SO grateful that you alerted me to this. I am also grateful that you were able to help Media Services come up with such a win-win solution. You are a freaking genius when it comes to this stuff. I'm really so grateful, Ben.

See you back on campus soon!

Youngme

From: Edelman, Benjamin
Sent: Friday, August 23, 2013 11:50 AM
To: Moon, Youngme
Subject: RE: classroom projectors

I just heard from Steve Gallagher. It seems IT will be able to roll us back to 4:3 for the coming academic year, still getting much of the resolution & brightness benefits of the new projector, but without loss of screen space or accelerated transition to 16:10. That's a great outcome, basically what I had envisioned. I think it only happened because you pushed. Thank you!

From: Edelman, Benjamin
Sent: Thursday, August 22, 2013 9:43 PM
To: Moon, Youngme
Subject: RE: classroom projectors

Thanks for the update. I'm sorry this intruded on your vacation... but this may be an area where an hour now, rather than Monday, makes a real difference.

I met Stephen last week and feel we are on the right track. Will see how I can be useful to him on this.

From: Moon, Youngme
Sent: Thursday, August 22, 2013 7:25 PM
To: Edelman, Benjamin; Segel, Arthur
Subject: FW: classroom projectors

FYI see Stephen Gallagher's response below. (he is our new CIO)

hopefully we will be able to implement Ben's suggestions for remedying the situation before the start of classes.

thank you both for alerting me to this issue.

Exhibit 2: 2013 Emails pertaining to projectors (continued)

From: Gallagher, Stephen
Sent: Thursday, August 22, 2013 7:21 PM
To: Moon, Youngme
Cc: Dewey, Brit; Tobiason, Jessica
Subject: RE: classroom projectors

Youngme,

Thanks for reaching out to me. I'm gathering information on the below concern. My team has had some very recent back-and-forth conversations with Ben, and I'm processing the mitigation strategies this evening. I will get back to you by tomorrow morning with more information and suggestions.

-Steve

From: Moon, Youngme
Sent: Thursday, August 22, 2013 5:25 PM
To: Gallagher, Stephen
Cc: Dewey, Brit; Tobiason, 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 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 amount of 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 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.

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Exhibit 2: 2013 Emails pertaining to projectors (continued)

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

Thanks much.

Youngme

From: Moon, Youngme
Sent: Thursday, August 22, 2013 3:11 PM
To: Segel, Arthur
Cc: Edelman, Benjamin
Subject: RE: warning on projector changes for fall 2013; action required

I, too, am learning about this for the first time and I am upset, not only on behalf of the faculty, but for myself personally (this is going to create a huge headache for me)

This is obviously under IT's governance, not MBA's domain, but the fact that they made these changes without telling us is frustrating

When I return to campus next week I will talk to head of IT about it

From: Segel, Arthur
Sent: Thursday, August 22, 2013 2:03 PM
To: Moon, Youngme
Cc: Edelman, Benjamin
Subject: Re: warning on projector changes for fall 2013; action required

This is not good to find out about this now. I have slides for most of my classes and most are new this year and no time now with a FA pretty busy.

From: Edelman, Benjamin
Sent: Thursday, August 22, 2013 2:49 PM
To: Hagi, Andrei; Segel, Arthur; Keinan, Anat; Coval, Joshua; Gourville, John
Subject: FW: warning on projector changes for fall 2013; action required

Below is a note I sent to my unit colleagues re a technology change important for everyone whose teaching includes slides (even if just in the daily wrap). I expect that Media Services or IT will be in touch to alert you to these changes at some point, but in the interim I thought an early warning would be helpful. Surely the transition to widescreen content becomes even more troublesome when it has to happen in a hurry during teaching.

(I hesitate to write to all EC instructors, so I picked the five of you from the list. Let's call this an email among friends rather than a full-scale alarm.)

Exhibit 2: 2013 Emails pertaining to projectors (continued)

From: Edelman, Benjamin
Sent: Wednesday, August 21, 2013 7:13 PM
To: Mohan, Kevin; Luca, Michael; Gino, Francesca; Wasynczuk, Andrew
Subject: warning on projector changes for fall 2013; action required

I learned today that Media Services has “upgraded” our classroom center projectors. The short of it is that slides now need to be 16:10 ratio (width:height), whereas we’ve all used 4:3 historically (PowerPoint’s default and our prior classroom standard).

If you change to 16:10 ratio, you’ll get the benefit of screens that are “only” 16.7% smaller than last year (1/6 smaller, as the new projection image is 5/6 as large). If you fail to change to 16:10 ratio, and continue using old 4:3 material, your screens will be 30.5% smaller than last year (11/36 smaller, as the new projection image will be 5/6 as tall and 5/6 as wide, hence 25/36 as large). Losing 30% of screen space is obviously a big problem for any slide with significant detail.

To change a slide deck to 16:10, go to Design – Page Setup, then click Page Setup, and choose On-screen show 16:10. (Mac instructions vary.)

Text slides will rearrange themselves, probably satisfactorily in general. But each and every image, chart, and diagram will need to be resized to avoid distortion. See “step 1” at <http://www.hanselman.com/blog/HowToConvertAPowerPointPresentationFrom43RatioTo169WithoutDistortedOrStretchedImages.aspx> .

You might consider asking FA’s to help with these adjustments. But I suggest reviewing all work carefully. In the first file I modified, I found I easily cut off key parts of images and diagrams, and I misaligned several annotations markups on a diagram. It’s not easy for an outsider to do this right, without a full understanding of slide substance.

I’ve told Media Services that I think the change is ill-advised. It’s particularly terrible for me in light of my on-screen class notes. And I’m shocked that they haven’t told faculty well in advance. But they have their reasons for the change, and it seems we’ll be stuck with it.

Exhibit 3: Felix Oberholzer-Gee "Decision" Email re Projectors

From: Oberholzer, Felix
Sent: Sunday, April 12, 2015 11:45 AM
To: Sebenius, James; Edelman, Benjamin; Segel, Arthur
Cc: Gallagher, Stephen; Clark, Elizabeth
Subject: Widescreen projection

Dear Colleagues,

Thanks again for participating in last week's meeting. It was helpful to see what your slides would look like and hear your views. After careful consideration of the pros and cons, we have decided not to change the screens in the MBA classrooms. We will still purchase new widescreen projectors, but will overthrow to the current aspect ratio. This sets us up to make the transition to the new standard at a time when we decide that the benefits outweigh the costs.

Thanks,
Felix

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Exhibit 4: Discussion with Rawi Abdelal about projector changes; his reply

From: Abdelal, Rawi
Sent: Thursday, February 12, 2015 5:35 PM
To: Edelman, Benjamin
Subject: RE: MBA projector changes

Ben,

Many thanks for your note and the thoughtful reflections on all this. I didn't know any of it, really. I'll look into it.

Thanks again,
Rawi

From: Edelman, Benjamin
Sent: Thursday, February 12, 2015 13:24
To: Abdelal, Rawi
Subject: MBA projector changes

Rawi,

Nice to bump into you today. Thanks for making some time to think about this.

I've been looking at this proposed change to classroom projectors since summer 2013, when I learned about it two weeks before the fall term began. (I always test my classroom equipment in advance given my unusual teaching style, <http://www.benedelman.org/boardnotes/>.) It didn't seem wise to me, so I alerted a few colleagues. Arthur Segel escalated to Youngme who got the change delayed repeatedly. But now I hear it's going forward, purportedly with blessing from you, Felix, and others.

The essence of the change is to convert MBA classroom projectors to widescreen, 16:10 aspect ratio, compared to 4:3 now. The label "wide" suggests bigger, but in fact the screens stay the same width and shrink 1/6 in height. Thus, a faculty member who uses the full screens gets a 1/6 reduction in screen space.

At least as serious, a faculty member who makes no change -- who keeps files as is -- only fills the center 5/6 of the screen, with 1/12 blank on left and another 1/12 blank on right. So existing content fills just 25/36 of the screen ($=(5/6)*(5/6)$), a 11/36 reduction from what we currently have.

Converting content from 4:3 to 16:10 is time-consuming and error-prone. Simple text converts easily. Images stretch. (A circle becomes an oval.) Diagrams are distorted too. Each shape can be adjusted, but that takes time. Often, arrows end up pointing to the wrong place, shapes misaligned, etc. The impact varies considerably across instructors. Those with complicated slides and diagrams are most affected. I suspect EC courses are affected more than RC, based on the kind of material and prevailing teaching style. If one hour is required to fix one slide deck, this quickly adds up to literally thousands of hours of FA time across campus. My current FA is superb, by far the best I've had in eight years; but even when she does this work, I still find I have to make further adjustments and the slides still aren't as good as

Exhibit 4: Discussion with Rawi Abdelal about projector changes; his reply (continued)

they began. Even a single screw-up, like a misplaced arrow muddling a diagram, could impact teaching and reduce instructor credibility.

I've seen the same problem in my FIELD 3 TG. Last year's content is 4:3 (from Batten projectors used last year). Now we need 16:9 for new Batten wall screens. Every week's files must be changed. That adds extra steps to the TG process. Often, someone shares files in the wrong format, others don't notice, then we customize in parallel and all have to redo the conversion in parallel. Lots of extra work for zero benefit.

IT presents these changes as necessary for standardization across the campus. I value standardization but don't think that justifies these changes in light of the downsides. I'd rather see us standardize on genuine improvements, rather than standardize on the lowest common denominator.

IT presents these changes as necessary in light of changing projector available for purchase. But in fact my fall 2013 fix is working fine, using the (excellent) new projectors to fill existing screens.

IT presents these changes as necessary in light of the upcoming upgrade to PowerPoint 2013, which has widescreen as the default. But PowerPoint 2013 has 16:9 as the default, not 16:10. So every new deck will have to be adjusted to 16:10 for our rooms, even after the upgrade. Furthermore, the default can be easily changed (including centrally by IT through "remote management" of our computers).

IT says there have been no complaints in the exed rooms where the change has been in place for some months. It's hard to generalize, but I sense some exed material is somewhat less detail-oriented than certain EC courses. There are also significant questions about classroom size (number of chairs in the room, distance from further chair to screen) and screen size.

IT says there have been no complaints in Aldrich 209, where the change was in place for fall 2015. But the fall 2015 instructors in that room were instructors whose teaching style is less likely to flag this issue. Clearly it affects some instructors more than others. And incidentally those are smaller rooms (82 seats) than the main Aldrich rooms (101), making screen size somewhat less urgent there.

I know IT said they'd provide "training and support" for the transition. On inquiry, I learned that the "support" is actually just "training." I think some people may not have understood this.

This is a sensitive subject. I gather IT leaders think they have obtained all required approvals, so I haven't gotten much traction in my recent requests (including my request in December to genuinely enlarge screens in one room where I and other concerned folks could teach EC classes, and my subsequent request to delay the change for one EC room). On one hand, I don't want to interfere with the proper process running its course. But I think it may be even more important to reach the correct decision based on a full understanding of the merits. Shrinking our MBA classroom screens, probably for a decade, shouldn't be done lightly. Nor should we divert this much FA time if there is any other way. I look forward to your thoughts.

This issue matters a lot to me, both because it distinctively affects my teaching style and because I've spent the time to figure it out in detail. Happy to discuss further any time.

Ben

Exhibit 5: Correspondence with IT re "support" to be provided

From: Emmons, Willis
Sent: Saturday, January 31, 2015 4:58 PM
To: Edelman, Benjamin
Subject: RE: from Media Services re widescreen conversion

That's too bad, but you did indeed predict it.

From: Edelman, Benjamin
Sent: Wednesday, January 28, 2015 4:29 PM
To: Emmons, Willis
Subject: from Media Services re widescreen conversion

See below. It's as I predicted: IT support for widescreen transition is training but not actually doing the work.

From: HBS Information Technology [<mailto:hbs@service-now.com>]
Sent: Wednesday, January 28, 2015 4:09 PM
To: Edelman, Benjamin
Subject: Incident INC0035934 -- comments added

2015-01-28 16:07:54 EST - Benjamin Frey [reply from: bfrey@hbs.edu]

Hi Professor Edelman,

Sorry for the delayed response, I wanted to check in with my IT counterparts first to make sure I was passing along the right information. My understanding is that the support being provided will be in the form of training the FA's through a variety of methods including one on one consultation but not converting content on their behalf.

-Ben

From: Edelman, Benjamin
Sent: Friday, January 23, 2015 10:26 AM
To: HBS Information Technology
Cc: Frey, Benjamin
Subject: RE: "assistance making this change" to widescreen

Thanks.

