

## **BAD BLOOD: THE FINAL CHAPTER**

### **EPISODE 1: THE SYMPATHY PLAY**

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**Elizabeth Holmes:** I feel like the luckiest person in the world because I get to live every single day knowing that even in a small way, I've done something that's made someone's life better.

**Except Elizabeth Holmes *wasn't* making people's lives better. The young entrepreneur who dropped out of Stanford to revolutionize blood testing with her company Theranos... she was actually making a lot of peoples' lives worse. Which is what I was trying to get to the bottom of on June 23, 2015 when I entered a conference room at the offices of my employer, the Wall Street Journal, in midtown Manhattan.**

**I was hoping to get Elizabeth to finally answer some of the questions I'd been asking for two months after receiving a tip that her science was unsound. Questions like how "many tests can you really run on a drop of blood?" I knew what she'd been claiming in public. Theranos could run comprehensive laboratory tests...**

**Elizabeth Holmes:** ...comprehensive laboratory tests from a tiny sample or a few drops of blood that could be taken from a finger.

**But I had multiple sources who said that wasn't true.**

**Unfortunately, Elizabeth wasn't there that day to answer my questions. Instead, she'd sent a subordinate named Daniel Young.**

**Daniel Young:** ...laboratory director for our Phoenix Laboratory.

**John Carreyrou:** Ok, so you have CLIA certification to sign off on patient results?

**Who looked nervous and coached. And lawyers. Lawyers who, every time I asked Daniel a question, answered for him.**

**Heather King:** Maybe do you want to describe yourself... kind of what you do there?

**Or interrupted.**

**John Carreyrou:** You weren't laboratory director as recently as...

**Heather King:** I'm sorry, just one second, Mr. Carreyrou.

**That's Heather King. She was Theranos' general counsel...**

**Heather King:** We're just not going to speak to... how we do what we do. I mean, just...

**John Carreyrou:** But that's, that's the heart of the story I mean I explained...

**Heather King:** We're actually not going to disclose names of other employees...

**Heather King:** I mean, just one thing that I wanted to make explicit...

**Heather King:** ...very serious questions...

**Heather King:** We're here today to do our part to help educate you on what...

**Heather King:** We would just urge you to look very carefully at your sources. There's other ones...

**Heather King:** ...there are some very serious allegations in those questions...

**True. I was making some pretty serious allegations. I was alleging that Theranos' vaunted blood-testing device didn't work. And that, to conceal this, they made some tweaks to blood testing machines that**

were already on the market... and tested patients' blood on those. But that workaround had resulted in major problems too. And Theranos was sending inaccurate test results to tens of thousands of patients.

Elizabeth and her henchmen pulled out all the stops to try to keep me from reporting what I'd discovered.

They had my sources followed by private investigators.

They ambushed one of them, Tyler Shultz, at the home of his grandfather, the former Secretary of State and Theranos board member George Shultz.

They threatened doctors who had spoken to me and tried to get them to recant.

Elizabeth even tried to get Rupert Murdoch, the Wall Street Journal's owner who'd invested \$125 million in Theranos, to kill my story.

Thankfully, none of this worked and I broke the scandal on October 15th, 2015. That evening, feeling the need to respond to my story, Elizabeth went on CNBC.

**Jim Cramer:** One of the most exciting privately held companies in Silicon Valley has come under fire. I'm talking about Theranos. And just this morning, The Wall Street Journal ran a pretty scathing article about the company alleging that the company's proprietary testing devices may be inaccurate and basically accusing Theranos of deceptive practices. Ms. Holmes, welcome back to Mad Money.

**Elizabeth Holmes:** It's great to be here, thank you.

**Jim Cramer:** What do you think's going on here?

**Elizabeth Holmes:** This is what happens when you work to change things. And, first they think you're crazy. Then they fight you. And then all of a sudden you change the world. And I have to say, I, I, I personally was shocked to see that the Journal would publish something like this when we had sent them over a thousand pages of documentation demonstrating that the statements in their piece were false.

