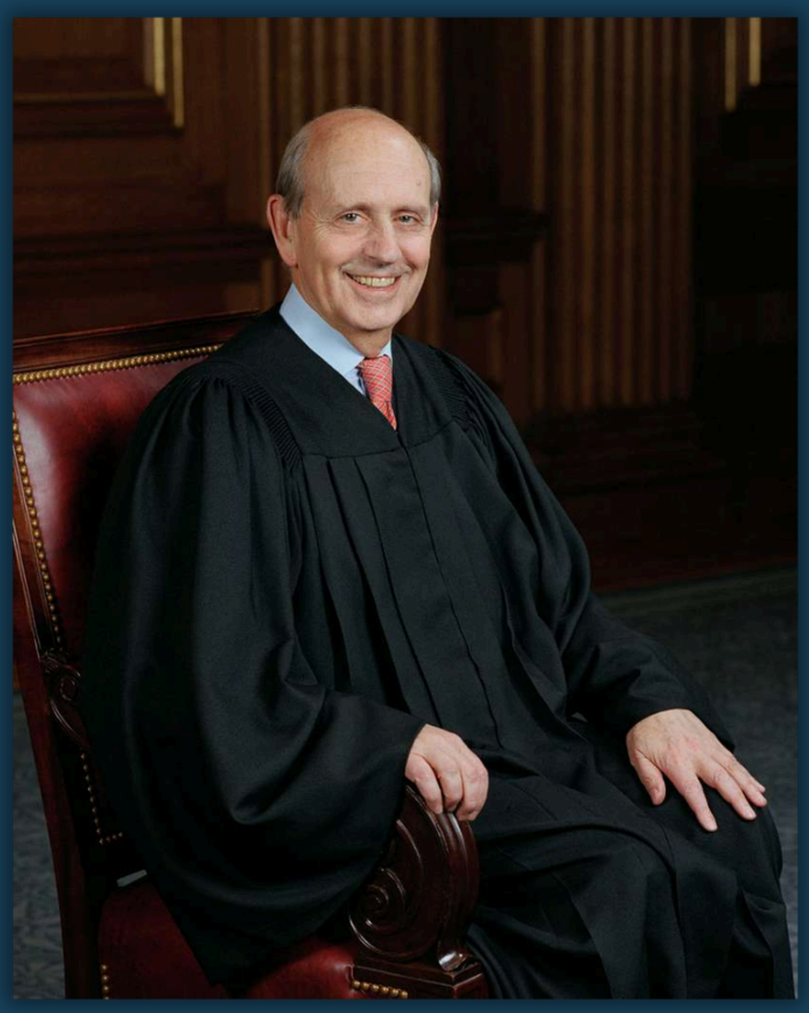
Post-Booker Era



Assiciate Justice Stephen Breyer, *Courtesy of the Library of Congress*

"But the constitutional jury trial requirement would nonetheless affect every case. It would affect the decision whether to go to trial. It would affect the content of plea negotiations. It would alter the judge's role in sentencing." - Justice Stephen Breyer

Decision Summary

Justice John Paul Stevens delivered the 5-4 decision in *Booker*, holding that the Sentencing Guidelines violated the Sixth Amendment right to a jury trial. In the remedial majority, Justice Stephen Breyer stated that the guidelines would now be advisory. *Fanfan* and *Booker's* sentences were vacated and remanded.

Balancing of Judicial Powers

With advisory guidlines, judges could tailor sentences specifically to individual cases by considering facts of someone's life or the crime. This must be found true by a preponderance of evidence. However, this decision also requires any facts that increase a defendant's sentence above the statutory maximum be found true beyond a reasonable doubt by a jury, restoring fact-finding power to the jurors, while simultaneously allowing for greater judicial discretion.

