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Eulogy of an Acquittal: "I am an Innocent Man"

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On 6 June 2024, following a 12-year investigation and three-month trial, Autonomy's former vice-president of finance, Stephen Chamberlain – and former CEO Michael Lynch – were acquitted of all charges in what prosecutors once dubbed California's largest criminal fraud trial ever.

Due to a surreal series of events, the victory was short-lived. On Saturday 17 August 2024, while out for a morning run in Cambridge, England, Mr Chamberlain was fatally struck by a car. At the time, Dr Lynch and his co-lead counsel Chris Morvillo were vacationing in the Mediterranean on Dr Lynch's yacht. On Sunday, I woke up to a text from Chris informing me of the tragic news and broke down crying. As I tried to process what had taken place, Chris' last words to me were "Hug your wife and kids. And say a prayer for Steve and Karen and their family". Hours later, a massive storm hit and sank the yacht.

Chris and his wife, Dr Lynch and a daughter, and others, went down with the yacht.

In total, 500 family and friends attended Steve's funeral. As his casket was carried in, Billy Joel's "I am an Innocent Man" filled the church. The words captured the strength it took for Steve to fight the charges against him and clear his name. This article offers insights into how the Chamberlain and Lynch teams combined to beat the odds and win at trial. But it is also meant to honour Steve Chamberlain for his integrity and grit, to pay respect to my wonderful co-counsel Chris Morvillo, and to pay homage to Dr Lynch and the others who tragically perished.

The setting

The names Hewlett and Packard are nearly synonymous with Silicon Valley and Stanford University. But as the century turned, their iconic hardware company was slipping behind new software and cellular giants in the Valley like Apple, Google, and Facebook. HP hired former SAP chairperson Leo Apotheker to turn that around. In August 2011, HP announced the purchase of the UK's hottest software company, Autonomy, Inc. Shortly after the purchase, however, HP had a change of heart. HP replaced Apotheker with Meg Whitman and began accusing Autonomy's former executives of fraud. So began 12 years of litigation, including

a nine-month civil trial in London, two criminal prosecutions in San Francisco and related litigation. The lengthy litigation climaxed in the 2024 criminal trial of Lynch and Chamberlain.

The criminal allegations and acquittal

In November 2012, HP announced a USD8.8 billion write-down of Autonomy's book value; HP attributed USD5 billion of that amount to fraud. The next month, HP reported that it was making efforts to solicit the Department of Justice (DOJ), the Securities and Exchange Commission (SEC), and UK's Serious Fraud Oice (SFO) to go after former Autonomy executives. In January 2015, the SFO closed its investigation, reporting it had "insuicient evidence for a realistic prospect of conviction". In March 2015, HP filed a civil lawsuit against Lynch and former CFO Sushovan Hussain in London.

In November 2016, the United States Attorney in San Francisco charged Hussain with accounting fraud related to Autonomy's revenue recognition practices. The US Attorney claimed that Hussain and co-conspirators defrauded investors, HP, and the Deloitte accountants. After a nine-week trial before the Honorable Charles R Breyer, a jury convicted Hussain. Judge Breyer sentenced Hussain to five years in prison. His conviction was airmed on appeal.

Emboldened by their victory in Hussain, in November 2018, prosecutors brought similar charges against Lynch and Chamberlain. Several years passed as Lynch fought extradition in London.

The HP civil trial in UK chancery court occurred in 2019 and lasted nine months. Two years later, the chancery judge ruled in HP's favour on liability. The chancery judge still has not ruled on damages.

In the summer of 2023, Lynch was extradited. In March 2024, jury selection began in San Francisco in the criminal trial against Lynch and Chamberlain. The US Attorney's Oice fielded a brilliant team of prosecutors. Lynch was defended by a fantastic team co-led by Chris Morvillo of Clifford Chance and by Reid Weingarten and Brian Heberlig of Steptoe. My team defended Chamberlain.

Judge Breyer described the trial as a "model of co-operation and civility

between the defence and the prosecution". After testimony from 41 witnesses, including Lynch, and two days of closing arguments, the jury found Lynch and Chamberlain not guilty on all counts. The complex trial involved a lot of strategy calls. Here are some of the key ones.

