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## THE MAN WHO SAVED RICHARD SCRUSHY

By John Helyar

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(FORTUNE Magazine) – RICHARD SCRUSHY'S \$2.7 BILLION accounting-fraud trial

looked like a slam-dunk for the prosecution. All five CFOs who had ever reported to the former HealthSouth CEO copped guilty pleas and agreed to testify against him. Ten lesser company officials also pleaded guilty and agreed to testify. Yet the prosecutors threw up 36 airballs, failing to score with a Birmingham, Ala., jury on any of the three dozen counts. What happened? Scrushy's lead attorney, Donald Watkins, would be glad to explain--and to continue the hoops metaphor. "They never expected a hard, full-court press throughout the trial, and that's what they got. It was unrelenting," says Watkins, who put together an unlikely defense team and unleashed it on what he calls the "overconfident" feds. Art Leach was the Designated Objector, contesting prosecutors' questions frequently and knocking them off stride. Jim Parkman was the cross-examiner whose down-home demeanor won over the jury even as he destroyed witnesses' credibility.

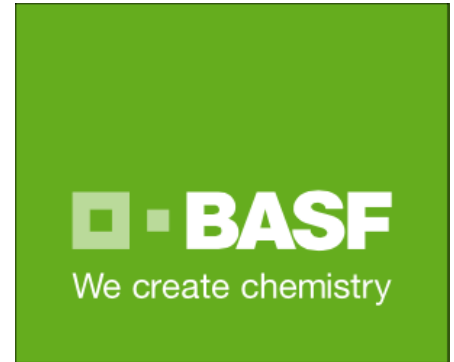
Watkins, of course, was the coach--and, it turns out, the perfect person for the role. His worldview was shaped by his youth in civil-rights-era Montgomery. Though the son of a university president, he knew the indignities of drinking from separate water fountains and the stresses of integration. Now 56, he was one of the first blacks to attend the University of Alabama law school in the 1960s. Even decades later, the emotions and fissures of that era's upheaval profoundly influence Alabama's dynamics--and, as necessary, Watkins's tactics.

And so he deployed a brilliant, if controversial, racial strategy in a city where blacks and whites still, according to Watkins, view certain things very differently. "Black people are more open to receiving their information in the courtroom," he says. "Whites will buy into the media hype put out by the U.S. Attorney and Justice Department for two years...." Watkins tried to maximize the number of black jurors--seven of 12 would be African American. He seemed to be speaking directly to those jurors in his closing argument, comparing the legal travails of Richard Scrushy (who--need it be noted?--is a wealthy white man) to the struggles of blacks in the 1950s and 1960s. Outside the court, the black community was wooed by Scrushy himself, who joined a black church, and preached or donated to other black congregations. Some of them sat behind the defense table at trial in what became known as his "amen corner." Critics saw that as an effort to influence jurors; Watkins asserts it was an unbidden show of support.

Maybe. But Donald Watkins's genius is to play his cases as multidimensional chess. He made his name in Birmingham in the early 1990s by representing Mayor Richard Arrington, then under investigation for corruption. Watkins didn't just defend the city's first black mayor; he went on the offensive, leveling charges of racism. Arrington, who was never charged, put Scrushy together with Watkins even though his old attorney hadn't practiced law since 1998. In recent years Watkins has founded a bank and invested in energy deals. He was bidding (unsuccessfully) for the Anaheim Angels baseball team in 2003 when Arrington urged him to represent Scrushy.

Watkins admits he was greatly aided by two government gaffes. First, it tried the case in Birmingham rather than New York or Washington, D.C. He had many more moves to make on the home court. Two, it assembled an awkward coalition of prosecutors--some from Washington, some from Birmingham--who meandered through eye-glazing accounting and compensation technicalities. Doug Jones, a former U.S. Attorney in Birmingham, believes prosecutors had a "fundamental misunderstanding" of the case. "What the defense understood is that this was a street brawl," he says. (U.S. Attorney Alice Martin counters that hers was a well-presented case and the venue was proper, since the HealthSouth pleas were entered in Birmingham. "You can't run to New York for everything," she says.)

Scrushy still faces a wave of civil litigation, including an SEC suit. Watkins will put a lot less time into this phase of Scrushy's defense--he wants to get back to his business interests--but vows to be no less aggressive: "The government will have to work for every inch of ground." -- John Helyar



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