

1 UNITED STATES OF AMERICA

2 ~~TACOM HEARING~~

3 MERIT SYSTEMS PROTECTION BOARD

4 CHICAGO REGIONAL OFFICE

5 IN THE MATTER OF:

6 LEROY J. PLETTEN

7 vs.

8 UNITED STATES DEPARTMENT
9 OF THE ARMY

10 Transcript of the Deposition of JEREMIAH

11 H. KATOR, a witness in the above-entitled cause, taken before
12 Jo Gallagher, Notary Public in and for the County of Wayne
13 and State of Michigan, at 3000 Town Center, Suite 1150,
14 Southfield, Michigan, on Friday, April 23, 1982, commencing
15 at or about 11:47 a.m.

16
17 APPEARANCES:

18 COOPER & COHEN, 3000 Town Center, Suite 1150, Southfield,
19 Michigan 48075; Appearing on Behalf of Leroy J. Pletten.
BY: STEVEN Z. COHEN, ESQ.

20 DEPARTMENT OF THE ARMY, TACOM LEGAL OFFICE, DRSTA-LA, Warren,
21 Michigan 48090; Appearing on Behalf of United States
22 Department of the Army.
BY: EMILY SEVALD BACON, ESQ.

23 Also Present: Leroy J. Pletten
24
25

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1 Southfield, Michigan

2 Friday, April 23, 1982

3 11:47 a.m.

4 P R O C E E D I N G S

5 MR. COHEN: Mr. Kator, my name is Steven
6 Cohen and I am the attorney for Mr. Pletten in this
7 action before the Merit Systems Protection Board.

8 Pursuant to an agreement between the Agency
9 and myself on behalf of Mr. Pletten we have agreed to take
10 these depositions in lieu of making you go to trial in
11 Chicago. It seems that they have now scheduled things
12 only in the home base of the MSPB and, as such, we are
13 holding the depositions here.

14 The testimony you give here, even with
15 objections, even if counsel and I should object, will be
16 the only testimony necessary for you to give and you will
17 not be called again to trial. Do you understand that?

18 THE WITNESS: Yes.

19 MR. COHEN: If I ask you a question you
20 don't understand or if my opponent should ask you a ques-
21 tion you don't understand, ask both of us to clarify this.

22 I believe that is a concise statement of
23 our agreement, Ms. Bacon.

24 MS. BACON: Yes.

25 MR. COHEN: I believe it is your witness

1 first.

2 MS. BACON: Yes, it is.

3 Let the record show that my name is Emily
4 Sevald Bacon and I am representing the Agency in this
5 matter.

6 The Agency calls Jeremiah H. Kator as
7 its first witness.

8 J E R E M I A H H. K A T O R,
9 being first duly sworn, was examined and testified on
10 his oath as follows:

11 EXAMINATION

12 BY MS. BACON:

13 Q Mr. Kator, what is your present position?

14 A I am a Position Clasification Specialist with the Army
15 Corps of Engineers in Washington, D. C.

16 Q What was your position prior to your taking your present
17 one?

18 A I was Chief of Position and Pay Management Branch in the
19 Personnel Office at the Tank Automotive Command in Warren,
20 Michigan.

21 Q Can you remember the approximate dates that you occupied
22 that position at TACOM?

23 A I arrived at TARCUM in February, 1978, and my transfer
24 was effective in June of 1980 from TARCUM to Washington.

25 Q Were you in the position of Chief of Position and Pay

1 Management Branch during your entire stay at TARCOM?

2 A Officially that was my assignment. However, there were
3 periods during that time that I was detailed to other
4 assignments.

5 Q Are you acquainted with the appellant in this matter,
6 Mr. Pletten?

7 A Yes, I am. Mr. Pletten was a Position Classification
8 Specialist in the branch that I supervised during the
9 time that I was at TARCOM.

10 Q Okay. Are you acquainted with Mr. Pletten's objections
11 to being around smokers or to having people smoking near
12 him?

13 A Yes, I am aware.

14 Q When did you first become aware of Mr. Pletten's objections?

15 A Excuse me, may I ask for clarification?

16 When did I first become aware of his
17 objections to what?

18 Q Smoking.

19 A To being in the presence of smokers?

20 Q To being around smoking, yes.

21 A Shortly after my arrival I was made aware of the fact
22 that Mr. Pletten had at least annoyances about being in
23 the presence of smokers. Subsequently, I was made more
24 aware of the physical problem that was alluded to in a
25 note from a physician, wherein it was indicated that he

1 had a physical problem necessitating being a specific
2 distance from smokers.

