

The Law, Such As It Is

Season 3, Episode 10 - Bonus

Larry

This is Larry Lessig, and this is a bonus episode of the podcast *The Law, Such as It Is*, Season Three.

We just completed the final episode for this season, Episode 9, which tried to summarize the whole of the podcast, a project that's taken more than a year to complete. And after we were done, I had the idea of "what if we just run the transcripts through NotebookLM's podcast generator and see what its summary sounds like?"

And it's extraordinary. Genuinely extraordinary. Way more powerful than the summary I produced. And though suffering because of a few misstatements, the misstatements don't change the meaning of the argument and are not creating false assertions that we would need to worry were being spread by this podcast.

So I'm adding that podcast here. If you've never heard a Notebook LM podcast, you'll see it's a conversation between a man and a woman about the material that they are reviewing, and the material they are reviewing is the transcripts from the nine episodes of the podcast we've done for this season.

We've produced a transcript of this podcast, and that transcript has the corrections to correct the slight misstatements that there might be in the podcast. You can check that if anything's uncertain. And if you listen to this podcast and you want to go deeper, then go back to the original episodes and listen to the full argument of those episodes.

I hope you enjoy it. I hope you find it as compelling as I do. I hope you'll share this episode, at least to bring more people into a place where they might understand exactly why I believe, and so many others believe, that Harvard has wrongfully taken the tenure of Harvard Business School Professor Francesca Gino.

Thanks for listening. This is Larry Lessig.

Mr. NotebookLM

Imagine a scenario where you're just sitting at your desk and you're suddenly called into your manager's office. You sit down and

you are casually informed that you're being put on trial for a typo. A typo you supposedly made in an email. But the catch is the email was sent like 14 years ago.

Ms. NotebookLM

Which is just an eternity in corporate time.

Mr. NotebookLM

Exactly. And it gets worse. You aren't permitted to actually see the original server file of the email. You're explicitly forbidden from speaking to the administrative assistant who drafted it for you.

Ms. NotebookLM

Wow.

Mr. NotebookLM

And to cap it all off, you were denied the ability to bring in your own IT expert to look at the server logs to prove it wasn't you.

So, OK, let's unpack this.

Ms. NotebookLM

I mean, it's a bureaucratic nightmare. It's the kind of procedural trap where the presumption of innocence is essentially just inverted from the very first meeting.

Mr. NotebookLM

Right. But this isn't some hypothetical thought experiment. This is the structural reality of a case that unfolded at literally one of the most prominent academic institutions on the planet.

Welcome to the Deep Dive.

Ms. NotebookLM

Glad to be here.

Mr. NotebookLM

So, our mission today is to thoroughly unpack a massive stack of source material. We're primarily looking at transcripts and research compiled by the legal scholar Larry Lessig. He has systematically deconstructed the high-profile case of Francesca Gino.

Ms. NotebookLM

Right. The Harvard Business School Professor.

Mr. NotebookLM

Yeah, the one who became the first tenured faculty member in Harvard's entire history to have her tenure revoked over allegations of academic data fraud.

Ms. NotebookLM

And our focus today is strictly on the mechanics of that decision. We're looking at the standard of evidence. Because, you know, Harvard's own governing rules require what they call 'clear and convincing evidence' to end a tenured career.

Mr. NotebookLM

Right. Clear and convincing, not just a hunch.

Ms. NotebookLM

Exactly. So, by diving into these transcripts, the procedural missteps and the alternative explanations presented by the defense, we're going to examine the argument for why the evidence used to revoke her tenure really doesn't support that standard.

Mr. NotebookLM

But to understand how a procedural trap like this even gets set, we have to look at the environment Harvard was operating in at the time. I mean, this investigation didn't happen in a vacuum, right?

Ms. NotebookLM

Oh, absolutely not.

Mr. NotebookLM

It played out against a backdrop of intense, sustained public scrutiny of the university. You had significant external pressures from the Trump administration regarding university policies. You had the highly publicized plagiarism investigation surrounding former Harvard president, Claudine Gay. And you had very vocal, very well-funded commentary from activist investors like Bill Ackman.

Ms. NotebookLM

And just to be totally clear, we're impartially reporting these contextual facts here.¹ We aren't taking any political sides on those specific events.

Mr. NotebookLM

Exactly. No sides at all.² It's just about setting the temperature of the room. The university was essentially a pressure cooker. The world was watching to see how they would handle any question of academic integrity. And frankly, the institutional anxiety was palpable.

Ms. NotebookLM

Yeah, and that anxiety is a crucial lens for understanding the administrative decisions that followed. Because when an institution is operating under the threat of massive public embarrassment, standard operating procedures, they often just get bypassed.

Mr. NotebookLM

Right, the rule book goes out the window.

Ms. NotebookLM

Exactly. A sense of urgency replaces deliberate due process. And that dynamic became super obvious in July 2021 when a group of data scientists known as Data Colada approached the Harvard Business School.

Mr. NotebookLM

So, let's talk about Data Colada because generally they do rigorous work policing academic research. They find anomalies. They publish their findings. But the way they initiated this specific case was, well, it was highly unusual.

Ms. NotebookLM

Highly unusual is putting it mildly.

¹ Clarification: the impartiality refers to the political climate. As to the facts of the case, the speakers are basing their comments on the podcast episodes created by Lessig.

² Clarification: the 'no side at all' refers to the political views.

Mr. NotebookLM

Right. Their stated policy, which is public on their website,³ is to share drafts of their posts with the authors of the papers they're critiquing, like⁴ seven days before going live, to solicit feedback.

Ms. NotebookLM

Which is standard professional courtesy.

Mr. NotebookLM

Exactly. But they bypassed that entirely with Francesca Gino. They went directly to the dean of the Harvard Business School.⁵ They presented claims of data anomalies in four of her papers and essentially delivered an ultimatum.

Ms. NotebookLM

Act on this or we publish.

Mr. NotebookLM

Yes. They made it incredibly clear that if Harvard didn't satisfy their demands, their sources would, and I quote, "take matters into their own hands."⁶

Ms. NotebookLM

And the dean's reaction to that ultimatum really set the tone for the entire multi-year ordeal. Instead of routing the complaint through the existing established business school procedures for academic misconduct, the dean panicked.

