



Mandy: Hello, everyone, and welcome to this very special edition of Fraud Talk. We are coming to you this month and we are releasing this during International Fraud Awareness Week, which is our annual week-long awareness campaign to help everyone know that fraud will not be tolerated.

We create a lot of free resources. You can find those on fraudweek.com. We hope you enjoy this podcast that will be included in one of those resources. I am joined today by, I will say he is also a friend as well as a colleague, Chris Ekimoff. Hello.

Chris: Hey.

Mandy: Believe it or not, Chris and I have never met in person.

Chris: Yes. More than 10 years of working together on Association of Certified Fraud Examiner activities and for some reason, the Northeast, and Texas, we've never found a way to be at the right session together or meet at the right conference. Although it's been less of an issue over the past two years I guess as the rest of the world has been figuring out this remote way. We've always been able to work together, Mandy. Someday we will share that drink in person.

Mandy: We're doing a bit of a crossover today. I'm letting Chris come on Fraud Talk even though he also co-hosts his own podcast. He got very jealous of what we were doing at Fraud Talk and decided to start his own. The inSecurities Podcast from PLI. Chris, tell us a little bit about inSecurities and take that time. I'll give you what? 30, 60 seconds to plug? I'm just kidding.

Chris: That's great. I can go on forever. The inSecurities Podcast is so named because of a venture that a colleague of mine, Kurt Wolfe, who's a practicing attorney at Quinn Emmanuel national law firm in the states here. He and I had been approached by the Practicing Law Institute, PLI, one of the providers of CLE or Continuing Legal Education to attorneys all across the globe about doing something non-traditional for them.

They had done a lot of webinars and obviously a lot of in-person events in the traditional CLE activity but said, "Hey, we're thinking of maybe branching out into podcasts. We've already got one started related to pro bono efforts. Would you guys like to come on and maybe put something together related to what you do?" Being a Certified Fraud Examiner and Kurt practicing in the securities enforcement space, we came up with the name, although it was wonderfully Kurt's idea to call it inSecurities to represent not only our sheepishness about if this podcast was going to go anywhere as well as the topic that we'd be discussing.

We just released episode 50 today, early November of 2021. It's been a great two-year ride and really, our focus is to provide what we call the practitioner's perspective. You've got two people who work with clients every day and with and for and against regulators every day on the issues that you've read about in the *Wall*

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Street Journal or the *New York Times*. Our perspective is not academic. It's not only from the regulator's point of view. It's how Kurt and I live our daily lives in the working world and what we think with a little bit of humor.

Mandy, we like to say that we are keeping it fresh while staying wonky on those topics. It's been a great ride and Kurt and I really enjoy being able to use this podcast medium in a way that's been beneficial both through the pandemic and otherwise.

Mandy: Awesome. Well, it's a treat for me to have practitioners on because I'm purely here for entertainment. I lead the communications at the ACFE, which some of you might know. I am not a practitioner but I play a very good one.

Chris: You know enough to be dangerous, Mandy. We'll put it that way. For those who want to hear Mandy on the inSecurities podcast, we release at the end of every year the podcasts Kurt and I are listening to, Fraud Talk obviously made the list. We had a great spot with Mandy and one of her guests from 2020 to come on and share some of that story as well.

This is a, I'm not going to say quid pro quo knowing the type of work that you and I do, Mandy but I'm glad to reciprocate in sharing our story on your podcast as you did ours.

Mandy: Awesome. What we're talking about today, the Theranos Trial is we've all been watching it, following along this started years ago. I remember reading John Carreyrou *Wall Street Journal* articles and just waiting for when it was actually going to blow up.

We're going to talk about where we are with the trial today. We thought it might be a good topic for Fraud Week, especially with a lot of the themes that we're seeing play out with the witnesses we're hearing from and really talking about fraud awareness at its core, which I know there were things that hindsight is 2020 but there are things that we can look at now and say, "Wow, this was there."

