The Law, such as it is
Season 3, Episode 2

Larry

This is Larry Lessig. This is the second episode of the podcast "The Law, such as it is." We're in the fourth [actually, third] season where we're considering the story of Francesca Gino.

Francesca was a professor at the Harvard Business School, and this year, became the first professor in the history of Harvard University to have her tenure removed. The conditions of that removal are the subject of this season of the podcast.

The second episode will cover the events that led to the conclusion by the Harvard Business School that she had committed academic misconduct, and the business school would then recommend that she have her tenure revoked.

As I said in the first episode. I'm not a neutral in this case. I was a friend of, I am a friend of Francesca Gino, and I helped her throughout the process, not as a lawyer, except at the very end, where I helped put together her final appeal to the President, which ultimately failed.

But the purpose of telling this story slowly through the medium of a podcast is to give you a chance to come to understand it carefully, because in the culture of tweeting, it's an easy story to mischaracterize. In the culture of tweeting, it's an easy story to mock. I've been astonished with the confidence that people who know nothing about the facts seem to have about the facts. So I'm going to try to give you a picture of the facts, and with that picture, you can draw your own conclusions. So this interview happened on August 14, with Francesca in person. We will have one more episode with her telling the balance of the story until she was removed as a professor. And then, as I promised, we will go into four episodes that will each consider the four papers that were said to have been fraudulently produced, and then we'll have a concluding episode. Stay tuned.

Larry

Francesca, I'm grateful that you're having this conversation with me. We've known each other for a long time. Why don't you describe a little bit about when we first got to know each other?

Francesca

I believe it was around 2010. I had just arrived on campus or soon after. And I knew of you because you were involved in some of the work at the Safra Center, and, at the time, I was doing quite a bit of research on trying to understand why people do what they do, but in the context of morality. And so I came to meet you.

Lawrence Lessig

Yes, and then you were affiliated with the Center, and we got to participate in that project, which, at the time, we were focused on what I called "institutional corruption." But that was the focus, really about a social morality, or the morality of systems or institutions. And I just remember you were a vibrant contributor to that conversation, and I was grateful that you participated back then.

But we're having this conversation today, it's August 14 2025, because four years ago, in July 2021, a group called Data Colada contacted Harvard Business School, where you were professor, with concerns over four studies in papers you had co-authored. Let's start with a question of who Data Colada is.

Francesca

Data Colada is a group of three behavioral scientists. They do work like other behavioral scientists, trying to understand why people behave the way they do. And at around 2013, they started a blog called Data Colada. They write about other people's work, they criticize it in the hope of making science better.

Larry

They were, and in some ways, still are, to me, a kind of hero, in the sense of they're out there trying to make sure that the standards of the field are being met. And, with respect to your work, they claim that there were at least anomalies in the data supporting the claims in your research. Those anomalies could either have been errors or fraud, and they were quite explicit that they didn't know which. They just knew that there were problems with the data, and so they took their issue to Harvard, which was weird, right? Because they typically would take the issue to the authors. So, did they bring these charges to you at all?

Francesca

They did not. It is their policy to go to authors and give them the chance to respond, but they didn't do that in my case.

Larry

Okay, all right. So let's back up a little bit so everybody understands a little bit more about you and why you do the work you do. So tell me a little bit about how you got to where you are. Obviously from your beautiful accent, it's clear you didn't get there from Cambridge, Massachusetts. So how did you get to this position of being a professor at the Harvard Business School?

Francesca

It's a bit of a long story. In Italy, when you are in college, you work on a dissertation, and, at the time, I decided to work on one that was about production systems based on a really cool class that I took back then, and I ended up doing a lot of research with the professor who taught the class and wrote a handbook of sort. And I really loved that process. There was also a center, a lab, where I used to go as a participant to be part of lab studies. And so, after graduating from college, I started a PhD program in Italy that was experimental, and the idea is that you would leave on year three and go somewhere else to do your dissertation work. And for no particular good reason, I left at the beginning of my second year. I came to Harvard. And the idea was to say for six months, but I never left. So I started taking classes here. At some point, a professor asked me, "why not starting a PhD from scratch from here?" I didn't understand the system. And so I stayed where I was.

So fast forward, I graduated from my three-year program. I think that everybody understood that I wasn't quite ready. And so I stayed on as a post doc, followed by another post doc at Carnegie Mellon University. And then I had my first job at UNC, and after a few months, I realized that there wasn't a department who was doing a lot of behavioral research, and, as an Italian, it was a little difficult to live in Chapel Hill. And so I told myself that it'd be better to move. That was 2009. I received an early offer from Stern. In talking to advisors, they recommended going on the market and doing so selectively in places, cities and universities where I would be happy as a scholar, but also as an Italian.

Larry

So that led you here, back to Harvard.

Francesca

That's exactly right.

Larry

Okay, but then help us understand a little bit more the nature of the research. So you called yourself a behavioral scientist, but what does it mean to be a behavioral scientist? What does the particular part of the field that you're working in look like?

Francesca

Very broadly, Behavioral Science uses psychology as well as economics to try to understand human behavior. It's really asking questions related to, why do we do the things that we do, or why do we think the way we think? And then you can apply those questions across different settings. And so for some of my research, for example, I studied why is it that good people do bad things? And as you explore these questions, one common way of doing so is through lab experiments or surveys, where you're trying to put participants, subjects, people like us, in different conditions, and then seeing if, because of that situation or condition, you see a difference in their behavior that is consistent with your hypothesis. So lab studies often start from observations in the world, and then you turn them into hypotheses that you want to test.

Larry

Okay, so you have a theory, an observation, and you then think about how to test that, and then you might design an experiment that is conducted inside of a lab. And by a lab, we basically mean a room with a bunch of computer terminals, where people come and they sit at the computer terminal and they answer questions. Would that be the way it might look?

Francesca

Yeah. And in fact, if you go back to my time at Carnegie Mellon University, or even at UNC, often experiments were in the form of paper surveys. And so you would go around town and ask people if they wanted to participate, and then they would answer by filling out paper surveys, and some of them were condition A and some of them were condition B, and then you would look at the difference that way.

Larry

Okay. Now, when you started doing this, obviously, as a post doc, you did most of the work or all of the work yourself, but as you became an assistant professor, and then a professor here, the

character of the team changes, right? Because there's a ton of data here. There's a ton of stuff to work through. Who does that ton of work?

Francesca

So one of the things that you want to do when you run studies is ensuring that the data is collected properly, and that you are not somehow biasing it in some way, and so you rely on the assistance of what we call the "research assistants." So these are often undergraduates, or people who are taking gap years, or people who want to go to grad school later, and they want to get more research experience, and they are the people who are responsible for collecting the data, cleaning the data. Even before collecting the data, you need approval from the IRB.

Larry

What's an IRB?

Francesca

It's the Institutional Review Board. They are people who look over your research, your plans for what you intend to do, to make sure that there is nothing that is dangerous or risky for participants. And so the RA would help you write the application to make sure that they have all the information that they need to run the experiment. And it makes sense, then, for them to be the one cleaning the data, since sometimes when you run studies in the lab, not everybody is behaving particularly well, or you might have reasons to drop them, and the RAs have that knowledge.

Larry

Okay, so the word 'cleaning the data' will strike people who are not in the field as kind of weird. That sounds like you're, you know, picking the observations you like and ignoring the observations you don't like. So just give us a practical sense of like, what does messy data look like, and what is done to it to turn it into clean data,

Francesca

Absolutely. So let's imagine the survey or the experiment asks a question about your age, and often the way the question is asked is, in which year were you born? But some participants going fast, rather than saying 1978, they put 47. And so an RA cleaning the data would correct that, so that when you're doing descriptive statistics, you're actually looking at the right data. Or sometimes there is

misspelling if you're giving answers. And so that also needs to be corrected. But cleaning the data also means sometimes you use a survey for testing, and so you have what we call the pilot study. So we invite 10 participants in, and so those need to be removed from the data. And it's understood from the beginning that they're not going to be real participants, but an RA would know that, and not the person who's known as the principal investigator.

