

COMMISSION MEETING

AGENDA

JANUARY 21, 1987

The following persons attended the U.S. Sentencing Commission Meeting on January 21, 1987.

Commissioners

William W. Wilkins, Jr., Chairman
Michael K. Block
Stephen G. Breyer
Helen G. Corrothers
Ronald L. Gainer
George E. MacKinnon
Ilene H. Nagel
Paul H. Robinson

Staff

Suzanne Conlon, Executive Director
Mary Ellen Albrecht
Charles Betsey
Alan Chaset
Russell Ghent
Di Horvath
David Lombardero
Paul Martin
Phyllis Newton
William Rhodes
Elizabeth Williams

Commission Meeting Minutes -- January 21, 1987.

Chairman Wilkins called the meeting to order at 9:30 a.m. on Wednesday, January 21, 1987.

The Chairman distributed revised versions of Part Q, on environmental offenses, and Chapter 3 for Commission review. He continued the review of Chapter 2, from the previous day, with Part G involving prostitution, sexual exploitation of minors, and obscenity.

Part G: Prostitution, Sexual Exploitation of Minors and Obscenity

Judge MacKinnon opposed the inclusion of the last sentence of the introduction to Part G stating that the primary sentencing consideration for sexual offenses was deterrence. Commissioner Nagel moved to delete the reference to any preferred sentencing factor in order to remain consistent with the rest of the draft. Judge Breyer seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

Judge MacKinnon moved to include the use of drugs in the specific offense characteristic for coercion under §G211. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge Breyer moved to delete §G212, owning and operating a place of prostitution, due to the lack of prosecutions under the statute. He recommended adding commentary noting the lack of prosecutions and suggesting that offenses covered by this guideline be punished in accordance with §G211. Commissioner Block seconded the motion. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Commissioner Block moved to increase the base offense level for prostitution from 3 to 6 to give a sentencing judge more discretion. He recommended checking other guidelines to insure that the draft is consistent in this regard. Judge Breyer stated that there was no basis in current practice for such an increase. Commissioner Nagel seconded. The motion passed by a vote of 5-1. Judges Wilkins and MacKinnon, and Commissioners Block, Corrothers and Nagel voted yes. Judge Breyer voted no. Commissioner Robinson was absent.

Phyllis Newton stated that the base offense level and specific offense characteristics in §G221 were based upon the statute. Commissioner Block moved to delete the reference to prior criminal history in §§G221 and G222, and replace them with commentary stating that the statutes for these offenses are concerned with criminal records. Judge Breyer seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge MacKinnon moved to change the level of aggravation in §G221 for age of the victim from "2" to "2 to 4" and include commentary to indicate that victims of a very young age would warrant the 4 level increase. Commissioner Corrothers seconded the motion. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge MacKinnon suggested adding an aggravating factor to §G222 to capture the large quantities of money often involved when the defendant is a member of organized crime. Judge Breyer encouraged the Commission to review the current practice data before voting on this guideline.

Judge MacKinnon moved that a 4 level increase be added to §G222 when the retail value of the exploitive material exceeds \$25,000. Commissioner Corrothers seconded the motion. The motion passed by a vote of 5-1. Judges Wilkins and MacKinnon, and Commissioners Block, Corrothers and Nagel voted yes. Judge Breyer voted no. Commissioner Robinson was absent.

Commissioner Nagel moved to delete the reference to prior criminal record in §G231 and include commentary to cover the importance of criminal record in the statute. Judge Breyer seconded. Commissioner Block amended the motion to change the level of increase in the specific offense characteristics under §G231 to 1 to 6. Judge MacKinnon seconded the amended motion. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Commissioner Block moved to approve Part G as amended. Commissioner Corrothers seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part H: Civil Rights

Suzanne Conlon explained the application of the guidelines for civil rights violations. Commissioner Corrothers recommended an aggravating factor for defendants who are acting in an official capacity. Judge Wilkins recommended adding commentary to take such offenders into account by sentencing on the high end of the range, and deleting commentary that may be construed to exclude all offenders except law enforcement officials. Commissioner Corrothers moved to make these changes in the commentary for §H211. Commissioner Nagel seconded the motion. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge MacKinnon recommended several wording changes to the guidelines and commentary for violations of political rights.

