

# BAR & BENCH

## SALT LAKE COUNTY BAR ASSOCIATION

SALT LAKE COUNTY BAR ASSOCIATION

WINTER 2022

### President's Message

by Mark Kittrell

Salt Lake County Bar Association President

Welcome to the Winter 2022 edition of the Bar & Bench! I have the honor of serving as President of the County Bar this year, and I couldn't be more humbled to lead such an outstanding group of attorneys.

I joined the Executive Committee of the SLCBA in 2008 and serving our members has been a career highlight for me. It's where I learned that things like "networking" can be sharing a few laughs over a drink with members of our legal community. Where CLEs are a great opportunity to speak with judges and experienced attorneys about effective advocacy. Where you learn from the admired practitioners in our community that the practice of law can be a rewarding and fulfilling career.

As the hair grows whiter on my head and chin, the struggle to remain relevant is real. My daughter reminds me of this every day ("Eww, Dad, that music is terrible!" "Dad, what are you wearing?" Sigh). Regardless of my struggles to remain relevant to my daughter, we want to remain relevant to you, your practice, and the community. The world has not only changed over the past few years, but it has been flipped upside down and shaken. As we learned to cope, adjust, and now thrive, we discovered that while it's wonderful to go back to "normal," the

changed world has led us to find better ways of doing things.

So, while we will continue with our popular signature events (our Holiday and Summer Parties, the New Lawyer and Judges Reception, and our Appealapalooza and Trialpalooza CLEs), we will strive to meet you, our members, where you are and aim to create additional spaces to fulfill our mission of being the preeminent social and educational bar organization in Salt Lake County. To that end, look for us to host virtual CLEs during the winter months, as well as some smaller scale in-person social events for our members to unwind and have fun with your colleagues in the Bar. We welcome your feedback on what works, what

doesn't work, what you'd like to see, and what you'd like to never see again. Email your comments to [saltlakecountybar@gmail.com](mailto:saltlakecountybar@gmail.com).

Finally, I'd like to take a moment to mention our efforts to give back to our community. During our August summer party (which will be heading back to its traditional June date in 2023), our organization announced the SLCBA Endowed Scholarship at the SJ Quinney College of Law. Thanks to the efforts of Committee members Kristen Olsen and Blakely Denny, we established a scholarship fund that will



Mark Kittrell

## President's Message

Continued

financially assist students who intend to practice law in Salt Lake County after graduation, with preference given to students who have experienced hardship and have demonstrated resilience and grit in the face of such adversity. Our goal is to raise \$5,000 each year toward that scholarship, and we are currently more than halfway to our goal. Please [consider a donation](#) as you think of your end of the year giving.

From the largest of cases to the smallest of matters: we do hard work and important work. Our hope is that by connecting with the County Bar, we can find ways to have fun with the work that we do. I hope you have enjoyed this holiday season. Happy New Year.

## Justice Tongue

## “The Big Lie”

Dear Justice Tongue,

I watch in utter astonishment/horror at the departure from sanity now characterized as a “post-fact world.” I know you don’t like to touch on politics, especially in this case, as the principal author of this malaise is none other than our former President sponsoring “The Big Lie” and bringing along his acolytes and ignorant followers who subscribe and promote “The Big Lie.” This isn’t just a lie, this is a lie that undercuts the foundations of our democracy. But, that is not my question.

My question concerns whether and to what extent this disdain for the truth might contaminate our legal proceedings, and engender a lack of respect for the duty of candor in our system of justice.

Would you be so kind as to weigh in and provide a “sense of the Court” on this issue.

Anonymous

Dear Anonymous,

You’re right about one thing. This Court does not enjoy weighing in on political issues. In the political arena, the quest for power is all-consuming, and with that power comes corruption as its inseparable handmaiden.

