

## **Tragedy and Integrity: Framing Elizabeth Holmes in the Courtroom**

Elizabeth Holmes went from being spotlighted through profiles in major newspapers, delivering her own TED Talk, and earning a spot on *the Times'* 100 most influential people list, to a place beside Bernie Madoff in the public imagination. Theranos, the health-technology company founded in 2003, was once valued at \$9 billion, with its blood-testing devices appearing in Walgreens stores nationwide. Despite being pitched as the future of diagnostic medicine, Theranos collapsed when reporting revealed that its supposedly groundbreaking technology did not work and many of its claimed successes had been falsified by CEO Elizabeth Holmes (Streitfeld). Despite her ambition to cultivate the image of a visionary founder, Holmes is now infamized as a legendary fraudster through hit podcasts, best-selling books, and even a Hulu miniseries starring Amanda Seyfried. The case was described in the media as a "cautionary tale" for Silicon Valley, whose story exposed the flaws embedded in the "fake it till you make it" approach that had served many high-tech entrepreneurs up to that point (Laidler). The highly public nature of the company's downfall—from *The Wall Street Journal* reporting in 2015 to Holmes's eventual criminal sentencing in 2022—not only documented Holmes's egregious misconduct, but also sparked conversations about the structure of private companies and the cultural norms that enabled Theranos to flourish unchecked for over a decade. An examination of the closing argument in Holmes's 2022 criminal trial for wire fraud, delivered by U.S. Attorney Jeffrey B. Schenk, illuminates how the prosecution deliberately framed Holmes as an immoral agent, elevated former

employees and witnesses as moral counterweights, and challenged the private-company oversight failures.

### **The Rise and Fall of Theranos**

In 2003, 19-year-old Elizabeth Holmes had just dropped out of Stanford and set her sights on Silicon Valley success. The Valley at the time was defined by rapid expansion, aggressive venture capital, and a penchant for exaggeration, a "fake it until you make it" culture (Streitfeld). For the ambitious founder seeking breakthrough success, the environment offered Holmes a perfect opportunity to start her health technology company. Theranos marketed a blood-testing device that promised to run hundreds of tests with only a few drops of blood. With early backing from Stanford-affiliated mentors, Holmes and Theranos quickly became prominent names in health-tech and the broader startup space (Streitfeld). At its height, the company secured a significant partnership with Walgreens, placing its testing devices in stores for consumers to buy and test themselves for indications of diseases such as AIDS or cancer. However, this resulted in many false diagnoses due to Theranos's faulty technology (Khorram). In 2015, a series of *Wall Street Journal* articles by investigative journalist John Carreyrou was published, exposing Theranos for egregious and consistent fraud over the 10+ years it was in operation. These articles included statements from former employees and whistleblowers who revealed that Theranos had committed fraud against both patients and investors by falsifying scientific and financial data. Witnesses described Holmes suppressing evidence of repeated faulty results, attaching a Pfizer logo to Theranos reports to imply outside validation, and even falsely claiming that the military was using Theranos devices in medevac units (Carreyrou).

These revelations sparked interest from various government agencies, including the FDA (Food and Drug Administration), CMS (Centers for Medicare & Medicaid Services), and the SEC (Securities and Exchange Commission), which quickly began their own reviews of Theranos and its practices (Begley). At the same time, investors, business partners, and patients also filed a series of civil suits against the company (Ashley). These overlapping actions created a steady legal buildup for Holmes, and by the time federal prosecutors brought criminal wire-fraud charges against her in June of 2018, Holmes had already fallen from grace in the public eye.