Rereading emails about projector changes, I notice this sentence: "If you would like assistance making this change to your materials, please contact Technology Support Services (ithelp@hbs.edu<<mailto:ithelp@hbs.edu>>; 5-6600) to schedule a consultation." Do you know what kind of assistance they're providing? I don't need anyone to show me the PowerPoint features for changing slides to 16:10 – that's a couple of clicks, trivial. On the other hand the work of updating scores of slides, diagrams, etc. is quite significant – and with reduced FA staffing and other FA commitments, it's not something I can easily ask of my FA at this time. Do you know whether IT or Media Services is providing support in converting material to 16:10?

Exhibit 6: Correspondence re keeping one classroom unchanged

From: Edelman, Benjamin
Sent: Tuesday, February 03, 2015 12:55 PM
To: Gallagher, Stephen
Subject: RE: Classroom A/V upgrade request

Steve,

Thanks for these details.

I have some thoughts about the process here. But I'll save it for another time.

I credit the concern about cost. I've never been excited about the cost of enlarging the screens.

Here's a different approach that avoids incremental expense, but keeps the screen size I've come to be quite attached to: Keep one classroom in 4:3, exactly as is. Based on recent enrollment figures, I'd be fine with any of the MBA classrooms, of any size. That would let me retain the full projection surface I've been using rather than the 1/6 loss currently planned.

We'd keep the existing code on that room's Crestron, keep the projector lens as it is currently set, and keep the screen drop height as it is. I don't see any cash cost to this approach.

The main downside would seem to be potential incompatibility with other rooms. But we seem to be doing fine with a mix of 16:10 and 4:3 rooms right now, including the single Aldrich room already running 16:10 now while the rest are 4:3. If it works to have 15 Aldrich rooms in 4:3 and 1 in 16:10, it should also be workable to have 1 in 4:3 and 15 in 16:10.

For an instructor who arrives with 4:3 content, "my room" would surely be preferable – full projection surface (same as this year) rather than 11/36 reduction.

If an instructor arrives with 16:10 content, that instructor will still get the same square feet of projection surface on all three screens, identical to what that instructor gets this year. 16:10 content would have fewer pixels on the center projector, somewhat reducing quality and brightness. (I think the pixel count would be reduced by 11/36 relative to the approach you're currently planning for all rooms.) To my eye that's not a bad outcome: 1) To date few instructors have 16:10 content and it remains to be seen how quickly folks change. 2) 16:10 instructors would have no reduction in capabilities from the status quo, which I don't think instructors have found deficient. 3) We'd work to assign this room to instructors who don't care about projectors (don't use them much or at all), who keep their 4:3 content for one more year, and/or who (like me) care more about the projection surface size than about pixel count. I'm confident that I could identify instructors who would either be indifferent or, more likely, would view this as a benefit rather than a detriment.

I look forward to your thoughts on this.

Ben

Exhibit 7: Advance staff approval of 2010 upgrade

From: Mitropoulos, Margaret
Sent: Tuesday, March 23, 2010 11:04 AM
To: Malhotra, Deepak
Subject: RE: quick question

Professor Malhotra,

Thank you for checking in advance! You would be able to get reimbursed for the coach fare and the upgrade up to \$2,500.

Please let me know if you have any further questions.

Regards,

Margaret

From: Malhotra, Deepak
Sent: Tuesday, March 23, 2010 11:01 AM
To: Mitropoulos, Margaret
Subject: quick question

Hi Margaret,

I will be flying to London in June, in order to teach in an HBS Exec Ed program. The rules regarding travel reimbursement state that I may buy a coach ticket, or a business class ticket with reimbursement limited to \$2,500.

Having explored the possibilities, I find that I am able to purchase a business class ticket for under \$2,500. The way to do it is for me to buy a coach ticket, and then use a purchased upgrade (NOT frequent flier miles) to upgrade to business class. For reimbursement, I would submit my actual, documented costs (with receipts) for the ticket and upgrade, not to exceed \$2,500.

My understanding is that this is well within the reimbursement rules. Please confirm, and I will make the purchase ASAP to avoid rate hikes.

Hope you are well.

Regards,
Deepak

Exhibit 8: 2007 correspondence with Margaret Mitropoulos as to travel policies*

From: Margaret Mitropoulos
Sent: Thursday, March 01, 2007 10:35 AM
To: 'Ben Edelman'
Subject: RE: Questions about HBS travel policy

Ben,

Thank you for your email and for taking the time to review the policy. I have addressed your answers below in red. Please keep in mind, there are some differences between the University's policy and ours. Individual schools may be more stringent than the University; however, a school cannot be less stringent.

Please let me know if you have any further questions.

Regards,
Margaret

From: Ben Edelman
Sent: Thursday, March 01, 2007 5:39 AM
To: mmitropoulos@hbs.edu
Subject: Questions about HBS travel policy

Ms. Mitropoulos,

I'm a Harvard Ph.D. student with an offer to join the HBS faculty later this year, as an assistant professor. In understanding the offer, I've tried to familiarize myself with applicable HBS policies, the travel policy key among them, since I know I'll need to travel for research, for conferences, and for case-writing.

Aleta Creech sent me reimbursement policies she retrieved from the HBS Financial Office web site. Separately, I reviewed the relevant HU policies from <<http://vpf-web.harvard.edu/ofs/travel/pdf/policy.pdf>>. The policies are largely straightforward, and I found them both reasonable and fair. Here are four questions that arose:

* Permissibility of adding stops at my own expense. I've occasionally found that I can add additional stops or segments at minimal, no, or negative expense. Page 58 of the HU policy seems to indicate this is fine, with the traveler paying the extra cost out-of-pocket (if any). Of course I'd retain appropriate documentation of the cost of the simpler itinerary, so we could compute and confirm the difference. I wouldn't use this approach lightly, because I realize that it makes accounting more complicated. But I hope it would be available where savings are substantial. Is this permissible?

* For readability in black & white, I marked Margaret's red replies with indents and vertical spacing.

Exhibit 8: 2007 correspondence with Margaret Mitropoulos as to travel policies (continued)

> It is allowed; however it must be clearly stated and supporting documentation must be submitted with the travel report. We will verify the cost of the roundtrip for the airfare portion pertaining to the business trip and that's the amount you will be reimbursed.

* Permissibility of selecting a higher class of service at my own expense. The HBS policy states that "An upgrade at the expense of the University is not permitted" -- exactly suggesting that an interested traveler could book a more expensive ticket and pay the difference out-of-pocket. Is that permissible, with appropriate documentation of the difference in cost (if any)? Of course usually such upgrades are often prohibitively expensive, but occasionally I've stumbled into some great deals. In the most notable cases, First can be available for less than Business -- a phenomenon I hope to explain in a forthcoming academic paper, that I'd be pleased to discuss with you if you're interested.

> The ticket price is not the determining factor when it comes to class of service. The University does not allow first class travel at any time, regardless of cost. HBS is more stringent regarding business class. Only Faculty are allowed to fly business class outside of North America. All other staff (except for RA's who must fly coach class on all flights) can fly business class only when the total air time equals or exceeds 10 hours. If you choose to select a higher class of service, you would be reimbursed for the cost of the allowed fare for that particular flight. We do verify the amounts of the cost of the ticket.

* Hawaii travel. I noticed that the HU policy permits Business travel to Hawaii, but HBS seems to specify Coach (since Hawaii is within North America). Is that right? Ordinarily I wouldn't much care about Hawaii -- hardly a key research destination. But Honolulu turns out to be a frequent meeting venue for several top electronic commerce conferences, so I'll surely have to consider travel there in the coming years. I've previously remarked on the low cost of premium tickets to Hawaii -- often well under \$2000 for round-trip Business, making this a far better value (per hour) than, say, Europe. Still, I understand the simplicity of the apparent HBS rule -- easier to make a simple rule for all of North America than to have complicated exceptions.

> You would be able to fly business class to Hawaii.

* London travel. The HBS rules state "business class travel on all flights outside North America, including London." This wording seems confusing to me. I think the most natural reading is that London, of course located outside North America, is therefore eligible for Business travel. But it's odd to mention London specifically, which made me think perhaps this is a special London exception, i.e. that London is the one city outside North America for which only Coach travel is permitted. Since I can read the sentence either way, I wanted to check with you. I know how expensive Business travel to London travel can be, particularly relative to the short travel time. So I wouldn't fault HBS for establishing a special London exception, and even if Business were permitted to London, I suppose I might not want to spend my research budget that way.

> There is a reason for the wording as such. A few years ago, HBS decided to not allow business class for Faculty to London since the travel time was comparable to flying to California. Upon further review, it was decided to reinstate the policy and allow Faculty to fly business class to London.

Thanks,

Ben Edelman

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Exhibit 9: Attempt to Upgrade FIELD2 faculty and staff

From: Siegfriedt, Barbara
Sent: Monday, January 14, 2013 7:21 PM
To: Edelman, Benjamin
Subject: Your offer

Hi Ben:

I talked to Cassie late in the day today and she has been so tied up with managing the 1000 plus students all over the world she did not have time to get back to you. Although she appreciates the offer, they are straight out so don't have time to reach out to the faculty that are traveling. She did say that everyone is already booked on business travel so that is good news for everyone!

Thanks again,

Barbara

From: Siegfriedt, Barbara
Sent: Monday, January 14, 2013 9:40 AM
To: Edelman, Benjamin
Subject: RE: United upgrades for faculty and staff traveling for FIELD 2

Hi Ben:

Thanks so much for your generous offer! I sent your message along to Cassie Bordeau who is responsible for the Global Immersion Office. GEO organized both the IXP and RC FIELD 2 programs. I'm sure she will be in touch today.

Thanks,

Barbara

From: Edelman, Benjamin
Sent: Sunday, January 13, 2013 10:12 AM
To: Siegfriedt, Barbara
Subject: United upgrades for faculty and staff traveling for FIELD 2

Barbara,

I have some United systemwide upgrades expiring at the end of January. These are valid for an upgrade to the next class of service (coach to business or business to first) from most United fares (although not from the very cheapest coach fares or the very cheapest business fares). Here are applicable rules. Upgrades are transferable to anyone I designate.

Since I won't be able to use these before expiration, I'd be happy to give them to anyone traveling on HBS business, and I thought of faculty and staff traveling for FIELD 2. I gather most folks are already ticketed in business class, but some upgrades to first could be a nice treat.

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Exhibit 9: Attempt to Upgrade FIELD2 faculty and staff (continued)

I have two, and I think Brian Hall is inclined to offer six more. So we could potentially upgrade quite a few people.

Do you have records of who's flying on which airlines? To arrange the upgrades, I just need record locator (six character code) and passenger last name. If you have ticket confirmations, we'd even be able to check who's on what fare basis – letting us make sure tickets are eligible. Of course there is no guarantee that upgrade space will be available, and some United planes don't even have a first class cabin, but given the number of people traveling, it seems like we can probably find some suitable opportunities to use these.

Thanks,

Ben Edelman

Exhibit 10: 2008 offer to supplement my Faculty Reporting submission

From: Ben Edelman
Sent: Thursday, January 24, 2008 11:58 AM
To: 'Office of the Dean'
Subject: Outside activities discussion

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

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

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

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

Thanks,

Ben Edelman

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Exhibit 25

Reflection on Feedback from Faculty Review Board

Benjamin G. Edelman
March 15, 2017

Reflecting on the 2015 report of the Faculty Review Board and about my time at HBS more generally, I took a moment to review the school's mission as elaborated in the community values statement:

The mission of Harvard Business School is to educate leaders who make a difference in the world. Achieving this mission requires an environment of trust and mutual respect, free expression and inquiry, and a commitment to truth, excellence, and lifelong learning.

The FRB's 2015 concerns link most closely to the community values call for trust and mutual respect. I was saddened and alarmed by the FRB's report that some staff previously found me disrespectful, and guided by the FRB's assessment, I have tried to change my style to make sure my interactions accurately and unambiguously reflect my respect and concern for others. I took some solace in the FRB's recognition my positive intentions, but I credit that good intentions are not enough. Showing respect to everyone I work with, and having them perceive me as respectful, is crucial in each and every interaction, without exception, even if it means moving more slowly or foregoing some opportunities.

Drawing in part on the FRB's report, I have also thought carefully and critically about the subjects I work on and the way I approach them. Broadly, I think I have improved in my efforts to pick subjects that are (and are seen to be) appropriate; I now choose my methods and style more carefully in order to make sure my work is seen as constructive; and I explicitly pause to consider other points of view. Meanwhile, my winter 2017 LCA teaching is providing a valuable opportunity for me to reflect on key areas the FRB considered. And my new office location, with LCA colleagues, immerses me in a different environment where it has been particularly natural to see the world from a different perspective. In this document, I provide an update each of these topics in turn.

