

# THE STANDARD OF CARE IN THE CREDIT INDUSTRY

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## I. INTRODUCTION

Computers are an integral part of modern society. Today, scientists measure information transmission in the billionths of a second and store libraries of information on microchips smaller than a dime.<sup>1</sup> With the aid of computers, businesses compile massive amounts of data pertaining to an individual and transmit that information with ease. This technological capability, however, has created two crucial legal issues: 1) what information pertaining to a consumer's financial background and credit history should a company be permitted to report? and 2) how can consumers guarantee that the company reports this information accurately?

The first issue concerns the consumer's right of privacy, an issue that became very topical in the late 1960s and early 1970s.<sup>2</sup> Congress

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1. A survey of 1500 organizations showed that over 90% of their record keeping operations were computerized. In 1979, the top 50 U.S. data processing companies had revenues in excess of 30 billion dollars. Vogell, *Law and Computers: Current Issues*, 43 TEX. B.J. 757 (1980). See generally Tunick, *Computer Law: An Overview*, 13 LOY. L.A.L. REV. 315 (1980) (discussing the massive influence of computers on society).

2. See generally Miller, *Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information Oriented Society*, 67 MICH. L. REV. 1091 (1969) [hereinafter cited as Miller, *Personal Privacy*]; Miller, *Computers, Data Banks and Individual Privacy: An Overview*, 4 COLUM. HUM. RTS. L. REV. 1 (1972-73) [hereinafter cited as Miller, *Computers*]; Note, *Protecting Privacy in Credit Reporting*, 24 STAN. L. REV. 550 (1972).

Professor Miller, who has studied the subject extensively, explains why privacy has become an issue in information processing. He suggests that privacy was easy to

addressed the need to protect the consumer's right of privacy<sup>3</sup> by enacting the Federal Privacy Act of 1974.<sup>4</sup> The second issue, regarding the accuracy of credit information, continues to trouble consumers. Consumers seem to understand that they must surrender a certain amount of personal information if they are to avail themselves of many services.<sup>5</sup> Hospitals, insurers, and retailers require information about customers before they can provide them with goods or services.<sup>6</sup> Although this surrender of consumer privacy is necessary, consumers should nonetheless demand that the information retained and

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protect before extensive use of computers because: 1) Large quantities of information about individuals were not available; 2) the available information generally was decentralized; 3) the available information was relatively superficial; 4) access to information was difficult to secure; 5) people in a highly mobile society were difficult to monitor; and 6) most people were unable to interpret and infer revealing information from available data. Miller, *Computers, supra*, at 8.

3. One noteworthy commission that examined the issues of technology and privacy was the Privacy Protection Study Commission (PPSC). The PPSC set forth three objectives for its work with privacy legislation: "minimizing intrusiveness, maximizing fairness, and creating legitimate enforceable expectations of confidentiality." Feldman & Gordin, *Privacy and Personal Information Reporting: The Legislative Boom*, 35 BUS. LAW. 1259, 1271 (1980).

4. Pub. L. No. 93-579, 88 Stat. 1896 (1974) (codified as amended at 5 U.S.C. § 552(a) (1982)). The private sector also expressed the need for controls. Indeed, the computer industry itself continues to offer solutions to the problem as shown by this excerpt from an IBM advertisement appearing in the New York Times:

At IBM, we think computers should be as good at protecting information as they are at processing it.

Here are some things we're doing about that.

So that only the right people see information about you, IBM systems can be programmed to demand identification in various ways. They can require passwords or numbers, or keys, or magnetically coded I.D. cards, or combinations of them.

With many IBM systems, certain information can be reserved solely for the people who need it. A person who needs only your name and address cannot learn anything else about you.

We have systems that scramble computer signals sent over wires. So eavesdroppers can't listen in.

We're even experimenting with devices that recognize people by their signature rhythms.

With innovations like these, computers can be more than safe places to keep information.

N.Y. Times, Feb. 7, 1980, 3A, at 24, *quoted in* Comment, *The Use and Abuse of Computerized Information: Striking a Balance Between Personal Privacy Interests and Organizational Information Needs*, 44 ALB. L. REV. 589, 614 n.156 (1980).

5. Comment, *supra* note 4, at 601.

6. *Id.*

circulated is accurate,<sup>7</sup> especially considering the importance of a credit rating in the marketplace.<sup>8</sup>

Today, the primary means of guaranteeing the accuracy of personal information collected by credit agencies is through the Fair Credit Reporting Act (FCRA).<sup>9</sup> This Note focuses on section 1681e of the FCRA, which demands that agencies exercise reasonable care to ensure maximum accuracy in credit reporting.<sup>10</sup> This Note first describes the remedies available to consumers at common law for inaccurately reported information.<sup>11</sup> After this overview, the Note considers the FCRA and examines the Act's threshold requirement that information be clearly inaccurate before a consumer may challenge it.<sup>12</sup> It also investigates the definition of "reasonable procedures" for gathering and collecting information on consumers as set forth in the Act.<sup>13</sup> Finally, the Note analyzes the reasonableness of procedures for processing and reporting the data once it is collected, particularly in light of the credit industry's immense dependence on computer technology.<sup>14</sup>

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7. *Id.*

8. One court noted:

Data banks keep track of us all. They record evidence of our credit worthiness, our character, and our style of living. They report this information to potential employers or lenders. In our complex society, data banks of personal information seem necessary evils: necessary, because they quickly inform vulnerable institutions about people; evil, because their information may be inaccurate and because they may brand us with the Scarlet Letter of lost events best forgotten.

*Goodnough v. Alexanders, Inc.*, 82 Misc. 2d 662, 663, 370 N.Y.S.2d 388, 389 (Sup. Ct. 1975) (mem.).

9. Pub. L. No. 91-508, Title VI, 84 Stat. 1127 (1970) (codified as amended at 15 U.S.C. §§ 1681-1681t (1982)).

10. Throughout this Note, "consumer report," "credit report," and "credit rating" will be used synonymously to indicate the product of a consumer reporting agency. The Fair Credit Reporting Act defines a consumer reporting agency as follows:

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part 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 . . .

15 U.S.C. § 1681a(f) (1982).

11. *See infra* notes 15-27 and accompanying text.

12. *See infra* notes 28-61 and accompanying text.

13. *See infra* notes 62-90 and accompanying text.

14. *See infra* notes 91-125 and accompanying text.