Larry

Okay, so the whole process of becoming an academic in the field that you work is a process of actually learning this incredible, really industry, of producing the data that will then be analyzed to test the hypothesis that people have about why people behave the way they do. So you must have, as a graduate student, been advised by your more senior graduate students or by the professor you are working with, exactly how all this work has done. Done is that is that kind of the culture of how you become a business school professor studying behavioral science.

Francesca

Absolutely, it's part of the training that you receive. And in fact, when I went to Carnegie Mellon University as a post doc, I was actually a visiting assistant professor, to be precise, my position was created for me. And the reason is that they needed people to teach courses to undergraduate around organizational behavior. And I thought I could do that, but they also had a lab manager. So this is a person who oversees all the lab studies that are going on in the lab. And so I took the position of lab manager, I did the teaching, and I became visiting assistant professor. And so my role, day in and out, was to be in the lab, to the be the person, either myself or with the help of other undergraduates, who collected the data for various professors who were working in this field at the time.

Larry

So across the United States, how many people are there like you, in the sense of nobody like you, exactly Francesca, but I mean, like you, in the sense of working in behavioral studies like this.

Francesca

It's an interesting question, because some of these scholars sit in business schools. Some of them sit in psychology departments. I would say, when you look at the society where these members tend to aggregate, there are, I believe, 1500 members. It's the Society of

Judgment and Decision Making. And then if you add the psychologists, then I think the number gets a little larger.

Larry

Okay, so couple 1000 people working in this field. Now, you know, I've not been your lawyer in the context of defending you directly, although I did participate at the last stage in writing the final appeal in this process. But I'll just be frank. When understanding how data is handled in your field, it was a little bit shocking in the sense that it's as if it doesn't really matter to be 100% certain that every step has been taken with perfect certainty, because it seems like the process, not just your process, but the process of others, is relatively casual about how data is manipulated, cleaned, passed from one device to another device, then used in a study. Obviously, everybody believing that it's actually what it's supposed to be. But if this were a bank, and that's the way data about, you know, financial transactions were handled, it would be kind of a scandal, right? So am I being fair in my characterizing this as not quite the level of security of data in a bank, and what justifies that difference?

Francesca

If I think about this with the head, the mentality and thinking of 2025, I think I'm as surprised as you are. And I look back and say, "Wait a second, is this how we handled our data?" And I'm as surprised as you are, even shocked. But when I think about it in the context of the practices of the field in the 2000 and I go back to what we were actually doing, like running around the city trying to gather data from participants, it didn't seem as strange. Again, it wasn't just me or my lab. It was everybody in the field having the same type of practices and not exactly thinking through, "Well, if we collect data on paper, what kind of security do we need around it? Or if we insert data in Excel, what kind of errors are likely to happen?"

When I think about all the different classes that I took as a PhD student, and I believe this to be the case also in 2025, there are no data management classes. That's shocking now, reflecting back to what happened to me. But you just learn by looking at what others are doing. And I can't remember conversations where my colleagues and I look at each other and said, "Hey, wait a second. Is it possible that...?" It just didn't happen.

Larry

Yeah, I mean, one way to understand it is kind of an expression of humility. I mean, you know, really, why does it matter? It's just

an academic paper being published about whether morality is triggered by eggs or by, you know, dish soap. And so if you're not using the level of security you would use if you were working inside of the Fed, it's maybe kind of appropriate.

But what's weird about the moment we're in is that because of, I think, the legitimate activity of people like Data Colada, there's a real question that gets raised about, why are there certain anomalies? And you and I both know that the academy is not filled with perfectly pure souls, and there have been very important examples, even especially at Harvard, of people who have overtly manipulated their data. Who have decided I need an answer to get this grant, or I need an answer to get tenure, I need an answer to get some bonus, and so I'll just fudge the data to get that answer. And to the extent we know that happens, I guess it's not surprising that we have this conflict between what we could call lax data practices and suspicion triggered by sometimes intentional manipulation, sometimes accidental, unintentional flaws.

Francesca

Yeah, so if I go back to 2013 when Data Colada started their blogs, and then it took a few years, as change usually requires, there have been a lot of what I believe are very healthy discussions about looking at practices and ensuring that the conclusions that we draw from the research that we do in behavioral science are solid.

So another one that I think is going to shock you, if you pick up a paper from 2010 or earlier, the number of people that you have in each condition, that you're using to draw conclusions about your research is probably 20 or 30. And looking at it now, we know that if you do proper power analysis, that is a big mistake. It's not proper, but it wasn't known at the time. And so if you're working in a system where you're adopting the current practices, and you're not pausing to ask questions, "are these the best practices that we have?," you end up probably with some anomalies.

Larry

In fact, in this context, we're going to spend a lot of time not you and I, because you and I are not going to talk about the substance of the papers and whether, in fact, the charges against you are true. I don't want to put that burden on you, so that's the conversation I'm going to have with others. But in the context of this, when the charges were made against you, your co-authors were rightly anxious, and they worried, was their work infected by this as well.

And so there was a project, I think it was called the Many Co-authors Project. Describe the Many Co-authors project.

Francesca

So, as you said, when the news broke in the summer of 2023, co-authors reacted by saying, "we should have a database of all the papers that we wrote with Francesca and try to see if there are issues, as far as we know, in the other papers." And this was an important effort, because the news rocked the field. There were students who were hitting the market and they needed jobs, and they had my name on their papers or on their CVs, or people going through promotion processes. And so this effort came from the desire to ensure that the papers that others wrote with me were "clean."

And through this effort, one co-author, Juliana Schroeder at the University of Berkeley, decided to audit all the papers she co-authored with me, and she had seven. And as it turns out, in her audits, she ended up finding errors in studies where I didn't have anything to do with the data collection, data cleaning or data analysis. And to me, that was really an important moment. As I told her, I wish she audited the papers she didn't co-author with me to try to see how likely errors tend to happen, especially because in some cases, some of the errors were similar to the ones that I uncovered. So, for example, in one of her studies, she found that 34 rows of data were coming from a person taking the survey multiple times, which is something similar to an anomaly that I found in one of my studies. And so, it was just the realization that, unfortunately, errors are common in our field. And to me, it was an eye opener and a call to the field, not only to have better practices, but also better ways to check on the data that we collect.

Larry

Now, for many academics, it's hard to understand what that could mean. So I'm a law professor. I write articles, I do my own research in the sense that I read, and I highlight sections that I'm reading, and I produce endless note cards, and I sit there with the note cards, and I put them to knit them together into an article, and I type out the article, and because I'm a law professor, I obsessively footnote everything. If you discovered in my work, pages of the work that had not been cited that were just, you know, verbatim copies of something else, I think it's a fair conclusion I did that intentionally. Right? Who else would have done it? And it's not so hard to just put a footnote, and to the extent I don't put a footnote, or I repeatedly

have stuff that's not mine in there, I think it's perfectly fair to assume there must be something wrong with me and my execution in a very intentional way.

Yeah, and even Data Colada, just before the final decision in your case was revealed, turned out to have problems with their data. And I remember reading it, and one of the principals said, you know, it just turns out, this is really hard. And that's a really important insight: It's really hard. I don't think Data Colada fudged their data. I don't think there was any intentionality to it as well at all, but I think it brings out the fact that this is a field where it's quite likely that even the most careful are going to turn out to discover that there are problems in the data that they're working with.

Larry

But I think the point I'm trying to emphasize for people who've not thought about this endlessly as we have, is that that's not actually a fair inference to draw in many fields. In order to draw that inference, you got to do more than that and then identify that there's an anomaly, you've got to actually kind of figure out, work out, work backwards, to see where the anomaly comes from, and if it turns out the anomaly comes at the very last stage, when you're sitting there with the article, trying to put it together, to make it say what you want it to say, Okay, fine: I'm totally willing to believe that the author is responsible there. But if you haven't even looked at the stages that happened before, the people who were involved in that process, then I think it's just wrong to leap to the conclusion that this is like, this is criminal behavior. But it's so hard to resist that. The Atlantic had a piece. It wasn't Juliana that the piece was about, right?

