

# Bar Briefs

## President's Message

### *Bar Association Plans Full Slate of Spring Events*

By Bill Raney

President

The coldest winter in many years is now drawing to a close. Spring brings with it traditional events on our Bar Association schedule.

#### **Doctor/Lawyer Dinner**

Mark your calendars for May 22, 2003, for the annual doctor/lawyer social.

Building on the success of last year's event at the Louise Wells Cameron Art Museum, the Medical Society and the Bar Association have selected the Bellamy Mansion Museum as the venue for this year's event.

The event will feature a cash bar and heavy hors d'oeuvres and is currently being offered only to Association members due to limited space.

We may be able to offer the opportunity for spouses and dates to attend when we determine the number of members who are planning to attend. The event will start at 6:30 p.m.. Make your reservations with John Smith.

#### **Spring Evening Social**

We are also planning a weekday evening social at a downtown venue with hors d'oeuvres and limited free adult beverages.

#### **Luncheon Program**

We are planning a free luncheon meeting with an educational format. Current plans are to have a presentation on the free Casemaker online computer research system available to all members of the North Carolina Bar Association as well as a legislative update from the Bar Association Legislative Council. We may also have a little business of purely local interest.

#### **Sections**

The proposal I floated in the last edition of the newsletter regarding "Sections" of the local Bar to address matters of interest to practitioners in various areas of practice elicited a resounding silence.

The only response I received was from a domestic law practitioner. I expect that most of our members, like me, are reluctant to respond for fear of being saddled with a new "job".

Nonetheless, your Bar Association does remain available as an organizational point for matters of interest to specific areas of practice.

For example, if any of our members have issues that should be discussed and addressed by similar practitioners, an article in "Bar Briefs" is an excellent way to get the ball rolling.

#### **Public Service**

The Young Lawyers Group has set an example for the rest of us by undertaking a service project during Law Week.

Congratulations to Peter Bynum and his group for helping lawyers get some credit for all the individual and collective good that we do for the community.

### *Young Lawyers Volunteer*

By Peter Bynum

Members of the New Hanover County Young Lawyers Division volunteered some otherwise billable time recently to help Airlie Gardens prepare to open its doors for the season. On the morning of Saturday, February 22, seven young lawyers gathered at the gardens with gloves and shovels in hand. Under the wise tutelage and watchful eye of garden curator Rodney Eason, the team planted a trailer-load of new annuals and distributed mulch around the refurbished beds.

Strong thunderstorms in the area held off until the afternoon, leaving the attorneys with sunny and warm conditions in which to work. The garden staff seemed very appreciative of the effort.

Lawyers who participated included Jenna Butler, Hal Kitchen, Alex Dale, Peter Bynum, Cameron Simmons, Kurt Fryar and Robert Jones. The project was undertaken as part of a statewide service day for young North Carolina lawyers.

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## Wilmington's Legal Legacy

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### Daniel Lindsay Russell

#### *Enigma Extraordinaire*

by John W. Smith

While I was recently doing some research about the past judges who had served New Hanover County, I found some historical information which I think the members of our Bar might find interesting. Many of us are familiar with those judges who have served since the time of George Rountree, whose portrait has always adorned our courtroom. But, it took some effort to find out the names and information about those who preceded him. Before the adoption of our Constitution of 1868, our Superior Court Judges were appointed by various governing officials or elected by the legislature. After the Civil War, Congress required North Carolina to adopt a new constitution in order to return to the Union, and this new 1868 constitution reflected the populism of Jacksonian Democracy. One of these changes which endures today was the popular election of almost every public official, including Superior Court Judges.



The new 1868 Constitution created twelve Superior Court districts and required the Chief Justice to divide the twelve new judges into two "Classes." One class, chosen by lot by the Chief Justice, would have eight year terms, and the other would have four year terms. One of the districts was denominated as the Fourth District, and originally included New Hanover, Brunswick, Bladen, Columbus, Robeson, Duplin, and Sampson. Pender at that time was part of New Hanover and was formed out of New Hanover in 1875. Sampson was soon moved to the Fifth District.

Daniel Lindsay Russell was born on Winnabow Plantation on August 7, 1845. He attended UNC-CH and was admitted to practice

law in 1866. His father, Daniel Lindsay Russell Sr., was a delegate from Brunswick County to the 1868 Constitutional Convention. Although the younger Russell had commanded a Confederate Militia after leaving UNC-CH, both father and son had been Unionists in their sentiments, and Russell Sr. had openly and vigorously opposed secession and conscription. Russell Jr. had opposed the popular election of judges as a matter of principle. He was an early critic of the attempts by North Carolina to try to repudiate its debts and state bonds.

Following the adoption of the new Constitution after the war, Daniel Russell Jr., who was 22 years old, was nominated to fill the first Superior Court seat to be filled by popular election, and was elected. He was selected to serve a term beginning July 1, 1868, which was to expire in 1872. His term was later extended by the legislature to expire in 1874.

In October of 1873, when he had been on the bench for about five years and at the age of 28, a case came before him while he was holding a session of court in Wilmington. The civil case is somewhat complicated in its facts, but it basically involved an affray which took place as a group of Blacks sought to attend a performance in the "Opera House" which is now Thalian Hall. The Opera House had been operated by John T. Ford, the same Ford who had operated Ford's Theater in which Lincoln had been assassinated; but the lease was now in the hands of a local proprietor named Pennypacker. Following the trial, Russell filed a written opinion which is worth quoting. He acknowledged that the following language was "*obiter dicta*" and not critical to the decision, but he felt it was necessary to say some things in order to avoid being misunderstood. The decision was published in the local papers and was an issue in subsequent elections. It is important to remember that *Plessy v. Ferguson* would not be decided by the Supreme Court for 23 years in 1896. Here are portions of the lengthy article as reported in the *Wilmington Daily Journal* on October 28, 1873:

"The following opinion, rendered by Judge Russell in the matter of the recent difficulties at the Opera House was filed in the Superior Court yesterday morning:

'...It appears from the evidence that Pennypacker is the proprietor or tenant in possession of a certain public Theatre or Opera House in the city of Wilmington; that defendants, having procured tickets, presented themselves in this Theatre, and attempted to get admission therein; that the prosecutor [proprietor] refused them admittance, upon which they attempted to force their way in...

