

SETTING THE RECORD STRAIGHT ON *STATE V. JOHN INGRAM PURTLE*: REFLECTIONS ON THE GREAT DISSENTER

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The fact of the matter is the late John Ingram Purtle is the only sitting Supreme Court Justice in Arkansas history to be charged with a felony.¹ There is no getting around it. And, before that event, his seven years of service on the court had been anything but dull. On one occasion, for example, he was accused by a popular and often erratic Pulaski County Sheriff, Tommy Robinson, of having ties to organized crime because of his dissent in a criminal case.² There were others who believed him to be “a misfit out of step with the times,” while, on the other hand, there were those who considered him to be a bright spot on the court, a man who “didn’t forsake his humanity when he ascended to the state’s highest bench.”³

Justice Purtle, a small town lawyer raised in a log cabin in Enola, Faulkner County, was elected Associate Justice, Position 2, in the fall of 1978 after capturing fifty-three percent of the vote in the Democratic primary. He ran against Otis Turner, a consummate trial lawyer from Arkadelphia, who was supported by a solid majority of the Bar. Justice Purtle’s support came, in large part, from teachers and unions whom he wooed from the back of a paneled pick-up truck. His first eight-year term began in January 1979, the year I left the United States Attorney’s Office for private practice.

The first time I met Justice Purtle was six years later in the office of William “Bill” R. Wilson Jr., currently a federal district court judge. Judge Wilson and I had each been recommended by some of Justice Purtle’s

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1. Conspiracy to commit theft of property by deception in an arson-for-profit scheme. Ark. Stat. Ann. § 41-707 (currently codified at ARK. CODE ANN. § 5-3-401 (Repl. 2006)). The Felony Information was filed on August 28, 1985. *State v. Shamlin* (Pul. Cir. No. CR85-2187) (1985).

2. See *Grey v. State*, 276 Ark. 331, 335–36, 334 S.W.2d 392, 394 (1982). Justice Purtle replied by comparing the good sheriff’s tactics to Adolph Hitler. Mara Leveritt, *John Purtle’s Day in Court*, ARK. TIMES, Aug. 1989, at 29.

3. Mara Leveritt, *Judge Purtle Dissents*, ARK. TIMES, Aug. 1989, at 29 (also quoting John DiPippa, current Dean and Distinguished Professor of Law and Public Policy, University of Arkansas at Little Rock William H. Bowen School of Law, comparing Justice Purtle to United States Supreme Court Justice William O. Douglas).

friends to be trial counsel in his criminal conspiracy case. Rather than compete for the job, we decided to join forces, if he would have us. Before our meeting, Judge Wilson and I discussed what we were going to charge for our representation. I did not know Justice Purtle's financial condition but Judge Wilson did. He told me, "Justice Purtle doesn't have anything." That settled the matter as far as we were concerned. So we agreed to represent him for free.

When we presented our plan, Justice Purtle would have nothing of it. He insisted on paying us and came up with a fee of \$25,000—having no idea that our customary fees at the time were many times that amount. To seal the fee agreement, we agreed to take a promissory note.⁴ Justice Purtle also had a life insurance policy with a cash value of about \$5000. He wanted to cash it in and give it to us for expenses, but we would not let him. The beneficiary was his estranged wife, and he was dutifully paying the premiums each month as well as giving her one half of his salary. As for the trial expenses, they were ultimately paid in large part by contributions from lawyers. A *sua sponte* fundraising effort was spearheaded by Little Rock lawyer Gail O. Mathews. The funds were placed in a blind trust and, as far as we know, Justice Purtle never knew who contributed to the fund.⁵ If you were a contributor, however, I can tell you he was humbled by the gesture and forever grateful.

From our first meeting, I began to grow fond of Justice Purtle. He did not engage in the understandable whining many people engage in when they feel wrongfully accused. Oh, he had his opinions about the possible motives behind his prosecution, but he did not allow that to interfere with his focus. He also knew he needed to listen to us. Believe me, this was a concept that escaped many of our clients. Over the many months we spent together, I found him to be a gentle, kindhearted man with two immediate passions: the law and a girlfriend with chronic financial problems. In the end, the former would sustain him while the latter would nearly cause his downfall.

After the charges were filed, Justice Purtle's critics—and he certainly had his share—seized the opportunity to point out why he should not be on the Arkansas Supreme Court. Frankly, that did not surprise me. What disappointed me the most, however, was the fact that some respected members of the Arkansas Supreme Court began to publicly pressure him to resign and

4. After Justice Purtle was acquitted, Judge Wilson and I tore the note up and told Justice Purtle to give the money to charity. In his Roller Funeral Home obituary, it was noted that he was giving money to "over 100 charities" at his death. I was not surprised. He was the kind of person who would give you his last dollar if you needed it.

5. Judge Wilson and I were criticized by some members of the establishment Bar for representing Justice Purtle. One of those critics allegedly called a Supreme Court member, claiming that we were unethical for using the expense fund.

appeared to go out of their way to make him look bad in the media.⁶ Based on what I saw, that movement contributed to our inability to seat a jury in Pulaski County. To me, if there was one person in our state who should have been able to embrace the presumption of innocence, it was a Supreme Court Justice. I realize the vast majority of Americans pay lip service to this mainstay of our criminal justice system. It is a hard concept for the average person to truly accept. But Justices on the Arkansas Supreme Court should accept it instinctively, and because they didn't, it still bothers me.

When the trial started in Little Rock, we had to excuse the first sixteen jurors because they had formed opinions of guilt.⁷ Of the 105 jurors called to court that first day, seventy-nine had read or seen news accounts of the case. Neither Judge Wilson nor I have ever witnessed such widespread media exposure in another criminal case.

Nevertheless, with the firestorm of criticism and publicity, I really began to understand Justice Purtle. Of course, he did not resign from the court. Instead, he did acquiesce, at the request of five Justices, to "not participate in conferences, the deciding of cases or the writing of opinions" until his case was resolved.⁸ Logically, this arrangement suggested that Justice Purtle

6. See, e.g., George R. Smith, Letter to the Editor, *ARKANSAS GAZETTE*, November 7, 1985. The letter was published more than two months after the charges were filed and a week before co-defendant Luther Shamlin's trial:

To the Editor:

The recent instances of misconduct on the part of judges and others in public office make us wish that every public officer could inscribe on his wall and carry in his heart the words of Walter Lippman: "Those in high places are more than the administrators of government bureaus. They are more than the writers of laws. They are the custodians of a nation's ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes a nation out of a mere aggregation of individuals. They are unfaithful to the trust when by word and example they promote a spirit that is complacent, evasive and acquisitive."

