

MDL/obr

TACOM HEARING

APPEAL FROM MERIT SYSTEM

PROTECTION BOARD

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6 In the Matter of: )  
7 LEROY J. PLETTEN, )  
8 Appellant, )  
9 -vs- )  
10 DEPARTMENT OF THE ARMY, )  
11 Appellee. )  
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13  
14 Transcript of the Deposition of  
15 DR. FRANCIS HOLT, taken before Margaret D. Lewis, Notary  
16 Public in and for the County of Wayne, State of Michigan,  
17 acting in the County of Oakland, at 3000 Town Center,  
18 Suite 1104, Southfield, Michigan, on Friday, May 21, 1982,  
19 commencing at or about 5:45 o'clock in the afternoon.

17 APPEARANCES:

18 COOPER & COHEN, 3000 Town Center, Suite 1104, Southfield,  
19 Michigan 48075, appearing on behalf of Appellant.

19 BY: STEVEN Z. COHEN, ESQ. (P29344)

20 EMILY SEVALD BACON, ESQ. (P30243), United States Army Tank  
21 Automotive Command, Detroit Arsenal, Warren, Michigan 48090,  
22 appearing on behalf of Appellee.

23  
24 REPORTED BY: MARGARET D. LEWIS, CSR 2738  
25 540 Buhl Building  
Detroit, Michigan 48226  
961-9395 and 883-1500

1 Southfield, Michigan

2 Friday, May 21, 1982

3 5:45 in the afternoon

4 o o o

5 MR. COHEN: Let the record reflect  
6 that this is the continuation of testimony in the  
7 matter of Leroy J. Pletten before the Merit System's  
8 Protection Board.

9 Dr. Holt, I'd like to thank you  
10 for coming.

11 Dr. Holt appears today as a continua-  
12 tion of his deposition de bene esse pursuant to notice  
13 and pursuant to subpoena issued by Administrative Law  
14 Judge Reidy.

15 F R A N C I S J . H O L T , M . D .

16 having been first duly sworn to testify to the truth,  
17 the whole truth and nothing but the truth, was examined  
18 and testified upon his oath as follows:

19 CROSS-EXAMINATION

20 BY MR. COHEN:

21 Q Dr. Holt, would you state your full name and your pro-  
22 fessional status?

23 A Francis J. Holt. I'm the medical officer at the Tank  
24 Automotive Command in Warren.

25 Q How long have you been there, sir?

1 A Eighteen years.

2 Q Your training is from where?

3 A I graduated from Wayne State University College of  
4 Medicine, M. D., in 1954.

5 Do you want my post-graduate  
6 training?

7 Q If I could.

8 A I took a U. S. Naval internship at Newport, Rhode  
9 Island. I took residency in internal medicine the  
10 first year at the Veterans Research Hospital in Chicago  
11 and two years at the University Hospital in Ann Arbor.  
12 I took sub-specialty training in hematology at the  
13 Veterans Administration Hospital in Ann Arbor, and  
14 I was a Fellow in Cancer Chemotherapy at the Research  
15 Hospital in Ann Arbor for three years. Since that  
16 time, I've been with the Veterans Administration or  
17 with the Tank Automotive Command.

18 Q Do you have a board-certified specialty?

19 A No, I am not board-certified.

20 Q In any specialty?

21 A In any specialty, no.

22 Q What training do you have in pulmonary functions,  
23 sir?

24 A No normal training in pulmonary functions.

25 Q How did you come to know or be aware of the

1 circumstances regarding Leroy Pletten?

2 A Mr. Pletten came down to see me in December of 1979  
3 with an acute asthmatic episode. He was wheezing and  
4 short of breath. At that time he told me he had a  
5 long history of asthma, and he said he'd been exposed  
6 to cigarette smoke on the job and this had caused a  
7 flareup in his condition.

8 I examined him, determined that  
9 he was short of breath -- dyspneic -- and we sent him  
10 to his personal physician who was treating him at that  
11 time.

12 Q Could I see the set of documents in front of you, sir?  
13 They say "Treatment Record."

14 A This is his clinical record. Is this what you'd like  
15 to see?

16 Q Yes. Whatever it is you're going to testify from,  
17 I'd like to see.

18 MR. COHEN: Could we go off the  
19 record for a moment?

20 (Discussion off the record.)

21 Q (By Mr. Cohen): The first time you have a notation  
22 is 21 December 79.

23 A Yes.

24 Q You indicate that Mr. Pletten had a flareup.

25 A Yes.

1 Q And he was taking medication?

2 A Yes.

3 Q What did you do for him?

4 A Well, I examined him, you know. My job at the Tank  
5 Automotive Command is to determine whether or not any  
6 employee is fit for duty. If they have a medical  
7 condition that would render them unfit for duty, if  
8 it's a personal illness, I send them to their physician.  
9 If it's a job-related injury or illness, we go ahead  
10 and treat them.

11 I took a history from Mr. Pletten.  
12 I examined him, determined that he had an asthmatic  
13 episode. This was a personal illness going back to  
14 childhood. I took him off duty.

15 Essentially I did a history and  
16 physical examination on 21 December 79.

17 Q Was the personal illness exacerbated by working con-  
18 ditions?

19 A It was certainly exacerbated by exposure to cigarette  
20 smoke, according to Mr Pletten. I did not actually  
21 see someone smoking in his presence, but we know this  
22 has happened.

23 Q Based on his history as given?

24 A Yes.

25 Q Is there a conclusion that you can draw that but for

1 that involvement with cigarette smoke on the job, he  
2 would not have had that asthmatic situation?

3 A That's one conclusion you could draw. I felt that  
4 Mr. Pletten's condition was also aggravated by emotional  
5 factors, by extreme emotional upset that was complicating  
6 the problem, but cigarette smoke certainly contributed  
7 to it.

8 Q Where on the writeup do you so show it? I'm talking  
9 about 21 December 79.

10 A I don't think I show it here, although let's see.  
11 No, I don't.

12 We did spirometry on him. That's  
13 a pulmonary function test in which the individual  
14 blows into a machine and we record his breathing  
15 capacity.

16 Q So far we're going up through 21 and 26 December. I  
17 see no notation as to emotional problems.

18 A On 31 December is where he came back again with this  
19 flareup of chest congestion and told me about some  
20 of the things that were going on with him emotionally.  
21 He felt there might be a long-standing conspiracy to  
22 poison him by polluting the air in his working area  
23 with cigarette smoke and stated he was pursuing legal  
24 steps to ban all smoking in his working area and in  
25 the entire building.

- 1 Q You feel that that was causing his asthma?
- 2 A No. I just feel that emotional factors could influence  
3 his condition. It can with any asthmatic. Their  
4 condition can be exacerbated by emotional upsets.
- 5 Q The question I have is but for the cigarette smoke, he  
6 wouldn't have been emotionally upset. Isn't that  
7 correct?
- 8 A Yes, I granted that. Sure.
- 9 Q A condition precedent to all that would have been his  
10 having an asthmatic reaction to cigarette smoke?
- 11 A Yes. That's right.
- 12 Q The initial phase, the first attack was engendered by  
13 his work-related contact?
- 14 A Yes, that's correct. That's my understanding.
- 15 Q If it got worse later, then it was kind of growing out  
16 of the initial problem.
- 17 A Okay. I'll grant that.
- 18 Q You have no problem with that?
- 19 A No, I have no problem with that.
- 20 Q You received a notation from Dr. Pollock, which is  
21 in the record?
- 22 A Pardon me? Dr. Pollock?
- 23 Q Yes, a Dr. Sanford Pollock.
- 24 A I'm not familiar with that.
- 25 Q You're not?

1 A No, I am not.

2 Q Dr. Pollock, it seems --

3 MR. COHEN: I hate to keep moving

4 back and forth. Let me use yours, Emily.

5 A Dr. Salomon and Dr. Dubin, I'm familiar with.

6 Dr. Pollock, I'm not.

7 Q (By Mr. Cohen): You're not familiar --

8 A No.

9 Q Well, let me make you familiar. I show you Tab 2.

10 A Oh, yes. I remember this now.

11 Q Now you're familiar with Dr. Pollock?

12 A Yes.

13 Q Okay.

14 Dr. Pollock said patient is unable  
15 to work within 25 feet of people who are smoking.

16 A Um-hum.

17 Q That was on 5-7-79.

18 A That's right.

19 Q You're aware of that?

20 A Yes, I remember seeing this.

21 Q At the time did you notify the legal office or the  
22 personnel office that Mr. Pletten should be medically  
23 disqualified?

24 A No, I did not.

25 Q Why not?

1 A Medically disqualified? We have people with asthma  
2 who work at TACOM for years. That wouldn't disqualify  
3 him from working.

4 Q Why is the Army trying to disqualify him now, then?

5 A Mr. Pletten requires a completely smoke-free work  
6 environment which the TACOM does not have.

7 Q Who says?

8 A Dr. Dubin and Dr. Salomon say that with letters we  
9 have on record.

10 Q Are you familiar with Dr. Dubin's letter completely?

11 A I'm familiar with his letters, yes.

12 Q All of them?

13 A Well, I've read them. At one time or another, I've  
14 read all of his letters.

15 Q How about this one of 1-20-81?

16 A Yes, I saw that note but Dr. Dubin --

17 Q Why don't you read it for the record

18 A (Reading): "To Whom It May Concern:

19 "There is not and has not

20 been any medical reason for denying Mr.

21 Pletten's ability to work and for denying

22 him an environment reasonably free of con-

23 tamination."

24 Q Where does that say "completely smoke-free"?

25 A It doesn't, but elsewhere Dr. Dubin has said "absolutely

1 smoke-free."

2 Q If Dr. Dubin has said one thing on one day and one  
3 thing on another, would you consider that a conflict  
4 inherent in his opinion?

5 A Yes, and we asked him for clarification.

6 Q Did you call him up?

7 A No, we wrote a letter.

8 Q If you're having trouble understanding his written  
9 word, why would another letter clarify?

10 A We wanted to document the record, and we thought this  
11 would be the best way to do it.

12 Q When there is inconsistent testimony -- go ahead.

13 A Because Mr. Pletten was in the process of filing  
14 many grievances about smoking.

15 Q Is that why you wanted the clarification?

16 A That's one of the reasons, yes.

17 Q Didn't you just want to know from the standpoint that  
18 you're the medical officer?

19 A Yes, certainly. I wanted to know what kind of  
20 environment Mr. Pletten required because of his  
21 condition. Apparently I was led to believe he  
22 required a completely smoke-free work environment.

Q Now, if I could characterize it, Doctor, isn't it  
true that there was a great deal of confusion as to  
just what his doctors wanted?

there was no confusion, with the exception of  
brief note.

let me give you a hypothetical construction of  
the documents: First of all, let's start with the  
the question. Is smoke in the air good for any  
human being?

it's not good for anybody. No.

is not good for you or me?

for Mrs. Bacon or the court reporter; right?

it. I certainly agree.

what if you were a doctor advising somebody that  
they should avoid smoke at all costs, for example,  
you would advise any human being of that.

14

15

A If somebody had an illness that was aggravated by exposure  
to tobacco smoke --

16

17

Q Even if they didn't. Even if they didn't have an  
illness, wouldn't you advise any human being to avoid  
smoke-filled rooms because it might harm them even-  
tually?

18

19

20

21

A Yes. Without making a complete change in their life-  
style, sure. And if they had a job and they had to  
work, I would say, you know, avoid smoke if you  
possibly can.

22

23

24

25

Q Sure.

nb-50

ha-4-01

1 A That's a common sense thing, is it not?

2 Q Sure; common sense.

3 . When a doctor says that a person  
4 needs a smoke-free environment; is it possible that  
5 he's referring to any person needing a smoke-free  
6 environment?

7 A I didn't interpret that this way. I thought we were  
8 talking about Mr. Pletten.

9 Q All right.

10 A Yes.

11 Q But generally any person should have a smoke-free  
12 environment?

13 A As smoke free as possible, yes.

14 Q Now, if a person has a sensitivity to smoke, cigarette  
15 smoke, would that preclude him from working and being  
16 effective on the job?

17 A If he's as sensitive as Mr. Pletten's doctor says he  
18 is, it does preclude him from working there at TACOM  
19 where we do not have that environment.

20 Q Is he as sensitive as his doctors say he is?

21 A He apparently is extremely.

22 Q You did tests on him. What did you see?

23 A All I did was a spirometry. His function was somewhat  
24 impaired in '79 because he was having an allergy test.

25 Q Dr. Dubin is what he relied on completely?

- 1 A I relied on Dr. Dubin's expertise as an allergist and  
2 pulmonary function specialist.
- 3 Q So Dr. Dubin was the only person that you based your  
4 decision to medically disqualify him on?
- 5 A As well as Dr. Salomon's recommendation that he required  
6 a smoke-free work environment and was extremely sen-  
7 sitive to cigarette smoke.
- 8 Q Did you contact Dr. Pollock?
- 9 A No, I did not contact Dr. Pollock.
- 10 Q Why not?
- 11 A To my knowledge, they were not his treating physicians.  
12 He was not one of Mr. Pletten's treating physicians.
- 13 Q Where did the note come from?
- 14 A Mr. Pletten presented that note to us at one time, back  
15 in the summer of May of '79, saying he needed some  
16 protection from people smoking here in his work en-  
17 vironment.
- 18 Q All right. Now --
- 19 A And I agree. He did need protection. And I suggested  
20 could they perhaps isolate him, move him away from  
21 the other workers That's one of the suggestions I  
22 made.
- 23 Q Well, what about banning smoke.
- 24 A That's not in my province, to ban smoke at the  
25 Tank Automotive Command.

