CLPP working paper

Monitoring in the Garment Industry: Lessons from Los Angeles

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The Chicano/Latino Policy Project (CLPP) is an affiliated research program of the Institute for the Study of Social Change at the University of California, Berkeley. The CLPP supports, coordinates and develops research on public policy issues related to Latinos in the United States and serves as a component unit of a multi-campus Latino policy studies program in the University of California. Although CLPP's current research focus is Latino youth achievement–CLPP is committed to supporting and promoting the development of public policy research from a wide range of disciplines, including, but not limited to education, health care, immigration and political participation.

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- Enforcement at the contractor level does not work because contractors can too easily go bankrupt, move, or change names. It is impossible to achieve remediation at this level and more importantly to actually improve the ongoing rates of compliance.
- While there is no joint liability at the federal level and only very restricted liability at the state level, the Department of Labor (DOL) created an innovative alternative by invoking the "Hot Goods" provision of the Fair Labor Standards Act. The DOL, thus, found it they could force manufacturers to take responsibility for their subcontractor violations by restricting the movement of goods made in violation of the FLSA. Armed with the threat of confiscating garments, the DOL asked manufacturers to sign a formal agreement to pay backwages and to monitor their subcontractors.
- The first agreement was signed with Guess, Inc. in 1992. More than 60 companies have now signed agreements (ACPA) with the DOL to monitor, and hundreds of others are also monitoring.

Effectiveness of Monitoring in Los Angeles

- Monitoring has significantly raised the rate of compliance in the industry. DOL statistics show that the rate of violations in non-monitored shops is twice as high as in monitored ones.
- While monitoring helps, it cannot alone solve the industry's problems. 60% of monitored shops are *still* out of compliance. Moreover, 44% of the *most thoroughly* monitored shops are out of compliance.
- The effect of monitoring appears to have plateaued. Despite the fact that the percentage of firms monitoring increased between 1996 and 1998, overall compliance did not improve.
- This is due, in part, to the inconsistency in the implementation of monitoring. According to the DOL data, only a small percentage of factories are "effectively monitored": 28%, or a little over a third of those being monitored.

Weaknesses of the Monitoring System

- There is a no real oversight in the monitoring system, resulting in the following problems:

1. As indicated by the statistics above, monitoring practices are erratic. Monitors do not consistently follow the DOL's guidelines on monitoring, even where required by a formal agreement between the manufacturer and the DOL. Announced visits are common, the frequency guidelines for visits are not strictly followed, surveillance is not always conducted, employee interviews are not conducted in a confidential manner, and only a sampling of payroll records are checked rather than all records since the last visit. The DOL's survey data reveals that of 25 instances where ACPA signatory manufacturers showed up randomly in their survey, 16% the manufacturer had not monitored at all, 80% had not performed all of the required monitoring components, and in only *one* had the manufacturer complied with all monitoring requirements and allowed negotiations over prices (the ACPA only requires negotiations on notice of unprofitability, but this DOL survey question does indicate some level of pricing flexibility).

2. There is currently no systematic check on monitoring—that is, whether the monitoring is thorough and whether the monitors' findings are followed up. Moreover, there is no penalty for bad monitoring.

3. There is no registration or approval process for operating a monitoring firm. Some firms provide other services, which may present serious conflicts of interest with their monitoring business.

- There is no transparency in the system, as all reports are kept secret. No consumer, researcher, or other concerned individual can actually check on the status or thoroughness of a company's monitoring program.
- Because companies are not required to disclose the list of contractors they work with, they are able to monitor their "good" contractors and use other contractors for short runs or quick turnarounds. The DOL survey shows that 53% of manufacturers with work in multiple shops only monitored in one of the shops.
- The pricing issue is inadequately and ineffectively dealt with within the monitoring structure.
- Workers-- who are the best monitors as they are a constant presence in the shop and for the most part are acutely aware of violations against them— are not real participants in this system. Workers are often unaware of who the monitors are or what the purpose and consequences of their visit may be. They are not offered confidentiality or protection from firings or layoffs if they do speak the truth. All interviews take place on-site and the manager is aware of who is being interviewed.

Conflicts of Interest for All Parties

- *Manufacturers*: want their monitors to find violations but do not want production disrupted or to be forced to raise prices (especially given the fact that retailers will not raise the price to the manufacturer). Finding violations would mean added expenses in backwages owed and added time if the work were to be removed from a violating shop. These conflicts are exacerbated by the fact the production managers, whose responsibility it is to ensure quality production on time and within budget, are usually charged with overseeing monitoring programs.
- *Workers:* may want to speak out about violations, but fear retaliatory firings or that the manufacturer will cut off work to the contractor, resulting in layoffs. Workers may also have material incentives in not revealing cash pay or overtime hours that allow them to survive on meager earnings.
- *Monitors:* work directly for the manufacturers and while they may want to standardize their monitoring practices they must tailor their services to the desires of their client, the manufacturer. Monitors cannot interfere in the pricing issue, which involves the business negotiations of their client. Moreover, they may offer other services-- contractor consulting or employee leasing— which can directly conflict with their interest as monitors.
- *Contractors:* are forced into a position of appearing to follow the laws whether or not they are receiving the prices to do so. In fact, since monitoring charges are often deducted from the money the manufacturer owes the contractor, monitoring may intensify the situation. It does, however, offer the contractor the opportunity to learn the laws and also to learn how to hide from detection of violations if they so choose.

Recommendations

- Monitoring cannot and should not replace government enforcement of the laws. Enforcement efforts must be strengthened with the funding of more investigator positions and the implementation of *penalties* for violations, not simply paying backwages that should have been paid in the first place.
- Monitoring alone has not cleaned up sweatshops. The "hot goods" provision has serious limitations. Legislating joint liability would compel manufacturers to take responsibility for the conditions under which their garments are produced, forcing them to take monitoring seriously and giving them a material incentive to pay fair prices to the contractors.
- We cannot enforce labor laws domestically and ignore violations abroad. Trade agreements must include strong and enforceable accords on labor rights as part of the agreement, or enforcement efforts domestically will only serve to further push manufacturing off-shore.

〈 Monitoring itself must be strengthened in the following ways:

1. Oversight: The DOL needs to implement stronger oversight of monitoring practices. This should include a registration process for all monitors, detailed guidelines for acceptable monitoring, a review of each company's monitoring program through semi-annual meetings with each company, and spot-checking investigations. Companies found to be doing an inadequate job should be warned and then have their registration revoked. Monitoring companies should not be approved if they engage in other business, creates a conflict of interest.

2. Negative consequences: The DOL should sue companies for breach of contract if they do not monitor according to the formal agreement they have signed with the DOL. There must be negative penalties for bad monitoring or the system has no credibility.

3. Transparency: Monitoring reports should be made open to the public, as should lists of manufacturers' subcontractors. Public confidence cannot be created without an open and verifiable system.

4. Worker participation: Workers should be apprised of the meaning and consequences of the monitoring process through quarterly meetings held between monitors and workers, on-site and during paid working hours. These meetings must be held in the language(s) of the workers. Employees must be informed of an easily accessible way to make complaints when violations arise. Legislation or regulations to protect employees from retaliatory firings specifically in regard to information given to monitors should be enacted.

5. Intermediary body: An intermediary body should be set up to coordinate monitoring activities for manufacturers. This body should hire monitors who will report to the body rather than the individual manufacturer. Such an arrangement will avoid conflicts of interest with manufacturers paying monitors directly, and will also be a cost-saving measure, resolving the problem of repetitive audits.

6. Pricing: the language on pricing should be reverted to the language in the first draft of the long-form agreement, which specifies that the manufacturer is responsible for bringing up pricing and conducting time and work studies to verify the fairness of a price offered. Failing to do so should also result in a suit or other penalty.

1. INTRODUCTION

The exploitation of production workers in the garment industry is widely acknowledged and has become an area of growing public concern in the last few years. In the United States these workers are almost exclusively immigrants, Latinos in the majority. In Los Angeles, the largest garment manufacturing area in the U.S. and the site of this study, 94% of production workers are immigrants. Of these, 75% are Latinos and 72% are women.

Domestically, violations of wage and hour laws are rampant. Internationally, the use of child labor and verbal and physical abuse accompany low wages and long hours. The focus of the U.S. government's policy initiatives to address this crisis is privatized monitoring. The U.S. Department of Labor has instituted a program in Los Angeles and elsewhere to force manufacturers to monitor their subcontractors for labor law violations. This monitoring program— its effectiveness and its shortcomings— is the focus of this paper.

A major obstacle to combating labor abuses has been the structure of the garment industry, which is based on a system of subcontracting. Subcontracting has been expanded and complicated by economic globalization: manufacturers, who design and market the clothes, now use subcontractors in dozens of countries to produce the garments. Workers often do not know who they are actually producing for and, in any case, they have no access to the manufacturer to rectify any grievances. The system of subcontracting insulates manufacturers from legal liability for working conditions. Subcontractors have no reputation to protect, few assets, and are extremely mobile— they can move to another shop, use another name, or sometimes even move to another country literally overnight. Workers and government agencies have had a difficult, often impossible, time recuperating backwages or demanding other redress from such ephemeral entities. The challenge is to hold the real profit makers (the manufacturers and retailers) accountable for the conditions under which their products are made.

Codes of conduct and monitoring are now being promoted by the U.S. government, many NGOs, and even some manufacturers as a way to ensure accountability and, thus, address the problem of sweatshops in the globalized garment industry. Codes of conduct are a list of principles developed by manufacturers to guide the conditions of production in their subcontracting factories. The codes usually include such issues as numbers of required hours, minimum working age, minimum salaries, and rights like freedom of association. Codes always demand compliance with local laws (such as legal working age in the country) or specify higher standards (such as a minimum worker age of 15). Manufacturers provide their subcontractors with such codes and usually request that each subcontractor sign an agreement to comply with them. Monitoring, visits to and investigations of factories, is an additional step that a subset of manufacturers has adopted to confirm if subcontractors are actually complying.

While codes of conduct are written documents that can be easily examined and analyzed for weaknesses or unacceptable principles (such as legal minimum wage vs. living wage, or 60 required hours of

work vs. 40 hours), monitoring is set of practices that remains largely hidden from scrutiny. The concept and structure of monitoring is now the subject of a worldwide debate among NGOs, manufacturers, academics, and others.

It should be noted that domestic and international monitoring differ in significant ways. For instance, while companies who monitor abroad do so for compliance with their codes of conduct, domestically most companies who monitor only do so to ensure compliance with U.S. laws governing wage and hour violations, child labor, and to a lesser degree health and safety regulations. Issues such as discrimination, freedom of association, and collective bargaining rights are ignored domestically.

This difference in monitoring practice partially results from differing pressures on international and domestic manufacturers. Companies doing international monitoring have done so solely in response to the pressure of social movements and the negative publicity these movements have generated about sweatshops abroad. The Gap became the first company to agree to independent monitoring of any of its subcontractors when it signed an agreement with the National Labor Committee (NLC) in 1995.[1] This agreement specifically concerned a factory in El Salvador where workers had been mistreated and also fired for union activities. Later, Kathie Lee Gifford, the TV personality whose line of clothing is sold at Wal-Mart, erupted in tears on national television over the disclosure by the NLC that children were working for her subcontractors in Honduras, while Disney was exposed for exploiting workers in Haiti, and Nike for paying poverty wages to Indonesian workers. These incidents, together with the revelation of the virtual slave labor of Thai immigrants in a factory in El Monte, California, led to the formation of the President's Apparel Industry Partnership and a surge in international monitoring activity.

The Thai case in El Monte also gave a boost to domestic monitoring. However, domestically, companies are monitoring not only in fear of negative publicity if sweatshop conditions are uncovered with their labels present, but also in response to a concerted monitoring campaign by the federal government. The government's effort has been concentrated, although not exclusively, in Los Angeles where the Department of Labor (DOL) began a monitoring push in 1992. Recognizing that they were not making progress enforcing labor law at the contractor level, the DOL began to enforce the "hot goods" provisions of the 1938 Fair Labor Standards Act on garment manufacturers. This statute states that goods made in violation of labor laws cannot be shipped in interstate commerce. Armed with the threat of restricting the movement of goods, the DOL forced manufacturers to pay backwages, and repeat violators to agree to monitor their own subcontractors. The DOL is also attempting to enlist retailers' assistance by pressuring them to require monitoring programs of all manufacturers who wish to sell to them.

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[1] The NLC is an organization that grew out of internal opposition to the AFL-CIO's support of U.S. military aid to El Salvador and Guatemala in the early 1980s, given the human rights violations against unionists there.

This report will set forth some basic facts about domestic monitoring: who does the monitoring and how they do it. It will lay out in a more schematic fashion the same information for international monitoring. The report is also an attempt to analyze some of the conflicts of interest and other potential problems within the process. The underlying assumption of this report is that monitoring reduces the numbers of labor law violations in the industry, but does not eradicate them. This is a view shared by state investigators, union representatives, and academic experts alike. Monitoring is a tool but as the creator of the program, DOL District Director Rolene Otero, put it, "it is not a silver bullet."[2] Given that, how can we best use this tool? And what are its weaknesses, inherent or correctable, of which we must be cautious?

[2] Interview with Rolene Otero, DOL District Director, August 6, 1998.

2. EVIDENCE OF MONITORING'S EFFECTIVENESS

2.1 Domestic Evidence

The United States Department of Labor (DOL) has conducted studies demonstrating that monitoring has reduced violations. Table 1 summarizes DOL analyses of three surveys conducted over a six-year period in Los Angeles. While this table shows that overall compliance rates did not improve between 1996 and 1998, it does show that monitored shops had lower rates of violations and smaller violations (see backwages owed) than non-monitored shops.

The data also shows that *how* a shop is monitored has a significant effect on rates of violations. In the 1996 survey, the DOL asked shops simply whether or not they were being monitored. However, in the 1998 survey, investigators asked specifically whether any of seven components of monitoring were being conducted. The monitoring points as laid out by the DOL are as follows: review of timecards; review of payroll; interviews of employees; providing compliance information; advising of compliance problems; recommending corrective action; and making unannounced visits. The 1998 "monitored" shop column includes shops that were being monitored in at least one of the seven component areas, while the "effectively monitored" column covers only shops that were being monitored in at least six of the seven areas. The significantly higher rate of compliance in effectively monitored shops as opposed to shops that were minimally monitored demonstrates that it is important to explore *how* shops are being monitored (see Section 5).

However, the fact that even in the "effectively monitored" shops nearly half were still out of compliance demonstrates that monitoring as a process, without other significant changes, can only have a limited effect. Moreover, if one compares the monitored column in 1996 to the equivalent column in 1998 (the first of the two monitored columns in 1998 which would, like 1996, include *all* monitored shops) effectiveness of monitoring seems to have significantly decreased. Even if you compare the 1996 column on monitoring (which would include all monitored shops "effectively and minimally" monitored) to the 1998 effectively monitored column, a slight decrease in effectiveness is shown. It would appear that monitoring has neither been refined nor grown in effectiveness, but rather its effect has at best plateaued and at worst declined. Monitors and state and federal officials alike agree that as subcontractors get used to monitoring, they become better at hiding violations from the monitors.

It is also noteworthy that while the percentage of monitored shops appears to have grown significantly between 1996 and 1998, from 48% to 77% of those surveyed, the overall compliance rate did not improve. Gerald Hall, District Director and the head of the DOL garment enforcement program in Los Angeles, points out that not all the shops in the minimally monitored column should actually be considered

Table 1. Department of Labor Data From Surveys of Garment Shops In The Los Angeles Area[3]

Overall compliance refers to compliance in the five areas covered by the Fair Labor Standards Act (FLSA): child labor, homework, recordkeeping, minimum wage, and overtime payments. All statistics here are directly from the DOL's own analysis of their data.

