

Fair Sentencing Act of 2010, S. 1789, which was signed into law on Tuesday by President Obama. This reform, which significantly narrows the sentencing disparity between crack and powder cocaine from 100:1 to 18:1, is a long overdue victory for a criminal justice system rooted in fundamental fairness.

I am all for tough antidrug laws, but those laws must also be fair. Current law is based on an unjustified distinction between crack cocaine and powder cocaine. The mere possession of 5 grams of crack—the rough equivalent of five packets of sugar—carries the same sentence as the sale of 500 grams of powder cocaine.

As it turns out, this 100-to-1 disparity is unjustified by science. Moreover, it disproportionately affects African Americans who make up more than 80 percent of those convicted of Federal crack offenses.

Law enforcement experts say that the disparity has undermined trust in the criminal justice system, particularly in minority communities.

Making this change a reality required leadership from the very top: from President Obama's personal involvement to great efforts by Senators DICK DURBIN, JEFF SESSIONS, ORRIN HATCH, and others. Achieving this reform took significant political muscle and it took a continuing effort.

I especially want to note the Vice President's early and sustained leadership on this issue.

Back in 2002, when very few in this body wanted to touch this politically toxic problem, then-Senator BIDEN held a hearing that exposed the need to reduce the crack-powder disparity. Particularly significant was his willingness to admit that he, and Congress generally, made a mistake when they created the distinction back in 1986.

In June 2007, Senator BIDEN without any cosponsors on either side of the aisle introduced the first Senate bill that would have equalized the penalties for crack and powder cocaine without raising penalties for powder. The introduction of this bill changed the entire landscape of the crack-powder debate. No longer was the question "Should the disparity be reduced?" No longer was the debate about whether the 100:1 disparity was reasonable. The Biden bill shifted the burden to the naysayers to justify why 1:1 wasn't the right policy solution.

After Senator BIDEN assumed his duties as Vice President of the United States, Senator DURBIN picked up the Senate torch and reintroduced the Biden bill. I was proud to join him as a cosponsor of S. 1789. He then worked closely with colleagues on both sides of the aisle to find a compromise that would both satisfy the needs of law enforcement and return fundamental fairness to the sentencing for these sorts of offenses.

I would be remiss if I did not mention one more crucial participant in this long-running effort. As my colleagues

in this body know, much of what we accomplish here on behalf of the American people is influenced greatly by our talented staff.

In this case, reducing the disparity between crack and powder cocaine—without increasing penalties for powder—would not likely have been achieved without the dedication of a very talented public servant, Alan Hoffman.

Alan, while serving as then-Senator BIDEN's chief of staff, delivered one of the first pushes that started to roll this stone forward, and he kept at it for many years. It is undeniable that many had significant roles to play in this remarkable achievement. But it is equally undeniable that Alan's longstanding drive to right this wrong and shift the policy debate fundamentally was crucial to our being able to celebrate this accomplishment today.

As my colleagues know, I have spoken many times in the Senate about the outstanding men and women who constitute our Federal workforce. Alan Hoffman has been a loyal and dedicated public servant who deserves credit for his work today.

FINDINGS OF THE NTSB

Mr. CARDIN. Mr. President, I rise today to discuss the findings of the National Transportation Safety Board's final report on its investigation into the fatal June 22, 2009, Metrorail crash on the Red Line near Fort Totten.

This report is a call to action for Congress to pass legislation that will help prevent such tragedies on our Nation's public transit systems from ever happening again.

Last week, the NTSB presented the findings of its year-long investigation into last year's Metrorail crash that killed eight passengers and the train's conductor nine total. The fatal accident also hospitalized 52 passengers with serious injuries and left approximately 30 others with minor injuries.

The investigation concluded:

The cause of the crash was a series of faulty track circuits that failed to detect the presence of a stopped train on the right-of-way.

The severity of the accident was compounded by the poor crashworthiness of the 30-plus year-old railcars involved in the accident where most of the injuries and fatalities occurred.

Lastly, NTSB determined that safety has not been a priority for WMATA. Simply put, Metro lacks a "Culture of Safety" throughout its entire organization.

NTSB Chairman Deborah Hersman aptly put it in her statement regarding the release of its findings: "Metro was on a collision course long before this accident. The only question was when Metro would have another accident—and of what magnitude."