George Rose Smith,
Associate Justice
Arkansas Supreme Court
Little Rock

7. The pre-trial publicity was rough. For example, a couple of days before Justice Purtle's trial began in Little Rock, my friend Pat Lynch, a KARN-AM radio show host, began his show that day with a commentary on "the troubled mind of an arsonist." The first day of trial, I felt like we were conducting the *voir dire* of a lynch mob. Prejudice was coming at us from all sides.

8. The Chief Justice, Jack Holt Jr., was out of town at the time Justice Purtle was asked, as he put it, to "step aside." However, right before trial, the Chief was asked by the press what impact Justice Purtle's non-participation had had on the court. He was quoted as having said that the court had been "crippled" by Justice Purtle's non-participation. Justice Purtle responded to press inquiries about this quote with the following letter to the Chief:

Dear Chief:

was now unfit to serve and that he might use his predicament to make it difficult for prosecutors to keep convicted criminals convicted; or it would appear so. Yet, ironically, two prosecutors—including Circuit Judge Chris Piazza’s old boss Wilbur C. (“Dub”) Bentley—were among those who testified as Justice Purtle’s character witnesses.⁹

To begin to understand the apparent inconsistency, you only have to look at some of Justice Purtle’s opinions. During the time he was on the court, Justice Purtle authored 859 majority or concurring opinions. Incredibly, he also wrote 470 dissenting opinions. Predictably, he ruffled feathers doing it¹⁰—a result you can rarely avoid in the law business if you are doing

I noted from today’s media reports that you have given an interview during which you stated that the court has been ‘crippled’ because I have not been participating in decisions since the charges were filed.

In the first place, I want to remind you that I stepped aside at the request of the other Justices (you were out of town).

Please be advised that I am ready, willing and able to assume my duties on request from you, the Chief Justice. At the request of the Court, I would be happy to limit my participation to civil cases, to avoid even the appearance of any type of impropriety.

Assuming that you and the other justices presume me innocent, as mandated by the Constitution of Arkansas and the United States, I reiterate that I am ready to assume my duties as a regularly elected Associate Justice of the Arkansas Supreme Court on request.

I also remind you that it was I who requested that my case go to trial in early December so that the matter could be resolved forthwith. The prosecution objected. Additionally, it was only yesterday that the prosecution discovered there had been extensive pre-trial, unfavorable publicity, particularly in Pulaski County; thus necessitating another delay.

I shall await your reply.

Very respectfully,

John I. Purtle

Associate Justice

Arkansas Supreme Court

(Letter on file with the author.) No change was made by the court and Justice Purtle continued to handle administrative duties only until after his trial four months later.

9. Judge Piazza was our prosecuting attorney. Mr. Bentley was joined by prosecuting attorney Wilbur “Dub” Arnold (who would eventually be elected Chief Justice of the Arkansas Supreme Court), a sitting Circuit Judge, Floyd Lofton; Ed Bullington, President of the Arkansas Education Association; Justice Purtle’s estranged wife; and others.

10. *See, e.g., Jarrett v. State*, 265 Ark. 662, 665, 580 S.W.2d 460 (1979) (“I cannot compel myself to remain silent in view of the majority opinion. I could not sleep well if I refrained from registering this dissent. My brothers have again confounded me by their reasoning in affirming this case. Apparently the prosecuting attorney wanted to see how far he could go with a literal interpretation of the language in our new Criminal Code. It would be funny if we were not dealing with the liberty of another human being.”). While doing my research for this article, I read all of Justice Purtle’s dissenting opinions. Most are well worth the reading, and some are simply priceless. But, a common and consistent theme runs through all 470 of them. Justice Purtle loathed injustice and would expose it even when it meant sounding like a trial judge rather than an appellate judge. He also wanted statutes strictly construed, the Bill

your job. In addition, not only did he dissent more often than any Justice in the court's history, during his tenure he wrote nearly twice as many opinions as his fellow Justices. Justice Purtle also wrote just as forcefully for the majority as he did when dissenting.¹¹ You cannot do that without having a passion for the law. And, I believe one of the reasons he worked that hard was he wanted to be on the just side of an issue—one way or the other. In addition, if he believed the majority was wrong, he wanted to shine a light on its reasoning.

In Justice Purtle's case, John Langston was our trial judge. Due to the fact that one of Justice Purtle's alleged co-conspirators, Luther Shamlin, intended to testify and had a previous felony conviction—and each defendant had given statements to the authorities that the prosecution intended to use—Judge Langston granted a severance. Consequently, Judge Piazza decided to try Mr. Shamlin, the alleged torch, first. As a former federal prosecutor, I know the plan was to turn the heat up on Mr. Shamlin to plead guilty and testify against Justice Purtle and Ms. Linda Noonan—the third alleged co-conspirator and Justice Purtle's girlfriend. Justice Purtle's conspiracy charge related to the alleged arson of a car and house with accelerants. Both burned, and insurance was collected on each. Justice Purtle's defense was that neither fire was the result of arson, but if arson was involved, he had nothing to do with it.

During his prosecution, Mr. Shamlin was offered plea deals to testify against Justice Purtle; but he declined. Nevertheless, Mr. Shamlin was tried and convicted in Little Rock of arson and conspiracy and sentenced to twenty-five years in the penitentiary.¹² I sat through most of the prosecution's

of Rights staunchly protected, and the law applied equally. For a listing of memorable quotes from Justice Purtle's dissents, *see* Appendix A.

11. *See, e.g., Perry v. State*, 277 Ark. 357, 642 S.W.2d 865 (1982) (death case); *Maness v. State*, 274 Ark. 69, 622 S.W.2d 166 (1981) (rape shield statute); *see also Rector v. State*, 280 Ark. 385, 401, 659 S.W. 2d 168, 176 (1983) (Purtle, J. concurring) ("The majority states the most cowardly and contemptible criminals are the ones who seek to prevent a death qualified jury. I am of the opinion that an accused is not considered to be a criminal, at least in the case being tried, until after he has been convicted. The right to an impartial jury is guaranteed by the Sixth Amendment to the United State Constitution is not, in my opinion, a favored position not enjoyed by others. Everyone is entitled to the protection of our Constitution.").