### **Silicon Valley's Structure and the Conditions for Fraud**

Around the time Theranos was finally exposed, the question arose: *How did the rampant fraud embedded within the company evade detection for so long?* Not only had Theranos lied to investors from the beginning, but its defective devices had reached stores and were being used by patients. Many commentators pointed to the opacity of private companies and the culture of Silicon Valley as integral factors in causing the oversight. At the time, the SEC was cracking down on structural practices in Silicon Valley that allowed private companies, like Theranos, to grow rapidly without any disclosure obligations. Two years before Holmes was officially charged, the SEC was flagging these risks. In a 2016 keynote at the SEC–Silicon Valley Initiative, Chair Mary Jo White reminded the public that "being a private company obviously does not mean that you can disregard the interests of investors," stressing that it instead "comes with serious obligations to investors and the markets" (White). This broader regulatory concern forms the backdrop to Holmes's criminal case. While the SEC conducted its own investigation and case against Holmes, the criminal trial focused squarely on her

individual intent and responsibility. As former senior counsel at the SEC, Michael Hurwitz, argued in his 2020 article, criminal prosecutions of CEOs like Holmes serve to enforce individual accountability—detering future misconduct and reinforcing the public's confidence that corporate wrongdoing will be met with real consequences, even when governmental oversight initially fails (1549).

After years of back-and-forth, with the trial delayed by the COVID-19 pandemic, the prosecution finally delivered its closing statement in the *United States v. Elizabeth A. Holmes* case on December 16th, 2021. As the New York Times noted, the trial itself "stood out in the world of white-collar crime," mainly because Silicon Valley executives rarely faced criminal charges (Streitfeld). The national eyes on the case meant that Holmes's trial was much more of a cultural event than a legal one, with the closing argument operating on these multiple levels. These can be illuminated by examining Schenk's closing argument through the lens of Kenneth Burke's dramatic pentad. As a framework, pentadic criticism examines an act, the agent who performs it, the scene in which it occurs, the agency by which it is carried out, and the purpose behind it (McGeough and King 153). Burke's pentad allows critics to see how motives are framed within a rhetorical act because, as McGeough and King observe, the perspective selected to explain an action shapes the motive that the rhetoric conveys (152). Because of this, Burke's method proves particularly illuminating here, as the trial hinges on how Holmes is framed in relation to the act of fraud, as well as the broader cultural context that shaped how her motive was presented to the jury. These pentads can be supported by another element of Burke's theory, terministic screens, which he describes as terms that select certain realities, emphasize certain aspects of them, deflect others, and ultimately guide how audiences understand a text (Burke 45). These tools make visible the

rhetorical choices through which Schenk guides jurors toward a particular understanding of Holmes's character, as well as the moral contrast he draws between her and the whistleblowers who testified against her in the trial.

### **Constructing Holmes as an Agent of Fraud**

An important element of fraud, as discussed by Parminda Enkeshafi in her 2022 Law Review Article, *Universalizing Fraud*, is the presence of morality within its legal definition: "Moral content is central to the broader definition of fraud—and beneath statutory language lies a simple notion that it is wrong to deceive another out of their property" (49). Because of this, jurors in fraud cases are often asked not only to evaluate a defendant's intent in the traditional legal sense, but also to determine whether the defendant was aware that what she was doing was wrong—a principle defined as *consciousness of wrongdoing* (Enkeshafi 50). This notion of *consciousness of wrongdoing* is paramount to Schenk's rhetorical framing of Holmes. Not only because it is an imperative element in the fraud charge, but also because it provides the foundation for Schenk's construction of Holmes as the central agent within Kenneth Burke's dramatic pentad. Schenk's anchoring of Holmes as the agent makes the fraud she commits a moral reflection of her character. The manner in which Schenk presents the story of Holmes's fraud can be presented with the following pentad:

As Theranos was quickly losing funding, support, and teetering towards failure (scene), success-motivated and ambitious-to-a-fault CEO and founder Elizabeth Holmes (agent), sought out to avoid failure at all costs (purpose) and used her power as CEO to be knowingly dishonest with investors (agency), by pitching

false representations of Theranos and their financial standing, ultimately defrauding investors during pitch meetings (act).

