

Faulty Inspection

The transit union's bus overtime campaign endangers drivers, passengers, and everyone on the road

By Carl F. Horowitz

Summary: *The Amalgamated Transit Union is working with its political allies on a proposed federal law that it claims will make bus travel between cities safer. Not surprisingly, the law ignores the most important safety factors in such travel and will likely make passengers less safe. But the law does have one advantage for union leaders: they think it will raise wages.*

The Amalgamated Transit Union (ATU), which represents some 200,000 transit workers across the U.S. and Canada, is trying to make the nation's roads less safe, while it pretends to work to make them safer. In politics, one of the most important skills is to make one's special interest seem like the public interest. Unions are adept at this. With regard to buses and bus drivers, the ATU is particularly effective at advocacy (or "spin"), in part because of people's emotional response to news reports whenever a horrible bus accident occurs.

Bus travel in the United States is generally safe, but as with air travel, the rare serious accident that occurs usually receives wide coverage on the news. In addition, people tend to respond emotionally to bus accidents, because they can imagine themselves as the victims who suffer injuries after putting their safety in the hands of drivers who may be unqualified or inattentive.

One scenario that's particularly terrifying to the average person is of a bus



National Transportation Safety Board inspectors examine damage to a tour bus.

driver who falls asleep, and the ATU knows how to play off people's fears.

Sleepy drivers?

It's become an all too common tragedy. A long-distance bus crashes on the highway, resulting in multiple passenger injuries, even death. The official cause, someone claims, is driver fatigue. Whether or not the driver is fatigued, any signs of distraction or sleepiness related to fatigue are likely to be highlighted in any subsequent litigation, and the ATU prefers to assume that that claim is accurate, because it furthers the union's agenda.

Last March, Sen. Charles Schumer (D-N.Y.)—with strong backing from the ATU and the AFL-CIO—proposed legislation with the stated aim of reducing the risk of accidents on long bus trips. The bill, known as the

Driver Fatigue Prevention Act (S.487), would extend the overtime pay provisions of the Fair Labor Standards Act to intercity bus drivers. ("Intercity" refers to travel between cities or metro areas—for example, from Washington to Baltimore to Philadelphia and up the East Coast.) At this writing, the bill has been assigned to a Senate committee.

The bill's rationale, as put forward by the unions: By forcing bus companies to pay overtime rates for work per-

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formed beyond the standard 40-hour week, the measure would eliminate the need for drivers to take a second job in order to pay household expenses. Being better rested when they hit the road, drivers would drive more safely, and passengers would be more likely to arrive at their destinations safely.

What this chain of reasoning overlooks is that federal law already discourages driver fatigue. The problem is that certain companies, especially fly-by-night curbside operators, aren't heeding the current law. (Curbside bus operations save money by eschewing the use of terminals, which require spaces to be rented and fees to be paid. They typically pay their drivers very little. Intercity fares can be as low as \$10, or even \$1 for tickets purchased online well in advance. In recent years, a network of curbside operations has sprung up in the major cities of the Northeast, typically running between those cities' Chinatown neighborhoods.) ATU downplays the problem of noncompliance with current law, even as it conducts a "safety" campaign for passage of the Schumer bill and the new rules and regulations the Schumer bill would produce.

Also lost in the debate over driver fatigue are other factors related to high-profile bus accidents: drivers who can't read road signs written in English, or

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who have criminal convictions that indicate extremely poor judgment and impulse control, or who have a record of texting-while-driving or otherwise demonstrating an inability to concentrate. In one recent tragedy, the bus company was already supposed to have been shut down by regulators but had received an extension. Sometimes, companies are shut down but quickly re-open under different names. Only a few companies are bad actors, and they are responsible for the vast majority of problems.

Back to the overtime/fatigue issue: For more than 50 years, the U.S. Department of Transportation (part of the Commerce Department until 1966) has exempted intercity bus service from mandatory overtime laws that apply to bus drivers who operate in a local or metropolitan area. The purpose of this exemption is to ensure that intercity bus service employers don't overwork their drivers. The ATU has opposed this arrangement. The union wants long-distance drivers, especially the 6,000 who belong to the ATU, to be eligible for overtime pay when they exceed the overtime threshold. In other words, the union accepts employer lawbreaking as a given. It simply wants a bigger piece of the action when it happens.

As of this writing, no committee action has taken place on the Schumer bill, which skirts the real issues involved in intercity bus safety. But should the proposal pass, the results won't necessarily please drivers, union or nonunion.

