Madoff and Belfort – Ike Sorkin

[00:00:06] Today, my podcast guest is Ike Sorkin. The name will be familiar to many of you. Ike has had a long and storied career, starting at the FCC and the Department of Justice, and then later as white collar criminal defense counsel. He's probably best known for representation of two clients, Bernie Madoff and Jordan Belfort. Belfort was played by Leonardo DiCaprio in "The Wolf of Wall Street." Ike, thank you for joining me.

[00:00:30] My pleasure.

[00:00:30] I thought we could approach this by comparing the two defendants that you represented. Their financial crimes differ in nature and in scope. Madoff was the architect of the largest Ponzi scheme in history, and Belfort was responsible for a so-called "pump-and-dump" trading scheme. Can you describe those schemes for those of us who aren't experts in investor fraud?

[00:00:51] They are very, very different. The Ponzi scheme has been around for decades, and it's a very simple scheme. You take money from an individual or an entity, and you promise them exorbitant returns. I don't mean to play up exorbitant, but much higher than the market. What you then do is take that money, go to the next person, make the promise to the next person that you're going to be able to beat the market by a number of percentage points, and you take money from that second person. When it comes time to pay back the first person, you're using the money obtained from the second person, and it keeps going on and on and on. It can go on and on infinitely, as long as the market goes up. When the market goes down and people don't want to give you money, and those who have given you money want their money back — or at least the principal plus all the returns that they've been promised — you're in a lot of trouble because you can't raise the money any longer. With respect to Mr. Madoff — again, I'll emphasize I'm not telling tales out of school, because this has all been written about and discussed — by the time the winter of 2008, principally the late winter, early spring of 2008, when the markets were crashing, the individuals who had given him vast sums of money wanted their money back. They wanted redemptions. The amount of redemptions that he was facing was somewhere slightly north of US$7 billion. That's with a "b." Of course, he did not have US$7 billion to make the redemptions because, quite frankly, he'd given money to B, to C, to D and so forth, on and on and on, and needed to raise more money to keep the ponzi scheme going. He was only able to raise about — I say only about — US$250 million. By the fall of 2008, by then, he thought it was over. He believed it was over. What he then did was confess to his two sons, December 10th, as to what this was about. The two boys then went and told the authorities, and the very next day on December 11th, the authorities, based upon what the sons had told them, went out and got him arrested. So it was all over by then. That's the Ponzi scheme. It's very simple. What he was very successful in doing was playing, for the most part, hard to get. People would come to him, begging him, literally, to take their money because he was getting really tremendous returns compared to the market. The market was returning 3%. He was able to get 10% consistently. So many, many, many institutions and individuals wanted to invest their money with him, and he would, in fact, turn them away in essence saying, "I don't want it. I don't need it." Then finally he would say, "All right. I'll take your money to invest." And then, of course, for the short-term, they were very happy. They were getting great returns. But, of course, they didn't realize in virtually every case that the money they were getting in terms of their returns was coming from other individuals. That's the Ponzi scheme.

[00:04:04] Let me just pause there for a second. Madoff's the criminal here, and I don't want to blame the victims. But was nobody doing any due diligence on his company?

[00:04:12] That's a very good question. Transparency is critical. It's critical in every investment an individual makes, whether it's through a hedge fund, private equity, the market. You've got to have transparency, and you've got to ask questions. With respect to Mr. Madoff, he took the position that, "If you want to know how I'm doing it, you're out. Don't ask me how I'm doing it. I have a very complicated buying program, hedging program, and if you ask me how I'm getting these returns, take your money and go." And people, quite frankly, didn't care. As long as they were making money, they didn't ask questions. So your point is well taken. None of these frauds, if you will, could occur without a certain degree of greed on the part of the investors.

[00:04:59] I know the two schemes are very different, but how does what you've just described compare to what Belfort did?

