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PUBLIC HEARING

before

ASSEMBLY LABOR COMMITTEE

ASSEMBLY BILL NO. A-210

(Bill prohibiting abuses of workplace electronic monitoring)

April 23, 1990
Room 410
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:
Assemblyman Joseph D. Patero, Chairman
Assemblyman Louis J. Gill, Vice Chairman
Assemblyman Thomas P. Foy
Assemblyman Robert E. Littell

New Jersey State Library

ALSO PRESENT:
Gregory L. Williams
Office of Legislative Services
Aide, Assembly Labor Committee

* * * * * * * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

JOSEPH D. PATERO
CHAIRMAN
LOUIS J. GILL
VICE-CHAIRMAN
THOMAS P. FOY
ROBERT E. LITTELL
ROBERT J. MARTIN

New Jersey State Legislature
ASSEMBLY LABOR COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 984-0445

NOTICE OF PUBLIC HEARING

The Assembly Labor Committee will hold a public hearing on the following legislation:

A-210 Schwartz/Naples	Prohibits abuses of workplace electronic montoring.

The hearing will be held on **Monday, April 23, 1990 at 10:00 A.M.** in **Room 410, State House Annex, Trenton, New Jersey.**

The public may address comments and questions to Gregory L. Williams, Committee Aide, and persons wishing to testify should contact Kathleen Lieblang, secretary, at (609) 984-0445. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

Issued 04/06/90

ASSEMBLY, No. 210

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen SCHWARTZ and NAPLES

AN ACT to prevent abuses of electronic monitoring in the workplace.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Commissioner" means the Commissioner of Labor.

"Electronic monitoring" means the obtaining of personal data concerning an employee by means of computer, electronic observation and supervision, remote telephone surveillance, telephone call accounting and other forms of auditory, video or computer-based surveillance conducted by any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system.

"Employee" means any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

"Employer" means: an individual, partnership, association, corporation or other person who engages the services of an employee and who pays the employee wages or other compensation; an agent of the employer; or a person or business entity having a contractual agreement with the employer to obtain, maintain or otherwise manage personal data concerning the employer's employees. The term "employer" shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created by the State or its political subdivisions.

"Personal data" means any information concerning an employee which because of name, identifying number, mark or description can be associated with that particular employee, including information contained in printouts, forms or written analyses or evaluations.

"Prospective employee" means an individual who has applied for a position of employment with an employer.

2. a. An employer engaging in electronic monitoring to obtain personal data about an employee shall provide the employee with prior written notice describing the following information regarding the electronic monitoring:

(1) What forms of electronic monitoring will be used;

(2) What personal data will be collected;

(3) How frequently each form of electronic monitoring will occur;

(4) What production standards and work performance expectations exist;

(5) How the personal data obtained by electronic monitoring will be used in determining or modifying production standards and work performance expectations; and

(6) What other use will be made of personal data obtained by electronic monitoring.

b. An employer shall provide a prospective employee with the written notice required pursuant to subsection a. of this section regarding any existing forms of electronic monitoring which may be used to obtain personal data about the prospective employee if he is hired by the employer. The written notice shall be provided to the prospective employee before any agreement is entered into for the prospective employee to be employed by the employer.

c. An employer engaging in electronic monitoring shall provide the affected employee with a signal light, beeping tone, verbal notification or other form of visual or aural notice that electronic monitoring is taking place.

d. An employer conducting a telephone service observation shall provide any affected customer with a signal light, beeping tone, verbal notification or other form of visual or aural notice that the telephone service observation is occurring.

e. Notwithstanding the provisions in subsection a. above, an employer who is engaged in electronic monitoring on the effective date of this act shall be given a period of ninety days following that effective date in which to provide each affected employee with the written notice required pursuant to that subsection.

3. An employer shall provide an employee or the employee's authorized agent, upon the request of the employee, access to all personal data obtained by electronic monitoring of the employee's work. If the personal data regarding the employee uses a code to convey information about the employee, the employee or the employee's agent shall be provided with a key to the code. The employer shall provide copies of any portion of the personal data requested by the employee at a charge not greater than the cost of reproduction.

4. If an employee notifies his employer that he believes that any portion of the personal data obtained by electronic monitoring of that employee is inaccurate or misleading, the employee and the employer may mutually agree upon a removal or correction. If an agreement can not be reached, the employee may submit a written statement explaining the employee's position regarding the disputed information. The statement shall be included in any disclosure of the disputed information. The inclusion of the employee statement with the information without

any additional statement by the employer shall not imply or create any presumption of employer agreement with the statement's contents. In addition, the employee may:

a. File a complaint through whatever grievance procedure is established pursuant to an applicable collective bargaining agreement; or

b. File a complaint with the commissioner, who shall investigate the complaint and have the authority to conduct a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to determine whether the disputed information is inaccurate or misleading. If the commissioner determines that the disputed information is inaccurate or misleading, he shall require that the information be deleted.

5. a. An employer shall obtain no personal data regarding an employee through electronic monitoring or maintain that personal data, except data which are relevant to the employee's work performance.

b. An employer shall not maintain personal data obtained through electronic monitoring if the personal data have been determined by the commissioner to be inaccurate or misleading pursuant to section 4 of this act.

6. a. An employer shall not use personal data obtained by electronic monitoring as a basis for individual employee performance evaluation or disciplinary action, except as follows:

(1) The employer may use personal data regarding the employee's work performance during the first 42 days following the date on which the employee is hired to evaluate the employee's work performance for the purpose of determining whether to continue to employ the employee and on what terms the employee shall be employed; and

(2) After the 42nd day following hiring, the employer may use personal data obtained by electronic monitoring to evaluate the employee's work performance for purposes other than disciplinary action, if the personal data are obtained by electronic monitoring during one period of not more than 30 continuous days out of any one year period, and the employee is given advanced notice of when that period of not more than 30 days is to occur.

b. An employer shall not use personal data obtained by electronic monitoring as a basis for individual employee performance evaluation or disciplinary action if the personal data are collected or maintained in violation of the provisions of section 5 of this act.

c. An employer shall not use personal data obtained through electric monitoring to calculate the volume or rate of an employee's work for a performance evaluation of the employee, unless the calculations are based on the entire volume of work

performed by the employee for a period of not less than one week.

d. If an employer uses personal data obtained through a telephone service observation to evaluate any aspect of an employee's performance other than the volume or rate of the employee's work, the evaluation shall be based on the observation of not less than 30 consecutive telephone calls handled by the employee and the observation shall be conducted in one continuous session.

7. a. An employer shall not disclose personal data obtained by electronic monitoring regarding an employee to any person or business entity without the prior written consent of the employee, unless the disclosure is made:

(1) To those officers and employees of the employer who have a legitimate need for the information in the performance of their duties;

(2) To a law enforcement agency in connection with a criminal investigation or prosecution; or

(3) Pursuant to the order of a court of competent jurisdiction.

b. An employer shall not disclose any personal data obtained by electronic monitoring to any person or business entity if the personal data are collected or maintained in violation of the provisions of section 5 of this act.

8. No waiver of the provisions of this act by an employee or prospective employee shall be a defense to either criminal prosecution or civil liability.

9. This act shall not apply to electronic monitoring administered by law enforcement agencies conducting criminal investigations.

10. Each employer who uses electronic monitoring to obtain personal data about his employees shall establish an employee assistance program to make available for each affected employee evaluation and counseling regarding stress-related problems by a qualified counselor and to provide referral and paid release time for any treatment which the counselor determines is necessary to assist the employee to successfully cope with the problems.

11. An employer who violates a provision of this act shall be guilty of a crime of the fourth degree.

12. An employee aggrieved by a violation of a provision of this act may, not more than three years following the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and damages. If the employee prevails in the action, he shall be entitled to an award of damages which result from the violation, including any lost wages, benefits and other remuneration, or for the amount of $1,000.00, whichever is greater, plus full costs of the action and reasonable attorneys' fees. If the court finds the violation to be willful and knowing, it may award treble damages. If an employer is found by the court

to have terminated or disciplined the employee because of personal data obtained, maintained or used in violation of the provisions of this act, the employer shall be required to reinstate the employee to the same position held before the termination or disciplinary action or to an equivalent position and reinstate the employee's full benefit and seniority rights.

13. The commissioner shall adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be necessary to carry out the provisions of this act. These regulations shall include, but not be limited to, regulations adopted in consultation with the Commissioner of Human Services stating the minimum required qualifications of counselors employed in employee assistance programs established pursuant to section 10 of this act.

14. This act shall take effect immediately, except that section 10 shall remain inoperative until the 180th day following the effective date of this act.

STATEMENT

The purpose of this bill is to prevent abuses of electronic monitoring in the workplace. The bill sets the following standards for an employer who uses electronic means to collect information which may be identified with an individual employee:

1. The employer is required to notify employees and prospective employees of the employer's electronic monitoring policies.

2. The employer is required, during any electronic monitoring, to provide a visual or aural signal of the monitoring to an employee or, if the monitoring is a telephone service observation, to the employee and any affected customer.

3. The employer is required to provide an employee access to all data obtained by electronic monitoring of the employee. The employee may dispute inaccurate or misleading data, submit a written statement to be included with the disputed data and file a complaint through an available grievance procedure or with the Commissioner of Labor, who may delete data.

4. The employer is prohibited from using electronic monitoring to obtain data not relevant to the employee's work performance.

5. The employer is prohibited from using data obtained by electronic monitoring for an employee evaluation, unless it applies only to the employee's performance during the first 42 days after he is hired, or, after that 42-day period, only to one period of not more than 30 continuous days out of any one-year period. After the 42-day period, the employer is prohibited from using the data for disciplinary actions.

6. The employer is prohibited from using electric monitoring

to calculate the rate or volume of an employee's work for a performance evaluation, unless the calculation is based on all work performed during an entire week. The employer is also prohibited from using data obtained through a telephone service observation to evaluate any aspect of an employee's performance other than work volume or rate, unless the observation is of not less than 30 consecutive telephone calls.

7. The employer is prohibited, without prior employee consent, from disclosing personal data obtained by electronic monitoring except under certain stated circumstances.

8. The employer is required to establish an employee assistance program to provide counseling, referral and paid release time for necessary treatment for stress-related problems.

Violations of the bill are crimes of the fourth degree. In addition, an employee may institute a civil action for injunctive relief and damages. If an employee is terminated or disciplined because of a violation, the court may require the reinstatement of the employee's previous position or its equivalent with full benefit and seniority rights.

LABOR

Prohibits abuses of workplace electronic monitoring.

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ASSEMBLY ALA COMMITTEE

AMENDMENTS

(Proposed by Assemblyman Schwartz)

to

ASSEMBLY, No. 13

(Sponsored by Assemblymen Schwartz and Naples)

REPLACE SECTION 2 TO READ:

2. a. An employer engaging in electronic monitoring to obtain personal data about an employee shall provide the employee with prior written notice describing the following information regarding the electronic monitoring:

(1) What forms of electronic monitoring will be used;

(2) What personal data will be collected;

(3) How frequently each form of electronic monitoring will occur;

(4) What production standards and work performance expectations exist;

(5) How the personal data obtained by electronic monitoring will be used in determining or modifying production standards and work performance expectations; and

(6) What other use will be made of personal data obtained by electronic monitoring.

b. An employer shall provide a prospective employee with the written notice required pursuant to subsection a. of this section regarding any existing forms of electronic monitoring which may be used to obtain personal data about the prospective employee if he is hired by the employer. The written notice shall be provided to the prospective employee before any agreement is entered into for the prospective employee to be employed by the employer.

c. An employer engaging in electronic monitoring shall provide the affected employee with a signal light, beeping tone, verbal notification or other form of visual or aural notice that electronic monitoring is taking place[1], unless the employer is required by the provisions of a State or federal law to conduct the electronic monitoring without providing the notice[1].

d. An employer conducting a telephone service observation shall provide any affected customer with a signal light, beeping tone, verbal notification or other form of visual or aural notice that the telephone service observation is occurring.

e. Notwithstanding the provisions in subsection a. above, an employer who is engaged in electronic monitoring on the effective date of this act shall be given a period of ninety days following that effective date in which to provide each affected employee with the written notice required pursuant to that subsection.

REPLACE SECTION 6 TO READ:

6. a. An employer shall not use personal data obtained by electronic monitoring as a basis for individual employee performance evaluation or disciplinary action, except as follows:

(1) The employer may use personal data regarding the employee's work performance during the first 42 days following the date on which the employee is hired to evaluate the employee's work performance for the purpose of determining whether to continue to employ the employee and on what terms the employee shall be employed; [1][and][1]

(2) After the 42nd day following hiring, the employer may use personal data obtained by electronic monitoring to evaluate the employee's work performance for purposes other than disciplinary action, if the personal data are obtained by electronic monitoring during one period of not more than 30 continuous days out of any one year period, and the employee is given advanced notice of when that period of not more than 30 days is to occur [1]; and

(3) The personal data relates to a criminal violation for which the employee has been convicted.

A provision of this subsection a. shall not apply to an employer to the extent that compliance with that provision will prevent the employer from complying with the provision of any federal law or any other State law[1] .

b. An employer shall not use personal data obtained by electronic monitoring as a basis for individual employee performance evaluation or disciplinary action if the personal data are collected or maintained in violation of the provisions of section 5 of this act.

c. An employer shall not use personal data obtained through electric monitoring to calculate the volume or rate of an employee's work for a performance evaluation of the employee, unless the calculations are based on the entire volume of work performed by the employee for a period of not less than one week.

d. If an employer uses personal data obtained through a telephone service observation to evaluate any aspect of an employee's performance other than the volume or rate of the employee's work, the evaluation shall be based on the observation of not less than 30 consecutive telephone calls handled by the employee and the observation shall be conducted in one continuous session.

REPLACE SECTION 7 TO READ:

7. a. An employer shall not disclose personal data obtained by electronic monitoring regarding an employee to any person or business entity without the prior written consent of the employee, unless the disclosure is made:

(1) To those officers and employees of the employer who have a legitimate need for the information in the performance of their duties;

(2) To a law enforcement agency in connection with a criminal investigation or prosecution; 1[or]1

(3) 1To a State or federal regulatory agency to the extent that the employer is required by law to provide the personal data to the agency; or

(4)1 Pursuant to the order of a court of competent jurisdiction.

b. An employer shall not disclose any personal data obtained by electronic monitoring to any person or business entity if the personal data are collected or maintained in violation of the provisions of section 5 of this act.

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ASSEMBLYMAN JOSEPH D. PATERO (Chairman): May I have your attention? First of all, I'd like to welcome you all here today on this important bill. Can I have it quiet in the back? Sorry we are starting the meeting late. I usually like to start promptly. It seems that everyone kept bringing in different amendments and other proposals. That's the reason why we're late. We are now going to have a public hearing on the Assembly Bill No. 210 which prohibits the abuse of workplace electronic monitoring. Will you please call the role.

MR. WILLIAMS (Committee Aide): Assemblyman Martin.

UNIDENTIFIED MEMBER OF COMMITTEE: He's here.

MR. WILLIAMS: Assemblyman Littell.

ASSEMBLYMAN LITTELL: Here.

MR. WILLIAMS: Assemblyman Foy is not here, Assemblyman Gill is not here. Assemblyman Patero.

ASSEMBLYMAN PATERO: I'm here. Okay, there will be no action taken on the bill today. We will just be taking testimony, and then we'll see what the hearing comes up with. The first person that we'll have to address this Committee is Vince Trevelli from CWA.

V I N C E N T M. T R E V E L L I: Good morning, Mr. Chairman.

ASSEMBLYMAN PATERO: Good morning.

MR. TREVELLI: Mr. Littell, how are you? I just wanted to thank you for scheduling this bill and bringing this bill up and holding this public hearing. This has been an issue which has affected our membership and the public for many years. Unfortunately, it's a practice -- electronic monitoring -- that is growing.

When we first raised this issue, we were concerned about our membership in the telephone companies, AT&T, New Jersey Bell, and others, but now the practice has expanded from the State of New Jersey. When you call for what you think is confidential tax information, there could be a third party listening in on your conversation with the State of New Jersey while you discuss your taxes. We believe that's an invasion of

privacy. So, I brought here today two people who actually are monitored on a daily basis. They've taken the day off to come down and speak to the Committee. We have one woman from New Jersey Bell and one woman from the Department of Motor Vehicles, who also listens in on conversations. I really just wanted to let them speak about the effect of this constant or random, and not knowing when it's coming monitoring on their ability to do their job, which they do everyday.

First, I'd like to introduce Karen Gardner. She works with the Department of Motor Vehicles on Quakerbridge.

K A R E N G A R D N E R: Hello. Basically, the way I feel as far as monitoring is concerned, I feel that I have an extremely stressful job. If anybody has ever dealt with the Division of Motor Vehicles, they know that people call us with life and death problems, and I feel that if someone is monitoring me, I'm trying to get the point across, I'm trying to get the person to feel that I know what I'm talking about, and in the back there's someone monitoring me who is figuring out whether or not I'm sounding too powerful, or whether I'm trying to sound too motherly to a person-- I really don't think that I should have to deal with that. I think that I really should be able to do my job. I know my job, I've been doing it for two years, and I think I do it very well. So as far as monitoring is concerned, I think it really is unfair. I really do.

ASSEMBLYMAN PATERO: Maybe you can help me out on this monitoring. You say the State monitors the calls.

MS. GARDNER: Yes.

ASSEMBLYMAN PATERO: Randomly or--

MS. GARDNER: Well, now it's structured so that every other week different sections are monitored. Exactly which persons are being monitored, that's at random. But we know section by section when it's going on.

ASSEMBLYMAN PATERO: Vince, is this just the Motor

Vehicles and her group or--

MR. TREVELLI: Well, I think-- Like I said, it's at Taxation as well, for the State of New Jersey. It's in New Jersey Bell, in AT&T, and from the testimony you will be getting today, apparently lots of private employers monitor their employees as well. So it's a practice that we think is very broad, and it's a practice that includes listening in on conversations like this, but also practices that involve collecting masses -- reams of information about employees who work in front of VDTs.

I can get you congressional testimony about people who work in front of VDTs who are locked into the VDT. Their entire day is monitored by the VDT: how many keystrokes they make, how many pauses between keystrokes. They can't get up to go to the bathroom without asking a supervisor to unlock the chair, so they can move and go to the bathroom. Then, their time in how long they spent in the bathroom is monitored. That is a stress that you and I can't understand. We don't work under that kind of stress day to day to day when we do our jobs. We don't have people looking over our shoulders, day to day, when we do our jobs.

We have had people who have been disciplined because, as she mentioned, being motherly enough, or not motherly enough. We have had people who were listened into and were disciplined because they weren't their same cheery self; not that they did anything wrong, not that they didn't provide the service that was required, not that they swore at their client or anything, just that they -- well, you're usually more cheery, you're usually more friendly, and in this case you were not. We've had people who have been disciplined because they have been abused by a client or a customer from the outside and then in-between calls -- clearly in-between calls -- they say something. They react to that abuse that they just got. Clearly, no one else could hear it but themselves, except

for the third party that's listening in on their conversation. We believe that that's an abuse, that that's too much big brother listening in on people, controlling peoples' lives, and that it doesn't improve the quality of service.

The stress that people are under-- When she answers DMV calls, she's sitting there with a list of things that she can't do: She shouldn't sound too motherly, she shouldn't sound too forceful, she shouldn't sound this, and she shouldn't sound that. Yet what she's trying to do is answer the client's problem. She can't concentrate on that problem because she also has to worry about how she's sounding on the telephone. She's been trained, she knows her job, and she does her job.

Now, let me just introduce Linda Kramer who works for New Jersey Bell. Then you will hear for a moment about the private sector.

ASSEMBLYMAN LITTELL: Mr. Chairman, are we going to question them as we go along, or are we going to wait?

ASSEMBLYMAN PATERO: Yes, as we go along.

ASSEMBLYMAN LITTELL: Just one other question, Vince. Who does it; the supervisor monitors the calls?

MR. TREVELLI: Yes. She can describe a situation where it's even a group of supervisors at once go in a room.

ASSEMBLYMAN PATERO: Do you have anything to follow?

ASSEMBLYMAN LITTELL: I have several questions, Mr. Chairman. Karen, you say you know that this is going on. Has your employer notified you that this is going on?

MS. GARDNER: Yes, we have video monitors which state quality assessment is going on, so our section just looks up at the monitors. That's how we know it's going on.

ASSEMBLYMAN LITTELL: Part of this bill requires that the employer notify you, and secondly, it provides that a signal to the employee during your monitoring take place. So, they're already doing that from what you're telling me?

MS. GARDNER: Not specifically. I don't know when

Karen Gardner is being monitored. I know when my section of 60 people is being monitored, but no, I don't know exactly.

ASSEMBLYMAN LITTELL: But you know somebody is being monitored?

MS. GARDNER: I know-- At that time, yes.

ASSEMBLYMAN LITTELL: Okay. Let me ask you this. If you think there has been monitoring, can you go to your supervisor and say, "Was I monitored, and how did I do?"

MS. GARDNER: I guess we could go. I don't know whether they would answer or not. I really couldn't say.

ASSEMBLYMAN LITTELL: Mr. Trevelli said that -- I don't know whether he meant you specifically, or somebody else -- has been disciplined for not being cheery on the telephone. Could you explain to me how that happens? Does somebody call you in and say, are you having a bad day? Do they say you're not being cheery? Do they say you're going to get a letter in your file? What sort of thing happens? Explain that, would you please?

MS. GARDNER: Well, in our section, what happens is they collect data. They take notes on each person. If someone was being too forceful, whatever -- whatever the problem is. They collect the data, then the following week they pull the person aside and they call it a coaching. They'll say, "Well, you were too forceful. You sounded too motherly," and then they'll explain to you why you shouldn't sound like that. To me it's very subjective: Who's to say who's motherly? If I have a person born in 1973 on the phone, of course, I'm 28 years old, I'm going to try to sound like his mother and say, "No, you shouldn't have gotten that speeding ticket, and this is what you have to do." But, as far as they're concerned, that's too motherly and you shouldn't do it.

ASSEMBLYMAN LITTELL: Well, what sort of discipline do you actually get as a result of not being too cheery? I can't imagine that you'll get any discipline.

MS. GARDNER: Being pulled to the side is a discipline. If somebody is being pulled to the side, and told, well, you shouldn't do that, that's a form of discipline.

ASSEMBLYMAN LITTELL: Isn't that really training, Karen?

MS. GARDNER: No, not necessarily, because every situation is different. If I've been on my job two years, I should be able to know how to say, which way, at what time. I don't consider it training because training is telling me what constitutes a suspension, what constitutes a restoration. That's training. As far as I'm concerned, they're dictating to me how my personality should be. I am what I am.

ASSEMBLYMAN LITTELL: Okay, so you think it's an affront to you personally to have somebody say to you that you're not forceful enough, or you're too forceful, or that you're cheery? You don't see it as training?

MS. GARDNER: I don't see it as training. If I were doing something wrong, then no. I wouldn't see it as an affront to me if actually I was rude to someone. We're not even talking about rudeness. We're not even talking about not giving out the correct information. What we're talking about is how I should sound on the phone. As we all know, every situation is different. Even If I sound too monotonous-- Now if I should happen to have a cold -- and that's another thing that's stated, if you sound too monotonous, you can't do that -- if I happen to have a cold and there's just no way for me to sound any other way, then yes, I could be written up for that, and that can affect my par.

MR. TREVELLI: That can affect the par rating. Do you want to explain par?

ASSEMBLYMAN LITTELL: I'm sorry Vince, I can't hear you.

MR. TREVELLI: I'm just making sure that she explains what par is. What you're getting in terms of discipline is the

par rating, the valuation rating. How you are valued in your job, is determined by these pullings aside and discussing and in some cases disciplining, especially when you get to the private sector, the discipline that people have been put on.

ASSEMBLYMAN LITTELL: But, is it any different than a vice principal going in a classroom and watching a teacher perform a job as a teacher for the day, where they have to instruct the class, where they have to discipline the class, where they have to change their mood throughout the period?

MR. TREVELLI: It is different because in that case, it's noticed. This bill allows for training purposes, notice monitoring, and once a year, to check on people's noticed monitoring. When the principal walks in the room, that teacher knows the person's there. Also, when you're a teacher in a room, you don't have any expectation of privacy. Under the phone situation that we're talking about here, is you call up DMV, or you call up Taxation, or you call up AT&T, New Jersey Bell information, and someone else can be listening in on that conversation, and neither you nor the employee knows that that's going on. It's not the same situation as someone noticed walking in and listening to the--

ASSEMBLYMAN LITTELL: Well, I think that you've got a different situation in the classroom as compared to what Karen's subjected to because of the circumstances. She certainly could have a supervisor stand behind her and listen to what she says, but not necessarily hear the other end of the conversation. So, it really is not as meaninful as it is in the classroom. In the classroom, the vice principal is listening to the exchange between the students and the teacher.

In the Division of Motor Vehicles situation, if the supervisor doesn't hear the other half of the conversation, that's really not fair to Karen. To have a supervisor stand behind her to monitor her the same way as a vice principal would monitor a teacher wouldn't give the whole story. There

may be a reason for her voice to escalate. The client on the other end may give her a very bad time -- we all have emotions, and we all know that. It's not improper or certainly not less than normal for you to have those emotions. What I'm trying to understand here is, where do you draw the line between training a person, and helping somebody do the job better for the benefit of the operation, as compared to what you're saying is discipline?