12. *See Shamlin v. State*, 23 Ark. App. 39, 743 S.W.2d 1 (1988); *Shamlin v. State*, 19 Ark. App. 165, 718 S.W.2d 462 (1986). Mr. Shamlin's first appeal was a "Petition for permission to file a petition for a Writ of Error Coram Nobis." In that appeal, Mr. Shamlin contended that his case should be remanded to the trial court for a hearing on the following:

1. An insurance investigator with expertise in arson testified at Shamlin's trial that he made an examination of the car after the fire. From his examination he determined that the fire was of incendiary origin and his opinion was confirmed by a chemical analysis of residue taken from the car. A written report of his observations and actions was introduced into evidence. At Justice Purtle's trial, the same witness testified that after examining the vehicle he determined from the

case against Mr. Shamlin, but left before the case was concluded because it was too painful to watch. Mr. Shamlin did not testify in his case, but his position on Justice Purtle was unwavering—the judge was not involved in any criminal activity with him or anyone else to his knowledge.

Perhaps the State continued to think it was going to flip Mr. Shamlin, or perhaps the prosecutors were emboldened by their solid victory. At any rate, Judge Piazza decided to try Justice Purtle second.¹³ After one day of voir dire in Little Rock, Judge Piazza agreed with the defense that the case should be transferred to Perry County because of jury pool bias. I have always admired Judge Piazza for that decision. I cannot recall any trial where more people expressed the view in voir dire that someone was guilty, but I cannot say I blame them for their opinions. The television stations and

physical evidence that the heat generated by the fire was of such intensity that it could only have been reached by use of an accelerant. He stated that he had taken samples from the car for chemical analysis in order to confirm his opinion and the analysis of those samples had confirmed accelerants. The investigator testified on cross-examination, however, that he dictated his report on August 1 confirming the chemical analysis. The chemical analysis report was dated August 9. In other words, the witness relied in his report on a chemical analysis that had not yet been completed.

2. At Mr. Shamlin's trial, Homer Alexander testified that two days before the house fire he was with Mr. Shamlin when Shamlin purchased seven containers of Gulflight charcoal lighter fluid at Handy Dan's on Geyer Springs Road in Southwest Little Rock. Gulflight sold for a price of \$1.99 each during the time in question. Alexander also stated that the purchase was made with cash. The prosecution introduced a register tape from Handy Dan's that showed the sale of seven items at \$1.99 in Handy Dan's two days before the house fire. At Justice Purtle's trial, it was revealed during cross-examination that the cash register tape used by the prosecution concerned items that had in fact been paid for by check, rather than cash as Alexander testified, and the check had been presented for payment by Robert Palmer Photographics for "molding and paint for partition."

3. At Mr. Shamlin's trial, a second insurance adjuster introduced as a business record an inventory said to have been made after the fire at Ms. Nooner's home. Listed on the document were appliances which were claimed to have been destroyed in the fire and the time, place, and price of their purchase. The adjuster stated that the inventory was based on information furnished by Ms. Nooner. In Justice Purtle's trial, it was brought out in cross-examination that at the time the adjuster met with Ms. Nooner, he only listed the items which he believed had been destroyed in the fire. The adjuster testified that the documentation of the time, place and price of purchase was furnished at "a later date" and inserted on the exhibit immediately before Mr. Shamlin's trial. The trial court ruled in Justice Purtle's case that, as the entries of value had not been made close in point of time to the events described, the document had lost its status as a business record, at least to the extent of the recitation of value (an issue material to the theft by deception allegation).

The allegations were true, but Shamlin's petition was denied on procedural grounds.

13. Ms. Nooner was tried last in Perryville. She was convicted of conspiracy and sentenced to three years in the penitentiary. *Nooner v. State*, 1988 WL 23266 (Ark. App. 1988).

newspapers were brutal, and Mr. Shamlin had been convicted in resounding fashion.

One statewide newspaper held particular disdain for Justice Purtle. In addition to its tilted reporting, it ran an article shortly after Justice Purtle's aborted Little Rock trial on "the many faces of Justice Purtle," where photographs of his appearance were shown from the time he was arrested to the time his trial began. When Justice Purtle was arrested, he was photographed with a mustache and long hair that nearly covered his ears. He was wearing a short-sleeved shirt with an open collar, aviator glasses and a gold chain. When Justice Purtle went to court in his case, he looked like a Supreme Court Justice. Of course, we, his trial lawyers, orchestrated those changes. And all we did was send him with our law clerk, Beth Deere, now a federal Magistrate Judge, to a barber shop and Mae Horne's clothing store on us. I guess the newspaper was distressed with our efforts because Justice Purtle was a distinguished looking man when he was spiffed up. Apparently for the newspaper, the arrest outfit was more suitable for an alleged arson conspirator.

Now, you might think moving a high profile trial a mere forty-five miles away would not change things much, but it did. It was like traveling to another country. Only a small percentage of jurors had watched television accounts of Justice Purtle's case or admitted reading anything substantive about it in the newspaper. As a matter of fact, a respectable number of them had never heard of him before the first day of trial. Our problem, however, was this was going to be the most celebrated trial Perry County had ever seen. That was confirmed when we witnessed the freshly painted downtown square parking stripes, the portable hot dog stand and grill across the street from the courthouse, and the trial being interrupted by screams of "Purtle's guilty!" from a passing school bus.

My reflections on Justice Purtle's case, however, would not do justice to all concerned without highlighting Judge Langston. If you have any doubt about the effect a trial judge can have on the outcome of a criminal case, just sit as a special judge or a defendant. The pressures on an elected trial judge, with a sitting Supreme Court Justice as the defendant, must have been enormous. Would the press coverage cause him to be harder on this defendant? Or, would he try to protect a fellow judge? There must have been plenty of people asking those questions. I was. However, Judge Langston did what all trial judges should strive to do. He called balls and strikes and made sure that justice was truly blind. He did not interject himself into the trial or help one side over the other. He refereed a fair fight. You can't ask for more, and Justice Purtle recognized it.

