

PRESENTATION OF THE PORTRAIT

OF

DAVID MAXWELL BRITT

Associate Justice
Supreme Court of North Carolina
1978 - 1982

April 22, 1996

RECOGNITION OF JUDGE HENRY McKINNON

BY

CHIEF JUSTICE BURLEY B. MITCHELL, JR.

Chief Justice Burley B. Mitchell, Jr. welcomed official and personal guests of the Court. The invocation was pronounced by Dr. T. L. Cashwell, Jr., Pastor Emeritus, Hayes Barton Baptist Church. The Chief Justice then recognized the Britt family and Judge Henry McKinnon, who would make the presentation address to the Court:

On behalf of the members of the Court, I would like to welcome each of you to this ceremony to which we have all looked forward. We honor a man today who not only made an impact on the Supreme Court, but, through his years as a lawyer-legislator and as speaker of the State House of Representatives, made a tremendous impact in restructuring our judicial branch of government. His stature and contributions are evident in the supportive and impressive crowd that has come to honor him.

When I heard who Justice Britt had asked to present remarks to the Court today, I knew we were in for a treat. Judge Henry McKinnon has been a remarkable influence on the judiciary in North Carolina in his own right. A graduate of Duke University's undergraduate and law school programs, Judge McKinnon was appointed to the Superior Court in April of 1958. He served as a Resident Superior Court Judge from Robeson County until the end of October 1980 when he agreed to remain on our list of emergency judges while he spent more time improving his quail hunting skills.

PRESENTATION ADDRESS
BY
HENRY A. MCKINNON, JR.
RETIRED JUDGE,
SUPERIOR COURT OF NORTH CAROLINA

May It Please The Court:

It has been almost forty years since I appeared before this Court, and I had no expectation of ever doing so again, so it is a special privilege for me to be asked to participate in the presentation of the portrait of Justice David M. Britt. The portrait is being presented by a number of the former law clerks of Justice Britt and members of his family, and I am honored to speak in their behalf.

David Maxwell Britt was born on January 3, 1917, in the Town of McDonald in Robeson County, the second of eight children of Dudley H. Britt and Martha Mae Hall Britt. His paternal great-great grandfather came to Robeson County from Johnston County in about 1790 and settled in what later was appropriately named Britts Township. His paternal grandparents moved westward about ten miles to the area that was to become McDonald in about 1886, and at about the same time his maternal grandparents, the Halls, moved there from Cumberland County. His parents grew up and were married in this community.

May it please the court, in preparing for this presentation it has been difficult not to make this a bragging session on Robeson County, and particularly the unique community of McDonald, but those who have known David Britt know of his love for his home place and for his family, and I think it and they deserve some recognition at this time.

The Town of McDonald came into being in about 1900, when a new railroad crossed this rich farming section of Robeson County. A major landowner laid off and sold lots on his land near the store of P. K. McDonald, and the town was created. It was soon incorporated as the Town of McDonald, and for the next twenty years it blossomed. People from the surrounding community built homes there, and in its heyday it boasted of a bank, a drug store, a doctor, two churches, and several mercantile establishments, including one operated by David Britt's father. At its peak it may have had as many as two hundred inhabitants.

The first child of Dudley and Martha Mae Hall Britt, Clifford Bowman, died in infancy, and after David came Neill LaSane, Miriam Hall, now Mrs. Garran Purvis, Arthur Victor, Dudley H., Carl Truett and William

Earl, and they were raised as a close and loving family in McDonald. Grandparents on both sides lived in the community and were a strong influence on David Britt's early life. His parents lived long enough to know of some of his successes in life. Two of his brothers, N. L. and Carl Truett have died, but the others of his siblings are present today.

One thing that makes McDonald unique is that within a period of fifteen years, beginning with David Britt's birth, the town produced six boys who were to become lawyers (four in the Britt family), and four of them became distinguished members of the judiciary. In addition to Justice Britt, these are his brother Earl, Senior United States Judge for the Eastern District, the late Judge James B. McMillan of the United States District Court for the Western District, and Judge Charles G. McLean, retired Chief District Judge of the 16th Judicial District of North Carolina.

