

Presentation of the Portrait of
BURLEY B. MITCHELL, JR.

Chief Justice
Supreme Court of North Carolina
1995-1999

Associate Justice
Supreme Court of North Carolina
1982-1995

August 10, 2016

OPENING REMARKS
and
RECOGNITION of
FORMER GOVERNOR JAMES B. HUNT, JR.
by
CHIEF JUSTICE MARK MARTIN

The Chief Justice welcomed the guests with the following remarks:

Good afternoon, Ladies and Gentlemen, and thank you Ms. McFarland for the Invocation.

I am pleased to welcome each of you to your Supreme Court on this very special occasion.

As I begin, it is important to note that we have two extraordinary public servants in the courtroom today that have each left an indelible impression on our great State. One is former Governor James B. Hunt, Jr. Governor Hunt, we are thankful for your presence here today.

The other, of course, is the individual we are here to honor – Chief Justice Burley B. Mitchell, Jr.

The presentation of portraits is one of the most beloved traditions here at the Court. The first portrait was presented on March 5, 1888, and is the one directly behind me, that of Chief Justice Thomas Ruffin. The Court takes great pride in continuing this tradition 128 years later. In fact, this Court proudly boasts one of the most complete sets of portraits in the nation. For those of you who may not be familiar with the Court, the portraits in the courtroom are those of former Chief Justices, and the ones in the hall here on the third floor are those of former Associate Justices.

Courts exist to preserve the rule of law, and as such, are bodies of tradition, precedent, and respect for history. Our portrait collection is one small part of this greater tradition, helping us to remember our past and to honor the invaluable service of those who have come before us. Chief Justice Mitchell's portrait will serve as a lasting monument to his great contributions to this Court and to our great State.

Although we will hear more about Chief Justice Mitchell shortly, I would like to take a few moments and share, from my perspective,

about his many accomplishments here at the Court and his legacy in our court system. I admit, however, that I do so at great risk! Chief Justice Mitchell once said that we “have too much work to do for me to spend these precious few moments reflecting on past achievements.”¹ But on an occasion like this, I think I’ll take my chances. After all, Chief, everyone here today is here to recognize your tremendous contributions to and impact on this Court, the legal profession, and all who have had the great privilege to know you and to serve alongside you.

Burley Mitchell was the Chief Justice when I joined this Court over seventeen years ago. He was then, and continues to be today, the standard to which many of us aspire as members of this Court. Upon his retirement from thirty years of public service, he remarked: “I have taken the duties of the Office of Chief Justice very seriously, but I know, that it is the Office I hold that is important and not me as a person. We who hold public offices must remember that the people entrust them to us and that we should return them to the public in better shape than when we took them.”

Chief Justice Mitchell surely exemplified these words. His life’s work has shown him to be the personification of a servant-leader to his family, his community, and his country. Whether serving in the United States Navy 7th Asian Fleet or furthering the important work of this Court, Burley Mitchell has always dedicated himself to the public good.

As a jurist, Chief Justice Mitchell authored 484 appellate opinions for the Court of Appeals and for this Court. Among these opinions is *Leandro v. North Carolina*, the landmark opinion which recognized that our State Constitution grants to its citizens a “right to the privilege of education.” This decision received national attention and is one of many that shows the impact of this Court’s work on the every-day lives of the citizens we serve. It continues to this day to affect the lives of over one and a half million school children in all parts of our state.

Yet, Chief Justice Mitchell left his mark on far more than just the jurisprudence of our state. Under his leadership as Chief Justice, we saw the establishment of the North Carolina Business Court, at a time when there were very few around the country. Chief Justice Mitchell also led in the creation of the Chief Justice’s Commission on Professionalism. This Commission, one of only fifteen in the entire nation, does amazing work to promote civility among the bench and the bar, and public trust

1. Remarks by Chief Justice Burley B. Mitchell, Jr. at the Campbell University Norman Adrian Wiggins School of Law Hooding Ceremony, May 10, 1998.

and confidence in our court system. Just last year, Chief Justice Mitchell received the Chief Justice's Professionalism award for his lifelong commitment to exhibiting professionalism himself and encouraging it in others.

