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PUBLIC HEARING

before

ASSEMBLY LABOR COMMITTEE

ASSEMBLY BILL NO. 210

(Prohibits abuses of workplace
electronic monitoring)

April 30, 1990
State House Annex
Room 368
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph D. Patero, Chairman
Assemblyman Louis J. Gill, Vice Chairman
Assemblyman Robert E. Littell
Assemblyman Robert J. Martin

ALSO PRESENT:

Assemblyman Gerard S. Naples
District 15

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

New Jersey State Library

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State House Annex
CN 068
Trenton, New Jersey 08625

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SEPH D. PATERO
CHAIRMAN
UIS J. GILL
VICE-CHAIRMAN
OMAS P. FOY
BERT E. LITTELL
BERT J. MARTIN

New Jersey State Legislature

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

COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY LABOR COMMITTEE
FROM: ASSEMBLYMAN JOSEPH D. PATERO, CHAIRMAN
SUBJECT: COMMITTEE MEETING - April 30, 1990

The public may address comments and questions to Gregory L. Williams, Committee Aide, or make bill status and scheduling inquiries to Kathleen Lieblang, secretary, at (609) 984-0445.

The Assembly Labor Committee will meet on Monday, April 30, 1990 at 10:00 a.m. in Room 368, State House Annex, Trenton, New Jersey to consider the following bills:

A-729 J.Smith	Provides for interstate recovery of certain unemployment benefits.
A-954 Otlowski	Provides workers' compensation coverage for certain volunteers.
A-2800 Littell/Felice	Establishes commission to study impact of health care costs upon health care benefits provided through employment.

Immediately following the committee meeting, there will be a continuation of the Public Hearing from April 23, 1990 on:

A-210 Schwartz/Naples	Prohibits abuses of workplace electronic monitoring.
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Issued 4/25/90

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

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

3

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

6 1. As used in this act:

7 "Commissioner" means the Commissioner of Labor.

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

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

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

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

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

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

- 40 (1) What forms of electronic monitoring will be used;
41 (2) What personal data will be collected;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 performed by the employee for a period of not less than one week.
- 2 d. If an employer uses personal data obtained through a
3 telephone service observation to evaluate any aspect of an
4 employee's performance other than the volume or rate of the
5 employee's work, the evaluation shall be based on the
6 observation of not less than 30 consecutive telephone calls
7 handled by the employee and the observation shall be conducted
8 in one continuous session.
- 9 7. a. An employer shall not disclose personal data obtained by
10 electronic monitoring regarding an employee to any person or
11 business entity without the prior written consent of the
12 employee, unless the disclosure is made:
- 13 (1) To those officers and employees of the employer who have
14 a legitimate need for the information in the performance of their
15 duties;
- 16 (2) To a law enforcement agency in connection with a criminal
17 investigation or prosecution; or
- 18 (3) Pursuant to the order of a court of competent jurisdiction.
- 19 b. An employer shall not disclose any personal data obtained
20 by electronic monitoring to any person or business entity if the
21 personal data are collected or maintained in violation of the
22 provisions of section 5 of this act.
- 23 8. No waiver of the provisions of this act by an employee or
24 prospective employee shall be a defense to either criminal
25 prosecution or civil liability.
- 26 9. This act shall not apply to electronic monitoring
27 administered by law enforcement agencies conducting criminal
28 investigations.
- 29 10. Each employer who uses electronic monitoring to obtain
30 personal data about his employees shall establish an employee
31 assistance program to make available for each affected employee
32 evaluation and counseling regarding stress-related problems by a
33 qualified counselor and to provide referral and paid release time
34 for any treatment which the counselor determines is necessary to
35 assist the employee to successfully cope with the problems.
- 36 11. An employer who violates a provision of this act shall be
37 guilty of a crime of the fourth degree.
- 38 12. An employee aggrieved by a violation of a provision of this
39 act may, not more than three years following the violation,
40 institute and prosecute in his own name and on his own behalf, or
41 for himself and for others similarly situated, a civil action for
42 injunctive relief and damages. If the employee prevails in the
43 action, he shall be entitled to an award of damages which result
44 from the violation, including any lost wages, benefits and other
45 remuneration, or for the amount of \$1,000.00, whichever is
46 greater, plus full costs of the action and reasonable attorneys'
47 fees. If the court finds the violation to be willful and knowing, it
48 may award treble damages. If an employer is found by the court

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

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

15 14. This act shall take effect immediately, except that section
16 10 shall remain inoperative until the 180th day following the
17 effective date of this act.

18
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20 STATEMENT
21

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

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

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

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

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

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

48 6. The employer is prohibited from using electric monitoring

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

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

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

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

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22

LABOR

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Prohibits abuses of workplace electronic monitoring.

TABLE OF CONTENTS

	<u>Page</u>
William R. Healey Director of Governmental Relations New Jersey State Chamber of Commerce	1
Lester Kurtz Vice President Industrial Relations New Jersey Business & Industry Association	7
Paul Landsbergis, Ph.D Empire State College, State University of New York	13
Lois Yates New Jersey Association of Collection Agencies, Inc.	18
Anthony Carrisino Legislative Affairs Coordinator New Jersey State AFL-CIO	22
John J. Brennan President ICT Group Incorporated	24
Richard E. Moeller Senior Legislative Representative Atlantic Electric	28
Rick Engler Assistant to President New Jersey Industrial Union Council AFL-CIO	33
Frank A. Willis Housing and Legislative Affairs New Jersey Savings League	37
Timothy S. Kelsey Legislative Analyst New Jersey Natural Gas Company	39

TABLE OF CONTENTS (continued)

	<u>Page</u>
Eugene B. Kordahl President National Telemarketing, Inc.	39
APPENDIX:	
Statement submitted by William R. Healey	1x
Statement submitted by Paul Landsbergis, Ph.D	3x
Statement plus attachments, submitted by Lois Yates	10x
Statement submitted by Anthony Carrisino for Charles Marciante New Jersey State AFL-CIO	12x
Statement, letter, and other materials submitted by John J. Brennan	13x
Statement submitted by Richard E. Moeller	23x
Statement plus attachments, submitted by Frank A. Willis	26x
Statement submitted by Timothy S. Kelsey	31x
Statement and other materials, submitted by Eugene B. Kordahl	33x
Statement and other materials, submitted by Sharon Danann Research Director 9 to 5, National Association of Working Women	61x

TABLE OF CONTENTS (continued)

	<u>Page</u>
APPENDIX (continued):	
Letter and other materials, submitted by Russell A. Hedden Director of Government Relations New Jersey Bell	116x
Letter submitted by G. Donald Bates State Government Affairs Manager Jersey Central Power & Light Company	120x
Letter submitted by Jon Rogeberg Director of Security Carter-Wallace, Inc. Cranbury, New Jersey	121x
Letter and other materials, submitted by Richard C. Strouse Deputy Director for Survey Operations Mathematica Policy Research, Inc. Princeton, New Jersey	123x

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ymb: 1-45

ASSEMBLYMAN JOSEPH D. PATERO (Chairman): The first person I will call-- I'm trying to figure out who was here the last time? Okay. The first speaker we will have is William Healey from the New Jersey State Chamber. I'm sorry we ran out of time the last time.

W I L L I A M R. H E A L E Y: Oh, that's quite all right. These things will happen. Mr. Chairman, thank you very much. Because I know we have so many speakers this morning, I will paraphrase my statement rather than reading it verbatim.

ASSEMBLYMAN PATERO: What we'll do is if you give the testimony, we'll make sure that that's part of the record.

MR. HEALEY: Thank you for that opportunity. Again, my name is William Healey. I am the State Chamber's Director of Governmental Relations. Over the past number of decades, our economy has made what we think is an inexorable shift from manufacturing and agriculture, certainly to an economy based on services. Our State has become a leader in this mode.

Many of our more traditional businesses, having a need to compete and provide, have also refined their operations to include more direct telephone contact with customers. It's these service and product type businesses along with the State's public utilities who are here this morning for this second meeting on A-210 to express our opposition to the bill. We feel that the bill would effectively eliminate electronic monitoring as a supervisory or quality control tool.

We're also concerned with the signal this type of legislation sends to our members in the business community. The State Chamber represents over 4000 businesses in the State, and combined with our 94 local and regional Chambers of Commerce, we speak for about 45,000 business enterprises here in the State of New Jersey.

This legislation, we feel, in seeking to be fair to the rank and file employee, really effectively discriminates against management. Even more detrimental, is the legislation

ultimately means, we feel, a poorer quality of service to the consumer. It's that facet of the bill that we feel should concern everyone.

The monitoring that does take place is to determine employee effectiveness and customer attitudes. There's no invasion of privacy. If an employee feels he has a need to conduct personal business, it could rightly be characterized as stealing if it's not cleared with a supervisor, and really should not be protected as a right.

We feel the bill marks another attempt by the Legislature to bypass the collective bargaining process. I know that's a point that many of the other speakers last Monday made, as well. I think the policy that is espoused in A-210 loses sight of a very necessary credo of service that needs to be instilled in a service based economy such as the one New Jersey has become and is making a continuing shift to.

We said before this: Electronic monitoring, we feel, is an important supervisory tool. A-210 takes away that protection to the consumer for a potentially abusive employee. We really dispute the allegation the bill is designed to protect employees' rights. Again, our primary concern should be to that of the consumer.

I'm sure many representatives of the business community and other concerned entities are here this morning. These are people who are in the front line of providing service to the consumers and to customers here in New Jersey. I mentioned a little bit about our membership a few moments ago. We have nearly every type of business here in the State of New Jersey as a member.

Rather than go into a point by point impact on each business, I'm going to leave it to the other experts here this morning from individual types of business who can state very clearly and cogently what kind of an impact this legislation will have on them.

Just for a moment to talk about the past decade-- A number of heavy phone intensive businesses have emerged here in New Jersey. Many of them have relocated themselves from New York and other parts of the country. Though it's not practical for one of our public utilities to pack up and move away, many other business operations are not bound by those kinds of constraints. Many back office operations -- phone intensive operations -- can very easily pick up.

I know we are not discussing it this morning, but combined with the potential impact of an extension of the sales tax to telecommunication services, the imposition of legislation like A-210 could send an irreversible message that would send many of those telemarketing, back office business operations packing and out of the State of New Jersey.

Those are just a brief synopsis of the State Chamber's comments. I appreciate the opportunity to speak, and we will pass ample copies of the statement around for inclusion in the record.

ASSEMBLYMAN PATERO: Okay, Bill. Thank you for being brief, and thank you for your testimony.

MR. HEALEY: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: For the record, let it be shown that the members present are Vice Chairman Louis Gill, and Assemblyman Bob Littell. Filling in for Assemblyman Tom Foy is Assemblyman Gerry Naples. Assemblyman Littell.

ASSEMBLYMAN LITTELL: I would just like to ask the Chamber representative a question. Bill, you talked about the fact that we have a lot of businesses that rely on heavy telephone usage and that the inability to monitor would affect them. We kind of got an indication the other day when we heard this bill, that there were a lot of other people who thought this included them that would like to be cut out, and almost inferred that it ought to be just telephonic if there's going

to be any bill passed. What you're saying is that it shouldn't even be on the telephone communication -- that monitoring would hurt that industry as well?

MR. HEALEY: Absolutely. The two specific points that I wanted to make are: 1) the emergence in number of these back office operations -- telemarketing operations; utilities like businesses that have to provide a service to the consumer. I'm sure if legislators receive word back from their constituents that they, as consumers weren't being served, or companies weren't providing service, the legislators would want to do something about it. This is one of the primary tools.

I am not an expert on how this affects every business point by point. There are other of our members out here this morning who can explain it far better than I can. This is a tool that you'd be taking away from supervisory personnel. We feel, ultimately, it would be detrimental to the service the consumer receives when he or she calls on the other end seeking service, be it from an appliance company, a public utility, what have you. If that opportunity for responsiveness is not there, that's what we're concerned about.

ASSEMBLYMAN LITTELL: And let me ask you this: Do you have any companies that you are familiar with that have any sort of collective bargaining agreement dealing with monitoring, or are you not privy to that?

MR. HEALEY: I'm not sure of the specifics, but I'm sure this is a subject that is brought up in such agreements. I'd rather leave that to the experience of somebody who has had experience in negotiating those types of agreements to comment on that. But again, it's a mandate; or in this case, a taking away of something that management uses as a tool to provide management over the sector of employees they've got responsibility for and ultimately provide service to the consumer. That's what we feel would be--

ASSEMBLYMAN LITTELL: Have you got some people here today who can tell us? We need to know -- hands-on experience -- if this is being used to punish people, to penalize them for not doing a perfect job everyday, or is it just being used to try and train and educate their employees to do what it they would like them to do?

ASSEMBLYMAN PATERO: Mr. Healey-- We have people from several groups here. Telemarketing is here. Banks are here. Maybe you could ask them about that question.

MR. HEALEY: Yes. These companies are members. They can address those specific issues. We're making kind of a general statement, so we're really appreciative for the opportunity to lead off this morning and perhaps set a tone for the business community's presentation on this bill.

ASSEMBLYMAN LITTELL: All right.

ASSEMBLYMAN PATERO: Assemblyman Naples has some questions.

ASSEMBLYMAN NAPLES: Real real quick. I just want to say we disagree on this, obviously. As much as I may co-prime, it is my wish to protect employee and civil rights, the same as I would not want to see management rights abridged. It's my feeling that management and labor could exist independently and work in tandem. I made a little note -- two notes; three notes: If it's used as a shield to prevent the abridgement of management prerogative, that's one thing, but if it is used as a sword against an employee, it is proverbial horse of a different color, and that's my concern.

There could be abuses. There could be a bridging of civil and private rights. There are individuals and there are individuals. There are good workers, and there are bad workers. I shouldn't say bad. There are better workers, and there are some not so good. There are better employers and some not so good. It all comes down to people here. Let me just having prefaced that, ask you this question. Based on

an answer you gave to Assemblyman Littell, you said you would not want to see this used as something punitive. In the event it is proven that something is punitive -- by that I mean guys goofing off all day, and any flag he would get he certainly deserves it -- but if it's used as something punitive, something impure, and it is an out-and-out abuse on the part of management, do you favor a stern deterrent or penalty? Would you favor an opportunity for the employee to have -- let's put it this way -- a very strong rejoinder?

MR. HEALEY: Rather than making a blanket statement, "Would I want to see such a mandate put in legislation?" I think the situation you are addressing is addressed in a number of different collective bargaining agreements -- company by company -- and I think each company knows through consultation with his employees and supervisors, what's best for that company. I think maybe where we disagree is the imposition of legislative mandates; the one size fits all type of approach. Nobody wants to see an employee put in a -- or supervisor use this kind of tool in a merely punitive manner. I don't think that's the way most management of most companies uses this.

ASSEMBLYMAN NAPLES: It shouldn't be.

MR. HEALEY: It's a quality control tool. In discussion with a number of our State Chamber members -- those who use telemarketing -- if an employee has to go to make a personal type of phone call, check in with their supervisor and they get a little break time. They are not making a personal type call when a customer calls and says they have a problem with their gas service or what have you. There's no personal information exchange, nor should there be on that phone call. So this legislation is a right of privacy. We don't really see where that--

ASSEMBLYMAN NAPLES: Let me just conclude very quickly. I spoke at length on this and there is no sense in

being redundant. I'm sure David will have a lot to say on this as well. I'll just conclude by saying, I'm in education. I do a lot of observing and supervising, myself. The theory of supervision in education is to help the quality of instruction.

There's a difference between supervision and -- to use a colloquialism -- "snoopervision." That was mine and David's concern, is all I'm saying. Thank you, Mr. Chairman.

MR. HEALEY: We probably have to share some of our concerns and differences on the approach that should be taken.

ASSEMBLYMAN PATERO: Okay. Thank you.

MR. HEALEY: Mr. Chairman, thank you again.

ASSEMBLYMAN PATERO: Let it be known Assemblyman Martin is here. The next person to speak is Lester Kurtz from New Jersey Business and Industry Association.

ASSEMBLYMAN NAPLES: Very quickly. I'd like to, if I may, Mr. Chairman-- I've got to leave. I've got to meet the new Commissioner. The Governor has asked me to come to his office. I have enough problems without getting him mad.

ASSEMBLYMAN PATERO: Thank you, Assemblyman, for filling in today.

L E S T E R K U R T Z: Mr. Chairman, I didn't get a chance to complete my testimony at the last hearing, and what I would like to do is somewhat supplement some of the remarks that I started to make at the last hearing. I want to limit it to the area of collective bargaining.

Electronic monitoring or telephone monitoring, has been a subject for collective bargaining for the past 15 years within the phone company -- AT&T and Bell Telephone. Every now and then it comes up as an issue of collective bargaining, but it doesn't go any further because the management has taken the position in respect, and they have negotiated how they will be handling telephone monitoring of their employees.

Employees who disabuse a company policy are subject to a grievance procedure. There is a whole host of protections that this bill provides employees under a collective bargaining hearing. No way is an employer permitted to abuse that procedure. Not only is there an internal process in which management handles employees who are abusing company rights, but there is an outside review through a impartial arbitrator that reviews whether an employer is acting improperly in taking corrective action against employees who abuse the use of the company's telephone.

So from that instance, those employers who appeared at our last hearing and indicated that they are dissatisfied with their company's position, I might point out that they are fully protected under company abuses, for telephone monitoring. I might point out as a general practice their labor contract prohibits the employer from taking disciplinary action against an employee for one instance.

If an employee does something wrong, he is cautioned. He is brought into a meeting with his supervisor and his union representative in an attempt to correct his ability or his performance. Only where the employee continually violates the company's guidelines, is he disciplined. To my knowledge, where management has unjustly disciplined an employee, he has been corrected through the arbitration proceedings.

So, in that extent, those employees who have complained about their company monitoring their ability to use a telephone, they have built-in protections within their union contract. Those companies who are not subject to union contracts and who feel that an employer is abusing them through the use of the telephone or through any form of electronic monitoring, they have a number of avenues to seek redress. Some of them have, and the vast majority have not. With those parameters, I urge this Committee -- once again -- not to release this bill, regardless of what form it takes,

because it will set our entire economy back 25 to 50 years. I'd be happy to respond to any questions that the Committee might have.

ASSEMBLYMAN PATERO: Any questions?

ASSEMBLYMAN LITTELL: You talked about the procedure, Lester, that a union employee would grieve such a problem. You said that a nonunion employee has a procedure. You have to run that one by us again because I'm not sure that I'm clear on--

MR. KURTZ: In an organization or a firm that is not unionized and the employer is using electronic monitoring and arbitrarily making some employee decisions with respect to electronic monitoring, the employees have the ability to seek out union protection. They have the ability to go out through a majority, secret ballot election, get a union involved, sit down and negotiate the employer's ability to continue those past practices. So, there are a number of avenues open to the employees.

ASSEMBLYMAN LITTELL: What you're saying is they have the ability to organize if they find they are being abused?

MR. KURTZ: Exactly.

ASSEMBLYMAN LITTELL: Okay. I wasn't sure of that at first.

MR. KURTZ: I would think that if there are a sufficient number of employees who feel that the company is disciplining them unusually, they would run out to a labor union. If they can't sit down and get redress from an employer without going to a labor union, I would assume that would be their first step; to look for redress without a labor union. If they can't get redress, they always have the opportunity to invite a labor union to come and help assist them to organize. This would be a prime subject for collective bargaining. So, there is always that avenue open.

As a general rule, an employer who invests "X" number of dollars to train an employee and gets a certain degree of

productivity from that employee-- The employer is shortsighted and would also be stupid to cast aside that employee on one instance. I believe that an employer only uses the ultimate weapon where he can't -- through consultations with the employee -- point out that what he is doing is inappropriate. Only then would the employer discipline that employee and get rid of him and give up all the investment that he has in training the employee.

