

BAD BLOOD: THE FINAL CHAPTER

EPISODE 3: SUNNY AND ELIZABETH

SEC Lawyer: Would Sunny Balwani have been involved?

Elizabeth Holmes: Yes.

SEC Lawyer: Who else would know besides the laboratory director?

Elizabeth Holmes: Sunny might? I'm not sure.

SEC Lawyer: Who, who was involved in those discussions from Theranos?

Elizabeth Holmes: Sunny Balwani led them.

SEC Lawyer: Who was taking that on?

Elizabeth Holmes: Had we done it, it would have been Sunny.

SEC Lawyer: Who would know whether that was the case?

Elizabeth Holmes: Again, I would... I would talk to Sunny.

SEC Lawyer: Do you recall Sunny Balwani attending that meeting with you?

Elizabeth Holmes: I do.

SEC Lawyer: Who prepared these financial statements?

Elizabeth Holmes: Sunny, Sunny, Sunny, Sunny Balwani.

When Elizabeth Holmes testified to the Securities and Exchange Commission in the summer of 2017, the name Sunny Balwani loomed large. Over three days of questioning at the SEC's San Francisco offices, it came up no fewer than 427 times. That's because, according to the SEC and to federal prosecutors, Elizabeth did not commit the alleged Theranos fraud all by herself. She had an accomplice, an accomplice who was both her live-in boyfriend and the company's president and chief operating officer: Sunny Balwani. Understanding

their relationship is crucial to understanding what happened and it could determine the outcome of her trial.

Sunny told the SEC he met Elizabeth in 2002 in China. She was 18 and had just graduated from high school. He was 37, on a career hiatus after making a lot of money from the sale of a software startup. They were both enrolled in a Stanford summer program that sent students to Beijing to study Mandarin.

Sunny Balwani: Our interactions at that time were friendly, you know, and we had conversations. She was very famous in the Stanford Chinese program because the entire department knew about her Chinese skills. And so that's how, you know, when I first met her, I'm like, oh, you must be *the* Elizabeth Holmes.

Despite their big age gap, they struck up a friendship and stayed in sporadic touch over the next two years. When Elizabeth dropped out of Stanford and launched Theranos in early 2004, it was Sunny who gave her advice and encouragement. Before long, they became romantically involved, and soon their lives became even more intertwined. Sunny, who'd divorced his wife, an artist he'd shared a home with in San Francisco, bought a condo in downtown Palo Alto. By July of 2005, Elizabeth had moved in with him.

In Theranos's early years, Sunny continued to give Elizabeth advice, but stayed behind the scenes. She would sometimes introduce him to employees at company parties as her boyfriend, but that was as far as his involvement in the startup went. Things changed in late 2009,

when Theranos nearly ran out of money. Elizabeth had already spent the \$49 million she'd raised from early investors.

Sunny Balwani: Company was low on the cash, and, and I knew this mission and what company was trying to do was paramount.

Elizabeth needed a loan to carry her until her next round of fundraising. Sunny came to her rescue.

Sunny Balwani: And long story short, I ended up giving a 12- or 13- or 14-million-dollar personal loan. I guaranteed a loan to the company.

In exchange for the loan, Sunny joined Theranos and from that point on, he and Elizabeth ran the startup together.

Soon after Sunny's arrival, Theranos abandoned its original business model: providing its blood-testing technology to drug makers for use in clinical trials. Instead, he and Elizabeth decided they should market it directly to consumers. For that, they needed a retail partner. So, they enlisted Walgreens. What exactly they told the drugstore chain... And what they later told investors to convince them to part with nearly a billion dollars... That will be at the heart of the trial.

Their relationship ended in 2016 as Theranos began to implode. According to Elizabeth, the romance had fizzled out by then.

Elizabeth Holmes: Once we started working together, it was a very intense working relationship, and there... the sort of romantic piece that was there at the

very beginning, died. I don't think it happened in one moment, but it was very clear that we were colleagues.

Elizabeth moved out of the big house they shared in Atherton. And if their SEC testimonies are to be believed, they've had very little contact since then.

When the San Francisco U.S. Attorney's Office unveiled its indictment in June of 2018, it named Elizabeth and Sunny as co-conspirators and planned to try them together.

But in March of 2020, U.S. District Judge Edward Davila severed their cases. Sunny will now be tried *after* Elizabeth... Late last week, Judge Davila unsealed court filings that laid bare why: As we had anticipated in Episode 1 of this podcast, Elizabeth's lawyers are contemplating a strategy that will put their relationship front and center, a strategy practically unheard of in corporate fraud cases: the Svengali defense.