MR. TREVELLI: What this bill tries to do, is it tries to draw that line. It says that when a new person is hired, for six weeks with notice, they can listen in on that person, work with that person, and train that person for the job. Once a year, getting a fair sample for a month, you can do it again; every year to find if that that person's progressing or not progressing. We believe that-- They also have other methods to do this like you say, being in the room. If you're a good supervisor, you know which of your employees is doing a job and which of your employees is not doing the job. You don't need extraordinary means to get in-between that person, that employee, and the public. In this case, we are talking about the public's rights as well. When they pick up that phone, they have an expectation of privacy in the State of New Jersey. Private employers are violating that expectation of privacy on a daily basis, and people's jobs and their career advancement is being affected by that.

Let me just say, in terms of emotions, the stress involved in this -- and there is testimony coming later today about the psychological stress of not knowing when and if you're being monitored, and how you're sounding on that call and whether or not you're meeting the 26, or whatever it is, requirements that you have to meet, in terms of your voice quality and tone and your answers-- And the stress involved to that third party, in fact, brings down the quality of service, rather than improving it. Can we have the private sector

person speak as well?

ASSEMBLYMAN LITTELL: Sure. I just wanted to get some of those questions answered. Thank you, Karen.

MR. TREVELLI: I understand. Linda Kramer from New Jersey Bell.

L I N D A K R A M E R: Good morning. I have 21 years service with New Jersey Bell, and I've always been a service rep, so I'm used to observing. In my particular office, they observe on us up to five hours a day. We have five supervisors and one manager. Not only do they go in the back and individually observe on the entire office and yes, we don't always know when they are there. We don't know all the time. Sometimes we know when they're there. We do a head count to see where they are.

Not only do they individually observe in the observing room on us, but they also have manager office meetings where six of them will observe us at the same time. They are bringing people in from Bell of Pennsylvania to observe us, along with New Jersey Bell people. So, one afternoon, I think there were between seven and nine people in the back room, listening in on our observations. You know the old saying, walk a mile in my shoes? I imagine it's very difficult for any of you to understand what it really is like to perform our jobs. The company says that they do use it as a training tool.

For example, when we take an order for new service, we have a sheet that we are to follow. There are between 27 to 30 points that we must cover, and we do get feedback within 24 hours of the observation. Usually, my supervisor tries to get back to me the same day. One contact I thought I did particularly well-- It's like, oh my God, I remembered wiring maintenance. We have to discuss this with the customers because of divestiture, and it makes our contact a lot longer. There are items that we must discuss under Federal law, which is understood, and of course, we have to sell features to the customers.

Also, the tone of your voice, the way you carry yourself, the way you presented yourself for the company to the customers, is taken into consideration.

As I said, I had this contact, and I thought it went very well. It was a move order, from one address to another; the customer was staying in the same town. I remembered all the points: I sold, I did everything I was supposed to, but I didn't tell them the telephone number was tentative, which we are supposed to say. Because I did not do that, I did not have a good contact. The customer probably ended having the same telephone number. It's very unlikely that your number will change if you're staying in the same geographical area, unless, you're in an urban city, it might change.

It's just as a friend of mine said, "They're just abusing their divine right." Yes, they have the right to observe; yes, it is a part of our job; yes, I am used to it; but when do you draw the line, when is it too much? When is it affecting me and how I do my job?

We have a new title in our contract called "the in-charge." We've never had this in our department before, where I could be supervisor for the day. I would assume some of their responsibilities, short of disciplining -- observing. I couldn't observe. I could talk to customers, I could talk to irrate customers. I could answer questions, help with orders. In another office, a girl was in charge for the day and was allowed to attend a supervisors' meeting, and the subject of monitoring did come up and the talking amongst them was, well look, nobody has a perfect contact; you always find something wrong with it. We know this going in that it's impossible to have a perfect contact, no matter what we do.

What Vince was saying about discipline, we have a lot of new people now, the company has turnover. For awhile it was very stable where we would have people in the office with years of service up to maybe 10 years and that would be it. Now

we're getting new people because a lot of people are retiring. So the new kids, the observing is part of their whole appraisal, and if their observations are not good, it could affect whether or not they get their next raise; not sole, but it is part of it, of the overall job. So what Vince was referring to about being disciplined, you could not get your raise very well because of a couple of contacts as part of the overall picture. Do you have any questions that I can answer?

ASSEMBLYMAN LITTELL: Linda, you seem to agree that yes, you understand it; you think there is some legitimacy to it. You seem to think they have gone too far. Where do you think we should draw the line? Should we draw the line by saying that they shouldn't be able to discipline you like the bill says, or should we draw the line to say that the discipline should be warning in nature? Should you only be disciplined after the third or fourth time? It seems to me that if discipline is ruled out totally, that it eliminates the ability for a company to use the tool effectively.

ASSEMBLYMAN PATERO: Excuse me. I think all she wants is no monitoring. If a supervisor comes around and sees she's doing something wrong, she could discipline. Right now the question is monitoring.

ASSEMBLYMAN LITTELL: Well, I thought--

ASSEMBLYMAN PATERO: She's not talking about not being disciplined.

ASSEMBLYMAN LITTELL: It says disciplined in the bill.

ASSEMBLYMAN PATERO: Through the monitoring.

ASSEMBLYMAN LITTELL: Through the monitoring..

ASSEMBLYMAN PATERO: Well, what we're trying to do is trying not to monitor.

MR. WILLIAMS: Assemblymen, it actually says that it limits it, where they can only use a 30-day period.

ASSEMBLYMAN LITTELL: Right there in that section. I think she said that she accepted monitoring as a way of life,

and that it's a legitimate thing.

MS. KRAMER: I said we're used to it as a part of my job. I don't accept it, but I have to. I have no choice.

ASSEMBLYMAN PATERO: No, I know, that's what--

MR. TREVELLI: If you're worried about quality control and during this 30-day period they hear a problem, why discipline the person? Why not sit down and work with the person and train the person? Why does it have to be a discipline?

ASSEMBLYMAN LITTELL: Well, that's what I was trying to get at.

MR. TREVELLI: You can do that. Under the 30-day period and the six--

ASSEMBLYMAN PATERO: Because of time, can we contain this, please.

ASSEMBLYMAN LITTELL: How do we define this thing if it's not to be used as a form of discipline? Should there be a requirement that a person put in some time in a training program or something else? Somebody might construe that as discipline as well because they might have to do it on their own time or they might have to it and not like doing it. I'm just trying to find out from her, as she testified, how she feels we can make this thing operate? It's here, it's part of the system, and I don't think you are going to eliminate monitoring completely. That's the way I see it.

I may be wrong, but it seems to me that if monitoring is a useful tool that maybe the limits ought to be defined more clearly. You and I may not agree on that, but I think Linda basically said in her testimony that it's a system that's here and that it works, and although you may not like it--

MS. KRAMER: I didn't say it worked.

ASSEMBLYMAN PATERO: I think you are right, this is for public purpose other than disciplinary action. That's new amendments. We'll have to take a look at that, but I think the

question right now is about the monitoring rather than discipline.

MS. KRAMER: I think the public is appalled when they realize they are being monitored on. I've had several contacts, one where the computer was down. The customer and I were having a conversation, just hoping the system would start moving or whatever, and I got my feedback and I was told that I was on entirely too long. I was too chatty with the customer. I was trying to service the customer.

That's another point I wanted to make, Assemblyman Littell, excuse me. We used to be in the service business; we're not in that anymore. I mean service they say they care about, but darned if I can figure it out? I mean they are more concerned about their objectives, about their sales incentives, about how many observations they do on people, about how many contacts we take on a yearly basis and my rebuttal is after I am observed on, and they give me the feedback, I said, "Well I was nice to the customer. They were satisfied," "Well yes, but it's not all that important."

Yes, they want you to be nice. That goes without saying. I mean it always used to be a part of our job, that as long as we treated the customer the way we would want to be treated if we called up some other service industry, that's all that really matters in that we service the customer. We've just become a production line, unfortunately.

ASSEMBLYMAN LITTELL: Have you ever tried to negotiate this in your company?

MS. KRAMER: I believe so. We recently did get language this past contract limiting them to how many contacts they can do on an individual per year, based on their performance. For example, if I'm an outstanding employee, they're only permitted to do 20 per year. If I'm a satisfactory employee, they're only permitted to do 30 per year, if I'm unsatisfactory, I believe it's 40 per year and then if you're a new person with -- I'm not sure if it's 18

months or whatever -- it's unlimited because they're developing the new people. As I've said, they're saying it's a training tool, but they're abusing that.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PATERO: Thank you very much. Next we'll have Dr. Janet Cahill, Glassboro State College, Department of Psychology.

D R. J A N E T C A H I L L: Good morning.

ASSEMBLYMAN PATERO: What we're going to do, rather than read the whole thing--

DR. CAHILL: Absolutely.

ASSEMBLYMAN PATERO: --what we'll do is we'll give it to the stenographer and she can type word for word. So if you just want to summarize it, we'd appreciate it.

DR. CAHILL: Absolutely. I wouldn't want to read that, myself. Let me just introduce myself so you know who I am. I am an Associate Professor of Psychology at Glassboro State College. I'm a psychologist, and my area of expertise is in occupational stress. I do a lot of research on how the work environment, supervision, structure of work, affects peoples' physical and psychological health. I'm also an active consultant on workplace stress for both labor and management, and I recently completed a study on implementation practices of electronic monitoring across the country.

My testimony today is going to focus on the relationship between monitoring and stress, since that's an issue that's already emerged. Let me first, real quickly, summarize why you should be concerned with the stress issue. The most recent estimates from the Office of Technology Assessment indicate that stress is causing, or contributing to, conservatively, $50 billion to $75 billion cost to U.S. industry per year. That cost translates into absenteeism, lost time, and increased medical costs. That does not take into effect personal and public medical costs, as well as job

satisfaction and service loss.

There is an extensive body of scientific evidence which links stress related problems to serious physical and psychological disorders. I don't mean the occasional executive who's taking Maalox, I mean people who have diabetes, hypertension, serious types of digestive disorders, serious types of emotional disorders, and we're seeing an increasing risk of cardiovascular disease when certain types of work environments are utilized: stroke, kidney disease, those kinds of things. So, we need to take stress very seriously and from a productivity point of view, we have to look at lost time, job dissatisfaction along those lines. It should be noted that in terms of compensation claims, stress related claims are the fastest growing claims for the workforce under the age of 40. So, there's a number of areas where stress has to be taken seriously.

The issue is, does electronic monitoring per se contribute to stress levels, and the answer is, it depends on how it's implemented. If it's implemented in the following way, that it increases workload, increases effective role conflict. Getting back to the prior testimony, if I must do two things in the same interaction, I must be fast and I must be nice, that increases a factor we call role conflict. If it decreases my control over my job -- a factor called workload and workplace autonomy -- all of those things have been well documented to increase stress levels.

When we look at people who are heavily monitored, we find that they have heavier, increased levels of stress, compared to other work forces. All of the existing scientific literature has concluded that monitoring, as an independent practice, contributes to stress levels. It is an issue of sufficient concern that the National Institute of Occupational Safety and Health has made this one of its top priorities, to begin to document this problem. When you combine it with

remote monitoring -- that is like, I can't see you, I don't know when I'm being monitored -- those stress levels seem to increase as well. When you increase the structuring of tasks, that is, I have about 30 to 40 to 50 items I have to attend to in one interaction, we find that surpasses the human being's capacity to pay attention. You cannot pay attention to all those factors sucessfully in one interaction, and we find that that contributes to the sorts of cardiovascular problems that I discussed earlier.

Electronic monitoring appears to create a kind of work environment that is similar to machine paced work. Machine paced work is one of the most documented workplace variables around occupational stress. It increases certain biochemicals, particularly, the catecholamines which have been implicated in high blood pressure. When you have routinized jobs like this, it also decreases job satisfaction. So, point one is there seems to be a great deal of evidence that electronic monitoring, as it's currently being implemented, has a very very serious impact on stress level.

A second key issue I wish to mention is it does not appear that electronic monitoring is necessary to achieve the supervisory effect that managers seem to want to achieve. There are alternative methods. First, let's just deal with the narrow issue of productivity. Does electronic monitoring, per se, increase productivity? No one is sure. There are studies which have concluded that electronic monitoring actually decreases productivity because it dramatically decreases job satisfaction, turnover, and increases customers complaints. There are other studies which conclude on very narrow variables, it increases productivity. What you measure is what you get. If you measure productivity in the sense of forms filled out, that's what you get. You may not get productivity and customer satisfaction, so the issue of does this help supervision, is an open one.

The third major point: Are there alternatives available? Yes, there are, and you do not need to monitor people continuously in order to get the increased productivity or the job performance that you want. Human beings behave the same over long periods of time. If you monitor them for 30 days, those behaviors will persist. They don't tend to change. You do not need to monitor as it is currently being employed, which is a moment by moment monitoring effect. Every single second of the workplace of the workday, in some instances, are being monitored. This flies in the face of 50 years of psychological evidence that that sort of intrusive monitoring is not necessary.

Alternative means which use positive feedback, such as a supervisor sitting behind a worker in what we call "jacking in," you listen in on the conversation notifying both the worker and the customer, gives you the same effect and does not decrease job satisfaction, and there is evidence from some studies that customer satisfaction actually increases when this type of experiment has been tried. In my own work, where I work with Human Service workers here for the State -- and we're trying to improve customer satisfaction around Human Services, and we train supervisors to watch, to observe directly and to incorporate the use of positive feedback more importantly than negative feedback -- we find that we get a drastic increase in customer service, that is in Human Services, and we also do not have any loss. In fact, we find an increase in job satisfaction. So, it doesn't seem to be stressful. It is not necessary. The jury is out to whether this increases productivity, and it certainly flies in the face of what we know about alternative means of increasing productivity. Let me stop at that point. Is that concise, or what?

ASSEMBLYMAN PATERO: Yes, very.

ASSEMBLYMAN LITTELL: Thank you, Mr. Chairman. Dr. Cahill, you say U.S. industry has losses of $50 million to $75

million per year in lost time, absenteeism, and company and medical expenses--

DR. CAHILL: Billion, with a "B."

ASSEMBLYMAN LITTELL: Billions?

DR. CAHILL: Yes.

ASSEMBLYMAN LITTELL: Yes. Where do those numbers come from?

DR. CAHILL: The Office of Technology Assessment. I can give you that reference if you'd like.

ASSEMBLYMAN LITTELL: All right, I'd like to have that if you would, please.

DR. CAHILL: Sure, absolutely.

ASSEMBLYMAN LITTELL: How do you differentiate between the stress on the job as compared to the stress a person brings to the job? Maybe they had a bad morning with their children or their wife or their husband, and maybe they're bringing that with them, or maybe there are financial problems and maybe they're bringing that stress to work with them. How do you differentiate between one and the other?

DR. CAHILL: It's a very legitimate question. There has been a lot of research on that very issue. There's a lot of empirical ways to do it. Sometimes they compare the exact same people in different work sites, sometimes they follow people over time. They do what's called a multiple regression analysis -- don't I sound smart? -- where you parcel out those sordid personality variables versus workplace variables, over and over and over again. The research indicates that while personality contributes to stress, while it's something that we have to pay attention to, we also recognize that workplace stress -- what we refer to as structural sources of stress -- are far more powerful for health than for personality variables. So, I won't say that there are no individual differences -- that would be incorrect -- but if you want to weigh individual differences versus workplace stress, workplace

stress is far more powerful.

So, if you take a perfectly healthy human being with good coping skills, good attitude, good marriage, children, flosses their teeth, all those sort of good things, you put them in a highly stressful job, they will get sick. If they don't do those things, they've got a crummy marriage, they don't floss their teeth, they eat Twinkies for breakfast, you put them in a stressful job, they'll get sick faster. That, the research supports quite clearly.

ASSEMBLYMAN LITTELL: So, this stress that's losing all this money for business and industry isn't all caused on the job, obviously. It comes from a variety of sources.

DR. CAHILL: Certainly, we couldn't eliminate the personal factor, no.

ASSEMBLYMAN LITTELL: So, you're not going to save $50 billion to $75 billion dollars by eliminating monitoring?

DR. CAHILL: But you would save a far more-- Again, if you were balancing the two, the workplace stress is far more powerful.

ASSEMBLYMAN LITTELL: I think any monitoring of any person's performance, even a report card for a student in a school, is stressful. I think the best example I've seen recently, is I attended a hearing on the commercial driver's licenses that are going to be required for all drivers of hazardous materials and drivers over a certain weight, and drivers who have been driving for 20 to 25 years got awards for driving one million miles without any accidents or problems are just blown away by the idea that at this point in their life, after being out of school for this long, the government wants them to take a test -- and a very extensive test at that -- to say that they know how to drive a truck. It's just mind-boggling to those people there.

In California, where they gave the test, 60% of the drivers that took the test failed and relatively speaking, in a

short sense, what it boils down to is when you put people down and make them do things that they're not accustomed to doing or make them do something that they don't like doing, it's very stressful. I suspect that monitoring is one of those things, but I'm not sure what the alternative is to allow people to manage your business at the same time, and be responsible as a legislator to say that the people do, in fact, have a right to determine the job performance of their employees. Can you address that?

ASSEMBLYMAN PATERO: Well Bob, that's the reason you should support this bill; because these people are doing it everyday, may twice, three times a month. Now, you're talking about the truck driver that has to take this test, 60% of them failed because that's more or less being monitored. They are going back in there again, and that's the reason we have this bill here today.

ASSEMBLYMAN LITTELL: But there's a very good reason for it: So that you don't have accidents. That's the reason for it, and when you have a truck going down the road with hazardous material, the government has determined that it's good public policy to make sure that these drivers are well trained and that they're qualified and that they're able to respond to questions as well as to actions. The drivers don't agree to that, but the government has decided we ought to do it.

What I'm asking the Doctor to tell me is where does somebody-- The Division of Motor Vehicles is a good example. We had a young lady up here explain that. We certainly all would like to call the Division of Motor Vehicles and be treated pleasantly, and frankly, I think they do a marvelous job. I think they've increased their performance operation over there to a great extent. I used to get a lot of complaints. I get very few anymore. I think that a lot of other things are done that way, and I suspect that maybe training and monitoring has helped. But where does it become

legitimate, and where is it illegitimate?

DR. CAHILL: Let me just say again that I understand your point, and I'm not arguing against quality assurance, observation of people, or supervision, but you can achieve the results you want, good service -- I've done this sort training myself, so I can speak directly from experience-- You can achieve what you want in terms of good service, get the benefit of increasing job satisfaction without the use of remote electronic monitoring, and you do it just by basically doing good supervision. There are many models of that around, including many generated by industry. You don't need to remotely observe someone on a continuous basis to achieve that result, and the cost of doing that appears to me to be not worth it when there are alternative means available.

I don't think anyone would suggest, certainly I myself, that you never watch people, you never observe them, you never give them constructive feedback. But the way monitoring is currently being employed, it doesn't do that in a particularly constructive fashion. The way it's being implemented now has negative side effects, and you don't have to do that. You can get what you want by improving performance, and the benefit of increasing job satisfaction through alternative methods of supervision which are well developed. You don't have to recreate the wheel.

ASSEMBLYMAN LITTELL: Banks have monitoring cameras for security reasons, but they also monitor their employees at the same time. Do they find that that's stressful?

DR. CAHILL: Around the surveillance from cameras?

ASSEMBLYMAN LITTELL: Yeah.

DR. CAHILL: I don't know of research directly speaking to that. I do know that assembly line workers who were observed by cameras, do find that highly stressful. I don't know about banks, so I can't answer that question without making something up, which wouldn't be fair.

ASSEMBLYMAN PATERO: Thank you very much.

DR. CAHILL: Thank you.

ASSEMBLYMAN PATERO: Next we'll have one of the sponsors of the bill, Assemblyman Gerard Naples.

A S S E M B L Y M A N G E R A R D N A P L E S: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: You can stay there, Gerry.

ASSEMBLYMAN NAPLES: Good morning. Thank you very much. I am one of the co-primes of the bill. I am not the prime sponsor, Assemblyman Schwartz of Middlesex County is. And inasmuch as this is only a public hearing and not a Committee meeting, there'll be no vote to release.

Let me editorialize for a moment. I'm in management myself, and I've been listening very intently to what a lot of you have been saying. I have my own point of view to whether continual monitoring makes for better management, better productivity, or what have you. Sometimes I wish management would concentrate on administering and management, and not management like these, and I think we might get better products which we claim that we will get, through bills such as these. But that's obiter dictum; that's my own personal opinion.

Let me talk about the bill. This is 1990, not 1984. The law, nevertheless, says this is permitted. Again, I have my own point of view here. The question poses itself-- Let me do this inductively and take a case. There was a teacher in my school who had had a very serious domestic problem. She had broken up with her husband, divorced, and then maybe a year later broke up with her boyfriend, and she was shattered. Through her girlfriend, I found out that she was in therapy and she told me from time to time she would need a personal day and I said fine, there's no problem. In fact, she didn't even have to tell me she was in therapy. It was none of my damned business, but I was honored that she saw fit to confide in me.

One day she came down very upset and said, Gerard, can

I use your phone? I said sure. She didn't want to use the main phone. She wanted to use the phone in my office to call her therapist. Now, she was on her free period. Even if she were not, even if she had an emergency and had to come down, and needed the service of that therapist, she was still doing the best. To digress for a moment, she was still doing her job despite the heavy burden she bore and despite the strain she was undergoing at the time. It's nobody's business to hear that conversation, it's got nothing whatsoever to do with her job, yet it could be heard unconsciously.

In terms of this young lady applying for future positions, a potential evaluator of her could have that in the back of his mind. It could even be unconscious, or some type of subliminal stimuli on the part of the listener which could render her in his mind, or her mind, unstable for this position. I have to ask myself, do the benefits of operations, "good management," outweigh the detriment to the employee and public in terms of invasion of privacy?

I personally think this is a good bill. If I were the prime sponsor, the bill would be stronger, but I'm not the prime sponsor. I take my hat off to Dave Schwartz for tackling a very, nettlesome, vexing prolem which must be faced. I'm glad that as the psychologist ironically testified in front of me and I thought back to this day -- I don't know whether that line was bugged or not, I don't know -- but I thought back to that day six or seven years ago, while the Doctor from Glassboro was talking.

I'm not going to address everything I have in my packet, my own position papers, the bill, all the opposition. I've pretty much heard it, and I respect you, and I understand your concern to have a good ongoing business. One of the great fears I harbor is abuse of this. Abuse; something not connected with management prerogative in any manner whatsoever, something more in line with management abuse. One supervisor

told me -- he's not in this room -- we've got to keep a rope on them somehow. That's not good practice. That's not good management. That's not good labor relations. That's not good human relations. I am really concerned about abuse of this, about private information being disseminated, about a person being confronted about matters which matter little. I'm not saying that an employee who doesn't do a good job shouldn't be, if you will, canned, or disciplined, but, if in addition to, not in place of, the person engages in a private conversation, that person does a good job, the person shouldn't even be confronted -- have to be confronted with what I consider to be an abject indignity.

That's about all I'm going to say except for the fact that I am going to take a look -- this will not be the time to amend this bill-- I'm going to have the matter researched, with a view towards a severe penalty for abuse. Now, if you are all concerned with this bill as a tool for management prerogative, you would ipso facto, favor non-abuse. One of the best ways to prevent abuse, is a deterent and I really believe-- Let's take another example in the case of the teacher who called her therapist. Let's say it was a supervisor in education and he used this-- An example would be that person would be stripped of his or her certificate, never permitted to teach in the State of New Jersey again. I feel very strongly about this from the civil libertarian point of view, and that's about all I have to say on this bill. I will be happy to read the transcript, talk to Assemblyman Schwartz, any of you -- certainly as I always have -- and with the Chairman's permission, I have about 15 more minutes before I go to another meeting. I'll be happy to field any questions.

ASSEMBLYMAN PATERO: As long as you say you aren't going to talk another 15 minutes.

ASSEMBLYMAN NAPLES: No, no I can't. I'm sure some people had some questions. If I was a little long, you still

had quality along with quantity.

ASSEMBLYMAN PATERO: Okay, thank you very much, Assemblyman. Any questions? (no response) Nope, fine, good. Thank you very much.

ASSEMBLYMAN NAPLES: Thank you.

ASSEMBLYMAN PATERO: What we're going to do is we're going to take this by groups now. We have the bankers, bank associations, utilities, and so forth. We'll take utilities first. The first person to speak is Ernie Cerino from the New Jersey Utilities Association. Now, for the people that have regulations now, we did put back into the bill as an amendment, "unless the employer is required by the provisions of a State or Federal law to conduct electronic monitoring without providing notice," that was not included in the bill, and we will be putting that back into the bill as an amendment. So, Mr. Cerino.

E R N E S T C. C E R I N O, JR.: Good morning, Assemblyman Patero, Assemblyman Littell. I am Ernie Cerino, Associate Director of the New Jersey Utilities Association, representing the State's electric, gas, water, and telecommunications utilities. Since there are numerous persons to offer comments on A-210 today, I will be very brief. However, for the record, I would like to respectfully state our opposition to the bill.

A-210 is extremely broad in its application. You will hear from some of our member companies today who will outline for you the impact of its provisions on each of them individually. Generally, however, we would like to suggest that this bill appears to be based upon a belief that electronic observation is detrimental to employees. We know of no unfair or abusive situations that have arisen due to employee monitoring, and our employees know that any and all monitoring is conducted fairly, for the purposes of providing our customers with the highest levels of customer service as required in our industry.

Electronic monitoring is employed by the utility industry to improve efficiency and to assure vital services to our customers. It is utilized as an essential quality control tool. In our view, the best way to handle this issue is on an individual company basis, through the collective bargaining process. This legislation, we feel, would replace collective bargaining and prescribe management policy by statute.