Francesca

Alison Wood Brooks

Larry

Yeah. And she, like through this piece, was trying to help the author understand what was going on and how they could be finding anomalies. And at the end, it turned out she too had anomalies in her paper. But what was striking to me is the author of the piece. The Atlantic pivoted it around right away to say, "Oh, you too, are a fraudster." No, she wasn't a fraudster. It's just a messy, difficult, complicated field, and it turns out there's something wrong with it. That's not to say there couldn't be fraud. It's to say you've got to do the work to demonstrate that there's fraud. You can't make this leap to the conclusion we've got a criminal here, or let's destroy

somebody's career, because we must have a criminal here, because who else could have done it?

Francesca

Yeah, and the piece was about Juliana Schroeder. I'm sad that the reporter concluded or wrote the story the way he did. I think Juliana is a remarkable example of a person who took the moment to say, "Okay, let's audit these papers." And as she told me, that summer was really hard due to the discovery of the anomalies and errors that she found. But what was also interesting of her story is that what follows were corrections if the anomalies didn't change the results, or retractions when that was appropriate.

Larry

Okay, so the bottom line is, you're in a field where you produce research driven by tons of empirical data. There are many people working on preparing that data for you to analyze. Once the data is prepared, you determine whether it actually shows something interesting, and if it does, you write it up, and if editors at journals like it, they publish it. That's the state of your life. So how many papers like this have you published?

Francesca

I have published about 140 papers. And, generally, papers have multiple studies, since you're going after similar or a series of hypotheses on the same topic. And so it's about over 500 studies.

Larry

500 studies that get revealed in 140 papers. And you were charged here with four papers where these anomalies existed, so less than 1% of these papers. I'm a lawyer, so I am doing the math.

Francesca

You're doing the math fast. I'm trying to follow you.

Larry

And so in these 140 papers, how many co-authors would be in that mix?

Francesca

About 120. Again, this might sound shocking to you if you think about the way you described a paper of yours, but it truly is a different field and a different set of efforts. Again, many papers have five, six, sometimes even seven, studies. And in order to get to those

seven studies, you probably conducted many more, because in the first time you try out the experiment, maybe your manipulation wasn't appropriate in the sense of really proving what you were trying to prove. And so there is a lot of experimentation that goes into the making of these papers, and many people trying to help as the data is being collected to the point where the paper is written up.

Larry

Okay. And those are just the authors. If you had to ballpark, how many people touched the data from the 140 papers that you've published, how many people would that be? I mean, obviously a research assistant could work on four or five papers, so it's not like it would multiply out from 140 but if you just had to, you know, if you think about how many researchers have I worked with? How many lab managers have I worked with? How many post docs have I worked with? Is it like 10s or 20s or hundreds? What does it look like?

Francesca

It's probably in the hundreds. I had at some point during the investigation to look back to all the research associates that worked with me, and I had 66 research assistants who were working for me paid. But then there were many more, actually, that were doing work related to my research or the research I was doing with my graduate students that were doing it for class credit. And so we're talking about hundreds of people.

Larry

Okay, all right, great. So let's go back to the what happened here in July 2021. Again, four years ago, Data Colada contacts Harvard, not you. Were you told that they contacted Harvard?

Francesca

I was not told.

Larry

Okay, so in July, they contact Harvard. What we know from the discovery in the related proceedings around this issue is that at that point, the business school and Data Colada enter into some sort of agreement. I mean, obviously Data Colada comes to the Business School and says, "We think you have this fraudster professor, and we're going to publish these blog posts about her," and Harvard's eager, apparently, to forestall that. And so they enter into an into an

agreement where the business school promises to open an investigation, in exchange for them delaying the publication of the blog post. Is that right?

Francesca

That's right.

Larry

Okay. And so they begin that process, but they begin it by creating the process, or more precisely, by rewriting the process that would govern charges of academic misconduct. The Business School, like the law school, had a policy for research misconduct. I think it was a very short kind of two-page policy that had been debated by the faculty and adopted by the faculty as the faculty's statement of the policy to govern research misconduct.

But, over the summer, the business school crafted a brand new policy: 16 pages that was designed to govern the adjudication of your case. And, again, when they created this, did the faculty debate it and vote on it?

Francesca

No, it was done behind closed doors.

Larry

Okay, so behind closed doors, they change the policy that the faculty had adopted, creating one that's now eight times longer. The faculty doesn't know about it. And as you think about the comparison between that policy and the policy which preceded it, what are the two most significant things this policy enforced that the older policy would not necessarily have enforced?

Francesca

The two would be, first, the fact that they put a restriction such that I could only engage with and talk to two advisors. And the second important difference is that there were issues of confidentiality, so I could not talk beyond these two advisors, to anyone about what was happening. And the policy states that if I were to share information about the process or what was going on, there would be sanctions up to termination.

Larry

Okay, so those are two really striking conditions. When I thought about it, it kind of made sense, if you thought of this policy

as growing out of the very elaborate process which the universities have adopted to deal with claims of sexual misconduct, where, obviously, confidentiality is really important if you're going to give victims the space and the permission, the freedom to raise their claims. You must have confidentiality. And if I were managing such a process, I would absolutely say you must maintain confidentiality, and if you breach it, that's the end. And then the same thing with advisors. If you're thinking about a rape, or one of these horrendous sexual misconduct claims, as horrendous as it is, it's within the ken of understanding of ordinary people. We know what we're talking about. So how many people do you actually need?

So I understand the kind of source of a policy like that, but in this context, it's quite consequential because this effective gag order means that you know, once you learn of it, so far, you haven't learned of it... we're still talking about them crafting the policy, but once you learn of it, you can't talk to anybody about it. You can't talk to the people who you did the research with about it. You can't talk to your research assistants. You can't try to figure out what happened, who did what, who said what.

And quite importantly, who knows how many advisors you would need to be able to defend yourself, depending on what the issue was. Because obviously, with your field, unlike mine, they're really complicated statistical questions to be able to establish whether there's likelihood of misconduct or not, and that's beyond my can and at some stage it's beyond all of our cans. And so that's why you bring experts in.

Okay, so these policies were enacted, I'm going to call it unfairly maybe, but I'm going to call it the gag order and the restriction on your advisors. And then it also created this new position, the research integrity officer. What is the research integrity officer?

Francesca

So you can think of him or her as a person who stands between you and the committee. So the committee is faculty members at Harvard Business School. At the time of the inquiry, it was two, and at the time of the investigation, it was three of them. But it's not that I could, if I had a question, pick up the phone or write an email directly to the committee. I would always have to do that through the research integrity officer. And similarly, when the committee had questions for me, they would come through this middle person.

Larry

Okay, so this is not a faculty person, this is just a staff person who was to be the kind of point of contact between the two. And even though there would be a faculty committee that would investigate and a faculty committee that would then make a determination of whether they thought there was a violation here, you would communicate solely through this research integrity officer.

So, back to the timeline, HBS gets notified in July, they strike a deal with Data Colada. Then for three months, they build this new process for adjudicating charges like this, they hire somebody to manage it. All of this is done in secret. The faculty knows nothing about it. You don't know anything about it. And then fast forward to October 27 2021. What happens then?

Francesca

So it is 8.10 in the morning, and I receive an email that I printed out so I have in front of me that said, "Dear Francesca, I have a serious and time sensitive matter I need to discuss with you today. Could we please meet for 20-30 minutes at your earliest convenience? I understand you may have teaching obligations this morning. Let's meet on campus if possible, and please bring your HBS issued devices to the meeting. Thanks. Alain."

So this is an email from the research integrity officer that I received that morning. And, as it turns out, it was my husband's 50th birthday. And so I responded by saying, I'm teaching. I have Parent Teachers conferences, and then I have...

Larry

for your own kids, parent teachers conference...

Francesca

yeah, for my own kids. And then I have this big celebration for my husband, since it is his 50th birthday. And he asked me to call him right away before teaching. So I did. And so the day went sideways, where: I taught, and then I walked to campus with my HBS issued devices.

Larry

Yeah, I mean, I'm not sure I would have understood what that was about until the "and bring your HBS issued devices along with you," which is obviously a chilling demand.