Commissioner Block recommended that a specific offense characteristic be used as opposed to a range in the base offense level in §§H223, H234 and H235.

Judge MacKinnon recommended changing the commentary to §H241, peonage, to include any activity contrary to the 13th amendment.

Commissioner Nagel moved to approve Part H as amended. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part J: Administration of Justice Offenses

Judge Wilkins distributed the revised version of Part J and began its review.

Judge Breyer noted that the base offense level for obstruction deviated from present practice for no stated reason. He recommended that the base offense level be lowered or the range be expanded. Judge Breyer and Commissioner Block discussed the average sentences given to defendants convicted of obstruction.

Judge MacKinnon stated that the Commission should not be bound by present practice because of the need to eliminate disparity.

Judge Wilkins recommended that the low end of the base offense range be no less than 15. He stated that only the judge can determine the severity of the impact that the obstruction had on the criminal justice system.

Commissioner Corrothers moved to place the range of the base offense level for §J212, obstruction, at 13 to 18. Judge Breyer seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge Wilkins suggested that the base offense level for perjury be the same as for obstruction of justice. Judge Breyer and Commissioner Block discussed present sentencing practice for perjury using data developed by Bill Rhodes and other data included in the Partridge study. Commissioner Nagel stated that only one data base should be used throughout the guidelines to maintain consistency.

Judge Breyer moved to change the base offense level for perjury to a range of 13 to 18 in keeping with obstruction of justice. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Suzanne Conlon discussed the base offense levels for §§J216, J217 and J218. She noted that these offenses were prosecuted under statutes with mandatory minimum penalties.

The Commission discussed the guideline for impersonation of a federal official, agent or employee. Judge Breyer recommended

placing all the offenses for impersonation under one guideline with a base offense level of 10. Commissioner Nagel moved to place the base offense level for impersonation at a range of 10 to 12. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Judge Breyer asked Bill Rhodes to compile a list of present sentencing practices for offenses covered under Part J. Commissioner Block moved to approve Part J as amended. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part K: Public Order and Safety

The Commission discussed the guidelines included in Part K. Judge MacKinnon suggested striking a sentence reciting a legal principle concerning receipt of stolen goods because this had not been done elsewhere in the guidelines.

Russell Ghent explained the reason for placing the base offense level for §K214, arson, at 8. Commissioner Nagel suggested increasing the base offense level and decreasing the specific offense characteristic for arson. Judge Wilkins suggested listing four base offense levels for the various degrees of arson, the least of which would be 8.

Judge MacKinnon recommended a specific offense characteristic with respect to §§K215 and K216 for explosives that are armed and ready to detonate at the time of arrest. He suggested that such a factor should result in the statutory maximum sentence. Mr. Ghent noted that the offense levels of those guidelines already allow for the possibility of sentencing at the statutory maximum. Judge MacKinnon recommended commentary to address this factor.

Commissioner Block suggested stylistic changes to §K216 and an additional specific offense characteristic for persons prohibited by federal, state or local law from possessing dangerous weapons.

Judge Breyer moved to change the wording of specific offense characteristic (3) in §K214 to include places where persons are likely to be present and omit commentary referring to detached sheds. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Commissioner Block moved to approve section 1 of Part K as amended. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Commissioner Block moved to amend the level of decrease for legitimate sporting purposes under §K221 to a range of 3 to 5 levels in order to afford a judge the opportunity to award

probation. Commissioner Corrothers seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

The Commission and staff discussed §K222, the guideline for weapons in violation of the National Firearms Act. David Lombardero discussed present practice and the Parole Commission guidelines for this offense.

