



BBN photo — Adrienne B. Roth

Criminal trial attorneys Keith Szachacz, left, Kepler Funk, center, and Alan Diamond have represented clients in a number of high-profile cases locally and around the nation, winning a string of victories. They have traveled to far-off places to secure witnesses for cases, including to Brazil, Germany, and Switzerland. While defending clients, they've gained knowledge about the livestock industry, the space shuttle and other interesting areas of commerce. Their law practice — Funk, Szachacz & Diamond — is in Melbourne.

## Funk, Szachacz & Diamond cut wide path as trial lawyers, unique cases

By Ken Datzman

Kepler Funk and Alan Diamond have an odd footnote in NASA's space-shuttle history.

And neither are they aerospace engineers, nor have they ever had anything to do with the space program.

As criminal trial attorneys in Melbourne, they cut a new legal path 15 years ago when they successfully defended Billy T. Thornton, who was a quality-assurance specialist at NASA's Kennedy Space Center and had contractor-inspection oversight for space-shuttle Discovery.

The U.S. government accused Thornton of falsifying documentation of critical parts on Discovery, between October 2002 and May 2003. Discovery was scheduled to be the first shuttle sent back into space following the Columbia accident of Feb. 1, 2003.

He pleaded not guilty in one of the most unusual and one of the most interesting federal cases, which eventually took Funk and Diamond actually inside the space shuttle Discovery at the Vehicle Assembly Building at Kennedy Space Center. They broke new ground in the legal profession as they defended their client.

A 15-year NASA veteran, Thornton faced 166 felony counts of fraud by the U.S. government. He was fired by NASA in September 2003.

This is the only case in American legal history where there's been a prosecution of "fraud involving space

shuttle parts," said Funk, adding, "We interviewed Mr. Thornton and we knew from the first hour of talking to him that we believed he was not only not guilty, but he was also innocent. There is a difference."

Innocent means that you did not commit the crime. Not guilty means that there was not sufficient evidence to determine that you did commit the crime.

"When we talked to him, we could see the passion and devotion he had not only for his job, but also for his country. He had a wife and a child and was a soccer referee," said Funk, who along with Keith Szachacz and

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Diamond run the longtime criminal defense firm Funk, Szachacz & Diamond.

They are all board-certified criminal trial lawyers. Funk is originally from New Jersey, Szachacz is from New York, and Diamond is from Georgia.

Their work has taken them to various states and they have made journeys abroad in defense of clients, including to Brazil, Germany and Switzerland.

"We are fortunate that we make a great team," said Funk. "We work extremely well together. We are not going to be outworked. That's the only way we know how to level the playing field for our clients. Generally, we face an uphill battle representing clients because there is presumption that law enforcement would not arrest somebody if they were not guilty. So we have to chip away at the prosecution's case and produce what we say — prove what we say in court. If you can do that, most American juries are pretty in tune and they can read body language very well."

Szachacz says building "credibility with the jurors is huge. And it starts with jury selection, in my opinion. Questioning the prospective jurors, knowing their names and pronouncing their names correctly, and establishing a relationship early on are all very important in the process. Then, with your opening statement, you have to show the jury immediately that the state didn't tell everything, they are going to learn a lot more. And make sure you produce what you promise."

Funk said while their firm handles a lot of complex cases, the three trial lawyers are able to present the details in an understandable way to the jury.

"The space shuttle case is a great example. That was a complex case, yet we were able to distill the concepts and explain them to the jury. That is certainly an art form. Successful lawyers can tell a story, no matter the complexity," Funk said.

Defense lawyers are entitled to inspect evidence of the case and visit the crime scene, and that's what Funk and Diamond did in defense of Thornton.

"We demanded to see the crime scene — space shuttle Discovery," said Funk, whose firm prides itself on its in-depth research and willingness to travel anywhere to gain information and interview people close to a case they are working on. "So Alan (Diamond) and I went to KSC and crawled around on Discovery, which was pretty unusual."

"Having eyes-on at the Vehicle Assembly Building and the shuttle and the orbiter was a key to Mr. Thornton's defense," said Diamond, a graduate of the University of North Carolina School of Law at Chapel Hill.

Thornton had turned down an offer from the U.S. Attorney's Office to plead guilty to a single count of fraud, said Funk. "He was a man of such conviction and was not going to plead to something he said he did not do, no matter the outcome. He said he didn't do anything wrong and, in the end, the jury agreed" that he had examined the labor of contractors working on Discovery.

The jury in Orlando heard closing arguments and then deliberated just two hours before reaching its not guilty of fraud verdict. One juror told "The Associated Press" she "found NASA's guidelines for inspectors unclear."