Should the Committee wish, we would be happy to expand on this testimony at a future date. For today's purposes of discussion, I have with me several representatives of the utility industry who are ready to offer their specific insight to the problems associated with A-210. Thank you for allowing me the opportunity to testify, gentlemen.

ASSEMBLYMAN PATERO: What kind of monitoring do you do, Mr. Cerino?

MR. CERINO: Basically, our industry monitors everything from service, to people calling in saying there might be a problem with their gas or electric, water or telephone service, sometimes emergency situations, sometimes just service hook-ups, monitoring of meter reading, and employee performance to make sure our customers receive accurate bills, receive quality service, as we're required by the BPU.

ASSEMBLYMAN PATERO: Is this eavesdropping, or is it by a call coming in on tape?

MR. CERINO: Well, I wouldn't call it eavesdropping. There are situations where a supervisor could listen in directly to an employee. There are also some taped calls.

ASSEMBLYMAN PATERO: What I meant by that is, is this random, or is it just there all day long that they're listening to his calls?

MR. CERINO: Random. But the points are, all this is used to provide our customers with high quality service. We're required, as you know, to provide essential electric, gas, water, and telecommunication services on demand from our

customers. We want to make sure that they have that highest quality service. This is what it's for.

ASSEMBLYMAN LITTELL: Mr. Cerino, has the development of computers and the electronic communication system been the reason that we've gotten into this monitoring process electronically; because it's easier, or because it's the only way you can really handle the volumes of people that we're dealing with?

MR. CERINO: I think the key word which you said is volume. I know during the heating season, some companies receive tens of thousands of phone calls per hour of customers calling in to check their furnaces, start up their furnaces. You know, it's just basically due to volume.

ASSEMBLYMAN LITTELL: And because of this type of monitoring, do you find that the employees are more productive or less productive, or does it not make any difference in their productivity?

MR. CERINO: I would say more productive. I think it helps us provide the essential services. Not being a customer service expert, I couldn't tell you specifically. We do have some people with us today.

ASSEMBLYMAN LITTELL: You've got somebody here that can testify to that?

MR. CERINO: Yes.

ASSEMBLYMAN LITTELL: Well, I'll wait and ask them.

MR. CERINO: Sure.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PATERO: Thank you, sir. Is Jon Spinnanger here? (no response) Donald Bates, the State Government Affairs Manager from Jersey Central Power & Light Company.

G. D O N A L D B A T E S: Thank you Mr. Chairman, members of the Committee.

ASSEMBLYMAN PATERO: I'm sorry-- Make it be known for

the record that Assemblyman Tom Foy came in at 11:00.

ASSEMBLYMAN FOY: Mr. Chairman, I apologize for not being here. I was appointed to the Oversight Committee and we had a hearing today with the State Treasurer on the issue of the diversion of the $100 million from the Unemployment Trust Fund, and I felt it important to attend that half of the meeting. There are other fiscal issues being addressed, but I apologize for being late. I'll obtain copies of the record and familiarize myself with the testimony to date.

ASSEMBLYMAN PATERO: No, I understand. This is a special meeting. Our meeting is scheduled for Monday, and I felt that since at a public hearing you do not have to have a quorum, that since we're going to be here today, that we'll have just a public hearing today.

ASSEMBLYMAN FOY: You weren't lonely, I can see from the attendance.

ASSEMBLYMAN PATERO: Don, I'm sorry, go ahead.

MR. BATES: Mr. Chairman, I have with me today Jim Knubel, who is Director of Security at GPU Nuclear Plant down in Oyster Creek. He will comment on how it affects his operation.

We have about 3600 full-time employees in New Jersey, and we have a good working relationship with our employees, and they're mostly union collective bargaining personnel. We feel that A-210 is just far too broad and would adversely impact on almost every aspect of the data recording that's required for everyday operation. The bill limits our right to manage in the areas of hiring, terminating, and disciplining, by legislating employer reactions rather than allowing the collective bargaining process to take its normal course.

The prohibition of unlimited or unrestricted methods of "eavesdropping" is certainly understandable by Jersey Central, but we think A-210 is just going a little bit far from

reality. Our company's very ability to function on a daily basis, safely and efficiently, is reliant on day-to-day computer driven information.

A-210, we feel, fails to strike an appropriate "fair play" balance between the employer's rights to protect its own interest, and the employees' rights to a reasonable level of privacy in the workplace.

The present wording of the bill limits the use of gathered information, requires warning lights and audio sounds, and restricts periods when monitoring may be conducted. This, we feel, translates into providing employees with a virtual license or a free hand, to do whatever they want to the detriment of the employer. This scenario is compounded by the criminal sanctions available against the employer as well as possible treble damages. These provisions most definitely limit management's right to monitor basic productivity.

A-210 concerns us because it will not allow us to operate our present electronic access control and security system, thereby severely reducing security in the workplace, and this we feel is to the detriment of both the employee and the employer. Further, restricting the evaluation of an employee's work performance, productivity, and attendance to 30 days is ineffective because it limits the monitoring of trends in both departmental and in individuals. This short period of 30 days could be more harmful than good to the employee and could even breed and cultivate an adversary atmosphere.

A-210 limits the use of computer generated records such as simple things such as: time sheets, training logs, management control systems, productivity, attendance, performance, and it goes on and on. We are concerned that none of these records could be used for promotion, discipline, termination, etc., without the proper employee notification about the monitoring.

We feel that the 42-day limit to monitor new employees

is also insufficient. Jersey Central uses at least a 90 day qualifying period. In fact, some of our qualifying periods are as long as 37 months in the case of linemen progression periods.

Also, short-term monitoring of at least a minimum of one week to check work volume, would not permit monitoring of a meter reader's one-day performance. Now, we presently use hand-held, electronic monitoring equipment, by our meter readers to record their activity.

A-210 restricts telephone monitoring to 30 consecutive calls, which certainly doesn't give a proper indication of problems occurring over several days. For safety reasons, we routinely tape telephone and radio communications at our dispatch centers. By the way, they are on a beeper system, so everyone knows they are being monitored.

We feel that this legislation -- and this is the crux of the matter -- replaces collective bargaining with "management by legislation." Worse yet the bill promotes only the monitoring of an employee's "best" efforts since an employee, knowing that he/she is being monitored, would strive for excellence, and put their best foot forward during that monitoring period. The bill seems to protect a small fraction of possibly dishonest, self-interest employees who are bent on violating company policy.

A-210 implies that monitoring creates stress which is contrary to managerial philosophies. The average employee enjoys being singled out as an efficient performer, one that is giving quality service, and is proclaimed as a good producer. Stress, we feel, more likely comes from trying to hide a poor performance.

The bill's purpose is to prevent abuses of data obtained through electronic monitoring. No problem there. We feel that management has the right to receive an acceptable level of performance for a salary paid. Disciplinary action is

certainly not an abuse of authority.

So in summary, Jersey Central feels A-210 is just, in its present form, not realistic. It's far too broad, and it's at the expense of efficient, prudent, and safe management. Modern technology has allowed the business community to revise methods for gathering information. Both the employee and the employer must be willing to adapt to these modern methods. To return to manual operation would surely increase the cost of doing business, thus increasing the cost of service to our customers.

The use of computer data banks has eased the task of record keeping. We monitor to bring about efficient, effective, and quality customer service. Our operation is not designed around discipline. It's designed around training, education, and self-improvement.

So, we see very little room for amendments that might make this legislation acceptable to us. However, we, as always, stand ready and willing to discuss any proposal that might make the legislation workable. Thank you for your time, and I would like Jim Knubel, from Oyster Creek, to offer a few comments.

ASSEMBLYMAN PATERO: Okay. Mr. Knubel, I hope you don't read the thing. Like I said, it's presented to the stenographer there, and we'd appreciate just a capsule, because we have a time limit until 12:00, and we have quite a few people.

J I M K N U B E L: I will keep my comments short because first I want to thank you. Most of my comments are already addressed by amendments that are already proposed which deal with the conflict I saw between A-210 and the Federal regulations that regulate the nuclear industry.

As a security professional, I still have one area that I would like to address quickly, and that is, there are times when, for legitimate security reasons, we have to do things like area surveillances, where -- especially in the nuclear

industry -- there is a potential that someone may be tampering with safety related equipment. Once we do that, it's got to be covert, and we can't be notifying people that the area is under surveillance. Along with that is an unfortunate truth in our industry as well as others, that there are that small percentage of people who will steal, who will use drugs, or otherwise inappropriately act in the workplace, and I believe that the bill would eventually be an antitechnology bill, to prevent us from using available technology to surveil that. Basically, that's all I have to say.

ASSEMBLYMAN PATERO: Just one question: Is that required by Federal regulation now?

MR. KNUBEL: No, it's not.

ASSEMBLYMAN PATERO: That isn't. Any questions?

ASSEMBLYMAN LITTELL: Mr. Chairman, I'd like to ask a couple of questions. Do you have a collective bargaining agreement that deals with electronic monitoring at all?

MR. BATES: We don't necessarily. The bargaining may not say that electronic monitoring is allowed, but the process of what can be done and what can't be done with working relationships, is through the collective bargaining process, and right now, our employees know they are either being randomly monitored or monitored by tape at our service centers. It's a nice working relationship. We have no problems or objections.

ASSEMBLYMAN LITTELL: Not a point of contention every time you have negotiations?

MR. BATES: No.

ASSEMBLYMAN LITTELL: Are you required by BPU or the Federal laws to monitor other than what Mr. Knubel described at the nuclear plant?

MR. BATES: No, I don't believe we're required by law to do any monitoring, say at our service centers, but that is to the advantage of the customer and the employee to be monitored, so we know what he or she did say or did not say.

Sometimes a customer might exaggerate some kind of conversation.

ASSEMBLYMAN LITTELL: Now, you talked about your meter readers and the fact that the meter readers are now monitored with their hand-held computers, which is a new technology in reading meters where a meter reader goes up and punches in the customer's numbers and a meter number or whatever, and that's all recorded automatically and transferred to your main billing computer when he comes back at the end of the day -- it also has a time frame on there -- how different is that from the monitoring you used to use where you put a hub on the wheels of the trucks, so you could tell when the truck went so many miles a day?

MR. BATES: Well, of course this is the monitoring--

ASSEMBLYMAN LITTELL: Is this more effective?

MR. BATES: Oh sure it's more effective. It tells us electronically where he or she is at any given point in the day, and how long it took from one stop to the other. It's all designed for efficiency and that is so we won't have the truck parked for half a day and at the customers' expense.

ASSEMBLYMAN LITTELL: And is that different than what you used to get when you had the hub on the wheel?

MR. BATES: Oh sure, it's much more efficient and much more effective, and there's no objections from the employees.

ASSEMBLYMAN LITTELL: No objections?

MR. BATES: No.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN FOY: I have a couple of questions. With respect to any telephone monitoring that you do, what is the purpose of that monitoring? Is it just for quality assurance in terms of treatment of customers that your operators are supposed to provide, or is it for productivity in terms of the number of calls they're supposed to handle in a given shift, or is it for both?

MR. BATES: It's for both, Assemblyman. Productivity, of course, is a concern, but also our concern is the proper way to handle a call being made by our employees when we receive it from the customer.

ASSEMBLYMAN FOY: All right. Now, your employees are alerted in advance that this is an ongoing condition of their employment, is that correct?

MR. BATES: Yes.

ASSEMBLYMAN FOY: What happens when you have an employee who doesn't either meet a level of productivity or a level of quality assurance that is your norm or standard?

MR. BATES: Well, he or she is counseled, and if it's something that continues, if we have a real problem then certain measures would have to be taken -- certain disciplinary measures.

ASSEMBLYMAN FOY: So, if they were disciplined, do your contracts -- your collective bargaining agreements -- provide for grievance discipline, for the grievance of disciplinary matters?

MR. BATES: Absolutely, absolutely. A very detailed process which has been working for years.

ASSEMBLYMAN FOY: You obviously would be supportive of a notice from the telephone company. There was a suggestion that there be an exemption for collective bargaining agreements, where provisions were involved with respect to that. Would you support that type of amendment?

MR. BATES: Sure.

ASSEMBLYMAN FOY: How many instances -- just if you know-- How many instances of this type of discipline occur in your company during the course of the year?

MR. BATES: I don't know, but I do know there are some. I don't know what those figures are. We could probably

research that.

ASSEMBLYMAN FOY: It would be useful if we could determine, from some industries that utilize this procedure, what the frequency of disciplinary activity is in relationship to this monitoring, and what the severity of the discipline results of that are? I'd be curious to find out as well what the disposition has been? How many times, in a sense, have you been overturned as a result of an arbitration or something like that? If you had 20 instances a year through the grievance procedure, how many were actually taken to arbitration, and in the arbitration, what was the disposition of that particular individual?

MR. BATES: Sure, we could make that available.

ASSEMBLYMAN FOY: I think it would be useful from the Committee standpoint to analyze the impact of current practices, in relationship to the need or lack of need for this type of legislation.

ASSEMBLYMAN PATERO: I think if you could get that to Greg Williams, we'd appreciate that.

MR. BATES: Sure, no problem.

ASSEMBLYMAN PATERO: And anyone else from the utility company that wants to supply it to us. Thank you very much.

MR. BATES: Thank you.

ASSEMBLYMAN PATERO: Next, Bill Walsh from Public Service Electric and Gas Company.

W I L L I A M J. W A L S H, JR.: Thank you, Mr. Chairman. Good morning members of the Committee and staff. I'm Bill Walsh from Public Service Electric and Gas Company. I won't go over some of the issues in detail that you've heard already. I'll try and stick to perhaps different examples or things that may be a little bit different.

ASSEMBLYMAN PATERO: We'd appreciate that.

MR. WALSH: One thing I was glad to hear is that the amendment with regard to State or Federal regulations-- We

currently are subject to, under the Board of Public Utilities jurisdiction, specific delineations how you can use electronic monitoring, what the purposes are for, particularly training and retraining supervisory assistants and/or measurements of service levels.

If you look in the phone book for Public Service Electric and Gas Company, you will see a number of phone numbers, all of them with a little symbol. Next to that symbol, it tells you to look on page 16 in the phone book for an explanation of what that symbol means; that they are monitored or subject to service observing, and under what conditions, and the reasons that a company can use that sort of information.

We record telephone conversations in our customer service centers. They're recorded continuously. No one particular-- Whenever these are used in the context of training or retraining of personnel, the tapes are grabbed at random, no particular day. So, you get a random sampling of a person's activity over a course of time, and that's important for us, particularly on the gas side of business. It's cyclical in nature.

It's certainly different to get a call from a customer in late August saying, "I'd like to have my furnace inspected prior to the fall when it's going to get cold," than that first cold day when we get phone calls at peak in excess of 3000 an hour, and could be as high as 9500 to 10,000 a day, for no heat or service interruption, particularly on gas. Now, limiting the monitoring to a 30-day period-- If you limit it to a 30-day period, and you try and target those days when it's extremely cold, you're not going to get an accurate representation of how that employee is going to respond in a multitude of different scenarios. You're only going to get one particular type of situation, and it's going to be a customer calling up and saying, by and large, "I have no heat. When can

you people be out here?" With 3000 or more an hour, to try and tell a person a.m. or p.m., and they say it's seven or eight degrees outside, a.m. or p.m. may not do it.

If it's spread out over a year, I think it will give more representation as to the type of calls and the type of situations that the employees are subjected to. Not only that, but particularly in emergency situations: If someone calls up and says, "I smell gas," any recording, either substantiates the employee's or a customer's recollection as to what happened over that telephone conversation. This can be very important, particularly as I said, in the emergency situations.

The 42-day provision you've heard about already. Our minimums are on the order of six months, and I don't know if they go beyond 18 months or so, for those who would be, by and large, subject to electronic monitoring on a routine basis. You've heard about the monitoring being incorporated in the hand-held microprocessors. What's important in this is, rather than observing that activity over a 30-day period, generally on the 10th day of a month, a meter reader will, by and large, be reading the same route or the same group of homes or businesses that he read the prior month on the 10th date. So, these routes can vary substantially, going from a largely residential neighborhood where the homes may be spread out, 100 to 200 feet, as opposed to an inner city, such as a Chambersburg situation where the houses are primarily row homes. There's a large difference in terms of how much you get done and in what period of time. So, I think it's necessary to look at single day events, because they will be compared to that same route or group of customers over a month's period of time.

I believe everything else that's contained in my written statement has been covered to some degree. If there are any questions at this point, I would be happy to address them. I took note of Assemblyman Foy's question, and we'll see if we can't dig up some of that information in terms of

frequency and number of cases that went through arbitration for Committee hearings.

ASSEMBLYMAN PATERO: Okay, thank you.

ASSEMBLYMAN LITTELL: I just have one question to ask of you. Mr. Walsh, please, when you include that, send us an explanation of how you do that random monitoring--

MR. WALSH: Sure.

ASSEMBLYMAN LITTELL: --is it done electronically in your computer, so that nobody is singled out for any specific number of times? If you'd explain to us how that's done, that might be helpful. It might be a solution to part of the question that we're looking at here.

MR. WALSH: Thank you.

ASSEMBLYMAN PATERO: Thank you very much. Now, I have other people that want to speak from the utilities, but we have one half hour left. We'd like to hear from the banking community right now. The next speaker I'll call is Alfred Griffith, New Jersey Bankers Association.

A L F R E D H. G R I F F I T H: Good morning, Mr. Chairman, members of the Committee.

ASSEMBLYMAN PATERO: Good morning.

MR. GRIFFITH: My name is Alfred Griffith, the Executive Vice President of the New Jersey Bankers Association. I appreciate, Mr. Chairman, the opportunity to have public testimony on the bill. It is a wide-ranging type of legislation.

I'd like primarily to speak to the letter that I submitted to Assemblyman Schwartz. I have also talked to him several times about the bill, so he is aware of our concerns. We have reviewed the bill very carefully and particularly have looked at it in response to banking law regulation and practice, both at the Federal and State level. It's our belief that the bill is intended to protect employees from being observed or overheard, and being evaluated for matters other than his or her work performance.

While we do not believe the bill is intended to deter

the use of electronic monitoring for legitimate security purposes, the language of the bill makes it unclear whether the terms and conditions of the bill apply to the use of electronic monitoring by the banks for security purposes. I know when I spoke to Assemblyman Schwartz initially about the bill, expressing our concern about the security dimension, his initial thought was the bill really didn't reach to that. However, with a camera situated on a teller who is there, to protect the teller, as well as, a deterent from criminals, one would assume that the camera on the teller could be used for an evaluation purpose as well as security purpose, so that was kind of understood.

The Federal Bank Protection Act of 1968, requires that each Federal bank regulatory body establish standards that each bank must comply with for security purposes. We attach, and have for the record, a copy of the Federal Act essentially specifying that regulators must establish regulations to provide for protection -- security protection for the installation, maintenance and operation of security devices and procedures to discourage robberies, etc. and to assist law enforcement in the identification and apprehension of persons committing such acts.

We also attach, as Attachment B to the record, regulations that were promulgated by the Federal Deposit Insurance Corporation, with an Appendix A, which sets certain minimum standards for security devices, including surveillance systems, and speaks to the use of cameras, etc. The other Federal regulators, including the Controller of Currency, who regulates our national banks, have adopted very similar regulations to that, which was imparted by the FDIC. We ask that you review the minimum requirements in Appendix A which require the use of surveillance systems, etc.

We find also that drug laundering has become a significant problem in our society, and the banks must

constantly be vigilant about criminals who may establish an inside relationship in a bank. Constant electronic surveillance is a clear deterent to those who might attempt to use certain bank employees for their unlawful purpose.

While camera and photographic equipment is essential to bank and bank employee security, increasingly popular electronic fund transfers, both retail and wholesale, exceed a trillion dollars per day. The taping of all wire transfer activity both inside and outside of a bank and its branches, is required with all transfer orders. Return calls verifying all orders are also taped. Employees and customers know they are being taped for accuracy and readily accept the process for their own protection.

I might say however, in the whole area of wire transfers, which has become an increasingly popular form of financial management, there are no specific Federal regulations at this particular point that we're aware of that, at this point, require that taping, as an example, of all the transactions. It's a matter of practice, but that is not necessarily required by regulations, as far as I know. Because this is a growing area of activity the National Association of Uniform Commissioners of State Law, adopted a model Federal bill which could be implemented at each state, establishing a number of standards and requirements designed to provide further security in the area of electronic funds transfers.

We attached to the material a summary of the model and what it's designed to do, as well as a provision in there regarding a security procedure that ought to be utilized by a financial institution when we're talking about an electronic funds transfer that's considered a wire funds transfer.

In summary, I'll try to keep it brief: The electronic surveillance is a requirement of banks necessary to the protection of bank employees and as a deterrent for crime. Law enforcement officers have an absolute need for electronic and

telephonic material. I know banks quite often are requested to have whatever kind of electronic data they have available, to be made available for the investigation of criminal activity within the bank, or ultimately before a court of law.

Section 9 of the bill recognizes that particular significance and exempts it from the provisions of the Act. While the bill does not appear again to consider security, at least according to our counsel's opinion, its language may be construed as affecting and limiting bank electronic monitoring for security purposes. Without some type of language in the bill which might clearly provide some type of exemption for security related activities -- future litigation down the road -- we're not sure what a judge might do in looking at the bill and looking at the bank's action to see whether or not it did, or did not reach to the area of security.

To make it clear that the bill does not limit electronic monitoring for banks for security purposes, our association respectfully recommends that regulated banking institutions -- all banks and savings banks, and that would include savings and loan associations, though we prefer not to speak for them -- be deleted from the bill in its definition section, or since section 9 clearly anticipates and understands the need for continuous electronic monitoring by law enforcement agencies, and since the use of such equipment is akin to the purposes of banking enforcement, that section 9 be amended to exclude security related activity by banking institutions.

We looked this morning at some proposed amendments, and I think they're geared to some degree toward recognizing what exists in Federal law and regulation. Mr. Chairman, I'd have to say as a nonlawyer, I would probably prefer to have our own counsel take a look at it to see whether it does the job, but I understand the thought is designed to reach toward that particular security mode, and we very much appreciate that

consideration.

ASSEMBLYMAN PATERO: That's the question I was going to ask you: What do you think of these amendments? But you're going to have someone review them?

MR. GRIFFITH: Yes, I shall. I'm not an attorney--

ASSEMBLYMAN PATERO: Me neither.

MR. GRIFFITH: I won't even try to pretend to be one.

ASSEMBLYMAN PATERO: You have been working with Assemblyman Schwartz?

MR. GRIFFITH: Yes, he is aware and understands our concern, and we'll continue to work with him on the language if it's acceptable to him and also to ease any further refinement.

ASSEMBLYMAN LITTELL: Mr. Griffith.

MR. GRIFFITH: Yes, sir.

ASSEMBLYMAN LITTELL: You talked about a trillion dollars a day electronic transfers business going on. We know that banking is no longer New Jersey banking; we've given that away or it's gone, whatever. Could you foresee a problem if we passed a law in New Jersey that prohibited monitoring, that your banks might choose 800 numbers that we can't monitor and control and utilize that sort of a telephone system that is completely regulated by the Federal regulations?

MR. GRIFFITH: I don't know, but I can say that, Assemblyman, out there, if there is anything that wound up being limiting in our statute as far as the banks' ability to conduct those activities so that it and its employees were protected, that the banks would have to consider whether or not they would want to institute or initiate the transaction, particularly if they're operating on an interstate basis.

ASSEMBLYMAN LITTELL: I think we all know that if you're making an 800 telephone call, you might be talking to someone in Oregon or California or wherever, and we get all these electronic messages that are transferred, and we have no idea really where they are, or who we are talking to. You call

up, get a message that says if you want to talk to loans press one, if you want to talk to car financing press two, and you really don't know who you are talking to or where they are. It would seem to me that with multistate banking and multistate telephone calls that we don't control, that we really might drive jobs out of New Jersey if we tried to include banks in this.

MR. GRIFFITH: I know, as an example, in the whole area of wire transfers it's absolutely essential that a recorded record be made of every part of the transaction for everybody's security and protection because again, particularly we might be talking about a transaction that might be a million dollars or more, and if there is no record trail to protect the bank, to protect the person who sent the message, as well as the person who received the message we could be doing a considerable degree of harm in the marketplace.

ASSEMBLYMAN PATERO: Thank you very much.

MR. GRIFFITH: Mr. Chairman, thank you very much and members of the Committee for your consideration. I appreciate it.

ASSEMBLYMAN PATERO: Next we'll have the sponsor of the bill, Assemblyman David Schwartz.

A S S E M B L Y M A N D A V I D C. S C H W A R T Z: Thank you Mr. Chairman and my colleagues. I'm pleased to be here. I apologize for coming late to this meeting, I had major bond issues up in the Appropriations Committee which enjoy the support of the business community in the State, and other legislation elsewhere, but I think none of these bills are any more important than this legislation which seeks, on my part anyway, to provide some element of fairness on electronic monitoring in the workplace, while through your amendment and others that may be developed, seeing to it that other values, including quality control and other business purposes, are maintained.

I want to say at the outset that it's not my intention through this legislation, to end capitalism as we know it. I think some of the testimony that we've seen or heard about, would drive in that direction. I notice over the years that other legislation has had the same witness characteristic. We were told once upon a time that fair labor standards would do that, that minimum wage would do that, that OSHA would do that, and a variety of other things would do that, and they were all going to eliminate capitalism. But capitalism has survived and thrived, and I want to suggest that capitalism will survive and thrive in this State and nation even if something appropriate to this legislation is enacted.