This is *Bad Blood: The Final Chapter*. I'm John Carreyrou. On today's episode, the long-shot defense Elizabeth's team is likely to present... and some key evidence that undermines it.

That's after the break.

PREROLL BREAK

SEG A

A Svengali is someone who dominates another person and gets them to do what he wants. The Svengali defense, in turn, involves shifting the blame from the defendant to a Svengali-like character who supposedly manipulated them and led them astray. In this case, the defense team wants us to believe that the Svengali was Sunny.

In the court filings that were just unsealed, we learned that Elizabeth is going to allege at trial that Sunny mentally and sexually abused her. According to the defense, Sunny monitored Elizabeth's movements, her calls, her text messages and her emails... He controlled what she ate, how she dressed, how much money she could spend, and who she could interact with... And he restricted her sleep and insisted that any success she achieved was because of him.

The defense's psychologist, Mindy Mechanic, will testify that Elizabeth's history as a sexual-assault victim made her especially vulnerable to Sunny's abuse. Elizabeth has alleged that she was raped during her sophomore year at Stanford. Ms. Mechanic will also testify that Elizabeth suffers from post-traumatic stress disorder and anxiety and depression as a result of the abuse.

Sunny's lawyers say that he "categorically" and "unequivocally" denies the abuse allegations and that their airing will deprive him of a fair trial when he goes to court early next year.

For the Svengali strategy to fly, the defense team will need to prove to the jury that Sunny exercised such control over Elizabeth that she

had little or no free will during the decade-plus they were together. In other words, that Sunny was the mastermind and Elizabeth was his puppet. That under his toxic, coercive influence, she became unable to distinguish between right and wrong.

As we discussed in Episode 1, this is a really difficult defense to pull off. Being in an abusive relationship doesn't necessarily absolve someone of guilt under the law. But there *are* reasons this defense could work. After all, when Sunny and Elizabeth first met, she was barely out of high school. Her lawyers will portray her as an impressionable teenager who was taken advantage of by a man nearly two decades her senior. And Sunny's temper tantrums? They were the stuff of legend at Theranos. He routinely tore into employees. So, it's not a stretch to imagine that this behavior could have spilled over to their relationship. According to the defense, Sunny sometimes threw sharp objects at Elizabeth.

There's also this: According to the government's indictment, the fraud started in 2010 right after Sunny came aboard. And then there's the fact that by 2013, Sunny was managing many aspects of the company day-to-day, while Elizabeth acted more as a figurehead. Sunny is also the one who directly oversaw the lab where third-party machines were being used instead of Theranos's own devices. And he's the one who created the wildly inflated financial models Theranos gave investors.

But there's a problem with this strategy: no one saw the alleged abuse. Aside from a handful of early employees who met Sunny

before he joined the company, few people even knew they were romantically involved. They hid their relationship from nearly everyone, investors, Walgreens, the Theranos board. Most members of the board only found out about the relationship when I started asking questions in the summer of 2015. Because of the lack of witnesses, the defense has indicated that Elizabeth is highly likely to testify in her own defense.

There's another bigger problem: Prosecutors have tens of thousands of text messages between Elizabeth and Sunny. I've obtained copies of these texts. They span a five-year period between 2011 and 2016. Many of the more personal and romantic ones are redacted, but the ones that aren't don't back up the defense's story. Instead, they paint the picture of two people who consulted each other about matters big and small, dozens of times a day and seamlessly intertwined their private lives and their work lives.

Later in this episode, you'll hear some of these text exchanges, read by actors. Some are incriminating and may be used by prosecutors during the trial. Some are about me and my sources and their attempts to quash my reporting. When you hear these messages, it's very hard to conclude that Sunny was pulling all the strings and Elizabeth was his helpless captive. No, the clear impression these texts convey is that this was a partnership of equals. As they plotted together, they agreed not just on their objectives, but on the ruthless tactics to achieve them. At no point did Elizabeth seem reluctant or submissive.

If anything, Sunny was occasionally the voice of restraint. He even expressed misgivings at times about what they were doing. As for Elizabeth, well, she didn't.

ON THE EVENING before Thanksgiving in 2014, Elizabeth texted Sunny from the rear seat of a black Audi Sedan. Her security team was driving her back to Palo Alto from Rupert Murdoch's sprawling ranch near the seaside town of Carmel. Over lunch, she'd convinced Murdoch to invest \$125 million in Theranos. And then during that car ride back, she'd also secured commitments over the phone for another \$150 million from two heirs to the Walmart fortune.

Sunny was thrilled to hear the news. Responding from his office in Theranos's sparkling new headquarters, he wrote "Can't wait to learn more about conversation with Rupert," to which Elizabeth bragged that the media mogul would have spent more time with her if she hadn't cut the meeting short.

