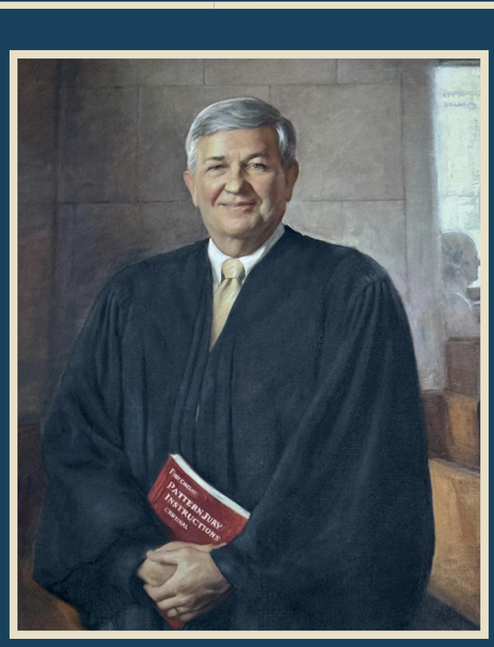
Fanfan's Persistence

FANFAN'S RESENTENCING

The Supreme Court's 2005 decision in ***United States v. Booker*** made the **Federal Sentencing Guidelines advisory** rather than **mandatory**. This greatly affected Ducan Fanfan's original **78-month sentence,** which he felt bound to by the Court's holding in *Blakely v. Washington* (2004). In the final lines of the *Booker* opinion, the Court vacated the judgment in Fanfan's case even though it was deemed constitutional. As a result, Fanfan required a **resentencing**. When Judge D. Brock Hornby resentenced Fanfan, the now **advisory guidelines** allowed him to consider additional factors in Fanfan's case. These new considerations caused Fanfan's sentencing range within the guidelines to rise significantly. Judge Hornby was now able to consider evidence that suggested a much higher amount of drugs that Fanfan had been found with. With this rise in Fanfan's guideline rang**e**, Judge Hornby imposed a new sentence of **210 months** in federal prison and **5 years of supervised release**. Although Judge Hornby used the sentencing guidelines to determine the new sentence, Fanfan's attorneys appealed.



Judge Hornby, U.S. District Judge



Chief Judge Boudin



Circiut Judge Torruella

1ST APPEAL

After Judge Hornby resentenced Ducan Fanfan to 210 months and 5 years of supervised release, Fanfan appealed the sentence to the U.S. Court of Appeals for the First Circuit. The three-judge panel of Chief Judge Michael Boudin, Circuit Judge Juan R. Torruella, and District Judge William W. Schwarzer heard his appeal on September 8, 2006. Fanfan and his attorney made these arguments to the Circuit Court:

- His co-conspirator's evidence was prejudicial.
- The majority of the evidence was against his character.
- Fanfan's Sixth Amendment rights were violated.
- The Supreme Court upheld his old sentence (resentencing was **unnecessary**).
- A jury should determine sentencing guidelines.
- The sentence violates ex post facto principles (it was legal at the time).
- Fanfan was manipulated by the government to purposefully increase his sentence.

The Circuit Court upheld Judge Hornby's ruling and held every argument made by Fanfan invalid.

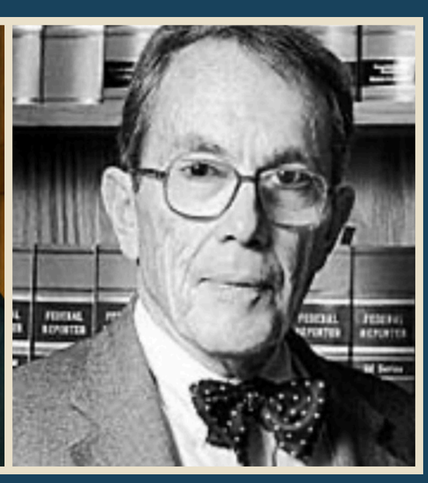
CHANGE IN COCAINE SENTENCING

After two decades of significant disparities between powder cocaine and cocaine base (crack cocaine), the U.S. Sentencing Commission updated the Federal Sentencing Guidelines in 2007 to make cocaine related penalties more equitable. Before the change, under the Anti-Drug Abuse Act of 1986, the law used a 100-to-1 sentencing ratio. This meant that 5 grams of crack cocaine triggered the same mandatory minimum sentence as 500 grams of powder cocaine, even though both drugs are forms of cocaine. The rationale for this was that the effects of crack cocaine are much more potent and absorbed into the system more quickly than powder cocaine. The harsher sentences imposed for crack cocaine, however, seemed to target specific communities, primarily African Americans.

The Commission recommended that the Sentencing Guideline ranges for many crack cocaine offenses be reduced by two offense levels. This change was made retroactive, meaning Fanfan and his attorney, J. Hilary Billings, could file a motion for a reduced sentence. Judge Hornby granted that order and reduced the sentence from 210 months (17.5 years) to 168 months (14 years). **Mr. Fanfan was not satisfied with his sentence reduction and, once again, appealed for a lower sentence.**



Chief Judge Lynch



District Judge Schwarzer

> *"The question was asked based on Apprendi (2000). In some instances, these special interrogatories can pose a risk, but this one did not."*
>
> -Chief Judge Boudin

2ND APPEAL

After Judge Hornby resentenced Fanfan from 210 months down to 168 months, Fanfan and his attorney were still displeased and filed a motion with the District Court for reconsideration. Judge Hornby denied the motion, stating that the 168-month sentence was final. Fanfan appealed to the U.S. Court of Appeals for the First Circuit, where Chief Judge Sandra L. Lynch heard his case alongside Judges Torruella and Boudin, who also heard his first appeal.

At the appeal, both Fanfan and the United States argued over which precedent applied; Fanfan relied primarily on the recent *Kimbrough* decision, while the U.S. relied on *Mihm* and *Hicks*. They also debated how far judges' discretion can reach while assessing which sentencing factors were used.

Judges Lynch, Torruella, and Boudin affirmed Judge Hornby's decision to deny the motion to reconsider. The major reasons for this decision were as follows:

- A court is prohibited from changing a sentence it has already administered unless there was a congressional lowering of the statutory minimum, which there was not, since Fanfan's sentence was changed to 168 months.
- There was sufficient evidence that Judge Hornby had considered all applicable sentencing factors in his decision.

CREATED BY THE 2026 "SUPREME COURT AND MY HOMETOWN" STUDENTS

Benedita Alberto, Ashlynn Cuthbert, Catherine Peacock, Charlotte Rioux, and Emma Twomey

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