Let me give you a quick and brief and succinct explanation of my purposes, and what I think the bill does by way of suggesting only that I want to work with you, Mr. Chairman, and your staff, and with all members of the Committee and indeed, with all members of the public and the business community and labor communities in this State, to see to it that what ultimately passes from this Committee and then on through the Legislature, protects workers, protects elemental justice in the workplace, at the same time that other business values such as quality control and the meeting of regulatory responsibilities and, indeed, profit potential and economic opportunities and job creation is also facilitated.

As in my judgement, A-210 seeks to preserve privacy, to prevent abuse, and ensure the confidentiality of information -- of information gathered through electronic monitoring of the quantity and quality of employees' work by their employers. In my judgement, this is the bill that requires employers to give proper written notice to their employees, telling them when and how they'll be monitored. It's my understanding that the bill also sets certain standards for determining the performance of employees by means of employee monitors, monitoring, that is to say, standards that issue a fairness.

Under this legislation, any employer wishing to provide this kind of monitoring, or to do this kind of monitoring, with reference to the volume of work, electronically must evaluate that performance over the entire week; or in the case of telephone work for not less than 30 consecutive telephone calls, so that we're getting an evaluative base, a discipline base, which is fair. It doesn't say, "I found one phone call and you're disciplined in consequence." It may, in fact, say that, but at least there would be a data base that assures the worker with some notion that a fair sample of his or her work is being considered.

The legislation, also in my judgement, gives employees access to files which may contain personal or personnel information gathered through electronic means and allows them to challenge the veracity or relevance of that information. If found to be inaccurate, misleading, or irrelevant either by the Commissioner of Labor or through some other available grievance procedure, that information must then be deleted from the worker's file. The employer is also charged with the responsibility of keeping electronic monitoring information confidential, except for those exceptions which are stated in the bill.

Finally, businesses with electronic monitoring of employees may create emotional or physical stress related illnesses. Among those, workers would be required to provide remedial actions so the worker could get help. This bill doesn't, nor could it, prohibit electronic monitoring. It doesn't prohibit such monitoring in cases where Federal laws clearly, specifically require such monitoring practices. I do however support amendments that grant exclusions to various industries or to various classes of industries, that are required by the Federal government, State government, or other regulatory entities, to conduct monitoring in such ways as

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might be otherwise prohibited from my bill.

I don't want to put business or anybody else in the catch-22 of some regulator or some statute, Federal, State, or other, demands it, but on the other hand we have a statute that forbids it, puts you in a catch-22. I don't think any of us really intended to do that. That may come as a surprise to some of the previous witnesses, but that is what I want, that we don't put business in a catch-22, but we don't put workers in an impossible circumstance either.

In closing, I'd like to say that during the great debates that lead to fashioning child labor laws, establishing the minimum wage, creating the 40-hour week, as well as in debates of establishing many other pieces of progressive legislation, it has been the case that sometimes the spectre has been raised that we would eliminate profitability -- we would eliminate profitability as we know it. I don't think this bill will eliminate capitalism as we know it, but I want to pledge, in conclusion, that I want to work with you, Mr. Chairman, with your staff, with other members of the Committee, and with interested business, industry, and labor folk, so that we can go forward and get a good bill. Thank you.

ASSEMBLYMAN PATERO: Assemblyman, there have been some good suggestions made, and once we get all the hearings done and completed, we'll probably sit down with you and have a work session.

ASSEMBLYMAN SCHWARTZ: I'd love to do that. I'm sure that the legislative work product of your leadership will come forward that will make elemental fairness in the workplace happen, while meeting the real legitimate business interests of most of the people here at the same time. Thank you.

ASSEMBLYMAN LITTELL: Wait a second.

ASSEMBLYMAN SCHWARTZ: Can't escape!

ASSEMBLYMAN LITTELL: I'll be easy on you, David.

ASSEMBLYMAN SCHWARTZ: I wish you would.

ASSEMBLYMAN LITTELL: Dr. Schwartz, I know as a professor that you've been monitored in your work, not now but as you started out, and I'm sure you realize that every manager has to monitor their employees.

ASSEMBLYMAN SCHWARTZ: I do, indeed.

ASSEMBLYMAN LITTELL: One of the problems that I have is the part in number 2 which deals with the discipline action, and the part that I perforce, I won't deal with it here, but we'll talk about that later. I just wanted you to know that. Another part is number 10 where it says that each employer who use electronic monitoring to obtain personnel, that about his employee, shall establish employee assistance programs to make available for each affected employee, evaluation and counseling regarding stress related problems by a qualified counselor, and to provide referral and paid release time for any treatment which the the counselor determines is necessary to assist the employee to successfully cope with the problems.

Number one, you're saying that the employer has to pay for the EAP program and then on top of that to pay the employee while attending that training or program. I think that there's some plusses in that, but there's also some minuses in that. We really ought to examine that more thoroughly because it could be abused and misused. It may be a very effective tool, but it also could be an abuse factor, and I think we need to look at that.

ASSEMBLYMAN SCHWARTZ: I would concur. I think that it would be fun for me to sit here and say I think I gave you a piece of legislation, why don't you just enact it? That's not the case. This is legislation that obviously needs your handicraft, needs to be a legislative work product. I'm not a labor specialist or a specialist in surveillance. I tried to simply produce a bill that made me feel that we're moving in the right direction and assume that there would be a serious

high-minded legislative process of this nature, and I would be willing to discuss any of these concerns with you, and frankly, be willing to -- and I would say this without fear of meaningful contradiction -- I would be willing, primarily, to defer, in areas which were not noxious to me, I would defer to the Committee's process because you are specialists in that field. Your Chairman, in addition to being a longtime friend and running mate, is an acknowledged legislative expert in this field, and I would attempt to want to defer to your process.

ASSEMBLYMAN FOY: I have a couple of observations and a question.

ASSEMBLYMAN PATERO: Go ahead.

ASSEMBLYMAN FOY: Clearly, one of the major purposes of the bill was to attract the attention of the business community. You have succeeded admirably. Testimony to that effect is exhibited by--

ASSEMBLYMAN SCHWARTZ: But perhaps I have not achieved my high popularity bill.

ASSEMBLYMAN FOY: That's a goal maybe contravening your original goal. In terms of the origin of the bill, I suspect it rose from the fact that you received communications from people that there were abuses occurring under certain circumstances, and--

ASSEMBLYMAN SCHWARTZ: That's correct. There were occurences that they perceived to be profoundly abusive--

ASSEMBLYMAN FOY: Right.

ASSEMBLYMAN SCHWARTZ: --and evasive.

ASSEMBLYMAN FOY: And I don't know whether they were from mainstream people, or people on the fringe in the business, what have you, but whenever legislation like this is initiated -- and I think I can, to a degree, liken this to drug testing legislation in many ways -- it seems to me that the best legislation that emerges is that which really kind of addresses the problem in a comprehensive fashion. It attempts

to strike a balance between the competing interests that are involved. Your very candid acknowlegement that the bill may need some amendment and some pruning and fine-tuning, I think, is appreciated by members of the Committee. I want to make sure that we have a sound empirical base for initiating such legislation in whatever form it comes out, to the extent that those who have -- and I've already asked this of the business community -- to the extent that those who have brought to your attention abuses, if we as members of the Committee could have some data from--

ASSEMBLYMAN SCHWARTZ: I will ask them to do that.

ASSEMBLYMAN FOY: --employee groups, individuals, whatever, in the form of, you know, their correspondence, or their surveys or whatever. I think that'll be helpful as well because I asked the industry people and really I asked the utilities but I'll renew it and expand it to all of the business groups present, if you could give us some empirical data as to what the extant situation is, how frequently does this occur in your particular industry, how much discipline arises out of it, what's this position in the grievance continuum of that particular discipline? The flip-side of that is, if there are horror stories, I'd like to know about them.

ASSEMBLYMAN SCHWARTZ: Mr. Foy, through you Mr. Chairman, I appreciate your question. I will, in fact, ask those persons and organizations, associations and trade unions, who have brought such instances and cases to my attention, if they will share that with you, and, indeed, I will review my files thoroughly. Let me say, however, to you, it was my intention this morning to come here to give you my purposes. I thought little would be served for me to do that.

I could have brought before you -- and I know there are members of the media here -- I could have brought a whole bunch of cases of people who say that their working lives have been destroyed, that inappropriate actions have been taken of a

disciplinary nature, invasions of their privacy, of the most profound nature, the consideration of circumstances which I think all of us would be shocked to hear. But if I did that, inevitably, my concern would be that I would be essentially slamming and slandering a business community in this State which I think on the whole is largely responsible. And people of the media and you would be saying, "Oh did that really happen, and how widespread is it?" Precisely that which does you the most credit, as always, it does you great credit to hear your desire from empirical data. As much as it's important to hear it, it's important that we balance it with the many cases in which regulations and other things move in the direction of requiring this or responsible monitoring happen, so I don't want to create a sensationally charged atmosphere, so I want you to understand why I didn't bring you those statements.

ASSEMBLYMAN FOY: No, I understand that and I also assume that it was to protect their privacy as well--

ASSEMBLYMAN SCHWARTZ: Indeed.

ASSEMBLYMAN FOY: --so that's why I'd like the communication directly to me as a Committee member rather than testimony.

ASSEMBLYMAN SCHWARTZ: We'll find a way to share with you both the horror stories and the systematic degradations and difficulties with which I'm concerned.

ASSEMBLYMAN FOY: In addition, I'm inclined to believe that regulation of these activities is not all bad from the employer's standpoint, because it's just like drug testing; where you have a defined, known set of rules that exist regarding certain things, you sometimes are protected from abuse in the other direction. So, I don't think it needs to necessarily be viewed as the end of capitalism, but the end of management's prerogative, so to speak. I think it's got to be looked at long and hard, a balance has to be fashioned that's

fair to all concerned. But it won't be the end of the world if something emerges that regulates this particular activity.

ASSEMBLYMAN PATERO: I would concur.

ASSEMBLYMAN FOY: Now, what final form that has, I couldn't predict at this point. I don't know how long it's going to take, but we'll give it our best shot. I would guess it would take awhile because it's an important issue.

ASSEMBLYMAN PATERO: Assemblyman, if you get that information to Greg Williams, we'd appreciate it, and he'll forward it to us.

ASSEMBLYMAN SCHWARTZ: I will. Thank you.

ASSEMBLYMAN PATERO: Thank you very much. For the record, make it be known that Assemblyman Lou Gill--

ASSEMBLYMAN GILL: Sorry I'm late, I was at another committee hearing.

ASSEMBLYMAN PATERO: I explained that it's an unusual meeting. Next we'll have Alisa Mariani from the ACLU of New Jersey. She's not here. Next, Barbara McConnell. (response from audience that Ms. Mariani is present) Oh, I'm sorry.

A L I S A M A R I A N I: My name is Alisa Mariani. I am Chair of the Workers' Rights Committee of the American Civil Liberties Union of New Jersey.

The ACLU believes that employers in this State have a right to expect a high standard of performance from the workers they employ, but we also believe that employees have rights, rights they should not be expected to give up when they go to work, rights that include due process and privacy. We support the bill because it attempts to balance the interests of employers and employees, interests that we feel need not be antithetical or incompatible.

The bill does not preclude the employer's legitimately and reasonably setting standards for work performance and attempting to monitor work performance. At the same time it ensures that employees will be informed what those standards and monitoring attempts are, and when they are in effect. It

ensures that employees will have access to data obtained through such monitoring, and opportunity to challenge its accuracy or relevance. And it ensures that such monitoring will deal with work performance only and will not entail inappropriate and intrusive incursions into personal privacy.

Due process -- you could call it simply "fair play" if you will -- is at the heart of the American concept of justice, and we believe the protection of due process should be public policy in New Jersey, in both the public and the private sector. Privacy, which Justice Brandeis years ago called "the right most valued by civilized men," is under siege in many areas of all our lives today, because of the proliferation of electronic devices which can monitor behavior; their unregulated use has great potential for very grave abuse. The ACLU welcomes legislation which seeks to protect these essential rights in the workplace.

ASSEMBLYMAN PATERO: Thank you very much. Next we'll have Barbara McConnell from the New Jersey Food Council.

B A R B A R A M c C O N N E L L: Thank you. Can I call up with me Mr. Richardson, Vice President of Security? Thank you Mr. Chairman, members of the Committee.

I represent the New Jersey Food Council which are supermarket and food manufacturing companies, and with me is Jeff Richardson who is Vice President of Security for Supermarkets General.

We have a great deal of concern with this legislation. While it's obvious that the intent is directed towards auditory monitoring, it's apparent to me that this legislation is so broad and so sweeping that it impacts other areas of electronic surveillance or monitoring. For instance, this legislation -- based upon the way we interpret it -- would prohibit a very widespread or customary use in the supermarket industry of cash register reports which provide us information on a number of things including, the percentage of sales,

speed, accuracy, and productivity. It would prohibit the use of electronic monitoring by camera of our employees and our customers for safety reasons. Criminal activities shrink, in evaluating performance. It would also prohibit the use of data sharing, computer information from between departments when one supervisor might want to look into the activities of employees within their department.

It's estimated in our industry, that we lose $508 billion a year in shoplifting and employee theft. While we believe that most employees are honest, you and I know that some of them are not. Those that are honest want to make sure that everyone within the workplace is. I'd like to ask Mr. Richardson at this time to give us his experience in the field of security and share with you why our ability to monitor employee performance -- electronic surveillance -- is important in the field of security as well as for the consumer.

Everyone has been talking today as though this were legislation about the employee versus the employer. I suggest to you that this legislation impacts the consumer in terms of cost and service, and that needs to be brought out. Jeff.

J E F F R I C H A R D S O N: Thank you. Again, my name is Jeff Richardson, Vice President of Security for Supermarkets General, Pathmark Division, controlling security loss prevention programs for all Pathmark Supermarkets.

We use a lot of electronic devices to do different things in the supermarket and in the office section; from access control, using a card access system to control the movement into an office, so that different people can gain access from one area to another area at designated times in keeping others out; from truck monitoring using on-board computers to monitor the activities of individual truck drivers, right down to speeds on our highways, to monitoring feedback information as to how fast a particular driver was travelling on the Turnpike because he was behind schedule, that

may put lives in jeopardy, and thereby using that information to help in control. All these things I see as electronic devices used to monitor not only activity, but performance and a lot of different other things.

In the supermarkets themselves, we use camera systems to monitor activity of both customers and associates. In that monitoring process, we have been able to apprehend dishonest customers and employees, using such devices into the thousands and thousands of individuals, recovering thousands of dollars of merchandise each and every year. Last year for instance, companywide, we recovered a little over $1 million in shoplifting alone from customers, using these devices. The same devices and camera systems are used to monitor activity on the front end.

One of our biggest problems that we feel in the supermarket industry is that cashiers who have been trained properly, but for whatever reason have a desire to underprice our merchandise to customers and generally speaking, a lot of those customers that we apprehend receiving discounts from a cashier are family members. That monitoring device of the electronic front end, the scanning front end, provides us with information as to an individual who may be low in scanning percent or very low in average item volume dollar value which says that that individual may, in fact, be underringing or discounting merchandise. As we monitor that individual with a camera system which is usually already established and installed into a store -- better than 50% of our stores have camera systems -- you will find that when you make a discounting apprehension that the cashier has discounted the order from anywhere to 50% to 80% of the true value of the order, taking a $100 order and being rung up at $25 or less. It's not unusual for us to find a discounting in as large as $1100 discrepancy for an order.

Of course, that shrink to the supermarket industry

creates an increase in security costs, an increase in costs to all of us in this room; an increase in costs of buying our groceries on a daily basis. We have in our industry, in Pathmark especially, been able to reduce our overall shrink from a percentage than was close to 2% per year down to less than 1% for the past two years in a row, and we greatly attribute that to the use of electronic monitoring. If we didn't have the use of such things, it would rely on walking the floor and being able in trying to detect individual dishonest people, which is much more difficult. We find that we actually outperform in a CCTV store, 33% better than we do in a non CCTV store. In addition to the shrink, it also shows us the negative effects of non CCTV.

ASSEMBLYMAN PATERO: Maybe I read the bill wrong, but I'm not aware of a provision that the bill would prevent the use of monitoring for security purposes.

MS. McCONNELL: It's not clear as to whether it would or not, but it clearly prohibits it for use in terms of monitoring or evaluating employees--

ASSEMBLYMAN PATERO: Right, that I know.

MS. McCONNELL: We're talking here about employee theft, and it's--

MR. RICHARDSON: 50% of our shrink is employee theft on the front end.

MS. McCONNELL: It's questionable to whether or not it would prohibit it for security reasons. And two, when a company goes to the expense of installing electronic monitoring equipment -- Jeff, perhaps you can back me up on this or refute it? -- the total benefits, of course, are to be able to monitor, shrink employee theft, as well as shoplifting, and if the bill would prohibit us-- Even if the bill did allow us to monitor for shoplifting purposes, would it be cost-effective to do it for that purpose alone?

MR. RICHARDSON: In my estimation, it would not be

cost-effective to do it for that one category alone.

ASSEMBLYMAN PATERO: Well, as you heard, the sponsor of the bill said he is willing to take amendments on the bill, where we will work with the sponsor of the bill to try to come up with a bill that satisfies everyone.

MS. McCONNELL: I think it's also important, I haven't heard much testimony regarding this, but this data sharing of computer information between departments-- Jeff alluded to it-- I haven't heard much testimony, and I think that's a very serious problem where a number of offices are under the supervision of one department and the supervisor there wanted to plug in to see how many customer complaints it had, how they were handled, and so forth. I'm not talking about auditory, I'm just talking about plugging in and sharing that information. This legislation would prohibit that.

ASSEMBLYMAN PATERO: We'll take--

MS. McCONNELL: As I say I think the focus is on auditory monitoring, but you sweep up all other types of written evaluations.

ASSEMBLYMAN LITTELL: I'd just like to ask Jeff a question. Mr. Richardson, do you notify the employees that they're under surveillance in the stores where you have that sort of a system?

MR. RICHARDSON: The surveillance system that's in the stores is completely through the store. Most of the cameras that are installed in the store are dumb cameras with a mirror finish. We cannot see where the camera is pointing, but upon hiring and coming into orientation into the store, you are given an orientation as to the overall security of the store. If your store has a camera system in it, you are informed of the camera system and shown its capabilities which is every aisle and the capability of looking at every monitor on the floor -- I mean every cashier on the floor. So, they are instructed.

ASSEMBLYMAN LITTELL: So, they are notifyed. Do you

have anything in your collective bargaining agreement dealing with that at all?

MR. RICHARDSON: No, we do not.

ASSEMBLYMAN LITTELL: You had no requests for that?

MR. RICHARDSON: No, we have not.

ASSEMBLYMAN LITTELL: You also spoke about monitoring through the cash register process, and I know some cash registers they just drag the packages across the thing that reads the bar graph, and others, they have to actually ring them up. Would you explain to us how you monitor your employees by doing that? Do you evaluate how many dollars they ring up? Do you evaluate how many packages they handle?

MR. RICHARDSON: Well, what happens in a standing front end or an electronic front end, especially on the scanning front end-- Based on the computer system, the computer reads all the data and compares each individual cashier to another on any and every given week, so this weeks average item value for a particular store may be $1.22, showing that one particular cashier is showing the same average item value at $1.00, which means she's $.22 off the norm for that particular store, not for the chain, but for that particular store and that week. There is a very strong possibility that that cashier's average item value is down, because that cashier may be scamming. It doesn't prove the point; we now have to prove the point. So, that person is not dealt with as to being a dishonest person by any means for that one piece of information.

ASSEMBLYMAN LITTELL: You don't use it for discipline. It's further observation of that individual.

MR. RICHARDSON: It's a trigger. For instance, that cashier may have had that week, very few hours on the register, and -- for whatever reason -- runs up a lot of low value items in the paper aisle or something to that nature. So, what happens is, you just look at those numbers and compare them to last week and the next five or six weeks in a row to see if the

pattern continues to grow. But by no means do you go and discipline a cashier because of that one factor.

ASSEMBLYMAN PATERO: Thank you. Assemblyman Foy.

ASSEMBLYMAN FOY: Just a couple of observations. Your use of the word "shrink" is an interesting term. I think the reason half the employees want this, is to avoid having to go to a shrink as a result of the stress involved with some of this, and I think that's something we need to take a look at.

The other thing is with respect to the security industry, somebody once told me that 5% of all people in the world if you put $1 million in front of them, they'd never take a nickel, 10% of the people in the world while they talking to you they are stealing the rings off your fingers, and gold out of your teeth, and the other 85% of the people is why we have a security industry.

MR. RICHARDSON: That's right. (laughter)

ASSEMBLYMAN PATERO: Thank you very much. It's after 12, we'll be taking two more speakers, and they'll be Bill Murtha from the Casino Association, and also Mr. Healey -- no, Lester Kurtz from New Jersey Business and Industry. We'll take Mr. Bill Murtha first. I hope it won't be long. I'm sorry, but it's late.

W I L L I A M C. M U R T H A, Esq.: I'll be very brief. Mr. Chairman, members of the Committee, good afternoon. I'm Bill Murtha, Vice President and General Counsel for the Casino Association of New Jersey. The Casino Association represents nine of the 12 operating casinos in Atlantic City. I have a prepared statement which really details some of the problems which this bill has for the casino industry, and I'd like to leave that with you today. Just very briefly, my remarks are not dissimilar to the remarks made by the representative from the banking industry in the sense that casinos, like banks, are highly regulated.

Practically every phase of casino/hotel operations are

regulated by the Casino Control Commission, and practically every phase of those operations, not only on the casino side, but on the hotel side, involve some form of electronic monitoring. The most obvious example of that is in the casino where we have surveillance cameras on all of the tables and common areas. In addition to that, we have the counting rooms which have CCTV surveillance cameras as well as audio equipment.

On the hotel side we have cameras in all the public areas, generally on all the hallways, bars, and restaurants, and things like that. In addition to that, all access into casino computer systems is tracked, both on the hotel side and the casino side, due to the sensitive nature of the information in the computer system such as player ratings, credit information, and financial information. I believe that this bill would touch upon that computer based electronic monitoring.

In addition to computers, we have certain monitoring in purchasing, in food and beverage, all of which would be affected by this legislation. I'm not aware of too many circumstances where telephone monitoring occurs within casinos. The only thing I can think of offhand is during the course of security integrity investigations, there may be some telephone monitoring. That would either be done by the security department, or the security department in conjunction with the Division of Gaming Enforcement.

I've looked at the amendments, and I don't believe the amendments would go far enough, especially in terms of sections 3, 4, 5, and 10, in terms of carving out casino operations from the electronic monitoring portions of the bill. What I would recommend is an amendment in section 9 which would specifically exclude casino licensees to the extent that the casino licensee is performing electronic monitoring which is required by the Casino Control Act, Commission regulations, or the Commission approved internal controls within a casino. I think that that

would cover it.

Also in section 9, an exclusion should be made for applicants of a casino license. The most recent example is the Trump Taj Majal. It had to have its electronic monitoring devices in place operating, and they had to demonstrate that, prior to getting an operating certificate and a casino license. So, the exclusion should also go to applicants for casino licenses, as well as holding companies of casino licenses which, again, have certain electronic monitoring requirements such as to do diligent background checks of its officers and directors, and principal employees.

What I will do is provide you with my written comments. What I would like to do is follow up next week with another letter which explains how the amendments, which I looked at today, don't quite resolve the problem for casinos. Any questions?

ASSEMBLYMAN PATERO: Assemblyman Foy.

ASSEMBLYMAN FOY: I don't have any questions for the speaker, I have a question for you. Do we still have a substantial pile of people who wish to testify?

ASSEMBLYMAN PATERO: Yes, we do.

ASSEMBLYMAN FOY: Well, if I can offer a procedural suggestion to take under advisement. Since this is going to be a rather protracted process anyway, maybe we could reserve a portion of our various next sequence of regular Committee meetings, at the end, begin taking some of the testimony of the people on a continuous public hearing basis, so that we don't have to go through another whole day on a day where we have a little problem as far as logistical scheduling. We do it on our own day, take maybe 20 minutes to one half hour, schedule two or three speakers, make it known in advance who's going to be testifying on this when we put out the Committee thing; take them in sequence until we conclude everybody, and then have our dialogue and meetings with the sponsor of the bill. If a

refined bill then emerges, make that available, and then have another full-blown public hearing regarding whatever revised bill would occur.

That may save a lot of time a lot of time and may give it a logical sequence.

ASSEMBLYMAN PATERO: Yeah, that's a good suggestion. We don't have any controversial bills in the next agenda, and maybe once we--

ASSEMBLYMAN FOY: One half hour on our agenda, half hour on another one--

ASSEMBLYMAN PATERO: We could continue on.

ASSEMBLYMAN FOY: --just until we get done. I'm sure the business groups won't mind if this takes six months to a year or whatever to get through the Committee. You'll see the list expand over time. It'll be the New Jersey version of a filibuster. (laughter)

ASSEMBLYMAN PATERO: I think what we'll do is, right after the bills are passed from the next Labor Committee meeting which is Monday, or 11:00 on, we will continue with this public hearing.

ASSEMBLYMAN FOY: Okay.

ASSEMBLYMAN PATERO: Any more questions for Mr. Murtha?

ASSEMBLYMAN FOY: That's not to cut Lester off. We want to end with a bang, if nothing else.

ASSEMBLYMAN PATERO: No no no. I saved the best for last. Is Lester still here, or did he leave? (affirmative response) Oh, I thought you left, Lester.