I want you to give us a little background for people who are not familiar and who have been living under a rock, under a non-fraud rock. Give us some background on Theranos and what led us to where we are now, which is a trial.

Chris: Mandy, you hit the nail on the head. This has been one of the most widely covered stories across business, technology, investing, fraud, legal spaces over the past 10 years, if not longer. For those of you who don't know, Theranos is a Silicon Valley-based healthcare company that was founded by a woman named Elizabeth Holmes back in 2003 after she dropped out of Stanford, having been there only about a year with her focus being on medical device technology. Her ideas had always been around using medical devices or using technology to cut out the middleman or shorten the length of time that patients needed results.

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The first idea that actually came up with Theranos was a patch that you would wear that would administer the appropriate amount of medication or whatever you're being prescribed on a regular basis so you wouldn't have to remember to take a pill or to stop in to see your doctor. The idea came from this place of medical device technology but actually ended up gaining fame in the 2007 time period with what they call their Edison prototype. This machine was aimed at providing a smaller and faster way to test for and receive the results of blood draws when compared to the standard intravenous or IV blood draw and testing.

Mandy, I'm sure you've done it as well. You're a mother, right? I'm sure you've been to the doctor's office a bit with your kids. You go in, when they do the blood draw, it could be relatively painful and take a while. They take three or four samples of your blood and then send it off to a lab for testing for all of the things that your blood might indicate from a health perspective. The idea of the Edison prototype and from Theranos' perspective was to make that a very short process. A finger prick of blood being a few drops that they could then test almost instantly, in 20 or 30 minutes, you would have your results back.

Very, very lofty goals when they came around in the late 2000s. As with any Silicon Valley company, investment and money was tight. Elizabeth actually benefited her family that she grew up with is very well connected in the East Coast spaces as well as out West and so had some folks in the private equity industry and family investors that were able to fund that project for the Edison.

After the Edison was developed in 2007, there was some growing interest in the company and around 2011 is when the mini-lab was created, and then that gained national attention in 2013. Then finally, in 2014, Elizabeth Holmes, the CEO of Theranos was featured on a cover story in *Fortune Magazine*. That has always been her arrival date to the world. She was quoted around that time period as the richest self-made female billionaire in the world based on her shares of the company Theranos and the valuation of that business based on funding rounds that were coming in.

At the time, Theranos was also in discussions with major retailer and pharmacy chains, Walgreens and Safeway to pursue strategies to implement the mini-lab, this desktop testing device in their stores. That's hundreds if not thousands of stores across the country. Walgreens actually started a pilot program with the mini-lab machines and Theranos testing procedures at locations in Silicon Valley and Arizona.

Mandy, you touched on a little bit, with every success story, there may be a crack or two along the way and one of those cracks came when investigative reporter at *The Wall Street Journal* named John Carreyrou in October 2015 published the first of a series of articles questioning the science behind Theranos' testing. We won't get into detail here, reading John Carreyrou's book *Bad Blood* is a great read, you should read it.

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One of the cruxes of that argument is that you cannot run the amount of blood tests that the mini-lab purported to do on a small amount of blood. That's why when you and I, Mandy, go into the doctor's office, they take a significant amount of blood so they can run all the tests they want. Also, some ethical laboratory practices that were going on within the business of Theranos.

Theranos, as most companies that are questioned do, pushed back significantly with a variety of public relations, legal and other business strategies. The questions about Theranos ended up continuing and led to a fall from grace for the business. Again, we won't get into the excruciating detail that's been covered by others here about that fall but it really came down to the crux of a settlement with Centers for Medicare and Medicaid Services or CMS. They have jurisdiction over testing and laboratory facilities here in the States and in 2016, based on the lab practices at Theranos, prohibited them from operating testing labs for the two years following taking apart that testing business model.