Chief Justice Mitchell led the effort to eliminate the backlog of court cases across the state. He suspended rotation and sent the Superior Court judges back to their home districts, with instructions to resolve cases and eliminate backlogs. Here at the Supreme Court, he and the Justices who served with him endured countless long weeks of oral argument—up to 27 cases during some weeks—to ensure that justice was not delayed or denied in his day. He was truly a leader who led by example, and we all greatly admire and respect Chief Justice Burley Mitchell. Of course, anyone who knows Burley knows of his humility, his compassion, and . . . his sense of humor. There are, indeed, many *other* stories we could tell about this great man.

Burley, I count myself very fortunate to have been able to work with you on the Court, and I am so proud to be a part of this great day. We deeply appreciate your service to the Court system, and to our state, and we are grateful for this opportunity to honor you today.

At this time, it is my pleasure to recognize former Governor James B. Hunt, Jr. and invite him to the podium for remarks.

Thank you, Governor Hunt, for those excellent remarks. They were a fitting tribute to our former colleague.

RECOGNITION of
RETIRED ASSOCIATE JUSTICE WILLIS P. WHICHARD
by
CHIEF JUSTICE MARK MARTIN

Next we recognize Associate Justice Willis Whichard, a former member of this Court, and invite him to the podium for remarks and to present the portrait.

Thank you, Justice Whichard, for your warm recap of Chief Justice Mitchell's remarkable career. It is always a pleasure to have you back at the Court.

**RECOGNITION of
CHIEF JUSTICE BURLEY B. MITCHELL, JR.
by
CHIEF JUSTICE MARK MARTIN**

Chief Justice Mitchell has asked for time for “remarks,” which sounds a lot like an opportunity for rebuttal to me. We are very pleased to welcome the Chief to the podium for remarks.

Thank you, Chief Justice Mitchell.

**ACCEPTANCE of CHIEF JUSTICE MITCHELL'S
PORTRAIT
by
CHIEF JUSTICE MARK MARTIN**

I am delighted to ask Chief Justice Mitchell's granddaughters, Mary Catherine and Margaret Bayard to unveil the portrait of their grandfather.

On behalf of the Supreme Court, we accept this portrait of Chief Justice Mitchell as a part of our collection. We are pleased to have this fine work of art done by a well-known artist, Dean Paules, and we sincerely appreciate the efforts of all who helped to make this presentation possible.

Chief Justice Mitchell's portrait will be hung in this Courtroom and will be a continuous reminder to us and our successors of the great history and traditions of this Court. Additionally, these proceedings will be printed in the North Carolina Reports.

Your participation today makes this ceremony special, and we are honored that all of you could be with us. At the close of this ceremony, Chief Justice Mitchell and his family, as well as the members of this Court, will form a receiving line in the front of the Courtroom. The research assistants will assist you in forming a line to greet the Mitchells and the Justices.

On behalf of the Mitchell family, I invite all of you to a reception in the History Center on the first floor of this building.

If you will, please allow Chief Justice Mitchell and his family, as well as the Court, a few moments to form the receiving line. Again, thank you for being with us today.

REMARKS by GOVERNOR JAMES B. HUNT, JR.

May it please the Court:

I am honored to speak to this Court and this assemblage of the life and service to North Carolina of Chief Justice Burley Mitchell (and of the goodness and steadfastness of his wife, Lou). There are many great jurists who have served in this chamber and are honored with their portraits here. Chief Justice Mitchell's career is surely one of the most distinguished and valuable to our state.

I knew him and his roots from my first days in public life because our fathers were friends and early leaders in the cause of "soil conservation" after Franklin D. Roosevelt committed America to that work in the New Deal.