But I mean, when you think back, you know that we're talking about July, so August, September, October, three months between the time that they learn of charges of academic misconduct, and you learning about the charges, is that ordinary? Is that like a normal process for academic misconduct?

Francesca

No, in fact, I think that the norm is to be told within a week.

Larry

Within a week.

Francesca

Yeah. And here is over three months.

Larry

Okay. And so you have the conversation, and you learn that you're being charged with academic misconduct. I can't imagine how horrible that must be, but when you think back about it, it might have been complicated, because you might have also thought there's no there there, so I'm not really worried about this. So what did you feel at that moment?

Francesca

I remember being shocked. I couldn't quite understand what I was hearing from the research integrity officer. But then, as you said, I thought maybe there is an error, since I didn't commit any misconduct. And so, right from the start, I was collaborative, and I did what I was told. I showed up with my HBS issued machines.

Larry

Okay, so the process begins, you obviously are interacting with the research integrity officer. Describe the research integrity officer, what kind of person?

Francesca

So I knew of him, since he used to be one of the people responsible to review applications sent to the IRB. And so if there were ever issues or need for clarification, it would be the person sending comments and having the back and forth.

As it turns out, this position of research integrity officer is really critical. They are in charge of gathering all the data, all the evidence that is relevant in order to understand the allegations against you.

And they manage the process. Again, they're the person who is communicating with the committee and ensuring that the process is actually followed as is spelled out.

Larry

But was he pleasant? Was he I mean, what kind of relationship did you have on day one with this person?

Francesca

So when he asked me to ensure that I would show up at HBS right away, the scene was puzzling, since the police was there. Security was there when I showed up on campus, and so it's a little bit like being in a movie and sort of asking yourself if this is your story.

I am not very technologically savvy, so not only I showed up with my machines, but I also showed up with my husband, who's a software engineer, so that I could ensure that if they had questions about my computers, I had an expert on the site to answer them. But it was formal, and I just followed the rules that he set from the start.

Larry

Okay, so, but he tells you, what? Does he give substance about what's been charged? Or he says, you've been charged with academic misconduct, and this will begin a process of investigation.

Francesca

So during the call, when we connected, he let me know that there were allegations of misconduct against me, and that he would send a formal note that would start the inquiry process. And then he told me that for any question that I had, once I read the letter, I could turn to him.

Larry

Okay, so in this process, you needed to pick two advisors, and only two advisors. Who did you pick and why?

Francesca

So the first one I picked was a lawyer, and it wasn't my choice, really. But it was a suggestion, a very strong suggestion, from the research integrity officer. And so if you go back to that time, again, imagine me, saying, "What is this all about? Why do I need a lawyer to get involved?" And so I told him that I didn't think I needed one.

And he mentioned that in similar investigations in other parts of Harvard, lawyers are common, that he would recommend names

of people that I should be talking to. And so one of the advisors ended up being a lawyer. And then, as a second advisor, I chose a mentor and colleague who is a professor at Harvard Business School. His name is Gary Pisano.

Larry

Okay, so Gary's a great, obviously superb professor. Is he an expert in statistics?

Francesca

No, not only he is not an expert is also not from my field, which turned out to be an important aspect of going through a process like this one.

Larry

Okay. But you at this stage again, in your own mind, I'm not guilty of anything. I need people to be in the room with me as I'm going through this process. You're not really gaming out exactly what the elements of a defense would have to be. You don't even know what the nature of the charge is fully, so it's understandable you would pick those two.

But it does raise the concern that if they don't turn out to be the kind of people necessary to help you defend yourself, you're stuck. You've picked your two, you've played your cards. Those are the rules, of course, not the rules approved by the faculty, but those are the rules that you're being forced to live under.

I imagine you must have had conversations with the research integrity officer clarifying the fact that, for example, you can't go talk to the research assistants, you can't talk to other members of the faculty, you can't get help from other people that you really were stuck with... or stuck is a bad word, because there's both of them are perfectly decent people to do the job. They just weren't the only people, and they weren't all the people necessary to do the job. So you had them, and those were the people you could work with. You must have confirmed that understanding repeatedly.

Francesca

I did. And as you said, it became a real limit, because due to the way these studies are put together and the papers are written, you truly need other people to be involved, to try to understand or even reconstruct who did what and when for each of the studies in question.

Larry

Yeah, yeah, I can imagine. Okay, so that's October 27. November 5, the process formally begins. The Business School appoints two faculty members, and their job is to investigate enough to decide whether a formal process should proceed. Where is Data Colada in all of this?

Francesca

It's nowhere since I only knew that the accusations against these four studies were made by an anonymous complainant. And so I didn't know that it was Data Colada.

Larry

And but now, do you know whether Data Colada had any role in these early iterations at the business school to determine whether, in fact, there was misconduct in this case?

Francesca

Now I do, and I know that they communicated with the research integrity officer multiple times.

Larry

And what was the nature of the communication to provide information or to get information?

Francesca

It was more to get information and almost dictate some of what the process should be doing, or what the committee should be doing in the way they looked at the data.

Larry

Yeah. And again, I can understand from Data Colada perspective, Data Colada thinks, look, we have these great blog entries, you know. And of course, a blog is the most important thing in the world, but we have these great blog entries, and we have agreed not to publish in exchange for you doing an investigation. So we have some stake in this investigation, and so we're going to be right there with you, and we're going to be describing what you should be demanding. To get the evidence to prove guilt or innocence. I'm not going to assume they intended to prove guilt.

But from a process perspective, that's pretty outrageous, because this should be the business school making its judgment, not the business school as the handmaiden of like these data vigilantes. You

know, God bless them for their work. But that's not the appropriate role in this stage. Yet, that seems to be what's going on.

So you've got November, December and January. What do you know? What do you think is happening? Because nothing's happening directly with you. My understanding is you're just kind of locked in a room, not allowed to talk to anybody while this is all going on. Is that right?

Francesca

That is correct, and more than locked in a room, I was doing my job of teaching and continuing the research, which I think is an important aspect of all of it, since after the fact, some people looking back said, "Why did you keep working on your research?" And almost being angry that I did. But if you take my perspective of "I'm part of a process, I know I've done nothing wrong. I'm sure that the process will prove that," then what I ought to be doing is continue helping my students and continue pushing on the research.

Larry

Yeah, and you had a bizarre, I mean, from you know, a law professor's perspective, you had a bizarre amount of teaching obligations at this time, right? So describe like what you're teaching.

Francesca

I was teaching a new course that became a first-year course for the MBA students. So it's over a 1000s of them on inclusive leadership, and so it was a lot of work to create the materials. I was also chosen as the course head. That means that you're managing eight professors. Eight or more professors were teaching different sections of the course. So it was a very intensive period, from a teaching perspective.

Larry

Okay. And then you're also doing academic research.

Francesca

I'm doing academic research. And then as a good HBS professor, you're also participating in all other activities, like promotion processes.

Larry

Okay, so you're a regular professor. You're teaching what is, from my perspective, an ungodly amount of number of students at

the same time. But in the back of your mind, you know, there's this ticking time bomb of a process which, because you believe, because you know you're innocent. You don't believe it's going to blow up. You have faith in the system. And so that might not be debilitating to know that that's going on, but it can't have been pleasant.

But so in February, seven months after these charges were brought to the Harvard Business School by Data Colada, in February, they finally talked to you about it, right? So describe what happens in February.

Francesca

So in February, we had a meeting. It was me, the two committee members of the inquiry committee. So these two Harvard Business School professors...

Larry

Yeah, and I just want to be clear to the audience, I'm not going to… I'm asking Francesca, and I'm not going to mention who these faculty members are. It's a hard and thankless task, the work that they're called to do, and I don't intend our conversation to burden them personally at all, so all we're going to do is describe what happens, and these anonymous people participating in the process will remain anonymous.

Francesca

I appreciate that, and, like you, I went back to the interview notes, to the transcripts, and I actually started by thanking them for doing what they were doing. Since I know the life of an HBS professor: it is very busy, and so doing this on top of that was something that definitely was calling for being grateful. But I was there. We were on Zoom, all the meetings with them.