In Burke's framework, the pentad also includes the concept of *ratios*, which reveal how the relationships among the elements highlight one component as dominant and create a particular "persuasive bias" (McGeough and King 150). Schenk's dominant use of the agent–act ratio communicates to the jurors what kind of person Holmes is and her role in the fraud against investors. Additionally, it directly opposes the defense's portrayal of her as a businesswoman swept up in a culture that rewards risk and exaggeration. To separate Holmes from that collective identity, Schenk uses terministic screens as "filters" that shape jurors' interpretations of motive (Burke 46). One of Schenk's most prominent terms is the repeated use of the word "decision." Describing Holmes's response to Theranos's imminent financial collapse, Schenk tells jurors, "Ms. Holmes had a **choice** to make. She could watch Theranos slowly fail, or she could make a different **decision**... she made a different **decision**... the **decision** to defraud her investors and then to defraud patients" (*United States of America v. Elizabeth A. Holmes* 8909). The repeated use of the word decision reflects the reality that Holmes, as CEO, made confident, controlling choices for Theranos. This serves to remind jurors that Holmes was not simply reacting to circumstances beyond her control but instead had the opportunity to decide to deceive investors consciously. This selects a reality that emphasizes the power that CEOs like Holmes traditionally have over their companies—the power to decide the direction the company takes, especially relevant in private companies such as Theranos. This use also deflects the potential reality in which the CEO role would leave Holmes unaware of what was happening in the labs, which was the angle the defense attempted to take in its argument. Her decisions, as Schenk

emphasizes throughout the closing, reflected a selfish use of that power and a *choice* to save the company, and her own reputation, at any cost: "She **chose** fraud over business failure. She **chose** to be dishonest with her investors and with patients" (*United States of America v. Elizabeth A. Holmes* 8909; emphasis added) The term "choice" itself underscores that Holmes possessed full agency and deliberately selected the unethical path, prioritizing her personal and professional survival over honesty. This framing positions her not as a founder overwhelmed by circumstances, but as a selfish decision-maker who knowingly embraced wrongdoing to secure her own success.

Similar to the screen built around the word choice, Schenk also characterizes Holmes's purpose, which is central to the jury's ultimate understanding of motive, through his use of the word "knowing." Rather than treating her misstatements as accidental or careless, Schenk tells jurors that Holmes communicated "**knowingly** false statements about Theranos," but only "the favorable kind" designed to attract investment. These selective misrepresentations, he argued, reflect her deliberate use of information that was "**knowingly** false" and "**knowingly** favorable" to achieve her objective of lying to investors and getting them to invest in Theranos (*United States of America v. Elizabeth A. Holmes* 9018; emphasis added). The term "knowing, within this context and throughout the closing argument, reflects the idea that Holmes was deliberate in her decisions to lie to investors and acted with complete consciousness of her words and actions. Again, it emphasizes her controlling role as a CEO in deciding which information to share with investors during these pivot moments in pursuit of investment. This also deflects the defense's suggestion that Holmes's conduct was typical business behavior or that her misstatements were accidental, highlighting the intention behind each false presentation. Instead, Schenk frames Holmes as a rational,

calculating agent who was selfish, conscious, and knowing in her wrongdoing. By depicting Holmes in this light, Schenk combines the requirement for legal intent with moral awareness, inviting jurors to interpret Holmes as a person who is both criminally culpable and ethically reprehensible.

## **Whistleblowers, Witnesses, Integrity & the Information Gap**

### *Witnesses and Whistleblowers*

In his lengthy closing argument, Schenk spends much of the time recapping the testimony given by the 29 different witnesses for the prosecution. While doing so, he casts Holmes in opposition to the witnesses and whistleblowers—Theranos employees who spoke out against her and Theranos. The story Schenk tells not only characterizes Holmes as "self-serving" but also presents former employees who testified in the case as powerless within Theranos because of her (*United States of America v. Elizabeth A. Holmes* 9022). However, he presents the trial as an opportunity for the employees to regain some of that power and their previously suppressed knowledge for good. In turn, this communicated to jurors that the trial itself functioned as a corrective space—one where the power imbalance inside Theranos could be reversed.