I had never been to Perryville before the Purtle case. My only contact with this pleasant town of 1500 had been with Herby Branscum, a promi-

ment local lawyer who had the misfortune of finding himself in Special Prosecutor Kenneth Starr's crosshairs many years later.¹⁴ Mr. Branscum had graciously agreed to review our jury list since he knew everyone in Perry County. His office was our first stop when we entered the city limits, and he helped us identify some bad jurors. For that, we were most appreciative.

Perryville has a single courtroom courthouse in the center of town. The courthouse was rebuilt for the last time in 1888. The tiny second-floor courtroom took us back in time. Microphones were not available, or needed for that matter, and the unforgiving wooden spectator benches were filled to capacity with jurors and the press by the time of trial. In fact, many of the 149 veniremen had to stand outside the courthouse while they waited their turn during voir dire. The worn counsel tables were separated by a narrow aisle, and the lawyers addressed the spartan bench from an oak podium darkened with age.

Judge Wilson handled voir dire for the defense.¹⁵ It was as skillful as I had ever seen.¹⁶ I gave the opening statement. My goal in every opening was to make sure the case was viewed by the jury as a horse race before the evidence began. I think I did that.¹⁷ By the time the State called its first witness, we knew the jurors had come for a fight. And, that is exactly what they got.

Now, at this point, I think it is important to address Justice Purtle's perceived motivation for his prosecution. He felt he was being prosecuted because Judge Piazza and other prosecutors did not like him and his decisions in criminal cases, and because Judge Piazza wanted to make a name for himself. Judge Wilson and I never got that impression. What I believe happened was that Judge Piazza and his Chief Deputy Lloyd King in particular were sold a bill of goods. They accepted the word of a Luther Shamlin antagonist, Homer Alexander, and relied on the opinions of three prosecution fire investigators who were corroborated by "salted evidence" (as Judge Wilson put it). It turned out that one of the fire samples taken three months after the fire from the charred remains of the car, and subsequently offered

14. Mr. Starr was appointed to investigate Bill and Hillary Clinton's Whitewater land development case. But his investigation spread like the Bubonic Plague to include Arkansas governor Jim Guy Tucker, Mr. Branscum, and countless others having no connection to Whitewater. *See, e.g.*, *United States v. Tucker*, 217 F.3d 960 (8th Cir. 2000); *United States v. Tucker*, 137 F.3d 1016 (8th Cir. 1998). Mr. Branscum was absolved of fraud charges in federal district court in Little Rock. *United States v. Branscum*, No. LR-CR-96-49 (E.D. Ark., June 7, 1996).

15. You can read portions of Judge Wilson's voir dire in JAMES W. JEANS, *TRIAL ADVOCACY* (2d ed.1993).

16. By that time, I had seen voir dire conducted by such courtroom warriors as Reggie Eilbott, Jack Holt Jr., W.B. "Tuffy" Howard, Alston Jennings Sr., William "Bill" McArthur, Dale Price, and Henry Woods.

17. You can read my opening statement in ALFRED S. JULIEN, *OPENING STATEMENTS* § 5A.06 (Supp. 1996).

by the state as evidence of an accelerant, was found to contain “raw” gasoline.¹⁸ The prosecutors were also relying on suspicious tape recordings, most of which were found to be inadmissible in Justice Purtle’s case, as well as the Justice’s contradictory pre-trial statements.

The trial was everything I imagined it would be. Judge Piazza was a formidable opponent and the drama built with every witness. There were fiery objections, passionate arguments, slashing cross-examinations, surprising courtroom strategies, visible jury reactions, interesting conspiracy issues and a clash of experts—eight in all.

We battled for nearly two weeks—a lengthy state trial for 1986. Then came the time for us to decide whether we would call Justice Purtle as a witness. Before that decision was made, however, the prosecution made a plea offer to Justice Purtle, which included a misdemeanor guilty plea, no time and his resignation from the Arkansas Supreme Court. It took Justice Purtle about two seconds to turn it down. He told me after trial that day that he would rather go to the penitentiary than resign from the Arkansas Supreme Court for something he did not do.

When I was a prosecutor, it made my day in trial when the defense called the defendant to the stand. I learned early on that in complicated white-collar crime cases, if the defendant took the stand, the dynamics of the case changed. Instead of the jury having to sort out complicated facts and conflicting testimony, often the case was reduced by the jury to a simple issue: did the defendant tell the truth? As a result of those experiences, when I became a defense attorney, I rarely called my client to the stand. When an exception was made, I usually regretted it. One of those exceptions was the case of *State v. Purtle*.

Justice Purtle, under previous counsel, had given two sworn pre-trial statements to Mr. King. Aside from the questionable wisdom of giving a statement, he was not adequately prepared before he answered questions and, unfortunately, some of the answers in his first statement turned out to be untrue.

We worked with Justice Purtle for days before he testified. When the time came, my stomach was in my throat. But Justice Purtle handled Judge Wilson’s direct and Mr. King’s cross-examination superbly.¹⁹ He was as

18. Dr. Morris Cramner, a highly qualified toxicologist and defense expert, analyzed the sample after it had been sent to a Memphis lab by one of the insurance investigators. A year after his testimony, Dr. Cramner found himself on the receiving end of a federal indictment. *See United States v. Cramner*, 871 F. 2d 1091 (8th Cir. 1988). The defense also offered testimony from an independent lab about the samples from the house used by the prosecution to corroborate Mr. Alexander’s charcoal lighter fluid story. The testimony was that the samples contained “exylenes,” which are not found in charcoal lighter fluid.

19. I never understood the strategy behind Mr. King conducting the cross-examination. Everyone was expecting Judge Piazza to take Justice Purtle on. When he did not, the letdown

calm as any defendant I have ever seen in the courtroom. I have thought about that many times because the stakes couldn't have been higher. Looking back, I think his calmness was the product of his love for the law. He believed in the jury system with all his heart and, if given a fair trial, he was convinced he would be found not guilty.