Impacts on Sentencing

Before sentencing, a judge receives a pre-sentence report containing detailed information about the defendant's life history, background, education, prior convictions, and any additional relevant information. This information is not given to the jury during the trial because it could increase jury bias. Judges, however, can review these details as sentencing factors. If they find them to be proven by preponderance of evidence, they can elect to depart from the guidelines to a sentence they deem more appropriate. This discretion allows judges to sentence a defendant in consideration of their unique circumstances. It is important to note that sentencing disparities have risen in the post-*Booker* era of advisory guidelines.

42.8%

Federal sentences that fell within the Guidelines in fiscal year 2021.

13.4%

Higher federal sentences for Black offenders compared to White offenders 2017-2021.

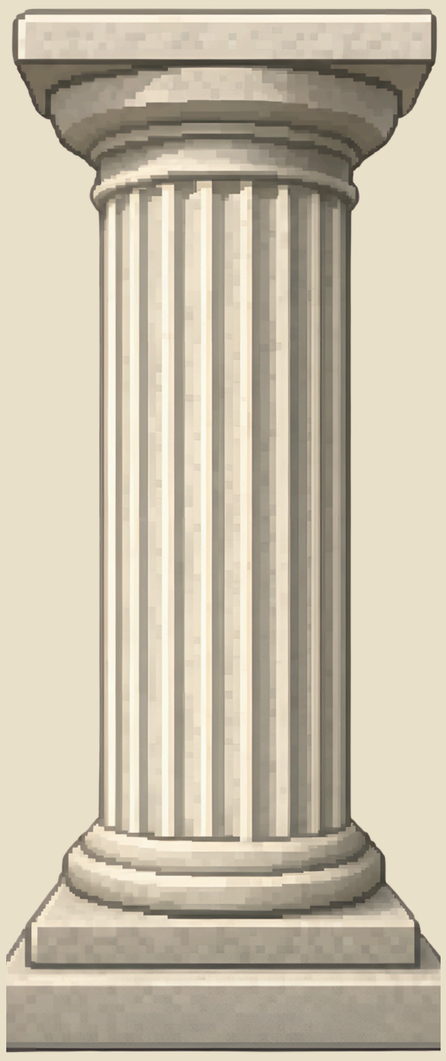
Judicial Impacts

***Kimbrough v. United States* (2007)**

In a 7-2 decision, SCOTUS overturned the Fourth Circuit Court of Appeals and affirmed the District Court. Justice Ruth Bader Ginsburg's majority held that judges could depart downward from the cocaine to crack sentencing guidelines ratio of 100:1 when sentencing because, post-*Booker*, judges have judicial discretion and are expected to have some level of non-uniformity when sentencing.

***Peugh v. United States* (2013)**

In a 5-4 decision, the Supreme Court of the United States overturned the Seventh Circuit Court of Appeals' decision, ruling that the ex post facto clause applied to cases involving the sentencing guidelines. Because the sentencing guidelines changed after the offense and were used as advisory, Justice Sonia Sotomayor's majority opinion held that using post-offense sentencing guidelines changed the nature and severity of the offense.



Combating Disparaties

The sentencing disparities seen in the post-*Booker* era can be explained by judges departing from the sentencing guidelines after considering defendants' life circumstances. Additionally, the U.S. Sentencing Commission (USSC) has been working to remedy these growing disparities, ensuring that similar crimes under similar circumstances are sentenced comparably nationwide.

To achieve this, the USSC has established advisory groups composed of a diverse range of people to ensure everybody has a seat at the table. They conduct research to identify where disparities are present, and work to modify the Guidelines so that sentences are, in accordance with 18 U.S.C. § 3553(a), sufficient but not greater than necessary to provide retribution, deterrence, incapacitation, and rehabilitation.

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

Evelyn Kahn, Joanna Kamalandua, Natalie Rand, Ava Rigler, Dash Young

Program sponsored by the Supreme Court Historical Society, the U.S. Court of Appeals for the First Circuit, and the U.S. District Court for the District of Maine.