**Despite Elizabeth's denials, federal prosecutors corroborated my reporting. In June of 2018, Elizabeth and her ex-boyfriend and second-in-command, Sunny Balwani, were indicted on nine counts of wire fraud and two counts of conspiracy to commit wire fraud. Charges that carry prison terms of up to 20 years. A tenth count of wire fraud was later added.**

**I'M JOHN CARREYROU. While the federal investigation was underway, I wrote a book expanding on my reporting called "Bad Blood: Secrets and Lies in a Silicon Valley Startup." I interviewed more than 150 people connected to Elizabeth and in the process uncovered a decade-long trail of lies and deceptions.**

**But, as I would come to find out, there was still a lot I didn't know. Since my book came out three years ago, I've gotten my hands on heaps of new documents, emails and texts that I didn't have when I wrote it. I've obtained Elizabeth and Sunny's sworn testimonies to the Securities and Exchange Commission and the depositions of dozens of witnesses in two lawsuits filed against the company.**

Some of this new material is fascinating, some is compromising, and virtually all of it is highly relevant to Elizabeth's trial, which kicks off on August 31st.

So... this is **Bad Blood: The *Final* Chapter.**

Over the course of a dozen episodes, we're going to explore the web of deceit the government accuses Elizabeth of weaving and follow her trial as it unfolds.

Next week, the woman who once graced the covers of magazines as the world's youngest self-made *female billionaire* will walk into the federal courthouse in San Jose, California. She'll stand accused of swindling investors out of hundreds of millions of dollars by lying to them about the capabilities of her technology and, even worse... endangering patients with blood tests she knew to be unreliable.

Elizabeth faces a mountain of evidence against her. Most people in her position, they would have taken a plea deal. But not Elizabeth. Her defense team faces a steep uphill battle and seems to be banking on a longshot strategy: soften her image and shift the blame to someone else entirely.

And you know what? After years of reporting on her, I have to say, if anyone is brazen enough... sly enough... to pull this off, it might just be Elizabeth Holmes.

## **BREAK 1**

### **SEG A**

**I'm often asked how Theranos managed to stay in business for 15 years if little the company did actually *worked*. How a college dropout with no training in science or medicine managed to raise \$1 billion from some of the world's savviest investors. How she could build a staff of nearly 1,000 in the highly competitive Silicon Valley job market, partner with national brands like Safeway and Walgreens and lure a Who's Who of ex cabinet members and military commanders to her board.**

**Joe Fuisz:** This is a woman who at Theranos very astutely used theater. Whether it was the bodyguards, whether it was the mode of dress. This was someone who was projecting an image very aggressively and effectively to get what she wants.

**Joe Fuisz and his father, Richard, never fell for this theater. One-time friends of the Holmes family, the Fuiszes watched Elizabeth's rise from afar somewhat skeptically at first. That skepticism turned into outright suspicion and hostility when Elizabeth accused them in 2011 of stealing a patent from her. After a three-year legal battle, they were forced to give up the patent. In the process, they became convinced that Elizabeth was exaggerating her scientific claims and that Theranos was a sham.**

**But other people were buying her act. Eating it up.**

**Whether it was the deep voice she adopted seemingly overnight...**

**Elizabeth Holmes:** It's a question of going down a thousand different paths to get to your end point. No matter how you have to go to get there.

**Or the all-black Steve Jobs outfit she started wearing when people started comparing her to the late Apple founder...**

**Elizabeth Holmes:** Every single day, I put the same thing on and I don't have to think about it. That's one less thing in my life that I need to deal with.

**Or the way she bragged to the New Yorker about sleeping four hours a night and drinking cucumber juice as "fuel."**

**Elizabeth Holmes:** Much better than coffee to keep you just, going.

**Elizabeth knew how to turn herself into exactly what Silicon Valley loved: the wunderkind who was inventing time machines when she was seven.**

**Elizabeth Holmes:** It was a very detailed drawing of what the time machine is going to do and all the functionality in terms of the interface and the outcome. And there was a box in the middle...