ASSEMBLYMAN LITTELL: Do you think this bill ought to be amended to limit it to electronic telephone monitoring, or do you think the whole bill is bad?

MR. KURTZ: The whole bill is bad. There are avenues open now for employee protection. This is an issue that is not being used indiscriminately by employers. Employers use electronic monitoring extremely cautiously. They are not abusing it as you might find in certain instances where there are individuals who are disciplined. But I might point out that they are only-- You might call it discipline, but other employers call it-- They take suggestions for improvement.

Only at that time where the employee declines any suggestions for improvement and continues to abuse the company's policies, at that time will the employer take disciplinary action; corrective action. The first instance of corrective action might be a day or two off to give the employee time to think about what he's doing and his refusal to adhere to company policy. Companies do not arbitrarily discipline or discharge an individual who abuses their privileges.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PATERO: Assemblyman Martin.

ASSEMBLYMAN MARTIN: The area I guess I'm most concerned about is the issue of invasion of privacy which, of

course, is one of the aspects that this bill would be deemed to cure. Perhaps a little overreaching, at least that's the issue in front of us. Are there any court cases that you know of in which any of these areas have been tested as far as State and constitutional--

MR. KURTZ: Yes. There have been a number of court cases regarding employee privacy. In all of the cases that I have seen, the employee's right to privacy is diminished or almost eliminated once he enters private property. Courts have upheld an employer's right to search an employee's locker. They have also upheld the employer's right to search an employee's desk and files. Now, there are two instances of employee privacy which weighed in the balance when it can be demonstrated that the employer's rights perhaps surpass or are more critical than the employee's rights of privacy.

ASSEMBLYMAN MARTIN: Does it make a distinction as to whether the employer is a public employer as opposed to a private one?

MR. KURTZ: I don't believe so. I don't know. In the cases I've seen, they've been in private industry rather than in the public sector.

ASSEMBLYMAN MARTIN: The bill refers to a section -- I guess it's section 10 -- about an employee assistance program if electronic monitoring is used. Are there such programs in existence now, or would they have to be created?

MR. KURTZ: Well, there are a number of companies as part of their health insurance package that do provide employee assistance programs. So, employees that have certain problems and require counseling are free to go there.

ASSEMBLYMAN MARTIN: Including stress related -- I'm just reading from the bill. it say stress related problems?

MR. KURTZ: Yes. That's provided now in a number of health insurance plans. It's a costly employee benefit. The only reason that it isn't widespread is because it's costly.

Employees as a general rule would favor other benefits as opposed to an employee assistance program.

ASSEMBLYMAN MARTIN: Yeah. When you say costly, do you have any numbers at all that would relate?

MR. KURTZ: Well, employee assistance programs vary as to the number of consultations and visits that an employee can go to. There are some that have three. There are some that have six. There are some that have a dozen within a given period of time. So it all depends on the number of counseling opportunities that an employee has, and who is selected to do the counseling. You might have a psychiatrist. You might have a psychologist. You might have a social worker. All of those bear on the cost.

ASSEMBLYMAN MARTIN: Let me ask you one more question. Other than negotiations that you referred to earlier, is there any other way in which the employees would have a means of being able to address these issues on a case-by-case basis or a group basis?

MR. KURTZ: I believe that in any nonorganized setting, an employee who feels that a company is abusing him or taking retribution against him because he is violating the use of the telephone, he always has that opportunity to confront his supervisor and talk to his supervisor and let him know that the punishment does not fit the crime. He always has that door open.

If he doesn't get that satisfaction from his immediate supervisor, he can always go higher up. Many companies keep an open door policy to resolve employee complaints when there is not an organized set-up. This is one feature that keeps the union out, where there is an open door policy. Only when there isn't an open door policy that it creates dissatisfaction within the employee ranks, and they go outside and seek unionization.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN PATERO: Thank you, Mr. Kurtz. The next speaker will be a Mr. John Brennan from the ICT Group. Did he get here yet?

UNIDENTIFIED SPEAKER FROM AUDIENCE: I'm sorry. He hasn't quite arrived. He was right behind me, and I just got in.

ASSEMBLYMAN PATERO: Okay. Well, he was on the list last week, so let me know when he comes in.

UNIDENTIFIED SPEAKER FROM AUDIENCE: All right. Thank you very much.

ASSEMBLYMAN PATERO: Okay. Next, we'll have Mr. Paul Landsbergis from Empire State College.

P A U L L A N D S B E R G I S, PH.D.: Thank you. Mr. Chairman. My name is Paul Landsbergis. I teach occupational safety and health at the State University of New York, and I am a consultant on occupational stress to the Cornell University Medical Center. Last week I submitted some written testimony in support of this bill, so I'd like to just briefly summarize those written remarks.

A lot of people have raised serious concerns about monitoring. A lot of the issues involve privacy, dignity, due process, morals; those types of issues. A number of the testifiers have spoken very eloquently about those, so I'm not going to go into those, but really focus more on the issue of occupational stress and the cost of stress to employees and the economy. So I would just like to make two connections. The connection between monitoring in the workplace and stress; the connection between stress and illness.

ASSEMBLYMAN MARTIN: Just before you-- You gave your qualifications. Are there medical qualifications? Could you just explain a little bit more what your training is so I will know what--

DR. LANDSBERGIS: Okay. I have a master's in psychology, and a doctorate in labor studies from Rutgers. I

have conducted research and published articles on occupational stress, specifically.

The issues of cost, I think, are important here because the impact of cost of stress related illness on our economy, on industry, range from \$50 billion to \$100 billion a year. The impact of worker's compensation claims on stress, due to job conditions-- Those comp claims have increased drastically during the 1980s. They are about 14% of all worker's compensation claims now nationally.

It's clear that monitoring conceivably could be used in a positive way: to give positive constructive feedback to employees. That has been recommended by a number of people. But in fact, the way it's typically used, according to reports by the World Health Organization, congressional reports, and other studies, typically there is an emphasis on speed and quantity of work, not quality.

There is more of a coercive, number counting, supervisory approach, less social interaction among employees -- more of a climate of fear and intimidation that monitoring creates; importantly, very little -- less control that employees have over the pace of work, over the way tasks are done, over when to take a break, how to schedule their work. I mention these aspects of work because these are the type of job factors that have been shown in the research that has built up over the last five or 10 years to increase greatly the risk of stress related illness.

For example, in the testimony that I handed in, there have been some recent studies conducted at Cornell University Medical Center by my colleagues, which show that in a large study of New York City employees that they conducted, published in "The Journal of the American Medical Association" several weeks ago, that people in jobs that combine these high pressure demands with little control, with a low amount of ability to meet these demands, people in those type of jobs face a three

times higher risk of high blood pressure. In that study they also had an increased heart mass, a predictor of future increased risk of heart disease.

Other studies have shown that more socially isolated employees -- employees with a more hostile supervisor, or less social support -- also face an increased risk of heart disease. These are important because heart disease is the number one killer in our country. Nearly half of the deaths in our country are from heart disease. It's a very high cost that employees and our economy pay in medical costs and lost work time.

I just want to sum up, basically, by again pointing to a government report by the U.S. Congress which summarized this literature showing that we don't have all the evidence in. But basically they state that there is reason to believe that electronic monitoring contributes to stress and stress related illness. Thank you.

ASSEMBLYMAN PATERO: Thank you. Assemblyman Martin.

ASSEMBLYMAN MARTIN: I was always under the impression that some stress was good for you. Is that a fair statement? It seems to me when the alarm clock goes off in the morning you have to start getting a little bit of stress. Where do you draw the line between good stress and bad stress?

DR. LANDSBERGIS: The traditional view of stress is that obviously some is good for you. What this recent research has been showing is that even though all of us face demands on the job and these demands help motivate us and get us going, it's those employees who are under those demands and pressures and deadlines, who also have little control on how to meet those demands -- when to schedule their work and when to take breaks and so forth -- that's the group at risk of illness; not the group that has high demands and high control. That group does not have an increased risk of illness.

ASSEMBLYMAN MARTIN: When you talk about these high risk persons, has there been comparisons between these persons and other occupations? For example, I would think the police have a tremendous amount of stress, much more so than a person who-- While they may face whatever stress you've indicated, they're not fearful of the potential of getting hurt on the job or shot on the job, or something like that.

I mean, how much relativity here should we look at when we are talking about stress? Let me put it this way: Are you saying that there would be less stress without electronic monitoring? Are you saying that right now they are at such a high disproportionate amount of stress that we must do something right now because their health is at risk? Where are we going with this?

DR. LANDSBERGIS: What we know so far is that monitoring -- the way it has been used -- increases those negative job conditions that do lead to stress related illness, as best that we can tell. It's those high demands and the low control that seem to be the problem. The study of New York City employees included a lot of different kinds of employees: clerical workers, assembly line workers, stockbrokers, VDT operators; lots of different kinds of groups. It was those factors across all those different groups; the high demands and low control that predicted the high blood pressure.

ASSEMBLYMAN MARTIN: How much study have you made relative to productivity? I'll give you just a simple example because I can only equate this to what I am familiar with. One of my part-time jobs in going to college was to work in a bookstore. We sold used books at a bookstore. When there were no customers in the store we were supposed to dust the shelves and make sure the books were in place.

If the boss wasn't looking, we usually sort of lingered on the end and didn't work as hard as when the boss was occasionally walking down the rows. It seems to me that

this provides some degree of productivity, and that's been an argument here. Where and what kind of measurements can we make, if there are any, regarding the loss of productivity relative to the amount of increased stress or the removal thereof?

DR. LANDSBERGIS: Well, as I understand it, this bill doesn't eliminate monitoring or supervision.

ASSEMBLYMAN MARTIN: It eliminates some form of monitoring.

DR. LANDSBERGIS: Well, I think it provides employees access to the information that has been collected by monitoring. It makes people aware of the program. It makes sure that they are notified. I think it provides for a fair sample of work to be used in evaluation, and these are the kind of safeguards I think would be very valuable to make sure that the supervision is done in a positive and constructive way.

ASSEMBLYMAN MARTIN: Last question. I think I'm missing something. I just came from a briefing with some executives from Blue Cross/Blue Shield. We know that there is a health crisis in New Jersey where employers as well as employees, are facing a real crisis unless we get a handle on increasing health care. Are you suggesting today that apparently employers are somehow not being able to read what is apparent in your studies? That this factor of increased stress is significant enough? That it is a health risk that this monitoring which they're performing-- While it doesn't outweigh it, that somehow they haven't been able to get the signal that in the long run they'd be better off by voluntarily going with your program instead of having the State mandate it?

DR. LANDSBERGIS: Some of this research on stress is relatively new. It has only recently been getting the publicity I think it deserves. The study at Cornell was reported in the major newspapers and on the evening news. I'm

hoping that the labor community and industry becomes more aware of this research and takes this health risk more seriously.

ASSEMBLYMAN MARTIN: Is there any other state at this point that has statutorily mandated the kind of proposal we have here?

DR. LANDSBERGIS: I'm not sure.

ASSEMBLYMAN MARTIN: No other questions.

ASSEMBLYMAN PATERO: Okay. Thank you.

DR. LANDSBERGIS: Thank you very much.

ASSEMBLYMAN PATERO: The next speaker will be Marie Kehras from Federal Express (no response). She's not here. Okay. Next, Lois Yates from New Jersey Association of College Agencies.

L O I S Y A T E S: That's a typo. I'm from a collection agency.

ASSEMBLYMAN PATERO: Oh, okay. For the record, collection agencies rather than college.

MS. YATES: I'm Lois Yates, representing the New Jersey Association of Collection Agencies. I'd like to thank you all for giving me the opportunity to testify. The Association of Collection Agencies opposes A-210, electronic monitoring in the workplace. We do this because we feel that the whole purpose of monitoring collectors' telephone calls would defeat what we actually do.

Monitoring promotes job satisfaction of the employees, increases the employers' profitability by making the employees more productive, and reduces the potential liability for employers. The Federal Fair Debts Collection Practices Act has been in effect since 1978. Since that time it has worked well in achieving the purposes for which it was enacted.

In enacting the FDCPA, Congress recognized that abusive debt collection practices contribute to personal bankruptcies, marital instability, the loss of jobs, and invasions of individual privacy. There is no question that abusive debt collection practices result in consumer injury.

The New Jersey Association of Collection Agencies believes A-210 would hamper collection agencies in their self-regulation efforts and thereby increase the chances that consumers would be harmed by abusive or unfair collection practices. Most collectors' training programs involve listening to actual telephone conversations. This exposure to real, unrehearsed calls enables collectors to hear how the things they learn are put into practice.

By monitoring telephone calls, collection agencies can quickly detect those collectors who "fly off the handle" or use less than ethical procedures in collecting debts. These debt collectors can be given more training, a job transfer, or an opportunity to look for another line of work. If collection agencies do not monitor business calls, they will be unable to take remedial action before matters get out of hand.

Collectors who cannot deal with irate consumers or who let the consumers "get away" with stalling tactics become frustrated with their jobs and experience considerable stress. By monitoring calls, supervisors can help analyze the things they do wrong and give them new ways to handle recurring situations.

Monitoring reduces employers' exposure to tort liability. Employers are responsible for the actions of their employees in the scope of their employment. To reduce exposure, employers exercise reasonable care with all collections to insure they are within the scope of the Fair Debts Collection Practices Act at all times. Because collection agencies regularly deal with sensitive and defensive consumers, it is imperative that employers have access to the best means for training and supervising employees, as well as the collection transaction.

I have members within the Association that monitor and record every single phone call of a debt collection practice that is going on. They do this because the tort liability is

extremely high. Consumers -- although they may owe a debt -- feel that they also have the right to sue. By monitoring these calls and having them recorded and putting them in the file, it's there as a matter of record of what goes on. They absolutely would hate to have any type of impediment of this ability to do this.

ASSEMBLYMAN PATERO: Okay. You say that you use the monitoring to make sure that the people are polite. Based on monitoring, do managers ever tell employees, be more tougher in their collection actions?

MS. YATES: We have telephone collection schools that we send them to and there is a proper procedure. I don't know whether it's tough or easy or what. It's more of an actual procedure that they go through. They try to adhere them to this to make sure they stick with it. Actually, I can't say whether they are being tough.

ASSEMBLYMAN PATERO: Well, if you get a call they say you have to do this or put pressure on the person to make sure they pay. I think sometimes that's being used. I don't think they'll say, "Please, we'd like to have you send your money in." I think they're a little tougher than that.

MS. YATES: Yes.

ASSEMBLYMAN PATERO: Okay. I have no other questions. Assemblyman Martin.

ASSEMBLYMAN MARTIN: Do you have any statistics as far as the turnover rate and as far as employees in your Association?

MS. YATES: I don't, but I can get them for you. I do know it is pretty high.

ASSEMBLYMAN MARTIN: I'd be interested to see whether any of those figures could show persons leaving for what might be construed as job dissatisfaction on the basis of stress or injury or for physical symptoms?

MS. YATES: Interestingly enough we find that most employees leave and start their own collection agencies. Once they are trained, once they know the technique and once they know the know-how, they open up their own agency. But I can get you those statistics if you'd like.

ASSEMBLYMAN MARTIN: When they go to the school, I am sure they are told that if they use improper procedures they can be sued. There is also a Federal law that they have to stay by. If they were to get tough, they'd do so at their own peril? If they use threatening tactics which are not permitted, they are susceptible to consumer actions with treble damages? There's a whole host of remedies.

MS. YATES: That's correct. Also we found that through the technique that by getting tough-- You just don't get enough money by getting tough. The honey catches more flies or something. We don't want the customer to get on the defensive, basically, is what it is. You try not to-- They are already on the defensive, and we try to understand and coax them along.

ASSEMBLYMAN MARTIN: We're trying to find out how many of your employees are stressed out because of the monitoring, not perhaps dealing with clients -- if that's what you call them -- or customers, who may give them a hard time or whether they are tough or soft or whatever tactics they may use.

MS. YATES: Basically, they have found that by recording their conversations, that when they have a complaint, they'll say, "Oh, listen. It's on record here. I was not impolite. This man just does not want to pay his bills." They go back and they have found that it actually is helpful. The employees do appreciate it because they have evidence on their side that they were not abusive. They were within the Fair Debts Collection Practice Act, and it's there as a matter of record. They look at it as a tool for them.

ASSEMBLYMAN MARTIN: Well without this, it would be just their word against the customer.

MS. YATES: Exactly. Exactly.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN PATERO: Okay. Thank you for your testimony. Next, Charles Marciante from the AFL-CIO.

A N T H O N Y C A R R I S I N O: My name is Anthony Carrisino and I have been elected to give the testimony in his place.

ASSEMBLYMAN PATERO: Okay.

MR. CARRISINO: To all members of the Assembly Labor Committee: The New Jersey State AFL-CIO strongly supports Assembly Bill A-210 in its intentions to eliminate electronic abuses in the workplace.

Organized labor is deeply concerned about the impact on health, privacy rights, and worker dignity resulting from increasing employer use of electronic surveillance. Far too many employers use electronic surveillance as a means of harassment of their employees. Such electronic monitoring and other surveillance tactics such as timing bathroom breaks, listening to personal phone calls, and videotaping of employees walking to the lunchroom appear to be actions more closely related to employer control over the workforce than to increase productivity and employer/employee relations.

Again, we respectfully request your support of this bill in its attempt to create a more productive and harmonious workplace for the citizens of New Jersey.

ASSEMBLYMAN PATERO: That's from your President, Charles Marciante?

MR. CARRISINO: Yes.

ASSEMBLYMAN MARTIN: I have one question. As the AFL-CIO is a union which has collective bargaining in each one of its marketplaces, does it not?

MR. CARRISINO: I would assume so.

ASSEMBLYMAN MARTIN: As far as you know, are any of

these areas that this bill has discussed -- I don't know how familiar you are with the specifics of it, but--

ASSEMBLYMAN PATERO: Assemblyman Martin. He's representing Charlie Marciante. I'm not sure if he can answer that question. We do have a Mr. Rick Engler from the IUC, an attorney, who probably could answer that question much better than Charlie (sic) here.

ASSEMBLYMAN MARTIN: Let me just pose the question. If you don't know the answer, that's fine. Are these areas in which you can negotiate as part of your annual or biannual agreements with employers?

MR. CARRISINO: Well, if counsel is here, maybe we should let him answer a question of that nature when he comes up.

ASSEMBLYMAN PATERO: Sure. He works on contracts, so he is probably more aware.

MR. CARRISINO: I would like to respond to a previous question Assemblyman Littell--

ASSEMBLYMAN PATERO: No, Martin.

MR. CARRISINO: --Martin -- I'm sorry -- posed about himself working in the bookstore, if I may sir?

ASSEMBLYMAN PATERO: Yes, go right ahead.

MR. CARRISINO: Okay. As far as being lax when the employer isn't around-- There are certain companies that I'm aware of -- specifically Supermarkets General, Wakefern, etc. -- that are alleviated of these kind of thoughts by operations management creativity. They've developed programs in their warehouse where they use computerized man numbers where it's not necessary for surveillance. They have a certain amount of work to do selecting food and so on, groceries, within a certain amount of time.

Throughout the day they have to be so productive. They have a certain amount of time to do it which the union has agreed upon for their workers. At the end of the day, the

proof was in the pudding. Either they have produced a fair day's work for a fair day's pay, or they haven't. There was no need for the nonsense. Gestapo tactics is what they really are. Monitoring them on trivial things while the work is being done. They are productive, and both sides seem to be living with it very well.

ASSEMBLYMAN MARTIN: I don't know. I think some of the things you just suggested might be eliminated by this bill. The very areas that you just talked about as being creative may, in fact, be areas of this bill which may be prohibiting those creative tactics from being used. So, we have to be concerned about throwing the baby out with the bath water.

