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# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

**Contents**



## *Dear Professor,*

Welcome to McGraw-Hill Education's October 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 3 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the October 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. California's recent decision to end cash bail in its criminal justice system;

2. Recent moves in the hotel industry to equip employees with "alert" devices for security purposes;

3. President Trump's recent executive decision to impose additional tariffs on goods imported from China;

4. Videos related to a) the International Criminal Court and b) a recent business decision made by Ford Motor Company in response to President Trump's decision to impose a 25 percent tariff on automobiles imported from China;

5. An "ethical dilemma" related to the demise of Theranos Corporation and the scandal surrounding its founder and chief executive officer, Elizabeth Holmes; and

6. "Teaching tips" related to Article 1 ("California Becomes First State to End Cash Bail after 40-Year Fight") and the Ethical Dilemma ("Theranos Is Shutting Down") of the newsletter.

A disclaimer of note—Some of the material in this month's newsletter contains political undertones associated with the legal issues addressed. I have included this material solely on the basis of: a) the timeliness of the legal issues covered; b) the relationship of the material to law topics commonly addressed in business law and legal environment classes; and c) the likelihood that coverage of the material will spark student interest in the study of law. Law and politics are inextricably intertwined, serving to cross-pollinate the development of law and the fields of academic disciplines associated with them. Let that never serve to dampen our willingness to address potentially

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Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education **October 2018** Volume 10, Issue 3

controversial legal topics. I trust that all law educators feel compelled and duty-bound to do so in the interests of academia, and in sustenance of our democracy.

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# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

**Of Special Interest**

This section of the newsletter covers three (3) topics:

1) California's recent decision to end cash bail in its criminal justice system;

2) Recent moves in the hotel industry to equip employees with "alert" devices for security purposes; and

3) President Trump's recent executive decision to impose additional tariffs on goods imported from China.

## Hot Topics in Business Law

**Article 1: "California Becomes First State to End Cash Bail after 40-Year Fight"**

**https://www.npr.org/2018/08/28/642795284/california-becomes-first-state-to-end-cash-bail**

According to the article, California will become the first state in the nation to abolish bail for suspects awaiting trial under a sweeping reform bill signed by Governor Jerry Brown recently.

An overhaul of the state's bail system has been in the works for years, and became an inevitability earlier this year when a California appellate court declared the state's cash bail system unconstitutional. The new law goes into effect in October 2019.

"Today, California reforms its bail system so that rich and poor alike are treated fairly," Brown said in a statement, moments after signing the California Money Bail Reform Act.

The governor has waited nearly four decades to revamp the state's cash bail system. In his 1979 State of the State Address, Brown argued the existing process was biased, favoring the wealthy who can afford to pay for their freedom, and penalizing the poor, who often are forced to remain in custody.

"Our path to a more just criminal justice system is not complete, but today it made a transformational shift away from valuing private wealth and toward protecting public safety,"

Sen. Robert Herzberg, a co-author of the bill, said in a statement. "California will continue to lead the way toward a safer and more equitable system."

Washington, D.C., already has a cashless bail system. Other states, including New Jersey, have passed laws that reduce their reliance on money bail. And other states are considering making similar changes.

Under the California law those arrested and charged with a crime won't be putting up money or borrowing it from a bail bond agent to obtain their release. Instead, local courts will decide who to keep in custody and whom to

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

release while they await trial. Those decisions will be based on an algorithm created by the courts in each jurisdiction.

In most nonviolent misdemeanor cases, defendants would be released within 12 hours. In other instances, defendants will be scored on how likely they are to show up for their court date, the seriousness of their crime, and the likelihood of recidivism.

Some people could be released on other conditions, including monitoring by GPS or regular check-ins with an officer.

The goal of the legislation is to eliminate human bias in court proceedings, but critics argue the new system that will be created by the courts runs the risk of perpetuating discrimination. Meanwhile, the American Civil Liberties Union of California, an original co-sponsor of the bill, pulled its support, arguing that last-minute changes give judges too much discretion in determining under what circumstances people will be released or kept in custody.

"We are concerned that the system that's being put into place by this bill is too heavily weighted toward detention and does not have sufficient safeguards to ensure that racial justice is provided in the new system," said the ACLU's Natasha Minsker.

Raj Jayadev, co-founder of advocacy organization Silicon Valley De-Bug, said like the ACLU, his group is a former supporter of the bill. Ultimately, as it is written, he told the Sacramento Bee, the law discriminates against the poor.

"They took our rallying cry of ending money bail and used it against us to further threaten and criminalize and jail our loved ones."

And there's the end to the state's bail bond industry.

"We're gone. We're done. As of today the bail industry will start shuttering their doors," said Topo Padilla, President of the Golden State Bail Agents Association. That that could reportedly affect 7,000 jobs, though Jeff Clayton, president of the American Bail Coalition, said that it's likely that the bail industry will sue, putting the law on hold.

Padilla contended the law is bad for the people of California.

The law "straps the taxpayers with funding 100 percent of all pretrial release programs," and will lead to increasing detentions of people who otherwise would post bail, he said.

## Discussion Questions

1. Describe the Due Process Clause of the United States Constitution. In your reasoned opinion, is there a Due Process Clause-related argument that supports a cashless bail system?

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

*The Fifth Amendment to the United States Constitution mandates that "No person shall...be deprived of life, liberty, or property, without due process of law..." The Fourteenth Amendment imposes this obligation on the states, indicating that "No state shall...deprive any person of life, liberty, or property, without due process of law."*

*The issue of bail is addressed in the Eighth Amendment, which states that "Excessive bail shall not be required..." The Due Process Clause-related argument that supports a cashless bail system is that any appreciable bail amount required for an indigent defendant might be "excessive." $500 might not even appear "on the radar" for a wealthy defendant, but that amount might represent "all of the money in the world" for an indigent defendant.*

2. Describe the Equal Protection Clause of the United States Constitution. In your reasoned opinion, is there an Equal Protection-clause related argument that supports a cashless bail system?

*The Fourteenth Amendment to the United States Constitution proclaims that "No state shall...deny to any person within its jurisdiction the equal protection of the laws." If a wealthy defendant is easily able to post $10,000 in bail but an indigent defendant is not, resulting in the wealthy defendant being free pending trial while the indigent defendant languishes behind bars, that is arguably a violation of equal protection.*

3. As the article indicates, ending the cash bail system in California will affect 7,000 jobs in the "Golden State." In your reasoned opinion, is this an important factor in deciding whether to implement a cashless bail system? Explain your response.