Painting an image of Theranos employees as powerless within the company, Schenk recalled testimony that described Holmes as speaking over other Theranos employees during meetings, "interrupting" and answering questions on behalf of the entire team (*United States of America v. Elizabeth A. Holmes* 8949). Schenk also describes "email after email" sent to Holmes by employees detailing problems occurring in the lab and with the technology, which, as multiple witnesses confirmed, went ignored and were never communicated to investors. Schenk characterizes the

overwhelming power that Holmes had over the information in Thernaos, and over the employees, stating that she "[decides] what is the kind of information that should be communicated and what is not" (*United States of America v. Elizabeth A. Holmes* 9023). Again using the same decision-focused framing, Schenk continues to emphasize Holmes's control over her employees, the flow of information, and Theranos's operations as a whole.

### *Integrity & the Information Gap*

However, the past suppression of employee voices is then contrasted with the opportunities presented in the trial itself, where those same employees finally could speak up and challenge Holmes in court. As Schenk's narrative shifts toward the witnesses near the end of his closing, he frames the trial as an opportunity for Theranos employees—and, by extension, the jurors themselves—to confront that earlier suppression of information and reclaim power. Schenk presents the following pentad:

Former investors, patients, and partner companies (agents) use their testimony in the trial (agency) to pursue justice (purpose) within the courtroom (scene), and finally speak out against Holmes's fraud (act).

Schenk directly calls forth specific witnesses and Theranos whistleblowers who testified against Holmes, describing Theranos as "a story of a tragedy, but also the story of some people acting with really remarkable integrity" (*United States of America v. Elizabeth A. Holmes* 9029). He repeats this line twice during his closing, only two minutes apart. These two competing screens, "tragedy" and "integrity," ultimately work together to shape how the jury interprets the case and its actors. The term "tragedy" highlights the harm caused by Holmes's fraud, emphasizing those who suffered its consequences while

deflecting any reading of the case as ordinary business misconduct. Conversely, the term "remarkable integrity" frames the Theranos witnesses as exceptionally morally upright in the face of that harm, invoking qualities such as courage, honesty, and virtue. In this framing, the witnesses' former roles within Theranos are downplayed, and instead, figures like engineer Erica Cheung and lab director Dr. Rosendorff appear solely as direct oppositional forces to the tragedy Holmes created, presenting as witnesses in Holmes's downfall. Their behavior seems even more morally exemplary when set against this tragic backdrop, while Holmes's conduct appears even more egregious when contrasted with the witnesses' integrity.

Schenk goes on to explain that Holmes knew the truth about "what Theranos could do and what it could not do," while investors, patients, and even Theranos employees did not. Schenk states that Holmes "took advantage of that sort of information gap," which ultimately allowed her to commit fraud (*United States of America v. Elizabeth A. Holmes* 9029). Returning to the same family of terms as used earlier, related to knowledge, truth, and information, Schenk contrasts Holmes's manipulation of these concepts with the ways witnesses were now able to use them for good in the trial, where, as he suggests, the informational gap is finally closing. For example, while Schenk first recalls testimony from both investors and former employees describing what they "did not know" and "had no way of knowing," at the time, he then directly positions the jurors as knowledgeable, telling them, "you now **know** the answer... because you've listened to the trial" (*United States of America v. Elizabeth A. Holmes* 8939; emphasis added). Shifting the power of knowledge from something Holmes used to suppress others into something that now empowers the jury, Schenk casts jurors as possessing the answers—able to act with the same "remarkable integrity"

as the witnesses because they have the knowledge investors and patients lacked at the time.

