

THE SURRENDER OF ELIZABETH HOLMES: A COMPLEX AND CAUTIONARY TALE OF AMBITION TURNED DECEIT.

By Panda Kröll



Once celebrated and now vilified Elizabeth Holmes has traded her black turtleneck for an orange jumpsuit. Credit: Getty Images for TechCrunch.

On June 14, 2018, a grand jury indicted Elizabeth Holmes, age 39, and Ramesh “Sunny” Balwani, age 57, with crimes related to a scheme to promote Theranos, a health care and life sciences start-up based in Palo Alto, California, that had promised it would disrupt the consumer healthcare industry.

In 2022, Holmes and Balwani, Theranos’ CEO and COO, were convicted in separate trials of making fraudulent claims about Theranos’ ability to provide “accurate, fast, reliable, and cheap blood tests

and test results.” Holmes and Balwani also misrepresented Theranos’ financial condition and prospects, defrauding investors of hundreds of millions of dollars.

The curtain has now fallen on the final act of this true-crime story of massive fraud that captivated not only the business and biotechnology sectors but also the popular imagination. After losing her last-minute appeal to the Ninth Circuit for bail while she appeals her conviction, Holmes surrendered to authorities on May 30, to begin her eleven-year sentence

in FPC Bryan, a federal prison for women in southern Texas. Her sentence begins just months after giving birth to her second child with her current partner Billy Evans, heir to a San Diego-area chain of hotels. On April 20, Balwani, Holmes’ former romantic partner, reported to Terminal Island, a federal prison in San Pedro, California to begin his thirteen-year sentence. Former inmates at this facility include Al Capone, Charles Manson (briefly, for auto theft) and LSD evangelist Timothy Leary. Holmes and Balwani’s trials were severed after Holmes revealed her defense strategy – that she was unable to think clearly during the time of the crimes because she was the victim of Balwani’s emotional and physical abuse.

In opening statements at her federal criminal trial, the U.S. Attorney prosecuting Holmes told the jury, “This is a case about fraud, about lying and cheating to get money.” Holmes’ counsel argued in defense, “Failure is not a crime.” Unpersuaded, the jury returned a guilty verdict on four out of eleven counts of fraud. The Silicon Valley mantra, “Fake it till you make it,” does not play as well in health care as it does in other fast-moving tech start-ups.

On Nov. 18, 2022, Holmes was sentenced to 135 months in federal prison, and on Dec. 7, 2022, Balwani was sentenced to 155 months. Commenting on his harsh sentence, Judge Edward Davila of the U.S. District Court for the Northern District of California spoke of early Silicon Valley success stories such as Hewlett-Packard, which had fostered an environment of innovation and fairness. Theranos similarly had great promise, but that promise was “dashed by untruth, misrepresentations, hubris, and plain lies.” For a transcript of Judge Davila’s statement, see NPR, “Read what a judge told Elizabeth Holmes before sending her to prison for 11 years,” available at the following URL:

www.npr.org/2022/11/23/1138988456/read-what-a-judge-told-elizabeth-holmes-before-sending-her-to-prison-for-11-year.

In addition to incarceration, Holmes and Balwani were ordered jointly and severally

to pay over \$450 million in restitution to investors victimized by the fraud, who may not see a penny. Emotional scars will also be hard to remedy.

Twenty-something employees Tyler Shultz and Erika Cheung were initially fans of Holmes and her mission but faced bullying and derision after raising uncomfortable questions to Theranos' management about severe flaws in the technology. After resigning in frustration, Cheung, an entry-level lab tech, blew the whistle to a little-known but powerful federal agency, Centers for Medicare and Medicaid Services, who responded by giving Theranos ten days to fix laboratory practices that posed "immediate jeopardy to patient health and safety."