There was a little bit of a response from Theranos when the Zika virus came out and they started marketing their machines to be able to test rapidly for just that one test, just that Zika virus but as that was coming on, the SEC filed charges against Theranos' Elizabeth Holmes and another executive a gentleman named Sunny Balwani in March of 2017. The case settled later in 2018 with Theranos and Holmes agreeing to restrictions and a penalty, but not admitting or denying any fraudulent conduct.

We'll get into the details of the SEC case and everything else, but, Mandy, I know that one of the things that we've talked about both about Theranos and in our remote work together over the past ten years is really those hallmark red flags of allegations of fraud. I think a few of them were here with Theranos.

Mandy: Yes, the biggest one and you touched on this. In everything you just said, I could pick out what contributed to the biggest one, which was that larger than life, grandiose, cover story, young female hype Silicon Valley going to change the world, you had a very beautiful illusion and you had a lot of inherent trust, just because of what it looks like, and the façade. That's something we see a lot.

We saw that with Madoff. It was someone who didn't question, he had a lot of trust with people because he had a lot of power. She earned the same thing. She was a darling, she got investors by meeting with them in their living room, and convincing them of her vision and then she really sold it. I think there was a lot of privilege involved, but I also think she built up a very, very strong narrative.

Chris: Yes, and one of the things I know the ACFE touches on, Mandy, is what's called affinity fraud and Madoff is a prime example of that. That's where the social, spiritual-religious network of the Jewish community in New York and Palm Beach relied on each other to validate Madoff as a potential investment source.



Usually, you'll see affinity fraud based in smaller groups like that or with a religious community or a social network in a neighborhood or a town. Here, you just touched on it. That social network was almost that that privileged investor class in the healthcare space who thought they could do no wrong and thought this was the next best thing, that beautiful illusion you just talked about was the driving force behind what might not be a traditional affinity fraud but all of those elements were in play as well.

Mandy: Yes, and she, along with Sunny and the PR team, really, really built up that FOMO of you do not want to miss out on this. You do not want to miss out on changing the world and making it affordable. It's for everybody. She used the narrative how she was deathly afraid of needles, and this was going to change that. It would cost 2.99. It's not just for people who have insurance.

She really had a lot of great talking points and what we, you and I can immediately see was, okay, well, how did she back it up? What's sad is that a lot of investors didn't even get to that point. They didn't even-- some of the board they didn't even get to show me the data, show me the books, show me how it's working, take my blood, or even just the due diligence.

I know you wanted to talk a little bit about that but that was the biggest thing was the trusting that appeal and the too good to be true, we say that. I don't know how many times I've said that in my career. If it's too good to be true-

Chris: Even on the Fraud Talk Podcast, maybe every episode.

Mandy: Yes, exactly like it is. I don't know, I kind of wanted you to touch on the board and that trust there and maybe what other boards can learn from this?

Chris: Yes. We don't have to name names, but the folks who were on the Theranos board were really some of the most well-respected men and women in the United States at the time. Folks who have served in political office as the head of cabinet positions, as well as very successful people in the investment market and in the private equity space.

People always look at that, and they say, why didn't they do their homework? I always pull back from that and say, "Listen, if my best friend Dan calls me, and he says, 'Hey, Chris, I got a great idea. I think you should get involved with that.' I'm going to think about that differently than if I see a sign on the street that says, hey, think about this idea because I've got that relationship with Dan that I can rely on him to get that done."

The problem is when Dan heard that idea from three people removed that he doesn't know so well, then I start to rely on him more than I should. That's where a lot of the folks involved with this and there's been a ton of stories since things fell apart back in 2018 with individuals saying, "Listen, I was fooled as well and I was looking around

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the boardroom and everybody else seemed to agree so I agreed too." That's something I know the ACFE and me as a practicing Certified Fraud Examiner hit on all the time is it's okay to be rude when you're asking for more information. There's a couple of very interesting stories from the reporting that's come out about this matter as well where Silicon Valley investors, very robust, very intelligent, they will turn on a dime for the right idea and kick away the wrong one very quickly.