Improving my approach to internal projects

I previously attempted to convey to the FRB my longstanding and ongoing passion for improving and updating our software and systems to help make HBS the best it can be. My prior and updated personal statements, both at heading "Contribution to the HBS Community," list my efforts in this area. These range from large (participation tracking software at peak used by more than half the faculty, and once credited by Dean Nohria as importantly reducing the disparity in grades for male versus female students) to small (quick tools to help colleagues with one-off requests). There have always been obvious tensions in this work. For one, it's untraditional for HBS faculty to write software, and while some have done so in the past (notably including Jan Hammond and Frances Frei writing earlier versions of the participation tracker), this has been a greater focus for me. Meanwhile, changing software architecture makes it more difficult for faculty to get involved: As we move away from freestanding files on individual computers, towards applications running on servers, we naturally become more reliant on centralized IT—leaving less room for faculty to build improvements even if they have programming skills. Nonetheless, I haven't turned away from these efforts, but instead have tried to do this work better and smarter. The fact that he includes this tells me he is still missing the whole point!

In particular, I have attempted to focus my software efforts on areas where I can be most helpful, which necessarily includes respecting others' decisions even if I disagree. In that regard, a notable experience occurred in summer 2016 when, in preparation for the Canvas rollout, I alerted IT leaders to some important limitations in their proposed implementation. I was particularly concerned that 70 clicks

were required for a RC course assistant to copy a changed template through to the 10 sections, especially since this process must be repeated every time there is new material to distribute – every supplement added or typo corrected. In short order, I built a script that reduced the process to two clicks. IT staff examined my approach, evaluated it at some length, and decided they preferred to retain the approach they had planned. (They were concerned that my tool might malfunction in unforeseen circumstances. Their approach had the notable benefit of being entirely supported by Canvas's developer, while my approach was an unofficial "hack.") I disagreed, but it was their decision to make. I have not pursued this matter further. Arrogant, still believes he is always right

Yet even as I hoped for more from some aspects of Canvas, I haven't turned away from the IT team that managed that rollout. Quite the contrary, I remain in contact with these staff roughly once per month, sending specific suggestions that I gather are sometimes quite useful. In one suggestion, sent just last month, I suggested improvements for tracking student absences, combining four separate systems where such information is currently stored. IT's Jeanne Po replied the next day to thank me for my suggestions, mentioning that "As always, it is extremely helpful," and adding that my effort was also "timed so perfectly" as her team was also thinking about this subject. We may never know whether my suggestions went beyond what her team was already planning, but her unsolicited thanks meant a lot to me as I continue to evaluate whether I'm on the right track.

Meanwhile, I've found particular satisfaction in helping a sight-impaired colleague use novel IT to teach without special staff assistance, specifically by repurposing classroom "polling" buttons to let students register their interest in speaking and even convey the urgency of their interest. For her, this was a big step forward: I gather she was not looking forward to having a staff member handle calls or whisper names in her ear, whereas my software makes her independent. Indeed, with the urgency feature, there's a sense in which the software lets her prioritize calls better than fully-sighted instructors. As you might expect, the process had twists and delays, taking almost a year from initial articulation of the concept until first use in the classroom. But I think we reached an outcome that's better than anything my colleague had hoped for. Furthermore, my software could be useful to other sight-impaired instructors as well as to anyone wanting the urgency/priority feature. (In fact, Josh Coval first proposed this feature and says he wanted it for years.) I hope this tool demonstrates two things: First, the substantive result is something I am proud of—a major service to a colleague in need. Second, this process entailed close work with multiple Media Services staff, and even with their outside AV contractor. It seems the ultimate burden on Media Services was relatively low—modest cost and modest staff time. I hope their experience, working on this with me and with the affected instructor, is something they see positively too.

Based on the FRB's report in 2015 and knowing a further review would soon follow, it would have been easier and arguably safer to stop trying to get involved in IT improvements—mindful that any such efforts could backfire or could be seen as out of line. Indeed, both before and after the FRB's report, multiple colleagues questioned why I spend time on these internal projects. I understand their reasoning, but I tried to take something more nuanced from the FRB's assessment—not that it's improper to try, but that I needed to redouble my efforts to make sure that I do it properly and leave others feeling fully respected and as good about me as I do about the underlying purpose.

Choice of outside projects; methods and style

Well before the FRB's report, I had already begun to rethink certain of my outside activities. My November 2015 reply to the FRB summarized some of those changes, and I have continued in the same direction. In response to the Blinkx matter, I became increasingly skeptical of relationships that might

create an appearance of a conflict of interest, even when clearly permissible under law and even when otherwise a good match for my skills and interests. I have declined several such projects and expect to continue to decline them in the future. I'm confident that there are ways to do such work without creating a risk of an appearance of conflict, most naturally by declining payment of any kind from any source, or perhaps through improved disclosures that leave no doubt what I'm doing or why. But mindful of public concern at the way I handled the Blinkx matter, I have stayed away from such projects.

As to consumer protection projects, I have continued to follow the approach I conveyed in 2015, namely picking my focus areas with significantly greater care. I previously told the FRB about some of the litigation matters I originated, including efforts to protect first advertisers, and later consumers, from a variety of improper charges. I have been pleased to see the interested public broadly receptive to these efforts, some of which have led to substantial refunds to victims. My newest consumer protection efforts include some embodied in class action litigation, and I anticipate (and have seen early signs seeming to confirm) public support. For example, airlines' growing fees are notoriously unpopular, and where I can demonstrate that such fees are not just arbitrary but indeed unlawful (for example, breaching some regulatory duty or prior contractual commitment), it seems the interested public shares my goal of reducing the fees and even compelling airlines to provide refunds. Consider also my May 2016 online article about Uber billing errors—overcharging consumers, promising "refunds" but delivering credits, and adding undisclosed restrictions to seemingly-simple promotions. With proof in screenshots on my site, with my tone appropriate throughout, and with my explicit focus on refunds for everyone affected, these were straightforward discussions about contract terms and truth in advertising, not a tirade or impassioned debate. Meanwhile, I was pleased to see Uber change its practices to cease the overcharges I revealed. I count that as a success, and while it's incomplete (victims only refunded if they read my article, realized what happened, and contacted Uber to request benefits), I don't plan to pursue it further.

Considering other points of view

The FRB found me deficient in understanding and accepting other points of view. I took the feedback to heart and have made changes, including a new approach that allows me to deliberately and thoughtfully consider others' perspectives. Specifically, I try to mitigate my strong instincts by pausing to assess the counterarguments. For tougher cases, I endeavor to pause further to restate the counterarguments in my own words, as persuasively as I can, stepping into the shoes of whoever I'm talking to, or into those of a possible future critic who assesses a given project. This builds in part on a suggestion I received from Jan Rivkin, and I've found it an effective and rigorous way to deepen my appreciation of multiple points of view.

Importantly, even when this process hasn't changed my mind about the "right" answer or the best answer, it has helped me see other perspectives and has broadened the set of questions where I recognize that reasonable people can disagree. For example, this approach led me to conclude that even as I disagreed with IT's approach to certain aspects of the Canvas rollout, it was their decision to make and I needed to leave them to it.

Impact of teaching LCA

Since January 2017, I've been teaching LCA. There was an unavoidable irony to this assignment. Nonetheless, in my view the course is going extraordinarily well. I have much to say about the course substance, depth of the cases and questions, and teaching group, all of which I have found impressive and satisfying. But perhaps much of that goes beyond the interests and scope of the FRB.

For FRB purposes, a particularly relevant facet is the relationship between course concepts and my prior activities. For example, my experience in the Blinkx matter connected directly to questions that arise in the course—what methods equity analysts may lawfully and ethically use to assess company prospects, a question that arose in the final pasture of our discussion of insider trading in *Martha Stewart*. It was tempting to leave my saga out of the teaching plan. (One key worry: What insight could come from discussing my own activities, when students with negative views would inevitably feel limited in what they could say with me facilitating discussion?) Nonetheless, I concluded that I needed to explore my experience, including what I did and how others saw it—not just because it was personally relevant, but because some students were likely to know about it already, and I couldn't ignore the elephant in the room. Whatever trepidations I had, the pasture was compelling. Students were intrigued, and they were quick to apply their skills to assess the situation. I'm not one to be emotional in teaching, but this discussion brought me closer to these students than I've ever felt to others.

Looking ahead, I see other areas where my personal experience—and the activities the FRB examined—are bound to come into the classroom. Should my restaurant pricing experience find its way into the *responsibilities to customers* module, as I teach it in my section? Here too, given my amply documented experience which the students of course know, I think it has to. I wouldn't wish this on other instructors, but nonetheless it will make a reasonable mini-pasture. Separately, some of my class action litigation efforts, seeking refunds for consumers or advertisers or others, will also arise. Writing weeks before those sessions, I cannot yet state precise teaching purposes or takeaways. But between the process of preparing to teach and the insights from students, I'm confident that I'll emerge with a richer understanding of what I'm doing, whether it makes sense, and how it should be adjusted.

Sitting with LCA instructors and others in general management
Is he kidding? Seems disingenuous

In my new office with LCA instructors, the world looks somewhat different. Where NOM colleagues might discuss the latest paper in AER or methods for improving identification in field experiments, the northwest quadrant of Morgan 4 is more likely to talk about an ethical dilemma in the news or a possible addition to the LCA curriculum. More generally, sitting with a different group provides a natural opportunity to see the world in a different light and to rethink my prior perspective in light of the focus of those now around me. It's a big change, but ultimately I feel comfortable in both places.

Moving to Morgan also has benefits beyond LCA colleagues. People I'd previously see every few weeks are suddenly just down the hall. Baker always felt a bit distant from the core of HBS, and Morgan 4 is the very opposite of that. THIS is how he thinks he's benefitted from the move? this whole section sounds phony and contrived

Suggestions on additional sources and evidence

Both when I first read the FRB's report, and again as I reread it more recently, I remarked that the report did not discuss the perspectives of the faculty or staff with whom I have worked most closely. In the accompanying addendum, beginning on the next page, I list a variety of such faculty and staff, the contexts in which I have worked with them, and what I believe the FRB might learn from consulting with them. I intentionally omit most faculty and staff affiliated with NOM in light of the FRB's prior sense that evaluations are most useful when they come from outside the unit.

I hope that these colleagues can provide insight into my approach and a useful perspective on the concerns raised in the original FRB report.

Other Staff and Faculty with Extended Observations Yielding Possible Insight on My Character

Not clear how interactions described below reflect on character per se (see pink highlights as examples)

Faculty outside my unit:

Tom Eisenmann ran a teaching group as Peter Coles and I took over his EC course in 2008-2009. We also worked together on questions of Independent Project structure and overlapping students, EC courses for “tech tribe” students, skills-based teaching (particularly software design), faculty rights in case publications, and online distribution of cases. We often discuss research due to overlapping interests. From dozens of discussions going back to the very beginning of my time at HBS, I think Tom has a full sense of who I am, what I’m interested in, and what I’m likely to do in the future.

John Deighton and **Sunil Gupta** led focused Exec Ed programs in which I taught perhaps half a dozen times, often with one of them observing. John and I also presented jointly at faculty reunions on approximately a dozen occasions—offering provocatively opposite assessments of the effectiveness of online marketing. From these sessions, as well as overlapping research interests which we’ve also discussed at some length, I think John and Sunil are particularly well positioned to assess who I am and where I’m headed.

Marco Iansiti and **Shane Greenstein** lead the Digital Initiative, in which I have participated as a regular and active seminar participant (among other things). We often discuss research due to overlapping interests. From these activities, as well as overlapping research interests which we’ve also discussed at some length, I think Marco and Shane are well positioned to assess my approach and my prospects.

Jeff Polzer was FIELD 3 course-head when I taught in that course during winter 2015. Other senior track faculty in the FIELD 3 teaching group included **Mike Toffel** (2015) and **Cynthia Montgomery** (2016). I think they would report that I was a well-liked participant in the teaching group, making substantive contributions relating to my skills and research (for example, strategies and guidance for teams working on software-based businesses and particularly marketplaces) as well as administrative contributions to facilitate delivery of a complex, logistics-intensive course.