Funk, Szachacz & Diamond worked on the case for months. "We spent four to five hours a week, for four straight months, literally talking to rocket scientists," said Funk. "They taught us about the redundancy systems, among other things, on that particular space shuttle. By the time we finished with that case, Alan (Diamond) and I could speak a different language."

The space shuttle Discovery is now on permanent

display at the Smithsonian Institution's National Air and Space Museum just outside Washington, D.C. Discovery was the leader of NASA's space-shuttle fleet, which retired in July 2012 after 30 years of service.

The Funk, Szachacz & Diamond law firm has been at the center of high-profile cases locally and around the nation, representing clients accused of murder, corporate espionage, drug trafficking, arson, fraud, and a host of other indictments. The firm has been able to win victories for its clients.

"We've been fortunate to have cases come our way that have brought us national notoriety," said Szachacz, a University of Florida College of Law graduate who is a railroad expert and published author on the subject.

Funk himself has provided trial analysis for Court TV. One of his cases featured on "Forensic Files" is the subject of the novel "Lipstick and Blood" by John Kearney. Their firm has also been on national programs such as ABC's "20/20" and other such TV shows.

In 2017, their firm represented Randy Patterson and the Anthony Livestock Co. in Anthony, Kan. That livestock company is one of the largest in the nation to buy and sell cattle. Patterson was indicted on multiple charges of wire fraud.

"There was a federal trial at the historic courthouse in Wichita, Kan., and Mr. Patterson and his company were acquitted of everything brought against them," said Funk.

Patterson named a horse after the three attorneys — "Florida Boys," said Diamond. "We now have a horse named after us and he won his maiden race in Arkansas."

There is a poster of Florida Boys on the office wall of Funk, Szachacz & Diamond.

Federal prosecutors had accused the cattle buyer Patterson and his company of wire fraud for allegedly faxing invoices to JBS Five Rivers Cattle Feeding that falsely inflated the amount paid for cattle.

Their firm was asked to consider reviewing Patterson's case and that's how they became involved. "They reached out to our office to see if we would be interested," said Funk. "The three of us from the firm flew to Kansas and met with Mr. Patterson. We interviewed him and decided it was a case we wanted to get involved in."

Funk continued, "The private investigator who originally started working on that case was a former FBI agent who once headed the Wichita bureau office of the FBI. This agent, who is now retired and works as a private investigator, worked on the Oklahoma City, Okla., Bombing case (a domestic terrorist truck bombing on the Alfred P. Murrah Federal Building that killed at least 168 people). He decided he would continue working on Mr. Patterson's case. We have used his services since then."

Funk, Szachacz & Diamond requested the judge dismiss the case after the government rested its case. A federal judge found prosecutors did not present enough evidence at trial for the case to go to jury.

A former president of the Livestock Marketing Association, Patterson was one-week old when his mother first took him to Anthony Downs, a track not far from their home in Anthony, Kan., in 1953.

"I never missed a meeting there from 1953 to 2009," he told "Trainer" magazine. He said he didn't buy his first horse until 1985.

In 2014, Patterson's 6-year-old Moonshine Mullin became the first horse to earn an automatic qualifying berth in that year's Breeders' Cup Classic after scoring a 1-3/4 length victory under Hall-of-Fame jockey Calvin Borel over the favored Will Take Charge in the Stephen Foster Handicap at Churchill Downs.

The three lawyers said they learned a lot about the cattle industry from the Patterson case. "We went to livestock auctions," said Diamond, whose firm handles all types of cases, including DUI. "At one auction, I scratched my nose, and almost bought a cow."

"We took video at a livestock auction in Oklahoma while we were preparing for Mr. Patterson's case," added Funk. "That video was critical to Mr. Patterson being found not guilty."

Having successfully established themselves in the state of Kansas with the Patterson victory, their firm was soon defending another businessman in Wichita, in a case that gained national exposure. Their firm secured a dismissal in a 10-count federal computer fraud indictment against well-known personal-injury attorney Bradley Pistotnik in Wichita.

Pistotnik is known for his commercials in which he rides a bull while advertising that he is an accident attorney. "We finished that case in October 2019," said Funk. "Bradley was the first lawyer in Kansas to advertise on television. He's known as the 'bull attorney.' He is a very successful personal-injury lawyer."

Early in their careers, Funk and Szachacz represented Maria Selma Sodre, a Brazilian National dubbed "The Black Widow." She was accused of first-degree murder of her husband. Funk and Szachacz won her acquittal.