## II. COMMON LAW REMEDIES

Before Congress began regulating the credit industry, consumers harmed by an inaccurate credit report could resort only to common law remedies<sup>15</sup> or, in a few states, to state statutory remedies.<sup>16</sup> If a consumer claimed that the information in a credit report was erroneous, he or she could bring an action for either invasion of privacy or defamation.<sup>17</sup> Defamation actions were the most common,<sup>18</sup> probably because a plaintiff could establish a prima facie case merely by alleging that the defendant made a defamatory statement to a third party.<sup>19</sup> To be defamatory, the statement must infringe on the plaintiff's reputation and good name in the community.<sup>20</sup> For example, a plaintiff could meet the requirements for a prima facie case if a credit report improperly labeled him a drunk, a bankrupt, or an immoral

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15. Feldman & Gordin, *supra* note 3, at 1260. For an exhaustive history of common law actions prior to the Fair Credit Reporting Act, see Ullman, *Liability of Credit Bureaus After the Fair Credit Reporting Act: The Need for Further Reform*, 17 VILL. L. REV. 44 (1971).

16. Before Congress passed the FCRA, Massachusetts, Minnesota, New York and Oklahoma had enacted statutes concerning the liability of credit bureaus to consumers. See Ullman, *supra* note 15, at 58.

17. Feldman & Gordin, *supra* note 3, at 1260. The question of the invasion of privacy through credit reports is beyond the scope of this Note. This Note accepts the essential propriety of a credit report. Instead, it focuses on the means of assuring the accuracy of the information. Nevertheless, the right to privacy was occasionally used to combat the excesses of credit agencies. Scholars look to an article by Justices Warren and Brandeis as the origin of the right to privacy. See Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). This right is actually a collection of four types of torts: 1) intrusion upon a plaintiff's solitude; 2) public disclosure of private facts; 3) placing the plaintiff in a false light in the public eye; and 4) appropriation of a plaintiff's name or likeness. W. PROSSER, HANDBOOK ON THE LAW OF TORTS § 117, at 804-18 (4th ed. 1971). Although types two and three seem to apply to the credit industry, Professor Prosser states: "Unquestionably, reasonable investigations of credit . . . are privileged." *Id.* at 818.

18. Comment, *Fair Credit Reporting Act: Constitutional Defects of the Limitation of Liability Clause*, 11 HOUS. L. REV. 424, 427 (1974). See also Note, *Protecting the Subjects of Credit Reports*, 80 YALE L.J. 1035, 1049 (1971). Very simply, defamation is that which tends to injure reputation or to diminish the esteem, respect, good will, or confidence in which the plaintiff is held, or to excite adverse, derogatory, or unpleasant feelings or opinions against him. W. PROSSER, *supra* note 17, § 111, at 739. Although malice need not be shown, it necessarily involves the idea of disgrace. *Id.* § 113, at 772.

19. W. PROSSER, *supra* note 17, § 111, at 737.

20. *Id.*

person. Thus, the defamation cause of action seemed well-suited for insuring accuracy in credit reporting.

The courts, however, intentionally restricted the availability of the defamation remedy.<sup>21</sup> Because of the importance of credit agencies to a community's economic well-being, many courts were reluctant to burden the agencies with the task of defending defamation suits.<sup>22</sup> Thus, they extended the defense of "conditional privilege" to the agencies.<sup>23</sup> This defense absolved the agencies from liability unless plaintiffs could show that the agencies had acted with malice in publishing defamatory statements.<sup>24</sup> The conditional privilege was available to persons who, in fulfilling a legal or moral obligation to speak, published statements that turned out to be defamatory.<sup>25</sup> The courts made the conditional privilege available to credit agencies because the agencies had an obligation to disclose a person's financial records when a merchant requested this information.<sup>26</sup> Thus, for the sake of market efficiency, agencies were able to pass on to consumers the costs of damages resulting from mishandling or inaccurately reporting a person's credit information.<sup>27</sup>

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21. Note, *supra* note 18, at 1049-50.

22. *Id.* at 1052-53.

23. *Id.* at 1050.

24. *Id.* at 1050-51. The privilege also failed to protect agencies that disseminated the defamatory information to persons not entitled to it, or for an improper purpose. *Id.* at 1050 n.83.

25. *Id.* at 1050.

26. Comment, *supra* note 18, at 427. See, e.g., *Watwood v. Stone's Mercantile Agency*, 194 F.2d 160 (D.C. Cir. 1952) (defendant credit agency not guilty of defamation despite fact that credit report falsely suggested that plaintiff was unmarried and a mother).

27. See Note, *supra* note 18, at 1054.

One commentator justifies the conditional privilege for credit-related communications by stating:

If such communications are not protected by the law from the danger of vexatious litigation in cases where they turn out to be incorrect in fact, the stability of men engaged in trade and commerce would be exposed to the greatest hazard, for no man would answer an inquiry as to the solvency of another. . . . Can it be desirable to impose conditions of immunity so stringent as to discourage the giving of information and thus diminish materially the probability that the desired information will be obtained by persons in need of it?

Smith, *Conditional Privilege for Mercantile Agencies*, 14 COLUM. L. REV. 187, 201 (1914).

### III. THE FCRA AND THE THRESHOLD INACCURACY REQUIREMENT

Despite the inadequacy of the common law remedies, until recently the problems surrounding inaccurate information processing were not pressing.<sup>28</sup> Formerly, businesses conveyed information concerning the public primarily by means of word of mouth or by manual transmission. This limited the amount of consumer information available at any one time.<sup>29</sup>

With the dawning of the computer age, however, both business and government have implemented information processing techniques to amass data on the consuming public.<sup>30</sup> Credit reporting agencies solicit information from their investigators and customers and utilize this information to compile extensive personal dossiers describing an individual's financial, personal, and public life.<sup>31</sup> This "credit report" is then sold<sup>32</sup> to insurers,<sup>33</sup> merchants,<sup>34</sup> and employers.<sup>35</sup> Businesses often find this information to be vitally important in calculating the risk of dealing with a consumer,<sup>36</sup> and it is crucial that

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28. See *supra* note 2.

29. *Id.*

30. Comment, *supra* note 4, at 590.

Extensive dossiers are easily maintained on individuals who apply for credit, insurance, medical care or employment benefits, and are used to assess the eligibility of or risks posed by a particular individual. In addition to such business activity, government at every level maintains large scale record keeping systems which contain personal and sensitive details about individuals who have applied for government benefits, or whose activities have become the subject of law enforcement scrutiny.

