Sickle,[289] Vail,[290] Stanley, [291] [299]Roberts,[292] and Dealy[293] does not set forth facts which show any violation. [300]

APPENDIX B

Abbreviations used throughout this Initial Decision are as follows:

CX - Complaint counsel's exhibit
RX - Respondent's exhibit
Tr. - Transcript page
CB - Complaint counsel's brief
CPF - Complaint counsel's proposed finding (reply findings of fact)
CRB - Complaint counsel's reply brief
RB - Respondent's brief
RPF - Respondent's proposed finding
RRB - Respondent's reply brief

OPINION OF THE COMMISSION

BY PERTSCHUK, *Commissioner:*

I. BACKGROUND

A. The Law

Congress enacted the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681, *et seq.* (1976), in order to ensure that "consumer

[289] In the case of Mr. Van Sickle, the record shows that a notice was sent to the insurance company correcting the item Mr. Van Sickle disputed (CX 305, 306; Tr. 3824-25). There is no evidence in the record to support complaint counsel's speculation that the recipient insurance company regarded this correction notice as self-serving (CPF 1061; see also p. 266, n. 254).

[290] The record shows that a reinvestigation was conducted after Mr. Vail disputed his report and that the results were transmitted to the requesting company with corrections (CX 292, 293, 294A-B, 295, 297A-B, 299A-B).

[291] The record evidence surrounding Mr. Stanley's contact with Retail does not support complaint counsel's position that reinvestigation in this instance was not conducted within a reasonable time (CCB, p. 70; CPF 1006). Mr. Stanley received disclosure on either January 24 or 25, 1972, (RX 495D, G). Retail notified the recipient company of its intention to reinvestigate on January 28, 1972 (RX 495F). On January 31, 1972, the reinvestigation was ordered (RX 495B; CX 271C). This brief delay was explained in a memorandum to the Home Office as being due to the branch office's attempt to locate the report on Mr. Stanley for homeowner's insurance which Mr. Stanley stated was cancelled at the same time as his automobile insurance; it was the automobile report which he disputed (RX 495B). This explanation, on its face, appears reasonable, and no finding of violation is made.

[292] While consumer Roberts' testimony was presented under these paragraphs, his own testimony indicates that, after he disputed information disclosed to him, respondent conducted a reinvestigation which was sent to the insurance company involved (Tr. 3375). In addition, the record contains documentary evidence showing a reinvestigation (CX 1464A-C).

[293] The testimony of consumer Dealy does not support a finding of violation. He testified that, while he disputed information in his file and he was told there would be a reinvestigation, he never was contacted by Retail regarding the results (Tr. 3402). A reinvestigation was conducted (CX 343 O-Q). Complaint counsel's contention that there is a duty to contact the consumer for disclosure of reinvestigation results (Tr. 3403) is rejected.

reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information * * * ." FCRA, 602(b).

To protect the confidentiality of information concerning consumers, the statute permits "consumer reporting agencies"[1] to [2]disclose "consumer reports" only to those who have a legitimate business need for the information.[2] Because Congress recognized [3]that some inaccuracy was inevitable, *see* 115 *Cong. Rec.* 2411 (1969) (remarks of Sen. Proxmire), it chose not to render consumer reporting agencies strictly liable for inaccuracies in a report. Instead, it (1) required the use of "*reasonable* procedures to assure maximum possible accuracy of the information concerning the individual about whom [a] report relates," FCRA, Section 607(b) (emphasis added); (2) prohibited, as a general rule, the communication of obsolete adverse information, that is, most adverse information reported after seven years, FCRA, Section 605; (3) required the updating of information obtained from an investigative consumer report[3] before it could be included in a

[1] The Act focuses on information contained in a "consumer report," that is, "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" and "which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family or household purposes, or (2) employment purposes, or (3) other purposes authorized under Section 604." [FCRA, 603(d)] Section 603(d) contains several exclusions from the definition, including reports "containing information solely as to transactions or experiences between the consumer and the person making the report * * *."