After arguments and instructions, it was late in the day. Due to the number and size of the exhibits, and the matchbox-sized jury room, Judge Langston decided everyone should leave the courthouse and allow the jury to deliberate in the courtroom. So the courtroom spectators, press, and parties filed out and gathered under the trees on the front lawn of the courthouse. When that happened, about 100 additional spectators joined us. I still remember standing in the dark, looking up at the courtroom windows, wondering how the deliberations were going and what the verdict would be. Only a dedicated trial lawyer can understand what it is like to wait for a jury verdict in a criminal case. It is pure agony.

Because of space considerations, when the jury announced that it had a verdict,²⁰ only a limited number of people were permitted to enter the courtroom. The not guilty verdict was announced and Judge Purtle and I embraced. I could feel the tension leave his body. His son and daughter cried. Judge Wilson led the defense team to shake the prosecutors' hands.

We exited the front door of the courthouse to a scene from a Hollywood movie. Understandably, the press was eager to get Justice Purtle's reaction. For me, this was the only time I was disappointed in him. I had expected him to thank the jurors for their verdict, reaffirm his faith in the jury system and leave it at that. But he didn't. Among other things, Justice Purtle said, "I think one of the most important lessons to be learned for the prosecutor is you can't just pick off a judge you don't like."²¹ He also questioned the prosecution's motive by stating, "(a) young prosecutor who wants to get ahead can take down a big man in his first term. It's been reported to me that he said he could be attorney general . . . and governor after that."²² A

in the courtroom was palpable. Justice Purtle also testified in Ms. Nooner's Perryville trial which resulted in her conviction. Judge Piazza conducted the cross-examination in that trial, and Justice Purtle handled it poorly. Indicative of the tone of the cross-examination was the last question and answer:

"Q: Judge, you mentioned Ms. Nooner, or was it yourself, when you said that they were out of touch with reality? Who were you testifying about?

A: I might have been talking about you. I don't remember."

20. While it was reported that the jury deliberated "1 1/2 hours" and "about two hours;" it was much less. Most of the time was taken up by the jurors standing in line for a break at the solitary courthouse bathroom. We were also told later that there were two jury votes. The first was eleven to one for acquittal.

21. Bruce Kinzel, *Jury Declares Purtle Innocent of Conspiracy*, ARKANSAS DEMOCRAT, May 24, 1986, at 1A.

22. *Id.*

rare opportunity to disarm his critics was lost. I have thought about that moment many times over the years and wished we could have gotten him aside before he said that to the press. But I guess the stress and frustration of being prosecuted was just too much for him to handle at that moment. Everything he had worked so hard for in his career was on the line that day. It was an emotional time.

Justice Purtle's verdict was returned on Friday, March 23, 1986. The following Monday, he sat with the other Justices for a full day of arguments. Ironically, Judge Wilson and I were arguing one of the cases.²³ We were happy we helped return him to the bench, but I can tell you some members of the court were not.

Justice Purtle's acquittal also occurred shortly before the Arkansas Bar Association annual meeting. That year, the Gridiron planned a show for the Association members in attendance. Of course, they included something about Justice Purtle's case, complete with a cast member's match-lighting solo rendition of Justice Purtle singing "I Don't Want to Light the World on Fire." I can still hear the roars of laughter and, yes, Justice Purtle was in attendance. He had very thick skin by that time, but he left the meeting that day and returned to the one thing that provided him with a full measure of comfort—his office and the law.²⁴

Justice Purtle served undeterred on the Arkansas Supreme Court for three years after his acquittal.²⁵ In his final year, he explained his judicial philosophy to a reporter as trying to "protect the Constitution and particularly the Bill of Rights from the courts."²⁶ Perhaps Justice Purtle's philosophy had been partially shaped by his prosecution. For he now knew for a certainty how much a biased trial judge or an intellectually dishonest appellate judge can determine the outcome of a criminal case and whether someone goes to prison unjustly.

One might reasonably assume that Justice Purtle's recent death prompted my writing this article. However, the real reason was an obituary that appeared in a statewide newspaper highlighting his being charged with conspiracy to commit arson for profit while a Supreme Court Justice. Of area newspapers, only the *Log Cabin Democrat* chose not to write about Justice Purtle's criminal case after his death. I have no way of knowing why.

23. *Alexander v. Chapman*, 289 Ark. 238, 722 S.W.2d 765 (1986) (Purtle, J. and Holt, C.J., not participating) (the improper trial tactics case—a must-read for every trial lawyer).

24. Justice Purtle seemed to double his efforts after he was found not guilty. During 1987–88, the first full term after his acquittal, he wrote 117 opinions. Fifty were dissents. The remaining justices authored approximately seventy-five opinions each.

25. When Justice Purtle resigned, then-Governor Bill Clinton appointed Otis Turner to serve as interim Justice.

26. Leveritt, *supra* note 2, at 85. Justice Purtle felt he was "not a full member" of the court and "a voice crying in the wilderness" shortly before his resignation. *Id.* at 26.

Perhaps, even though his charges created a spectacle, to the newspaper, they were still just accusations.

I, too, feel Justice Purtle deserves to be remembered for what he did in life—not for the accusations lodged against him. He was one of nine children born to sharecropper parents who taught him the meaning of education and hard work. He joined the infantry at age seventeen, five days after the attack on Pearl Harbor, and served for five years in the Asiatic-Pacific Theater before returning home. He enrolled in what is now the University of Central Arkansas under the GI Bill and ultimately transferred to the University of Arkansas at Fayetteville, where he graduated from law school. He represented the Pulaski County School District and was elected state representative twice before he was elected to the Arkansas Supreme Court. He served on the court for eleven years. He practiced law nearly sixty years before he became ill. And, he was a good sibling, son, father, and husband.

For those of you who felt an abiding loss when he left the Arkansas Supreme Court²⁷ and again with his passing, do not despair. You may rest assured that he is holding court in a place where justice is swift, sure and pure. A place where the last are always first and justice is tempered with mercy. And, he is at peace knowing that through his adversity he stayed the course for the underprivileged, those in the minority, and those constitutional principles he so cherished.²⁸

APPENDIX A

Hall v. State, 264 Ark. 885, 888, 890, 567 S.W.2d 178, 180–81 (1979) (Justice Purtle’s first dissenting opinion.) (“The prosecuting attorney and his deputies are public officers performing their duties in a quasi-judicial capacity. . . . This function should be carried out with vigor, and any honorable, reasonable and lawful means should be employed. There should be no occasion to deliberately appeal to the prejudices which most of us possess. Juries are for the most part composed of people with ordinary intelligence, with variances of course, and are likely to look upon a public official in the performances of his/her duties with more confidence than a lawyer who is being paid to defend an accused. . . . However, [the prosecutor’s] remark may

27. Dean DiPippa, on learning Justice Purtle might leave the court, had this to say, “If he doesn’t run again, I don’t anticipate anyone in his mold being elected. What we’ve done is create a mold in which very cautious, very ordinary, very conventional people are elected to the bench. If you have a court full of cautious, conventional jurists, what you get is a cautious, conventional jurisprudence, and that’s a jurisprudence that’s divorced from the life of the community.” *Id.* at 86.