The folks who asked for audited financial statements of Theranos couldn't get them so they had a large accounting firm perform their audit up to I believe, was 2013 or 2014. That accounting firm walked away at that time to say, "Hey, we don't like the way you guys are accounting for a specific stock option deal with the executives, until that's resolved we can't sign off on your audit." Stopping is not something that happens in Silicon Valley, as we've learned through this case and others, and so they just kept going on with their projected financials or their own audited financials, and there were investors ready to put forward hundreds of millions of dollars who said, "Hey, Theranos, just get us some audited financials, and we'll check the box and we'll move on."

They couldn't do it and those investors walked away. They didn't meet the diligence checklist of that specific investment portfolio that that hedge fund or that private equity group was looking for and so they moved away from it and that's a testament to asking for the things that you need to feel comfortable about this investment. There's others who said, "Oh, my God, Elizabeth, you look great on CNBC and then my friend told me that I should give you \$2 million. Here's 2.5, I think it's going to go great." And they didn't talk about financials.

Mandy: I was going to also share in some of the coverage I was reading today from the *Journal*, they were talking about the Walgreens CFO, who really just stayed supportive even after some of the first claims came out. They quoted the CFO sending her an email saying "The haters are everywhere, but your contribution to the world cannot be bottled up. The universe has an odd way of preparing very special people for the even bigger missions ahead."

He wasn't a malicious money-hungry person, he believed in her. He believed in this idea. I think that is even more of what you were just saying about your friend coming to you, it was sold. The message was sold, the idea and how this was almost the MO of a Silicon Valley startup. You believe in it no matter what. It's not until, I later read about falsified documents or lying, or-- that's when you start to say, okay, but without that you're basically going on someone's word.

Chris: Exactly. It's been an interesting unwrapping of this case. Obviously things are still up in the air and settlements haven't been met. I believe in our legal system and I know Kurt and PLI, we believe the same way. If things are adjudicated in a manner in this trial to say that things weren't done inappropriately, then that's a legal standard that we'll have to come back and talk about on the Fraud Talk Podcast, Mandy, but I want to jump into a little bit of detail just to pull at the threads of what's

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going on from the legal perspective here, because we've got a couple of different elements happening here.

In March 2018, the SEC announced its settlement with Theranos and Holmes. The SEC charged Holmes and Theranos with securities fraud, that's the SEC's purview. Holmes and Theranos agreed to settle those charges on a no admit and no deny basis and pay a \$500,000 penalty. One of the interesting parts here is that Elizabeth actually agreed to be barred from serving as an officer or director of a public company for 10 years, as well as returning the almost 20 million shares in the company she obtained and relinquishing her voting control of Theranos by converting her shares from a supermajority down to Class A common shares.

She went from basically being the owner and the CEO and the driving force of Theranos to completely stepping back from there, losing all of her ownership value in the company as an owner and converting all those shares to that. A lot of people say, "Okay, well, she still owns a significant number of common stock shares," just like Mandy, you and I would if we would be involved with a company. What happens if they get bought or somebody picks it up. Part of that agreement as well is that she will not benefit from any liquidation or sale down the road until \$750 million of the money that is alleged to have been part of this fraud issue is returned to shareholders.

It's an interesting nuance there and that no admit, no deny? We could teach seminars on those settlements with the SEC, this isn't the place or time to talk about those but those extra elements of her being barred for 10 years and then having to relinquish control of the business she started and funded really knocks against what some would think is a credible argument that this was not in fact a fraud, that this was not, in fact, an issue for what happened.

Sunny Balwani, who I mentioned earlier, served as the COO, the Chief Operating Officer and president, was seen as Elizabeth's number two during the matter. Also there are allegations that they had a personal relationship as well as a professional relationship, which, of course is getting a lot of press coverage although it may not relate specifically to the legal arguments that are being debated in court. He was actually charged as well for securities fraud and, interestingly, aiding and abetting securities fraud. A secondary charge for Sunny. He, unlike Theranos, the company, and Elizabeth Holmes, the person, Sunny is actually fighting those charges.