Mike Toffel, in his capacity of TOM course-head, in fall 2016 inquired about a random-call tool I had made previously, as he thought that tool could help add excitement to the final day of TOM. In a quick discussion, we concluded that a new tool would be even more effective. I wrote it quickly, and I understand that he and some other members of the teaching group used it the next day. I think Mike would report that he was pleased to receive a tool that did everything he wanted, reliably and easily, on an unusually tight timetable.

Joshua Coval, **Randolph Cohen**, and **Christine Exley** are familiar with my ongoing efforts to integrate my software with built-in classroom hardware (specifically, polling buttons) both to assist sight-impaired instructors (Cohen and Exley) and to facilitate market-based call prioritization (Coval). I think they’re all pleased that the software now exists and provides the features we discussed at length. I think Christine, who in winter 2017 is using the software intensively, will report that it transformed her approach to teaching and increased her confidence in the classroom.

Christine Exley and I also worked at some length to devise other IT improvements that make the most of her vision. For example, I reworked the ergonomics of her office workspace, including loaning her stopgap equipment before official HBS accommodation equipment became available. I devised an

Reflection on Feedback from Faculty Review Board

Addendum: Other Faculty and Staff with Extended Observations Yielding Possible Insight on My Character

March 15, 2017

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unobtrusive software solution to let her view seminar slides on a tablet, at a distance and angle that work for her, without requiring that the presenter do anything extra. I think Christine will report that these benefits improved her comfort and productivity and allowed her to feel like a full participant in seminars.

Youngme Moon led the MBA program during the period in which I first raised concerns about proposed reduction in classroom projector screen size. I think she'll report that she was alarmed by the changes, all the more so because changes were made without IT telling her or seeking or receiving her approval. She may remember thanking me for discovering the problem before the semester began, with enough time left for her to undo the change without impact to a single class (and indeed without most faculty learning about the issue or needing to spend a moment thinking about it). Some of her contemporaneous emails on this subject are in Exhibit 2 to my Reply to FRB (November 6, 2015).

Richard Nolan and Robert Austin led a focused Exec Ed program in which I taught repeatedly. I think they'll report that I was an effective instructor. They may recall that after I taught a case they wrote, *The iPhone at IVK*, I then wrote and published a teaching note for that case—I gather, a rarity, in that few faculty write teaching notes for other instructors' cases.*

Arthur Segel and John Macomber led a focused Exec Ed program in which I taught once, and we have repeatedly discussed overlapping research interests as well as connections between our courses and research. I think they'll report that I was an effective instructor and that we have enjoyed exploring related interests.

David Parkes (the George F. Colony Professor of Computer Science and Area Dean for Computer Science) leads the SEAS expansion into Allston. For several years, we have discussed transportation options to link the Allston and Cambridge campuses, drawing on my research and casewriting as to certain transportation innovations. I think David will report that my remarks changed the way he thinks about transportation options and convinced him to look into novel options he would otherwise have rejected without serious consideration.

Shawn Cole teaches a required course for HBS-HKS joint degree candidates, and in both 2016 and 2017 invited me to guest-teach in that course. I think Shawn will report that my sessions were effective and well-received.

Mitch Weiss and I have repeatedly discussed a range of overlapping research and course development interests at the intersection of technology and public policy, as well as course development associated with technological skill-building and entrepreneurship (grounded in our joint FIELD 3 teaching in 2015). I think Mitch will report that in FIELD 3 I was well-liked and a full contributor, and that our subsequent discussions have helped guide some of the most challenging aspects of his course development.

Joe Badaracco is the Course Head of LCA, in which I am currently teaching. I have also worked closely with Lena Goldberg on developing new teaching materials. Within the teaching group, I have worked most closely with Nien-hê Hsieh on teaching plans and pedagogy. In the first few weeks of teaching, I

* A colleague asks why I wrote a teaching note for someone else's case. I thought my teaching plan might be helpful for others looking for teaching ideas for this material. I do not claim that my substantive contribution was extraordinary or even notable enough to be starred in my review packet (which it is not). Nonetheless, for FRB purposes, I think this document demonstrates my longstanding contributions to the HBS community. Notice that I published this note in 2010, years before Blinkx or restaurant pricing raised the prospect of a FRB review or similar scrutiny.

was pleased to see that **David Fubini** substantially adopted my one-page bring-to-class teaching plan for the second day of the Enron case. When I proposed an alternative approach to the final pasture of the **Martha Stewart** case, **Amy Schulman** reported successfully using my approach. I think all will report that I am an effective and well-liked member of the teaching group. I hope they'll also report that my technical contributions have improved the group's operations.

Philip Heymann (the James Barr Ames Professor of Law at the Harvard University Law School), **Harry Lewis** (Gordon McKay Professor of Computer Science and the Director of Undergraduate Studies in Computer Science at Harvard University), and **Scott Kominers** (in his then-capacity of instructor of the Harvard Economics Department graduate course in Market Design) teach or taught courses elsewhere in the university. Each invited me to guest-teach in their respective courses. I think they will all report that my sessions were effective and well-received.

Staff:

FSSs and their managers, including **Imelda Dundas**, can assess my work with the FSSs to whom I was assigned. I think they will report that I was able to work productively with all the FSSs assigned to me. They may remember that I happily accepted even FSSs who had difficulty working productively with other faculty.

Jenny Sanford, my FSS during 2015-2016, and later my part-time RA, can assess the way I conducted myself in response to media coverage in 2015, as well as my interactions with FSSs. I think Jenny will report that I was humble but composed, and that I was well-liked by FSSs.

Paul Craig of HBS IT can assess my work on campus-wide educational software, including my efforts on Learning Hub specifications and requirements, finding and documenting bugs, suggesting improvements, and devising workarounds for key limitations. I think Paul will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users. More recently, my primary contact for such matters has been **Jeanne Po**, and I hope she will convey a similar assessment.

Niel Francisco and **Michael Soulios** of HBS IT can assess our joint work on various desktop support anomalies such as computer encryption complexities and support for faculty with special needs, as well as routine matters such as desktop support and loaners. I think they will report that I was respectful, easy to work with, and appropriately focused on obtaining the best possible outcomes for all users.

Media Services classroom technicians, including **Matthew Briggs** and **Paul Shoemaker**, can assess my work with the technicians assigned to my classrooms, including my responses to occasional failures in classroom technology and my classroom technology innovations now used by others. I think they'll report that despite my unusual classroom equipment, I was respectful, easy to work with, and accepting of the inevitable glitches.

Willis Emmons (and historically **Tara Abbatello**) of the Christensen Center can assess my efforts in software to measure and analyze participation, including the groups I interacted with in designing and improving this software and my approach to feedback and requests. I think Willis will report that my participation tracker implemented a vision he had articulated for years, but that he had been unable to obtain for lack of technical resources. I think Willis will report that I was respectful and easy to work with, and that I went above and beyond to provide the best possible features to all faculty and staff.

Lee Gross in the MBA Registrar's office can assess our interactions as we coordinated my software's efforts to gather course and enrollment information from Registrar systems. I think Lee will report that I was respectful and easy to work with, and that I was careful not to intrude on her time or make unwarranted special requests of the Registrar. Lee may recall that when she occasionally needed to confirm the way IT systems presented information to faculty (to troubleshoot displays seen by other faculty), she contacted me, and I always promptly and happily provided the information she requested.

FIELD 3 staff, including Kari Limmer and historically Annie Hard (now at HKS Center for Public Leadership) and Greg Freed, can assess my participation in the FIELD 3 teaching group, including the software I built to improve productivity for faculty and staff as well as to streamline activities within the classroom. I think they will report that I was respectful and intently focused on improving systems for students, faculty, and staff. Kari may remember that Greg used some of my tools even outside of FIELD 3, finding that my tools could equally be applied in other parts of FIELD to streamline work by faculty as well as FSSs and especially FIELD staff.

What about Marybeth Graves?

Exhibit 26

Reply to Faculty Review Board Questions

Benjamin G. Edelman
October 5, 2017

I appreciate the FRB's attention and the significant time and effort expended, particularly interviewing a broad group of the faculty and staff I have worked with. I am grateful for this opportunity to reply to the draft report.

Reading the FRB's draft report, I was pleased to see confirmation that many colleagues like what I've been doing and think I've been doing it well enough that FRB subjects shouldn't impede promotion. I was disappointed to read that some people don't think I've changed enough or as fast as they'd like, but happy to read that there was substantial consensus that I'm moving in the right direction.

I also felt the FRB's draft report makes some errors and material omissions, particularly in its treatment of the Microsoft disclosures and the American Airlines lawsuit risks. I discuss each of those in turn.

Let me begin with some broad thoughts on the way I approached the last two years. Knowing that the FRB review was coming up, I could easily have sought to avoid any possible controversy, even if that meant doing much less or foregoing opportunities that I would otherwise pursue. Some colleagues encouraged exactly this. But after careful consideration, I felt the honest way forward was to continue to be me—to learn from the FRB's 2015 guidance and adjust accordingly, but continue with the full range of projects that are the reason why I chose this career. I think my approach should influence the FRB's assessment: Had I turned away from every project that had the potential to create controversy, the FRB would have much less basis to assess how I've changed.

In parallel, I sought more guidance from senior colleagues, increasingly including those outside my unit, about both priorities and methods. Relatedly, I carefully considered the suggestion of outside coaching. Examining my decision not to use an outside coach, the FRB reports one factor I mentioned in an interview: that a coach might "take too much time to get to know me and the School." But that's an importantly incomplete summary of the considerations that I shared with the FRB. In interview remarks, I conveyed three separate reasons. First, I was mindful of the difficulty of familiarizing an outsider with the multifaceted relationships and tradeoffs including, yes, the time required to build a deep understanding. Second, a coach would be most effective after seeing my discussions and interactions first-hand, yet that was manifestly infeasible. Third, I found new sources of guidance from senior colleagues outside my unit. I discussed the possibilities and challenges of an external coach in several detailed emails with Angela Crispi in February-April 2016, and her suggestions further shaped my thinking. These considerations reveal that my decision was multifaceted and that I certainly sought and accepted coaching. Perhaps something would have been gained from an outside coach, but I don't think the FRB should draw an adverse inference from my choosing internal rather than external guidance.

Disclosure of work with Microsoft

The FRB criticizes my failure to disclose work for Microsoft, citing six examples during 2016-2017. Crucially, I did zero work for Microsoft during that time; my most recent work for Microsoft was a project completed in October 2015. The conclusion of my work for Microsoft was the reason I felt disclosure was no longer required on articles pertaining to Microsoft competitors.

The COI policy gives clear guidance about treatment of completed prior activities that are "directly related": Disclosure is compulsory for such a project within the past three years. If a faculty member

consults for Google in 2015, then writes a case or article about Google in 2017, the COI policy requires disclosure.

But my situation is quite different. In particular, my work for Microsoft (largely about advertising fraud) does not seem to me to be “directly related” to my writings about Google. Because many of my Google writings explored competition questions—how antitrust enforcement agencies should view Google practices—I nonetheless treated my work for Microsoft as falling within the broad purview of the COI policy, and I disclosed the Microsoft work in the way contemplated by that policy (indeed, often more prominently than that policy required). But once my Microsoft work ended, mindful of the fact it was not “directly related” to Google in the first place, I concluded that further disclosures were no longer appropriate. My conclusion was informed by my assessment of what a reasonable reader would consider important, by the increasingly distant relationship between current Google antitrust versus historic Microsoft advertising fraud, and by the fact that the COI policy offered no requirements to the contrary. Had I interpreted the rules to call for disclosure about the historic work, or had anyone suggested that such disclosure was required or appropriate, I would have added it without hesitation. Moreover, I would happily do so going forward if that is how the FRB interprets the disclosure rules.

The FRB calls my disclosures “inconsistent,” which seems to suggest oversight or inattention. But I included appropriate disclosures consistently when my work with Microsoft was ongoing. My September 8 response to FRB noted my 2010 “Labels and Disclosures in Search Advertising”¹ which, I pointed out, began with a superior disclosure (at top of page, with distinctive background color for emphasis) discussing my work with companies that compete with Google. I provided similar disclosures on a range of other Google-related publications from 2010 to 2015.² My historic disclosures, including consistent inclusion and prominent placement, reveal my commitment to this effort. And my numerous voluntary disclosures well before the HBS COI policy indicate that this commitment was personal and truly-held, not merely satisfying the School’s minimum requirements.

American Airlines lawsuit

I’ve considered reputational risk far more carefully since the media blow-ups of 2014, and I am committed to doing work that is seen as positive, including via approval processes for projects that create material risks. But in the American Airlines litigation in which I represent Max Bazerman (and seek to represent others similarly overcharged), Max and I carefully considered this concern and saw no significant reputational risk—rather, both substantive and reputational benefit to the School.

