

# Elizabeth Holmes: Two months into Theranos founder's trial, how does it look for her?

Holmes faces tough odds, statistically

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Two months after Theranos founder Elizabeth Holmes' federal criminal trial started in San Jose, legal observers are divided on her prospects.

"It doesn't look good for Holmes," said Neama Rahmani, a former federal prosecutor who's now an attorney at West Coast Trial Lawyers. "I fully expect her to be convicted unless something dramatic happens when the defense puts on their case."

But Bay Area defense attorney Jessica Nall said she believes Holmes "has a fighting shot" to escape conviction. "I'm getting more optimistic for her chances," said Nall, of Baker McKenzie in Palo Alto and San Francisco. "It's been held up as a clear fraud. I don't think it's that clear."



If Holmes — who faces up to 20 years in prison if convicted — is to walk free from what is expected to be a three- to four-month jury trial, she'll have to beat the odds.

"Trials are rare in the federal criminal justice system – and acquittals are even rarer," researchers said in [a 2019 Pew report](#) that found rates of acquittal were even lower in jury trials, rather than those decided by a judge alone. Still, said Brian Klein, a defense attorney and former federal prosecutor, "Juries will surprise you."

Through weeks of trial in a U.S. District Court, Holmes, clad in business skirt-suits, has sat upright, flanked by lawyers from high-profile Washington, D.C. firm Williams & Connolly. Her mother, Noel, has been a constant presence in the gallery, often joined by Holmes' partner Billy Evans — the father of her baby — and a shifting cast of friends showing support.

Because the federal government is still making its case, with Holmes' 10-lawyer team defending her via cross-examination until they have a chance to call their own witnesses to testify, "the story is only partially written," Klein said. "A lot could ride on what witnesses are called in the defense."

Prosecutors allege Holmes bilked investors out of hundreds of millions of dollars and defrauded patients with false claims that her now-defunct Palo Alto blood-testing startup's machines could conduct a full range of tests using only a few drops of blood from a finger-stick. She has denied the claims; the prosecution must convince the jury that she intended to defraud the alleged victims.

The government has so far called a number of former Theranos employees to testify as witnesses. "That's always going to be potentially very compelling evidence because you're hearing from people on the inside," said Klein. "The prosecution will argue that you can sort of peel back the curtain and see what really happened."



Prosecutors have called to the stand one former Theranos employee after another, to testify to the gap “between the way the technology was and the way it was being represented,” Nall said.

To overcome jurors’ potential belief that ex-employees may have an ax to grind, prosecutors are “really going with the overwhelming approach,” Rahmani said, to show the jury that, “even if you don’t believe one, there’s 10 others there, who are saying the same thing.”

However, that insider testimony has not succeeded in getting to the fundamental issue of Holmes’ intent, Nall said. “What was in her mind? What was she thinking?”

Holmes’ trial fortunes may turn when evidence is presented during her defense about her relationship with former Theranos president Sunny Balwani, whom Holmes has accused of abusing and coercing her. “There’s a significant empty chair with Sunny Balwani,” Nall said.

Rahmani said he believes Holmes’ coercion claim is inconsistent with everything she said and did publicly as the recognized leader of the company. Jurors, for example, heard testimony that Holmes, defending herself and Theranos on national television after a devastating 2015 Wall Street Journal exposé, said, “Anything that happens in this company is my responsibility.”

Loving text messages Holmes sent to Balwani and displayed to the jury have also helped prosecutors nip in the bud any potential Holmes claim of coercion, Rahmani said.

With the government focused on Holmes’ alleged lies about the capabilities of her startup’s machines, the defense during cross-examination has sought to highlight the devices’ actual capabilities, such as the tests they could actually perform.



“Any points they score off a government witness where they’re able to show that yes, there was something there, that is going to be helpful,” Nall said. “They’ll be able to show ... that there was existing cutting-edge technology — it just may not have evolved to the level that it needed to be.”

Jurors, said Rahmani, could conclude that Holmes engaged in “puffery” but not fraud.

Perhaps the most damning testimony to date relates to a Theranos report — sent to Walgreens executive by Holmes and distributed to investors — imprinted with logos from Theranos and pharmaceuticals giant Pfizer. A former Pfizer scientist told the jury he had probed Theranos, dismissed its technology, and was not aware of anyone at Pfizer approving Theranos’ use of the logo.

The damage to Holmes’ defense from the Pfizer-logo revelations remains to be seen, especially since her lawyers have suggested to jurors that Balwani, not Holmes, ran the Theranos laboratories, Nall said.

“The question is, ‘How did that logo get there? Who made that decision — was it her?’ If the jury finds that Holmes was herself misled about the maturity of her firm’s technology, or that she believed her own hype, jurors could acquit her, Nall said. “There’s a lot of road left here.”

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Ethan Baron is a business reporter at The Mercury News, and a native of Silicon Valley before it was Silicon Valley. Baron has worked as a reporter, columnist, editor and photographer in newspapers and magazines for 25 years, covering business, politics, social issues, crime, the environment, outdoor sports, war and humanitarian crises.

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