Firms in Compliance	1994 **overall**	1996 **overall**	1996 non-monitored	*1996 monitored*	1998 **overall**	1998 non-monitored	*1998 monitored*[4]	*1998 effectively monitored*[5]
Overall compliance	22%	39%	22%	*58%*	39%	20%	*40%*	*56%*
Minimum wage	39%	57%	36%	*73%*	52%	33%	*56%*	*72%*
Overtime	22%	45%	25%	*61%*	46%	40%	*48%*	*56%*
Average backwages per shop[6]	$7,284	$3,235	$4,872	*$1,972*	$3,631	$5,324	*$2,955*	*$1,413*
Percentage of shops surveyed	100%	100%	52%	*48%*	100%	23%	*77%*	*28%*

- Compliance in monitored shops is higher than compliance in non-monitored shops.
- Overall compliance did not change significantly between 1996 and 1998 despite the fact that the percentage of shops being monitored appears to have increased dramatically (48% to 77%).
- In 1998, only 28% of shops were "effectively monitored." This means that only 37% of the shops being monitored were "effectively monitored.

[3] This data was released by the Department of Labor (DOL) in April 1998 in a summary of its survey findings. The 1998 survey covered 70 garment shops and previous surveys covered similar numbers of shops.

[4] Shops reporting that a manufacturer to whom they sold carried out at least one of seven monitoring components: review of payroll, review of timecards, interviews of employees, providing compliance information, advising of compliance problems, recommending corrective action, and making unannounced visits.

[5] Shops in which the manufacturer carried out at least six of the seven monitoring components.

[6] Backwages are the amount that employees are owed for non-payment of minimum wage and overtime and are an indication of the extent of the violations.

monitored, since only one of the seven components needed to be conducted.[7] My own research confirms that the number of shops being monitored did rise between 1996-1998, but not so dramatically—perhaps by 10%. However, the increase in the percentage of monitored shops sampled for the survey clearly rose more than the overall increase in monitoring. Since the 1998 survey excluded underground shops, where there does not tend to be much monitoring, the rates of monitoring increased. This increase in the percentage of sampled shops being monitored, whatever the exact figure, *did not* correspond to *any* rise in overall compliance of sampled shops.

The observable decrease in compliance in minimum wage may be attributed to a 21% rise in the federal minimum wage during this period; but overall compliance in all areas probably decreased more than is represented by comparing the 1996 and 1998 figures (in bold). The 1998 survey only included registered shops, the sample being taken from a state list of registered shops. In 1996, the survey sample was taken from tax data in which "underground" or unlicensed shops were included. Therefore, the pool for the 1998 survey *should* have lower violation rates, since it is widely acknowledged that there are far more violations in the underground shops that were excluded by the 1998 survey. Since the pool was not kept constant, the fact that the 1998 figures do not show lower rates of violations would, thus, actually indicate a rise in violations.

It should also be noted that the effectively monitored column represents only 28% of the 70 factories investigated, or 20 shops. This is only a little over a third of 54 sampled factories being monitored. However, even if the number of monitored shops is adjusted, as suggested above, it is clear that large percentages are not effectively monitored.

While monitoring may have played a role in substantial improvements in compliance rates between 1994 and 1996 it seems to have reached the limits of its effectiveness in terms of real change. At least this is true for how monitoring is currently being conducted. Perhaps if monitoring were standardized and regulated so that most monitored shops were "effectively" monitored we would see more overall improvement.

2.2 International Evidence

Studies such as the U.S. Department of Labor's investigation of L.A. shops have not been done on an international level and, in fact would be very difficult to do under the present circumstances. There is no body with the authority to demand entry into off-shore factories to do inspections. However, the DOL conducted a survey of various footwear companies regarding their policies on codes of conduct and monitoring in relation to the use of child labor. They concluded that::

> These policies usually prohibit the use of child labor, and often establish guidelines for the monitoring of foreign manufacturers and disciplinary action for violations. The actual

[7] Interview with Gerald Hall, DOL District Director, June 12, 1998.

> implementation of these policies, however, varies from company to company and from country to country. Awareness of the policies among foreign manufacturers, workers and trade unions seems to be limited at best. Similarly, monitoring by US importers is not consistent, even within the same country.[8]

While monitoring has the potential to benefit the workers, its unevenness and lack of transparency makes it difficult to evaluate in practice. There is some cautionary evidence from reports on factories in Viet Nam and Mexico, which were being monitored and where violations continued. We also have some evidence from El Salvador that their independent monitoring project, while quite limited, has had some positive results.

2.2.1 Nike's Monitoring in Viet Nam

In 1997, Dara O'Rourke, a researcher from UC Berkeley and consultant to the United Nations studying export factories in Viet Nam, was leaked a monitoring report on one of those factories. The audits and report were done by Ernst and Young, the international accounting firm, for Nike. O'Rourke compared his own findings, from environmental factory audits conducted as a United Nations consultant and off-site interviews with workers, to the findings of the Ernst and Young report. His conclusions raise some serious questions about manufacturer-commissioned monitoring.

O'Rourke found that Ernst and Young had *not* found many violations occurring in the factory— such as physical and verbal abuse of workers, sexual harassment, violations of Vietnamese labor laws on wages and hours, and strikebreaking. Ernst and Young did not discover these violations because they relied on employee surveys and management interviews, but failed to conduct confidential employee interviews, failed to conduct an occupational health and safety audit according to accepted industrial hygiene standards, and failed to use a thorough and independent methodology in their investigation. As Ernst and Young explain in their report "the procedures performed were those that you [Nike] specifically instructed us to perform. Accordingly, we make no comments as to the sufficiency of these procedures."

Ernst and Young did find numerous other violations, including illegal chemical exposure, lack of training on hazardous materials, lack of safety equipment, and forced overtime. Despite these findings, which clearly violate Nike's Code of Conduct, Ernst and Young concluded that the factory was in compliance with Nike's Code. Because all such reports are confidential (unless leaked), Nike was able to claim and publicize— with the help of ex-U.N. Ambassador Andrew Young, whom they hired to also monitor their factories— that Nike was "doing a good job."[9]

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[8] US Department of Labor, *By the Sweat and Toil of Children*, Washington, DC, 1997, p. 93.
[9] O'Rourke, Dara. *Smoke From a Hired Gun: A Critique of Nike's Labor and Environmental Auditing*. San Francisco, Transnational Resource and Action Center, 1997.

2.2.2 Guess's Monitoring in Mexico

In February of 1998 the National Interfaith Committee for Worker Justice (NICWJ) sent a delegation to Tehuacán, Mexico to investigate the conditions in four jeans factories, all of which produced for Guess? Jeans as well as for other companies. The NICWJ delegation found forced overtime, unpaid overtime, minors (13 years old) working, verbal abuse, and violations of minimum wage laws, among other problems.[10]

Guess's internal monitor had accompanied their hired compliance firms to audit Guess's factories in this region only weeks before. I was told by Guess's compliance coordinator, Irma Melawani, that they did not find any of these violations. She said they had found minor things like a lack of toilet paper, blocked aisles, and non-use of protective gloves and covered shoes. In regards to the child labor question she said this was hard to determine since people can look younger than they are, but it was true that all the personnel files were not complete.

Ms. Melawani said that they had returned to Tehuacán in April: "All these issues we went back to ensure they had been corrected and they were." When asked if she meant the documentation was complete she said, "Well no, the documentation is a very difficult thing, it's a long process to work on," because getting birth certificates takes a long time in Mexico. When asked if they would require this by the next visit in September she responded, "we'll check on that again and we'll see how the process is going."[11] There seemed to be a lot of leeway on what should be a crucial issue, the possibility of child labor. Again reports of these audits are confidential and Guess? will not release them for public review.

The discrepancies between the claims may be due in part to the fact that the NICJW delegation relied heavily on off-site employee interviews for their information while Guess? did not conduct such interviews. Instead they reviewed company records and spoke to employees on the factory premises.

2.2.3 NGO Monitoring in El Salvador

In El Salvador, monitoring is being carried out in one factory by a coalition of religious and academic groups who have an agreement with the Gap to monitor their subcontractors there. The Independent Monitoring Group of El Salvador (GMIES) reports,[12] and my own research confirms,[13] that the situation in that factory has greatly improved since monitoring began. The workers have potable water, bathroom visits

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[10] *Cross Border Blues: A Call for Justice for Maquiladora Workers in Tehuacán*, National Interfaith Committee for Worker Justice, 1998.

[11] Interview with Irma Melawani, August 7, 1998.

[12] Anner, Mark. *La Maquila y El Monitoreo Independiente en El Salvador*; San Salvador: GMIES Report, 1998.

[13] I conducted six weeks of field research in El Salvador on the Mandarin case in the summer of 1996, at which time I interviewed workers, unionists, members of the monitoring group, government officials, and the factory owner. I also observed conditions in the factory on two occasions.

are unlimited, ventilation in the factory has been improved, all social security payments are being met by the owner, and there are no more complaints of mistreatment by management. Workers continue to report problems around freedom of association, although fired strikers have been reinstated and are continuing to be active as a union within the factory.

It is hard to disentangle whether all these improvements are due to the monitoring itself or to pressure from the manufacturer who suffered from an intense publicity campaign and consumer boycott. However, it is clear that monitoring has contributed to the ongoing scrutiny given the factory and its continued lack of violations. It is also clear that a local NGO carrying on monitoring has been able to establish ongoing relationships with workers in which the workers themselves feel that they have enough confidence in and access to the monitoring group to present problems as they arise.

However, this project continues to be very limited in scope. As of August 1998, the GMIES was still only monitoring one factory, although they had spoken to other manufacturers about their services. The GMIES had also not been able to develop the capacity to do technical monitoring of health and safety conditions. There is a local university, which may be able to offer assistance in this area. Finally, there is no stability built into this monitoring project in terms of funding. The GMIES must apply each year for funding from international NGOs. The manufacturer and the contractor have no financial responsibility for this project. While foundation and NGO funding provides more independence for the monitors, such a system fails to hold the manufacturers and retailers, who are responsible for the need for monitoring, accountable for its expense.

3. THE MONITORS

These international cases bring up the question of who is actually doing the monitoring and for whom. The majority of domestic monitoring is being conducted in Los Angeles, the largest garment manufacturing area in the country. In the last six years, 63 firms have each signed the Augmented Compliance Program Agreement (ACPA) with the U.S. Department of Labor to monitor their subcontractors.[14] All of these firms are in the Los Angeles area with the exception of two in San Francisco. Firms usually sign this agreement under duress. When the DOL repeatedly finds a company's subcontractors in violation, it asks the company to sign the agreement with the spoken or unspoken threat of taking it to court if they refuse. Companies that sign the ACPA are allowed to ship "hot goods" as long as they are in the process of remediation, without having to wait for the DOL to officially lift its objection. A few firms, some of which were under pressure from the DOL for past violations, banded together in the Alliance Compliance and affirmatively signed a joint agreement with the DOL along the same lines as the ACPA.

However, ACPA signers are a minority of the hundreds of firms in Los Angeles that are monitoring. Most monitor with no agreement with the DOL, preferring to avoid government contact, which they feel gives the impression of previous wrongdoing. Even if a company has not signed the ACPA, the fact that it is monitoring is taken into consideration if the DOL finds violations at a contractor shop. The DOL is less likely to contact the retailer, for example, and if it does the retailer will be informed that the company has taken proactive measures.

The DOL claims there is no count of how many manufacturers may be monitoring, nor list of who they are. According to my survey of Los Angeles compliance firms, consulting companies who offer monitoring services, their manufacturer clients total approximately 350. However, some manufacturers use more than one compliance firm. On the other hand, the 350 figure does not include manufacturers who rely solely on internal monitors, that is, their own employees. While 350 is a significant number, it is less than one-fifth of the estimated 2000 manufacturers in the Los Angeles area.[15]

Table 2 shows the cumulative results of a survey conducted in October 1998. Four of the five major compliance firms in Los Angeles responded to the survey.[16] These figures represent the total number of clients the four firms have, but do not reflect whether those firms have hired the monitors for domestic or international monitoring. However, only one compliance firm, Cal-Safety, does any significant amount of

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[14] Three firms are no longer in business. As of June 1998 the ACPA became the FPA: Full "Hot Goods" Compliance Program Agreement. However, it is still standardly referred to as the ACPA or the Long Form.

[15] Bonacich, Edna and Richard Applebaum. *Behind the Label: Inequality in the Los Angeles Apparel Industry*. Berkeley: University of California Press, forthcoming.

international monitoring and it has 30 of the 33 retailer clients. The other clients can all be assumed to be doing domestic monitoring with perhaps some additional international monitoring as well.

Table 2. Survey of Los Angeles Monitoring Firms

# of Clients	1998	1996	1994
Manufacturers	324	237	168
Retailers	33	11	0
Contractors	159	51	35
TOTAL	524	299	203

As you can see, manufacturers make up the bulk of the firms with domestic monitoring programs. Spurred on by negative media exposés linking retailers to labor abuses, a small number of retailers have begun to monitor. In order to have more control over the process and to avoid being monitored by a number of different manufacturers, a growing number of contractors choose to monitor themselves rather than or in addition to being monitored by the manufacturer.

A much smaller number of firms (although with a higher percentage of retailers) are monitoring abroad; these are generally only the largest, most visible and wealthiest companies (e.g. Guess, Disney, Kelwood, Gap, and Nike).

Manufacturers (or other entities) hire a variety of companies and organizations to actually carry out the monitoring and then report back to them. While compliance firms dominate the monitoring business in Los Angeles, monitors also include employees of the manufacturer (internal monitors), accounting firms, certification agencies, and NGOs.

3.1 Internal Monitors

Many manufacturers began "monitoring" by using their own quality control (Q.C.) staff, who were already frequently in the factories, to check for labor law compliance. While many still do this, especially abroad, it has been widely recognized that Q.C. staff have neither the expertise nor the incentive to do such monitoring. The priority of the Q.C. person is to get high-quality garments manufactured on time, within the estimated budget. Rectifying labor law violations, which entails additional expenditures as well as time, clearly interferes with this goal (at least in the short term).

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[16] The DOL was only aware of five compliance firms in Los Angeles when I spoke with them in June of 1998. Through my research I became aware of one more. A small one-person firm did not respond to the survey and a firm called Labor Law responded that all information requested was confidential.

Many manufacturers have now hired their own internal monitors. This sometimes replaces outside monitoring and is sometimes combined with it. Some manufacturers find it cheaper to hire their own monitor than to pay compliance firms for each individual visit. This person or persons are in charge of all compliance for a company's subcontractors. Many of the internal monitors are former employees of the monitoring firms and tend to use the same sort of system.

Some large companies combine internal monitors with outside services. For instance, Guess has an internal monitor who coordinates her efforts with the services of an outside firm. She sometimes accompanies them on visits. More often she takes their reports and then speaks directly with the plant owner. She also does visits on her own when problems arise. The Gap also has a monitoring department that coordinates its internal and external efforts; this includes an internal monitor stationed in Central America.

While the DOL states in all their materials and agreements that the monitor may be an employee of the firm or an outside person, it promotes the use of outside monitors. Rolene Otero told me that when they find violations in shops that are monitored with the manufacturer's own personnel, they urge the manufacturer to use an outside agency. Gerald Hall stated at a monitoring forum that the DOL does not recommend one *over* the other but *both* to provide a check in the system. An outside monitor is assumed to be more independent and, therefore, more effective.[17]

3.2 Compliance Firms

The majority of monitoring in Los Angeles conducted by compliance firms. These are companies that have grown up specifically to do labor law compliance in the garment industry (although some have now branched out to audit production of toys, shoes, etc.). There are four major firms in the Los Angeles area and some smaller operations.

