BEFORE THE:

DEPARTMENT OF THE TREASURY
Office of Comptroller of the Currency
Docket ID OCC-2007-0019; RIN 1557-AC89
and
Office of Thrift Supervision
Docket No. OTS-2007-0022; RIN 1550-AC01

FEDERAL RESERVE SYSTEM
Docket No. R-1300

FEDERAL DEPOSIT INSURANCE CORPORATION
RIN 3064-AC99

NATIONAL CREDIT UNION ADMINISTRATION
12 CFR Part 717

FEDERAL TRADE COMMISSION
Project No. R611017, RIN 3084-AA94

INTERAGENCY NOTICE OF PROPOSED RULEMAKING: PROCEDURES TO ENHANCE THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES UNDER SECTION 312 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT

COMMENTS SUBMITTED BY THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

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February 11, 2008

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. ("OOIDA" or "Association") in response to an Interagency Notice of Proposed Rulemaking: Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act. The Notice was published in the Federal Register on December 13, 2007.

B. The Interest of the Owner-Operator Independent Drivers Associations, Inc.

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 161,000 members of OOIDA are small business men and women located in all 50 states and Canada who collectively own and operate more than 241,000 individual heavy-duty trucks. Many of OOIDA's members are also small business motor carriers who have DOT authority to operate in interstate commerce. The mailing address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.ooida.com

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe

environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of small business truckers in numerous committees and various forums on the local, state, national, and international levels. Many of OOIDA's members are the subject of consumer reports, governed by the Fair Credit Reporting Act, that contain statements purporting to be descriptions of their employment history. The principles governing the quality of such descriptive statements submitted by their former employers, who are the providers of the statements that are the subject of this rulemaking, potentially have an enormous impact on both their ability to find employment in the trucking industry and the ability of motor carriers to reliably screen employment applications and therefore employ qualified drivers. All those working in the trucking industry, as well as the public at large and interstate commerce, are well served by "accuracy" in the descriptions of drivers. None are well served by ambiguity, vagueness, imprecision or incompleteness tending to mislead.

II. SUMMARY OF COMMENTS OF THE ASSOCIATION

The agencies either a) must limit the application of the definition of accuracy in the proposed rule to only credit reports (and similar reports of financial transactions), and not to descriptions of the characteristics of individuals or their employment histories, or b) should adopt as the criteria for the accuracy of a statement to a consumer reporting agency the following:

> An accurate statement in a consumer report about a consumer or about a transaction involving a consumer is a statement that, from the perspective of its reader, is reasonably meaningful, reasonably concrete, reasonably complete, reasonably precise, and true, so as not to tend to mislead.

Such a definition, being more comprehensive than what is in the proposed rulemaking, is suitable

for both financial transactions and descriptions of individuals. The definition of accuracy proposed by the Association is implicit in the 10th Circuit's decision in Cassara v. DAC Services and explicit in instructions to the jury in OOIDA v. DAC Services. The proposed rulemaking presents a definition that may be suitable for statements about financial and other quantitative transactions, but fails to provide appropriate guidance for the large number of qualitative descriptions coming within the ambit of the Fair Credit Reporting Act.

III. COMMENTS OF THE ASSOCIATION

On May 22, 2006, the Association submitted comments in response to the advance notice of proposed rulemaking (Comments: 522110-00084 to 89). Those comments and appended exhibits are incorporated herein by reference.

To avoid significant difficulties in application, the proposed regulation needs to be limited in application to those types of transactions, commonly the subject of consumer reports, which are objective in nature and expressed in quantitative measures, like time and money. The regulation, as written, should not apply to statements in consumer reports "bearing on a consumer's credit worthiness, credit standing, [or] credit capacity..." if the statements are qualitative or necessarily subjective in nature. The regulation should not apply at all to statements about "character, general reputation, personal characteristics, or mode of living" which of necessity must be qualitative or subjective in nature.

The population of transactions and events within the ambit of the Fair Credit Reporting Act is broad. Perhaps the most numerous are those dealing with the payment of money. Those transactions are by their nature objective and quantitative. What is typically of interest to those reading about such transactions is whether a given amount of money was delivered by a given

point in time. Both an amount of money and a point in time are objectively and quantitatively determined. These comments do not address any such financial transactions.

The definition of "accuracy" proposed in the notice of proposed rulemaking is as follows:

> "Accuracy means that any information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer reflects without error the terms of and liability for the account or other relationship and the consumer's performance and other conduct with respect to the account or other relationship."

If read in the context of financial transactions, the phrase "information... reflects without error... the consumer's performance and other conduct with respect to the... relationship" is meaningful because such transactions are inherently objective. But when a consumer's "character" is the subject, this same phrase is meaningless. It simply begs the question. Instead of discerning whether a statement is "accurate," one must discern whether it is in "error." But no criteria for distinguishing "error" from "non-error" in statements describing a consumer's character is presented in the proposed regulation. This is not progress.

Subjective statements about the qualities of individuals come within the ambit of the Fair Credit Reporting Act. By way of example, many background reports used for employment screening contain more than the identities of prior employers and the dates of employment. Some contain qualitative descriptors of the employees' work histories.

An employment screening report was the subject of the Cassara case, a copy of which is appended hereto as Exhibit 1. The Cassara dispute arose in the context of a system to receive and republish reports of truck driver employment histories. The system used a set of "canned" but ill-defined descriptors, e.g. "accident." Mr. Cassara disputed that some events in his history were not "accurately" described as "accidents." The Court decreed that because the term

"accident" was ill-defined, and because different persons preparing and reading such descriptions gave different meanings to the term, Mr. Cassara had presented a jury justiciable issue regarding whether the consumer report was "accurate." Because the definition was an integral part of the system for preparing consumer reports, the lack of a shared meaning presented the jury issue of whether the credit reporting agency had followed reasonable procedures to assure maximum possible accuracy. At the heart of the 10th Circuit's analysis was the idea that if a reader of a statement about a consumer does not obtain the knowledge of the author, it is "inaccurate." The underlying concept is that the "accuracy" of a statement is a question of the quality of the communication accomplished thereby, and not a question of the quality of the correspondence between a statement and the event it was intended to represent. What event is or is not an "accident" can be defined using objective quantitative meaningful criteria, but in the consumer reports at issue in Mr. Cassara's case, they were not so defined. Because of the poor quality of the descriptor, any attempt to apply the definition in the proposed rulemaking to the Cassara facts would be problematic at best. One can not undertake to discern "error" in a statement until after one has discerned its meaning. In the absence of shared meaning, a word has no meaning. Neither interstate commerce, nor consumers, nor the policies to be served by the Fair Credit Reporting Act are well served by rules that countenance the publication and transmission of meaningless statements.

A copy of the form more recently used by DAC Services (the defendant in the Cassara case) to collect descriptions of the work histories of truck drivers is appended as Exhibit 2. It is titled a Termination Record form. This is the form a former employer of a truck driver used to input work record descriptors into DAC Services' database. When a prospective employer later

purchased from DAC an Employment History Report on that same driver, the descriptors in DAC's database were bundled together and sold to the prospective employer. The Employment History Report was a "consumer report." The associated Guide to the Termination Record form, which sets forth DAC's definitions of the terms used in the Termination Record form, is appended as Exhibit 3.

DAC's Termination Record form, and specifically the Work Record descriptors therein, was the subject of litigation in the Federal District Court for the District of Colorado. There the plaintiffs alleged that DAC's Work Record descriptors such as "company policy violation," "cargo loss," "personal contract requested," and "other," on their face and as defined by DAC in its Guide, were denotatively meaningless but connotatively derogatory, and were therefore inherently inaccurate. The Plaintiffs alleged their use was a violation of the FCRA. In the context of that litigation the undersigned counsel for the plaintiffs hired an expert to address questions at the heart of the FCRA, the definitions of the terms used in DAC's Termination Record form later re-bundled as consumer reports describing truck drivers. Dr. Edward Schiappa was asked to address the terms used in DAC's Termination Record form. The report of Dr. Edward Schiappa is appended as Exhibit 4.

The proposed rulemaking does not address "meaning." It isn't necessary to do so for financial transactions. The meaning (as well as the precision) is implicit in the quantitative nature of the statements about them. But because the regulations do not address the criteria for "meaning" of subjective and qualitative statements, they should be limited in scope to those transactions that are not dependent upon "meaning" to determine "accuracy."

In the OOIDA v. USIS case, the Federal District Court agreed with the plaintiffs that

"truth" was **a** criteria, but not **the** criteria, for determining the accuracy of a qualitative subjective statement about a consumer. When it came time to instruct the jury on the meaning of terms in the FCRA, the Court addressed "accuracy" as follows:

> Certain words or phrases used in these instructions have a particular meaning. The following are definitions for these certain words or phrases.
> 1. Accurate (or any of its various forms, including "accuracy") The word "accurate," when used with regard to the **accuracy** of the information made the subject of the Fair Credit Reporting Act (FCRA), **means information that, from the perspective of the reader** of the published consumer report, **is reasonably meaningful, reasonably concrete, reasonably complete, reasonably precise, and true**, so as not to be misleading. (Emphasis added.)

As an aside, the Plaintiffs believe the final qualifier should be "so as not to tend to mislead," rather than, "so as not to be misleading," because the former properly makes the point of reference the publication and implicates the foresight of the author (the one with knowledge about the matter addressed), while the latter implicitly and wrongly references the reading and implicates a "hindsight analysis." Further, the Court's final qualifying criteria effectively subsumes the other criteria into a single was-anyone-misled criteria. Otherwise the Court was correct in its instruction. But, in order for a statement about a consumer to be "accurate," it must not only be true, it must also be reasonably meaningful, reasonably concrete, reasonably complete, and reasonably precise. None of these qualities of a statement describing a consumer, with the possible exception of completeness, are implicated in statements about the time and amount of payments by a consumer. None of these qualities of statements are implicated by the proposed rulemaking.

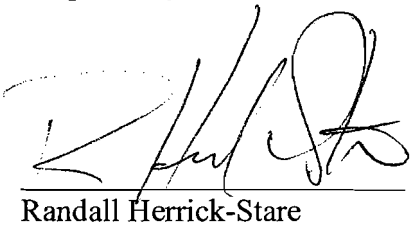
III. CONCLUSION

Because the proposed definition of "accuracy" fails to address questions of meaning,

concreteness, completeness, or precision, its application should be limited to transactions and relationships in which these qualities are inherent in the associated and commonly used descriptors. It is suggested that the scope of the regulations be limited to statements in consumer reports that, on their face and from the perspective of a reasonable reader, are quantitative or otherwise objective.

Alternatively, the regulation should dictate that a statement in a consumer report is an accurate statement only if it is, from the perspective of a reasonable reader, all of: reasonably meaningful, reasonably concrete, reasonably complete, reasonably precise, true, and not tending to mislead.

Respectfully submitted,



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February 11, 2008

EXHIBIT 1

Westlaw.
276 F.3d 1210
(Cite as: 276 F.3d 1210)

United States Court of Appeals,
Tenth Circuit.

Joseph L. CASSARA,
Plaintiff-Appellant/Cross-Appellee,
v.
DAC SERVICES, INC.,
Defendant-Appellee/Cross-Appellant.

Nos. 00-5021, 00-5026.

Jan. 17, 2002.

Truck driver who was the subject of report provided to prospective employers regarding his prior accidents and employment history brought lawsuit against reporting agency for allegedly failing to adopt reasonable procedures to ensure accuracy of its reports, in violation of requirements of the Fair Credit Reporting Act (FCRA). The United States District Court for the Northern District of Oklahoma, Thomas R. Brett, J., granted agency's motion for summary judgment on truck driver's claims, but refused to award it attorney fees, and both sides appealed. The Court of Appeals, Jenkins, United States Senior District Judge for the District of Utah, sitting by designation, held that: (1) commercial carriers may investigate driver employment histories and driving records of truck drivers who apply for employment beyond the minimum standards established by Federal Motor Carrier Safety Regulations (FMCSR); but (2) genuine issues of material fact, as to accuracy of reports provided by consumer reporting agency regarding truck driver's prior "accidents," and as to whether agency had followed reasonable procedures to ensure the accuracy of its reports by culling them from information provided by member employers using their own unique, nonstandardized definitions of what qualified as reportable "accident," precluded entry of summary judgment for reporting agency.

Affirmed in part, and vacated and remanded in part.

West Headnotes

[1] Federal Courts 776
170Bk776 Most Cited Cases

[1] Federal Courts 802
170Bk802 Most Cited Cases

On appeal, Court of Appeals reviews district court's grant of summary judgment de novo, considering evidence and all reasonable inferences drawn therefrom in light most favorable to nonmoving party.

[2] Federal Civil Procedure 2544
170Ak2544 Most Cited Cases

Where party moving for summary judgment does not bear ultimate burden of persuasion at trial, it may satisfy its burden at summary judgment stage by identifying lack of evidence for nonmovant on essential element of nonmovant's claim; to avoid summary judgment, nonmovant must establish, at a minimum, an inference of presence of each element essential to its case. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[3] Credit Reporting Agencies 3
108Ak3 Most Cited Cases

To prevail in private civil action under section of the Fair Credit Reporting Act (FCRA) requiring consumer reporting agencies, in preparing consumer reports, to follow reasonable procedures to ensure maximum possible accuracy of information concerning the individual to whom report relates, plaintiff must establish: (1) that consumer reporting agency failed to follow reasonable procedures to assure the accuracy of its reports; (2) that report in question was, in fact, inaccurate; (3) that plaintiff suffered injury; and (4) that agency's failure caused plaintiff's injury. Consumer Credit Protection Act, § 607(b), as amended, 15 U.S.C.A. § 1681e(b).

[4] Federal Civil Procedure 2491.8
170Ak2491.8 Most Cited Cases
(Formerly 170Ak2481)

Genuine issues of material fact, as to accuracy of reports provided by consumer reporting agency regarding truck driver's prior "accidents," and as to whether agency had followed reasonable procedures to ensure the accuracy of its reports by culling them from information provided by member employers using their own unique, nonstandardized definitions of what qualified as reportable "accident," precluded entry of summary judgment for reporting agency in lawsuit that was brought under the Fair Credit Reporting Act

(FCRA) by truck driver who was subject of reports. Consumer Credit Protection Act, § 607(b), as amended, 15 U.S.C.A. § 1681e(b).

[5] Automobiles 116
48Ak116 Most Cited Cases

Commercial carriers may investigate driver employment histories and driving records of truck drivers who apply for employment beyond the minimum standards established by the Federal Motor Carrier Safety Regulations (FMCSR), which, purely in interests of public safety, require carriers to investigate driving records and employment histories of prospective employees being hired to drive large trucks, and in inquiring as to prior "accidents" in which job applicant has been involved, carriers are not limited by narrow definition of "accident" set forth in the FMCSR. 49 C.F.R. §§ 390.1- 390.37, 391.1-391.69 (2000).

***1212** David F. Barrett, (R. Deryl Edwards, Jr. with him on the brief), Joplin, Missouri, for the Plaintiff-Appellant/Cross-Appellee.

Larry D. Henry, (Patrick W. Cipolla with him on the brief) of Gable & Gotwals, Tulsa, OK, for the Defendant-Appellee/Cross-Appellant.

Before HENRY and BRISCOE, Circuit Judges, and JENKINS, Senior District Judge. [FN*]

FN* The Honorable Bruce S. Jenkins, United States Senior District Judge for the District of Utah, sitting by designation.