In assessing possible reputational risk, I began by considering public attitudes towards the general subject. Bag fees are notoriously unpopular, and there’s growing public concern about airlines’ customer service more generally, so we expect public sentiment largely on our side—especially about extra fees demonstrably contrary to contract.

My assessment of likely positive public response was shaped by positive public reception to my prior aviation consumer protection efforts.³ Representative media coverage is listed in the appendix “Favorable public perception of my prior aviation consumer protection efforts.”

My decision not to seek approval or guidance from the Dean or the School’s communication professionals was also informed by the factors mentioned in my September 8 response to FRB. I mentioned the plain language of applicable policies (not requiring approval), Jean’s guidance in 2008 (no approval needed for service as an attorney), Max’s assessment, and my role as an attorney (making no reference to my HBS affiliation and otherwise staying far from COI concerns).

He didn't ID himself as HBS professor either in Chinese restaurant incident, but it leaked out and became the "lead story". Shows lack of sensitivity to perceptions. Response is very lawyerly.

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As evidence of the supposed reputational risk, the FRB cites three articles. In my view, these articles do not support the FRB's conclusion of significant reputational risk. Considering each in turn:

But "not being caught" (yet) is no defense for creating the risk of being found out - the relevant question is whether disclosure of HBS connection would harm School's reputation

- 1) "American Airlines Pissed Off the Wrong Harvard Business School Professor" (fn2). While the title is arguably snarky or otherwise negative, the body of the piece is neutral to positive, offering a straightforward summary of the case with zero suggestion that it is in any way improper. Indeed, Max's HBS affiliation is mentioned only once in the body of the article, for description and identification. I am nowhere mentioned, nor is my HBS affiliation mentioned. Of the 16 comments on that article, not one offered a personal attack, questioned our motive, criticized the School, or suggested that we had done anything improper. All either wrote in favor of our effort, or offered remarks that were unrelated or neutral.
- 2) A brief piece at Top Class Actions (fn4) summarizes the case in neutral terms. Notably, this piece nowhere mentions HBS. In that regard, this piece stands contrary to the FRB's claim that every piece of news coverage about this case "automatically connects back to the School." By its plain language, this piece does no such thing.
- 3) The FRB cites a July 15, 2015 post from blogger Gary Leff (fn3). But that post discusses a 2015 administrative complaint (not a lawsuit) which I filed with the Department of Transportation when I noticed certain other (allegedly) unlawful airline practices.⁴ That post is entirely unrelated to my 2017 class action on behalf of Max Bazerman and others overcharged for checked bags.

In support of its conclusion of reputational risk to the School, the FRB also cites my interview remarks about two people who were overcharged by American yet declined to serve as class representatives. But their concerns don't mean that the project is risky for me, Max, or HBS. The first person was applying for a mortgage and thought that computerized review of his mortgage might react unfavorably to a pending lawsuit. The second person wasn't just "high profile" (the FRB's summary) but, as I explained in my interview, a professional speaker whose corporate clients dislike class actions. He told me, and I told FRB, that he declined to serve as a class representative because does not want to disaffect his corporate clients. These concerns do not apply to me, Max, or HBS. Does anyone really believe HBS will benefit from such activism?

Had I thought that this project would create significant reputational risk to the School (as opposed to the reputational benefits that I continue to believe are much more likely), I would have consulted with Jean, as I did on other matters (including those discussed at section "The purpose and frequency of my consultations with Jean," below). Informed by the factors described above, I did not think that this project rose to that level.

"With his superiors, he has more of a filter."

The FRB reported one person commenting that I interact differently with those of higher status. That's a serious allegation, and it clearly influenced the FRB's thinking (one of two bulleted negative comments the FRB then discussed in prose). The nature of this allegation could carry disproportionate influence: Senior faculty may worry that even if their experiences with me have been positive, I treat staff or junior colleagues worse, rendering their personal experiences unrepresentative.

This allegation was surprising and disappointing to me, as it goes so strongly against who I am and who I try to be. Moreover, I think this allegation is in tension with other aspects of my interactions with those of lower status. I've offered some examples earlier in the FRB process. The accompanying appendix

"Distinctive interactions with staff, junior colleagues, and students" offers a voluminous list, including many that will be new to the FRB.

I am proud of the activities listed in the appendix, but I do not claim that any number of good deeds outweigh the deficiencies that the FRB reports. Rather, I offer these examples for two specific purposes. First, I think the quantity and variety demonstrate my commitment to lower-status members of our community, including that this commitment is longstanding and truly held. Second, I think these examples demonstrate that lower-status members of our community in fact come to me, and feel comfortable coming to me, on the most sensitive subjects and for their most difficult problems. The fact is, I care about the entirety of our community, including people who others tend to overlook. Reflecting on specifics, I realized that I know the janitor who cleans Baker Library common areas during the work day, the person who washes dirty dishes in Faculty Commons, and the person who *used to* wash dirty dishes in Faculty Commons. And I don't just know their names; I've had conversations with them and know a bit about them, and they know me and we like each other. I'd be pleased to learn that other faculty have similarly taken the time to build relationships with the cleaning staff, but my sense has long been that I'm unusual in this regard.

I'm sure FRB members will have views about which of the listed efforts are truly laudable, which less so, and which merely humdrum or maybe not worth doing at all. I particularly hesitated with requests that entail tension between staff versus RA or Harvard, as I feel genuine loyalty both to my friends and colleagues, and to the School and its vendors. Nonetheless, I want to support people coming to me in their times of need, on subjects that are important to them, sometimes with nowhere else to turn. With that in mind, I have tried to err on the side of saying yes.

I have never sought any credit for my efforts to help lower-status members of our community. I offer these examples with the greatest of hesitation, swayed primarily by the difficulty of offering any other response to the concerns the FRB conveyed.

The purpose and frequency of my consultations with Jean

The FRB also questioned why I consulted with Jean on only some recent projects. In short, I consulted with Jean when I saw specific reason to do so, using my judgment to try to identify which subjects rose to the level that she would want to be involved. As to Airbnb, I anticipated exceptional public interest plus the sensitive subject of race discrimination. As to the article about bias by online travel agents, I saw heightened sensitivity in the paid request from an outside organization, where disclosure was compulsory, and I wanted Jean's guidance on wording as well as overall approach. In contrast, the work products listed on page 6 of the FRB's draft report raised none of these concerns. To the extent that I considered these in any depth, the benefit of disclosure would have seemed particularly limited, both due to the passage of time and the distinct subject matter. The fact that my prior Microsoft disclosures had always been viewed as satisfactory or indeed exemplary, getting no criticism whatsoever in the FRB's detailed 2015 review, further reduced my sense that this was an area Jean was concerned about or interested in. Finally, I followed guidance from the respective publishers (CPI, ECJ, HBR, JMR) and discussed with coauthors (Gerdin, Lai). They all considered this routine, reducing my sense that further consultations would be useful.

Concluding thoughts

I'm proud of the way I've spent my two-year extension. Teaching LCA was transformative—not just new colleagues and new material, but a framework for formalizing themes I've long thought about, genuine benefits to my research, and in multiple respects by far the most effective teaching I've ever done.

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Meanwhile, I've thought increasingly carefully and critically about the subjects I work on, and the lack of further media blow-ups is consistent with the suggestion 2014 was a fluke not likely to recur. I've also worked to improve my methods and style, including declining to meddle in matters better handled by others, even if I would have approached the questions differently (including the various examples in my March 15 submission to FRB). The FRB's assessment seems to confirm that I've made progress and that many people noticed it. My changes are genuine, and I think my efforts over the past two years have fully lived up to, or indeed surpassed, reasonable expectations.

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Appendix: Favorable public perception of my prior aviation consumer protection efforts

My assessment of likely positive public response to my recent American Airlines / bag fee lawsuit was shaped by positive public reception to my prior aviation consumer protection efforts.³ Representative media coverage:

- Christopher Elliott, "You've never heard of these people but they've changed the way you fly," Washington Post, June 1, 2017⁵—praising my efforts to "show[] air travelers how to negotiate the federal government's often confusing complaint system" and tabulating the recoveries the federal government has collected from airlines based on my complaints.
- Kelly Yamanouchi, "Fliers' right to video gets push from recent airline incidents," Atlanta Journal-Constitution, July 11, 2017⁶—favorably summarizing my Petition for Rulemaking asking the Department of Transportation to invalidate airline rules purporting to prohibit passengers from recording disputes; quoting multiple passengers who agree.
- Public comments on my DOT Petition for Rulemaking as to passenger right to record⁷—listing 32 comments received to date, unanimously in support: "I support this petition," "It is appalling that there is any question...", "I agree with this petition...", and similar.

Appendix: Distinctive interactions with staff, junior colleagues, and students

As to staff, within or related to their official duties:

- 1) My "Teaching Schedule Exporter"⁸ simplified, accelerated, and reduced FSS errors in the dull yet crucial task of copying irregular MBA teaching schedules into Outlook.
- 2) My "BookMe" self-service scheduler⁹ eased office hours and lunch scheduling including automatic confirmations, calendar entries, and reminders, reducing burden on FSS's.
- 3) My "Sequential Slideshows" tool¹⁰ streamlined FIELD staff efforts to show a series of student presentations (such as multiple FIELD 3 team presentations).
- 4) My "Countdown Timer"¹¹ streamlined FIELD staff coordination of limited class time, replacing a commercial predecessor that was distracting and uncustomizable.
- 5) My "Bulk View of VTS and IRS"¹² let FIELD staff see all students' submissions more quickly, replacing 90+ clicks with ~10. This tool was also used in FIELD 1, a course in which I had no role.
- 6) My "Hives Seatchart Maker" let FIELD staff prepare seating charts for Batten rooms, eliminating manual copy-and-paste of student names and photos.
- 7) My web-based mail merge tool let FSS's more easily send customized messages to FIELD 3 student teams, avoiding the error-prone copy and paste previously used by most FSS's.
- 8) The "freeze" feature, which I designed and which Media Services staff and their contractor built at my suggestion, is available in all MBA and exec ed classrooms. This feature is used by FIELD staff, I gather among others, to more effectively use all three classroom projectors to efficiently convey complex information to students.
- 9) I devised a procedure to let FSS's print student flashcards directly onto cardstock, eliminating the need for cutting paper and taping or gluing onto cardstock. My FSS shared this procedure on Slack, to immediate praise and thanks from other FSS's.
- 10) I repeatedly assisted various FSS's in troubleshooting case template errata, and I gathered bugs and suggestions for review by appropriate IT staff.
- 11) An FSS came to me to discuss ongoing difficulty working with her assigned faculty member. I encouraged her and suggested steps she could take to work productively.
- 12) For two of a colleague's research assistants, with whom I had not otherwise worked, I reviewed applications National Science Foundation graduate fellowships, and suggested specific improvements. Both received the fellowships they sought.
- 13) I offered expiring upgrades to staff traveling for FIELD2, suggesting that upgrades could be "a nice treat" for staff who usually fly coach.
- 14) As IT staff designed various tools (including RIS, Learning Hub, Canvas, video tools, and course materials archives), they sought my suggestions about features, requirements, and architecture. After the tools launched, I sent bug reports and suggestions with clarity and specificity. In various emails, they generously thanked me for these efforts.

- 15) On several instances, staff in the registrar's office sought my assistance when they needed to check how software systems show certain information to faculty. They indicated that they chose to request this assistance from me, alone, because they knew I could precisely describe what I saw and because they perceived, correctly, that I'd be happy to help.

As to food-service workers, relating to their employment:

- 1) A handful of food-service workers, who joined Harvard so long ago that they were direct Harvard employees (not employees of RA), contacted me to report that Harvard refused to provide them with certain benefits widely provided to others including short-term disability insurance and dental insurance. At their request, I helped them put their concerns into writing, including referencing relevant principles of law, giving their arguments increased clarity and precision. After multiple letters with my assistance, among other efforts, they obtained the benefits they sought, effective January 1, 2011 and continuing to this day.
- 2) Various food-service workers contacted me about matters affecting them collectively. For example, they were alarmed that when colleagues needed urgent medical attention, RA managers repeatedly refused to assist. (In one instance, a RA manager deposited a worker at the HBS Cumnock clinic, specifically designated as not providing urgent care. In another instance, a RA manager refused to call an ambulance, leading an employee to drive himself to a hospital where he immediately underwent emergency surgery.) I assisted concerned staff in writing a letter reporting their concern. In response, RA managers explicitly affirmed that workers needing urgent medical attention may obtain it, that managers will call an ambulance whenever a worker so requests, and that managers will notify emergency contacts.
- 3) Various food-service workers contacted me to request assistance with their individual disagreements with RA, Harvard, or their union. In a representative matter, a computer error led a RA staff member to be paid less than the applicable contract promised, a difference of \$0.20 to \$0.60 per hour, for ten years. I assisted her in tabulating the amount at issue and writing a letter which led to her obtaining a portion of the amount by which she had been underpaid. To her disappointment, RA declined to pay her the full amount of the error. At her request, I then referred her to a local attorney who practices in this field.