A "consumer reporting agency" is, in turn, defined as a "person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in * * * the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." [FCRA, Section 603(f)] The permissible purposes, set forth in Section 604, are quoted in note 2 *infra*.

[2] Section 604 of the FCRA provides as follows:

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe —

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

[3] An "investigative consumer report" is a

consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any

(Continued)

subsequent consumer report, FCRA, Section 614; and (4) imposed restrictions on the use of public record information. FCRA, Section 613.

Congress also imposed a variety of procedural requirements designed to enable consumers to identify and correct inaccurate information. For example, the users of consumer reports must inform the consumer of the name and address of the consumer reporting agency responsible for preparing a consumer report that was used to deny credit, insurance, or employment or to increase the charge for credit or insurance. FCRA, Section 615(a). Also, the statute requires consumer reporting agencies upon request (and without regard to whether a user of the file has taken adverse action against the consumer) to inform him or her "clearly and accurately" of the "nature and substance" of information in its files on the consumer at the time of the request, the [4]sources of the information,[4] and, with certain limitations, the identity of the recipients of any consumer report on the consumer. FCRA, Sections 609, 610.

If the consumer disputes the completeness or accuracy of any item of information contained in his or her file, the reporting agency must "within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute * * * is frivolous or irrelevant." If the information is found to be inaccurate or can no longer be verified, the agency must promptly delete the information. FCRA, Section 611(a). In case the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute, FCRA, Section 611(b), and, unless there are reasonable grounds to believe that the statement is "frivolous or irrelevant," the reporting agency, in any subsequent consumer report containing the information in question, must clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate summary. FCRA, Section 611(c). The statute directs the reporting agency, following deletion of information found to be inaccurate or unverified, or the addition of any notations as to disputed information, to notify previous recipients of the information designated by the consumer that the information has been deleted or to send them the consumer's version of the dispute. FCRA, Section 611(d).

Administrative enforcement of the FCRA is assigned to the

such items of information.

FCRA, Section 603(e).

[4] Except in the course of discovery in an action brought under the FCRA, the consumer reporting agency need not disclose the sources of information acquired solely for use in preparing an investigative consumer report.

Commission, except to the extent that enforcement is specifically committed to other government agencies under Section 621(b). For the purposes of the Commission's exercise of its enforcement responsibilities under the FCRA, a violation of any requirement or prohibition imposed by the statute constitutes an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. 45 (1976). FCRA, Section 621(a).

B. The Respondent

Equifax Inc.[5] is one of the nation's largest consumer reporting agencies.[6] Directly or through its subsidiaries, among [5]other things, it supplies financial and credit reports for use in evaluating the financial reputation and payment history of individuals who seek credit; sells personnel selection reports used to evaluate applicants for employment; supplies insurance companies with information used to determine the desirability of applicants as risks for insurance; and prepares information used to assess claims made against insurers.

Since April 1, 1977, consumer reports, including personnel reports and reports sold to insurance companies for underwriting purposes and claim investigations, have been the responsibility of Equifax Services, Inc., a wholly-owned subsidiary. These reports are prepared in Equifax Services' 219 branch offices and 1000[7] "suboffices." As of May 1974, respondent employed approximately 4600 salaried field representatives to perform the investigative work underlying the reports. (ID 75, 89)[8]

II. Complaint and Initial Decision

The complaint in this case charged Equifax Inc. with a variety of

[5] Respondent was known as Retail Credit Company when the complaint in this case issued. It was renamed Equifax Inc. effective January 1, 1976.

[6] Some of respondent's activities are not those of a "consumer reporting agency" as defined by Section 603(f) of the FCRA.

[7] These numbers of offices are accurate as of April 1976.