JENKINS, Senior District Judge.

Plaintiff Joseph L. Cassara brought this civil action under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t (2000) ("FCRA"), alleging that DAC Services, Inc. ("DAC"), a "consumer reporting agency" under the FCRA, has violated 15 U.S.C. § 1681e(b) (2000) [FN1] by failing to adopt appropriate procedures ensuring the accuracy of the reporting of his employment history in a DAC-prepared report furnished to prospective employers, and that DAC has failed to disclose to Cassara the identity of all of the recipients of that report, a violation of 15 U.S.C. § 1681g(a)(3)(A)(I) (2000). [FN2] DAC answered by denying liability and pleading a counterclaim alleging that Cassara's claims were frivolous and filed in bad faith.

FN1. 15 U.S.C. § 1681e(b) requires 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."

FN2. Cassara abandoned his § 1681g(a)(3)(A)(i) claim prior to any substantive ruling by the district court. (*See* Aplee. App. vol. II, at 372.)

On December 30, 1999, the district court denied Cassara's motion for partial summary judgment as to liability, dismissed DAC's counterclaim, and granted DAC's motion for summary judgment. Judgment was entered on January 3, 2000. Cassara filed a notice of appeal on February 2, 2000.

[1][2] We have jurisdiction of this appeal pursuant to 28 U.S.C. § 1291 (1994). On appeal, the district court's grant of summary judgment is reviewed *de novo*, considering the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Cooperman v. David*, 214 F.3d 1162, 1164 (10th Cir.2000). Summary judgment is proper if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). When, as in this case, the moving party does not bear the ultimate burden of persuasion at trial, it may satisfy its burden at the summary judgment stage by identifying "a lack of evidence for the nonmovant on an essential element of the nonmovant's claim." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir.1998). To avoid summary judgment, the nonmovant must establish, at a minimum, an inference of the presence of each element essential to the case. *Hulsey v. Kmart, Inc.*, 43 F.3d 555, 557 (10th Cir.1994).

***1213 FACTUAL AND REGULATORY BACKGROUND**

The Federal Motor Carrier Safety Regulations

In an effort to promote greater safety in the operation of large trucks on the Nation's highways, in 1970 the United States Department of Transportation promulgated the Federal Motor Carrier Safety Regulations ("FMCSR") establishing minimum qualifications for commercial motor vehicle drivers and requiring employers to investigate the driving record and employment history of prospective employees

being hired to drive large trucks. 49 C.F.R. §§ 390.1-390.37, 391.1-391.69 (2000). The investigation of an applicant's driving record must include inquiries to "the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit" during the preceding three years. 49 C.F.R. § 391.23(a)(1) (2000). The investigation of the applicant's employment record for the preceding three years "may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate," but the employer must maintain a written record as to each past employer that was contacted. 49 C.F.R. § 391.23(c) (2000).

The regulations require that drivers applying for employment likewise must disclose detailed information, including the "nature and extent of the applicant's experience in the operation of motor vehicles," a list of "all motor vehicle accidents in which the applicant was involved" during the three years preceding the application, "specifying the date and nature of each accident and any fatalities or personal injuries it caused," and a list of "all violations of motor vehicle laws or ordinances ... of which the applicant was convicted or forfeited bond" during the three years preceding the application. 49 C.F.R. § 391.21(b)(6)-(8) (2000). A driver applicant must detail "the facts and circumstances of any denial, revocation or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to applicant," as well as furnish a list "of the applicant's employers during the 3 years preceding the date the application is submitted" indicating the term and reason for leaving employment. 49 C.F.R. § 391.21(b)(9), (10) (2000).

As used in these regulations, "accident" means:

> an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:
> (i) A fatality;
> (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
> (iii) One or more vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

49 C.F.R. § 390.5 (2000). The definition expressly excludes an "occurrence involving only boarding and alighting from a stationary motor vehicle" or "only the loading or unloading of cargo." *Id.*

These FMCSR requirements establish a *minimum* standard for the evaluation of driver qualifications. The regulations also provide that trucking companies may enforce "more stringent requirements relating to safety of operation" than the general requirements found in the federal motor carrier safety regulations, 49 C.F.R. § 390.3(d) (2000), and may require driver applicants to provide information in addition to that required to be disclosed by the regulations. 49 C.F.R. § 391.21(c) (2000).

***1214 DAC and FMCSR Investigations**

As often is the case, the federal regulation of one commercial activity gave birth to another new business opportunity--in this case, the gathering and reporting of drivers' records and employment histories for a fee. DAC was formed in 1981 to exploit that opportunity, first by building a database of truck driver employment histories. Beginning in 1983, DAC offered employment histories, employee driving records, and other reports to its trucking industry members nationwide, augmenting its database with information reported by its participating employers.

In its own words, DAC acts as a "file cabinet," storing employment histories on terminated drivers for over 2,500 truck lines and private carriers from across the country. Participating member employers can access the DAC database, which currently contains over four million records, to gather key employment history information. DAC advertises that its employment history files comply with the federal regulations and are accepted by the United States Department of Transportation to satisfy Section 391.23(c) of the Federal Motor Carrier Safety Regulations, governing investigations of driver applicants' employment history.

Cassara and DAC

Joseph L. Cassara worked as a truck driver for Watkins Shepard Trucking, Inc. ("WST") from March to October 1994, and then for Trism Specialized Carriers ("Trism") from December 1994 through December 1996. After Cassara left employment with these companies, each company made reports to DAC concerning Cassara's driving record and employment history. DAC compiled this information into a report. It then furnished the report to other companies inquiring about Cassara.

WST initially reported two accidents involving Cassara. [FN3] According to WST, on June 28, 1994, Cassara struck another truck while trying to back his equipment into a customer's dock, causing $1,942.26 in damage to the other truck. (Aplee. App. vol. II, at 358.) The WST Safety Department reviewed the accident and determined it to be preventable. (*Id.*) On October 19, 1994, Cassara damaged a ladder while backing at a customer's place of business, an accident which WST's Safety Department determined also to be preventable. (*Id.* at 359.)

FN3. WST submitted its information concerning Cassara to DAC on November 17, 1994. (Aplee. App. vol. II, at 441.)

Based on the WST information, DAC's report on Cassara read as follows:

OF ACCIDENTS (EQUIPMENT WAS INVOLVED IN AN ACCIDENT OR DAMAGED WHILE ASSIGNED TO THE DRIVER REGARDLESS OF FAULT):2
* * * *
ELIGIBLE FOR REHIRE: NO
REASON FOR LEAVING: DISCHARGED OR COMPANY TERMINATED LEASE
STATUS: COMPANY DRIVER
DRIVING EXPERIENCE: MOUNTAIN DRIVING
EQUIPMENT OPERATED: VAN
LOADS HAULED: GEN. COMMODITY
WORK RECORD: COMPLAINTS OTHER

(Aplee.App. at 441.)

Similarly, DAC reported the following accident data based upon information submitted by Trism: [FN4]

FN4. Trism submitted its information to DAC on June 27, 1997. (*Id.* vol. I, at 18.)

***1215** # OF ACCIDENTS (EQUIPMENT WAS INVOLVED IN AN ACCIDENT OR DAMAGED WHILE ASSIGNED TO THE DRIVER REGARDLESS OF FAULT):6
* * * *
ELIGIBLE FOR REHIRE: REVIEW REQUIRED BEFORE REHIRING
REASON FOR LEAVING: RESIGNED/QUIT OR DRIVER TERMINATED LEASE
STATUS: COMPANY DRIVER
DRIVING EXPERIENCE: MOUNTAIN DRIVING OVER THE ROAD
EQUIPMENT OPERATED: FLAT BED
LOADS HAULED: GEN. COMMODITY
MACHINERY
OVERSIZED LOADS
PIPE
WORK RECORD: COMPANY POLICY VIOLATION

(*Id.* at 442.) At Cassara's request, Trism provided him with a list of the six reported accidents in a letter dated August 26, 1997:

On 8-26-95 backing out of the tractor shop at NIE Maryland terminal right side of tractor hit a parked trailer. $889.90 posted as collision damage.
On 3-1-96 near Laural, Montana, hit a deer, $604.40 posted as damage.
On 8-6-96 near Cleveland, Tennessee, turning around on parking lot damaging surface of parking lot. To date no claim for damage has been paid.
On 10-17-96, Ft. Worth, Texas, backing and struck a utility pole. You have indicated that an employee of the Consignee was acting as a flagger for you on that occasion. A claim for $719.53 is posted as damages.

On 11-21-96 at Pekin IL, drove over lawn to exit parking lot and bottomed out blocking street. To date no claim for damage has been paid.
On 11-26-96 at Harrisburg, PA, pulling into parking space and rear of trailer cut trailer tire on another vehicle. To date, no claim for damage has been paid.

(*Id.* at 360.)

In February 1997, and again in September 1997, Cassara contacted DAC, first disputing the accuracy of the WST information, and later, the Trism information reflected in the DAC report. [FN5] DAC contacted WST and Trism to verify the disputed entries. WST verified its report on March 19, 1997, and Trism did so on October 7, 1997. (Aplee. App. vol. I, at 17; *see id.* vol. II, at 461-62.) WST amended its report on April 15, 1997, deleting one of the two "accidents" initially reported because WST did not have to pay a claim arising out of the event. (*Id.* vol. I, at 28.)

FN5. On February 26, 1997, Cassara placed this consumer statement in his DAC file: "I was not involved in an accident. I am not aware of any complaints. I am not aware of what the term 'other' refers to." (*Id.* vol. II, at 437; *id.* vol. I, at 16-17.)

Upon further inquiry by DAC based upon Cassara's continuing dispute of its report, WST again verified its reported information, this time by letter dated October 16, 1997, detailing the reported accidents as well as a litany of company policy violations and disciplinary write-ups. (Aplee. App., vol. II, at 358-59.) As to the accidents, WST advised DAC that "WST's policy as it relates to accidents (was and continues to be) is to report all accidents to DAC which involve third party property damage if the accident is determined to be preventable." (*Id.* at 359.) WST also recounted several other occasions on which Cassara's vehicle had been damaged, including a "non-preventable accident" resulting in "damage (of unknown ***1216** sources) to his driver side mirror of his assigned tractor." (*Id.* at 358.) [FN6]

FN6. WST also addressed the reference to

> "other" in DAC's report of Cassara's work record:
> Finally, with regard to the word "other" as part of his work record, Mr. Cassara had problems following procedure as it relates to equipment inspection, dispatch communication and safety. This resulted in numerous complaints by the departments involved. Maybe Mr. Cassara would prefer to have a more specific definition of work record that would state that he failed to follow company policy despite repeated oral and written warning. If DAC changes the work record designation, I would suggest such language be used. (*Id.*)

As the district court pointed out in granting summary judgment, Cassara acknowledges that each of the *events* reported by WST and by Trism did occur. Those events remain uncontroverted facts for purposes of this appeal.

Cassara does not argue with history. Instead, he disputes DAC's reporting of these events as *accidents.* Reporting of accidents, Cassara urges, should be standardized by applying the definition found in 49 C.F.R. § 390.5 (2000). If the C.F.R. definition was applied to his own driving history, then no accidents would have been reported by either WST or Trism.

The District Court's Ruling

The district court granted summary judgment in favor of DAC, concluding that Cassara's complaint about inconsistent reporting of accidents "unsuccessfully attempts to circumvent the fact that the reports concerning his driving are, in fact, accurate," and that DAC "has established it followed reasonable procedures to insure maximum possible accuracy," entitling DAC to summary judgment on Cassara's claims brought pursuant to 15 U.S.C. § 1681e(b). (Order, entered January 3, 2000, at 11.) The district court rejected Cassara's contention that DAC should be applying the C.F.R. definition of "accident," noting that "public safety is best protected by the broadest possible interpretation and reporting." [FN7] (*Id.* at 11 & n. 1.)

> FN7. The district court discussed *Fomusa v. Energy Sharing Resources*, No. 96-C-50410, 1999 WL 436596 (N.D.Ill. June 28, 1999), in which another district court had concluded that "DAC has shown it followed reasonable procedures to insure maximum accuracy" in its reporting of driver employment history records to its member employers. *Id.* at *4. Plaintiff in *Fomusa* complained about DAC's use of the phrase "failed to report accident" to characterize his 90-minute delay in telephoning his employer to report a trailer fire. *Id.* at *2. The *Fomusa* court observed that "[a]ll of these terms have a specific meaning as DAC's standard report format and uniform terms were created in conjunction with members of the trucking industry." *Id.*

The district court's summary judgment ruling also denied--implicitly, at least--DAC's counterclaim against Cassara for costs and attorney's fees pursuant to 15 U.S.C. §§ 1681n-1681o (2000) for having to defend claims brought in bad faith or for purposes of harassment. The district court ordered that DAC was awarded its costs, but that "[e]ach party is to bear its own attorney fees." [FN8] (*Id.* at 12.) DAC has cross-appealed from that ruling.

> FN8. In response to a letter from DAC counsel seeking clarification, the district court entered an order on February 7, 2000 stating that "the Court concluded Plaintiff's claim was not frivolous by awarding attorney fees as set forth in the Order." (Order, filed February 7, 2000, Aplt.App. vol I, at 158.)

CASSARA'S FAIR CREDIT REPORTING ACT CLAIMS

DAC acknowledges that its reporting activities are governed by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t (2000), and that its employment history reports are considered to be "consumer reports" governed by FCRA. (Aplee. App. vol. I, at 3 (Affidavit of Richard ***1217** Wimbish, dated October 24, 1999, at 3 ¶ 8).) Section 607(b) of the FCRA, 15 U.S.C.A. § 1681e(b), reads: "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."

The official Federal Trade Commission commentary elaborates upon the language of § 607(b):

> The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable, and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems

(by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it must review its procedures for assuring accuracy. Examples of errors that would require such review are the issuance of a consumer report pertaining entirely to a consumer other than the one on whom a report was requested, and the issuance of a consumer report containing information on two or more consumers (e.g., information that was mixed in the file) in response to a request for a report on only one of those consumers.

16 C.F.R. Part 600 App. (2000).

[3] To prevail in a private civil action under § 607(b), a plaintiff must establish that (1) the consumer reporting agency failed to follow reasonable procedures to assure the accuracy of its reports; (2) the report in question was, in fact, inaccurate; (3) the plaintiff suffered an injury; and (4) the consumer reporting agency's failure caused the plaintiff's injury. *See, e.g.*, *Whelan v. Trans Union Credit Reporting Agency*, 862 F.Supp. 824, 829 (E.D.N.Y.1994).

[4] Cassara urges reversal of the district court's grant of summary judgment, arguing that the district court weighed and determined fact issues still in genuine dispute. Cassara contends that as to "accident," DAC defines the term "so loosely ... that there is absolutely no way of predicting what is or is not recorded on DAC's reports," that "DAC reported that Cassara had been involved in eight accidents ... when he had arguably been involved in none," and that when asked, DAC "failed to conduct any substantial factual investigation" of the factual basis for its report. (Aplt. Br. at 46.) Cassara further contends that this court should grant judgment in his favor on the question of liability and remand the matter to the district court "only on the issue of damages and attorney fees." (*Id.* at 47.)