As to staff (including food-service workers), personal matters:

- 1) I assisted multiple staff including food-service workers and FSS's in preparing their tax returns. For those with sufficient computer skills, I provided computers with TurboTax, and I answered their questions about tricky portions of their returns. For those uncomfortable with the process, I typed in their information for them. I began this effort in 2008, and my records indicate 92 tax returns (46 federal and 46 state) for 11 different staff members (and, often, their spouses), saving them each the \$150+ (per year) that H&R Block and similar services regularly charge.
- 2) When a food-service worker was accused of assault, an accusation which he vigorously denied, I guided him towards practical next steps. Following my guidance, he was able to resolve the accusation.
- 3) When a staff member bought a used car with multiple concealed defects, I guided her through her rights under Massachusetts law, including helping her write a letter that led to the repair of all defects at no additional cost to her.

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Appendix: Distinctive interactions with staff, junior colleagues, and students

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- 4) When I found myself with excess computer screens (bought with personal funds, not HBS funds), I offered the extras as long-term loans to FSS's. This allowed some FSS's to have two screens, for increased productivity and comfort, years before DRFD authorized the purchase of a second screen with School funds. At peak, every NOM FSS had a second screen provided by me.
- 5) I formalized the practice of bringing seminar snack leftovers back to the NOM suite for FSS's to enjoy, an effort which had previously been sporadic but is now routine.
- 6) When I saw others leaving behind a mess in common areas such as faculty kitchens, hallways, and conference rooms, I made a point to clean up, including washing dishes, discarding leftovers, wiping down tables, and the like, all on numerous occasions.
- 7) When a food-service worker was reassigned to a position and schedule that were not workable for her, I rewrote her resume, improving her prospects in seeking a new position elsewhere.
- 8) When a food-service worker's landlord sought a 60% rent increase, I wrote a letter challenging that increase as excessive and harsh. With my letter, she negotiated both a delay and a reduction of the proposed increase. Did he ID himself in the letter as HBS faculty?
- 9) Several staff members sought my suggestions to reduce cost of air travel, including last-minute bereavement travel that was otherwise unduly costly. On three occasions, I provided free tickets via redemption of my frequent flier points.

As to junior colleagues (assistants, associates, and senior lecturers) within their professional work:

- 1) I designed software to let a sight-impaired colleague use tabletop polling buttons for calling.¹³
- 2) I devised an unobtrusive software solution to let a sight-impaired colleague view seminar slides on a tablet, at a distance and angle that work for her, without requiring that the presenter do anything extra.
- 3) I provided my "Real-Time On-Screen 'Chalkboard' Class Notes" tool¹⁴ to two junior colleagues whose temporary and permanent disabilities prevented them from writing with chalk. The faculty member with a temporary disability used the tool until his temporary disability ended. The faculty member with the permanent disability used it throughout her time at HBS and continues to use it at another university.
- 4) Multiple colleagues sought my guidance on company NDAs, data sharing agreements, and the like.
- 5) Three colleagues use my "courtesy copy"¹⁵ tool to more broadly distribute selected cases.
- 6) A colleague sought my assistance in regaining access to a software program, important in his teaching, that was designed for Windows 95, well over a decade earlier. On one day's notice, I managed to get the program running and extract key files so he could use the core features on a modern computer.
- 7) A colleague sought my assistance in processing an unusually large database which he was unable to open using standard tools or with assistance from Research Computing.
- 8) Multiple colleagues sought my advice on the scope of "fair use" reproduction of portions of others' copyrighted material.

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- 9) Multiple colleagues sought my guidance on both technical challenges and legal concerns associated with collecting data from the Internet by "scraper."
- 10) Multiple colleagues sought short-term loans of cables, chargers, adapters, and similar accessories, all of which I bought in extra quantity and variety for others' use as needed.
- 11) I repeatedly hosted dinners at my home for all junior unit colleagues in my discipline and all the doctoral students and local coauthors they were collectively working with (20+ people).

As to junior colleagues, personal matters:

- 1) When a colleague's elderly father-in-law faced an unexpected but large charge from a hospital, more than three hundred thousand dollars, the colleague came to me seeking guidance. I "ghost-wrote" a letter giving words to the family's concerns. My letter pushed the hospital and insurance company towards a resolution of the charges without further effort (or payment) by my colleague or his father.
- 2) When a colleague's spouse faced complications during a medical procedure due to possible physician malpractice, I guided the colleague and spouse through research, investigation, filing complaints and pursuing disciplinary action, and considering legal action.
- 3) When a colleague's landlord sought to retain a security deposit due to supposed infractions, I identified the landlord's violation of applicable Massachusetts law as to how such deposits must be handled, and I helped him write a letter that yielded the immediate return of his entire deposit.
- 4) When a colleague's landlord sought a penalty after she broke the lease early, I guided her towards fruitful arguments to avoid that expense. She was ultimately able to leave the property without penalty.
- 5) When a colleague leased a property to a tenant during the colleague's temporary appointment away from Boston, and the tenant caused extra expense through negligence, I helped the colleague resolve the dispute informally but fairly.
- 6) When a colleague was the victim of online fraud that placed \$5,000+ of disputed charges on his credit card, and when his card issuer denied responsibility, I assisted him in filing a more persuasive credit card dispute that ultimately made him whole.
- 7) When a colleague worried that her financial advisor was stealing from her, she came to me seeking guidance. I helped her evaluate the evidence and devise next steps.
- 8) When a colleague received a series of harassing emails, I analyzed message metadata for evidence of who sent the messages, and I helped her evaluate her legal and practical options.
- 9) When a colleague received a traffic violation with a surprisingly large financial penalty, I examined the notice of violation and identified a fatal defect. Via the approach I suggested, the violation and penalty were immediately dismissed.
- 10) When Amazon threatened to ban a colleague for (allegedly) excessive returns, I guided him towards an unofficial mechanism to submit evidence that his returns were appropriate in quantity and reason. My method led to an apology from Amazon and no penalty to his account.

- 11) When a colleague was involuntarily downgraded from business class to coach due to a cabin crew strike and associated complications, I wrote a letter on his behalf which led to him obtaining the refund to which he was entitled under law and contract.
- 12) Numerous colleagues repeatedly sought my assistance in using frequent flier upgrades and redemptions to travel at lower cost, in greater comfort, or with family.

As to students:

- 1) I devised software to let a sight-impaired MBA student see my slides and on-screen “board work” using the student’s standard laptop and wifi. The student said the system worked well—far better, he indicated, than alternatives he had tried in other classes at HBS and elsewhere. Moreover, my solution required no special hardware, nor any special effort by Media Services or anyone else.
- 2) When several MBA students suffered water damage to their personal possessions due to a sprinkler malfunction in the building where they lived, I alerted them to their rights under law. Using the reasoning I provided, they recovered the entirety of their loss from the party at fault.
- 3) When an undergraduate research assistant’s low-income parents struggled to rent a car to help her move out of her apartment, I guided them towards a cost-effective option within their budget.
- 4) Two MBA students came to me, separately, to discuss concerns relating to “hitting the screen”—each indicating that she thought language and cultural barriers were as much to blame as her genuine knowledge. Over the subsequent months, I met with each of them repeatedly, offering guidance on course selection, participation, and strategy for exams and papers.
- 5) I repeatedly hosted dinners at my home for all Business Economics “non-finance” doctoral students (30+ people).

References

¹ <http://www.benedelman.org/news/110910-1.html>

² Examples: Testimony of Benjamin Edelman, presented to the United States House of Representatives Committee on the Judiciary, Task Force on Competition Policy and Antitrust Laws, June 27, 2008, <http://www.benedelman.org/publications/ppc-competition-071008.pdf> (with a large bold-faced heading "Disclosures" listing unrelated work for Microsoft and service as cocounsel in two unrelated cases). "Tying Google Affiliate Network," <http://www.benedelman.org/news/092810-1.html>, September 28, 2010 (with an unavoidable top-of-page disclosure, with distinctive background color for emphasis, disclosing both my unrelated work for competitors and my service as cocounsel in litigation against Google)

³ <http://www.benedelman.org/airfare-advertising/>

⁴ DOT-OST-2015-0137, <https://www.regulations.gov/docket?D=DOT-OST-2015-0137>

⁵ https://www.washingtonpost.com/lifestyle/travel/youve-never-heard-of-these-people-but-theyve-changed-the-way-you-fly/2017/06/01/847ce1a6-358f-11e7-b373-418f6849a004_story.html

⁶ <http://www.myajc.com/business/fliers-right-video-gets-push-from-recent-incidents/iKpxLoeoGdcsg4LV4uORGL/>

⁷ <https://www.regulations.gov/docket?D=DOT-OST-2017-0084>

⁸ <http://www.people.hbs.edu/protected/bedelman/classesstocalendar/>

⁹ <http://people.hbs.edu/protected/bedelman/bookme/>

¹⁰ <http://people.hbs.edu/protected/bedelman/sequentialslideshows/>

¹¹ <http://people.hbs.edu/protected/bedelman/timer/>

¹² <http://people.hbs.edu/protected/bedelman/field3/vtsview/>

¹³ <http://people.hbs.edu/protected/bedelman/buttons/>

¹⁴ <http://www.benedelman.org/boardnotes/>

¹⁵ <http://people.hbs.edu/protected/bedelman/courtesycopy/>

Exhibit 27

Supplemental Response to Faculty Review Board Questions – Outside Activities

Benjamin G. Edelman
September 8, 2017

The FRB's September 1, 2017 message posed several questions about my outside activities. In separate documents, I list my recent outside activities and recent work products. In this supplemental response, I turn to the broader questions the FRB asked.

First, as to when and where to seek advice or approvals on outside activities: I begin with the HBS Policy on Outside Activities of the Faculty. In many respects, the policy is unambiguous, and I seek to follow it strictly. When it appears to be ambiguous, I have consulted with Jean Cunningham and sought her guidance on its meaning. I have also discussed these questions with trusted faculty colleagues, most often senior faculty in my unit, though also colleagues in other units who I have reason to believe have relevant experience.

As to how to include disclosures on my output: I have long included disclosures within my output, including disclosures that predate HBS policy calling for this approach. Compare my "Labels and Disclosures in Search Advertising" (discussing certain Google practices and beginning with an unavoidable top-of-page disclosure with distinctive background color discussing my consulting work for companies that compete with Google; <http://www.benedelman.org/news/110910-1.html>, dated November 9, 2010) with the HBS 2012 Conflict of Interest policy (which, as I understand it, began the official requirement to include such disclosures where applicable). In fact I had posted relevant disclosures on online articles as early as 2004 or perhaps earlier, though my word choice, format, and placement have evolved based on my developing assessment of readers' expectations and the nature of relationships that call for disclosure. Relatedly, I have also twice mentioned efforts to improve the HBR.ORG content management system to provide better and more relevant disclosures. (See my November 6, 2015 Reply to Faculty Review Board at page 3, second bullet. See also my July 31, 2017 Response to FRB Questions at page 4, paragraph beginning "A separate set.") These efforts indicate the depth of my commitment to superior disclosures and my efforts not just to follow applicable rules and guidelines, but to lead.

As to when to include disclosures on my output: In my view, the HBS Policy on Outside Activities of the Faculty appropriately states the circumstances in which disclosure is appropriate. Restating the general approach as I understand it: Disclosure is appropriate, and indeed compulsory, when an outside activity is directly related to a work product, in a way that affects, or could reasonably be seen to, affect objectives or financial interests. Of course people may see "directly related," "affects," and even "objectives or financial interests" differently. Historically my approach to these questions has been grounded in the training I received as an attorney, including in the attorney ethics course required as part of the HLS curriculum. Subsequent events, including FRB guidance, have broadened my understanding, as I discussed in greatest detail in my November 6, 2015 Reply to FRB.