28. The last quote I could find of Justice Purtle on his judicial philosophy was: “I may march to the beat of a different drummer, but I have never marched with a goose step.” *Id.*

well have added years to the sentence of appellant. . . . For the reason cited above and the long-range effect of fair trials, I would reverse and remand for a new trial.”); *Sutton v. State*, 265 Ark. 645, 646, 580 S.W.2d 195, 196 (1979) (“The [pro se] appellant has filed the record and a brief before this Court. Perhaps a more disorganized brief has never been presented to this Court. However, within that brief is a copy of an alleged statement made by the trial judge, to the jury, during their deliberations on this action, which should not and cannot be allowed to stand if our system of justice is to prevail. When the jury asked for additional instructions the court, among other things, allegedly stated: ‘EVEN IN A CASE LIKE THIS WHERE THERE IS OBVIOUS GUILT A JURY HAS WIDE LATITUDE . . .’ The above statement was not taken by the court reporter and is ‘outside’ the record so far as the majority is concerned and they even cite a statute and a case to support their position. A hundred statutes and a hundred cases would not change my opinion that we are not doing justice when we fail to look at an error of this magnitude on the ground that it is outside the record. The only reason we have the statement, which is considered outside the record, is that the appellant had the foresight to have his cassette recorder turned on at the time this incident happened.”); *Plummer v. State*, 270 Ark. 11, 16, 603 S.W.2d 402, 405 (1980) (“I believe the lineup as conducted was unduly suggestive. The only manner in which it could have been more indicative would have been to have placed a sign around the appellant’s neck that stated, ‘This is the one.’”); *Stillers v. State*, 272 Ark. 212, 216, 613 S.W.2d 387, 390–91 (1981) (“By delaying the motion [in limine] until the prosecution asked the questions before the jury is too late. It is like shutting the gate after the horse is out. The only reason a prosecutor would want to wait until this time and ask such questions is solely for the purpose of inflaming the jury or to create prejudice against an accused. A prosecutor is supposed to be seeking the truth and affording the state and the accused a fair and impartial trial. I do not consider such questions to fit in the category of fair and proper.”); *Wilson v. State*, 272 Ark. 361, 364, 614 S.W.2d 663, 664 (1981) (“I dissent with amazement at the action of this court in handing down two opinions on the same date holding directly opposite each other.”); *Chism v. State*, 273 Ark. 1, 11, 616 S.W.2d 728, 733 (1981) (“There certainly is no precedent for the trial court or this court to complete the state’s cases for it when it fails to do so. I do not want to be any part of starting such a practice.”); *Stull v. Ragsdale*, 273 Ark. 277, 285, 620 S.W.2d 264, 269 (1981) (“The majority has marched full speed ahead into the Nineteenth Century with this [wrongful death case] opinion.”); *Bizzell v. White*, 274 Ark. 511, 517, 625 S.W.2d 528, 531 (1981) (“I disagree with the majority opinion when it states that a portion of the reapportionment plan for the state cannot be attacked unless the entire plan is attacked. If a dog bites my ankle, he has surely attacked my body as a whole.”); *Barnes v. Barnes*, 275 Ark. 117, 119, 627 S.W.2d 552, 554 (1982) (“I dissent from the majority opinion which I

feel is an incorrect interpretation and application of the law as well as a most unjust decision. I realize we are frequently forced by law to make unjust decisions but this one was freely and voluntarily made by the court.”); *Zardin v. Terry*, 275 Ark 452, 456, 631 S.W.2d 285, 288 (1982) (“Sometimes it seems to me this court strains at a gnat and swallows a camel.”); *Carroll v. State*, 276 Ark. 160, 166–67, 634 S.W.2d 99, 103 (1982) (“Neither the Arkansas General Assembly nor the Supreme Court of Arkansas has the power to invalidate the 4th and the 14th Amendments to the Constitution of the United States of America. The majority opinion, it seems to me, has attempted to either annul or circumvent the provisions of those Amendments. The court cannot contravene the United States Constitution through the use of misnomers. That is precisely what the majority opinion has attempted to do by substituting the word ‘inspection’ for ‘search.’ A rose by any other name smells the same.”); *Roy v. Atkins*, 276 Ark. 586, 589, 637 S.W.2d 598, 600 (1982) (“I am shocked by the majority opinion in this case. I have never found any jurisdiction, including Arkansas, which prohibited a person from giving oral testimony about medical expenses incurred as a result of a personal injury.”); *Hoggard v. State*, 277 Ark. 117, 125, 640 S.W.2d 102, 107 (1982) (“I respectfully dissent because I think both the affidavit and search warrant are as phony as a \$3 bill.”); *Rowell v. State*, 278 Ark. 217, 221, 644 S.W.2d 596, 599 (1983) (“I strongly disagree with the majority in this case. I think the opinion will have a chilling effect on most lawyers who represent people accused of a crime.”); *Brown v. State*, 278 Ark. 604, 608, 648 S.W.2d 67, 70 (1983) (“The dastardly crime resulted in the senseless shooting of a respected, popular and talented white teenager by two unknown black males. There was soon raised a public hue and cry for the apprehension of the perpetrators. Certainly the public was justified in demanding that justice be done. However, that demand for justice has, in my opinion, resulted in a severe injustice.”); *Matthews v. Rodgers*, 279 Ark. 328, 337, 651 S.W.2d 453, 459 (1983) (“This is in many respects a very tragic case. The majority’s opinion today does nothing but magnify the tragedy. My conscience will not allow me to join the majority opinion which, in my opinion, is as unreasonable and unfair as the judgment of the trial court. I realize it is our custom to state only the facts supporting the verdict when we affirm the judgment of a trial court. However, we are not required to ignore the other facts altogether.”); *Walls v. State*, 280 Ark. 291, 297, 658 S.W.2d 362, 366 (1983) (“Were we merely joking in *Spears v. State*? The majority opinion sets the stage for unknown persons to entrap people who would not otherwise violate our laws. I think I detect a goosestep in our cadence.” (citation omitted)); *James v. State*, 280 Ark. 359, 370, 658 S.W.2d 382, 388 (1983) (“The direction taken by the majority in this case chills me to the bone. It is beyond my comprehension how the law enforcement officers, the prosecutor and the trial court could all so clearly bulldoze through appellant’s constitutional rights and be upheld on appeal.”); *Simpson v. Langston*, 281 Ark. 458,