Burley attended North Carolina's public schools, served in the Navy, and graduated from two of our great public universities.

I first noted his service to our state and his personal determination and "toughness" when he was the District Attorney for the 10th District (Wake Co.) in the mid-1970s. He was the scourge of criminals. At a time when "continuances" were easily obtained and dockets long—a condition too often existing in our criminal courts—District Attorney Burley Mitchell "cleaned up" the docket and speedy trials were held, more criminals were "off the streets," and the people of Wake County were better protected.

He continued protecting us as one of North Carolina's best Secretaries of Crime Control and Public Safety, Chairman of the Governor's Crime Commission, and as Chairman of Governor Jim Martin's Advisory Board on Prisons and Punishment.

A second area of Chief Justice Mitchell's service to North Carolina is in the field of education.

He has been an invaluable member of the North Carolina State University Board of Trustees and the Board of Governors of our University of North Carolina system. And he encouraged innovation in our K-12 public schools as Chairman of the "North Carolina New Schools."

But he made history when he wrote the decision for a unanimous court in *Leandro v. State of N.C.* that all children have a fundamental state constitutional right to the “opportunity to receive a sound basic education.” Chief Justice Mitchell and this court defined a sound basic education in some detail and ruled that the State of North Carolina (*not* local school districts) has the *constitutional* obligation to deliver every child’s *Leandro* right.

The full implementation of this decree is, in the opinion of a large number of North Carolinians, our greatest and most urgent challenge.

We will shortly see the portrait of Justice Mitchell to be hung in this court and meditated on by our State’s lawyers and judges.

Maybe we ought to have a replica of the Chief’s fine portrait hung in the Legislative Building of North Carolina, where all can think of *Leandro* and our “constitutional responsibility” for our children’s and North Carolina’s future.

The third key area of service by Justice Mitchell (and the one we most celebrate here today) is his service as a great jurist. It was my privilege to appoint him to the North Carolina Court of Appeals in 1977, to this Supreme Court in 1982, and as Chief Justice taking office January 3, 1995.

His services on this Court were noted by a strong work ethic, wise decisions, and creative leadership of the entire judicial branch of our state.

But he did more. He created the Chief Justice’s “Commission on Professionalism.” He appointed our state’s first Special Superior Court Judge for Complex Business Cases, he was Chairman of the National Conference of Chief Justices “Committee on Professionalism” and was a member of the American Bar Association’s “Presidential Task Force on Corporate Responsibility.”

Throughout his public career the citizens of North Carolina trusted and felt secure in the wise decisions and leadership of Justice Burley Mitchell.

Indeed, people recognize and honor him in public life as one of our greatest chief justices. And it is my privilege to present him to you today.

REMARKS by WILLIS P. WHICHARD

Burley Bayard Mitchell, Jr., was born in Oxford, North Carolina, to Burley Mitchell, Sr. and Dorothy Ford Champion Mitchell, on December 15, 1940. He grew up in Raleigh, North Carolina, where he attended the public schools. Following service with the United States Navy's 7th Fleet in Asia from 1958-1963, he received degrees from North Carolina State University in 1966 and the University of North Carolina School of Law in 1969.

From his law school graduation in 1969 until his retirement from this Court in 1999, a period of thirty consecutive years, Burley Mitchell was engaged in public service: Assistant Attorney General of North Carolina, 1969-1972; District Attorney for the Tenth Judicial District, 1972-1977; Judge of the North Carolina Court of Appeals, 1977-1979; Secretary of the North Carolina Department of Crime Control and Public Safety, 1979-1982; Associate Justice of the North Carolina Supreme Court, 1982-1994; and Chief Justice of the North Carolina Supreme Court, 1995-1999. In addition to holding these positions, he chaired the Governor's Advisory Board on Prisons and Punishment from 1989-92 and the Governor's Crime Commission from 1977-79. He also served on the Courts Commission, the News Media Administration of Justice Council, and the North Carolina State University Graduate School Board of Advisors.