Mr. NotebookLM

Yeah, they just invented a brand-new process.

Ms. NotebookLM

Right. They created an ad hoc extraordinary procedure specifically for this case. And the very first procedural move was to impose a strict gag order on Gino.

³ The policy can be found here: https://datacolada.org/feedback_policy

⁴ Correction: the Data Colada feedback policy states "at least" seven days.

⁵ Correction: Data Colada contacted various faculty at HBS, then the HBS Dean's Office.

⁶ These words are cited from an email Data Colada sent to HBS Research Integrity Officer in Gino's opposition to motion for sanctions, available on the public docket at 115: <https://www.courtlistener.com/docket/67659904/gino-v-harvard-university/>

Mr. NotebookLM

A gag order.

Ms. NotebookLM

Yeah. She was forbidden from discussing the allegations with anyone with the sole exception of two non-technical faculty advisors she was allowed to appoint.⁷

Mr. NotebookLM

I want to dig into that gag order for a second because, wait, isn't confidentiality standard in HR investigations? Like in corporate HR or university Title IX settings, that's completely normal.

Ms. NotebookLM

It is, but applying that framework to academic data fraud feels like a category error. I mean, think about it. In a sexual misconduct case, the gag order exists to protect the victim from retaliation, right?

Mr. NotebookLM

Right, to preserve witness testimony and protect vulnerable people.

Ms. NotebookLM

Exactly. But in a case about spreadsheet anomalies, who is the victim requiring privacy? The only person whose reputation is on the line is the accused.

Mr. NotebookLM

Wow, so it just isolates her.

Ms. NotebookLM

It fundamentally isolates the accused. By applying a standard designed for interpersonal misconduct to academic fraud, the institution effectively neutralized her ability to defend herself. I mean, while articles about the allegations were popping up in major publications, she couldn't publicly respond.

⁷ Correction: the Interim policy called for two advisors. HBS Research Integrity Officer advised Gino to hire a lawyer as one advisor. Gino chose a HBS mentor and colleague outside her field as the second. The policy is available here: <https://www.francesca-v-harvard.org/s/New-HBS-Research-Integrity-Policy.pdf> The policy states: "Respondents may choose up to two personal advisors for support during the process" (p. 3).

Mr. NotebookLM

That's suffocating.

Ms. NotebookLM

But the most damaging aspect of the gag order was operational. It legally prevented her from speaking to the people who actually handled the data.

Mr. NotebookLM

Her research assistants.

Ms. NotebookLM

Exactly, her former RAs.

Mr. NotebookLM

Which is the core of this whole thing. We're talking about anomalies in data sets that were touched by dozens of hands over a decade. And she's forbidden from calling up the RA who managed the 2014 file to ask, 'hey, do you remember what happened with this column?'

Ms. NotebookLM

Right, and it gets more restrictive. So, Harvard brought in an outside forensic firm called Maidstone to analyze the data. But under these new ad hoc rules, Gino was forbidden from hiring her own data experts to review Maidstone's work.

Mr. NotebookLM

Wait, really?

Ms. NotebookLM

Yeah. She couldn't hire anyone to help her interpret the charges. She was defending herself against highly complex digital forensic allegations armed only with two non-technical faculty advisors.⁸ Meanwhile, the prosecution had an entire contracted IT firm.⁹

⁸ Correction: as noted earlier, the policy states: "Respondents may choose up to two personal advisors for support during the process."

⁹ Correction: HBS retained two individuals from Maidstone.

Mr. NotebookLM

It's the equivalent of being charged with complex financial fraud, and the court tells you that you aren't allowed to hire a forensic accountant, but the prosecution gets a whole agency.

Ms. NotebookLM

That's a perfect analogy. So based on this unchallenged Maidstone report, the HBS investigative committee finds her guilty.

Mr. NotebookLM

Which is phase one.

Ms. NotebookLM

Right. And that guilty finding triggers the second phase, the university-level Third Statute proceeding. This is the actual tenure revocation phase. And here's where the procedural whiplash really happens.

Mr. NotebookLM

Oh boy...

Ms. NotebookLM

Because once she enters this final catastrophic phase, the rules suddenly change. She is finally permitted to hire her own experts.

Mr. NotebookLM

So she spends, what, over a year?

Ms. NotebookLM

Over a year and roughly \$3 million assembling a defense team. They finally get access to the Maidstone report, which is the foundational document of her guilt,¹⁰ remember, and her experts dismantle it.¹¹

Mr. NotebookLM

And just tear it apart.

¹⁰ Correction: the Maidstone report did not make conclusions about Gino's guilt. It examined Data Colada's claims and identified discrepancies across earlier and later versions of datasets. It was the HBS investigative committee that made determinations of guilt based on the Maidstone report.

¹¹ Correction: the Maidstone report was available to Gino during the HBS investigation, but she did not have proper expert forensic help to examine it.

Ms. NotebookLM

Totally. They find glaring methodological errors in how Maidstone analyzed the data. They essentially proved that the initial forensic investigation was fundamentally flawed.

Mr. NotebookLM

Now, you know, a rational observer might expect Harvard to pause. If the foundational report that justified the entire tenure revocation proceeding is proven defective, you stop and reassess.

Ms. NotebookLM

You'd think so. But Harvard quietly abandoned the Maidstone report entirely. They just threw out the basis of their own case. And then, they brought in a brand-new expert.

Mr. NotebookLM

Jeremy Freese, right?

Ms. NotebookLM

Right, a sociologist from Stanford. He generates a massive 230-page report introducing completely new theories and falsification scenarios that weren't even in the original charges.

Mr. NotebookLM

And how long did they give Gino's team to process this massive new document?

Ms. NotebookLM

Harvard gave Gino's defense team just 30 days to respond.¹²

Mr. NotebookLM

30 days?

Ms. NotebookLM

Yeah.

¹² Clarification: Freese submitted his report on Aug 16 2024. Gino and her experts submitted their testimony on Sept 13 2024. Freese then submitted a rebuttal report, that Gino and her experts could not respond to in writing before the mid-November tenure revocation hearing.