The largest of these companies is Cal-Safety, which began doing compliance consulting about health and safety regulations and now does strictly monitoring. Monitoring is a booming business— Cal-Safety earned $4,500,000 in 1996. Cal-Safety has grown considerably since then, and now has approximately 100 employees and does almost 30% of its audits abroad. International audits are much more expensive and more lucrative for the compliance firms. Local audits in Los Angeles range between $150 and $375 with $300 to $350 per visit being the most common price. International audits by compliance firms cost around $1,000.[18]

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[17] However, one internal monitor pointed out in an interview that if he failed to detect violations he would lose his job, whereas an outside monitoring firm might simply lose one client. Interview with Martin Yap, August 4, 1998.

[18] Some charge $500 for Mexico.

To give a sense of the breadth and growth of the compliance industry, below is a table of activities of four of the five largest compliance firms based in Los Angeles.

Table 3. Activities of Compliance Firms

Companies	*1998*	*1996*	*1994*
Number of Visits Conducted in Los Angeles	10,240	9,420	7,885
Number of Visits Conducted in Other Areas of the U.S.	3,115	2,080	1,515
Number of Visits Conducted Abroad	3,044	1,515	505
TOTAL	16,399	13,015	9,905

The fastest growing sector is actually monitoring abroad, although most of this growth is due to an expansion of international monitoring by one firm, Cal-Safety. Audits conducted in the U.S. outside of Los Angeles doubled between 1994 and 1998. This growth was on the part of two firms: Cal-Safety and Apparel Resources, Inc. Cal-Safety has not expanded its business in Los Angeles in the last four years; the growth of monitoring there is covered by Apparel Resources, which now conducts the largest number of audits in the area and by newly formed compliance firms.

The compliance firms generally hire untrained staff, often young college graduates, or students as part-time employees. Some require that new employees have a second language, but no other specific skills beyond that. While capable of doing simple audits, they do not have any specialized knowledge in accounting, health and safety, or interviewing techniques (see Section 6.1 on Training). Several of the companies have senior staff with expertise as former government investigators or trained accountants.

All monitoring by compliance firms is done on a checklist basis. Monitors do not look at operations systems or procedures. If, for example, there are apparently no minors in the factory today, then the factory would pass on that score. There is no attention paid to what the procedure is to ensure that minors are not hired.

3.3 Accounting Firms

Accounting firms are mainly involved in international monitoring. There are several accounting firms that did some monitoring in Los Angeles when the program first began. They already worked as financial auditors for many garment manufacturing companies and began offering an additional service, which they view as an expanded type of audit. But according to two of those firms, as the compliance companies grew the accounting firms could no longer compete for customers. The accounting firms hire

trained staff, mostly certified public accountants (CPAs). It was not worth an accounting firm's time to compete for domestic monitoring jobs at the prices the compliance firms were offering.[19]

There are two main accounting firms who now do mostly international audits: Pricewaterhouse Coopers and Ernst & Young. Growth in this area is astounding. Pricewaterhouse, which had not yet started this service in 1996, conducted an estimated 6,000 audits in 1998.[20] Their clients tend to be big companies with large profits, like Disney and Nike. They have the advantage of established offices in many parts of the world and local staff familiar with the language and customs of the workers. They are also highly trained in calculation and bookkeeping, which may facilitate addressing wage and hour issues. They claim to look beyond surface appearances at systems of operation (such as what *procedures* a company has in place). However, they have no professional training in other areas such as health and safety, labor law, or human rights issues. Moreover, they do not necessarily have experience interviewing or dealing directly with workers.

3.4 Certification Agencies

There are also certification companies that are presently conducting audits abroad. These are mostly agencies involved in the International Standards Organization (ISO) system, such as SGS of Switzerland. These companies previously audited for compliance with internationally recognized environmental and production quality standards. They are familiar with doing factory audits and specialize in reviewing systems of operation. They have expertise in environmental areas and in production standards, which gives them insight into whether things are as they appear (such as whether the amount of work contracted could be accomplished by the machines and workers present or whether there must be homework or further subcontracting going on). However, they are not trained accountants, nor do they have experience with labor issues and worker concerns.

3.5 Non-Governmental Organizations

There are no non-governmental organizations currently monitoring garment shops in Los Angeles, and none that the author is aware of the United States. However, there are three NGO monitoring projects currently operating in Central America and others being proposed in Asia. There have also been one-time monitoring efforts in Guatemala and the Dominican Republic.

There are two ongoing monitoring projects in Central America, but they are each limited to one factory. In El Salvador, the Independent Monitoring Group of El Salvador (GMIES) has been monitoring

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[19] Interview with Randy Rankin, head of social auditing for Pricewaterhouse Coopers, on September 24, 1998; and a telephone interview with a representative of Stonefield Josephson on September 25, 1998.
[20] According to their response to my survey returned in November of 1998.

the Mandarin International factory, which produces for the Gap, since 1996. The GMIES monitors the shop on a very consistent basis with weekly visits to the factory and ongoing communication with the workers. Their monitoring to date has focused on correct payment of wages, visible conditions, social security payments, reinstatement of fired employees, and right to association.

There is also a monitoring group in Honduras, which was set up through the same channels as the Salvadoran group. They also came together to monitor a single factory producing for the Gap under an agreement with National Labor Committee. This monitoring group has actually run into problems with the Honduran unions over the boundaries of their activities. A new monitoring group, COVERCO, has recently been established in Guatemala. They were slated to begin monitoring activities in January of 1999 with three factories producing for Liz Claiborne.

"Monitoring" has also been used on a one-time basis to verify or evaluate specific situations. Levi Strauss contracted with Oxfam and two NGOs in the Dominican Republic to evaluate the implementation of their codes of conduct there. Human Rights Watch also "monitored" a factory producing for Philip Van Heusen in Guatemala during a labor dispute. Both of these were successful interventions but were not long-term endeavors.[21]

NGOs often have the trust of the workers and credibility with the larger society, and they are most capable of investigating violations of human rights and freedom of association. However, there is always the danger that such credibility would not exist if, on the one hand, the company could find or create a "pet" NGO or, on the other, the NGO were simply an uncritical voice of the workers.)

Even with established, credible NGOs, it seems currently that they do not have the necessary capacity to do full and complete inspections, including complicated accounting and health and safety audits. While NGOs could certainly build this capacity, it would take funding to do so. This is a controversial area, since there has already been division and competition among NGOs for such international funding. There is also a question of how such funding should be given, since it causes grave conflicts of interest if the NGOs are funded directly by companies. This brings us to the question of the structure of payment.

[21] In fact, in December 1998, Philip Van Heusen closed this factory, the only unionized factory in the export processing zones in Guatemala.

4. STRUCTURES OF PAYMENT

It is important to not only look at who is monitoring, but also at who is paying for that monitoring, both immediately and ultimately. The structure of payment has implications for the "independence" of the monitors, the systems of reporting, and the coordination of monitoring activities by different manufacturers in the same factory. Various structures of payment are operating or have been proposed, including the manufacturer directly paying for monitoring, the contractor paying directly, or the creation of an intermediary body to oversee the monitoring process.

4.1 Manufacturer Pays

In Los Angeles, the manufacturer almost always makes the actual payment for the monitoring service. If a manufacturer hires an internal monitor, it pays the monitor's salary. If it hires an external firm, it writes the check for those services. However, in the latter case it is very common for the manufacturer to charge back some or all of these expenses to the contractor, that is to deduct the money from what is owed to the contractor. Since retailers set the prices they pay the manufacturer, if manufacturers want to avoid monitoring costs they can only do so by passing the costs down the chain, not up.

Large manufacturers often have an agreement that they will pay for all audits that the contractor passes and charge back the contractor for all audits that it fails. If a contractor passes, it is not visited again for a specified period of time, in most cases three months; if the contractor fails, a visit is scheduled in a shorter period of time. Some manufacturers will pay for these quarterly visits, but charge back any extra visits that are required because of a contractor's failing an inspection. Other manufacturers, especially smaller ones, charge back half of or all of even the quarterly visits to the contractor.

The DOL's intention, as described to me by the creator of the monitoring program, was for the manufacturer to pay these expenses. They envisioned that weekly monitoring, which occurs when a contractor has failed audits (described in Section 5.2), would be so costly as to be prohibitive and so manufacturers would drop the contractor.[22] However, there is no language in the ACPA agreement requiring a manufacturer to absorb the expenses.

The system of chargebacks can be excessively burdensome to a contractor who usually works for more than one manufacturer and is, therefore, being charged back for monitoring visits on behalf of each manufacturer. Monitoring companies rarely combine their own reports— much less with any other firm. So if a monitoring firm needs to visit a contractor for more than one manufacturer, it does not generally consolidate the visit, or at least it does not consolidate the charges. The monitoring companies claim that the manufacturers do not want to share information or reports and that they must do a separate report for each

manufacturer, thereby justifying the repetitive charges. Manufacturers contradict this justification, saying they would be happy to share expenses and that the information is not secret because the manufacturers know who else is in the shops through their quality control agents.[23] It was reported to me by several sources that while a monitors charges each manufacturer for its own visit, in some cases the name is simply changed on the report. In any case, the contractor is subjected to chargebacks for several reports and possibly subjected to the disruption of several visits.[24]

4.2 Contractor Pays

Other monitoring arrangements have been proposed or already exist in which contractors pay directly for the monitoring services and are provided with a passing certificate that they can then show to any prospective manufacturer. Contractors have to continue to be audited at specified intervals, annually for example, and they may be decertified upon failure of subsequent audits or if they are found to be in violation of labor standards in the interim (through government investigation or additional audits triggered by registered complaints).

4.2.1 Contractor Associations

The Garment Contractors' Association of Southern California (GCA) made a proposal to the DOL in 1996 that would allow its members in good standing, and who had no violations for the past three years according to DOL and state Department of Labor Standards Enforcement (DLSE) records, to become "certified contractors." The contractor would be awarded certification upon passing an audit by an approved monitoring company. The contractor would arrange and pay for such an audit from a company on a list of monitors approved by the GCA and the DOL. According to the executive director of the GCA, the DOL rejected this proposal because DOL officials in Washington felt that it would undermine monitoring's purpose of creating responsibility on the part of the manufacturer. Without DOL support, in approving a list of auditors or guaranteeing that such a certificate would be accepted by the DOL in lieu of a manufacturer arranging for the monitoring, the GCA decided not to go forward.[25]

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[22] According to interview with Rolene Otero, August 6, 1998.

[23] Interviews with Vera Campbell of Design Zone, July 27, 1998; Sam Abebe at L'Koral, July 20, 1998; and Spencer Miller at Little Laura, July 21, 1998.

[24] Contractors, manufacturers, and anonymous monitoring employees all told me of double billing. Spencer Miller at Little Laura described fighting with Cal-Safety over this issue. The heads of all three contractor associations in Los Angeles concurred on how the current system works: interviews with Joe Rodriguez, GCA, July 13, 1998; Gary Jue, American-Chinese Garment Contractors Association, July 23. 2998; Jay Lee, Korean-American Garment Industry Association, July 24, 1998.

[25] Interview with Joe Rodriguez of GCA, and GCA proposal.

The GCA arrangement would have avoided the problems of overlapping, both of visits and of charges. It also addressed another contractor concern—autonomy. Contractors feel that a manufacturer sending someone to look at all their records is an unfair interference with their business practices. A contractor would certainly not have a similar right to access the manufacturer's accounts. Moreover, contractors complain that the monitors often act like policemen and treat the contractors disrespectfully. Some contractors feel that if they must participate in this process, they should have the right to own the report that they often in effect pay for, and that they would rather be in the position of contracting the monitor's services themselves to help them correct problems.

One small monitoring firm in Los Angeles specializes in serving contractors directly and encourages them to take a more forceful stand on this issue. It currently has about 60 contractor clients. Other monitoring firms also sell their services directly to contractors and include them in a referral service of clean contractors, which they offer to manufacturers. There are also contractor associations in El Salvador and other Central American countries who have begun to hire monitors directly.

While this makes sense in many ways, it also is open to problems of direct conflicts of interest. If a monitor is being paid directly by a contractor, clearly the monitor would be in danger of losing a client if they failed them and conversely the contractor could look for a monitor who would pass them.

4.2.2 S.A. 8000

The Council on Economic Priorities based in Washington D.C. has begun a program, S.A. 8000, which is structured so that while contractors pay the monitor directly, there are checks built into the model. Only monitoring agencies accredited by S.A. 8000 are accepted in this system. Most importantly, complaints about a factory that has passed inspection can be filed either with the monitoring agency or with S.A. 8000. These complaints can be registered by workers themselves or by another party on behalf of the worker (an NGO or labor union for example).[26]

The S.A. 8000 model, however, requires a would-be monitor to pay $10,000 plus significant accreditation expenses to become part of the system. The services of such monitors could not come cheaply, bringing up the point that monitoring can create, or entrench, a division among contractors. Only the most successful contractors can afford the expense of becoming certified through monitoring; this may in turn give them an extra edge on smaller competitors. It may, in fact, drive the smaller competitors underground.

4.3 Intermediary Body

There are also proposals for structures in which the contractor or manufacturer would pay an intermediary body who would then hire the monitors, review the reports, and oversee the corrective actions.

These models allow for some measure of "independence" on the part of the monitor, who is not hired directly by the interested party, and provide more transparency.

4.3.1 Made By the Bay

In San Francisco, Manex (Manufacturing Excellence) Corporation and the Northern California Chinese Garment Contractors Association (NCCGCA) have designed a Independent Monitoring Component (IMC) as part of their Made By the Bay program (which also includes technical assistance and marketing training). The IMC would carry out all audits and report to the consortium of contractors rather than to its individual members. There are provisions for contractors to be dropped from the program for repeated violations or refusal to pay owed backwages. The model also stipulates that the IMC will report regularly to the DOL and that all results and findings of the IMC will be a matter of public record.[27]

4.3.2 Clean Clothes Campaign

The Clean Clothes Campaign is a coalition of trade unions, consumer organizations, women's groups, and solidarity and development organizations that began in the Netherlands in 1990 and has now has local branches throughout Western Europe. In 1997, they outlined a system for independent monitoring, which they call a "Foundation Model." The foundation, or Monitoring Body, responsible for monitoring represents equally NGOs, trade unions, producers, and retailers. Each manufacturer or retailer signs a contract with the Monitoring Body, including payments. The Monitoring Body guides the companies in how to implement their codes on the factory level, and then hires monitors to do external audits. These monitors report to the Monitoring Body, who advises companies of what actions must be taken. This advice is binding and if it is not followed the contract is considered broken. Information is to be made public if corrective actions are not taken.[28]

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[26] Interview with Judy Gearhart of S.A. 8000, July 18, 1998; and S.A. 8000 documents.
[27] Interview with Paul Gil of MANEX, May 1998; and IMC document.
[28] Interview with Ester de Hahn of Clean Clothes Campaign of the Netherlands, July 17, 1998;and Clean Clothes Campaign documents.

5. VARIETY OF PRACTICES

It is not only the relationships involved, but also the objective quality of the monitoring that determines its effectiveness. For monitoring to be effective the monitors must first gather reliable information and then the manufacturer— or monitor in its stead— must follow up on any violations found.