MR. CARRISINO: Yeah, I can understand what you're saying. I'd like to see these creative things that they say they aren't able to implement. If such things are brought to our attention and the wisdom here of the labor board, I'm sure you'll make the right decision on anything that's being stunted in growth.

ASSEMBLYMAN PATERO: Okay. Thank you very much.

MR. CARRISINO: Thank you.

ASSEMBLYMAN PATERO: Next we'll have Mr. John Brennan from the ICT Group in Langhorne, Pennsylvania.

J O H N J. B R E N N A N: Thank you, sir. I apologize for being a bit late this morning.

ASSEMBLYMAN PATERO: That's quite all right. We had more testimony to go ahead with.

MR. BRENNAN: Okay. Good morning Chairman Patero, members of the Committee, and others present. My name is John Brennan, President of the ICT Group, a full-service marketing company headquartered across the river in Langhorne, Pennsylvania. We have five satellite centers from which we do telephone marketing, two of which are in New Jersey; one in

Cherry Hill and one a few miles down the road in Hamilton Township.

Currently, ICT has 750 full- and part-time employees, a large majority of whom are telephone representatives. After being at last week's hearing and today's hearing, I thought we'd provide a different perspective on a business that is significantly impacted by the proposed legislation. We provide telephone marketing and market research primarily through the telephone, for business and consumer clients nationwide.

Our clients consist of major corporations and institutions across a variety of industries. During the past year they have included high technology companies including IBM, Apple Computers, AT&T, MCI, Bell Atlantic; retailers such as J C Penney's and R. H. Macy's; publishers including McGraw Hill, Family Circle, The Weekly Reader Children's Books; financial institutions including Chase Manhattan Bank, First Fidelity, Union Fidelity Life Insurance; nonprofit institutions such as Consumers' Union, Planned Parenthood, the U.S. Army, and various political and political poster organizations.

If this bill passes, the monitoring restrictions would seriously affect using the telephone for sales calls or market research, or for receiving calls on 800 numbers. Silent monitoring is designed by our industry as a consumer protection measure. No other method confirms that standards are being followed by our telephone representative, offers are being stated properly or, most importantly, that consumers are not being misled. It ensures that orders are accurate, market research information is objective, and that call interactions are courteous and professional. Bill A-210 increases the chances that misrepresentation, even unintentional, will occur. Without monitoring, and silent monitoring in particular, it would be impossible to ensure consumers adequate protection.

Monitoring is also used by our company and our industry to train, supervise, and review performance. When telephone representatives are hired, they sign an agreement that they are aware they will be monitored for these purposes. Each representative is monitored on a random basis, twice a week for fifteen minutes, for a total of one half hour per week, from a typical workweek of 20 to 30 hours per week. They typically work on different programs every 30 to 60 days which requires retraining and renewed monitoring. We strongly believe in respect for privacy, but we do not agree this silent monitoring is "gathering of personal data" and an invasion of privacy.

In addition, Bill A-210 does not meet criteria for fairness to all parties. It would:

- 1) protect the employee but not the employer or, especially, the consumer;
- 2) prevent effective quality control because consistency of performance could not be determined;
- 3) prevent effective training and evaluation because performance review would always be done under artificial conditions;
- 4) set the scene for employees to adhere to standards only when they knew they were being monitored; and
- 5) penalize legitimate businesses whose primary equipment is the telephone, by unreasonably restricting their methods of quality control.

Legitimate businesses in our industry make major contributions to the local economy. In 1989, ICT employed, part-time, over 1000 employees in the State of New Jersey. We are planning further expansion in New Jersey of another center this year, but if A-210 passes we would have to consider closing rather than opening our centers. In the minds of our clients, they would refuse to do business without the option to monitor. Besides ICT, dozens of service bureaus and hundreds

of in-house customer service, telephone research, and telephone sales departments would confront similar decisions.

Electronic monitoring is not unique to our industry, but it is more essential. Unintended, A-210 would reduce or eliminate legitimate, purposeful, profitable businesses in the State. ICT believes such an unfortunate outcome is unnecessary. The bill's issue is privacy in the workplace, not regulating business telephone use. It is crucial to separate electronic abuse to invade privacy, from electronic use to protect everyone concerned.

We respectfully ask the Committee to reject or amend A-210. We'd be pleased to offer our assistance.

ASSEMBLYMAN PATERO: Thank you.

ASSEMBLYMAN MARTIN: I don't know whether you heard the last speaker here-- I would assume that as an employer, you are not opposed to creative means of monitoring, other than electronic monitoring, are you? You would be open to other ways of review, other than simply electronic monitoring?

MR. BRENNAN: If you include--

ASSEMBLYMAN MARTIN: It's not a loaded question. I just--

MR. BRENNAN: No, it's important to us that electronic monitoring is listening to two sides of a telephone conversation to understand that the person being made an offer, understands the offer as well as the person who's projecting the offer. I don't know how to do that without being able to listen to both sides.

ASSEMBLYMAN MARTIN: That was my next question. I mean if we had some proposal here that provided some form of monitoring that could do the job that electronic monitoring does in certain circumstances, I think we'd all be appreciative of that and would go to that direction.

MR. BRENNAN: Sure.

ASSEMBLYMAN MARTIN: I'd be inclined to do that. My trouble with this legislation right now is I haven't heard -- other than some reference to some food stores -- that there may be other means of providing the same type of scrutiny that would relieve the employee of stress and get the job done. I guess what I'm asking you is, do you know of any?

MR. BRENNAN: I don't know of any. I think stress on our job relates primarily to making 50 phone calls and getting unacceptance rather than worrying about whether you are monitored. Monitoring is a much lower consideration within the telephone marketing, or telephone market research industry.

ASSEMBLYMAN MARTIN: I don't know-- I know you're not in the medical field, but I-- As an employer, do you see any means to separate out the stress from the electronic monitoring versus the stress of the rejections versus family related stress that one may bring into their work environment on a regular basis?

MR. BRENNAN: I really don't know how you can separate them. I really don't think it's the major-- I think it's a secondary stress issue in our workplace, and we're a telephone marketing company.

ASSEMBLYMAN MARTIN: Okay.

ASSEMBLYMAN PATERO: Okay. Thank you for your testimony. The next person is Rick Moeller, the Senior Legislative Representative from Atlantic Electric.

R I C H A R D E. M O E L L E R: Thank you, Mr. Chairman. I am Rick Moeller and I represent Atlantic Electric Company. My testimony has already been submitted in writing for the record, so I'll be very brief and just summarize it.

We have some serious concerns about the bill because as others have said, it restricts our employee training programs. We have numerous customer calls coming into employees everyday in our customer service department. We

handle this by recording. Everything is recorded for both the protection of the employee and the customer, as others have also said.

Once the calls are recorded, at the end of the day or perhaps a couple of hours a week, one of the supervisors will go back and randomly monitor some of those calls. If any situations are noted -- good or bad -- the employee is given a slip of paper detailing a little bit about the call, and the employee is given some suggestions on how he could better handle that call or some of the very good things that they did. To the best of my knowledge at this point -- and I have my people looking into it -- we don't have any situations of employee complaints. They don't necessarily like the system, and they would prefer to have it not there, but we don't know of any particular complaints at all. It's not used directly as a disciplinary tool.

If during the course of monitoring some problems are noted, we do have periodic evaluations of an employee and during that periodic evaluation, that can be used as a point of discussion. As I said, too, I think it's very protective for the employee because a lot of times customers become abusive or swear that they are told one thing or another and they really haven't been. So this allows someone to go back and have absolute proof of what took place.

I think one of our most specific concerns of the 30 continuous days out of any one-year period, is it takes away the element of any surprise at all. If an employee knows they are being monitored for those 30 particular days out of any one year, we all know that they are going to be on their very very best behavior and never have any problems.

We also have a concern about the requirement to establish the employee assistance program to provide counseling and referral services and also paid release time for stress related problems. We already provide extensive health and

welfare benefits to the employees. I just think this is another cost in times of severely rising health insurance costs and medical costs.

We would urge you to vote against this bill or at least, to allow us to work with you to amend it. I think the amendment that was put through in the previous Committee meeting is good, but I don't think it goes quite far enough. It helps in some situations, but it doesn't go quite far enough. We'd be happy to work with you a little bit further to have that done. Thank you for the opportunity to speak.

ASSEMBLYMAN PATERO: You know, maybe the Committee should go check one of these out to see just how they monitor, so we have an idea of what's going on?

MR. MOELLER: I would be pleased to have you come down and show you our system. We do tape record everything, and it's just a matter--

ASSEMBLYMAN PATERO: I'm not familiar with what they do with the monitoring outside of checking on the calls.

MR. MOELLER: Well, we do have other forms of things that I think fall into it such as electronic access to buildings and things like that. You had indicated that you probably would work on some amendments to get those type of things out of there.

ASSEMBLYMAN PATERO: Okay. We'll be in touch with you when we proceed with the bill.

MR. MOELLER: Okay, thank you.

ASSEMBLYMAN PATERO: Assemblyman Martin.

ASSEMBLYMAN MARTIN: You record every telephone call between an employee and a customer?

MR. MOELLER: Yes, we do.

ASSEMBLYMAN MARTIN: That is not utilized unless some issue comes up? I guess in some cases you use it for selective review?

MR. MOELLER: That's basically what happens. The supervisor or manager will take it, spin through it, stop it at some point, listen to a call, and at that point just check to see that everything is okay. At the time when there are a lot of connects going on in the shore area at this time of year with all of the seashore resorts coming back, the volume of calls gets overburdening. I think it's important at certain times like that to really make sure that employees who are under stress at that point in time provide very polite and courteous service.

ASSEMBLYMAN MARTIN: All your employees are aware that all of these telephone communications are recorded?

MR. MOELLER: They are aware of it when they are hired, and they are also made aware of it periodically. There are stickers that are placed throughout. There is also a tone that is used, and as far as the customer goes, there is a marking in the front of our listing in the telephone book. If they refer to a certain code on a certain page, they can tell that all phone conversations are being recorded.

ASSEMBLYMAN MARTIN: You may not be the person to ask this, but related to your firm are you aware of any -- relative to other areas of employment with an electric company, like climbing the telephone poles, making electrical connections, and various other jobs within the employ-- Are there any statistics that one may be able to see to determine whether those employees who are involved in telecommunications on a regular basis as part of their job -- I guess that's customer relations or billing or something like that -- would have more stress than other positions?

MR. MOELLER: I don't think there is, Assemblyman, anyway that you can really tell that. Because as you've said -- and others up here have said -- it's difficult to tell whether the stress is coming from the job or outside activities or from where we just don't know. Certainly a lineman or

someone in a generating station when there is a peak emergency load situation on a hot August day, and we are doing everything possible to keep all units up to provide the electricity that is needed, certainly those people are under a tremendous amount of stress.

ASSEMBLYMAN MARTIN: So are the people waiting for their air conditioning to come back on.

MR. MOELLER: Right. So are the people waiting for the air conditioning. It occurs in just about everybody's job at any given time. This is not unique. These people are aware that this is going on before they are hired, and I do not know of any serious cases in our company where our employees have a real problem with this.

ASSEMBLYMAN MARTIN: One final question and one that I posed before. In your profession, in this occupation with the electric utility -- do you see any alternate means of providing for a way in which the customer as well as the employee can be reviewed and supervised to be able to determine productivity, courteousness, and all the other requirements of the job other than this form of monitoring?

MR. MOELLER: I know of none; the reason being, of course, that we need to listen to both sides of the story. We need to hear the customer, and we need to hear the employee, and we certainly would be happy to entertain any new methods that came up, but at this point in time we just don't know of anything.

We've been practicing it for years. All the major utility companies in the State have. We believe it has worked well. We're regulated by the Board of Public Utilities, and this is not an area for any abuse at all as far as I'm concerned.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN PATERO: Thank you very much for your testimony. Next, we'll hear from Mr. Rick Engler from the IUC.

R I C K E N G L E R: Thank you for the opportunity to testify, Chairman Paterno. I do have to make one point of information to defend myself from our constituency, and that is, I am not an attorney. I just wanted to clarify that.

My name is Rick Engler. I represent the New Jersey Industrial Union Council, the AFL-CIO. We represent over 200,000 members in both the public and private sector work force in the State.

Many years ago, at the beginning of the mining industry in this country, mine owners used to send canaries into the mines held by workers as essentially a monitoring device to find out whether there were dangerous levels of life threatening gases that could lead to mine explosions. Too often the canaries died.

As recently as December, the Department of Health issued a report showing that 2000 workers die each year from occupational diseases in New Jersey, that there are many thousands of new cases of occupational disease discovered each year. Much of the occupational disease cases in the United States including vinyl chloride, including asbestos, and including a whole range of chemical substances were discovered not because doctors did fancy epidemiological studies, but essentially because of self reports by workers who were exposed to different conditions. They went to physicians, went to their union, went to their family, and patterns began to emerge that through common knowledge lead eventually to the generation of pressure for scientific investigation.

In this case it's very troubling that there are apparently so many cases where people would not even know that they were monitored. Not even know. So that the ability to generate self reports would be extremely limited. People really have to know that they are monitored in order, in a sense, to generate a further data base showing that monitoring is a problem. It becomes a catch-22 problem if legislation is

not passed that gives working people the right to know, as we have on chemical hazards, as we have on a range of other areas what the problem is, in the first place.

Saturday was Worker Memorial Day and the Assembly passed a resolution. I think many of the members of the Labor Committee signed onto that resolution. Essentially, that issue was saying that we ought to focus attention on occupational disease in our State. We ought to look at the problem and try to prevent it. It seems to me what this bill is about is essentially shifting the burden of proof; while many arguments have been made concerning how onerous it is, and certainly, I'm sure, there will be some amendments to the bill to correct technical problems.

Our position in support of this legislation is simply based on the burden of proof; that it's the responsibility of employers who have the power to introduce technology into the workplace. They should be under some obligation before it's presented in the workplace until millions of dollars are invested in making a case that the technology is not going to have a detrimental impact to worker health.

In closing, let me just give two quick examples of problems that might have been avoided if that type of research had been done. Video display terminals are an example, and I know there's other legislation pending on that, sponsored in part by members of this Committee. Video display terminals introduced, apparently without any type of significant occupational health and safety impact study, all kinds of problems of stress, back, ergonomic problems raised, possible radiation exposure, and were installed in millions of workplaces in the country. Now we're going back and saying now that they are in, what are the occupational health and safety consequences?

Another example: laser related checkouts in supermarkets. I was in my local Acme the other day, and there was someone who was wearing a splint on their left hand, here,

(demonstrates) and they were reaching over to check out the groceries. I got into a discussion with her and it emerged that she had been doing that for about nine months. She didn't know why, what the cause of this -- it was an uncomfortable position. I'm not a physician having this kind of conversation on the check-out line, but it clearly emerged after some discussion that she was always doing this full-time, pulling groceries over the scanning device.

NIOSH, the National Institute for Occupational Safety and Health, has just completed a study of supermarkets, in cooperation with employers and the United Food and Commercial Workers in northern New Jersey, showing almost a third of the scanners -- the checkout people surveyed -- had repetitive motion injuries. What's my point? My point is, not to divert from this -- my point is it would seem like an intelligent course of action to place the burden on proving the safety and health of new technology on the employer who has the power to introduce it, and stands to reap the financial benefits from it, prior to its introduction.

That would even argue for a far more reaching legislation such as outright prohibitions on new technologies until safety and health studies have been done. That's not what this bill calls for. This bill is a reasonable attempt to allow employees to have the right to know that they are being monitored. And it seems like a very reasonable way to allow a further generation of information to be developed -- which certainly industry has an obligation to do -- to prove that this technology does not have a detrimental impact on the health of working people and their families. Thank you.

ASSEMBLYMAN PATERO: As a compliment, you sound like a lawyer. This is a compliment.

MR. ENGLER: That's what I was worried about. I will change my testimony next time. I don't think there are any lawyers on these Committees.

ASSEMBLYMAN MARTIN: I am a lawyer, but I try not to sound like one, especially when I run for reelection. Would you have a problem with legislation that required if somebody was going to monitor as far as telecommunications, that all telephone communications were monitored? I'm not sure what you're saying.

You talk about right to know, but this bill goes beyond right to know because it really-- If somebody like a utility company wants to monitor all the telephone communications and is willing to make that apparent presumably both to the employee as well as customers, although I'm not sure that all customers-- I tell you, I'm more concerned about the invasion of privacy to unknowing customers with some of the practices today than I am with some of the employees.

I am concerned about the employees, so let's just deal with the premise of my question here. If a utility company is willing to make that available -- presumably it's made available to the employee as well as the customer -- that they are going to monitor everyone, is there something wrong with that as far as your position goes?

MR. ENGLER: Well, my question would still be, what studies have the industries that are using electronic monitoring done to indicate that it is a safe procedure? It seems to me in the introduction of new technology, that the burden should fall on those who benefit most from the introduction of new technology; not on an assumption that whatever cost that would result from whatever negative results there are are simply going to be externalized to result in higher worker's compensation costs, higher insurance costs, whatever costs that may or may not develop from it.

That's why I think it's a burden of proof question that the Legislature has a duty to protect the public in the broadest public interest in allowing this type of technology

to first be known about, and to proceed very cautiously and slowly. We have too many examples in other areas where we hurdled headlong into development of new technology on the assumption that technology, and forms and use of technology, could be equivalent to the general progress and well-being of the society, and we've seen case after case where that has been problematic.

ASSEMBLYMAN MARTIN: If I can understand your answer, this bill goes beyond right to know because you're not-- You don't want to limit it simply to a right to know, rather you want to take it a step further and make a shift of burden? If I understand, that burden is that anytime an employer begins a new practice, at that point in time they have to demonstrate to the satisfaction presumably of the work force and society in general, that that practice is user friendly before they can implement it?

MR. ENGLER: I think that's a credible position, but that's not the degree I think this bill goes to. I think the bill is much more narrowly constructed.

ASSEMBLYMAN MARTIN: But it is just simply beyond right to know. Thank you.

ASSEMBLYMAN PATERO: Thank you very much. We have seven more speakers and we have a 12:00 p.m. deadline on this, so as you come up could you make it brief, especially if you have a statement? The Committee would really appreciate that. The next speaker is Frank Willis from New Jersey Savings League.

F R A N K A. W I L L I S: Thank you very much. I have provided a statement, and I'll leave with you a summary of the comments I'm going to make. I will use your time judiciously.

The New Jersey Savings League represents about 136 savings institutions with about 16,000 employees. The industry is obviously a significant user of teller machines and security cameras. My comments this morning are addressed to that, rather than the narrower issue of telephone monitoring.

Obviously we use teller machines to record our work, to count transactions, and provide an audit trail. We use the summary of work to identify differences, so we can provide additional training. All of our branch people use terminals to serve customers by bringing up rates, like what is the latest rate on a CD and other products. Our mortgage underwriting people use equipment regularly for mortgage processing.

We also regularly use surveillance equipment, like TV monitors and cameras, to safeguard assets, in accordance with Federal regulations and insurance company requirements. All of these everyday routine uses are identifiable by nature to an individual employee. We are concerned that A-210 reaches to restrict the use of this type of equipment. I read the amendment that has been provided. We are studying the language a little further. I do think it helps, but I wanted to have the opportunity to go on record with these comments and request that bank and thrift institutions be exempted from A-210.

Specifically, the reasons are that the machines that I'm talking about are an integral part of the everyday work. To provide a beeper or flashing signal, I think, would be very upsetting and disturbing to the customers that we're trying to serve. The 42-day and 30-day limitations really don't apply when we're keeping track of our daily work. I do feel, in connection with comments by previous speakers, that it would be very difficult to separate the creation of stress from the machine as created by the job itself. That's my statement.