*Id.*

31. Note, *supra* note 18, at 1036.

32. For example, in one case a defendant's credit investigators prepared approximately 10-15 reports per day and charged \$7.00 per report. *Hauser v. Equifax, Inc.*, 602 F.2d 811, 815 (8th Cir. 1979).

33. McLaughlin & Vaupel, *Constitutional Right of Privacy and Investigative Consumer Reports: Little Brother Is Watching You*, 2 HASTINGS CONST. L.Q. 773, 802 (1975).

34. See *Acherley v. Credit Bureau of Sheridan, Inc.*, 385 F. Supp. 658 (D. Wyo. 1974).

35. See *Retail Credit Co. v. Russell*, 218 S.E.2d 54 (Ga. 1975) (credit agency furnished defamatory information to employer). See also Note, *Fair Credit Reporting Act: The Case for Revision*, 10 LOY. L.A.L. REV. 409, 424 (1975).

36. Two commentators stated:

In the credit industry alone hundreds of millions of dollars rest upon decisions regarding the extension of credit to individuals. The decisionmakers must be

the information be accurate.<sup>37</sup> When agencies report inaccurate information due to mistaken identification, improper record maintenance, or use of unreliable sources, both the consumer and the business suffer.<sup>38</sup> The consumer unjustly loses an opportunity for credit, insurance, or employment,<sup>39</sup> and the business loses a valuable

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informed about a person's solvency and reliability. Automobile insurers need to know a person's driving record and other pertinent facts before taking the risk of insuring that person. Life insurance companies should know the medical history and the physical condition of the applicant, as well as the hobbies and interests of the applicant if they involve special dangers such as skydiving or mountain-climbing. An employer should know the experience and abilities of a prospective employee and the educational background of the applicant and his characteristics which might determine suitability for a particular assignment. The filing of such information holds certain cost-saving efficiencies which are helpful in the business world. The information thus gathered allows for "statistical stereotyping" as a means of making a large number of decisions in the shortest amount of time.

McLaughlin & Vaupel, *supra* note 33, at 802.

37. An excerpt from Senator Proxmire's testimony before the Privacy Protection Study Commission states that:

The Consumer is entitled to an assurance that information about him that is collected and distributed by consumer reporting agencies is accurate, complete and relevant to the purposes for which it is used. This is nothing more than fundamental fairness. The credit or insurance or employment applicant ought not be the subject of slipshod investigative techniques or haphazard data collection, or of distorted recording, reporting or evaluation methods. A heavy burden ought to rest on the reporting agencies to assure that their reports are as accurate and as thorough as possible.

Note, *supra* note 35, at 423 n.84 (quoting a statement by Senator Proxmire before the Privacy Protection Study Commission, Aug. 3, 1976). See also Note, *Fair Credit Reporting: Are Misleading Reports Reasonable?*, 55 N.Y.U. L. REV. 111, 113 (1980).

38. Note, *supra* note 37, at 112.

39. In a speech before the Senate, Senator Proxmire described a few instances in which blatant inaccuracies in credit reports resulted in harm:

A Maine housewife has lost virtually all her credit and her life, hospital, and car insurance due to "bad morals" cited in a credit report. The reason? For 12 years she has been a common law wife to a man whose wife will not divorce him.

A college student from Ohio lost his car insurance on the strength of a neighbor's secret testimony.

A Pennsylvania woman was turned down for major medical coverage by an insurance company. After repeated interviews with company officials and the Pennsylvania insurance commissioner, the woman's husband finally learned the reason. A credit report indicated she was an alcoholic. In actual fact, the woman had never consumed more than a dozen drinks in 20 years of married life.

A Florida insurance man with 20 years of experience writes that credit investigations are frequently characterized by hearsay evidence, inaccuracies, incompetent investigators, and snide insinuations.

The attitude of credit reporting industry officials on hearsay evidence is not

customer or employee.<sup>40</sup>

The failure of consumers to realize that retailers may refuse to extend credit to them because of an inaccurate credit report only aggravates the problem.<sup>41</sup> Similarly, the credit bureau usually remains unaware of any problems with inaccurate data because it has little incentive to detect mistakes.<sup>42</sup> As a result, businesses unfairly deprive consumers of benefits they rightly deserve.<sup>43</sup> The solution to these problems lies in a legal scheme that balances the need for credit information with the need for accuracy.<sup>44</sup>

Congress attempted to provide this balance in the Fair Credit Reporting Act.<sup>45</sup> Congress passed the FCRA for the expressly stated purpose of ensuring that consumer reporting agencies adopt reason-

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exactly reassuring. For example, the general counsel of Retail Credit testified at a recent hearing. "What's wrong with hearsay? We all operate on hearsay everyday. We couldn't have a civilized society without hearsay." 115 CONG. REC. 2411 (1969).

40. *Id.*

41. Note, *supra* note 35, at 411.

42. Note, *supra* note 18, at 1037. Indeed, the nature of the investigatory procedures used by many of the agencies actually lends itself to inaccuracy. See *Equifax, Inc., v. FTC*, 678 F.2d 1047 (11th Cir. 1982). In *Equifax*, the FTC charged that the defendant's practice of rewarding employees for producing adverse information constituted unreasonable procedures under the FCRA. The defendant prevailed, however, because conflicting evidence also showed that the company strongly disapproved of production of inaccurate information. *Id.* at 1052.

43. Comment, *supra* note 4, at 591. A merchant may deprive a consumer of his rights by using the spectre of a "bad credit rating" to coerce the consumer into foregoing complaints about defective merchandise. If the consumer refuses to pay because a product is faulty or because the merchant refuses to replace it, the merchant can simply threaten to put a smudge on the customer's credit report. Note, *supra* note 18, at 1039.

44. Note, *supra* note 37, at 112-13.

45. Note, *supra* note 35, at 409. For many observers of the credit industry, the FCRA was long overdue. News accounts depicting credit agencies invading individuals' privacy and mishandling delicate information had given the credit industry a much deserved bad reputation. See *supra* note 39. In response, industry spokesmen contended that the number of people injured by faulty reports was quite small considering the number of reports issued. Also, they asserted that the benefits of the system far outweighed any of its liabilities. Note, *supra* note 35, at 414. Senator Proxmire, one of the credit industry's most outspoken opponents, countered this argument in a speech before the Senate. Noting that the credit industry issues over 100 million reports each year, he asserted that even given a one percent rate of error, faulty reports may affect one million people each year. 115 CONG. REC. 2411 (1969).