*Although student opinions may vary in response to this question, in your author's opinion, job preservation and creation in the criminal justice system should not be a consideration in crafting government policy and law.*

**Article 2: "More Hotels to Provide Employees with Alert Devices"**

**https://www.usatoday.com/story/travel/2018/09/10/hotels-equip-employees-personal-safety-alarms/1261179002/**

*Note: In addition to the article, please also see the accompanying video included at the above-referenced internet address.*

**"More Hotels to Provide Employees with Alert Devices"**

According to the article, more hotel companies have pledged to equip their employees with personal safety devices they can use to get help if they feel they are in danger.

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

G6 Hospitality, parent company of Motel 6 and Studio 6, has promised to provide the devices to all its employees at its corporate-owned and managed hotels by the end of March 2019. The company will begin distributing the devices this fall.

The devices will emit a dual-siren alarm when activated. Employees can use them if they or any guests they encounter feel they are being sexually harassed or assaulted in any way.

G6 is the first company in the economy lodging sector to sign on to a pledge by the American Hotel and Lodging Association to enhance policies, training and resources to improve safety, including preventing sexual harassment and assault. The lobbying group for the industry last week announced its 5-Star Promise, which also includes providing hotel employees across the USA with employee safety devices by 2020.

Hilton, Hyatt, InterContinental Hotels Group, Marriott International and Wyndham Hotels and Resorts also signed onto the pledge.

"People are the heart of this business and the single greatest asset to G6 Hospitality. That is why we are committed to the well-being, peace of mind and safety of our team members and guests, and we continue to take steps to improve that experience," says Rob Palleschi, CEO of G6 Hospitality.

Hotel companies in several cities such as New York, Washington D.C., Chicago, and Seattle already provide such devices to employees.

The hotel industry is responding to the current climate that is recognizing sexual harassment as a larger issue in the wake of the #MeToo movement. The industry is also acknowledging other human rights issues such as human trafficking.

G6 Hospitality has also introduced anti-human trafficking training to all its employees.

## Discussion Questions

1. Define negligence.

*Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to prove negligence, a plaintiff in a civil action must prove, by the greater weight of the evidence, that: a) the defendant owed a duty to the plaintiff; b) the defendant breached the duty of care owed to the plaintiff; c) the defendant caused the plaintiff harm; and d) the plaintiff experienced damages as a result.*

2. In light of the growing number of hotels providing employees alert devices, would not offering alert devices constitute negligence? Why or why not?

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

*Compliance with an industry standard is compelling evidence of due care, while not meeting industry standard is compelling evidence of negligence. The more that competitor hotels provide employees with alert devices, the more likely such a practice will be recognized legally as an industry standard.*

3. In terms of the duty of care owed by a business, is there a difference between the duty of care owed an employee and the duty of care owed a customer? Explain your response.

*Businesses owe a substantial duty of care to both employees and customers. For employees, the Occupational Safety and Health Act (OSHA) mandates that employers provide them with a safe work environment (This is known as the "general duty" standard). In terms of liability for an employee who has been sexually harassed, if an employer maintains a work environment that facilitates such harassment, the employer can be held liable. For customers, anyone who comes on to business property for a business purpose is known as an "invitee." In terms of premises liability, a business is liable for harm that results to a customer due to the business's failure to make the property reasonably safe for the customer's visit. This liability is premised on negligence law.*

**Article 3: "The Executive Runs Amok"**

**https://www.nationalreview.com/corner/trump-china-tariffs-new-taxes-by-executive-fiat/**

*Note: The following is an opinion piece written by Jibran Khan, the Thomas L. Rhodes Journalism Fellow at the National Review Institute. The National Review is a self-described conservative magazine and website. Although the article is politically charged (such is the current nature of our sociocultural environment), your author encourages you to use it as a vehicle to discuss with your students, as apolitically as possible, the always-salient and topical issues of international trade and trade restrictions (for example, tariffs).* ***It is not your author's intent to either endorse or indict the sitting president.***

In characteristic fashion, President Trump proclaimed his new tariff package via Twitter. He boasted of the "massive Tariffs we may be imposing on China," and then noted that they may cause Apple products' prices to rise. One wonders why the latter part didn't set off an alarm bell.

Tariffs, after all, are a tax imposed on *American* buyers and manufacturers, not "on China," and the price rises they cause won't be limited to Apple products, but instead will be seen through the economy as a whole, including on products from industries that source their parts domestically.

Where the previous sets of tariffs targeted wide swathes of products and parts, the new tariff program will hit all imports from China. Trump has promised $200 billion that are ready to go, and explained that "behind that, there's another $267 billion ready to go on short notice if I want. That totally changes the equation."

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

Indeed it does. The Chinese have signaled that they are going to retaliate, so American manufacturers and farmers who just received subsidies for their government-induced losses will likely to have their export markets damaged even further. No amount of subsidization is going to make up for the precipitous drop in sales.

What's more, the scope of the hike will incentivize cronyism, as well-connected companies seek (and receive) arbitrary exceptions. That private actors will seek relief is understandable, and yet the arbitrary application that will result underscores one of the core problems with Trump's approach: That, in truth, these tariffs are not "policy" in the traditional sense of that word — that is, an idea that is discussed, developed, and debated by a legislative body before being passed — but the capricious impulses of one man. (The legislation that the president has used to levy tariffs is not new; it dates to 1962, however its very name — the "Trade Expansion Act" — shows that the Trump tariffs are not in keeping with its intentions.)

Only Congress can change this state of affairs. The Framers placed in Article I of the Constitution the origination clause, which states that "All Bills for raising Revenue shall originate in the House of Representatives," and they followed it with "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises." They did this for a reason: Namely, that the House of Representatives was the closest branch to the people who would face the brunt of taxation — in contrast to the Senate, which represented states, and in even starker contrast to the executive, which was most distant of all. Today, though, the president has been empowered to impose taxes whenever he sees fit (an odd state for a nation founded in opposition to 'Taxation without Representation"). Whether this is legal or not (I am sympathetic to the view, expressed by George Will and Brooklyn Law School's Rebecca Kysar, that despite legislation that purports to do so, the legislative branch cannot constitutionally delegate its powers to the executive), it represents an inversion of our constitutional order.

Many weeks of debate (and years of research) preceded Congress's passage of last year's tax bill. The president's tariff hike, which dwarfs that legislation in size, is being debated on Twitter. Something has gone wrong here.

## Discussion Questions

1. Define tariff.

*A tariff is a tax on imports or exports. Money collected under a tariff is called a duty or customs duty. Tariffs are used by governments to generate revenue and/or to protect domestic industries.*

2. In your reasoned opinion, as between the executive and the legislative branches of government, which branch should have the power to impose trade restrictions? Explain your response.