ASSEMBLYMAN PATERO: Thank you very much. Just to let you know, the Committee will be looking through all these amendments, and I'm sure there will be changes made.

MR. WILLIS: Fine. We'll be watching. I appreciate it.

ASSEMBLYMAN PATERO: Okay. Any questions? (no response) Thank you very much. Next, Mr. Richard Strouse, Deputy Director for Survey Operations, Mathematica Policy

Research, Inc? He's not here. John Doran, Regional Governmental Affairs-- Raymond Messina, Legal Counsel? Tim Kelsey?

T I M O T H Y S. K E L S E Y: Mr. Chairman, if I might? I think I am just going to submit my written testimony, since most of my points have been made by other utility representatives. If it goes into the record that will be sufficient.

ASSEMBLYMAN PATERO: Okay.

MR. KELSEY: Thank you.

ASSEMBLYMAN PATERO: We'll state that you made comments on it. Next, Gus Schlaier, New Jersey Council of Savings Institutions.

UNIDENTIFIED MEMBER OF COMMITTEE: I guess he's not here.

ASSEMBLYMAN PATERO: The last one that we have recorded is Eugene Kordahl from National Telemarketing Corporation.

E U G E N E B. K O R D A H L: Good morning, gentlemen. Assemblyman Patero.

ASSEMBLYMAN PATERO: Good morning.

MR. KORDAHL: You have my statement, so I'll try to be as brief as possible. I am the founder and President of National Telemarketing, Inc., the oldest telemarketing consulting firm in the United States and abroad. We were incorporated in 1977, well before the name "telemarketing" became popular.

I am the author of a book, "Telemarketing for Business, Telephone Sales Training." several foreign books, and we maintain the "Annual Guide to Telemarketing" which is a document that statistically covers the industry on an annual basis. It's frequently quoted by the major publications throughout the world. I believe I can bring a wider knowledge to the subject than some of the professionals you've heard so far.

Since 1957 I have been intimately involved with electronic monitoring as both an employee -- being observed -- and as an employer, doing the observing. Since 1967, as a consultant, I've had to advise my clients of the various aspects of electronic monitoring as they apply by state and by various governments.

The perception of electronic monitoring commonly used in all 50 states and abroad, is that privacy is not extended to the workplace which is considered to be semi public or public. Electronic monitoring -- as seen by the telephone professionals -- is a positive form of on-the-job continuing training.

In the 34 years that I have been in this business -- because of that I'm considered an expert -- I've given testimony in various court proceedings ranging from suits dealing with the failure to deliver telephone service, to the most current 30-day rule proceedings which are still continuing in Washington before the FTC. I am their expert witness in the field of telemarketing.

I'd like to just give you a little scope on the field of telemarketing as it has grown. These are all in the statement, so you can refer to them. In 1985, the total goods and services sold by telephone was \$91 billion. In 1989, it had risen to \$196 billion. In addition, compared with 80,000 in-house telemarketing operations in '85 representing 4% of all businesses, there are now 405,000 businesses using telemarketing in 1989 -- those are our latest figures -- which represents 10% of all U.S. businesses. It's growing. Compared with 960,000 employees in 1985, we now have 3,500,000 working in the field of telemarketing.

We are firmly opposed to and want it to be on record as opposing New Jersey Assembly Bill No.210 as presently written because it does not address the professional use of the telephone monitoring feature completely. It precludes the

commercial use of the telephone, including inbound, outbound, in the house, and telemarketing service bureaus, telephone sales, customer service, order entry and research, due to its inaccurate and misleading wording regarding the regulation of electronic call monitoring or service observing.

Historically, electronic monitoring in my experience has been used since 1956, and I know it has been used long before that. It has consistently been understood through labor agreements as well as common usage, that the gathering of "personal data" was, and is, repugnant to the needs of any business employing EM. A schedule of monitoring is rarely ever given as it would allow abuses to customers by a few employees who would not perform their work in accordance to the standards set for the rest of the employees.

I ask you, how else can increases be given to meritorious work, beyond just quantity? Electronic monitoring prevents misrepresentation, harassment, and fraud, and has provided for-- In the American Telemarketing Association's "Telemarketing Standards and Ethics Guidelines" on page nine, if you care to look, these standards were drawn up and approved by the general membership from the 50 states and abroad with over 900 major U.S. firms being represented.

Assembly Bill A-210 is so encompassing that it will adversely affect all the professional telemarketers in this State. As written, it will seriously reduce or eliminate altogether the legitimate, professional, and profitable business in our State for they will find other locations in the U.S. in which to do telemarketing. This has been the experience of a number of other states in the Union who have passed similar laws. It is critical that you separate the issues of the invasion of privacy from the protection of the consumer as well as the business taxpayer, the client, and the employee who seriously uses electronic monitoring to improve their career path performance.

Invasion of the worker's privacy does not occur in the monitoring of employees. EM allows the supervisor to hear "real time" presentations to customers or consumers. Personal conversations are infrequently encountered and are pointedly overlooked if the employee doesn't have a prior history of abusing the company property for personal reasons. The invasion of privacy only happens when the employee is using the employer's telephone to make personal calls. In routine EM, when a personal call is detected, the supervisor immediately disconnects, and goes about the business of monitoring other personnel. Repeated violations, however, of the use of business lines for personal purposes is the same in any business climate, be it commercial or governmental. It gives cause for a warning regarding abuse.

The standard monitoring agreement is so widespread that respected trade journals such as the "Van Vechten Report" -- published here in New Jersey by the way -- routinely publish what they call an "understanding statement" which is a part of my statement which you will have.

In section 2D-- In other states where this ruling has been enacted, the notification of monitoring through aural or visual means-- The reaction of the consumers we have found to be very interesting. It ranges from surprise, annoyance, and unfortunately in the majority, one of distraction and a degree of suspicion that "Big Brother" is listening in. The discomfort to the consumer has been voiced in a number of arenas.

Since we feel that Bill A-210 is incomplete and doesn't define the data gathered by electronic monitoring completely -- that is only one side of the EM picture is addressed, the privacy of the abused worker -- there are two views, we believe that the first view is the personal information that we talked about. The second -- more importantly, probably -- is the employee performance

information. This bill can simply and fairly be amended however, to meet the two needs if the following amendments are made-- I won't go through each suggestion, but we've gone through each point and we've shown where the words "personal data" could be replaced by "employee performance." It works quite well.

This bill currently as written -- the definition of "personal data" includes any information associated with a particular employee. This incomplete definition includes all business information which is obviously not of a personal nature. I'd like to suggest, for the clarity of this bill, two things: the definition of "employee data," and a definition of "employee performance."

The employee performance definition could read as follows: "Employee performance 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." You will notice that all I did was change the word "personal data" in the original form to "employee performance."

The second thing is the personal data definition: "Personal data is any information deemed by law or common social practice to be private in nature regarding a particular person or which could be construed by any prudent supervisor or manager to be of nonbusiness and private nature beyond the normal amenities of a professional business relationship." I then listed the various changes that could be made and additional amendments.

I'd just like to point out several other amendments I think would be appropriate here. I think that the 30 consecutive observations, for instance, which was written into the bill where length of the average contact is not specified, will use an industry average. Industry average -- and this is

after hundreds of thousands of studies -- is five minutes on the average contact, it's called. The supervisor would have to spend 150 minutes or 2.5 hours in continuous session to satisfy this rule. This seems unreasonable and perhaps impractical.

The requirement for an employee assistance program regarding stress related symptoms, along with paid release time, constitutes a very costly burden to any firm employing EM. It seems perhaps, to fall under the purview of some other Committee other than the one that we are addressing here today. That is the conclusion of my statement, gentlemen. Thank you very much for your time.

ASSEMBLYMAN PATERO: That's a very good statement. What I would ask is that we get copies of some of the proposed amendments that you have. You didn't bring enough copies, so all the members will get it.

MR. KORDAHL: Thank you.

ASSEMBLYMAN PATERO: Again, are people aware when you hire them that they are going to be monitored?

MR. KORDAHL: Absolutely. That's one of the first things that comes as part of the job description: That you will be monitored. Anyone who refuses, or does not feel comfortable with that is free to leave.

ASSEMBLYMAN PATERO: Okay. Any other questions? (no response) No other questions. Thank you very much. Just to show we are an impartial Committee, at the last meeting, Assemblyman Tom Foy, asked Jersey City Public and Light Company if there are any employee grievances filed within the last few years and Mr. Bates said he would get us this information, and we did get a copy of it. I think everyone has a copy of it where it says research of our records revealed and new grievances of this nature have been filed to the collective bargaining process. If there is no one else wishing to testify

here today-- Is there is anyone in the audience? If not, the public hearing will be closed. This bill will be brought up at a later date. Thank you very much.

(HEARING CONCLUDED)

APPENDIX



NEW JERSEY STATE
CHAMBER OF COMMERCE
Governmental Relations Office
28 West State Street, Suite #1100
Trenton, NJ 08608
(609) 989-7888

Statement of the
New Jersey State
Chamber of Commerce

April 30, 1990

New Jersey General
Assembly Labor Committee

A-210

Chairman Patero, members of the the Assembly Labor Committee, thank you an opportunity to present testimony on Assembly Bill A-210. My name is William R. Healey and I serve as the State Chamber's Director of Governmental Relations.

Over the past decades, New Jersey has witnessed an inexorable shift from an economy based on manufacturing and agriculture to one based on service. Our state has become a leader in the move to "services."

In addition, our more traditional businesses, through their need to compete and provide quality products, have refined their operations to include more direct contact with their customers. This contact is done primarily over the telephone.

It's these service and product businesses, along with our state's public utilities, who are here today to express opposition to Assembly Bill A-210. This bill would effectively eliminate "electronic monitoring" as a supervisory or quality control tool for the thousands of New Jersey businesses that have phone contact with Garden State consumers.

We're very much concerned with the signal this type of legislation sends to the New Jersey business community. In seeking to be "fair" to the rank and file employee, it effectively discriminates against management. Even more detrimental, however, is that this legislation ultimately means a poorer quality of service to the consumer. THAT should concern us all.

The monitoring that takes place is to determine employee effectiveness and customer attitudes. There is no invasion of privacy. If paid employees, on company time, use company property and facilities for the conduct of personal business, this could be characterized as stealing and should not be protected as a "right."

This bill marks another attempt by the Legislature to bypass the collective bargaining process in New Jersey by manadating benefits and workplace rules. While we all seek to protect employees and provide the proper conditions, we must all remember that employees, their managers, business owners and others should have one primary goal in mind - to provide the best possible service to the consumers they are in business to serve.

/X

The policy espoused in A-210 loses sight of that credo of service.

Electronic monitoring is an important supervisory tool in our service based economy. It seeks to shield the consumer from potential abuses by an unresponsive employee. A-210 takes away that protection for the consumer.

We dispute the allegation that this bill is designed to protect employee rights. Again, our primary concern should be with the consumer, the end user of any product or service.

We're happy to join our member businesses here this morning. They're in the "front lines" of providing customer service. The State Chamber includes as its members nearly every organization that is represented here this morning to speak against this legislation. We'll leave it to each of them to detail the particular impacts on the delivery of their customer services. The potential abuses of this legislation, if it were to be enacted, are far greater than the supposed "wrongs" this bill seeks to fix. As we mentioned earlier, the New Jersey consumer is the one who will ultimately suffer, through a potentially lessened response from companies around the state.

Especially in the past decade, a number of heavy, phone intensive businesses have emerged in New Jersey. While it's not practical for one of our public utilities, for instance, to pack up and move away, many other business operations are not bound by those constraints.

Combined with the impact of an extension of the sales tax to telephone services, the imposition of legislation like A-210 could send an irreversible message to such service operations, quite frankly, a message that says New Jersey does not want your business.

Help keep competitiveness and consumer responsiveness in New Jersey by defeating this bill.

On behalf of the New Jersey State Chamber of Commerce, thank you for the opportunity to present our viewpoint on A-210. This morning, we're pleased to speak on behalf of our affiliated local and regional chambers of commerce whose combined strength represents more than 45,000 business enterprises in the Garden State.

I would be pleased to try and answer any questions the committee may have.

**TESTIMONY OF PAUL LANDSBERGIS,
EMPIRE STATE COLLEGE, STATE UNIVERSITY OF NEW YORK,
TO THE ASSEMBLY LABOR COMMITTEE**

April 23, 1990

Mr. Chairman, my name is Paul Landsbergis. I teach occupational safety and health at Empire State College, State University of New York, and I am a consultant on occupational stress to the Cornell University Medical Center in New York City. I am formerly an Assistant Professor of Environmental and Community Medicine at UMDNJ-Robert Wood Johnson Medical School. I hold an M.A. in Psychology from New York University, and a doctorate in labor studies from Rutgers University. I have conducted research and published articles on stress in a wide variety of occupations, including health care workers, postal workers, air traffic controllers, stockbrokers, VDT operators, and clerical workers.

I am pleased to have the opportunity today to appear before this Committee in support of A210, an Act to Prevent Abuses of Electronic Monitoring in the Workplace.

Electronic surveillance and monitoring of employees, because of the way such systems have been implemented, pose a threat to the physical and mental health of workers, and, therefore, could lead to considerable costs to society. Stress related symptoms cost industry an estimated \$50-75 billion per year in absenteeism,

company medical expenses and lost productivity.¹ In addition, stress now accounts for about 14% of occupational disease compensation claims, up from less than 5% in 1980. These average \$15,000 per claim, or twice as much as those for workers with physical injuries.²

Many serious concerns have been raised by researchers and workers on the potentially negative impact of monitoring on morale, motivation, self-esteem, absenteeism, turnover, and productivity, and on issues of privacy, dignity, and due process. These important issues will be addressed by others' testimony. My remarks will focus on the critical issue of stress and stress-related illness. Unfortunately, there has been little research to date directly investigating the impact of monitoring on health. However, evidence has accumulated on the physical toll of workplace stress (particularly on coronary heart disease and high blood pressure), and growing evidence has linked monitoring with stressful work environments.

While monitoring theoretically could be applied in a positive way to provide accurate, meaningful, nonjudgmental feedback on performance, monitoring typically includes the following features, according to a recent report by the World Health Organization: "second-by-second monitoring, often at the level of individual keystrokes; overemphasis on the quantitative aspects of performance and upon speed; an element of implied pacing to meet targets; lack of information to users as to what information can (or is) being collected and why; the imposition of a form of supervisory style that is manifested as constant negative performance feedback; lack

of discretionary control; and performance standards based upon arbitrarily defined performance goals of system capabilities rather than upon well-established data on human performance limitations."³ The telephone survey conducted by Dr. Cahill and myself last year found that monitored employees were often unclear about which tasks were most important and often did not have easy access to their own performance results.⁴

Monitoring (as it is typically practiced) tends to increase those characteristics of jobs which have been previously found to be stressful. Several of the most important characteristics are: low control, authority, or participation; low challenge, variety, and use of skills; high workload, pressures, and demands; and low social support.^{3,4,5,6}

1) Control. Monitoring tends to reduce employees' control over how tasks are carried out, and how work is scheduled (including rest breaks). The office begins to resemble an assembly line. The directory assistance operators' job, for example, has become machine-paced with calls controlled and monitored by computer.⁵ In addition, employees often have no input or say into the design or planning of the monitoring system.⁴ Such reduced influence can decrease motivation and self-esteem and increase stress.⁶

2) Use of skills. Since work tends to be simplified in order to make it quantifiable for monitoring, "monitoring may reduce task complexity, variety, challenge, and skills used by the employee."⁶

3) Demands. Monitoring can create a climate of fear and threat of reprimand, deadline pressure on a constant basis, and an associated fear of increasing production standards.⁶

4) Social support. While social support has been shown to reduce the effects of job stress¹³, studies have shown that "computer automation with monitoring produced a more coercive, stricter number-counting supervisory style which replaced more helpful, less-performance oriented supervisory approach."⁶ Monitoring also reduces the ability of employees to interact and socialize.⁴

Over the past 10 years, striking evidence has accumulated indicating that these job factors increase the risk of stress-related illness. Jobs that combine high demands and low control or skill use have been associated with significantly higher rates of coronary heart disease and myocardial infarction (heart attacks) in Sweden^{7,8}, and in the U.S.^{9,11} Two weeks ago, a study of male employees in New York City was published in the Journal of the American Medical Association, indicating that those employees with high job demands and low job control faced a three times greater risk of having high blood pressure. In addition, men 30 to 40 years old with high demand-low control jobs had a "clinically significant" thickening of the heart's left ventricle, a condition that often precedes coronary disease and heart attacks.¹⁰

It is important to remember that cardiovascular disease (CVD), which includes heart disease, high blood pressure, and stroke, afflicts 66,890,000 Americans, and is the leading cause of death in the U.S. 976,700 Americans died in 1987 from CVD, or 46% of all deaths. An estimated 33,390 New Jersey residents will die from CVD this year (46.5% of all New Jersey deaths), at an estimated cost of \$2.8 billion in medical costs and lost productivity.¹²

Reduced social support from co-workers (in combination with high demands and low control), a feature typical of monitoring systems, was associated with significantly higher cardiovascular disease.¹⁴ Similarly, a non-supportive boss was a significant predictor of coronary heart disease among female clerical workers in the Framingham Heart Study, a group with nearly double the heart disease risk of other working women or housewives.¹¹ There is great concern that monitoring systems are primarily being implemented at the low skill and low status end of the occupational spectrum, a group already at increased risk of stress-related illness (as in Framingham). In a 1986 survey of 110 firms, an estimated 20-35% of clerical workers were monitored, while virtually none of the managerial staff were.¹⁵

Increased job pressure and speed also contributes to the epidemic of crippling repetitive strain injuries (RSIs), such as carpal tunnel syndrome and tendonitis, seen in the 1980s. The Bureau of Labor Statistics (BLS) reported that in 1988, over 240,000 new cases of occupational illness among workers were reported by private industry. RSIs constituted nearly 1/2 of the total, and have significantly increased in number over the past several years.

To compete effectively, businesses in New Jersey and the U.S. need to make full use of the human resources of our workforce. A210 provides the minimum necessary safeguards to maintain a skilled, motivated, and productive workforce, and to prevent an increase in the high cost of stress-related illness, a cost ultimately borne by the workers and taxpayers of New Jersey.

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NEW JERSEY ASSOCIATION OF COLLECTION AGENCIES, INC.



Mr. Chairman and Members of the Committee:

I am Lois Yates, representing the NJACA. I appreciate the opportunity to testify concerning A-210, Electronic monitoring in the work place. NJACA opposes A-210 because this legislation would defeat the whole purpose of monitoring collectors' telephone calls. Monitoring promotes job satisfaction of the employees, increases the employer's profitability by making the employees more productive and reduces the potential liability for employers.

The FDCPA, has been in effect since 1978, and since that time it has worked well in achieving the purposes for which it was enacted.

In enacting the FDCPA, Congress recognized that abusive debt collection practices contribute to personal bankruptcies, marital instability, the loss of jobs and invasions of individual privacy. There is no question that abusive debt collection practices result in consumer injury. NJACA believes A-210 would hamper collection agencies in their self-regulation efforts and thereby increase the chances that consumers would be harmed by abusive or unfair collection practices. Most collectors' training programs involve listening to actual telephone conversations. This exposure to real, unrehearsed calls enables collectors to hear how the things they learn are put into practice.

By monitoring telephone calls, collection agencies can quickly detect collectors who "fly off the handle" or use less than ethical procedures to collect debts. These collectors can be given more training, a job transfer or an opportunity to look for another line of work. If Collection agencies do not monitor business calls, they will be unable to take remedial action before matters get out of hand.

Collectors who cannot deal with irate consumers or who let the consumers "get away" with stalling tactics become frustrated with their jobs and experience considerable stress. By monitoring calls, supervisors can help analyze the things they do wrong and give them new ways to handle recurring situations.