There's some interesting ideas around secondary liability there, whether Sunny was involved, we'll have to see how that SEC trial plays out. That's the SEC side of the coin. That's the Securities and Exchange Commission, looking at securities fraud issues in this Theranos investment capacity.

Now, Mandy, you talked a little bit about the trial that's going on right now, as we sit here. Out in Silicon Valley, Elizabeth Holmes is facing the Department of Justice on wire fraud claims. The DOJ and the SEC work sometimes in a similar vein, the SEC

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focuses on civil actions and remedies. The SEC cannot put you, Mandy in jail but if you are found to be guilty of something that's a security fraud, that may also be a wire fraud or some other violation of the law, the Department of Justice on behalf of the taxpayers of the US has the ability to take away your freedom, put you in jail, sentence you to how it might be. These are two separate ideas based on the same fact pattern.

The Department of Justice charged Holmes and Balwani together with two counts of conspiracy to commit wire fraud and nine counts of wire fraud. Now, wire fraud and securities fraud are often charged together, so it's interesting here to see that the securities fraud charges aren't being brought by the DOJ. One of the ideas behind that is maybe it's harder to prove securities fraud, especially as it relates to the conduct that's at issue here where you're talking to individual patients and doctors. They weren't really on the securities side of the coin, they were focused much more on the operations of the business. That might lead to a more streamlined prosecution if that's how the Department of Justice feels it.

For context, the wire fraud statute makes it illegal for anyone to use or cause the use of "wire, radio or television communication in interstate or foreign commerce" for the purposes of executing a scheme to defraud or to obtain money by false or fraudulent pretenses. It is a commonly charged issue. You might think when's the last time I used a wire? Mandy, you and I are using wires in terms of the way that court or the Department of Justice view that now on recording this podcast. Basically, any interstate communication or use of a system connected to an interstate communication system can lead to up to 20 years in prison if fraud is found to have been occurring there.

A common misconception about wire fraud is the belief that the lie or the fraud itself must involve the wired communication. I have to lie to you over the wire OR I have to defraud you utilizing that but in reality, all that has to be proven, again, beyond a reasonable doubt in a criminal trial is that the wire communication was used or caused to be used during the course of the fraud. It doesn't have to be an overt act that creates the fraudulent conduct, any innocent or otherwise innocuous wire it can bring the crime within the law's jurisdiction. It's a pretty wide berth, as I talked about.

For purposes of stating a wire fraud claim, the prosecutors point to a combination of direct communications, marketing materials, statements to the media, financial statements, models, and other information to defraud potential investors. Mandy, there's a ton of stuff in there. I don't know if you've got thoughts on the wire fraud statute or the securities fraud issues we've talked about?

Mandy: No, my thought is, I think you and I know the US DOJ well enough that we know they're only going to bring what they think they can win. I think the prosecution probably thought that their best bet was wire fraud. I know that from many courses I've attended, believe it or not, but they are really, from what I've read, hammering in on the voicemails, emails, PR messaging that Theranos put out. Even statements

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from the board, even statements that they are alleging some of them were forged. I think they're using a lot of that data, and a lot of those different communications to make their case.

Sunny and Elizabeth have both pleaded not guilty but I think that's also-- I know, we'll get into that. There's been rumors of her defense going into mental illness or bullying from Sunny. I'm so curious how that's going to-- I read something today that said mental incapacity is the hardest thing to prove. The hardest thing to prove.

I'm curious, she's already played some of it, though, with the pregnancy, with wanting to delay it. There's so many things that are still out there but I think that her own gravitas, her own hubris could be what gets her in the end because there's so many documents, so many emails, so many voice messages between her and Sunny, between her and investors that could really seal her fate.

Chris: To back up a bit, Sunny and Elizabeth were charged jointly, those cases have been severed. What's happening now, which started in September is the trial against Elizabeth Holmes as an individual on wire fraud and conspiracy of wire fraud charges. There's been a lot of posturing. Mandy, you're pulling at these threads related to some of the things we've seen in the coverage and the way the case has come out as to why that happened.

