

assessment of the offender and the offense. See *Rita v. United States*, 551 U.S. 338 (2007). Accordingly, a sentencing judge must use his or her experience and common sense when determining what value the “starting point” should have in the final analysis. As Judge Cabranes and Professor Stith point out in their book, “the explosion of case law on federal sentencing contains almost no discussion of the purposes of sentencing generally or in the specific case—almost no articulated concern as to whether a particular defendant should be sentenced in the interest of general deterrence, rehabilitation, retribution, and/or incapacitation.” Kate Stith & Jose Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (Univ. of Chicago Press 1998). Now that judges are free to discuss these purposes of sentencing within the context of the individualized facts of the offender and the case, an exchange among the courts, defenders, prosecutors, probation officers, victims, and the Sentencing Commission can take place and a “common law” of sentencing can and should emerge. A great example of this “common law” of sentencing that actually addresses the purposes of sentencing can be found in *United States v. Cole*, 622 F. Supp. 2d 632 (N.D. Ohio 2008), where the trial court discussed the purposes of sentencing in the following manner:

“We have long understood that sentencing serves the purposes of retribution, deterrence, incapacitation, and rehabilitation. Deterrence, incapacitation, and rehabilitation are prospective and societal—each looks forwards and asks: What amount and kind of punishment will help make society safe? In contrast, retribution imposes punishment based upon moral culpability and asks: What penalty is needed to restore the offender to moral standing within the community?”

The Cole court went on to describe how each of these purposes was consistent with the sentencing statute found at §3553, and how the law and the facts (which involved a financial crime) should be analyzed given these sentencing concerns.

With respect to appellate review, I believe that the “abuse of discretion” standard has worked well and will continue to do so. District court judges “live with a case” for a substantial period of time and have face-to-face interactions with the offender. Appellate courts do not have these advantages available to district judges in formulating an appropriate sentence, making a less deferential, “de novo” standard of review inappropriate. While district judges can and do get it wrong from time to time, I believe the current “abuse of discretion” standard adequately allows appellate courts to determine the point at which the latitude afforded district court judges has been transgressed. If a Court of Appeals canvasses the entire record and is left with a “firm and abiding” conviction that the sentence is not “reasonable,” then the Court of Appeals can and should intervene and reverse the district judge. I am not certain that this is a test which “shocks the judicial conscience,” but I am confident that Court of Appeals judges will be able to identify an unreasonable sentence when they see it and articulate the reasons why the sentence is unreasonable in the context of the particular facts of a case.

Lastly, with respect to changes in either the sentencing statutes or the Federal Rules of Criminal Procedure, I would emphasize the necessity of eliminating all mandatory minimum statutes and sentencing enhancement statutes. These statutes unfairly and improperly shift the sentencing function of government from the judicial branch to the executive branch. With respect to Federal Rule of Criminal Procedure 32, it should be expanded to permit a broader exchange of in-

formation in advance of the actual sentencing proceedings. Additional authority should be provided within the Rules to allow medical, psychological, or vocational testing when such testing would aid the sentencing judge in formulating an appropriate sentence.

Thank you for the invitation to submit testimony before the commission. I look forward to the opportunity to verbally address any concerns or questions you may have about my testimony.

HONORING OUR ARMED FORCES

STAFF SERGEANT STEPHEN MURPHY

Mrs. SHAHEEN. Mr. President, today I wish to express my sincerest condolences and deepest sympathies to the family of SSG Stephen F. Murphy, who died in Al Asad, Iraq, on November 8. Staff Sergeant Murphy, a native of Troy, NH, served his country for 16 years as a member of the U.S. Marine Corps. The American people will forever be grateful for his service.

Staff Sergeant Murphy exemplified the best in America’s long tradition of duty, sacrifice and service. Despite being turned away from a Marine recruiting station as a teenager for being too small and still lacking a high school diploma, Stephen was determined to enlist and rededicated himself to his studies and weight training until he could join the Corps. The selfless determination he displayed is what makes our Armed Forces the best in the world.

When he formally established Veterans Day in 1954, President Eisenhower described the importance of a national day of remembrance: “On that day let us solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom, and let us reconsecrate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain.”

In the town of Troy this past Veterans Day, those words undoubtedly took on a new poignancy as the community came together to honor the sacrifice of one of its own. Our nation can never fully repay this sacrifice, nor fully assuage the loss to Stephen’s family. Through his years of service, he helped preserve the safety and security of the American people. It now falls to all of us to honor his memory by supporting our veterans and their families and ensuring America’s continued security.

I ask my colleagues to join me and all Americans in honoring the life of SSG Stephen Murphy.

REMEMBERING AMBASSADOR THOMAS F. STROOCK

Mr. BARRASSO. Mr. President. Wyoming has lost a statesman. On Sunday, December 13, 2009, Ambassador Thomas F. Stroock passed away at the age of 84. Tom once said, “I don’t know why God gave me this wonderful life. Good fortune, I guess.” Those of us who had

the benefit of knowing Tom are certain that his wonderful life was a result of his determination, toughness, and confidence.

Tom served our Nation as a marine in WWII. In 1948, he graduated from Yale University and then found his way to Wyoming. His first job was as a roughneck on an oil rig. The following year, the lovely Marta Freyre de Andrade agreed to be his wife.

Tom was a man who saw possibilities and opportunities. He started his own oil and gas properties firm in 1952, Stroock Leasing Corporation and Alpha Exploration, Inc. It grew to be one of Wyoming’s most respected and successful oil and gas businesses.