466, 664 S.W.2d 872, 876 (1984) (challenge to Grand Jury Report on Little Rock Police Chief) (“Grand juries are made up of reputable citizens residing in the county. Thus they become the voice and conscience of the county. It is not their privilege only, but also their duty, to speak out on matters of public concern and interest. We should not quiet their voice or still their conscience.”); *Neyland v. Hunter*, 282 Ark. 323, 330, 668 S.W.2d 530, 533 (1984) (“The best I can figure, the majority holds Ark. Stat. Ann. § 76–104 and 105 are probably constitutional but have a meaning other than what they state. This is the most strained and warped construction I have ever had the duty to read.”); *Berna v. State*, 282 Ark. 563, 571, 670 S.W.2d 434, 439 (1984) (“A defendant is entitled to know when and why panel members are excused from serving at his trial. If 75% of those selected are ineligible to serve there is something wrong with the use of the jury wheel. In the future I will vote to reverse any judgment from any county when the selection of a jury is as haphazard as is demonstrated here. Likely there was no intent to do wrong; nevertheless it leaves a bad impression.”); *Jones v. State*, 283 Ark. 308, 315, 675 S.W.2d 825, 829 (1984) (“How far must we go before we adopt the plain error rule beyond [*Coones, Barnum, Singleton, Wilson & Dancy, Sims, and Bell*]? Precedent or not there comes a time when this court should step in and correct prejudicial errors even though not technically raised at the trial level.” (citations omitted)); *Holmes v. City of Little Rock*, 285 Ark. 296, 306, 686 S.W.2d 425, 430 (1985) (“I must again respectfully dissent. The majority set out the correct law concerning annexations of adjacent territory by cities then promptly forgot what it said and wrote a nice sounding piece of social legislation.”); *Morrison v. Morrison*, 286 Ark. 353, 357, 692 S.W.2d 601, 604 (1985) (“I strongly disagree with the majority opinion in treating disability benefits as marital property.”) *Hess v. Treece*, 286 Ark. 434, 446, 693 S.W.2d 792, 799 (1985) (“In my opinion, the only outrage to be found in this [tort of outrage] case is the majority opinion.”); *Mullenax v. Langston*, 286 Ark. 470, 472, 692 S.W.2d 755, 757 (1985) (“I do not understand by what rationale the majority recognizes we did not have a death penalty in 1972, but implies that the 1976 Criminal Code establishing capital murder relates back to the time when there was no such law. That is *ex post facto* and completely unacceptable to me.”); *Wilburn v. State*, 289 Ark. 224, 231–34, 711 S.W.2d 760, 763–65 (1986) (Justice Purtle’s first dissenting opinion after his acquittal, a case from Judge John Langston’s court, where he maintained that Judge Langston abused his discretion in excluding a defense expert and in the admission of evidence); *Hedrick v. State*, 292 Ark. 411, 415, 730 S.W.2d 488, 491 (1987) (“This Court has reached the pinnacle of affirmance in this case by upholding the finding of guilt for a crime which was never charged. So far as I am concerned, the sentence of life without parole is as void as a death sentence issued by a municipal judge. Good-bye due process and equal protection.”); *Harvey v. Bell*, 292 Ark. 657, 661–62, 732 S.W.2d 138, 141 (1987) (“The majority

opinion literally adds insult to injury inasmuch as the opinion not only allows the appellee to appropriate the appellant's property for his own use, it also takes away the piddling sum awarded by the trial court. I am beginning to understand the dialogue between Socrates and Thrasymachus, as recorded by Plato in his *Republic*, where it is stated: 'Justice is in the interest of the stronger.');" *Jones v. Ragland*, 293 Ark. 320, 328, 737 S.W.2d 641, 646 (1987) ("Jones is apparently a fiercely independent man, and obviously a dissenter. Nevertheless, he is entitled to the same rights as other citizens. It seems to me that the Boston Tea Party was carried out by the likes of Theodore Jones. He may be a thorn in the side of tax collectors but he still deserves equal and fair treatment under the law. I do not think he has been treated fairly. This case is a clear example of the strong hand of the government reaching into the lives and trampling upon the rights of individuals in order to reach a result desired by the government.);" *Coble v. Lockhart*, 293 Ark. 515, 517, 739 S.W.2d 164, 165 (1987) ("Regardless of the fact that we seem to weave back and forth on the matter of appointment of counsel and acceptance of handprinted briefs, we cannot deny the fact that every individual is entitled to represent himself. These inmates are individuals and they have a Constitutional right to represent themselves in this Court. They cannot proceed if money is required or if their briefs must be typewritten. Therefore, we should grant the appellant the right to file a handwritten motion and brief in support of his claim for relief.);" *Smith v. State*, 294 Ark. 357, 360, 742 S.W.2d 936, 938 (1988) ("In the case of *Ward v. State*, we 'wholeheartedly' endorsed the *Batson* decision prohibiting purposeful discrimination in the jury selection process. Before the ink is dry on *Ward* we have begun the process of backtracking and limiting its application." (citation omitted)); *Finley v. State*, 295 Ark. 357, 366, 748 S.W.2d 643, 648 (1988) ("The majority opinion is part of a familiar pattern of judicial encroachment upon legislative and executive powers. No matter how clear and unambiguous a statute may be, the judiciary often bends the words into what the courts believe the law ought to be. There is no need to cite precedent in this dissent. Neither precedent nor the separation of powers doctrine seem to deter this court from making new law every Monday morning.);" *Gage v. State*, 295 Ark. 337, 339, 340, 748 S.W.2d 351, 352, 353 (1988) ("The recent cure-all theory that 'the evidence of guilt is overwhelming' is a blight and parasite on the laws and the Constitution. In street language it is a 'cop-out.' It is a cancer which should be exorcised here and now. It is a step away from our traditional claim to be a nation of laws. . . . So long as we label defects in trials as 'harmless constitutional error,' there is no incentive on the part of the state or the courts to follow the law or rules of evidence.);" *Smith v. State*, 296 Ark. 451, 457, 757 S.W.2d 554, 557 (1988) ("I think we ought to follow the law but in doing so we should use common sense and apply that degree of justice which is compatible with the law. Basically, I disagree with this outrageous sentence, which indicates a need for sentenc-