In his post-judicial life Chief Justice Mitchell has continued to fill a variety of public-service capacities, including service on the North Carolina State University Board of Trustees from 2005-2009 and on the University of North Carolina Board of Governors from 2009-2013.

Extensive public responsibilities notwithstanding, Burley Mitchell has been married to Mary Lou Willett Mitchell for 54 years. The marriage produced two children, David Bayard Mitchell, now deceased, and Dr. Catherine Morris Mitchell Fuentes. The Mitchells have two grandchildren, Mary Catherine Fuentes and Margaret Bayard Fuentes.

Given the limitations on our time, it is appropriate to focus today on Chief Justice Mitchell's Supreme Court years, and particularly the years as Chief Justice. William Bobbitt, the justice for whom I clerked, always refused when asked to select the most important of his opinions. "I'll leave that to history," he would say. I would expect Burley Mitchell to do the same. The man told us something about himself, though, by referring to three old North Carolina cases when he took his oath as

Chief Justice. The cases were Bayard v. Singleton, a 1787 case that established the principle of judicial review in North Carolina sixteen years before John Marshall did it for the country in Marbury v. Madison; Foy v. University of North Carolina, an 1805 case that was the first in the United States to establish modern principles of due process; and State v. Darnell, a 1914 case that struck down racially segregated housing laws at a time when segregation of the races was not only the strong custom but legally sanctioned. By referencing these cases, he was highlighting his commitment to preserving the proper – indeed, essential – role of the judicial branch in our system of government; to according fairness and due process to all litigants appearing before the courts of North Carolina; and to according equal treatment before the law to all such litigants. The references were more than rhetoric. In his near half decade as Chief Justice, he worked actively to fulfill these commitments.

While Chief Justice Mitchell might not want to choose his most important opinions, he has said of his tenure on the bench: “I think I’ve added to North Carolina’s body of law, especially in the area of freedom of expression.” Indeed, he has. Two cases come readily to mind – one a suit against the Salisbury Post, the other a case involving a statute making criminal the distribution of unsigned campaign literature. In the latter he was alone among the seven justices in concluding that the First Amendment rights of free speech and expression trumped the statute, as the United States Supreme Court later held in a case from another state on the identical issue.

He was equally zealous in protecting and preserving other constitutional rights. He once said, “It’s going to be very tempting to give up some rights so people can feel safe, so their children can feel safe. But I don’t trust government, and I’ve been in government for thirty years.”

It is fairly safe to predict that history will remember him for both defining and preserving one particular constitutional right – the right the children of North Carolina have under the state Constitution to “a sound basic education.” Theologians have a concept called “progressive revelation.” The Leandro opinion evolved in the same way for the North Carolina Supreme Court under Chief Justice Mitchell’s leadership. It was not an easy case, but ultimately his eloquent pen came to this conclusion:

An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.

Education, he said, must give students the opportunity to succeed as adults and as citizens.

“It’s one time,” he later said of the opinion, “when I think the mind and the heart were able to work together.” Those of us who have closely observed his years of public service would say it was not the only time a great mind and a great heart worked together to produce a result with long-term potential benefits to the people of North Carolina.

At the beginning of his tenure as Chief Justice, Mitchell said: “We’re restoring the confidence in the court system.” That was indeed his goal, and he made considerable strides toward achieving it. We hear a lot about “education governors.” It is not hyperbole to call Mitchell an “education chief justice,” for it was a significant part of his mission to educate the public about the courts and the legal system.

With his judicial robe now resting easily on the rack, we can identify, briefly, certain themes that emerge from his efforts to restore public confidence in the court system. He was determined to improve court administration. Early in his chief justiceship he temporarily suspended the rotation of superior court judges, assigning them back to their home districts for a vigorous attack on the backlog of cases. And not without effect. Court dockets were reduced considerably during his tenure. His own Court, at the top of the system, was not exempt. In his first year as chief justice, it heard and decided almost twice as many cases as it had in the previous year, and when he left it in September 1999, it had no backlog of unargued cases.

