

Trial Recap - US v. Elizabeth Holmes

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On this episode of The Bracewell Sidebar, we discuss the Elizabeth Holmes/Theranos trial and the significance of the mixed verdict.

To break it down, 11 counts ultimately went to the jury. Holmes was convicted on some and acquitted on some of them, and on some of them the jury was unable to reach a conclusion. When you have a truly mixed verdict like this, that sets up a real challenge on appeal because a truly mixed verdict suggests that the jury really did go through each count and the evidence for each count, and either reached conclusions or decided they were unable to reach conclusions on some of the counts.

It's an interesting case of a very young dynamic woman, which is unique in the white-collar world. There's not that many high-profile women who are charged and convicted of white-collar crime. But Holmes was a Stanford dropout and started Theranos, with the idea to create technology that could test for up to 200 diseases and other types of blood tests with a single drop of blood.

Holmes and Theranos were actually telling people that they had that technology, that it worked and included some very large retail pharmacies. So, ultimately this is a huge success story that went awry when the whistleblowers came forward. This was a company that at one point was valued at \$9 billion and ultimately didn't have the technology to conduct near the amount of tests that they were claiming they could do.

She is an obviously smart, intelligent woman, very charismatic and built this company. The problem, the government claims, was she built it on a foundation of lies.

That was the core of the government's case. And it merits pointing out that at the height of the Theranos appeal and the Elizabeth Holmes appeal, you had this quick flip where a reporter for *The Wall Street Journal* who had done a lot of digging, started publishing articles questioning Theranos and questioning Holmes. Ultimately this reporter, John Carreyrou, came out with a book called *Bad Blood* that that seemed as an expose of Theranos and Holmes. That flipped things overnight, where there was an SEC investigation, there were private civil suits, and then ultimately there were criminal charges that culminated in the trial with the verdict that was delivered last week.

It was interesting that Holmes was found guilty of the charges related to, or at least most of the charges related, to lying to investors. There were three that the jury didn't reach a verdict one way or the other, but she was largely acquitted on the charges relating to lying to patients or even conspiracy to defraud patients. The jury was focused much more on the evidence relating to the lying to the investors was much stronger than those relating to the patients. That could have been because of the credibility of the witnesses. It could have just been the focus on the prosecutor as the trial went on.

You have a guilty conviction on the first count, which related to conspiring with another person named Ramesh "Sunny" Balwani. His trial is separate, but he played a large role in absentia in the Holmes case. The narrative that was developed essentially at trial was that Holmes and Balwani, together behind the scenes, decided even though the technology didn't work, even though they didn't have the blood testing capabilities, they should tout that they have them and use that and go to potential investors with the model, little black box testing device and say, "Behold, here's the Therasys product. It works and invest in us because we can sell this thing all over the country, and it'll revolutionize blood testing."

From the government's perspective, if you approach the narrative from that perspective, saying here are two people who agreed to do something bad and then they did it, at least in the level of here are two people who agreed to go pitch investors and say, "Invest in me because I'm good and my product is great," then if those statements are not true, it really does fit into a traditional white-collar fraud case. Whether it's securities fraud or wire fraud, the notion of saying, "Give me money because I can do something," and in fact you cannot do it is a pretty good recipe for getting into trouble with the US government.

Have questions? Email [Matthew Nielsen](mailto:Matthew.Nielsen@bracewell.com).

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