L E S T E R K U R T Z: No such luck, wishful thinking. I think I'm going to be brief, briefer than normal. Many of the things I want to say have already been said, but for the record, I'd like to clear up one misstatement that we heard this morning from the psychologist from Glassboro and I quote from the report of the Office of Technological Assessment,

"Currently there is insufficient research literature to support the contention that electronic monitoring leads to stress and a diminution of health." We heard to the contrary this morning, and their report says quite the opposite.

Let me just point out to the Committee that workplace monitoring has been in existence ever since there has been a workplace. It began with manual monitoring, and as the technology progressed, we find ourselves with electronic monitoring today. Virtually as you've heard, virtually every business function in some manner, relies on computer and telephone based message transmissions as well as audio transmissions. From the simplest function of taking attendance of employees, this bill would prohibit that function or would restrict an employer from using the electronic information collected due in a matter of taking attendance for taking disciplinary action against an individual who is habitually late or habitually absent; just to give you an example of the type of ramifications of this type of bill.

The bill has been around, I think we had a hearing on this bill 10 to 12 years ago sponsored by Senator Gregorio and the hearing I recall was held in Linden City Hall. We had one public hearing, and we never saw the light of it. I don't believe this bill has seen the light of day in a number of other states where it has been considered and rejected. It has similarly been considered and rejected on the national level, so I think it would be to the detriment of New Jersey, and it would set our economy back a number of years, should the bill be enacted, thereby restricting an employer's right to manage his operation efficiently. I will leave my testimony with--

ASSEMBLYMAN PATERO: Lester, since you cut yours short, if you want to stake out at Monday's meeting, you can come address the meeting, and if there are questions, we'll answer the questions Monday.

MR. KURTZ: Okay.

MR. WILLIAMS: At least one copy of the testimony so we can get it into the record.

MR. KURTZ: Okay.

ASSEMBLYMAN PATERO: Okay, that's the end of the public hearing and as we stated, the next hearing will be Monday on this bill, after the voting of the Labor Committee, or 11:00.

(HEARING CONCLUDED)

APPENDIX

Testimony before the Assembly Labor Committee

A 210

Dr. Janet Cahill
Glassboro State College

April 2, 1990

Thank you for the opportunity to testify today. By way of introduction, I am an Associate Professor of Psychology at Glassboro State College. My area of academic and professional expertise is in the field of occupational stress. That is, identifying aspects of the work environment which have an impact on physical and psychological functioning. I am also an active consultant for stress management and reduction programs.

My testimony today will focus on the relationship between electronic monitoring and stress. My colleague Dr. Paul Landsbergis and I have recently completed some research in this area, which we presented at the last meeting of the American Public Health Association. My testimony today is in specific reference to Bill No. A 210. Let me state from the outset that I strongly support the passage of this legislation. My primary reason for this support rests upon the mounting evidence that electronic monitoring has a detrimental impact on both the work environment and employee stress levels. I will detail some of this evidence below.

NIOSH's (1981) study <u>The Potential Health Hazards of VDTs</u>, found that a heavily monitored group of clerical workers exhibited more psychological symptoms (such as depression and

anxiety) than did a control group. Subjects utilized for this study were clerical workers employed by Blue Cross/Blue Shield. Another study sponsored by 9 to 5 found that workers who were monitored more frequently perceived their work to be "very stressful" than workers who were not monitored. In a similar vein, a report by the Bureau of National Affairs, VDTs in the Workplace, reports on a study of Southern New England Telephone employees. The study found a high correlation between employee health complaints and electronic monitoring.

In summary, research which has addressed the issue of electronic monitoring per se has found a persistent association with increased stress levels. In addition, research has found connections between electronic monitoring and other detrimental aspects of the work environment. For example, a study by Vallas and Calabro, concluded that electronic monitoring increased a factor called structuring of tasks. This factor, in turn, was predictive of increased risk of cardiovascular disease. Further, they reported a significant correlation (r=.49) between structuring of tasks and physical complaints.

Another serious concern is that monitoring appears to create a work environment very similar to that of machine paced work. This is due to the fact that monitoring imposes rigid controls and quotas on the pace of work. There is a significant amount of empirical evidence which links this type of machine paced work with an increase in stress symptoms. For example, Johansson, Aronsson & Linstrom (1978) concluded that machine paced workers

secreted higher levels of catecholamines (biochemical involved with the stress reaction) than a group of workers with a more flexible work routine. Another study by Northcott and Lowe (1985) found that postal workers in automated, highly routinized jobs had lower job satisfaction and more health complaints than a comparable group of workers with a more flexible routine.

Electronic monitoring would also appear to increase levels of two other documented psychosocial stressors: low autonomy and workload. Autonomy, or the amount of control an individual has over their work environment is a key variable in occupational stress. When electronic monitoring is imposed upon a work force, they lose a great deal of control over the organization of their work. Instead, they must work exclusively to meet the criteria of the monitoring system. These factors also tend to increase the work load of the job. Robert Karasek has found that the combination of these two factors (low control and high demand) was associated with increased risk of cardiovascular disease. Another article by Kahn (1973) reported a connection between perceived overload and increased heart rate, cholesterol levels and lowered self-esteem. French and Caplan (1973) found overload to be related to at least nine different physical and psychological symptoms, including smoking, which is a major risk factor for cardiovascular disease. This is by no means an exhaustive review of this literature, but serves to illustrate that increases in these factors has serious health consequences for the work force involved.

A final factor that is often associated with the introduction of electronic monitoring is that of role conflict. This problem occurs when employees must meet two conflicting demands in the same interaction. As one example, telephone operators who must work very quickly and be courteous at the same time. This type of role conflict has been repeatedly linked to stress indicators (French and Caplan, 1973).

In summary, there is growing evidence that the introduction of electronic monitoring results in the deterioration of the work environment. This has significant consequences in terms of employee health. Stressful work conditions lead to increased use of sick time, loss of job satisfaction, and a wide range of employee related problems. The National Institute for Occupational Safety and Health is significantly concerned about this issue to be sponsoring several laboratory and field studies which will examine this issue. Serious concerns have also been raised around the issues of privacy and fairness when electronic monitoring is used.

Employers often justify the use of monitoring by arguing that it greatly improves productivity. However, this claim has yet to be validated. Simply meeting computer generated criteria more frequently does not necessarily mean that overall productivity increases. Employers have also argued that monitoring per se is neutral and can actually be a positive factor in the work environment if appropriately implemented. I can speak to this latter point from my own research. I examine implementation

patterns of electronic monitoring in a number of work settings and found that monitoring was overwhelming being used in a punitive and negative fashion.

Finally, there are many other, less intrusive means of providing appropriate supervision and feedback to employees without the use of monitoring. Our understanding of how and why people work makes it quite clear that monitoring is not a necessary precursor to appropriate performance and may well serve to inhibit motivation. This bill would be an important safeguard against the potential abuses and negative consequences of monitoring and I urge you to give it your most serious consideration.

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NEW JERSEY UTILITIES

A • S • S • O • C • I • A • T • I • O • N

130 WEST STATE STREET • TRENTON, NEW JERSEY 08608 • (609) 392-1000

Testimony of Ernest C. Cerino, Jr. - Associate Director
New Jersey Utilities Association - A-210

Good morning Assemblyman Patero and members of the Committee. I am Ernie C. Cerino, Associate Director of the New Jersey Utilities Association, an Association representing the State's investor owned electric, gas, water and telecommunications utilities. Since there are numerous persons to offer comments on A-210 today, I will be very brief. However, for the record, I would very respectfully like to state our opposition to this bill.

A-210 is extremely broad in its application. You will hear from some of our member companies today who will outline for you the impact of its provisions on each of them individually. Generally, however, we would suggest that this bill appears to be based upon a belief that electronic observation is detrimental to employees. We know of no unfair or abusive situations that have arisen due to employee monitoring. And, our employees know that any and all monitoring is fairly conducted for the purposes of providing our customers with the highest levels of customer service as required in our industry.

Electronic monitoring, is employed by the utility industry to improve efficiency and to assure vital services to our customers. It is utilized as an essential quality control tool. In our view, the best way to handle this issue is on an individual company basis through the collective bargaining process. This legislation, we feel, would replace collective bargaining and prescribe management policy by statute.

Should the Committee wish, we would be very happy to expand upon this testimony at some future date. For today's purpose of discussion, I have with me several representatives of individual utility companies who are ready to offer their specific insight to the problems associated with A-210. Thank you for allowing me the opportunity to address the Committee.

4/23/90

JCP&L / GPU

Jersey Central Power & Light Company
Public Affairs
Capital View
150 West State Street
Trenton, New Jersey 08608
(609) 393-4960
(609) 393-4973

April 23, 1990

A-210, Electronic Monitoring
In the Workplace

Thank you Mr. Chairman, members of the Committee. My name is Don Bates, State Government Affairs Manager for Jersey Central Power & Light. I have with me today, Jim Knubel, Director of Security at GPU Nuclear who operates our Oyster Creek plant. Jim will comment on his concerns with A-210 as they relate to his area of operation.

Jersey Central employs nearly 3600 full-time employees in New Jersey, a good portion being union bargaining personnel of which we have an excellent working relationship. Jersey Central has some major concerns with A-210, and should it become law in its present form, our employee relationship would be severely strained thus hampering our ability to serve our customers in an efficient manner.

One of our concerns is the term "electronic monitoring." We feel the bills definition is far too broad and would adversely impact almost every aspect of data recording that is required in our everyday operation. The bill limits our right to manage in areas of hiring, terminating, and disciplining by legislating employer actions rather than allowing the collective bargaining process to take its normal course.

Jersey Central Power & Light Company is a Member of the General Public Utilities System

The prohibition of unlimited or unrestricted methods of "evesdropping" is certainly understandable but A-210's noble endeavor has completely divorced itself from reality. It's a massive solution desperately searching for a problem! Our Company's very ability to function safely and efficiently, for the most part, is reliant on day to day computer driven information.

A-210 fails to strike an appropriate "Fair-play" balance between the employer's rights to protect its own interest, and the employees rights to a reasonable level of privacy in the workplace.

The present wording of the bill limits the use of gathered information, requires warning lights or audio sounds, and restricts periods when monitoring may be conducted. This translates into providing employees with a virtual license, or a free-hand, to do whatever they want, to the detriment of the employer. This scenario is compounded by the criminal sanctions available against the employer as well as possible trebel damages. These provisions most definitely limit managements right to monitor basic productivity.

In this fast moving computer age, and with the need to maintain reasonable and competitive rates, we have kept up with the times by replacing costly manual monitoring systems with electronic computerized programs.

A-210 concerns us because it would not allow us to operate our present electronic access control and security systems thereby severely reducing security in the workplace - to the detriment of both the employee and the employer.

Further, restricting the evaluation of an employees work performance, productivity, and attendance to 30 days is ludicrous because it limits the monitoring of trends in both departmental and in individuals. This short period of 30 days could be more harmful than good to the employee and could even breed, foster, and cultivate an adversary atmosphere.

A-210 limits the use of computer generated records such as: time sheets, training logs, management control systems, productivity, attendance, performance, etc. We are concerned that none of these records could be used for promotion, discipline, termination, etc., without proper employee notification.

We feel that the 42 day limit to monitor new employees is insufficient. Jersey Central uses at least a 90 day qualifying period. In fact some qualifying periods are as long as 37 months in the case of linemen progression periods.

Also short term monitoring of at least a minimum of one week to check work volume, would not permit monitoring of a meter reader's one day performance. A meter reader's performance is presently monitored electronically through hand-held meter reading computing devices.

A-210 restricts telephone monitoring of 30 consecutive calls which certainly doesn't give a proper indication of problems occurring over several days. For example, for safety reasons we routinely tape telephone and radio communications at our Dispatch Centers.

We feel that this legislation replaces collective bargaining, with "management by legislation". Worse yet the bill promotes only the monitoring of an employees "best" efforts since an employee, knowing that he/she is being monitored, would strive for excellence and put their best foot forward during that period. The bill seems to protect a small fraction of possibly dishonest, self-interest employees who are bent on violating company policy.

A-210 implies that monitoring creates stress which is contrary to managerial philosophies. The average employee enjoys being singled out as an efficient performer, one that is giving quality service, and is proclaimed as a good producer. Stress more likely comes from trying to hide a poor performance.

The bills purpose is to prevent abuses of data obtained through electronic monitoring. We feel that management has the right to receive an acceptable level of performance for a salary paid. Disciplinary action is certainly not an abuse of authority.

In summary, A-210 is just not realitic, far too broad, and is at the expense of efficient, prudent, and safe management. Modern technology has allowed the business community to revise methods for gathering information. Both the employee and the employer must be willing to adapt to these modern methods.

To return to manual operation would surely increase the cost of doing business thus increasing the cost of service to our customers.

The use of computer data banks has eased the task of record keeping. We monitor to bring about efficient, effective, and quality customer service. Our operation is designed around training, education, and self-improvement rather than discipline as the bill implies.

We see very little room for amendments that might make this legislation acceptable, however, we are always ready and willing to discuss any proposals that might make the legislation workable and we would appreciate additional time to work towards that end. We respectfully ask that you hold any action on this far-reaching legislation.

Thank you for your time and consideration.

JCP&L / GPU

Jersey Central Power & Light Company
Public Affairs
Capital View
150 West State Street
Trenton, New Jersey 08608
(609) 393-4960
(609) 393-4973

January 31, 1989

Mr. Dale Davis - Senate Labor Committee
Mr. Joe Devaney - Assembly Labor Committee
Office of Legislative Services
CN-068
State House Annex
Trenton, New Jersey 08625

Joe

Dear Dale and Joe:

Jersey Central Power & Light/GPU Nuclear Corporation, comprised of nearly 3600 full-time employees, has some major concerns with Senate Bill No.3070 and Assembly Bill No.3656 which establishes guidelines for electronic monitoring in the workplace. The term "electronic monitoring", as defined in the bills, is far too broad and thus would adversely impact almost every aspect of data recording that is required in our every day operation. The bill limits our right to manage in areas of hiring, terminating, and disciplining by legislating employer actions rather than allowing the collective bargaining process to take its normal course.

Specifically, we object to this legislation for the following reasons:

- Our existing electronic access control and security system would be negatively hampered and thus security in the workplace would be severely reduced or even lost.

- Employee productivity, attendance, and performance are all monitored electronically. The 30 day monitoring period restricts monitoring of trends in both, departmental and individuals.

- The legislation limits use of computer records such as: time sheets, management control systems, etc. None of these records could be used for promotion, discipline, termination, etc. without proper employee notification.

- The 42 day limit to monitor new employees is insufficient. We use at least a 90 day qualifying period. Some qualifying periods are as long as 37 months, such as the lineman progression.

Jersey Central Power & Light Company is a Member of the General Public Utilities System

- Short term monitoring of one week to check work volume would not allow monitoring of a Meter Reader's one day performance.

- Telephone monitoring of 30 consecutive calls doesn't give a proper indication of problems occurring over several days.

- The legislation lacks "fair play" balance. The limitations on the use of gathered information, the warning lights/sounds, gives employees too much of a free hand. It limits managements right to monitor productivity.

- This legislation replaces collective-bargaining with managing by legislation.

- We monitor to maintain good customer service. Our service is designed around training and education rather than discipline.

- If an employee knows that he is being monitored, only their best foot will be put forward during that period. The bill seems to protect a small faction of self-interest employees.

- The bill implies that monitoring creates stress which is contrary to managerial philosophies. Stress usually comes from trying to hide poor performance.

- Stress problems would normally come under Workmans Compensation. How are differences of opinions resolved? Is it required that a counselor be hired?

- Abuse of data would be its improper use. Management has the right to receive performance for salary paid. Disciplinary action is not an abuse of authority.

We see very little room for amendments that might make this legislation acceptable, however we are always ready and willing to discuss any proposals that might make the legislation workable. Thank you for your time and consideration.

Sincerely,

G. DONALD BATES
State Government Affairs Manager

GDB:js
cc: Patricia Colby
Kevin Lynott

New Jersey State Library

GPU Nuclear

GPU Nuclear Corporation
One Upper Pond Road
Parsippany, New Jersey 07054
201-316-7000
TELEX 136-482
Writer's Direct Dial Number:

DATE: APRIL 4, 1990

TO: JOSEPH D. PATERNO, CHAIRMAN, ASSEMBLY LABOR COMMITTEE

FROM: JIM KNUBEL, NUCLEAR SECURITY DIRECTOR, GPU NUCLEAR CORP.

SUBJECT: PROPOSED BILL A-210, ELECTRONIC MONITORING IN THE WORKPLACE
COMMITTEE MEETING, APRIL 30, 1990

TESTIMONY TO THE ASSEMBLY LABOR COMMITTEE

Thank you, Mr. Chairman, members of the Committee. My name is James Knubel, and I am the Nuclear Security Director for GPU Nuclear Corporation. GPU Nuclear operates the Oyster Creek Nuclear Generating Station in Forked River, New Jersey.

GPU Nuclear has two major areas of concern with the language and impact of A-210, should it become law. The first is that the Oyster Creek Nuclear Generating Station is licensed by the Nuclear Regulatory Commission (NRC). As such, Oyster Creek and its workers are subject to the requirements of the Oyster Creek License and the Federal Regulations governing the commercial use of nuclear power. Portions of the proposed bill (A-210) are in direct conflict with these Federal requirements. The security requirements for commercial nuclear power plants mandate a sophisticated monitoring and surveillance system. The purpose of this system is two-fold. The first is to detect, monitor and evaluate any potential external threat. Second, to track and

monitor activities internal to the facility so that the potential for internal sabotage will be minimized. If there were a security event, then this system would be used to assist in determining those people involved.

These Federally mandated security requirements would come in direct conflict with the proposed requirements of A-210. The requirements of Para. 2.C, for a "signal light, beeping tone, verbal notification... is taking place" would violate these Federal requirements and defeat the purpose of the security system. Also, because of the nature of information gathered, by NRC regulation, this information cannot always be provided to the employee or the employee's agent as stated in Para. 3 of A-210.

The NRC rules require that all persons who work at a commercial nuclear facility are "trustworthy and reliable"; Para. 5 and 6 of A-210 are not compatible with these Federal requirements.

Also, Para. 7 of A-210 places restraints on the disclosure of obtained data that would prevent NRC inspectors and utility management from carrying out their responsibilities which are requirements of the Federal Regulations and Plant Operating license.

The second concern with the bill is that there are times when, for legitimate security purposes, covert surveillance is warranted. For example, there have been some instances of

deliberate tampering with important safety equipment at several nuclear facilities around the country. Covert video surveillance of the effected area is warranted. This would violate Para. 2.C and Para. 6 of A-210.

Also, it is a known but unfortunate truth that certain employees sometimes steal, use drugs or otherwise engage in unacceptable behavior while at their place of work. A-210 would eliminate the prudent use of available technology to detect and deter these activities.

In general, it is hard to understand the need for the bill. Current labor law and precedent require that employees and prospective employees be notified of their diminished privacy while at work. Employers who fail to notify employees will find that they will risk of having any actions they take being overturned or worse, they may suffer punitive damages for their actions.

We respectfully request that you withhold any actions on this far-reaching legislation.

Thank you for your time and consideration.

cc: Members of the Committee:
Thomas P. Foy
Robert E. Littell
Robert J. Martin

jk/laborcmte
4/4/90

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PSE&G

Public Service Electric and Gas Company 150 West State Street Trenton, New Jersey 08608 Phone 609/599-7047

William J. Walsh, Jr. Manager — State Governmental Affairs

April 10, 1990

Honorable Joseph D. Patero
6 North Arlington Street
P.O. Box 747
Manville, New Jersey 08835

Dear Assemblyman Patero: Joe

I have enclosed a copy of testimony I had planned to give before the Assembly Labor Committee on Monday, April 2, referencing Assembly Bill No. 210 (Schwartz, Naples). Of primary concern to Public Service Electric & Gas Company (PSE&G) is that A-210 seeks to legislate that which more properly deserves resolution, and in PSE&G's case has been resolved, at the bargaining table. Pursuant to our bargaining agreements, all telephone conversation involving our customer service personnel are recorded. Electronic monitoring serves a multitude of purposes, including protection for the customer, the employee and the employer. Limiting electronic monitoring to "one period of not more than 30 continuous days of any one year period" is absolutely not workable in the electric and gas industry, particularly for emergency situations. A recording can serve to challenge or substantiate a customer's claim regarding an employee's action.

Monitoring controls allow for direction of the work force with minimal cost to customers, protection of employees, customers and employer, and translate into quality service in an efficient and cost-effective manner. Prohibition of this type of monitoring can only lead to increased costs and a lower quality of service. Should you have any questions or require additional information, please don't hestitate to call. I have enclosed my card for your reference.

Sincerely,

Bill Walsh

Enclosures

ASSEMBLY LABOR COMMITTEE

MONDAY, APRIL 2, 1990

ASSEMBLY BILL 210

Good morning, Mr. Chairman, members of the Committee and Staff. My name is Bill Walsh, Manager of State Governmental Affairs for Public Service Electric & Gas Company. I appreciate the opportunity to come before you and provide comments on Assembly Bill 210. This proposal can have a significant impact on the operations of our Company as relates to the quality and efficiency of service provided to our electric and gas customers.

Of primary concern is the fact that this proposal attempts to legislate what more properly deserves resolution and in our case, has been resolved, at the bargaining table via the collective bargaining process.

Electronic monitoring, be it by computer-generated comparisons or recording customer telephone inquiries continuously, serves a multitude of purposes to protect the employee, the customer and the employer. For example, recording of telephone conversations protects both employee and customer by virtue of the fact that the recording can avoid any misrepresentation as to what actually occurred, particularly in an emergency situation. A recording can serve to challenge or substantiate a customer's claim regarding an employee's actions. Limiting electronic monitoring to "one period of not more than 30 continuous

days of any one year period," is not absolutely workable in the electric and gas utility industry. The types and reasons for customer calls vary depending on the time of year. A call from a gas heating customer in August or September requesting a furnace inspection is different from a "no heat " call during the first cold snap of the fall. In this sense, the 30-day limit does not provide an accurate picture for a cyclical business.

Call handling activity is randomly monitored and analyzed with a focus towards training and assuring an adequate level of performance. By our bargaining agreements, individual calls are identified only as a result of a specific customer complaint. Periodic reviews with the employees provide constructive feedback and identify those individuals who require additional training. Is it unreasonable for our customers to expect that poor performance on a regular basis should not be corrected?

The 42-day provision for newly-hired personnel is also inappropriate. Minimum probationary periods for new employees are six months in some classifications, and a year or longer in the most technical areas.

Electronic monitoring is also incorporated in the hand held microprocessors used by meter reading personnel. This equipment not only provides readings for the basis of billing customers but also provides the time of day for each

read and the time required to complete the read in conjunction with the number and nature of stops. Since each meter reading day is responsible for on average, $19 million in customer billings; daily not weekly retrieval and processing of this information is critical. We cannot afford to let an entire week go by, when it can affect close to $100 million in customer billing.

Monitoring controls protect customers, employees and employers and allow for direction of the work force with minimal cost. These actions translate into quality service for customers in an efficient and cost-effective manner. They are in the best interest of the general public, our customers and Company operations. The absence of such controls would result in a lower level of quality control and service, lower productivity, and higher costs for consumers.

NEW JERSEY BANKERS ASSOCIATION

499 North Harrison Street • Princeton, New Jersey 08540-3571 • 609 924-5550
Mailing Address: Post Office Box 573, Princeton, New Jersey 08542-0573

EXECUTIVE VICE PRESIDENT
ALFRED H. GRIFFITH, C.A.E.

April 18, 1990

The Honorable David C. Schwartz
New Jersey General Assembly
P.O. Box 150
New Brunswick, New Jersey 08903

Re: Assembly No. 210

Dear Dave:

Our Association has reviewed Assembly No. 210 carefully in conjunction with banking law, regulation and practice.

We believe the bill is intended to protect employees from being observed or overheard and evaluated for matters other than his or her work performance. While we do not believe the bill is intended to deter the use of electronic monitoring for legitimate security purposes, the language of the bill makes it unclear whether the terms and conditions of the bill apply to the use of electronic monitoring by banks for security purposes.

The federal Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) requires each federal bank regulatory body to establish standards that each bank must comply with for security purposes.

We attach, as Attachment A, a copy of sections of the Act requiring the installation, maintenance and operation of security devices and procedures to discourage robberies, etc. and to assist law enforcement in the identification and apprehension of persons committing such acts.

We also attach, as Attachment B, Federal Deposit Insurance Corporation regulations (12 C.F.R., part 326) which includes Appendix A setting minimum standards for security devices, including surveillance systems. The Comptroller of Currency has adopted a similar regulation which in large part is word for word the same as the FDIC regulation and includes the same (12 C.F.R., part 21).

We ask that you review the minimum requirements in Appendix A which require the use of surveillance systems. Constant electronic surveillance is crucial to the safety of bank employees, particularly those who have direct exposure to the public. Such surveillance is recognized and appreciated by bank employees as being crucial to their personal safety.

Drug laundering has become a significant problem in our society. Banks must be constantly vigilant about criminals who may establish an inside relationship in a bank. Constant electronic surveillance is a clear deterrent to those who might attempt to use certain bank employees for their unlawful purpose.

While camera and photographic equipment is essential to bank and bank employee security, increasingly popular electronic fund transfers, both retail and wholesale, exceed one trillion dollars per day. The taping of all wire transfer activity, both inside and outside of a bank and its branches, is required with all transfer orders. Return calls verifying all orders are also taped. Employees and customers know they are being taped for accuracy and readily accept the process for their own protection.

