



February 7, 2018

Register in Chancery
ATTN: Sheila Boyer
500 North King Street, Suite 11600
Wilmington, Delaware 19801
BY FAX: 302-255-2213

2018 FEB 22 P 4: 29
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Re: *Partner Investments, L.P. v. Theranos, CA 2017-1816, CA 2017-0262*

To the Register in Chancery:

I am a journalist and documentary film maker, writing to seek public access to discovery materials in the matter of *Partner Investments, L.P. v. Theranos, CA 2017-1816* and *CA 2017-0262*. The case, which was closed last May, is in the court of Vice Chancellor J. Travis Laster.

By way of introduction: I have directed and produced more than two dozen documentary films, through my company, Jigsaw Productions (<http://www.jigsawprods.com>). My work on an array of public issues has been viewed worldwide, and received significant recognition. One of my films, *Taxi to the Dark Side*, about torture at a U.S. military base in Afghanistan, won the Academy Award for Best Documentary Feature. *Enron: The Smartest Guys in the Room* was nominated for an Oscar. Some of my other projects include *Going Clear: Scientology and the Prison of Belief* and *Mea Maxima Culpa, Silence in the House of God*, about a Milwaukee priest who abused deaf children and the failure of the Catholic Church to stop him. (Both these films were recognized with multiple Emmys and Peabody Awards.) I have often explored complex business issues, which are the subject of my six-part series recently released on Netflix, titled "Dirty Money." This series includes separate hour-long films investigating the Volkswagen diesel-emissions scandal, predatory payday lenders, and illegal money laundering by HSBC.

I am now preparing a feature-length documentary for HBO Films about Theranos. I am writing to seek disclosure of unfiled discovery materials generated during the Theranos litigation before Vice Chancellor Laster. I believe these materials would be invaluable in furthering public understanding of this remarkable story—and my efforts to tell it fully.

In a May 25, 2017 opinion, Vice Chancellor Laster responded to a previous media request from the *Wall Street Journal* by ordering the release of redacted exhibits to court filings, including approximately 200 pages of deposition excerpts. In doing so, he quoted *Matter of Cont'l Ill. Sec. Litig.*, which noted that "the public's right of access to judicial records has been characterized as fundamental to a democratic state."

I am writing now to ask that this critical principle be applied to other discovery in this case, both filed and unfiled. Specifically, I am requesting that all videotaped depositions generated in this matter in the possession of the parties be made public, in both paper and video form.



This litigation has now been closed for more than nine months. However, the issues raised and discussed during the depositions remain of vital public interest. Although a private company, Theranos' operations involved more than \$700 million of investor funds and—even more important—hundreds of thousands of flawed blood tests conducted on American consumers.

For a time, the company and its founder, Elizabeth Holmes, were hailed as business and medical visionaries. Ms. Holmes appeared on the covers of national magazines (including *Fortune* and *Forbes*) and was profiled in the pages of *The New Yorker*; *Time* named her as one of the “100 Most Influential People” of 2015. The publicly traded drugstore giant Walgreens celebrated a \$140-million joint venture with Theranos, establishing more than 40 Theranos-branded blood-testing centers in its Arizona stores. The governor of Arizona cleared the way for this, signing into law special legislation that suspended the requirement that only a physician could order patient blood tests. Theranos was overseen by a board of luminaries, including former Secretaries of State George Schultz and Henry Kissinger, former Senators Sam Nunn and Bill Frist, and General James Mattis, now U.S. Secretary of Defense. As a healthcare company, Theranos was supposed to be subject to tight federal regulatory monitoring.

Despite this multi-layered structure of formal oversight and presumed due diligence, it was the fourth estate – in particular, a journalist named Carreyrou from the *Wall Street Journal* (with the reported aid of a whistleblower from inside the company) – which revealed that Theranos' claims for its “revolutionary” blood-testing technology were false. Theranos, noted the WSJ, wasn't using its heavily promoted “finger-stick” technology for the vast majority of its blood tests – and for a simple reason: The technology didn't work. In relatively short order, the Centers for Medicare and Medicaid Services found deficiencies at Theranos' laboratories that posed an “immediate threat to patient health and safety.” Government regulators revoked the company's laboratory license, and barred Holmes from the blood-testing business for at least two years. In addition, Theranos voided all its patient test results for 2014 and 2015. Walgreens terminated its partnership with Theranos “for cause” and sued the company. The Justice Department and the Securities and Exchange Commission launched investigations that continue today.

How could this happen? How could all these accomplished individuals, formal business structures and regulatory systems fail to safeguard the public? Why was it left to a single journalist to expose the problem?

These questions are central to the story my team and I are seeking to understand—and present to a national audience. It is a complex and important tale. Telling it properly necessarily requires the fullest possible access to the perspectives of all concerned—to all sides of the story. Much of that, we believe, lies in the videotaped depositions taken in this case, where lawyers asked these very questions and the essential players in the troubling events surrounding the company—those with direct knowledge—were forced to respond.

If ever the presumption of openness should govern, it is here. The records we are seeking are central to understanding the legal dispute—who did what and why; how systems and safeguards failed. And the public interest is great. As I write this letter, Theranos remains in business, seeking to return to the public healthcare marketplace after securing \$100 million in new debt financing from a private equity firm. Ms. Holmes still runs the business, as CEO.



On the other side of the balancing test, the potential harm of disclosure is minimal. As Vice Chancellor Laster's May 2017 order notes, Theranos had failed to show "good cause to maintain the confidentiality of any of the material in the Deposition Excerpts." That order spelled out a few potential justified redactions in documents, but many of those concerns have been rendered moot by the passage of time. Any small passages in the complete depositions that meet the high burden for redaction can be readily addressed.

I am asking here for the release, in full, of all videotaped depositions taken in this case. This release would not be burdensome; the materials are readily accessible from the attorneys in the case. They have already been collected and made available in electronic form to the lawyers in a pending federal class-action fraud lawsuit against Theranos in the Northern District of California (5:16-cv-06822).

I am requesting public release of the video of these depositions (all of which were professionally taped by experienced court videographers) because my medium for investigative journalism is film. The appearance of individuals, as they respond to questioning, can be as telling as their words. As I noted earlier, I do recognize there may be some small references that require redaction to protect privacy, such as phone numbers, email addresses, or other limited matters. Where that is the case, we will cover all costs for preparation by a professional service of a copy of the video with the necessary audio portions redacted, much as they would be in a paper transcript. (We made identical arrangements with the Securities and Exchange Commission in connection with a videotaped deposition of Steve Jobs, featured prominently in my 2015 documentary about the late Apple CEO.)

As a final argument, I would note that release of the depositions in their entirety will avoid Theranos' previously expressed concern that unsealing of partial excerpts would present a "one-sided" picture that omits "crucial factual details and context." Indeed, this disclosure will assure the fullest possible account of these matters, so clearly—and properly—a subject of widespread public interest.

I can be reached to discuss any of these issues at my office number: 212-352-3010.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "A. Gibney", with a long, sweeping underline that extends to the right.

Alex Gibney

Recipient Information

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Sender Information

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This is a letter request regarding a case from my colleague Alex Gibney to Ms. Sheila Boyer, for the attention of Vice Chancellor Laster.

Please feel free to contact me with any questions regarding this matter at 817-691-3110, or by email, peter.elkind@att.net.

Thank you.

Peter Elkind

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