1 Q Isn't it your province though to recommend what should  
2 be done for the medical welfare of all employees?

3 A Sure.

4 Q Isn't it good for all employees to be away from smoke-  
5 filled rooms and smoke, in general?

6 A Granted.

7 Q Then why don't you make that recommendation to the  
8 Command? They don't have to accept it, Doctor, but  
9 why don't you make the recommendation?

10 A It's my understanding that that is not my province.  
11 I've been told that.

12 Q If it were your province, would you make such a  
13 recommendation?

14 A I'd recommend that we have definite non-smoking areas  
15 and they be observed.

16 Q You wouldn't recommend it for the optimum medical  
17 circumstances, for all the employees, that smoking be  
18 banned?

19 A No, I would not at this time, no.

20 Q Why not?

21 A Because I feel some people can smoke without great  
22 risk to their health, if it's done within reason and  
23 if there are smoking areas.

24 Q What say you to the Surgeon General of the United  
25 States, then, who says that you're wrong, who says

1 that cigarette smoking will cause a health hazard to  
2 you if you smoke, no matter what contents or amounts?

3 A All I can say is I don't set the Army policy. I went  
4 to the DARCOM surgeon about this. This was a DARCOM  
5 installation. He says this is something you cannot  
6 do. You cannot recommend no smoking.

7 Q You cannot recommend no smoking?

8 A That's what I was told.

9 Q By whom?

10 A By the DARCOM surgeon.

11 Q Who is that?

12 A Dr. Chloupek. He would be one of my superiors.

13 Q If he told you it was in your purview, you still wouldn't  
14 ban smoking?

15 A I definitely would not. No, I would not.

16 Q Even though you stated in your testimony that you feel  
17 it's safer for everybody if they're away from smoking  
18 completely?

19 A I certainly think it's safer for some people that they  
20 be away from smoke, some individuals who have cardio-  
21 pulmonary conditions; definitely. But I just can't  
22 say I personally --

23 Q You're contradicting your earlier testimony. You're  
24 modifying it now. Is that correct? You're saying  
25 for some people, not all people.



1 Q You're testifying Doctor. Look through it. All  
2 the letters from Dr. Dubin are there; right?

3 A They should be.

4 Q All right.

5 A The last communication I had from Dr. Dubin was -- Okay,  
6 this is a letter from Dr. Salomon dated March 12th,  
7 1981, and this is a letter from Dr. Dubin dated  
8 March 5th, 1981, and that's the last communication I  
9 have.

10 Q Do you know when the adverse action was taken against  
11 Mr. Pletten to remove him?

12 A No, I do not.

13 Q I suggest you look and I will tell you my recollection.  
14 It's in 1982, perhaps in the month of February of  
15 1982?

16 A Oh, okay.

17 Q Do you always make recommendations as to a person's  
18 medical qualification or disqualification without an  
19 update for almost a year?

20 A I wasn't asked to make a determination in 1982 about  
21 whether or not Mr. Pletten was disqualified. I  
22 wasn't asked to make a recommendation.

23 Q So right now, as the medical officer, you don't know  
24 whether Mr. Pletten is disqualified or not?

25 A Whether he is medically unable to tolerate a smoke-free

1 work environment? I don't know that for a fact at  
2 this time, no, because my last letter from Dr. Dubin  
3 was March 5th, 1981.

4 Q Let me understand this: The Army is spending a whole  
5 lot of money trying to get rid of Mr. Pletten. You  
6 understand that. The question is --

7 MS. BACON: I will object to your  
8 couching the adverse action in those terms.

9 MR. COHEN: Noted.

10 Q (By Mr. Cohen): The question then becomes, nobody  
11 really knows whether Mr. Pletten -- First of all, he  
12 hasn't been examined in a long time; isn't that  
13 correct?

14 A Unless his personal physician, Dr. Dubin or Dr.  
15 Salomon, has examined him, I guess he has not.  
16 Maybe they have examined him. Mr. Pletten has not  
17 been at work now for some time.

18 Q So you don't know --

19 A I don't know for a fact when he was last examined.

20 Q And you're basing all of your conclusions, as to  
21 whether or not he is medically disqualified, on the  
22 basis of a letter that was over a year old?

23 A I based my conclusions at the time on the letters I  
24 got from Dr. Dubin and Dr. Salomon back in 1981.

25 Q Did the Command ask you to update that?

1 A They asked for this clarification in 1981. That was  
2 the last time they asked for a clarification, but  
3 Mr. Pletten has not been at work since then.

4 Q The proposed notice of removal in this matter, Doctor,  
5 was signed by Carma Averhart in November of 1981.  
6 That is some eight months -- that's actually Novem-  
7 ber 27th, '81. That is almost nine months after the  
8 last communication from Dr. Dubin. Is that correct?

9 A The last communication from Dr. Dubin was March 5,  
10 1981.

11 Q So between March 5 of '81 and November 27 of 1981,  
12 we know nothing more about Mr. Pletten's condition.

13 Did you consult with Mrs. Averhart?

14 A No, I did not.

15 Q Did she ask you whether this guy was disqualified medi-  
16 cally?

17 A No, she did not. I guess they used whatever information  
18 they had based on this letter of Dr. Dubin's in March  
19 of 1981.

20 Q Eight months stale with a man's career hanging in the  
21 balance? Don't you find that to be a little unusual?

22 A Not as far as the Government goes. These administrative  
23 things take a long time.

24 Q So you mean it's not unusual for the Government to go  
25 on --

1 A In my limited experience, this is not an unusual situa-  
2 tion.

3 Q Do you think it's right?

4 A Do I think it's right?

5 Q Yes.

6 A Do I think there's a justice in it?

7 Q Yes.

8 A No, unfortunately I think there is a lack of justice  
9 in a situation like that. Yes.

10 Q I appreciate that.

11 A But that's the way things go.

12 Q Not always. Not if I can help it, Doctor.

13 Let me ask you was any pressure  
14 put on you by management with regard to Mr. Pletten's  
15 case at all, just generally?

16 A No.

17 Q Was it a cause celebre in your office?

18 A No, it was not. The medical department was not --  
19 pressure was not put on us about Mr. Pletten.

20 Q Were you told about the air standards within the  
21 Command? Building 230 in particular?

22 A Our industrial hygienist, Mr. Braun, has done several  
23 air content studies of the buildings involved, and he  
24 told me that there is no health hazard, that we are  
25 meeting Army regulations regarding ventilation and

1 air changes.

2 Q Would that be Army Regulation 1-8?

3 A Yes.

4 Q I'm going to surprise you, Doctor, because Mr. Braun  
5 was in here to testify three and a half weeks ago. I  
6 believe I can get a copy of the transcript.

7 MS. BACON: I believe you have a  
8 copy of the transcript.

9 MR. COHEN: Hang on a second.  
10 Let me interrupt for a minute. Let me get the tran-  
11 script.

12 Off the record, please.

13 (Discussion off the record.)

14 MR. COHEN: Rather than belabor  
15 the time -- it's getting late -- let's go back on the  
16 record and I will, subject to my finding it in here --

17 Q (By Mr. Cohen): Dr. Holt, I'm going to tell you that  
18 it is my recollection from the testimony -- and I'm  
19 sure I can find it -- ah, here it is. I asked Mr. Braun  
20 whether or not Building 230 met the requirements of  
21 AR 1-8 and he had a peculiar answer. At Page 27 I  
22 asked him specifically, quote, "Truthfully, Mr. Braun,  
23 at 230,, were people getting ten cubic feet at all  
24 times?" That's the standard, parenthetically. He  
25 answered me for the record, "I would say not at all

1 times, but, generally speaking, they were getting it."

2 Then further on down the line I  
3 asked him, "The last time Mr. Pletten was there?"

4 And he answered, "The last time  
5 Mr. Pletten was there, I would say it was in the  
6 area of 70 to 90%."

7 And then I asked him, "That's  
8 a wide range, sir."

9 And he said, "No, it is just that  
10 way. It varies in 230."

11 And I said. "How would it vary?"

12 "It would be far more constant."

13 That's the end of the quotations  
14 from Mr. Braun. But basically what he said is that  
15 between 70 and 90% of the time, AR 1-8 is not met  
16 in Building 230. Does that surprise you?

17 A My understanding is it's being met 70 to 90% of the  
18 time, from his remarks.

19 Q Yes.

20 A No, it does not, because sometimes the ventilating  
21 equipment can on occasion malfunction. We know this  
22 can happen. And even when it does, no health hazard  
23 has been raised. This question has been studied  
24 many times

25 Q You mean to tell me that if the regulation is not met --

1 the question in Mr. Pletten's case is does the Army  
2 meet the regulation, and if the regulation is met,  
3 can Mr. Pletten work. Now, Mr. Braun has testified  
4 that they don't meet the regulation between 70 and 90%  
5 of the time. I'm sorry; that they meet the regulation  
6 70 to 90% of the time, so that in actuality they don't  
7 meet the regulation between ten and 30% of the time.

8 A As I just said, Mr. Pletten's physician says he needs  
9 a completely smoke-free environment; no ambient smoke  
10 at all.

11 Q That's what he said in March 1981. Let's get back  
12 to what Mr Braun said. He told you that the place  
13 complied with AR 1-8. Now he's telling me that the  
14 place does not comply all the time. Would you agree  
15 with that?

16 A Okay. But on the other hand he also says whether --  
17 it may not meet those exact specifications in AR 1-8,  
18 but even if it doesn't, there is no health hazard.  
19 He has assured me of this on many occasions.  
20 There may be a nuisance odor to that effect, but  
21 there is no health hazard.

22 Q There is no health hazard to people in general, but  
23 to people with a sensitivity, perhaps it would be a  
24 problem. Correct?

25 A Correct.

1 Q All right. So if the Army regulation were a hundred  
2 percent enforced, those people with sensitivities might  
3 not be bothered. Is that correct?

4 A They might not be. But apparently Mr. Pletten requires  
5 an environment we can't provide.

6 Q Wait a minute, now. The question is you haven't pro-  
7 vided the environment that the Army regulation requires  
8 a hundred percent of the time. Correct?

9 A Okay. Okay. Yes.

10 Q Have you made studies to comply with AR 1-8 on a  
11 hundred percent basis?

12 A The post engineer -- engineering facility is striving  
13 to do this all the time.

14 Q So they may make it yet?

15 A Sure. Sure. That's a theoretical possibility but  
16 mechanical failures happen all the time.

17 Q Excluding mechanical failures, I was asking -- and I  
18 could let you read it, but Mr. Braun had testified  
19 that the building itself just cannot make any better  
20 than that accommodation. Now, that being the case,  
21 he also testified that if they change around the  
22 duct work and put in some air-conditioning -- as a  
23 matter of fact, he said specifically if they air-  
24 conditioned the building, he could meet the AR with-  
25 out any problem. Has he told you that also?

1 A No, he did not tell me that; that they could do that.  
2 He did not, no.

3 Q Assuming from your conclusion, based on Mr. Braun's  
4 testimony that there represents no health hazard to  
5 people in general, how many people have you treated  
6 in your health clinic for sensitivity to cigarette  
7 smoke?

8 A I can think of one other employee who -- not treated  
9 but who complained.

10 Q Who would that be?

11 A It was a woman by the name of Slaughter.

12 Q Mrs. Slaughter?

13 A Mrs. Slaughter. Am I getting this right? Yes. I  
14 believe she worked in the building next to the dis-  
15 pensary area, which would be one of the old buildings,  
16 Building 1. But she had had a history of pulmonary  
17 tuberculosis and had chest --

18 Q Let me refresh your memory. What about a lady named  
19 Mary Ellen Dukes? Do you remember her?

20 A The name is familiar but I'd have to see the employee  
21 before I could put a name with the face.

22 Q Are you familiar with her case file?

23 A No, I am not.

24 Q If I were to tell you that you had treated her as a  
25 result of a complaint because of bronchitis affected

1 by cigarette smoke --

2 A Okay; that sounds familiar.

3 Q If I told you the name Mae Lonie Sweeney, a lady who  
4 suffered from amyotrophic sclerosis but who had com-  
5 plained about cigarette smoke in her working area, you  
6 do not remember that?