Cassara complains that DAC accepts employers' reporting of accident data without taking adequate steps to ensure that the events reported as "accidents" are accurately and consistently characterized as such. He asserts that DAC's reporting system is flawed because DAC "allows differences in reporting standards by different companies, making a driver employed by one company look worse than a driver employed by another for no other reason than the employer [s'] disparate reporting policies." (Aplt. Br. at 8.)

DAC offers some broad-brush guidance to its member employers as to what events should be reported as accidents, but otherwise leaves to the employers the determination whether a particular event should be characterized as an "accident." Cassara argues that DAC's passive approach to the problem of definition results in serious ***1218** inconsistencies among the reporting practices of various member employers. One employer's reportable "accident" may be another employer's unreported non-chargeable loss. Without uniformity in reporting, a driver working for one employer may have several accidents reported, while a driver working for another employer may have fewer--or none-- reported, even where the drivers' histories are equivalent. The difference is not one of driving record; it is a matter of employer reporting practices. This disparity, Cassara submits, proves unfairly misleading and renders the reporting inaccurate.

To resolve this problem, Cassara asserts that only those events that qualify as "accidents" under 49 C.F.R. § 390.5 (2000) should be reported as "accidents" by DAC. By limiting reporting of "accidents" to the C.F.R. definition, the reporting process gains uniformity. Enforcing the C.F.R. definition would eliminate misleading inconsistencies among employers reporting to DAC, resulting in even-handed treatment of driver histories concerning accidents.

DAC responds that its reporting procedures assure maximum accuracy of the data reported to its members; that its report concerning Cassara was accurate; that DAC investigated the underlying facts in a fashion that satisfies the requirements of the FCRA; [FN9] and that the district court erred in dismissing DAC's counterclaim against Cassara seeking costs and attorney's fees for Cassara's filing an FCRA action in "bad faith" or "for the purposes of harassment." (Aplee. Br. at 12-13, 48.)

FN9. DAC asserts that Cassara never presented his improper investigation claim before the district court, and should not be raising it for the first time on appeal. (Aplee. Br. at 13.)

DAC contends that there is a common understanding in the trucking industry of what an accident is, and that DAC is justified in relying on the employers' application of that common understanding in their reporting of employee driving histories. The C.F.R. definition, DAC insists, proves too narrow, omitting many incidents in a driver's history that prospective employers want to know about. Applying the commonly understood meaning to the events of Cassara's employment history, DAC insists that both WST and Trism reported accurate information concerning Cassara's accidents, that the information is reflected accurately in DAC's report, and that if the report is accurate, "then the procedures utilized by the

consumer reporting agency to create the report become irrelevant," and the court's inquiry need go no further. (Aplee. Br. at 15.)

DAC'S REPORT ON CASSARA: WAS IT ACCURATE?

Accepting DAC's suggestion that the "initial focus of this Court's inquiry is the accuracy of the report after DAC investigated Cassara's dispute," (Aplee. Br. at 16), we start from the uncontroverted premise that the events referred to in the verified WST and Trism reports did in fact occur. The events *as events* are not in dispute.

The dispute concerns the manner in which these events have been characterized--whether each event has been placed in the proper *category:* "accident" or "other." To speak in a meaningful way about whether the placement of events in a specific category is "accurate," we must first apprehend the criteria that define the content and limits of the category. [FN10]

FN10. Originally, the Greek "noun *kat;egorí;a* was applied by Aristotle to the enumeration of all classes of things that can be named--hence, 'category.' " John Ayto, *Dictionary of Word Origins* 101 (1990).

***1219 What is an "accident?"**

DAC's approach to the reporting of driver accident data has been evolving in recent years, but at all times pertinent to this appeal, DAC has consistently treated "accident" as a self-evident term. DAC's September 1993 *Guide to Termination Record Form* instructed employers to "[r]ecord [the] total number of accidents, whether preventable or nonpreventable; chargeable or nonchargeable. The number of accidents does not necessarily reflect fault on the part of the driver involved." (Aplee. App. vol. II, at 435; *see also id.* at 396-97 (Deposition of Kent Ferguson at 29:8-30:4).)

DAC has since developed a more detailed reporting option, one made available to members beginning in April of 1997. (Aplee. App. at 433-34.) In the more detailed version, DAC's "accidents" category is divided into two more categories: "DOT recordable accidents" and "non-DOT accidents/incidents." A DOT recordable accident is an accident within the meaning of 49 C.F.R. § 390.5--the kind of accident that the federal regulations require to be listed in the employer's own records, and that Cassara agrees should be reported. A "non-DOT accident/incident" is an event that falls outside the C.F.R. definition, but nevertheless is still thought of as an "accident" or an "incident." (Aplee. App. vol. II, at 434.) [FN11]

FN11. Neither WST nor Trism used the more detailed form in reporting about Cassara.

By 1998, DAC had modified its driver employment history reporting format to read:

> The equipment was involved in an accident or damaged while assigned to the driver regardless of fault during the period of employment referenced above
> Number of Accidents/Incidents: 06
> No additional accident/incident information available

(*Id.* at 438.) This statement indicates that while employed by Trism, Cassara was involved in six reported events--either "accidents," however defined, or "incidents" involving damage to his equipment. But to say that the "equipment was involved in an accident" does not describe or explain what an accident is, or how to tell whether someone has had one.

Apart from the more recent reference to "DOT recordable accidents," and some generalized guidance as to the immateriality of fault, DAC has left the meaning of "accident" to be defined by its reporting employers:

> A. I don't know that we normally get involved with discussing what a particular company's description of what an accident is. We allow them a means to certainly give this information out.... They are the ones determining--
> Q. What an accident is?
> A. --what an accident is, what goes in that particular section of the form.

(Aplee.App. vol. II, at 399 (Deposition of Kent Ferguson at 32:13-21).)

Words, Meanings, Categories, Criteria

Common use of a common word invokes implicit criteria. Absent common agreement, however, no implicit criteria come into play, and if the word is to have useful meaning--and if the category is to have a meaningful scope--some explicit criteria must be supplied to define the word, and to limit the category. Without common, agreed-upon criteria defining the scope of the category, "accident" may mean something different to each reporting employer.

Absent a common understanding or explicitly stated criteria, the reporting of numerical data grouped into the "accident" category necessarily would lack the precision ***1220** needed to assure consistency. Richard Wimbish, DAC's President, acknowledges this: "For

the DAC report to be effective, it is best to have uniform terms in order to compare apples to apples." (Aplee. App. vol. I, at 2 (Affidavit of Richard Wimbish at 2 ¶ 5).) Without consistency, the accuracy of the reporting is cast into doubt.

DAC recognized this problem in 1991, when it considered language to be added to its *Guide* indicating that "accident" included "preventable or nonpreventable; chargeable or nonchargeable" accidents without regard to fault:

> [S]ome companies were only putting chargeable accidents, some only preventable, some everything that occurred. So we were getting very wide variance of what was included in that particular category. So the definition was being expanded to try and cover all that was being reported there, which was difficult.

(Aplee.App. at 410-11 (Deposition of Kent Ferguson at 58:21-59:2) .) DAC revisited the problem in 1997 when it incorporated "incidents" into the category of reportable "accidents" in order to address the lack of agreement with many drivers as to what an "accident" is. As explained by DAC's President:

> [W]e have added the word "incident" along with the word "accident" and our report now states the number of "accidents/incidents". Our definition of "accident" to our customer has not changed.... The word "incident" was added because we have learned over the years that some drivers like to refer to minor accidents as "incidents" and that, to them, accidents were occurrences of a more serious nature. Further, there is no clear line or distinction between what is an "incident" or an "accident" and I believe that line normally depended upon the opinion of the driver in question with his attempt to limit what was an accident. Because of this mind set among many drivers, our consumer department received many driver disputes relating to the listing of accidents in their employment history reports. This created substantial work for that department.... We decided that the drivers might better understand that the report covered all "accidents" whether minor or major if we added "incident" to the term "accident". We did this and it seems to have lessened the number of disputes in this area and the workload of our consumer department.

(Aplee.App. vol I, at 11-12 (Affidavit of Richard Wimbish, dated October 24,1999, at 11-12 ¶ 22).) Thus, the inclusion of "incident" in the reporting of "accidents" used "a term on the face of the report that was familiar" to drivers and "better communicated what was being reported" by the employers, *viz.*, a broader usage of the term "accident" than many drivers had previously understood. [FN12] (*Id.*)

FN12. As John Wilson explains, "it does not matter what words we use to describe what, provided that we agree about the uses...." JOHN WILSON, LANGUAGE AND THE PURSUIT OF TRUTH 43 (1960).

Even with these efforts by DAC to clarify, member employers still rely largely upon their own criteria for reporting "accidents," "incidents," and "other" events worthy of note, and these criteria vary. Cassara asserts that WST "reports accidents that involve third party property damage that is determined to be preventable." WST itself avers that "[o]ur company chooses to report accidents that we deem to be preventable, or where the driver was at fault." (Aplee. App. vol. I, at 30 (Affidavit of Tom Walter at 4 ¶ 13).) Cassara asserts that Trism, on the other hand, "believes in reporting and considering ***1221** all accidents, big and small, regardless of fault." (Reply Br. at 2.)

Cassara argues that this kind of variation is widespread. DAC responds that among its members, the meaning of "accident" is commonly understood. As one DAC representative explained, "accident is a very general term. Most people know what an accident is...." (Aplee. App. vol. II, at 401 (Deposition of Kent Ferguson at 39:22-23).)

"In order for words to function in communication, they must *mean* something." ROBERT T. HARRIS & JAMES L. JARRETT, LANGUAGE AND INFORMAL LOGIC 113 (1956) (emphasis in original). If the meaning of "accident" is commonly understood, as DAC suggests, then what *is* that commonly understood meaning?

Dictionary definitions offer some guidance. *Webster's* says an accident is "[a] happening that is not expected, foreseen, or intended," or "an unpleasant and unintended happening, sometimes resulting from negligence, that results in injury, loss damage, etc." WEBSTER'S NEW WORLD COLLEGE DICTIONARY 8 (4th ed.1999); *see also* WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 71 (1984) ("An unexpected and undesirable event."). [FN13] *Black's Law Dictionary* defines "accident" as an "unintended and unforeseen injurious occurrence." BLACK'S LAW DICTIONARY 15 (7th ed.1999). According to one insurance law treatise, where "in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident." 1A JOHN A. APPLEMAN & JEAN APPLEMAN, INSURANCE LAW AND PRACTICE § 360, at 455 (rev.vol.1981).

FN13. Etymologically, an accident is simply 'something which happens'--'an event.' That is what the word originally meant in English, and it was only subsequently that the senses 'something which happens by chance' and 'mishap' developed. It comes from the Latin verb *cadere* 'fall'.... The addition of the prefix *ad*-'to' produced *accidere*, literally 'fall to,' hence 'happen to.' Its present participle was used as an adjective in the Latin phrase *r?s accid?ns*, 'thing happening,' and *accid?ns* soon took on the role of a noun on its own, passing (in its stem form *accident*-) into Old French and thence into English.
JOHN AYTO, DICTIONARY OF WORD ORIGINS 4 (1990).

DAC's President suggests that "[t]he term 'accident' is used in its ordinary sense in the motor carrier and insurance industries, i.e., an unexpected occurrence." (Aplee. App. vol I, at 11 (Affidavit of Richard Wimbish, dated October 24, 1999, at 11 ¶ 21) .) Another affiant avers that "an 'accident' as used in the motor carrier industry is merely an unanticipated event as defined by the National Safety Council." (Aplee. App. vol. I, at 33 (Affidavit of David M. Kuehl, dated September 9, 1999, at 2 ¶ 4).)

In fact, the National Safety Council has formulated an American National Standard *Manual on Classification of Motor Vehicle Traffic Accidents*, now in its sixth edition. *See* National Safety Council, *ANSI D16.1-1996 Manual on Classification of Motor Vehicle Traffic Accidents* (American National Standards Institute, Inc. 6th ed.1996) (hereinafter "*ANSI D16.1-1996* "). According to *ANSI D16.1-1996*, "An accident is an unstabilized situation which includes at least one harmful event." *Id.* at 13 ¶ 2.4.6. An "unstabilized situation" is defined as "a set of events not under human control. It originates when control is lost and terminates when control is regained or, in the absence of persons who are able to regain control, when all persons and property are at rest." *Id.* at 12 ¶ 2.4.4. A "harmful event" refers to an occurrence of injury or damage." *Id.* at 11 ¶ 2.4.1. *ANSI D16.1-1996* also refers to a "collision accident," that is, a "road vehicle accident other than an overturning accident ***1222** in which the first harmful event is a collision of a road vehicle in transport with another road vehicle, other property or pedestrians," and a "noncollision accident," meaning "any road vehicle accident other than a collision accident." *Id* . at 19 ¶¶ 2.6.2, 2.6.3. [FN14]

FN14. Under *ANSI D16.1-1996*, a noncollision accident includes an overturning, jackknife, accidental carbon monoxide poisoning, explosion, fire, breakage of part of the vehicle, and occupant hit by an object in or thrown against the vehicle or from a moving part of the vehicle, objects falling on or from a vehicle, a toxic spill or leakage, among others. *Id.* at 19 ¶ 2.6.3.

To date, DAC has not adopted the *ANSI D16.1-1996* definitions of accidents. The *ANSI D16.1-1996* definition nevertheless proves to be instructive: an "accident" generally involves at least one "harmful event," one "occurrence of injury or damage." At least one DAC witness defined "accident" in similar terms: "An unexpected event that involved damage to company equipment or someone else's property or person." (Aplee. App. vol. II, at 463 (Deposition of Alicia Jeffries at 9:10-11).)

In its brief, DAC seems to argue that the occurrence of damage or injury is not essential to an "accident," that an "unexpected occurrence" or "unanticipated event" would be sufficient. (*See* Aplee. Br. at 31. [FN15]) Yet there are many "unexpected occurrences" or "unanticipated events" encountered by commercial truck drivers and other motorists on a daily basis--occurrences and events that few would characterize as "accidents."

FN15. On the next page of its brief, DAC argues that "when a driver takes his heavy equipment over lawns, landscape and weaker hard surfaces, and causes damage, an accident has occurred," suggesting that the occurrence of damage defines the accident, even absent an unanticipated event. (*Id.* at 32.) This is not the only time that DAC's brief appears to argue seemingly contradictory propositions.

What criteria really define the category?

DAC's brief asserts that "DAC has defined each term in its report," and that "there was never a misunderstanding with the motor carriers regarding what was being reported." (*Id.* at 25.) This assertion may overstate things a bit.