[00:05:05] Well, what Belfort did was very, very different, but the common denominator with both, in Oakmont, where Belfort was the principal owner, and Madoff Securities is greed. Individuals who invested through Belfort wanted short-term gains. They had views that — we'll call it "instant gratification." They were not in it for the long run, and he was very successful in convincing many, many, many people that if you invest with his firm, you're going to make returns very quickly. The fraud perpetrated by Stratton Oakmont was much different. I'll give you the overview. What Belfort did was, in effect, take companies public. For example, if he took a company that wanted to raise US$25 million, he would take five million shares. He would sell the five million shares at $5 a share and raise, presumably, US$25 million, putting aside costs and underwriting fees and so forth. But what he did, unbeknownst to the regulators, particularly the SEC, was he would sell the stock before it became public to friends with the promise that as soon as the stock began trading publicly, he would buy the stock back through his firm at, let's say, US$6 a share. So if you invested, say 50,000, shares at US$5 a share for an outlay of US$250,000, as soon as the stock became public, he would buy it back for $6 a share, which would be US$300,000, and he would make US$50,000 very quickly. He would then take that stock, and he would put it into the inventory of the firm. So now he is sitting with, in many cases, 60-70% of the public offerings, sitting in his firm. When the stock began to trade publicly, he would then use his sales force — the boiler room salesmen — to call up customers and say that, "This stock is going to go up. This stock is the next Apple. This stock is the next Xerox. This is going to be the next IBM. You really need to get on board now and buy this stock." The promise was that this stock is going to move very quickly, and the reason that was going to move very quickly in price is because he controlled the price. You can control the price of the stock if you control the number of shares, because you can make the stock go up or down based upon the number of shares that you have in the inventory. So if he's sitting with, let's say, three million out of five million shares, he would tell his customers, and his salesforce would tell customers that the stock was trading now at US$6, and in no short time or in a short time, the stock's now US$7. US$7.50. It's US$8. It's US$8.50. So you better get in on the stock now because the stock is moving. But why is the stock moving up? Because he created the price. He controlled the price of the stock. If you control the number of shares out, you can control the price. So he kept moving the price up and telling the salesforce that this is where the stock is going. It's now US$7, US$8, US$9, US$10. And people were buying. And where's that stock coming from that people were buying? From his inventory. Once all of his inventory was sold at ever-increasing prices — US$7, US$8, US$10, US$12, US$15, US$20 — and there's no more stock to sell from his inventory, the price of the stock would collapse. The company would have nothing there, and his firm would have millions and millions of dollars because they sold the stock at ever-increasing prices — which prices were created by Stratton Oakmont. That's the Stratton Oakmont Belfort scheme. Much different than a Ponzi scheme.

[00:09:01] That would seem incredibly visible to the market, if he's doing this repeatedly.

[00:09:08] Well, he took public about 25 different companies, and the short answer is yes. But during the '90s, when he was very successful, there were numerous boiler rooms out there in New York and in Florida. Basically, the scheme was the same. The regulators came in, but it was very difficult for the regulators to understand, particularly the SEC and the FBI, how this was taking place. It wasn't easy to solve. The reason he got caught, Belfort, was not because of stock manipulation, but because of money laundering. If you recall from the movie, he was moving money overseas to his wife's aunt who had a secret Swiss bank account. She was in England, and he got caught money-laundering. Then the FBI was able to figure out, as was the F.C.C., how this was all done. But it wasn't easy to solve.

[00:09:58] I'd like to come back to their guilty pleas and their penalties. But from your perspective, what institutional safeguards broke down to enable both of these schemes to proceed?