The text exchange Elizabeth and Sunny had that day would be unremarkable if not for another series of messages they would send each other less than 48 hours later. Murdoch and the Waltons were investing huge sums in Theranos because they thought that the blood tests it offered through Walgreens stores were accurate and that the lab processing those tests was state of the art. But Elizabeth knew full well that wasn't the case. Two days after her road trip to Carmel,

Sunny paid a visit to Theranos's clinical lab. At 3:12 that afternoon, he texted Elizabeth.

Sunny Balwani: Normandy lab is a fucking disaster zone. Glad I came here. We'll work on fixing this.

Elizabeth Holmes: Meant to be that you're there, apparently. What happened?

Sunny Balwani: I will get Tina out. We need a software person running this. Between Tina and Max we have a mess.

Elizabeth Holmes: I could not agree more.

Sunny Balwani: We built software to remove human error and human judgment. All day, I saw these people use their judgments to work around our processes.

Elizabeth Holmes: This is where our problems are, which means we can fix it. Thank God.

Normandy is the name Sunny had coined for the part of the Theranos lab that processed the company's proprietary fingerstick tests. It was supposed to be the crown jewel of the Theranos operation, a secret place that could only be accessed by authorized personnel through a door equipped with a fingerprint scanner. And here was Sunny telling Elizabeth that it was a disaster zone. And here she was saying she could not agree more, barely two days after securing \$275 million from prominent investors she'd sold Theranos on as a beacon of health care innovation.

By the fall of 2014, when these text exchanges occurred, Theranos had already been live with its blood tests in Walgreens stores for a year, and thousands of patients in California and Arizona had been relying on them to make important health decisions.

But the truth was Theranos's proprietary devices were so unreliable that the company had modified third-party machines and was running most fingerstick samples on those. Unfortunately, that workaround was unreliable too.

On top of that, common lab safety measures were being routinely ignored. And patients weren't being notified when errors were made. The list of problems went on and on. And contrary to what Elizabeth suggested in one of her responses, she and Sunny did little to fix it.

In fact, Theranos's lab director had just quit. He was tired of fielding complaints from doctors he knew were justified. Government filings allege that instead of replacing him with someone experienced, Elizabeth and Sunny hired a dermatologist whose only lab expertise involved testing dermatology samples. He did no work for Theranos until September 2015, effectively leaving the Theranos lab without supervision for 10 months.

In February of 2015, three months after Sunny texted Elizabeth that the lab was a disaster zone, I received a tip and began investigating Theranos. I developed several sources among former employees and what they told me of their experiences at the company convinced me that I was on to a big story. In April, I flew to Phoenix to interview doctors and patients who'd ordered Theranos blood tests. While I was there, I also planned to visit a Walgreens store to get myself tested.

Somehow, Elizabeth and Sunny got wind of the fact I was coming. I'd had no interaction with Theranos up until that point, but they knew the exact day I was arriving, April 20th, 2015. That evening, Elizabeth's private plane was en route to New York City, but got diverted by bad weather to a small airport upstate. A car picked her up from there and drove her to her hotel in Manhattan. From the plane on the tarmac, and later from the back seat of the car, she texted Sunny.

Elizabeth Holmes: Wall Street Journal guy might show up tomorrow.

Despite her public assertions that Theranos could perform hundreds of tests from a drop of blood pricked from a finger, the reality was that the company was performing most of its testing the old-fashioned way, by drawing blood with a needle from a vein in the arm. Elizabeth wanted to hide this from me. In their text exchange that night, she and Sunny discussed rushing changes to their lab order system so that my test order would trigger the much-touted fingerstick draw.

Sunny Balwani: We need tomorrow to test and then the team can push it in production tomorrow night.

Elizabeth Holmes: OK, could just do for him only if he shows up.

Sunny Balwani: Hard to know who he is and what order he brings. Better the perfect venipuncture than bad fingerstick or miss a test. Seems like this guy is looking to write something negative.

Elizabeth Holmes: It's possible he talks to docs first day and does draw second day. That's what he does.

Sunny Balwani: Even then, we don't know what tests he will do.

Elizabeth Holmes: I know.

When I later saw these texts, I was stunned. How did they know my whereabouts and plans? Somehow Elizabeth anticipated that I was going to interview doctors first and then visit one of their blood draw centers. That's exactly what I wound up doing. The whole thing was unnerving.

Sunny Balwani: We will push it tomorrow.

Elizabeth Holmes: Assuming confidence is there. Confidence there?

Sunny Balwani: So Wednesday it will trigger finger sticks for GC18.

Elizabeth Holmes: Yes.