Mr. NotebookLM

After she spent a year and millions of dollars preparing to defend against the initial theories. I mean, that fundamentally alters the nature of the hearing.

Ms. NotebookLM

Oh, entirely. The hearing committee was impaneled to review the findings of the business school. But because the business school's findings were based on a discredited, abandoned report, the hearing committee basically morphed into a primary fact finder.

Mr. NotebookLM

They were holding a trial on brand new theories, with the defense given almost zero time to process the new data.

Ms. NotebookLM

It's a severe compression of due process, and that compressed timeline brings us to a much broader systemic issue with the investigation, the age of these allegations. We are looking at a procedural scramble over data sets that, in some cases, were pushing a decade and a half old.

Mr. NotebookLM

Which brings us to the statute of limitations. Because Harvard's own policies,¹³ which match the federal guidelines set by the Office of Research Integrity, those rules clearly state that allegations of research misconduct older than six years are not to be investigated, period.

Ms. NotebookLM

Right. The legal concept here is a statute of repose. And the rationale, as articulated by figures like Supreme Court Justice Robert Jackson, is that investigating ancient history is inherently unjust.

Mr. NotebookLM

Because the evidence decays.

Ms. NotebookLM

Exactly. The further back in time you go, the more the truth degrades. Memories fail, key witnesses move on, physical files are

¹³ The policy can be found here: <https://facultyresources.fas.harvard.edu/policy-and-procedures-responding-allegations-research-misconduct>

lost, and digital hardware is retired or wiped. You simply cannot mount a fair defense when the evidence required to exonerate you has naturally decayed.

Mr. NotebookLM

Yet out of the four papers Harvard investigated, three of them were far outside that window. We're talking about studies published 11, 12, and 14 years prior to the investigation.¹⁴ So how does an institution with a strict six-year rule justify opening a tribunal into a 14-year-old spreadsheet? Like, how did they legally bypass that?

Ms. NotebookLM

They invoked a very specific loophole. The rule contains an exception if the scholar has, quote, "continued or renewed the misconduct by using the fraudulent research for their potential benefit."

Mr. NotebookLM

Okay, so how did she renew it?

Ms. NotebookLM

Well, Harvard's administration argued that because Gino listed these older papers on her curriculum vitae, hosted links to them on her academic website, or included general citations to them in the literature reviews of her subsequent papers, she was actively using the data.

Mr. NotebookLM

You've got to be kidding me.

Ms. NotebookLM

Nope. Therefore, they claimed, the misconduct was renewed every time someone downloaded her CV.

Mr. NotebookLM

That interpretation completely obliterates the concept of a statute of limitations. Every academic on earth lists their published papers on their CV. That is literally what a CV is.

Ms. NotebookLM

That is.

¹⁴ Correction: the three papers were published 11, 12 and 14 years ago. At the time of the initial investigation, late 2021, the three papers had been published 6, 7 and 9 years earlier.

Mr. NotebookLM

If leaving a paper on your website restarts a six-year clock every single day, the clock never actually runs out.

Ms. NotebookLM

And the federal organization that originally drafted that rule, the Office of Research Integrity, has actually addressed this. They've clarified that a simple citation or a CV listing is not sufficient to trigger the exception.

Mr. NotebookLM

Right, because that would be absurd.

Ms. NotebookLM

Exactly. To renew the misconduct, a scholar must explicitly cite and rely upon the specific portions of the research record that are alleged to have been fabricated.¹⁵ General citation just doesn't cut it.

Mr. NotebookLM

So if we connect this to the bigger picture, the chilling effect of Harvard's interpretation on the broader academic community is just massive.

Ms. NotebookLM

Oh, it's terrifying for them.

Mr. NotebookLM

Right. The reality of modern academia is that lead researchers at major universities do not handle raw data. If you were running a major lab, you rely on an army of research assistants, often grad students or postdocs, to clean, format, and merge the data sets.

So, if an RA made a sloppy formatting error or a copy-paste mistake 12 years ago, and you simply leave that published paper on your faculty page, a motivated investigator could use that to end your career. You are perpetually liable for the keystrokes of every assistant you've ever hired until the day you retire.

¹⁵ Harvard's own policy has been updated to include this change:
<https://facultyresources.fas.harvard.edu/policy-and-procedures-responding-allegations-research-misconduct>

Ms. NotebookLM

It creates an environment of perpetual vulnerability. And this brings us to the substantive foundation of the hearing committee's guilty verdict. Because even if we set aside the procedural anomalies and the expired statute of limitations, which is a lot to set aside...

Mr. NotebookLM

Yeah, that's a huge if...

Ms. NotebookLM

Right. But even if we do, we have to look at the actual logic the committee used to determine guilt. And their entire conclusion rested on a single, massive assumption regarding motive.

Mr. NotebookLM

Okay, lay it out for me.

Ms. NotebookLM

The committee's smoking gun was their assertion that all the data anomalies discovered across these four papers uniformly strengthened Gino's hypotheses.

Mr. NotebookLM

Okay, so all the errors magically helped her.

Ms. NotebookLM

That was their claim. They argued that if a data set has random errors, those errors should point in random directions. But if the errors consistently make the study look better, that proves intentional malicious manipulation. And since Gino was the lead author, she was the only one with the motive to perform that specific directional manipulation.¹⁶

Mr. NotebookLM

I mean, logically, that framework makes sense on paper.

Ms. NotebookLM

On paper, yes. The problem is that the underlying premise is factually incorrect.

¹⁶ Correction: their claim was that Gino was the only author common across the four papers, not that she was the lead author.

Mr. NotebookLM

Yeah.

Ms. NotebookLM

When the defense experts analyzed the actual data sets across all the allegations, they found that a significant portion of the anomalies either weakened the study's conclusions or they altered variables that were completely irrelevant to the hypothesis being tested.

Mr. NotebookLM

Wait, so the errors went in both directions?