[00:10:12] With Mr. Madoff, quite frankly — and I say this with something of a broken heart because I spent five years at the SEC, and five years plus with the U.S. attorney's office, and I'm very fond of the SEC I think they're a great agency, but simply put, they missed the boat. If they had asked Mr. Madoff five different questions when he testified back in the '90s and then in 2006, but certainly going back to the '90s, they would have stopped this in its tracks. The five questions they should have asked was, one: "If you're trading all of these securities in overseas banks, billions of dollars worth of securities, tell us which banks." They had never asked those questions. Secondly: "Where are the securities? You've got all these securities you're buying. Who has custody of these securities, and where are they?" They never went there. A third question that they could have asked and should have asked was, "Whose your outside auditor?" If they had dug a little deeper, they would have discovered his outside auditor was a three-man firm up in a small town north of New York City who, under any circumstance, could not possibly have audited properly Madoff securities. The last question — which is probably the most telling — there is an entity called the Depository Clearing Corporation. That's the company that matches up all the trades in the United States. It's Called the Depository Trust Clearing Corporation, DTCC. By that I mean if someone in Boise, Idaho, is selling 100 shares of General Electric, and those 100 shares are being sold to somebody in New York, what the DTCC does is match up the trades so that every trade is matched up, and there's no mistake, and if there's a mistake, it has to be corrected. They never went to the DTCC and asked for the matching trades. For example, if they'd gone to his firm, they would have seen, on one particular day, let's say 500,000 shares of IBM was bought. Had they gone to the DTCC, they would have seen that there was no seller of that 500,000 shares because it was all paper. It was a created trade. It didn't exist. So they never were able to match it up, and they never tried to, and they never went there. Had they done that — that was the thing that he feared the most, that the SEC would try to match up the trade because there was no "there" there, on the other side of the trade, the counter party. Why that was not done, I can't tell you. Had they done that, this thing would have been stopped in its tracks. As for Belfort and Stratton Oakmont, it was far more complicated. They had to get records. They had to talk to customers. They had to talk to brokers. They didn't know that Belfort and his partner, Porush, were selling stock to their friends secretly and then buying the stock back when the stock began to trade publicly. So it was much more complicated to figure that out. If victims had not been — and I say this sadly — greedy, the Belfort customers were told, "This stock is going to double in a couple of weeks. We know people there. We have inside" — they don't want to say "insider information," but — "We know a lot about the company. This stock is going to double. You better get it now." And people would jump in, and they lost money.

[00:13:35] It's interesting how different the tactics were. Madoff, it sounds like he was the wizard behind the screen, whereas Belfort was the showman.

[00:13:41] Absolutely.

[00:13:42] But those strategies worked. So Belfort pleaded guilty to securities fraud, money laundering and I think a couple of other things and was sentenced to four years in prison.

[00:13:50] That's correct.

[00:13:50] Madoff pleaded guilty to 11 felony counts, also including money laundering, perjury and fraud and was sentenced to 150 years in prison. And he's 79 so that's not looking good. But both left a trail of real financial misery behind them. Do you have the numbers at your fingertips of how much damage their crimes inflicted?

[00:14:10] The trustee in the Madoff case claims — it's been discussed in the press that it was US$165 billion fraud. It was a US$50 billion fraud. There was a US$65 billion fraud. The actual loss — and I'm not minimizing this in any way — was something around US$20 billion. That was the real loss. In "The Wolf of Wall Street," in the Stratton case, the estimated loss was over US$100 million, so it was very small by comparison. It's interesting. Madoff had a much greater impact in the securities world than Stratton Oakmont. Not many people invested in the Stratton Oakmont deals. Certainly, the big hedge funds, the major brokerage firms, they stayed away from the boiler room stocks. Madoff, on the other hand, had institutions, banks, hedge funds, charities all investing with him. It had much greater impact on how the Street treats these types of schemes. With respect to Belfort, he cooperated with the government, and he assisted them. Mr. Madoff couldn't do that. Of course the scope of what Mr. Madoff did — I think the judge in the Madoff case was trying to send a message, and the message was that no one ever came forward to stand up for Mr. Madoff. He had no friends, and the scope of the scheme went back. The government thinks it started in the late '60s. Diana Henriques of The New York Times, who wrote the book "The Wizard of Lies," thinks it started somewhere between '86 and '90, and he has maintained from day one that it started in the early '90s, when there was a bit of a recession. If you recall, Clinton ran on the, "It's the economy, stupid" because George W. Bush, he claimed, was responsible for a weakened economy, and that was one of the reasons he apparently was elected. He claims that in the early '90s, when the markets were doing badly, people came to him, investors, and said, "We want to invest in you, with you. Can you keep the same returns? Can you get the same returns?" To his everlasting regret, he said yes. At that point, according to him, in the early '90s, institutions, charities, individuals began to throw hundreds and hundreds of millions of dollars his way. According to him, he just said, "I can't trade all this. I stop." And he just stopped and didn't do it. That's the position he has maintained from day one. I think in the Madoff case it was much bigger, the scope of it, the impact on institutions, on charities, on investors, brokerage firms, banks, you name it. That certainly was not the case with Jordan Belfort and Stratton Oakmont.