The root cause of the crash was a faulty track circuit that failed to detect the presence of a train pulling into Fort Totten Station.

As a result, the system did not signal a second approaching train to hold at a safe distance on the track.

When working properly, the track circuits are designed to detect and trace the presence of trains on the right-of-way. This effectively prevents two trains from occupying the same stretch of track at the same time.

A particularly troubling finding of the NTSB's investigation is that a 2005 "near accident" on the Orange and Blue lines' in the Potomac River tunnel coming into the Rosslyn Station was caused by an identical track circuit malfunction to the one that caused the June 22 crash.

In other words, Metro knew, from firsthand experience, about the serious risks track circuit failures present.

The NTSB concluded that if WMATA had taken a lesson from the 2005 "near accident" at Rosslyn and made fixing the track circuit failures throughout the system a priority, the June 22, 2009, tragedy would have been avoided entirely.

The second layer of safety meant to prevent a crash in the case of a track circuit failure are automatic alerts sent to Metro Central Command to alert control officers when a track circuit failures occurs.

However, ignoring these warnings were part of Metro's operational protocol.

The NTSB reported that prior to the Red Line crash, track circuit failures were such a frequent occurrence, that Central Command was receiving an average of 3,000 system alerts a week.

Central Command's response to the overwhelming number of alerts was to implement an automatic override program.

The override allowed Metro to operate around the alerts, rather than fixing the circuit failures triggering the alerts.

The constant barrage of alerts ended up creating a culture of complacency rather than creating a culture of urgency.

This negligent managerial approach to solving the warning rather than solving the problem is entirely irresponsible and exemplifies the lack of a Safety Culture at Metro.

Because the approaching train was under automatic control it was completely reliant on receiving the correct operations signals from the track circuits.

Since the system failed, it was on the train's conductor to stop the train. The investigation concluded that operator Jeanice McMillan, of Fairfax, VA, acted quickly and appropriately to do all she could to stop the train.

The curvature of the track, combined with the high speed that the automatic controls had her train travelling at, made it impossible for Ms. McMillan to prevent her train from striking the train ahead.

Based on the emergency brake marks on the tracks, Operator McMillan acted as soon as she had visual contact with the train ahead.

She made a selfless choice to remain at her post and do everything she could

to slow the train, even when she surely must have realized that a collision was inevitable.

Operator McMillan gave her life to save her passengers. Ms. McMillan's heroism surely prevented an even greater tragedy and for that we are all grateful.

The NTSB pointed to the crash-worthiness of the railcars as a major contributing factor in the severity of the accident.

These are the first-generation 1000 series cars that are subject to shearing in crash situations.

Metro has known about the compromised crashworthiness of its oldest railcars for many years.

A relatively low-speed accident at the Woodley Park Station in 2004 demonstrated how dangerous these railcars are in a crash situation. Fortunately, in that accident no one was seriously injured.

After the June 22 accident, Metro implemented a plan to place the older 1000 series cars in the center of trains as claiming that this shelters the older, less crashworthy cars in an accident.

The NTSB has pointed out that there is no factual basis for this practice, known as "bellying," in creating safer trains.

The only way to make for safer trains is to get the old, unsafe railcars off the system. I am happy to report, that WMATA is working to replace the 1000 series cars incrementally with newer, safer cars.

In fact, last Monday, Metro announced it has placed the order for the 7000 series cars that will finally replace all of the oldest, most unsafe, railcars on the system.

The NTSB's top-line recommendations to the Washington Metropolitan Area Transit Authority are the following:

Expedite the detection and replacement of all faulty track circuits within the System.
Expedite the replacement or reinforcement of all of the oldest least crashworthy railcars in operation.

Ensure that all new and current railcar cockpits are outfitted with event data recorders.

And lastly, management, starting with the board, must establish a culture of safety that pervades the entire organization.

The last point is incredibly important because despite Metro's ongoing budget woes, making safety a genuine priority would come at no additional cost to WMATA.

The NTSB also had many compelling recommendations for how the Federal Transit Administration should establish better safety guidance.

Because of Metro's unique relationship with the Federal Government, the FTA should provide immediate guidance to Metro on improving the safety of its operation.