3 Q What did you do with this medical certificate when you
4 received it?

5 A I sent the certificate to our Command physician asking
6 for verification of the necessity for separation and his
7 advice as to what alternatives we might have.

8 Q Do you recognize this document?

9 A Do I recognize this document?

10 Yes. This is the document that I sent
11 to the medical officer with the certificate attached.

12 MS. BACON: I would move for the submission
13 of this document at this time.

14 MR. COHEN: Let's see what we have.

15 May I voir dire the witness as to the
16 document?

17 MS. BACON: Yes.

18 V O I R D I R E E X A M I N A T I O N

19 BY MR. COHEN:

20 Q Mr. Kator, at the upper right-hand corner there is a
21 Mr. Grosby referenced.

22 What is that?

23 A Fred Grosby was another employee within the Branch.

24 Q What does it mean when his name is in the upper right-
25 hand corner?

1 A It means that he may have drafted, at my request, the
2 content of a DF. A DF would bear the name of the drafter
3 as well as the name of the signatory.

4 Q So while you may have signed this, you may not have
5 written it?

6 A I indeed was responsible for the final editing.

7 Q That is not what I asked you.

8 I said that while you may have signed it,
9 you did not necessarily write it?

10 MS. BACON: Well, I would ask you to clarify
11 what you mean by writing it.

12 THE WITNESS: It is not written. It is
13 typed.

14 Q (By Mr. Cohen) All right. Well, you did not compose it?

15 Did you or did you not compose the DF? It
16 is no big question.

17 Did Mr. Grosby compose the DF?

18 A I don't understand the word compose.

19 Q Did he draft it?

20 A Yes.

21 Q In final form?

22 A I'm sorry, I can't answer that because I don't recall
23 whether I changed his initial draft.

24 Q What is your custom when receiving disposition forms that
25 are prepared at your direction? Do you review them in

1 their entirety or do you just sign them?

2 A A draft would not have been on that form. A draft would
3 have been on a normal piece of paper, a plain piece of
4 paper, given to me for handwritten editing.

5 Q So let me understand the procedure.

6 Mr. Grosby would have provided a draft to
7 you and you would have reviewed the draft; is that
8 correct?

9 A That's correct.

10 Q And provided any deletions, additions, or alterations?

11 A That's correct.

12 Q And then it would have come back in final to you and you
13 would have signed it; is that correct?

14 A That's correct.

15 Q Do you recall this disposition form particularly?

16 A No, sir.

17 Q You have no independent recollection of it other than
18 having been refreshed by its viewing today?

19 A I recall the DF in terms of having signed it and being in
20 agreement with its content. How much I edited his initial
21 draft, I do not recall.

22 Q Do you have a copy of the original draft?

23 A No, sir.

24 Q Or of its additions or deletions?

25 A No, sir.

1 MR. COHEN: I would object to the admission
2 on the basis of the best evidence rule.

3 MS. BACON: Well, I would submit that you
4 can make your objections for the record.

5 MR. COHEN: That is what I am doing.

6 MS. BACON: I am still going to include
7 this to Mr. Manrose in Chicago and let him make the
8 determination.

9 MR. COHEN: Ms. Bacon, that is our under-
10 standing; if there are any objections, he will rule on
11 them. But I am voicing the objection and I want it
12 identified as an exhibit by the court reporter.

13 MS. BACON: Okay. This will be identified
14 then as Agency Exhibit 1, which was admitted over
15 objection.

16 MR. COHEN: No. Which was submitted over
17 objection.

18 MS. BACON: No, I'm sorry, which was
19 submitted over objection.

20 (Agency Exhibit 1 marked for
21 identification.)

22 MS. BACON: I would request at this time
23 that any submissions made by either party will be
24 identified at the time they are being submitted and will
25 be given to the court reporter to be included with the

1 transcript that is sent to Chicago.

2 MR. COHEN: No objection.

3 DIRECT EXAMINATION

4 BY MS. BACON (Continuing):

5 Q So this is the DF that you sent to Dr. Holt, along with
6 the doctor's note stating the requirements of Mr. Pletten,
7 correct?

8 A That is correct.

9 Q Does your DF indicate that Dr. Holt submitted anything
10 back to you?

11 A Yes. There is obviously a response signed by Dr. Holt
12 concurring with the personal physician regarding
13 Mr. Pletten's requirement to be separated from smoking
14 and also informing me that a survey would be accomplished
15 regarding --

16 MR. COHEN: I am going to lodge an objec-
17 tion as to this testimony as being hearsay within hearsay.
18 Until Dr. Holt can testify specifically as to the contents,
19 what Dr. Holt told him or put into the letter is subject
20 to the hearsay objection.