The following section is based on DOL data and fieldwork I conducted in Los Angeles during the summer of 1998. I spent three months conducting over 40 in-depth interviews with monitors, manufacturers, contractors, government officials, workers, and union representatives. I also observed a limited number of audits. While I cannot verify that the examples I give are evidence of patterns of practice, they do indicate important weaknesses in the system. Moreover, the statistics given, which are based on analysis of the raw data from the DOL's survey, confirm that these weaknesses are widespread. The DOL's own analysis showed that only 28% of firms are being effectively monitored (a little over a third of those being monitored). I have included here specific breakdowns on monitors' performance of each component of monitoring. Furthermore, DOL data showing widespread violations even in effectively monitored shops (44%), indicates a need for stricter monitoring standards, as well as for a more transparent monitoring system.

The veil of secrecy in the compliance industry hindered a more thoroughgoing observation process. While the executive directors at each company granted me generous interviews and some provided their standard monitoring forms, I was denied access to significant observation of the monitoring process. I requested permission from the four main monitoring companies to be allowed to accompany them on visits for a week or two in order to understand monitoring. Three companies agreed that I could accompany them, but only for one day each. A fourth company simply refused.

Furthermore, in the end I was only allowed to observe with two companies. At Cal-Safety, the Executive Director had agreed to the observation but when the owner, Carol Pender, saw me in the office she became very upset. Raising her voice, she yelled at me that no one went out on visits with them and that 20/20 had requested to go and that she had refused: no one was allowed. When I responded that I was an academic researcher and not a journalist, she continued to loudly insist that no one went out with them, that she had to protect her clients and her employees. I pointed out that I had signed a confidentiality agreement, which the Executive Director had drawn up, to not reveal the names or identities of her employees or the factories or their employees. She was unmoved by this argument and by my subsequent request and explanation.

The examples below are, therefore, taken from a limited number of observations: seven audits done on three different days by two companies. The monitors were, on the other hand, the most experienced field staff in each of their respective offices and did represent to me that the procedures I witnessed were standard. The information is also based on interviews with the directors of five compliance firms in Los

Angeles and the sales packets and written monitoring protocols of the three biggest companies (those that agreed to provide this information). I also interviewed six staff members who do the actual monitoring for three firms. In addition, I interviewed two internal monitors who work directly for manufacturers.

I compare actual practices to information about monitoring I received through interviews, training materials, and legal agreements from the U.S. Department of Labor and the California Department of Labor Standards Enforcement. I also observed at two DOL trainings for monitors and manufacturers.

In addition, I created a database with the raw data from seventy surveys the DOL conducted of Los Angeles garment factories in 1998, which I received through a Freedom of Information Act request. Because the DOL collected separate monitoring information on each manufacturer that had clothing in each shop, the survey actually gives us information about 176 cases. Of these 176 cases, 88 represent instances where manufacturers were conducting at least one component of monitoring and form the universe of the statistics on monitoring. Of these 88, 25 instances involved ACPA signatories. Below is a table showing the percentage of cases in which each of the DOL's recommended, and required for ACPA signatories, components were conducted. This table gives the reader an idea of the inconsistency of practice within the entire monitoring group and even more pronouncedly among ACPA signatories. Each of these components will be discussed at length in the following sections.

Table 4. Monitoring Components Actually Conducted

Monitoring Component	*% of Cases of Monitoring Where Conducted*	*% of Cases of ACPA Signatories Where Conducted*
Unannounced Visits	61%	40%
Employee Interviews	73%	80%
Check Payroll	78%	72%
Check Timecards	87%	80%
Providing Compliance Information	81%	80%
Advising Contractor of Compliance problems	45%	48%
Recommending Corrective Action	40%	44%
Allows Price Negotiation*	49%	40%

*This will be discussed in the section on pricing (8.2).

Following is a review of monitoring requirements and practices. It is broken down into the various elements and issues that comprise monitoring in Los Angeles. It is important to keep in mind that monitoring is a private enterprise. Compliance firms offer a variety of services and the manufacturer is

viewed as the client who has the right to choose the services desire. As stated earlier, all monitoring done in Los Angeles is based on a checklist inspection of the premises. No policies or systems of operation are reviewed, so all determinations are made on the basis of what the auditor views during the visit and any prior surveillance.

5.1 Visits

Most compliance firms audit factories as directed by the manufacturer. While every three months is the norm, manufacturers who have not signed an agreement with the government sometimes choose to have factories monitored less frequently—every six months or even once a year. If there are problems, the frequency is increased. However, unless a company has signed an agreement, there are no rules about the frequency of such visits. Even for those who have signed, the frequency of the audits actually conducted is ultimately up to the manufacturer.

The standard on visits has been set by the Department of Labor in the ACPA. For those that sign, this agreement requires audits every three months for one year as long as the shop passes inspection. If no problems are found, the shop can be moved to every six months provided that a) a tamperproof clock is used in the factory, b) an independent payroll service is used, and c) the DOL is informed and approves the 180-day status.

When a problem is suspected or found, audits move from minimum intensity to intermediate intensity, which is once a month. If a violation is found during the time a factory is on intermediate-intensity audits, the facility is to be moved to high-intensity monitoring, once per workweek. The factory is also supposed to be moved to high-intensity monitoring if the DOL informs the manufacturer of willful or repeated violations on the factory's part. Each status continues until the factory passes two consecutive inspections and has no uncorrected violations for the past 180 days on minimum wage, overtime, and child labor, and no uncorrected violations for the last 90 days in terms of simple recordkeeping.

While the legal agreement is clear on the frequency of visits, the actual practice is much more variable. Extra visits are levied an additional charge, which must be pre-approved by the customer. According to several monitoring firms, manufacturers often decide not to spend the money or delay in approving the recommendation. I observed at a 90-day audit at which the monitor reviewed *all* payroll for the past 90 days. This is a lengthy procedure and only used as a follow-up to finding serious problems. The monitor told me that this factory had been visited ten times and problems were found every time. Backwages had been found from over six months earlier that had never been paid. However, the factory had never been visited weekly. The monitoring firm had recommended a 90-day audit months before it was approved. The manufacturer in this case *was* an ACPA signer. It was not until shortly before the 90-day audit that the manufacturer stopped sending work to the factory.

Audits tend to last one to two and one-half hours, depending on the amount of bookkeeping. Some firms use teams of two inspectors while others send out one inspector on each audit. The inspections I witnessed were conducted by one person and lasted no more than two hours. The actual factory floor inspection and employee interviews lasted 30 to 45 minutes. At Cal-Safety, two inspectors go out together and inspections are scheduled every three hours; this includes time in-between to commute to the new site and get something to eat. DOL investigations take 20 hours, according to Gerald Hall.

While the ACPA requires unannounced visits and the DOL recommends this in all of its materials and workshops, the manufacturer can request to have announced or unannounced visits. The firm that conducts the most audits in the Los Angeles area, Apparel Resources Inc. (ARI), does almost all announced visits. In fact, the firm's owner told me, "We reserve unannounced audits as the pinnacle of distrust of a contractor."[29] They justify this by claiming that their surveillance counts as unannounced visits. Cal-Safety usually does announced visits, although they are doing more unannounced than previously, [30] perhaps due to the DOL's insistence on this point in the release of the 1998 survey statistics. These two firms conduct 85-90% of the audits in Los Angeles. A smaller firm used to do only unannounced visits, but now does announced visits at the insistence of its clients. A fourth firm generally uses their surveillance as a time to schedule the audit. When they do an "unannounced" visit they tell the factory what week it will be so that the books are on hand.

Data from the DOL survey confirms that a large percentage of monitoring is, in fact, announced—even where required by legal agreement to be unannounced. In the DOL survey, only 61% of the cases involved unannounced visits. Moreover, in only 40% of the cases of ACPA signers using a shop did they conduct unannounced visits. As mentioned above, these figures could include cases of unannounced surveillance, even where the audit is announced.

Manufacturers say they request announced visits because unannounced visits cause too mush disruption in the contractor's production schedules and because it is more costly to do unannounced visits. If the manager or owner of the factory is not present and no one else can show the books, the auditor must return at an extra charge. Even if the owner/manager is present, it is very possible that payroll records are not available, because they are not kept on the premises but at an accountant's office. I observed a day of auditing in which none of the four shops visited had payroll. That particular compliance firm, which does almost exclusively unannounced audits, has a policy that the company can send over the records to the compliance firm within 3 business days. Another firm I observed gave the contractor 24 or 48 hours to send the records. While these policies mitigate the expense of return visits, they also undermine the effectiveness of an unannounced visit by allowing the contractor time to modify his or her books.

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[29] Phone conversation with Randy Youngblood, owner of Apparel Resources Inc., July 14, 1998.

One monitor with many years of experience told me, "If you want to clean up the garment industry you would do all unannounced visits . . . On announced visits you find less. It would be like Child Protective Services telling you they are coming; the kid will be well dressed, all bathed with their nose wiped. Everything will look great."[31]

5.2 Surveillance

Surveillance is a separate service, usually charged for apart from visits (ranging from $85 to $150 extra). However, some companies fudge the difference by counting unannounced visits as surveillance or surveillance as unannounced visits. In this way, a company may do surveillance (which is unannounced in nature) and make appointments for their visits and still claim to fulfill the Department of Labor's recommendation of unannounced visits. Conversely they may do unannounced visits and claim that this counts as the surveillance required by the ACPA. While surveillance is not one of the seven components of effective monitoring outlined by the DOL (perhaps leaving room for the above manipulations), the ACPA is clear that surveillance is required by its signatories even as part of minimum-intensity monitoring. Two different instances of surveillance for each audit are included as a requirement for effective monitoring in the DOL's training materials. Further, the ACPA specifies that surveillance must be done in the early mornings, late afternoons, and on weekends. In their presentations to me, firms indicated that normal surveillance was done once before or after work or on Saturdays; although stepped-up surveillance could result from suspicions or findings of violations.

Surveillance practices differ depending on the firm. For some, surveillance is sitting outside the factory in a car and watching if people are working beyond regular hours, perhaps trying to get a head count through the window, and checking if material is going in or out of the factory in order to detect homework or further subcontracting. It is, as one firm director put it, "undetected observation." Other companies go into the shop on a Saturday, introduce themselves, count heads, and count timecards. They see if the two numbers coincide, and they then return for an audit in approximately two weeks to check if payroll accurately reflects the number of people who were working that Saturday.

One of the internal monitors told me that surveillance was the key to monitoring. He said that he does surveillance of the contractors on an almost weekly basis, and then double checks this with the payroll records. In fact, he felt that surveillance was much more reliable than employee testimony. With thorough surveillance, he claimed one can collect hard evidence of off-clock work, whereas employees will not always reveal such practices (see Sections 5.5 and 7.3).

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[30] Interview with Bil Bernstrom, executive director of Cal-Safety, June 29, 1998.
[31] Anonymous interview.

5.3 Record Checking

Compliance firms check various records during an audit. They check the state registration, which they then verify with state authorities. They check workers compensation and often ask for the contractor to sign a waiver allowing the insurance company to notify the compliance firm when the insurance expires. They also look for a public health license, city license, general liability coverage for fire and theft, W-4s, and I-9s (verification of workers immigration status).

The focus of their record checking is on timecards and payroll records, and piece-rate tickets where those are available. They use these documents to check what the workers' hourly wages are, if they are being paid overtime correctly, and if they are being paid for all the time clocked-in. They also scrutinize the timecards for uniformity to make sure that they are not all being punched in by the supervisor or owner. Additionally, monitors cross-check timecard information against that given by workers in the employee interviews (e.g. if they work Saturdays, hours during the week). Again, as during surveillance, monitors also count heads and timecards to make sure they correspond.

The amount of payroll examined also varies. While the ACPA states that all records must be checked since the preceding visit, this seems a rarity. One firm does 90-day audits but this is considered an extreme measure, reserved for clear violators. Cal-Safety requires companies to keep 30 days worth of payroll records on the premises. With announced visits, monitors usually request the last payroll and, if different, the one that covers the period in which a surveillance visit was conducted. As stated earlier, at least two of three major compliance firms allow records to be turned in within a short period. This practice allows companies the opportunity to doctor their books, rendering a clean bill of health dubious.

Some monitors check the general ledger or bank statements to make sure that no one is being paid off the payroll record. However, there is more resistance from the contractors to showing general ledgers and bank statements than payroll records, and some firms are more insistent than others.

No compliance firm reviews contracts and prices, common practice in both state and federal investigations. Monitors believe contracts to be the proprietary business of the client. Cal-Safety does ask the monitor to assess whether the "work in process [is] in balance with # of employees & machinery." However, it is questionable whether young investigators inexperienced in apparel production could make such an assessment. State investigators told me that the only way to know whether or not people are working more than the timecards reflect is to calculate out from the contracts. The surest way to catch hidden violations is to figure whether correct payment according to the production records, plus rent, expenses, and minimal profit could possibly be covered by the prices listed in the contracts. According to a former investigator of 25 years, "Books can look right if you don't focus in on productivity."[32]

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[32] Ed Tchakalian, a former state labor inspector, August 6, 1998.

Moreover, even in just checking the books there appear to be significant lapses. According to the DOL survey, in 87% of the monitoring cases timecards were checked but in only 78% payroll was checked. For the cases where ACPA signatories were involved, 80% checked timecards but only 72% checked payroll records. Checking timecards alone only reveals if someone is working off-clock at the moment; without double checking timecards against payroll much of their value as indicators of compliance or violation is lost. In 22% of the cases of monitoring and in 28%of the ACPA cases, there was *no* check of payroll records.

5.4 Calculation and Payment of Backwages

The DOL includes computation and payment of backwages as the "final aspect of monitoring" in its training materials. However, except for ACPA signatories, the calculation and payment of backwages for most manufacturers is optional. There is one monitoring firm that always calculates backwages, but it is still up to the manufacturer whether or not to do anything with that information. Cal-Safety charges an additional fee for backwage calculation. The director there, Bill Bernstrom, told me only a handful of his clients have this done (presumably that is outside of those required to do so by the ACPA).

Bernstrom estimated that 60-70% of the manufacturers who cover the backwages themselves charge them back to the contractor. If a manufacturer is on the ACPA and the amount of the backwages exceeds $2,000, they must write a check to the DOL, which distributes this money. Of the manufacturers who pay and are not on the ACPA, about half of those choose to write a check to the DOL so that they have no direct (possibly construed as legal) relationship with the workers. The other half prefer to pay directly in order to avoid contact with the DOL.

The ACPA requires that backwages be calculated for all employees for a 13-week period. This is because the "hot goods" provision of the FLSA specifies a 90-day period as the time in which the goods in question can be assumed to be linked to the non-payment of a worker. The worker actually has the right to two years of unpaid backwages— three years if the violation was intentional. However, since the monitors are only seeking to protect the manufacturers for the time for which they may be liable, they check only for the 90-day period.

In fact, the calculations of backwages tend to be calculated not for all employees, but in a much more random fashion. One firm calculates only for the four or so employees it interviews. Another calculates for ten employees per pay period— those interviewed and another group selected at random. Even on the thorough 90-day audit, backwages were calculated for everyone during the first few time periods, and then for a rotating random sample for the earlier payrolls.

Manufacturers pay backwages because the violation is considered remediated once owed money is paid and the DOL could not object to the shipment of goods even if they found the wage and hour violation. Most manufacturers, it should be noted, pressure the contractor into paying the backwages or deduct backwages they pay from the amount of money they owe the contractor.