[8] The following abbreviations will be used in this opinion:

ID	–	Initial decision finding no.
ID p.	–	Initial decision page no.
Tr.	–	Transcript page no.
CX	–	Complaint counsel's exhibit no.
RX	–	Respondent's exhibit no.
RAB	–	Respondent's appeal brief.
CAB	–	Complaint counsel's appeal brief.
R. Ans.	–	Respondent's answering brief.
C. Ans.	–	Complaint counsel's answering brief.
RRB	–	Respondent's reply brief.
CRB	–	Complaint counsel's reply brief.
RPF	–	Respondent's proposed finding no.

violations of the Fair Credit Reporting Act and Section 5 of the Federal Trade Commission Act. Violations of the FCRA alleged in the complaint include furnishing information about consumers to persons respondent has no reason to believe intend to use the information for one of the permissible purposes set out in the statute; reporting the existence of obsolete, adverse information; and failing to disclose to consumers, upon request, the nature and substance of information in its files. The complaint also alleged that respondent employs certain procedures which do not assure the maximum possible accuracy of information concerning individuals about whom its reports relate, including a "salary/production [6] system" which "requires or compels" its personnel to prepare an unreasonable number of reports, and quotas which "require or compel" its personnel to prepare a certain proportion of reports containing adverse or derogatory information.

The complaint also charged several violations of Section 5, including misrepresentations to consumers by respondent's investigative personnel that they are agents or employees of the companies to which the consumers have applied for benefits; representations to its customers (those who purchase its reports) that information was gathered in in-person interviews in cases when, in fact, the interviews were conducted by telephone; and employing authorization forms for the release of medical information which misrepresent that the information is being sought for the exclusive use of insurance companies. Finally, the complaint alleged that respondent's investigators have misrepresented to consumers the purposes of those investigations which are designed to evaluate claims for loss or injury under an insurance policy.

After a lengthy trial, Administrative Law Judge ("ALJ") Theodor P. von Brand entered a carefully documented and well-reasoned initial decision sustaining most of the complaint allegations. He found, however, that several were not supported by the record and that two of the alleged violations of Section 5 were immunized by the McCarran-Ferguson Act, 15 U.S.C. 1011, *et seq.* (1976), as the "business of insurance." The case is now before the Commission on cross-appeals filed by complaint counsel and respondent from certain of the ALJ's findings and also from his proposed order.

III. Fair Credit Reporting Act Charges

A. Reasonable Procedures to Assure Maximum Possible Accuracy

In enacting the Fair Credit Reporting Act, Congress' primary

concern was the dissemination of reports containing inaccurate adverse information[9] about consumers. The Senate report declared that "[t]he purpose of the fair credit reporting bill is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report." S. Rep. No. 91-517, 91st Cong., 1st Sess. 1 (1969). Senator Proxmire, upon introducing [7]the Senate bill, stated why he was concerned about even small amounts of inaccurate information in credit reports:

> Perhaps the most serious problem in the credit reporting industry is the problem of inaccurate or misleading information. There have been no definitive studies made of just how accurate is the information in the files of credit reporting agencies. But even if it is 99 percent accurate—and I doubt it is that good—the 1 percent inaccuracy represents over a million people. While the credit industry might be satisfied with a 1-percent error, this is small comfort to the 1 million citizens whose reputations are unjustly maligned.

115 *Cong. Rec.* 2411 (1969).

Similarly, Representative Zablocki, one of the authors of the House bill, expressed his concern about the impact on individuals:

> [W]hen we consider the fact that each time there is an error by an agency, an individual suffers not only embarrassment and inconvenience but financial loss and possibly even the loss of his job, his insurance, and even his mortgage, then we have put the danger of incorrect reports in proper perspective.

Id. at 2517.

Congress, as noted previously, imposed on reporting agencies not strict liability, but an affirmative duty to take reasonable steps to assure that the information in a consumer report is correct. Section 607(b) provides that "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

While the legislative history and the statute itself shed little light on the meaning of the words "reasonable procedures to assure maximum possible accuracy," it is clear that Congress intended to mandate something more than the use of some care to avoid inaccurate reporting, and something less than a duty to achieve absolute accuracy or even "maximum possible accuracy" in every report. We construe Section 607(b) to require reporting agencies to do whatever is reasonable under the circumstances to minimize the chances that consumers will be harmed by inaccurate reporting. If