Commissioner Block suggested that the commentary address offenders in this guideline who have no criminal purpose, but act only as collectors. Judge Wilkins recommended that this mitigating factor be given a 6 to 9 level decrease. Commissioner Block moved to amend §K222 to include a 6 to 9 level decrease for legitimate sporting purposes. Commissioner Corrothers seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

David Lombardero discussed the base offense level for §K223, unlicensed dealing in firearms. Commissioner Block moved to retain the base offense level, but amend the aggravating factors for multiple firearms, stolen firearms and prohibited persons. Commissioner Corrothers seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

Judge MacKinnon and Russell Ghent discussed §§K214 and K215, and the statutory offenses they are intended to cover. Judge MacKinnon recommended commentary to clarify the guideline to be used for each statute.

The Commission discussed the base offense level and aggravating factors for §K231, unlawfully transporting hazardous material aboard an aircraft. Commissioner Gainer noted that offenders prosecuted under this guideline may be those who do not meet the statutory requirements for hijacking.

Judge Wilkins recommended a base offense level of 15 with an increase if the offender acted with intent to commit another crime. He based this level on the fact that the statutory maximum is five years. Judge Breyer recommended flagging this guideline for comment due to the lack of past practice data and parole guidelines. Judge Wilkins suggested a base offense level of 20 with a specific offense characteristic increase of 5 for intent to commit another crime.

Judge Wilkins recommended that the base offense level for §K232, unlawfully transporting hazardous materials in commerce, be placed at 15 with an increase of 5 if the offender acted with intent to commit another crime. Judge Breyer requested that 'willful' be deleted from the specific offense characteristic.

After discussing §§K233 and K234 Judge Breyer recommended that they be retained in the guidelines to facilitate comment.

Commissioner Block moved to approve Part K as amended. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

The Commission recessed for lunch.

Judge MacKinnon requested that fines be mandatory for obscenity offenses. He stated that other guidelines had fines listed in the commentary and suggested that obscenity offenses warranted similar treatment. Judge Wilkins stated that fines would be applicable throughout the guidelines and should not be specified in any particular guideline.

Part B: Property

Commissioner Block discussed his proposal for §B211, larceny, embezzlement and other forms of theft. He recommended separating the increase for planning and sophistication from dollar value and adding an increase for multiple transactions to be used if the result is greater than the dollar value. He further recommended adding \$1 to the first column of the property table to keep each level exclusive and avoid potential litigation.

Commissioner Block moved to accept these recommendations to Part B. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Commissioner Block moved to amend §B212(a)(1) to read the same as the newly amended §B211(a)(5). Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

The Commission discussed §B231, the guideline for robbery. Judge Breyer discussed the application of the robbery guideline and present sentencing practice for robbery offenses. He disagreed with the use of dollar value stolen to aggravate the offense level because the amount taken is largely fortuitous. Judge Wilkins suggested omitting that factor and placing commentary in the guideline for the judge to sentence at the high end of the range when dollar value stolen is in excess of \$10,000.

The Commission discussed the application of the property table in the guidelines for burglary, robbery and embezzlement.

Judge Breyer stated his disagreement with the use of the property table in the guideline for §B243, bribery by a common carrier. He stated that some judges had trouble with the use of the property table in any bribery guideline because they did not know whether they should use the amount of the bribe or the amount of benefit that was expected to be produced by the bribe. Judge Breyer recommended using the amount of the bribe and

include commentary to allow the judge to use the amount of gain if the amount of the bribe does not seem to capture the severity of the offense.

Commissioners Block and Nagel stated that the property table should use the amount of the benefit to the offender to capture the true offense. Judge Wilkins suggested that the amount of the benefit be the measure for aggravation and include commentary to allow for the use of the amount of the bribe in appropriate cases. Judge MacKinnon suggested making a distinction in the commentary between the gain to the person paying the bribe and the gain to the recipient of the bribe.

Judge MacKinnon recommended including in the commentary for §B243 an example of how the guideline would be applied to an athlete who was bribed to shave points. He also suggested commentary allowing the judge to aggravate the sentence further if drugs were an element of the bribery.

Judge Wilkins suggested that Charles Betsey redraft these guidelines to include the Commission recommendations and propose them for approval at a later time.