Extradition

Following indictment, Judge Breyer advised Lynch and Chamberlain that the Court would set an unsecured appearance bond if the defendants voluntarily appeared. With colourable arguments that the case belonged in the UK, the defence had to choose whether to fight extradition. Chamberlain waived extradition. He voluntarily appeared, was released on an unsecured appearance bond, and for the next six years pending trial, he travelled freely.

Dr Lynch vigorously fought extradition while subject to bond restrictions in the UK. By fighting extradition, Lynch delayed the US proceedings, allowing him to try the UK civil case. The UK civil case gave the defence a myriad of transcripts of testimony and declarations to later use in the criminal trial. The UK court ruled in favour of the government's request for extradition. That ruling

was airmed on appeal. Upon Lynch's arrival in San Francisco in the summer of 2023, Judge Breyer required him to post a USD100 million bond, be confined to a home with GPS monitoring and use privately paid, 24-hour security guards who reported to the Probation Oice.

Joint defence

This was a case where a joint defence was not obvious; several former Autonomy executives cut deals with the government to avoid the risk of imprisonment. The government offered Chamberlain what most defendants would consider a sweetheart deal. But the offers would require an innocent man to plead guilty, and Steve Chamberlain was not going to do that.

The allegations created the potential for conflicting defences: Lynch would highlight that, as CEO, he relied on the accountants to get the accounting right. Chamberlain would highlight that he was not involved in some of the allegations directed at Lynch. But neither Lynch nor Chamberlain knew of any wrongdoing by the other. Pointing the finger at the other would benefit no one.

The joint defence teams met regularly for over ten years. By the time the trial began, the defence teams aligned their examinations and arguments and built off the themes of each other. Despite the pressures of trial, the teams maintained a coherent, collective strategy. The government was never able to use one defendant's arguments against the other.

Client as part of team

We reviewed every document, interview report and exam outline with our client. From a database in the tens of millions and an exhibit list of over 12,000, each week the government was adding exhibits and identifying hundreds it planned

to use that week with its upcoming witnesses. No one understood the exhibits as well as our client. Every night, Chamberlain reviewed the exhibits into the wee hours of the morning to help us address them. Every weekend we met to review exams. Integrating our client into the defence team was critical to our success.

Foreign depositions

Many potential witnesses lived in the UK. Some had agreements with the US authorities. Few wanted to be bothered by defence attorneys. Because the witnesses we needed would not voluntarily travel to the United States, pursuant to Rule 15 of the Federal Rules of Criminal Procedure, we moved to compel foreign depositions of two Autonomy accountants who had worked with Chamberlain. Once the Rule 15 motion was granted, the UK Central Authority required a "Letter of Request" (sometimes referred to as Letters Rogatory) from Judge Breyer. The UK Central Authority would then serve the Rule 15 order. The prescribed procedure would then require the defence to write out all the questions that it sought to ask the deponent. A UK judge would then put the deponent under oath and proceed to ask the questions in the order they were written. There was no prescribed procedure for follow-up questions. This would have been a cumbersome process and would not have presented well to a jury. Fortunately, once we obtained the Rule 15 court order, and working with the prosecutors, we were able to persuade the witnesses to appear

for normal depositions.

Whether to take Rule 15 depositions is often a tough strategy call. It requires defendants to put on part of their defence before hearing the government's case. Not knowing what the government's case would ultimately look like, we did not even know if some of our questions would prove to be relevant. So, we made clear on the record that we would ask questions that we ourselves might later argue were irrelevant. One benefit of taking depositions was that the witnesses felt less intimidated testifying in a comfortable London conference room than if they had to travel to a foreign country, feel pressured by the government, and appear in a US courtroom with an audience of attorneys, the press, a federal judge and jury. Moreover, once these depositions were complete, counsel for the defence had certain facts "in the bag" and could then adjust the overall defence strategy around such testimony. Knowing that we had locked in good testimony in London made it easier for us to decide to put on a defence case.

Friendly but uncooperative witnesses

As is often the case, many of the government witnesses refused to speak with the defence in advance of their testimony. This even included individuals who had close relationships with the defendants during (and sometimes after) the events at issue. For example, there were multiple auditors at Deloitte who worked closely with Chamberlain during the relevant period. We understood – and elicited on cross-examination – that they believed Chamberlain to be a man of integrity.