30x

The ever increasing use of wire transfers and the potentially negative downside of such activity without proper electronic security protection has prompted the National Conference of Commissioners on Uniform State Laws to establish a federal Model Article 4A under the Uniform Commercial Code for such Funds Transfers. We include a summary of their product as Attachment C.

Section 201 of the Model dealing with "Security Procedures" points to the need to establish procedures for electronic payment orders, cancellation and amendments, along with methods to detect transmission errors. We include a copy of Section 201 as Attachment D.

In summary, electronic surveillance is a requirement of banks necessary to the protection of bank employees and as a deterrent for crime. Law enforcement officials have an absolute need for electronic and telephonic material. Such material is used in investigations and for trial purposes. While the bill does not appear to consider security, its language may be construed as affecting and limiting bank electronic monitoring for security purposes.

To make it clear that the bill does not limit electronic monitoring for banks for security purposes, our Association would respectfully recommend that regulated banking institutions (all banks and savings banks) be deleted from the bill in its definition section). Or, since Section 9 clearly anticipates and understands the need for continuous electronic monitoring by law enforcement agencies and since the use of such equipment is akin to the purposes of law enforcement, that Section 9 be amended to exclude security related activity by banking institutions.

We appreciate your consideration of our concerns.

Sincerely,

AHG/RA71
Encl.

cc: Honorable Patero, Gill, Foy, Littell, Martin

Attachment C

ARTICLE 4A - FUNDS TRANSFERS

PREFATORY NOTE

The National Conference of Commissioners on Uniform State laws and The American Law Institute have approved a new Article 4A to the Uniform Commercial Code. Comments that follow each of the sections of the statute are intended as official comments. They explain in detail the purpose and meaning of the various sections and the policy considerations on which they are based.

Description of transaction covered by Article 4A.

There are a number of mechanisms for making payments through the banking system. Most of these mechanisms are covered in whole or part by state or federal statutes. In terms of number of transactions, payments made by check or credit card are the most common payment methods. Payment by check is covered by Articles 3 and 4 of the UCC and some aspects of payment by credit card are covered by federal law. In recent years electronic funds transfers have been increasingly common in consumer transactions. For example, in some cases a retail customer can pay for purchases by use of an access or debit card inserted in a terminal at the retail store that allows the bank account of the customer to be instantly debited. Some aspects of these point-of-sale transactions and other consumer payments that are effected electronically are covered by a federal statute, the Electronic Fund Transfer Act (EFTA). If any part of a funds transfer is covered by EFTA, the entire funds transfer is excluded from Article 4A.

Another type of payment, commonly referred to as a wholesale wire transfer, is the primary focus of Article 4A. Payments that are covered by Article 4A are overwhelmingly between business or financial institutions. The dollar volume of payments made by wire transfer far exceeds the dollar volume of payments made by other means. The volume of payments by wire transfer over the two principal wire payment systems -- the Federal Reserve wire transfer network (Fedwire) and the New York Clearing House Interbank Payments Systems (CHIPS) -- exceeds one trillion dollars per day. Most payments carried out by use of automated clearing houses are consumer payments covered by EFTA and therefore not covered by Article 4A. There is, however, a significant volume of non-consumer ACH payments that closely resemble wholesale wire transfers. These payments are also covered by Article 4A.

There is some resemblance between payments made by wire transfer and payments made by other means such as paper-based checks and credit cards or electronically-based consumer payments, but there are also many differences. Article 4A excludes from its coverage these other payment mechanisms. Article 4A follows a policy of treating the transaction that it covers -- a "funds transfer" -- as a unique method of

payment that is governed by unique principles of law that address the operational and policy issues presented by this kind of payment.

The funds transfer that is covered by Article 4A is not a complex transaction and can be illustrated by the following example which is used throughout the Prefatory Note as a basis for discussion. X, a debtor, wants to pay an obligation owed to Y. Instead of delivering to Y a negotiable instrument such as a check or some other writing such as a credit card slip that enables Y to obtain payment from a bank, X transmits an instruction to X's bank to credit a sum of money to the bank account of Y. In most cases X's bank and Y's bank are different banks. X's bank may carry out X's instruction by instructing Y's bank to credit Y's account in the amount that X requested. The instruction that X issues to its bank is a "payment order." X is the "sender" of the payment order and X's bank is the "receiving bank" with respect to X's order. Y is the "beneficiary" of X's order. When X's bank issues an instruction to Y's bank to carry out X's payment order, X's bank "executes" X's order. The instruction of X's bank to Y's bank is also a payment order. With respect to that order, X's bank is the sender, Y's bank is the receiving bank, and Y is the beneficiary. The entire series of transactions by which X pays Y is known as the "funds transfer." With respect to the funds transfer, X is the "originator," X's bank is the "originator's bank," Y is the "beneficiary" and Y's bank is the "beneficiary's bank." In more complex transactions there are one or more additional banks known as "intermediary banks" between X's bank and Y's bank. In the funds transfer the instruction contained in the payment order of X to its bank is carried out by a series of payment orders by each bank in the transmission chain to the next bank in the chain until Y's bank receives a payment order to make the credit to Y's account. In most cases, the payment order of each bank to the next bank in the chain is transmitted electronically, and often the payment order of X to its bank is also transmitted electronically, but the means of transmission does not have any legal significance. A payment order may be transmitted by any means, and in some cases the payment order is transmitted by a slow means such as first class mail. To reflect this fact, the broader term "funds transfer" rather than the narrower term "wire transfer" is used in Article 4A to describe the overall payment transaction.

Funds transfers are divided into two categories determined by whether the instruction to pay is given by the person making payment or the person receiving payment. If the instruction is given by the person making the payment, the transfer is commonly referred to as a "credit transfer." If the instruction is given by the person receiving payment, the transfer is commonly referred to as a "debit transfer." Article 4A governs credit transfers and excludes debit transfers.

Why is Article 4A needed?

There is no comprehensive body of law that defines the rights and obligations that arise from wire transfers. Some aspects of wire transfers are governed by rules of the principal transfer systems. Transfers made by Fedwire are governed by Federal Reserve Regulation J and transfers over CHIPS are governed by the CHIPS rules. Transfers made by means of automated clearing houses are governed by uniform rules adopted by various associations of banks in various parts of the nation or by Federal Reserve rules or operating circulars. But the various funds transfer system rules apply to only limited aspects of wire transfer transactions. The resolution of the many issues that are not covered by funds transfer system rules depends on contracts of the parties, to the extent that they exist, or principles of law applicable to other payment mechanisms that might be applied by analogy. The result is a great deal of uncertainty. There is no consensus about the juridical nature of a wire transfer and consequently of the rights and obligations that are created. Article 4A is intended to provide the comprehensive body of law that we do not have today.

Characteristics of a funds transfer.

There are a number of characteristics of funds transfers covered by Article 4A that have influenced the drafting of the statute. The typical funds transfer involves a large amount of money. Multimillion dollar transactions are commonplace. The originator of the transfer and the beneficiary are typically sophisticated business or financial organizations. High speed is another predominant characteristic. Most funds transfers are completed on the same day, even in complex transactions in which there are several intermediary banks in the transmission chain. A funds transfer is a highly efficient substitute for payments made by the delivery of paper instruments. Another characteristic is extremely low cost. A transfer that involves many millions of dollars can be made for a price of a few dollars. Price does not normally vary very much or at all with the amount of the transfer. This system of pricing may not be feasible if the bank is exposed to very large liabilities in connection with the transaction. The pricing system assumes that the price reflects primarily the cost of the mechanical operation performed by the bank, but in fact, a bank may have more or less potential liability with respect to a funds transfer depending upon the amount of the transfer. Risk of loss to banks carrying out a funds transfer may arise from a variety of causes. In some funds transfers, there may be extensions of very large amounts of credit for short periods of time by the banks that carry out a funds transfer. If a payment order is issued to the beneficiary's bank, it is normal for the bank to release funds to the beneficiary immediately. Sometimes, payment to the beneficiary's bank by the bank that issued the order to the beneficiary's bank is delayed until the end of the day. If that payment is not received because of the insolvency of the bank that is obliged to pay, the beneficiary's bank may suffer a loss. There is also risk of loss if a bank fails to execute the payment order of a customer, or if the order is executed late.

There also may be an error in the payment order issued by a bank that is executing the payment order of its customer. For example, the error might relate to the amount to be paid or to the identity of the person to be paid. Because the dollar amounts involved in funds transfers are so large, the risk of loss if something goes wrong in a transaction may also be very large. A major policy issue in the drafting of Article 4A is that of determining how risk of loss is to be allocated given the price structure in the industry.

Concept of acceptance and effect of acceptance by the beneficiary's bank.

Rights and obligations under Article 4A arise as the result of "acceptance" of a payment order by the bank to which the order is addressed. Section 4A-209. The effect of acceptance varies depending upon whether the payment order is issued to the beneficiary's bank or to a bank other than the beneficiary's bank. Acceptance by the beneficiary's bank is particularly important because it defines when the beneficiary's bank becomes obligated to the beneficiary to pay the amount of the payment order. Although Article 4A follows convention in using the term "funds transfer" to identify the payment from X to Y that is described above, no money or property right of X is actually transferred to Y. X pays Y by causing Y's bank to become indebted to Y in the amount of the payment. This debt arises when Y's bank accepts the payment order that X's bank issued to Y's bank to execute X's order. If the funds transfer was carried out by use of one or more intermediary banks between X's bank and Y's bank, Y's bank becomes indebted to Y when Y's bank accepts the payment order issued to it by an intermediary bank. The funds transfer is completed when this debt is incurred. Acceptance, the event that determines when the debt of Y's bank to Y arises, occurs (i) when Y's bank pays Y or notifies Y of receipt of the payment order, or (ii) when Y's bank receives payment from the bank that issued a payment order to Y's bank.

The only obligation of the beneficiary's bank that results from acceptance of a payment order is to pay the amount of the order to the beneficiary. No obligation is owed to either the sender of the payment order accepted by the beneficiary's bank or to the originator of the funds transfer. The obligation created by acceptance by the beneficiary's bank is for the benefit of the beneficiary. The purpose of the sender's payment order is to effect payment by the originator to the beneficiary and that purpose is achieved when the beneficiary's bank accepts the payment order. Section 4A-405 states rules for determining when the obligation of the beneficiary's bank to the beneficiary has been paid.

Acceptance by a bank other than the beneficiary's bank.

In the funds transfer described above, what is the obligation of X's bank when it receives X's payment order? Funds transfers by a bank

on behalf of its customer are made pursuant to an agreement or arrangement that may or may not be reduced to a formal document signed by the parties. It is probably true that in most cases there is either no express agreement or the agreement addresses only some aspects of the transaction. Substantial risk is involved in funds transfers and a bank may not be willing to give this service to all customers, and may not be willing to offer it to any customer unless certain safeguards against loss such as security procedures are in effect. Funds transfers often involve the giving of credit by the receiving bank to the customer, and that also may involve an agreement. These considerations are reflected in Article 4A by the principle that, in the absence of a contrary agreement, a receiving bank does not incur liability with respect to a payment order until it accepts it. If X and X's bank in the hypothetical case had an agreement that obliged the bank to act on X's payment orders and the bank failed to comply with the agreement, the bank can be held liable for breach of the agreement. But apart from any obligation arising by agreement, the bank does not incur any liability with respect to X's payment order until the bank accepts the order. X's payment order is treated by Article 4A as a request by X to the bank to take action that will cause X's payment order to be carried out. That request can be accepted by X's bank by "executing" X's payment order. Execution occurs when X's bank sends a payment order to Y's bank intended by X's bank to carry out the payment order of X. X's bank could also execute X's payment order by issuing a payment order to an intermediary bank instructing the intermediary bank to instruct Y's bank to make the credit to Y's account. In that case execution and acceptance of X's order occur when the payment order of X's bank is sent to the intermediary bank. When X's bank executes X's payment order the bank is entitled to receive payment from X and may debit an authorized account of X. If X's bank does not execute X's order and the amount of the order is covered by a withdrawable credit balance in X's authorized account, the bank must pay X interest on the money represented by X's order unless X is given prompt notice of rejection of the order. Section 4A-210(b).

Bank error in funds transfers.

If a bank, other than the beneficiary's bank, accepts a payment order, the obligations and liabilities are owed to the originator of the funds transfer. Assume in the example stated above, that X's bank executes X's payment order by issuing a payment order to an intermediary bank that executes the order of X's bank by issuing a payment order to Y's bank. The obligations of X's bank with respect to execution are owed to X. The obligations of the intermediary bank with respect to execution are also owed to X. Section 4A-302 states standards with respect to the time and manner of execution of payment orders. Section 4A-305 states the measure of damages for improper execution. It also states that a receiving bank is liable for damages if it fails to execute a payment order that it was obliged by express agreement to execute. In each case consequential damages are not recoverable unless an express agreement of the receiving bank provides for them. The

policy basis for this limitation is discussed in Comment 2 to Section 4A-305.

Error in the consummation of a funds transfer is not uncommon. There may be a discrepancy in the amount that the originator orders to be paid to the beneficiary and the amount that the beneficiary's bank is ordered to pay. For example, if the originator's payment order instructs payment of $100,000 and the payment order of the originator's bank instructs payment of $1,000,000, the originator's bank is entitled to receive only $100,000 from the originator and has the burden of recovering the additional $900,000 paid to the beneficiary by mistake. In some cases the originator's bank or an intermediary bank instructs payment to a beneficiary other than the beneficiary stated in the originator's payment order. If the wrong beneficiary is paid the bank that issued the erroneous payment order is not entitled to receive payment of the payment order that it executed and has the burden of recovering the mistaken payment. The originator is not obliged to pay its payment order. Section 4A-303 and Section 4A-207 state rules for determining the rights and obligations of the various parties to the funds transfer in these cases and in other typical cases in which error is made.

Pursuant to Section 4A-402(c) the originator is excused from the obligation to pay the originator's bank if the funds transfer is not completed, i.e. payment by the originator to the beneficiary is not made. Payment by the originator to the beneficiary occurs when the beneficiary's bank accepts a payment order for the benefit of the beneficiary of the originator's payment order. Section 4A-406. If for any reason that acceptance does not occur, the originator is not required to pay the payment order that it issued or, if it already paid, is entitled to refund of the payment with interest. This "money-back guarantee" is an important protection of the originator of a funds transfer. The same rule applies to any other sender in the funds transfer. Each sender's obligation to pay is excused if the beneficiary's bank does not accept a payment order for the benefit of the beneficiary of that sender's order. There is an important exception to this rule. It is common practice for the originator of a funds transfer to designate the intermediary bank or banks through which the funds transfer is to be routed. The originator's bank is required by Section 4A-302 to follow the instruction of the originator with respect to intermediary banks. If the originator's bank sends a payment order to the intermediary bank designated in the originator's order and the intermediary bank causes the funds transfer to miscarry by failing to execute the payment order or by instructing payment to the wrong beneficiary, the originator's bank is not required to pay its payment order and if it has already paid it is entitled to recover payment from the intermediary bank. This remedy is normally adequate, but if the originator's bank already paid its order and the intermediary bank has suspended payments or is not permitted by law to refund payment, the originator's bank will suffer a loss. Since the originator required the originator's bank to use the failed intermediary bank, Section 4A-402(e) provides that in this case the originator is obliged to pay its payment order and has a claim against the intermediary bank for the amount of

the order. The same principle applies to any other sender that designates a subsequent intermediary bank.

Unauthorized payment orders.

An important issue addressed in Section 4A-202 and Section 4A-203 is how the risk of loss from unauthorized payment orders is to be allocated. In a large percentage of cases, the payment order of the originator of the funds transfer is transmitted electronically to the originator's bank. In these cases it may not be possible for the bank to know whether the electronic message has been authorized by its customer. To ensure that no unauthorized person is transmitting messages to the bank, the normal practice is to establish security procedures that usually involve the use of codes or identifying numbers or words. If the bank accepts a payment order that purports to be that of its customer after verifying its authenticity by complying with a security procedure agreed to by the customer and the bank, the customer is bound to pay the order even if it was not authorized. But there is an important limitation on this rule. The bank is entitled to payment in the case of an unauthorized order only if the court finds that the security procedure was a commercially reasonable method of providing security against unauthorized payment orders. The customer can also avoid liability if it can prove that the unauthorized order was not initiated by an employee or other agent of the customer having access to confidential security information or by a person who obtained that information from a source controlled by the customer. The policy issues are discussed in the comments following Section 4A-203. If the bank accepts an unauthorized payment order without verifying it in compliance with a security procedure, the loss falls on the bank.

Security procedures are also important in cases of error in the transmission of payment orders. There may be an error by the sender in the amount of the order, or a sender may transmit a payment order and then erroneously transmit a duplicate of the order. Normally, the sender is bound by the payment order even if it is issued by mistake. But in some cases an error of this kind can be detected by a security procedure. Although the receiving bank is not obliged to provide a security procedure for the detection of error, if such a procedure is agreed to by the bank Section 4A-205 provides that if the error is not detected because the receiving bank does not comply with the procedure, any resulting loss is borne by the bank failing to comply with the security procedure.

Insolvency losses.

Some payment orders do not involve the granting of credit to the sender by the receiving bank. In those cases, the receiving bank accepts the sender's order at the same time the bank receives payment of the order. This is true of a transfer of funds by Fedwire or of cases in which the receiving bank can debit a funded account of the sender.

But in some cases the granting of credit is the norm. This is true of a payment order over CHIPS. In a CHIPS transaction the receiving bank usually will accept the order before receiving payment from the sending bank. Payment is delayed until the end of the day when settlement is made through the Federal Reserve System. If the receiving bank is an intermediary bank, it will accept by issuing a payment order to another bank and the intermediary bank is obliged to pay that payment order. If the receiving bank is the beneficiary's bank, the bank usually will accept by releasing funds to the beneficiary before the bank has received payment. If a sending bank suspends payments before settling its liabilities at the end of the day, the financial stability of banks that are net creditors of the insolvent bank may also be put into jeopardy, because the dollar volume of funds transfers between the banks may be extremely large. With respect to two banks that are dealing with each other in a series of transactions in which each bank is sometimes a receiving bank and sometimes a sender, the risk of insolvency can be managed if amounts payable as a sender and amounts receivable as a receiving bank are roughly equal. But if these amounts are significantly out of balance, a net creditor bank may have a very significant credit risk during the day before settlement occurs. The Federal Reserve System and the banking community are greatly concerned with this risk, and various measures have been instituted to reduce this credit exposure. Article 4A also addresses this problem. A receiving bank can always avoid this risk by delaying acceptance of a payment order until after the bank has received payment. For example, if the beneficiary's bank credits the beneficiary's account it can avoid acceptance by not notifying the beneficiary of the receipt of the order or by notifying the beneficiary that the credit may not be withdrawn until the beneficiary's bank receives payment. But if the beneficiary's bank releases funds to the beneficiary before receiving settlement, the result in a funds transfer other than a transfer by means of an automated clearing house or similar provisional settlement system is that the beneficiary's bank may not recover the funds if it fails to receive settlement. This rule encourages the banking system to impose credit limitations on banks that issue payment orders. These limitations are already in effect. CHIPS has also proposed a loss-sharing plan to be adopted for implementation in the second half of 1990 under which CHIPS participants will be required to provide funds necessary to complete settlement of the obligations of one or more participants that are unable to meet settlement obligations. Under this plan, it will be a virtual certainty that there will be settlement on CHIPS in the event of failure by a single bank. Section 4A-403(b) and (c) are also addressed to reducing risks of insolvency. Under these provisions the amount owed by a failed bank with respect to payment orders it issued is the net amount owing after setting off amounts owed to the failed bank with respect to payment orders it received. This rule allows credit exposure to be managed by limitations on the net debit position of a bank.

Attachment D

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

§ 4A-201. SECURITY PROCEDURE

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

COMMENT

A large percentage of payment orders and communications amending or cancelling payment orders are transmitted electronically and it is standard practice to use security procedures that are designed to assure the authenticity of the message. Security procedures can also be used to detect error in the content of messages or to detect payment orders that are transmitted by mistake as in the case of multiple transmission of the same payment order. Security procedures might also apply to communications that are transmitted by telephone or in writing. Section 4A-201 defines these security procedures. The definition of security procedure limits the term to a procedure "established by agreement of a customer and a receiving bank." The term does not apply to procedures that the receiving bank may follow unilaterally in processing payment orders. The question of whether loss that may result from the transmission of a spurious or erroneous payment order will be borne by the receiving bank or the sender or purported sender is affected by whether a security procedure was or was not in effect and whether there was or was not compliance with the procedure. Security procedures are referred to in Sections 4A-202 and 4A-203, which deal with authorized and verified payment orders, and Section 4A-205, which deals with erroneous payment orders.

§ 4A-202. AUTHORIZED AND VERIFIED PAYMENT ORDERS

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security

ACLU of New Jersey
2 Washington Place
Newark, NJ 07102
(201) 642-2084

Assembly Labor Committee,
Hearing on A.210
April 23, 1990

My name is Alisa Mariani. I am the chair of the Workers' Rights Committee of the American Civil Liberties Union of New Jersey.

The ACLU believes that employers in this state have a right to expect a high standard of performance from the workers they employ. But we also believe that employees have rights, rights they should not be expected to give up when they go to work, rights that include DUE PROCESS and PRIVACY. We support this bill because it attempts to balance the interests of employers and employees, interests that need not be antithetical or incompatible.

The bill does not preclude the employer's legitimately and reasonably setting standards for work performance and attempting to monitor work performance. At the same time,

a) it ensures that employees will be informed what those standards and monitoring attempts are and when they are in effect;

b) it ensures that employees will have access to data obtained through such monitoring, and opportunity to challenge its accuracy or relevance;

c) it ensures that such monitoring will deal with work performance only, and will not entail inappropriate, intrusive incursions into personal privacy.

Due process (call it "fair play," if you will) is at the heart of the American concept of justice, and we believe the protection of due process should be public policy in New Jersey, in both the public and the private sector. Privacy, which Justice Brandeis years ago called "the right most valued by civilized men," is under siege in many areas of our lives today, because of the proliferation of electronic devices which can monitor behavior; their unregulated use has great potential for very grave abuse. The ACLU welcomes legislation which seeks to protect these essential rights in the workplace.

CASINO ASSOCIATION OF NEW JERSEY

March 30, 1990

Honorable Joseph D. Patero
Chairman, Assembly Labor Committee
State House Annex
Trenton, NJ 08608

RE: A-210 "Electronic Monitoring in the Workplace"

Dear Chairman Patero,

The Casino Association of New Jersey (the "CANJ") is pleased to provide the Assembly Labor Committee with our comments concerning Assembly Bill A-210 which sets forth procedures for employer electronic monitoring of employees in the workplace and collection of personal data concerning employees and prospective employees.

As the Committee is aware, casino operations and employees of companies operating casinos are highly regulated by the New Jersey Casino Control Act, N.J.S.A. 5:12-1, et. seq. and the regulations promulgated thereunder by the New Jersey Casino Control Commission (the "Commission"). The provisions of A-210 requiring notice to employees prior to any electronic monitoring, prohibiting electronic monitoring unless related to work performance, restricting the use of information obtained from such monitoring and access to personal data collected pursuant to such monitoring directly conflict with regulatory controls established by the Casino Control Act, Commission regulations and Commission approved internal control procedures established by casino licensees. For this reason casino licensees, their holding and intermediary companies and applicants for casino licenses as those terms are defined in the Casino Control Act must be made exempt from the provisions of A-210.

N.J.S.A. 5:12-98(b)(1) requires casino licensees to install closed circuit television systems in accordance with Commission requlations. Those requlations set forth in N.J.A.C. 19:45-1.10 require surveillance systems in the casino licensee's casino, cashiers cage, slot booths, count rooms and such other areas as may be designated by the Commission. In addition to CCTV surveillance monitoring the regulations require certain audio monitoring in the casino licensee's soft count room. These devises would be considered "electronic monitoring" devices collecting "personal data" as those terms are defined in A-210. Restricting such monitoring, requiring employee notices of such monitoring and providing access to employees of the personal data collected by such monitoring would undermine the legislative policy of ensuring integrity in gaming and casino finance operations through use of surveillance systems.

2922 Atlantic Avenue • Atlantic City • New Jersey • 08401 • 609/347-0800 • FAX: 609/347-9138

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In addition, casino licensees through accounting internal controls required by N.J.S.A. 5:12-99, track employee utilization of the casino licensee's computer systems. Because of the sensitivity of certain information contained in those systems such as information related to patron play, credit and financial data, casino licensees must be permitted to track computer access by employees. A-210 would appear to regulate such monitoring in a fashion which is inconsistent with the purpose of the established accounting control procedures.

A-210 also would regulate the use of electronic monitoring by employers to obtain personal information related to an employee or prospective employee. Many casino licensees and their respective holding companies are required by the Commission to conduct due diligence background checks of prospective directors, officers and principle employees which require the use of certain electronic intelligence gathering such as credit, criminal and litigation checks. These investigatory checks are required to be kept confidential by casino licensees. The provisions of A-210 are inconsistent with the purpose underlying required casino licensee due diligence investigations of employees and prospective employees.

For the reasons set forth above the CANJ recommends that Section 9 of A-210 be amended as follows:

> 9 This act shall not apply to casino licensees, holding companies and applicants for casino licenses as those terms are defined in the New Jersey Casino Control Act, N.J.S.A. 5:12-1, et. seq. or to electronic monitoring administered by law enforcement agencies conducting criminal investigations.

The CANJ will be pleased to provide any additional information the Committee may require with respect to this legislation.