ing guidelines at the state level.”); *Davis v. State*, 296 Ark. 524, 526, 758 S.W.2d 706, 707 (1988) (“I almost neglected to dissent in this case because I didn’t recognize the facts as set forth in the majority opinion as the same case argued in the briefs and considered by this court.”), *overruled by Grable v. State*, 298 Ark. 489, 769 S.W.2d 9 (1989); *Brazel v. State*, 296 Ark. 563, 568, 571, 759 S.W.2d 28, 31, 32 (1988) (“However, to hold that the introduction of a codefendant’s signed ‘confession’ was ‘harmless error’ is almost beyond belief. . . . If the United State Supreme Court’s rulings are not binding on this court, then I need write no more.”); *Bragg v. State*, 297 Ark. 348, 352, 760 S.W.2d 878, 880 (1988) (“Upon actual consideration of the petition, this court found a procedural error: the transcript was not timely ordered by the inmate. The court apparently fails to recognize that this notice of appeal and request to proceed in forma pauperis were forwarded from the maximum security unit at Cummins. That is hardly a place where one would expect an inmate to be able to contact the court reporter and order the record.”); *Clayton v. Clayton*, 297 Ark. 342, 345, 760 S.W.2d 875, 877–78 (1988) (“There seems to be no end to the imagination of the majority of the members of this Court relating to what marital property consists of when one spouse receives an injury giving rise to a claim for income or money damages. . . . This court is hard-headed and at times legislates when it decides it knows what the law ought to be. It looks like the General Assembly will have to make a fifth effort to write a law which this court understands.”); *Lee v. State*, 297 Ark. 421, 427, 762 S.W.2d 790, 793 (1989) (“I write primarily to call attention to the unfairness with which I believe this Court sometimes handles appeals.”); *Cash v. State Bd. of Pardons and Paroles*, 297 Ark. 625, 626, 765 S.W.2d 4, 4–5 (1989) (“In no case could it be made more plain that a person has been denied equal protection and due process because he is poor. He would have received his right to proceed in this case if he had the money. No person should be forced to give up statutory or constitutional rights because of poverty.”); *White v. State*, 298 Ark. 163, 168, 765 S.W.2d 949, 953 (1989) (“I could not sleep tonight if I failed to dissent in this [marijuana and illegal weapon] case.”); *Becker v. State*, 298 Ark. 438, 441, 443–44, 768 S.W. 2d 527, 529, 530 (1989) (“Either something is wrong with our criminal justice system or something is wrong with this case. No fair system of justice could sanction giving a man fifteen years in prison for stealing a few slices of ham. . . . However, this case does nothing to promote a fair and just criminal justice system. It is, in fact, a blight upon our system. If this court will not correct it, then the Governor and the General Assembly should.”); *Whitmore v. State*, 299 Ark. 55, 68–69, 771 S.W. 2d 266, 272 (1989) (decision abolishing Arkansas’ post-conviction relief procedure) (“Petitioner’s case is presently pending before the United States Supreme Court. Under the circumstance, this court should pause in its haste to dismantle post-conviction relief until after the United States Supreme Court decides the matter. . . . The majority opinion is primarily in-

tended to soothe the conscience of the court. If this were not the case, we would simply do as we usually do when presented with a petition for Rule 37 relief and deny it without issuing an opinion.”); *Rolark v. State*, 299 Ark. 299, 304, 305, 772 S.W.2d 588, 591, 592 (1989) (“Another mistake made by the majority is its approval of the practice of allowing the state to abide only by the rules it chooses. . . . The bench and bar of this state deserve the right to know the rules of criminal procedure and how to conduct a trial.”); *Courteau v. Dodd*, 299 Ark. 380, 388, 390, 773 S.W.2d 436, 440, 441 (1989) (“We should abandon the archaic rule that dictates that before an injured person may proceed against a physician, he must have another physician who is willing to testify that the treating physician did not use the degree of care required. . . . Our court-made rule requiring a physician to testify against another in support of a plaintiff’s claim is, at the very least, obsolete. . . . The jury did not need the testimony of an expert witness to interpret the facts in this case.”); *Duhon v. State*, 299 Ark. 503, 512, 774 S.W.2d 830, 836 (1989) (“Arkansas has won another distinction: it is the only state in the nation which imposes criminal sanctions on a person who does not pay his rent on time. . . . The majority has, with all the speed of a crawfish, backed into the 19th century.”); *Crawford/Sebastian Cnty. SCAN v. Kelly*, 300 Ark. 206, 209, 778 S.W.2d 219, 221 (1989) (“Whenever the state usurps the role of the family in matters relating to the rearing and disciplining of children, it has gone too far.”), *overruled by Ark. Dep’t of Human Serv., St. Francis Div. of Children and Family Serv. v. Thompson*, 331 Ark. 181, 959 S.W.2d 46 (1998); *Ferguson v. Sunbay Lodge, Ltd.*, 301 Ark. 87, 89, 781 S.W.2d 491, 492 (1989) (“We set a trap for lawyers when we amended A.R.A.P.4(c)”); *Schrader v. Bell*, 301 Ark. 38, 42, 44, 781 S.W.2d 466, 468, 469 (1989) (Justice Purtle’s final dissent) (“I am pleased to see that the majority has, somewhat belatedly, joined my dissent in *Penny v. Phillips*. . . . I can now retire with a sense that my opinions have, after all, sometimes had an effect. I only hope that in the future my dissents relating to the Bill of Rights and other constitutional issues will have an equal impact.” (citation omitted)).