*Article I, Section 8 of the United States specifically indicates that "The Congress shall have the power... (t)o lay and collect taxes, duties, imposts and excises..." Congress delegated some of its authority to the president pursuant to the Trade Expansion Act of 1962, which states that if the*

Proceedings

A monthly newsletter from McGraw-Hill Education **October 2018** Volume 10, Issue 3

*Secretary of Commerce "finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," then the president is authorized to take "such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security."*

*In your author's opinion, any attempted resolution of this fascinating "balance of power" issue depends on answering the following questions:*

*a) What trade situation specifically triggers presidential authority to protect "national security" (for example, would simply a trade deficit or balance of payment deficit with another country constitute a national security issue, and if so, how much?); and*

*b) Is Congress is willing to assert its constitutional authority to regulate tariffs, as delegated specifically and exclusively in Article I, Section 8 of the United States Constitution?*

3. Comment on the view of George Will and Rebecca Kysar that the legislative branch of government cannot constitutionally delegate its power(s) to the executive branch. Do you support or oppose this view?

*This is an opinion question, so student responses may vary. Those who support such delegation might make a general "delegation of authority" argument similar to what they might learn in a basic "Principles of Management" course, while those who oppose such delegation might contend that constitutional delegation of authority, specifically by our Founding Fathers to Congress in Article I, Section 8 of the United States Constitution, represents not only a congressional privilege, but a solemn congressional responsibility consistent with how the framers viewed the proper structure of our government and the appropriate balance of power between the various branches of government.*

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

# Video Suggestions

**Video 1: "Trump Administration to Sanction International Criminal Court, Ban Judges from US"**

**https://www.usatoday.com/story/news/world/2018/09/10/palestinians-say-trump-bullying-them-closure-washington-office/1254466002/**

*Note: In addition to the video, please also see the following article included at the above-reference internet address.*

*Note: Although the video and its accompanying article are politically charged (such is the current nature of our sociocultural environment), your author encourages you to use it as a vehicle to discuss with your students, as apolitically as possible, the always-salient and topical issues of international trade law. USA Today is an internationally distributed American daily newspaper that serves as the flagship publication of its owner, the Gannett Company.* ***It is not your author's intent to either endorse or indict the sitting president.***

**"Trump Administration to Sanction International Criminal Court, Ban Judges from US"**

According to the article, White House National Security Adviser John Bolton unleashed a scathing attack recently on the International Criminal Court, saying the Trump administration would sanction the court and ban its judges from the U.S. if it moves forward with a probe into alleged U.S. war crimes in Afghanistan.

"The United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court," Bolton said in a speech to the conservative Federalist Society. "The ICC is already dead to us."

The ICC has long been controversial, with critics like Bolton suggesting it's a threat to American sovereignty. Supporters say the international court, based in the Netherlands, offers recourse for victims of genocide and other war crimes in lawless countries.

The ICC was first envisioned in 1998 by the Rome Treaty as a tribunal that could prosecute genocide, war crimes and other crimes against humanity. "As a court of last resort, it seeks to complement, not replace, national courts," the ICC says on its website.

businesslaw

Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

In his recent speech, Bolton blasted the ICC as a “supranational tribunal" that claims "unfettered discretion to investigate, charge, and prosecute individuals, regardless of whether their countries have acceded to the Rome Statute." The U.S. is not a signatory to the Rome agreement.

"In theory, the ICC holds perpetrators of the most egregious atrocities accountable for their crimes, provides justice to the victims, and deters future abuses,” Bolton told a receptive audience of Federal Society members. “In practice, however, the court has been ineffective, unaccountable, and indeed, outright dangerous.”

Bolton said he made the announcement now because the Trump administration feared the ICC was about to take action in the Afghanistan matter.

Last November, the court’s prosecutor, Fatou Bensouda, announced plans to seek a probe into allegations that the U.S. military and CIA personnel were involved in acts of torture in Afghanistan.

"In due course, I will file my request for judicial authorization to open an investigation, submitting that there is a reasonable basis to believe that war crimes and crimes against humanity have been committed in connection with the armed conflict in Afghanistan," she said at the time.

But Bolton cited another factor in his broadside against the ICC: a possible investigation of Israel, a key U.S. ally. The Palestinians asked the ICC in May to probe alleged human rights abuses by Israel.

"We will not allow the ICC, or any other organization, to constrain Israel's right to self-defense," Bolton said.

If the ICC tries to prosecute the U.S., Israel, or other allies, Bolton said the Trump administration would not only sanction the ICC but also any company or state that works with the court in such a probe. The U.S. could even cut off foreign aid to those countries, he said.

"We will remember that cooperation when setting U.S. foreign assistance, military assistance, and intelligence sharing levels," Bolton said.

In a related move, the Trump administration announced recently it would shutter the Palestine Liberation Organization’s office in Washington – a move that drew an immediate rebuke from Palestinian officials who said the White House is trying to bully them.

The State Department's spokeswoman, Heather Nauert, said the administration was closing the office because the PLO has not been a productive partner in efforts to achieve a peace agreement between the Israelis and the Palestinians.

"The PLO has not taken steps to advance the start of direct and meaningful negotiations with Israel," Nauert. "To the contrary, PLO leadership has condemned a U.S. peace plan they have not yet seen and refused to engage with the U.S. government with respect to peace efforts and otherwise.

businesslaw

Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

"The United States continues to believe that direct negotiations between the two parties are the only way forward," she added. "This action should not be exploited by those who seek to act as spoilers to distract from the imperative of reaching a peace agreement. We are not retreating from our efforts to achieve a lasting and comprehensive peace."

Saeb Erekat, the chief Palestinian negotiator, said that the recent announcement was "another affirmation of the Trump administration's policy to collectively punish the Palestinian people, including by cutting financial support for humanitarian services including health and education."

The Trump administration first threatened to close down the PLO's office in Washington last fall but later backed off. The State Department's decision to finalize that move will further inflame tensions between the U.S. and the Palestinians – coming on the heels of the Trump administration's decision to nix funding for U.S. aid to the West Bank and Gaza and to freeze support for the United Nation's program that supports Palestinian refugees.

"This dangerous escalation shows that the U.S. is willing to disband the international system in order to protect Israeli crimes and attacks against the land and people of Palestine as well as against peace and security in the rest of our region," Erekat said Monday.

He said the Palestinians would "take the necessary measures to protect the rights of our citizens living in the United States to access their consular services."

Human rights advocates and other critics said the twin moves would further undermine America's global standing and cripple U.S. efforts to be seen as a legitimate peace broker in the Israeli-Palestinian conflict.