Recognizing this growing public sentiment in favor of government regulation, the credit industry created a committee that proposed guidelines for self-regulation. Con-



able procedures to insure that credit, insurance, and personal information is accurate, relevant, and properly used.<sup>46</sup> Under the Act, a consumer reporting agency must use reasonable procedures to assure that the information it reports is as accurate as possible.<sup>47</sup> Because the Act fails to define "reasonable procedures" and "accuracy," the judiciary must assume the responsibility for interpreting these broad terms.<sup>48</sup>

When confronted with issues raised under the FCRA, courts first decide whether the report itself is inaccurate.<sup>49</sup> Because courts will not hold an agency liable under the FCRA unless the information is "clearly inaccurate," this threshold inquiry stands as a substantial obstacle to an aggrieved consumer.<sup>50</sup> Thus, courts uniformly deny relief<sup>51</sup> to a consumer who sues a credit reporting agency alleging that a credit report is misleading or damaging, though technically accurate. For example, in *Austin v. Bankamerica Service Corp.*,<sup>52</sup> a bank hired a credit reporting agency to conduct a credit check on a loan applicant.<sup>53</sup> Because the agency's report stated that the plaintiff had been involved in litigation, the bank declined to extend credit to the

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gress rejected these guidelines, opting instead for Senator Proxmire's FCRA. Denney, *Federal Fair Credit Reporting Act*, 88 BANKING L.J. 579, 580-83 (1971).

Although Senator Proxmire is legitimately credited as the motivating force behind the FCRA, he was not the first to suggest the need for such legislation. Congressman Cornelius Gallagher from New Jersey introduced the idea in a speech on the topic in the House of Representatives. Although the public generally ignored his speech, a few of the House leaders recognized the importance of the issue and soon authorized public hearings. *Id.* at 580-81.

46. See 15 U.S.C. § 1681e(b) (1982).

47. *Id.* The Act provides: "(b) Whenever 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." *Id.*

48. Note, *supra* note 37, at 114.

49. *Id.*

50. *Id.*

51. See, e.g., *Roseman v. Retail Credit Co.*, 428 F. Supp. 643 (E.D. Pa. 1977) (plaintiff who lost a job because the report furnished to his employer depicted him in an unfavorable light not permitted to recover because the report was nevertheless technically accurate); *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013 (N.D. Ga. 1976) (plaintiff not permitted to recover despite the report's failure to state the outcome of his arrest).

52. 419 F. Supp. 730 (N.D. Ga. 1974).

53. *Id.* at 731-32.

loan applicant.<sup>54</sup> The applicant sued, claiming that the agency failed to explain that he was involved in litigation in his official capacity as a county deputy marshal.<sup>55</sup> A federal district court denied relief, however, holding that recovery under the FCRA requires a clear misstatement or inaccuracy in the credit agency's report.<sup>56</sup>

Thus, a misleading report may be damaging but not "inaccurate" under the FCRA. One critic illustrates this problem through the following example: A consumer's credit report simply states: "arrested, criminal trespass, sentenced, six months."<sup>57</sup> The police had arrested this individual twice: once during a civil rights demonstration in the 1950s and once at a march for equal employment opportunity in the 1960s.<sup>58</sup> Although the report is technically accurate, it is nevertheless misleading. The report may cause merchants to associate the consumer with felons who routinely are denied credit.

Courts justify failing to require credit agencies to disseminate complete or updated information by ruling that such dissemination is not required by the FCRA.<sup>59</sup> An explicitly stated purpose for enacting the FCRA, however, was to protect the consumer from misleading information in credit reports.<sup>60</sup> Certainly, the consumer does not benefit from the courts' rigid interpretation of the FCRA. Courts

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54. *Id.*

55. *Id.* at 732. The loan applicant contended that if a company or bank understood that he was involved in litigation as an official, the litigation would have no bearing on his credit rating. *Id.*

56. *Id.* at 731-32. The court relied on its decision in *Peller v. Retail Credit Co.*, 359 F. Supp. 1235 (N.D. Ga. 1973). In *Peller*, the plaintiff sought relief under the FCRA on the grounds that the results of a polygraph examination showing that the plaintiff used marijuana were included in a credit report. The court denied relief on the ground that the report, as subsequently admitted by plaintiff, was accurate. *Id.* at 732.

57. Miller, *Computers*, *supra* note 2, at 9.

58. *Id.* Professor Miller also speculates about those individuals convicted under a statute that is later held unconstitutional. If the credit report lists the initial arrest, it should also include this subsequent information. *Id.*

59. In introducing the FCRA, Senator Proxmire stated: "Perhaps the most serious problem in the credit reporting industry is the problem of inaccurate or misleading information." 115 CONG. REC. 2411 (1969).

60. *See, e.g.*, *Austin v. Bankamerica Serv. Corp.*, 419 F. Supp. 730, 732-33 (N.D. Ga. 1974). The court asserted that if an agency is forced to ascertain whether the plaintiff previously had been sued in his official or in his personal capacity, the agency soon may have to determine such questions as whether the suit is for injunctive relief or damages or whether there is a strong probability of success. The court asserted that this goes well beyond the requirements of the FCRA. *Id.*

should require agencies to do more than simply extract information out of context from public records.<sup>61</sup> Rather, when agencies report incidents such as a consumer's arrests or litigation, courts should demand that the agencies report the context of those incidents as well. This requirement would aid in the prevention of misleading reports, which can be damaging as well as inaccurate. By adopting this requirement, courts would refuse to permit the "clearly inaccurate" requirement to dampen the intended effect of the FCRA.

#### IV. THE FCRA AND THE DEFINITION OF REASONABLE PROCEDURES

Once consumers surmount the threshold inaccuracy requirement, federal law still does not guarantee recovery.<sup>62</sup> The FCRA is not a strict liability statute; rather, it requires only that an agency use "reasonable procedures" to insure "maximum possible accuracy."<sup>63</sup> Consequently, an agency that compiles and reports inaccurate data may not be liable if the court finds that the agency used reasonable procedures. By strictly defining "reasonable procedures," a court can strengthen the FCRA; conversely, a lax definition of the "reasonable procedures" requirement will strip the legislation of its effectiveness.