GC18 refers to a panel of 18 commonly ordered blood tests. Under their plan, if I went to a Walgreens store with a doctor's order for the common panel of 18 tests, my blood would be drawn by fingerstick and the phlebotomists would milk my fingertip to fill three nanotainers, the little blood collection tubes Theranos was becoming famous for.

After a little more back and forth, the exchange concluded with Elizabeth writing that she'd finally arrived at her hotel and was, quote, "Going to sleep soon."

Although I had no idea Elizabeth and Sunny were trying to game out my visit, it didn't matter because the plan they hatched didn't work. I had gotten a doctor to prescribe me more tests than they had anticipated. When I showed up at the Walgreens closest to my hotel, Theranos was forced to draw my blood with a syringe to complete all

the tests on my order. This confirmed what my sources had already told me: Theranos's fingerstick testing capabilities were limited.

Five days later, Elizabeth was in Sedona, Arizona, rubbing shoulders with Fortune 500 CEOs at a conference. Sunny, who was in Palo Alto, had just come out of a meeting with two members of Fusion GPS, the opposition research firm that later became infamous for commissioning the Trump dossier. Theranos had hired the firm because they were worried... They were worried about me, and Fusion's two founders were ex colleagues of mine. When Elizabeth texted him to ask him how the Fusion meeting went, Sunny sounded a note of concern.

Sunny Balwani: Peter met with Ron Conway today for breakfast, and Ron commented that there is too much hype around Theranos and you. FYI I am worried about overexposure without solid substance, which is lacking right now. We can talk tomorrow about overexposure.

Elizabeth Holmes: On outside they're just jealous.

Sunny Balwani: We need FDA clearance and CTN clearance.

Elizabeth Holmes: Absolutely.

Ron Conway is a well-known Silicon Valley angel investor who didn't invest in Theranos. CTN is code for nanotainer. After Elizabeth's response, Sunny switched to sartorial matters.

Sunny Balwani: Leaving office to get suits.

But she continued to ponder the question he'd raised.

Elizabeth Holmes: My read on this is everyone gets wildly jealous. We need to read the utility of the press events one by one, what we're saying in each one and what it brings to being the consumer spokesperson for consumer and prevention and then judge. The more it works, the more haters will hate, especially people like Conway.

Sunny was clearly getting worried that Theranos was flying too close to the sun. By this point, Elizabeth had been on the cover of Fortune magazine and profiled in The New Yorker. She'd become a fixture at tech and health care conferences and was being hailed as the world's youngest self-made female billionaire. But Sunny was quietly reminding her that neither the nanotainer nor any of Theranos's fingerstick blood tests had been approved by the Food and Drug Administration. The words “overexposure without solid substance” betray someone who knew Theranos was exaggerating its achievements and overpromising.

Yet Elizabeth brushed away his concerns. She dismissed the criticism of Ron Conway as jealousy. She did not want to be reined in.

If Sunny was worried about the media hype, things were about to get worse. Two days later, Elizabeth was on Jim Cramer's Mad Money. Mad Money was a cult show among the investing public, especially among the younger crowd. For the occasion, Cramer had temporarily moved his set from CNBC's New Jersey studios to a terrace overlooking San Francisco Bay. Elizabeth appeared in her all-black uniform and held up a nanotainer between her thumb and index finger to illustrate the promise of Theranos.

Jim Cramer: Now, if people know that they have to get stuck, it's something you've described it as, like spiders, there are certain phobias. Having a needle in your arm is something that has kept people from taking care of themselves, right?

Elizabeth Holmes: Absolutely. Myself included. And I'm absolutely terrified of it. And I mean, I've always said if you were to sort of think of torture experiments, it would be a phenomenal one because you sit there and sort of watch as your blood is sucked out of you. And it's... it's incredibly painful.

Jim Cramer: To me. It's reasonable to compare you, I usually don't do this, to Steve Jobs and what he did for computing. I regard you as a visionary next generation person. Is this the kind of ridiculous pressure that nobody needs?

Elizabeth Holmes: You know, Steve Jobs was... I don't think there is another Steve Jobs. He was a phenomenal entrepreneur. We've got an incredible opportunity to try to uphold a legacy in Silicon Valley of changing the world and-

Jim Cramer: Disrupting the world.

Elizabeth Holmes: We're working 24/7 to do it.

After the show, Sunny texted Elizabeth full of praise.

Sunny Balwani: You were flawless in Mad Money, just perfect. If I was competing with you, I would be scared. You came across as a pure statesman.

But then his concerns about appearances being out of sync with reality crept up again.

Sunny Balwani: Got to get more assays on fingerstick.