[00:17:03] That all makes sense. I've read a little bit about efforts to get some of the money back to the victims. Can you describe the efforts that have been made in that respect?

[00:17:14] I can't tell you with respect to Belfort. He was fined, I believe, somewhere north of US$100 million. How much of that he has paid back, I can't tell you. He claims that the money he received or was expecting to receive from "The Wolf of Wall Street" was going to go to investors. I don't know anything about that. With respect to Mr. Madoff, the trustee in bankruptcy who pegged the loss at about US$20 billion, apparently has been able to recover somewhere around US$12 billion, of which, however, US$7 billion was from one investor who passed away. So how successful he will be, I don't know. I can tell you that, when it broke, people didn't expect to get any money back. But he's already gotten 50 cents on the dollar, which is really a success because in bankruptcies, if you get 10 cents or 15 cents on the dollar, you're lucky. So he's still plugging away and trying to find more assets. He's got more lawsuits. This would be the trustee in the Madoff case.

[00:18:20] Did they convey to you sincere remorse or remorse that you felt was genuine? Or was it just defensive and justification all the way through.

[00:18:29] That's a fair question. I think, certainly, with Mr. Madoff, he certainly did. He got into this, and he couldn't get out. To this day, I don't believe his two boys — both of whom are dead — and his wife knew anything about this, but he was trapped. And when you're in a Ponzi scheme, if the market doesn't keep going up, you can't get out, and you have to keep going. It becomes self-fulfilling, and he couldn't get out of it. I think he expected that he would be caught. I think he expected that it would all end. I think, when you look at it, that is one of the reasons — I think the principal reason — why he kept his boys away from it. His boys were never permitted to become part of Madoff Securities. In fact, he carried out the scheme on the 17th floor of the building where they were located at, and his boys worked on the 19th floor. He never let the boys come down to the 17th floor. He kept them away.

[00:19:30] It's interesting. I'm certainly not in the business of generating sympathy for Bernie Madoff, but it must be a terrifying way to live because as soon as the market turns, the whole thing collapses and collapses so utterly.

[00:19:43] It was. I think if he's to be given any credit: One, he kept the boys out of it, and two, I think, from a legal standpoint, we could have kept him out of jail for another year. We were able to keep him out of jail through three magistrate judges, I believe, or four magistrate judges kept him out on our request. We litigated it. A federal district court judge kept him out. So we were successful in keeping him out of jail. The government wanted us to remand him before his pleading guilty. To his credit, knowing full well that we could have kept him out for another year and then pleaded guilty, he decided that it was in the best interests of his boys and his wife to plead guilty when he did, because once he pleaded guilty, the helicopters disappeared. The satellite dishes disappeared. The reporters hanging around his co-op all day 24/7 disappeared, and it had an enormous impact, a negative impact, on his wife. She couldn't walk out of the co-op and get a cup of coffee without being followed by photographers and reporters. She couldn't get on the subway where her picture was taken, and he takes credit, says, "I can't put her through this. I'm going to plead guilty and put it behind me." The day he pleaded guilty and was remanded to jail, all that ended, and she was at least able to have some anonymity.

[00:21:04] I'm curious whether you were afraid for his safety before he was taken into custody. He ruined a lot of lives and undermined an extraordinary number of organization, and I know there was just incredible anger at the time, understandably. Were you concerned for his safety?

[00:21:24] We were very much concerned for his safety. We had a security detail with him. He was protected 24/7 in his co-op. We were also concerned for his wife's well-being. She was under enormous pressure, and as I said, one of the reasons that he pleaded was to take the pressure off his wife, even though we think we could have kept him out longer. So the answer is, yes. For Belfort — you asked Belfort — it was one big lark. It had to end at some point in time when it just got overboard. If you saw the movie, it got crazy, and they just couldn't keep up with everything they were doing between the drugs, between the women, between the regulators. It just was a lark, which is probably the wrong way to put it.