Not to get too far down the legal rabbit hole but each team of attorneys is trying to represent and advocate for their client as best they can. When that decision to sever the trial was made, there's a theory out there that that's better for Elizabeth and maybe better for Sunny individually than for them to be tried together.

We have the ongoing trial of Elizabeth Holmes happening as we record this. One of the things that's happening significantly with that trial is the discovery of evidence, evidence is being presented. One of the key things that's being brought up in the court case, as well as in the popular media covering it is all of the information that related to the SEC investigation back in 2017 and 2018.

There are recordings of deposition testimony in which Elizabeth and Sunny and others are talking about what happened during this case. It's almost like they're piggybacking off of a lot of the hard work that the SEC and the attorneys did back then. But it's really providing a picture of how these individuals viewed their conduct and viewed what they were representing to investors almost with a crystal clear lens. These questions have been asked and answered and recorded and now we're bringing that up again from the DOJ's perspective. There's been a lot of coverage on the depositions that have come out, there's been a lot of coverage on the email traffic.

One of the things that's come up more recently, in this case, has been the text messages, you talked about Mandy. There's a lot of great reporting out there. Again, John Carreyrou is running a podcast right now called *Bad Blood: The Final Chapter*

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where he does a weekly check-in on how the courts is going. Rebecca Jarvis, former keynote and host of the Fraud Conference with the ACFE is continuing her reporting in an episode of what's called *The Dropout*, her podcast on the topic.

The way those stories are being told in the courtroom and then by those reporters shows the almost excruciating level of detail that I try to accomplish in some of the work that I do. I know Mandy, a lot of CFEs do out there, as well as is building a timeline. You'll hear a story about a meeting happening, two or three emails or text messages being exchanged. Then referencing the next trip, that trip happening, they're being radio silenced while someone's on a plane, that person landing, then responding with more thoughts. They're picking apart those ideas to say, "You just told investors X, you then referenced you said that to them." Someone may have said something that conflates with that or changes the opinion of that. Then you land the plane later and you go back and tell another investor the same thing.

I'm drawing a more general picture than what's being represented in the trial but that level of detail and evidence is really going to be the crux of where the jury is asked to evaluate whether this was wire fraud conduct or conspiracy for wire fraud conduct.

Mandy, I don't know if you've been following, the courtroom stuff has just been almost as interesting as the topic here. Three jurors have been dismissed from the trial to date for a variety of reasons, religious and most recent one was playing Sudoku, the popular number puzzle game while the trial was going on. I don't know, I'm very interested in the trial. I don't know if I would be sitting there playing Sudoku but that's how some of the juries I guess, pass their time. I think the reference was like doodling, it's just what that individual did while they were thinking or while they were listening.

This has been a landmark of legal effort, not only the hundreds of millions of dollars and the use of the F word, I like to say fraud being at this conduct of this former Silicon Valley darling. We've now got all these trial issues with the judge and the jury and all of the evidence being presented and the attorneys going back and forth and objecting. It's really been a very interesting watch.

Mandy: Carreyrou was called by the defense, was put on the witness list.

Chris: That's right.

Mandy: What he was thinking was so that he couldn't cover it anymore. If you're called as a witness, can you still go in and cover it, which the judge said, "Yes, you can still cover it." There's been like, you just said, one thing after the other. I feel like each new day is a new adventure.

I know we still have a long way to go because I know there's a lot of witnesses to still call and I believe the whistleblower Erica Chung has been called. Another



whistleblower Tyler Schultz hasn't been called yet. I know there's a lot of people to get through.

Chris: You touched on some of the defenses that the legal team representing Elizabeth Holmes has both put forward in court and are expected for her. I just want to do a quick rundown of those.