In claiming some firsts for Robeson County, McDonald and the Britt family, we can say with pride that David Britt was Robeson County's first native son to become Speaker of the House of Representatives, judge of the Court of Appeals and a justice of the Supreme Court, and that his brother, Earl, was the first native son to be a United States District Judge. In making these claims, it is necessary to explain that while Judge James McMillan's roots and raising were in Robeson County, he happened to be born in Goldsboro, while his mother was visiting at her family's home, and that Justice L. R. Varser, who came to this Court from Robeson, was a native of Gates County.

On a personal note, I might say that I have tried to claim some of this judicial luster of McDonald by marriage, because my wife, Martha, was also born in McDonald, and her father, Dr. E. L. Bowman, the town's first doctor, delivered all of the Britt children, as well as Judge McLean.

On a slightly broader scale, it should be noted that from three early Britt settlers in Robeson County, probably related, have sprung a remarkable number of lawyers. Within this century at least twenty-three have come to the bar from Robeson County bearing the Britt name, along with half a dozen more who are of that blood, and most of them have practiced in the county. Within my memory there have been seven "Lawyer Britts" active there at one time.

The coming of the automobile and good roads, followed by the Great Depression, brought an end to McDonald's days of prosperity,

but it remained as a good place to grow up, and it remains as a community to be claimed with pride as a native home.

David Britt's early years were influenced strongly by his surrounding community, his family, and the economic conditions of his time. He knew the days of the pitcher pump, the privy, and the wood stove. He experienced the hard work of a farm and a family store. He began school in a two-room school where two teachers attempted to teach seven grades, and eventually moved to a new community school with four classrooms and an auditorium. When he began high school in 1929, it involved a twelve-mile ride on a model-T bus to Lumberton. As tough as those times may seem today, they were the norm for rural North Carolina then, and they molded character and a willingness to work hard that have been hallmarks of the career of David Britt.

He entered Wake Forest College in the fall of 1933, at the age of 16, and found another community and relationships that have strongly influenced his life. During college he worked at jobs that were a part of many Wake Forest students' experience then, including such things as working in the kitchen and then the dining room of his boarding house, and being janitor of his fraternity, Alpha Phi Omega. He entered into interfraternity politics and was elected business manager of the year book, with his classmate and good friend James W. Mason, as editor. Later the two served respectively as business manager of the student newspaper and of the student magazine, better paying positions which helped with their college expenses. In 1936 he also made his first entry into "real" politics, when at the request of schoolmate A. Pilston Godwin, he solicited votes at home for Thad Eure in his first run for Secretary of State.

Under the rules of the college and of the State Bar at that time, one could enter law school after two years of college, and David Britt began law school in the fall of 1935, along with his friend, the late beloved Chief Justice Joseph Branch. By attending two summer sessions and monitoring courses in addition to their regular schedule, they completed two years of law study and took the bar examination in the summer of 1937. It is worthy of note that the list of those passing that 1937 bar examination included not only future Justices Branch and Britt, but also United States District Judge Woodrow W. Jones, Court of Appeals Judge James C. Farthing, and Superior Court Judges A. Pilston Godwin and John D. McConnell.

Although David Britt had passed the bar exam, he was still only twenty years old and not eligible for admission to the bar. He needed

only ten semester hours to receive his law degree, but because his brother, N. L., was already at Wake Forest and his sister Miriam was ready for college, and the family's resources were strained, he elected to work that fall in a grocery store in Fairmont and to prepare to open a law office there in January.

In January 1938 David Britt was admitted to the bar and began a solo practice in Fairmont, which then had five lawyers. Like others of that time, his early practice was modest, with his first fee for a court appearance in a local court being \$15.00. In the spring of that year he was encouraged to run for solicitor of the Fairmont District Recorder's Court against an entrenched incumbent, and he engaged in his first personal political campaign. He contacted personally about 75% of the voters in the four townships surrounding Fairmont, and although he lost the race, he made many friends who thereafter became his supporters and clients. In 1940 he was successful in winning this office, and held it for four years, prosecuting the criminal docket of the court, while still being permitted to engage in civil practice.