[9] "Adverse information," as used in this opinion and in the order, means information which may have, or may reasonably be expected to have, an unfavorable bearing on a consumer's eligibility or qualification for credit, insurance, employment, or other benefit, including information which may result, or which may be reasonably expected to result, in a denial of or increased costs for such benefits. (*See* RPF 1(h).)

an agency employs a procedure which does not offer the best assurance of producing the most accurate reports, it ought to have a strong justification for doing so. [8]

With some qualifications, we uphold the judge's findings that respondent has failed to meet this duty.[10]

1. Pressures To Develop Adverse Information

The complaint alleged that respondent has imposed quotas which "require or compel" its investigative personnel to prepare a "certain proportion" of reports containing adverse information. According to the complaint, these alleged quotas "have the tendency and capacity to promote incomplete or inaccurate reports." Because of Congress' concern about the serious damage which the misreporting of adverse information can inflict on consumers, we should be skeptical of any procedure which may induce employees to falsify, unduly emphasize, or exaggerate adverse information.

While the complaint implicitly asserted that quotas for the production of adverse information are inherently incompatible with the rigorous standard prescribed by Section 607(b), the ALJ found unreasonable only the particular system used by respondent. Respondent appeals from Judge von Brand's conclusion that its system was not reasonable, and complaint counsel appeal from the judge's failure to decide that such quotas are inherently unlawful.

The parties agree that respondent has conducted "quality audits" of the reports prepared by its branch offices and that these audits have included measurements of each office's production of "declinable" information (adverse information which might cause an insurance company to decline an underwriting application or to fail to renew an existing policy) and "protective" information (adverse information which might cause an insurer to charge a higher premium). (ID 281-82, 294-95; RPF 754(a), (b))[11] In 1975, respondent altered the audit procedure so as to obtain regional rather than individual office results and, the following year, it stopped auditing protective and declinable information. (ID 297)

Before these changes were implemented, however, branch offices were ranked into upper, middle and lower third positions according [9]to how their current performances in producing protective and declinable information compared with those of all other branch offices during the preceding year. (ID 305) This ranking created

[10] We agree with respondent that complaint counsel had the burden of proving their case by a preponderance of the evidence. *See, e.g., Leonard F. Porter, Inc.*, 88 F.T.C. 546, 627 (1976). Respondent has acknowledged that the ALJ understood complaint counsel's evidence was to be tested by this standard. (Transcript of Oral Argument 16)

[11] Besides measuring protective or declinable information, auditors would attempt to determine whether the reports under review satisfied respondent's standards for completeness and for clerical accuracy.

pressure on respondent's employees. The judge found that "[t]here was considerable rivalry among respondent's offices, and everyone wanted to be at the top of the performance category in terms of all phases of branch office performance measured by quality audits, including production of declinable information," although "[s]ometimes a Regional Vice President was satisfied with performance in the middle third." (ID 311 & n.101)

The ALJ determined that, in the quality audits, too few reports were sampled to permit a valid survey of the performance of the individual branch offices (ID 335–36; ID p. 239),[12] and respondent does not challenge that finding. Nor does respondent question the finding that the same percentage of adverse information could not be expected from each office "because of differing geographic as well as economic and social factors." (ID 332)

Respondent does appeal, however, from the ALJ's finding that the quality audits and the subsequent rankings of offices impliedly set quotas for the production of unfavorable information. (ID 343) Respondent describes the audits simply as a training tool designed to improve the quality of its reports and asserts that it did not impose sanctions upon field representatives or "significant" sanctions upon branch office managers who failed to develop adverse information. (RAB 61–62)[13]

We need not decide whether, as the ALJ found, the pressures created by respondent's quality audits may properly be characterized as "quotas," implicit or explicit.[14] The quality audits clearly resulted in the setting of objectives which field representatives [10]were expected to meet in order to assure that their offices would score well in the audits. The audits placed a premium on the production of adverse information and induced employees to prepare reports which contained inaccurate adverse information.