Ms. NotebookLM

Exactly. And this is where the evil genius theory completely falls apart. I mean, think about it. If an academic is maliciously and intentionally altering a spreadsheet to fabricate a statistically significant result, why on earth would they spend hours manually altering hundreds of data points that have zero impact on the final paper?

Mr. NotebookLM

Right, that makes no sense.

Ms. NotebookLM

Or worse... Why would an evil genius intentionally introduce data anomalies that actively weaken the very hypothesis they were supposedly trying to save?

Mr. NotebookLM

Malice just doesn't explain bidirectional errors. But sheer human error does. If we look at how Gino's lab operated, Lessig describes it as an academic paper factory. Over the course of her career, she employed upwards of 60 different research assistants.¹⁷

Ms. NotebookLM

60.

Mr. NotebookLM

60. These are the individuals tasked with taking messy output from survey platforms like Qualtrics, cleaning it up, merging it into master Excel files, and preparing it for statistical software like SPSS.

¹⁷ Clarification: this number only refers to paid research assistants. There were dozens of other RAs working in Gino's lab for class credit over the years.

Ms. NotebookLM

And this leads to what might be the most staggering investigative failure in the entire source material. Harvard is looking at messy data, full of anomalies that point in multiple directions. The data was processed by dozens of RAs over a decade.

Mr. NotebookLM

Right.

Ms. NotebookLM

So how many of those 60-plus RAs did the hearing committee interview to figure out how these anomalies occurred?

Mr. NotebookLM

I mean, you'd think they'd call a bunch of them. If the data was messy and RAs claimed it, why didn't the committee just ask the RAs what happened?

Ms. NotebookLM

They didn't. Out of the vast network of people who actually had custody of these specific spreadsheets, who executed the copy-paste, the merges, and the sorting, Harvard interviewed precisely two individuals.

Mr. NotebookLM

Two out of 60. Two. That is, I mean, that's investigative malpractice.

Ms. NotebookLM

Yeah.

Mr. NotebookLM

If you have a chain of custody involving multiple people and the physical evidence shows signs of chaotic, multidirectional errors, your first step is to interview the people who actually handled the evidence.

Ms. NotebookLM

Right. Instead, the committee presumed guilt based on authorship. They assumed that because Gino's name was at the top of the paper, she must have been the one manually tweaking cells.

Mr. NotebookLM

As Lessig points out in the transcripts, no legitimate prosecutor's office would ever close an investigation without speaking to the very people who were in the room handling the materials in question.

Ms. NotebookLM

It's an investigation driven by a predetermined narrative rather than, you know, forensic curiosity. And to really understand how deeply flawed this approach is, we need to look at the individual allegations.

Mr. NotebookLM

Let's do it.

Ms. NotebookLM

Let's start with the oldest one, allegation four. This is a study from 16 years ago conducted while Gino was at the University of North Carolina. It was testing whether signing an honesty pledge at the beginning of a form makes people more honest.

Mr. NotebookLM

Okay, so this allegation is fascinating because it hinges entirely on a misinterpretation of file versions. I mean, the committee built their entire case by comparing two distinct Excel files.

Ms. NotebookLM

Right, File A and File B.

Mr. NotebookLM

Yeah. They looked at File A, which was sent to Gino by her lab manager at UNC, and they compared it to File B, which was the final data set Gino analyzed for the published paper. The files were different.

Ms. NotebookLM

And so, the committee concluded what?

Mr. NotebookLM

The committee concluded that File A was the complete original raw data. Therefore, any differences in File B meant Gino fraudulently altered the numbers to strengthen her results.

Ms. NotebookLM

So the entire accusation rests on the absolute certainty that File A is the untouched baseline. But in academic research, especially 16 years ago, data was often compiled in batches. I mean, what if File A wasn't the final raw data? What if it was just an incomplete working file sent over before all the participants had been entered?

Mr. NotebookLM

And this is where the story takes a turn that you literally couldn't script.

Ms. NotebookLM

I love this part.

Mr. NotebookLM

Right. Because Gino was transitioning from UNC to Harvard around the time this study was wrapping up. A moving company packed up her entire physical office. A lot of those boxes ended up sitting untouched in Harvard's archives or in her garage for over a decade, just gathering dust.¹⁸ Exactly during this scramble to build her defense, she went digging through those old moving boxes. And she found the receipts. She literally found the original physical paper payment receipts from the participants of that exact 16-year-old study.

Ms. NotebookLM

Physical evidence from a decade and a half ago. And those paper receipts proved unequivocally that File A was missing data. There were participants who had signed the physical receipts confirming they were paid for completing the study who were not listed in File A.

Mr. NotebookLM

Wow.

Ms. NotebookLM

Yeah. This definitively proved that File A was not the final baseline raw data. It was just an incomplete snapshot.

¹⁸ Correction: the boxes were in Gino's HBS office, not in Harvard's archives. After HBS put Gino on leave, HBS moved the boxes to Gino's garage.

Mr. NotebookLM

But when you look at File B, the supposed fraudulently manipulated file, it perfectly matches the physical paper receipts. Everyone who signed a receipt is in File B.

Ms. NotebookLM

So, the entire structural foundation of the fraud charge collapses. If File A isn't the complete raw data, then File B isn't a manipulated forgery. File B is simply the final completed compilation of the data collection.

Mr. NotebookLM

It completely exonerates her on that charge.

Ms. NotebookLM

Yeah.

Mr. NotebookLM

The defense team submitted these physical receipts into the official evidentiary record. They are formally logged in the docket as exhibits RX-626A and RX-626B.

Ms. NotebookLM

Right, it's documented.

Mr. NotebookLM

It is. And yet, when the hearing committee released its final report justifying the revocation of her tenure, the report explicitly stated, and I quote, "she did not, however, provide those receipts."¹⁹

Ms. NotebookLM

I mean, that is just... The receipts are sitting in the official evidentiary docket, and the committee writes in their final report that she didn't provide them.

Mr. NotebookLM

It's unbelievable.