As a part of improving the efficiency of the courts, he was a vigorous advocate with the legislature for adequate funding for the judicial branch. In the process he courageously called a spade a spade. He let legislators know that the prison population had almost doubled while there had been no substantial increase in the number of judges. Failing to provide adequate resources to the courts, and the resulting overload, he said, ensures that the public is frustrated and angry. Even something as seemingly sacrosanct as the Victims Rights Amendments did not escape his expressions of concern. They would become “a false promise,” he said, if the General Assembly did not appropriate sufficient funds to do the job they required. Any call for legislation creating new crimes or substantially increasing punishment for existing crimes would, he told the lawmakers, simply amount to demagoguery if not accompanied by adequate increases in court resources.

Obtaining and retaining good judges was a part of his program for restoring the public's confidence in the courts. He thus, throughout his chief justiceship and even before it, championed the merit selection of judges. "Judges should not be representatives of the people," he said with candor, "we are representatives of the law." The partisan election of judges was, in his view, moving us toward a system in which judges are at least sorely tempted to be representatives of the people rather than servants of the law. He perceived the trend and its danger vividly, and he tried to stop it. Some efforts, he would undoubtedly and sadly concede, take longer than others.

He recognized, too, that jurors have an important role in determining public confidence in the system. He therefore started the annual observance of Juror Appreciation Month in North Carolina – "to commemorate the role of jurors under our democratic system" and "to better educate North Carolinians about the importance of jury service under our democratic system and to praise the efforts of the many citizens who fulfill their civic responsibility and serve on juries." "The jury becomes the state of North Carolina," he said: "We give them the authority to speak for seven million people." It thus was appropriate that their fellow citizens should recognize them for their service.

The problem of substance abuse had his constant attention as chief justice. He knew from his experience as a district attorney that it was involved in the overwhelming majority of the crimes committed in North Carolina. He knew from his association with other lawyers that many of them were its victims as well. The State Bar's PALS program had his vigorous and active support. He urged lawyer participation in Barcares, a program providing professional and personal counseling services for lawyers around the calendar and around the clock. His last day as chief justice found him appealing to the editors of the News and Observer for more coverage of substance abuse problems, which fuel crime and ruin lives, and their possible solutions.

The final plank in his effort to restore confidence in the courts was an active and abiding concern for professionalism. He frequently quoted Roscoe Pound as follows:

There is much more in a profession than a traditionally dignified calling. The term refers to a group...pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood.

With equal frequency, he quoted Louis Brandeis:

Some men buy diamonds and rare works of art, others delight in automobiles or in yachts. My luxury is to invest my surplus effort in the pleasure of taking up a problem and solving...it for the people without receiving any compensation.... I have only one life, and it is short enough. Why waste it on the things I don't want most? I don't want money or property most. I want to be free.

In the spirit of Pound and Brandeis, Chief Justice Mitchell called on his profession to both be and give its best. He urged his new clerks to read Harper Lee's novel, To Kill a Mockingbird, to gain a notion of what a lawyer is supposed to be. His clerks learned to model themselves after Atticus Finch, the dignified attorney in the novel who practiced his profession with honor and with eloquent wisdom. But in the process, they were also, perhaps unconsciously, learning to model themselves after Mitchell himself.

Near the end of his tenure, Chief Justice Mitchell appointed a Commission on Professionalism and defined professionalism as "doing what's right by the public." It is doing what you should do," he said, "not just what you must do in order to keep your license." "We are going to make people treat each other more decently and treat their clients better," he concluded. Time has proven him right, despite the undeniable fact of lingering concerns in this area.