Larry

Right, this is COVID.

Francesca

Yeah, yeah, and it's the two of them. Is me. I had my lawyer, and so in order for my lawyer to be there, there was the General Counsel of Harvard on the call as well, as well as the research integrity officer. I think that... that's it in terms of who was present. But, at that point, again in going back to the transcript, they asked some questions about my general practices. Again, in thinking about who

the people there were, and maybe at the time I didn't quite understand it, but they didn't know my ways of working or my practices.

Larry

They don't know the practices of behavioral science.

Francesca

Not to the level I think that we're talking about now.

Larry

Because obviously not every business professor, business school professor, works with data the way you work with data. Not all of them would have an intuitive understanding of the complexity of managing 30 research assistants to pull together the data for a project, right? So they could view it the way I would view it if it were a faculty member from the law school, like, here's some problems. You're the one who benefits. So I'm presuming you're guilty here.

Francesca

Absolutely. I could imagine you looking at the data and truly not understanding why is it that you as a faculty don't own every step of the process, but when you put it in the context of multiple studies per paper, multiple papers a year, and the field is one of joint effort, and in fact, the joint effort is praised because it allows us for better research, then you're in a very different world.

And so some of the questions were about understanding my practices, as well as going back to what the anonymous complainant brought to them, since they submitted a detailed letter, report, if you will, on December 3, and so they had the chance to see it, but I didn't. And so...

Larry

This is an important point. So, so what Data Colada submitted, and you understood it to be an anonymous complainant, was a detailed description of why they thought there was a problem with the with four papers.

Francesca

Yeah, I'm going back with my memory, since this is an important detail, and I want to be accurate, I know that it exists since I saw it later, but I don't know if I had it at the time. But what I did have was from the committee, they would share their screen on Zoom and show me what they believed to be the anomalies that this

anonymous complainant pointed out to them. And so, for example, for one of the allegations, they pointed to the fact that there were 20 rows (turned out to be 24) with Harvard written as the answer to one of the questions of the survey. And it seems strange, and so they were asking me to make sense of it. And if I go back to my interview, I didn't have good answers because I didn't really had the chance to try to make sense of the data.

Larry

Yeah, if you had manufactured the data, you would have had a pretty good answer, because you would have come in there thinking, "Oh, those are the 24 rows there must be they must have discovered the 24 rows I added. So what's my answer? Oh, here's the answer." But you're kind of cold called, here are 24 rows that seem to have these weird characteristics to them. Like, what is this? And you don't have a good answer.

Francesca

That's right.

Larry

And then the question is, how do you, as investigators, read the fact that you don't have a good answer. And there's a lot of great work to demonstrate that we're not actually very good, necessarily, in reading the integrity of another person, depending on the character, depending on the manner of the person. But they're obviously listening to you, describe, give answers.

As you left that meeting, it's the only meeting, I mean, leave at zoom you logged off of the zoom call, which is the only time you met with the two committee members during this investigation, the investigatory stage of this, did you feel anxious, more anxious or less anxious? Did you feel like this was a problem that was going to go away? Or did you feel like, wow, we don't really have a clear sense of what makes this go away.

Francesca

I think the emotion I remember having was one of sadness. It was the first time, and in fact, I commented on this in the interview itself... It was the first time I was meeting one of my colleagues, since one of the faculty members who was part of the Inquiry Committee, was a person I never had a conversation with up to that point. And so it just felt so sad and disappointing that that was the entry point to one of my own colleagues.

Larry

Yeah. Okay, so February, there's this meeting. March happens, but you don't hear anything? What are you thinking?

Francesca

At that point, we were in the middle of finishing teaching this course, and so my focus really was on what was happening. And the course was... we struggled in getting it right, and I've always been a really successful and effective teacher. And so it was the first time where the materials weren't as well received as we hoped. And so there was work to do, and so my attention was there.

Larry

You were distracted, formally, fortunately. Okay, in April, the committee concludes that a formal investigation needs to happen. And they appoint a third committee member, and they begin their work. So they notify you of that through the through the research integrity officer?

Francesca Gino

They did.

Larry

So the research integrity officer just gives you this conclusion or gives you a letter that says something?

Francesca

He always sends you a note that says, "I'm about to share a confidential note about the process," and then the note would follow.

Larry

I see. Okay. So are you at home? Are you in your office when you read this?

Francesca

I believe I was in my office. And you might ask, how did that feel?

Larry

Yes, I'm going to ask how it did feel.

Francesca

It felt surreal. At the same time, I remember when back in late October of 2021, when I was interviewing the lawyers that the

research integrity officer suggested, one of the consistent things that they said was, "look, the process entails an inquiry stage and then an investigation stage. Most, if not all of these cases end up in an investigation, and so the inquiry is almost something that we do to then lead into an investigation." So my expectations were, an investigation is going to happen.

Larry

Okay, so this wasn't a surprise.

Francesca

That's exactly right.

Larry

Disappointment, maybe, but not a surprise.

Francesca

Mmm mmm [in agreement].

Larry

Okay. April. May: the research integrity officer informs you that Harvard, the Harvard Business School, has hired a forensics firm, a firm called Maidstone. What's a forensics firm?

Francesca

So forensic firms are groups of experts who know a lot about data and they know a lot about digital evidence, and so they're people who can look at files and make sense of whatever evidence could be helpful. And in this case, in trying to understand what happened.

Larry

Are they cheap?

Francesca

I'm told they're quite expensive. And now I know for a fact that they're quite expensive.

Larry

Because they're highly talented, like typically PhD type people who didn't want to be academics, but they wanted to do really consequential work. So one would think that learning that Harvard had hired a forensics firm for them, not for you, you might want to hire a forensics firm. Did you hire a forensics firm?

Francesca

I wanted to hire a forensic firm. It's one of the things that Gary suggested doing, and when I asked the research integrity officer, I was told I couldn't because I used up my two slots.

Larry

You played your two cards.

Okay, so this is a really critical point. And I say that as a member of the Harvard faculty, because it just strikes me as outrageous.

You know, you've effectively been gagged already. You don't have an opportunity to talk to the people who could help you put together the evidence you would need to establish what I believe is true. And you've asserted convincingly to me that there is no fraud here. There's no misconduct. You've already been gagged and made that much more difficult. But they think it's necessary to have an expert to understand the data. The idea that they don't let you have an expert to understand the data is extraordinary.

You know, it would be a violation of due process in a court, the idea that one side gets special access to a technology to understand the evidence in the case, but the other side is blocked from it and blocked from it based on the fact that you played your cards already. I mean, it's not like when you decided those two, the research integrity officer said, "Oh, look, you know might be you want to reserve one of these because you're going to need to have really high powered experts to evaluate data. So make a good choice here." You had no clue about what was going to be necessary here.

And yet, here we are. You are blocked from being able to have an expert who could help you resist or rebut or interrogate the evidence that comes out from the expert on the other side. And of course, that becomes as we, you and I are not going to talk through this, but in talking through of the four charges, that becomes quite significant, because eventually it's shown this expert's work is problematic, and they withdraw the expert as the expert they rely on in the tenure revocation proceeding.

And the errors are errors that if you had had an expert before they concluded you were guilty, you could have pointed out to the committee, that they were expert and there are errors in the analysis. So it's not just that it was wrong. It was actually harmful to the process of coming to a conclusion of whether you had committed

academic misconduct. And so, you know, as I look at this, this feels to me like the most significant point at this stage of the process.

Now, to be perfectly transparent, the research integrity officer says that he didn't forbid you from hiring an expert. I mean, Gary, your advisor told you should hire an expert. I would imagine that if he told you, you would agree you needed to hire an expert. The fact that you didn't hire an expert was not that you were, you know, lazy or not interested or not concerned. There must have been some reason why you didn't. So that seems circumstantially to suggest that, in fact, you were told.

But the research integrity officer is quite clear that he never told you you couldn't hire an expert, that you were free to hire an expert, that there was this hidden exception to the gag order. The gag order says you couldn't talk to anybody except the expert, which you were allowed to hire but did not hire. When you heard the research integrity officer say that, what did you feel?