¹⁹ The quote is from pg. 5 of the hearing committee findings and recommendations: <https://theginocase.info/wp-content/uploads/2025/09/Confidential-Hearing-Committee-Findings-and-Recommendations.pdf>

Ms. NotebookLM

Whether they were overwhelmed by the sheer volume of a 2,500-page evidentiary record, or whether they were willfully ignoring evidence that contradicted their thesis, it is a catastrophic failure of the fact-finding process. They essentially erased physical evidence to maintain a narrative of digital fraud.

Mr. NotebookLM

And that narrative bias extended to how they interpreted her early drafts, too.

Ms. NotebookLM

Oh...

Mr. NotebookLM

Because in the second part of this UNC allegation, Harvard claimed they found an early draft of the paper describing a specific experimental design, and then a later draft describing a different design.

Ms. NotebookLM

Right, and the committee theorized that she ran the first experiment, failed to get the results she wanted, faked the data, and then rewrote the methodology in the later draft to cover her tracks.

Mr. NotebookLM

But when you actually read that early draft, the experiment it describes is logically impossible. It's what Lessig calls a brain-dead experiment.

Ms. NotebookLM

Brain-dead... I like that.

Mr. NotebookLM

Yeah, the methodology described in that early draft literally could not have been executed in a real room with real human beings. It was quite obviously a drafting typo. A researcher misdescribing the setup in a rough draft, realizing the mistake, and correcting the text in a later draft to accurately reflect what they actually did in the lab.

Ms. NotebookLM

It's the ultimate example of confirmation bias. When the investigative body has already decided you are an evil genius, a corrected typo from 15 years ago isn't seen as a normal part of the drafting process. It's interpreted as a calculated cover-up.

Mr. NotebookLM

Right. Let's look at another example of how ignoring context leads to false conclusions. The 2014 study on whether cheating boosts creativity. This is allegation three.

Ms. NotebookLM

Ah, the evil genius study.

Mr. NotebookLM

Exactly. So, the setup was a coin flip game. The coin flip was rigged so that everyone who played it guessed the coin flip wrong.²⁰ If a participant reported that they guessed right, the researchers knew they lied and they were flagged in the data as a cheater.

Ms. NotebookLM

Okay, pretty straightforward. But the committee focused on 12 specific participants. These 12 people told the truth about the coin flip. They admitted they guessed wrong. Yet in the final data column, they were marked as cheaters.

Mr. NotebookLM

And Harvard looked at this and concluded what?

Ms. NotebookLM

They concluded that Gino manually manipulated that column, falsely flagging honest people as cheaters to artificially inflate the correlation between cheating and her creativity metrics.

Mr. NotebookLM

But we have to look at the environment where this data was gathered. I mean, this wasn't done in a controlled lab. It was conducted online, using Amazon's Mechanical Turk platform.

²⁰ Correction: it is disputed whether the coin flip was rigged. This analysis assumes that Harvard is correct in claiming that it was rigged.

Ms. NotebookLM

Right. And for those who don't know, Mechanical Turk relies on crowd workers who are highly incentivized to get good ratings from researchers so they can secure more work. They want to provide the right answers.

Mr. NotebookLM

They want to look smart.

Ms. NotebookLM

Exactly. And one of the creativity metrics used in the study was the remote association test, or the RAT. It's a very standard psychological test, and because it's so common, the answer key is easily searchable online.

Mr. NotebookLM

Okay, so it's a test you can cheat on.

Ms. NotebookLM

Yes. The second creativity metric was a usage task asking participants to list as many creative uses for a common object, like a newspaper, as they could. You cannot Google the answers for a usage task. It requires actual, spontaneous, cognitive effort.

Mr. NotebookLM

So imagine you were a Mechanical Turk worker. You want to look smart to get a good rating. You hit the RAT test, you open a new tab, Google the answers, copy-paste them in, and move on.

Ms. NotebookLM

Now let's look closely at those 12 specific participants. The data shows they had incredibly high, almost perfect scores on the RAT test, the one you can cheat on. But their scores on the usage task, the one you can't cheat on, were perfectly average.

Mr. NotebookLM

Interesting.

Ms. NotebookLM

Furthermore, the metadata showed they took significantly longer to complete the survey than the average participant, which is exactly what you would expect if someone was spending time Googling answers in another tab.

Mr. NotebookLM

So put yourself in the shoes of a research assistant cleaning this data. You see a participant who didn't lie about the rigged coin flip, but you look at their test times, and you look at their suspiciously perfect RA score paired with an average usage score. A diligent RA doing a holistic review of the data is going to realize, oh, this person cheated on the RA test.

Ms. NotebookLM

Exactly. And the survey spreadsheet actually had two distinct columns. One was specifically labeled, 'lied about the coin flip.'²¹ The other was labeled, 'cheated.' I mean, why would a survey design²² include two separate columns if they were intended to measure the exact same data point?

Mr. NotebookLM

Right, that would be redundant.

Ms. NotebookLM

The most logical explanation is that the second column was utilized by the RAs for this exact kind of holistic assessment of the participants' behavior across the entire survey.

Mr. NotebookLM

But because Harvard fundamentally failed to interview the RAs who spent over 500 days managing this specific data set, they didn't know how those columns were utilized in practice. They looked at an RA's diligence in catching Mechanical Turk cheaters and assumed it was Francesca Gino maliciously altering data.

Ms. NotebookLM

And again, the evil genius motive falls apart when you look at the rest of the spreadsheet. Because in this exact same data set, there was a massive copy-paste error regarding that usage task. An entire block of data was copied from the wrong location.²³

Mr. NotebookLM

And what did that error do to the paper?

²¹ Correction: the first column was labeled 'reported guessing correctly' and it captured whether participants lied about the coin flip.

²² Correction: spreadsheet, not survey design.

²³ Correction: the data copied from the wrong location was not in a block.

Ms. NotebookLM

The statistical result of that specific error was that it actively weakened the paper's overarching conclusion. I mean, an evil genius doesn't sabotage their own findings, but an overworked, exhausted RA dragging and dropping hundreds of rows of data late at night, they absolutely make that kind of error.²⁴

Mr. NotebookLM

Let's stay on that concept of dragging and dropping data because it is the entire key to allegation two. This is the 2014 authenticity study.²⁵ And if you want a masterclass in how mundane software mechanics can be weaponized into proof of malice, this is it.