5.5 Employee Interviews

The interviews are perhaps the most controversial of all the monitoring components. Some argue that employee interviews are almost useless, since workers are subject to threats and intimidation.[33] Others argue that employees have a vested interest in keeping information on off-the-book payments hidden.[34] However, most monitors I spoke with view the employee interviews as the key to any inspection, because the employees almost always know when they are being cheated in some way. While all agree that employees hold the truth, they also agree that workers are afraid to talk and that contractors often tell them what to say.

The difficulty in speaking is exacerbated by the interview situation. Cal-Safety's brochure states that the employee, "must be confidentially interviewed. The interview process must be conducted randomly in an environment free from reprisal or intimidation." However, several Cal-Safety employees reported to me that the interviews are conducted on the factory floor or in an office in the factory. A former Cal-Safety monitor said, "There is no privacy in the conversations. The employer always knew who was being interviewed."[35]

The interviews I witnessed with other firms were neither private nor probing. One interviewer conducted all interviews on the shop floor at the work stations, while the manager wandered about the floor continuing the business. Another interviewer held interviews in the manager's office without the manager present, but allowed the manager to choose who was interviewed and send them in one by one. The interviews were cursory and rote. The monitors followed the forms and did not try to delve into problems they had detected. While some workers seemed at ease, others were disinterested or seemed nervous and anxious. One firm asked the employees to sign their interview form, which seemed to further intimidate the workers. No assurances were made to the employees about the confidentiality of the information. Even if the information were to remain anonymous, the workers would not know that.

Joe Razo, Senior Deputy Labor Commissioner, stated that workers had complained of being fired after signed forms had been shown to employers. Even if most forms are kept confidential, workers, lawyers, monitors, and state officials reported that workers have been fired for talking to monitors.[36] Monitors said all they could do with such complaints is to include them in the report to the manufacturer. While the state labor code protects workers from retaliation for filing complaints about violations, Razo said this offered little protection to workers fired for complaining to monitors. He said they were basically "helpless" and

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[33] Both Ed Tchaklian and Martin Yap, a long-time monitor, argued this.

[34] Richard Reinis, among others, made the argument that employees don't tell not because of employer threats but because they benefit from a system of hidden payments, which allows them to dodge taxes and still collect welfare (see Section 7.3).

[35] Anonymous interview.

[36] I heard this repeatedly in my interviews. Most recently, Julie Su at the Asian Pacific Legal Center in Los Angeles reported in November 1998 that workers had come to their offices who had been fired and that they called Cal-Safety, who said they could do nothing.

suggested that there should be legislation specifically including monitors in such retaliation provisions. However, he also said that retaliatory firing cases are very difficult to win, because the employer can always use other excuses for having fired the individual.[37]

It seemed, both in the audits I observed and from talking to garment workers, that the workers do not know who the monitors are. They do not know if the people coming into the factory are private monitors, government inspectors, or employees of the manufacturer. This is not well clarified by the monitors. No meetings are held to explain what the monitors are doing. In the audits I observed, monitors simply introduced themselves as working for "the one who sends the work" and reassured the workers that they were not government employees. In so doing, monitors sought to allay workers' fears of the INS and thus encourage them to speak out. However, Bill Bernstrom, who was the coordinator of the DOL's Los Angeles Apparel Task Force prior to running Cal-Safety, said that he thought workers were more likely to be candid with government officials. He felt that this was because the government had the ability to ensure them backwages. Others I spoke to gave different reasons for believing that workers revealed more to government investigators: that the government was more intimidating; that workers felt they would get in trouble for lying to the government; and that the government had the resources and prerogative to interview people at home where they felt freer to talk.

It is sometimes possible to call monitors anonymously; but it is unlikely workers would do so when most are at best ignorant and at worst fearful of the monitors. Cal-Safety, for example, has an 800 number and receives an estimated 100 calls per year. The internal monitoring program at Guess also runs an 800 number, but the director of compliance said she had not received any calls of complaint in the past year.[38]

I was provided with interview questionnaires from the three main monitoring firms. They all cover the following areas: how long you have been at the company; what hours you work during the week; if you work on weekends, what hours and how often; if you take work home; if you get paid in cash or by check, and if you get a check stub; when you get paid; and who punches your timecard. Some of the questionnaires are more thorough, asking similar questions about not only the interviewee but coworkers as well. The Cal-Safety questionnaire also asks the monitor to assess whether the employee appeared truthful, coached, or fearful.

There is a general feeling that having monitors of the same ethnicity helps put workers at ease. For example, the male Latino monitor I observed used slang and started all conversations with the male employees by talking about the World Cup soccer games. Several workers smiled at this and answered congenially. Pricewaterhouse, which monitors throughout the world, told me they always hire locally because they feel that co-ethnic monitors have more of a rapport with the workers. It is not clear if this is the case,

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[37] Interview with Joe Razo, Senior Deputy Labor Commissioner, July 31, 1998.

but the monitors I observed in Los Angeles had the same impression. A white male monitor said that despite his ability to speak Spanish to Latino workers, "The employees are afraid of me. Veronica (a Latina monitor) just says hello to them and they spill their guts." If this is true, Los Angeles presents a complicated situation, since workers have immigrated there from a variety of countries.

All firms claimed that interviews were conducted in the employees' language and that professional interpreters were hired when necessary. However, the practice was different in the few cases I observed. Both the men I observed spoke Spanish and English but no other language. In one case a manager was asked to translate for the worker who spoke Vietnamese. In another, the manufacturer sent over a Thai designer to translate for the interview. In this case, the woman translating had much lengthier interchanges with the worker than represented by the brief translations. However, the monitor, while acknowledging this to me, did not follow up with her to ask what else had been said. In this instance, the owners of the contracting shop began pleading their case to the designer, who tried to intervene on their behalf, asking what could be done so they could pass. This seemed to undermine the sense of the translator's impartiality. I was told by one monitor that they often look for someone at a nearby business that speaks the same language and pay them $20 to translate, bringing into question the professional nature of the translations.

The number of employees interviewed varies from firm to firm. The ACPA guidelines call for interviewing at least 5% but no fewer than three people for minimum-intensity monitoring; 10% and at least five people for intermediate; and 15% and at least ten people for high. All companies claim to meet these standards or higher. However, one of the monitors I observed did four interviews whether the shop was on minimum or higher intensity, although the clients were not necessarily ACPA signatories. On another observance of an intermediate-intensity audit for an ACPA signatory, a monitor asked the manager to send in five employees, but when she said they were busy and wouldn't three do, he accepted. The internal monitor at another ACPA signatory manufacturer reported to me that he rarely conducted employee interviews and instead did weekly surveillance. Having worked at a monitoring firm previously, he had found interviews to be unreliable and unrevealing.

The DOL data here, again, confirms highly inconsistent practices. In over a quarter of the monitoring cases and in 20% of the ACPA signatory cases *no* employee interviews were conducted.

5.6 Contractor Advising

The DOL puts a lot of emphasis on interaction with the contractor in recommendations about the monitoring visits. Three of the DOL's seven components of effective monitoring revolve around contractor advising: 1) providing compliance information, 2) advising of compliance problems, and 3) recommending corrective action. The ACPA requires an initial and a close-out conference with the contractor on each

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[38] Interview with Irma Melawani.

monitoring visit. The first is to include a review of the Employer Compliance Program (ECP, which is laid out in a pamphlet of that name to be given to each contractor working for an ACPA signatory) and to ask whether it is being complied with and if any previous problems have been corrected. The close-out conference is to note all problems and corrective action to be taken and to elicit a commitment from the contractor to take such steps.

According to DOL survey data, most companies provide compliance information, but many fewer advise of problems and even fewer recommend corrective action. Of the monitoring cases, 81% of firms provided information, only 45% disclosed problems, and only 40% recommended corrective action. Even of the ACPA signers, less than half performed these required components. For ACPA signers, while contractors were provided with information in 80% of cases, they were advised of problems in only 48% of cases, and recommended corrective action in just 44%.

In my observations, no one reviewed the ECP with the contractor. In fact, it is unclear how many contractors actually receive the ECP. Moreover, according to the DOL, the ECP has not been translated. Most contractors are not native English speakers and while most speak some English, the ECP is written in formal legalistic language.

Monitors began the visit by introducing themselves to the owner or manager and reviewing what the audit would consist of. At that point the owner would either agree to or refuse the audit. I was present on two occasions when the manager refused to be audited. In one the monitor called the manufacturer contact from the facility but could not get hold of him and so left. In the second, the contract shop owner said they were very busy and besides the monitors had been there only a month earlier. She asked for the monitor to please return the next week and make an appointment first. He said they would return but could not make an appointment. The monitor said he was accommodating because he remembered that he had recently monitored that shop and he was either mistakenly assigned it or assigned it for another manufacturer. A monitor also told me of going into a shop and being threatened with a pair of scissors by the owner. He reported this to the manufacturer, Guess, who reprimanded the contractor but did not drop the shop. The executive director of Cal-Safety said it was common to be refused entrance and that it happened in about a third of all first-time audits.[39]

Two of the three main companies do conduct close-out conferences. They provide a sheet that tells the contractor what needs to be fixed and asks him or her to sign it. The third company only provides a request for any records needed to complete the audit. They do not conduct close-out conferences, the monitor told me, because they do not believe it is safe. He said a contractor had demanded a passing report, threatening him with a gun. However, not holding close-out conferences seemed to be part of the

[39] Bill Bernstrom told me this on July 7, 1998 after I returned from going out on an audit with his staff members and we were refused entrance.

philosophy of that compliance firm, because they also do not provide the contractor with a corrective action recommendation report. They send this report to their client, the manufacturer, who must then follow up with the contractor. They claim that the report is the property of the manufacturer who has, after all, paid for it.

5.7 Child Labor

Auditors told me that the way they checked for child labor was to make sure they included in their interviews the youngest-looking workers in the factory. They would ask them their age and could follow up by asking their date of birth. There was no further record check. It seems that the only instances of child labor that the monitors could really catch are those of very young workers who are obviously under the legal limit.

One monitoring firm also asks if any employees bring their children to work as part of the standard questionnaire.

5.8 OSHA

Most compliance firms include a minimal inspection for violations of the Occupational Safety and Health Act (OSHA) as part of their audits. This includes looking for frayed or hanging wires or obvious electrical hazards and checking to see if there is the required clear space around the electrical box. Inspections also included checking to see that exits are clearly marked and not blocked; checking that there are an appropriate number of fire extinguishers and that they are not expired; checking the machines to make sure the pulley-guards are on; and checking that there is an evacuation plan posted. Monitors also ask if there is a stocked first aid kit on the premises. They check if there is an eating area and, if so, if it is clean. I did not see anyone check bathroom conditions. I was also told about inspectors checking for biohazardous containers for needle disposal in case an employee got stuck, to reduce risk of AIDs contamination. I never saw anyone actually check for this, however.

Some of the OSHA compliance inspection is as much to ensure the safety of the goods as of the workers. For example, on one inspection the auditor asked if there was an automatic turn-off for the sprinkler system. The manager replied that the system was disconnected and did not run. He said that was fine, I followed up with him on this and it turned out that the concern was that the sprinklers could accidentally go off and damage the clothing.

5.9 Collective Bargaining Rights

No company I interviewed considered collective bargaining rights or freedom of association within the purview of their audits in the United States; although the Cal-Safety literature states, "Freedom of association and forced labor must be addressed at every inspection." No company includes interview

questions on this subject in their employee interview questionnaires. When asked about this issue, monitoring firm heads claimed that for U.S. audits they stick to the areas covered by the Fair Labor Standards Act (FLSA): minimum wage, overtime, recordkeeping, homework, and child labor regulations. However, as indicated above and advertised in their literature they do (at least superficially) check for compliance with health and safety (OSHA) and immigration law (IRCA—Immigration Reform and Control Act) as well as with state regulations regarding registration and workers compensation. However, they do not investigate for violations of the National Labor Relations Act (NLRA).

Auditors did tell me that when they monitored abroad, depending on the code of conduct of the particular manufacturer, they sometimes checked for violations of unionization rights. However, among the auditors there seemed to be at best ignorance about union issues and at worst a negative view. Several auditors told me that unions were not an issue in the U.S. or not an issue on the West Coast. One auditor told me that in El Salvador, factories were clean and workers well paid and that "unions just mess things up."

Monitoring firms may help foment such a view. One monitoring firm also offers services to defend employers at Labor Board hearings on union issues (as well as from workers' claims over workers compensation, sexual harassment, and retaliatory dismissal claims). At Cal-Safety, Guess' "Walk the Walk" ad slamming the garment workers union was posted on the wall in the hallway near the coffee machine. In fact, this paid advertisement voices the message that monitoring is a substitute for unionization. This is a widely held belief in the apparel industry, summarized to me by a leading proponent for monitoring, industry attorney Richard Reinis:

> Through self-policing, my monitoring, the workers are able to improve their standard of living, increase their wage level without organizing in effect . . . So what's happened here is that through people like Cal-Safety, hired by people like Kelwood who are socially responsible, minimum wage and overtime is guaranteed to be paid and the workers don't need to organize, they don't need to pay dues to Jay Mazur in order to obtain the benefit because they have stronger forces than even the union in order to compel payment in accordance with the law.[40]

This argument assumes that wage issues are the only basis for organizing and that workers only want or need the minimum required by the law.

[40] Interview with Richard Reinis on August 13, 1996. Jay Mazur is president of the garment workers union.

6. TRAINING AND OVERSIGHT

The section will address the minimal amount of training and oversight involved in monitoring, which contributes to inconsistent practices on the ground. It will also cover the hidden nature of monitoring reports, which undermines monitoring's credibility.

Private monitoring is often portrayed as an extension of the federal government's limited capacity to enforce labor laws, given their insufficient number of investigators. The government is, in fact, relying on monitors to help combat the sweatshop crisis and advertise the monitoring program as proof of their concerted efforts. However, monitors with little training have not proven to be reliable investigators. Furthermore, the government only minimally oversees the program and helps to hide its deficiencies by refusing to make public reports showing monitoring results.

6.1 Qualification and Training of Employees

Labor violation investigation requires not only accounting skills, but also knowledge of the industry and an ability to gain the trust of workers. Investigators working for the state of California are trained for several months before they participate in investigations, and it takes two years to train a federal investigator.[41] There are many schemes to cheat workers; workers at the Garment Workers Justice Center came up with 25 ways that they had been cheated by their employers. Many of these schemes would not be apparent from a review of the pay records. Detecting violations takes experience and training, yet monitors tend to be young and inexperienced with only minimal training.

Monitoring field investigators have minimal qualifications. While the director at each of the five compliance firms I interviewed had substantial experience either in investigation or in the garment industry, the in-field monitors had generally acquired all their experience on the job. Most compliance firms prefer that new hires have a B.A., although at least one used college students as part-time investigators. A second language is the most critical skill required. Cal-Safety, which is the largest firm and does much of its business abroad, recruits former Peace Corps volunteers and Mormon missionaries because of their language skills and overseas experience. Firms prefer someone with accounting or investigative background, but most of the auditors I met had taken the job soon out of college. There is some hiring between firms, so that several auditors I spoke to had worked at another compliance firm previously. In fact, the largest firm is reported to have a high rate of turnover.[42]

Most training is on the job. The director of Cal-Safety reported that new hires spend a week in the office learning labor law, the forms they will use, and data entry for those forms. They are then sent out for a

[41] Gerald Hall, DOL and Joe Razo, DLSE.

few days with a mentor. When the director determines that there are enough new hires to justify a training, he organizes one. It should be noted that Cal-Safety, unlike several of the other firms, generally sends monitors out in pairs, even after the training period. Another firm said they send monitors out to accompany an experienced auditor for two to three months before sending them out on their own.