The FRB asked about my work in litigation adverse to American Airlines. First, the FRB asked about the role I am playing. I thought of the case while casually reviewing the applicable contracts and practices to assist friends and family. After I uncovered the violations and determined that they were appropriate for class action litigation, I identified co-counsel appropriate for the day-to-day work in the case. I

drafted most of the complaint and handed the case off to them. I expect that I'll work on some of the key legal strategy and drafting, but I do not expect to be involved in the minutiae of the case.

The FRB next asked whether I considered seeking approval from the Dean for my work on this lawsuit. I considered it but determined that it was not necessary. First, I was guided by the plain language of the applicable policies. In general, litigation does not trigger any of the specific categories listed in the HBS Policy on Outside Activities of the Faculty. Closest is the requirement of Dean's approval for service as an expert witness. But neither of the stated reasons (risk to reputation, scheduling inflexibility) obviously applies. (Service as an attorney tends to prompt fewer personal attacks than service as an expert, where opposing experts often criticize each other by name. Indeed, my prior litigation projects have yielded positive to neutral public response, reducing my sense of reputational risk from these projects and correspondingly reducing my assessment of the likelihood that Dean approval was necessary or appropriate. Meanwhile, co-counsel handle all court appearances and other day-to-day aspects of the litigation, so there is no sense in which this case will impact my academic duties in the way that OA Policy worries for service as an expert.) Moreover, service as an attorney simply is not service as an expert, and thus falls outside the plain language of this provision of the OA policy.

All very "lawyerly"

Second, I was guided by my 2008 disclosures and subsequent discussions with Jean Cunningham. In January 2008, I wrote to the "Office of the Dean" role account (officedean@hbs.edu) specifically pointing out my work as an attorney, noting that this was outside the scope of activities calling for Dean's approval, and seeking guidance. I received no reply. In October of that year, I discussed that question among others with Jean Cunningham. Jean gave specific guidance about service as an expert but did not indicate that work as an attorney required advance approval. Leaving that discussion, my understanding was that I do not need to seek approval for service as an attorney, and that has been my approach ever since. But he could easily have clarified this by asking her if he had to disclose his activities as an attorney

Third, I was guided by senior colleagues. I sought their guidance (as discussed below) and proceeded as they directed.

Fourth, I was comforted by my limited role in the case, serving solely as an attorney. In some matters, concern arises in large part from shifting between multiple roles—for example, doing certain research for investors interested in Blinkx, then writing an article grounded in some of the same findings. Here, I have made no public statements about American Airlines bag fees, and I do not intend to do so, except in the limited ways typical for an attorney. Indeed, this has been my standard approach to litigation matters for some years. See e.g. my single public posting about Facebook overcharging kids and parents, "Refunds for Minors, Parents, and Guardians for Purchases of Facebook Credits" (<http://www.benedelman.org/news/071216-1.html>), in a formal lawyerly style, jointly written with co-counsel, simultaneously and identically posted to co-counsel firm web sites. This narrower single role reduces some concerns.

Although I concluded that the Dean's permission was not required for my work in this case, Max Bazerman and I nonetheless decided to alert the Dean to the project. Reflecting on the dual connection between the case and HBS (my role as an attorney, and Max's role as plaintiff), we both noted that this was unusual and would benefit from up-front discussion with others. In July 2017 we discussed the subject with Brian Hall and other senior colleagues whose judgment we trusted. In a lengthy email thread, we decided that Max would revise his letter as to my promotion case to mention this relationship with me (lest anyone think my representation of him affected his letter); that he would notify Paul Healy (in his capacity as Senior Associate Dean for Faculty Development); that he would pre-commit to give to charity any proceeds he received from the case; and that he would tell the Dean,

Need
to ask
Max
about
this

request guidance, and propose to discuss by phone or in person as the Dean saw fit. Max tells me that he promptly did all of those things (though I gather the Dean elected not to follow up). Thus, the Dean did know about this project, has been consulted, and did not object. Paul Healy replied to thank Max for mentioning this unusual relationship, but expressed no particular concern.

Incidental to these steps, we also considered several alternatives. For example, we discussed consulting with Jean Cunningham, but concluded that communication directly with the Dean was appropriate (albeit without extended explicit deliberation on this point). We also discussed my participation in some of the steps discussed above, such as me separately contacting the Dean, but we decided Max alone would proceed as discussed above. Among the factors that led us to that decision: As discussed above, we saw my role as plainly permissible under applicable policies, while more unusual questions arose from the dual relationship between me and Max (me serving as his attorney in the AA bag fee case, but at the same time, him writing a letter as to my promotion).

Max: Simple common sense would suggest you should not serve as BE's client

Does he
want us
to
believe
that the
client
(HF)
didn't
want this
info to
become
public,
given
their
short
position
in the
stock?

The FRB asked about my article entitled "Impact of OTA Bias and Consolidation on Consumers" and suggested that piece "shares at least some similarities with Blinkx in that a third party provided funding for the work."

First, as I've mentioned previously, I wouldn't characterize the Blinkx project as a client "provid[ing] funding for the work." For the Blinkx project, a client paid me to do a portion of the research later summarized in my online posting. Other portions of the research in that posting came years before, and some came after. Notably, it was my decision whether to post my findings online or otherwise tell the public. Indeed, as we have discussed, the client did not request that I post my findings, and in fact the client's initial request was for confidentiality, while I insisted on the *right* to tell the public given the possible importance of the findings and the fact that my work would rely only on publicly-available information that need not end up confidential. Many readers skipped over these aspects of the relationship, and I have learned that some readers place little or no weight on these factors. Indeed, my thinking on these subjects has evolved, as I explained in detail in my November 6, 2015 Reply to Faculty Review Board (at page 2, heading "Further learnings from Blinkx experience"). Nonetheless, I pause on this point to redouble my efforts to state the facts accurately: No one paid me to post the Blinkx research to my web site, nor did any contract or agreement require me to do so.

Turning to the Blinkx project versus this more recent project about OTA search bias --

Despite the similarity that FRB identifies, I see the projects quite differently.

For one, my disclosure practices differ sharply between the two projects. The FRB no doubt recalls that my initial Blinkx disclosure was both insufficient and inartful: The first version omitted some information that should have been included, and also allowed incorrect interpretations that led some readers to misunderstand my relationship with the investors who had previously asked me about Blinkx. In contrast, for the search bias paper, my relationship with AHLA was fully and carefully disclosed from the outset. I drafted a first disclosure for the OTA bias paper, but mindful of my own fallibility and Jean Cunningham's special expertise and work in this area, I consulted with her by email months before publication, and I implemented verbatim the revision that she suggested.

Turning to substance, the OTA bias paper also offered distinctive benefits for my professional development. For one, the relationship with AHLA provided superior access to key managers (a benefit not included in my relationship with the investors who asked about Blinkx). In particular, the AHLA

arranged for me to interview relevant managers including marketing, strategy, and general management leaders at hotel chains, large hotel franchisees, and individual hotels. At my request, AHLA also arranged for me to interview selected mid-level staff who handle OTA relationships on a day-to-day level. I could have obtained some of this access on my own, but it would have been much more difficult, more time-consuming, and less likely to reach the senior leaders with greatest insight.

Relatedly, the OTA bias project is distinctively related to my academic work. For one, I have written about search bias—largely, though not exclusively, in general-purpose search engines such as Google—for more than a decade. Furthermore, my recent work about “price coherence” (vertical price restrictions) connects closely to the way OTAs obtained market power over hotels and the way they prevent hotels from escaping their high fees and harsh terms. AHLA managers were familiar with both these lines of research when they approached me, and the special fit made the project seem a particularly good match on both sides. The Blinkx article also built on some of my prior work (examining Zango, an adware company that Blinkx acquired after an FTC enforcement action and bankruptcy), but that prior work was largely during graduate school and most readily understood as an outside activity.* In contrast, the OTA bias work is much closer to my core, recent research.

Meanwhile, it seems to me that the best public discussion of novel regulatory and policy topics occurs through academic analysis embodied in work for which faculty authors are typically paid. I share the FRB’s general concern about some aspects of this process. But it seems to me that the alternative is worse. I see little sign that, for example, FTC staff or congressional staff are well positioned to independently explore the OTA market in the depth and detail necessary to form a robust opinion. Instead, analysis by faculty helps frame the issues they need to look at. Close relationships between faculty and affected firms help assure that that framing is as timely and insightful as possible. Finally, competitive dynamics effectively compel firms to seek faculty assistance. Indeed, on the specific subject of OTA bias, the subject of my recent article, OTA’s have been diligent in seeking top talent. For example, Susan Athey, now of Stanford GSB, joined Expedia’s Board of Directors, I gather in large part to guide Expedia’s efforts in this area. With Expedia recruiting top Stanford faculty to assist with this subject, it seems to me entirely proper for the targeted hotels to have access to similar talent to respond in kind. If only Expedia has specialized assistance, and hotels do not, policy outcomes will be predictably lopsided. Tech firms arguably already have some big advantages—easier access to capital, greater market concentration that lets them better organize their arguments—and in my view the search for truth is better served by assuring that small firms, such as advertisers, are diligently and skillfully assisted.

Arguably there are also important distinctions grounded in the motives of my clients. Some people objected to my Blinkx work because my clients were (or were presumed to be) investors who were, in the basest sense, betting against a company and hoping that its stock would drop. They stood to profit at the expense of other investors—in some sense, taking money from other investors. Here, customers (hotels) are complaining about the tactics of certain dominant suppliers (OTAs). They stand to “profit” only by getting to keep money that they would otherwise pay as commissions or fees. To those who disliked the prospect of investors betting against a company, it may be more palatable for companies to seek to reduce their payments to suppliers. The fact that two huge companies control 95% of the OTA market probably makes their situation that much more sympathetic, particularly given increasing public concern about monopoly and oligopoly.

* Some of my adware testing led to academic publications. A representative article that used adware testing to address questions of management: “Risk, Information, and Incentives in Online Affiliate Marketing.” Journal of Marketing Research (JMR) 52, no. 1 (February 2015): 1–12. (Lead Article.) (With Wesley Brandi.)

Finally, my approach to this project was influenced by the fact that HBS rules nowhere prohibit such work and, indeed, plainly allow it. These rules were recently discussed at length and updated with care. During that process, I read the rules, internalized them, and followed them. I credit that there's always a penumbra around any set of rules; some grey areas require interpretation. But I don't think this is in a grey area. In discussing the rules, it was always apparent that outside organizations sometimes pay faculty for outside activities including speaking, testimony, and other writings. The required approach, under the OA and COI policies, is disclosure, which I did. We collectively approved the rules with the understanding that in situations such as this, robust disclosure suffices.

My advance consultation with Jean, as to the disclosure text, also led me to believe that she, at least, saw this project as well within the bounds of the HBS OA policy and also within the bounds of appropriate faculty conduct. She took a full business day to read my draft document, then indicated that she had read it in its entirety and found it interesting, and even offered a bit of other commentary in addition to her guidance on disclosures. Jean nowhere suggested that the project was out of line, was impermissible under the OA or COI policy, or should be withheld or suspended.

Finally, the FRB asked about the concern of "research for hire." I think we're all alarmed by some of what we have learned about certain faculty members' ties to certain companies. I've thought about this for years, beginning while a graduate student before joining HBS. I devised my personal lines that I will not cross and have not crossed. Most notably (with the exception discussed below), I never give any companies right to control (such as approve, veto, or forcibly revise) anything I write about them, with them, with their support, or even using data they provide. (My final requirement differs from many colleagues, who accept company data subject to data sharing agreements that let a company approve or reject a publication at the conclusion of the project—a relationship that makes faculty authors predictably subservient to company requirements, and all but assures results favorable to the companies they work with.)

What is he referring to?

Indeed, I have followed these principles at personal cost. For example, some years ago, Groupon approached me, seeking my assistance investigating an advertising fraud that cost it millions of dollars. Their standard consulting agreement included a non-disparagement clause that would have prevented me from giving frank advice to students wanting to know my view of the company's prospects. In negotiations with Groupon attorneys, I asked that the clause be removed. When they refused, I declined to assist them. My duties as a faculty member came first.