The word assay is a laboratory term synonymous with blood tests. The fact that Theranos was far short of offering the much-promised hundreds of blood tests by fingerstick, even as Elizabeth was being compared to Steve Jobs, was gnawing at Sunny. Elizabeth, who was on her way to the airport to catch yet another flight, didn't see his text

until an hour and 40 minutes later. When she did, she was flush with pride.

Elizabeth Holmes: Loved your text so much.

Sunny Balwani: I know. Got to succeed in finger sticks.

Elizabeth Holmes: So grateful to God for where we are now.

Sunny Balwani: Got to get finger sticks done. GC20 and E40, we will kill after that.

Elizabeth Holmes: Exactly.

Sunny's nagging concerns are palpable. He mentions the need to improve their fingerstick test offering not once, but three times. Elizabeth agrees with him, but she just doesn't seem as concerned. She comes off as more carefree, delighted by his rave review of her Mad Money interview and savoring one of the trappings of her wealth.

Elizabeth Holmes: Grateful to be on G4. Best plane we've taken yet. I'm in my own cabin, tired, but just want to work. HMFR.

Sunny Balwani: HMFR indeed.

The acronym HMFR is short for an Arabic phrase that means, "This by the grace of my Lord." It's from a verse in the Koran. Sunny and Elizabeth often invoked it in their text messages.

Soon, Sunny's concerns would prove founded and both he and Elizabeth would show their ruthless sides.

That's after the break.

BREAK 1

SEG B

On May 12th, 2015, two weeks after her Mad Money interview, Elizabeth arrived in Seattle to attend Microsoft's annual CEO summit. Her private jet had just flown in from Washington, D.C., where she and a dozen other entrepreneurs had been hosted at the White House by President Obama. Sunny was in his office in Palo Alto seething about a negative review someone had written about Theranos on the job site Glassdoor. Bad reviews from Theranos employees on Glassdoor were so frequent that Sunny would post fake positive reviews on the site to try to offset them.

The next day, he and Elizabeth had another problem on their hands. I'd been asking Theranos's outside public relations representative for an interview with Elizabeth for several weeks, but he wouldn't grant me one unless I sent him written questions first. So, I'd sent him an email listing seven main areas I wanted to discuss, ranging from Theranos's use of third-party blood testing machines to Elizabeth and Sunny's secret relationship. I'd also brought up a former company scientist named Ian Gibbons. Ian had been driven to suicide by Theranos's toxic work environment.

Sunny and Elizabeth traded texts, plotting how to respond to the questions in my email.

Sunny Balwani: Extremely serious legal implications. He basically violated and shared our trade secrets down to machine names. It is Tyler, Erica and Adam, the filth about living together, probably from Rochelle.

Elizabeth Holmes: Literally. I know.

I didn't realize it at the time, but despite my best efforts to protect them, Sunny and Elizabeth had been able to immediately identify my sources. One of them was a former employee named Tyler Shultz, the grandson of former secretary of state and Theranos board member George Shultz. Another was Rochelle Gibbons, the deceased scientist Ian Gibbons's widow. Once again, Sunny and Elizabeth were one step ahead of me.

Elizabeth Holmes: Once and for all, transcend all the B.S. We'll put all our thoughts together into it.

Sunny Balwani: Yeah, and we will also take legal action once this is behind us. Violating trade secrets is not OK.

Elizabeth Holmes: Without question. Legal likely is part of it.

Sunny Balwani: Secondly, we need a better strategy for Normandy. For a long time to come we will have hybrid solutions.

Elizabeth Holmes: That we'll have to talk about too.

Sunny Balwani: Yes, we will think together. But we know it's these four people.

Elizabeth Holmes: For sure.

Sunny Balwani: Most likely two plus Rochelle. Rochelle, we need to sue for defamation.

Beyond the talk of suing a bereaved widow, the most damning part of this exchange is what Sunny says about the Normandy lab. Implicit in the words, "We need a better strategy for Normandy for a long time to come, we will have hybrid solutions," is an admission that they've

been lying to investors and to the Theranos board about using only proprietary technology. As we'll discuss in greater depth in coming episodes, this issue will be front and center at trial. Unbeknownst to investors and to the board, Theranos was performing fewer than a dozen blood tests on its proprietary devices and running the more than 200 other tests it offered consumers on third-party machines, some of which it had modified to accommodate small fingerstick samples. I was threatening to expose this secret. Sunny was saying they needed, quote, "A better strategy" to get ahead of that disclosure, and Elizabeth was agreeing with him.