Autonomy's Deloitte auditors were critical witnesses. Deloitte cut a deal and had been co-operating with the government for years. But Deloitte counsel refused to let us speak to anyone, even those auditors who were friendly with Chamberlain and felt he did nothing wrong. Due to HP's acquisition of Autonomy, it was HP, not Autonomy's former executives, who purportedly controlled Deloitte's ability to discuss matters related to their audit. As a result, we had no ability to speak with these critical witnesses.

At trial, we tried to use this dichotomy – witnesses who liked and respected Chamberlain but refused to co-operate with his defence team – to our advantage. After establishing that the witnesses refused to meet with us, we nevertheless elicited positive testimony from them. With some, we showed how the government's unequal access to them had shaped their testimony in a manner that slanted towards the government's view of the facts. With others, we showed them documents that the government had not shown them before and obtained admissions that such documents contradicted their prior statements. By taking this soft-impeachment approach, and highlighting the uneven playing field between the defence and the government, we were able to flip them into witnesses who benefitted Chamberlain.

Good faith

Chamberlain developed a robust good-faith defence. The government called several accountants, including some who had been in-house at Autonomy and some from Deloitte. These witnesses testified that they sometimes felt "uncomfortable", sometimes "questioned" and sometimes outright disagreed with the accounting decisions. Even so, they conceded that the accounting

decisions were often tough judgment calls. And they universally conceded that Chamberlain was open and honest with the company's outside auditors. The government witnesses universally testified that they never heard Chamberlain lie and that he never asked them to lie. The auditors stood by their accounting

opinions "based on what they knew at the time". We demonstrated that what they knew was the same as what Chamberlain knew. We did not refute that some of the accounting was "aggressive". But we drew a line between aggressive and improper. By embracing the government witness testimony wherever possible, we avoided having to paint government witnesses as liars.

Judge Breyer granted the defence request for a good-faith instruction as the theory of the defence. The key parts of the instruction included the following language.

The good faith of a defendant is a complete defence to the charges... because good faith is, simply, inconsistent with the intent to defraud alleged in those charges. A person who acts, or causes another to act, on an honestly held belief or opinion is not punishable under this statute merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an error in management does not rise to the level of intent to defraud... The burden of proving good faith does not rest with a defendant because a defendant does not have any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted with the intent to defraud.

During closing, we relied heavily on this jury instruction to hammer the concept of good faith into the minds of the jury. After the trial, jurors advised that this helped simplify the case. Jurors understood that Chamberlain performed his work in good faith.

Experts

In the Hussain case, the government called an accountant who worked as the post-acquisition CFO of HP-Autonomy to summarise all of the alleged accounting fraud, which led to a multi-billion dollar restatement of Autonomy's financials. Between the two trials, the Federal Rules of Evidence changed to require such a witness to be designated as an expert. In the second trial, the defence successfully moved to preclude that witness from providing similar testimony on the basis that the government had not designated him as an expert.

The government instead called an outside, retained expert to quantify the alleged fraudulent accounting. The expert reviewed hundreds of accounting transactions and prepared scores of charts to support a conclusion that hundreds of millions of dollars' worth of accounting decisions were improper

(resulting in HP paying billions of dollars too much to buy Autonomy). The defence objected to the expert's testimony on multiple grounds, including the fact that he had not identified with specificity the documents that he relied on. Though his expert report attached a detailed list of items he relied on to form his opinions, cross-examination revealed that he also relied on witness testimony from prior proceedings and interview reports that had not been disclosed with specificity.

Even more troubling to the defence, the government used the expert as a summary witness to

summarise evidence not before the jury. For example, the expert report concluded that Autonomy should not have recognised revenue on the basis of witness testimony from a prior proceeding. Such evidence was not introduced in this trial due to the government's decision not to call a particular witness or inquire into a particular area. Following the expert's testimony, the defence moved to strike his testimony and moved for a mistrial on the basis that the expert introduced facts not in evidence in violation of the defendant's confrontation clause rights. Judge Breyer denied both motions. But the judge permitted vigorous cross-examination about the fact that the expert was relying on hearsay statements of individuals from whom the jury did not have an opportunity to hear.