21 Go ahead.

22 Q (By Ms. Bacon) No problem. Carry on.

23 A The response is indicating that an industrial hygienist
24 will survey the area.

25 Q Did a hygienist, to your knowledge, come and survey the

1 work area?

2 A Yes, he did.

3 Q I would ask you if you could identify this document?

4 A Yes, I recall this document.

5 Q What is that document, please?

6 A It is the report of the hygienist subsequent to his
7 survey of the area.

8 MS. BACON: I would move for submission
9 of this document.

10 MR. COHEN: Let me ask Mr. Kator some
11 questions.

12 MS. BACON: Yes.

13 V O I R D I R E E X A M I N A T I O N

14 BY MR. COHEN:

15 Q Mr. Kator, this was sent to you; is that correct?

16 A Yes, it was.

17 Q And you have no knowledge with particularity of the
18 contents of it other than that you received it?

19 A Excuse me, I don't understand the question.

20 Q Let me understand, did you compose the work that made
21 up the contents of this disposition form or are you just
22 the recipient of it?

23 A I am the recipient of this.

24 Q So you don't have any personal knowledge as to the
25 contents of it other than what is represented to you?

1 A Personal knowledge of the contents?

2 Having read and understand it, I know the
3 contents.

4 Q Well, but you didn't produce the contents?

5 A That's correct.

6 Q Okay. Do you know what it is a survey of?

7 A Yes. As I recall, the individual had come to the office
8 and I can recall --

9 MS. BACON: Mr. Kator, let me interrupt
10 you for a second.

11 Do you want him to read this document to
12 you?

13 MR. COHEN: Not at all, no. No.

14 I am asking him if he has any independent
15 knowledge of what the survey was about.

16 Let me ask it more specifically and maybe
17 we can get back to the voir dire of the document.

18 MS. BACON: Yes.

19 Q (By Mr. Cohen, continuing) Mr. Kator, was it a study
20 pursuant to Army regulations or is it pursuant to OSHA
21 standards?

22 A I do not know.

23 MR. COHEN: I presume you are going to try
24 and admit this, Counselor?

25 I will object to its admission -- I will not

1 object to its admission for the limited purpose of it
2 having been received by Mr. Kator. I can't object to
3 that. That is his testimony.

4 But I will certainly object to the
5 document being placed in the record to prove the truths
6 of the matters asserted therein until Mr. Braun testifies
7 thereto.

8 MS. BACON: Your objection is noted.

9 This particular document entitled
10 "Work Area and Medical Condition of Leroy J. Pletten,"
11 dated 1 June 1979 is submitted as Agency Exhibit 2.

12 (Agency Exhibit 2 marked for
13 identification.)

14 DIRECT EXAMINATION

15 BY MS. BACON (Continuing):

16 Q Mr. Kator, you just testified that you received back from
17 Mr. Braun Agency's Exhibit 2, which states that an air
18 content study was done and that Mr. Braun did conduct it.

19 At the bottom of this DF a recommendation
20 is noted. Did you implement that recommendation?

21 A Yes, I did.

22 Q How did you implement that recommendation?

23 A There was desk space in a semienclosed area, shared with
24 another desk, and I offered Mr. Pletten to move away from
25 the window area to that desk. He accepted that

1 recommendation and was moved.

2 Q Can you identify this document?

3 A Yes, I can. Those are my initials. I signed it.

4 Q Is this the document you sent to Mr. Pletten notifying
5 him of what was done based on the hygienist's --

6 MR. COHEN: Objection. It is a little
7 bit leading, Counsel. He has the document in front of
8 him.

9 Q (By Ms. Bacon) What does the document say, Mr. Kator?

10 A Notification to Mr. Pletten of the information received
11 from the medical officer. Attached is a copy of that
12 correspondence. I had taken the recommendation of the
13 hygienist with respect to the movement of his work site
14 and considered that the matter had been accomplished.

15 MS. BACON: I would move for submission of
16 this document at this time.

17 VOIR DIRE EXAMINATION

18 BY MR. COHEN:

19 Q Mr. Kator, do you have any independent recollection of
20 this document?

21 A I don't understand what that implies.

22 Q Let me clarify it. It is not a trick question.

23 It is a document dated 6 June 1979. It
24 has been some years.

25 A That's correct.

1 Q Without having seen it today would you have recalled it?

2 A Not the wording, no, sir. I recall the circumstances
3 of Mr. Pletten's complaints and those actions which
4 ensued.

5 But I did not recall the specific wording
6 of that document.

7 Q Did you prepare this document yourself? I don't see
8 Mr. Grosby's name.

9 A To the best of my recollection I did.

10 Q The document attached to it was prepared by Mr. Grosby,
11 apparently.

12 Oh, that is the original document that we
13 have had in before?

14 MS. BACON: Yes.

15 Q (By Mr. Cohen) So this document you prepared yourself,
16 all right.

17 Do you write these out before you have them
18 typed?

19 A Yes.

20 Q Do you have any of those notes available to you?

21 A No, sir.

22 MR. COHEN: Okay. No objection.

23 MS. BACON: Agency Exhibit 3 is then
24 included into the record.

25 (Agency Exhibit 3 marked for

identification.)