Judge Breyer disagreed with the use of the property table in the guideline for counterfeiting. Judge MacKinnon discussed the application of the specific offense characteristic for possession and recovery of counterfeit plates.

Judge MacKinnon requested that "uncompensated" be removed as a qualifier for losses in the commentary for counterfeiting.

The Commission and staff discussed the aggravating factors for possession of counterfeit plates and currency. Judge Breyer suggested that commentary be added to avoid double counting.

Judge Breyer moved to adopt Part B as amended. Commissioner Corrothers seconded. The motion passed by a vote of 6-0. Commissioner Robinson was not present at the time.

Part X: Conspiracies, Solicitations and Attempts

Judge Breyer suggested the base offense level for conspiracies and attempts be the same as the underlying offense, but the level for solicitations be half the level of the underlying offense. Commissioner Nagel stated that she believed half the level of the underlying offense was too low. Judge Wilkins stated that he expected that all solicitations were adequately covered in other parts of the guidelines.

Judge Breyer moved to treat attempts and conspiracies at the same base offense level as the substantive offense and solicitations as half of the base offense. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner

Robinson was absent.

The Chairman reviewed the guidelines for aiding and abetting, accessory after the fact and threats. Judge Breyer recommended deleting §X241, threats, and adding commentary somewhere in the guidelines to read, "If the offender is convicted of an offense for which no specific guideline has been written, the court shall sentence the offender by applying the guideline or guidelines that it finds most closely analogous and in the absence of a guideline that provides an analogy the court shall, with a statement of its reasons, impose a sentence proportionate to the severity of the crime and consistent with the purposes of sentencing set forth." Judge Breyer moved to adopt Part X as amended. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part F: Fraud

Suzanne Conlon reviewed the proposed draft of Part F. She stated that, due to the amount of criticism of the September draft, the fraud guideline was redrafted to be simpler and more flexible. She stated that attorneys from the Fraud Section of the Department of Justice indicated that the fraud guideline should not be driven by the property loss.

Commissioner Block did not agree with the structure of the proposed guideline and stated that it may provide a possibility for double counting. He proposed that the guideline be redrafted along the lines of theft, with base offense levels of 6, 8 and 10, and include a specific offense characteristic that referenced the property table. Commissioner Block stated that the amount of money defrauded was the most significant factor. He recommended deleting the word "extent" in the base offense level because extent would be captured in dollar value.

Commissioner Block and Judge Breyer discussed the application of the proposed guideline and Commissioner Block's proposal. Judge Breyer suggested making use of the property table discretionary depending on whether money adequately reflects the seriousness of the fraud.

Commissioner Block stated that any fraud guideline should be based upon property loss. Judge MacKinnon agreed with Commissioner Block, but stated that dollar value should not be the sole aggravator in some cases. Commissioner Nagel stated that dollar value does not always capture the seriousness of the offense.

Judge Breyer suggested making the three base offense levels for fraud 6, 8, and 10, adding the property table as an aggravating factor and allowing the judge to use an additional 1 to 11 level increase in the alternative if the property table

does not adequately reflect the severity of the crime. Suzanne Conlon stated that some offenses, such as social security fraud, would be disproportionately aggravated by the property value.

Commissioner Gainer stated that fraud was essentially a property offense. He stated that fraud may also pose dangers to physical or psychological well-being.

Judge Breyer suggested adding commentary to state the Commission's diverse ideas as to this guideline and requesting comments.

Commissioner Block requested reasoning to support a base offense level for fraud 2 levels greater than theft. Judge MacKinnon stated that there was often an abuse of trust as an element of fraud.

The Commission discussed the application of the amendments to the proposed draft. Suzanne Conlon requested that the amendments be reviewed by the Department of Justice. Judge Wilkins noted that the Justice Department had detailed a member of its Fraud Section to help the Commission. He recommended inviting the Fraud Section to review the proposals before voting on the draft.

Part L: Immigration

The Commission discussed the application of the proposed guideline for immigration violations. Commissioner Block questioned the increase for "prior convictions for this offense." Judge MacKinnon noted that it was difficult to determine present practice because of the new immigration statute.