From the materials in the record now before the court, it seems clear that DAC, responding to industry needs and concerns, intends "accident" to have a broad scope, and that DAC leaves it to the employers to define that scope according to their own needs. Those needs reach beyond concerns about highway safety to matters of economics and profitability. As DAC's President

explains:

> In my experience, drivers want to minimize the lesser accidents because they view these accidents differently than do the employers. Our members have made it very clear to DAC over the years that they want these minor accidents reported. A driver who has a record of breaking off mirrors, cracking fenders, wind guards, tearing off hinges, etc. can be *a non-profitable driver.*

(Aplee.App. vol. I, at 10 (Affidavit of Richard Wimbish, dated October 24, 1999, at 10 ¶ 20) (emphasis added).) Inclusion in DAC reports of "minor" accidents or "incidents" in which equipment was "damaged while assigned to the driver regardless of fault" thus speaks to economic concerns--driver profitability and company loss prevention--as well as public safety concerns. In explaining to Cassara's counsel why DAC's reporting of accidents is broader than the C.F.R. definition, counsel for DAC wrote:

> Let me give you a couple of examples of why the DAC definition is broader that the DOT's definition. Driver A may continually break off mirrors, hinges, doors, wind guards, etc. on the equipment ***1223** entrusted to him. *As a result, Driver A is not a profitable driver. His carelessness takes the profit out of the load.* None of these incidents would fall under the DOT definition of accident. *The DOT does not care how profitable a particular load is, but the employer does.* Driver B has accidents of backing into fixed objects, e.g., docks, buildings, light poles, cars, trucks, etc. No one was killed or injured, nor did serious property damage occur, but this is obviously a driver who does not pay sufficient attention and he would have killed someone except by the grace of God there was no one in the way. When selecting a driver, a company would prefer, if it has a choice, to pick a driver with the best driving record. The quality of drivers is not only measured by the results of their inattention....

(Aplee.App. vol. II, at 385-86 (emphasis added).) As discussed above, in responding to these concerns, DAC has attempted to integrate "incident" with "accident" in order to encompass even "minor" occurrences involving damage to equipment or property, regardless of driver fault. [FN16] In its optional reporting forms, employers may distinguish "DOT recordable accidents" from other accidents or incidents outside of the C.F.R. definition. But even these more recent efforts have stopped short of explicitly defining what DAC means by the term "accident."

> FN16. Having explained the employers' need for accurate information concerning all of a driver's "minor" accidents and incidents, (Aplee. Br. at 20-23), DAC's brief inexplicably asserts that "if the driver has six accidents within the DAC definition, an employer can opt to report none, one, or any number up to six. *Any report in each of these scenarios would be accurate.*" (*Id.* at 33 (emphasis added).) This proposition would seem to defeat DAC's stated purposes for reporting accident data involving drivers in the first place. (*See id.* at 21 ("Obviously, trucking companies want to have as much knowledge as possible about a driver's safety record.").) DAC's assertion only invites omissions and inconsistencies in the reporting process that guarantee *in* accuracy.

> When we don't know the meaning of a word, or when we suspect we may have connected the wrong meaning with the right word, or when for us a word is ambiguous or vague, we feel the need for a definition. We may ask, "What does this *word* mean?" Or we may ask, "What do *you* mean by this word?" In the former case, the supposition is that the word has some standard, regular, normal, correct meaning. In the latter case there seems to be implicit the recognition that a word's meaning may vary with its user.
>
> ROBERT T. HARRIS & JAMES L. JARRETT, LANGUAGE AND INFORMAL LOGIC 113 (1956) (emphasis in original).

Whatever the "common understanding" of the term "accident" among DAC's member employers may be, or whatever DAC chooses "accident" to mean, DAC remains somewhat at a loss to articulate it. The criteria defining the category of "accidents" reported on its forms remain largely implicit.

Were Cassara's Reported Events "Accidents"?

On their face, in 1997 and today, DAC's reports concerning Cassara indicate that as to the "accidents" reflected in each report, "*[t]he equipment was involved in an accident or damaged while assigned to the driver regardless of fault during the period of employment referenced above.*" (Aplee. App. vol. II, at 437-42.) The district court read this language to mean that "[a] DAC report includes accidents a driver may have regardless of the seriousness," and that the DAC report "contains the objective fact that damage occurred to the equipment while it was assigned to the driver." (Order, entered January 3, 2000, at 4 ¶ 10.)

***1224** In this instance, however, a close look at the DAC reports reveals that neither of these readings is entirely correct.

The evidence in the present record indicates that

DAC's reports on Cassara do *not* include all of Cassara's accidents while employed by WST, "regardless of the seriousness." When Cassara disputed the initial DAC reporting in 1997, WST removed one of two "accidents" it had reported three years earlier. Subsequently, a WST representative indicated that Cassara had as many as *four* "accidents" while driving for WST, only one of which is currently reflected in the DAC report. (Aplee. App. vol. I, at 28 (Affidavit of Tom Walter, dated September 9, 1999, at 2 ¶¶ 5-6).) Cassara disputes whether the events were "accidents" at all.

The verification that DAC obtained from Trism reflects events which Cassara argues were neither "accidents" nor "incidents" even as DAC uses those terms. According to Trism, on August 6, 1996, near Cleveland, Tennessee, Cassara turned around on a private parking lot, apparently damaging the surface of the parking lot. Cassara's truck and trailer were not damaged. [FN17] He did not collide with any other vehicle or object. Trism indicated to Cassara that no claim for damage has been paid.

FN17. When queried at deposition about whether such an event is an "accident," one DAC representative responded as follows:
Q. So if a driver were to drive over a parking lot and crack the parking lot, should that be listed under number of accidents?
A. If he did no damage to the truck or trailer, I would say no.
(Aplee.App. vol. II, at 402 (Deposition of Kent Ferguson at 45:12-16).) In subsequently submitted corrections, the witness changed his answer to "It would depend upon the facts," noting that his original answer "was incorrect." (Aplee. App. vol. II, at 430.)

Similarly, Trism verified that on November 21, 1996, at Pekin, Illinois, Cassara drove over a lawn to exit a parking lot and "bottomed out" his trailer, blocking the street. [FN18] It appears his equipment was not damaged; instead Trism noted damage to "landscaping," but advised Cassara that no claim for damage had been paid. [FN19]

FN18. In describing this event to the district court, DAC argued that this event was "reminiscent of the movie 'Smokey and the Bandit'. Plaintiff pulled his rig into a shopping center lot at night to go to sleep. When he awoke the next day, surprise, surprise, the parking lot was filled with customer's automobiles. Plaintiff was blocked in, but that did not deter the plaintiff. He took off over the shopping center's lawn and eventually got stuck and needed to be towed...." (Aplee. App. at 106 (citing Deposition of Joseph Cassara, dated May 24, 1999, at 103:4-104:16, Aplee. App. vol II, at 326-27).) According to Cassara, "the bottom of the trailer bottomed out on the crown of the road. So I had called a tow truck myself and paid for it myself, and it just needed a slight pull to get it going...." (Aplee. App. vol. II, at 326.)

FN19. This may indeed have been an "unexpected occurrence," but it seems doubtful that DAC's member employers would uniformly agree that a trailer becoming stuck on the crown of the road would constitute a reportable "accident." DAC argued to the district court that it "was an obvious accident, non-collision, but an accident nonetheless." (Aplee. App. vol. I, at 106.)

DAC's Senior Consumer Representative avers that each of these events, like the others reported by Trism, "was, in fact, an accident as that term is normally understood and as DAC defines it in its reports." (Aplee. App. vol. I, at 19 (Affidavit of Lynn Miller, dated September 9, 1999, at 3-4 ¶ 6).) Cassara disagrees. Without explicit criteria to apply in defining the category, resolution of the issue in this forum proves to be difficult.

The Question of Accuracy Raises a Genuine Issue

This court need not decide the question whether these events, or any others, ***1225** should be placed in the category of "accidents," or "accidents/incidents," or whether they are best listed as "other" events about which interested parties may inquire further. The question is whether, drawing all reasonable inferences in favor of Cassara, the district court was correct in concluding that DAC had shown that no genuine issues of material fact exist and that DAC is entitled to judgment as a matter of law concerning the accuracy of its reports.

[5] The district court soundly rejected Cassara's assertion that DAC should report only accidents within the meaning of 49 C.F.R. § 390.5. By the regulations' own terms, employers may investigate driver employment histories and driving records beyond the minimum standards established by the regulations themselves. As the present record amply demonstrates, the motor carrier industry's needs and concerns

involving drivers extend to a range of past accidents, incidents, mishaps, occurrences and events well beyond those encompassed by § 390.5. DAC's reporting system seeks to satisfy those needs and concerns as well as the federal regulatory requirements.

However, the district court's conclusion that Cassara's only basis for claiming that DAC's reporting was inaccurate "is his belief that terms should be defined in the best light toward him" does not resolve the question of whether the reporting was in fact accurate in light of whatever definitions or criteria *do* apply, or the more fundamental question whether absent an explicit definition of "accident," DAC has "followed reasonable procedures to insure maximum possible accuracy" as required by the FCRA. The district court's grant of summary judgment in this regard may well have been premature.

On the present record, it seems apparent that at least one of Cassara's former employers, WST, applies criteria in reporting drivers' accidents that materially differ from those urged by DAC as being commonly understood and applied by its reporting employers, and that DAC has been made aware of this. If, as DAC's President suggests, for "the DAC report to be effective, it is best to have uniform terms in order to compare apples to apples," then discrepancies among employers as to what it treated as a reportable accident become important. Cassara has pointed out such discrepancies, albeit at best a minimal showing on the present record.

We conclude that Cassara has raised a genuine issue of material fact as to (1) whether DAC's reports reflecting one accident while he was employed at WST and six accidents while he was employed at Trism are in fact "accurate" within the meaning of the Fair Credit Reporting Act, and (2) whether DAC failed to follow reasonable procedures to assure the accuracy of its reports--specifically, whether DAC is or should be reasonably aware of systematic problems involving the reporting of "accidents" by its member employers.

It certainly is not this court's role to define what an "accident" is for the use and benefit of the motor carrier industry. We affirm the district court's ruling declining to prescribe that DAC's reporting of accidents be limited to "accidents" within the meaning of 49 C.F.R. § 390.5 (2000). But if employers in that industry are to communicate meaningfully among themselves within the framework of the FCRA, it proves essential that they speak the same language, and that important data be reported in categories about which there is genuine common understanding and agreement. Likewise, if DAC is to "insure maximum possible accuracy" in the transmittal of that data through its reports, it may be required to make sure that the criteria defining categories are made explicit and are communicated to all who participate.

***1226** As the FTC Commentary suggests, if DAC "learns or should reasonably be aware of errors in its reports that may indicate systematic problems," then "it must review its procedures for assuring accuracy." 16 C.F.R. Part 600 App., at 508 (2000). "If the agency's review of its procedures reveals, or the agency should reasonably be aware of, steps it can take to improve the accuracy of its reports at a reasonable cost, it must take any such steps. It should correct inaccuracies that come to its attention." *Id.* Not only must DAC review its own procedures, it "must also adopt reasonable procedures to eliminate systematic errors that it knows about, or should reasonably be aware of, resulting from procedures followed by its sources of information," *id.*, in this case, its member employers. DAC may require a reporting employer who frequently furnishes erroneous information to revise its procedures "to correct whatever problems cause the errors." *Id.* DAC, then, is in a position to require its member employers to report accidents according to a uniform definition that DAC may articulate.

As DAC acknowledges, Cassara has not been alone among drivers in expressing concern about DAC's use of the term "accident" in reporting driving histories. DAC has already taken steps to address some of those concerns and to better communicate to both employers and drivers the meaning of the data it reports.

There may be more steps that need to be taken, or there may not.

We do not decide that today. We simply hold that Mr. Cassara has raised a triable issue as to whether DAC's reporting about his accident history is accurate, and whether DAC must review its procedures for assuring accuracy, and if warranted, take additional steps to assure maximum accuracy as required by the Fair Credit Reporting Act. [FN20]

FN20. If Cassara can prove that DAC failed to adopt reasonable procedures to eliminate systematic errors that it knew about, or should reasonably have been aware of, resulting from procedures followed by its member employers, that this failure resulted in distribution of an inaccurate report that caused him injury, then DAC may be liable to Cassara in damages.

We need not separately address Cassara's claim of defective investigation of his report by DAC because his allegation that DAC "failed to conduct any substantial factual

investigation" of the factual basis for its report, (Aplt. Br. at 46), finds no support in the present record, and because his allegations before the district court of internal inconsistencies in DAC's verification of accident data, (Aplee. App. at 42-45, 52-54), depend upon the same categorical consistency problem as his inaccurate reporting claim.

CONCLUSION

This court concludes that Joseph Cassara has raised a genuine issue of material fact concerning his claim of inaccurate reporting of his employment history accident data by DAC Services, Inc. under § 607(b) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b) (2000), and specifically, his allegations that (1) DAC failed to follow reasonable procedures to assure the accuracy of its reports of numbers of accidents; and (2) the report in question here was, in fact, inaccurate. To that extent, the district court's judgment is VACATED AND REMANDED for further proceedings consistent with this opinion. In all other respects, the judgment of the district court is AFFIRMED.

276 F.3d 1210

END OF DOCUMENT

EXHIBIT 2

DAC services

TERMINATION RECORD FOR CDL DRIVERS

[1] MEMBER I.D.

[2] INDIVIDUAL'S LAST NAME — FIRST NAME INITIAL

[3] SOCIAL SECURITY # — [4] DATE OF BIRTH Mo. Day Yr

[5] PERIOD OF SERVICE ____ TO ____

	Yes	No	
[6] Was the driver involved in DOT or Non-DOT recordable accidents/incidents during this period of service?	☐	☐	*If yes, please complete accident and/or drug alcohol information on reverse.*
[7] Do you have record of the driver violating DOT drug/alcohol regulations in the past 2 years?	☐	☐	

[8] STATE — LICENSE #

STATE — LICENSE #

Important Notice: Refer to "Guide" for full explanation of codes below (Form SL0050g)

[9] **Eligible for Rehire** *(Circle only one)* 001 Yes 002 Yes, but against company policy 003 No 004 Review required before hiring

[10] REASON FOR LEAVING
(Circle Only One)
101 Discharged (or Company Terminated Lease)
104 Agency Lease Terminated
106 Laid Off (or Lease Suspended)
112 Leave of Absence
122 Repossession/Lease Default
127 Retired
133 Resigned/Quit (or Driver Terminated Lease
199 Other _____

[11] STATUS
(Circle All That Apply)
202 Company Driver
207 Lease Driver (Employee of Independent Contractor)
213 Owner/Operator
217 Lease Purchase Program
228 Trip Leaser
230 Student/Trainee
233 Student CDL Permit
234 Casual Driver
299 Other _____

[12] DRIVER'S EXPERIENCE
(Circle All That Apply)
303 Local
305 Regional
311 Mountain Driving
327 Over the Road
332 Single Driver
333 Driver Trainer/Instructor
351 1st Driver on Team
352 2nd Driver of a Team
355 Freight Handling
399 Other _____

[13] EQUIPMENT OPERATED
(Circle All That Apply)
505 Auto Transporter
511 Bus
516 Double Trailer
523 Driveaway/Towaway
527 Dry Box
529 Dump Truck
532 Flat Bed
533 Mobile Crane
534 Pick Up or Hot Shot
540 Refrigerated
542 Specialized Trailer
544 Specialized Truck/Toter
547 Straight Truck
549 Pneumatic Trailer
552 Tank Truck
562 Triple Trailer
573 Van
581 Winch
599 Other _____

[14] LOADS HAULED
(Circle All That Apply)
707 Bulk Commodity
712 Container
713 Empty Trailer
714 Gen. Commodity
716 Electronics
718 Hanging Meat
720 Hazardous Material
725 Household Goods
729 Livestock
730 Lumber
731 Machinery
733 Mobile Homes
735 Motor Vehicle
750 Passengers
762 Oversized Loads
763 Parcels
764 Pipe
769 Refrigerated
773 Steel
799 Other _____