First is that Elizabeth didn't play a major role in some of the statements or the conduct that's at issue in conducting the fraud. That's really, we like to call that the executive defense and that, "Hey, listen, I'm running the company, I'm out doing interviews. I'm trying to solicit investment. I'm not in the lab day to day making decisions. I'm not running these protocols." That'll be a way that has worked for executives in the past, in terms of avoiding liability related to some of these issues.

Another element you touched on is that personal relationship or that mental state, there's been a lot of conjecture, and I don't know if it's actually come into the courtroom yet, but there then witnesses listed for both sides related to mental health. One of the ideas that pundits following this case have posited is that they're trying to see if they could present evidence that, Elizabeth Holmes-- again, when this company started, she was 19 and not six or seven years later, a major investor came on, Sonny Balwani, who was, I think, 20 or 30 years, her senior. They had a professional relationship and a personal relationship at that time.

There may be some credence to having that conversation around where, on the spectrum of support or instruction or how they work together from a professional perspective and who was driving some of these statements as those timelines are built.

Then one word that we all of in the legal and forensic accounting area is puffery. Mandy. Everybody loves to say, Hey, listen, I just said that to make us look good. Puffery is a common defense in statements. If you watch a commercial for dish soap and they say, our dish soap is the best, you can't really sue them because their dish soap is not the best in your mind. That's a super over generalization of puffery, but the idea is that it was really their job to go out and represent that story. That mission. You talked about an investor who believed the CFO believed that they could change the world. That belief, instilling that belief, is part of that investment solicitation and part of that Silicon Valley ethos.

That's almost a lot of coverage has focused on that too. Is this the trial that finally puts Silicon Valley in its place when we're going to be the next Uber of X, or we're going to be the next Tesla of Y do we need to start reining in some of those statements to be a little bit more grounded in reality, or what I love financial projections that we can evaluate and support instead of just this conjecture being set out over there?



There's some defenses there and it's going to be interesting again, for those of you who follow law and maybe watch a lot of law and order or legal movies like I do. This is a jury trial. It's not about proving conduct to the nth degree. It's about convincing 12 of Silicon Valley's jurors to consider that there's a chance that she did not do this right? Beyond reasonable doubt as the standard. If that can't be proven in the minds and hearts of those 12 individuals, there's a chance that these charges are dismissed or a chance that she's found not guilty. That moves on.

We're dealing with a lot of interesting nuance in the legal system, a ton of interesting nuance in the medical field. I mean, doctors have been testifying for days in this case. I'm a little bit of a nerd. My dad was a chemist all through my childhood. I love following the blood immunoassay issues and the testing protocols that they go through. For folks out there that have a similar interest in that, they should definitely check it out.

But Mandy, this is just a huge ball of wax and something I think really speaks to the International Fraud Awareness week. There's so many instances in which another person asking another question or taking a step back, or even just being aware that there's a few other things that we could be asking about this investment, this company, this test result that might have led to a different course of action.

That's not to say that everything that was happening here was wrong. It's just that had these questions been asked, maybe Theranos continues to be a success. Maybe they take a break from soliciting investment and try to figure out some of the allegations around their testing or their accuracy issues that have been brought to light.

Mandy, I don't know how to be more aware of a fraud issue. You talked about people living under a rock if they hadn't heard of Theranos. Obviously I agree, because I've been following this pretty closely, but I think this is a great way to talk about fraud awareness and things that individual investors, boards, executives can do to consider how to combat fraud before it happens.

Mandy: This is such a classic case too, and this is something we talk about a lot in our education and training is checking your biases at the door. When I used to look at Elizabeth Holmes, she, I look, I have blonde hair, I was younger at the time. I loved the idea of a woman in power and doing these amazing things.

That's another thing with fraud awareness is you got to check that stuff at the door. Just because someone looks like you, talks like you, the affinity for that we were talking about, you've got to go back to the trust of verify. There was so much trust involved in this, but not a lot of verify.