Two months passed during which Theranos, with the help of the legendary attorney and legal pit bull David Boies, mounted a scorched-earth campaign to intimidate my sources and quash my story. Theranos lawyers ambushed Tyler Shultz at his grandfather's house. The company hired private investigators to follow him and several other of my sources. It threatened me and The Wall Street Journal with litigation. And Sunny pressured doctors to recant what they told me about bad test results. In the middle of this campaign, Theranos held a difficult board meeting on July 14th, 2015, during which Elizabeth and David Boies briefed directors on my reporting. A big part of the meeting centered on two of my suspected sources, Tyler and another employee who was friends with Tyler. The discussion got so heated at one point that George Shultz stormed out. Other directors had to leave the room to persuade him to return.

That board meeting left scars. The next day, Elizabeth and Sunny had a long text exchange in which Sunny, who had flown to Phoenix to intimidate another doctor I'd interviewed for my story, talked of resigning.

Sunny Balwani: I worked for six years day and night to help you. I thought it would be better. I know you were angry in your way and upset with me for not doing everything you wanted me to do.

Elizabeth responds with three question marks. Then she writes:

Elizabeth Holmes: I was just thinking about texting you in that minute, by the way. It's just hard to transition.

Sunny Balwani: I am responsible for everything at Theranos all have been my decisions too.

Elizabeth Holmes: But getting through yesterday will make it easier to do so now.

Sunny Balwani: I won't transition until you are in a perfect place. You know that. You are underestimating the challenges and being childish. I've been telling you for months.

Elizabeth Holmes: No such thing. That was the point we talked about. It's OK, just was emotional. But am ready and I completely get it on the challenges.

Sunny Balwani: Unfortunately, you don't.

Elizabeth doesn't seem to understand or agree and responds with a single question mark, to which Sunny writes back:

Sunny Balwani: I am not leaving until we break even. We will do this together and I will be by your side until the end. Can't leave like this. You were wrong that yesterday's meeting makes it easier. It didn't.

Elizabeth Holmes: For me to emotionally handle it. The transition.

Sunny Balwani: No, you are underestimating. And yes, I do dislike the direction you have taken with all this PR and all legal work and a lot of other things. But

hopefully we can talk and find perfect focus and perfect plan and execute heads down and build product and break even. I can leave if that gives you emotional peace. But you know, we have to sacrifice. I can leave then. Until then, you need me whether ideal or not, we need to get out of this together.

The words, "We need to get out of this together," bring to mind the image of two people who are cornered and running out of options. Later in this exchange, Sunny tells Elizabeth, "Yesterday was just a preview, trust me world is a mean place. Everyone has only been nice to us because of greed." He seems to be anticipating the scandal my story is going to unleash and trying to communicate the gravity of the situation to Elizabeth.

He wasn't wrong to be worried... my investigation was reaching a critical juncture. Around the time he and Elizabeth were exchanging these texts, I spoke on the phone to a high-ranking source at the FDA. More than a year earlier, the agency had told Theranos in writing to stop its fingerstick testing until it had a chance to review clinical data for each of its tests and for the nanotainer. But Holmes claimed she'd gotten a different message from an agency official and Theranos had continued the testing unabated. Now, my FDA source was hearing for the first time, not from the company, but from me, that Theranos was conducting a lot of the fingerstick testing on hacked third-party machines. I could tell from his reaction that he was alarmed.

What I didn't realize was how alarmed. After we hung up, he ordered agency inspectors to pay a surprise visit to Theranos's facilities.

That's after the break.

BREAK 2

SEG C

The FDA inspectors arrived one morning in the middle of August. One showed up at Theranos's Palo Alto headquarters, and the other at its big facility across the bay in Newark.

Elizabeth and Sunny were furious. Unannounced inspections were rare, and they hadn't seen this one coming. They tried to have their lawyers run interference, but the inspectors forged on, unfazed. Sunny stationed himself in Newark while Elizabeth stayed in Palo Alto. They frantically tried to coordinate their responses to the inspectors' questions over text. At one point, Elizabeth marveled to a colleague that such lowly public servants could wield so much power.

Now that the inspectors were on site, Elizabeth and Sunny tried to downplay the fingerstick testing. Theranos still performed regular venous blood draws for more than half of the tests on its menu, but it used smaller needles known as butterfly needles for those draws. They decided to emphasize *that* to the inspectors.

Elizabeth Holmes: I think we should show them the first ad that's going to run in Arizona. It doesn't mention nanotainers or fingerstick, just less blood, which I will make a big deal about, being about butterfly and smaller needles. Better for us to show than not.

Sunny Balwani: Yes, need to remind her less blood has nothing to do with fingerstick. Make sure she gets it.

Elizabeth Holmes: All over it.

Sunny Balwani: That we calculate and draw only what we need, not two to three times.

Elizabeth Holmes: Exactly.