[15] WORK RECORD
(Circle All That Apply)
901 Satisfactory
902 Superior
903 Outstanding
912 Excessive Complaints
913 Cargo Loss
915 Falsified Employ. Application
917 Equipment Loss
924 Late Pick Up/Delivery
926 Log Violation
928 No show
929 Failed To Report Accident
931 Quit Under Dispatch/Did Not Possess a Load
933 Quit/Dismissed During Training/ Orientation/Probation
935 Company Policy Violation
938 Unsatisfactory Safety Record
940 Disconnected Tracking Device
944 Personal Contact Requested
957 Unauthorized Equip. Use
959 Unauthorized Passenger
961 Unauthorized Use of Company Funds
999 Other _____

QUIT UNDER LOAD/ABANDONMENT
(If Applicable, Circle Only One)
950 Co. Terminal – With Notice
951 Auth. Location – With Notice
952 Co. Terminal – W/O Notice
953 Unauth. Location – W/O Notice
954 Left Vehicle With Team Driver
955 Unauth. Location – With Notice
956 Auth. Location – W/O Notice

[16] _____
List Disputed Employment Code(s) separated by a comma

[17] _____ _____
Contact Person (optional) Date

DAC Services 4500 S. 129th E. Ave, Ste 200 Tulsa, OK 74134-5885
800/331-9175 (Nationwide) DAC Customer Service 800/322-9651
FAX 800/327-3784

USIS00154 (00004)

Case No. 04-1384-Ex M3

TERMINATION RECORD DETAILS

[A] MEMBER I.D. # _____ [B] SOCIAL SECURITY # _____

Please detail all DOT recordable accidents (use additional paper if more than 8) and the most severe non-DOT recordable accidents

[C] _____ Total Number of DOT Recordable Accidents [D] _____ Total Number of Non-DOT Accidents/Incidents

[E] Accident/ Incident#	[F] DOT?	[G] Date	City	[H] State	[I] # of Injuries	[J] # of Fatalities	[K] HAZMAT	[L] Description Codes(s) (Use up to 4)
Sample	Y or N	3/3/1998	Tulsa	OK	0	0	Y or N	01, 02
1	Y or N						Y or N	
2	Y or N						Y or N	
3	Y or N						Y or N	
4	Y or N						Y or N	
5	Y or N						Y or N	
6	Y or N						Y or N	
7	Y or N						Y or N	
8	Y or N						Y or N	

ACCIDENT DESCRIPTION CODES

01 Backing	09 Overturn	17 Picked Up Damaged Trailer	24 Fuel Spill	40 Preventable Accident/ Incident
02 Right Turn	10 Struck Overhead Object	18 Mechanical Failure	25 Fire	50 Non-Preventable Accident/Incident
03 Left Turn	11 Jack Knife	19 Ran Traffic Control	26 Hit Animal	99 Misc.
04 Lane Change Side Swipe	12 Hit Pedestrian	20 Ran Off Roadway	27 Hit Parked Vehicle	
05 Rear End Collision	13 Passing	21 Downgrade Runaway	28 Load shift	
06 Intersection Collision	14 Dropped Trailer	22 Trailer Breakaway	29 Theft	
07 Head On Collision	15 Hit While Parked	23 Cargo Spill	30 Rollaway	
08 Struck Stationary Object	16 Hit While Moving		31 Non Contact	

[M] List disputed accident/incident number(s): (1,2,3 etc.) and/or items C and D _____

Indicate below any violations of 49 C.F.R. Part 40 that occurred during this period of service.

Violation		Date(s) of violation: Mo Day Yr	Mo Day Yr
1	☐ Driver had an alcohol test with a confirmed B.A.C. of 0.04 or greater.		
2	☐ Driver had a controlled substance test with a positive result.		
3	☐ Driver refused a controlled substance or alcohol test (includes verified adulterated or substituted results).		
4	☐ Driver violated other DOT drug/ alcohol regulations.		

Indicate below any violations of 49 C.F.R. Part 40 that occurred within the past 2 years which were reported to you by a previous employer.

Violation		Date(s) of violation: Mo Day Yr	Mo Day Yr
5	☐ Previous employer reported DOT drug/alcohol violation(s).		

CHECK HERE ☐ *if driver disputes Drug/Alcohol violation(s).*

EXHIBIT 3

DAC Services

GUIDE TO THE TERMINATION RECORD FORM

This guide includes the definitions of codes and terms used in the current version of DAC's Termination Record Form for CDL drivers.

While most of the descriptions on the termination form are self-evident, we recommend you consult this guide when contributing termination records if you are in doubt.

You may also receive employment histories contributed by other DAC members that contain terms not used in your operation. Use this guide to interpret any term in which you are unsure of the meaning.

USIS04141(OOIDA)

DAC SERVICES 4500 S. 129TH EAST AVE., Ste 200 TULSA, OK 74134
DAC 800 331-9175 (Nationwide) DAC Customer Service 800 322-9651
Fax: 800-327-3784

FormSL0050g

TERMINATION RECORD DETAILS

1 MEMBER ID #: Record the customer number assigned by DAC.

2 LAST NAME AND FIRST INITIAL OF FIRST NAME: Record driver's last name with no space and no punctuation. In the box at the end of this line, record the first initial of the driver's first name.

3 SOCIAL SECURITY NUMBER: Record the driver's social security number.

4 DATE OF BIRTH: Record the month, day and year (including century) of the driver's date of birth.

5 PERIOD OF SERVICE: Record period of service using starting month and year (including century) to terminating month and year (MMCCYY to MMCCYY).

6 WAS THE DRIVER INVOLVED IN DOT OR NON-DOT ACCIDENTS/INCIDENTS DURING THIS PERIOD OF SERVICE?: Answer by marking the yes or no box. If yes, give accident details on the back of the form.

7 DO YOU HAVE RECORD OF THE DRIVER VIOLATING DOT DRUG/ALCOHOL REGULATIONS IN THE PAST 2 YEARS?: Answer by marking either the yes or no box. If yes, indicate the violation on the back of the form.

8 STATES OF LICENSE: Record the post office abbreviation for the state or states in which the driver has held licenses while with your company. Record license number(s) omitting all spaces and dashes.

9 ELIGIBLE FOR REHIRE (circle only one code)
001 Yes: Driver is eligible for rehire.
002 Yes, but against company policy: Driver is qualified, but your company has a policy against rehiring drivers regardless of qualifications.
003 No: Driver is ineligible for rehire based on current company standards.
004 Review required before rehiring.

10 REASON FOR LEAVING (circle only one code)
101 Discharged: Employment or lease is involuntarily terminated.
104 Agency Lease Terminated: An agency affiliated with the company has terminated, closed, or is no longer under contract.
106 Laid Off: Driver is laid off or lease has been suspended due to business reasons unrelated to performance.
112 Leave of Absence: Company approved leave without pay.
122 Repossession/Lease Default: Owner Operator/Independent Contractor has defaulted on a lease contract or had their truck(s) and/or trailer(s) repossessed.
127 Retired: Driver retires.
133 Resigned/Quit: Employment or lease is voluntarily terminated.
199 Other: Anything other than items listed above. This space is provided for your documentation. DAC will record "other" only.

11 STATUS (You may circle more than one code)
202 Company Driver: An employee of the company.
207 Lease driver: Employee of an independent contractor.
213 Owner/operator: A person who owns and drives his own equipment for a company as its employee or as an independent contractor.
217 Lease Purchase Program: A driver that is currently participating or has participated in an equipment lease purchase program.
233 Student CDL Permit: A student qualified as a second seat driver while on a CDL learner permit.
228 Trip Leaser: Driver is acting as an independent operator or as an agent of a carrier contracting with your company for specific loads hauled on a trip by trip basis.
230 Student/Trainee: A student or trainee of the company.
234 Casual Driver: A driver hired to drive on an intermittent, casual, or occasional basis who may or may not be an employee of the company.
299 Other: Anything other than items listed above (see 199).

12 DRIVER'S EXPERIENCE (You may circle more than one)
303 Local: Driver had substantial city driving experience.
305 Regional: Driver had substantial regional driving experience.
311 Mountain driving: Driver had substantial mountain driving experience.
327 Over-the-Road: Driver had substantial long haul driving experience.
332 Single Driver: Driver had sole responsibility for equipment and substantial experience driving alone.
333 Driver Trainer/Instructor: Driver had substantial road experience training students and/or trainees. A company employee that has a substantial amount of experience with classroom and driving instruction.
351 1st driver of a Team: Driver had primary responsibility in a two-member team.
352 2nd driver of a Team: Driver had secondary responsibility in a two-member team.
355 Freight Handling: Driver had substantial experience loading and unloading freight.
399 Other: Anything other than items listed above (see 199).

13 EQUIPMENT OPERATED (You may circle more than one)
505 Auto Transporter: Truck, semi-trailer, or trailer with the body designed for the transportation of other vehicles.
511 Bus: A motor vehicle designed, constructed and used for the transportation of passengers.
516 Double trailer: (Also twin trailer-unit) consists of tractor, semi-trailer and full trailer.
523 Driveaway/Towaway: Motor vehicle(s) or trailer(s) constitute the commodity being transported. One or more sets of wheels of such vehicles are on the road during transportation.
527 Dry box: Enclosed semi-trailer.
529 Dump truck: Truck, semi-trailer or trailer which can be tilted to discharge load.
532 Flat bed: Truck or trailer without sides or top.
533 Mobile Crane: A truck designed for the specific purpose of transporting a crane.
534 Pick-Up or Hot Shot:: Up to one ton truck with or without a trailer.
540 Refrigerated: Refrigerated truck or trailer designed for hauling perishables.
542 Specialized trailer: A trailer designed for a specific purpose not included in the other categories listed (e.g. missile carrier).
544 Specialized truck/Toter: A straight truck/tractor with the body designed for a specific purpose other than those listed in other categories here (e.g. concrete, refuse, etc.).
547 Straight truck: A truck with the body and engine mounted on the same chassis and not listed elsewhere under equipment operated.
549 Pneumatic Trailer: Truck, semi-trailer or trailer loaded and/or unloaded using compressed air.
552 Tank truck: Truck, semi-trailer, or trailer with a tank body for hauling petroleum, chemicals, liquids, or dry commodities in bulk.

562 Triple trailer: Tractor, semi-trailer plus two trailers.
573 Van: Van, including step van.
581 Winch: Hoist used on straight truck or tractor (includes gin pole).
599 Other: Anything other than items listed above (see 199).

14 LOADS HAULED (You may circle more than one)
707 Bulk Commodity: Liquid or dry bulk.
712 Containers: Hauling of large cargo-carrying containers that can be easily interchanged between trucks, trains, and ships, without rehandling contents.
713 Empty trailer: Driver delivers empty trailers—does not apply to deadheading.
714 General Commodity: Varied types of freight.
716 Electronics: Transporting electronic commodities requiring special handling.
718 Hanging meat: Self explanatory.
720 Hazardous material: As designated by the Department of Transportation including but not limited to: explosives, radioactive materials, etiologic agents, flammable liquid or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.
725 Household goods: Self explanatory.
729 Livestock: Transporting cattle, horses, etc.
730 Lumber: Self explanatory.
731 Machinery: Self explanatory.
733 Mobile homes: Self explanatory.
735 Motor vehicles: Transporting of motor vehicles by hauling them on special vehicles or through driveaway-towaway.
750 Passengers: People.
762 Oversized loads: Loads requiring special permits due to size or weight.
763 Parcels: Parcels and packages.
764 Pipe: Self explanatory.
769 Refrigerated: Self explanatory (not including hanging meat).
773 Steel: Other than pipe.
799 Other: Anything other than items listed above (see 199).

15 WORK RECORD (You may circle more than one)
It is strongly recommended that items denoting less than satisfactory performance be supported by documentation in the driver's file.
901 Satisfactory: Driver meets minimum company standards of performance in all categories.
902 Superior: Driver exceeds minimum company standards of performance in all categories.
903 Outstanding: Driver's performance is outstanding in all categories.
912 Excessive Complaints: An excessive number of complaints have been received regarding the driver's service and/or safety.
913 Cargo loss: Cargo was lost, stolen, damaged or destroyed while assigned or under direct responsibility of the driver.
917 Equipment loss: Equipment was lost, stolen, damaged or destroyed while assigned to or under direct responsibility of driver.
915 Falsified Employment Application: Falsified information on employment application or omitted information as required by company, state, or federal regulations.
924 Late pick up/Delivery: Failed to make pickup or delivery according to schedule.
926 Log Violation: Violation of Federal Motor Carrier Safety Regulations, "Hours of Service," part 395.
928 No show: Driver failed to appear on job site without notification or approval of supervisor. Driver has hauled previous loads for the company.
929 Failed To Report Accident: Driver violated accident reporting requirements while in the service of the company.
931 Quit Under Dispatch: Driver was available for work, assigned a load but quit before load was secured. Driver did not possess a load.
933 Quit/Dismissed During Training/Orientation/Probation: Driver did not complete company training, orientation and/or probabtion. If the driver quit or was dismissed during orientation, leave sections 12, 13 & 14 blank and do not provide further information to section 15.
935 Company policy violation: Driver violated company policies and/or procedures. Use this code only if the other selections in this section do not indicate the company policy violated.
938 Unsatisfactory Safety Records: Driver did not meet company safety standards.
940 Disconnected Tracking Device: The driver disconnected the truck and/or trailer-tracking device(s) without company authorization
944 Personal Contact Requested: Company issuing record has further information to provide regarding the driver or for the driver.
957 Unauthorized equipment use: Deviated from route or used equipment for purposes not specified by company. (Not intended to be used when the driver has resigned/quit or terminated lease and returned equipment to the nearest company terminal or a location authorized by the company.)
959 Unauthorized passenger: Passenger in company vehicle contrary to company policy or did not meet company policy requirements covering authorized passenger.
961 Unauthorized Use of Company Funds: Driver used company funds for purposes not authorized by company.
999 Other: Anything other than items listed above (see 199).

QUIT UNDER LOAD/ABANDONMENT: (Circle only one code, if applicable) Quit job before truck and/or cargo was delivered to final destination.
950 Co. Terminal - With Notice: Left truck and/or cargo at a company terminal. Driver did notify the company of termination. (Not intended to be used when the driver has resigned/quit or terminated lease and returned equipment to the nearest company terminal or a location authorized by the company.)
951 Auth. Location - With Notice: Left truck and/or cargo at a location authorized by the company. Driver did notify the company of termination.
952 Co. Terminal - W/O Notice: Left truck and/or cargo at a company terminal. Driver did not notify the company of termination. (Not intended to be used when the driver has resigned/quit or terminated lease and returned equipment to the nearest company terminal.)
953 Unauth. Location - W/O Notice: Left truck and/or cargo at a location unauthorized by the company. Driver did not notify the company of termination.
954 Left Vehicle With Team Driver: Left truck and/or cargo in the possession of a team driver.
955 Unauth. Location - With Notice: Left truck and/or cargo at a location unauthorized by the company. Driver did notify the company of termination.
956 Auth. Location - W/O Notice: Left truck and/or cargo at a location authorized by the company. Driver did not notify the company of termination.
**** The following codes are no longer used, but could appear on older termination records.
909 Abandonment: Abandoned truck and/or cargo without notification to the company.
937 Quit Under Load: Quit job before truck and/or cargo was delivered to final destination. Assumes that driver did notify company of termination.