"The first casualty of this (ICC) decision is America's credibility when it comes to international justice," said Brett Bruen, who served as director of global engagement in the Obama administration. Bruen said Obama tried to balance concerns about the ICC, in terms of its impact on U.S. national security and sovereignty, with America's role as a champion of rule of law around the world.

"What Bolton is essentially doing is taking one our most powerful deterrents and removing it from the equation, which will result in more gross human rights violations taking place in places like Venezuela and Myanmar," Bruen said. "It will ultimately result in more American blood and treasure having to be spent to remove those who are committing these kinds of war crimes."
Amnesty International also blasted the move and called on the U.S. to join the ICC as a full-fledged member.

"Rather than imposing sanctions, the United States should instead once and for all reaffirm its signature of the Rome Statute establishing the ICC, and support – not impede – its investigations," said Adotei Akwei, deputy director of advocacy and Government Relations at Amnesty International USA.

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

## Discussion Questions

1. Describe the International Criminal Court. What are its roles and functions?

*The International Criminal Court (ICC) is an intergovernmental organization and international tribunal that sits in The Hague in the Netherlands. The ICC has jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes. 123 nation-states are members of the ICC. Although the United States was a signatory (giving its preliminary support) to the Rome Statute of the International Criminal Court, the treaty that established the ICC, the United States has not ratified the agreement. The result of this is that the United States is not legally bound by the treaty.*

2. Describe the power of an international tribunal such as the International Criminal Court. Does an international tribunal have actual power regarding the disputes it attempts to resolve and the rulings it makes? Explain your response.

*The power of an international tribunal depends predominantly on the willingness of nations to abide by its decisions.*

3. Describe the power of international law. Is international law truly binding and enforceable? Why or why not?

*Similar to the response offered in response to Video 1, Discussion Question Number 2 above, the power of international law depends predominantly on the willingness of nations to adhere to it.*

### Video 2: "After Trump Tweets That the Ford Focus Can 'BE BUILT IN THE U.S.A.,' Ford Explains Why That Would Make No Sense"

**http://fortune.com/2018/09/10/trump-ford-focus-active-donald-trump-china-tariffs/**

*Note: In addition to the video, please also see the following article included at the above-reference internet address.*

*Note: Although the video and its accompanying article are politically charged (such is the current nature of our sociocultural environment), your author encourages you to use it as a vehicle to discuss with your students, as apolitically as possible, the always-salient and topical issues of international trade and trade restrictions (for example, tariffs). Fortune* is an American multinational business magazine headquartered in New York City. ***It is not your author's intent to either endorse or indict the sitting president.***

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Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

## "After Trump Tweets That the Ford Focus Can 'BE BUILT IN THE U.S.A.,' Ford Explains Why That Would Make No Sense"

Recently, President Donald Trump tweeted approvingly about the news that his 25% tariffs on Chinese-made automobiles had led Ford to decide against importing its compact Ford Focus Active model to the U.S. from the Chinese factories where the car is made.

"This is just the beginning. This car can now be BUILT IN THE U.S.A. and Ford will pay no tariffs!" Trump exulted.

One problem: That's not going to happen.

Ford's North America product communications manager, Mike Levine, spelled it out for the president in a tweet noting "it would not be profitable to build the Focus Active in the U.S. given an expected annual sales volume of fewer than 50,000 units and its competitive segment."

Ford didn't move production of the Focus to China by accident; it did so because the U.S. market has shifted away from smaller vehicles toward SUVs, which has made production of the Focus in the U.S.—a relatively expensive location—an illogical choice.

The automaker decided a couple years back to shift production of the Focus to Mexico, then last year it opted for China instead. Earlier this year Ford cancelled all its smaller cars with the exception of the Mustang and the Focus Active.

Then, after Trump started threatening his new tariffs against China, Ford decided in August that it wouldn't sell the Focus Active in the U.S. after all. The profit margins were simply too small to be worth it.

The auto-sector market economist Jon Gabrielsen claimed that Trump's tweet was "further evidence that neither the president nor his trade representatives have any clue of the complexities of global supply chains."

"This forces Ford to forfeit the sales they would have had if they could continue to import that low-volume niche vehicle," Gabrielsen said.

### Discussion Questions

1. Is Ford an American corporation or a multinational corporation?

*Ford Motor Company is an American multinational automaker headquartered in Dearborn, Michigan. In 2017, Ford sold 6.6 million vehicles worldwide. Approximately 2.8 million of those were sold in the United States, and 1.2 million were sold in China. Based on a cursory internet*

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Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

*search by your author, Ford Motor Company has production facilities (for automobiles and component parts) in at least twenty-two (22) countries. These statistics demonstrate that although Ford Motor Company is headquartered in the United States, its strategic focus extends globally.*

2. Why (specifically) has Ford elected to not sell the Focus Active automobile in the United States? Is its decision really just part of an overall strategy to deemphasize the sale of smaller vehicles and emphasize the sale of sport utility vehicles and trucks?

*Quite simply put, Ford's decision to not build or sell the Focus Active automobile in the United States is purely a business decision. In Ford's estimation, it would not be profitable to either build or sell the Focus Active automobile in the United States.*

3. As the article indicates, Ford's North America product communications manager, Mike Levine has indicated that "it would not be profitable to build the Focus Active in the U.S. given an expected annual sales volume of fewer than 50,000 units and its competitive segment." Analyze and assess this comment.

*As indicated in response to Video 2, Discussion Question Number 2, Ford's decision not to build or sell the Focus Active automobile in the United States is purely a business decision. In Ford's estimation, it would not be profitable to either build or sell the Focus Active automobile in the United States.*

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Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

**Of Special Interest**

This section of the newsletter addresses the demise of Theranos Corporation and the scandal surrounding its founder and chief executive officer, Elizabeth Holmes.

## Ethical Dilemma

**"Theranos Is Shutting Down"**

**https://www.nytimes.com/2018/09/05/health/theranos-shutting-down.html**

According to the article, Theranos is going out with barely a whisper. Once heralded as a revolutionary new way to conduct a blood test to detect myriad diseases, all with a single finger prick, the company is making preparations to close its operations, according to a letter sent to shareholders.

"We are now out of time," David Taylor, the company's chief executive and general counsel, informed investors recently. Theranos's efforts are now focused on avoiding bankruptcy.

It's in default under a credit agreement reached last year with Fortress Investment Group, Mr. Taylor told shareholders. The company is negotiating a settlement with Fortress, which would then own the company's intellectual property and allow Theranos to distribute its remaining cash — some $5 million — to unsecured creditors.