Because the FTA has no actual regulatory authority, Congress must take the NTSB's safety improvement recommendations as a call for legislative action.

We must act to ensure that the NTSB's recommendations to FTA can

be implemented in a way that achieves results.

Senators DODD, MENENDEZ, MIKULSKI, and I introduced legislation requiring the Transportation Secretary to establish and implement a comprehensive transit Public Transportation Safety program.

With the support of Senator SHELBY, this bill was reported out of committee and is awaiting action on the floor.

This legislation will give the FTA the ability to take decisive actions such as conducting inspections, investigations, audits, examinations of public transit systems.

The Public Transportation Safety Program Act of 2010 came about at the request of the President and Transportation Secretary LaHood.

I applaud the Obama administration for recognizing the need to give the FTA legal enforcement authority of its standards and rules.

This legislation establishes the type of safety enforcement authority for the FTA that currently exists for the Federal Railroad Administration's over commuter rail systems and that the Federal Motor Carrier Safety Administration has for commercial trucking.

It makes sense for public transit systems that receive federal funding to meet federal safety requirements set by the FTA.

These are safety requirements that could have saved the lives lost in last year's Red Line crash and would help make transit systems across the country safer for all users.

Just as I believe that the Federal Government has a role in ensuring Metro is safe for its riders and employees, I also believe the Federal Government has a responsibility to help fund the safe operation of the system since Metro provides the Federal Government and its employees a vital transportation service.

I was proud to work alongside Senators MIKULSKI, WEBB and former Senator John Warner to include major new funding authorization for Metro in the Federal Rail Safety Improvement Act, which was signed into law in 2008.

This law authorizes \$1.5 billion over 10 years in federal funds for WMATA, and is matched dollar-for-dollar by the local jurisdictions, for capital improvements.

This arrangement will finally provide Metro with the dedicated funding the system needs.

President Obama's fiscal year 2011 budget request to Congress includes \$150 million for Metro.

This builds on the substantial down-payment Senators MIKULSKI, WEBB, MARK WARNER and I were able to secure for Metro last year. I am happy to see that the Appropriations Committee has included this request in the Transportation appropriations bill reported out of Committee.

This is an important investment, but it is not nearly enough to fulfill all of Metrorail's obligations.

Metro maintains a list of ready-to-go projects totaling about \$530 million and

\$11 billion in capital funding needs over the next decade.

When Metro was a relatively new system it was the epitome of safe and reliable public transit.

After 34 years of operation, and a managerial focus on system expansion rather than system preservation, the backlog of maintenance needs have taken its toll.

I find it unacceptable that the transit system in our Nation's Capital does not have enough resources to improve safety and maintain its aging infrastructure.

My deepest sympathies remain with the families and friends whose lives are forever affected having lost someone dear to them in last year's tragedy.

I want them to know that you and the loved ones you lost are not forgotten.

This tragedy has served as a constant reminder and inspiration for my work to fix the problems that led to the tragedy.

I call on my colleagues to honor the memory of those by working to pass the Public Transit Safety Act so that we can prevent similar tragedies from happening in the future.

SMALL BUSINESS TAX RELIEF

Mr. GRASSLEY. Mr. President, we spent nearly 6 weeks debating a bill that would help small business.

My friends on the other side of the aisle exclaimed that the bill was a jobs bill, one that would help small business—the engine of our economy.

The senior Senator from Louisiana—for whom I have great admiration as an advocate for small business—said, "If the Democrats aren't for small business, I don't know what we're for."

Well, the small business jobs bill was not passed by this body.

My friends on the other side will claim that Republicans blocked the bill.

But I think my friends need to look in the mirror when placing blame on their inability to govern.

Even if the small business jobs bill would have passed, the tax measures in that bill are only a drop in the bucket when it comes to the taxes and increased regulation small business is going to have to endure.

That's right, although Democratic leadership and the White House continue to say that they are for small business, any legislative measure that has been advertised as helping small business has not lived up to the hype.

Let's start with the new health care reform law.

During the debate over health care reform, my friends on the other side of the aisle—including top officials in the White House—explained that the new law would provide tax credits to small business to help them pay for health insurance.

My friends said it so many times, you would almost think that the so-called tax credit was the best thing since sliced bread.