Ms. NotebookLM

Yeah, the investigation into this study began with what we can call the scammer retreat. Data Colada originally flagged 20 highly anomalous entries in the data set. These were participants who, when asked what year they were in school, inexplicably answered 'Harvard.'

Mr. NotebookLM

Which is weird.

Ms. NotebookLM

Very weird. Data Colada, and subsequently the HBS investigative committee, argue that Gino must have fabricated these 20 entries to artificially pad her data set.

Mr. NotebookLM

But when Gino's defense team finally got access to the files and brought in their own experts, they pulled the Qualtrics metadata.²⁶ They looked at the IP addresses and completion timestamps.

Ms. NotebookLM

And what did they find?

²⁴ Correction: the RA imported rows of data into the dataset to be used for analysis, but we don't know if the RA used drag and drop.

²⁵ Correction: the study was indeed conducted in 2014, but the authenticity paper with the study in it was published in 2015.

²⁶ Correction: Gino had access to the files during the investigation, but she did not have experts.

Mr. NotebookLM

The metadata proved conclusively that those 20 entries were generated by automated bots.²⁷ They were scammers themselves, rapidly clicking through the online survey to harvest the Amazon gift cards that were being offered as participant compensation.

Ms. NotebookLM

Wow. So the university had to quietly abandon that part of the charge. The evidence was irrefutable. But the psychological damage to the presumption of innocence was already done. The committee was already convinced of her guilt.

Mr. NotebookLM

Right.

Ms. NotebookLM

So, when Harvard's new expert, Jeremy Freese, pivoted to a different issue in the same data set, the committee was primed to believe it was fraud. Freese identified 154 altered cells between the source data and the final analysis file.

Mr. NotebookLM

Harvard immediately pointed to these 154 cells and claimed she manually altered them to force her hypothesis to work. But as we've seen before, that narrative doesn't match the math. 44% of those 154 changes did absolutely nothing to support the hypothesis. They altered irrelevant demographic data or moved numbers in the wrong direction.²⁸

Ms. NotebookLM

But the defense experts didn't just look at the percentage of helpful versus unhelpful changes. They analyzed the structural geometry of the errors in the spreadsheet. And I want to be extremely precise here.

Mr. NotebookLM

Here's where it gets really interesting.

²⁷ Correction: the entries came from scammers, by all indications humans, not bots.

²⁸ Correction: the changes affected variables irrelevant to the study hypothesis, but the changes were not about demographic data, and they did not move numbers in the wrong direction.

Ms. NotebookLM

Yeah. The defense proved that these 154 alterations were not random manual inputs. And they were not a simple sorting error. They demonstrated that this exact pattern of anomalies is the unique footprint of a highly specific drag and drop swap error.²⁹

Mr. NotebookLM

A drag and drop swap error. Walk me through that.

Ms. NotebookLM

Caused when highlighting a range of cells and dragging them while pressing the shift key. To picture this, think of a spreadsheet like a massive bookshelf. If you highlight a block of cells, you are grabbing a stack of books.

Mr. NotebookLM

Okay, got it.

Ms. NotebookLM

If you just drag that block to a new spot, you overwrite the books that are already there. But Excel has a specific feature. If you highlight a block of cells, move your cursor to the border until the icon changes, hold down the shift key, and then drag that block... Excel doesn't overwrite the destination.

Mr. NotebookLM

Oh, it pushes them.³⁰

Ms. NotebookLM

Exactly. It pushes the existing cells out of the way to make room. It swaps the data blocks, creating a cascading shift in the adjacent rows and columns.³¹ It's like shoving your stack of books into a crowded shelf. Everything else has to shift to the right to accommodate it.

²⁹ Correction: 94% of the 154 changes can be explained by the swap error. The remaining changes can be explained by another Excel feature used in error.

³⁰ Correction: Excel does not "push" the data, it swaps it.

³¹ Correction: in Excel, the Shift-drag swaps the cells you had selected, and places them at the destination where you release the mouse. This command does not create a cascading shift in the adjacent rows and columns. AI is describing an insert here rather than a swap.

Mr. NotebookLM

It creates a highly predictable, deterministic displacement of data. It's a replicable, mechanical process.

Ms. NotebookLM

Yes. The defense experts took the clean, original source file, they executed this exact drag-and-drop swap action, highlighting a specific range, holding the shift key, and dragging it to a specific destination. When they did that, Excel automatically generated the exact same 154 anomalies in the exact same geometric pattern found in the final linkless³² file.³³

Mr. NotebookLM

So let's look at the statistical probability here. There were 2,455 cells in that specific spreadsheet that could theoretically have been manipulated to strengthen the paper's conclusion. What are the chances that Francesca Gino, acting with malicious intent, goes into that file and manually types new numbers into exactly 154 cells in a configuration that perfectly mimics an automated Excel shift drag and drop error?

Ms. NotebookLM

It's insane.

Mr. NotebookLM

Right. And does so while ensuring that nearly half of her manual changes don't even benefit her research. The mathematical probability is virtually zero.

Ms. NotebookLM

It is statistically absurd. The evidence points overwhelmingly to an accidental keystroke by a research assistant cleaning the data, but the hearing committee refused to accept the mechanical explanation.

Mr. NotebookLM

Of course they did.

³² Correction: AI seems to be using this word to indicate that there were no links to other cells or spreadsheets in the block of data that was swapped.

³³ Correction: as already noted, 94% of the 154 changes can be explained by a swap error. The remaining changes can be explained by another Excel feature used in error.

Ms. NotebookLM

Instead, they doubled down on the motive theory. They argued that it couldn't have been an RA because the metadata showed the file was last modified on Thanksgiving Day 2014. Their logic was that RAs don't work on holidays, therefore it had to be Gino sitting alone in her office manually committing fraud.

Mr. NotebookLM

The Thanksgiving myth. It sounds compelling until you look at the archives. The defense produced five earlier versions of that exact same data set from the archives. Those files demonstrated that the data had been actively worked on, formatted, and manipulated by RAs for months prior to Thanksgiving.