The long-distance bus industry

Buses are a highly popular mode of transportation in this country. According to the Department of Transportation, about 76,000 commercial buses were registered in this country in 2011, not including the nearly 600,000 publicly owned and privately owned noncommercial buses (e.g., school

buses). About 4,000 intercity motor coach operators are now in business. This much activity makes at least some accidents unavoidable. The issue is how many, and in what magnitude.

The issue can best be judged in terms of human life. In 2009, the most recent year for which data are available, the Federal Motor Carrier Safety Administration (FMCSA, the agency within the Transportation Department that regulates bus, truck, and other ground commercial travel), buses of all types were involved in 240 crashes with at least one fatality. These accidents resulted in a combined 254 deaths, or a little over one per accident. Moreover, during 2002-11 there were a little over 500 deaths from intercity bus accidents, or roughly 50 a year.

The risk of death in intercity travel is greater, relative to the number of passenger-miles travelled, than for bus travel in general. A bus, if driven improperly, can be a lethal weapon, especially on a highway. Being far heavier and larger than cars, buses present a greater risk of disaster if they flip over or veer off the road into a ditch, down a ravine, or off an overpass. About half of all motor coach bus deaths are due to vehicle rollover, according to the National Transportation Safety Board (NTSB), and about 70 percent of persons killed in rollover accidents are ejected from the vehicle. Galvanized steel rail guards, while an effective deterrent for automobiles, aren't capable of retaining buses at high speeds.

Intercity bus driving is a breed apart from local bus driving. Long-distance drivers travel at a high speed and don't make frequent stops. If and when accidents do happen, they are more likely to produce injuries and fatalities.

As for the cause of intercity bus accidents—the Amalgamated Transit Union has an idea.

Bus safety: the union view

Founded in 1892 as the Amalgamated Association of Street Railway Employees of America, the ATU is one of the nation's oldest unions. It has 240 locals in 46 states and nine Canadian provinces. Its members include the operators of buses, vans, ambulances, and subways and light rail, along with clerks, baggage handlers, and maintenance employees.

According to the ATU, intercity bus travel is a ticket to disaster. The key phrase is "driver fatigue." In 2011 the union published a study, "Sudden Death Overtime," which analyzed National Transportation Safety Board accident data for the period June 1998 to January 2008. The report concluded that drivers often lacked a full night's sleep, because their employers had ordered them to drive beyond a 40-hour work week to keep their full-time employee status. The authors concluded that 36 percent of all motor coach fatalities were due to driver fatigue, a figure far higher than either fatalities related to road conditions (2 percent) or driver inattention (6 percent).

The source of the problem, argued the authors, is that federal law enables employer exploitation. Exempt from paying overtime wages, bus companies underpay their intercity drivers, effectively forcing them to find a side job to make ends meet. The extra working hours in turn push drivers beyond their limit of endurance. ATU President Larry Hanley calls the long-distance bus industry a "sweatshop on wheels." He claims, though without offering examples: "Hundreds of intercity bus companies get away with paying their bus drivers criminally low wages, forcing drivers to work 100 hours a week or more, often balancing two or three jobs, just to make a living. Unsuspecting customers can get on these buses and disaster can strike."

The best defense against accidents, Hanley insists, is to bring intercity bus driving under Fair Labor Standards Act overtime coverage.

The current proposal by Sen. Schumer isn't the first time he's tried to accomplish the ATU's goal; he introduced similar legislation in December 2011. To lobby Capitol Hill for Schumer's bill, the ATU hired the Ickes & Enright Group, headed by Clinton White House lawyers/senior aides Harold Ickes and Janice Enright.

"For decades the [Federal Labor Standards Act] has covered 85 percent of American workers," the ATU's Hanley declared in May 2012. "In the intercity bus industry, the lack of guaranteed overtime pay after a 40-hour work week is a dangerous exception to the rule. Extending these protections to intercity bus drivers is not only the right thing to do; it's the safe thing to do for our riders." Hanley reiterated this view in testimony on January 14 of this year before a panel of the House Transportation and Infrastructure Committee: "Since intercity bus drivers are exempt from the Fair Labor Standards Act's overtime provisions, many are forced to work second jobs during their so-called 'rest period' to make ends meet. It's time to lift the overtime exemption for intercity bus drivers."

Bus driver fatigue: the untold story

On the surface, Hanley and other ATU officials make a convincing case. But the real story lies underneath. In making their case, ATU and its allies overlook several key matters of bus safety that undercut their position.