Francesca

It's hard to hear… looking back at the history and changing the facts in the moment where the research integrity officer told me that I couldn't hire a forensic expert. What I told myself, well, it's going to be a fair process, and so I'm sure that their expert is just going to figure out the truth and explain what they see in the data. And so I was starting from the standpoint of thinking that the committee and the research integrity officer would do their work with this expert to simply prove that I didn't do anything wrong.

At the same time, in May, the research integrity officer told me that the committee intended to interview the various RAs involved in the research. And so again, I'm there thinking they're gonna have a lot of information and evidence to simply come to the conclusion that there is no evidence against me.

Larry

Okay, so you're still operating with the belief that everybody's operating in good faith. And I'm not saying they weren't operating in good faith, but you're not anxious about it, because, again, you think that the process is going to prevail the truth. And the truth is you haven't engaged in academic misconduct.

But I'm asking a different question. I'm saying at the moment you heard the research integrity officer say that he didn't tell you you couldn't hire another expert. What did that feel like?

Francesca

It felt awful. Here you have the research integrity officer of a really important institution where Veritas means something, and he lied under oath. That was really hard.

Larry

Yeah, it's hard for me even just to hear it. And this is at a stage where you can understand, maybe you know, this turns out to have been an important decision. And clear to everybody, it was the wrong decision to forbid you to hire a forensics expert. So maybe there's a motivated reason why his memory evolved to believe this, you know. So he maybe didn't actually lie, in the sense that he actually did believe he said this to you. But at the moment when this was operative, your advisor is telling you you need a forensics expert, and you believe you want to hire a forensics expert, you don't hire a forensics expert. It's pretty hard to believe you did that just because you believed it was not necessary, you're not listening to Gary.

Francesca

And for anything important, really critical that the research integrity officer suggested I should do, there is an email when he suggested lawyers. There is an email with names of lawyers to try and speak to. And when it came to a forensic firm, there is no email whatsoever.

Larry

Okay, that's May. In June, coming up on a year since this whole thing began, Data Colada begins to get impatient. In the end of June, which is just at the year point, they send the research integrity officer a letter demanding to know when the process is going to complete, and quote "whether and when they should take matters into their own hands." So again, they're kind of holding the gun to the head of Harvard saying you got to resolve this because we need to publish our blog posts. So the committee is obviously feeling some pressure. From their perspective, nothing's really happened. From Data Colada's perspective, nothing's really happened, and they're acting to make their threat to HBS play.

Okay, so Francesca, it's the summer of 2022, one year after the charges have been raised, about four of your papers, HBS is investigating these charges. You've learned HBS gives its forensics firm data from your computer for them to evaluate.

Okay, let's pause on this point, another really critical point for just a second. They have your computer, right? You told us that you gave them your computer when they told you that you were being investigated and when they took it from you. Do you know what they did to it?

Francesca

When I showed up on that October day, I showed up with all my HBS machines, and so there was an IT person who was supposed to take forensic images of my machines so that they would have all the evidence needed to make sense of these allegations.

Larry

Yeah. So to be clear, this is not something that's obvious. You can take what's called an image of the machine, which is more than an image of the hard disk,[1] it's an image of the state of the machine at a particular time. And that image of the state of the machine kind of draws the baseline, and it's from that image that you make a determination of what happened on that machine. Because obviously essential to the case is them establishing that you manipulated the data in some way. So if you did, there might be evidence on the machine that you manipulated data in some way. There might be files in the system that would help reveal that. It reveals what web pages you've opened, what thumb drives you've inserted, all that sort of data is there.

Indeed, you could say this is kind of data forensics 101. That if you're going to know how a machine was used, the investigator must take this image at the moment the investigation is launched, because that image permits the analyst to determine every fact about the use. It records the websites. It includes system logs. This is the critical part, right? That could reveal when and how files were created, maybe even include remnants of deleted files, because when we delete a file, it doesn't actually delete it, it just deletes the entry in the file list. So the problem is that that information is not stored forever, because these system logs have routines to erase them after a period of time. Number of days after they're created, they get erased depending on which log it is, so it doesn't take over the whole of the computer's hard disk. But you were told specifically that the research integrity officer had made forensic copies of the devices, but he had not. He had not taken forensic images. All he did was have a

[1] Instead of saying "more than an image of the hard disk," it would have been better to say "more than copying some files from the hard disk."

computer technician turn on the computer and copy certain files from your computer onto another computer, doing nothing to preserve the evidence necessary to know who did what when. Is that right?

Francesca

That's exactly right.

Larry

And you didn't know this at the time obviously, right?

Francesca

I did not.

Larry

Okay. So when HBS gives Maidstone, not a forensic image of your computer, but instead, copies of files from your computer, Maidstone is working with an imperfect set of evidence, right?

Francesca

Yeah. So it's, in a sense, error upon error. Instead of taking a forensic image, they copied files, losing some important evidence...

Larry

the metadata evidence...

Francesca

That's exactly right. And then they go to their expert, and rather than giving them all the evidence so that they could work from a complete set, they gave them, I believe, 343 files out of one terabyte of data. And so what Maidstone was working with was very incomplete.

Larry

So Maidstone not only had imperfect data, because the metadata wouldn't have been preserved in the way it would have been if it had been an image of the computer, they didn't even have all the files. But with that subset, they begin to do the work.

So over the summer, the committee, now it has three members, also begins to do its work. That work was supposed to involve interviewing the people involved in the process of you producing your work like that's what we've been talking about during this conversation, because obviously there are a lot of people touching data and

to figure out how certain things might have gone wrong, would be good to talk to those people.

So you had identified 12 RAs that had been touching the work related to these four papers. How many of those 12 did the committee decide to interview?

Francesca

The committee interviewed only two of them, and one was an RA who worked on two of the papers, but the committee only discussed on one of the papers.

Larry

...with that RA.

Francesca

Mmm mmm [in agreement].

Larry

Okay, so two out of 12. And did you know that they were interviewing just two out of 12?

Francesca

No, the research integrity officer told me that they would be going out to the RAs to truly understand who did what.

Larry

And so you believing in the system, believe you talk to all the RAs. The RAs are not going to say that Francesca is a fraudster who's been trying to manipulate data. They're going to describe the process. They might help the committee understand just how messy and complicated the process is.

Francesca

And Larry, I think it's important to note that it's not that I was in constant communication with the research integrity officer. Just the opposite. It's not that when the committee went and interviewed an RA, they would come to me and say, "one of the interviews has been completed." I would only hear from him under very specific milestones: a report is available or a meeting is coming up. And so you're almost feeling like, you're sitting waiting for something to happen, and when that thing happens, you try to prepare to respond to whatever question is coming your way.

Larry

Yeah. And just to be clear, you didn't talk to these 12 RAs either.

Francesca

I did not.

Larry

Because you were not allowed to.

Francesca

That's exactly right.

Larry

And the research integrity officer doesn't say that there was some hidden exception to the gag rule that said you were allowed to talk to the 12 during this process. Everybody agrees we're not allowed to talk to them.

Okay. So now we're into the fall of 2022. At some point, Maidstone completes its first report. HBS gives the report to you. Can you describe it? Do you remember that first report?

Francesca

These are dense reports. They come in Word format, with printed tables and different colors that try to explain the data. And having now had the opportunity to go through each of them very carefully, also with the help of forensic experts...

Larry

Not at the time.

Francesca

Not at the time. This is after the investigation, after I was put on leave... it takes hundreds of hours to just try to understand what the forensic firm actually did, to figure out whether they made mistakes, and then for you yourself, doing the work, trying to understand the data.

Larry

Yeah. And so you had a limited amount of time to review this report before you were to meet with the committee to discuss the nature of the report, right? So you had, was it two weeks?

Francesca

Yeah. So they the research integrity officer sent the various reports separately. So I believe that the forensic firm sent them to the committee, the committee might have had extra questions, send them back. And when they believe they were final, they discuss them as a committee, then send them to me. And they were doing them in sequence, so I didn't receive them all at the same time. And it's now September and October, and again, we're back into teaching. And for one of the reports, I only had two weeks to look through it. And so this is hundreds of pages with very detailed information.