Contrary to respondent's contentions, the record clearly shows that respondent used the audit results for purposes other than simply identifying candidates for additional training. The amount of bonus money received by a branch office manager was based in part on audit performance,[15] and the performance of the field representa-

[12] Some of respondent's own managers, including regional vice presidents, expressed doubts that the audit data were necessarily representative. (ID 331)

[13] Related to this assertion, the judge found that "[t]he record does not demonstrate an overall pattern of overt sanctions such as firings or the withholding of salary increases or promotions as penalties for the failure to achieve specific levels of protective/declinable information." (ID p. 238)

[14] Respondent argues that the audit system could not impliedly have set a quota because the ALJ did not, and could not, state what the quotas are. The record, however, is replete with references to specific objectives which were communicated to respondent's employees. (*E.g.*, ID 319; Tr. 1761–62)

[15] Respondent asserts that

> it is true that performance on home office audits was one factor taken into account in determining a

(Continued)

tive in the quality audits was "one factor among several" considered by the branch managers when they made their salary recommendations. (ID 312–13)

The significance of the quality audits to respondent's managers is indicated by evidence that they took steps to pressure employees to produce enough adverse information to permit their offices to score well in the audits. The manager of one office informed his field representatives that " * * * until such time as each individual met the declinable objective [for two types of reports] * * * there would be no salary increases for any [11]members of the unit." (ID 319(c))[16] Investigative personnel were made aware that they were expected to obtain the specified amounts of protective and declinable information. (*E.g.*, Tr. 1761–62, 1845;[17] ID 319, ID p. 239; *see* RPF 770.) A supervisor in another of respondent's branch offices was placed on probation because of management's judgment that his unit's production of declinable information was too low. (ID 319(h); RX 446B)

Respondent's higher level management brought pressure to bear on lower level management, usually branch managers, to achieve high audit scores (ID 299, 318),[18] and branch managers, [12]in turn,

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manager's bonus (ID at 238), but it was a minor factor that might or might not affect a given bonus (RPF 407–13), and some managers either were not even aware that it was taken into account or considered it an insignificant factor. (RFP [sic] 774c)

RAB 61 n.56. While performance on the quality audits was just one of several factors, we cannot find that it was sufficiently "minor" that it would not induce a manager to attempt to score well on the audits. In any case, the combination of incentives (such as the managers' bonus) and disincentives clearly induced many employees to take the quality audits seriously, and to conclude that they were expected to produce at least the specified amount of protective and declinable information.

Nor can it be very helpful to respondent's case that "*some* managers either were not even aware that it [performance on home office audits] was taken into account or considered it an insignificant factor." (RAB 61 n.56) (emphasis added)

[16] Contrary to respondent (R. Ans. 54), we believe the ALJ properly relied on the memorandum (CX 1283A) cited in the finding despite complaint counsel's failure to call its author as a witness. Because the document speaks for itself, it was not complaint counsel's burden to proffer testimony as to its meaning.

[17] Even though respondent called a number of current and former employees who testified that they were unaware of pressures to produce adverse information, the ALJ was entitled to find that the pressure existed. That not all employees may have been aware of, or affected by, the pressures is not inconsistent with a finding that other employees were pressured to produce the requisite amount of adverse information. Indeed, the documentary evidence cited by the ALJ requires such a finding. (ID 319)

The ALJ found the testimony of these witnesses, and that of most of the other former employees called by complaint counsel, credible as to the shortcuts they took to meet their production quotas. (ID pp. 287–88) We find no basis to accord their testimony less weight on the issues of whether pressures were imposed on them to produce adverse information and the effects of any such pressures on the manner in which they prepared their reports.

We have been presented no persuasive reasons by either complaint counsel or respondent to upset the careful credibility determinations made by the ALJ as to the various witnesses called in this case.

[18] For example, one Regional Vice President told his managers:

> All of us naturally would like to be furnishing customers with a service that ranks above other offices and other regions. All of us would like to be in the top third as we measure an office and region.

CX 1127A.

Another Regional Vice President expressed his dissatisfaction with the performance of one of the branches in his territory:

(Continued)

transmitted that pressure to their field representatives. A rivalry developed among branch offices and among regions to outdo each other in the audits. (ID 311)

In light of these findings, we are not troubled by the absence of an overall pattern of overt sanctions applied to employees who produced "unsatisfactory" amounts of adverse information. Incentives, like sanctions, are designed to influence behavior, and the incentives employed by respondent, together with the more subtle sanctions, impressed upon many field representatives and their supervisors the importance of ranking high in the quality audits.