Firms have training materials to teach monitors the laws and regulations and legal books available for reference. The director of Cal-Safety has been developing an extensive training manual. Firms also provide monitors with checklist sheets and interview questionnaires to guide each audit.

Firms also rely on the U.S. Department of Labor for formal training. The DOL "trainings," are actually two-hour sessions meant mainly for manufacturers. I attended one of these trainings, which covered the law, why manufacturers should monitor, and some basic principles of monitoring. Only about half an hour of the two-hour session was devoted to the specifics of how to monitor. DOL representatives reviewed the seven components of effective monitoring and went over a list of common schemes to cheat workers. They did not describe how to uncover any of those schemes, nor did they teach actual monitoring skills or techniques except the calculation of correct overtime wages from piece-rate information. I attended another forum, which Gerald Hall described as "unique" because it was the first time they had specifically invited monitoring firms and internal monitors. "We have never set up a meeting from that perspective," he began. Even in this setting, Cal-Safety had only sent about 5 of its 100 employees.

Moreover, a state investigator pointed out that the government investigators may not *want* to teach monitors all the techniques. The DLSE Deputy Labor Commissioner told me that it was an awkward position for them because on the one hand, the DLSE wants the monitors to be effective in helping to detect and correct violations and on the other hand, the DLSE does not want to teach the monitors too many specifics about investigating, because the same monitors act as consultants to the contractors in defending themselves from DLSE charges of violations (see Section 7.4).[43] Even if monitors do not act as consultants, it is clear, as has been stated, that contractors learn how to correct or to hide violations from being monitored—it can be almost a practice run for a government investigation. This conflict also militates against thorough training.

6.2 Oversight

There is little oversight of the monitoring firms. There are no formal checks on who the monitors are, what they do, or how they do it. There is no registration process (as there is for garment contractors and manufacturers). The DOL does not have a complete list of monitoring firms. In fact, the head of the DOL

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[42] An ex-employee who was there for several years told me this firm has a very high rate of turnover.
[43] Interview with Joe Razo.

program asked me to let them know if I found out about any smaller companies of which they were not aware.

There are no requirements to open a monitoring firm. As a top investigator at the DLSE said, "Any consultant can start a compliance firm."[44] And they have. One firm has actually started and is still owned by a former DLSE investigator who was fired for taking bribes from contractors. Firms also have other areas of business that create direct conflicts of interest with monitoring (See Section 7.4).

There are no acknowledged and accepted standards for monitoring, as there are in accounting or industrial hygiene, for example. As Randy Youngblood, the CEO of a large monitoring firm, suggested:

> Like CPAs, let's establish some criteria for auditing firms . . . we are more or less holding ourselves to the DOL standards and hoping our bases are covered.[45]

The ACPA lays out some required procedures for its signatories, in terms of numbers and frequency of visits, record review, employee interviews, and close-out conferences. The DOL has also put forward its seven components of monitoring. However, the DOL components are somewhat unclear. Advising of compliance problems or recommending corrective action could also be considered providing compliance information—but these are meant to be separate components. Also, as suggested earlier, the list of components does not make clear that unannounced visits are separate from surveillance.

The DOL's monitoring guide includes three and one-half pages on how to monitor. Although brief, this document does offer some guidelines, which include: "using trained individuals with experience in the garment industry"; conducting unannounced visits; doing surveillance; "look[ing] at all the work orders that are currently 'in house' . . . it may be necessary to count the goods"; and holding confidential employee interviews in which the monitor asks the worker if he or she has been coached. As described earlier, these guidelines are either ignored or only partially and sporadically followed.

Despite the inconsistencies in monitoring practices, Gerald Hall, the head of the DOL monitoring program, rejected the notion of regulating the monitoring industry. He stated that the DOL did not need another program to oversee and that another layer of bureaucracy was unnecessary. He stated that the free market would work things out:

> There are people saying they [monitoring firms] should be licensed and regulated and so forth and my contention is that's silliness, is that the competition there works wonderful. It's the best example of free enterprise . . . what we found was if monitoring companies were not doing a good job they [manufacturers] fired them because they didn't want their name on the report, they didn't want the liabilities, they didn't want any of that stuff. So the way a monitoring company becomes better and better was that I'm paying you so that the

[44] Interview with Joe Razo.
[45] Phone conversation, March 8, 1999.

department doesn't find violations in my contractor shops and if I don't get that then I'm not going to pay you anymore. I'm going to find someone else.[46]

The irony of this is stark, since it is the free market competition among contractors which leads to the violations in the first place.

Hall's explanation relies on the assumption that if monitoring companies are doing a bad job, the contracting shops will be found in violation and the manufacturers will look for a more thorough monitoring company. However, as Richard Reinis said, "there is not much of a threat" of being investigated by the government. Given the ratio of investigators to garment shops, the risk of a government investigation is low.[47] In fact, this ratio was one of the impetuses for creating the monitoring program. As a former DOL investigator conceded, the contractors' "chances of being hit are almost nil."[48]

In fact, thoroughness is only one, and probably not the most important, consideration in choosing a firm. As suggested below, Cal-Safety has received much publicity for missing violations and yet it continues to be the largest firm in the Los Angeles area. Manufacturers also weigh such considerations as price, attitude, treatment of the contractors, and hype of the firm. In fact, manufacturers who reported that they had switched or considered switching firms said they did so because they felt one company was rude to the contractors or because they felt that the company was creating reasons for extra visits or double charging for reports. Manufacturers did not mention the DOL or DLSE finding violations as a reason for switching. When one firm decided to switch from Cal-Safety, Cal-Safety responded with threats. The owner of Cal-Safety, Carol Pender, called up the manufacturer who sells to Wal-Mart, and claimed that Wal-Mart, for whom Pender also worked, would not accept another monitoring company's reports. This turned out not to be the case, but it shows that there are a variety of reasons and relationships that may be considered in choosing a firm.[49]

Clearly, monitoring firms do not catch every violation and they themselves will be the first to tell you this. They do not have the amount of resources or time to put into an investigation that the government does. However, there have been cases of gross violations missed by monitors, which highlight the existence of weaknesses in the system. In 1994, Cal-Safety inspected the front shop, D & R, that was transferring work to the El Monte sweatshops, and did not uncover the fact that large amounts of work were being sent out of

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[46] Interview with Gerald Hall.

[47] There are 42 DOL investigators in the Los Angeles area, which includes 5,000 registered garment shops, probably thousands more unregistered, plus construction sites, restaurants, and many other workplaces which they also must cover. There are 950 inspectors in the United States, which has 6,500,000 workplaces.

[48] Interview with Bill Bernstrom.

[49] Interview with Sam Abebe from L'Koral.

the shop.[50] In November 1996, a Guess contractor, Jeans Plus, was given a clean inspection report and then found by the DOL to owe $80,000 in backwages.[51] And in the fall of 1998, at Trinity Knitworks, Cal-Safety gave the shop a clean report despite the fact that they failed to provide full records, while state investigators turned up massive violations.[52] Even if these cases were due to bad individual investigators, they point to the need for more standardized and regulated monitoring. I went to a factory with the lead monitor for one company who failed the shop; I then spoke to the lead monitor for another company who had passed the same shop only the week before.

Moreover, even when violations are found they can be ignored over and over. Monitoring companies report that they find violations on 75-80% of initial visits and that on approximately half of follow-up visits. Several manufacturers and monitors told me that a "three strikes and you're out" policy is common: that is, a manufacturer will drop a contractor after three failed inspections. However, I was also told that manufacturers often have a group of contractors that they will continue to work with despite bad reports. There is no mechanism for disqualifying a contractor. The monitors simply recommend more frequent visits.

According to the DOL, high-intensity monitoring was meant to be a deterrent to continued use of that contractor. High-intensity monitoring would be so costly that the manufacturer would drop the contractor rather than pay for weekly visits. However, the system is so lax that high-intensity monitoring is not actually done weekly. The report is sent out and the manufacturer must respond and give approval for another visit, which is then scheduled. This process takes some time. As described earlier, I observed an audit for an ACPA signatory of a factory where serious violations had been found repeatedly and weekly audits had never occurred. It is clear that because there is no oversight, even with the ACPA signers where there are clear requirements, the system functions not according to what steps *should* be taken, but what steps the manufacturer wants to take and pay for.

Following is Table 5, drawn from original analysis of the 1998 DOL survey raw data, which shows the number of monitoring points conducted for all those who were monitoring and for the ACPA signatories. It also indicates at the bottom the percentage of firms that did all seven monitoring points and allowed price negotiation. The seven points are all required by the ACPA and price negotiation is required upon the contractor notifying the manufacturer of unprofitability. The question of whether the contractor was able to negotiate does not mirror that requirement, but is an indication of the manufacturer's flexibility on pricing.

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[50] Interview with Julie Su, attorney representing the workers in the El Monte case.
[51] Greenhouse, Steven. "Sweatshop Raids Cast Doubt on Ability of Garment Makers to Police Factories," *New York Times*, July 18, 1997.
[52] McDonnell, Patrick. "Industry Woes Help Bury Respected Garment Maker," *Los Angeles Times*, December 1, 1998.

Table 5. Monitoring Components in All Cases and in Cases of ACPA Signatories

# of Monitoring Component	*% of Cases of Monitoring*	*% of Cases of ACPA Signatories*[53]
0	0%	16%
1	12.5%	4%
2	2.3%	0%
3	12.5%	4%
4	12.5%	16%
5	21.6%	16%
6	17%	24%
7	21.6%	20%
All 7 plus negotiate prices	**8%**	**4%**

It is clear that despite the DOL's efforts to provide guidelines and to even legally require certain manufacturers to follow them, monitoring is erratic at best and non-existent at worst.

These statistics also reveal that ACPA signatories, in fact, monitor no more consistently than the general group of those who monitor. In fact, in 16% of the cases ACPA signatories did not monitor at all. This may be because once a company signs the ACPA, it feels protected by the agreement, or that the ACPA group includes more chronic violators, since those were the companies who were compelled to sign. In any case, the DOL is not giving proper oversight to this program and is not ensuring that even those with a legal contract comply. Instead, the DOL has focused its efforts on recruiting or compelling more firms to sign the ACPA. The DOL is aware of numerous cases of manufacturers not following up on monitoring reports or not following ACPA guidelines. However, it has never sued a company for breaking the agreement, nor has it taken any other legal action against such companies. The DOL needs to implement effective penalties for non-compliance.

[53] It should be noted that the ACPA signatory group includes all the manufacturers who signed an agreement regardless of whether they did any monitoring. Hence there are several cases (5 of 21) where no monitoring was done, significantly lowering the overall statistics of this group. If we were to exclude this group, the ACPA signatories who actually monitor do slightly better than the overall group (in which they are included). However, since *all* ACPA signatories are required to monitor, the table as it appears accurately reflects their overall performance.

6.3 Reporting Systems and Transparency

Monitoring companies issue reports for each audit to the manufacturer. There reports are considered completely confidential and there is no way for an interested party— a researcher or concerned consumer, for example— to check on the status of a company's monitoring program. It is a completely internal system. Therefore, when factories are found in violation by the government, it is not clear if these violations were missed by the monitor or if the manufacturers are informed of the violations but fail to follow up on them. With hidden reports, the manufacturer and the monitor can continue to blame each other for uncorrected violations in any specific instance.

It is clear that fault occurs on both ends: violations are missed, as described above, and reports are not followed up on. Evidence from a lawsuit brought against Guess by workers in its subcontracting shops show that manufacturers do not always follow up when violations are reported. UNITE and the *New York Times*, each of whom reviewed 1,500 pages of monitoring reports done for Guess, both allege that violations were reported and then ignored for years. At one shop, reports over a period of five years indicated serious violations again and again, yet nothing was done. Meanwhile, Guess advertises itself as the leader in monitoring, with the most effective program.

Manufacturers who have signed the ACPA are required by the agreement to report biannually the results of their monitoring to the government. However, the DOL keeps these reports secret and will not release them even under Freedom of Information Act requests. It is, therefore, impossible to know whether a company's claims about the effectiveness of its monitoring program are true or not. This "confidentiality" opens the door to companies making false claims about their products being "sweat-free."

It is not even clear how much the government itself reviews these reports. The creator of the program, Rolene Otero, described the reporting system:

> We never had any idea how much work that would create for us. And it has. And we've been overwhelmed. Sixty-five or so companies on those agreements all send in six-month reports. So we've got volumes of paper. I've been out of the program for the last year and a half so I'm not sure what they are doing with them. For a long period of time, [the reports] just sat on a shelf and if they didn't turn them in we hardly even called them up until months later."[54]

While the DOL has in the past spot-checked the reports and done some follow-up investigations, these are very sporadic. As the current director of the program, District Director Gerald Hall, explained:

[54] Interview with Rolene Otero.

> They can make it up, to be real honest because you know I can't check it all the time. And so as I said we randomly see things and we randomly run into things anyway. And so there is a certain amount of randomness.[55]

Hall also stated that some companies do not turn in the reports. However, the DOL has never to date tried to sue any company for breaking the agreement.

A lack of transparency undermines the potential for public confidence in the program. Not only do consumers have no way of checking reports, but more importantly, workers and their advocates have no incentive to report violations through this hidden system. In fact, as it stands the system is constructed more to hide violations than anything else. Many companies engage in monitoring to avoid negative publicity—to find the violations before they are uncovered by others and revealed to the world through the DOL's website or a media exposé.

The DOL, monitors, and some manufacturers are promoting monitoring as a necessary cost of business in order to protect manufacturers from liability. Unfortunately, this can be accomplished by cleaning up violations or by hiding them. This is glaringly clear in international monitoring. When asked about the armed guards at Central American factories, a monitor for Cal-Safety told me that he considered guards a positive in his report, which included how easily unwanted people (presumably U.S. activists and others) could get into the factory.[56] The director also told me that Cal-Safety's ratings for factories abroad, which included high-, medium- and low-risk, referred to the risk that they would end up in the news.[57] While avoiding negative publicity is the single driving force for monitoring abroad, it is also an important aspect of monitoring in the U.S.

The government actively supports monitoring's potential to act as a screen from scrutiny by allowing monitoring reports to be confidential and by not building any transparency into the process. A lack of transparency undermines the potential for public confidence in the program. Not only do consumers have no way of checking reports, but more importantly workers and their advocates have no incentive to report violations through this hidden system. The contradictions involved in a system which is designed both to protect companies and benefit workers becomes clear as we explore the many conflicts of interest within the monitoring system.

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[55] Interview with Gerald Hall.
[56] Interview with monitor from Cal-Safety.
[57] Interview with Bill Bernstrom.

7. CONFLICTS OF INTEREST

The effectiveness of monitoring is not only compromised by weaknesses in the implementation process, but more fundamentally by an inconsistent logic which is manifested in the conflicts of interest embedded in the system. Every party involved in the monitoring system has interests that militate against an open and thorough investigation: manufacturers have an interest in keeping the prices they give contractors low; contractors must appear to comply with the law without necessarily having the resources to do so; workers may be fired or lose income if the contractor is found in violation; and monitors are not a neutral party, but working for the manufacturer and in some cases strongly tied to the contractor community as well.