As the inspection wore on, Sunny got increasingly frustrated. Two hours later, he texted Elizabeth:

Sunny Balwani: We can build this business with software and JP and run circles around others and FDA by manipulating their game.

JP is short for Jurassic Park. It's the name Sunny had given to the part of the Theranos lab that did regular venous testing with third-party machines. His conceit was that the third-party machines would soon be made obsolete by Theranos's technology.

Elizabeth Holmes: We could definitely run circles, this isn't even a game, it's straight-out harassment.

Sunny Balwani: We can market our lab and everything and people we talk about our fingerstick without us talking about it.

Elizabeth Holmes: Yeah.

Sunny is basically suggesting they game FDA regulations by marketing the Theranos lab as cutting edge without explicitly referring to fingerstick testing. And Elizabeth is wholeheartedly agreeing with him. It's the type of incriminating language prosecutors relish because it suggests an intent to mislead. The government has indicated that it wants to use these texts at trial, but it isn't clear yet whether it will be able to do so.

SEC attorneys already grilled Elizabeth about them during her 2017 testimony to the agency. In her responses, she seized on the word “others” in Sunny's initial text. Remember, he wrote that they could run circles around “others and FDA” by manipulating their game. “Others,” in Elizabeth's telling, referred to Quest Diagnostics and LabCorp, the two big incumbents of the lab business who she and Sunny believed were intent on crushing Theranos.

SEC Lawyer: And then you respond. We can definitely run circles. What did you mean by that?

Elizabeth Holmes: Again, sitting here now, I think we're talking about Quest and our thought that they were getting regulators to come in and inspect us and then they were doing things in Arizona, like putting sort of bad press about us on the door of patients. And they were going after us really hard.

SEC Lawyer: Were you referring to running circles around the FDA?

Elizabeth Holmes: I definitely don't think so.

SEC Lawyer: What were you referring to running circles around?

Elizabeth Holmes: The lab companies.

SEC Lawyer: I guess why don't you think you were talking about running circles around the FDA?

Elizabeth Holmes: Because we were trying so hard to do the right thing in engaging with the FDA. We hired all the best regulatory counsel, we'd been trying to proactively engage with them. We knew we were doing something different, but we really wanted to do the right thing in terms of working with them constructively.

The FDA inspection ended with Theranos being forced to stop its fingerstick testing. But Theranos didn't tell Walgreens or its investors about it. When my first article came out in The Wall Street Journal a month later, Elizabeth was in Boston attending a meeting of the Harvard Medical School's Board of Fellows. Over text, she and Sunny

discussed a statement Theranos was preparing to post on its website to respond to the story. In its third paragraph, the statement read, "Theranos is working to reinvent the lab experience by providing high quality tests faster, cheaper and more conveniently, requiring less blood and causing less patient discomfort than ever before."

Elizabeth Holmes: I'm OK with less blood and discomfort in holding statement. Almost odd if not there.

Sunny Balwani: OK. Just worried about FDA and CMS. But OK, have to take this risk.

Elizabeth Holmes: We made such a big deal when they were here about venipuncture being less blood. I'm comfortable with it.

The reference to less blood in the statement was misleading. In the wake of the FDA's inspection, Theranos was only doing regular venous testing. Sunny worried that it would antagonize the FDA. But Elizabeth rationalized it by invoking the same butterfly needle smokescreen she had used with the FDA inspectors weeks earlier.

It was a dangerous game to play. I didn't yet know that Theranos had stopped its fingerstick testing. A rumor about an FDA inspection had been circulating among ex-employees, but I hadn't been able to confirm it because I'd been unable to reach my FDA source. Elizabeth was banking on the fact that I'd remain in the dark about the inspection and its outcome for a while longer. That was a miscalculation.

A few hours after my first story hit the newsstands, I tried my FDA source again and he finally picked up the phone. He confirmed that an inspection had taken place and told me the agency had forced Theranos to stop using its nanotainers, effectively halting its fingerstick testing. I quickly got to work on a second story to break the news and sent Heather King, Theranos's general counsel, an e-mail requesting comment.

Elizabeth was cornered, so she tried to preempt my scoop by mentioning the nanotainer withdrawal in an interview she'd agreed to that evening with Jim Cramer.

Elizabeth Holmes: We've actually become the first company advocating for FDA regulation of lab developed tests. And as part of that, we have said that we think that every lab developed test really should go through the FDA submission process. And so, we've been consistent with it. And in fact, we even just recently took our nanotainers-

Jim Cramer: Uh-huh.

Elizabeth Holmes: -through the FDA clearance process and sent submissions in for those. And as part of that process, we're not even using our nanotainers except for FDA cleared assays.