The ALJ found that the audit procedure had the potential "to adversely influence report writing * * * ." (ID p. 239) The record supports this conclusion. For example, the record includes evidence of the efforts of one manager to teach field representatives to phrase adverse information in a forceful manner. A memorandum written by this branch manager to one of his suboffices urging the omission of qualifying phrases such as "it is believed" and "sources believe" (CX 1565A) was designed to strengthen the impact of the adverse information which was discovered, thus increasing the branch's production of declinable information. (ID 329(b))[19] The goal, according to the manager [13]of the Albuquerque branch office, was to "put the decline across," that is, to transform what would otherwise merely be "protective" information into "declinable" information. (ID 329(a))[20] We agree with the ALJ that when the goal is "maximum possible accuracy," it is not reasonable to discourage the qualification of adverse information the certainty of which is in doubt, and that respondent's quality audits had this impermissible effect.

Additionally, the evidence shows that some management personnel urged lower level managers and field representatives not to

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I know you and your people are going to be disappointed with the Declinable of 5.4% in the second round analysis * * *, *but I also know that the personnel in Albuquerque will immediately set about to make sure the next round analysis will reflect only upper third rankings in all categories*!

CX 772 (emphasis added).

[19] Respondent contends that the point of the memorandum was not to eliminate qualifying information from reports when that qualifying information was needed to make the report accurate (RAB 64–65), but was, instead, simply a product of the manager's view that "if a source stated to a field representative that he was not certain that an individual was involved in an accident, but that he believed he was, that would not be a satisfactory basis for submitting the report." (RAB 64) We reject respondent's construction of the document. The memorandum, while urging elimination of these qualifying phrases, says nothing about omitting from reports information about which the source is uncertain. Moreover, although this communication states that these qualifying phrases "tend to disturb the confidence of the underwriter in our report," a concern which could well be unrelated to an interest in ranking high in an audit, a subsequent memorandum to the Regional Vice President, quoted in ID 329(a), supports the ALJ's inference that the suggested omission of the phrases was designed to increase the office's production of declinable information.

We are, therefore, not persuaded by the testimony that these instructions were simply part of an effort "to provide as concise and accurate [a] report as we could, and our effort was to eliminate unnecessary words and unnecessary phrases." (Tr. 11819)

[20] The ALJ properly was unpersuaded by the explanation offered by the author. (Tr. 11828–29)

report information which would tend to negate derogatory information discovered during the course of an investigation. A Regional Vice President, for the sake of improved audit performance, wrote to a branch office manager that "[o]ne of the biggest problems" contributing to the office's placement in the lower third of all offices in one of the audits

> was that when your people would develop declinable information it was worded in such a way that its effectiveness was decreased. These were usually such comments as[:] ["]this is the only known instance known instance of driving while intoxicated["] or that the subject had stopped drinking completely three months ago and was now reformed.

ID 330. [14]

A former field representative testified that, to reach his prescribed level of declinable information, he would attempt to make it appear that an "excessive" drinker drank "a little more than he actually did." Where sources could not report how often the person had been seen drinking, the field representative would fabricate a number. (Tr. 1782)[21]

Despite this evidence, respondent complains that the record does not include any reports in which adverse information was falsified. (RAB 59) However, in view of the testimony and the [15]written instructions cited above, we do not find this shortcoming fatal. The record demonstrates that field representatives, in their effort to meet the objectives inspired by the quality audits, have been instructed, in effect, to misreport adverse information. We recognize that proof that a challenged procedure has consistently yielded reports free of inaccurate adverse information would shake a claim that a procedure is unreasonable. Similarly, proof that its use has resulted in inaccurate reporting would bolster a claim that it is not a "reasonable procedure to assure maximum possible accuracy." *Cf.*

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[21] With respect to the credibility of this witness, *see* note 17 *supra.* The testimony of the former employee's office manager, Mr. Yox, cited by respondent (Tr. 8491-93; RPF 775(c)(1)), does not refute Mr. Crepeau's testimony quoted in the text that he was induced to exaggerate information. Mr. Yox disagreed with Mr. Crepeau's testimony that the former field representative had once rewritten a report after an earlier version had been returned to him with instructions that it be worded more strongly. (Tr. 1783, 8491-92) Mr. Crepeau, however, did not testify that the practice mentioned in the text was induced by these purported instructions.