Ms. NotebookLM

Right.

Mr. NotebookLM

The file saved on Thanksgiving was simply the combination of months of prior custody. The swap error could have happened weeks earlier, but the committee entirely ignored the existence of those five prior files to preserve their narrative.

Ms. NotebookLM

It's an exhausting pattern of ignoring exculpatory evidence, and that pattern reaches its absolute peak in allegation one. This is the only allegation out of the four that actually occurred within the six-year statute of limitations.

Mr. NotebookLM

Okay, the 2020 networking study.

Ms. NotebookLM

Yes, and this is where the investigation made its most catastrophic technical blunder.

Mr. NotebookLM

Let's hear it.

Ms. NotebookLM

The allegation centers on 1,066 anomalies between the raw survey data and the final file. And true to form, 38% of those anomalies were completely irrelevant to the study's hypothesis. But Harvard

presented a very specific narrative. They claimed that Gino downloaded the raw data directly from the Qualtrics server on the afternoon of January 24, 2020, and then spent that entire evening running commands in SPSS, a statistical software program, obsessively tweaking the data cell by cell to force results.

Mr. NotebookLM

But that narrative completely ignores the established workflow of her lab.

Ms. NotebookLM

Yeah.

Mr. NotebookLM

We have the actual testimony from her lead RA at the time, Alex Rohe. He testified that he had already downloaded the raw data, performed the initial cleaning and formatting, and provided the file to Gino prior to January 24th.

Ms. NotebookLM

And how was data transferred in that lab? It wasn't emailed. The standard practice was to use physical thumb drives. And there was a naming convention. When an RA worked on a file, they would typically append their first initial to the file name to denote custody.

Mr. NotebookLM

So, a file processed by Alex Rohe would have an R in the file name.

Ms. NotebookLM

Exactly. Gino argued she didn't download raw data. She simply plugged in the thumb drive Alex Rohe gave her, which contained the file with the R in the name, which already had the anomalies in it from the cleaning process.

Mr. NotebookLM

But the hearing committee rejected this explanation based on a profoundly flawed piece of logic. They searched her archives and found an older file from years prior that also had an R in the file name. But this older file was created before Alex Rohe was hired.

Ms. NotebookLM

Right.

Mr. NotebookLM

Therefore, the hearing committee³⁴ concluded the R couldn't possibly stand for the RA's name, invalidating the entire thumb drive defense.

Ms. NotebookLM

But if you just look at the employment records, who was the lead RA who ran the lab before Alex Rohe? Her name was Mindy Rock.

Mr. NotebookLM

Alex Rohe, Mindy Rock.

Ms. NotebookLM

Both of their last names begin with the letter R. Of course, the older files had an R in the name. The committee failed to make a connection that a basic glance at an HR roster would have solved.

Mr. NotebookLM

It's a stunning lack of curiosity. But the tragic part of this specific allegation is that the entire debate, did she download raw data from the internet on January 24th, or did she open a pre-cleaned file from a thumb drive, could have been resolved with absolute objective certainty.

Ms. NotebookLM

Because modern operating systems are essentially massive surveillance networks. They track everything.

Mr. NotebookLM

Exactly. The Windows³⁵ operating system generates hidden system log files that record every minute interaction with the hardware and the file system. These logs record the exact millisecond a USB thumb drive is inserted into a port. They record the hardware serial number of that specific thumb drive.

Ms. NotebookLM

They record exactly when a file is dragged from that external drive onto the local desktop. Similarly, they record exactly when a

³⁴ Correction: what Mr. NotebookLM states here is hard to hear but "he" is referring to what the hearing committee concluded.

³⁵ Correction: Gino used a Mac.

web browser initiates a file download from an external domain like Qualtrics.

Mr. NotebookLM

So the truth wasn't a mystery. The answer to whether she downloaded the file or used a thumb drive was sitting in the event viewer logs of her computer for January 24th, 2020.

Ms. NotebookLM

Right. And when the investigation commenced, the HBS Research Integrity Officer, the RIO, assured Gino in writing that the university's IT department had taken a forensic copy of her computer's hard drive.

Mr. NotebookLM

Let's define what that means in the IT security³⁶ world. A forensic copy, or a bit-for-bit clone, requires a technician to use a physical write blocker to ensure the drive isn't altered.

Ms. NotebookLM

Right.

Mr. NotebookLM

They then use specialized software to copy every single zero and one on the physical disk. This captures the user files, the hidden system logs, the registry files, and even the unallocated space where deleted files might still exist. It freezes the computer's entire digital reality at that exact second in time.

Ms. NotebookLM

That is what they promised, but that is not what they did.

Mr. NotebookLM

Oh, no.

Ms. NotebookLM

Instead of executing a true forensic image, an IT technician simply logged into her computer, highlighted specific user folders like her documents and desktop folders, and dragged and dropped them onto an external drive. They performed a basic logical file copy. They were so indiscriminate that they copied a folder labeled personal, which contained her private tax returns.

³⁶ Correction: IT forensics, not IT security.

Mr. NotebookLM

Wow. When you do a logical drag and drop copy, the operating system often updates the metadata of those files.³⁷ It changes the accessed or modified dates to the moment of the copy, essentially destroying the historical timeline of the files. But more importantly, a logical copy completely ignores the hidden operating system logs.

Ms. NotebookLM

And because they didn't capture those logs, and because they returned the computer to active use, the operating system did what it is programmed to do. To save disk space, Windows³⁸ uses circular logging. When the log file reaches a certain size, it begins overwriting the oldest entries with new ones.

Mr. NotebookLM

The system operates like an old VHS security tape. It just records over itself.

Ms. NotebookLM

Precisely. Harvard's IT failure allowed the computer to overwrite the critical system logs for January 2020. They literally destroyed the objective digital evidence that could have definitively proven where that file originated.

Mr. NotebookLM

They destroyed the only³⁹ evidence capable of distinguishing between the guilty hypothesis of a Qualtrics download and the innocent hypothesis of an RA's thumb drive.

Ms. NotebookLM

And the crowning absurdity of this entire saga is how the committee handled that destruction. They didn't acknowledge that their IT failure compromised the investigation. Instead, they used the void of evidence they created to convict her.