**The driven, brilliant founder.**

**And that character gave her a lot of cover. To be secretive. After all, this was her incredible vision. Her life's work. Her creation. She needed to protect her *trade* secrets at all costs.**

**So, employees' emails were monitored. Parts of the Theranos facilities were locked and off limits. There were guards like it was Fort Knox. Non-disclosure agreements were required when employees started their jobs and again when they quit. A *lot* of them quit.**

**Much of this secrecy was enforced by legal threats. In many ways, Theranos's lawyers were more important to the enterprise than its engineers.**

**But the intense, driven founder who lived and breathed her company, the founder so consumed with guarding her secrets that she sicced lawyers on terrified whistleblowers, that act won't get much sympathy in court.**

**Elizabeth's going to have to play an entirely different role in front of the jury.**

**And as she's shown us before. She's an incredible chameleon.**

**There's no way to say this next part without sounding deeply cynical. I've tried writing it a hundred different ways.**

**Elizabeth Holmes just had a baby.**

**And what better way to soften your image than to become a new mother weeks before your criminal trial? That was my first thought. And I wasn't alone in thinking it.**



**When I heard that Elizabeth was pregnant, I called a bunch of people connected to the case to gauge their reaction to the news and the overwhelming response I got was: This isn't a coincidence. It's a calculated move to try to garner sympathy from the jury.**

**Reed Kathrein:** I actually was not surprised. I kind of thought this might happen all along. I had talked...

**Phyllis Gardner:** Well all we were all waiting for. I mean, everybody said, you know what she's going to do? She's going to get pregnant.

**Joe Fuisz:** Hoofbeats horses. I just... there's little doubt in my mind that this is a cynical effort.

**Lina Castro:** In the back of my mind, I'm like, hmm. I mean, good timing, right?

**To these people, and to myself, it felt like another instance of Elizabeth using theater to try to get her way. But we're all assuming that bringing a baby to court will benefit Elizabeth. That may not be accurate.**

**In the spring, when I learned that the trial was being delayed again by Elizabeth's pregnancy, I called up some jury consultants: Experts on juries, how they think, what they care about. What I expected to hear was that juries are less likely to convict a new mother, but what I was**

**told is, it's just as likely that the jury would see giving birth to a child under these circumstances as a cold and irresponsible act.**

**After all, what kind of person would decide to have a baby when facing up to 20 years in prison?**

**Joe Fuisz:** This is a very high-risk kind of move, but you know this is also a person with obviously an extraordinary risk tolerance. You know, most people don't raise hundreds of millions of dollars premised on things that don't work and subject patients to tests that don't work. So this is no a person with a conventional risk tolerance.

**But there's another way of looking at this: Elizabeth is 37 years-old, reportedly newly married, and if we go by the few photos of her and her new partner that have filtered out: very happy. If she's confident she can prove her innocence, then she may simply have seen this as a logical step to take in her life.**

**Whatever her reasoning, the prosecution will have to handle this delicately or it runs the risk of sounding... just like I sounded. Callous and mean. Its best bet may be not to address it at all and trust that the jury won't be too distracted by it. The jury consultants I talked to said juries are often smarter than we give them credit for and focus on the facts.**

**So, let's assume the jurors tune out the baby and do keep their focus on the facts. What *are* those facts?**

**Prosecutors accuse Elizabeth of misleading investors about a lot of things: the size of Theranos's revenues, its regulatory status, its partnership with Walgreens, its relationship with the military. But the heart of their case is this: That Elizabeth lied about the capabilities and accuracy of Theranos's blood-testing device. They're likely to show that Theranos only ever used it for 12 tests and that the more than 200 other tests it offered in Walgreens stores were secretly performed on third-party machines.**

**One of the prosecution's star witnesses is likely to be Brian Grossman, a portfolio manager at the San Francisco hedge fund Partner Fund Management. Partner Fund invested \$96 million in Theranos in early 2014 and later sued it for fraud. Grossman took detailed notes when he met with Elizabeth and Sunny, giving prosecutors written evidence of the lies they told him.**

**The government has a long list of other witnesses. Everyone from the big shots who sat on Theranos's board to FDA officials and the former lab director who was one of my original sources. Add to that the hard drives containing more than 20 million pages of documents prosecutors handed to the defense during discovery and what you've got... is a mountain of evidence.**

**Given all that, it's going to be very hard for Elizabeth's legal team to fight on the facts. Which is why they seem to have adopted a different strategy.**

**A strategy named after a character in a 19<sup>th</sup> century novel who... was so persuasive he could make people do whatever he wanted.**

**Like turn a tone-deaf Irish girl into a famous singer.**

**More on that, after the break.**

**BREAK 1**

**SEG B**

**Marian Marsh:** What'd he do?

**Lumsden Hare:** He hypnotized you.

**Donald Crisp:** Yeah, and don't you ever let him do it again. Those fellas can make you do anything and say anything they want. Lie, steal, anything.