7 A I don't remember that case.

8 Q How about Evelyn Bertram?

9 A I know Evelyn Bertram, but she never complained to  
10 me about cigarette smoke.

11 Q Are you familiar that she had a worker's compensation  
12 case against the United States Army, that was granted?

13 A I did not know that.

14 Q Would it surprise you to know that?

15 A Yes, it would.

16 Q Mr. Hoover testified by letter. One of the letters  
17 that's in the record indicated that they had had  
18 several smoking-related complaints at the Command.  
19 Are you aware of that?

20 A Yes, I understand they have had smoking-related  
21 complaints. Specifically which ones, I don't know,  
22 but I understand they have.

23 Q If their complaints, Doctor, what's your role in  
24 that? Do you have to investigate them or try and  
25 find out if there's a medical problem?

1 A We send the industrial hygienist to investigate the  
2 work area, to see whether ventilation is adequate, to  
3 see whether there is some real hazard.

4 Q Do you go out and look?

5 A Yes, if Mr. Braun feels I ought to. Ordinarily I'm  
6 the only physician there. I pretty much stay in  
7 the main dispensary. I depend on Mr. Braun for the  
8 environmental studies.

9 Q Can smoking or smoke, ambient smoke, cause difficul-  
10 ties for a person at a later time in his life?

11 A That's controversial. You mean to somebody who is  
12 not a smoker but who is passively exposed to cigarette  
13 smoke? Some people think it's a possibility. There  
14 are opinions both ways.

15 Q What is the opinion of the United States Government  
16 via the Surgeon General of the United States?

17 A Regarding passive?

18 Q Yes.

19 A I don't know.

20 Q I will inform you that the Surgeon General of the  
21 United States recently issued a statement within  
22 the last four months that indicated that that type  
23 of contact with cigarette smoke may indeed then be  
24 hazardous to the health of non-smokers. Would that  
25 surprise you?

1 A It would not surprise me, no.

2 Q Okay. Owing to that, has the Command ordered you or  
3 have you undertaken any studies with regard to the  
4 workers to determine if they wanted cigarette smoke  
5 in the area or if it was a problem for them?

6 A No, we have not specifically undertaken studies of  
7 that kind. We have contacted the American Lung  
8 Association to put on programs regarding the hazards  
9 of smoking and enabling people who are smokers to  
10 stop. We've contacted the American Lung Association.  
11 They do come out regularly and put on programs.

12 Q What about non-smokers. Do you put on hazard programs  
13 as to how they can avoid -- what they should do?

14 A No, we do not at this time.

15 Q Do you provide counseling to non-smokers?

16 A We are always available for counseling on an individual  
17 basis.

18 Q Well, what did you tell Mr. Pletten?

19 A We told Mr. Pletten, first of all, to get a letter  
20 from Dr. Dubin and Dr. Salomon as to what he could  
21 tolerate in the way of -- what kind of environment  
22 he could tolerate and the conclusion from both  
23 physicians is he must have an absolutely tobacco-  
24 free environment. I also interpret that to mean  
25 industrial fumes as well as smoke tobacco smoke.

1 action.

2 Q Everybody who's testified here says that you're the  
3 one who makes the determination upon which this  
4 action is based.

5 A I make the determination about whether somebody is  
6 fit for duty; in other words, are they fit to be working  
7 that day. If they're not, they are sent off duty.

8 Q Is Mr. Pletten fit for duty?

9 A Not to my knowledge.

10 Q But your knowledge or the conclusions that you made  
11 are based on information of March 1981?

12 A Yes.

13 Q So you have absolutely no knowledge as to whether he's  
14 fit today?

15 A I don't know what his condition is today, no.

16 Q Did you know what his condition was on November 27  
17 when the letter proposing removal was made?

18 A No, I did not.

19 Q Mrs. Averhart didn't call you and say, "Hey, Doctor,  
20 what's the story with Leroy?"

21 A No.

22 Q General Stallings didn't call you before he fired  
23 the man and removed him from the service?

24 A No, General Stallings did not call me. Mrs. Averhart  
25 did not call me.

- 1 Q Did Ms. Bacon call you from the legal office to find  
2 out?
- 3 A No.
- 4 Q Did anybody from any higher command or did Mr. Hoover  
5 call you and say, "How's Leroy doing?"
- 6 A No, he did not.
- 7 Q Did he say, "Find out"?
- 8 A No, he did not.
- 9 Q Doctor, would you have liked the opportunity to find  
10 out?
- 11 A I would certainly appreciate progress notes about  
12 Mr. Pletten's condition if there's been a change, sure,  
13 if he were still an employee, if he were still working  
14 and there was still a question about him coming back.
- 15 Q I'm going to show you Agency's Exhibit 18. That's  
16 AR 1-8. Are you familiar with it?
- 17 A Vaguely.
- 18 Q I'd like you to read the document at least down to  
19 about the middle of the page so you can get an idea  
20 of what it's like.
- 21 A (Reading); "This regulation esta-  
22 blishes a uniform procedure for smoking  
23 in Department of Defense-occupied build-  
24 ings and facilities."
- 25 Q You can read it to yourself, Doctor. We don't need

1 it on the record. You can just read it so you can  
2 familiarize yourself with it.

3 All right, Doctor, you've read it  
4 briefly?

5 A Yes.

6 Q Now, who determines whether a person can smoke in  
7 that? Is there a conditional right to smoke?

8 A Yes, providing it doesn't cause discomfort or un-  
9 reasonable annoyance to non-smokers. I presume that's  
10 why they have non-smoking areas.

11 Q And who determines whether a non-smoker is discomfor-  
12 ted or annoyed?

13 A Well, the non-smoker himself would determine that  
14 and would make a complaint.

15 Q If Mr. Pletten says he's annoyed or discomforted, the  
16 person shouldn't smoke, right?

17 A Um-hum.

18 Q And that's the way the Army kind of puts it down.  
19 Correct?

20 A Um-hum. Um-hum.

21 Q So if Mr. Pletten wanted to walk into an office, he  
22 could call ahead and say, "Don't smoke. I'm coming  
23 over"?

24 A Presumably, yes.

25 Q Would that be okay for you?

- 1 A Yes, I could go along with that, sure.
- 2 Q And if the people didn't stop smoking, they would be  
3 violating the Army regulation, wouldn't they?
- 4 A I guess it could be interpreted that way.
- 5 Q Wouldn't that have been a solution to all this?
- 6 A It's certainly one possible solution.
- 7 Q Have Mr. Pletten call ahead and say, "Listen, I'm going  
8 to be coming into your area right now or in the next  
9 five minutes" --
- 10 A Mr. Pletten wanted a guarantee of a complete smoke-free  
11 work environment; no traces of smoke at all.
- 12 Q Wouldn't you think it reasonable -- and we discussed  
13 earlier, smoking is dangerous to most people -- wouldn't  
14 a reasonable human being want the best for all of his  
15 co-workers?
- 16 A Yes. Sure.
- 17 Q And doesn't everybody who works at the Tank Command  
18 have a duty, by regulation, to promote the efficiency  
19 of the service and to promote the completion of the  
20 task and the mission of the Command?
- 21 A I would think so.
- 22 Q And if Mr. Pletten saw you being harmed or people  
23 having discomfort, wouldn't he have a duty to raise  
24 that issue as to the banning of smoke in the Command?
- 25 A I can't answer that, because that sort of makes

1 Mr. Pletten an ambassador or crusader, anti-smoking  
2 crusader. That's the image I would get.

3 Q There's nothing wrong with him raising it.

4 A He could raise an issue. That's within his right.

5 He could raise an issue about something like that. But  
6 he has done that.

7 Q Is smoking a habit, Doctor?

8 A It can be. It can be a habit, yes.

9 Q It's not essential to life, is it?

10 A No.

11 Q In some parts of the Command you can't smoke; is  
12 that correct?

13 A That is correct.

14 Q What parts are those?

15 A Conference rooms, certain areas of the cafeteria,  
16 auditorium.

17 Q What about the computer area?

18 A I believe that's another non-smoking area.

19 Q We've had testimony that the computer area is a  
20 non-smoking area and the work area around it is non-  
21 smoking, so the smoke won't rust or harm the computer.  
22 Are you aware of that?

23 A I'm not specifically aware of that, but I think com-  
24 puters, being as sensitive as they are, there may be  
25 something to that.

1 Q So the United States Government is willing to ban  
2 smoking to protect a machine, but they aren't willing  
3 to ban smoking to save a human being; is that correct?

4 A Paradoxical. Yes.

5 Q It doesn't make a lot of sense, does it?

6 A I suppose when you consider the issues that would be  
7 raised by smokers. I suppose it's understandable.

8 If the Army suddenly decided to ban smoking completely --

9 Q The Army can tell its employees to do what they want,  
10 can't they? And they have to listen.

11 A I'm sorry?

12 Q If you get an order from your superior telling you to  
13 do something, you do it. Is that correct?

14 A That's correct.

15 Q If you get a guideline, you better have a good reason  
16 for deviating from the guideline. Is that correct?

17 A Yes; but there is an appeal process. You can appeal  
18 orders and so on; civilians can.

19 Q You can't strike.

20 A That's right.

21 Q Better not, because the President of the United  
22 States has recently fired about 12,000 people.

23 A True.

24 Q You can't do that. So if they tell you to do some-  
25 thing, including don't smoke on the job, you have

1 to do it; right?

2 A Um-hum.

3 Q Even the smokers who work in the computer area, if  
4 they're told it's a non-smoking area, they better not  
5 smoke?

6 A Um-hum. Under those circumstances, true.

7 Q So although there may be problems banning smoking, in  
8 terms of the cry of somebody like Mr. Hoover who is  
9 a couple-pack-a-day smoker, the head of the personnel  
10 office, they could do it?

11 A The Army could ban smoking.

12 Q Now, based upon what I've told you about Mr. Braun's  
13 testimony, is it still your position that AR 1-8 is  
14 complied with at the Command?

15 A Yes, it is my position that this is complied with  
16 because it says that DA recognizes the right of in-  
17 dividuals working in Department of the Army-occupied  
18 buildings to an environment reasonably free of con-  
19 tamination, and we have such an environment, to the  
20 best of my knowledge.

21 Q Let me have the document back so I can show you the  
22 second part.

23 The second part on Page 2 reads,  
24 as a general rule, a minimum ventilation of ten cubic  
25 feet of fresh air per minute per person is recommended

1 to remove smoke from work areas and provide a healthful  
2 environment. Now, Mr. Braun has said that at some  
3 times, between ten and 30% of the time, that ten cubic  
4 feet requirement is not met. Do you still say that  
5 it complies with 1-8?

6 A Did the Post Engineer, Mr. Lang, offer an opinion about  
7 that? You know, Mr. Lang has to do with the actual  
8 functioning of the ventilation equipment.

9 Q Mr. Lang, if I recall his testimony, said that's the  
10 first he's heard of it, but basically he still thinks  
11 it's healthy. I think that's about what his testimony  
12 amounted to. But Mr. Braun seems to have laid a new  
13 piece of information on all of us. Now, owing to that,  
14 are you still real sure that AR 1-8 is complied with?

15 A To the best of my knowledge, we have an environment  
16 reasonably free of contamination, yes.

17 Q But the ten cubic feet, you're not sure of?

18 A I cannot swear to that, no.

19 Q Now, what evidence do you base that conclusion on?  
20 How do you know that it's reasonably free from con-  
21 tamination?

22 A Mr. Braun's air content. He's done repeated air content  
23 studies and they continue to show no health hazards,  
24 no toxic levels of contaminants.

25 Q But he only tests for a couple of things, doesn't he?

1 A Yes. There are a lot of -- for example, the products  
2 of tobacco smoking -- tremendous number of products  
3 in tobacco smoke, that he could test for. The quantities  
4 are too minute. He does not have the capabilities to  
5 test for them.

6 Q He testified he did have the capability but they were  
7 not necessary.

8 A Mainly carbon monoxide is the one he has to test for.

9 Q That's about it?

10 A That's about it.

11 Q He testified he had this Draeger item, Draeger testing  
12 piece of equipment that he uses for his air samples  
13 and they have various tubes that are sensitive to  
14 various by-products.

15 A Okay; that's a piece of equipment I'm not familiar  
16 with. He may well be right about that. He has ex-  
17 pertise in that.

18 Q He didn't tell you about that?

19 A No.

20 Q He told me he could get tubes for almost anything,  
21 but that he didn't see the need. As a matter of fact,  
22 if I recall Mr. Shirock's testimony, he specifically  
23 said he didn't think it was necessary and would not  
24 order it. Do you understand that?

25 A Yes. Yes, we've talked this over and we felt that

1           it was not -- we didn't have to go beyond our testing  
2           in what equipment he had available.

3       Q     So really you don't know whether some of the contaminants  
4           in cigarette smoking are present or not?

5       A     That's true, we don't.

6       Q     How did you come to the conclusion that they were so  
7           minute that they shouldn't be tested for?

8       A     Studies. I can't honestly tell you which studies but  
9           studies have shown that these quantities are so minute  
10          and they're diluted by the ambient air so quickly.