Credit agencies compile data in two ways: by using field investigators who uncover data through neighborhood interviews and by collecting information from their customers—the merchants. Courts have failed to define "reasonableness" concretely for either of these methods. For example, in *Hauser v. Equifax, Inc.*,<sup>64</sup> the consumer

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61. Under § 1681k of the FCRA, a reporting agency may extract information from the public record. 15 U.S.C. § 1681k (1982). Although § 1681k(2) requires that the agency report up-to-date information, that information must be complete at the time the agency compiles the report. *Id.* Often, an agency does not use a report until well after it is compiled. Senator Proxmire describes the problem as follows:

Most credit reporting agencies assiduously cull adverse information on people from newspapers, court records, and other public documents. These records include records of arrests, judgments, liens, bankruptcies and the like. However, most agencies are not anywhere nearly as diligent in following up on the case to record information favorable to the consumer. Action following arrest is often dropped . . . suits are dismissed . . . Judgments are reversed. However, these facts are seldom recorded by the credit reporting agencies with the result that their records are systematically biased against the consumers.

115 CONG. REC. 2412 (1969).

62. Note, *supra* note 37, at 118.

63. 15 U.S.C. § 1681e(b) (1982).

64. 602 F.2d 811 (8th Cir. 1979).

alleged that the defendant, Equifax, Inc., issued a report that inaccurately described his job to an insurance company, which caused the company to deny the consumer his disability benefits.<sup>65</sup> The plaintiff asserted that the company's investigators failed to use reasonable procedures to insure the accuracy of the report.<sup>66</sup> The Eighth Circuit Court of Appeals acknowledged the inaccuracies in the report but nevertheless held that Equifax's procedures did not violate the Act because they were not negligent.<sup>67</sup> The court explained that even when a report is inaccurate, a company is liable only if the procedures used in compiling the report do not meet the minimum standards of reasonableness.<sup>68</sup> In this instance, the investigator spoke to reliable sources and arrived at a mistaken conclusion about the plaintiff's job description.<sup>69</sup> While ruling that the company's policy of conducting interviews constituted reasonable compliance with the statute, the court failed to indicate what would constitute unreasonable interviewing or investigating techniques.<sup>70</sup>

In *Millstone v. O'Hanlon*,<sup>71</sup> however, the Eighth Circuit Court of Appeals considered procedures used by a credit agency to be an ideal example of those proscribed by the FCRA. Millstone, an assistant managing editor at the St. Louis Post-Dispatch, applied for automobile insurance.<sup>72</sup> The insurance company issued the policy but ordered a credit check from the defendant company, O'Hanlon.<sup>73</sup> The defendant's report of Millstone was negative, calling him a long-haired hippie who associated with demonstrators and who was suspected of using drugs.<sup>74</sup> An insurance agent who was familiar with

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65. *Id.* at 813-15.

66. *Id.* at 814. The plaintiff claimed that the investigator had spent little time preparing the report and had not interviewed him personally. *Id.* at 815.

67. *Id.*

68. *Id.*

69. *Id.* at 813-15.

70. *Id.* at 814. The court noted that the FCRA does not provide for comprehensive regulation of the credit industry. Rather, it establishes broad minimum standards which collectively are called "reasonable procedures." *Id.*

71. 528 F.2d 829 (8th Cir. 1976).

72. *Id.* at 831.

73. *Id.*

74. *Id.* at 831, 834. That credit report, noted by the court, is an example of potential credit abuses. It reads:

Comment. A poll of four local neighbors at the former address proved that the assureds were very much dislike [sic] here by all informants, mainly because of their attitude [sic] and by the non-discipline of their four children. Mrs. Mill-

Millstone's reputable professional standing prevented the insurance company from canceling the policy.<sup>75</sup> Nevertheless, Millstone requested to see the report and pressed the credit agency to reveal the basis for its information. The agency discovered that its investigator had spent only thirty minutes compiling the report, without verifying its contents.<sup>76</sup> The court of appeals chastised O'Hanlon for its failure to comply with the reasonable procedures requirement.<sup>77</sup> The federal district court had been less subtle in its criticism; it characterized the investigator's techniques as "so heinous and reprehensible," "so slipshod and slovenly," and "so wanton as to be clearly wilful non-compliance with the FCRA."<sup>78</sup>

*Millstone* exemplifies investigatory conduct that falls below the Act's minimal standard of reasonable care. The *Hauser* and *Millstone* decisions suggest that courts that interpret the requirements of the FCRA expect a credit agency to conduct at least several interviews with reliable sources. There is no precise standard. Separate factual situations in each case prevent courts from correctly defining the term "reasonable."<sup>79</sup>

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stone would allow her children to run free in the area, and they frequently played ball in the neighbors' yards, and even gardens, and tore them up on several occasions. . . . In addition, both assureds were reported to be the "hippie" type by all neighbors and participated in many demonstrations here in Washington and also housed out of town demonstrators in their house during these demonstrations, and these demonstrators slept on the floors, in the basement and any where [sic] else they could on assured's property. Assureds were strongly suspected to be drug users by all neighbors, however this could not be positively substantiated by any of our informants. Assured is reported to have shoulder length hair and a beard on one occasion while living here. The risk, a late VW Bus, was used to transport out of town demonstrators to and from the demonstrations here in Washington informants [sic] also stated. . . .

*Id.* at 834, n.5.

75. *Id.* at 831. Millstone, as Assistant Managing Editor of the Post-Dispatch, covered the White House while at the paper's Washington office. When the company learned of this, it reinstated the insurance policy. *Id.*

76. *Id.* at 834. The investigator obtained the information in one interview from an extremely biased informant. *Id.*

77. The court characterized the defendant's report as "ripe with innuendo, misstatement, and slander." *Id.*

78. *Millstone v. O'Hanlon Reports, Inc.*, 383 F. Supp. 269, 275 (E.D. Mo. 1975).