Larry

With very detailed information and no expert help, because you've got to understand it and be able to evaluate whether what these data experts are describing is plausible or true, or have some sense of what you would do to resist it. So you meet with the committee. All three of them. Is this again a Zoom meeting?

Francesca

It is again a Zoom meeting.

Larry

Okay. And this is the only meeting you had with this committee, right?

Francesca

Yep.

Larry

And so how long did this meeting go on?

Francesca

I believe it was three hours. Well, the afternoon of Monday. Initially, the committee had decided to have two separate meetings in light of how dense the reports were, I believe. And the meetings were scheduled before I received the reports. And so when the time came very close and I still had no reports, I asked for the meeting to be moved so that I would have time to have a look at it, and then the committee didn't want to push the meetings till after Thanksgiving, and so we ended up with only one meeting, making it a little longer.

Larry

Okay. And what kind of questions did the committee ask you in that meeting?

Francesca

It is hard, because what a lot of the meeting was about is them screen share part of the analysis that Maidstone had done asking questions about, how would I explain some of what they were seeing in the data. And so when I look back and I look at the transcripts, I almost feel ashamed of how I answered. But it came from a person who... you can't, on the spot, make sense of data that another person collected and clean, and you didn't have the chance to fully understand prior to having the question being asked.

Larry

Right. And this is important, because ordinarily you would think you know if you're being asked about your behavior - like you drank a bottle of vodka and you got down, you went down and got in your car and drove... Like, you know, everything about what happened in that story. But they weren't asking you about, you know, did you drink a bottle of vodka? Did you get in the car and drive?

They were asking you about an evaluation that's made by some expert, who's displaying an expertise you don't have of data that was on your computer to reach a conclusion that it demonstrated you must have engaged in fraud or not. You are not in a position to make that evaluation right, because that's not your expertise, right? But that's what they're essentially asking you to do.

Francesca

Yeah, looking back, I think the entire structure of this interaction was just wrong for the purpose of trying to understand what happened in the data. I think the right structure of this interaction is to truly sit down with the experts and actually going through Excel, going through the files rather than responding to something that you see on a screen.

Larry

yeah, yeah, I can't imagine how you would begin to respond to that. And is the lawyer there with you?

Francesca

Yes, so the lawyer was there as well as Harvard General Counsel.

Larry

All right, so you left that meeting, or the meeting logged off. Were you more concerned than you had been before?

Francesca

I remember crying pretty hard...

Larry

Is this the first time you were crying?

Francesca

No. But I cried because, again, these are your colleagues, and I think as scholars, one of the things that we might not do exceptionally well is to say, "I don't know." And I felt bad that I couldn't give them the explanations they were looking for. And so I cried.

Larry

Yeah. Okay. So a number of weeks later, how much longer is it until you get a draft report?

Francesca

It's mid December.

Larry

Okay. So three weeks later, four weeks later, you get a draft report. The research integrity officer gives it to you, what does he say is going to happen now, when you have the draft report?

Francesca

Receiving the draft report was hard, because in the draft report, the committee was taking a stance in terms of their belief about what the anomalies were, data falsification. And in addition to that, they were taking a stance in terms of who was responsible for data falsification.

And it was hard to take, because in reading the Maidstone reports, one of the things that Maidstone did was just trying to understand, when you compare different files, an earlier version and a later version, if there were differences, and found that there were, in fact, differences. And they didn't ask themselves the question of, how do we explain them? How is it that they could have come about? And they certainly didn't make a determination on who was responsible. And yet the committee had reached that conclusion.

And so I remember, again, it's the end of the school semester for my kids, I remember participating in a play, and before the play started, I called Alain. And I was in tears because I couldn't believe what I read in the report, and I started asking for time so that I could respond to the draft report.

And I remember Alain saying that he didn't believe that there would be changes to what the committee had concluded, and in fact, he recommended that I seek mental health support because it was going to be hard.

Larry

Wow. So you're at your kids' school. We didn't introduce your kids. Your kids are beautiful and young. So how old are they at this point?

Francesca

At the time, I had a four-year old, a six-year old, a seven-year old and a 10-year old.

Larry

Wow. But you throw yourself into writing a response. For six weeks you write a response to this report.

I'm not sure I would have gotten over the first point, which is the evidence you have is of a difference in the files. You don't have evidence that the computer was used to make the difference, you don't have the system files necessary to demonstrate that so and so at this point, tapped this and therefore got that. You don't have any of that evidence. You've instead, just inferred from the fact that there's a difference, that you, one of 10 people writing this essay are responsible for the difference.

And I'm not saying, as some people have suggested, that no, no, there's some evil research assistant who's trying to screw you. No, it's just that there's a difference. And there's any number of reasons why there could be a difference. And the job of the committee must have been to decide that they had enough evidence to say you made the difference, not that they could infer it, but that they had evidence of it. And so for six weeks you spend trying to respond. Who was helping you in drafting that response?

Francesca

It was Gary...

Larry

Again, a great professor, but not an expert, to respond to Maidstone.

Francesca

And in fact, at that point, his role, I think, became one of recognizing that it was hard to respond to what the committee had produced. And so it would be me often going to Concord and sit down in his office drafting while he was working on something else, and when I had questions, I would ask him for his counsel.

Larry

So how long is your response?

Francesca

My response was, I believe 35-36 pages, but then I had a lot of exhibits, and so the document became significantly longer, so we're up to 250.

Larry

Okay, and when you're finished with that work that you've done for six weeks, do you feel good about it?

Francesca

I remember almost having a little celebration in terms of saying, "Okay, this is going to be fine," because what I had done is looking back to the Maidstone reports, at least call out what Maidstone had concluded, and referring to the overall evidence, and sort of suggesting that the committee didn't have the evidence to conclude that there was data falsification and that I was responsible. And so I actually felt good.

Larry

Yeah, you felt you'd achieved what you needed to achieve. So you turn your report in, and how many weeks later does the committee finish its final report?

Francesca

So it's February 17, 2023 when I submitted my response, and it's early March when I hear that the report is final.

Larry

So they take less time than you took, and they conclude that their report is final. Their final report is, as the research integrity officer said, basically, their draft report. Did the committee tell you this? Or how did you understand this? They decided not to incorporate responses saying that they were not germane. Somebody says that in this context, I think they just don't know what that word means like, in what sense could they not have been germane?

Francesca

I am not sure. I thought that they were relevant, but they weren't… well, according to them.

Larry

They didn't see they were. Yeah, Maidstone had found discrepancies, differences in the files. They hadn't said who was responsible. The committee concluded they knew who was responsible. You tried to respond by saying, actually, you don't have evidence, either they're intentional or that I did them. They didn't think that was relevant.

Francesca

I think what the committee was really trying to get at, or that they wanted, at that point, was clear explanations of how the anomalies came about, and at that point, not having had the forensic help that I needed to answer that question, I didn't give them that answer.

Larry

And that's a great point, because later, we'll see in the next episode, that when you did have an expert, you actually were able to explain how the anomalies came about, at least give an account that competes with and in some cases, I think, completely negates the suggestion that it was done intentionally. But you didn't have the expertise at this stage to be able to craft that kind of response, and so you couldn't give them what they were eager in getting.

Okay, so let's just dig down and unpack this a bit, because I think it's important to hold it all on one page. Everybody understands there were differences. Everybody acknowledges that there are many people touching these data, and many people who could have created these differences, but they concluded it must have been you, because only you benefited, they thought, from the differences.

Now we're going to see later that in each case, there were differences that both strengthen the conclusions of your paper and weaken the conclusions of your paper. So even here, the claim of motive is weird, but we're going to focus on that later. There were differences. They concluded it must have been you.

Now I, you know, have said, I think in some contexts, that's a fair conclusion. Just about the same time, there was a right-wing blogger who was attacking Harvard's president, Claudine Gay for plagiarism. The charge was that in 8 of the 17 works reviewed, there were 50 incidents where the instances where there are passages copied from other people's work without attribution or quotation marks, Harvard eventually concluded they were not intentional. But no one would doubt that she was responsible for the errors in the sense that she's the one who typed them, like it's not like a research assistant typed them for her.