"Because the company's cash is not nearly sufficient to pay all of the creditors in full, there will be no distribution to shareholders" under the plan, Mr. Taylor said in the letter.

The process of dissolving the company is expected to take six to 12 months.

Founded in 2003 by Elizabeth Holmes, a 19-year-old Stanford University dropout, Theranos promised to shake up the entire lab industry, making blood tests much easier and less expensive than traditional methods.

A charismatic executive who wore black turtlenecks and spoke passionately about giving people control over their health information, Ms. Holmes attracted high-profile investors and assembled a Who's Who of directors, including two former secretaries of state and two former United States senators. General Jim Mattis, the current secretary of defense, also served on the board.

At its peak, the privately held company was valued at a lofty $9 billion, and Ms. Holmes was promoted as one of the nation's most successful female entrepreneurs. But questions emerged about the accuracy of the company's

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

testing, and federal regulators barred Ms. Holmes from owning and operating a laboratory for two years in 2016.

In March, the Securities and Exchange Commission charged Ms. Holmes with widespread fraud, accusing her of exaggerating — even lying — about her technology. In announcing the charges, the S.E.C. said that Theranos and Ms. Holmes agreed to a settlement.

Then in June, Ms. Holmes was indicted on criminal charges, and she has pleaded not guilty. The company's travails are the subject of a book by The Wall Street Journal reporter, John Carreyrou, called "Bad Blood: Secrets and Lies in a Silicon Valley Startup," and a forthcoming movie.

Lawyers for the company and Ms. Holmes did not respond to requests for comment. Ramesh Balwani, the company's former president who continues to fight the civil and criminal charges against him, issued a statement through a representative: "As an investor who put millions of dollars of his own money and nearly seven years of his life into Theranos, Mr. Balwani was saddened to see the letter from Theranos to investors yesterday."

## Discussion Questions

1. Define fraud. Referencing the supplemental article included in Teaching Tip 2 of this newsletter, explain the particular type of fraud Elizabeth Holmes is alleged to have committed.

*Fraud as defined as wrongful or criminal deception intended to result in financial or personal gain. In order to prove fraud (which can result in both civil and criminal liability), the plaintiff/prosecutor must prove the following elements:*

*a) The defendant made a false statement of fact;*
*b) The defendant made the false statement of fact with knowledge of its falsity or reckless indifference as to its truth;*
*c) The defendant made the false statement with intent that the listener rely on it;*
*d) The listener relied on the false statement; and*
*e) The listener was harmed (economically, physically, or both) as a result.*

*As indicated in the supplemental article included in Teaching Tip 2 of this newsletter, Ms. Holmes is alleged to have committed both fraud and securities fraud, misleading the public (including doctors and patients) and Theranos investors by promoting medical devices and tests that not only did not work, but also endangered lives.*

2. In your reasoned opinion, is securities fraud a particularly egregious type of fraud? Explain your response.

Proceedings

A monthly newsletter from McGraw-Hill Education **October 2018** Volume 10, Issue 3

*This is an opinion question, so student responses may vary. In your author's opinion, securities fraud is a particularly egregious type of fraud. Not only does it affect one or more actual victims, but in a high-profile case, it can undermine confidence in the securities market. Confidence in the securities market depends on investor access to accurate information regarding the nature of a particular company and its product(s).*

3. As indicated in the article, Theranos will cease to exist. It will distribute its remaining cash (approximately $5 million) to unsecured creditors, and there will be no distribution to shareholders. In terms of the company's remaining $5 million, why will creditors be preferred over shareholders? Should creditors be preferred over shareholders? Explain your response.

*In crafting bankruptcy law, the United States Congress has made a policy statement by preferring creditors over shareholders in the distribution of bankruptcy assets. This underscores the risk that shareholders take when they invest in a company, even if they mistakenly believe that their investment decision was a wise one and are victims of fraud themselves.*

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# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

**Of Special Interest**

This section of the newsletter will assist you in addressing Article 1 ("California Becomes First State to End Cash Bail after 40-Year Fight") and the Ethical Dilemma ("Theranos Is Shutting Down") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Article 1—"California Becomes First State to End Cash Bail after 40-Year Fight"): The Issue of Bail Reform

For articles offering competing viewpoints on the issue of cash bail and the need for bail reform, please see the following:

**"As Bail Reform Progresses, Yes, Bail Is Constitutional"**

**https://fedsoc.org/commentary/blog-posts/as-bail-reform-progresses-yes-bail-is-constitutional**

If you read the text of the Eighth Amendment excessive bail clause, you may be surprised to hear bail reform advocates ask, "Is Bail Unconstitutional?"

The answer is no.

But the question arises as debates over bail reform rage from Maryland and New Jersey to Texas and California, asking a more fundamental question of how to balance individual liberty with state power to secure public safety and justice. Proponents of reform who question the constitutionality of money bail, including former Attorney General Eric Holder, argue that setting bail at an amount higher than an individual can afford to pay violates the Fourteenth Amendment to the U.S. Constitution. Those defending the constitutionality of money bail, including conservative lawyers Paul Clement and Chuck Cooper, point to the Eighth Amendment, arguing that money bail is constitutional even when an individual cannot afford to pay bail, so long as the amount is reasonably calculated to assure his appearance at trial.

Reform advocates make compelling policy arguments for changes to discrete bail practices, and indeed state legislatures may wish to act on them. But claims that money bail is unconstitutional are incorrect and risk misinforming policy changes that may bring with them unintended and potentially severe consequences.

Four recent events illustrate the build-up in today's bail debate.

In February 2015, the U.S. Department of Justice's Civil Rights Division filed a statement of interest in a class action lawsuit in federal district court arguing

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

that "any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy." (Varden v. City of Clanton, No. 2:15-cv-34-MHT-WC (M.D. Ala., Feb. 13, 2015).)

In December 2015, the Obama White House Council of Economic Advisers wrote an issue brief that expounded on the administration's public policy concerns with state and local bail practices. The brief made two particularly compelling policy arguments. First, that "bail practices can result in detaining the poorest rather than the most dangerous defendants before trial." Second, individuals detained before trial who cannot afford bail may undergo significant hardships, such as potential loss of employment, limited access to defense counsel, and a reduced opportunity to prepare a defense.