16 LIST DISPUTED EMPLOYMENT CODES(S): List any employment codes that were disputed by the driver at the time of termination.

17 CONTACT PERSON: Signature of individual completing form and date.

A Member I.D.#: Record the customer number assigned by DAC.

B Social Security #: Record the driver's Social Security Number.

ACCIDENT/INCIDENT DETAILS

C Total Number of DOT Recordable Accidents: Record the total number of accidents that are classified as "recordable" under DOT guidelines. The number of accidents listed does not necessarily reflect fault on the part of the driver involved.

D Total Number of Non-DOT Accidents/Incidents: Record the total number of accidents/incidents that do not meet the DOT recordable classification. Accidents/incidents listed do not necessarily reflect fault on the part of the driver involved.

E DOT?: Circle Y or N to indicate whether the accident meets the DOT guidelines for a recordable accident or did not meet those guidelines.

F Date: Record the month, day and year (including century) the accident/incident occurred.

G City: Record the city or town (or nearest) in which the accident/incident occurred.

H State: Record the state in which the accident/incident occurred.

I Injuries: Record the total number of persons injured as a result of the accident/incident who immediately received medical treatment away from the scene.

J Fatalities: Record the total number persons that died as a result of the accident/incident.

K HAZMAT: Record whether hazardous materials, other than fuel from the tanks of motor vehicles involved in the accident/incident, were released.

L Description Code(s): You may use up to four (4) accident description codes to describe each accident.

01 Backing: Occurred while backing.
02 Right Turn: Occurred while making a right turn.
03 Left Turn: Occurred while making a left turn.
04 Lane Change Side Swipe: Involved a side swipe collision while changing lanes.
05 Rear End Collision: Involved striking another vehicle in the rear.
06 Intersection Collision: Involved a collision while in an intersection.
07 Head-On Collision: Involved a head-on collision with another vehicle.
08 Struck Stationary Object: Involved an impact with a stationary (fixed) object.
09 Overturn: Involved the truck and/or trailer overturning.
10 Struck Overhead Object: Involved an impact with an overhead object.
11 Jack-knife: Involved the truck and trailer jack-knifing.
12 Hit Pedestrian: Involved an impact with a pedestrian.
13 Passing: Occurred while passing another vehicle.
14 Dropped Trailer: Involved the trailer being dropped.
15 Hit While Parked: Involved the truck and/or trailer being hit while parked.
16 Hit While Moving: Involved the truck and/or trailer being hit by another vehicle or object while moving.
17 Picked Up Damaged Trailer: The driver picked up a trailer that had been previously damaged.
18 Mechanical Failure: Occurred due to mechanical failure of the truck and/or trailer.
19 Ran Traffic Control: Involved a failure to yield at traffic control.
20 Ran Off Roadway: Involved the truck and/or trailer running off the roadway.
21 Downgrade Runaway: Involved loss of control on a downgrade.
22 Trailer Breakaway: Involved the trailer breaking away from the tractor.
23 Cargo Spill: Involved a cargo spill.
24 Fuel Spill: Involved a fuel spill from the power unit.
25 Fire: Involved a fire.
26 Hit Animal: Involved an impact with an animal.
27 Hit Parked Vehicle: Involved an impact with a parked vehicle.
28 Load Shift: Involved a load shift.
29 Theft: Involved theft of the truck, trailer and/or cargo.
30 Rollaway: Involved a parked truck and/or trailer rollaway.
31 Non-Contact: Did not involve a collision.
40 Preventable Accident/Incident: Based on your company guidelines the accident/incident was preventable.
50 Non-Preventable Accident/Incident: Based on your company guidelines the accident/incident was non-preventable.
99 Misc.: Anything other than the items listed above.

M List Disputed Accident/Incident Number(s): List the accident/incident number(s) (1, 2, 3, etc. in the preceding chart) that the driver disputes. If the driver disagrees with the total number of DOT or non-DOT accidents/incidents, enter items C and/or D.

DRUG/ALCOHOL VIOLATION DETAILS

1 Driver had an alcohol test with a confirmed B.A.C. of 0.04 or greater: If the driver violated this section of 49 C.F.R. Part 40, Mark an "X" in the box and list the date(s) of violation.

2 Driver had a controlled substance test with a positive result: If the driver violated this section of 49 C.F.R. Part 40, mark an "X" in the box and list the date(s) of violation.

3 Driver refused a controlled substance or alcohol test (includes verified adulterated or substituted results): If the driver violated this section of 49 C.F.R. Part 40, mark an "X" in the box and list the date(s) of violation.

4 Driver violated other DOT drug/alcohol regulations. If the driver violated this section of 49 C.F.R. Part 40, mark an "X" in the box and list the date(s) of violation.

5 Previous employer reported DOT drug/alcohol violation(s). If the driver violated this section of 49 C.F.R. Part 40, mark an "X" in the box and list the date(s) of violation.

Check Here: Mark an "X" in the box if the driver disputes any of the drug/alcohol violations.

EXHIBIT 4

Report on Definitional Issues in *OOIDA v. USIS*

Edward Schiappa, University of Minnesota

June 2, 2005

Executive Summary

- The purpose of definitions is to provide precise, accurate meanings to a word or phrase. Good definitional practices facilitate *denotative conformity* (agreement about what a word or phrase refers to) and *connotative predictability* (a reliable sense of the reactions a word or phrase elicits).

- Good definitions or category descriptions provide clear exemplars of the phenomenon being defined such that members of a particular language community understand that "X counts as Y in context C." Members of a language community, such as the trucking industry, must have shared understanding of how information is *encoded* into data and how data should be *decoded* accurately.

- Good definitional practices meet four criteria: Clarity, Shared Purpose, Appropriate Authority, and Feedback. Collectively, these practices facilitate a language community's shared understanding of what "attributes" are central and important to the catetgories used by that community.

- The following phrases and definitions used in DAC's Termination Record Form and DAC's *Guide to the Termination Record Form* were analyzed: "company policy violation," "unsatisfactory safety record," "excessive complaints," "cargo loss," "equipment loss," "quit/dismissed during training/orientation/probation," "eligible for rehire: no," "other," "personal contact requested," "late pick up/delivery," "log violation," "no show," "failed to report accident," "quit under dispatch," "unauthorized equipment use," "unauthorized passenger," and "unauthorized use of company funds."

  In all cases, the "definitions" provided were seriously flawed: They were circular, vague, ambiguous, or open to abuse. They fail to facilitate denotative conformity or connotative predictability.

- The definitional practices of USIS's DAC Services fail to meet the four criteria of good definitional practices. The flawed design of the code categories can be understood clearly by considering how the codes *could* have been defined more clearly.

- Accurate interpretation of data generated by TRF reports is impossible. The problems are systemic to the design of the form and its definitional glossary. The Work Record section of the TRF does not meet the goal of "maximum possible accuracy of the information concerning the individual about whom the report relates."

Report on Definitional Issues in *OOIDA v. USIS*

Edward Schiappa, University of Minnesota

June 2, 2005

This report is divided into three sections. Section I describes a set of standards for understanding and evaluating definitions and categories. Section II provides an analysis of the definitions provided in the *Guide to Termination Record Forms* distributed by USIS's DAC Services. Section III provides an overall assessment of the definitional issues.

I. Standards for Definitions & Categories

In this section I provide a set of criteria for evaluating definitions and categories. I frame my remarks as answers to a series of questions: What is a definition? What is the difference between a definition and a category (or "classification")? What is the purpose of definition? And, lastly, What are the criteria for good definitional practices?

What is a definition?

Since definition is a topic that has been of interest for well over 2,000 years, it is not surprising that there are actually a number of definitions of "definition" (Robinson, 1950; Rey, 2000). Aristotle is credited for the standard definitional form involving genus and difference: An *X* is (a kind of) *class name* that has such-and-such *attributes*. I will discuss categories and attributes in the following subsection. Before that discussion, we need to recognize that distinctions are drawn among lexical, ostensive, operational, theoretical, stipulative, circular, and other types of definition. It is not necessary to discuss all of these types of definition, but four are particularly relevant. First, a *lexical* definition is simply the sort of definition found in a

dictionary. It is an empirical guide to usage; that is, a dictionary tells us what the most common use of words has been, and thus functions as a prescriptive guide for how language users should use the word now.

For ordinary, day-to-day use, a standard dictionary is adequate. Groups of language users often have specific needs and interests that require them to use words in a more precise way than is common in ordinary language use. Obvious examples of this would be legal, medical, and scientific terms. In such specialized language communities, a good deal of effort is expended defining words in a precise manner. Ordinary words take on a far more specific meaning within a specialized language community (such as "force" in physics or the law). It should be noted, however, that it is not only the highly specialized fields of law, medicine, and science that develop their own special uses for words. Indeed, any time an identifiable group of people share a common set of experiences, they can be described as a language community that develops a particular set of language practices that mark them as distinct. If a person becomes a musician, an auto mechanic, a professional poker player, a salesperson, or a truck driver, part of learning how to be part of that community involves learning to "talk the talk." Joining a community, such as "the trucking industry," is joining a *language* community that uses words in a particular fashion. Some of those words may be unique to that community, and other words may be taken from ordinary usage but given more specific meaning within that community.

For specialized language communities, reliance on lexical definitions is not enough. There is a need for what are called "stipulative" and "operational" definitions. A *stipulative* definition is simply a declaration and agreement by a language community that a word "Y" will be used in a particular fashion. Whomever first called the manual graphical user interface part of a computer a "mouse" simply declared it to be so, and now everyone knows what we are talking

about when we refer to a computer's "mouse"—even though that use is obviously quite different than the traditional lexical definition of a mouse. Furthermore, when it is important to have common agreement about when something should be called "Y," we often develop an *operational* definition. An operational definition often specifies some *measurable* dimension. In education, "gifted" and "challenged" are often defined by reference to a specific score on a standardized intelligence test. Many psychological diagnoses are dependent on specific scores measured by detailed questionnaires. Vehicles are often categorized by such measurable dimensions as weight, size, and number of tires. "Speeding" is operationalized by travel at a speed in measurable excess of posted limits.

Lastly, it is important to note that what is called a "circular definition" is *not* an acceptable form of definition. A circular definition is one that simply repeats the word or phrase being defined in the definition itself without providing additional information about the word or phrase's denotative or connotative meaning. Since circular definitions assume a prior understanding of the word or phrase being defined, it does not provide members of a language community any insight into how the word or phrase should be used.

To summarize: Specific language communities develop, through practice over time or through concrete acts of stipulation, general and operational definitions that guide the linguistic behavior of the community's members. What these definitions have in common is a desire for clear and consistent use of specific words. Formally, they create a linguistic "rule" of the form "X counts as Y in context C." Thus, a "flush" in poker *counts* as a flush only if one has a sufficient number of cards of the same suit. That use of the word "flush" is obviously quite different than how the term might be used by a plumber or doctor. Accordingly, the same word

might be defined quite differently by different language communities, depending on their respective needs and interests.

For the purposes of this report, “definition” refers to a specific effort by a language community to identify the denotative and connotative meanings of a word. What I wish to stress at this point is that a definition functions within a language community as a kind of linguistic rule, “X counts as Y in context C.”

What is the difference between a definition and a category?

Much of what I have said so far about definitions could also be said about “categories” and systems of “classification.” As communication scholars Bowker and Star note, “to classify is human” (1999). Stressing the importance of categorization, Senft (2000) argues, "classification abilities are necessary to the survival of every organism" (p. 11). Similarly, Bowerman notes "the grouping of discriminably different stimuli into categories on the basis of shared features is an adaptive way of dealing with what would be an overwhelming array of unique experiences" (1976, pp. 105-6). In short, the way we make sense of the world is through the aquisition of categories. This is also a useful way to think about how language works—primarily as a complex system of categories used to make sense of an infinitely complex world.

Categories are formed based on learning the relevant functional, perceptual, or other sorts of attributes that members of a category share. This is precisely why Aristotle’s formulation of definitions is so influential: An _X_ is (a kind of) *class name* that has such-and-such *attributes*. “Attributes” are simply features or qualities of a phenomenon: a chair is something we sit on (a functional attribute), a ball is round (a perceptual attribute, something we see). One's earliest exposure to a category is sometimes called an original or prototypical exemplar (Bowerman,

1976). It is through exposure to a series of examples (or "exemplars") that we learn what counts as a member of a category. One typically does not learn what a "ball" is from one example, since balls have attributes that other categories have as well (not all round objects are balls). For a category to be meaningful and useful, it must both include items and exclude others, thus humans acquire a social category by learning a set of "similarity/difference relationships" that distinguish one category from another (Schiappa, 2003). We have to learn when something "counts" as a member of *this* category but not *that* one, and we do that by learning what attributes one category has in common that are *different* from the attributes of another category. Some linguists and philosophers refer to this process as "semantic mapping." That is, we must learn how our words map out the world around us, and we must learn to "read" that map in a manner consistent with other members of our language community: "A network of definitions maps experience by categorizing" (Matthews, 1998, p. 55).

The production of definitions is a social practice designed to *formalize* our understanding of specific categories. Definitions identify the "definitive" or "essential" attributes that characterize a category. Definitions are ultimately intended to serve a social purpose of *stabilizing* meaning so that when a person refers to a category, we know what that person is talking about.

What is the purpose of definitions?

Though I have already said that definitions serve an important stabilizing function so that we can understand each other, especially in specialized language communities, a few additional remarks may be useful to understand the purpose that definitions have. The key idea is that definitions are intended to have more *precise* and *predictable meaning* than mere "description":

Descriptions "do not constrain experience as a network of definitions do. Descriptions are open-ended" (Matthews, 1998, p. 56). To explain how definitions function more precisely and predictably than descriptions, I next describe the concepts of "denotative conformity" and "connotative predictability."

Denotative conformity refers to the degree of intersubjective agreement about what a specific word *refers* to. To "denote" means to "refer," to point out something, as in "there's a tornado!" Denotative conformity can be measured. For example, among experienced poker players, one would find 100% agreement about what the terms "flush" and "straight" refer to. The degree of denotative conformity varies among different language communities. A term like "solenoid" might have relatively low denotative conformity among a general population (I would *not* know one if I saw it, for example), but it would undoubtedly have a near perfect degree of agreement among experienced mechanics.

Connotative predictability is similar, but refers to the subjective "sense" of a word rather than its objective referent. All words conjure up thoughts, including images, feelings, and attitudes. Sometimes those thoughts are mundane (such as the word "pencil"), and other times the feelings and attitudes elicited by a word can be quite powerful (such as the word "murder"). Part of what definitions help to do is to stabilize the connotative predictability of a word so that when person A uses a word, that person can predict the sorts of images, feelings, and attitudes person B will have in response. This is why politicians use highly charged words like "terrorist" or "freedom," of course, but the same principle would apply to almost any word used in a specific language community. If a veteran professional baseball player refers to another player as a "rookie," the term has both a denotative meaning (referring to a player in his first year of

major league play) and a set of predictable connotative meanings (inexperienced and eager, for example).