Commissioner Corrothers moved to adopt Part L as amended. Judge MacKinnon seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part M: National Defense

Charles Betsey explained the guideline for treason. He stated that the parole guidelines called for 100 months or more for this offense. He noted that data on current practice were unavailable.

Judge Breyer recommended that the relationship between the base offense levels for misprision of treason and treason be the same as for misprision of felony and felony. He stated that commentary should describe how the Commission derived the base offense levels where current practice and parole guidelines are not available.

Judge Breyer moved that the base offense level for misprision of treason be 17. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

Judge Breyer stated that it was difficult for him to propose a base level for these offenses that have no current convictions or parole guideline guidance. He stated his concern about institutionalizing the opinions of the Commissioners, no matter how well founded they are.

Commissioner Robinson recommended an aggravator for offenses committed in time of war.

Judge Breyer moved to adopt section 1 of Part M as amended. Commissioner Block seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

Judge Wilkins recommended changing the base offense levels for sabotage to be similar to treason. He suggested changing the base offense level of §M221 to 32, §M222 to 26, §M223 to 30, §M224 to 26, §M225 to 20 and §M226 to 20 with an increase of 4 to be consistent with arson. The Commission discussed the base offense levels of several national defense guidelines in an attempt to make analogous guidelines consistent.

Judge Breyer recommended including production of defective war materials in §M221 and deleting §§M223 and M224. Commissioner Gainer encouraged consolidation of other guidelines in the future.

Judge Breyer stated that the espionage guideline covered a wide variety of conduct that was not reflected in the base offense level.

Commissioner Gainer disagreed with the distinction made between top secret and secret documents in the specific offense characteristics for espionage. Commissioner Nagel suggested that a range be allowed for this aggravating factor with a level based on the damage done to the country. Commissioner Gainer stated that a range was a good idea, but that if it is tied to damage, the government would rather drop the charge than produce evidence of damage in a public trial. Judge Wilkins suggested retaining the distinction between secret and top secret as a practical compromise.

Judge Breyer suggested withdrawing the guidelines for espionage that are not prosecuted. He stated that despite an interest in protecting national security, the possibility of using such large offense levels on whistle-blowers and newspaper reporters will be controversial and may impinge on free speech.

Commissioner Block recommended that Part M be condensed so that each statute does not have its own guideline. Commissioner Gainer suggested that this section be condensed prior to publication, or left as it is with commentary stating that the section requires simplification.

The Commission discussed the base offense level for §M238, disclosure of information identifying a covert agent. Charles Betsey explained the application of this guideline. Judge Breyer stated that the statute it intends to cover has statutory maximums of 3, 5 and 10 years depending on the level of clearance the offender has. Judge Wilkins suggested a base offense level of 16 with specific offense characteristics of 8 and 4 depending on the level of security clearance the offender has. Commissioner Nagel stated that 16 was insufficient as a base offense level for such a serious offense. Judge Wilkins recommended a base offense level of 20 with increases of 10 and 5 for the defendant's level of clearance.

The Chairman called for discussion of §M239, negligent delivery or loss of national defense information. Judge MacKinnon read the statute intended to be covered by the guideline. Judge Breyer suggested that the guideline was analogous to involuntary manslaughter. Commissioner Gainer stated that he believed the base offense level was too high for negligent behavior in relation to intentional transmittal.

Judge Breyer recommended base offense levels of 14, 12 and 10 for §M239 to be consistent with involuntary manslaughter. He suggested adding commentary stating that the guidelines were written to capture offenders who intend to or actually submit the country to national security dangers. The commentary would recommend that in cases where national security was not compromised a downward departure is warranted.

The Commission discussed the application of the guidelines in section 4 of Part M. Judge Breyer noted that the offense covered by §M241 has been prosecuted and those sentences should be reviewed before deciding on a base offense level. Commissioner Nagel proposed a range of 10-15 for the base offense level with commentary stating that in time of war the judge should use the maximum.