That said, you should sit back and observe with some pride that what has been characterized as “The Big Lie” found no purchase in the halls of justice. Scores of cases were brought to advance the baseless assertion that the 2020 election was stolen, and none found traction when challenged to present material, admissible evidence supporting those baseless claims. In other words, there is no such thing as a “post-fact world” in our system of justice. Popular statements by politicians that “I hear a lot of people saying” or “there can be no doubt” or “the evidence is overwhelming” ring hollow unless accompanied by substantial, material and admissible evidence that meet the strictures of the Rules of Evidence governing what can and cannot be presented in a court of law. And these rules know no political party. This is best demonstrated by the fact that the rejection of baseless political lies by jurists bears no relationship to the party responsible for placing them on the respective courts.

This is not to say that those of us in the judiciary did not harbor substantial concern at the audacity of the misrepresentations brought into judicial proceedings by the defeated presidential candidate. Nevertheless,

the judiciary held, and is holding, and, with the grace of God, will hold against the notion that alternative worlds can be created for the purpose of undermining our democratic principles and traditions for which so much blood and treasure has been sacrificed.

There are outliers that participate in court proceedings with wild unsubstantiated rumors and bizarre theories and conspiracies. Attorneys that trade in such abuses are known; and their credibility significantly diluted in the eyes of the attentive jurists. That does not mean of course that mistakes are not made, but the truth is “we know who they are” and we ascribe to them the low level of credibility that they deserve.

One last thought: There is, apparently, a new and popular conception that in the “science of lying” there are not just white lies (harmless), or black lies (dangerous), but “blue lies.” “Blue lies” are defined as misrepresentations and outright bizarre assertions of conspiracies that attract allegiance from people who do not necessarily believe the lies, but do believe the lies are being told for the benefit of “their tribe.” It cannot escape casual observation that here in America and elsewhere, the world is being polarized with lies, misrepresentations, and blatant attempts to undermine democratic governments.

Such tribalism, however, has no place in our judicial system. In our American system of justice, there are no tribes. All participants take essentially the same oath, and have the same obligations. All attorneys commit themselves to adhere to the Rules of Professional Conduct as an integral part of their duty to their clients irrespective of the outcome of the proceedings.

Very simply, the obligation of every lawyer that appears in court, including those “Big Lie” knuckleheads, is candor before the Court. Anything less, at any time and in any form, is to be condemned and presents great risks to the practitioners, their reputations, and privileges.

Fondly,

Justice J. Learned Tongue

## Judicial Profile

**By: Ruth Hackford-Peer**

Dianna Gibson is cool. She's very cool. I realized when interviewing her for this article that I could sit and listen to her stories all day. It's impressive for any female, minority, first generation college student to go on to law school but even more impressive to become a judge. When you hear Judge Gibson's path to the law, I think you'll be even more impressed.

Judge Gibson was born in Hong Kong to a single mom. She was a toddler when her mom met the American Navy serviceman from Price, Utah who she ultimately married. She feels like she won the lottery when they married because that's how she ended up being raised in Utah.

Judge Gibson translated for her mom beginning at a young age, learned to manage her parents' bills, was the in-house babysitter for her younger siblings and excelled as a student. Doing well in school led her to seek a college degree and ultimately a law degree from the University of Utah.

Judge Gibson has had a storied career that has developed in decade-long chunks. After graduating from the University of Utah's S.J. Quinney College of Law in 1996, Judge Gibson clerked at the Utah Court of Appeals then joined Parsons Behle & Latimer, where she spent about a decade and ultimately became partner. At Parsons, she did trials and appeals in state and federal court and worked on international arbitrations. The most interesting case she worked on was a maritime arbitration before the London Metals Exchange.

She then spent the next decade working in-house with two publicly traded companies. In this role, she had

## Judge Dianna Gibson

the opportunity to do a lot of international travel. On one such trip, she traveled to the middle east to negotiate a joint venture to set up a Saudi-based company. She got off the plane with her male colleagues and was promptly ushered away to the women's only route. While there, she wasn't permitted to drive, required a guide/bodyguard, and wore the traditional attire for women, complete with Abaya and Shayla. Then she entered a law office, removed the layers of covering and—in a room filled entirely with men—used her legal skills to successfully negotiate the deal. While in-house, she

also negotiated the largest commercial contract the company had ever entered – a contract exceeding a billion dollars!

