

# **Life in Prison for Hedge Clippers: A Racialized Justice System**

## **JIPP Student Editorial Board**

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In 1997, Fair Wayne Bryant stole a pair of hedge clippers. Bryant — a Black man — had been convicted of 3 “petty theft” crimes and one count of armed robbery almost 20 years before the incident in question. However, under criminal statutes known as “habitual offender” laws, the prosecutor of the case pushed for life in prison. Without parole. In the most recent of a series of appeals, the Louisiana Supreme Court voted to uphold Bryan’s original sentence — but at what cost?

Retired New Orleans judge Calvin Johnson speaks to the gross inhumanity of the punishment. Bryant is forced to live out the rest of his old age at the Angola State Penitentiary in Louisiana — the largest maximum-security prison in America — performing backbreaking labor, all for a pair of hedge clippers. Moreover, his incarceration has cost Louisiana taxpayers more than half a million dollars to date. Given that such an excessively harsh sentence has no increased penal benefit and is exorbitantly expensive, why was it ever requested? More importantly, why does our justice system vigorously defend life in prison and other excessive punishments for crimes where they have no conceivable criminological benefit?

First of all, numerous data points can explain why such a sentence was initially sought. To begin, 95% of elected prosecutors and 71% of district court judges are white. Adding on that juries are selected from voter rolls (which are in turn susceptible to the massive disenfranchisement of Black people and “purges” of Black voters) and that Black jurors are almost twice as likely to be rejected from the panel, it is no surprise that old, white citizens are vastly overrepresented in juries in Louisiana. Due to all of this, Black defendants often find themselves facing a room of all white people when fighting

for their freedom. Therefore, according to the United States Sentencing Commission itself, Black men are sentenced for almost 20% longer than white men for the same crime on average.

Regardless, the more pressing question is how the United States continues to justify such punishment within its legal systems. Chief Justice Bernette Johnson — the lone dissenter to the Supreme Court’s decision as well as the only woman and Black person on the Court — offers a historical explanation.

Johnson notes that each of Bryant’s crimes was for theft, i.e. dependent on financial situation, and that his life sentence was made possible through habitual offender laws. These laws were created by southern states during the Reconstruction era to “excessively criminalize petty theft associated with [the] poverty” of newly emancipated slaves. Since freed slaves had not been taught English and had no capital of their own, they either had to sharecrop for their previous enslavers or turn to petty theft to provide for themselves. Habitual offender laws for theft allowed states to convert those instances of petty theft into long sentences of forced labor on plantations. Essentially, America constructed a legal system that provided the backbone for a modern, and legal, form of slavery and labor extraction.

This history is particularly strong in Angola — the prison where Bryant is incarcerated. Angola is on the site of a former slave plantation named after the African country where the majority of the slaves were taken from. To this day, thousands of prisoners work the fields as free labor for the government. Not surprisingly, 80% of the prisoners at Angola under habitual offender laws are Black — further implicating the current use of these already racialized laws.

We can no longer avoid these uncomfortable conversations about race in our society. In the words of Chief Justice Johnson, “we can only accomplish [change] by honestly and objectively examining our past in order to understand our present, and then critically examining our present in order to create a better future.” Only then can we truly understand the ugly truth of how the laws on the books today were created during the Reconstruction and Jim Crow eras and are therefore thoroughly informed by race. It is a disservice to the millions of Americans of color for us to continue to ignore these facts and fight against reform to the justice system.