11      Q     You can't see them?

12      A     You can't see them.

13      Q     Well, then, how do you know that they're so minute?

14      A     Well, where this has been studied, you know, under  
15          research conditions, these quantities have been found  
16          to be very minute.

17      Q     Can you name all the contents or the by-products from  
18          a burning cigarette?

19      A     No, I cannot.

20      Q     Do you know them? Did you research them for Mr.

21          Pletten's purposes?

22      A     No, I did not.

23      Q     Why not?

24      A     His doctors just said that he needed a smoke-free  
25          environment, and to isolate one particular component



1 Mr. Hoover has told you -- that several people have  
2 had smoking-related problems and they've expressed  
3 that there is a hazard to them, that they're discom-  
4 forted or annoyed or they have medical problems.  
5 You, Doctor, told me about a Mrs. Savage, I believe.

6 A Slaughter.

7 Q A Mrs. Slaughter. I misstated myself. Mrs. Slaughter  
8 said she had a problem with it. Mr. Pletten, every-  
9 body seems to think there's a hazard for him. Is  
10 that true?

11 A Yes. Yes.

12 Q And there's a hazard for all these other people. Isn't  
13 that also true?

14 A Yes. Yes.

15 Q Have you been asked --

16 A People smoking in their vicinity is hazardous to  
17 them.

18 Q Have you been asked for medical disqualification for  
19 any of those other people, including Mrs. Slaughter?

20 A No.

21 Q Why not, do you think?

22 A Again, medical disqualification is not the right term.  
23 It's fitness for duty. I determine whether somebody  
24 is fit for duty. Mr. Pletten is not because he requires  
25 this completely smoke-free work environment.

- 1 Q Mr. Pletten says he's willing to go back tomorrow.  
2 He can work even if there is enough smoke in there  
3 to fill up a chimney.
- 4 A That's the first I've heard about that.
- 5 Q If he had told you that directly prior to all this  
6 legal ---
- 7 A If his doctors had said that --
- 8 Q Mr. Pletten's comments make no difference?
- 9 A No. I want to have it from his physicians; They're  
10 treating him. I didn't know Mr. Pletten was his own  
11 physician.
- 12 Q It seems everybody's trying to tell Mr. Pletten what  
13 the interpretations of the letters are and it's a  
14 problem because -- let me explain the problem I have.  
15 If I were recommending for Mr. Pletten or if you were  
16 recommending for Mr. Pletten, I'd tell him he should  
17 avoid any smoke completely. Wouldn't you do the same  
18 thing?
- 19 A From what information I have from his physicians,  
20 that's correct, yes.
- 21 Q Okay. But then again, I'd tell that to any human being  
22 not just Mr. Pletten. Wouldn't you?
- 23 A No, because it might be that somebody would not be able  
24 to hold a job. Because people do smoke in this world.
- 25 Q No, I'd say if you can, avoid it at all costs.

1 A I'd tell that to anyone: Avoid it. If you can,  
2 avoid it. But if it means your job, I would not make  
3 that statement.

4 Q If it means your job, then there's a question in your  
5 mind. I understand that. But there are a lot of  
6 people who work under hazardous conditions at the  
7 Tank Command; isn't that true?

8 A That's true.

9 Q They're welders?

10 A That's true.

11 Q That's not a safe job. At least it's not as safe as  
12 being a personnel clerk.

13 A There are hazards in welding, yes.

14 Q There are hazards in being a fireman?

15 A True.

16 Q And there are health hazards for people who work in  
17 the air-conditioning, HISA? They're the maintenance  
18 people.

19 A That's correct.

20 Q There are hazards when you do backhoe work out at  
21 Selfridge?

22 A Um-hum.

23 Q These are all hazards?

24 A Job hazards, correct. Possible job hazards. Possible  
25 job hazards.

1 Q And these people undertake their positions knowing  
2 full well that they may get hurt.

3 A Yes.

4 Q And that if all things were equal and there were jobs  
5 available, there are safer jobs than the ones they  
6 hold?

7 A Correct.

8 Q And if you'd call their doctors I'm sure they'd have  
9 told you that it's a whole lot safer, for example --  
10 I guess making an extreme -- it's a whole lot safer  
11 to sit behind an office desk writing out letters for  
12 the personnel office than it is to test drive tanks  
13 on your tank track; correct? You have to answer audibly.

14 A Yes.

15 Q So Mr. Pletten is presented with a circumstance where  
16 he knows that he has a sensitivity to smoke. Correct?

17 A That's correct.

18 Q And you know he has a sensitivity and his doctors know?

19 A Yes.

20 Q Okay. But they never said in any of those letters,  
21 did they, that he could not work in the environment.  
22 Did they? They said that he could not -- he needed  
23 a smoke-free environment, but did they ever say this  
24 man should not work at the Tank Command as of this  
25 date and cannot work?

1 A They never specifically answered that question. They  
2 just said he needed a smoke-free work environment.

3 Q Was the question ever posed to them?

4 A Yes, the question was posed to his doctors: Can he  
5 work in the environment as we have it outlined? That  
6 was the question that was posed to them.

7 Q Do you have a letter to that effect?

8 MS. BACON: I would refer you to  
9 Agency Exhibit 23 which was introduced during Dr.  
10 Dubin's testimony yesterday.

11 MR COHEN: I was not present;  
12 I'm sorry.

13 Q (By Mr. Cohen): He didn't answer this question, did  
14 he, Doctor? The question where you said, "We need to  
15 know whether Mr. Pletten's medically determined require-  
16 ment for a smoke-free work environment precludes him  
17 from being able to work at this installation or whether  
18 Mr. Pletten is able to work in the work environment  
19 as it is provided here " he didn't directly answer, did  
20 he?

21 A No, he did not answer that question; that's right.

22 Q You asked it, didn't you?

23 A Yes, we did.

24 Q Probably the most important question in your letter,  
25 isn't it?

- 1 A Yes.
- 2 Q And he didn't answer it. Why didn't you write him  
3 back and say, "Dear Doctor: You have not answered  
4 the question"?
- 5 A Because he did tell us that Mr. Pletten required a  
6 completely smoke-free work environment and we did not  
7 have that environment. He was very specific about  
8 that. We thought that answered the matter.
- 9 Q You thought that it did, but are you sure?
- 10 A To the best of my knowledge, we do not have a smoke-  
11 free work environment. Mr. Pletten requires one.  
12 Therefore he cannot work in this environment without  
13 endangering his health.
- 14 Q Let's understand what we've got. We've got the  
15 one letter from Dr. Dubin that says one thing, we've  
16 got another --
- 17 A We've also got a letter from Dr. Salomon that says  
18 the same thing: He requires a completely smoke-free  
19 work environment.
- 20 Q You didn't write to Dr. Salomon for clarification,  
21 did you?
- 22 A Yes, we did.
- 23 Q Did you get a letter clarification?
- 24 A Yes, we did.
- 25 Q Is that in the file?

1 A Yes, it's right here: March 12, 1981.

2 Do you want me to read this into  
3 the record?

4 MR. COHEN: It's not in 23, is it?  
5 Did you include it in there?

6 MS. BACON: It can be included.

7 Q (By Mr. Cohen): This is the letter you wrote to Dr.  
8 Salomon?

9 A Um-hum.

10 MR. COHEN: Let's make this Agency  
11 24.

12 MS. BACON: Okay.

13 (Letter stamped 25 February  
14 1981 marked for identification  
15 as Agency Exhibit 24.)

16 Q (By Mr. Cohen): Now, you're looking at what date  
17 letter from Dr. Salomon?

18 A March 12th, 1981.

19 Q March 12th or March 17?

20 A March 12th, 1981.

21 Q I see March 28th, Doctor, and I see March 17th.

22 MS. BACON: Right after Dr. Dubin's  
23 letter of March 5th.

24 MR. COHEN: Ah. Okay.

25

1 complete, perhaps, to get his understanding as to  
2 whether or not he could work there, your ultimate  
3 question?

4 A I really think we had enough information to go on at  
5 that point. I really do. That's my feeling.

6 Q Now, you sent Mr. Pletten for a fitness-for-duty  
7 examination to a psychiatrist. Is that correct?

8 A Yes. It was ordered on the basis of a panel of three  
9 individuals who all agreed that Mr. Pletten needed  
10 psychiatric evaluation.

11 Q Who was on that panel?

12 A The chaplain, Chaplain Barbernitz, Catholic chaplain;  
13 David Smith, who was the alcohol and drug abuse  
14 coordinator, and myself.

15 Q Mr. Hoover didn't have any input into that?

16 A Not to my knowledge.

17 Q He did not recommend it?

18 A No, he did not.

19 Q Based upon your three evaluations?

20 A Yes.

21 Q What prompted you to think that he needed a psychia-  
22 trist?

23 A Mr. Pletten's supervisor, Mrs. Averhart, was very  
24 concerned about his behavior and his job performance.  
25 He was spending a great deal of time writing up

1           personal grievances. He was not getting his assignments  
2           done. He seemed to be emotionally on edge and she  
3           wondered about his emotional fitness for duty.

4   Q       So she's the one who actually initiated it?

5   A       Based on his on-the-job performance and behavior, she  
6           initiated it.

7   Q       Is it normal that you would think that a person who  
8           writes a lot of grievances is psychiatrically impaired,  
9           sir?

10  A       When an individual writes as many grievances as Mr.  
11           Pletten did, files as many, that question would be  
12           raised in my mind, but I would need more than that  
13           to go on to make a recommendation for psychiatric  
14           evaluation.

15  Q       You didn't personally observe Mr. Pletten during these  
16           periods of time, did you?

17  A       I observed him when he came into the clinic in December  
18           of 1979. He was emotionally upset then.

19  Q       You didn't know it, though?

20  A       Yes, it's in the record.

21  Q       You noted it after the initial bout with the cigarette  
22           smoke?

23  A       Yes, but he came back within a period of a week, two,  
24           three weeks, and was very emotionally upset.

25  Q       Was it partially because people were blowing smoke in

- 1 his face?
- 2 A No doubt.
- 3 Q Do you think he was justified in being upset?
- 4 A Yes, but to that degree and to have some paranoid  
5 delusions, perhaps I would question that.
- 6 Q Are you a psychiatrist, sir?
- 7 A No, I'm not a psychiatrist.
- 8 Q How did you come to the conclusion that they were  
9 paranoid delusions?
- 10 A They were delusions. We do have some exposure to  
11 psychiatric training in medical school, and I'm supposed  
12 to make occasional determinations whether somebody has  
13 an emotional disorder.
- 14 Q So you referred him to a psychiatrist?
- 15 A Yes.
- 16 Q Dr. David Schwartz?
- 17 A Correct.
- 18 Q And we've taken his deposition this afternoon. He  
19 found him to be absolutely free of psychological  
20 problems.
- 21 A That's my understanding.
- 22 Q You read his letter?
- 23 A Yes.
- 24 Q You were satisfied?
- 25 A Yes.

- 1 Q (By Mr. Cohen): It says, in reference to your letter  
2 in which you inquire about my meaning of a smoke-free  
3 environment, I would be happy to try to clarify the  
4 issue. And then he defines, if I'm correct, what smoke-  
5 free means. But he, too, did not say that Mr. Pletten  
6 could not work in the environment that you presented at  
7 the time. Is that correct?
- 8 A Yes, but we indicated that environment was not smoke  
9 free.
- 10 Q Well, no, but it doesn't say here that Mr. Pletten  
11 can't work there. He didn't answer it either, did he?
- 12 A No, he did not, but he said Mr. Pletten requires a  
13 smoke-free work environment. We indicated the environ-  
14 ment was not smoke-free. There was industrial pollu-  
15 tion, there was ambient --
- 16 Q But he answered your letter of February 25 where you  
17 write him and you say: Gee, can this guy work here,  
18 and he writes you back and redefines smoke-free for  
19 you. He didn't answer your question, did he?
- 20 A No.
- 21 Q So you interpreted the letter as it stood.
- 22 A Yes.
- 23 Q Because you didn't have anything more to go on.
- 24 A Correct.
- 25 Q Do you think it would have been a little bit more

1 Q Now, you've got this problem with Dr. Dubin. Dr. Dubin  
2 doesn't make himself clear in response to your questions.

3 Dr. Dubin is Mr. Pletten's doctor

4 A Yes. And Dr. Salomon. I think they both are. I think  
5 Dr. Dubin is a consultant and Dr. Salomon is his per-  
6 sonal family physician.

7 Q Why didn't you send him for a fitness-for-duty examina-  
8 tion to a specialist in the lung area?

9 A Dr. Dubin is a specialist in the lung area.

10 Q He didn't give you an answer to your question. Perhaps  
11 you would have done well with another opinion. Don't  
12 doctors ask for second opinions?

13 A Yes, but we're limited in the number of opinions we can  
14 get. We relied very much on Dr. Dubin's expertise.

15 Q Why couldn't you get more opinions? Why are you limited?

16 A Well, it was just my feeling, my medical judgment that  
17 we had enough information. I felt that I had enough  
18 information to proceed.