That was a gross mischaracterization of what had happened. The truth was that Theranos had ignored the FDA's orders to stop using the nanotainers for a year and a half and had only withdrawn the little tubes under pressure from the agency during the inspection. We quickly published my story on the Journal's website to set the record straight. It made the front page of the next day's paper. After that second article, Sunny fielded an angry call from a Walgreens

executive named Nim Jhaveri, who was in charge of the retailer's partnership with Theranos.

Sunny Balwani: OK, Walgreens freaking out, lack of transparency, why they find this all through media, not through us, why we didn't tell them about turning off nanotainer.

Elizabeth Holmes: Did you tell him it literally just happened?

Sunny Balwani: Yes.

Elizabeth Holmes: And we hadn't finalized our plan with FDA yet and still haven't.

Sunny Balwani: Yes. I told him we were surprised by the article as much as they are, but it was a matter of communication. I'd actually thought about it but got too busy to chat with you.

Elizabeth Holmes: Then let's show them that this literally is still up in the air. So, we literally just decided since the discussion is getting aired out in press.

Sunny Balwani: OK. However, issue is we didn't tell them in advance about switching.

Elizabeth Holmes: We'll have to present well that we hadn't decided to.

Sunny Balwani: Bad idea. At this point, they know so need to be transparent.

Elizabeth Holmes: How long has it been that we didn't tell them?

Sunny Balwani: Three to four weeks.

If not for Sunny, Elizabeth would have misled Walgreen's about the timing of the nanotainer withdrawal. Compared with the main allegations in the government's indictment, this is a relatively minor infraction, but prosecutors may seize on it because it shows Elizabeth's willingness to lie. If she was willing to lie about this, and she clearly was, it becomes easier to believe that she lied to Walgreens and investors about other things.

Nim Jhaveri, the Walgreens executive whose call to Sunny prompted this text exchange, is going to testify at trial that Theranos always assured Walgreens it was using its own technology and never said anything about using third-party machines. If it sees these texts, the jury will be all the more inclined to believe him and to doubt Elizabeth.

As bad as the FDA inspection and my Wall Street Journal articles had been for Theranos, the worst was yet to come. A second federal health regulator, the Centers for Medicare and Medicaid Services, or CMS, had launched its own inspection of the company.

Like the FDA inspection, it had started before my first article came out. But the CMS inspectors had found so many problems and Theranos had been missing so much lab documentation that they'd concluded they'd have to return. When they came back in mid-November 2015, my articles had been published. Elizabeth was there to greet them, along with Sunny, Heather King and a battery of lawyers and consultants.

The two inspectors split up. One walked through the Newark lab's two main rooms, Normandy and Jurassic Park, asking employees questions and taking notes. He was followed everywhere he went by Sunny. The other tried to interview an employee one-on-one about what had been going on in Normandy. But the employee looked scared and seemed to have been coached to request legal counsel.

In the end, the inspectors found so many serious deficiencies that they deemed the lab had been putting patients, quote, "in immediate jeopardy."

Theranos tried to keep their full inspection report from being released, but I was able to obtain a copy of it from a source and we published it on the Journal's website. Theranos had let unqualified personnel handle patient samples, had stored blood at the wrong temperatures, had let reagents expire and had failed to inform patients of flawed test results.

More damning even was what the report revealed about Theranos' proprietary devices: It laid bare the fact that the company had been using them for only 12 tests of the 250 it offered consumers. And it showed that their accuracy was extraordinarily bad. Under pressure from CMS, Theranos was forced to void nearly one million blood test results. Every single fingerstick result from its proprietary devices released to a patient was declared unreliable.

After the report became public, Elizabeth gave an interview to Maria Shriver on The TODAY Show in which she managed to seem both surprised and remorseful.

Elizabeth Holmes: I feel devastated that we did not catch and fix these issues faster.

Maria Shriver: You're running a health care startup, you're dealing with people's lives, you're dealing with test results that doctors prescribe medicine based on that. So, one would think that you would have had that in place from the get-go.

Elizabeth Holmes: Absolutely. And probably the most devastating part of this is that I thought we did.

Except remember the text exchange we discussed at the beginning of this episode, the one where Sunny wrote to Elizabeth "Normandy Lab is a fucking disaster zone." That was 18 months earlier. She'd known the lab was a mess for a year and a half.

Three weeks after Elizabeth's appearance on The TODAY show, Theranos announced Sunny's resignation. The company dressed it up as a voluntary retirement, but sources told me Elizabeth *forced* him out. That doesn't sound like someone so dominated by her partner that she had no free will.

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.

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

If you like the show, head over to Apple Podcasts, Spotify, Stitcher, or wherever you get your podcasts and hit subscribe. Leave a rating and 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.