When Schenk invokes the idea of "fraud having a head start on the truth," he uses the phrase to summarize his larger claim: that Holmes, Balwani, and similar Silicon Valley figures remained ahead of accountability for years by manipulating an information gap they controlled. This framing reinforces the overarching comparison he builds throughout the closing—Holmes as insulated and powerful, contrasted with the people she misled, who were left to face the consequences of decisions made without their knowledge, but able to regain their power through the justice system and through their role as whistleblowers. This emphasis on whistleblower testimony also echoes Verity Winship's point in her 2020 article that, in private companies, such voices become especially important because traditional oversight mechanisms are weaker (713). In this way, Schenk's depiction of Holmes, the witnesses, and the jurors as competing moral agents suggests that the trial operates as a space where truth has the ability to finally beat deception – an appealing idea when in regards to broader Silicon Valley patterns that had allowed founders to stretch and distort the truth long before anyone intervenes. As Jina Choi, director of the SEC's San Francisco Regional Office, put it at the time of Theranos's public downfall, "The Theranos story is an important lesson for Silicon Valley. Innovators who seek to revolutionize and disrupt an industry must tell investors the truth about what their technology can do today, not just what they hope it might do someday" (Griffith). Ultimately, the court, by empowering whistleblowers and jurors, provides the opportunity for truth to catch up to fraud finally in these spaces—and, thus, Holmes's consequences can finally catch up to her as well in the courtroom.

## Conclusion

Because Theranos operated as a private company, it existed largely outside the government's ordinary oversight mechanisms. As SEC Enforcement Co-Director Steven Peikin warned following their action against Theranos, there is "no exemption from the anti-fraud provisions of the federal securities laws simply because a company is non-public, development-stage, or the subject of exuberant media attention" (Winship 667). California attorney David Mills made a similar point in the *LA Times*, arguing that Holmes was prosecuted "to send a message to Silicon Valley, one about truth, overstatement and transparency" (Mills). Both Winship and Mills emphasize that when private companies face little disclosure oversight, criminal prosecution often becomes a stand-in for regulatory failure—a public way to express accountability when ordinary oversight mechanisms have fallen short. Schenk leans directly into this gap in his closing argument, presenting the trial as the moment when that lack of oversight can finally be corrected.

To illustrate Holmes's unchecked power as CEO, Schenk explains that her decision not to sell stock was evidence that she needed retain complete control over Theranos in order to maintain her fraud: "When Theranos was a house of cards, when it was fraud, she could not give someone else the power that came with those voting rights, the power to ask questions to get real answers" (United States v. Holmes 9019). When viewed in light of this broader context of Silicon Valley controversies at the time, Schenk's framing seems to target the private-company structure that enabled Holmes's deception to flourish unchecked. Standing in contrast to Holmes's selfish decision-making, the whistleblowers and witnesses come to represent the possibility of

accountability, representing individuals who alerted the public and the government to what was happening inside the company. Scholars like Melanie Jeske urge the public to learn from the ethical transgressions that were committed by Elizabeth Holmes.

Further, Jeske also cautions against the way some scholars have framed the story of Theranos and Holmes as the story of one ‘bad apple,’ suggesting that this obscures the structural failures that allowed the fraud to grow unchecked (Jeske 309). While Attorney Schenk’s closing does emphasize Holmes’s individual responsibility, one could also argue that his framing hints at a deeper structural critique, as Holmes’s ability to deceive depended on a system that lacked meaningful oversight and allowed for company information to be independently controlled. In this way, Theranos is not just the story of Holmes’s wrongdoing. It is also about the “remarkable integrity” of those who challenged it, the witnesses and jurors who “restored” truth. Their role makes clear that accountability in Silicon Valley arrives only when *integrity* and truth finally outruns the fraud that once had a head start.