19 Q In view of these inconsistencies in Dr. Dubin's own  
20 writing?

21 A I didn't feel there was any great inconsaistency. Dr.  
22 Dubin, when he had stated the matter, on all occasions  
23 had stated the man requires a smoke-free work environ-  
24 ment.

25 Q Except on the 1-21-81 letter.

- 1 A Yes. But I wonder --
- 2 Q Wait. What does he say in 1-21-81? He states he  
3 needs one reasonably free of smoke. That's not smoke-  
4 free, is it?
- 5 A Yes, but then we went back for clarification on the  
6 25th and wrote him and said: "What do you mean by  
7 this?"
- 8 Q Did he flip-flop again?
- 9 A We feel that his environment has to be completely and  
10 utterly free from smoke, tobacco smoke and its consti-  
11 tuents.
- 12 Q Then on 1-21-81, he said it was reasonably smoke-free.  
13 That doesn't make sense.
- 14 A 1-21-81 is prior to March 5th, '81.
- 15 Q I understand that. He's changed his mind, hasn't he,  
16 apparently?
- 17 A I don't think so.
- 18 Q You don't think so?
- 19 A That's not my interpretation.
- 20 Q You don't think there's any doubt at all?
- 21 A No, I don't think there's any doubt that Dr. Dubin  
22 feels Mr. Pletten needs a completely smoke-free work  
23 environment.
- 24 Q This is the same man who has not answered your question,  
25 he has seemingly -- at least from my interpretation,

1 perhaps not yours, Doctor -- contradicted himself in  
2 one of the notes just prior to your determination, and  
3 you didn't want to get another opinion?

4 Now, were you bound by the Army  
5 from getting another one? Do you have a budget?

6 A No, I was not bound by the Army. The budget comes  
7 from personnel. I felt I had enough information to  
8 make a decision that Mr. Pletten was not fit for duty.

9 Q Had you examined him just prior to this or did you  
10 rely --

11 A No, I relied on Dr. Dubin's examination.

12 Q But after that, subsequent to March, nothing was done,  
13 was it?

14 A No, Mr. Pletten was off duty. He was off duty as  
15 of March 1980, I believe.

16 Q You believe without pay?

17 A He was on sick leave and then he was on -- eventually,  
18 I guess he was on leave without pay. I would think he  
19 wouldn't have had that much sick leave.

20 Q What evidence do you have that Dr. Dubin was Mr.  
21 Pletten's doctor other than the fact here that he  
22 examined him?

23 A Well, I don't know. We have to -- I have a --

24 Q Who referred him? Did you refer him, by chance,  
25 to Dr. Dubin?

1 A Mr. Pletten said he would like to go to Dr. Dubin for  
2 his fitness-for-duty examination. Mr. Pletten was  
3 the one who suggested Dr. Dubin.

4 Q Did you tell him that it was a fitness-for-duty examina-  
5 tion?

6 A Yes, he was told that.

7 Q Where is a letter informing him?

8 A I don't know that I have that letter. Personnel sends  
9 the letter.

10 Q What did you tell him?

11 A That he is going to have a fitness-for-duty examina-  
12 tion.

13 Q And that he has to see Dr. Dubin?

14 A Yes. He said he wanted to see Dr. Dubin.

15 Q Wait a minute. Does that --

16 MR. COHEN: Off the record.

17 (Discussion off the record.)

18 MR COHEN: Mrs. Bacon, I just  
19 asked you off the record, I'll ask you on the record:  
20 Does such a letter directing Mr. Pletten for a fitness-  
21 for-duty examination to Dr. Dubin exist?

22 MS. BACON: To my knowledge, it  
23 does not.

24 Q (By Mr. Cohen): Dr. Holt, where are we at this point?

25 A This fitness-for-duty examination was on the recommendation

1 of Dr. Chloupek, the DARCOM surgeon, in telephone con-  
2 ference in December 1979. He said because of this  
3 condition requiring a smoke-free work environment, we  
4 should get a fitness-for-duty examination on Mr.  
5 Pletten.

6 Q You said Mr. Pletten knew this was a fitness-for-duty  
7 examination?

8 A He was told that, yes.

9 Q By whom?

10 A I told him verbally. I'm sure I did. The personnel  
11 informs people who are going to have a fitness-for-duty  
12 examination because personnel funds the examination.  
13 They fund it. It doesn't come out of the employee's  
14 pocket.

15 Q Isn't it a little unusual that there's no documentation  
16 on that?

17 A Yes, it is a little unusual.

18 Q They certainly documented his psychiatric evaluation,  
19 didn't they?

20 A Letters advising employees that they're going to have  
21 a fitness-for-duty examination don't get into the  
22 medical record. That's a personnel matter.

23 Q I see Is it possible Mr. Pletten didn't -- he may  
24 have heard you but he might not have understood or  
25 remembered?

1 A I think he understood very well.

2 Q Did he have a choice as to who he was going to see?

3 A He had a choice, right? He wanted to see Dr. Dubin.

4 Q Who were the members of the panel that were a choice?  
5 Who could he have chosen?

6 A We didn't even -- we did not -- we just let him go to  
7 Dr. Dubin because he was an expert. There was no con-  
8 flict there.

9 Q How do you know he was an expert?

10 A Well, we did some investigation of him. We found he  
11 was an allergist, immunologist and chest specialist  
12 in the medical clinic. We checked his qualifications.

13 Q Let me understand that. Let's go to another topic.  
14 Employees of the Tank Command, in your estimation,  
15 have to tolerate some smoke?

16 A Yes, I think they have to be able to.

17 Q Are they informed of this when they start working for  
18 the command?

19 A Not to my knowledge.

20 Q Do you think it would be wise to tell employees that  
21 if you're going to work here, you have to experience  
22 some smoke?

23 A It would be wise to tell them: If you have a problem  
24 being able to tolerate some smoke, you had better get  
25 some advice from your personal physician. It would be

1 wise to tell them that.

2 Q Did they tell Mr. Pletten that before he started work?

3 A I don't believe they did, but I don't know for a fact.

4 Q What steps had the Command taken to try and prevent  
5 discomfort to people in general as to smoking, if you  
6 know of any?

7 A I don't know, other than making sure that the non-smoking  
8 areas are policed and enforced and the regulations  
9 against smoking are enforced. Beyond that, I don't  
10 know.

11 Q Do you know for a fact that you can't provide a smoke-  
12 free environment there?

13 A Do I know for a fact that we can't?

14 Q Yes.

15 A To the best of my knowledge, we cannot. In my con-  
16 ferences with Mr. Braun and -- we cannot. We do not  
17 have the capability of completely eradicating all  
18 traces of ambient tobacco smoke.

19 Q Mr. Braun said that they probably could but it would  
20 cost a lot. What do you say to that, sir?

21 A I have no reply to that.

22 Q Okay.

23 Now, we're all talking about  
24 Mr. Pletten's asthmatic condition. Is Mr. Pletten  
25 unable to work with or without medication?

- 1 A I don't know whether he currently requires medication.  
2 At the time, I assume he required medication.
- 3 Q And he had been working for how many years before that?
- 4 A Mr. Pletten started to work in TACOM in August of  
5 1965.
- 6 Q For ten years, he worked at that Command and did not  
7 have any reason -- or was not disabled, was he?
- 8 A Not to my knowledge. So all of his difficulties  
9 started in December of '79, according to the medical  
10 record. His medical record really began then.
- 11 Q But did you ask, in your letters to Dr. Dubin and  
12 Dr. Salomon, as to whether he could work in a smoke  
13 environment with medication or without?
- 14 A No, I don't believe that question was raised.
- 15 Q Now, if a person has to take medication, they're still  
16 allowed to work at the command, aren't they?
- 17 A Certainly.
- 18 Q Unless, of course, it's something --
- 19 A If they were a driver and were taking medication,  
20 heavy tranquilizing medication, that would present  
21 a problem.
- 22 Q But general medication, they can take?
- 23 A Right.
- 24 Q But not like air traffic controllers or something  
25 like that?

1 A Right.

2 Q That being the case, wouldn't it have been -- well,  
3 strike that.

4 Would it have been more appropriate  
5 to ask, one, can he work without medication in this  
6 environment or, two, can he work with medication? What  
7 did you presume their answers were in those letters?

8 A I don't feel that's relevant because even if he re-  
9 quired medication, to continue to expose him to  
10 tobacco smoke is hazardous. He might have medica-  
11 tion. He might be able to suppress his symptoms, but  
12 they're still exposing him to the tobacco smoke, which  
13 in this case is a severe irritant and he's reacting  
14 to it. You can suppress symptoms with all kinds of  
15 medication, but the disease continues to progress.

16 Q You just said that some people undertake jobs that  
17 they know are potentially hazardous. You can't  
18 legislate his life, can you, Doctor?

19 A No, you can't. That's true.

20 Q If he wants to take the risk, don't you think he should  
21 be able to?

22 A His doctors indicated that he requires a smoke-free  
23 work environment. I have nothing more from them saying  
24 that he can work in this environment. I didn't know  
25 that he wanted to take the risk.

1 Q If the Government puts up a circumstance where Mr.  
2 Pletten works and later on in life he has a problem,  
3 does the Government have a worker's compensation program,  
4 doesn't it for job-related injuries?

5 A That's right.

6 Q An occupational safety and health program. If that's  
7 the case, then Mr. Pletten some day, God forbid, 50  
8 years from now but working in that personnel office  
9 for all those years then develops a real severe hacking  
10 cough, then he could make a claim to the worker's  
11 compensation people. Correct?

12 A This condition predated his employment. We have that  
13 on record, that his asthma goes back to childhood.

14 Q But the aggravation of it didn't come up until 1979.

15 A And I would not knowingly approve an employee for a  
16 job where I know his condition would be aggravated  
17 by the environment. That's what I would be doing. I  
18 can't do that.

19 Q But he was in good shape up until '79 and then a  
20 lot of people started having problems around that  
21 time, too, with the cigarette smoke, most particularly  
22 with regard to Building 230; isn't that correct?

23 A I don't know that for a fact.

24 Q Well, the other new buildings -- you have new buildings  
25 on the Command?

- 1 A Two new buildings.
- 2 Q The personnel office is where?
- 3 A In 230.
- 4 Q Still in the old building?
- 5 A Still in the old building.
- 6 Q Is the old building a musty, dank place?
- 7 A No, it's not.
- 8 Q Is there less circulation in there than in the other  
9 two buildings?
- 10 A It's not a closed system like the other new buildings  
11 are and it's not completely -- parts of it are air-  
12 conditioned, but the whole building is not.
- 13 Q Even the new ones?
- 14 A The new ones are air-conditioned, yes, completely.
- 15 Q Well, let's see: We've gone over this ground a lot,  
16 but let me see if we can summarize it, Doctor. He  
17 can work in the area with medication, for example?
- 18 A Not to my knowledge.
- 19 Q Not to your knowledge as of March of '81?
- 20 A As of the time, as of these last years, yes.
- 21 Q Okay. But you figured before that with medication,  
22 he could continue to work. He may be irritated --
- 23 A I did not say that.
- 24 Q Let me ask you: He could continue to work? He  
25 worked for a number of months in 1979 before this

- 1 whole thing started, didn't he, even though he may  
2 have had congestion and problems?
- 3 A But he was so sensitive to tobacco that he, in spite of  
4 the medication -- it did not control his symptoms.
- 5 Q What did the Command do? Did the Command try and tell  
6 people not to smoke anywhere near him?
- 7 A I'm sure that's one of the things they did. They tried  
8 to isolate his desk away from any area where he would  
9 be encountering smoke. They tried to erect barriers,  
10 screens --
- 11 Q But they were not closed off to the ceiling or floor,  
12 were they?
- 13 A That's probably correct?
- 14 Q It doesn't make much sense, does it?
- 15 A It was an attempt to accommodate him.
- 16 Q If the top or the bottom are open to smoke, which  
17 usually rises or falls with heat, then that wouldn't  
18 make much sense, would it?
- 19 A They tried to accommodate his handicap, yes.
- 20 Q They did in that fashion?
- 21 A Yes.
- 22 Q Did they do anything else, to your knowledge?
- 23 A Not to my knowledge, no.
- 24 Q Did you recommend anything else?
- 25 A No. No, I did not recommend anything else.

1 Q Were you asked to recommend anything else?

2 A They raised a question whether -- the question was  
3 asked could Mr. Pletten be fitted with a face mask  
4 or respirator.

5 Q A what?

6 A A face mask.

7 Q Were they serious about it?

8 A Yes, they were serious.

9 Q Do you think it was an unusual concept?

10 A I guess from what I've seen at other situations, such  
11 a remedy has been suggested for individuals. It's  
12 not a practical one, yes. In other words, the mask  
13 would screen out ambient tobacco smoke.

14 Q Who investigated Dr. Dubin's credentials in your office?

15 A Mrs. Jones, who is our chief nurse.

16 Q Did you see the reprimand from -- excuse me; let me  
17 not clarify it as that -- the directive from Mr. Hoover  
18 to Ms. Jones with regard to her treatment of Mr. Pletten?