Monitoring reduces employers' exposure to tort liability. Employers are responsible for the actions of

their employees in the scope of their employment. To reduce exposure, employers exercise reasonable care with all collections to insure they are within the scope of the FDCPA at all times. Because collection agencies regularly deal with sensitive and defensive consumers, it is imperative that employers have access to the best means for training and supervising employees as well as the collection transaction.

Thank you again for this opportunity to testify, and we urge you to oppose A-210.



Legislative Bulletin

106 W. State St.
Trenton, N. J. 08608
(609) 989-8730

130

April 30, 1990

TO ALL MEMBERS OF ASSEMBLY LABOR COMMITTEE:

RE: Support A.210

The New Jersey State AFL-CIO strongly supports Assembly bill A.210 in its intentions to eliminate electronic abuses in the workplace.

Organized labor is deeply concerned about the impact on health, privacy rights and worker dignity resulting from increasing employer use of electronic surveillance. Far too many employers use electronic surveillance as a means of harassment of their employees. Such electronic monitoring and other surveillance tactics such as timing bathroom breaks, listening to personal phone calls and videotaping of employees walking to the lunchroom appear to be actions more closely related to employer control over the workforce than to increase productivity and employer/employee relations.

Again we respectfully request your support of bill A.210 in its attempt to create a more productive and harmonious workplace for the citizens of New Jersey.

Very truly yours,

CHM:mr
opeiu-20
afl-cio

12X



APRIL 23, 1990

**A STATEMENT ON BEHALF OF:
THE ICT GROUP INCORPORATED**

PRESENTED TO:

**THE ASSEMBLY LABOR COMMITTEE:
JOSEPH D. PATERO, CHAIRMAN
LOUIS J. GILL, VICE CHAIRMAN
THOMAS P. FOY
ROBERT E. LITTELL
ROBERT J. MARTIN**

CONCERNING:

**NEW JERSEY ASSEMBLY BILL 210:
ELECTRONIC MONITORING IN THE WORKPLACE**

AS INTRODUCED BY:

ASSEMBLYMEN GERARD NAPLES AND DAVID SCHWARTZ



APRIL 23, 1990
STATEMENT TO THE ASSEMBLY LABOR COMMITTEE
CONCERNING ASSEMBLY BILL 210

Good morning, Chairman Paterno, Members of the Committee, and others present. I welcome this opportunity to speak to you about Assembly Bill 210 which addresses electronic monitoring in the workplace. I am John Brennan, President of The ICT Group, a full-service marketing company in Langhorne, PA. We have five satellite centers, including ones in Cherry Hill and Hamilton Township, NJ.

Currently, ICT has 750 full and parttime employees, a large majority of whom are telephone representatives. We provide telephone marketing and market research for business and consumer projects nationwide. Our market research division has been in business since 1970 and the telemarketing division since 1983. We take pride in experienced and professional execution of our services.

If this Bill passes, the monitoring restrictions would seriously affect using the telephone for sales calls or market research, or for receiving calls on 800 numbers. Silent monitoring is a consumer protection measure. No other method confirms standards are being followed, offers



April 23, 1990

Bill A-210

Page 2 of 4

are being stated properly or, most importantly, that consumers are not being misled. It assures us that orders are accurate, market research information is objective, and that call interactions are courteous and professional. Bill A- 210 increases the chances that misrepresentation, even unintentional, will occur. Without monitoring, it would be impossible to assure consumers adequate protection.

Monitoring is also used to train, supervise and review performance. When telephone representatives are hired, they sign an agreement to be monitored for these purposes. Each representative is monitored on a random basis, twice a week for fifteen minutes, for a total of one-half hour per week. We strongly believe in respect for privacy, but we do not agree this silent monitoring is "gathering of personal data" and an invasion of privacy.

In addition, Bill A-210 does not meet criteria for fairness to all parties. It would:

- Protect the employee but not the employer or, especially, the consumer
- Prevent effective quality control because consistency of performance could not be determined
- Prevent effective training and evaluation because performance review would always be under artificial conditions



April 23, 1990

Bill A-210

Page 3 of 4

- Set the scene for employees to adhere to standards only when they knew they were being monitored
- Penalize legitimate businesses, whose primary equipment is the telephone, by unreasonably restricting their methods of quality control

Legitimate businesses in our industry make major contributions to the local economy. In 1989, ICT employed over 1000 parttime employees in New Jersey. Most are of voting age with family responsibilities. Last year, we paid an estimated \$1.5 million to NJ residents in salaries and benefits and a much larger amount to businesses here for services and products. We are planning further development, but if A-210 passes we would have to consider closing our centers. Besides ICT, dozens of service bureaus and hundreds of in-house customer service, telephone research and marketing departments would confront similar decisions.

Electronic monitoring is not unique to our industry, but it is more essential. A-210 would affect companies with incoming calls for customer service, reservations or catalog ordering -- to mention only several examples. Thousands of jobs and many millions of dollars are at risk. Unintended, this Bill would reduce or even eliminate legitimate, purposeful, profitable businesses in the state.



April 23, 1990

Bill A-210

Page 4 of 4

ICT believes such an unfortunate outcome is unnecessary. The Bill's issue is privacy in the workplace, not regulating business telephone use. It is crucial to separate electronic abuse to invade privacy from electronic use to protect everyone concerned.

We respectfully ask the Committee to reject or amend A-210. We appreciate your consideration, and are pleased to offer our expertise and assistance in amending the Bill. Thank you for hearing this statement. I will be happy to answer your questions.

17X



April 16, 1990

Fax: 609-984-8441
Attn: Gregory Williams, Legislative Aide
xc: Assemblymen Schwartz and Naples

Assemblyman Joseph D. Patero
Chairman, Assembly Labor Committee
State House Annex, Room 442
West State Street
Trenton, NJ 08625

Dear Assemblyman Patero:

I am writing to state our concerns about proposed New Jersey Assembly Bill 210 which addresses electronic monitoring in the workplace. As a businessman whose company, The ICT Group Incorporated, would be significantly affected by this measure, I would like to draw your attention to serious problems with the Bill's current form and to the economic consequences if it should pass.

The ICT Group is a full-service marketing organization based in Langhorne, PA, with five satellite centers, including ones in Cherry Hill and Hamilton Township, NJ. Our workforce is drawn from the surrounding areas. We provide both outbound and inbound (800-) telephone marketing and market research nationwide, for business and consumer applications. Our market research division has been in business since 1972 and the telemarketing division since 1983. The ICT Group takes pride in experienced and professional execution of these services. (See Atch. A: The ICT Group.)

We oppose A-210 because, in effect, it would preclude commercial use of the telephone, including outbound telephone sales, market research and inbound (1-800) calling, due to its prohibitive and interfering regulations on call monitoring. While we strongly agree employers should respect the privacy of employees, we do not agree with the premise that monitoring of performance, when acknowledged as a condition of work prior to beginning employment, constitutes "gathering of personal data" and therefore is an invasion of privacy.

Proposed legislation should be tested against stringent criteria for fairness to all parties and consistency with existing legislation. Bill A-210 does not meet these criteria:

- It is intrinsically unequal in disposition of involved parties, for it seeks to protect the employee but not the employer or, especially, the consumer
- It would prevent effective quality control because consistency of performance could not be determined
- It would prevent effective training and evaluation because review of performance would always be under artificial conditions
- It would set the scene for abuses by employees who could conform to standards only at times of notified monitoring
- It penalizes legitimate businesses, whose primary medium is the telephone, by unreasonably restricting their methods of quality control



Silent monitoring of telephone sales representatives and market research surveyors is currently the only effective mechanism companies like ICT have to provide quality assurance to consumers, our clients and ourselves. Since it is in the consumers, your constituents, best interests to prevent misrepresentation, fraud and telephone harassment, silent monitoring is actually a consumer protection measure. For our part, it confirms that calls which are being made, are on clients' behalf and according to the guidelines we have established with clients. No other methods available guarantee call standards are being followed, offers are being stated properly, or most importantly, that consumers are not being misled in any way.

Monitoring of telephone calls in a telemarketing or market research environment does not invade the privacy of employees. It is used to validly supervise and review performance -- an accepted practice in our society. The means of review should be congruent with the type of work and equipment involved; in this case, silent monitoring. It also allows a trainer to hear "actual" presentations. If telephone representatives know exactly when they are being monitored, they might become nervous or alter their presentations. It is common practice in the marketing services industry to have telephone representatives sign an agreement before being employed (see Attachment B: ICT Group Monitoring Agreement). This explains they may be monitored at any time for training and quality assurance purposes.

Section 2(d) of the Bill also requires a consumer be notified of monitoring through aural or visual means. We feel this may create anxiety on the part of the consumer, altering the response to the presentation. For example, a voter may decide not to contribute to a campaign, reject the purchase of a product or service, or give a biased response to a telephone survey, because of the discomfort engendered when given this notice.

Legitimate businesses in our industry make significant contributions to the economies of their communities. In 1989, ICT employed over 3,500 parttime employees -- 1000 in New Jersey -- in telephone marketing and market research positions, within attractive and pleasant work environments. The majority are of voting age and have family and economic responsibilities. The average hourly wage paid to these employees is over \$6. During 1989, ICT Group paid an estimated \$1,500,000 to residents of NJ in salaries and benefits, and a much larger amount to businesses in the state for services and products.

The ICT Group has been pleased with its New Jersey sites and has plans for further business development in the state. However, if A-210 should pass, increasing ICT's business commitment in New Jersey could not be considered; closing our present centers would be. The Bill would make it impossible for us to operate at a high level of quality. In addition to ICT, by conservative estimate there are dozens of other service bureaus and hundreds of in-house customer service, telephone research and marketing departments operating in the state who would confront these issues. Thousands of jobs and many millions of dollars -- both of economic value and impact to the state -- are at risk.



Re: NJ Bill A-210

J. Brennan to Assemblyman Paterno

4/16/90

P. 3 of 3

The need for and use of electronic monitoring is not unique to our industry, but it is essential in our industry as it is in few others. A-210 is so comprehensive it would adversely affect telephone service operations within companies who handle incoming calls for customer service, for reservations or catalog ordering -- just to highlight a few. Quality assurance, and training and performance review are closely allied. They enter heavily into any setting in which the telephone is the equipment of the business. A-210 would not just reduce invasion of privacy in the workplace, it would, unintended, reduce or even eliminate legitimate, purposeful, profitable businesses in your state.

We firmly believe such an outcome is unnecessary. The Bill's issues are truly ones relating to rights of privacy in the workplace, not regulating use of the telephone in a sales, customer service or market research environment. It is crucial to separate the issue of electronic abuse to effect invasion of privacy from electronic use to protect the consumer, the businessman, the client, and the employee who endeavors to improve performance.

We appreciate your consideration. We would be pleased to offer any expertise and assistance in amending A-210, so it will protect all parties concerned: consumers/constituents, as well as employees and employers. I plan to attend the Public Hearing on April 23, and could be available prior to that time to discuss this critical proposal.

Sincerely,

A handwritten signature in cursive script that reads "John J. Brennan". The signature is written in black ink and is positioned above the typed name and title.

John J. Brennan
President

Attachment A: Profile of The ICT Group

Attachment B: The ICT Group Monitoring Agreement



Attachment A: Profile of The ICT Group

Re: NJ Bill A-210

J. Brennan to Assemblyman Patero

4/16/90

Positive factors accruing to NJ constituency from The ICT Group's business in the state:

- ICT conducts projects only for legitimate businesses and their products; primarily, Fortune 500 Companies.
- The ICT Group adheres to the standards for telephone marketing as published by the American Telemarketing Association and the Direct Marketing Association.
- We subscribe to the Telephone Preference Service List maintained by the Direct Marketing Association.
- Our Quality Control Program requires continual monitoring and verification procedures for compliance to these and additional, internal standards.
- ICT utilizes sophisticated technology to accomplish volume calling -- but it does not operate random dialers or connect call recipients to recorded messages. We have invested in an automated dialing system that connects the person receiving the call to a live operator in 1/50th of a second -- an imperceptible amount of time. Our system recognizes answering machines and disconnects within ten seconds. It is being enhanced and soon will recognize and disconnect from them instantly.
- We employ large numbers of women and students; minorities are an estimated 65% of our total workforce. We provide opportunities for numerous persons who cannot work full-time, do not have degrees, or have a physical handicap which limits some other options.
- In 1989, ICT employed over 80 fulltime professional, managerial and operations staff who receive a full complement of benefits: health, prescription, dental, profit-sharing, 401K Plan, vacation, holiday, personal and sick time, and tuition.
- The ICT Group has tripled in size since 1986, and anticipates significant continued growth into the 1990s.
- The ICT Group has a positive impact environmentally. Telecommunications is a clean industry, introducing no pollutants or hazards into the atmosphere or land.
- Our employees are generally well-educated. Currently, over 15% have a high school diplomas; over 55% have some college; and 28% have college degrees. Many remain with the company for long periods, e.g., during college, and become eligible for prorated benefits.
- Positions as telephone representatives (TSRs) are entry-level, but the TSRs receive training in communications, interviewing and sales skills, as well as basic computer operations. All of these capabilities are transferable to other business and academic settings, will be useful in virtually any career path, and provide experience not available in typical entry-level positions. Cooperative work-college credit agreements have been established with schools. In addition, they have the opportunity to become licensed agents, nationwide, in the accident/health insurance field.



Attachment B: The ICT Group Monitoring Agreement
Re: NJ Bill A-210 J. Brennan to Assemblyman Patero 4/16/90

RELEASE FORM

A. The ICT Group Incorporated, an independent marketing services company, specializes in telemarketing and market research throughout the U.S. ICT Group has installed monitoring devices which permit supervisory personnel to listen-in on program/project presentations between the Telephone Representative and the person called, but only during the "ordinary course of business". There will be no interception of calls. The ICT Group, in the conduct of particular programs and for training purposes, also can and will implement a taping procedure of program/project presentations. Neither, will there be disruption or interception of calls during this procedure.

B. The ICT Group, through this Release Form and through verbal communication, gives notice to all Telephone Representatives that their business calls can and will be monitored, and that these calls can and will be taped per client specifications and training purposes. The undersigned employee understands this is necessary for The ICT Group to carry out its normal business operations and agrees to comply with this policy.

C. The ICT Group, through this Release Form and through verbal communication, states that any compensation other than base salary is solely determined at the discretion of Management and can be changed by Senior Management of The ICT Group without prior notice.

Telephone Representative

Date

22X



TESTIMONY PRESENTED BEFORE THE
ASSEMBLY LABOR COMMITTEE
APRIL 23, 1990

CHAIRMAN PATERO AND MEMBERS OF THE COMMITTEE, I AM RICK MOELLER AND I REPRESENT ATLANTIC ELECTRIC. THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO SPEAK BEFORE YOU TODAY ON ASSEMBLY BILL NO. 210 WHICH SEEKS TO PREVENT ABUSES OF ELECTRONIC MONITORING IN THE WORKPLACE.

WE HAVE SOME SERIOUS CONCERNS ABOUT THE BILL BECAUSE IT SEVERELY RESTRICTS ONE OF OUR MOST IMPORTANT EMPLOYEE TRAINING PROGRAMS. CUSTOMER TELEPHONE CALLS COMING IN TO EMPLOYEES IN OUR CUSTOMER SERVICE DEPARTMENT ARE RECORDED AND PERIODICALLY MONITORED TO ENSURE THAT THE QUALITY OF SERVICE TO OUR CUSTOMERS REMAINS AT A HIGH LEVEL. FIRST LET ME ASSURE YOU NO ABUSES TAKE PLACE IN THIS PROCESS. THE EMPLOYEE AND THE CUSTOMER ARE BOTH MADE AWARE THAT THE CALLS ARE BEING RECORDED BECAUSE AURAL SIGNALS ARE PROVIDED. ALSO, EMPLOYEES AND PROSPECTIVE EMPLOYEES ARE ALWAYS NOTIFIED THAT THE PROCESS IS EMPLACED.

THE RECORDED CUSTOMER SERVICE CALLS ARE RANDOMLY REVIEWED BY A SUPERVISOR AND IF A SITUATION IS OBSERVED WHERE THE SUPERVISOR DECIDES THE EMPLOYEE NEEDS ADDITIONAL TRAINING OR IMPROVED COMMUNICATION SKILLS, THE SUPERVISOR AND THE EMPLOYEE REVIEW THE RECORDING AND DISCUSS HOW FUTURE CONVERSATIONS CAN BE IMPROVED. IF A CUSTOMER COMPLAINS TO MANAGEMENT OR THE

Atlantic City Electric Company
1199 Black Horse Pike
Pleasantville, N.J. 08232
609-645-4463

Capitol View Office Building
150 W. State Street
Trenton, N.J. 08618
609-393-4044, 393-0243

NJBPU ABOUT POOR SERVICE, OR THE CUSTOMER CLAIMS TO HAVE BEEN PROVIDED WITH INCORRECT INFORMATION, THEN THE RECORDINGS ARE REVIEWED TO DETERMINE WHAT ACTUALLY TRANSPIRED. AGAIN, IF WARRANTED, THE INFORMATION IS DISCUSSED WITH THE EMPLOYEE TO ENSURE THAT FUTURE CALLS WILL BE HANDLED IN A BETTER MANNER. DISCIPLINARY ACTION AGAINST EMPLOYEES IS NOT TAKEN AS A DIRECT RESULT OF THEIR HANDLING OF CUSTOMER SERVICE CALLS. HOWEVER, IN A SITUATION WHERE AN EMPLOYEE REPEATEDLY PROVIDES POOR CUSTOMER SERVICE OR INCORRECT INFORMATION (DESPITE SUPERVISOR'S EFFORT TO CORRECT THE SITUATION) THE EMPLOYEE'S PERFORMANCE APPRAISALS WILL REFLECT THAT UNSATISFACTORY PERFORMANCE.

ONE SPECIFIC CONCERN THAT WE HAVE ABOUT THE BILL IS THAT IT WOULD RESTRICT MONITORING TO NOT MORE THAN 30 CONTINUOUS DAYS OUT OF ANY ONE YEAR PERIOD AND THE EMPLOYEE WOULD HAVE TO BE GIVEN ADVANCE NOTICE OF THAT PERIOD. THIS IS ENTIRELY TOO RESTRICTIVE. IF THIS WAS AMENDED OR REMOVED IT WOULD GREATLY LESSEN OUR CONCERNS ABOUT THE BILL.

ANOTHER CONCERN WE HAVE IS THE REQUIREMENT IN THE BILL TO ESTABLISH AN EMPLOYEE ASSISTANCE PROGRAM TO PROVIDE COUNSELING, REFERRAL AND PAID RELEASE TIME FOR STRESS-RELATED PROBLEMS. WE ALREADY PROVIDE EXTENSIVE HEALTH AND WELFARE BENEFITS TO OUR EMPLOYEES. AN EMPLOYEE'S STRESS-RELATED PROBLEMS COULD COME FROM ANY NUMBER OF SOURCES AND WE DO NOT FEEL IT IS APPROPRIATE TO REQUIRE EMPLOYERS TO SET UP ANOTHER COSTLY PROGRAM, ESPECIALLY ONE BASED ON PERCEIVED STRESSES CAUSED BY MONITORING OF AN EMPLOYEE'S WORK.

I URGE YOU TO VOTE AGAINST THIS BILL TODAY, OR IN ANY CASE, NOT TO
RELEASE IT UNTIL WE HAVE HAD A CHANCE TO WORK WITH THE SPONSOR TO AMEND IT AND
MAKE IT A BETTER BILL. THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU
TODAY. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Richard E. Moeller
Senior Legislative Representative
Atlantic Electric
1199 Black Horse Pike
Pleasantville, N. J. 08232



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Telecopier (201) 272-6626

**STATEMENT OF
Frank A. Willis
TO THE ASSEMBLY LABOR COMMITTEE
April 23, 1990**

My name is Frank A. Willis and I represent the New Jersey Savings League. The League is the trade association for the \$52 billion savings and loan industry, representing 135 savings institutions with offices located throughout New Jersey. I thank the Chairman and other committee members for the opportunity to present the following testimony.