79. While one may view *Millstone* as the definitive judicial statement on the conduct of field investigators, other cases delineate further an agency's responsibilities when dealing with investigators who gather consumer information. In *Dynes v. TRW Credit Data*, 652 F.2d 35 (9th Cir. 1981), the plaintiff complained of inaccuracy in a credit report which said that her auto had been repossessed. The defendant

In addition to soliciting information from investigators, credit agencies also gather data from merchants. Nevertheless, an agency still must follow reasonable procedures to assure the maximum possible accuracy of the information obtained. A recent Sixth Circuit Court of Appeals decision, *Bryant v. TRW, Inc.*,<sup>80</sup> discusses this requirement in the context of data collected from merchants.

In *Bryant*, a mortgage company requested the defendant credit agency to conduct a credit check on the plaintiff to determine the plaintiff's eligibility for a mortgage.<sup>81</sup> Included in the agency's report was information obtained from other merchants who dealt with the plaintiff.<sup>82</sup> Although the defendant then reported this information accurately, the information itself was inaccurate.<sup>83</sup> Because of the plaintiff's complaints, the agency called the merchants who had supplied the information to verify the reports.<sup>84</sup> This effort only confirmed the inaccurate information.<sup>85</sup> The court determined that the agency must do more than simply act as a conduit of information.<sup>86</sup> To comply with the reasonable procedures standard, the agency must refer the consumer's complaints to the merchant and request a re-evaluation or reinvestigation.<sup>87</sup>

The *Bryant* court reiterated the concerns of the *Millstone* court by

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rechecked the data and was satisfied that it was accurate. Although the plaintiff complained again, the defendant claimed its only duty was to reinvestigate once—a sort of “single reinvestigation” theory. The court rejected this approach and agreed with the plaintiff by holding that a credit agency must reinvestigate the data until it is correct. *Id.* at 36. A company would not have this duty to reinvestigate if it believed on reasonable grounds that the consumer's claim is frivolous and irrelevant. *Id.* at 36. See 15 U.S.C. § 1681i(2) (1982) (setting forth a reasonable grounds standard). Surprisingly, there has been little litigation involving credit agencies that abuse their power when they define “frivolous and irrelevant” complaints.

80. 689 F.2d 72 (6th Cir. 1982).

81. *Id.* at 74.

82. *Id.* at 74-76.

83. *Id.* at 74-77. The information showed that the plaintiff was delinquent on his account with two stores. This information was inaccurate because at the time the agency issued the report the plaintiff was behind on his payments to the two stores, but he was not so far behind as to be considered delinquent. *Id.* at 76-77.

84. *Id.* at 79.

85. *Id.*

86. *Id.* The court emphasized the importance of an accurate credit report. The court stated that the defendant's claim that an agency merely has to report accurately the information given to it would result in a judicial repeal of the statute that Congress adopted after much consideration. *Id.* at 77.

87. *Id.* at 79.

emphasizing the importance of accurate credit reporting.<sup>88</sup> The *Bryant* court limited its holding to the facts of the instant case.<sup>89</sup> Nevertheless, *Bryant* stands as a victory for consumers because it rejects the role of the credit agency as an indiscriminate gatherer of unverified information. It confirms the independent responsibility of the agencies to the consumer when soliciting information from merchants.<sup>90</sup>

The *Millstone* and *Bryant* courts' interpretation of the reasonable procedures standard of the FCRA are favorable to the consumer. Although each case appears to demand only a minimal standard of care from the agencies when those agencies compile their consumer data, both decisions restrict an agency's discretionary power. *Millstone* and *Bryant* will promote the collection of accurate information pertaining to a consumer's personal and financial status.

## V. TECHNICAL ADVANCES IN FAIR CREDIT REPORTING

Once credit agencies collect and compile data, their responsibilities shift to managing and reporting this information. At this stage, the computer revolution takes on special significance because of the credit industry's extensive dependence upon computer technology for storing and transmitting data. Clearly, the nature of computer data alone changes the complexion of problems surrounding accurate credit reporting.<sup>91</sup> By using computerized data an agency adds a step to the process of handling credit information.<sup>92</sup> Rather than simply storing manually compiled data, clerical workers must also keypunch the data onto computer cards or directly into the computer system.<sup>93</sup>

88. *Id.* at 78.

89. *Id.* at 78-79. The court stated that "a consumer reporting agency does not necessarily comply with [the Act] by simply reporting in an accurate manner the information it receives from creditors." *Id.* at 78 (emphasis in the original). By italicizing "necessarily," *id.* at 78, the court suggests the possibility that in some instances simply reporting the information may be sufficient. Second, the court emphasized the defendants' awareness of prior instances in which the plaintiff had similar problems with inaccurate reports. *Id.* The court stated that, "[a]bsent these facts, we would have a quite different case." *Id.* at 79.

90. The court also upheld the district court's determination that the plaintiff's attorney should receive reasonable attorney's fees. *Id.* at 80. Without this type of judicial support, plaintiffs might rarely have the resources to challenge a credit agency.

91. See generally Nycum, *Computer Abuses Raise New Legal Problems*, 61 A.B.A. J. 444 (1975).

92. Miller, *Personal Privacy*, *supra* note 2, at 1114-15.

93. *Id.* at 1114.

This additional step increases the likelihood of error.<sup>94</sup> Significantly, a simple clerical error in this type of record can seriously harm a consumer.<sup>95</sup>

Similarly, because computer storage lends itself to strict categorical classification,<sup>96</sup> an agency may place certain ambiguous data into the most closely related category. This placement might have the effect of tainting a consumer's record. For instance, a "fair" report might be forced into either the "good" or "bad" risk category.<sup>97</sup> Finally, the expense of computer storage will discourage agencies from including in a data file explanations that the consumer might want an agency to consider.<sup>98</sup>

The nature of the computer data itself, however, presents the most volatile issue for those monitoring the credit industry. Computer data creates the impression of possessing a much higher degree of accuracy than manually produced data.<sup>99</sup> One observing a credit report on a computer printout may place undue reliance on the report and then fail to verify the accuracy of the data. Highly centralized computer data banks<sup>100</sup> compound these problems. These systems distribute data nationwide that may be inaccurate.<sup>101</sup>

Despite the complexity of computer technology, an agency cannot dodge responsibility for inaccurate credit reports by rationalizing

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94. *Id.* The author notes that a keypunch operator or clerical worker has the capacity to inflict as much damage through negligence, sheer stupidity, or lack of sensitivity as a person acting through malice. He suggests that the problems in this additional stage of handling will persist until extremely accurate input devices, such as optical scanners, become operational. *Id.*