There was a controversy between these parties as to the right of the defendants, who are men of color, to accommodations and privileges in this theatre equal to those enjoyed by other persons....

'I apprehend that the right of these defendants to precisely the same accommodations and the same treatment as other persons, will not be questioned. The pretension that any person or class may be prevented from resorting to a public place whose doors are open to all but them and denied them only on account of color or race, will not be tolerated by any Court honestly and sincerely desirous of expounding the constitution and laws, according to their true intent and meaning. It may be that the manager of this theatre has the right to separate different classes of persons whose close association is not agreeable to each other – always remembering that he must not discriminate against any; but that the accommodations given, the comfort, style, convenience and all other considerations for which the parties pay their money, shall be the same as to all, or so nearly so as to furnish no substantial cause of complaint by any....'"

As Conservative Democrats began winning elections and filling the legislature, an effort began to get rid of "Scalwags" such as Russell, who had originally run as a candidate for the newly formed Republican party but was now running as an independent. Among the methods used was legislation to return Sampson County to Russell's district and add Onslow and Carteret counties to the district, which shifted the balance of power to a Confederate War Veteran from Sampson County, Col. Allmand A. McKoy. This plan was successful. The judicial districts were reorganized, and Russell was defeated in the elections of 1874.

However, Russell served as New Hanover County Attorney and opened a law practice from his home at 2<sup>nd</sup> and Dock. He remained popular, and in 1879 he was elected to the U.S. Congress on the independent "Greenback" party ticket. After one term, he returned to his law practice. He later ran for and was elected Governor of the State of

North Carolina and served as Governor from 1897 until 1901. His term spanned a turbulent time in North Carolina politics, overlapping the 1898 Wilmington riots. On an occasion when Russell was returning to Raleigh from Wilmington, a mob of "Red Shirts," an armed white-supremacist paramilitary cabal, tried to board his train to lynch him; and the story is that he was saved only because a friend (who may have been a co-conspirator) arrived ahead of the mob to warn and hide the governor.

After his term as governor, Russell practiced law in Wilmington, and in one case he represented the State of South Dakota in a lawsuit to enforce some North Carolina bonds which the state had repudiated. That case was a celebrated trial before the United States Supreme Court, which had original jurisdiction in a case between two sovereign states. Russell won that case. The State of North Carolina was represented by none other than George Rountree, who would become a Superior Court Judge occupying Russell's old seat, and who was the grandfather of our own George Rountree III.

Daniel Russell died in 1908 at Belville Plantation across the river, and is buried in a family grave at Hickory Hill in Onslow County.

You can read the newspaper account of the Opera House case in the microfilm department at our public library; and you can find the Supreme Court trial involving these two luminaries of our local legal profession in *S.D. vs. N.C.*, 192 US 286. There are State Historical Markers near Russell's birthplace in Winnabow and near his gravesite in Onslow County, but I have not seen any acknowledgement of him in New Hanover County. Interesting.

### ***Who was Daniel Lindsay Russell?***

*Student at the University of North Carolina  
Captain in the Confederate Army  
Wilmington Lawyer  
Superior Court Judge  
United States Congressman  
Governor of the State of North Carolina*

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## Bar Association News, Announcements

### *TCAs to Meet Here*

TCA David Michael will be host to the annual meeting of the N.C. Conference of Court Administrators in Wilmington March 11-14. The conference will feature the National Justice Award winner as the keynote speaker on Court Safety and Security. The conference will be at the Hilton Riverside.

### *Mediation Training*

Beason & Ellis Conflict Resolution, LLC, will conduct Mediation Certification Training in Wilmington April 30-May 4, 2003.

The course provides 40 hours of CLE, and includes an ethics component. For more information, contact Robert A. Beason at (919) 419-9979, or [www.beasonellis.com](http://www.beasonellis.com).

### *Old Bar Records Sought*

The New Hanover County Bar Association is looking for minutes

and records from before 1996.

Those who know where these records may be stored or have any copies of records or correspondence of the Association should contact John Smith at 341-4420.

There is a special need for records from 1970 though 1995.

### *Birth Announced*

Maria and Christopher Warren are the proud parents of Nicholas Edgeworth Warren, who was born on January 5, 2003. They will call him "Edge."

### *Criner Appointed*

Sherman L. Criner has been appointed to a three-year term on to the North Carolina Dispute Resolution Commission by Chief Justice I. Beverly Lake.

The Commission certifies mediators in the state's Superior Court and District Court mediation

programs. The Commission is also charged with regulating mediator conduct.

### *Relay for Life*

Tom Morgan and Maria McIntyre are co-captains of the New Hanover County Bar Association team for the American Cancer Society's Relay for Life fund-raiser. The walk-a-thon will be held May 2-3, 2003, at Hoggard High School.

For more information, contact Mr. Morgan at 762-5271 or Ms. McIntyre at 442-1010.

### *Renovations Continue*

The next phase of renovations to the courthouse is expected to involve temporarily closing the main entrance. Entry will be by way of a downstairs detour. The new renovated entrance will include revolving doors and some additional security measures.