After three years of investigation that included worldwide travel, a jury trial began. Funk advocated for the hypothesis that the victim was not murdered, but drowned. The jury acquitted Sodre of first-degree murder. Szachacz successfully argued to have her released, pending her trial.

The Sodre case took them to a number of states and countries in pursuit of witnesses.

"The unique thing about this case is that in Florida we are allowed to do criminal depositions," said Funk. "In most states, you can't do criminal depositions. I believe Keith and I conducted 103 depositions for this case. We went to Montreal, Canada, and Vancouver, Canada, as well as Phoenix, Ariz., and Charleston, S.C. Then Keith and I and our private investigator went to Brazil to interview and secure witnesses that turned out to be critical witnesses."

They also traveled to Switzerland because Sodre's husband was Swiss and his family still lived in Switzerland. And they went to a factory in Italy that manufactured a pair of sandals that was part of the case and presented as evidence.

"We also had an oceanographer from the Florida Institute of Technology explain to us how tides rise and how tides fall," said Funk.

"The sandals and the tides were very important to the case," added Szachacz. "The way the sandals were positioned on the sand helped convince the jury that she did not harm her husband, that in fact he drowned. She was acquitted."

At one point during their work trying to locate witnesses on behalf of Sodre's defense, Funk and Szachacz "were in the back of a pickup truck riding through areas of Brazil that we did not feel very comfortable with and wondered if we were going to make it back to the United States," said Szachacz.

"That was an extremely scary experience, but it turned out to be critical for our case because the government ended up calling a witness that unbeknownst to the government, Keith and I had already interviewed in Brazil," said Funk.

In 2014, Funk, Szachacz & Diamond represented Brevard businessman Tom Biddix. He and two other men

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in other states were indicted on multiple counts for their alleged roles in a \$32 million fraud against a Federal Communications Commission program designed to provide discounted telephone service to low-income customers.

That discounted phone-service program was nicknamed "Obama phone" and this case was the first of its kind. The program was originally created in 1985 and expanded to cover cellphone service in 2005 under President George W. Bush.

A federal judge in Tampa granted a judgment of acquittal and dismissed the fraud case against Biddix. The investigation was run out of Washington, D.C., but the case was moved because the prosecutor relocated to Tampa.

"We were prepared to go to D.C. to try the case," said Funk. "That's what we had thought from day one. But we tried the case in Tampa and he was acquitted of all 13 federal counts."

Funk, Szachacz & Diamond worked with the famed Washington, D.C., law firm Williams & Connolly on the Biddix case. "We were very fortunate to work alongside Williams & Connolly. It's one of the most-respected law firms in America," said Funk.

Williams & Connolly's clients have included Oliver North, Hillary Clinton, Richard Nixon, and Kathryn Graham of "The Washington Post."

Funk and Szachacz opened their practice Jan. 3, 1996. Diamond, who is a firearms expert and teaches a concealed carry weapons class for people seeking licensing, joined them in 2004.

"It took us more than a year to find the appropriate lawyer to round out our team," said Funk. "We had a bunch of meetings with Alan and he had a lot of meetings with his family. He was 100 percent onboard. You have to have the blessing of your family to do this type of work because it is demanding. He made that commitment and it's been a seamless marriage. We put three lawyers on every case we accept. That's our philosophy."

Funk and Szachacz started their careers working in the Brevard Public Defender's Office. They worked for James "J.R." Russo, who had a long career as the 18th Circuit Public Defender.

"There was great camaraderie in that office working together and collaborating on cases," said Funk.

"J.R. Russo was amazing. Keith and I often had similar takes on cases and strategies, what should be done and what shouldn't be done. Even though we had our own cases, I would provide input on his cases and vice versa."

Funk added, "With the disparity in the resources of the state versus the resources of the Public Defender's Office at that time, we felt we had to put two lawyers on each case in order to compete. That's what we had to do to level the playing field, and it was a great strategy."

The two left that office to start their own private practice. "We both loved working there. We learned a lot from the more experienced lawyers we worked with in that office," said Funk.

Diamond, meanwhile, was a prosecutor. "We had many cases with Alan and saw that he was an extraordinary lawyer in his own right. At the time, Keith and I were gearing up to take on larger federal criminal cases — complex white-collar cases. We felt that we needed more than two lawyers to handle the cases. Alan was a perfect fit for the firm. Fortunately, the success has continued for us in private practice. We are getting requests to work on larger cases," said Funk.

"For the three of us, what it boils down to is that we love what we do every day. And we hate to lose a case," said Szachacz.

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