1941 was a memorable and what must have been a whirlwind year in the life of David Britt. In March he began dating Louise Teague, the daughter of Talmadge S. Teague, former school superintendent and then postmaster of Fairmont, and his wife, Mae Thomas Teague, and by July 16 they were married, beginning a happy marriage now in its fifty-fifth year. By the end of the year they had built and moved into a small home in Fairmont.

To this marriage were born four children: Nancy and Martha Neil, during the war years, and later Mary Louise and David Maxwell Britt, Jr. Young David, Jr. died in 1972 in a tragic car accident, a few days short of his eighteenth birthday. The daughters are present today, with their families, which include six grandchildren and three great-grandchildren of David and Louise Britt.

David Britt's law practice grew rapidly, and by the time I came to the bar in 1947, while only five years separated us in age, I looked on him as a senior member of the Robeson County bar. Although located in Fairmont, his practice was county-wide, and his influence in South Robeson was such that Mr. Horace E. Stacy, Sr., and other older lawyers sometimes jokingly referred to him as "King David". He was recognized as being honest, straightforward and a prodigious worker in whatever he undertook. I have appeared with him in cases, and on the other side, always with pleasure. In fact, my last appearance in this Court, in the spring of 1957, was to seek correction of

grievous errors which he, a Baptist, had persuaded a Baptist judge, Judge Raymond B. Mallard, to commit in a case involving a branch of my Methodist denomination.

He was active in all phases of community life. A lifelong member of the Baptist Church, he served as deacon and Sunday School teacher in Fairmont and later in Raleigh, and as chairman of the Robeson Baptist Association executive committee. He served as chairman of the Fairmont Board of Education, was a District Governor of Rotary International, and he served as Robeson County Democratic Chairman and as a member of the State Democratic Executive Committee.

In 1958 David Britt was elected as one of Robeson's members of the North Carolina House of Representatives, beginning the second phase of his remarkable public career. His interest in the legislature was spurred by his support for efforts of the North Carolina Bar Association toward improvements in the court system, and during the next five sessions of the General Assembly he was a leader in this movement and a principal architect of the dramatic changes brought about in legal and judicial reform.

At the end of the 1959 Session he was named to the General Statutes Commission and the Commission to Reorganize State Government, and in the 1961 Session he was floor manager for the bills sponsored by those Commissions, and a leader in the adoption of the constitutional amendments to restructure the court system. In 1963 he was chairman of the House Appropriations Committee and a member of the Advisory Budget Commission, and was appointed to the Courts Commission, which was to recommend the legislation to implement the court improvements.

In the period between the 1963 and 1965 Sessions David Britt found himself almost in the position of a full-time public servant. His positions on the Advisory Budget Commission and on the Courts Commission meant that there were almost weekly meetings of one or the other to attend, usually on weekends. Fortunately, his brother, now Judge Earl Britt, had joined him in law practice in 1959, and together they were able to maintain a busy practice during this time, with offices in both Fairmont and Lumberton.

The 1965 Session of the General Assembly must have been a most pleasant one for David Britt. It brought him into a new relationship with Governor Dan K. Moore, who was to become his close friend, and into a renewal of an old relationship with Joe Branch, his friend

from Wake Forest days, who was Governor Moore's legislative counsel. During that session David Britt was Chairman of the House Committee on Courts, and with his Senate counterpart, Senator Lindsey Warren, Jr., guided the adoption of legislation proposed by the Courts Commission to create a unified lower court system.

A less pleasant assignment resulting from the 1965 Session was his acceptance of the chairmanship of the study commission to review the controversial "Speaker Ban Law" which had been enacted in 1963. Under Britt's leadership, that Commission was able to recommend a bill vesting in the trustees of state schools the responsibility for appropriate speaker policies, which was passed at a 1965 Special Session, ending the controversy.

During 1966 the Courts Commission again worked regularly on legislation to establish the Court of Appeals, and in June of that year Lindsey Warren and David Britt jointly received the John J. Parker Award, the highest honor given by the North Carolina Bar Association, "in recognition of conspicuous service to the cause of jurisprudence," for their services on the Courts Commission and in the legislature.