## Works Cited

- Ashley, Sara. "The rise and fall of Theranos: A timeline." *CNN*, 7 July 2022,  
<https://www.cnn.com/2022/07/07/tech/theranos-rise-and-fall>.
- Begley, Sarah. "Theranos Is Under Investigation by SEC and U.S. Attorney's Office." *TIME*, 18 April 2016,  
<https://time.com/4298598/theranos-sec-us-attorney-investigation/>.
- Burke, Kenneth. "Terministic Screens." *Language As Symbolic Action: Essays on Life, Literature, and Method*, University of California Press, 1966, pp. 44-50.
- Carreyrou, John. "Hot Startup Theranos Has Struggled With Its Blood-Test Technology." *The Wall Street Journal*, 16 October 2015,  
<https://www.wsj.com/articles/theranos-has-struggled-with-blood-tests>.
- Enkeshafi, Parmida. "Universalizing Fraud." *DUKE JOURNAL OF CONSTITUTIONAL LAW & PUBLIC POLICY*, vol. 18, no. 1, 2022, pp. 47-71. *JSTOR*.
- Griffith, Erin. "Theranos and Silicon Valley's 'Fake It Till You Make It' Culture." *WIRED*, 14 March 2018,  
<https://www.wired.com/story/theranos-and-silicon-valleys-fake-it-till-you-make-it-culture/>.
- Hurwitz, Michael H. "Focusing on Deterrence to Combat Financial Fraud and Protect Investors." *The Business Lawyer*, vol. 75, no. 1, 2020, pp. 1519-1550. *JSTOR*,  
<https://www.jstor.org/stable/10.2307/27171056>.
- Jeske, Melanie. "Lessons from Theranos: Changing Narratives of Individual Ethics in Science and Engineering." *Engaging Science, Technology, and Society*, vol. 6, no. 1, 2020, pp. 306-311.

- Khorram, Yasmin. "Former Theranos patient testifies that a blood test at Walgreens came back with false positive for HIV." *CNBC*, 17 November 2021, <https://www.cnn.com/2021/11/17/theranos-patient-says-blood-test-came-back-with-false-positive-for-hiv.html>.
- Laidler, John. "A cautionary tale for Silicon Valley." *Harvard Law Today*, 9 October 2018, <https://hls.harvard.edu/today/a-cautionary-tale-for-silicon-valley/>.
- McGeough, Ryan Erik, and Andrew King. "Dramatism and Kenneth Burke's Pentadic Criticism." *Rhetorical Criticism: Perspectives in Action*, edited by Jim A. Kuypers, Rowman & Littlefield, 2016, pp. 147-164.
- Mills, David. "Prosecuting Elizabeth Holmes was never the solution to curbing lies by startups." *Los Angeles Times*, 8 January 2022, <https://www.latimes.com/opinion/story/2022-01-08/elizabeth-holmes-verdict-fraud>.
- Streitfeld, David. "The Epic Rise and Fall of Elizabeth Holmes (Published 2022)." *The New York Times*, 3 January 2022, <https://www.nytimes.com/2022/01/03/technology/elizabeth-holmes-theranos.html>.
- Streitfeld, David. "In Silicon Valley, Criminal Prosecutors See No Evil." *The New York Times*, 7 September 2021, <https://www.nytimes.com/2021/09/07/technology/silicon-valley-prosecutions.html>.
- "United States of America v. Elizabeth A. Holmes." Trial Transcript. *U.S. District Court for the Northern District of California, San Jose Division*, vol. 46, 16 December 2021, pp. 8899-9110.

White, Mary Jo. *Keynote Address at the SEC-Rock Center on Corporate Governance*

*Silicon Valley Initiative*. 31 March 2016. *SEC.gov*, U.S. Securities and Exchange Commission,

<https://www.sec.gov/newsroom/speeches-statements/chair-white-silicon-valley-initiative-3-31-16>. Speech.

Winship, Verity. "Private Company Fraud." *UC Davis Law Review*, vol. 54, no. 2, 2020, pp. 663-730. *HeinOnline*.