Definitions play a crucial role in the encoding/decoding process of communication. The concepts of encoding and decoding have been crucial parts of models of communication for over 50 years, most notably in the Osgood and Schramm model (Schramm, 1954) that stressed all communicators are "interpreters" who must encode and decode information. *Encoding* is the process of converting a complex set of information into more manageable "bits" of data. This is what language does: Words reduce an infinitely complex set of experiences into manageable and shareable chunks of information. However, such data or information are *meaningful* only if they are *decoded* accurately. *Decoding* is the reverse process of converting data that has been sent by a source into meaning (denotative and connotative) understandable by a receiver. Much of what we mean by learning to "talk the talk" of a particular language community involves learning to encode and decode in a manner consistent with veteran members of that language community, and here definitions can play an important role.

The bottom line purpose of definitions is *shared meaning*. Put simply, we want to know what a person *means* when he or she uses a word. Though "meaning" is a vexed term itself, all linguists and communication scholars certainly recognize the fundamental attributes of meaning include what Gottlob Frege described in 1892 as "sense" (connotative meaning) and "reference" (denotative meaning); that is, the subjective thoughts a word elicits in the mind of a hearer, and the objective referent to which a word refers.

Put more formally: The social goal of definition is to foster a coordinated and common understanding of words so that members of a language community have a high degree of denotative conformity when they use words to refer to the people, objects, and events most

relevant to that community, as well as connotative predictability so that they can anticipate the likely response to their use of such words. Similarly, "accuracy" in communication can be operationalized in the same fashion: To understand the meaning of a word "accurately" means that one understands its denotative reference and connotative sense with precision.

What makes for a good definition?

The proof of a good definition is in its performance. That is, if a particular language community defines a word such that its members recognize that X counts as Y in context C, then one should find a high degree of denotative conformity and connotative predictability. If a language community achieves high levels of denotative conformity and connotative predictability, it has a successful practice of definition. If not, then it does not have a successful practice of definition.

I would suggest four criteria that can assist in identifying successful definitional practices: Clarity, Shared Purpose, Appropriate Authority, and Feedback.

Clarity: As mentioned previously, we learn a category by being taught clear exemplars. By "clear exemplars" I mean examples that highlight the similarity/difference relations that distinguish one category from another. So, while not all birds can fly, one can learn the meaning of the category "bird" best through examples of birds that fly. There is clear evidence, for example, that a small child will learn to categorize "birds" better by initially being shown robins rather than penguins (Roberts & Horowitz, 1986). By contrast, one would not be advised to try to teach someone the meaning of the category of "chair" by first showing them a beanbag chair.

Learning a category involves learning what attributes are "essential" or "definitive" of a class of objects, events, or people. Thus, it would be preferable to learn who counts as an

"attorney" by reference to the attribute of "passing the bar exam" rather than, say, "someone who likes to argue." The first attribute is more essential or definitive than the second, and it helps differentiate between attorneys and non-attorneys more clearly.

Accordingly, the first criterion of a good definitional practice is that it strives for clarity through clear examples that allow members of a language community to recognize what the key attributes of a category are.

Shared Purpose: What counts as "essential" or "key" attributes of a category depends on members of a language community having a shared purpose in defining a given word. When I use the word "essential" I am not referring to some sort of metaphysical essence. Rather, I am referring to those attributes that the history and values of a given community deem as crucially important, given the community's shared purposes. Definitions are driven by needs, interests, and values. That is, we do not define words just for fun, but rather because of specific needs and interests that are reached when we have agreement on how to use certain words. For example, there are many ways to define "wetlands" and sometimes those definitions compete as government agencies and legislators have to decide what "counts" as a wetland within the meaning of specific laws and regulations. Ultimately, what is at stake is deciding what attributes (such as the presence of hydrophytes—plants that only grow in anaerobic conditions—versus how many days of the year there is standing water) are most important given the purposes of environmental protection laws.

It is unlikely that a language community will achieve *clarity* in its definitional practices unless it also has a common and *shared purpose* in defining important words. One cannot establish a clear category, with a clear set of definitive attributes, unless there is shared purpose. Without shared purposes for defining a word, it will be difficult if not impossible to agree on

what similarity/difference relations should be learned to know the rules for when X counts as Y in context C. In other words, a member of a language community cannot know if an X should count as a Y or not-Y without some understanding of the purpose of defining the category in the first place.

Appropriate Authority: An important criterion to consider when evaluating a set of definitional practices is who should have the *power* to define. When children are learning a language, it clearly advances the social interests of denotative conformity and connotative predictability to stipulate that parents and teachers have that power. When people are newcomers to a language community, such as medical students, law students, or apprentice laborers, it also makes sense that veterans have the authority and power to teach such newcomers what is what. In short, becoming a member of a language community involves initially "surrendering" definitional authority to those with more experience. As I said before, to be socialized into a particular community, one must learn to talk the talk.

Once one is socialized into a community, however, the question of how words should be defined is more a matter of negotiation and persuasion. For example, the faculty members of a new department might need to define what counts as a "scholarly publication" for the purposes of annually reviewing the achievements of each faculty member. Obviously, the department would want to achieve clarity in such a definition so that all faculty members would know what counts (denotative conformity) since scholarly publication is highly valued (connotative predictability). Through persuasion and negotiation, the department would identify what faculty members agreed were the most important attributes that should define the category, such as peer review and respected academic publishers. In such a case, the democratic norms of faculty

governance would be invoked since all faculty members would be recognized as authorized members of the language community.

Deciding who the appropriate authority should be in the practice of definition would vary from language community to language community. In the legal arena, the Supreme Court is the ultimate authority for defining what the words of the U.S. Constitution mean. In terms of deciding the definitions that appear in standard dictionaries, in a sense *everyone* is an appropriate authority because dictionaries are supposed to reflect what the most common uses of a word are.

I would suggest two ways to think about who the appropriate authority for defining should be. Ideally, *all* members of a specific language community share a stake in definitions. The best way to achieve denotative conformity and connotative predictability is to try to define terms as they are understood by all, or as many as possible, members of that community. Thus, just as in the case of dictionary definitions, the best way to foster the social goals of definition is through a "democratic" process that reflects the shared purposes of all members of that language community.

In cases where a "democratic" approach is not practical, such as a highly contested area of the law, definitional authority may have to be highly centralized. However, when such a circumstance obtains, the *other* criteria I have identified become all the more important. For example, if a group of faculty in a new department could not come to an agreement about how to define "scholarly publication," it could become necessary for a college dean to stipulate how scholarly publication will be defined for the purposes of reviewing faculty achievement. If that were to happen, it would be crucially important that the Dean meet the other criteria I have identified, including *clarity* and *shared purpose*. If the faculty members did not understand how the Dean defined scholarly publication, the group would risk not achieving their collective goals.

An individual faculty member might publish in an online, non-peer-reviewed journal, for example, then be outraged to learn after the fact that such an action does not "count" as scholarly publication.

In other words, regardless of who has the power to define, *all* members of a language community must be "empowered" with a clear understanding of the salient definitions of their community. Otherwise, the whole point of defining (denotative conformity and connotative predictability) is lost.

Feedback: An important part of how any word is learned is through the process of feedback. For example, small children will make mistakes of *overextension* (using a word too broadly, as in calling all round objects "balls") and *underextension* (not recognizing a green apple as an "apple"). It is only through a process of feedback that language-learners have their use of categories "corrected" by more experienced language-users. The process of correction may be one-way, as in a teacher-student relationship, or it may be a process of mutual feedback among members of a language community, such as when they work together to refine a coding system to improve their level of inter-rater reliability. Regardless of the language community, the desired end is a high degree of denotative conformity and connotative predictability, and a primary means of reaching that end is feedback aimed at improving a community's understanding of rules of the form "X counts as a Y in context C." Without such shared understanding, the coordinated management of meaning is impossible.

II. Analysis of the Definitions provided in the *Guide to Termination Record Forms.*

USIS or DAC Services collects information about drivers' employment histories in part by soliciting Termination Record Forms. The question I address is whether the definitions used

to explain the codes in the "Work Record" section of the Termination Record Form meet the goal of providing "maximum possible accuracy of the information concerning the individual about whom the report relates," as required by the Fair Credit Reporting Act (15 U.S.C. § 1681e[b]).

My assessment of the relevant definitional practices is informed by reviewing the following materials: The initial and amended complaint, copies of depositions (and supporting materials) involving Kent Ferguson, David Kuehl, Lynn Miller, and Richard A. Wimbish, a copy of DAC Services "Master User Guide," a document titled DAC Services "Guide to the Termination Record Form," affidavits of Lynn Miller from the cases of *Fomusa v. DAC Services* and *Cassara v. DAC Services*, affidavits of Richard Wimbish from the cases of *Fomusa v. DAC Services, Cassara v. DAC Services* and *Brabazon & Kaelin v. DAC Services,* sample Termination Record Forms, the text of *Cassara v. DAC Services*, various compilations of statistics regarding work history forms, and a copy of the FCRA and relevant regulations.

The focus of this section is DAC Services' *Guide to the Termination Record Form* (hereafter GTRF) because this guide "includes the definitions of codes and terms used in the current version of DAC's Termination Record Form for CDL drivers" (p. 1). This is the only document I found that explicitly attempts to define the key terms used in the Termination Record Form; indeed, the Guide encourages readers to "Use this guide to interpret any term in which [*sic*] you are unsure of the meaning" (p. 1). Plaintiff identifies seventeen phrases or categories that are problematic; I examine each in turn.

"Company Policy Violation." This phrase is defined as code 935 in the GTRF in the following manner: "Driver violated company policies and/or procedures. Use this code only if the other selections in this section do not indicate the company policy violated." It is worth

noting that this "explanation" of code 935 is not a definition in the traditional sense of the word. It is a classic example of a *circular definition*--one that assumes a prior understanding of the term or phrase being defined. It simply repeats the phrase and then provides instruction on when *not* to use the code. It is not an Aristotelian definition, which would require an explanation in the form "A company policy violation is [a kind of] *class name* that has such-and-such *attributes*." There are insufficient criteria provided to infer a clear definitional rule: X counts as Y (a company policy violation) in context C. There is no way to operationalize the phrase except in the crudest fashion, since to qualify for code 935 requires merely one violation of one company policy *or* "procedure."

Apart from lack of definition, understanding the meaning of the phrase "company policy violation" is problematic on several levels. First, no clear exemplar is provided, leaving it up to the person hearing the phrase to provide its "sense." That is, the only connotative predictability one can assume is that the phrase is meant to be pejorative. Second, the phrase is *prima facie* vague, and that vagueness is amplified by the definition when it describes a policy violation as when a driver violated company policies *and/or procedures*. By "vague" I mean that one cannot tell from the phrase what sort of policy and/or procedure was violated, and one certainly cannot ascertain the importance or magnitude of the policy and/or procedural violation. In short, one cannot tell what the words are, in fact, *referring to*. This lack of denotative clarity is made worse by the fact it is defined only by what it is not; that is, the GTRF says to "Use this code only if the other selections in this section do not indicate the company policy violated," which means that one can know only what is *not* being referred to, not what *is* denoted.

An analogy may be helpful in understanding just how meaningless the phrase "company policy violation" is. If I were to say that person A "violated one of the Ten Commandments,"

you would not know what person A did—only that A's action violated one or another commandment. You would not know if person A did something as serious as killing someone, or took the Lord's name in vain, or worked on a Sunday, or coveted a neighbor's car. Because companies have different policies and/or procedures, and religions have different beliefs and norms, a better analogy would be a statement of the form "religious policy and/or procedure violated," which covers everything from mass murder to eating oysters to failing to cross oneself properly. The analogy is useful because *within* various religions, not all sins are treated as equal. Judaism distinguishes among three levels of sin: intentional sin, sins of uncontrollable feelings, and unintentional sins. To state that "someone sinned" does not identify the important attributes of the category—severity and magnitude. Similarly, to state that a company policy and/or procedure was violated does not tell us anything about the severity, magnitude, or type of policy and/or procedural violation that took place. It is, in a practical sense, meaningless. A more useful category system would provide a means to identify the type of company policy and/or procedure violated, as well as the number and magnitude of the violation(s).

"Unsatisfactory Safety Record." This phrase is defined as code 938 in the GTRF in the following manner: "Driver did not meet company safety standards." This is not a circular definition; in fact, it is a sort of operational definition that can be formulated as "A driver has an 'unsatisfactory safety record' when the driver did not meet company safety standards." Unfortunately, the only defining attribute identified ("did not meet company safety standards") is as vague as the previous phrase analyzed, "company policy violation."

Once again, there are insufficient criteria provided to infer a clear definitional rule: X counts as Y (a company safety standard) in context C. Once again, no clear exemplar is provided, leaving it up to the person hearing the phrase to provide its "sense." That is, the only

connotative predictability one can assume is that the phrase is meant to be pejorative. The code and definition in combination are denotatively meaningless because one cannot tell what the words are, in fact, *referring to*. To state that a driver did not meet company safety standards does not tell us anything about the number, importance, or type(s) of standards, nor does it tell us by how *much* a driver did not meet one or more standard. In short, the "definition" provided of "unsatisfactory safety record" renders the code without meaning.

"Excessive Complaints." This phrase is defined as code 912 in the GTRF in the following manner: "An excessive number of complaints have been received regarding the driver's service and/or safety." This is another circular definition, since the "definition" basically restates the phrase being defined and assumes a prior understanding of the phrase.

The definition provided is not an Aristotelian definition, which would require one to identify a set of definitive attributes. Indeed, it is not clear *who* made the complaints, *how many*, *what* the complaints were about, or whether the complaints were *justified*. There are no criteria provided to infer a clear definitional rule: X counts as Y (excessive complaints) in context C. There is no way to operationalize the phrase except in the crudest fashion, since to qualify for code 912 requires merely more than one complaint.

Apart from lack of definition, understanding the meaning of the phrase "excessive complaints" is problematic on two levels. First, no clear exemplar is provided, leaving it up to the person hearing the phrase to provide its "sense." The only connotative predictability one can assume is that the phrase is meant to be pejorative. Second, the phrase is denotatively vague--one cannot tell what the words are, in fact, *referring to*.

"Cargo Loss" and **"Equipment Loss."** These phrases are defined in the GTRF as codes 913 and 917, respectively, in the following manner: "Cargo" or "equipment" "was lost, stolen,

damaged or destroyed while assigned to or under direct responsibility of driver." The problem with these definitions is somewhat different than the previous phrases and definitions. In these cases, enough of a definition is provided that one can formulate a linguistic rule of the form "*cargo/equipment loss* occurs when cargo/equipment is lost, stolen, damaged, or destroyed in a particular context; namely, when assigned to or under direct responsibility of the driver."

The problem is not so much one of denotative vagueness as it is an ambiguous overabundance of possible specific referents. The phrase "cargo loss" could refer to events as disparate as having one's cargo stolen, swept away in a flood, damaged by lightning, or destroyed by vandals. The problem is that a reader of such a report must guess which sort of loss occurred, how serious it was, and who (or what) was the cause.

Given that the *purpose* of the employment history records provided by USIS is to aid employers in making hiring decisions, one must evaluate the suitability of the definitions in light of that purpose. That is, do the definitions of the categories identify the attributes important for potential employers? In these cases, they do not, for the simple reason that the definitions do not make clear whether the cargo or equipment loss was *significant* or whether the loss was the driver's *fault*. A more useful category system would provide a means to: A) indicate whether the cargo or equipment was lost, stolen, or damaged, B) estimate the value of the loss, and C) attribute responsibility for the loss. Or, if there is only space for one category, it would be operationalized in such a way to make the information more useful, such as "cargo loss valued in excess of $500 due to driver malfeasance."