95. *Id.*

96. See Note, *supra* note 18, at 1040 n.29.

97. Miller, *Personal Privacy*, *supra* note 2, at 1117. The use of evaluative information in such conclusive categories becomes particularly dangerous when others who view the information interpret the categories differently. One viewer analyzing the data may consider "fair" an average performance, while another may see this same evaluative term as indicative of a very poor performance. *Id.*

98. See *id.* at 1116-17.

99. *Id.* at 1116. The computer's image of infallibility prompted a government official to remark that just because data is stored in a computer does not make it accurate. *Id.*

100. Miller, *Personal Privacy*, *supra* note 2, at 1115. Because large numbers of local and regional computers may be linked together into extensive national and international networks, information can be stored and carried far from its point of recordation. This enhances the possibility that persons not associated with the data's collection will interpret it inaccurately. *Id.*

101. *Id.*



mistakes as "computer error."<sup>102</sup> Instead, courts insist that a company's duty to exercise reasonable care in reporting credit data does not abate simply because it uses a computer.<sup>103</sup> Courts consider the characteristics of computer technology and demand that credit agencies modify their procedures to ensure the greatest possible accuracy in credit records. Two recent cases illustrate this point.

In *Lowry v. Credit Bureau, Inc. of Georgia*,<sup>104</sup> a bank checked the plaintiff's credit with the defendant credit agency after the plaintiff applied for a loan.<sup>105</sup> The credit agency had programmed its system so that its customers had direct access to the system.<sup>106</sup> This arrangement allowed a merchant to confuse files with similar names and information.<sup>107</sup> In *Lowry*, the bank retrieved the wrong file and, acting

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102. Indeed, causes of action such as breach of warranty in computer contracts and tortious misrepresentation in computer sales rest partially on the notion that computers are inherently different from ordinary business machines. Note, *Unconscionability and the Fundamental Breach Doctrine in Computer Contracts*, 57 NOTRE DAME LAW. 547, 552-53 (1982). Those acquiring a computer for business expose themselves to more risks than if they had acquired a regular machine. *Id.* at 554.

103. Nycum & Lowell, *Common Law and Statutory Liability for Inaccurate Computer-Based Data*, 30 EMORY L.J. 445, 453 (1981).

The principle that a computer mistake does not shield a company from liability is well established. In *Pompeii Estates, Inc. v. Consolidated Edison Co.*, 91 Misc. 2d 233, 397 N.Y.S.2d 577 (Civ. Ct. N.Y. 1977), the court held a utility liable for wrongfully terminating electricity at an unoccupied home. The company had been sending the bill to the house when it should have been sending the bill to the builder. Similarly, in *Ford Motor Co. v. Swarens*, 447 S.W.2d 53 (Ky. Ct. App. 1969), the defendant, Ford Motor Co., blamed faulty repossession of the plaintiff's automobile on computer error. The court rejected this defense stating:

Ford explains that this whole incident occurred because of a mistake by a computer. Men feed data to a computer and men interpret the answer the computer spews forth. In this computerized age, the law must require that men in the use of computerized data regard those with whom they are dealing as more important than a perforation on a card. Trust in the infallibility of a computer is hardly a defense. . . .

*Id.* at 57.

104. 444 F. Supp. 541 (N.D. Ga. 1978).

105. *Id.* at 543.

106. *Id.* The merchants would supply the computer with as much relevant information about an individual as possible. The computer would then list the names of those people whose records matched up closely with this information based on a programmed minimum number of "points of correspondence" between the two sets of data. The merchant would then choose which credit history he wished to review. *Id.*

107. The plaintiff gave the bank his name as James F. Lowry, but the file the bank extracted from the defendant's computer concerned James Frank Lowry of a different address. *Id.* at 543.

on this information, rejected plaintiff's application.<sup>108</sup> The plaintiff then sued, alleging that the credit agency failed to use reasonable procedures to insure the accuracy of the credit report.<sup>109</sup> The court held that the agency's use of a computer program that allowed a merchant to automatically add information to a consumer's file may constitute a violation of the FCRA.<sup>110</sup> The court's decision rests on the fundamental proposition that the FCRA demands that reasonable procedures be used in the "preparation" of a credit report.<sup>111</sup> The court reasoned that "preparation" of a report was a continuous process<sup>112</sup> and because the agency failed to verify the accuracy of information added by merchants, the practice violated the reasonable procedures requirement.<sup>113</sup>

A similar problem arose in a Fifth Circuit Court of Appeals decision, *Thompson v. San Antonio Retail Merchants' Association*.<sup>114</sup> The plaintiff applied for credit with Gulf and Montgomery Ward.<sup>115</sup> When Gulf conducted a credit check on the plaintiff, the credit agency's computer reported information on another individual whose name was similar to the plaintiff's.<sup>116</sup> After Gulf had finished using

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108. The bank rejected the plaintiff's application because the file of the wrong individual, James Frank Lowry, listed him as in the midst of bankruptcy proceedings. *Id.*

109. *Id.* at 544. The court stated the issue succinctly: "The crux of the plaintiff's complaint is the potential for confusion of reports inherent in the defendant's computer system." *Id.* Despite this statement of the issue the court did not ultimately rest its decision on that claim. It specifically stated that a credit agency's use of the wrong reports is not the basis for a federal claim. According to the court, the real problem stemmed from the merchants' ability to feed data directly into the computer, allowing a merchant to put the plaintiff's social security number into James Frank Lowry's file. This mismatched information allowed the plaintiff to meet the threshold inaccuracy requirement for basing a claim on the FCRA. *Id.*

110. *Id.* The court denied the defendant credit agency's motion for summary judgment. The court further ruled that it would not be impossible for the plaintiff to satisfy the FCRA requirement of establishing damages resulting from the defendant's breach. *Id.* See *supra* note 109.

111. 444 F. Supp. at 544. See 15 U.S.C. § 1681e(b) (1982).

112. 444 F. Supp. at 544.

113. *Id.* The court emphasized that permitting the defendant's procedures to go unchecked would be completely contrary to the broad aims of the FCRA. *Id.*

114. 682 F.2d 509 (5th Cir. 1982).

115. *Id.* at 511.