**Bramwell Fletcher:** And then they make you kill yourself when they're done with ya'.

**Donald Crisp:** Yeah, they do that.

**Marian Marsh:** But he took my pain away.

**Bramwell Fletcher:** I'd rather have the pain than have it cured like that.

**That's a scene from *Svengali*, a 1931 movie starring John Barrymore.**

**Like the famous novel it's based on, it tells the story of Trilby O'Ferrall, a young Irish girl living in Paris who falls under the spell of Svengali, a devious musician who uses hypnosis to control her and turn her into a talented singer.**

**The novel was a huge success when it came out in the late nineteenth century, and it left its mark on the English language. The word "Svengali" became synonymous with someone who dominates and**

manipulates another person. With time, it also inspired a defense strategy in court cases, the “Svengali defense.”

The most recent example of its use was during the trial of Boston marathon bomber Dzhokhar Tsarnaev. His lawyer tried to shift the blame to his older brother Tamerlan, who was killed during the manhunt that followed the bombing. He tried to portray Tamerlan as the attack’s mastermind. It didn’t work. Dzhokhar was convicted on all counts.

So, what does any of this have to do with Elizabeth Holmes’s trial? Well, Elizabeth was initially supposed to be tried with her ex-boyfriend Sunny. But in March of 2020, the judge overseeing the case, Judge Edward Davila, ordered that they be tried separately. He didn’t say why, but it’s usually a sign that the defendants have turned against each other. Then, a few months later, we learned from another court filing that Elizabeth’s lawyers planned to introduce expert evidence relating “to a mental disease or defect... bearing on... the issue of guilt.” The expert they planned to call is a psychologist who specializes in intimate partner violence.

Based on those clues, it’s not difficult to see where this is going. Elizabeth’s defense team is setting Sunny up as the bad guy. As her evil Svengali.

But if Sunny was a mean and abusive boyfriend, would that necessarily absolve Elizabeth of guilt?

**Robert Weisberg:** It's a very, very dicey defense.

**That's Robert Weisberg, an expert in criminal law who teaches at Stanford, the school Elizabeth famously dropped out of before launching Theranos. Like many on the Stanford faculty, Robert is watching her case and curious to see how it plays out. I asked him to game out the legal arguments Elizabeth's defense team might make.**

**Robert Weisberg:** Let's take one thing off the table right away, and that would be a not guilty by reason of insanity verdict. Pretty much the only people who win not guilty by reason of insanity verdicts are people who are schizophrenic, often paranoid schizophrenics, who are just utterly divorced from reality.

**If her lawyers tried to make that argument, all it would take for prosecutors to rebut it is to show the jury video footage of the confident and self-possessed young woman who transfixed audiences at the height of her fame. So what does that leave us with?**

**Robert Weisberg:** I was being controlled by an outside force, namely this man.

### **The Svengali Defense.**

**Robert Weisberg:** Nobody was forcing my hand to write with a pen or to type on the computer or whatever, but my mind was so beclouded by the effect of this manipulation that this mental phenomenon called intent to defraud couldn't even take place in my head. Because to intend an act requires a certain act of will, a certain cognition, a certain, you know, consciousness of what you're doing. And although I wasn't insane, the effect of this horrible experience I've had, made it impossible for me to go through the mental steps to intend something. That's an unbelievably difficult claim to win on.

**The Svengali defense isn't so much about making an argument that holds up under the law. Because it doesn't really, Robert says. It's about getting the jury to empathize with Elizabeth and to like her.**

**Robert Weisberg:** We sometimes talk about jury nullification. In its purest form, it means the jury is convinced beyond a reasonable doubt that the person is guilty. The facts and the law are all against the defendant, but the jury says, we like this person and we hate the prosecutor. Or we hate the law and we're just going to acquit anyway.