Chris: I go back to what I tell my clients all the time is that there's no harm in asking a second or third question if the person's being truthful. Whether that's in an admission seeking an interview or in information gathering interview, or just talking

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about a matter that I might be working on or another CFE might be working on. Because if they're being honest, they'll either give you that answer or they'll say you know what? I don't know.

I never thought about that.

But when you start dealing with these folks who have to consider ways that they can cover for themselves or always look good, or always be trusted, you start to identify some of those things. This is a plug for the ACFE, all of the great training on live spotting and considerations and interviews, those things might have drawn out a lot of good discussion while these investments were being solicited and while these questions could have been asked and getting that verification, show me your audited financials.

We talked about doing due diligence at a distance. Relying on my friend Dan instead of looking ourselves and audit? Yes. Is that a function of that? Of course, you've got an accounting firm representing the lack of material misstatement for the financial statements as presented under the appropriate accounting framework.

But that's another checkpoint to say, can you give me that information when I ask for it? They may say yes, or they may say no, "Because we all are still working on it. It should be out in three months." Then if I'm an investor, I say, great, call me in three months. We'll talk about it. That's an easy one versus that awkward or that rude impoliteness that some people might feel. Verifying is much more valuable upfront than finding out about it down the road

Mandy: And bringing the right people into the conversation. If you're investing, reach out to an attorney, an accountant, a CFE. Bring the expertise you need in because you can't know everything. That's another, I think that's another aspect of Fraud Awareness Week too, is really trying to convince companies and organizations and agencies that you said the F-word earlier, fraud, isn't a dirty word. You got to be ready. It's got to be on your radar. Admitting that is a risk is just, that's part of the deal now. If you're not, then, unfortunately, you're going to miss it.

Chris: These things can happen. The trial is ongoing. Like I said, we're recording this in early November. International Fraud Week begins on November 14th. Hopefully, this episode will be out shortly after that. The trial was originally scheduled or estimated to be about three months, starting in September, they've had a couple of delays due to COVID. We talked about some of the jurors being dismissed. That will probably bleed into late December, if not early next year, depending on holidays and other things.

The trial will wrap up hopefully in the next couple of months and then we'll be able to maybe come back and talk a little bit about some of the sentencing or some of the other things that might have come to light even right now, Mandy. They could be in



the courtroom right now with more text messages and legal theories that we can kick around as well.

Should be an interesting end of the year and continues to be an interesting trial to follow. We want this to really be a story that it clues folks into what International Fraud Awareness week is about. Putting on that cap of trusting, but verifying or being professionally skeptical, it's not impolite. It's part of what CFEs should be doing. It's part of what auditors should be doing. I know the attorneys that I've worked with feel the same way. We hope that if there's no other message you take away, that keeping that focus is great for avoiding these issues down the road.

Mandy: Thank you so much for this crossover of sorts. I was happy to have you on Fraud Talk. I will always be down to go on inSecurities, you know that, but I really appreciate it, Chris.

Chris: No, I'm so happy to be here. Mandy, this is actually my second time on Fraud Talk. One of our previous works was talking about a career path of a CFE. God, it must have been 2013. Oh, maybe a million years ago, at least one pandemic ago.

Mandy: I was much younger then.

Chris: We both were. For those of you interested in more of the stuff that we cover on the inSecurities podcast, you can check us out at pli.edu/insecurities, or just look for the inSecurities podcast on Spotify, Apple podcast, Google, you name it. We're out there.

We'd love to hear other listeners. If you want to get on social media and interact, you can use the hashtag inSecurities pod, P-O-D, to get in touch with us. Kurt and I would be happy to take topics or future guests on our series as well. Mandy, it has been a pleasure. I always love working with you. One day we'll get together and do it in person.

[music]

Mandy: Thank you so much, Chris. Thank you all for listening. Happy International Fraud Awareness Week. I know it seems a bit too happy, but I am so excited you are with us in the fight against fraud. You can find, Fraud Talk wherever you listen to your podcast and you can visit us as acfe.com/podcast. Thank you all for listening.

[00:40:15] [END OF AUDIO]