³⁷ Clarification: as Gino's forensic expert testified, HBS did not make a forensic image of Gino's laptop. Instead, it appears that HBS only copied a subset of the files under the "fgino" profile of her laptop. We do not know how exactly the copy was made.

³⁸ Correction: Mac, not Windows.

³⁹ Correction: the most direct or simplest evidence, not necessarily "the only" evidence.

Mr. NotebookLM

They blamed her for the missing logs.

Ms. NotebookLM

They essentially argued, while we have no server⁴⁰ logs proving a thumb drive was ever inserted, therefore you must have downloaded the raw data and manipulated it yourself. They wiped the security tape and then convicted her for not having an alibi.

Mr. NotebookLM

It is the antithesis of a fair investigative process. During the tenure revocation hearing, the RIO actually attempted to deflect blame, claiming he only copied specific folders to protect her privacy, a defense that is immediately contradicted by the fact that he copied her tax returns.⁴¹

Ms. NotebookLM

Exactly.

Mr. NotebookLM

The institution refused to accept responsibility for a catastrophic breach of forensic protocol and instead shifted the burden of that missing evidence onto the accused.

Ms. NotebookLM

So, we have to pull all of this together and look at what it means. We return to the core legal standard that is required to revoke the tenure of a Harvard professor: Clear and convincing evidence. In the legal realm, the clear and convincing standard is generally understood to require a 70 to 80 percent confidence level. The evidence must be highly and substantially more likely to be true than untrue. It requires a firm belief or conviction in the factual guilt of the accused.

⁴⁰ Correction: OS logs, not server logs.

⁴¹ Clarification: RIO Bonacossa contradicts himself as he also maintains in his August 15, 2024 testimony that a forensic copy was made even after Gino identified that Harvard did not make a full forensic image of her laptop: “After sending Prof. Gino the Notice of Inquiry, I worked again with HBS Information Security Officer Christopher Pringle to make a forensic copy of two of Prof. Gino’s computers, which Prof. Gino represented were the only two computers in her possession that had records or evidence relevant to the research misconduct allegations.” Witness Statement of Alain Bonacossa at ¶ 29.

Mr. NotebookLM

When you aggregate the facts we've explored, that standard is simply nowhere to be found. We are looking at a case built on 20 anomalous entries that were objectively proven to be automated gift card scammers. We are looking at 154 altered cells that mathematically and geometrically replicate a highly specific software driven drag and drop swap error.

Ms. NotebookLM

Yes.

Mr. NotebookLM

We have an investigative committee that actively refused to interview the vast majority of the research assistants who held custody of the data. We have physical 16-year-old paper receipts sitting in a card box in a garage that completely exonerate the baseline data file used in Allegation 4.

Ms. NotebookLM

And we have an administration that authorized the physical destruction of the core digital log files that could have proven innocence in Allegation 1 simply through IT incompetence.

Mr. NotebookLM

Does any of that collection of facts sound like an 80% confidence level of intentional, malicious, calculated fraud?

Ms. NotebookLM

Not at all. The argument that Harvard's decision was profoundly flawed is incredibly robust. When you lay out the procedural shortcuts, the reliance on an expired statute of limitations, the mathematical improbability of the motive theories, and the sheer investigative negligence regarding witnesses and digital forensics, it becomes nearly impossible for an objective fact finder to review this record and conclude that the clear and convincing standard was satisfied.

Mr. NotebookLM

The anomalies are demonstrably ambiguous. The assumption of unidirectional malice is contradicted by the data itself, and the institutional investigation was structurally incomplete.

Ms. NotebookLM

Which brings us back to you, the listener. You might not be an academic. You might not care about the internal politics of the Harvard Business School, but you should care about the mechanics of this case.

Mr. NotebookLM

Absolutely. Because if a globally prestigious university, armed with virtually unlimited financial and legal resources can completely ignore its own statute of limitation, abandon its own multi-million-dollar foundational expert reports, destroy objective digital evidence through sheer administrative incompetence, and end a career based on an assumption of motive that are mathematically absurd...

Ms. NotebookLM

Yeah.

Mr. NotebookLM

What does that signal for the integrity of institutional investigations everywhere?

Ms. NotebookLM

It's a question of systemic vulnerability. We exist in a professional world where data is increasingly abstracted. It is handled by massive teams of assistants parsed by complex algorithms and processed through layers of opaque software. In that environment, anomalies are inevitable.

Mr. NotebookLM

Right. Mistakes happen.

Ms. NotebookLM

But if our institutions default to assuming human malice every single time they encounter a digital formatting error, a misaligned spreadsheet cell, or an incomplete working file, we aren't actually protecting the truth. We are simply creating a paranoid, punitive system where no researcher, analyst, or employee is ever safe from the ghosts in their own machines.

Mr. NotebookLM

It really brings us right back to the beginning. You're put on trial for a typo from 14 years ago, but the server logs have been recorded over, the assistant isn't allowed to testify, and the IT guy just

shrugs and points to your name on the memo. That is the reality of the diagnostic muddy waters we just swam through.

Thanks for joining us on this Deep Dive.

Larry

That was NotebookLM's summary of the nine episodes of the podcast, *The Law Such as It Is*, recounting the removal of Francesca Gino's tenure by Harvard University and the Harvard Business School.

You can find more information about the case at the website TheGinoCase.info. And you can find a simple way to share this podcast episode, as well as other material about the case, to help others who you might think would like to understand exactly why I believe, and many believe, that Harvard has wrongfully taken the tenure of Francesca Gino.

And even if these words don't have an effect on Harvard, let them have an effect on the understanding of those who care to listen and understand enough to see the injustice in this story.

Because what was done to Francesca is wrong. And at the very least we can remedy part of that wrong by spreading the understanding of just how wrong it was.

This episode was produced by Josh Elstro of Elstro Productions. You can find him on the web at ElstroProduction.com. And you can find more information about this case again at the website TheGinoCase.info.

Thanks for listening.

Thanks for listening with an open mind.

This is Larry Lessig.