First, the exemption of intercity bus service from overtime wage regulation isn't some sadistic way the federal government has cooked up to deprive drivers of rightful income. The exemption exists for reasons of safety. And it applies to all motor coach

companies, from major carriers, such as Greyhound, Martz, and Peter Pan, to countless smaller ones whose buses board and de-board passengers at street curbs rather than terminals. Bus drivers, who typically are paid on an hourly basis, have a natural incentive to work overtime. If eligible to receive time-and-a-half pay, many no doubt would jump at the chance to work 50 or even 60 hours a week. Federal law, by exempting intercity bus employers from paying overtime rates, discourages this practice. In the process, it reduces the risk of driver fatigue.

Federal law provides other safeguards against fatigue. For example, a motor coach driver may not drive more than 10 consecutive hours after eight consecutive off-duty hours. Moreover, a driver may not operate a bus after he has been on duty (driving or not driving) for 60 hours or more over the course of seven consecutive days, or 70 hours over the course of eight consecutive days. All this is meant to reduce the risk of accidents.

Second, bus travel as a whole is a reasonably safe mode of transportation. While available data are limited and inconsistent, largely because of differences in state reporting, it is fair to say bus travel has become safer in recent years. Total injuries resulting from bus crashes dropped slightly, from 15,489 in 2006 to 15,327 in 2010. And the 254 fatalities for all types of bus travel in 2009 reported by the Federal Motor Carrier Safety Administration represented a 25 percent decline from 337 in 2006.

Safety improvements are more dramatic when viewed as a function of composite mileage. In 1988, there were 556 injuries from all types of buses per 100 million passenger miles traveled. Two decades later, in 2008, that figure had dropped to 343 injuries per 100 million passenger miles. Assuming a steady

increase in population and bus fleet size, all other things being held equal, one would have expected the number of injuries to have risen, not fallen. It's also worth noting that long-distance motor coach bus travel—the kind Sen. Schumer's bill addresses—accounts for only a little over 10 percent of all bus crashes. Most accidents involve mass transit buses, school buses, mini-buses, or large vans.

Third, fatigue is only one cause of bus accidents, and not necessarily the most prominent one. Poor driver training, ineptitude, and poor safety habits each raise the risks of a crash. So do mechanical failures.

Several years ago, the Federal Motor Carrier Safety Administration came out with a report, "The Bus Crash Causation Study." Based on data and interviews relating to 39 crashes involving 40 buses in northeastern New Jersey during 2005-06, the Administration found that a large portion of crashes were due to driver error, both on the part of the bus drivers and the drivers of other vehicles with which the buses collided.

The 15 instances when an accident was primarily attributable to the bus driver could be explained as follows: "inadequate surveillance" (6); "inattention" (4); "following too close" (2); and "other reasons" (3). In the two dozen other accidents, the critical reason for the accident was mechanical failure, weather, pedestrians, or (most frequently) the behavior of drivers of other vehicles. Perhaps most telling were "associated factors" in a given accident, of which there could be more than one. "Line of sight obstructed," "in a hurry," "inadequate evasive action," and "unfamiliar with road" were associated, respectively, with 22, 16, 15 and 11 accidents. By contrast, "fatigue" was associated with just one accident.

Granted, the sample consisted of cases in one metropolitan area in one state over a two-year period. But that hardly renders the study insignificant. At the very least, more research with dramatically different results will be needed before one can conclude that driver fatigue is the master explanation for intercity bus accidents.

Fourth, intercity bus accidents that result in multiple fatalities are more likely to happen among carriers who pick up and drop off riders at street and highway curbs rather than bus terminals. More than terminal-based carriers, the vehicles operated by these companies have mechanical problems. And their drivers have inadequate training and, worse, low levels of inhibition behind the wheel. If "fatigue" is an issue, it may be only incidental.

Consider a case that prompted many calls for improvement in bus safety:

In March 2011, a bus traveling along Interstate 95 in the Bronx, N.Y., on the way home to Manhattan's Chinatown from the popular Mohegan Sun resort and casino in Connecticut, jumped over a shoulder and crashed into a barrier, killing 15 of the 33 occupants. There were a few interesting details about this crash. First, the bus company, World Wide Travel of Greater New York Ltd., had an accident rate 375 percent higher than the threshold deemed acceptable by the federal government. Second, the driver was something less than a model for other drivers. His commercial license had been suspended on 18 previous occasions, and he himself had been fired from his two previous transportation jobs. Third and finally, though fatigue was listed as a contributing cause, the driver had been going 78 miles an hour in a 50 mile an hour zone.