I say that I "have not crossed" these lines, but there is a notable exception: Our casewriting policies require me (and all other faculty authors) to agree not to publish a case using information learned during casewriting, unless the case subject approves. I've long been concerned about that requirement, worrying that it forecloses cases that explore sensitive or disputed subjects. Despite that worry, I understand the rationale for our approach, and of course I value the superior access the policy helps us retain. He appears to be implying that HBS's policies are inconsistent/hypocritical, and that his approach to consulting is more appropriate than how we deal with field cases. My bottom line, then, is that questions of outside activities and conflict of interest are complex and multifaceted. In my view, the discussions during revision to OA and COI policy were appropriately nuanced, and the revised policies seem to me to strike the right balance between the competing objectives. If a colleague sees my work as "research for hire," I'd encourage that person to look again, and also to think carefully about the plausible alternatives for work that all but requires close relationships with companies. I would also hope that that person would see the benefits that come

from some of my outside activities—for example compelling Facebook to provide refunds to certain parents and kids; compelling Yahoo to let advertisers reject its most noxious advertising placements. I think a fair examination of those activities would reveal my level of care when choosing to work closely with companies, versus when choosing to oppose apparent corporate misconduct. Ultimately I am comfortable with—and proud of—the approach I have taken, the substance of my findings and recommendations, and the work I have done.

Exhibit 28

Supplemental Response to Faculty Review Board Questions – Full Listing of Recent Outside Activities

Benjamin G. Edelman
September 8, 2017

The FRB requested a complete listing of all my recent outside activities. I prepared the following list from accounting records and, to a limited extent, email records and other notes. Unpaid projects were less likely to yield entries that carry through here. I omit litigation matters still in the stage of research and investigation, and litigation research abandoned without filing suit.

As previously discussed, some client names are protected by confidentiality agreements. I nonetheless provide a complete list for the limited purpose specified by FRB.

This document covers work from October 1, 2015 through September 8, 2017.

Detecting advertising fraud: AOL, Barons, Blucora, eBay, David White, Deluxe, Geico, Intuit, Mars, Microsoft, Penske Media Corporation, ShareASale, Target, Travelzoo, TribalFusion, Tubemogul, Verizon

Investors concerned about advertising fraud and other online misbehavior: Foxhaven, Guidepoint, Harborspring, Mosaic Research, Muddy Waters, Noble Insights, Valiant

Other consulting: American Coalition for Taxpayer Rights, American Registry for Internet Numbers, California Division of Fair Employment and Housing, Future of TV Coalition, Hitachi, Homeaway, Keystone Strategy, Online Publishers Association, Sify, Videology, VR Networks

Litigation: Bazerman v. American Airlines (alleging overcharging bag fees), Flowers v. Twilio (alleging recording and interception of communications without consent), Huddleston v. American Airlines (alleging check-in time requirements, fees and penalties without basis in contract), I.B. v. Facebook (children and parents challenging “all sales are final” policy as unlawful, and seeking refunds)

Paid speaking: Boston Coach, Institute of Global Management (canceled)

Video remarks: Bizcuit

Journal and publisher referee payments: American Economic Review, Journal of International Money and Finance, Columbia University Press

Unpaid outside activities: Various discussions with enforcement agencies, legislators, and regulators. Various discussions with journalists. Various discussions with individual consumers about aviation disputes and, occasionally, other legal problems. Software development. Academic refereeing.

HBS short executive education programs: Strategic Negotiation (January 2016, May 2016), Retail Forum for Senior Leaders (June 2016, May 2017)

As we discussed in 2015, I have been careful to assure that my outside activity remains within the applicable limit. It does. Among other factors, my advertising fraud detection is largely automated, reducing my role to reviewing automatically-generated reports. Furthermore, my co-counsel largely handle litigation matters on a day-to-day basis.

Exhibit 29

Page 1

1 COMMONWEALTH OF MASSACHUSETTS
2 SUPERIOR COURT
3 SUFFOLK, SS
4 BUSINESS LITIGATION SESSION

5
6 BENJAMIN EDELMAN,
7 Plaintiff,
8 v. Civil Action No.
9 PRESIDENT AND FELLOWS OF HARVARD 2384CV00395-BLS2
10 COLLEGE,
11 Defendant.
12

13 DEPOSITION OF
14 STUART GILSON
15 DATE: Tuesday, April 29, 2025
16 TIME: 9:37 a.m.
17 LOCATION: Zalkind Duncan & Bernstein LLP
18 65A Atlantic Avenue
19 Boston, MA 02110
20 REPORTED BY: Robert Lombardi
21 JOB NO.: 7309585
22
23
24
25

<p style="text-align: right;">Page 50</p> <p>1 sort of designed a way for the faculty member to sort 2 of be -- to be signaled somehow as to what students 3 wanted to participate. 4 It just allowed for a more -- my 5 understanding was it allowed for a more effective 6 interaction with -- with the students despite the 7 visual impairment -- vision impairment. 8 Number of people commented that, you know, 9 in the -- the LCA -- that's the ethics course, 10 leadership, something, and accountability. But in his 11 interactions with LCA faculty, I believe there were 12 positive comments there. A number of people commented 13 that he seemed to be very helpful when asked to, you 14 know, assist, you know, in certain types of tasks. 15 Q In what ways did he not meet the 16 expectations for colleagueship? 17 A So I think the -- so the -- the -- so there 18 are -- there were some interviews that we conducted. 19 These were not interviews that I myself conducted, but 20 other members of the committee conducted in which it 21 appeared there still may be concerns about the manner 22 in which he might treat other people. 23 But for me, the -- the greater concern was 24 whether or not he recognized that, you know, certain 25 of his actions and choices -- you know, again, however</p>	<p style="text-align: right;">Page 52</p> <p>1 THE WITNESS: Again, I -- I have no way 2 of remembering. I mean, if it was, like, asking 3 somebody, "Where -- when is the meeting going to be 4 held? What room are we in," you know, that might be 5 one that wouldn't go out to everybody, but I can't 6 remember specific emails. 7 BY MR. RUSSCOL: 8 Q Are there any FRB faculty with whom you 9 never exchanged one-on-one emails about FRB business? 10 MR. MURPHY: Objection. 11 THE WITNESS: I can't recall. 12 BY MR. RUSSCOL: 13 Q Did you ever send FRB-related emails just to 14 Professor Edmondson? 15 A I may have, but again, I don't remember. 16 Q Did you ever send FRB-related emails just to 17 Angela Crispi? 18 A I don't remember. 19 Q Did you ever send FRB-related emails just to 20 Professor Schlesinger? 21 A I don't remember. 22 Q Did you ever send FRB-related emails just to 23 Jean Cunningham? 24 A Yeah, yeah. I don't remember. I don't 25 remember whether I would've CC-ed other people or not.</p>
<p style="text-align: right;">Page 51</p> <p>1 well-intentioned they may be -- might have or might 2 engender a negative reaction among others, and as a 3 result, impose costs or reputational harm on the 4 school or faculty or staff. 5 Q How did you communicate with other members 6 of the FRB about the FRB's proceedings? 7 A It would've been primarily through 8 conversations that we had during meetings or emails. 9 Q When you emailed about FRB business, did you 10 usually include all the members of the FRB? 11 A When I personally -- 12 Q Yes. 13 A Yep. I -- I wouldn't know the exact split. 14 I mean, I suppose it -- it might depend on what the 15 nature of the communication was. Maybe sometimes yes; 16 maybe sometimes no. 17 Q So you think there might've been times when 18 you emailed only one member of the FRB? 19 MR. MURPHY: Objection. 20 THE WITNESS: Yeah. I don't remember. 21 BY MR. RUSSCOL: 22 Q But you think there might've been times when 23 you emailed some but not all of the members of the 24 FRB? 25 MR. MURPHY: Objection.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q When there were in-person meetings of the 2 FRB, did they include all the members, or did fewer 3 than all the members meet sometimes? 4 A Yeah. I don't remember. 5 Q When there were meetings of the FRB, were 6 they recorded? 7 MR. MURPHY: Objection. 8 THE WITNESS: I don't believe there was 9 an audio recording ever taken. 10 BY MR. RUSSCOL: 11 Q Were there notes taken of FRB meetings? 12 A Yeah. I believe minutes were taken in some 13 cases. 14 Q Who took the minutes for the meetings? 15 A I don't know. 16 Q Did you take any notes at the FRB meetings? 17 A No. 18 Q Did you observe anyone taking notes at the 19 FRB meetings? 20 A Yeah. I -- I just can't remember. Like, 21 did anybody have a pen up and was writing at the time? 22 It's just too far back in time. I don't remember. 23 Q How many times did the FRB meet regarding 24 Mr. Edelman's case? 25 A I can't remember a specific number.</p>

Exhibit 30

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss
Business Litigation Session

BENJAMIN EDELMAN,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 2384CV00395-BLS2
)	
PRESIDENT AND FELLOWS OF)	
HARVARD COLLEGE,)	
)	
Defendant.)	
)	

AFFIDAVIT OF CHRISTOPHER PRINGLE
IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SPOILATION SANCTIONS

I, Christopher Pringle, hereby depose and state under oath and upon personal knowledge:

1. I have worked in Harvard Business School's ("HBS" or "the School") IT Department for over 18 years. I became the Information Security Officer in 2017, a role which expanded to Campus Information Security Officer in 2023, which I currently occupy.

2. As part of my position, I have governance oversight for the design and implementation of IT Security, Compliance, and Data Privacy practices at HBS, including for the School's email environment.

3. Harvard University's ("the University") official email client is Microsoft Outlook ("Outlook"), which the University pays for as part of an annual subscription governed by its Master Service Agreement ("MSA") with Microsoft. HBS is covered by the University's MSA with Microsoft as a "tenant account"; as a tenant account, HBS is able to host its own email domain ("@hbs.edu"). HBS pays licensing fees associated with its tenant account under the MSA to the University. Any separate Microsoft licenses the School uses which are not included under the University's MSA are selected and paid for by the School. Under its tenant account, HBS licenses

tens of thousands of email users under the HBS email domain (including thousands of current students, faculty, and staff, as well as tens of thousands of alumni).

4. Microsoft offers a variety of Outlook functions for email users and IT administrators. Many of these functions are included by default, and HBS also has the ability to configure other functions for its licensed email users. One such function includes default retention expiration policies. A retention expiration policy operates automatically in the background by removing items that fall outside of a retention period (for example, after 14 days).

5. Typically, when an HBS Outlook user deletes an email from his or her inbox (or another email subfolder), the message is moved to the “Deleted Items” folder of that user’s Outlook account. Items in this folder remain in the folder until the user, the user’s delegate, or an HBS IT administrator manually clears the Deleted Items folder (HBS has not elected to apply a retention expiration policy to the Deleted Items folder, so items in this folder are never automatically cleared). Once cleared, items from the Deleted Items folder move into the “Recoverable Items\Deletions” folder of the user’s Outlook account. As the file name implies, items in this folder may be recovered until either the retention expiration policy kicks in or a user manually clears the Recoverable Items\Deletions folder prior to the retention expiration. The retention expiration period for the Deletions folder runs on cycle that averages 14 days. Cleared items from the Deletions folder (“Deleted” items) then move into the user’s “Recoverable Items\Purges” folder. Similar to the Deletions folder, a user may manually clear the Purges folder; otherwise the items will be automatically removed after the average 14-day retention expiration cycle. Prior to being cleared (either manually or automatically), items in the Purges folder are also recoverable. Once cleared from the Purges folder, however, these items may be considered permanently

“Purged” from the system, as they are no longer viewable or recoverable by any user or administrator.

6. When a litigation hold is put in place for a user’s HBS email account, it impacts the above processes in a significant way: While the retention expiration policies described above still operate during a litigation hold, the litigation hold ensures that all Deleted items are still saved in the system, and that items in the Purges folder are never permanently deleted. Rather, all email items deleted after the litigation hold is put in place are saved indefinitely, regardless of the lengths a user may go to in attempting to permanently delete items. This ensures that Outlook evidence is preserved so that it can be extracted and produced as part of litigation discovery.

7. The indefinite retention of Outlook items under a litigation hold also retains the metadata associated with those items. However, the *forensic* metadata associated with such items (e.g. who viewed, moved, deleted, or purged the item and the date and time that person did so) are not retained indefinitely. By default, Outlook retains such forensic metadata for 90 days, even when a litigation hold is in place. In order to retain and access forensic metadata beyond the default 90-day retention window, Microsoft offers an Audit Retention Policy that must be purchased separately. HBS, under its tenant account through the University’s MSA with Microsoft, may elect to purchase this policy for its own email environment. HBS does not currently pay for this separate policy, nor has it ever at any point since 2014, when HBS migrated its email environment to the Microsoft cloud.

Signed under the pains and penalties of perjury this 15th day of December 2025.

/s/ Christopher Pringle

Christopher Pringle

CERTIFICATE OF SERVICE

I, Martin F. Murphy, hereby certify that on December 15, 2025, I caused a true and correct copy of this document to be sent, via email, to counsel of record for Plaintiff.

/s/ Martin F. Murphy
Martin F. Murphy