The cost of housing individuals who cannot afford to post bail in jails is also a driving factor of the bail reform movement. According to county officials in Cook County, Illinois, for example, out of approximately 7,500 individuals in jail, at least 1,100 are held on bail of $5,000 or less; and 300 on $1,000 or less; while the county pays at least $150.00 per day per person in pre-trial housing costs. Cook County Sheriff Tom Dart, has expressed his openness to replacing cash bail with more extensive background checks, preventive detention for individuals who pose a risk of flight or danger, and additional pretrial services for defendants who secure release before trial.
In 2016, the Civil Rights Division's Office for Access to Justice wrote a "Dear Colleague Letter" to state judicial officers that recommended specific actions based on prior legal and policy opinions. Citing its 2015 statement of interest in Varden v. City of Clanton, the letter repeated the argument that "any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment," and urged recipients to "consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts."
Finally in October 2016, in a memorandum to Maryland Attorney General Bryan E. Frosh entitled "Maryland's Wealth-Based Pretrial Detention Scheme," former Attorney General Eric Holder offered additional policy arguments in favor of reforming bail practices—chiefly, that indigent defendants who are unable to pay even modest bail amounts may enter into plea bargains simply to end their pre-trail detention. But the memo further claims that "Courts across the country have invoked" U.S. Supreme Court precedent "to find that wealth-based pre-trial detention schemes are unconstitutional."

In a Heritage publication, "The History of Cash Bail," Heritage Policy Analyst Jason Snead and I review the history of the Eighth Amendment bail clause in light of those arguments. We find that the text of the Constitution, U.S. Supreme Court precedent, and legal history all indicate that a money bail scheme is not unconstitutionally excessive solely because it is "wealth-based" in general or if money bail is unaffordable in some instances. Rather, the concern when setting bail is whether the amount imposed is reasonably calculated to ensure the defendant's appearance at trial. Neither the due process nor equal protection clause fundamentally changes that analysis whenever a defendant held in pre-trial detention cannot afford bail.

businesslaw

Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

Unlike incarceration after a criminal conviction, pre-trial detention is not for the purpose of punishment. Obama Justice Department officials overlooked that crucial and longstanding distinction in framing their constitutional arguments against money bail, and read too broadly a line of Supreme Court cases that apply the Fourteenth amendment in a post-conviction context. While due process provides the appropriate analysis when some aspect of an individual's pre-trial detention is punitive, it does not supply a backstop whenever pre-trial detention is prolonged because the detainee is unable to post bail. Likewise, the rational basis review that equal protection analysis requires in alleged wealth discrimination cases does not avail advocates who seek to erase bail from its place in the Eighth Amendment.

At the heart of the bail controversy is the fact that judicial officers have enormous discretion to calculate and impose bail. That discretion may be restrained somewhat in jurisdictions that use bail schedules to assign predetermined sums based on offense categories, subject to judicial review. Nevertheless, reform advocates argue that judges often set bail too high, particularly as a substitute for requiring pre-trial detention when they perceive a defendant to be potentially dangerous or unlikely to appear for trial.

States have a variety of policy options at their disposal to address those concerns. Some states have abolished commercial bail. Nebraska has successfully experimented with automated court date reminders to reduce failure to appear rates. And several jurisdictions have adopted risk-assessment tools to determine what type of restraint to impose on an individual pending trial, ranging from detention to release on recognizance. New Jersey, for example, recently overhauled its bail practices, adopting a risk assessment algorithm created by the Laura and John Arnold Foundation called the Public Safety Assessment™ (PSA) which generates a score that is intended to guide a judge's determination of a defendant's risk of failure to appear or of committing a crime if released before trial.

While promising, like human calculations, the algorithm approach is fallible.

From thousands of cases that arose over the six months following New Jersey's bail reform, only 17 defendants received an option to post bail to secure their release.

While awaiting trial for an alleged assault, Zabdiel R. Vargas-Soto was released under electronic monitoring per the guidance of the PSA. Vargas-Soto had no prior criminal convictions and seemed to present a low risk of violence. But on release, he allegedly murdered two brothers.

It seems that the concerns raised by the Obama economic advisers and others—of detaining defendants who do not pose a risk of flight or committing crime if released, and releasing defendants who do pose such risks—may well persist after even the most well-intentioned reform. That is not an argument against state experimentation in pre-trial practices, particularly not against experimentation in developing effective risk assessment tools like the PSA; only against doing so on the false premise that bail is unconstitutional and therefore off-limits as one way to assure appearance at trial.

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

Bail remains on as firm a constitutional footing today as when the bail clause was written into the Bill of Rights. Arguments against money bail should remain focused on discrete practices that may be unlawful or bad public policy. The question that states ought to ask, therefore, is not whether the Constitution needs to be radically reinterpreted, but whether bail remains an effective means of ensuring appearance at trial, and if equally or more effective means now exist, is some change in order?

**"Is Bail Unconstitutional?"**

**http://www.slate.com/articles/news_and_politics/crime/2015/06/is_bail_unconstitutional_our_broken_system_keeps_the_poor_in_jail_and_lets.html**

Anthony Cooper was going to jail because he couldn't afford to buy his way out. After being picked up for public intoxication at a bus station in Dothan, Alabama, at about 1 a.m. on June 13, Cooper was told that unless he paid $300 in bail money, he would have to spend six days behind bars while awaiting a court hearing. If Cooper, who is illiterate and suffers from mental illness, had had the money on hand, he could have gone free on the spot. But the 56-year-old's only source of income comes from his Social Security benefits, and he didn't have $300. And so Cooper, like many down-on-their-luck Dothan residents before him, was locked up.
It was shortly thereafter that Alec Karakatsanis, a civil rights lawyer based in Washington, D.C., who graduated from Harvard Law School in 2008, entered the picture. Working with a like-minded Alabama attorney named Mitch McGuire, Karakatsanis filed a class-action lawsuit in federal court on behalf of Cooper and others in his position, contending that Dothan's bail policy, which called on people arrested by local police for misdemeanors and traffic offenses to come up with fixed sums ranging from $300 to $500, was unconstitutional. Specifically, Karakatsanis and McGuire argued, by allowing some people to purchase their freedom while detaining the indigent just because they were too poor to make bail, the city was in violation of the Equal Protection Clause of the 14th Amendment.

Recently, in response to Cooper's lawsuit, the city of Dothan announced that it had changed its bail policy: Going forward, people awaiting hearings in Dothan Municipal Court will no longer be required to pay bail upfront. The city will move to an "unsecured bond" system in which defendants only owe money if they don't appear in court when they're supposed to. While the lawsuit against Dothan has not been dropped—Karakatsanis intends to get a court-ordered settlement that will enshrine the new policy and make it semi-permanent—it has already resulted in getting Cooper, along with an unknown number of other pre-trial detainees in Dothan, out of jail.