**And that's... kind of Elizabeth's superpower: Getting people to like and support her. People who should have seen through her but didn't because she won them over.**

**People like Channing Robertson, a chemical engineering professor at Stanford who helped her get her start in Silicon Valley. Surely, he should have seen the fantasy of her idea.**

**People like George Schultz, the former secretary of state who stared down the Soviet Union at the height of the Cold War, but didn't see that Elizabeth was playing him like a fiddle.**

**Elizabeth knows how to tell stories that strike an emotional chord. Like this one she told at a TED MED conference in 2014.**

**Elizabeth Holmes:** I grew up spending summers and the holidays with my uncle. I remember his love of crossword puzzles and trying to teach us to play football. I remember how much he loved the beach. I remember how much I loved him. He was diagnosed one day with skin cancer. Which all the sudden was brain cancer. And in his bones. He didn't live to see his son grow up. And I never got to say goodbye.

**A compelling story. Except, a family member told me Elizabeth was never close to her uncle. But she told that story repeatedly as she charmed investors and the public.**

**It's that same touching, heart-warming front we're likely to see at the trial. The intense, driven CEO who was in firm control of her company and her life, will give way to the naïve young woman who was led astray by her boyfriend.**

**To convey that persona, Elizabeth wants to make sure the jurors see her. Sympathize with her. That's harder to do if your face is covered. So she's asked the judge to let her appear in the courtroom without a mask, despite county rules that mandate one indoors, regardless of vaccination status.**

**To further the narrative that she was Sunny's helpless puppet, Elizabeth's lawyers will likely emphasize how much older Sunny was — he's almost 19 years older — and how young Elizabeth was when they first met. She was 18. And they'll make the case that he was much more sophisticated in business matters. Before they met, he worked in the software industry for a decade and made tens of millions of dollars from an e-commerce startup. They'll also say that he had a bad temper and was prone to angry outbursts. That much is true: At Theranos, Sunny was constantly blowing up at employees and firing people at a moment's notice.**



**But for this defense to work, it seems likely the jury will want to hear from more than just Elizabeth's psychologist. Because, however convincing her psychologist is on the stand about the thrall Sunny supposedly held Elizabeth in, she's going to be contradicted by the prosecution's own psychologists who will portray Elizabeth as sane of mind and fully in command.**

**To break the stalemate, it seems to me, the jurors will want to hear from Elizabeth herself. They'll want to hear her describe firsthand the manipulation and abuse she allegedly suffered at the hands of Sunny. Which raises the question: will Elizabeth Holmes take the stand?**

**Robert Weisberg:** That's the biggest decision every defense lawyer makes. And very often a good lawyer won't make that decision until the lawyer sees how the trial is going, how the prosecution's case goes forth. This is certainly a case where it might be helpful. Now, she will then be cross-examined.

**Cross-examinations can be brutal. And they can take a defendant's testimony into dangerous areas the defense wants to avoid. Which is why most defense lawyers avoid putting their clients on the stand. But faced with the government's mounds of evidence, it could be a risk worth taking in this case to shift the focus from the facts, to a more emotional plane. If Elizabeth tells a poignant story...**

**Robert Weisberg:** She'll just get the jury to, you know, sympathize with her. And the jury might, you know, in a situation where it just doesn't make much conceptual sense to say she didn't intend the fraud, they could just feel sorry for her and decide to acquit.

**But emotions cut both ways. And the prosecution thought it had a powerful emotional card to play of its own...**

**A card that would have trumped Elizabeth's Svengali defense...**

**Until, the judge shuffled the deck.**

**BREAK 2**

**SEG C**

**Sanjay Gupta:** There's this man who goes by the initials R.C. right now in Arizona who is suggesting that the lab results that he got from Theranos were not accurate and it led to him having a heart attack. Based on what you know, is it possible that what he's saying is true? Could he have gotten a lab result that was so askew that he didn't act on it and then a month later, he ended up having a heart attack?

