

Interview: Bernie Madoff Faces Trial

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With Kendall Coffey
CNBC

Editor's note: Kendall Coffey is a former U.S. Attorney in Miami, Florida, and a frequent guest legal analyst .

Donny Deutsch: Okay, we are talking more about the pre-game for Bernie Madoff in court tomorrow with Kendall Coffey, former U.S. Attorney, and Joshua Hochberg, a white-collar defense attorney. Umm, let me start with you, Josh, is there any chance--any chance-- that this man is not in jail after tomorrow's hearing?

Joshua Hochberg: Well, there's always a chance, but I think the presumption is he will be in jail. It changes drastically. He's facing a life sentence if he pleads guilty, and the judge--though the defense will argue that there's clear evidence he's not a flight risk--in view of the life sentence and the fact the he may have assets that nobody may know about, the judge is likely to put him in jail.

Melissa Frances: Okay. Hey, Kendall, what does it mean to you that he may plea without a plea deal?

Kendall Coffey: Well, it means first of all, that the government is holding a line for him--which it should be. It secondly means that this guy has given up, which he should, and is getting nothing, apparently, from the deal. But here's what I think is going on.

Melissa Frances: That's hard to believe.

Kendall Coffey: Hard to believe. I think what he hopes is, when the prosecution against Bernie Madoff ends, that maybe the investigation of the Bernie Madoff fraud will end or slow down. It seems to me that he has to be protecting family, perhaps some friends, and he's hoping this whole thing will start to close down. Once the giant fish is caught they may not look for the other fish.

Donny Deutsch: Kendall, is it fair to say that politically, and from a PR point of view, there is no way the government could --the word plea could be there. That in some way, there was some leniency against him. Is there a possibility, that actually, they have been dealing and that there was an "unofficial" deal in effect to save his family--or whatnot. But it's not being called a "plea". Because the fact that...why would he just be going guilty with no plea whatsoever?

Kendall Coffey: Well, I think the government is not giving him any concessions. There would be such a public uproar if they did anything for a guy who's probably maybe the worst fraudster--and certainly one of the most heartless fraudsters in world history. And

that's why I agree with Josh's comment. This guy is going from the penthouse to the big house tomorrow. It's time that people who can;t sleep because they've lost everything know that this guy isn't sleeping anymore in a luxury apartment.

Joshua Hochberg: He does get one thing out of this. He won't be cooperating with the government. So he won't be debriefed and he won't be helping the government make cases against friends, family, and...

Donny Deutsch: Why do you say that, Josh?

Joshua Hochberg: They can't force him to. It's the same as if he pleaded after the indictment was turned down. He's asking for nothing else. They can't force him to cooperate, so he's not in there trying to get a better sentence.

Melissa Frances: Do you really think that's the case?

Donny Deutsch: How is that possible?

Joshua Hochberg: A defendant doesn't have to cooperate with the government if he accepts that he's guilty of the charges and is willing to do his time.

Melissa Frances: But, Kendall, isn't the flip side of that--doesn't that mean they're going to go after his family as hard as they possibly can--so it makes it seem like--what is the advantage to him of doing that? He's not going to get leniency, and he's not helping out his family. It doesn't seem like that is the strategy he's going after.

Kendall Coffey: He knows there's nothing he can do to save himself from, effectively, a life sentence. He's already confessed to the F-guy. What he's got to be hoping is the spotlight will shift away from Bernie Madoff to plenty of other criminal schemes once Bernie Madoff has pled guilty and is sentenced--and maybe he thinks, in some fashion, he could actually become a witness down the road as some of these other folks get charged at trial where he says, "Look, these people had nothing to do with it; it was all me. It was all me." That's been his scheme from day one. He knows he can't save himself. He's obviously trying to save some other people.

Joshua Hochberg: I think the government gave up on using him as a witness. They charged him with perjury, and that's the end of the story in terms of ever using him as a witness.

Donny Deutsch: Joe, is there a silver lining--certainly none of the victims are going to feel this way--is there a silver lining to Madoff? And at the end of every era, you need the ultimate poster boy that shines the light on the issues with the SEC--that shines the light on the issues with what's going on from a regulatory point of view--and, in a strange way, good will come from this.

Joe Lavorgna: I think the good, from my vantage point, is that people now will do some due diligence, especially on the find-to-fund side. I mean, he certainly really hurt the hedge fund business because people are having a very difficult time raising money. So, at least going forward, some of these fund-to-funds, who really did not do any of their homework-- hopefully that business gets shaken out and becomes a bit more careful with how it proceeds. And people, I think hopefully, will be more discriminating on who they give their money to. So that's probably the one positive, from our vantage point, in terms of capital raising.

Melissa Frances: Josh, what do you think are the odds that his wife gets to keep any piece of this money? Do you think she will end up facing criminal charges, from what you've read?

Joshua Hochberg: I can't tell if she'll face criminal charges. I think the government will aggressively go after any of the money she has. I mean, where did she get the money? Why is she sitting there with millions and millions of dollars? The government has filed for forfeiture, will try to trace the money, and will certainly be aggressive in trying to tie up every single cent that Madoff has.

Donny Deutsch: Kendall, these English banks have got to be shaking in their boots. Who else is probably having a very sleepless night tonight?

Kendall Coffey: Well, there have to be so many people who know that big lawsuits are coming. Plenty of them have already been brought. But given that the magnitude of the loss is \$65 billion- and the relative chump change that anybody's going to be able to find, this case is only beginning with the plea of Bernie Madoff. From the civil side, from the lawsuit side, this is going to be with us for another decade.

Donny Deutsch: Okay, guys, we've got to wrap. Kendall, Josh, thanks.