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.

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 insurance, 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.

We thank the committee for allowing the New Jersey Savings League this opportunity to express its views, and we welcome any comments or questions that committee members might have.



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ASSEMBLY LABOR COMMITTEE
A-210
ABUSES OF ELECTRONIC MONITORING IN THE WORKPLACE
APRIL 23, 1990

New Jersey Savings League

136 savings institutions, 16,500 employees, 932 offices in 417 cities and towns.

Significant user of teller machines and security cameras.

Primary function of teller machines is to record work, count and track transactions and provide an audit trail of who did what. Another use is the identification of individual differences so additional training can be provided. Branch personnel also use terminals to serve customers by displaying account activity, various deposit rates, etc. Mortgage underwriting personnel use equipment regularly for mortgage processing.

Thrifts also regularly use surveillance equipment like TV monitors and cameras to safeguard assets, in accordance with Federal regulations and insurance company requirements.

All of these uses are identifiable to an individual employee.

Request that thrift institutions be exempted from A-210.

1. Machines are an integral part of the business function.
2. Beeper or flashing signal would be very upsetting and disturbing to customers.
3. The 42 day and 30 day limitations have no practical application.
4. Identification of stress related incidents to the machine versus the job would be very difficult to ascertain.

Frank A. Willis
4/20/90



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**STATEMENT OF NEW JERSEY NATURAL GAS COMPANY
ON ASSEMBLY BILL NO.210**

New Jersey Natural Gas Company is a public utility that services over 300,000 customers in all of Monmouth and Ocean county and parts of Morris and Middlesex county. We are opposed to Assembly bill no. 210 in its present form.

- 1) This bill states that the use of data obtained through electronic monitoring may be used for disciplining new employees ONLY during the first 42 days of employment. Our employees require up to six weeks of classroom training BEFORE they can begin to perform their job responsibilities. This bill would forbid us to use electronic monitoring to qualify an employee before that employee ever began to perform their job.
- 2) Even if an employee were to be placed immediately in a job, without the benefit of classroom training, we feel that 42 days is insufficient time to determine their qualifications. Our business is cyclical in nature. The situations an employee must be able to handle will vary depending on the time of year. Most of our jobs require a 6 month qualifying time. If the 6 weeks of classroom training is added to the qualifying time then the 42 day limit this bill imposes will have a chilling effect on our ability to ensure our new employees can perform their job responsibilities in a satisfactory manner.
- 3) The bill also states that after the initial 42 day period, electronic monitoring --while no longer available for disciplinary purposes-- CAN be used to evaluate performance. But the information can ONLY be used to evaluate the employee if it is obtained during 30 or less continuous days in any given year AND only if the employee is given advanced notice of when that period will be.

Again, because of the cyclical nature of our business, one 30 day period per year will NOT be indicative of an employees ability to handle all aspects, or even MOST aspects, of their job.

Also, the advance notice requirement undermines the very purpose of an electronic monitoring system. Advance notice will NOT allow for an objective evaluation and, based on our experience; it will create greater levels of stress on the employee.





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4) We would also like to note that, as a public utility, we provide a necessary service and we are responsible for the safety of more than a quarter of a million natural gas customers. It is therefore **IMPERATIVE** that we have the ability to continuously monitor our employees and use that information to ensure that they are performing their jobs in an effective and safe manner.

5) Finally, this bill allows an aggrieved employee to file suit for violations of this act. Our employees have available to them a defined grievance procedure. This procedure was instituted as the result of an agreement between management and the bargaining unit. It includes a provision for the use of arbitration for an employee who feels they have been wronged. The bill creates a remedy that is essentially **ALREADY** available to the employee and it undermines the validity of the collective bargaining agreement.

New Jersey Natural Gas agrees that the potential for abuses of the electronic monitoring system is a legitimate concern. However, we oppose this bill, as it is currently drafted, because it seriously limits the effectiveness of electronic monitoring as a **NECESSARY** tool for maintaining minimum levels of employee performance and ensuring the safety of our customers. We ask that you **NOT** release this bill from committee.

Dave Klucsik (201) 938-1114
Tim Kelsey (201) 938-1246



NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

APRIL 28, 1990

A STATEMENT ON BEHALF OF
NATIONAL TELEMARKETING, INC.

PRESENTED TO:

THE ASSEMBLY LABOR COMMITTEE:
JOSEPH D. PATERO, CHAIRMAN
LOUIS J. GILL, VICE CHAIRMAN
THOMAS P. FOY
ROBERT E. LITTELL
ROBERT J. MARTIN

CONCERNING:

NEW JERSEY ASSEMBLY BILL 210
ELECTRONIC MONITORING IN THE WORKPLACE

AS INTRODUCED BY:

ASSEMBLYMEN GERARD NAPLES AND DAVID SCHWARTZ

VOICE: 201 361 3500

PAGE NO. 1

FAX: 201 361 2301

33X

NATIONAL TELEMARKEETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

PREPARED STATEMENT OF:

EUGENE B. KORDAHL,
PRESIDENT
NATIONAL TELEMARKEETING, INC.

My name is Eugene B. Kordahl. I am the founder and President of NATIONAL TELEMARKEETING, INC. ('NTI'), Randolph, NJ, the oldest (since 1977) telemarketing consulting firm in the U.S. and abroad. Among the past and present clients of NTI are over seven hundred and twenty five businesses, including Avis, SAS, J.W. Thompson, J.C. Penny, Disney World, Better Homes and Gardens, Ryder Truck, Musac, Prentice-Hall, McGraw Hill, Carrier Corp., Square D., AT&T, NYNEX, Southern Bell and other Fortune 500 Businesses. I am the co-founder and past president (1983-1985) of the American Telemarketing Association (ATA) which comprises over 900 corporate members nationally and internationally. I am a former Adjunct Professor of telemarketing management, New York University, NY, and an instructor at the Morris County Community College, Randolph, NJ. My professional writings are used as text books in colleges and universities in the U.S. and abroad by such institutions as the University of California the University of Wisconsin and Oslo University in Norway.

I am the author of Telemarketing for Business, Telephone Sales Training Systems, Pratisk Markedsforing, and co-author of the Annual Guide to Telemarketing, a statistical definition of the telemarketing industry published annually since 1980. The Annual Guide to Telemarketing, (Kordahl, Eugene B., and Fishman, Arnold), is used by over 300 subscribers consisting of major U.S. businesses, including AT&T, for industry statistics and for planning purposes. It is regularly cited as authority by

NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

the Wall Street Journal, New York Times, London Times, Singapore Times, and various other major newspapers world wide. It is also cited by Direct Marketing News, Direct Marketing Magazine, Target Marketing Magazine, Forbes, Fortune, Business Week, and Business Marketing Magazine.

Considered the most published author in the field of Telemarketing, I have published numerous articles and columns in over 150 trade and professional publications (according to the U.S. Library of Congress in recent testimony before the Federal Trade Commission), including Target Marketing Magazine, Direct marketing Magazine, Fortune, Forbes, The Wall Street Journal, and the New York Times. Some of these articles are listed in the list of publications, which, along with my CV is attached.

REASON FOR THIS STATEMENT

I am writing you to present what I believe to be a different view on the N.J. ASSEMBLY BILL A-210 prohibiting abuse of workplace electronic monitoring (EM). As a practicing Telemarketing Consultant, I believe I can bring a wider knowledge of the subject than most professionals you have heard so far. Since 1957 I've been intimately involved with EM as both an employee being observed and as an employer and consultant being the observer. Since 1967, as a consultant I've had to advise my clients both nationally and internationally regarding the controlling, monitoring or service observing laws affecting electronic telephone communications monitoring.

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As you are most likely aware, the Federal Communications Commission in 1936 wrote the controlling Omnibus Telecommunications Act which covers the use of wiretapping, and monitoring in great detail. This Bill A210 seems to be in conflict with the Act if it is approved as currently written. The potential for numerous unfounded lawsuits may arise without clarification of A210.

PERCEPTION OF ELECTRONIC MONITORING

EM is commonly used in all 50 states and abroad with few if any restrictions except for the invasion of privacy. EM has been compared with the normal accompaniment of a sales person in the field by that person's supervisor. A normal condition that does not require any stringent laws to protect the salesperson's privacy. Actually in terms of EM, "privacy" is not extended to the workplace, which is considered to be semi-public and public, by most governments and corporations. It is assumed that an employee has voluntarily placed themselves in a public setting and within reason have given up their rights to total privacy as experienced in their home.

EM as seen by the professional telesales, teleservice, teleorder and research personnel is considered a positive form of on the job continuing training and an opportunity to learn how to perform more effectively.

Based upon my thirty four years of telephone sales and marketing experience, I am considered an expert in the telemarketing industry, applications of telemarketing to business, and telemarketing management,

VOICE: 201 361 3500

PAGE NO. 4

FAX: 201 361 2301

36 X

NATIONAL TELEMARKEETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

including the organization and management of telemarketers, telesales, teleservice, teleorder, teleresearch, both "in-house" (within a corporation) and telemarketing service bureaus (TSB's) nationally and internationally. (A TSB is a firm that offers either or both incoming and outgoing telemarketing support to another firm. See, Annual Guide to telemarketing, Ch. XI, P. 20 (1989).) I am also considered an expert in the communication to and by consumers and businesses by telephone.

I have given testimony in numerous court proceedings ranging from suits dealing with failure to deliver telephone service to the most current "30 day rule" proceedings in Washington, D.C. I testified on behalf of the Federal Trade Commission as an expert witness in the field of telemarketing.

In this testimony I rely on evidence and data derived from: (1) my research of published sources and unpublished sources available to NTI; (2) the results of surveys conducted by clients of NTI to which I am privy; (3) NTI's own surveys commissioned by both NTI for its own use and commissioned by its clients; (4) the existing data base upon which the Annual Guide to Telemarketing is based (which is updated on a regular basis as a result of continuing research and as a result of fresh survey data collected annually by NTI); (5) publicly available surveys and other studies; (6) reports and analyses of data relied upon by federal and state governments and by trade associations; (7) industry roundtables; (8) research specific to a number of particular industries; (9) information from industry leaders and professionals using telemarketing and from TSB's; and (10) analyses of nearly 700 confidential business profiles

furnished over time by the clients of NTI (presently, these profiles are collected by NTI at the rate of about 36 a year). Although much of this information is proprietary, to the extent possible, throughout this testimony I attempt to identify the specific sources of my opinions and provide citations for the facts I provide. To the extent that I must withhold information to protect the property of NTI or its clients, I will attempt to supply non specific information about the source of the information and its reliability.

I. Introduction

Although much more complicated definitions of Telemarketing exist, I prefer the following definition: telemarketing is the planned use of the telephone in conjunction with traditional marketing methods and techniques. Implicit in this definition is the idea that the telephone, including other communications technologies that use the telephone, is no more than an interactive tool that can be used to facilitate virtually all traditional business transactions. Despite the advantages telemarketing offers in terms of improved efficiency and lower cost over business methods that do not employ the telephone, over the years businesses often only reluctantly have applied this technology to their operations. Of course, the value of the telephone has been established in such areas as --

- (1) Generating sales,
- (2) Taking orders
- (3) Providing customer service
- (4) Research
- (5) Extending credit, and
- (6) Facilitating collections.

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Increasingly, businesses are adapting telephone technologies to their operations throughout this nation. As evidence of this one only need look at the trends in telemarketing since 1985:

Telemarketing Trends in the U.S.
(Annual Guide to Telemarketing)

Year	1985	1989
Total Sales (Goods and Services)	\$91 Billion	\$196 Billion
Business to Business (Goods and Services)	\$73 Billion	\$161 Billion
Business to Consumer (Goods and Services)	\$18 Billion	\$35 Billion

In addition, compared with 80,000 in-house telemarketing operations in 1985, representing 4% of all businesses, there were 405,000 such operations in 1989, representing 10% of all U.S. businesses. Compared with 960,000 persons employed in telemarketing in 1985, in 1989 there were 3,500,000 persons employed in telemarketing.

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Based on the past growth of telemarketing, I predict that by 1995, 42% of all American businesses will be using telemarketing. I anticipate that by then total sales of goods and services to businesses and consumers will reach \$562 Billion. By 1995, I anticipate that 1.3 million U.S. corporations will use telemarketing and that 6.2 million persons will be employed in telemarketing with the State of New Jersey accounting for a significant portion of that employment compared with the other 49 states.

2. Opposition to New Jersey Assembly Bill 210

NTI wishes to be on record as opposing NJA Bill 210 as presently written because it does not address the professional use of the telephone monitoring feature correctly. It precludes the commercial use of the telephone, including Inbound, outbound, in-house and TSB telephone sales, customer service, order entry, and research due to its inaccurate and misleading wording regarding the regulation of electronic call monitoring (service observing).

3. The purpose and use of electronic monitoring in telemarketing

Electronic monitoring or "service observing" as it is called in Tariffs filed with the Federal and State governments by AT&T and the Bell Operating Companies, has never sought nor does it seek to overhear personal data of any kind in the act of evaluation of worker's performance. Historically, electronic monitoring (EM) provides fair and effective quality control that can assure consistency of performance of telephone workers as no other form of evaluation in the telemarketing industry.

NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

Further, EM is used by countless thousands of firms to provide not only effective, but welcomed training and evaluations to its employees. Because the performance review by EM techniques can be done at any time without interrupting the natural flow of the conversation of the telephone worker, most states have provided for EM with the written understanding that the employee is aware of the use of EM as a regular part of their job. The need for this type of monitoring also assures the consumer that illegal and misinformative information will normally not be given out.

Historically, service observing or EM was being used as early as 1956 when employee abuses in the airline industry created the need for a fair method of assuring both the union and management of observations of the quality and ethical treatment of passengers. It has consistently been understood through labor agreements as well as by common usage that the gathering of "personal data" was and is repugnant to the needs of any business employing EM. It is an industry standard that employees know which telephone stations are "subject to service observing".

A schedule of monitoring is rarely ever given as it would allow abuses to customers by a few employees who would not perform their work in accordance to the standards set for the rest of the employees.

Electronic Monitoring prevents misrepresentation, harassment, and fraud and is provided for in the American Telemarketing Association's TELEMARKETING Standards & Ethics Guidelines, page 9, under the heading of quality control. These standards were drawn up and approved by the general membership (over 900 major U.S. firms) in order to protect the

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consumer or buyer from the conditions just cited. The following is a direct quotation from the Guidelines:

QUALITY CONTROL

Managers in a telemarketing center should regularly monitor communicators' performance by listening to business calls being made or received while they are in progress.

Monitoring of communicators' business calls provides a means for employers to observe and evaluate employee performance and give objective feedback.

Monitoring helps employees by identifying performance deficiencies so additional training can be received to give them added skills and improved performance.

This guideline also provides a means to protect consumers/customers and the employer against possible unethical practices by individual communicators.

Monitoring protects the employer's rights to supervise and regulate the quality of work being performed in his/her behalf or in behalf of his/her clients.

End of quotation.

There is no other method available to the professional telemarketer to

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guarantee call standards are being met, that offers are being stated fairly and properly to all consumers or customers, and that the employee's performance is not misleading the consumer or customer in any way.

Bill A210 is so encompassing that it will adversely affect all the professional telemarketers in this state. Quality assurance, training and employee performance review are obligatory to good business practices.

Bill A210 as written will seriously reduce or eliminate altogether the legitimate, professional, and profitable business in our State for they will find other locations in the U.S. in which to do telemarketing. This has been the experience of a number of other states in the union.

It is critical that you separate the issues of the invasion of privacy from the protection of the consumer as well as the business tax payer, the client, and the employee who seriously uses EM to improve their career path performance.

4. Invasion of the worker's privacy

Monitoring of employees in the telemarketing profession does not invade the privacy of the individual. Service observing as I have stated has been used for years in the practice of telephone operations and is an accepted practice in our business society. Advance notice is rarely given and usually at the request of the employee when asking for supervisors training assistance. EM allows the supervisor to hear a "real time" presentation to a consumer or customer. Personal conversations are

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infrequently encountered and are pointedly overlooked if the employee doesn't have a prior history of using the company property for personal reasons.

If the employee knows exactly when they are being monitored, they naturally become nervous and this can and usually alters their presentation under this form observation. In the case of the employee requesting the EM to be used, there is no duress or nervousness as the employee is genuinely interested in receiving help. Silent observation by a supervisor is the least offensive way of engaging in quality control as it is non-obtrusive to either the customer/consumer or the communicator.

The invasion of privacy only happens when the employee is using the employer's telephone to make personal calls. In instances where monitoring is not used, it is not unusual to find an individual or individuals in the case of large operations, calling such things as "Dial-a-Porn" and other non-business telephone numbers all at the expense of the employer and therefore passed on to the customer. EM also prevents this type of blatant misuse of the telephone.

In routine EM, when a personal call is detected, the supervisor immediately disconnects and goes about the business of monitoring other personnel. Repeated violations however, of the use of business lines for personal purposes is the same in any business climate, be it commercial or governmental, and gives cause for a warning regarding abuse.

5. Standard Monitoring Agreement

The practice of having the telephone representatives sign an agreement regarding monitoring before being employed is an old practice and is nationwide in scope. It is so widespread that respected trade journals such as the Van Vechten Report routinely publish what they call an "UNDERSTANDING STATEMENT" for the use of telemarketers nationally. Please see the attached copy of the STATEMENT. This format is only one of many that are commonly in use today.

6. Consumer to be notified of EM

In Section 2(d), it is required that a consumer be notified of monitoring through aural or visual means. In other states where this type of ruling has been enacted, the reactions of the consumers are ones of surprise, annoyance, and unfortunately in the majority, one of distraction and a degree of suspicion that there is a "Big Brother" listening in on the conversation. Because of this level of discomfort to the consumer, the original intent of the telephone conversation seems to be lost and in the states where this type of law has been enacted, results have plummeted down in comparison to states where an aural or visual signal is not required. The source of this information is a group of large (NTI clients) consumer telemarketing firms with multiple U.S. locations where the rule does and does not exist.

National Telemarketing, Inc. is strongly opposed to this section of the Bill.

7. Bill NJ A210 is incomplete

Bill NJ A210 as presently written doesn't define the data gathered by EM correctly. Only one side of the EM picture is addressed, the privacy of the abused worker. There are two views that must be considered. There are two types of information in a business telephone communication. The two are:

- a. Personal information
- b. Employee performance information

This bill can be simply and fairly amended to meet the two needs if the following amendments are made:

8. Some suggested amendments to NJ A-210

Amendment 1. Emphasis on data gathering is reasonable if the term "employee performance data" and not "personal data" is used in most of the text. "Personal data" carries the connotation that a breach of privacy is the only reason for this Bill, when in fact there are two responsibilities here, to the employee and the employer. Both ultimately effect the consumer.

Amendment 2. A professional Telemarketing definition is not included in this Bill for the term "personal data." As it is currently written, the definition includes any data that can be associated with a particular employee. This incomplete definition includes all business information which is obviously not of a personal nature.

I would like to suggest that for clarity to this Bill, the following definition that would also protect the privacy of any personal communications overheard during the normal conduct of business in a telesales, teleservice, teleorder or research operation:

REVISED DEFINITION (S)

Amendment 3. The current definition of "personal data", page 1, line 29 can be retained in it's entirety with just the change of the word "personal" data to read "Employee performance" data. This would assure the employer that EM can be used to observe the quality of work performance of the employee without fear of invading that person's privacy.