That chapter also lasted about a decade before Judge Gibson transitioned her career once again and took the bench. She says she works as much as a judge as she ever did at the law firm and in-house. She enjoys the interaction with the public and with counsel. It is important to her that everyone who appears before her feels heard and is treated equally.



Judge Dianna Gibson

Judge Gibson's parents were extremely hard workers who made numerous sacrifices to provide for their family. It was at her Judicial Confirmation at the Capitol that her parents realized that the last time they were in the building, they were working as janitors who cleaned the offices. You can imagine how proud her parents are to see their oldest child become a judge. When she is not working, you can find her at home in Sugarhouse, or outside canyoneering, hiking, skiing, or biking.

## Practitioner Profile

Ramzi Hamady

**By: Ruth Hackford-Peer**

Ramzi Hamady knows what its like to feel like he doesn't belong. He also knows what it's like to feel pulled between places, people, and ideas. But recently, Ramzi has felt like he has found a surprising fit in the legal community here in Salt Lake City.

Ramzi spent the first decade of his life living between California and Lebanon. Even now, his mom lives in Beirut. He is bilingual and bicultural. After finishing undergraduate school at the University of California Irvine, he interned for a congresswoman in Washington D.C. but decided not to stay on the east coast. He felt pulled back to the West. After going back to California to work, he started applying to law school. He got accepted into a number of highly ranked law schools, but couldn't afford to go to them. So he found himself in Utah by default. He wasn't particularly tied to the University of Utah and felt at times that he was on a tough strange island without many allies.

I say Ramzi found a "surprising fit" in the law here, because until recently, Ramzi wasn't sure a legal career in Utah was going to be a long-term option for him. Ramzi is a 2017 graduate of SJ Quinney College of Law. Despite doing well in law school, he wouldn't necessarily call law school a good experience for him. Ramzi's community in California was a lot more ethnically diverse. As one of only a few Lebanese people in the legal community here, he felt pretty isolated—especially at first. But he found support in key people at the law school and pushed through.

Then, after graduating from law school, he struggled to find a good fit in Utah. He first worked at a small family law boutique firm where he felt like he got excellent training, but after a year or so the firm dissolved. He then went to another small law group where he learned immigration law and managed their family law practice. While this was a great learning experience, he found that he didn't like managing his own practice without the support of colleagues and a

firm. He then spent over two years at the Utah Juvenile Defender Attorneys ("UJDA") where he learned to be a litigator and trial attorney from his incredible mentors. As his time there was coming to an end, he thought about heading back to California and even filled out the application for the California bar. But ultimately, friends and colleagues he had made through his many legal involvements helped him navigate his way to Ray Quinney & Nebeker ("RQN"), where he now works.



Ramzi Hamady

At RQN Ramzi does primarily family law and criminal defense work. He really likes the work but when asked what he likes the most about his firm he says it's the people. "I work with really good people. The firm doesn't feel like a hierarchy. People value my contribution here." He describes RQN as being full of "humble law nerds" and that makes him fit right in. He's on the recruiting committee there as well and he feels like RQN really values him on that committee, really values having a diverse workforce, and is devoted to hiring top talent. He also really appreciates the opportunity to use his writing skills often, to learn from his remarkably talented mentors and colleagues, and to work in a firm that is

## Ramzi Hamidi

Continued

committed to high quality work.

Ramzi is a creative person. He loves music and creative writing. He is teaching himself to play the guitar and dabbles in piano as well. He met his wife Melissa while in college at the University of California at Irvine. They met at the Royal Cup Café in Long Beach, CA where Ramzi used to perform music and poetry at their open mic nights. He must have made an impression on Melissa because they've now been together almost twelve years and they have a 2 ½ year old daughter, Najwa.

Some people might not think that creativity and law go well together. And Ramzi admits that it can be tough to be in an adversarial mindset all the time, especially as a creative-type. But what he's found is that he can use his creativity and his unique perspective to help solve others' legal problems. This creativity comes in handy when doing legal work, because he's often able to think about a creative solution where more straightforward thinking might not have gotten his clients to a workable and advantageous solution.