Respectfully submitted,

William C. Murtha

William C. Murtha
Vice President &
General Counsel

WCM/mfv

CC: Honorable Louis J. Gill
Honorable Thomas Foy
Honorable Robert Littell
Honorable Robert Martin
Thomas D. Carver
Chief Executive Officers
In-House Counsel

102 West State Street
Trenton, NJ 08608-1102
609-393-7707 FAX: 609-989-7371

NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

STATEMENT

OF THE

NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION

TO THE

ASSEMBLY LABOR COMMITTEE

ON

ASSEMBLY BILL 210

(An Act Regulating Electronic Monitoring of Employees in the Workplace)

April 23, 1990

55X

New Jersey Business and Industry Association, the largest Association in the State, takes this opportunity to express its OPPOSITION to A-210 (Schwartz), a bill which proposes to regulate the electronic monitoring of employees in the workplace.

Workplace monitoring has been in existence ever since there has been a workplace. It began with manual monitoring and as the technology developed so did electronic monitoring. Today, electronic monitoring is found in the banking and insurance industries. It is an integral part of the airline industry, drug and textile manufacturing, the trucking industry, utility companies, the defense contracting industry and the nuclear generating industry.

Some form of electronic monitoring is found in most sections of the U.S. economy. It enables employers to automatically, efficiently and objectively collect information they need to manage their business most effectively. Manufacturing industries are undergoing a revolutionary transformation through the application of electronic monitoring.

NJBIA OPPOSITION to this proposed bill is based on a variety of reasons, first and foremost of which is an attempt to severely limit an employer's right to protect its business interests from lapses in employee job performance. Virtually every business function in some manner relies on computer and telephone-based message transmission between itself and its customers and suppliers. The level of accuracy, courtesy and efficiency of these transmissions is critical to the success of the business enterprise. Employers who rely on these vital functions must be secure in their ability to measure, evaluate and correct employee performance which does not properly equate to the standard of excellence established by employers.

Thus, A-210, while well-intentioned to protect an employee's rights of privacy, goes well beyond such intention and does so at the expense of the employer. In the final analysis, an employer complying with the bill's procedural and notification requirements, would have rendered meaningless any attempt at monitoring.

A second and equally compelling reason for NJBIA's OPPOSITION to the bill is founded in the vague and subjective content of the definition and remedial procedures.

The definition of "Electronic Monitoring" is not limited to telephone and computer data transmission. Rather, the definition can easily be interpreted to include all forms of electronic monitoring. The bill, therefore, would not only impact on employer's ability to monitor employee performance, but would severely limit attempts to control breaches of security and access to confidential information.

Enactment of A-210 would restrict an employer's ability to collect employee attendance and absentee data. It would hinder an employer's ability to accurately calculate employee wages, or determine the efficiency of an employees performance and training needs. It would also hinder an employer's ability to improve an employee's efficiency.

The remedial procedures of A-210 provide for the filing of a complaint through either a collective bargaining grievance procedure or with the Commissioner of Labor. This provision serves not only to frustrate the judicial and traditional function of collective bargaining, but gives the Commission broad power to determine whether disputed information is misleading or inaccurate. Such determination is clearly one which should be left to the parties involved in the dispute as is the case with all other matters of disputed employee performance. Additionally, inherent in this procedure is the difficulty of clarifying vagueness in interpreting what is and is not misleading or inaccurate.

Furthermore, there is a strong concern that Section 12 and 13 may be in violation of federal laws regulating collective bargaining and issues subject to an employer's grievance procedure.

A most disturbing aspect of this bill, blurred by procedural burdens, is the requirement put upon employers to establish an Employee Assistance Program to deal with stress-related problems. While it cannot be disputed that EAP's are a valuable asset to employers, mandating that every employer

establish one is a burdensome expense which many employers are ill-equipped to finance. Further, according to the Office of Technological Assessment, currently there is insufficient research to support the contention that electronic monitoring leads to stress or diminished health.

In the final analysis, a requirement that employers provide notice that employees are subject to electronic monitoring is not unreasonable. To go beyond this due process requirement by establishing Legislative procedures, disclosure requirements, dual remedies and the imposition of criminal sanctions, serves only to unreasonably protect employees from review and evaluation at the expense of an employer's ability to ensure employee performance.

Enactment of A-210 is certain to severely retard technological progress of sound management practices. We submit that it will result in irreparable harm to the economy of the state.

Accordingly, NJBIA urges this Committee to REJECT A-210.

102 West State Street
Trenton, NJ 08608-1102
609-393-7707 FAX: 609-989-7371

NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

COMPUTER MONITORING

Backgrounder

Electronic monitoring has been identified by some groups as an invasion of privacy and a cause of stress in office workers. They have sought through legislation, regulation and bargaining to prohibit its use.

WHY MONITOR?

Monitoring in the workplace is not new. Managers and employees of successful enterprises have always monitored the workplace to ensure efficient and effective use of corporate resources to meet customer needs and expectations. Today, effective monitoring is more important than ever, because American businesses operate in a complex, highly competitive world marketplace. Survival and growth in that marketplace depends upon the ability to provide customers with quality products and services at reasonable costs.

In some industries where safety or international competition is at stake, there is pressure to improve and strengthen the monitoring practices.

WHY IS COMPUTER MONITORING DONE?

Computer monitoring enables employers to automatically and objectively collect the data or information they need to manage their businesses most effectively.

Computers have become an integral part of the business in many sectors of the American economy. Manufacturing industries are undergoing a revolutionary transformation through the application of computer systems. Computerized order entry and inventory systems are reshaping the wholesale and retail trades. Entirely new services, particularly in the banking and insurance industries, have emerged in recent years as a result of the application of computer technology. For businesses that have made computer technology part and parcel of their operations, "monitoring" increasingly implies "computer monitoring."

HOW IS COMPUTER MONITORING USED?

In general, it's possible to retain and record almost anything that's entered into the computer and to set up a monitoring program on almost anything for which standards can be established.

The specifics of computer monitoring will depend on the nature of the work being done and the ultimate business objectives for monitoring. The following are some examples of the kinds of monitoring made possible by computer technology:

Companies in certain industries such as financial services (including banking and insurance) periodically monitor work for purposes of preventing and detecting fraud and dishonesty. This kind of monitoring is necessary in order to protect customers' assets and obviously must be done in confidence.

In the insurance industry, automatic file tickling is used to help claim representatives process their claim files in a timely manner. (All fifty states and the District of Columbia have statutory requirements for timeliness in settling claims.)

In the airline industry's reservation centers, automatic call distributors identify which operators and telephones are busy and match incoming calls to telephones and operators that are not engaged. This assures an even distribution of workload among operators and, more importantly, ensures that each customer receives service as quickly as possible.

Some 911 services use this same technology to automatically trace incoming calls. This feature can save lives in an emergency when operators often have difficulty getting their callers to give them complete data about the location of the emergency.

In data entry operations, computer monitoring makes it possible to more accurately track the workload of individual operators so that work assignments can be more evenly distributed and service objectives better met.

The textile industry uses computer monitoring in conjunction with an employee incentive program.. The monitoring program enables weavers to immediately identify a breakdown in their machines. This keeps their production count and, therefore, bonus pay as high as possible.

Computers are increasingly being used to monitor type and frequency of equipment maintenance. This yields detailed information such as the number of hours a part has been in use, when it will require replacement, and who is responsible for its installation. As a result, there is bettercontrol over the timeliness and accuracy of routine maintenance, which in turn leads to lower operating costs, more reliable service, and greater safety.

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HOW DOES COMPUTER MONITORING DIFFER FROM MANUAL MONITORING?

Previous forms of monitoring depended on use of tools such as paper and pencil tallies, work logs, mechanical time stamps, etc. More often than not, monitoring was based on a selected sample of work, not the entire body of work. As office work is becoming computerized for greater efficiency, so is the opportunity for better evaluation of the worker and/or work product.

The computer automatically keeps a record of everything that is keyed into it. Management has the option to retrieve data at any time in the future.

Computer monitoring, therefore, allows for more timely capture and reporting of more complete, precise data relating to the work being done. The precision made possible through computer monitoring can help eliminate human error or bias in employee evaluations.

WHAT DOES MONITORING MEAN TO EMPLOYEES?

With computer monitoring, employees can get a better sense of exactly how successful they are in accomplishing their goals. This is particularly important to employees when there is some payment attached to measurements of their work. At a minimum, workers can have a more meaningful discussion about performance with their supervisors. Nobody wants to do their job poorly, and concrete, objective feedback is an essential part of doing the job well.

With computer monitoring, employees are less likely to be subject to discrimination on the basis of personal biases because the computer reports only the facts.

Managers can aim at an even work distribution among employees and avoid work bottlenecks with the help of computer monitoring.

DOES COMPUTER MONITORING REPLACE FIRST LINE SUPERVISORS?

Only people can supervise people, but computers make it possible to establish more accurate and objective mechanisms for measuring the success of a business operation. As a result, there is sometimes less need for the kind of supervision which has been focused on keeping an eye on workers as they do their jobs.

Good first-line supervisors understand that they have to make judgments about the work monitoring data computers provide them. They know that if they want to find out what's really going on in the operation, they have to talk with the people doing the work. They know it's their job, not the computer's, to be the key resource to help workers find and implement the best ways of attaining the objectives of the business.

WHO HAS ACCESS TO THE INFORMATION COLLECTED?

In most circumstances, the information is a tool for discussion between management and workers. Progressive companies have a strong concern for privacy of the individual, so generally data about an individual's work are not published.

If the information is the more general kind obtained from monitoring work at a group level, then in most companies it is basically available to the supervisors and published on a periodic basis to workers.

IS MONITORING AN INVASION OF PRIVACY? IS THIS BIG BROTHER CONSTANTLY WATCHING OVER YOUR SHOULDER?

The concept of employees' rights to privacy and autonomy in the workplace is a relatively new one. But there are some areas in the workplace that may be considered private under some conditions.

Computer monitoring has never been held to be an invasion of privacy where employees have been informed that the job or work product is monitored. Managers generally inform workers not only that they will be monitored, but why computer monitoring is done and what results are anticipated.

A "Big Brother" approach can work against employers because employee morale can be affected and, consequently, reduce productivity. Workers respond well when they know they are trusted and valued. Management takes these factors into account in developing a balanced monitoring program.

DOES MONITORING CAUSE WORKER STRESS?

According to the Office of Technological Assessment, "currently there is insufficient research literature to support the contention that electronic monitoring leads to stress and diminished health."

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There have always been many potential stress-inducers in the workplace, both positive and negative (time deadlines, demands of customer service, continually changing procedures in response to market and bureaucratic pressures). Stress in the workplace can never be totally eliminated, but it can be controlled and its effects mitigated.

The key ingredient is good management practices such as choosing the right people for the right jobs and creating an enabling environment where workers feel they can realize some of their own talents in doing their jobs. The responsibility of finding a good job match falls not only on the employer, but on the employee.

IS COMPUTER MONITORING DEHUMANIZING?

No. Like any other form of technology, computer monitoring by itself is neither bad nor good. Its effects depend on how it's used. Productive and responsible use of computer monitoring is a matter of good management practice. There may, unfortunately, be some individuals who abuse workplace information including computer monitoring data. Others may give it greater weight than they should, but that can happen with any evaluation system.

DOES MONITORING LEAD TO THE CREATION OF MEANINGLESS, SMALL TASK JOBS?

Routine and single task jobs have always existed, and probably always will in some form or another. They are generally the entry level positions for business. Some of these jobs, such as routine filing, have been eliminated by new office technology while others were created.

Progressive companies realize, however, that needless over-simplification or over-structuring of jobs can lead to lower quality and less productivity. They know that there's a constant need to provide a balance between making jobs manageable and making them desirable.

CAN A STANDARDIZED MONITORING PROGRAM MAKE ALLOWANCES FOR DIFFERENT WORK STYLES OR DIFFERENT WORKER MOTIVATIONS?

It depends on the job itself. Some jobs would not be affected if workers did not reach their "productivity peak" until three in the afternoon as long as the day's objectives were met. In

these cases, a good monitoring program would allow for different work styles. Other jobs which may involve employee or customer safety require consistency in performance. A monitoring program for these jobs would not allow for performance peaks and valleys.

Ultimately, however, it is the people who use the program that make the judgements. It is up to the supervisors and managers to interpret the information provided through monitoring programs and allow for individual work styles and motivations. A good manager realizes that the monitoring data is only one of many tools available upon which to base decisions.

DOES MONITORING MEAN A SACRIFICE OF QUALITY FOR QUANTITY?

From time to time, as management and workers adjust to new technology, quality may suffer. This is a temporary situation until a new balance can be achieved. An employer would be extremely short-sighted to push monitoring or any other work practice to the point where it significantly impedes work quality. No organization can afford to settle for quantity without quality and stay in business for long.

A few years ago, for example, an over-night delivery company instituted a new monitoring system which was used to set a standard for the average amount of time per call employees could devote to each customer transaction. The company soon realized that employees were skimping on customer service in order to meet the standard. The delivery company still collects data on its agents' productivity, but it has changed the way it uses the information so that they have improved the quality of customer services as well as the quantity.

HOW IS MONITORING USED MOST EFFECTIVELY?

In any work monitoring program, computerized or not, management has a basic responsibility to establish measurement standards that are relevant to the specific objectives of the business. To effectively implement that program, managers convey those business objectives to the workers.

AIR TRANSPORT ASSOCIATION TESTIMONY
A-210 EMPLOYEE MONITORING
NEW JERSEY ASSEMBLY LABOR COMMITTEE

April 23, 1990

Chairman Patero and committee members, my name is Roger Cohen, New Jersey state legislative coordinator for the Air Transport Association. The ATA member airlines provide virtually all of the passenger service and most of the scheduled cargo service nationwide. Accompanying me today are representatives of two of our largest members, United Airlines and Federal Express, both of which maintain extensive operations here in New Jersey.

Over the past several years, this state has blossomed into one of the country's primary airline centers, and the 24,000 airline employees who work here -- combined with countless more who live in New Jersey and commute to their airline jobs elsewhere -- provide benefits to communities across the state. A report last year estimated that airlines contribute over $6 billion directly to the New Jersey economy, a contribution that grows exponentially as it ripples through the state. Not only has Newark International Airport become the nation's 10th largest airport, handling some 24 million passengers and nearly 400,000 tons of freight annually, but New Jersey is also the home to several large airline reservations and telecommunications facilities. In this context, we appear today respectfully opposing A210, which would severely restrict service monitoring practices to the detriment of New Jersey consumers and the state's business environment.

Permit me to briefly explain how airlines manage this reservations and telecommunications function. Unlike what some customers think when they call an airline to make a flight reservation, request an express package shipment or to check on the status of a particular flight -- the airline employee to whom they are talking is not normally located behind an airport ticket counter or at a freight terminal. Chances are, that employee isn't even within sight of an airplane. Rather, he or she is sitting in front of a computer screen, and is the sole link between a worldwide information system and the customer calling on a toll-free telephone line.

In general, airlines will monitor anywhere from one to two percent of these incoming calls, translating into about 10 to 20 instances per month, per employee. These monitored calls are then reviewed with the employee as a means to enhance employee perfomance and to provide the best customer service. But before I explain why airlines monitor reservations calls, it's probably just as important to state the "why nots" of telephone monitoring:

- Airlines do not monitor without employee notification. All employees are fully informed of airline monitoring practices prior to employment and through ongoing training programs.

- Airlines only rarely record these calls; and if they are recorded as part of a specialized training exercise, it is with advance notification and full approval of the employee.

- Calls are not monitored to obtain "personal" or confidential data about the employee or the customer; nor are employee personal calls monitored.

Airlines employ service monitoring basically to ensure that the customer is receiving the correct information in a proper manner. This is a method of work evaluation and quality assurance no different than other traditional evaluation methods. Whether the observation is "over the shoulder" or by monitoring a call to a sales agent whose only contact with the public is by telephone, the principle and the results are the same.

Monitoring also provides numerous legitimate benefits to the employee. Monitoring is critical to employee development, especially for new employees. It ensures that training programs are effective and working properly in the real world. It provides feedback and "hands on" coaching and helps employees develop confidence in their skills. Since for many newly-hired reservations agents this is their first professional work experience and the foundation for a long and rewarding career, this initial coaching is exceptionally critical.

For the customer and the general public, the benefits of monitoring are obvious. Given the incredibly complex -- and constantly changing -- nature of airline fares, it is vital that passengers are given accurate information.

Moreover, when a customer calls an airline, not only does that customer not expect that the conversation be kept confidential, but the customer assumes that the information discussed will be disseiminated throughout the airline -- to ticket agents, flight personnel, baggage service representatives and delivery agents for freight shipments. Service monitoring furthers all these objectives.

The visual or "beep tone" audible warning provision of A210 would be harmful to the goal of improved customer service. The beep tone would be especially disruptive to the accurate exchange of information between the customer and the employee. Similarly, a visual warning could distract the employee from storing or retrieving the correct information. A momentary glance away from the screen and what should be a $200 roundtrip to Akron could become a $2000 fare to Accra in West Africa.

Also, the restrictions of A210 would diminish the ability of airlines and law enforcement officials to combat telephoned threats against aircraft. Instant access to incoming calls by supervisory personnel is an important tool in tracing these "bomb threats". The pre-notification and restriction provisions of A210 could deter industry security efforts.

Given these significant questions, we would respectfully urge the committee to further study this issue prior to action on A210. We would be pleased to provide you additional information regarding airline industry service monitoring practices, and stand ready to answer any questions and assist this committee on this issue and others in the future.

Thank you for your consideration.

Air Transport Association ata OF AMERICA

1709 New York Avenue, NW
Washington, DC 20006-5206
Phone (202) 626-4000

March 29, 1990

Honorable Joseph Patero
Chairman, Assembly Labor Committee
New Jersey State Assembly
State House Annex
Trenton, New Jersey 08625

Dear Assemblyman Patero:

On behalf of the Air Transport Association member airlines serving New Jersey, we are writing in opposition to A-210 (Schwartz), scheduled for hearing in your committee Monday, April 2. We are sorry that a prior scheduling commitment in California precludes our testifying in person, but we submit the following comments for the record:

A number of airlines operate large reservations facilities in New Jersey, employing hundreds of highly-skilled and trained professional state residents. These offices handle telephone calls from across the nation, and providing the traveling and shipping public with reliable, efficient and courteous customer service is a primary responsibility.

All airline employees are informed that periodic monitoring for service quality and training is part of their job prior to and throughout their employment. In the airline industry, this monitoring is to 1) ensure that the customer is receiving proper flight and fare information; 2) to provide a basis for recognizing and rewarding outstanding job performance, as well as identifying training needs and 3) to track sales and marketing trends.

-- Personal calls are not monitored. Airline reservations systems are set up so that calls are received randomly and distributed evenly.

-- A-210 establishes a right to privacy where none exists. In fact, when customers call an airline they want the information (flight times, special meal requests, frequent flier numbers, etc.) to be widely circulated.

-- The "beep tone" provisions of A-210 would be intrusive to the efficient exchange of information, as well as adding cost burdens and delays to the handing of customer calls.

In addition, monitoring of calls to airline offices provides a backup system and better response to company and Federal security procedures. As you know, airlines are often the target of harassing and/or threatening calls, and the ability to monitor these calls quickly is another tool to fight this problem.

Thank you for your consideration and we would be pleased to provide anything additional. We urge a NO vote on A-210.

Respectfully,

Roger Cohen
New Jersey Legislative Coordinator

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BLUE CROSS AND BLUE SHIELD OF NEW JERSEY
STATEMENT ON ASSEMBLY BILL A-210

Blue Cross and Blue Shield of New Jersey respectfully requests that the Assembly Labor Committee not release Assembly Bill 210, sponsored by Assemblyman David Schwartz, as the bill is currently drafted.

A-210 is intended to prevent the abuse of electronic monitoring by establishing standards for the collection and utilization of monitored data by employers. In point of fact, several provisions contained in the bill effectively eliminate any useful purpose which can be served by monitoring. One provision, requiring employees and customers to be notified with a verbal tone at such time as the monitoring is taking place, is a good example. It is foreseeable that an employee could become conditioned to the tone and act differently when he or she is aware that they are being monitored.

Other objectionable provisions include the prohibition against using monitored data in employee evaluations unless obtained during the first 42 days of employment, or during a single continuous period of up to 30 days. Blue Cross and Blue Shield currently requires customer service representatives to complete a 120 day probationary training period during which they are constantly evaluated to assure that their skills and knowledge base develop to acceptable levels. Permitting random monitoring to be used for evaluations during only the first 42 days of employment does not allow sufficient time to properly evaluate trainees and could lead to inaccurate assessments of an employee's abilities. Monitoring continues to be an important tool after the training period in development of employees to a high degree of competence. This bill would also prohibit data gathered through telephone observations from being used to evaluate an employee other than for work volume or rate. By doing this, an employer would be prohibited from utilizing the data in preventing developing problems such as employee burnout, or distribution of inaccurate information.

Blue Cross and Blue Shield supports the concept as set forth in this bill to protect the employees' rights to privacy. There is, however, the right of the corporation to assure that their customers receive the best possible service which can be provided. We cannot expect to remain competitive in the insurance business without doing so. Therefore, we can not support this legislation as it is currently drafted, and would respectfully request that you not release the bill.

We would be happy to work with the sponsor and all other interested parties to develop amendments which would satisfy all concerned.

PUBLIC STRATEGIES, INC.

196 West State Street, Trenton, NJ 08608 • (609) 393-7799 • Fax: (609) 393-9891

MEMORANDUM

TO: Assemblyman Joseph D. Patero
Chairman, Assembly Labor Committee

FROM: Sharon A. Harrington

RE: ATTACHED MEMORANDUM FROM DEHART & DARR

DATE: April 23, 1990

I am attaching a memorandum from DeHart & Darr in opposition to A-210, the electronic monitoring bill.

DeHart & Darr work with the Direct Marketing Association (DMA), which has 162 member companies in New Jersey.

Presently, DMA advises employees that they will be monitored, and recommends they have a non-monitored telephone available for personal calls.

Should you require further information, please let me know.

Att.
c Assemblyman Schwartz ✓
Gregory Williams, Cte. Aide
Jake Genovay, Staff

/kl

DeHart and Darr

Memorandum in opposition to New Jersey Assembly Bill 210

This memo comes to you on behalf of the Direct Marketing Association (DMA) and its 162 member companies headquartered in 96 New Jersey cities and 205 members with operations in New Jersey.

The bill regulates monitoring employee telephone calls and has several onerous provisions. For example, there is a requirement to alert an employee of monitoring at the time it occurs by use of a beep tone, visual device, etc. This defeats the purpose of monitoring - - to provide the best service to consumers. And it distracts the employee.

Such restriction will deprive management of the opportunity to legitimately supervise the work activities of its employees, even while the State of New Jersey and the federal government are holding companies responsible for the business activities of employees.

The purpose of monitoring is:

1. to ensure that proper terms and disclosures are made about the sale of goods or services;
2. to ensure that customers are given courteous and helpful advice;
3. to provide for effective and understandable scripts and procedures;
4. to help employees do a better job.

DMA guidelines require employers to notify employees that they will be monitored and recommends that employees have a nonmonitored telephone available for personal calls.

The proposed legislation is also not in the consumer's interest.

Many businesses utilize this as a management tool:

- -airlines - for reservations and other service calls
- -public opinion pollsters - telephone polls are only as reliable as the interviewer
- -telemarketers monitor calls to ensure consumers are given full disclosure
- -market researchers
- -many companies monitor calls for security purposes
- -a manufacturer may want to utilize the telephone to quickly contact customers who purchased unsafe equipment that could be hazardous - and monitor the calls (This kind of consumer protection is not provided for in the bill.)

Telephone call monitoring is the employer's most effective, accurate and reliable method of maintaining high standards of customer service.

DeHart and Darr Associates, Inc. 1360 Beverly Road Suite 201 McLean, Virginia 22101 703 448-1000
Fax 703 790-3460

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New Jersey Retail Merchants Association
Comments on - "Electronic Monitoring
in the Workplace" Legislation (A 210)

1. General Observation

- We do not dispute that some forms of monitoring are offensive (cameras in restrooms; listening in on private calls)

- But use of electronic means of measuring productivity is generally well-intentioned effort to evaluate employees on objective basis

- Legislation should not broadly sweep away this trend and force employers to retreat to subjective evaluations, which have capacity to be based on offensive criteria (sex, race, etc.)

- Many of the practices the bills would restrict, if conducted "electronically", (e.g. surveillance, productivity records, phone logs) would be permissible if done manually. What does the restriction achieve?

2. "Electronic Monitoring"

- Definition covers virtually any device which is capable of collecting information about employees

- Bill (section 5b) allows Commissioner of Labor to further restrict types of information that can be collected

- Some uses arguably covered:

    1. Time-clocks which utilize electronic memories

    2. Cash registers which generate information as to number of transactions, accuracy of data entry, whether end-of-day cash equals sales

    3. Debt collection activities (number of calls; past due accounts collected)

    4. Telemarketing/Catalog sales (number of calls handled; sales volume data collected by computer)

    5. Electronic typewriters (pages typed, etc)

    6. Telephone Call Monitoring - (1. compliance with legal requirements such as credit card solicitation, debt collection laws; 2. customer service/courtesy) accuracy (catalog sales)

7. Security Cameras - (drug stores/controlled substances; cash rooms; internal theft investigations (we can't use polygraphs)

3. Electronic monitoring definition should be narrowed to restrict specified types of devices and specific forms of information (e.g. hidden cameras in locker rooms; tapping personal calls)

4. Prior Notification of Policy - If definition of monitoring can be narrowed, NJRMA would not oppose requirement (Section 2(a)) that employees be notified of types of monitoring to be used and circumstances under which monitoring may occur.