SUGGESTED " EMPLOYEE PERFORMANCE " DEFINITION

Amendment 4.

EMPLOYEE PERFORMANCE 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.

Amendment 5.

For a definition of "personal data" the following definition might be considered:

SUGGESTED " PERSONAL DATA" DEFINITION

PERSONAL DATA IS ANY INFORMATION DEEMED BY LAW OR COMMON SOCIAL

NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

USAGE TO BE PRIVATE IN NATURE REGARDING A PARTICULAR PERSON OR WHICH COULD BE CONSTRUED BY ANY PRUDENT SUPERVISOR OR MANAGER TO BE OF A NON-BUSINESS AND PRIVATE NATURE BEYOND THE NORMAL AMENITIES OF A PROFESSIONAL BUSINESS RELATIONSHIP.

Using the above definition would be fair to both the employee and the employer, and then most of this bill can stand as is with the following changes to revise "personal data" to read "employee performance":

2.a. line 37

2.a.(5) &(6)

2.b. line 13

2.6.a.(1) line 28

2.6.a.(2) line 33 & 35

2.6.c. line 45

2.6.d. line 2

AMENDMENTS REQUIRED DUE TO CLARIFICATION OF DEFINITIONS

Amendment 6.

1. Line 8&9: to read: "Electronic monitoring" means the undetected observation of employee telephone contacts with corporate customers, accounts, agents or the general public during the course of conducting normal business activities by means....."

Amendment 7.

2.a.(2) to read: "That personal data will not be collected;"

Amendment 8.

VOICE: 201 361 3500

PAGE NO. 16

FAX: 201 361 2301

48x

NATIONAL TELEMARETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

2.c. line 19 &20 to read: "the affected employee with a signal light, beeping tone, verbal notification, periodic written notice or other form of visual or aural notice that electronic monitoring is taking place.

Notification on each telephone so affected should bear the notice: " This station subject to service observing". (State of Minnesota vs Northwest Airlines).

Amendment 9.

2.d. Omit in its entirety. This is inappropriate due to the distraction to communications of both parties. In practical application, the notification of one of the two parties (the employee) is sufficient to protect the interests of both parties to the conversation.

Amendment 10.

2.4. lines 40-44. to read: If an employee notifies his employer that he believes that any portion of the monitored employee performance data has personal data obtained by electronic monitoring of that employee, the employee and the employer may mutually agree upon a removal of the personal data.

Amendment 11.

2.5.a. line 15 to read: An employer shall retain no personal data

Amendment 12.

2.6.a.lines 23-24-25 Omit entirely as it no longer would apply.

Amendment 13.

2.6.a.(1) and (2), lines 26-39. Should be omitted entirely since its based solely on the use of personal data. The suggestions previously made were made only to clarify the terms "personal data" and "employee

NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

performance data." The lines 35-39 are particularly difficult to interpret and impractical to practice & enforce. This is an unneeded and costly burden to the employer.

Amendment 14.

2.6.a.(2) d. line 6. 30 consecutive observations where the length of the average contact is (industry average) 5 minutes, would mean that the supervisor would have to spend 150 minutes or 2.5 hours in continuous session to satisfy this rule. This seems unreasonable and impractical and as an industry representative, I find this wording to be so innocent as to be written by someone not familiar with professional telemarketing practices.

Amendment 15.

2.10. lines 29-35. Omit entirely. The requirement for an employee assistance program regarding stress related symptoms along with paid release time constitutes a very costly burden to any firm employing EM. Frankly, it sounds too much like a union negotiation point rather than a point of law to protect the employer, the employee and the customer/consumer. This rule is so unusual and constitutes such an unreasonable cost burden to something so commonly done in American business (monitoring) that this rule could set a costly & inappropriate precedent in U.S. law. I believe that this would be fought by professional associations, corporations, and business in general.

Amendment 16.

2.13. line 10-14 omit entirely starting with the words: "These regulations shall...."

Amendment 17.

2.14. lines 15-16-17. Omit entirely

STATEMENT AMENDMENTS

Amendment 18.

2. to read: The employer is required, prior to any electronic monitoring to provide a visual or aural signal of the monitoring to the employees or if the monitoring is a telephone service observation, to the employee only.

Amendment 19.

3. line 34 to read: "all personal data obtained...". It is important to commerce to protect proprietary business information from the eyes of outsiders. This rule transgresses this fundamental business principle.

Amendment 20.

5. Remove this understanding in its entirety. This has nothing to do with monitoring but is telling how business should conduct its routine business. This stringent section of the STATEMENT is a work performance issue and would not seem to fall into the purview of the EM issues being considered by A-210. This understanding is not appropriate and clouds the issues that we are trying to resolve.

Amendment 21.

6. (correction) line 48. "electric" to read "electronic".

Amendment 22.

8. Lines 11-12-13. Omit entirely. Once again, employee assistance programs are reasonable labor negotiations costs best left to the normal negotiation process in the telemarketing industry. This would place an unreasonable cost on the employer.

NATIONAL TELEMARKETING, INC., 56 SHONGUM RD., RANDOLPH, NJ

In concluding, I wish to thank you for your consideration of these suggested amendments to Bill A210. I would be pleased to offer any further assistance and expertise in amending the Bill to protect all entities concerned: Employees, employers, consumers/constituents.

Sincerely,

Eugene B. Kordahl

President

Enclosures: Understanding Statement

Curriculum Vitae

Bibliography (Partial)

UNDERSTANDING STATEMENT

PLEASE READ AND SIGN THE FOLLOWING
INDICATING YOUR UNDERSTANDING AND
AGREEMENT.

I understand that my telephone conversations are eligible to be monitored and/or recorded by my employer. I further understand that the calls are recorded for training purposes only and the exercise review or tape will be erased as soon as the training has been completed, or, with my permission, be kept and cataloged for the department sales training library.

Finally, I understand that the recording and monitoring of my service calls, as well as the use of headsets, are conditions of my employment.

SIGNED

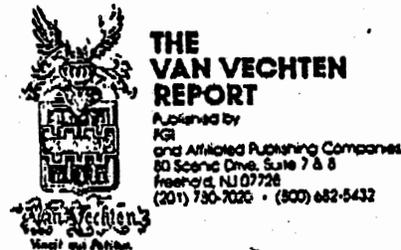
DATE

NOTED: _____

MANAGER

DATE: _____

Original to file
Copy to TSR



FGI 0911590

LIST - PUBLISHED SUBJECTS

By - Eugene B. Kordahl

<u>DATE</u>	<u>PUBLISHED BY</u>	<u>TITLE OF SUBJECT</u>
Feb '79	Randolph Reporter (interview)	Pyramiding a Business by Phone
Sep '79	Telephone Marketing Report	Collection Practices in Large Firms
Nov '79	Telephone Engineer & Mgmt	(Editorial) Telemarketers Police Thyselves
Nov '79	Telephone Engineer & Mgmt	(Forum) Ex Phone Power Man Defends Phone Selling
Nov/Dec '79	ZIP Magazine	(Quoted) Picking the Right Telephone Consultant From Expanding Lineup
Jan '80	Industrial Distributor News	Customer Account Analysis Reveals Phone Candidates
Jan '80	Daily Advance (Sunday)	Market by Phone (Interview)
Feb '80	The Newark Star-Ledger	Franklin Gregory's Column - Interview Phones, Phonies, & Those Unwanted Sales Pitc
Nov '80	DM News	(Interview) State Laws Create Headaches for Telemarketers
Feb '81	Direct Marketing	Glossary of "Telephonese", Telephone Marketi Terms
Apr '81	ZIP Magazine	How You Can Protect Yourself While Monitorin the Calls Made by Your Staff
Vol 1, #4-81	Personal Selling Power	Telemarketing - Don't Let Telephone "Hang-up Crimp Sales Output
Jul '81	Telephone Angles Newsletter	Better Business by Telephone
Jul/Aug '81	ZIP Magazine	Using Telephone to Capitalize On Your Mailin Lists
Oct '81	ZIP Magazine	Evaluating Equipment for Your In-House Telephone Operation
Mar '82	ZIP Magazine	(Regular Column) Teleconsultants Corner
Mar/Apr '82	Personal Selling Power	Increase Telephones With New Prospecting Lists
Apr '82	Bergen Record	(Interview) Firms Demoon Hike in Long Distance Rates
May/June '82	Personal Selling Power	Telephone Sales/Your Friend - The Phone
Apr '82	ZIP Magazine	Teleconsultants Corner
May '82	Personnel Consultant	Quoted in "Increase Your Telephone Selling Power (at length)
May '82	DM News	Quoted fully: Computer Vulnerability a Worry, Experts Suspect Data Thievery
May/June '82	Financial Marketing Mag.	Banking Needs Telemarketing!
Jul '82	DIIMA - Business/Industrial Direct Marketing Monograph	Telephone Marketing - Outbound and Inbound

Pg. 2 - List-Published Subjects
By: Eugene B. Kordahl

<u>DATE</u>	<u>PUBLISHED BY</u>	<u>TITLE OF SUBJECT</u>
Aug '82	Direct Marketing	Quoted in Editorial
Aug '82	Friday Report	Quored on AT&T Divestiture
Aug '82	DMA Business/Industrial DM - Monograph Vol. 5	
1983	Catalog Age (Preview Issue)	TM Boosts Business Catalog Sales
Jan '83	Marketing Communications	TM Directory
Jan/Feb '83	Personal Selling Power	Telemarketing
Spring '83	Videotrx Canada	The Perspective of Interactive TV
Aug '83 orwards	Zip Magazine	"Teleconsultant's Corner" column Monthly since Aug. '83
Aug '83	Zip Magazine	Teleoffice Design Ideas
Nov. '83	Zip T/Marketing	A Look at International View
Nov. 15	DM News	Overview of the Telemarketing Industry
Jan/Feb '84	Personal Selling Power	How <u>not</u> to set up Telephone Equipment & <u>S</u> ervices for Selling
Jan '84	Telecommunications	Interview with Eugene B. Kordahl
Feb '84	Tele-Marketing News	Comprehensive Manual (Johannesborg, SA)
Feb/Mar '84	Business Direct to Business	Telemarketing - Fad or Future?
Aug/Sept '84	Business Direct to Business	Managing the Telemarketing Operations
Sept '84	Metal Center News	Self Help for the Would-be Telemarketer
June '84	Zip Magazine	An Overview of the Telemarketing Industry
July '84	Zip Magazine	Telemarketers Need to face the Challenge of Certifying Employees
Oct '84	Forbes Magazine	Marketing
Oct '84	Agency Sales	The Most Misunderstood Sales Tool - "The Telephone".
Nov. '84	Telephone Marketing	Are you ready for the Telemarketing Glut?
Dec '84	Telephone Eng. & Mgmt.	Quoted - Forbes Magazine Article
Jan '85	Zip Magazine	E.B.K. - Quoted in Article about A.T.A.
Jan '85	Business direct to Business	Using the Telephone for Collections

Pg. 3 - List Published Subjects
By: Eugene B. Kordahl

<u>DATE</u>	<u>PUBLISHED BY</u>	<u>TITLE OF SUBJECT</u>
Jan '85	ZIP Target Marketing	Telemarketing to Ring Up \$90 Billion This Year
Feb '85	ZIP Target Marketing	Telemarketing Will Work With Cooperative Outside Sales
Mar '85	Business Marketing	Business to Business Telemarketing To Hit \$73 Billion in '85
Mar '85	ZIP Target Marketing	Burn Out - Sign of Management Failure
Apr. '85	ZIP Target Marketing	How to Avoid Telephone Burn-Out
May '85	ZIP Target Marketing	Determining Compensation for Telephone Personnel
June '85	ZIP Target Marketing	Telemarketing Segments
July '85	ZIP Target Marketing	Are You Earning Your Worth?
Aug '85	ZIP Target Marketing	Specific Training Program for Telephone Sales Personnel
Oct '85	ZIP Target Marketing	Telemarketing (1st of 3 Articles)
Nov '85	ZIP Target Marketing	What Managers Think Telemarketing Is (#2)
Jan '86	ZIP Target Marketing	Synergistic Telemarketing (#3)
Jan '86	Business Marketing	AT&T Unveils Two New Services for Business - Arouses Debate (Interview)
Jan '86	The Office	Telemarketing: A Tool for the Era of the '80
Feb '86	Business Marketing	Toll Free or Not Toll Free (Letters to Editor)
Mar 15,'86	NonProfit Marketin Insider Focus	Setting Up a Telemarketing Program (Interview)
Mar ' 86	ZIP Target Marketing	International Cdnnection
Apr '86	ZIP Target Marketing	Managing Your Database
Spring '86	TeleProfessional Magazine	Who Is the Best Telemarketing Sales Type?
Summer '86	TeleProfessional Magazine	How Far Is Up?
Aug '86	ZIP Target Marketing	Service Bureau Shakeout (Interview)



9to5, NATIONAL ASSOCIATION OF WORKING WOMEN

614 Superior Ave., NW, Cleveland, Ohio 44113

■ (216) 566-9308



Testimony in Support of A. 210

**State of New Jersey
Assembly Labor Committee**

Submitted by:
Sharon Danann, Research Director
9to5, National Association of Working Women

I am pleased to submit testimony on behalf of 9to5, National Association of Working Women in support of A. 210.

9to5 is the leading national membership association of office workers, with a membership of more than 14,000 office workers, chapters in 20 cities, and members in New Jersey, as well as every other state.

9to5 would like to encourage the members of this committee to stem the unchecked erosion of civil liberties that is taking place because of misuse of electronic monitoring of workers. In September 1987 the Office of Technology Assessment (OTA) of the U.S. Congress released a report on such monitoring, The Electronic Supervisor: New Technology, New Tensions, which estimates that 6 million workers nationwide have at least part of their performance evaluation based on computer-generated statistics. With the number of computers in workplaces now topping 50 million according to computer industry figures, we estimate that more than 25 million workers are electronically monitored, with at least 10 million receiving work evaluations based on monitoring results. In New Jersey, the number of computer-watched workers may be in the hundreds of thousands.

Computer-collected and remote observation data have become the sole basis for determining promotions and job security for many workers, usually without the opportunity to challenge the statistics. In addition, monitoring is frequently used for disciplinary purposes, resulting in reprimands, probation and firings. In one government agency, a supervisor listened in on certain workers almost constantly, in order to accumulate enough mistakes to discipline them. Employees are on trial and, using monitoring, the employer becomes the prosecutor, judge and jury,

while the employee is given no chance to speak.

Monitoring capabilities are used in ways that go beyond the measure of productivity or quality of work. Monitoring becomes a tool for management to gain more control over their workers, by timing bathroom breaks, listening to personal phone calls or conversation between co-workers, and videotaping workers on their way to the lunchroom. Call records from telephone call accounting systems can be used to identify or harass whistle-blowers, union organizers or other dissidents. In possible violation of laws restricting public disclosure of private facts, individual monitoring results are routinely posted in telephone companies, to shame the workforce into continuously increasing their speed, ignoring the potential for incurring physical and psychological damage at those speeds.

9to5 opened a hotline in January 1989 to collect stories of monitoring abuses. The results are contained in the attached report, Stories of Mistrust and Manipulation: The Electronic Monitoring of the American Workforce, recently released by our research affiliate, 9to5, Working Women Education Fund.

A New Jersey resident told us about her experience as a customer service representative with the telephone company. The computers kept track of quantitative measures such as the number of calls waiting to be answered and the number of sales per week. Supervisors also listened in on calls periodically. This woman described it as "more grades in a month than all three of my kids in a whole school year." Supervisors "...would come to you after each monitoring, come to you in front of everybody and tell you what you did wrong." The job pressures led to insomnia, and in anticipation of other stress-related health problems to follow, she decided to leave the job. She summarizes her feelings about monitoring as follows:

The monitoring makes you feel like less than a child, less than a thinking human being. It's a shame because they have a lot of intelligent people there -- you had to be smart to pass the test. You have to stop and think from time to time that your ancestors did not cross the ocean in steerage and come through Ellis Island to be treated like this.

A New Jersey airline reservation agent recalled the continuous pressure in her job. Monitoring is used to track employees closely and to be sure they are meeting performance goals of at least 275 calls a day with a 90% booking ratio. Discipline of employees occurs on a daily basis for any of the following: falling below the call quota, calls longer than 215 seconds, more than 12 minutes per day away from the computer for bathroom and other needs, or too much time between calls (not to exceed a total of 28 seconds per day).

At this New Jersey reservation office, monitoring is also

applied intensively if the airline wants to find an excuse to dismiss a particular employee. In retaliation for her involvement with a union organizing drive, the person who called our hotline was monitored heavily. Her good "runs" (results) were deleted from the record, and other people's poor results were added to her record. After many years of outstanding performance, she was told her numbers were too low and she was dismissed.

When computer monitoring is abused, it is counter-productive. It exacerbates the health problems already existing in computerized workplaces and increases employee turnover and absenteeism. Harvard University Professor Shoshana Zuboff found that turnover increased nearly 100% in one year after the collections department of a large retail chain store was automated.

Monitored workers are not always notified that information is being collected as they work. A bank teller in Boston was mystified as to how her supervisor was gaining access highly specific personal information. It was not until her six-month review that she was informed of the monitoring capabilities of the computer on which she worked.

Among the policy options proposed by the OTA report is legislation to protect monitored employees, either "general legislation aimed at establishing certain rights for employees within the workplace, or surgical legislation aimed at specific monitoring practices."

A. No. 210 is "surgical legislation" aimed at reducing abuses of monitoring, while establishing "general" rights for monitored employees, rights of notice, access to records and privacy of personal data. These rights will prevent violations of civil liberties and will reduce job stress from monitoring. Written notification is mandated for prospective as well as current employees. Provisions are included so that monitored workers know how production standards are determined and how to read the computer-generated records and statistics. Privacy rights and First Amendment rights are protected.

Knowing how collected data is to be used, having access to records, and assurance that personal records are not disclosed all are measures that reduce the unnecessary stress of common monitoring abuses. The stress from assaults on privacy through the collection of unnecessary personal information, such as amount of time spent in the bathroom, is also eliminated by the protections contained in H.F No. 210.

Stress is now the leading cause of occupational illness among younger workers. For workers under age 40, workers' compensation claims for stress-related illnesses exceed the combined total of all other occupational disease claims in national figures.

Job characteristics such as machine pacing, routinized work activities, increased work pressure, lack of control of tasks, and lack of contact with co-workers are typical of computer jobs that are monitored. Previous research in a number of occupations and office work in particular connect these job characteristics as leading factors to higher levels of stress on-the-job.

Stress is one of the ten leading occupational illnesses according to the National Institute for Occupational Safety and Health (NIOSH). In 1980, NIOSH studied clerical workers at Blue Shield of California and found that heavily monitored workers exhibited a greater degree of stress, depression, anxiety, instability, fatigue, and anger than did the control group.

In the "9to5 National Survey on Women and Stress," nearly 50% of respondents whose work was electronically monitored considered their jobs very stressful, compared to less than one-third of office automation workers whose work was not subject to electronic surveillance. Nearly one in three of the workers in this group reported she lost time from work due to health problems, compared to just one in five office automation users who were not monitored.

The results from the women and stress survey have been confirmed by Steven Vallas, Ph.D. and William Calabro, Ph.D. of the New York Institute of Technology in a study of job characteristics in relation to physical complaints, psychological distress and coronary heart disease. They summarized their findings this way, "Computer monitoring of the workers' performance sharply increases the degree to which management directs both the pace and method of work which in turn places workers at significantly greater risk of ill health."

Preventable job stress is costing the employers of this state vast sums of money. And unregulated electronic monitoring creates stressful jobs.

We are on the eve of an explosion in the spread of monitoring, because monitoring systems have become cheaper to install and maintain than what management perceives as the costs of inefficiency. Because monitoring is most likely to be applied to lower level jobs, monitoring primarily affects women and minorities.