An obvious question: What was this person doing behind the wheel, well-rested or not?

Government and trade association responses

The New York disaster was called a wake-up call for action on bus safety. Sen. Schumer, along with Rep. Nydia Vasquez (D-N.Y.), asked the National Transportation Safety Board to conduct a comprehensive long-distance carrier accident study. The NTSB, which normally takes at least a year to complete such reports, produced this one in seven months. The study concluded that curbside bus companies are seven times more likely to produce passenger deaths than companies using terminals (1.4 fatalities per 100 vehicles vs. 0.2 deaths per 100 vehicles).

The study had its critics, including Jim Epstein of the Los Angeles-based Reason Foundation. Epstein charged the board had loaded the dice by classifying Greyhound and a few other terminal-based carriers as "curbside" simply because some of their routes fitted that definition. Yet a subsequent recalculation by Bloomberg News, using Reason's classifications, would only have lowered the 7-to-1 curbside-to-terminal fatality ratio to 4.6 to 1—still much higher. NTSB spokesman Eric Weiss defended the report on grounds that it focused on company safety records rather than size, routes, or bus models. "Safe bus operations should not depend on whether passengers are picked up or dropped off at a traditional bus station or down on the corner," he said. "They should depend on safety culture and other issues such as driver training and bus maintenance." Some bus companies, it appears, don't have a safety culture.

The Federal Motor Carrier Safety Administration had been conducting its own safety study prior to the release of the NTSB report. Based on its findings, the FMCSA, in a one-day multistate sting on May 31, 2012, closed 26 Chinatown-connected curbside bus

companies, many of which had already been ordered closed and were illegally operating under a new name. This was part of an increasingly proactive regulatory and enforcement approach. Over roughly the past half-decade, the FMCSA doubled bus inspections; banned text messaging by commercial bus drivers; and instituted a mobile app, SaferBus, which enables passengers to review a bus company's safety record before buying a ticket.

On the legislative front, Congress in July 2012 passed, and President Obama signed into law, a broad transportation reauthorization bill that included various provisions to promote bus safety. The law submits startup bus companies to a full safety audit no later than 120 days after approval for operations; bars motor carriers from reopening if previously declared unfit to operate; and requires a Department of Transportation review of carriers every three years.

States also have stepped up enforcement. Last year, Fung Wah, the largest Chinatown-based bus company operating between New York and Boston, was shut down by the Massachusetts Department of Public Utilities. The department had found cracked bus frames and, equally troubling, attempts at repairing them that appeared to make matters worse. And in 2012, following the Bronx disaster, New York State passed legislation authorizing the City of New York to regulate the local curbside bus industry.

A trade association, the American Bus Association (ABA), emphasizes that better enforcement of existing regulations, rather than the creation of new ones, is the best way to prevent accidents. In a written response to ATU President Larry Hanley's House testimony this past January, the association commented: "Companies that

operate illegally and without regard for passenger safety or driver conditions will do so regardless of any regulations, unless and until there is sufficient enforcement action to stop them." The association added that one of the bus companies cited by the union as underpaying its drivers had nearly 200 safety violations.

The union interest vs. the public interest

The Amalgamated Transit Union emphasizes that it doesn't oppose safety monitoring. But it inevitably adds that improvements in oversight will be nearly meaningless unless intercity drivers are eligible for overtime wages. Yet are these drivers underpaid? According to the Bureau of Labor Statistics, intercity/rural motor coach drivers in May 2012 received an annual mean (average) wage of \$34,580, a figure only a little lower than the \$33,050 mean for urban transit bus system drivers. And allowing overtime wages would not guarantee that intercity drivers would be better off. Bus companies, in seeking to reduce labor costs, may respond either with layoffs or reclassifications of drivers as part-time, with the latter option becoming especially attractive once the Obamacare health care law takes full effect.

The American Bus Association also takes the view that forcing employers to pay overtime would mean lighter work schedules for drivers. ABA President Peter Pantuso remarked in response to the original Schumer bill: "I think the bill has been mischaracterized. It would do more to reduce pay and put drivers out of work than anything else."

Unions exist to advance the interests of dues-paying members. The Amalgamated Transit Union is no exception. While the ATU is properly concerned

about public safety, it is using this concern to push for highly questionable legislation. In supporting the Driver Fatigue Prevention Act, union leaders are assuming that bus companies, as matter of course, work their drivers to exhaustion—an unproven assumption. Thus, the reasoning goes, drivers need to be paid for any and all overtime hours they incur. In this way, they won't moonlight at other jobs, fall asleep at the wheel, and jeopardize the lives of passengers. It's a seductive chain of reasoning. The problem is that it doesn't hold up.