While he was busy with his successful energy endeavors, Tom still had much to give Wyoming and our Nation. He served for 16 years in the Wyoming Legislature. He was chairman of the local school board, as well as the Wyoming School Boards Association and Wyoming Higher Education Council. Tom used his energy and business acumen to lead the industry though his service on the Wyoming Natural Gas Pipeline Authority and the Enhanced Oil Recovery Commission.

In 1989, his good friend and college classmate, President George H. W. Bush, tapped him to be the U.S. Ambassador to the Republic of Guatemala. It was a tough assignment. Guatemala was in the midst of a decades-long civil war. Tom approached this job as he did all of his other challenges—with forthrightness and courage. Ambassador Stroock provided challenge and support to our friends in Guatemala as they worked toward a more stable economy, a decrease in political violence and perhaps most notable to the outside world, increased internal safety measures. Tom helped bring about changes that greatly impacted the daily lives of Guatemalans.

Tom Stroock’s accomplishments were numerous. Throughout his lifetime of leadership and service, Marta was at his side. The couple, married for 60 years, served as a pillar of the Casper, WY, community. Their daughters Margie, Sandy, Betty, and Anne, are carrying on their father’s commitment to business and public service.

Mr. President, while we are saddened by the passing of Ambassador Thomas F. Stroock, we are left with the example of a life well lived.

TRIBUTE TO ERNIE LOMBARD

Mr. RISCH. Mr. President, I rise today to give recognition to Ernie Lombard who has been at the forefront of preserving and recording Idaho’s great past.

For more than 20 years, Ernie has had a vision of a State park that would showcase Idaho’s mining history and allow for motorized recreation. In 2009, the vision was realized when thanks to Ernie’s leadership, the Bayhorse ghost town in Custer County became the newest addition to Idaho’s State park system.

It was not an easy task. Many parcels in the park needed to have century-old toxic mine waste removed. Bayhorse was one of the first sites in the country to use brownfields grant funds to accomplish that feat. The work was such a success the Bayhorse project was awarded the Partners in Conservation Award by the U.S. Department of the Interior for outstanding conservation results among many partners.

As an architect, Ernie has had a hand in designing several of Idaho's most significant buildings. His talents and passion for architecture and history, along with a strong interest in photography and art, have preserved Idaho's rugged and unique past. Ernie's photographic library includes more than 3,000 images of historic Idaho buildings. His presentation, "Ghost Towns of Idaho" has been presented to audiences more than 200 times. Every school district in the State has the video created from this presentation to use in teaching Idaho history.

His work on a county historical advisory board led to the preservation of the historic Guffey railroad bridge across the Snake River between Canyon and Owyhee Counties. This bridge is a centerpiece for Celebration Park.

Ernie also conducts historical "safaris" to ghost towns such as Silver City and teaches about Idaho ghost towns and photography in the Boise Community Education Program. He is the longest continuing education instructor in the history of the program having taught 27 years.

Recently, the Idaho State Historical Society awarded Ernie Lombard with their "Esto Perpetua" award for significant contributions to the preservation of Idaho history.

It is indeed an honor for me to give recognition to Ernie Lombard for his vision and many years of work to preserve Idaho's significant history and his passion and willingness to educate Idahoans and others about our wonderful State. Future generations of Idahoans have received a great gift from Ernie Lombard, and we are very grateful.

ADDITIONAL STATEMENTS

TRIBUTE TO DALE HANINGTON

• Ms. COLLINS. Mr. President, I wish to congratulate the president and CEO of Maine Motor Transport Association, Dale Hanington, on his retirement. The men and women of Maine's trucking industry are grateful for his determined and effective leadership. I am grateful for his guidance and support on transportation legislation, and for his friendship.

Dale, a Maine native who earned his bachelor's degree in business administration, retired from the Maine State police at the rank of lieutenant after 20 years of service. After retiring from the Maine State police, he served as a safety engineer with a large construc-

tion company for 2 years. In 1989, Dale joined the Maine Motor Transport Association as assistant to the executive director, and he became the president and CEO of the association in 1993.

Dale has been a strong advocate for Maine's most important transportation needs, including raising the Federal truck weight limit in Maine, which we have worked together tirelessly to address. With Dale's help and support, we finally have made progress in securing a 1-year truck weight pilot project for Maine.

I am grateful for our strong working relationship over the years. I offer my sincerest appreciation to Dale for his service and congratulations on a well-deserved retirement.●

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:04 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

The enrolled bills were subsequently signed by the President pro tempore (Mr. BYRD).

At 5 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4284. An act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

ENROLLED BILL SIGNED

At 7:24 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3288. An act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1471. An act to expand the boundary of the Jimmy Carter National Historic Site in the State of Georgia, to redesignate the unit as a National Historical Park, and for other

purposes; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3995. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines" (RIN2137-AE15) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3996. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Control Room Management/Human Factors" (RIN2137-AE28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3997. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Worker Visibility" (RIN2125-AF28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3998. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds" (RIN2127-AK10) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3999. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Federal Motor Vehicle Safety Standards, Child Restraint Systems" (RIN2127-AK36) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4000. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Oversales and Denied Boarding Compensation" (RIN2105-AD63) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4001. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices" (RIN2105-AD64) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4002. A communication from the Senior Regulations Analyst, Office of the Secretary