7.1 Manufacturers

The manufacturers are the ones who initiate the monitoring and are in most cases the direct client of the monitoring company. The manufacturers want the contracting shops to be cleaned up, but only to the extent that contractors can do so without raising prices. As Richard Reinis, a lawyer who founded the Compliance Alliance (a group of monitoring manufacturers), put it:

> In effect you have a monitor going into shops being paid by a manufacturer whose interest is getting work out of these shops at the right price. And every time Cal-Safety calls up and says a shop is in violation they get angry. Conflicts really need to be worked out . . . the conflicts are very real.[58]

For the manufacturer there is a direct conflict between wanting to clean up labor law violations at the contractor level and profiting from them, insofar as violations lower costs. We know that manufacturers do not calculate what they pay based on the price of labor. Even though the minimum wage in California rose 35% in the past two years, the manufacturer price to the contractors did not rise.[59] In the intensely competitive global garment industry, manufacturers look for the best quality at the lowest price. Since manufacturers contribute to violations by paying low prices, monitoring by those same manufacturers is by nature contradictory. As many have phrased it, private monitoring is like "the fox guarding the chicken coop."[60]

The time-sensitive nature of garment production, particularly women's wear, which predominates in Los Angeles, creates a further conflict. Short seasons require quick turnaround and manufacturers' sales to

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[58] Interview with Richard Reinis, July 3, 1998. Reinis put together a group of manufacturers called the Compliance Alliance, who signed a joint agreement with the DOL to monitor their own contractors. He argued against the "fox guarding the chicken coop" analogy, saying "at least the fox is concerned now-- before he was indifferent."

[59] Prices have not been raised, according to the DOL, which has written letters to the manufacturers about this issue. Information on pricing is also according to contractors associations and even manufacturers, who explained that the retailers had not raised their prices.

[60] This image has been used by many people to describe monitoring, including California Labor Commissioner José Millan, sociologist Edna Bonacich, and anti-sweatshop activist Medea Benjamin.

retailers depend on their ability to deliver in a timely fashion. Monitoring itself slows down production because it takes time during work hours. Finding serious violations could theoretically mean a disruption in production, with more audits and possibly cutting off of the contract. Yet manufacturers need their clothes done on time. They are extremely reluctant to actually pull clothes out of a shop in mid-production if they are informed that there is a problem. Joe Razo, Senior Deputy Labor Commissioner, explained:

> Who is paying their [the monitoring firm's] wages? The manufacturer is and they ask them to turn their head when it is crunch time and they need to get production out.[61]

Manufacturers also want quality work. Manufacturers are reluctant to stop working with a contractor that does timely, quality work despite bad reports from the compliance firm. Compliance firms reported that there are contractors to whom they go back again and again and give failing reports each time, yet the manufacturer does not want to drop them.

This conflict is intensified when the monitors are quality control staff or when the production manager is in charge of receiving and reviewing the monitoring reports, which is usually the case. The first obligation of quality control staff and the production manager is to get high-quality work, on time and within the budget allocated. A further complication is the practice of contractors giving kickbacks to production managers, which occurs in the industry.[62] Such payments can further tie the production staff to certain contractors, making them reluctant to cut off work. While some companies have recognized this conflict and switched the monitoring duties to a different department, others feel that it is important that monitoring oversight be part of the production manager's duties, because production managers have the closest relationship to the contractors and the contractors are more likely to listen to them than anyone else.

Manufacturers are also unlikely to want monitors to look for NLRA issues, since they are usually involved in opposing any unionization efforts (either directly or by dropping the contractor). In fact, a representative of several manufacturers told me that monitoring was a way to avoid unionization because if you could insure that the contracting shops paid minimum wage and overtime properly, the workers would not have cause to unionize.[63] There is a fundamental contradiction between monitoring being a process to protect workers' rights and a process by which to avoid the exercise of such rights.

7.2 Contractors

Contractors claim that the violations in their shops are due to their inability to cover their overhead, pay their workers, and make a modest profit given the low prices paid to them by manufacturers. Contractors feel that this situation is only being compounded by monitoring, which interrupts production,

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[61] Interview with Joe Razo.
[62] Several sources mentioned this practice, including two monitors and a DOL official .

costing them additional time and in effect money, and adds yet another expense when the manufacturer deducts the costs from their payments. As Joe Rodriguez, director of the Garment Contractors Association of Southern California (GCA), points out:

> It created a new industry, new breed of millionaires compensated out of industry funds. It diverts a lot of money, which could have gone to improving wages, benefits and conditions. Instead new millionaires and new jobs in monitoring are created in an era when we as an industry are an endangered species, when we have to think of ways of surviving in the global economy with NAFTA and GATT.[64]

For contractors, monitoring actually siphons off funds that could be used to comply with labor law in a situation where prices are already depressed by global competition.

While monitoring does help educate new contractors or others unfamiliar with the laws, it does not address this central issue. A representative of a large group of contractors anonymously testified that monitoring "makes the contractor a better window dresser." Contractors explain that they are being asked to appear to have no violations, without receiving the resources to affect real change.

Bill Bernstrom, director of Cal-Safety and an ex-DOL investigator, told me that when the DOL monitoring program started in 1992, violations were blatant. With monitoring, he said, contractors had become "slicker and slicker."[65] Officials from both the DOL and DLSE said that while monitoring had cleaned up a lot of violations, remaining violations were harder to detect than before.[66] Contractors use monitoring visits to learn the laws and how to follow them, but some also learn how to hide violations of the laws.

7.3 Workers

Workers, whom monitoring is meant to benefit, have little incentive to participate openly in the process. Most workers do not even know who the monitors are. Workers I interviewed had seen, and some had even spoken to, people in their shops, but did not know if they were from the state, a monitoring company, the manufacturer, or somewhere else. Moreover, workers testified to me they believed that if they revealed violations they would be fired by the employer if he or she found out. Even if the employer did not discover who had told, they feared that all the workers could be laid off because the manufacturer might pull

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[63] Interview with Richard Reinis, 1996.
[64] Interview with Joe Rodriguez.
[65] Interview with Bill Bernstrom.
[66] Interviews with Rolene Otero and Joe Razo.

the work from the shop. The latter threat, which is based on real possibilities, was often told to these workers by the contractor.

Since not all monitoring firms calculate backwages, and since those who do don't necessarily calculate them for all workers, there is little incentive for workers to reveal the truth. They may hope that the employer will change his or her practices on minimum wage or overtime pay, but the possibility of losing work temporarily or permanently looms larger. As Bill Bernstrom pointed out, with the DOL workers have the material incentive of backwages, they are not guaranteed this from a monitoring firm. The outcome would depend on the particular manufacturer.

Workers may also have material incentives *not* to participate honestly in this process. For example, many workers prefer to get paid in cash, off-the-books— even if it represents less than they ought to get paid given overtime laws. They, of course, save money in taxes this way. Moreover, given their meager earnings, some workers find it necessary to supplement their income with government benefits, for which they need to show less than their true earnings. If the workers are undocumented, they will not be docked unrecoverable deductions. Also, if a contractor wanted to come into compliance it might be cheaper for him or her to hire more workers than to pay overtime premiums. In this scenario, the worker who had been earning overtime, albeit at straight-time wages, would lose this income.

7.4 Monitoring Firms

The monitoring firms also have their own conflicts of interest. These have to do with working directly for the manufacturer, and increasing their business both in terms of number of visits and other areas of service.

The manufacturer is the client of the monitoring firm. While monitoring firms may want to maintain certain standards, they must please their clients to stay in business. Depending on the commitment a manufacturer has to correcting violations by their contractors, satisfying them may require very thorough monitoring or minimal monitoring, at a lower price. Without regulation, what free-market monitoring creates to some degree is made-to-order monitoring. For example, the director of one monitoring firm told me that they had a policy of doing only unannounced visits, but were now doing some announced visits because the manufacturers insisted.[67]

The manufacturer being the direct client interferes with effective monitoring in other ways. The heads of the monitoring firms told me that they do not involve themselves in the pricing issue. They represent the manufacturer and do not feel it is their job to interfere with that entity's business negotiations. As described in section 5.3, the monitors do a less thorough job uncovering violations than they could

[67] Interview with Jesse Atilano, CEO of Labor Law, and Damian Valdiva, director of monitoring at Labor Law, June 25, 1998.

otherwise given their perceived inability to look at the actual contracts and determine whether income corresponds to wages being paid, and whether garments ordered corresponds to garments present in the factory.

In terms of increasing their own business, I was told by several manufacturers that monitoring firms create reasons to return to shops in order to charge for more visits. One manufacturer complained that instead of following up on a problem found in the previous visit, Cal-Safety monitors would instead look for new problems.[68] On the other side, one long-time monitor told me of monitors receiving kickbacks from the contractors for a clean report.

Some of the monitoring firms also offer other services that could cause conflicts of interest. One firm, Labor Law, not only monitors contractors but is also a legal consultant to contractors. At one minute the firm could be trying to find violations and the next be protecting the contractor from accusations of violations by the DOL or DLSE.

All parties agree that the monitor's job is to find violations of the rights of the *employees*. In order to do so, monitors must have at the least a neutral position vis-à-vis the workers, if not be their advocates. Labor Law offers services to defend employers from workers' wage and hour or overtime complaints, and in front of the Labor Board (presumably the NLRB). Labor Law's sales packet states:

> A typical scenario nowadays is as follow: *John Doe, employee, has not been reporting to work on time. On a particular day, after written warnings, the employer receives a phone call from John Doe saying that he is ill and will be late. The employer is naturally upset and tells John Doe that he no longer has a job. John Doe goes to the Unemployment Office, files for benefits and will file a wrongful termination action against the employer and will win that also. Then, if John Doe is still up to it, he will file an action with Labor Commission alleging he started work 2 times, 5 minutes before his regular start time and was not paid properly.* This scenario is all too common in labor during this period in time. All the while, the employer, not only has to pay a few thousand dollars attorney fees, but will also live with the fact that someone got something for nothing.

It seems questionable that a firm portraying workers as liars and cheats in one area of its business can then take seriously employee testimony against the contractor in another. As discussed earlier, if employees do talk, the information given can be the key to an investigation. The DOL Monitoring Guide ends with this point: "This [employee interview] is where even the best schemes unravel. Look carefully at any employee statement that suggests a violation, even if the other statements indicate compliance." The DOL suggests here that to be effective monitors must, in fact, see workers as credible.

The conflict between representing both the contractor and the employees can have other serious consequences. For instance, the monitors interview employees and at Labor Law (and Cal-Safety) have the employee sign the interview sheet. While for this audit the monitor may want to find all violations, in later

[68] Interview with Sam Abebe at L'Koral.

defending such a contractor a signed sheet from the employee testifying that there are no violations could be useful. Another monitoring firm is also an employee leasing company and could actually be found jointly liable for any violations found by government investigators.

When a monitor works directly for the manufacturer (an internal monitor), the conflicts may be even greater. For instance, the Guess staff person in charge of their monitoring program actually visited shops asking workers to sign "opt-out forms" giving up their right to be included in a lawsuit workers had brought against Guess for violations, including non-payment of minimum wage and overtime. While internal monitors may not have some of the other conflicts of interest involved in increasing business described above, they are clearly not a neutral party who can potentially look out for the rights of the workers if those come into conflict with the interests of their own company.

8. OTHER ISSUES

This final section will explore monitoring's relationship to some of the major issues central to eliminating sweatshops: disclosure of chain of production information, pricing structures, and joint liability between the manufacturer and the contractor.

8.1 Disclosure

One problem with the monitoring system as it now operates is that there is no way to verify whether a manufacturer is monitoring all factories or just a portion of its production facilities. This is because reports are hidden, as described earlier, and the names and locations of a manufacturer's contractors is a closely held secret. Even if reports were to be made public, manufacturers could still appear to have a strong monitoring program, but could in fact be simultaneously using unmonitored facilities that did not appear in the reports. Omissions might be detected since workers (probably through their advocates) could check for their facility on the reports, but workers do not always know for whom they are producing. Full disclosure of reports and production chain information would allow anyone, including the DOL, to check if a company was monitoring all of its production.

There is evidence that manufacturers do in fact have hidden contractors. Of the 16 manufacturers who appear in multiple factories in the DOL's survey all but one conducted monitoring in at least one factory. Of these 15, eight manufacturers, or 53%, conducted monitoring in one shop and *not* inanother. In the shop where these manufacturers did conduct monitoring, they completed 4.12 of the 7 monitoring points. Yet in these eight cases they conducted no monitoring in the other shop where they had garments.

It is clear that manufacturers do not always give monitors complete lists of their subcontractors. I was told by monitors that they sometimes go into a facility for one manufacturer and see garments of another client who had not informed them that they worked with that facility. One monitor explained, "They have good shops and ones we're not supposed to know about."[69] Government investigators confirmed that they find shops that are not being monitored, yet are doing work for manufacturers who have an agreement with the DOL to monitor all their subcontractors.[70] The executive director of a contractor association described this process. "The manufacturers play around the monitoring game. Each manufacturer has contractors to keep on a list of good contractors for regular work and demand full compliance. But on quick turnaround, they give it to someone else and hope for the best."[71]

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[69] Anonymous interview with long-time monitor.
[70] Interview with Rolene Otero.
[71] Anonymous interview.

Manufacturers claim that they cannot release the names of their contractors because it would undermine their competitiveness. The government supports this position in its denial of FOIA requests for documents that include such information. Factories producing quality work on time are a company's competitive advantage, and so the information about them should be kept secret—so the argument goes. The fact is that manufacturers already know some of this information. Competitors, in fact, often subcontract to the same facilities (for example, Nike and Adidas use the same shops in Central America to make their clothes). Moreover, contractors willingly give out this information, since working for a big-name company is a form of advertisement for them. As economist Harley Shaiken argued, "If keeping secret one's suppliers was an important competitive advantage, why don't the electronics or auto industry do so?"[72]

In fact, manufacturers are hiding behind the claims of "competitive secrets" and "proprietary information" to avoid disclosure and to artificially depress workers' wages. If such information was made public and the manufacturer's scenarios of finding out and bidding up each other's contractors were to come about, what would this mean? Such openness would actually allow a more genuine functioning of free markets. If, in fact, the workers' productivity level deserves higher wages, they should be able to compete for such wages openly. Secrecy serves to hide productive factories, cutting off their access to free and open competition and consequently undermining workers capacity to demand the wages they deserve. Manufacturers, who are championing free market competition, are in fact distorting the process and rendering market mechanisms ineffective. In order to reward productivity and focus resources on suppliers who are doing a good job, information must be available.

Disclosure of reports and factory information is, thus, important for a variety of reasons. Disclosure would ensure *full* monitoring; it would allow consumers to check the veracity of a manufacturer's claims; it would facilitate workers locating the manufacturers for whom they are producing, if they do not have this information, and informing the manufacturer of problems; and it would afford workers a better chance at fair competition. Despite the fact that disclosure could, thereby, contribute to eradicating violations, it is not incorporated into the monitoring system. In fact, quite the opposite— confidentiality is a pillar of monitoring as it is currently practiced in Los Angeles.

8.2 Pricing

Government officials recognize that the prices paid by the manufacturer to the contractor dictate, in large part, the ability of the contractor to comply with minimum wage and overtime regulations. The DOL created the monitoring program precisely because it recognized that manufacturers, through their enforcement of low prices, were responsible for many of the violations. Yet the monitoring program, to date, has failed to affect pricing.

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[72] Harley Shaiken has done much research on the auto and electronic industries. Interview, December 8, 1998.