Some years ago the Joint Report of the American Association of Law Schools and the American Bar Association said this:

A profession, to be worthy of the name, must inculcate in its members a strong sense of the specific obligations that attach to their calling. One who undertakes the practice of a profession cannot rest content with the faithful discharge of duties assigned to him by others. This work must find its direction within a larger frame. All that he does must evidence a dedication not merely to a specific assignment, but to the enduring ideals of his vocation. Only such a dedication will enable him to reconcile fidelity to those he serves with an equal fidelity to an office that must at all times rise above the involvements of individual interest.

Burley Mitchell's career in public service has epitomized the ideals thus expressed. He has evidenced a dedication to the enduring ideals of his vocation.

Benjamin Cardozo said membership in the bar is a privilege burdened with conditions. Chief Justice Mitchell has honored the privilege by recognizing and honoring its conditions. As a consequence, he will, as Governor Hunt said upon the announcement of his retirement, "certainly go down in history as one of our greatest Chief Justices."

It should be said that all along the way he has kept his sense of humor about himself. Michelle Rippon accurately described him some years ago as "humorously irreverent." An example from soon after he left the Court proved that the high office of chief justice did not cause him to lose that quality. You perhaps saw his picture with a bulldog in the Womble Carlyle announcement that he had joined the firm. The firm billed him as the "Top Dog [with] New Turf." At the time a Court employee chided him for using a bulldog in the ad rather than her favorite kind of dog, a golden retriever. His response was: "Oh, ... that dog is a professional model. He's getting paid a lot more than I am."

I hope you will tolerate a brief personal recollection, one which also reflects our subject's sense of humor. I am between six and seven months older than Chief Justice Mitchell. When we were on the Court together, and at times since, from May to December he would from time to time tease me about my old age, frail health, and rapidly failing and fading persona. Once his birthday arrived in December, however, we were again the same age, and the teasing ceased – but only until my birthday the next May, when it resumed. For some reason that has not occurred this year. I strongly suspect it is only because he has known that I would have the podium for this auspicious occasion at which he does not get rebuttal time. Further, unlike our customary banter on the subject, these remarks will enter the permanent records of this Court. Once they are completed, however, I will not be shocked if the friendly banter about my old age and rapid decline resumes, to again cease for a time on December 15th.

In addition to maintaining a sense of humor, it should be said that all along the way Chief Justice Mitchell kept his essential humanity intact. Those of us who were privileged to serve with him watched him participate in all the events of the Court's 175th anniversary in 1994 with outward equanimity while inwardly experiencing, inevitably, the turmoil that having a seriously ill family member would cause anyone. We also

walked out of the building with him after long, hard days, knowing that his day was not over, for he was on his way to visit his elderly mother. We knew that his assistant could not have a baby, christen a child, or give one a birthday party without him coming. We knew that he spent a portion of Thanksgiving Day serving food to the homeless. He was an excellent member of this Court, both as an associate justice and as the chief justice, but he was and is an even better human being.

When Chief Justice Mitchell's father died, the chief said of him: "he gave a lot more to the community and the people in it than he ever asked of them." The same clearly can be said of him. He set out to correct public misconceptions about the courts, to make the court system more responsive in the process, and to enhance the image of lawyers, whom he described as "a terribly stressed and distressed group." We are all the better for his efforts. The News and Observer editorialists got it right when they said: "North Carolina's system of justice is much better today because [the judicial] robes proved to be a perfect fit [for him]." The citizens of North Carolina and the members of the legal profession are all in his debt for being a positive force in building the credibility of the courts and the profession with ordinary citizens.

Those of you who now occupy this bench, and your successors, will work in Chief Justice Mitchell's shadow, will benefit from his efforts, and will find inspiration in his great human spirit. The portrait by the late Dean Paules which we will unveil today will serve for all of his successors on this Court as a tangible reminder of his work here and the great mind and spirit behind it, which will abide as unspoken presences before this bench as long as this Court endures.