For Karakatsanis, co-founder of the nonprofit civil rights organization Equal Justice Under Law, Dothan is just one pot on a big stove: Since January, he has filed class-action lawsuits against four other small cities with bail schemes that don't take into account people's ability to pay, and he plans to file more. The suits are the opening moves of an ambitious campaign to abolish, on a national level, the practice of demanding secured money bail (i.e., cash) from pre-trial detainees as a

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

condition of release. Taken together, they represent the first major effort since the dawn of the mass incarceration era in the 1980s to use the legal system to force reform in this area.

"Nobody should be held in a cage because they're poor," Karakatsanis told me. "Detention should be based on objective evidentiary factors, like whether the person is a danger to the community or a flight risk—not how much money's in their pocket."

One of Karakatsanis' suits, against Velda City, Missouri, was filed on behalf of a 26-year-old mother of two who had been asked to pay $650 to avoid jail after being charged with having a broken headlight on her car and driving without insurance on a suspended license. That case, in which Karakatsanis worked with Thomas Harvey of the nonprofit pro bono law firm Arch City Defenders, ended earlier this month with a settlement that forbids the municipal court in Velda City—where most local arrestees brought in on misdemeanor charges and ordinance violations are prosecuted—from making people pay bail in order to avoid pre-trial detention.

"No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond," the court-ordered settlement read. That seemingly unequivocal declaration caused reformers around the country to take notice and prompted Tim Schnacke, the executive director of a research center focused on bail policy, to write an enthusiastic blog post about why "these 36 words" turned "every single thing we've been doing in bail in America on its head." Jurisdictions that have "grown accustomed to poor people in jail and only rich people out of jail pretrial," Schnacke wrote, should "get ready to change."

Another city Karakatsanis has sued—Clanton, Alabama—is heading in the same direction as Velda City, in a case that moved the Department of Justice to file a statement of support in February. Like Dothan, Clanton stopped requiring secured money bail from new arrestees in response to the suit; Monday night, Karakatsanis filed a settlement agreement to a federal judge aimed at forcing Clanton to abide by the new policy for at least three years.

On their own, each of these lawsuits makes only a tiny dent in the population of Americans who are incarcerated because they can't afford to make bail. The cities Karakatsanis has gone after so far—which also include St. Ann, Missouri, and Moss Point, Mississippi—are home to very small jails, and the number of people who have been let out thanks to his efforts looks positively inconsequential when you consider that, according to the latest Department of Justice statistics, there are almost a half-million Americans on any given day in pre-trial detention, waiting for court dates in jail even though they haven't been convicted of any crime. But if Karakatsanis is successful, the work he's doing could have serious ramifications for that population: Not only does his litigation strategy promise to put pressure on cities around the country to change their bail practices in order to avoid getting sued, the victories he has already notched against municipalities suggest that brandishing the 14th Amendment could represent an effective way to challenge money-based detention policies at the state level as well.

businesslaw

Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

The ostensible point of bail is to make sure that people who are accused of crimes show up to their court dates. (Bail is returned if you do show up for court.) The reasoning is that if defendants have money on the line they are less likely to skip town before the justice system has held them accountable for their actions. Karakatsanis and other advocates for reform argue that bail is not necessary for this purpose. Cherise Burdeen, the executive director of the nonprofit Pretrial Justice Institute, noted in an interview that simply calling people before their court date, or sending them a text message reminder, has been shown to be extremely effective at reducing failure-to-appear rates.

More to the point, reformers like Burdeen and Karakatsanis say, it makes no sense to decide whether someone should be detained based on how much money they have: Not only is it unfair to keep an almost-certainly harmless person like Anthony Cooper in jail because he's broke, it's also irrational to release a potentially dangerous suspect like, say, alleged serial killer Robert Durst just because he has millions in the bank.

Karakatsanis is playing a long game, picking off low-hanging fruit in the form of small municipalities that require cash bail for minor violations in an attempt to lay the groundwork for constitutional challenges he hopes to mount later, both in larger cities and at the state level.
The reasons for this are strategic. For one thing, Karakatsanis' small victories are useful to other reformers, like Nancy Fishman from the Vera Institute of Justice, who told me that in working with jurisdictions around the country on improving their incarceration policies, she and her colleagues at Vera can point to something like the Velda City settlement as evidence that cash bail regimes really do need to be overhauled. Secondly, bringing cases against cities that require cash bail for all misdemeanors, including very minor ones, highlights the unfairness of the practice.

"It's so obvious to any person who spends even a small amount of time thinking about any of this stuff that there's absolutely no reason to even have pre-trial detention in these minor cases," Karakatsanis said. "There's no reason why someone should be held in jail for a week or even four days for not having a leash on their dog or a headlight being out or driving with a suspended license. There's no reason why an arrestee should be held in jail because he's poor in one of those cases, and there's no question that any of these people are dangerous to the community."
But the argument works when applied to all kinds of crimes, he said. "The constitutional principles that we're applying in these cases that involve more minor arrests are equally applicable to drug distribution or burglary or armed robbery or rape or murder."

That doesn't mean Karakatsanis thinks people who have been charged with serious crimes like rape or murder should be able to walk free just because they haven't been convicted yet—only that people's fates should be determined as objectively as possible, based not on how rich or poor they are but on whether or not there's evidence that says they ought to be detained.
For now Karakatsanis is focused on taking incremental steps. "I'm looking to find other cities that want to work with us to change their practices without being sued," he said. "But we'll continue to bring lawsuits against cities and counties that insist on keeping these blatantly illegal practices alive."

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

**Teaching Tip 2 (Related to the Ethical Dilemma—"Theranos Is Shutting Down"): "Theranos Founder Elizabeth Holmes Indicted on Fraud Charges"**

For an article addressing the indictment of Theranos founder Elizabeth Holmes, please refer to the following article:

**"Theranos Founder Elizabeth Holmes Indicted on Fraud Charges"**

**https://www.nytimes.com/2018/06/15/health/theranos-elizabeth-holmes-fraud.html**

According to the article, Elizabeth Holmes, the disgraced founder of Theranos, the lab testing company that promised to revolutionize health care, and its former president, Ramesh Balwani, were indicted recently on charges of defrauding investors out of hundreds of millions of dollars as well as deceiving hundreds of patients and doctors.

The criminal charges were the culmination of a rarity in Silicon Valley — federal prosecution of a technology start-up. This one boasted a board stacked with prominent political figures and investors, and a startling valuation of $9 billion just a few years ago. In the fabled universe of overnight billionaires and unicorns, companies with billion-dollar valuations, Ms. Holmes had catapulted herself and her company into the buzz-filled world of "disrupters" by pledging to upend the health industry and give consumers control over their own care.