19 A Yes. She wrote a dispensary passage, if this is what  
20 you're referring to, that he should go off duty because  
21 he was emotionally upset and exposed to cigarette smoke.  
22 Mr. Hoover said that he needed a diagnosis but the nurses  
23 under my direction do this all the time. I can't see  
24 every employee and determine that they should go off  
25 duty and see their personal physician. I may be

1 elsewhere occupied, and they just use their clinical  
2 judgment.

3 Q You must understand that Mr. Pletten has gone through  
4 a tremendous amount with regard to grievances and  
5 other things. Just as an overt matter, wouldn't it seem  
6 to you or to Mr. Pletten that he was being picked on  
7 by Mr. Hoover in that regard?

8 A That's not my interpretation of this memorandum that  
9 we got from Mr. Hoover. That was not my interpretation,  
10 no.

11 Q Do all asthmatics need a completely smoke-free work  
12 environment?

13 A I don't believe they do. I believe there are some  
14 individuals who can tolerate some minimal smoke.

15 Q Did you do medical research on the issue of asthma?

16 A Did I? Not as a physician, no.

17 Q Why not?

18 A You mean in the course of my training and so on?

19 Q No, in the course of your discussion with Mr. Pletten.  
20 Did it seem to be a pivotal issue as to understanding  
21 what Mr. Pletten was all about? He had asthma;  
22 correct?

23 A Yes.

24 Q Did you consult any medical texts as to the degree  
25 of smoke that asthmatics can stand in general?



- 1 Q That's the problem, Doctor. You just told me a couple  
2 of minutes ago that he was directed to go to Dr. Dubin  
3 for a fitness-for-duty examination.
- 4 A Yes.
- 5 Q Now you tell me he's Dr. Dubin's patient?
- 6 A Yes, it's my understanding he was his patient.
- 7 Q He was told: You have to go to a doctor for a fitness-  
8 for-duty examination; you can go to Dr. Dubin.
- 9 A He said he wanted to go to Dr. Dubin.
- 10 Q Did he come up with a name?
- 11 A Yes, Mr. Pletten came up with a name. I didn't come up  
12 with a name. All we did was investigate to make sure  
13 Dr. Dubin was qualified. Mr. Pletten came up with  
14 Dr. Dubin's name.
- 15 Q You don't suggest names to the employees?
- 16 A No, no. In a case like this, they can go to their own  
17 personal physician if he's qualified.
- 18 Q Other than Dr. Dubin's letters, have you asked him if  
19 he's treated Mr. Pletten on a continual basis?
- 20 A No, I did not ask Dr. Dubin that.
- 21 Q He may have only seen him once, correct?
- 22 A Not to my knowledge. On the basis of the letters,  
23 he's seen him at least two or three times.
- 24 Q Total? In a period of three years?
- 25 A I don't know that. I don't know how often he's seen

1 Mr. Pletten.

2 Q But if you base it on the letters, all you know is  
3 that he's seen him two or three times in three years,  
4 and on that you're saying eventually that he is not  
5 fit for duty.

6 A I'm saying he is not fit for duty because both Dr.  
7 Salomon and Dr. Dubin say he needs a completely smoke-  
8 free work environment and they were very specific  
9 about that.

10 Q But, Doctor, wouldn't you agree with me that the facts  
11 upon which that is based, your conclusion, although it  
12 may have been based accurately on the facts that were  
13 in front of you, is a little thin in support?

14 A I don't think so. I think that I had the medical in-  
15 formation that I needed to find him not fit for duty.

16 Q If I were to tell you that Dr. Dubin, on testimony --  
17 and although I did not take his testimony yesterday, I  
18 am informed, although there are two opinions on this --  
19 that Dr. Dubin said that Mr. Pletten could work, what  
20 would that do for you?

21 A I'd be very surprised.

22 Q Would it change your opinion?

23 A I would like to see Dr. Dubin's written evaluation,  
24 upto-date evaluation of Mr. Pletten's condition. I  
25 really would like to see it.

1 Q If Dr. Dubin in his testimony said yes, this man can  
2 work; I don't care what the environment is, he can  
3 go back to work --

4 A And Dr. Dubin is willing to state that?

5 Q I don't know if he has.

6 A His condition will not be aggravated by our environment,  
7 occasional ambient tobacco smoke? If he will say  
8 that, then I can return him to duty.

9 Q You mean there is a pre-condition? It's not so much  
10 that he can work, the question that you're posing is  
11 will it be aggravated at some time in the future?

12 A No, I'm not saying the future. Will his condition be  
13 aggravated by our work environment.

14 Q How come Mr. Pletten wasn't found disabled by the  
15 office of personnel management?

16 A I don't know. I have nothing to do with that.

17 Q You have nothing to do with that?

18 A I have nothing to do with the office of personnel  
19 management. They make decisions about disability  
20 retirement, I have no way of predicting how they're  
21 going to decide.

22 Q If they say he's not disabled for retirement purposes,  
23 then shouldn't you employ him?

24 A But we can't with this information we have from Dr.  
25 -- you know. I'm not deciding whether somebody gets

1 employed or whether they get separated, but I'm saying  
2 he's not fit for duty because the information I have  
3 from his physician says he requires a smoke-free work  
4 environment.

5 Q Doctor, I don't want to minimize your role in this.  
6 If Mr. Pletten gets dismissed, you, sir, were the man  
7 who dismissed him, in effect, because you said he  
8 isn't fit for duty. Now, I want to understand as to  
9 the issue of an aggravation of his condition. Is  
10 that a prerequisite? He must not be exacerbated in  
11 any way by the environment as a precondition to his  
12 return?

13 A No, I wouldn't put that precondition in. I would just  
14 want a statement that he can tolerate the work environ-  
15 ment as is.

16 Q I think all the doctors have said he could tolerate  
17 it. What do you mean by "tolerate"? Define your term  
18 here. I want to be very precise about this.

19 A That he can function and his condition won't get worse.

20 Q Can you predict that any human being won't get hurt  
21 or killed or get worse?

22 A We have to make predictions in medicine. It's not  
23 an exact science. We have to predict on the course of  
24 an illness.

25 Q How can you predict?

1 A You know somebody who's treated as being an asthmatic  
2 and he has an asthmatic condition that is extremely  
3 sensitive to cigarette smoke, it's a safe assumption  
4 that if you continue to expose him to cigarette smoke,  
5 he will get worse.

6 Q Isn't it true that some asthmatics become healthy  
7 after a period of time?

8 A Become healthy?

9 Q I mean they lose their asthmatic tendency.

10 A Children outgrow asthma, sure.

11 Q Adults don't?

12 A I really don't know whether adults do or not. It's  
13 my understanding that when an adult develops asthma,  
14 this is a serious thing and it usually doesn't subside  
15 spontaneously. There may be cases on record where it  
16 has but --

17 Q You really don't know?

18 A I really don't know, that's right.

19 Q So if you really don't know, isn't it possible that  
20 Mr. Pletten will get better?

21 A It's a possibility.

22 Q Did you ask his doctors what is his prognosis for  
23 his asthma, which is the precursor to all of this?

24 Did you ask Dr. Dubin that?

25 A No, we did not. We asked him could he tolerate the

1 work environment. We did not ask him about his prog-  
2 nosis.

3 Q But logically --

4 A It's a safe assumption that if he's continued to be  
5 exposed to cigarette smoke, his prognosis would not  
6 be good. I mean I can make that assumption.

7 Q I understand that, but in the interim, for example,  
8 he's been off work for a continued period of time.  
9 The question was asked earlier, and much earlier in  
10 testimony, as to why this action and why now. The  
11 answer was because we had to do something, essentially.  
12 If you knew that Mr. Pletten, by being off for another  
13 year, would be much better and his asthma would be  
14 essentially eliminated, wouldn't that give you cause  
15 to recommend to the legal office: Don't do this.  
16 This man may become a viable employee again?

17 A Although I would recommend that there is a possibility  
18 he could return to duty --

19 Q Is there a possibility Mr. Pletten could return to  
20 duty?

21 A I don't know, because I haven't seen Dr. Dubin's or  
22 Dr. Salomon's current medical evaluation.

23 Q Okay. So we don't know about Mr. Pletten, essentially?

24 A Right now, I don't.

25 Q What about the Michigan Employment Security Commission?

1 There was a ruling that, subject to appeal, noted  
2 for Mrs. Bacon's purposes, that Mr. Pletten was ready  
3 and able to work for purposes of the statute.

4 MS. BACON: Objection. There has  
5 been no ruling by the Michigan Employment Security  
6 Council on Mr. Pletten based toward anything in that  
7 statute dealing with ready, willing and able to work.

8 MR. COHEN: I believe for the record  
9 the Michigan Employment Security Commission made a de-  
10 termination that Mr. Pletten is not disqualified for  
11 unemployment benefits under the act.

12 MS. BACON: That has been their  
13 decision so far. They have made absolutely no ruling  
14 on Mr. Pletten's being ready, willing and able to work.

15 MR. COHEN: I will make an offer of  
16 proof and a request for the presiding official to take  
17 official notice that pursuant to MCLA 424, that concerns  
18 the Michigan employment security law, that in order  
19 for a person to qualify to collect unemployment benefits  
20 in this state, one has to be ready, willing and able to  
21 work. Now, as to what other determination may arise  
22 out of the litigation, Mrs. Bacon, that is for you to  
23 inform the presiding official. But I hereby ask the  
24 presiding official to take official notice, and I  
25 will make a copy of that pertinent statute available

1 for the presiding official and for the court reporter  
2 so that it can be included in the record.

3 MS. BACON: I will object to the  
4 submission of any such evidence in that it is totally  
5 irrelevant to this particular action that we have  
6 before us and would point out to the presiding official  
7 that the Michigan Unemployment Security Commission has  
8 never, to date, made a determination on whether or not  
9 Mr. Pletten is ready, willing and able to work for  
10 purposes of unemployment compensation benefits.

11 MR. COHEN: But they have, Mrs.  
12 Bacon, isn't it true, made a determination that he  
13 is not disqualified for collecting unemployment bene-  
14 fits?

15 MS. BACON: To my knowledge, Mr.  
16 Pletten has received unemployment benefits.

17 MR. COHEN: He has received unem-  
18 ployment benefits?

19 MS. BACON: To my knowledge.

20 MR. COHEN: Okay. I will provide  
21 a copy of the statute for the record.

22 Q (By Mr. Cohen): Well, now that we've gone through all  
23 that, Doctor, let's get back to you. Owing to that,  
24 does it surprise you that Mr. Pletten has been collecting  
25 unemployment benefits?

1 A Does it surprise me?

2 Q Yes.

3 A It doesn't surprise me, no.

4 Q Why not? What is your understanding of the unemployment  
5 law?

6 MS. BACON: Objection. That's  
7 irrelevant.

8 A I have no knowledge. Really. It seems to me that  
9 politics seems to have a lot to do with it, but I  
10 don't know.

11 Q (By Mr Cohen): Now, one of the things you said  
12 prompted Mrs. Averhart to request this panel to decide  
13 on a fitness for duty psychiatrically for Mr. Pletten  
14 was Mrs. Averhart's contention that Mr. Pletten's  
15 work had fallen off. Correct? Were you familiar  
16 with the fact that Mr. Kator had given Mr. Pletten  
17 a wage grade increase at the same time Mrs. Averhart  
18 was making this request?

19 A No, I wasn't. I wasn't aware of that.

20 MS. BACON: I will object to the  
21 question as not being established.

22 MR. COHEN: All right. I believe  
23 it is established by the personnel record of Mr.  
24 Pletten, which I believe we requested as being part  
25 of the record originally, and I thought -- at least



1           determination and I have to evaluate it. I have  
2           to see the employee and see whether or not it's war-  
3           ranted.

4       Q     How many grievances did Mr. Pletten write, to your  
5           knowledge?

6       A     To my knowledge? The last figure I heard was a  
7           hundred and fifty.

8       Q     But you didn't have any independent knowledge of  
9           that?

10      A     No.

11      Q     During the time this was going on, when Mrs. Averhart  
12           said he's writing all these grievances, did you know  
13           how many he had written then?

14      A     No, I did not. But there were many.

15      Q     More than ten?

16      A     More than ten. I think it was in the vicinity of  
17           a hundred, so I had heard.

18      Q     You didn't check?

19      A     No, I didn't.

20      Q     Why didn't you? Mrs. Averhart was making some pretty  
21           nasty statements saying essentially that --

22      A     What she said was that a great deal of time was in-  
23           volved in writing up grievances. We weren't concerned  
24           with the number of grievances, but the fact that his  
25           time on the job was concerned with writing up grievances.