[00:22:15] So can I ask you about your own role in this? I know that you were the subject of a lot of personal abuse for representing these clients, particularly Madoff. There was a death threat that required the intervention of the FBI. I wanted to give you a chance to address that hostility.

[00:22:31] I'm glad you asked that question because I received e-mails, which I will not repeat to you, because you're going to have many women who I'm sure are going to hear this podcast, and they weren't very nice. I was not bothered at all by the virulent e-mails. There was one e-mail that said the guy's deepest regret is that the entire Sorkin family didn't die in the Nazi death camps. There was another e-mail that was cursing away at me for representing Madoff. Many, many anti-Semitic e-mails, some death threats. I was less worried — in fact, I can't say I was worried — about the anti-semitic stuff or the death threats. What bothered me the most, and to this day it bothers me, is that I received emails from people who didn't understand the role of a defense lawyer.

[00:23:23] Or the Sixth Amendment, constitutional right to counsel, presumably.

[00:23:27] You're absolutely right. There were people who were writing and saying, "How can you represent a crook? How can you represent someone this evil?" I remember one fellow wrote me an email, and I wrote back to him. I stopped with the e-mails. There were so many of them. I said, "Before you go to bed at night, read the Constitution and the Bill of Rights." And he wrote back and said something to the effect like, "I knew you'd use that as a defense."

[00:23:52] You're in good company.

[00:23:53] Oh, yeah. Let me tell you. To some I quoted, I said, "John Adams, our second president, represented British soldiers in 1770 who fired on colonists, and he wasn't a very popular guy either." Edward Bennett Williams, I use as an example, who was a great, great trial lawyer of the last century, represented Jimmy Hoffa and Vito Genovese. Vito Genovese, allegedly, was responsible for bringing heroin into the United States from Asia and then through France and so on. The Genovese crime family is named after him. So I said, "If you have John Adams and Edward Bennett Williams representing those types of individuals, it's certainly appropriate for me to represent Bernie Madoff." I think it had some impact, but it's still very disturbing that the American public really doesn't understand the role we play. Now, of course, if any one of those people get arrested and thrown in jail, the first person they are going to call is a lawyer. But that doesn't register with them. That that was the most disturbing part of it.

[00:24:57] One of the things that's surprising about that is I think the American public really does understand that the most horrifying sorts of murderers are entitled to lawyers, and somehow the world of white collar crime is perceived differently. In some respects, it gets a veneer of greater respectability, but in this respect, it seems as if they should have been left to their own devices, which is surprising. The hostility is understandable, but let's directed it at the criminals, not their counsel.

[00:25:24] That's the role we play, and it's unfortunate that defense lawyers and unfortunately even more so today that the judiciary is getting pounded, which is terrible.

[00:25:35] Absolutely. So thank you so much for talking to me. Is there anything you'd like to add, anything I didn't touch? These are these are stories that spend years and years and hundreds, if not thousands, of newspaper articles. But just from your personal perspective?

[00:25:48] Well, my personal perspective is that by the time I got to see Mr. Madoff, he'd already confessed. I was in Washington, D.C. at the time. I came back, and he'd already confessed to the FBI. So there was nothing that could be done up to that point. With respect to Mr. Belfort, I saw him in 1989, when he was first — and I've known Mr. Madoff since the '80s — saw Mr. Belfort in '89 when he was just starting his business, and I essentially told him, "If you want to do it the right way, this is what you have to do." He disappeared for two or three years until I discovered he was under investigation by the SEC, and I get a call from him one day and he says, "I need to talk to you." I said, "About what?" "Well, I need you to represent me." I said, "Where have you been?" Those were not the words I used, but they were a little cruder. He says, "Well, you scared me when I came in." I said, "I intended to scare you because you've got some problems." So I came in, and I continued to represent him. His plea of guilty was handled by two very good lawyers, Nick De Feis and Greg O'Connell. I had left private practice to go to Wall Street. At the time it was another place. They handled the plea, and he's out there. He served some time but he cooperated. They did a very good job.

[00:26:59] Thank you for sharing the firsthand story with us.

[00:27:02] You're very welcome. Thank you.