Both Ms. Holmes and Mr. Balwani pleaded not guilty to charges of wire fraud. Lawyers for Ms. Holmes could not be reached for comment, but a lawyer for Mr. Balwani said in a statement that his client was "innocent and looks forward to clearing his name at trial."

The indictment was filed by the United States attorney's office in San Francisco and came about three months after the Securities and Exchange Commission settled civil fraud charges against Ms. Holmes.

Recently, Theranos also announced that Ms. Holmes, who founded Theranos in 2003 as a 19-year-old Stanford University dropout, stepped down as chief executive. She will be replaced by David Taylor, the company's general counsel, according to a statement from the company, which did not respond to requests for additional comment.

In announcing the indictment, federal prosecutors highlighted the culture of Silicon Valley and the lure of exciting new ventures.

"Investors large and small from around the world are attracted to Silicon Valley by its track record, its talent, and its promise," prosecutors said. "They are also attracted by the fact that behind the innovation and entrepreneurship are rules of law that require honesty, fair play, and transparency."

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

Ms. Holmes and Mr. Balwani were accused of misleading the public and their investors by promoting devices and tests that not only did not work but also endangered lives. Ms. Holmes had drafted a spellbinding sales pitch and relentlessly pursued anyone — including her own employees — who doubted her new blood-testing machines.

“There is one cardinal rule in Silicon Valley that most people never realize,” said Paul Saffo, a longtime technology consultant, “and this is never ever breathe your own exhaust.”

“This is someone who is so deeply self-deluded by her optimism and faith in herself,” he said.

“And delusion is contagious.”

The concept was irresistible: Theranos said it could take a few drops of blood from a simple finger prick to detect everything from H.I.V. to a diabetic’s A1C level. Relying on a proprietary technology to analyze the small quantities of blood, the private company offered a wide array of tests much more cheaply than existing blood tests.

It even partnered with Walgreens, the giant drugstore chain, to open up centers in Arizona and California. Theranos reached a settlement with Walgreens last August.

At its peak, Theranos attracted prominent venture capitalists like Timothy Draper, Ms. Holmes’s former neighbor, and Don Lucas, an early investor in Oracle.

Ms. Holmes, a charismatic executive who wore black turtlenecks and spoke passionately about her aim to remake health care, also assembled a star-studded board, including two former secretaries of state, George P. Shultz and Henry A. Kissinger, as well as two former United States senators. Gen. Jim Mattis, the current secretary of defense, also served on the board. He told Fortune magazine in 2014 that he joined the board because he was impressed by the strength of Theranos’s leadership.

In October 2015, Ms. Holmes appeared on the cover of Inc. magazine, next to the headline “The Next Steve Jobs.”

But a series of articles in The Wall Street Journal exposed the company’s testing as deeply flawed, and her story is now the subject of a book by the articles’ author, John Carreyrou, called “Bad Blood: Secrets and Lies in a Silicon Valley Startup,” and a forthcoming movie.

Wealthy investors collectively lost hundreds of millions of dollars, including Walmart’s Walton family, the media mogul Rupert Murdoch, as well as Betsy DeVos, the secretary of education, and her relatives.

In addition to misleading investors about the promise of the company, federal officials charged the two with encouraging patients and doctors to use the company’s blood tests in spite of knowing they “were likely to contain inaccurate and unreliable results.”

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Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

In 2016, federal regulators barred Ms. Holmes from owning and operating a laboratory for two years. Later that year, Theranos announced it was closing its lab and laying off about 340 employees, or more than 40 percent of its work force.

Last March, the S.E.C. charged Ms. Holmes with widespread fraud, accusing her of exaggerating — even lying — about her technology while raising $700 million from investors.

In announcing the charges, the S.E.C. said that Theranos and Ms. Holmes had agreed to a settlement, with Ms. Holmes agreeing to pay a $500,000 penalty. She and the company did not admit nor deny the allegations. Mr. Balwani did not settle, and planned to fight the allegations.
Theranos's collapse has given pause to venture capitalists, but Lakshman Ramamurthy, a former official with the Food and Drug Administration and now the global regulatory lead at Foundation Medicine, is not certain investors have learned their lesson. Companies like Theranos, which offered little hard evidence that its tests worked to its investors, "have their own rules," he said.

"That hasn't changed."

"The Silicon Valley hubris remains," Mr. Ramamurthy said.

businesslaw

Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

## Chapter Key for McGraw-Hill Education Business Law Texts:

| | Hot Topics | Video Suggestions | Ethical Dilemma | Teaching Tips |
|---|---|---|---|---|
| **Barnes et al., Law for Business** | Chapters 5 and 7 | Chapter 5 | Chapters 3 and 5 | Chapters 3 and 5 |
| **Bennett-Alexander & Hartman, Employment Law for Business** | N/A | N/A | N/A | N/A |
| **Kubasek et al., Dynamic Business Law** | Chapters 6, 7 and 9 | Chapters 6 and 7 | Chapters 2 and 7 | Chapters 2 and 7 |
| **Kubasek et al., Dynamic Business Law: The Essentials** | Chapters 1, 6 and 7 | Chapters 1 and 6 | Chapters 2 and 6 | Chapters 2 and 6 |
| **Liuzzo, Essentials of Business Law** | Chapters 3, 4, and 36 | Chapters 3 and 36 | Chapters 2 and 3 | Chapters 2 and 3 |
| **Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment** | Chapters 5 and 7 | Chapter 5 | Chapters 4 and 5 | Chapters 4 and 5 |
| **McAdams et al., Law, Business & Society** | Chapters 4, 7 and 16 | Chapters 4 and 16 | Chapter 2 and 4 | Chapters 2 and 4 |
| **Melvin, The Legal Environment of Business: A Managerial Approach** | Chapters 9, 22 and 25 | Chapters 22 and 25 | Chapters 5 and 22 | Chapters 5 and 22 |
| **Pagnattaro et al., The Legal and Regulatory Environment of Business** | Chapters 10, 12 and 13 | Chapters 12 and 13 | Chapters 2 and 13 | Chapters 2 and 13 |
| **Sukys, Brown, Business Law with UCC Applications** | Chapters 2, 5 and 34 | Chapters 5 and 34 | Chapters 1 and 5 | Chapters 1 and 5 |

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Mc Graw Hill Education

# Proceedings

A monthly newsletter from McGraw-Hill Education

**October 2018** Volume 10, Issue 3

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Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1259722333) *New edition now available!*
Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585)
Kubasek et al., Dynamic Business Law: The Essentials, 4th Edition ©2019 (125991710X) *New edition now available!*
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Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1259917118) *New edition now available!*
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