1 Q Isn't a person entitled to official time to write  
2 grievances?

3 A I don't know.

4 Q Personnel in your department, do you limit them in  
5 writing grievances?

6 A That matter has never come up. Someone has never

7 Q Someone has never written a grievance?

8 A In my department, no.

9 Q But if they wanted to, you wouldn't stop them?

10 A No. No, but if they weren't performing their duties,  
11 I would raise a question about it.

12 Q But you would go through proper sources, the personnel  
13 department, to find out if you could --

14 A That's right.

15 Q Because you're not familiar with the contract?

16 A That is right.

17 Q Is it possible that Mr. Pletten's sensitivity to  
18 cigarette smoke built up from 1969 to the date he  
19 had the problem in 1979?

20 A It's possible.

21 Q That that would have been from the job. It would  
22 have been a job-related injury, would it not have  
23 been, if that were the case?

24 A Not necessarily. Why somebody suddenly becomes  
25 allergic after years of no reactivity, who knows?

1 Q Is there a concept that you work with of an aggrava-  
2 tion of a pre-existing ailment?

3 A Yes. If somebody has a condition and they have an  
4 occupational exposure which aggravates that condition,  
5 somebody with a chronic back, chronic low back injury,  
6 and they go ahead and do some lifting, this might  
7 aggravate that condition.

8 Q The Tank Command doesn't stop people with chronic bad  
9 backs from being employed at the Command, do they?

10 A If this was known at the time they applied for employ-  
11 ment, the question would be raised, but if they  
12 developed a bad back after they'd been employed, we  
13 try to accommodate their handicap.

14 Q But if a person has a bad back when they come to apply  
15 for work at the Command --

16 A It would exclude them from certain kinds of jobs.

17 Q Not all jobs?

18 A Maybe all the jobs they'd be qualified for, they'd  
19 be excluded.

20 Q Let's say they wanted to work in the personnel office.

21 A I wouldn't think that would present a problem because  
22 that doesn't ordinarily involve heavy lifting.

23 Q They'd probably be allowed in?

24 A Yes.

25 Q Then if later on it was proved that excessive walking

1 that they've had to do between buildings would hurt  
2 their back, the guy started complaining of a bad  
3 back, what would be your position? Would you declare  
4 them unfit for duty?

5 A No, what I would probably say is that he's restricted  
6 from prolonged walking and standing, and if this re-  
7 striction can't be observed, then they should give  
8 some consideration to a job change. That's as far as  
9 I would go.

10 Q Did you do that in Mr. Pletten's case?

11 A Yes, I suggested that they consider changing his job  
12 to an area where he possibly would not be exposed to  
13 smoke.

14 Q What about the computer area?

15 A That seems to be smoke free. I didn't suggest the  
16 computer area.

17 Q Did anybody?

18 A I don't know.

19 Q I think we all pretty much agree that that area has  
20 been roped off and is smoke free. As a matter of  
21 fact, there's a clean room back there; isn't that  
22 true?

23 A I don't know.

24 Q That would be an accommodation that could be made?

25 A Yes.

1 Q Doctor, how much were you involved with the personnel  
2 office in this? Did you speak to them for lengthy  
3 periods of time?

4 A No, I did not. I've had conversations with -- I had  
5 a conversation with Mrs. Averhart. I've talked to  
6 Mr. Hoover but for very short periods. No prolonged  
7 conversations with anybody in personnel.

8 Q Let's deal with some of your letters, Doctor.

9 MR. COHEN: Off the record.

10 (Discussion off the record.)

11 MR. COHEN: Let's go on the record.

12 Q (By Mr. Cohen): It's a letter from Ed Hoover dated  
13 March 28, 1980 to Mr. Pletten, that says Command  
14 Medical Officer has notified this office that you  
15 are not fit for duty pending clearance by your per-  
16 sonal physician. Did you tell Mr. Hoover that he  
17 wasn't fit for duty in March of 1980?

18 A Yes, I think I made that statement.

19 Q Did you notify him by writing?

20 A Yes.

21 Q Where is that notation?

22 A 25 March 1980.

23 Q Will you read it for me?

24 A Okay. Letter from employee's personal physician  
25 dated 17 March 1980 states that employee must have

1 smoke free work environment, including eating area  
2 and restroom facilities, because of aggravation of his  
3 chronic asthma by exposure to tobacco smoke. A smoke-  
4 free work environment as described above cannot be  
5 provided at this installation. Therefore he is not fit  
6 for duty pending clearance by his personal physician.

7 Q All right. And that was transmitted to Mr. Hoover?

8 A That's right.

9 Q And that's what he based his conclusion on? That was  
10 dated what date?

11 A 25 March 1980.

12 Q And then he came out with his March 28th letter to  
13 Mr. Pletten; right?

14 A Presumably. I didn't see that letter.

15 Q You signed something in July of 1979, July 16th, called  
16 a request for enforcement of AR 1-8, did you not, sir?

17 A I'm not aware of that, no.

18 Q Well, it's in agency package Number 23. You signed  
19 it along with Mr. Braun.

20 A I might have, but I don't recall.

21 Q Well, let me show it to you. Is that your signature  
22 down there?

23 A That's my signature.

24 Q Then you must have signed it?

25 A I must have signed it.

1 Q Let me see if I can give you some conclusions and  
2 recommendations from it. You said the air flow is  
3 adequate in Building 200A and you also said for some  
4 operations, the fire dampers must be changed, and  
5 then in "C" you said a program for filter maintenance  
6 and cleaning should be established, and then you  
7 talked about "D." Ceiling ducts may be adjusted in  
8 office area at the request of occupants, but turning  
9 off several ceiling ducts in local areas should be  
10 avoided. Such turning off of the air flow may restrict  
11 air below the minimum recommendation of ten cubic feet  
12 per minute per person.

13 A Mr. Braun followed those up, to the best of my  
14 knowledge.

15 Q If they were turning off some of the ceiling ducts,  
16 wouldn't it be possible that you didn't meet the ten  
17 percent?

18 A It's possible.

19 Q That may have been why you made the recommendation they  
20 don't do it, right?

21 A Right.

22 Q Then you wrote another one to Mrs. Evelyn Bertram  
23 dated 20 February 1980, and this was prepared also  
24 by Mr. Braun, and it talks about a report, about  
25 air movement in the personnel office, and it says

1 in the Summary and Conclusion, carbon monoxide and  
2 nitrogen dioxide results were essentially negative  
3 within the limits of the detector tubes used. Sec-  
4 ondary smoke and aerosols may exist but are below the  
5 limits and are not known to cause inflammation problems  
6 for an average person. And then it says HEW now recom-  
7 mends further study of the trace materials.

8 Do you remember all that?

9 A Vaguely.

10 Q And "Persons with chronic lung and chest conditions  
11 should be cleared by their personal physicians to  
12 work in these areas." Okay. Do you remember that?

13 A Yes.

14 Q How many other people have chronic lung and chest  
15 conditions that work in the personnel office?

16 A I don't know.

17 Q Didn't you get letters from all these physicians for  
18 all these people, clearing them for work in the area?

19 A If they had a problem, they were to bring in a letter.

20 Q It says "Persons with chronic lung and chest condi-  
21 tions should be cleared." This is obviously the  
22 preventative you should be talking about. If any-  
23 body has a problem, you should get cleared before  
24 you work in the area. Right?

25 A Right, but the only one who brought in letters was

1 Mr. Pletten.

2 Q If others didn't, they were ducking, weren't they?  
3 They were ducking your directive here.

4 A Well, perhaps.

5 Q Perhaps. And if these people are existent, I would  
6 think that you would want to review their doctor's  
7 recommendation so that you could rid the Command of a  
8 potential for harming somebody. Correct?

9 A Yes.

10 Q And then subsequent, if these other people ever  
11 brought a worker's comp case against the Government,  
12 you could point to that February 20 letter and say:  
13 I would have gotten rid of you then if I had known  
14 we were going to cause you a problem. Is that essen-  
15 tially what this is about?

16 A I don't interpret it that way, no.

17 Q All right.

18 Other than those two letters, I  
19 don't find anything else that has your name on it,  
20 other than that and your file note to Mr. Hoover.  
21 Are there any other letters that you wrote to any-  
22 body else in this case?

23 A The one on March 25th was the FFDP taking Mr.  
24 Pletten off duty because he could not tolerate  
25 cigarette smoke. That's the key.

1 Q Is a ban on smoking really necessary to protect Mr.  
2 Pletten?

3 A I don't know if a ban, just a ban on smoking would  
4 do it because of the nature of the area that we're  
5 in in Warren is industrial. It's an industrial area.  
6 I'm not sure that a ban on smoking would solve Mr.  
7 Pletten's problems based on his doctor's letters of  
8 1981. I'm not sure that it would.

9 Q How many smokers have retired on disability due to  
10 smoking, if you know?

11 A I don't know of any offhand.

12 Q The fire chief wouldn't have retired on that basis?

13 A The fire chief had a heart condition if you're talking  
14 about Chief --

15 Q Well, let's not mention his name. We don't want to  
16 involve that. But there was a fire chief thad had a  
17 heart condition?

18 A Yes, with angina.

19 Q So it was not related to smoking?

20 A It would have been exacerbated by cigarette smoking  
21 if he was a smoker because --

22 Q People with heart conditions shouldn't smoke either?

23 A No.

24 Q People with heart conditions shouln't be around people  
25 who smoke?

1 A Ideally, they shouldn't.

2 Q How many people with heart conditions are there at  
3 the Tank Command?

4 A Many.

5 Q And yet they don't ban smoking because of the potential  
6 harm to them?

7 A No.

8 Q What if somebody has a heart attack on the job? The  
9 Government's liable, isn't it?

10 A That hasn't come up so far.

11 Q Isn't it possible that we're all real lucky that it  
12 hasn't yet?

13 A I suppose we're all very fortunate, yes.

14 Q And couldn't you try and prevent it in your capacity  
15 and make a recommendation? Nobody -- let me interrupt  
16 myself, Doctor. Nobody has ever asked the people at  
17 the Command, "Does it bother you? Do you have a  
18 heart condition?" I don't think you could tell me  
19 how many heart patients you have there, can you?

20 A Not offhand.

21 Q Let's say half the people had heart conditions and  
22 smoke in the air is bad for heart patients. You  
23 should get --

24 A We're getting into this condition about passive cigarette  
25 smoking. In spite of what you said the Surgeon General

1 said, there's still controversy about it. Presumably  
2 heart patients have been told not to smoke. That  
3 would be the most essential thing.

4 MR. COHEN: Mrs. Bacon, for the  
5 purpose of promptness and brevity in this, I'd like  
6 to reserve the right to redirect to Dr. Holt and ask  
7 that you ask your questions now so I could continue  
8 reading the notes from my client.

9 MS. BACON: All right.

10 REDIRECT EXAMINATION

11 BY MS. BACON:

12 Q Dr. Holt, let me just understand a couple of things  
13 that you testified to on direct. What is Mr. Braun's  
14 relationship to you?

15 A He is the industrial hygienist.

16 Q Are you his supervisor?

17 A Yes.

18 Q Does he work under your direction?

19 A Yes, he does. He also works under the direction of  
20 Major Waller, who is the chief of preventative  
21 medicine at Fort Sheridan, Illinois.

22 Q Now, Dr. Holt, has Mr. Braun ever stated to you that  
23 we're not in compliance with AR 1-3? He's never  
24 said to you that 70 to 90% of the time, we're complying  
25 with the regulation?

1 A The first I heard about it was here at the dep.

2 Q Now, if Mr. Braun has made a test and determined that  
3 the ventilation was not meeting Army regulation  
4 standards, would he have been obligated to report that  
5 to you?

6 A Yes, he would.

7 Q And he never made such a report to you?

8 A He never made such a report.

9 Q Now, I also would ask you to check your record and  
10 would point out to you in the agency record at Tab 8  
11 is a letter from Mr. O'Connor. I would ask if your  
12 records reflect that letter?

13 A Yes, there's a letter here from O'Connor.

14 MS. BACON: All right.

15 For the record this letter is  
16 dated 2 November 1981. It informs Mr. Pletten that  
17 the OPM has disapproved his disability retirement and  
18 application which was filed in his behalf by the  
19 agency and that he is requested to provide an updated  
20 physician's statement concerning your current medical  
21 status.

22 Q (By Ms. Bacon): It further states that such a  
23 physician's statement must be provided to you. Is  
24 that correct?

25 A That's correct.

1 Q Now, in your record was there any physician's statement  
2 that was provided?

3 A No, there was not.

4 Q I would direct you to ---

5 A Oh, I'm sorry. November 11, 1981, signed by Dr.  
6 Salomon.

7 Q Does that letter from Dr. Salomon indicate that  
8 Mr. Pletten can work in other than a smoke-free work  
9 environment?

10 A It did not, no. It does not even address the question.

11 Q So that in your view, from everything that has been  
12 provided to you by his doctors, subject to the clari-  
13 fication and then after the clarification, he still  
14 required a smoke-free work environment?

15 A That's my understanding.

16 Q I would ask you further -- if Mr. Cohen is indeed  
17 right that we did depose Dr. Dubin yesterday and one  
18 of his statements was that the only way that Mr.  
19 Pletten can return to work was to a smoke-free work  
20 environment. Would that statement surprise you?