The monitoring program addresses the issue of pricing, but only on the level of formalities. The original ACPA included a lengthy section called "Pre-Contract Review; Feasibility of Price Terms," which required the manufacturer to discuss with the contractor the economic feasibility of the proposed price on the basis of a time and cost study that the *manufacturer* had conducted.[73] This clause was modified with new formulations of the agreement and in the newest version is entitled "Required Notices of Unprofitability." It reads:

> a) If Contractor will be unable to make a profit on its work on any purchase while complying with the Act [FLSA] and this ECP, Contractor will immediately notify the FIRM [Manufacturer] in writing.[74]

This section goes on to state that the contractor should perform a time and cost study and calculate the necessary change in price to produce the item legally. If the manufacturer does not agree in writing to the new price, the contractor is to notify the DOL. The new language shifts the burden of bringing up pricing and conducting a time and cost study to the contractor. This shift in responsibility significantly undermines the attempt to enforce fair pricing on manufacturers. Contractors, in all practicality, will not be to take the steps specified above and so non-compliance will remain their fault, not the manufacturer's.

According to contractor representatives, many contractors are not aware of this clause. It is unclear how often the contractors receive this information from the manufacturers, or whether they understand it. The DOL has published two documents directed at contractors as part of its monitoring program. The first is the Employer Compliance Program (ECP), which the ACPA signatory manufacturers are supposed to give to each contractor to obtain their written agreement to be monitored. This form is excerpted from the ACPA, including the unprofitability clause, and has a line for the contractor's signature. The ECP is written in formal legal language and has never been translated from English. Even for a native English speaker the document is not accessible and most contractors do not speak English as their native language.[75] By contrast, the DOL has translated into Chinese, Vietnamese, Korean, and Spanish a second document, "Apparel Contractor Guide to Compliance," which is written in comprehensible prose. While this document explains the major requirements of the FLSA and what monitoring is, it mentions nothing about pricing.

Even if contractors are aware of the clause, they do not feel that they have the leverage to demand higher prices. Joe Rodriguez, the executive director of GCA, attributes this to two factors: contractors are often newcomers and there is intense competition among them. Many contractors are immigrants who may have limited English skills and diverse cultural forms of negotiation. Moreover, according to data from the DOL's 1998 survey, over half of the sewing factories in Los Angeles have been in business less than two

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[73] ACPA, December 29, 1994.
[74] FCPA, June 7, 1998, which is the sixth version of the ACPA.

years. Production managers who are seasoned negotiators have an advantage over entrepreneurs unfamiliar with or practiced in U.S. price negotiations. Most importantly, contractors, even experienced ones, have little bargaining power when competing against cheap imports and an oversupply of contractors in Los Angeles, including hundreds of unregistered shops. Furthermore, pressing the issue could threaten future business with that customer and others.

The DOL has also been slow to support contractors in this area. As District Director Rolene Otero explained:

> We never devised a mechanism by which contractors could come to us but a few have . . . it's pretty rare though . . . usually blackballs them, certainly from any more work with that manufacturer and probably with anyone who knows about it.[76]

Early on Rolene Otero was advised by the DOL lawyers to steer clear of the issue and felt herself that it was a "quagmire." It is difficult to determine a fair price when shops have different levels of efficiency and modernization.[77] However, in the past year the DOL has become more interested in exploring the pricing issue. In the 1998 survey of contractor shops, the DOL included pricing information for the first time. They hoped to analyze whether low pricing had a direct effect on the number and kinds of violations. However, as they admit, their questions were so poorly designed that they did not obtain analyzable data. They asked only the type of item (jean jacket, T-shirt, etc.) and the price per piece. Without any information on the labor involved in sewing the item (number of seams, number of buttons, trim, etc.) the DOL was not able to analyze the data collected.

Nevertheless, the DOL now seems more committed to forcing the pricing issue. In August 1998, the DOL held the first forum for monitors, in which both the DOL and DLSE presented information and monitoring firms and manufacturers were encouraged to ask questions. In this forum, the DOL emphasized pricing for the first time. Gerald Hall instructed monitors to talk to manufacturers about pricing. He warned, "We are never going to get compliance without dealing with this issue."

Hall explained to the audience that the DOL had been "afraid" to bring up pricing earlier, but a February 1998 court decision had emboldened them to do so. In New York, the Secretary of Labor brought a case against Fashion Headquarters, a manufacturer who had repeatedly ignored the DOL's requests not to ship goods that the DOL had found to be produced in violation of the FLSA. The Federal District Judge not only ordered the company to monitor all of its subcontractors, but also to review with the

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[75] Half of the contractors in Los Angeles are Asian and 30% are Latinos. Most of these two groups are immigrants. Bonacich, forthcoming.
[76] Interview with Rolene Otero.
[77] Interview with Rolene Otero.

subcontractors, before entering into a contract with them, "the economic feasibility of the proposed price in terms of the requirements of the minimum wage and overtime provisions of the FLSA."[78]

The DOL is finally taking some concrete actions around the pricing issues, including lawsuits, exploring pricing guidelines, and researching pricing practices. However, it is doubtful that the DOL will be able to enforce fair pricing negotiations through the monitoring system. The manufacturers are the monitors' direct clients and monitors will have a hard time neutrally evaluating them on their business negotiations, if they feel they can get involved at all.

DOL data confirms that monitoring has not affected pricing, at least on the level of the contractor having the ability to negotiate (which was, as described, one of the aims of the ACPA). In their survey, the DOL did ask contractors if they were able to negotiate prices with the manufacturer over the past six months. While it is in no way clear that these negotiations resulted in a fair price, the possibility of negotiation lays a foundation for pricing discussions and flexibility. In 47.2% of the 176 cases, contractors said they could negotiate prices, and in 49% of the cases in which there was monitoring. However, ACPA signatories were less likely to negotiate prices: only 40% of contractors said they could negotiate with ACPA signatories. Only one of these was in a case where the manufacturer had performed all seven monitoring components and two were in cases where the ACPA signatory had conducted no monitoring. It seems clear, then, that to date monitoring has not in any way strengthened the contractor's ability to negotiate.

8.3 Joint Liability

Monitoring was originally envisioned by the DOL as a means to create a measure of joint liability between the manufacturer and the contractor for labor law compliance. According to DOL General Counsel Jon Nangel, "Historically there had been a reluctance to go from fining at the contractor level to the next person downstream." However, with rampant abuses and an inability to reduce the numbers of labor law violations by focusing on the contractor level—given the ease with which contractors can disappear, go bankrupt, or change names—the DOL decided to move up in the chain. Under current legislation, manufacturers are not legally responsible for most of what occurs in their contracting shops. State investigators only have legal reach to the manufacturers in cases where the contracting shop is unregistered. The California Garment Registration Bill was passed in 1980 after compromises that restricted the joint liability provisions to apply only to manufacturers who contracted to unregistered shops. In the early 1990s, the California state legislature passed across-the-board joint liability bills for the garment industry three times; but each one was vetoed by a Republican governor.

The only federal legislation approaching joint liability is the circuitous "hot goods" provision of the FLSA. This provision allows the DOL to, in effect, hold the "hot" garments hostage until they are made

[78] *Herman vs. Fashion Headquarters*, 97 Civ 8806 (SHS).

"unhot" through the remediation of the violation, which generally involves the payment of backwages. Unlike the DLSE, the DOL does not have the authority to confiscate the clothing, unless granted by a court in a lengthy procedure. Instead the DOL officially objects to the shipment of goods until remediation occurs. This is not a foolproof system; the DOL suspects that manufacturers sometimes ship despite their objections. If they suspect this has happened repeatedly, the DOL may take the manufacturer to court. While companies have been found jointly liable in court, litigation is lengthy and expensive. Moreover, the provision only applies to goods destined for interstate commerce.

Finally, the DOL is only able to collect backwages from the manufacturer for the previous ninety days under "hot goods," when, in fact, the worker may be owed for years of violations. Any violations occurring more than ninety days back are unrecoverable under this provision, because the goods are assumed to already have reached the retailer, who has to date been protected from liability by a "good faith" clause. Unlike the manufacturer who owns the goods (the cloth and then the clothing) throughout the production process, retailers are assumed to be acting in good faith if they are indeed a purchaser and were given "written assurances" by the manufacturer that the goods were made in compliance. Without legislation or the ability to litigate large numbers of cases, the DOL has had to rely on "hot goods" despite its limitations.

While the DOL did want to create liability in terms of violations of the FLSA and the ability to recuperate backwages for workers, they did not want to go so far as to make the manufacturers "joint employers." The DOL District Director who conceived of the monitoring program, Rolene Otero, said that the two issues they wanted to stay away from were pricing and joint employment. Joint employment could potentially make manufacturers jointly responsible for all claims against the contractor, including workers compensation, discrimination, wrongful termination, etc.

In fact, monitoring is now seen as a way to stave off more serious forms of joint liability. At the forum in August 1998, Gerald Hall warned that if manufacturers did not take monitoring seriously and clean up the industry that legislation would be passed in Washington that would be "very negative." He continued, "we are at the very last crossroads." In fact, Senator Kennedy and Congressman Clay introduced a bill in 1997 to create joint liability in the apparel industry, the "Stop Sweatshops" bill.[79] The Republicans have tried to create a version that would exempt a manufacturer from joint liability if it conducted monitoring of its subcontractors.[80]

Recent legal cases have reflected the debate as to whether monitoring absolves companies from joint liability or establishes a stronger manufacturer role in the contractor's business and so a clearer instance of joint liability. In *Figueroa v. Guess*, plaintiffs argued that through monitoring, the manufacturer was or should have been aware of violations, and that this knowledge, coupled with the manufacturer's role in structuring

[79] H.R. 23 and S. 626, 1997.

pricing and turnaround time in such a way as to make violations inevitable, established liability. In fact, evidence from the case shows that Guess received report after report from monitors detailing problems at the contracting shops and ignored the information. While the judge has not yet ruled on the facts of the case, he ruled in a trial on a demurrer (or motion to dismiss) that the argument was legally adequate.[81]

The DOL has argued that if monitoring is to be considered a factor in liability, no one will continue to monitor and the program will disintegrate. However, broad legislation would, in fact, strengthen monitoring by imposing joint liability on everyone. Manufacturers would be compelled by the risk of joint liability to conduct serious and thorough monitoring.

The DOL and others fear that sweeping joint liability legislation would drive production out of the United States. After all, the contracting system is a way to avoid such liability. If that insulation were to be stripped away for production in the United States, joint liability opponents claim that manufacturers would opt to move all production abroad.

Joint liability proponents, on the other hand, argue that a lot of the work is moving anyway (due to relative labor costs, NAFTA, and improved transportation and communication technologies). Potential job flight is not a reason to allow the work that remains in the United States to be made in violation of the law. Furthermore, there remains a demand for quick turnaround and small batch production that only a local industry can fill. Joint liability will be one factor in a manufacturer's decision about where to produce, but will not override other economic realities.

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[80] Interview with Richard Reinis, 1998, who was approached by Republican legislators about such a proposal.
[81] Interview with Michael Rubin, attorney for the plaintiffs in the lawsuit, April 28, 1999.

9. CONCLUSION

The DOL created monitoring as a means of addressing the stubborn persistence of sweatshop violations even in the face of focused government enforcement efforts. The government saw that bringing manufacturers into a "partnership"[82] with the government would increase available resources to fight this problem. One DOL official publicly referred to monitoring as, "an extension of the government."[83] Some would like to see monitoring as Richard Reinis characterized it, "What this is, is a privatization of a government function. Monitoring is simply the private sector taking over a function that is much too large for the government." While I would argue that monitoring should in no way be seen as a substitute for government enforcement, the government must recognize its participation in the creation and proliferation of this industry and take serious steps to regulate and improve it. Some of those steps are outlined below.

The DOL must strengthen its oversight of monitoring activities. The DOL should regulate the monitoring industry by having a registration process for monitors, which excludes firms who may have other services that create a conflict of interest. The DOL needs to take a more active role in fostering "effective monitoring." It should develop more detailed guidelines for monitors to follow, regardless of whether the client has signed the ACPA or not. It should also review monitoring companies' or internal monitors' programs with them and spot-check with investigations. Monitors who are not doing an adequate job should be warned and then have their registrations revoked. Moreover, manufacturers who have signed monitoring agreements with the DOL and fail to comply with these agreements should be sued for breach of contract. There must be real sanctions for bad monitoring if the system is to function and to have credibility.

Monitoring, as it currently operates, serves more to protect manufacturers from liability than workers from violations or consumers from false claims. There should be public disclosure of monitoring reports and the names of manufacturers' contractors in order to create a transparent and verifiable system. Transparency would promote more confidence in the system among workers as well as the public.

Workers are neither empowered nor protected by this system. It is the job of the Department of Labor to defend the rights of workers. However, this is a difficult task if workers are ignorant or suspicious of the processes created to serve them. Worker education and protections should be integrated into monitoring. Monitors should inform workers, in group meetings, of who the monitors are, why they are there, and what will happen with the information they collect. These meetings should be held quarterly, on the premises and during work hours, and should be conducted in the language(s) of the workers. Monitors should also inform workers of their rights and how to register complaints about the violation of those rights,

82 DOL materials on the "No Sweat" campaign refer to this as a partnership.

83 Mary McKnight, Garment Enforcement Coordinator in Los Angeles, at a DOL training held on August 5, 1998.

both with the monitors and with government agencies. Stronger and more easily accessible protections for workers who reveal violations and suffer retaliation should be implemented.

The challenge in refining monitoring is to minimize conflicts of interest while retaining joint liability. This can be accomplished through attention to pricing and the monitoring structure. A structure should be implemented that retains manufacturer responsibility, but severs the direct bond between monitor and manufacturer. This could be accomplished by forming an intermediary body to coordinate monitoring services for a number of manufacturers. This intermediary body should hire monitors who will report to the body, rather than to individual manufacturers. The intermediary body would determine follow-up action to monitoring reports and when contractors should be dropped. This body should report to the public as well as to the DOL. Such an arrangement will avoid conflicts of interest with manufacturers paying monitors directly and will also be a cost-saving measure, resolving the problem of repetitive audits.

Monitoring has been shown to have some positive effects. To the extent that the contractor is unaware or negligent, monitoring is an effective tool in educating and simultaneously pressuring the contractors to follow the rules. (In 1998 a DOL survey showed that those who knew the law had better rates of compliance). It is also a risk factor that may deter contractors who simply want to make extra profit. However, to the extent that violations occur because the contractor is not receiving enough to pay his or her workers, monitoring can have little effect without seriously addressing the issue of pricing. Monitoring should include an assessment of the feasibility of payments and manufacturers should be required to justify their prices based on fair and standardized time and cost studies. The language on pricing should be reverted to the language in the first draft of the long-form agreement which specifies that the manufacturer is responsible for bringing up pricing and conducting time and work studies to verify the fairness of a price offered. Failing to do so should result in a suit or other penalty.

Most importantly, monitoring should not be seen to replace government enforcement. As we have seen, the effectiveness of monitoring relies on a credible threat of government investigation and enforcement. If the government is serious about cleaning up sweatshops, it must devote more resources to funding DOL and DLSE investigative positions. It must also implement serious penalties for non-compliance. The DOL has been reluctant to assess fines beyond the backwages owed. Having to pay the same money later that you owe today is no incentive to pay it today.

Monitoring would be greatly strengthened by the enactment and implementation of joint liability legislation. Monitoring alone has not cleaned up the garment industry and after seven years, monitoring continues to be erratic at best. Joint liability would force manufacturers to take monitoring more seriously, by increasing the risks attached to having violations in contracting shops. Joint liability would also encourage manufacturers to pay contractors enough for them to comply with labor laws.

The DOL is cautious, in part, because it is accused of running more business, and jobs, out of the country. This issue can only be addressed through trade agreements that include strong and enforceable

labor accords. A prohibition on admitting "hot goods" across U.S. borders should be instituted for labor law violations that occur elsewhere. Given the globalized nature of the apparel industry, the government must begin to address violations in a global context.

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