Almost from the beginning of the 1965 Session David Britt had been pledged the support of every Democratic member of the House for the speakership in 1967, and at the opening of that Session he was easily elected speaker. The 1967 Session was a smooth one, with Governor Moore having substantial support for most of the programs he advanced. The legislation creating the Court of Appeals was adopted and Speaker Britt was credited with outstanding leadership during the session.

Looking back, the eight and one-half years and five sessions during which David Britt served in the General Assembly may have been the most productive years in legislative history, certainly in this century. They spanned the administrations of Governors Luther H. Hodges, Terry Sanford and Dan K. Moore. In addition to the total restructuring of the courts to create a unified system of justice, there was a major reorganization of state government, and a rewriting of numerous substantive laws, such as the Intestate Succession Act and the Durable Power of Attorney Act. Also, many parts of the programs of each governor's administration, in the areas of public and higher education, roads and economic development were considered and adopted.

Many of the dramatic changes that occurred during this period were the result of long and serious study, involving many groups, and the necessity of resolving differing interests, and David Britt's recognized abilities as a willing and hard worker, as one able to see all sides of a situation and to seek consensus, and as one devoted to law and justice, made him a natural leader in bringing these changes about.

I recall that during that period, while Justice Branch was legislative counsel to Governor Moore, he once told me that one of David Britt's chief assets as a legislative leader was the confidence that lay members of the legislature placed in his knowledge, his objectivity and his fairness in explaining to them the technicalities and the purposes of complicated legal measures, sometimes referred to as "lawyer's bills", that were continually before the legislature.

On the last day of the 1967 Session of the General Assembly Governor Moore announced the appointment of David Britt as one of the six original judges of the newly-created North Carolina Court of Appeals, thus signalling the ending of a distinguished career in one branch of government and the beginning of another.

His judicial career began on August 9, 1967, when he took the oath of office in a ceremonial session of the Superior Court of Robeson County, at which I had the privilege of presiding. The ceremony was attended by Governor Moore, Chief Justice R. Hunt Parker, Lt. Governor Robert W. Scott, newly named Chief Judge of the Court of Appeals Raymond Mallard and a filled courtroom of Judge Britt's friends and relatives. Appropriately, the oath was administered by his close friend of many years, Associate Justice Joseph Branch.

My special memory of that occasion will be appreciated by those who knew Chief Justice Hunt Parker. He was to share the bench with me, and as we were putting on our robes in the judge's chamber I asked him whether it would be appropriate in recognizing special guests to name him or Governor Moore first. His answer was, "Why, of course, the Governor is the chief executive officer of the state." I did name Governor Moore first, and then the Chief Justice, but afterward it occurred to me that, in a judicial setting, his reply had left me with a choice, and I always wondered if that was intentional on his part.

That fall Judge Britt joined with the other five original members of the Court of Appeals in the task of drafting the rules of the new court and preparing to hear the first appeals. At the death of Judge

James C. Farthing in December 1967 Judge Frank M. Parker was named to replace him. In January 1968 the Court heard its first appeals, and the six judges quickly became known as a close-knit, hardworking group of friends who made this new court a real success in the expanded judicial system. In July 1969 three additional judges were appointed to the court, and in 1975 three more were added. Judge Britt was elected without opposition to a new term in 1974. Judge Britt's many opinions written during his service on that court appear in Volumes 1 through 37 of its Reports.

In January 1978 Judge Britt filed for election to a seat on the Supreme Court to fill the vacancy to be created by the approaching retirement of Justice I. Beverly Lake and, with his usual diligent hard work and his many friends across the state, won handily in the primary. In August of that year Justice Lake announced his early retirement, and Governor Hunt appointed the new nominee to succeed him. On August 31, 1978, he was administered the oath of office in this courtroom by Chief Justice Susie Sharp, and began his service as an Associate Justice of this Court. By this early start on his term he had the pleasure of serving for a few months with his good friend, Associate Justice Dan K. Moore, who was also retiring.