None of the foregoing justifies illegal behavior by employers. If intercity bus companies are found to be forcing their drivers to work overtime in clear violation of federal wage and hour laws, they should be subject to sanctions. But contrary to the claims of the Amalgamated Transit Union, this is not a problem that mandating overtime pay can fix.

If ATU and its political allies are successful on this issue, drivers will actually have an incentive to stretch out their hours. The likely result is more accidents, more injuries, and another case on a union putting its own interest ahead of the public interest.

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LaborNotes

The **United Auto Workers** hopes to rerun the unionization vote it recently lost at the Volkswagen plant in **Chattanooga**. In a complaint to the **National Labor Relations Board** (NLRB), controlled by **Obama** appointees, the UAW declared that **Republican** politicians conducted “a coordinated and widely-publicized coercive campaign” to deprive workers of “their federally-protected right” to “support and select the UAW as their exclusive representative.”

The complaint’s basis is a legal doctrine known as “laboratory conditions.” The *Wall Street Journal* observed: “The NLRB invented this doctrine in the 1948 *General Shoe* case when it assumed responsibility to provide ‘a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.’ The board ruled that, ‘When, in the rare extreme case, the standards drop too low’ then ‘the experiment must be conducted over again.’” [See our December and March issues for more details on the Chattanooga battle.]

You’d think the UAW, as it attempts to penetrate factories in the **South**, would be on its best behavior. But UAW president **Bob King** has announced plans to raise dues by 25%. (Since 1967, the dues rate has been two hours’ pay per month for hourly workers and 1.15% for salaried workers.) As noted by former *Labor Watch* editor **Matt Patterson**, now with the **Center for Worker Freedom**, this means an entry-level worker will owe minimum dues of \$578.40 a year.

The news media have spent much of the past four years characterizing opponents of **Obamacare** as zealots, even racists. So can you guess who said the following? “If employers follow the incentives in the [Obamacare] law, they will push families onto the exchanges to buy coverage. This will force low-wage service industry employees to spend \$2.00, \$3.00 or even \$5.00 an hour of their pay to buy similar coverage. Only in **Washington** could asking the bottom of the middle class to finance health care for the poorest families be seen as reducing inequality.” That quote comes from a report by **UNITE HERE**, a union that represents hotel and restaurant employees.

The union is attacking Obamacare, even though (a) unions were among the most important groups pushing for its passage [see our November 2013 issue], and (b) the President has arbitrarily and, it seems, illegally exempted certain unions from a reinsurance tax Obamacare imposes. “This is cronyism at its worst,” declared **Sen. John Thune** (R-S.D.). “Because the tax was designed to raise a certain amount of revenue, that means everyone else has to pay a higher tax.”

Apparently some union activities are too much even for the Obama administration to stomach. An NLRB regional director has accused the **International Longshore and Warehouse Union** of violence in a dispute with a wheat-exporting company in **Vancouver, Washington**. As **Sarah Hurtubise** of the *Daily Caller* reports, members of **ILWU Local 4** allegedly “threatened to rape the daughter of one of the employer’s managers.” Union members also reportedly told a manager that they would “see his children at school,” adding, “Are your children okay today?” Local 4 picketers allegedly “caused a security officer’s leg to be pinned under a moving vehicle; shone spotlights into vehicles coming in and out of **United Grain**’s terminal, compromising drivers’ vision and causing permanent eye injury to one security officer; and recklessly pursued United Grain vans.”

Our October 2013 issue reported on special exemptions that labor unions receive from laws that apply to the rest of us, including laws against assault and extortion. Now the *Pennsylvania Independent* reports, “The indictment of 10 union members in **Philadelphia** is prompting lawmakers in **Harrisburg** to take another look at a state law that can prevent prosecution of some crimes if they’re committed by individuals engaged in a labor dispute. Under the 2002 law that defined ‘stalking’ as a crime, a specific exemption was made for labor union members and others who might be engaged in a labor dispute.” The defendants allegedly threatened to assault contractors and non-union workers at work sites. According to the indictment, they “relied on a reputation for violence and sabotage, which had been built up in the community over many years, in order to force contractors to hire union members.” Charges include racketeering and conspiracy to commit arson (setting fire to a construction crane at a **Quaker** meeting house). At the time of their alleged crimes, the men referred to themselves as “the helpful union guys,” or, for short, **THUGs**. Talk about truth in advertising!