21 A No, it would not.

22 Q Do you think that would be consistent with what  
23 Dr. Dubin had previously told you?

24 A Yes, that would be consistent.

25 Q Now, you've also testified before that you've had

1 other -- at least one other complaint about smoking  
2 has been written, to your knowledge?

3 A That I recall.

4 Q That you recall, okay.

5 Was an attempt made to accommodate  
6 that individual?

7 A Yes, an attempt was made to accommodate the individual.

8 Q Did you hear any further complaints after you made  
9 the accommodation?

10 A No, I did not. My last conversation with the employee  
11 was things were being worked out.

12 Q It would be your position that if such a complaint was  
13 made to you, that you would feel obligated and indeed  
14 make an attempt to accommodate the individual?

15 A Yes, I would.

16 Q Mr. Hoover has testified that he in fact was also  
17 concerned, along with Mrs. Averhart, about Mr. Pletten's  
18 emotional well being, I guess. To your knowledge,  
19 did Mr. Hoover ever make this known to you, or to the  
20 best of your memory, I guess?

21 A In conversation, yes, he said he was concerned about  
22 Mr. Pletten's emotional state. He seemed to be under  
23 a great deal of emotional pressure. This was in  
24 direct conversation.

25 Q Would it be a fair statement, then, based on this

1 letter from Mr. O'Connor in late 1981, based upon the  
2 fact that Mr. Pletten was asked to forward further  
3 medical statements to you and the statement that you  
4 in fact received from Dr. Salomon, would it be a  
5 fair statement to say that you felt comfortable with  
6 the fact that his medical condition was the same?

7 A Yes. Based on this from Dr. Salomon, yes. It would  
8 infer that it had not changed.

9 MS. BACON: All right. Nothing  
10 further right now.

11 MR. COHEN: Okay.

12 RE-CROSS-EXAMINATION

13 BY MR. COHEN:

14 Q I have gone through some things and I have some ques-  
15 tions left.

16 After the first episode in December,  
17 '79, when you first saw him and he was having problems,  
18 did you make him unfit for duty at that time?

19 A I took him off duty that first day because he was  
20 in such distress.

21 Q But you let him come back?

22 A We let him come back provided he was cleared by his  
23 doctor.

24 Q Did he get a clearance from his doctor?  
25

1 A Yes, he did. Presumably he did because he returned  
2 to duty.

3 Q Well, wait a minute. Wouldn't you have that clearance  
4 from the doctor? You have everything else in there,  
5 Doctor.

6 A I don't know.

7 Q Mr. Pletten testified that he took something to Mrs.  
8 Averhart and she wouldn't let him come back unless  
9 he presented that doctor's note to your office.

10 A Okay, here we are: 12-27-79, able to return to duty,  
11 and this is signed by Sanford Pollock. Now, this is  
12 signed by Dr. Pollock.

13 Q So Dr. Pollock said he was okay?

14 A Yes.

15 Q And then you let him go there. You knew he had asthma  
16 at that time?

17 A Yes.

18 Q And you knew that smoke made asthma worse?

19 A Yes.

20 Q All right. But you didn't say, Well, we've got to  
21 prevent this man from getting any worse and from  
22 being further aggravated.

23 A But I did not know at the time he required a  
24 completely smoke-free work environment. I didn't  
25 know it went to that degree -- severity.

1 Q I mean he continued to work for how long after that?

2 A A couple of months, I believe.

3 Q If the doctors had not used those unfortunate words,  
4 Mr. Pletten would still be working there, wouldn't he?

5 A Yes, I believe he would. I mean from a medical  
6 standpoint, he would still be fit for duty if he did  
7 not require a completely smoke-free work environment.

8 Q So but for those four words, "completely smoke-free  
9 environment," Mr. Pletten would be a valuable employee  
10 of the Tank Command?

11 A I suppose he would still be fit for duty.

12 Q And at the time that he had the asthma attack in your  
13 office and then was subsequently treated, you weren't  
14 worried about the preventative nature at that time?  
15 You weren't concerned about his getting worse?

16 A Yes, we were. We went back to May of '79 in which  
17 it was -- he presented a letter from Dr. Pollock  
18 saying he needed to be in an area that was free of  
19 tobacco smoke by -- he even quoted I think a figure  
20 of 25 feet and at that time we took steps to try to  
21 accommodate his need for a smoke-free environment.

22 Q Did you receive a directive from your higher head-  
23 quarters directing you to specifically enforce AR 1-3?

24 A Did I receive a directive?

25 Q Yes.

1 A I can't recall.

2 Q You can't recall?

3 A No.

4 MR. COHEN: Well, off the record  
5 for a minute.

6 (Discussion off the record.)

7 Q (By Mr. Cohen): Let me show you this, Doctor. Can  
8 you identify it?

9 A Yes.

10 Q All right. They told you to strictly enforce -- what  
11 is that document, by the way? Let's put it in the  
12 record properly. What is it?

13 A It's signed by Colonel Cole, who is the MEDDAC --  
14 M-E-D-D-A-C, acronym for Medical Department Activity,  
15 and Colonel Cole is the commander, and we are one of  
16 the outlying clinics of the MEDDAC, Fort Sheridan  
17 MEDDAC.

18 Q That is an authentic document that you received?

19 A Yes.

20 MR. COHEN: Move for admission.

21 MS. BACON: No objection.

22 MR. COHEN: No objection? Great.

23 MS. BACON: Where is my copy?

24 MR. COHEN: I'll get the copies  
25 for you and for the court reporter.

1 (Appellant Exhibit 11, two-  
2 page document dated March 10,  
3 1981, marked for identifica-  
4 tion.)

5 Q (By Mr. Cohen): The document before you, you testified  
6 earlier that you thought that the environment generally  
7 accomplished the guidelines of AR 1-8. Did this --

8 A Colonel Cole was referring to the clinic, the clinic  
9 area itself in this directive.

10 Q There was an attached -- it says, "STA Form 1453,"  
11 regarding Leroy Pletten, regarding the above subject  
12 (Inclosure 1) (sic). I didn't include enclosure 1.  
13 Enclosure 1 is an equal employment opportunity com-  
14 plaint filed by Mr. Pletten where he claims that the  
15 Command in general has not complied with army regula-  
16 tions, and that's what this was attached to. I'm  
17 sorry, I should have included this with Appellant's  
18 Number 11, and I would ask that the attachment be  
19 included.

20 MS. BACON: I would ask that the  
21 attachment be included with it, too.

22 MR. COHEN: Okay.

23 Q (By Mr. Cohen): Now, it wasn't referring to just  
24 your --

25 A It wasn't.

1 Q No, it was referring to the Command.

2 A Okay.

3 Q Now, did you seek to further enforce or go back and  
4 review the enforcement of AR 1-8 at that time? That's  
5 on 10 March 1981.

6 A I talked to Mr. Braun to make sure that we were in  
7 compliance.

8 Q Mr. Braun says that sometimes we're not in compliance,  
9 so there is no strict compliance, is there?

10 A No, no, I guess not.

11 Q And against the direct orders of Edward Cole, M.C., cor-  
12 rect?

13 A But my interpretation of that would be within our  
14 capability.

15 Q You interpreted Dr. Cole's directive? Is that what  
16 you're telling me?

17 A Well, rather than close down the Tank Automotive  
18 Command, my interpretation would be that we will  
19 comply with AR 1-8 to the best of my ability and  
20 provided there are no health hazards.

21 Q If there were deficiencies, did you direct here that  
22 further action be taken pursuant to this? Did you  
23 give this to the Commanding General and to Decker  
24 and say: Lookit?

25 A I don't recall. I certainly don't recall. I think

1 it was transmitted.

2 Q What did you do with it?

3 A I think it was transmitted to General Decker but I'm  
4 not sure.

5 Q Who would have transmitted it? Did you?

6 A I don't recall.

7 Q Are you familiar with a 24 March 1980 memorandum,  
8 the 24 March memorandum you read before? Or was that  
9 25 March?

10 A I amended that because of the language. I guess I  
11 was advised not to -- on 24 March, I made a statement  
12 that a smoke-free work environment as defined above  
13 cannot be provided at this installation. I then  
14 added a statement: Therefore he is not fit for duty  
15 pending further directives of the Department of the  
16 Army regarding smoking at this installation. I was  
17 advised that I could not make that statement, "pending  
18 further directives."

19 Q Why?

20 A That was not my province.

21 Q Were there further directives coming from DA regarding  
22 the installation?

23 A Yes, but I was advised that I could not -- what?

24 Q Yes or no?

25

1 A Were there?

2 Q Yes.

3 A Not to my knowledge.

4 Q Then why did you put it in?

5 A I was trying to be helpful. That's why I put it in.  
6 I was trying to be helpful.

7 Q And who told you to take it out?

8 A I believe it was Colonel Phillips, but I'm not abso-  
9 lutely certain about that.

10 Q Let me read to you from a letter from R. W. Kaufmann.

11 MR. COHEN: Can we go off the  
12 record for a second?

13 (Discussion off the record.)

14 Q (By Mr. Cohen:) Let me show you an exhibit I'm going  
15 to propose. It's Appellant Number 12. I want to  
16 try and catch up with the agency's numbers. They're  
17 all the way on 24 almost.

18 Will you look at that, please?  
19 As long as I'm doing it, I might as well make this  
20 Appellant's 13.

21 A Okay.

22 Q Can you identify it for me, please? Tell me what  
23 it is.

24 A It is a letter from R. W. Kaufmann, Lieutenant  
25 Colonel, Inspector General, Department of the Army,

1 U. S. Army Tank Automotive Materiel Readiness Command,  
2 dated 18 July 1980.

3 Q Is it in reference to one of your memos of March?

4 A Yes, it is.

5 Q Let me show you another document entitled Appellant's  
6 Number 13. That would be your March 24 memo?

7 A That's correct.

8 Q And that was the one that was subsequently amended  
9 on March 25?

10 A Yes.

11 MR. COHEN: Okay. Counsel, I  
12 move for both their admissions.

13 VOIR DIRE EXAMINATION

14 BY MS. BACON:

15 Q Have you ever seen this before, Appellant's Exhibit 12?

16 A This is the first time I've seen this.

17 Q So you have no idea of whether it was sent or whether  
18 it was seen or not?

19 A I don't know.

20 VOIR DIRE EXAMINATION CONCLUDED

21 MS. BACON: I would object to  
22 the admission of Appellant's Number 12. I have no  
23 objection to Appellant's Number 13.

24 (Letter dated 18 July 1980.

25 marked for identification as

Appellant's Exhibit Number 12.)

(Letter dated 24 March 1980

marked for identification as

Appellant's Exhibit Number 13.)

1  
2  
3  
4  
5 Q (By Mr. Cohen): Let me ask you about Appellant's  
6 Exhibit Number 12. This is now proposed since we're  
7 going to have an argument over whether it should be  
8 admitted. Basically you've read the letter that we're  
9 arguing about?

10 A Yes.

11 Q Were the contents with reference to your March 24  
12 memo? IS that your understanding of what the problem  
13 was? The March 24 memo?

14 A Yes.

15 Q That you implied the DA was going to make a determina-  
16 tion?

17 A Yes, it apparently implied that.

18 Q Mr. Pletten, of course, complained about that.

19 A Yes.

20 Q And he was right in complaining, was he not?

21 A Yes, I suppose he was.

22 Q And they sent back something, and if I could read it  
23 to you, it says here. "There is, however consideration  
24 underway between DA and other federal agencies  
25 regarding changes in smoking policy at Federal

1 agencies."

2 It says further, "This effort  
3 may or may not affect practices and policies regarding  
4 smoking at TARCUM. In any event, any change in the  
5 present TARCUM policy on smoking will be predicated  
6 on direction from higher authority based on the current  
7 review of the smoking in Federal installations."

8 A That's what it says.

9 Q So, in fact, there was further guidance that was going  
10 to be forthcoming from DA.

11 A I didn't know that for a fact. I was just trying to  
12 be helpful when I made that statement. I did not  
13 know that.

14 Q Sort of omniscient, you were; right?

15 A That's correct.

16 Q That being the case, did you get further direction  
17 from DA?

18 A I did not.

19 Q Still not?

20 A No.

21 Q That's all the way from July of 1980 and they haven't  
22 gotten anything to you?

23 A Not to my knowledge.

24 Q Not to your knowledge, okay.

25 So we've basically got a circumstance

1 here which is Mr. Pletten. It's a question of whether  
2 or not he is going to be harmed in the future. IS  
3 that the bottom line of his lack of fitness for duty?

4 A Yes. Yes.

5 Q And if his doctors say yes, he could work but he may  
6 have a problem 20 years from now --

7 A I would have to -- if that were the case, I would  
8 have to refer that to a consultant. I would not make  
9 a final determination. I would refer that to somebody  
10 up in the Army.

11 Q Did he abuse sick leave when he was there?

12 A I have no knowledge.

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