Judge Wilkins recommended a similar base offense range for §M244 as was agreed to for §M241. Judge Breyer stated that a range of 10-15 would eliminate the possibility of probation. He noted that conscientious objectors during the Viet Nam war were mostly given probation.

The Commission reviewed the guidelines in section 5 of part M concerning prohibited financial transactions and exports. Judge Breyer stated that the data on these offenses were insufficient to issue guidelines. He recommended that if a guideline were to be issued, all of the offenses should be included in one guideline with a wide range. The specific level used to sentence the defendant in such a large range would depend on: the degree to which the violation would likely impair a security interest, the amount of the commerce involved, the

relationship of the foreign country to the United States, the technical nature of the violation, and the sophistication of the evasion.

Judge Wilkins noted that the base offense levels for these guidelines were proposed by the Commerce Department. Judge Wilkins recommended that a range of 10-18 should be used as a base offense range for §§M251 and 253. He recommended a base offense of 20 for §§M252, 254 and 255. Judge Breyer recommended a broad range instead of a specific base offense level for §M252 because of the possibility of a broad range of offenses being covered by this guideline. Commissioners Block and Nagel supported Judge Wilkins' recommendations.

Commissioner Block suggested a base offense level of 10 for §M256 with both specific offense characteristics adding 10 more levels each. Commissioner Nagel stated that the specific offense characteristics should not be as large as the base offense.

Judge Wilkins recommended a base offense level of 25 for §§M257 and 258. Judge MacKinnon analogized the offense covered by §M258 to 18 U.S.C. § 1001, the statute for false statements or entries generally. Charles Betsey noted that the parole guideline for §M257 was 40-52 months, which would be a level 22. The Commission agreed to place the base offense level of §M257 and 258 at 22.

Judge Breyer stated that §M262 carried too high a base offense level. Judge Wilkins suggested deleting §M262. Commissioner Gainer noted that this guideline contains a drafting problem because it attempts to deal with regulatory offenses at the same time as more serious offenses. Judge MacKinnon stated that the statute covered by §M262, 18 U.S.C. §951, is commonly cited and well known, but agreed that the base offense level of 31 was too high. Judge Wilkins recommended a base offense level of 20 for §§M262 through M265.

Judge Wilkins suggested retaining the remainder of section 6 as proposed. Judge Breyer stated that the base offense level for §M266, failure to file political propaganda, was too high. He suggested placing the base offense at 6 to allow the judge the opportunity to give probation in appropriate cases. Judge Wilkins recommended a base of 12 for §M266. Commissioner Block proposed a base level of 10 for §M266.

Commissioner Corrothers stated that the base offense levels should reflect the severity of punishment suggested by Congress in the maximum penalty. Judge MacKinnon noted that the maximum penalty for the offense covered by §M266 was three years, so that 10 would be an appropriate level.

Judge Wilkins suggested that the guidelines in section 7 of

part M, concerning atomic energy, be made consistent. He proposed that all the base offense levels be made 30.

Commissioner Block stated his disagreement with the wording of some of the guidelines in section 8 of part M. Judge Wilkins recommended that the Commission not publish guidelines concerning neutrality violations. The Commission agreed with this recommendation.

- Judge Breyer moved to approve Part M as amended, but with a preface to state that it is published only to elicit public comment due to the lack of available information. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

Part N: Offenses involving consumer products

Judge Breyer noted that the guidelines in this part have been reviewed and approved by both the FDA and the regulated industry. He recommended that the base offense levels be retained as proposed.

The Commission discussed the types of offenses covered by these guidelines. Judge MacKinnon recommended replacing "scope" with "extent". Commissioner Nagel recommended several stylistic changes.

Judge Wilkins recommended that the increase for the specific offense characteristics in §N231 and 232 be changed to a range of 2 to 6.

Judge Breyer moved to adopt Part N as amended. Commissioner Nagel seconded. The motion passed by a vote of 6-0. Commissioner Robinson was absent.

The Chairman suggested that the Commissioners read the remaining unapproved sections and prepare to discuss them at noon the following day.

The meeting was adjourned.