Cheung has authored a Ted Talk about her experiences speaking truth to power. Shultz was the source of the Wall Street Journal article that exposed the fraud. His summer internship at Theranos had been arranged by Theranos' most celebrated board member: Shultz's grandfather, George Shultz who formerly served as the U.S. Secretary of State, Secretary of Labor, Secretary of the Treasury, and Director of the Office of Management and Budget. George refused to believe Shultz, causing a rift in the family, and Shultz was forced to spend more than \$400,000 in legal fees after Holmes directed one of the highest-profile attorneys in America, David Boies (also a board member), to threaten him and Cheung with defamation lawsuits and accused them of leaking trade secrets.

Holmes admitted that she hired private investigators to follow former employees. Shultz, however, told the Wall Street Journal, "I refuse to allow bullying, intimidation and threat of legal action to take away my First Amendment right to speak out against wrongdoing." Shultz received the James Madison Freedom of Information Award and is mentioned approximately 200 times in Wall Street Journal reporter John Carreyrou's national best seller, "Bad Blood: Secrets and Lies in a Silicon Valley Startup." His most famous quote: "Fraud is not a trade secret."

There have been countless media accounts of Holmes' rise and still more of her fall. At age 19, Elizabeth Holmes dropped out of Stanford in 2004 to found medical technology company Theranos (a portmanteau of "therapy" and diagnosis)" and quickly became a venerated icon not only to young women in technology but also a trusted advisor to both the Clinton and Obama administrations. Her ascension ended in 2015 when the Wall Street Journal called into question the efficacy of her claims. Carreyrou's reporting resulted in investigations of Theranos by the FDA, the US Senate, and the US Securities and Exchange Commission. Media coverage of this true crime drama includes an eight-episode mini-series starring Amanda Seyfried ("The Dropout," Hulu, 2019) and a documentary ("The Inventor: Out for Blood in Silicon Valley," HBO, 2019. ABC News produced a chart-topping podcast ("The Dropout," 2019), which began as six but was later expanded to 36 episodes ("The Dropout: Elizabeth Holmes on Trial," 2021), as well as a two-hour 20/20 special ("The Dropout: The Rise and Con of Elizabeth Holmes," Hulu, 2022).

At its apex, the consumer health care company was valued at \$9 billion and secured an ill-fated partnership with Walmart to offer blood-testing services in 40 Walgreens "Wellness Centers" in Arizona. In addition to luminaries on its board of directors such as Henry Kissinger, George Shultz, James Mattis, and Betsy DeVos, former executive Vice-President of Amgen, Fabrizio Bonanni, PhD, took a board seat in 2016 after he turned down Ms. Holmes' offer to replace her as Theranos' CEO.

Holmes, initially a media darling, graced the covers of *Forbes*, *Fortune*, and *Inc.* magazines, and was lauded as the youngest and wealthiest self-made female billionaire. After the exposé by WSJ, New York Times *Style* magazine featured her in yet another cover story. This time, however, the tale was of a brilliant young woman seduced by the power of her own myth.

SIDEBAR: Preparation for my team's final Inns of Court skit spanned a four-year period, due first to the 2017 Thomas Fire and then to the 2018 pandemic shutdown. The topic – the rise and fall of Holmes – was proposed by one of our chapter's youngest members, **Samantha Koopman**, who had only recently been admitted to the bar. My team finally presented at Sterling Hills on Nov. 16, 2021. Fittingly, that was the week the prosecution rested its 11-week case against the former Theranos CEO.

The part of Holmes was initially developed by **Rabiah Rahman**, and ultimately performed with panache and a blonde wig by the **Honorable Maureen Houska**, who had yet to don her robe as the newest addition to Ventura County's Superior Court bench. **Al Vargas**, as Holmes' secret boyfriend and Theranos COO, shot copious bills out of a money gun in a boardroom scene where Holmes announces a partnership between Theranos and Walgreens: more on that later. Koopman, **Mike Morrow**, **Tim Sottile**, new IOC member **Lou Kreuzer** and I rounded out the cast.



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