Ramzi used to play soccer in college and is still known to do a pick-up game of soccer or basketball, but nowadays he's more content watching sports than playing them. He's clearly deeply committed to equity, inclusion, and diversity, and takes great pride in his work. Ramzi is active in the Utah Minority Bar Association and is a Past President.

Whether you meet him in court, at an open mic, or through a game of pick-up basketball, say hello to Ramzi. You'll find yourself immersed in an amazing conversation with a deep creative thinker. Give yourself a little extra time to get to know him. It'll be worth it for sure.

*“Ramzi is a fierce advocate. In all that he does, he is compassionate, driven, and dedicated. Not only is he an immense asset to our legal community, he’s an asset to the community as a whole. His genuine kindness leaves a positive impression on everyone he meets. I’m honored to have worked with him and privileged to have had the opportunity to get to know him.” — Judge Monica Diaz*

## Dicta

**By: Michael Lehr**

Earlier this year, more than 14 years after Michael W. Thompson was convicted and sent to prison for a crime he did not commit, Third District Court Judge Su Chon granted Thompson's petition for factual innocence under Utah Code § 78B-9-40 and ordered that Thompson be paid approximately \$300,000 for the 7 years he spent in prison. Thompson's exoneration was the result of many years of work by attorneys at the Rocky Mountain Innocence Center, Parr Brown Gee & Loveless, and University of Utah Professor Jensie Anderson.

### Trial

In 2005, Thompson was arrested on two counts of forcible sodomy alleged to have occurred in 2002 while Thompson was staying with family in Salt Lake City. A jury trial was held on March 5-7, 2008. Thompson, a long-haul truck driver, denied committing the sexual misconduct and presented evidence of an alibi consisting of driving logs showing that at the time the alleged sexual misconduct had occurred, he was driving from Salt Lake City to Rapid City, South Dakota and was therefore unable to have committed the sexual misconduct.

Thompson's logs showed that he had made the trip from Salt Lake to Rapid City that day in about 10 hours. An expert called by the State, however, disputed that Thompson could have made the drive in

## Justice? The Michael Thompson Case

just 10 hours and testified that a printout from the trucking software PC Miler showed that the trip would have taken Thompson over 14 hours, not 10 as Thompson had claimed. The expert went on to state that Thompson had "cooked the books" and falsified his logs. Thompson's counsel failed to inquire as to the expert's qualifications or the foundation for the PC Miler report and did not call a rebuttal expert. At the conclusion of trial, the jury convicted Thompson of both counts of forcible sodomy and he was sentenced to two concurrent terms of 5 years to life in prison on May 16 2008.

### Reversal of Conviction

Shortly after arriving in prison, Thompson appealed his conviction based on ineffective assistance of counsel related to the PC Miler report and the State's expert. Thompson's appeal cited his counsel's failure to (1) call a rebuttal expert witness, (2) object to the State's expert witness's qualifications, and (3) challenge the foundation of the PC Miler program relied upon by the State's witness.

After a hearing after on Thompson's appeal, the court found that the State's expert lacked the knowledge, skill and training to qualify as an expert, that the expert did not actually generate the PC Miler report and relied on flawed data and, importantly, that it was factually possible for Thompson to have made the drive from Salt Lake to Rapid City in 10 hours as Thompson had testified and as the logs showed.

After the hearing, the Court of Appeals reversed



Thompson with his family

Courtesy of the Rocky Mountain  
Innocence Center



## Dicta

Thompson's conviction and he was set free in 2014 after 7 serving years in prison. The State decided not to retry Thompson and his case was dismissed.

### **Factual Innocence**

Soon after Thompson's conviction was reversed, Professor Anderson and the Rocky Mountain Innocence Center began investigating Thompson's claim of innocence. Parr Brown eventually joined Thompson's legal team and helped prepare a Petition for Determination of Factual Innocence under Utah Code § 78B-9-401 in March 2017. The factual Innocence statute allows a person who was convicted of a crime to be declared "factually innocent" if that person can show by clear and convincing evidence that they did not: (a) engage in the conduct for which the person was convicted; (b) engage in conduct relating to any lesser-included offenses of the crime for which the person was convicted; or (c) commit any other felony arising out of or reasonably related to the facts supporting the indictment or information upon which the person was convicted. If a person is found to be factually innocent, the statute requires payment for each year spent in prison as a result of the wrongful conviction.