Justice Britt's service on this Court spanned a period of exactly four years. In that time he served with two Chief Justices and with ten members of the Court. Of those, only Chief Justice Mitchell is a member of the present Court, and it is most fitting that this presentation is made to the Court over which he presides, and with the honoree present to enjoy the proceedings.

His many opinions, in Volumes 295 through Volume 307, reflect his lifetime dedication to hard work, his broad legal and governmental experience, and his devotion to the law. Not surprisingly, among those he found most interesting were two involving the separation of powers between the executive and legislative branches of government mandated by our Constitution. In *State ex rel. Wallace vs. Bone*, 304 N.C. 1, and in the *Advisory Opinion In Re Separation of Powers*, 305 N.C. 767, he authored the unanimous opinions of this Court that the involvement of members of the legislature or its committees in matters reserved to the executive branch of government was unconstitutional as a violation of the separation of powers doctrine.

Justice Britt retired on August 31, 1982, the fourth anniversary of his coming to the Supreme Court. He had reached the age of sixty-five, and had completed in that month fifteen years as a member of the judiciary. Although he might well have had many more distin-

guished years as a member of the Court, he chose this time because of those circumstances and some health problems he was then experiencing, and decided to enter into another phase of life.

After brief service as an Emergency Justice he joined the law firm of Bailey and Dixon in Raleigh in that privileged status as "Counsel", where he was able to pace his labors while still participating actively in various phases of the firm's practice, and he continues that association. He has continued to be active in many things related to the legal and judicial systems.

Throughout his career Justice Britt has found time to give distinguished services to two of the great loves of his life, beyond his family, the Baptist denomination and Wake Forest University. In addition to positions of leadership in his local church, both in Fairmont and Raleigh, he has served as vice-president and a trustee of the Baptist State Convention, as a trustee of Wake Forest University, as a trustee of Southeastern Baptist Seminary, and as a trustee of Meredith College for sixteen years. Anyone will recognize these offices as working jobs, and most of them were held during the busiest times of his legislative and judicial careers. In 1969 Wake Forest University honored him with the degree of Doctor of Laws.

In seeking one word which best describes the life of David M. Britt I would choose "Devotion". Devotion to his family, his community, and his faith—devotion to his state, to his government and to the rule of law—have been exemplified throughout his career. I would add to that one other characteristic, which has been the means by which he expressed that devotion—Hard Work.

In memoirs which Justice Britt wrote for his family he concluded with those familiar words of the prophet Micah: "What doth the Lord require of thee, but to do justly, to love mercy, and to walk humbly with thy God?" Characteristically, he expressed it this way: "I admonish you not only to work hard, but 'to do justly, to love mercy, and to walk humbly with thy God'".

David Maxwell Britt has lived by those commandments.

The portrait of Justice Britt was painted by Charles Gilbert Kapsner of Little Falls, Minnesota. Mr. Kapsner has studied extensively in Italy, at the International University of Art in Florence and under seasoned artists. He is well known in North Carolina for his work with North Carolina artist Ben Long on frescos in churches in western North Carolina and in the NationsBank building and St. Peter's Catholic Church in Charlotte. The portrait is given by a

group of Justice Britt's former law clerks and by members of his family. It will be unveiled by his youngest granddaughter, Louise Hayes.

**ACCEPTANCE OF JUSTICE BRITT'S PORTRAIT
BY CHIEF JUSTICE MITCHELL**

Thank you Judge McKinnon for sharing memories of Justice Britt and reminding us of the remarkable contributions Justice Britt has made to the Judiciary in North Carolina.

At this point, I would like to call upon Ms. Louise Hayes, the youngest granddaughter of Justice Britt, to come forward and unveil her grandfather's portrait.

It is with pleasure that I, on behalf of the Court, accept this wonderful portrait of Justice David Britt. I instruct the Clerk to, as quickly as possible, have the portrait hung upon the hallways of the Supreme Court. I would also instruct Ralph White, our Reporter, to have the entire contents of this proceeding, including the full presentation of Judge McKinnon, reprinted in the next published volume of the North Carolina Reports.