The defence case

The government's case lasted nine weeks. The defence case lasted two weeks. The defence case included Chamberlain's two Rule 15 witnesses, a rebuttal accounting expert, a summary witness, an Autonomy board member and Lynch himself.

The defence expert did not get into the micro-details of the scores of accounting decisions. Instead, he focused on flaws in the government expert's methodology and accounting principles. This strategy permitted the defence to be on the offence in attacking clear flaws in the government expert's work without having to defend a slew of different accounting decisions that were made many years ago – some of which the defence conceded were improper if you assumed certain facts were true. The more grey areas that the defence could show, the more easily the defence could show how complex the accounting was and how different accountants could reasonably come to different conclusions.

The defence called Jonathan Bloomer, the former chairperson of the board's Audit Committee. Bloomer had a stellar reputation and brought to life the fact that Autonomy had employed independent, highly skilled professionals to oversee its accounting. Bloomer oversaw Deloitte's audit of Autonomy Finance, was aware of the controversial accounting issues, and found Autonomy's accounting to be reasonable. Tragically, Bloomer and his wife were among those who died on the yacht in August 2024.

Lynch was the last to testify. In the prior UK civil trial, Lynch answered questions of cross-examination by HP's barrister for 21 days. He was a genius who knew the facts better than any lawyer in the courtroom. Chris Morvillo skilfully walked him through the issues in a clear, entertaining manner that helped humanise him. On cross-examination, Lynch kept his cool and gave credible responses. It was the most cogent testimony I have ever witnessed by a defendant.

We prepared our client to take the stand. But given that every government witness testified that Chamberlain had acted in good faith, we asked ourselves: why put a defendant on the witness stand if there is nothing to rebut? And given that the events at issue had taken place 15 years earlier, we were concerned that the government could paint an honest lack of memory about a topic as evasiveness. While there was much Chamberlain could say, there was not much he needed to say. While confident that Chamberlain would testify truthfully and be likeable, we felt the government had not met its burden of proof and did not want to shift the jury's attention away from that. As the trial record already contained overwhelming evidence of Chamberlain's innocence, it was not worth the risk of exposing our client to skilled prosecutors working with 2,000 documents

that dated back 15 years. Finally, because Lynch had testified so persuasively, and his testimony benefitted both defendants, we were content to leave that as the last impression. The relatively quick acquittal validated our decision.

The verdict and post-trial conversation with jurors

After approximately two days of deliberations, the jury returned not guilty verdicts. The defence side of the courtroom erupted in tears of joy and relief. After a battle that lasted a quarter of our client's life, Steve Chamberlain was vindicated.

Judge Breyer invited the jurors to speak with the attorneys. The jurors' questions were interesting: why did we handle certain witnesses aggressively and others with kid gloves? How did we decide whether to have our clients testify? What role did the associate lawyers play during the trial? What took place at the side bars? We asked the jurors what they understood about some of the complex issues and what was important to them. Then the mood got lighter. The jurors said that during breaks, they would discuss the attorney's fashion choices; apparently, they liked Chris Morvillo's glasses and Jonathan Baum's brightly coloured socks. We then left the courtroom and celebrated the liberty that had been restored to our innocent clients. Within two days, our clients were back home with their families in England.

The unfathomable tragic aftermath

Dr Lynch and Steve Chamberlain had their good names restored by a jury of 12 strangers in San Francisco. But these happy moments were short-lived with the tragic deaths on a road near Cambridge and just off the coast of Palermo.

A few days after losing Dr Lynch and Steve, Judge Breyer interrupted a court proceeding to pay special tribute to Chris Morvillo:

"I don't think I have really seen better lawyers on both sides than I did from the government and from the defence than the presentation of this case... [Chris] was one of the finest attorneys to ever have appeared in front of me... how exceptional he was as an advocate; how he carried out his responsibilities in a professional manner in which he exceeded the standards that I have ever seen". We will always remember our clients and our esteemed colleague for the excellence with which they carried out their duties. May they rest in peace. This saga of our trial and the strategic decisions that helped us win is in dedication to the memories of my wonderful client Steve Chamberlain, my brilliant co-counsel Chris Morvillo and all those who believe that our system of justice, though not perfect, can work, and did work, in this case.