Nor is there a direct conflict between Mr. Crepeau's testimony that instructions he received from his manager to "pick up on [his] declines * * * and protectives" affected how he wrote his reports (Tr. 1762) and the testimony of his manager that he did not "expect" Mr. Crepeau to produce a "specified percentage" of declinable and protective information. (Tr. 8490) The former manager testified that he informed his field representatives of the results of the quality audits (Tr. 8490) and Mr. Crepeau may well have inferred from these communications that he was expected to produce more adverse information, whether or not his manager intended to communicate such an expectation.

As noted by respondent, numerous current and former employees testified that the system did not affect the way in which they prepared and wrote their reports. Indeed, some of complaint counsel's witnesses so testified. However, we do not find fault with respondent's procedure because it caused widespread distortion of adverse information. Our conclusion that it did not meet the test set by Section 607(b) is based on the incentives it created for those employees who were either unable or unwilling to make the effort necessary to reach the objective without exaggerating or distorting the information uncovered by their investigations.

Bristol-Myers Co., 85 F.T.C. 688, 743 n.9, 745 (1975); *Coca-Cola Co.*, 83 F.T.C. 746, 809 (1973). However, in view of the difficulties of locating reports containing inaccurate adverse information, regardless of whether such reports exist, and of proving the causes of the inaccurate reporting, we do not believe that the record need contain actual inaccurate reports to sustain a ruling that respondent's procedures were not reasonably designed to assure maximum possible accuracy and conclude that the procedure was inconsistent with Section 607(b).

Indeed, as we have already observed, Section 607(b), rather than prohibiting inaccurate reporting, imposes upon reporting agencies an affirmative obligation to follow "reasonable procedures to assure maximum possible accuracy." It is the failure to follow reasonable procedures, and not the production of inaccurate reports, which violates Section 607(b). We are aware of nothing in the legislative history or the text of the statute which supports respondent's assertion that a reporting agency may not be liable under Section 607(b) unless a challenged procedure is shown already to have resulted in some inaccurate reporting.[22]

Respondent correctly observes, however, that several courts have declined to consider claims that reporting agency procedures failed to meet the standard established by Section 607(b) absent a showing that an inaccurate report had been produced. Our analysis of this issue, however, is not greatly assisted by [16]decisions rendered in private FCRA lawsuits brought by consumers seeking damages for noncompliance with the statute. In private damage actions, it is not surprising that courts will be unwilling to resolve difficult liability issues absent evidence that the alleged violations have resulted in harm to the plaintiff.

The Commission's enforcement role is different from that of the individual consumer seeking to vindicate his or her own rights under the statute. The Commission is directed to treat a violation of any requirement or prohibition imposed by the FCRA as a violation of Section 5 of the FTC Act. It is settled that specific injury need not be shown to establish that a practice is "unfair or deceptive" under Section 5, *see, e.g., Resort Car Rental System, Inc.* v. *FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied sub nom. MacKenzie* v. *United States*, 423 U.S. 827 (1975), and Congress has not expressed any intention

[22] Under respondent's construction of the statute, liability could not be established even if on its face, a procedure would mandate the production of inaccurate adverse reports. For example, respondent would seemingly argue that a quota system explicitly requiring each investigator to produce 10 adverse reports each day and, if necessary to meet the quota, to falsify adverse information, could not be challenged unless and until it could be shown that the procedure had actually resulted in the production of inaccurate adverse reports. Such a quota system, however, clearly would not be a "reasonable procedure to assure maximum possible accuracy," and on that basis alone would be a violation of the statute whether or not harm could be shown.