## Bibliography

- Balko, Radley. "Opinion | In This Louisiana Courtroom, Statistically Improbable Jury Pools Give Prosecutors an Advantage." *The Washington Post*, WP Company, 10 July 2019, [www.washingtonpost.com/opinions/2019/07/10/this-louisiana-courtroom-statistically-improbable-jury-pools-give-prosecutors-an-advantage/](http://www.washingtonpost.com/opinions/2019/07/10/this-louisiana-courtroom-statistically-improbable-jury-pools-give-prosecutors-an-advantage/).
- Benns, Whitney. "American Slavery, Reinvented." *The Atlantic*, Atlantic Media Company, 21 Sept. 2015, [www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/](http://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/).
- Chrastil, Nicholas. "Louisiana Supreme Court Won't Review Life Sentence for Man Convicted of Attempting to Steal Hedge Clippers." *The Lens*, 04 Aug. 2020, [thelensnola.org/2020/08/04/louisiana-supreme-court-wont-review-life-sentence-for-man-convicted-of-attempting-to-steal-hedge-clippers/](http://thelensnola.org/2020/08/04/louisiana-supreme-court-wont-review-life-sentence-for-man-convicted-of-attempting-to-steal-hedge-clippers/).
- Duffin, Erin. "Percentage of U.S. District Court Judges 2017, by Race." *Statista*, 30 Oct. 2019, [www.statista.com/statistics/408483/percentage-of-us-district-court-judges-by-race/](http://www.statista.com/statistics/408483/percentage-of-us-district-court-judges-by-race/).
- Edwards, John Bel and James M. Le Blanc. *Briefing Book*, Louisiana Department of Public Safety and Corrections, Jan. 2020, [s32082.pcdn.co/wp-content/uploads/2020/03/0Z-Full-Jan-2020-BB-3.13.2020.pdf](http://s32082.pcdn.co/wp-content/uploads/2020/03/0Z-Full-Jan-2020-BB-3.13.2020.pdf).
- Grosso, Catherine M. and Barbara O'Brien. "A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials." 97 *Iowa Law Review*, pp. 1531-1559, 2012, [digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1455&context=facpubs](http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1455&context=facpubs).
- Holpuch, Amanda. "Louisiana Court Upholds Black Man's Life Sentence for Trying to Steal Hedge Clippers." *The Guardian*, Guardian News and Media, 07 Aug. 2020, [www.theguardian.com/us-news/2020/aug/07/louisiana-court-denies-life-sentence-appeal-fair-wayne-bryant-black-man-hedge-clippers](http://www.theguardian.com/us-news/2020/aug/07/louisiana-court-denies-life-sentence-appeal-fair-wayne-bryant-black-man-hedge-clippers).
- Johnson, Bernette (a). "Louisiana Supreme Court Chief Justice Bernette Joshua Johnson Issues Call For Justice for All in Louisiana." *Louisiana Supreme Court*, 08 June 2020, [www.lasc.org/Press\\_Release?p=2020-18](http://www.lasc.org/Press_Release?p=2020-18).
- Johnson, Bernette (b). "State of Louisiana vs. Fair Wayne Bryant." *No. 2020-KO-00077*, Dissenting, [www.lasc.org/Opinions/2020/20-0077.KO.bjj.dis.pdf](http://www.lasc.org/Opinions/2020/20-0077.KO.bjj.dis.pdf).
- Kelly, Amita. "Does It Matter That 95 Percent Of Elected Prosecutors Are White?" *It's All Politics*, National Public Radio, 08 July 2015, [www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white](http://www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white).
- Litt, David. "The Racist History of Voter Registration." *Time*, TIME USA, 18 June 2020, [time.com/5855885/voter-registration-history-race/](http://time.com/5855885/voter-registration-history-race/).
- Morrison, Aaron. "Louisiana Prosecutors Use The 'Habitual Offender' Statute To Jail People For Life. Attorneys For Lifers Are Fighting Back." *The Appeal*, 12 Sept. 2019, [theappeal.org/louisiana-lifers/](http://theappeal.org/louisiana-lifers/).
- Oshinsky, David. "The View From Inside." *The New York Times*, 11 June 2010, [www.nytimes.com/2010/06/13/books/review/Oshinsky-t.html](http://www.nytimes.com/2010/06/13/books/review/Oshinsky-t.html).
- United States Sentencing Commission. "Key Findings." *Demographic Differences in Sentencing*, 14 Nov. 2017,

[www.ussc.gov/research/research-reports/demo-graphic-differences-sentencing](http://www.ussc.gov/research/research-reports/demo-graphic-differences-sentencing).