DIRECT EXAMINATION

BY MS. BACON (Continuing):

1
2
3
4 Q Did you instruct or make it known to your employees of
5 Mr. Pletten's sensitivity to cigarette smoke and that he
6 had objections to same?

7 A Yes, I did.

8 Q Did you tell your employees not to smoke in Mr. Pletten's
9 office?

10 A I don't recall having specifically said it in those words
11 but everyone in the area was aware of Mr. Pletten's
12 condition and aware of my feelings that they should not
13 smoke in his presence.

14 Q Did you allow smoking when you had branch meetings, for
15 instance?

16 A No, I did not.

17 Q Did you offer Mr. Pletten anything other than this office
18 that you offered him based on Mr. Braun's air content
19 study?

20 A Yes. There was another area within our branch
21 responsibility in which there were, as I recall, either
22 three or four desks and people working in our branch. I
23 offered Mr. Pletten space in that room. As a matter of
24 fact, the most distant space adjacent to some windows,
25 assuring that none of the people in that room would be

1 smokers. He declined to accept that offer.

2 Q Why did he decline to accept that offer?

3 MR. COHEN: Objection. It calls for a
4 conclusion as to Mr. Pletten's state of mind.

5 Q (By Ms. Bacon) What did Mr. Pletten state to you of the
6 reasons why he --

7 MR. COHEN: Objection, leading. No
8 foundation.

9 MS. BACON: Objection noted.

10 Q (By Ms. Bacon) Go ahead.

11 A Upon offering him that second move to the room I just
12 identified Mr. Pletten declined, indicating that he felt
13 I was being discriminatory and singling him out to be
14 moved to a remote area simply because of his physical
15 aversion to smoking.

16 Q Did Mr. Pletten ever indicate to you what was amenable
17 to him?

18 A What was amenable to him? I --

19 MR. COHEN: Objection as to relevance and
20 materiality.

21 MS. BACON: Noted.

22 THE WITNESS: Mr. Pletten had requested
23 that smoking be banned at various times and in various
24 dimensions throughout the branch, throughout the personnel
25 office, throughout the building, and throughout the

1 Command. I do not recall in relation to that specific
2 instance what the relief he sought was or may have been.

3 Q Were you present when Mr. Pletten was originally placed
4 on sick leave status?

5 A Was I present?

6 No. During that period of time -- and I
7 don't know that precise time -- I was in Washington, D. C.
8 on a temporary assignment; from sometime in the month of
9 January through the end of the month of May.

10 I know that the occasion that you cite
11 was during that period of time.

12 Q So other than your attempting to work out a place for
13 him to work that would be amenable to him did you ever
14 then have any other dealings with Mr. Pletten?

15 A Would you please clarify that? Obviously, I had many
16 dealings with Mr. Pletten.

17 Q Yes, sir.

18 Did you ever have any dealings with him
19 concerning trying to accommodate him in his objections
20 to smoking?

21 A Did I make any other efforts?

22 I don't recall any specific efforts. I
23 was certainly aware of his condition and was making every
24 effort to accommodate him.

25 MS. BACON: I have no further questions.

CROSS-EXAMINATION

1
2 BY MR. COHEN:

3 Q Mr. Kator, I am going to ask you to go back over some
4 ground.

5 You are now a Position Classification
6 Specialist?

7 A That's correct.

8 Q And that is with the Army Corps of Engineers?

9 A That's correct.

10 Q Now, you testified earlier that that is what Mr. Pletten
11 did?

12 A That's correct.

13 Q Is it the same job?

14 A No, it is not.

15 Q Well, is it a higher classification that you are in now?

16 A Yes.

17 Q What level of classification are you at?

18 A GS-14.

19 Q How long have you been with the government?

20 A My total service, including military time, is approxi-
21 mately 18 1/2 years.

22 Q How much military time, just so we will know?

23 A Seventeen months.

24 Q With regard to your position at TACOM, you were only there
25 for a period of a little under two years; is that correct?

