

18. If restitution is in issue, determine the appropriate amount and how and when it is to be paid.⁷ Resolve any factual or legal disputes and state that you have considered the factors in 18 U.S.C. § 3664(f)(2) (or, § 3664(a)(2) if defendant's offense occurred before Apr. 24, 1996). 18 U.S.C. §§ 3663–3664; U.S.S.G. § 5E1.1.
19. Determine whether to impose a fine and, if so, in what amount. See 18 U.S.C. § 3572(a); U.S.S.G. § 5E1.2.⁸
20. Explain that you will now state the sentence, but that the attorneys will have a final chance to make legal objections before sentence is imposed.⁹
21. State the sentence.
22. State the reasons for the sentence.
 - (a) The statement must include the “specific reason” for any departure from the guidelines and for the extent of the departure. 18 U.S.C. § 3553(c)(2).
 - (b) If the sentence includes a prison term within the guidelines, and the lower and upper limits of the guideline

7. Note that some circuits have held that restitution must be determined at the time of sentencing, not at a later date. *See, e.g.,* United States v. Porter, 41 F.3d 68 (2d Cir. 1994); United States v. Ramilo, 986 F.2d 333 (9th Cir. 1993); United States v. Prendergast, 979 F.2d 1289 (8th Cir. 1992); United States v. Sannett, 925 F.2d 392 (11th Cir. 1991). Several circuits have also held that the district court may not delegate to a probation officer the authority to set the specific terms of payment, including the ultimate amount of restitution and the size and schedule of any installment payments. The probation officer may make recommendations, but the court must make the final decision. *See, e.g.,* United States v. Graham, 72 F.3d 352 (3d Cir. 1995), *cert. denied*, 116 S. Ct. 1286 (1996); United States v. Mohammad, 53 F.3d 1426 (7th Cir. 1995); United States v. Johnson, 48 F.3d 806 (4th Cir. 1995); United States v. Porter, 41 F.3d 68 (2d Cir. 1994); United States v. Albrow, 32 F.3d 173 (5th Cir. 1994). Effective April 24, 1996, 18 U.S.C. § 3572(d)(2) states that “the length of time over which scheduled [restitution] payments will be made shall be set by the court.”

8. 18 U.S.C. § 3572(d)(2), noted above, also applies to fines.

9. Fed. R. Crim. P. 35 no longer authorizes the court to correct an illegal sentence or to reduce a sentence as a matter of discretion. Once a sentence is imposed, changing it appears to be beyond the sentencing judge's power, except for seven days in which to correct obvious technical errors under Rule 35(c). The procedure recommended here is intended to assure that the sentencing judge hears every possible objection before losing jurisdiction to change the sentence.