Rachel Wertheimer, one of Thompson's attorneys stated that although Thompson's conviction had been overturned in 2014, it was importation for him to pursue factual innocence to prove that he had not committed the sexual misconduct he was accused of. "More than any potential compensation, Michael's interest in seeking factual innocence was so that he could move on with his life," said Wertheimer.

An evidentiary hearing on Thompson's petition was held from January 31 to February 2, 2022. At the hearing, Thompson, his accuser, and other witnesses again testified about Thompson's alleged sexual misconduct. Importantly, the court also considered

## Justice? The Michael Thompson Case

the new evidence related to the PC Miler software. Based in large part on the evidence that the State's trial expert had used flawed data for his opinion that it would have taken Thompson 14 hours to make the drive from Salt Lake to Rapid City and the evidence that Thompson actually could have made the drive in 10 hours as he testified, the court declared Thompson factually innocent stating that the "evidence weighs heavily in [Thompson]'s favor as to his alibi and credibility."

Shortly after Judge Chon granted Thompson's petition, the State filed an appeal and asked that any payment to Thompson be postponed until the appeal is resolved.

### **"So Meaningful"**

Thompson's case—from arrest, conviction, reversal, to factual innocence—has been pending in Utah Courts for nearly 17 years. In a written statement to University of Utah, the Thompson family stated that the "wheels of justice are slow" and recognized that they had "some amazing people in our corner." Austin Riter, another attorney for Thompson, said that seeing "Michael, with his family's unwavering support, come back from the wreckage of his wrongful incarceration, fight for his exoneration for over five years, and finally prevail and obtain justice was one of the most meaningful experiences of my legal career."

While the State's appeal represents another stage in Thompson's case, Wertheimer and Riter are optimistic that Judge Chon's decision will be affirmed. "Based on Utah's Innocence Statute and the strength of the evidence in Michael's favor, the Utah Court of Appeals should affirm Michael's factual innocence."

## TV Review

By: Brady Rasmussen

### *New Girl*: A Review & Remedy (in Rhyme)



This holiday season, if you find yourself with Covid, the flu, or RSV,  
I suggest the following as an alternative remedy:

During a recent illness bout, I believe I had all three,  
my wife (not a doctor) prescribed watching *New Girl* as a kind-of entertainment IV.

Despite the title, it actually debuted years ago,  
but with 147 episodes total, you'll find a binging flow;

it stars Zooey Deschanel, and here's your holiday link,  
she starred in *Elf*, and is also quite the comedian, I think.

The show is about four roommates livin' in LA,  
hilarity ensues as they live the day-to-day;

think a modern spin of *Friends* if you mixed it with *The League*,  
there's even a dash of *Arrested Development*, minus Ron Howard as a lead.

Though a warning, you may find it immature, a bit offbeat and quirky,  
they play a drinking game named "True American," the rules of which are murky.

Yet, if you find yourself sick on the couch, and generally hatin' life,  
watching *New Girl* is like taking a happy pill - trust me, I got it from my wife.



## Recent Precedents

## Appealalooza

In September the Salt Lake County Bar held our Appealalooza event where practitioners get to sit down over a meal with appellate judges. We consistently hear how much attorneys enjoy this event.



# Recent Precedents

## New Lawyers and Judges Reception

On October 27th, the Salt Lake County Bar celebrated newly minted lawyers and judges at the Ken Garff Red Zone in the Rice Eccles Stadium. Special thanks to our sponsors – Kirkland & Ellis, Parsons Behle & Latimer, Ray Quinney & Nebeker, and Consilio





## e-SCLBA

Follow the Salt Lake County Bar online

Looking for information about our upcoming events? Want to connect with other members, see pictures of our past events, or re-read your favorite editions of *Bar & Bench*? You can do all this and more by following the Salt Lake County Bar Association online!

[@slcba](#)[www.slcba.net](http://www.slcba.net)[Salt Lake County Bar Association](#)[SLCBA\\_utah](#)[@SLCBA1](#)