5. Continuous Monitoring Prohibited

- We oppose the 30-days-a-year restriction on monitoring
- Deprives employers of legitimate, objective tools
- Because of bill's scope, this prohibition fails to distinguish between accepted, legitimate monitoring and more offensive techniques. Would use of time cards and electronic registers be restricted to 30 days annually?

6. "Sampling" Prohibited

- Bill allows "performance evaluation" monitoring only if based on an entire week's work volume or (for telephone service evaluations) 30 consecutive calls
- What evidence exists that performing evaluations on this basis is more reliable and fair than using sampling?

7. Advance Notice Requirement

- Alerting employees to periods when monitoring will occur defeats purpose of monitoring. Unless monitoring is continuous (or employees believe so), it serves little purpose
- Literally, bill would requires us to alert salespersons to periods when audits will occur
- Internal security would be frustrated if potential thieves were told when surveillance will occur
- Accurate barometer of employee productivity and customer service would be lost if random checks are prohibited

8. Data "Not Relevant"

- Bill prohibits "obtaining" electronically-generated data "not relevant to the employee's work performance"

- Vague: What data is not relevant? Bill should clearly tell employer what data can't be obtained

- Bill should not prohibit "obtaining" relevant data - only using it for disciplinary or job evaluation purposes. (e.g. employer who "obtains" office phone bill that includes personal calls shouldn't be punished for obtaining the bill, but for improperly using the information)

9. "Employee Counseling"

- A new mandatory benefit (counseling, paid release time) is applicable to the wide range of monitoring covered by the bill, and therefore expensive to provide. Few employers in New Jersey currently provide such a benefit.

- Bill does not specify qualifications for "qualified counselor"

- Bill assumes that employee "stress" is caused by electronic monitoring. Legislation should not endorse this assumption - and outlaw monitoring - without careful evaluation of medical evidence of the relationship between monitoring and stress.

- Even if a monitoring/stress relationship could be demonstrated, what is the rationale for requiring coverage for this one type of stress only?

New Jersey Bell
A Bell Atlantic Company

J.P. Spinnanger
Director of Government Relations

154 West State Street
Trenton, New Jersey 08608
609 989-9961

April 9, 1990

Honorable Joseph D. Patero
Chairman, Assembly Labor Committee
6 North Arlington Street
P.O. Box 747
Manville, New Jersey 08835

Dear Mr. Chairman:

Thank you for giving me the opportunity to express the concerns of New Jersey Bell regarding A-210, legislation that would drastically change the way we do quality service observing.

As discussed with you personally, New Jersey Bell observes less than 1% of all customers calls directed to our business offices and repair centers. We have maintained this practice for over 80 years as a quality control and training device.

Additionally, as a company regulated by the Board of Public Utilities we are bound by regulations set by the Board. The rules and procedures under which service observing is conducted have been developed by the BPU and are subject to their review and enforcement.

Secondly, we have entered into contractual agreements with our bargaining units that cover the subject of service quality observing. New Jersey Bell respects these contractual agreements which protect the interests of both parties.

Mr. Chairman, you asked for suggestions in which A-210 could be amended to address our concerns and I offer you this amendment:

> **"COLLECTIVE BARGAINING EXCEPTION":** When an employer has entered into a collective bargaining agreement that included provisions for the monitoring of employees' telephone conversations for the purpose of quality control or mechanical or service quality checks, the provisions of the collective bargaining agreement will replace the requirements of this law (section) (subsection)."

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Thank you for the opportunity to express our concerns on this matter. I have enclosed a copy of my prepared testimony on A-210 which contains additional information. If you wish to discuss the matter further, please call me or Russ Hedden at the above number.

Very truly yours,

Jon P. Spinnangr

JPS/mjh
Enclosure (1)

NEW JERSEY ASSEMBLY LABOR COMMITTEE

A-210

AN ACT TO PREVENT ABUSES OF ELECTRONIC MONITORING IN THE WORKPLACE.

MONDAY, APRIL 2, 1990

Mr. Chairman, members of the Committee:

My name is Jon Spinnanger and I am Director-Government Relations for New Jersey Bell Telephone Company.

I appreciate this opportunity to appear before your distinguished committee to describe New Jersey Bell's use of service observing, to explain the critical importance of this practice in achieving my Company's commitment to provide quality services and to express the serious concerns my Company has with the intent and provisions of Assembly Bill 210.

At New Jersey Bell, a variety of technical and electronic means are used for measuring the overall speed, accuracy and efficiency of the Company's telecommunications network and work forces. These measurements are accomplished through Service Quality Observations and the use of Operator Services productivity data such as Average Work Time.

The sole purpose of supervisory observing, or monitoring, is to assure that our customers receive fast, accurate and courteous service. The highest standard of service -- a characteristic of N. J. Bell since its inception -- is mandated by the Board of Public Utilities, the agency charged with the responsibility of seeing that this is accomplished.

Supervisory observing is a very effective and indispensable tool, one which we have been using for more than 80 years to measure the quality of the product we deliver. I'm sure that you'll agree that without quality control, no business can prosper or survive -- whether the product is television sets, automobiles or, as in our case -- SERVICE.

At New Jersey Bell, supervisory observing is utilized in three organizational entities: Operator Services, Installation and Maintenance and Contact Services. In each of these organizations, employees have direct telephone contact with our customers. As some of you already know, Operator Services handles residence and operator

Assistance and Contact Services handles residence and business customer requests for new service, changes in service and billing queries. Any activity involved with repair and the physical installation or rearrangement of service is performed in the Installation and Maintenance department.

Using monitoring techniques, we are able to measure the tone, speed, accuracy, and completeness of the services provided by these employees. In addition, observing serves to keep us informed as to employee sensitivity and attentiveness to customers' problems.

Customers' concerns and problems arising from changes in practices and/or the introduction of new technology are also identified in this manner.

Employees performing supervisory observations and their supervisors are experienced individuals who have demonstrated reliability. They are carefully trained and continually reviewed as to job knowledge, as well as their understanding of, and sensitivity to, the importance of privacy of communications.

To provide the proper perspective regarding the frequency of monitoring, you should know that on 3/4 of one percent of all calls handled in our Service Centers and Repair Bureaus are remotely observed. In Operator Services, the number is less. The conversations are predominantly those between company employees and customers, although some observations are made of business conversations between employees in areas which have a particular impact on the efficiency and adequacy of service to the customer. Under no circumstances are conversations taped nor are conversations <u>between</u> customers or personal conversations between employees the object of monitoring. Employees are free to make private calls using telephone facilities furnished in lounge areas.

Individualized feed-back sessions are scheduled as soon after the observation as practicable. These sessions are key to maintaining a high level of customer satisfaction. They are equally important to our employees since they are afforded the opportunity to become more professional and proficient through the training, retraining, constructive criticism and/or positive reinforcement.

Evidence of New Jersey Bell's success in developing its employees, through the observing process, can be found in recent survey results that reveal that 94% of the recent customers of Directory Assistance assess the level of service to be completely satisfactory. This measurement is based on information gathered through telephone interviews by an outside research firm.

Supervisory observing serves as a basis for training and development and certainly was never designed for disciplinary action. However, as can be expected in any business situation, there are a small number of employees who do not respond to training and development efforts. Over a period of time, if such individuals are found to lack ability or are unable to achieve the skills required of the job, the individual situation is assessed and appropriate action taken. No employee is disciplined as a direct result of supervisory observance without just cause. Instances of gross discourtesy to, or abuse of, customers; attempts to defraud the Company through misuse of service of equipment; or other serious infractions of Company policies, practices or rules are examples of just cause.

Further, New Jersey Bell does provide notification to all employees, subject to monitoring, through the use of advisory stickers affixed to all telephones subject to observing. Additionally, all of our telephone directories provide notification, in the white page listings, to the public of the potential use of service monitoring equipment. I have brought with me a copy of one of the directories so that you can see the symbol used and the caveats provided.

Supervisor observing and monitoring has been one which has gotten close legislative, regulatory and judicial scrutiny over the last 15 or more years. Consistently, however, New Jersey telephone utilities have "stood that test" and have, after many hearings, been found to be properly maintaining privacy of communications while maintaining proper quality control.

The 1977 New Jersey Board of Public Utilities Decision and Order (Docket 752-110) which permits and regulates our current telephone auditing activities - as well as the employee monitoring activities of other businesses and public agencies in our State - was issued only after 2 1/2 years of intensive investigation into telephone monitoring practices. In 1983, the BPU conducted another thorough review of service monitoring procedures and came to the following conslusion:

> "...we believe that service observing should be allowed within the guidelines established in our July, 1977 Order. We are of the opinion that service monitoring will be beneficial to both consumers and to businesses in the State. We also feel that the present Board requirements, which will remain in full force and effect adequately protect employee rights of privacy."

It's important to also mention that the Federal Legislature, after a full review, included a section in the Omnibus Crime Control and Safe Streets Act of 1968 (I8 U.S.C. S 25II (2) (A)) that specifically authorizes observing for quality or auditing purposes. It should also be noted that the New Jersey Wiretapping and Electronic Surveillance Control Act (N.J.S. 2A:I56 A-4 (a)) contains language that parallels the Federal Act.

Service Quality Observing has also been the subject of bargaining with the Communications Workers of America Union (CWA) which represents many of those employees who are subject to monitoring. Agreements which cover both service observing and existing productivity measurements are subject to review by an impartial third party through the grievance and arbitration procedure, providing employees with additional protection.

If enacted, this legislation would require major changes in the way in which New Jersey Bell has historically given the public the assurance of courteous service and accurate information, with few, if any consequential benefits to the workers themselves.

The use of a signal light, beep tone, or other signaling device would eliminate the Company's ability to assess the quality of service and accuracy, on an unbiased basis. Clearly, an employee would be aware of being monitored whenever the signal was present which could either cause the employee to be extra careful or to become confused and distracted. Neither of these reactions would help produce a natural conversation with the customer.

Limiting monitoring for continuation of employment to the first 42 days defeats the entire purpose of the monitoring program, which is to insure that the public consistently receives the quality of service that is deserves. Additionally, the requirement of no fewer than 30 consecutive telephone calls is both impractical and is probably not in the interest of the employee, if for example, the employee is having a "bad day." More frequent but shorter monitoring sessions certainly provide a better basis for employee evaluation.

The provision that would permit employees to lodge complaints with the Labor Commission would serve to interfere with personnel administration procedures written by the Company and would erode New Jersey Bell's ability to maintain good and efficient operations. Additionally, employees' legitimate interests are protected by the Labor Agreement provisions regarding the grievance procedure.

It goes without saying that no one is more concerned than New Jersey Bell with insuring the integrity and privacy of communications. Insuring the privacy which users of the service are entitled to expect has always been, and will continue to be, a foremost concern of the Company. We are convinced that our monitoring practices do not promote or cause any violation of privacy. Furthermore, if one were to compare the use of telephone service for personal conversations, with its use to conduct telephone business with us, I think it would be reasonable to surmise that a customer's expectation for privacy is significantly reduced, or non-existent, when negotiating with a telephone company service representative for the installation of new service, when requesting directory assistance, or when reporting trouble on the line.

While we recognize that human intervention in any transaction can produce abuses, nothing in this area has been brought to our attention, to the best of my knowledge, that would warrant the broad restrictions stipulated in A-210. Indeed, there is no evidence before the Legislature indication that the Company has abused its monitoring responsibilities as enunciated by the BPU. The State and Federal laws and regulations to which I previously referred have been enacted specifically to discourage invasions of privacy. In addition, all New Jersey Bell employees are required to annually review Our Code of Business Conduct, which contains a section entitled "Privacy of Communications." I will leave a copy of this book with you, Mr. Chairman.

In conclusion, it would be an understatement to say that this bill is not in the public interest. I hope that this testimony has made evident the potential problems that passage would bring to the local telephone industry in New Jersey, its employees and the citizenry.

Supervisory observing is vital to our business and, without question, should continue to be utilized, as it has in the past, if New Jersey Bell is to maintain its recognized high standard of individual performance while providing a high standard of customer service. The end product of these employees is telephone service, a product that can be reliably evaluated and improved only through supervisory observing. To effectively supervise, train, and develop individual employees and thus continue to maintain excellent service, we must retain the ability to monitor calls without the restrictions proposed by A-210.

Thank you for the opportunity to express New Jersey Bell's views on this bill.

I would be happy to respond to any questions this Committee may have.

NEW JERSEY SAVINGS LEAGUE

411 North Avenue East • Cranford, NJ 07016-2444 • (201) 272-8500
Telecopier (201) 272-6626

April 4, 1990

Mr. Gregory Williams
Office of Legislative Services
Statehouse Annex
CN-068
Trenton, N.J. 08625-0068

RE: A-210 (Schwartz)

Dear Mr. Williams:

The New Jersey Savings League appreciates the opportunity to comment on A-210. The League is the trade association for the $52 billion savings industry in the State of New Jersey. As a result of the composition of our membership, we have some concerns regarding the introduction of Assembly bill 210 which would significantly restrict a financial institution's ability to utilize electronic monitoring devices on its premises. A financial institution has an affirmative duty to protect the assets of the depositors and the financial institution through whatever monitoring is necessary. Failure to do so could be deemed a safety and soundness violation by the federal regulatory agencies.

Financial institutions are governed by the Bank Protection Act of 1968, 12 U.S.C.A. 1881 et seq., which requires financial institutions to comply with federal regulatory requirements which establish minimum standards with respect to the installation, maintenance, and operation, of security devices and procedures. Violation of these requirements will subject an institution to the imposition of civil penalties. Pursuant to 12 C.F.R. 568 et seq., savings institutions must maintain certain minimum standard as set forth by the Office of Thrift Supervision. The regulations specify that an association shall develop a security program which equals or exceeds the standards prescribed in the regulation.

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Appendix A of the regulation sets forth the general requirements for a surveillance system which "...should be located so as to reproduce identifiable images of persons either leaving the office or in a position to transact business at each such station or window". Since the teller is so vital a part of a transaction, many institutions, as a result of the federal security requirements, are compelled to place monitoring cameras within the teller area as it is a probable crime site to which robbers frequently gain access. Tellers are made aware of the existence of the cameras which are continuously operating during the association's business hours. The monitoring may secondarily be used in pursuing criminal activity on the part of savings institution employees to assist in investigating shortages of cash. In fact, many insurance companies often require institutions to utilize such monitoring equipment to help avoid insurance claims and losses.

Since the teller area is a probable crime site due to the availability of cash, an institution would be left open to challenge by the federal regulators if they were to remove or limit the use of monitoring devices required for security reasons. OTS regulation 12 CFR 568.3(a) requires the security officer to secure installation of certain security devices including "such other devices as the security officer, after seeking the advice of law enforcement officers, shall determine to be appropriate for discouraging robberies, burglaries, and larcenies and for assisting in the identification and apprehension of persons who commit such acts." Clearly, the placement of monitoring devices in the teller area is reasonable since the purpose is to protect the financial institution and its customers and to comply with federal regulation. Since the purpose of these cameras is **not** to monitor productivity, we believe that A-210 is overly broad in its scope.

Specifically, we object to the bill's requirements for the following reasons:

-The legislation appears to be overly broad in its scope and does not consider the potential financial losses which could result if a financial institution were to be limited to a 30-day per-year monitoring period and a new employee monitoring period of 42 days. It is vital that a financial institution not be hampered in its attempts to protect its customers, employees, assets and deposits.

-Section 8 of the bill seeks to require "referral and paid release time for necessary treatment for stress-related problems". Workers compensation provides coverage for work-related illnesses and therefore we do not understand the reason for inclusion of such a provision. In addition, financial institutions cannot afford an additional financial burden in light of the fact that they have already been hit with higher examination fees and other costs of doing business.

We respectfully request reconsideration of the need for such legislation and in particular, for legislation which will jeopardize the safety of financial institutions and their customers. If the sponsor chooses to go forward with this legislative initiative, we suggest that it is appropriate for financial institutions to be deleted from the restrictions.

We thank you for your consideration of our recommendations and would welcome the opportunity to further discuss our concerns.

Sincerely,

James R. Silkensen
Executive Vice President

MVF/

TESTIMONY OF GUSTAV SCHLAIER
BEFORE
ASSEMBLY LABOR COMMITTEE
REGARDING A-210

Mr. Chairman, members of the Committee, good morning. My name is Gus Schlaier and I am testifying on behalf of the New Jersey Council of Savings Institutions. The Council is a trade organization representing state and federally chartered savings banks in New Jersey.

As a matter of public trust, our savings banks must protect the safety and soundness of their institutions and their employees. Failure to do so could be deemed a safety and soundness violation by federal regulators. This duty to the public and its customers inevitably entails the monitoring of savings bank employees. Because of its special position of trust, the Council's members have some concerns that A-210, if enacted in its present form, could, overall, severely hamper the security practices of savings banks in New Jersey.

The Federal Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) requires the federal supervisory agencies to establish minimum standards with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such crimes. Pursuant to this Act, each federal agency has promulgated regulations on minimum security devices and procedures, which, for all intents and purposes, are identical. Financial institutions violating a rule promulgated pursuant to the Act are subject to civil penalties.

The regulations of our savings bank members' primary federal regulator, the FDIC, are found at 12 C.F.R. Part 326. The FDIC security regulations

require each savings bank to designate a security officer to develop appropriate security measures and security devices, including surveillance systems. (12 C.F.R. Part 326, Appendix A.) Based on these security regulations, some of our members have provided for the use of surveillance cameras in the teller areas, and most require an identifying employee number on all transactions processed by an employee. Employees are aware of these security measures and it is recognized that they are necessary for the employees' safety. The placement of monitoring devices in the teller area reasonably permits our banks to comply with the FDIC's security regulations, that is, to discourage crimes and identify criminals. The purpose of the devices is <u>not</u> to monitor employee productivity.

Although we do not believe that it is the intent of this legislation to deter the use of electronic monotoring for legitimate security purposes, it is unclear whether the bill's language would apply to electronic monitoring for security purposes. If savings banks were covered under the bill's provisions, savings banks would be limited to a 30-day per-year monitoring period and a new employee monitoring period of 42 days. This would potentially conflict with our members' FDIC security obligations.

Since security devices and surveillance equipment are used customarily in the savings bank business, it would appear that justification exists to exclude our members from this bill's provisions. Thus we would recommend respectfully that state and federally chartered savings banks be deleted from the scope of this legislation.

100x

NEW JERSEY COUNCIL OF SAVINGS INSTITUTIONS
10 ROONEY CIRCLE, WEST ORANGE, NEW JERSEY 07052 • (201) 325-3600 • TELECOPIER (201) 325-1682

April 6, 1990

The Honorable Joseph D.Patero, Chairman
Assembly Labor Committee
6 North Arlington Street
P.O. Box 747
Manville, N.J. 08835

Dear Assemblyman Patero,

I am writing to you on behalf of the New Jersey Council of Savings Institutions regarding A-210(90) dealing with electronic monitoring in the workplace. The Council is a trade organization representing state and federally chartered savings banks in New Jersey. The Council feels strongly that A-210's provisions would impact negatively on a savings bank's security measures and may well conflict with or undermine minimum security regulations promulgated by the FDIC pursuant to the Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.).

The Bank Protection Act of 1968 requires the federal supervisory agencies--the FDIC, the Federal Reserve, the Office of Thrift Supervision, and the Comptroller of the Currency--to establish minimum standards with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such crimes. Pursuant to this Act, each of the above federal agencies has promulgated regulations on minimum security devices and procedures, which, for all intents and purposes, are identical.

The regulations of our savings bank members' primary federal regulator, the FDIC, are found at 12 C.F.R. Part 326. Among other requirements, these FDIC security regulations require savings banks to designate a security officer to develop appropriate security measures and security devices, including surveillance systems. The FDIC regulations require that all security programs be reduced to writing and approved by a savings bank's board of directors. Based on these regulations, some of our members have provided for the use of cameras throughout their facilities and grounds, and most require an identifying employee number on all transactions processed by an employee.

Because savings banks must protect the safety and soundness of their institutions and employees, the Council is concerned that A-210, if enacted in its present form, could, overall, severely hamper the security practices of savings banks in New Jersey. In addition, it seems the bill would conflict with our members' FDIC security obligations.

CHAIRMAN

PRESIDENT
Samuel J. Damiano
New Jersey Council of Savings Institutions
West Orange, New Jersey

Since security devices and surveillance equipment are used customarily in the savings bank business, it would appear that justification exists to exclude our members from this bill's provisions. Should it be so decided, the Council would be available to submit language toward that end.

On behalf of the New Jersey Council of Savings Institutions, I appreciate the opportunity to share our thoughts on issues of mutual concern. Please feel free to contact the Council if we can further assist you.

Respectfully yours,

Gustav J. Schlaier

Gustav J. Schlaier
Director, Legal Department

cc: Hon. David C. Schwartz
Hon. Gerard S. Naples
Gregory L. Williams

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NEW JERSEY COUNCIL OF SAVINGS INSTITUTIONS
80 MAIN STREET, WEST ORANGE, NEW JERSEY 07052 • (201) 325-3600 • TELECOPIER (201) 325-1682

November 22, 1988

The Honorable David Schwartz
Assemblyman
P. O. Box 150
New Brunswick, New Jersey 08903

Re: A 3656 ('88)

Dear Assemblyman Schwartz:

I am writing to you on behalf of the New Jersey Council of Savings Institutions regarding Assembly Bill No. 3656 dealing with electronic monitoring in the workplace. The Operations and Human Resources Committees of the Council have reviewed the bill and feel strongly that its provisions would negatively impact on a bank's security measures.

Although we do not disagree that employees should receive some degree of protection in revealing personal data about an individual without the employee's consent, as a matter of public trust all financial institutions must protect the safety and soundness of the institution. This duty to the public and its customers inevitably entails the monitoring of bank employees.

Security precautions warrant the use of cameras throughout a bank's facilities and grounds. The expense of equipping these cameras with audible and/or visual signals would be significant. As financial institutions do not use these devices primarily to monitor employee productivity but for security reasons, these costs would not be justified.

In addition, it is necessary for all financial institutions to provide an audit trail. Thus most financial institutions videotape all transactions and require an identifying number relating to the employee that processed the transaction. The bill's provisions would hinder an institution's ability to audit an employee for security and fraud purposes.

For the above reasons, our committees believe this bill would have the unintended effect of frustrating a bank's security efforts with a concomitant increase in the incidence of fraud against banks, and thus oppose it.

CHAIRMAN
FIRST VICE CHAIRMAN
Wendell T. Breithaupt
103X
SECOND VICE CHAIRMAN-TREASURER
Anthony D. Calabrese
PRESIDENT
Samuel J. Camiano

I thank you in advance for this opportunity to express our concerns. Please feel free to contact me if you have any questions or wish to discuss our concerns further.

Respectfully yours,

Gustav J. Schlaier

Gustav J. Schlaier
Director of Legal Department

GJS:eu

cc: The Honorable Robert Littell
The Honorable Peter Genova
Ms. Kyra Lindemann, Department of Banking
Mr. Alfred Griffith, New Jersey Bankers Association

SECURITIES INDUSTRY ASSOCIATION
120 Broadway, New York, N.Y. 10271 • (212) 608-1500 • Facsimile: (212) 608-1604

April 12, 1990

Re: Assembly Bill 210

The Securities Industry Association 1/ believes that Assembly Bill 210 ("the bill") as currently drafted raises a number of questions that may not have been anticipated by the sponsors, but which must be carefully considered before taking further action on the bill. As drafted, the bill would have a very broad application and might require broker-dealers to undertake a number of burdensome steps in order to avoid criminal liability for inadvertent violations of the bill.

Some of SIA's member firms regularly record telephone calls of institutional salesmen. Such salesmen limit their customer contact to "institutional" purchasers or sellers of securities such as banks, pension funds, and other brokerage firms. Almost all of their trading consists of "block" trades i.e., purchases or sales of 10,000 shares or more of a stock, or equally large trades of government or corporate debt. The sums involved in each such trade can range from hundreds of thousands to several million dollars. Any mistake in a buy or sell order of such size may prove very costly, and in an attempt to ensure that orders are accurate, a number of firms record the phone calls of such salesmen. This practice is

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1/ The Securities Industry Association is the trade association representing over 600 securities firms headquartered throughout the United States and Canada. Its members include securities organizations of virtually all types--investment banks, brokers, dealers and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter market and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for approximately 90% of the securities business being done in North America.

widely known and accepted. Nonetheless, such conduct would likely be covered by the bill if it were enacted in its present form.

The bill would also have a deleterious impact upon the manner in which many firms train brokers. For example, it is a common practice at training classes for new stockbrokers to place a telephone call to a prospective customer. This is sometimes done over a speakerphone so that the other trainees in the class may monitor the conversation as a means of learning proper technique. It also permits instructors to evaluate the trainee's method and to ensure that he adopts a proper approach in dealing with a customer. Perhaps more importantly, under the relevant state and federal laws governing the securities industry, a comprehensive matrix of state and federal law has been developed for regulating the conduct of securities firms and their employees. Compliance personnel within firms have a duty to supervise brokers to ensure that they understand the various products that they sell, and that these investments are suitable for the broker's customers. Such practices -- essential for a business which is in large measure conducted over the telephone -- might be viewed as "electronic monitoring" and come within the scope of the bill.

However, in reading the Statement which accompanies the bill we sense that its intent is to reach the monitoring of phone calls by employees of telephone companies. If this is the case, we suggest that the bill be amended so as to exempt the employees of industries already heavily regulated, such as securities firms registered with the state Bureau of Securities and/or the federal Securities and Exchange Commission.

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