**Elizabeth Holmes:** I'm not the lab director. And so...

**Sanjay Gupta:** I know but you're the CEO and founder of the company. I mean, this is as serious as it gets.

**This question, which CNN's Sanjay Gupta asked Elizabeth during an interview in July 2016, goes to the most powerful part of the government's case. The jury may not have much sympathy for the hedge fund and the billionaires who invested in Theranos. But it likely *will* have sympathy for the patients the company put in harm's way.**

**According to court records, Theranos told one patient she had AIDS, leaving her in a state of anxiety for weeks until she could afford to get**

retested and find out the diagnosis was wrong. Several patients received false pregnancy results. One got a result indicating she was miscarrying when her pregnancy was still viable. Another was told she wasn't pregnant even though she was experiencing an abnormal pregnancy that could have threatened her life. That's just the tip of the iceberg. Thousands of patients in Arizona and California received erroneous results. In all, Theranos was forced to void or correct nearly 1 million blood test results.

Prosecutors plan to call some of these patients and their doctors to the stand. Anticipating how devastating their testimonies could be, the defense repeatedly tried to get them thrown out before the trial. The judge refused to do that, but he did agree to put strict limits on them. When they're on the stand, the patients won't be allowed to testify about any physical, financial or emotional harm they suffered because of bad Theranos test results. They'll only be able to recite the basic facts of their experience.

So the patient who was told she had AIDS won't be able to testify about the emotional turmoil she experienced after her false diagnosis. She'll only be able to testify that she got a second blood test from another lab sometime later that contradicted the Theranos one. Same with the patient who was wrongly told she'd miscarried. She won't be able to talk about the distress she felt upon hearing she'd lost her baby. Just that a second test from another lab contradicted the first and that she carried her pregnancy to term.

**But, jurors aren't dumb. They can read between the lines. It's not hard to imagine what it must feel like to be falsely told you have AIDS. Chances are they'll still be able to put themselves in the patients' shoes and feel outrage for what they went through.**

**That's what the defense is worried about. And that's why it has an argument ready-made to counter the patients' testimonies. All laboratories produce some errors, it will say. The government just happened to cherry-pick a few unlucky patients. It's an argument Elizabeth has made before, like when she hit back against my first Wall Street Journal article.**

**Elizabeth Holmes:** You can't take one person and make a generalized statement that, oh, therefore the whole lab is not working, right?

**Her lawyers will argue that it's only by looking at the whole picture — meaning, all of Theranos's testing data — that you can come to any firm conclusions. Or as Elizabeth herself put it:**

**Elizabeth Holmes:** Let the data speak for itself, you know.

**There's just one problem: The data is missing.**

**More specifically, it's been destroyed.**

**From court filings, here's what we know: On June 4, 2018, prosecutors sent WilmerHale, the law firm representing Theranos, a subpoena requesting a copy of Theranos's lab database. Two and a half months later, as Theranos was shutting down its operations,**

**WilmerHale provided the government an encrypted hard drive with the requested copy. But the files on the hard drive required two distinct passwords to open and one was missing. Before prosecutors realized this, Theranos went ahead and dismantled the database itself. The missing password was never recovered.**

**Now, there are two ways of framing this. If you're Elizabeth...**

**CNBC ANCHOR:** Attorneys for Holmes accuse the government of losing a database that contained three years' worth of accuracy and failure rates of Theranos tests.

**By blaming the government for losing the data, and acting upset about it, Elizabeth is essentially saying, "that data could have vindicated me. And now it's gone." Since no one can prove her wrong, why not make that bold claim? After all, Elizabeth always insisted her machines worked.**

**Sanjay Gupta:** It's probably the most important question I think anybody who's watching has about this. Does it work?

**Elizabeth Holmes:** Yes.

**Sanjay Gupta:** You're confident in that?

**Elizabeth Holmes:** I am confident in that.

**But if you're the government, the database was destroyed on purpose.**

**CNBC ANCHOR:** Prosecutors allege that Theranos executives destroyed that database because it proved that the blood testing product was inaccurate.