"Quit/Dismissed During Training/Orientation/Probation." This phrase is explained as code 933 in the GTRF in the following manner: "Driver did not complete company training, orientation and/or probation. If the driver quit or was dismissed during orientation, leave

sections 12, 13 & 14 blank and do not provide further information to section 15." The second sentence is not a definition, since it is only an instruction as to how to complete other portions of the Termination Record Form. The first sentence is again a classic example of a circular definition that does nothing more than repeat the category label.

Again the problem is that the label has an ambiguous overabundance of potential referents that makes the code unrevealing (meaningless) with respect to identifying driver attributes. It is not clear *when* in the employment process the event occurred, *who* initiated it, or *why*. A reader of such a report must guess, and the range of possibilities is so broad that one cannot make any confident inferences about a driver. Despite this lack of denotative clarity, it is obvious that whatever connotative meaning the label has is negative. "Quit" attributes the cause of the termination event to the driver in pejorative manner. "Dismissed" attributes the cause of the termination event to the employer, again in a manner that is derogatory to the driver.

It would not be difficult to restructure this category to make it more denotatively meaningful and less connotatively negative by indicating *when* the termination event occurred (including whether it was pre-contractual), *who* terminated the relationship (driver or employer), and providing a check-off list of the most common *reasons* for such termination.

"Eligible for Rehire: No." This phrase is explained as code 003 in the GTRF in the following manner: "Driver is ineligible for rehire based on current company standards." This explanation is another example of a circular definition that does nothing more than repeat the category label. The only attribute clearly denoted is that the driver is not eligible to be rehired (which clearly carries a negative connotation); however, the *rationale* for such ineligibility collapses back into one of the vaguest expressions found in the Termination Record Form—"based on current company standards." Again, a reader has no idea what company standards

have informed a decision that the driver is not eligible for rehire, and thus the reader learns nothing about the particular attributes of the driver. Though checking this code makes it clear what the driver's status is with respect to the company completing the form, it conveys no useful information about the driver's abilities. Beyond that company-specific rehiring status, the category is denotatively meaningless.

"Other." This phrase is defined as code 999 in the GTRF in the following manner: "Other: Anything other than items listed above (see 199)." Code 199 says "Other: Anything other than items listed above. This space is provided for your documentation. DAC will record 'other' only." Obviously, this category is denotatively meaningless and the category is not defined in any positive sense. There is no way to know what the category is referring *to*, only what it is *not*.

Categories identified as "other" are generally unhelpful in coding schemes. Consider the following example: Let us say that a department store wants to track the reasons that customers return articles of clothing that were purchased at that store. A set of categories might include "wrong size," "garment flawed," or "gift return" and such information could assist both the customers and the store to improve its future service. An unexplained "other" category would be useless because it does not *refer* to anything denotatively. It would be completely useless in helping the store understand why merchandise is being returned, since all anyone could infer is that "something" was wrong.

This case is similar. Since the work record is not described as "satisfactory," there is a vague connotative meaning that is negative—"something" was wrong. But no one receiving such information—either the driver or possible employers—would know *what* was wrong, which makes the information functionally useless.

"Personal contact requested." This phrase is defined as code 944 in the GTRF in the following manner: "Company issuing record has further information to provide regarding the driver or for the driver." This is not a typical category code because it does not even attempt to convey explicit information about a driver's performance. Rather, it is a request for action: For unstated reasons, the company issuing the TRF wishes contact with a potential employer *or* with the driver. Because this category conveys no explicit denotative meaning about the driver's performance, it is not clear to me why it belongs in a section labeled "Work Record."

Since it is a category different from reporting a "satisfactory" (code 901), "superior" (903) or "outstanding" (903) work record, there is a vague negative connotation here that there were problems of some sort warranting a personal contact for explanation. Such meaning is vague and indeterminate, however, since the code explanation includes the possibility that the issuing company wishes to contact the *driver* rather than a potential employer.

Other Descriptive Categories. There are eight additional categories that warrant a different sort of evaluation than the phrases and definitions analyzed so far. These categories are provided with a definition in the GTRF, so they are, in a sense, more meaningful than the circular and vague definitions identified previously. However, these categories are still seriously flawed.

Code 924 "**Late Pick Up/Delivery**" is defined as "Failed to make pickup or delivery according to schedule."

Code 926 "**Log Violation**" is defined as "Violation of Federal Motor Carrier Safety Regulations, 'Hours of Service,' part 395."

Code 928 "**No Show**" is defined as "Driver failed to appear on job site without notification or approval of supervisor. Driver has hauled previous loads for the company."

Code 929 "**Failed to Report Accident**" is defined as "Driver violated accident reporting requirements while in the service of the company."

Code 931 "**Quit Under Dispatch**" is defined as "Driver was available for work, assigned a load but quit before load was secured. Driver did not possess a load."

Code 957 "**Unauthorized Equipment Use**" is defined as "Deviated from route or used equipment for purposes not specified by company. (Not intended to be used when the driver has resigned/quit or terminated lease and returned equipment to the nearest company terminal or a location authorized by the company.)"

Code 959 "**Unauthorized Passenger**" is defined as "Passenger in company vehicle contrary to company policy or did not meet company policy requirements covering authorized passenger."

Code 961 "**Unauthorized Use of Company Funds**" is defined as "Driver used company funds for purposes not authorized by company."

There are three major problems with this set of categories. First, though each code denotes some sort of behavior or event, the category name or phrase is sufficiently broad that it is impossible to determine accurately the significance or importance of the violation. The categories do not allow the person completing the form to indicate the magnitude of the offense, its frequency, duration, or severity. For example, code 924 ("late pick up") could be checked whether the driver was 5 minutes behind schedule or 5 days. With respect to all eight categories, there is simply no way to distinguish between events that may be trivial, accidental, or due to factors beyond the driver's control, versus events that might be quite significant, intentional, and due to driver malfeasance.

Second, it is important to note how the categories are open to abuse due to the fact that all eight categories have distinctly negative connotations. The problem is that there could be two cases that are dramatically different (say, for example one driver is 5 minutes late versus another driver who is 5 days late). The negative connotations and harm to the driver's reputation would be identical since, in both cases, the only message communicated is a checkmark in a particular code box. Thus, even for cases that are denotatively quite different, the categories carry equally weighted negative connotations.

Third, drivers are not provided with these definitions, thus for them these categories are practically meaningless. Note that in some cases the definition is subjective and relies on ordinary language use (such as "late pick up" or "no show"), while others have fairly specific definitions (such as "log violation") that refer to specific policies or regulations. In one case a Federal regulation is referenced, while in several others, "company policy" is referenced. Cumulatively, the eight definitions put drivers between a rock and a hard place. On one side are highly technical definitions that drivers are not provided. On the other are vague or circular definitions that are open to anyone's interpretation. In both types of cases, drivers are disempowered from the relevant language community. Neither drivers nor potential employers are put in a situation to determine the accuracy of the report.

The "bottom line" problem with these categories is that there is no opportunity to provide the sort of details or narrative that would allow someone reading the report to produce an accurate interpretation of the events. We use categories to simplify our understanding of a complex world. However, there is a tradeoff between the *scope* and *precision* of categories: The broader and more abstract a category, the greater the range of events that can be described by it. However, what we gain in scope we lose in precision and accuracy, since a broad category will

lump events together that may be quite different. For example, if we only categorized movies into "comedy" and "serious drama," we would have two categories that have a powerful scope, but at a cost of lumping together films that are quite different. *To maximize accuracy*, one would need to subdivide categories more precisely, so we can distinguish (say) between *To Kill a Mockingbird* and *Star Wars* instead of lumping them together.

One of the best ways to understand the deficiencies of the current category definitions is to imagine how they could be improved. In every case, one can easily imagine how additional descriptors and an opportunity to provide a narrative would increase the meaningfulness of the work record. An example of such an improvement is how the category "Quit Under Load/Abandonment" has been elaborated. At one point, code 909 was "Abandonment" and code 937 was "Quit Under Load." I suspect for the very sorts of reasons discussed throughout this report, these categories were reformulated such that there are now *seven* categories covering a range of events instead of only two. This change nicely illustrates my point about the tradeoff between scope and precision. By elaborating the category, one must give up the simplicity of having only one or two categories, but with seven categories one gains precision and accuracy. I have no doubt that all of the TRF categories could be improved in a similar manner.

III. Overall Assessment and Conclusion

The question I address is whether the definitional practices employed by USIS in the "work record" portion of the TRF accomplish their stated ends or not. The USIS website description of their Employment History File product claims:

- Members receive more complete information in an efficient manner. Reports include information such as reason for leaving, equipment operated, eligibility for re-hire, status, driver's experience, and number of accidents.

- Employers release and obtain objective, factual information without risk. USIS's Employment History File protects employers from liability because termination records are submitted using a standard, multiple-choice termination form. Non-subjective, industry standard terminology is used to eliminate the possibility of information being misconstrued. (http://www.usis.com/commercialservices/transportation/employmenthistory.htm accessed 3/13/05).

In contrast, Plaintiff contends that the Termination Record Form that USIS pays carriers to fill out and return relies on terms that are "vague, ambiguous, incomplete, uncommonly defined, and inaccurate."

My overall assessment is that the Termination Record Forms fall far short of providing "complete information" about a driver's performance. The multiple-choice format does not produce "non-subjective" terminology that eliminates "the possibility of information being misconstrued," as USIS claims. Most of the definitional language is so vague or ambiguous that it virtually guarantees that report writers and readers will systematically misconstrue the denotative meanings of the codes. The system of categories as defined in the TRFs does not meet the requirement to "assure maximum possible accuracy of the information." Indeed, in most cases it is difficult if not impossible to ascertain the specific actions, behaviors, and events that the categories are supposed to refer to. The TRF as currently designed is a source of systemic *inaccuracy* in terms of denotative conformity and connotative predictability.

The problem can be diagnosed by returning to a distinction made in section I between *encoding* and *decoding*. The contested categories of the TRF have been designed in an excessively open-ended fashion from the standpoint of encoding. For example, an incredibly broad array of events can be encoded as "cargo loss." From the standpoint of a former employer completing a TRF, it does not matter if a tornado blew away the cargo or if the truck was robbed. No matter what happened or who was responsible or how much cargo was lost, it would all be

encoded by checking box 913. Those who write the reports are given almost no guidance as to how to "encode" specific events or attributes. Without such guidance, errors of overextension (applying a code too broadly or "false positives") and underextension (not applying a code when one should, or "false negatives") are inevitable.

No coding scheme or system of classification is neutral: All guide our attention in particular ways by providing semantic maps for making sense of our experiences, Such maps tell us what is important to notice and what can be neglected, and what is valuable and what is not worth our attention. By keeping the TRF codes to a minimum, the categories are "defined" so flexibly as to make them largely meaningless. **Furthermore, the "flexibility" of the encoding process is what makes accurate *decoding* impossible.** The data have become meaningless because it is impossible for a writers and readers to know what the codes are referring to (denotative meaning) and only vaguely how the codes are evaluating the driver (connotative meaning). The varying frequency of usage of the various codes by different carriers underscores this point—the TRF does not constrain coders, it gives them excessive latitude such that decoders have no clear idea what is or is not being reported.

The data gathered through such a coding scheme does not serve its purpose in assisting employers make informed hiring decisions based on accurate and precise information, and it obviously does not serve the interests of drivers either. Indeed, insufficient information is provided to allow drivers to know what behavior resulted in what sort of evaluation, which makes it extremely difficult to check or dispute the accuracy of such records.

Just how far short of the requirement to "assure maximum possible accuracy of the information" the TRFs are can be seen most clearly by considering how the categories *could have been* constructed and defined in such a way to avoid the problems identified in section II.

In each and every case, the problems identified above could be solved by providing additional codes to distinguish more precise subcategories or by defining the current codes with greater denotative precision.

Since the publication of Claude E. Shannon's "A Mathematical Theory of Communication" in 1948 it has been understood that "The fundamental problem of communication is that of reproducing at one point either exactly or approximately a message selected at another point" (p. 379). **The question is not only do the people completing a TRF know which box to check, the question is also whether those who subsequently *read* the output can accurately decode the meaning of such checked boxes.** If the message "received" or "interpreted" by the reader of a TRF is significantly different than the message "sent" by the original source, then we have, as it is put in *Cool Hand Luke*, "failure to communicate." That failure can be summarized as a profound lack of clarity and specificity in the "definitions" of the codes, which results in a lack of denotative conformity and connotative predictability.

To press the "diagnosis" a step further, I would suggest that the problems identified stem, in part, to a lack of shared purpose among drivers and carriers in creating the definitions and codes. The TRF is apparently designed wholly to serve the interests of carriers, who are consistently referred to as the "customers" in the depositions of Lynn Miller and David Kuehl. The code categories appear to have been defined to minimize the difficulty of filling out the form, while maximizing the power of the carriers over drivers.

If the categories are defined entirely from the carriers' perspective, then drivers are excluded from being what were described in section I as "appropriate authorities." In Miller's second affidavit in *Fomusa v. DAC*, she states that "Drivers are not users of our employment history reports" (§24). Despite the claim that "DAC uses definitions that follow industry

practice," she acknowledges that "I routinely encounter drivers who dispute their employment history reports because they do not understand the meaning of the terms in the report" (§24). The power to define is entirely in the hands of DAC Services, which apparently does not include any driver representatives on the DAC Advisory Board.

Furthermore, there does not seem to be any formal or institutionalized process of providing *feedback* that assures drivers a role in refining the code definitions. Drivers are not provided a copy of the "Guide to Termination Record Form," which includes the list of "definitions" I analyzed above. This lack of information obviously hampers drivers' ability to understand how or why their work record has been evaluated in a particular manner, and it makes the task of disputing a particular evaluation extremely difficult. Any informal or formal means of dispute resolution is hampered. Furthermore, the vagueness and ambiguity of the language function strategically to deflect responsibility by maintaining a kind of "plausible deniability" (Walton, 1996) about the "meaning" of TRF codes. That is, the vaguely negative connotations of the categories discussed above create a negative "presumption" about a driver, but because the form stops short of providing clear denotative meanings, DAC can deny specific inferences made from ambiguous codes. The TRF thus functions as a form of systematic "innuendo" about drivers and DAC avoids assuming a reasonable "burden of proof" for what is inferred from the vague categories (cf. Walton, 1996).

Giving carriers "definitional hegemony," or near-total authority over how a driver's history is encoded, functions to infantilize drivers in the language community that makes up the trucking industry. By denying appropriate authority or adequate opportunity for feedback for drivers, the category codes are potentially open to a good deal of abuse. The definitions of the codes are so vague, ambiguous, and/or circular that they can be stretched to describe just about

anything. Whether they have been abused is a question I am not in a position to answer, but I can say with confidence that the codes are very poorly designed and open to abuse.

To conclude: The definitional practices as found in the *GTRF* and in the various documents I studied associated with this case fail to provide "maximum possible accuracy of the information concerning the individual about whom the report relates." The TRF is not designed to provide accurate denotative or connotative meaning in terms of driver attributes. The category codes are vague or ambiguous—they do not provide sufficient guidance to promote either denotative conformity or connotative predictability. Because there is a lack of explicit and shared definitional purposes, and because drivers are not treated as appropriate authorities or provided an institutionalized opportunity for feedback, the definitional practices are seriously flawed.

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