But here they both had to conclude that you were responsible for the errors, and that the problems that they had identified were intentionally created by you. And that's what they asserted in concluding you were guilty. Now, when you read this, you must have been devastated.

Francesca

I think that that's a good word for it, since the process had been hard and I just couldn't understand why the conclusion that they reached was the conclusion that they reached. And I couldn't make sense of it.

Larry

But you were finally understanding the consequence here.

Francesca

Yes.

Larry

Like this was not a process that was reaching a happy ending by getting to the truth, from your view of the truth, and you know more than anybody knows what the truth is. So you finally now are confronting the fact that this has exploded in a way that's going to be catastrophic for you.

Francesca

Yes, I... At the time in March, I felt devastated, but I was still hopeful. I thought that, in the end, what the committee was doing

with their work is making a recommendation to the Dean, and the Dean would look at the report and see all the evidence from the interviews with my co-authors who spoke about my integrity or the way I worked. And that he would understand that maybe more work needed to be done, or maybe there would be consequences or extra training in terms of how I need to manage my lab, handle data... but I don't think I thought at that point that I would be put on leave.

Larry

Did others suggest you would be? I mean, you only had two people in your orbit, your lawyer and Gary.

Francesca

My lawyers were surprised, and they kept saying that they had not seen anything like that in other parts of Harvard. And they were so surprised that they decided to write a letter that they hoped would go directly to the Dean of the Business School. But being lawyers, they sent the letter to the General Counsel, making some important points about the fact that they didn't believe that the committee had the evidence to reach the conclusion that they did, and making the case for the conclusions to be changed and for the sanctions to be different.

Larry

But we don't think the Dean got that.

Francesca

Mmm mmm [indicating no, he did not.]

Larry

Okay, so the Dean didn't have that. The Dean on the basis of the charges made by Data Colada and the investigation committee, but a report that didn't include your responses but reached the conclusion that you had intentionally committed academic misconduct, concluded that you needed to be removed.

And removal is quite significant because it also means you don't have pay, you don't have health care, you don't have any of the ordinary support that in American society we depend on. On June 13, three months after the committee had made its conclusion, the Dean calls you into the office. Describe what happened.

Francesca

I want to describe what led to that meeting. Since, again, after March, there was silence. So I'm there waiting, not knowing what is happening. And as we got into early June, I sent a note to the Dean's office, sort of asking whether I could go on vacation as planned, knowing that this was hanging. It's this strange reality where you have a sense that things are happening behind the scenes, but nobody is telling you what exactly is happening. And so it had been a hard few years. And so, for the first time, we had a vacation planned as a family on June 14.

Lawrence Lessig

And so you're going to Italy, I believe.

Francesca

I was going actually to the islands. So we were going to the beach together in June. And I reached out. I was hoping to go and be offline, and so I shared my schedule with the Dean's office. And so they said, in light of your schedule, let's meet on June 13.

And it was a day where I was teaching the entire day in executive education, and I remember actually sitting at 5pm in the cafeteria, waiting for the 5:30 meeting with the Dean, and... I was just planning scenarios. And I thought that maybe there would be conversations about, "what do we learn from this experience and what needs to change?" To "sorry you had to go through this clearly the wrong conclusion." And I'm not even sure if I truly thought through the possibility that I would be asked to leave.

Larry

I don't think you were asked. So he brings you into the office. It's 5:30 June, 13. He tells you not to speak, and he has a letter that he reads to you, right?

Francesca

Yep.

Larry

Is he emotional? Is he uncomfortable?

Francesca

He doesn't look uncomfortable. He doesn't look emotional.

Larry

And this letter is telling you you have been put on leave, unpaid leave. And the research integrity officer then contacts the journals that have published these pieces and shares the Data Colada data and the Maidstone reports and the conclusions. I take it he didn't share your responses.

Francesca

He did not.

Larry

Yeah. And then the Dean reaches out to one of your colleagues, a professor, and asks that colleague to counsel you out. What does that mean?

Francesca

That means that the colleague came to me with a recommendation that I resign. And so the deal, in a sense, as it was posed to me, is that if I resigned, this would go quiet.

Larry

You didn't take that deal.

Francesca

I didn't take that deal. As I told my colleague, I didn't commit what I'm accused of.

Larry

So it didn't go silent. Which means that four days later, on June 17, the news goes to the public.

I remember hearing it and I was astonished. You know, I didn't believe it. But it almost writes itself, the story, right? You know, an academic studying the psychology of fraud, convicted of engaging in fraud. I mean, the internet loved it. It was everywhere. Everyone was sure that, you know, this powerful Harvard professor, one of the young superstars of the Harvard Business School, turns out to be, as many think, not what anybody believes. And so that, like blows up. Data Colada publishes its report on its blog. You begin to feel the real consequences of this. So what are the consequences beyond losing your employment with Harvard?

Francesca

It was really hard. I think that summer was full of great low points, because first it was telling the kids. They show up at 6am in the morning on June 14, ready to go on vacation. And we obviously didn't go on vacation. And we had decided which, in retrospect, was possibly not a great idea to tell them that I lost my job. And so that was hard. And now I have four small children at home. And the press is going on fire, and reading the stories was really, really hard.

I'm an endless optimist. And so I remember at the time looking at my husband and saying, "It's okay, we are going to navigate through this, and I'm going to be able to keep my consulting." And I was wrong. And what he saw pretty much every day is a client or somebody I was working with calling up and saying that in light of the news, despite the fact that they didn't believe what they read, I was radioactive, and so they couldn't keep working with me.

At that point, my husband had a job that he liked, but he was not a well-paid job since we had decided to focus on my career. And so it was really hard to realize that I had been the breadwinner for the family, and that it looked like I wouldn't be able to continue providing...

And I was being attacked on one of the most important values that I hold.

Larry

I reached out to you.

Francesca

You did.

Larry

We went for a walk in a park. We're getting coffee at Darwin's.

Francesca

You had long white hair.

Larry

Yeah. And I was not surprised by what I felt after I spoke to you, because it's what I believed. So maybe it's confirmation bias, but I was convinced that there was an injustice that we had to figure out how to fix. There was a lot more to be done.

Francesca

And Larry, what was also difficult in this moment is that the timing of it was awful, because it all happened so fast. I arrived home, I think at 8 pm that June 13, and then again, I was worrying about, what do we tell the kids? How do we relate this to them?

And I have 120 co-authors, I have students, I have RAs, and it just felt awful. It seemed like impossible that I would be able to reach them all. And so I called a few, but I couldn't reach everyone.

Larry

Francesca, thank you for fighting. Thank you for this conversation. We'll continue the next conversation through the next stage that gets us to the end of the tenure revocation process. And then I will be talking to someone else to unpack the four charges and demonstrate why they don't support the claim that you committed academic fraud.

There are many like me out there. We will always be here.

Francesca

I really appreciate you having the courage to tell the story. And this is a story of compounding error and feeling like the right things are happening too late. But I hope it's not too late, and that people are going to be open to hearing a side of the story that unfortunately I haven't been able to tell so far.

Larry

Thank you.

Francesca

Thank you.

Larry

That was the first half of the story. From the beginning in July 2021 until the Harvard Business School determined in 2023 that Francesca had to be removed from the business school.

The next episode will take the period from her removal until her removal from the university, having her tenure withdrawn by the President in 2025. Stay tuned for that episode.

This podcast is produced by Josh Elstro of Elstro Productions. It is not affiliated with Equal Citizens. It is my own Larry Lessig podcast produced for him with his money, but not a lot. Josh is an

efficient editor. You can subscribe to this podcast. Wherever you get podcasts, you can share it. I hope you do. There's a Substack you can find associated with me about the Gino case. That Substack will include not just these podcasts, but also materials that will help you understand the elements of the story.

After this podcast gets posted. I will be posting the appeal, which I wrote to the President to get the President to reverse the decision or not to accept the decision of the committee that determined her tenure should be revoked. That will get ahead of the story just a little bit, but it might help in following the episodes that come after this one.

Stay tuned. Thanks for listening.