There are new forms of technology on the horizon that could amplify the impact of monitoring: the use of computer capabilities to digest and analyze the results of monitoring, e.g. to find a pattern in out-going calls placed; and the ability to distribute and share employee records more quickly and easily than ever through the phone lines in integrated networks. We need to put protections into place now, in anticipation on the dangerous places computer technologies could lead us in the next few years.



New Jersey Bell

154 West State Street
Trenton, New Jersey 08608
Phone (609) 989-9906

R. A. Hedden
Director of
Government Relations

April 30, 1990

Dear Assemblyman Patero:

Per our recent discussion regarding A-210, here is the information you requested regarding our guidelines for service quality observing:

- A sticker is attached to all telephones capable of being monitored (see attached sample)
- New Jersey Bell Telephone Directory listing includes service observing indicator to alert customers that calls to those numbers can be monitored.
- Employees are informed of service quality observing when they are hired.
- New Jersey Bell has an agreement with CWA regarding service quality observing - a copy of those pages attached.
- New Jersey Bell follows the guidelines set by the Board of Public Utilities (BPU) regarding service quality observing.
- Telephones in employee lounges are **completely private**.

I hope this information is helpful to you. Please let me know if there is any further information that I can provide.

Sincerely,

Russ Hedden
Russ Hedden

16X

NEW JERSEY TELEPHONE COMPANY CONTRACT OFFICE

As required by Order of the N.J. Board of Public Utilities in Docket No. 752-110, the user is hereby notified that this telephone equipment is subject to service observing.



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

April 27, 1990

Assemblyman ~~T.D. Foy~~ *Tom*
Assemblyman L.J. Gill
Assemblyman R.E. Littell
Assemblyman R.J. Martin
Assemblyman G.S. Naples
Assemblyman J.D. Patero
Assemblyman D.C. Schwartz

Re: A-210 Electronic Monitoring

Dear Assemblymen:

At the April 23rd Public Hearing on the subject legislation, Assemblyman Tom Foy requested that JCP&L, and others, supply the Labor Committee with data on how many employee grievances were filed in the last few years regarding electronic/telephone monitoring. He also requested information on the disposition of these grievances.

Research of our records reveal that no grievances of this nature have been filed through the collective bargaining process.

I must emphasize again, that our present Collective Bargaining Agreement and relationships are working well and we feel that A-210 is not necessary. I also must point out that we are regulated by the Board of Public Utilities, which has promulgated rules and regulations for telephone monitoring. Their order came down in 1977, basically for telephone utilities, but we like other public utilities, adhere to these guidelines.

If you have any questions or desire additional information, please call.

Sincerely,

G. DONALD BATES
State Government Affairs Manager

GDB:js
cc: K.G. Lynott
G.L. Williams

CARTER-WALLACE, INC.

HALF ACRE ROAD . P.O. BOX 1001 . CRANBURY, NEW JERSEY 08512-0181

April 23, 1990 .

The Honorable David C. Schwartz
Assembly Majority Office
State House Annex
CN098
Trenton, New Jersey 08625

Dear Assemblyman Schwartz:

Reference is made to Assembly Bill 220, "An Act to Prevent Abuses of Electronic Monitoring in the Workplace" currently under consideration by the Assembly Labor Committee.

As one who has devoted nearly all of his working life to industrial security and law enforcement, I wish to register my deep concern about the impact this pending legislation would have on our efforts to maintain acceptable levels of security in industry in the State of New Jersey, particularly in the pharmaceutical manufacturing industry. Passage of this bill, in my opinion, would make it significantly more difficult and more costly to maintain security at a time when we are facing some formidable problems. Specifically in reference to camera surveillance, which apparently would be encompassed by A220, I would like to point out that denying us the use of this resource would be to deny us the use of one of our most effective weapons against theft of materials and products, diversion of pharmaceutical products and drug abuse in the workplace. Closed circuit TV systems are not only a valuable investigative and surveillance tool but, more importantly, a deterrent to crime generally. CCTV cameras have a proven track record, in fact, of providing effective economical security without being intrusive.

For those of us in the pharmaceutical business charged with the responsibility of maintaining security on controlled substances and products, it is difficult to imagine how we could meet the security requirements of the Drug Enforcement Administration without the use of closed circuit TV systems and, increasingly, electronic access control systems. There just is no practical cost-effective alternative.

It seems strange that at a time when we as a nation are engaged in a battle against illegal narcotics, which many consider to be our number one national problem, the General

121X

The Honorable David C. Schwartz
Page Two
April 23, 1990

Assembly of the State of New Jersey would want to consider legislation which would so significantly impede our efforts. It seems particularly remarkable since New Jersey has the greatest concentration of pharmaceutical industry in the country.

The impact of drug abuse on industry is enormous, affecting everything from safety and security to productivity, quality and employee morale. At a time when the Federal Government is proclaiming the need for industry to provide a drug-free environment for their employees, the proposed bill would, in fact, hamper our efforts along these lines.

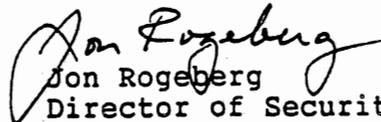
Finally, in our industry we must at all times be alert to possible attempts by outsiders to steal the fruits of our research, which is the lifeblood of the pharmaceutical industry. Without continuous research and product development, we could not remain in business for very long. We simply must be allowed to protect the products of our research in which we invest so heavily.

Obviously, positive access control by means of both camera surveillance and electronic entry control systems plays a key part in our efforts to protect ourselves from both of these threats.

Usually, when legislation of this nature is proposed, it is because there is a demonstrable need, or record of abuse. Certainly with respect to video surveillance and electronic access control, there has been no history of abuse to my knowledge. On the contrary, CCTV surveillance has been accepted and indeed welcomed by most employees, not only for the protection it provides the company and the workplace, but indeed the feeling of personal security it generates.

Again, speaking as one who is interested in ensuring acceptable standards of security in industry and making it attractive, not more difficult, to operate industrial plants in New Jersey, I wish to register my concern about this pending legislation, which I do not believe is in the interest of the people of the State of New Jersey.

Very truly yours,


Jon Rogeberg
Director of Security

JR:mr

cc: The Honorable Joseph Patero
Gregory Williams, Esq.

122X

MATHEMATICA
Policy Research, Inc.

P.O. Box 2393
Princeton, NJ 08543-2393
TEL (609) 799-3535
FAX (609) 799-0005

May 2, 1990

Mr. Gregory Williams
Assembly Labor Committee
Office of Legislative Services
State House Annex, Room 443
CN068
Trenton, New Jersey 08625-0068

Dear Mr. Williams:

We represent Mathematica Policy Research, Inc., Opinion Research Corporation, and Total Research Corporation, organizations that conduct survey research for private organizations and state and federal government agencies. Projects for private organizations may involve surveys of consumers, businesses, and professional groups. Studies for government agencies typically include surveys of population groups, such as unemployed persons, welfare recipients, elderly persons, and others who are beneficiaries of government programs, as well as businesses.

We attended the public hearing on April 23, but were unable to testify due to time limitations. Unfortunately, we were unable to attend the additional hearing on April 30. The type of work that we conduct, the role of electronic monitoring in evaluating the quality of our work, and our concerns regarding A-210 are summarized below. We would be willing to provide additional information and to respond to any questions by members of the Committee.

Many of our surveys are conducted by telephone, and interviewers assigned to these studies are monitored on a random basis to ensure the quality of our work. Quality assurance in our industry includes ensuring that data are collected reliably and that the purpose and sponsorship of the study are presented accurately to respondents. Many survey organizations also use electronic monitoring as an instructional aide following initial training sessions. To illustrate the uses of telephone monitoring in survey research, we have enclosed a copy of the monitoring form used by Mathematica Policy Research, Inc.

Typically, five to ten percent of the interviews on a study are monitored on equipment that allows supervisors to listen to calls without either party being aware of the observation. Telephone interviewing operations that use computer assisted interviewing systems often also allow the supervisor to view the interviewer's screen while the interview is being monitored. Samples of interviews to be monitored are selected on a random basis throughout a survey, which may last from a few weeks to over a year. Our organizations inform interviewers that they will be randomly

LETTER TO: Mr. Gregory Williams
FROM: Richard C. Strouse
DATE: May 2, 1990
PAGE: 2

immediately after completion of an interviewing session, and interviewers have the opportunity to review the evaluation. We do not tape record interviews that are being monitored and do not retain any information about the identity of the respondent who was interviewed to ensure the confidentiality of the interview. Monitoring is used as an evaluation tool following training, and rarely results in termination of the interviewer's employment. Exceptions include instances of fraud or intentional misrepresentation. However, we have used the results of monitoring to assign interviewers to different projects, if they are experiencing difficulties with a particular study or population group.

Random monitoring of telephone interviews is often a requirement imposed by clients for award of contracts. To illustrate this requirement, we have included excerpts from two requests for proposals issued by the National Cancer Institute that specifically require random monitoring of interviewers. Although we recognize that the amendments to A-210 (4/18/90) would exempt government-mandated electronic monitoring from the act, we believe that four provisions of the act would limit New Jersey based companies from competing on privately sponsored survey projects.

- 2.c,d: Silent monitoring is the accepted means of evaluating interviewer performance in the survey industry. Providing a signal light or beeping tone would obviously affect the behavior of the interviewer and respondent and reduce the effectiveness of the evaluation. We would be at competitive disadvantage compared to organizations in other states that do not have similar provisions. This competitive disadvantage could force some organizations to relocate their telephone interviewing facilities outside of New Jersey.
6. The sampling procedure under which monitoring could be conducted specified in this section of the act would effectively prevent survey organizations from conducting electronic monitoring. Our projects vary in length, but rarely last more than several months. Interviewers work on many different projects and monitoring requirements vary by client and project. Basing evaluations on 30 consecutive calls is impractical since interviews typically average 20 to 30 minutes, and interviewers generally work shifts of 4 or 5 hours per day. Therefore, the supervisor would have to monitor a single interviewer over a several day period, and would not be able to evaluate other interviewers working on the project. This would not be efficient or acceptable to our clients.
10. Interviewers working on survey research projects usually are temporary workers and turnover rates in this industry are high. Providing employee evaluation and counseling for stress related problems allegedly resulting from electronic monitoring and paid release time for treatment would significantly increase costs for survey

LETTER TO: Mr. Gregory Williams
FROM: Richard C. Strouse
DATE: May 2, 1990
PAGE: 3

companies based in New Jersey. These costs would be reduced if the provision applied only to employees participating in company provided health care plans. However, it is unclear that electronic monitoring is more likely to induce stress related health problems than other forms of employer evaluation or other sources of job related stress. We believe that it is inappropriate to use this bill as the vehicle to mandate health benefits, and recommend deleting this provision.

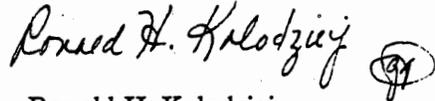
11. Although the provision of criminal penalties would not directly affect our competitive position, we believe that this is an unusually harsh response for violation of any provision of the act, particularly those involving procedural issues, such as sampling methods.

To summarize, while we support procedures to provide employees with written notification of electronic monitoring procedures, with access to information about the results of these evaluations, to maintain procedures for redress of grievances, and to protect the employee's privacy, we strongly object to provisions of the bill that require signal lights or beeping tones, that specify sampling procedures for monitoring, that mandate an employee assistance program, and that provide for criminal penalties for any violation.

Sincerely,



Richard C. Strouse
Deputy Director for Survey Operations
Surveys and Information Systems Division
Mathematica Policy Research, Inc.



Ronald H. Kolodziej
General Manager, Survey Operations
Opinion Research Corporation



Marsha Devlin
Director of Telephone Operations
Total Research Corporation

RCS/src

125X

**MATHEMATICA POLICY RESEARCH
TELEPHONE INTERVIEW EVALUATION FORM**

Interviewer _____
 Monitor _____
 Date _____
 Project _____

Error*

Overall Evaluation (Circle One)

1. Outstanding
2. Good, but a few errors
3. Acceptable, but needs improvement
4. Unacceptable

Question Number	1 Intro/Bkgd	2 Ques. Incor.	3 Dir. Probe	4 Insuf. Probe	5 Mispron.	6 Recd. Error	7 Other Inapp. Behav.	8 CATT Error	Description of Problem
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Additional comments: (Interviewer's delivery and professional conduct) _____

*Explanation of errors is on the reverse side.

126X

Explanation of Errors

1. **Introduction/Background**
Incorrectly presents:
 - Sponsor
 - MPR
 - Confidentiality
 - Sample selection
 - Purpose of study
 - Length of interview
2. **Question Read Incorrectly**
 - Alters main body or stem of question
 - Modifies response categories
 - Makes a statement about the anticipated response
 - Asks a question that should have been skipped
3. **Directive Probe**
 - Interprets question by rewording it
 - Limits or changes the frame of reference of either the question or the potential response
 - Repeats question or response incorrectly or incorrectly summarizes response
4. **Insufficient Probe**
Fails to probe adequately after initial don't know
5. **Mispronunciation**
Self-explanatory
6. **Recording or Entry Error**
Self-explanatory
7. **Other Inappropriate Behavior**
 - Interrupts respondent
 - Personal opinion
 - Other
8. **CATI Error**
Uses commands incorrectly

RECEIVED NAME 4 1989

MAO/RFP NO. NCI-CN-95188-43
Issue Date: May 19, 1989
Date Due: June 20, 1989
Time Due: 3:30 p.m. (EDST)

TO ALL MASTER AGREEMENT HOLDERS:

Subject: MASTER AGREEMENT ORDER #4: "Evaluation of the 1990 Medicare Legislation on Mammography Usage in the NCI Mammography Consortium," issued pursuant to the MA for "Cancer Prevention and Control Surveillance"

The Prevention and Control Contracts Section of the Research Contracts Branch, National Cancer Institute (RCB/NCI), is interested in receiving your technical and cost proposal to fulfill the requirements of this Master Agreement Order/Request for Proposal (MAO/RFP).

An original and 15 copies of your technical and business proposal(s) in response to this MAO/RFP shall be received until 3:30 p.m. on June 20, 1989 at the following address:

REGULAR U.S. MAIL OR POSTAL SERVICE "EXPRESS MAIL"

Diana L. Wheeler
Contract Specialist
National Cancer Institute
Research Contracts Branch
9000 Rockville Pike
Executive Plaza South/Room 635
Bethesda, MD 20892

HAND DELIVERY/COURIER SERVICE

Diana L. Wheeler
Contract Specialist
National Cancer Institute
Executive Plaza South/Room 635
6120 Executive Blvd.
Rockville, Maryland 20852

Offerors shall include the MAO/RFP Number on the proposal package.

128X

Maryland for coordination and planning meetings with the Government Project Officer. Offerors should also include in their budget appropriate trips to the five mammography intervention sites and costs associated with interaction with the mammography consortium staff.

Task 2: Interviewer Hiring, Training and Monitoring

Sub-task 2a: Interviewer Hiring

The MAO holder(s) shall provide the services of a sufficient number of trained interviewers and other necessary personnel to complete the required number of telephone interviews in the specified time frame.

Sub-task 2b: Interviewer Training

The MAO holder(s) shall develop and conduct a standardized and documented training program for all interviewers and supervisors which applies standard interviewing and administrative procedures to the administration of the mammography questionnaire. The program shall be documented in an Interview Instruction Manual. Training materials and a formal plan for training and evaluation shall include the following:

- 1) An explanation of the survey emphasizing its purpose, importance, and the long term nature of the study (i.e., that we will be doing another survey in 1991 or 1992) which necessitates maintaining a positive image with the interviewees;
- 2) The administrative specifications of the study, including dates of the scheduled interviews, time of the day, number of call backs and call back rules, refusal conversion strategies, reporting procedures, quality control procedures, and instructions for selection of eligible respondents; and,
- 3) A detailed review of all questions including definitions of terms, response categories, question by question instructions, methods of probing and recording, and any other points which need clarification. The interviewer training program will be conducted by the MAO holder(s) and will include non-sample practice interviews. Training, including listening to actual interviewing, will be monitored by the Project Officer.

Assumptions: The Government will provide a review of the background and goals of the study which will serve as the basis for an interviewer training manual and a question by question explanation of all questionnaire items, including interviewer probes. The MAO holder(s) shall incorporate these study-specific tools into an appropriate training program which will include standard interviewer training techniques.

Sub-task 2c: Interviewer Monitoring

The MAO holder(s) shall develop a systematic process to monitor the performance of the interviewers during the field period, including performance

criteria and methods to identify sub-standard interviewers, with provisions to either improve their performance or replace them. A sample of up to 5% of actual interviews are to be monitored.

Up to five percent of the approximately 8,113 telephone interviews (including some from each interviewer and type of questionnaire) will be monitored by the Project Officer.

Task 3: Conduct of Interviews

The MAO holder(s) shall conduct the required number of interviews by telephone using the systematic procedures developed and pretested for data collection. The sample size for the 5 mammography consortium areas is approximately 6500 women ages 65 to 74 years. More specifically the number of completed interviews in each community should be:

<u>Consortium Area</u>	<u>Community</u>	<u>Sample Size</u>
Los Angeles	Pasadena	835*
	Inglewood + Culver City	835*
Long Island	Huntington + Southhold	640
	Brookhaven	450
	Islip	450
	Smithtown	450
North Carolina	Pitt County	530
	New Hanover County	510
Philadelphia	non HMO PA/NJ in 9 Pa. and N.J. counties	590
Massachusetts	Lawrence + Methuen	650
	Brockton + Stoughton	550
Total		6490

*In the Los Angeles Consortium area there will be no upper age limit. For a detailed description of the statistical design of the study and derivation of the sample size, see Appendix A.

Note: The Government will provide the names, addresses, and ages of Medicare beneficiaries in each community obtained from the Health Care Financing Administration (HCFA). Prior to the data collection effort, an advance notice of intention to collect information shall be mailed to each of the 6,490 potential respondents by the MAO holder(s). The advance notice will serve to inform potential respondents of the types of questions that will be asked. The advance notice shall be mailed at least 10 days prior to telephone interviewing. An additional 1,623 advance notices may have to be sent to yield the required sample size of 6,490.

probes. The MAO Holder is expected to incorporate these study-specific tools into an appropriate training program which will include standard interviewer training techniques. The government will also provide some technical assistance during the interviewer training sessions in the form of resource persons knowledgeable about the questionnaires.

Task 3: Pretest and Evaluation.

The MAO Holder shall conduct, analyze and report on the findings from a pretest of the telephone questionnaires across the 11 locations. The pretest shall consist of 4 interviews in each community using the worksite instrument, 2 interviews in each community using the school-worksite instrument and 3 interviews in each community using the religious organizations questionnaire. The telephone numbers for the pretest will be provided by the government. Findings during the pretest will be used to effectively modify the interview questionnaire items and skip patterns if appropriate, the computer assisted interview software (if CATI is applicable) and the interviewer training manual and instructions. Any changes to the questionnaire and or skip patterns must have prior approval by the government Project Officer.

Note: Any subcontractor(s) proposed for the main data collection effort are to be fully involved in the pretest.

Pretesting will be monitored by the Project Officer and other selected professional staff. The contractor shall provide an edited pretest tape with documentation and prepare a written report evaluating the results of the pretest by appropriate statistical analysis of marginal tabulations and item completion and response rates and providing suggestions to overcome problems discovered in the pretest. The pretest evaluation report shall include:

- o The time required to administer the questionnaire (both the range and average).
- o Problems of the wording, sequencing or understanding of the questions, and understanding of the response categories.
- o The organization, thoroughness and clarity of the interviewer training and interviewer manual.
- o The efficiency and accuracy of any aspects of the interview which are computer assisted including

Attachment 1

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88