**The facts certainly don't look great for Theranos. Email exchanges described by the government show that some at the company knew about the missing password but didn't move to stop the database's dismantling. Prosecutors have pointed the finger at a man named Shekar Chandrasekaran in particular. Chandrasekaran is a longtime friend of Sunny's who the prosecution alleges developed and maintained the software that comprised the Theranos database. As the database was being taken apart over two days in late August 2018, Chandrasekaran, who was head of Theranos's IT department, "stood by and did nothing," prosecutors wrote in one court filing. Which is incredibly suspicious because, as it turns out, Sunny had just hired him as a litigation consultant.**

**But while that's potentially problematic for Sunny, it doesn't necessarily incriminate Elizabeth. By then, she and Sunny had long broken up and were no longer functioning as a team.**

**Prosecutors would love to pin the destroyed database on Elizabeth. But in the absence of evidence directly implicating her, the judge has ruled that they can't bring it up to the jury. Unless... the defense brings it up first. Meaning, if the defense says, "you can't prove anything because you don't have data to back up your claims..."**

**Robert Weisberg:** I can imagine the judge then permitting the prosecutor to say, well, the reason we don't have it... da duh da duh da duh. So it becomes a kind of shadow, para-obstruction charge built into the main case. Consciousness of guilt if you will.

**Basically, as Stanford's Robert Weisberg said, we'd be back to emotions. Prosecutors wouldn't be able to bring a formal charge, but they could sure make the jury *feel* like Elizabeth obstructed justice.**

**They would no doubt point out that she was still at the company when the database was dismantled. She'd stepped down as CEO, but she was still chairman of the board. The database went missing on *her* watch, they'd argue.**

**On the other hand, if prosecutors' continuing investigation does implicate Sunny in the database's destruction, that could help Elizabeth by playing into her narrative that he was the fraud's mastermind.**

**Which brings us back to the high-wire Svengali defense.**

**I asked Weisberg if Elizabeth's lead counsel, Kevin Downey of Williams & Connolly, would be locked into that defense or if he could pivot to something else.**

**Robert Weisberg:** Yeah, he can back out of it. The question is, what's the alternative?

**John Carreyrou:** What is the alternative to... to the Svengali defense?

**Robert Weisberg:** The alternative might be copping a plea.

**John Carreyrou:** Right. But aren't we... I mean, it's too late for that.

**Robert Weisberg:** Well, it's never too late.

**He's right. It's not too late. Theoretically, Elizabeth could still strike a plea deal on the eve of the trial or even during jury selection. But I don't think that's going to happen. To sign off on any plea deal, prosecutors would insist on significant prison time. Something I don't see Elizabeth ever voluntarily agreeing to. She'd rather roll the dice in court, a gamble she already made in a sense, by deciding to have a baby while facing up to 20 years in prison.**

**Statistically, the odds she's facing aren't good. In 2018, 83 percent of federal defendants who took their cases to trial were convicted. If you include guilty pleas, federal prosecutors' success rate that year was over 91 percent.**

**But in her mind, I think she thinks she has a real shot at getting off, and she may be right. After all, this is someone who was able to convince investors to part with nearly a billion dollars and get everyone, from the scientific community to the press, to believe her tall claims.**

**Elizabeth Holmes:** We have data that shows you can get a perfect correlation between a fingerstick and a venous draw for every test that we run.

**Why *wouldn't* she be able to get a jury to eat out of her hand?**

**In the end, it may all come down to this: Who will the jurors have more sympathy for? The young female startup founder who was in an**



**abusive relationship with an older man? Or the patients whose health she jeopardized?**

**I'm inclined to think the latter.**

**Because, based on all the reporting I've done over the past six years, I don't believe Elizabeth's life was ever in danger. Theirs were.**

## **CREDITS**

**Bad Blood: The Final Chapter is a Three Uncanny Four production. The show is hosted by me, John Carreyrou.**

**Our show is produced by Lena Richards, Rahima Nasa, and Jennifer Sigl with help from Shane McKeon. Emily Saul is our reporter. Jenny Kim is our production manager. Rachel B. Doyle edited.**

**Laura Mayer is our executive producer.**

**The show was mixed by Kevin Seaman. Casey Holford composed the theme music.**

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**a comment while you're there. It really helps new listeners find the show.**

**For Three Uncanny Four, I'm John Carreyrou. We'll be back next week.**