116. *Id.* at 511-12. The defendant's system worked as follows: The defendant updated its files using a computerized "automatic capturing" feature. A subscriber, Gulf in this case, had to feed certain identifying information from its own terminal into the defendant's central computer to gain access to the credit history of a particu-

the erroneous file and had added information about the plaintiff to the file, the agency "recaptured" the file into its terminal. Montgomery Ward subsequently ran a credit check on the plaintiff and received the garbled data in the incorrect file. Because of adverse information in this file, they denied the plaintiff's credit request.<sup>117</sup> Gulf was able to obtain the inaccurate file primarily because the agency's computer required no minimum number of "points of correspondence" between the merchant's information about a consumer and the file purporting to be the consumer's before a merchant could add or delete information from the credit report file.<sup>118</sup> In addition, the defendant had no way of verifying whether the added information was correct.<sup>119</sup> The court reiterated the principles set forth in the *Lowry* decision<sup>120</sup> and held that the credit agency had a continuing duty to assure the accuracy of newly added information.<sup>121</sup> The court emphasized the need for an internal auditing system to prevent errors.<sup>122</sup>

Thus, both *Lowry* and *Thompson* illustrate that unchecked reliance on information compiled by computers can be problematic for the credit industry during the collecting and reporting stages. Agencies

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lar consumer. When the defendant received this information, its computer searched its records and displayed on the subscriber's terminal the credit history file that most nearly matched that of the consumer. The terminal operator then could decide whether to accept the given file as that of the consumer. When an operator accepted a file, the computer automatically captured into the file any information the subscriber's terminal inserted. In *Thompson*, the Gulf terminal operator mistakenly accepted a file that he or she thought was the plaintiff's, and the defendant's computer automatically placed the captured information about the plaintiff into the wrong file. The erroneously accepted file and the plaintiff's file therefore became hopelessly mixed. As a result, when the Montgomery Ward operator checked plaintiff's credit report, there was a mixture of information on William Douglas Thompson, III (plaintiff) and William Daniel Thompson, Jr.

117. *Id.*

118. *Id.* at 513.

119. *Id.*

120. *See supra* notes 104-13 and accompanying text.

121. 682 F.2d 509 (5th Cir. 1982). The court noted:

Section 1681e(b) does not impose strict liability for any inaccurate credit report, but only a duty of reasonable care in preparation of the report. That duty extends to updating procedures, because preparations of a consumer report should be viewed as a continuing process and the obligation to insure accuracy arises with every addition of information.

*Id.* at 513 (citation omitted).

122. *Id.* at 513. The court seemed to favor a system demanding a certain number of points of correspondence as an adequate auditing procedure to foster accuracy. *Id.*

must realize that proper safeguards such as internal auditing systems which monitor data are necessary,<sup>123</sup> because the many risks associated with computer use<sup>124</sup> may cause significant harm to consumers.<sup>125</sup>

## VI. CONCLUSION

Despite the consumer-oriented interpretation of the FCRA in recent cases dealing with the "reasonable procedures" requirement, several problems remain. Courts still insist that the consumer may challenge the reasonableness of an agency's procedures only if the report is clearly inaccurate.<sup>126</sup> In defining what constitutes inaccuracy, courts continue improperly to exclude incomplete information about a plaintiff's arrest or litigation.<sup>127</sup> Similarly, courts have not yet established a standard definition of the term "reasonable" where the reasonable procedures requirement is concerned.<sup>128</sup>

Although these and other problems exist with the FCRA,<sup>129</sup> courts

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123. See Nycum & Lowell, *supra* note 103, at 454-55.

124. Note, *supra* note 102, at 553. Parties often fail to understand the unique risks accompanying extensive computer use. *Id.*

125. *Id.* The author notes that the survival of a business may depend solely on the efficient use of its computer systems. *Id.* See Triangle Underwriters, Inc. v. Honeywell, 604 F.2d 737 (2d Cir. 1979) (defendant liable for selling plaintiff company a computer system which malfunctioned repeatedly and ultimately led to plaintiff's insolvency). Note that if the credit agency is held liable for reporting inaccurate data due to a computer malfunction, the agency may seek relief from the computer company. A court might base recovery upon either breach of warranty (UCC approach) or tortious misrepresentation. For an excellent discussion of this rapidly expanding area of law, see Tunik, *supra* note 1. See also Bigelow, *Counseling the Computer User*, 52 A.B.A. J. 451, 452 (1966) (discussing relevant factors in contracting for computers).

126. See *supra* notes 28-61 and accompanying text.

127. See *supra* notes 52-61.

128. See *supra* note 79 and accompanying text.

129. Senator Proxmire specified two problems with the FCRA:

Under the present law, consumers get no prior notification that reports will be prepared about them. Only in the case of investigative reports . . . is the consumer even told afterwards that a report has been or may be prepared. Of all the information that might be collected, medical information is certainly the most sensitive and personal. Yet to this day consumers who sign medical authorization forms have no clear indication of the virtually indiscriminate uses that may be made of that data in the future.

The present law requires that when a consumer is denied credit, insurance or employment on the basis of a report, he be advised of the identity of the reporting agency which supplied the report. But denials of benefits or increases in the charges for those benefits, are not the only adverse actions that a consumer report

appear to be moving in the proper direction. Regarding the investigation stage, the *Bryant* decision indicates that courts disapprove of the credit industry's indiscriminate compilation of information without asking questions or verifying data. Moreover, the *Thompson* case illustrates the agency's responsibilities in managing and reporting the data once it has been collected. These decisions show that courts are beginning to shift the cost of erroneous credit reporting directly onto the agencies that have the ability to more easily bear and distribute these costs.<sup>130</sup> These decisions also show that the evolving judicial attitude seems to be more in keeping with the fundamental purpose of the FCRA—that is, to guarantee fairness and equity to the consumer.<sup>131</sup>

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may precipitate, and the Act leaves those other possibilities untouched. I understand, also, that earlier testimony before this Commission revealed that many life insurance companies make their decisions on the basis of reports supplied by the Medical Information Bureau, even though that Bureau's own bylaws prohibit such reliance. Here is one clear case where consumers are being affected by reports they may never know have been made.

Note. *supra* note 35, at 413 n.35 (statement of Senator Proxmire before the Privacy Protection Study Commission).

130. Note, *supra* note 18, at 1045. The author states that because the credit agency is at the locus of two points, information collection and dissemination, and money collection and expenditures, the bureau is perfectly suited to evaluate any risks involved and then to spread the costs of injuries. *Id.* at 1046.

131. *See supra* note 59.