1 A I believe it was a little over two years.

2 Q A little over. I am sorry.

3 Q What did you do in your position as a Classification --
4 I'm sorry, let's go back.

5 What was your actual position at TACOM?

6 A Supervisory Position Classification Specialist Branch
7 Chief in the Personnel Office.

8 Q What does that mean? What did you do? Who did you
9 supervise?

10 A The Position Classification Specialists and clerical
11 support personnel in that branch.

12 Q About how many people were in the branch?

13 A It varied between 7 to perhaps 12 to 13 over the period
14 of time.

15 Q Could you classify that as a medium-level supervisor then,
16 your position?

17 A I would consider that a first-line or first-level
18 supervisor.

19 Q And your responsibility was to each of those individuals;
20 is that correct? And to the Command, of course; is that
21 correct?

22 A Yes.

23 Q I'm sorry, Command first.

24 What are the things that you had to do as
25 a supervisor? Were you given courses instructing you

1 what to do as a supervisor?

2 A I have had such courses, yes. I was not given any
3 specifically while in this assignment.

4 Q I presume those included management courses with regard
5 to occupational safety and health?

6 A I don't recall any specific block of time on any of those
7 courses that related to OSHA, no.

8 Q Did you receive any training from the government as to
9 handicapped employees?

10 A Yes, I did.

11 Q What kind of course was that?

12 A Well, I attended a 2-week course in San Antonio that was
13 provided by the Drug and Alcohol Abuse portion of the
14 federal government or the people responsible for that
15 program, at which time we talked of various handicaps,
16 including drug and alcohol abuse.

17 I recall having specifically heard people
18 speak on the subject of the treatment of handicapped
19 personnel.

20 Q Did they include smoking in any of the discussions of
21 drug and alcohol abuse?

22 If you can recall.

23 A I don't recall.

24 Q Did you ever have any specific guidance with regard to
25 regulations on smoking within the Command?

- 1 A Would you repeat that?
- 2 Q Did you have any specific guidance from higher Command
3 authority with regard to regulations concerning smoking?
- 4 A I was aware of the guidance provided by higher Command
5 regarding smoking.
- 6 Q In what fashion were you aware?
- 7 A Mr. Pletten made me aware of all the regulations.
- 8 Q Did your superiors at any time make you aware?
- 9 A I don't recall their ever having made me aware, other
10 than referring to those documents.
- 11 Q Did they ever send around any guidelines to you prior to
12 the Pletten incident -- where you first started dealing
13 with Mr. Pletten -- that told you about regulations?
- 14 A I don't recall any, no.
- 15 Q After Mr. Pletten first became known to you as to his
16 condition who, if anybody, of the Command group did you
17 consult with?
- 18 A Would you define Command group?
- 19 Q Well, let's phrase it this way.
20 Did you speak to anybody within the Tank
21 Command above your level of supervision?
- 22 A Yes, indeed.
- 23 Q Who did you speak with?
- 24 A Mr. Hoover, who at that time was the Deputy Personnel
25 Officer; also, Mr. Grimmert, who was the Personnel Officer;

1 Q What was the text of those conversations?

2 A I haven't finished telling you who I spoke with first.

3 Q I apologize.

4 A Colonel Phillips, who at that time was the Director of the
5 Personnel Training and Force Development Division.

6 Now, your next question.

7 Q Yes. What was the text of the conversations with those
8 three men?

9 A They varied. I don't recall them specifically. Over a
10 long period of time many discussions were held with
11 those individuals on that subject.

12 Q Well, what was the nature of the discussion? Was it on
13 how to resolve the matter for Mr. Pletten or was it the
14 smoking issue in general?

15 MS. BACON: I would object to that in that
16 he has just stated that he doesn't remember the subject
17 matter of those conversations.

18 MR. COHEN: Your objection is noted.

19 Q (By Mr. Cohen) You may answer if you know.

20 A To the best of my recollection those discussions included
21 both of those subjects; how can we best accommodate
22 Mr. Pletten as well as the regulatory requirements.

23 Q After those series of meetings -- I presume it took
24 several months period of time?

25 A As I recall it took several months, yes. Or at least the

1 subject was being discussed over that period of a time.

2 Q Was guidance sought from higher Command than the three
3 individuals you spoke with?

4 A By me? No, sir.

5 Q Did the individuals you spoke with, including Mr. Hoover
6 and Mr. Grimmatt, indicate that they would get more
7 information?

8 A Yes, I do recall that both have had lengthy telephone
9 conversations -- if not written, I don't know -- with
10 higher Command, meaning TARCOM headquarters and possibly
11 beyond that.

12 Q Did you ever get to see those?

13 A As I say, I don't know that there were ever any written
14 documents.

15 Q You never received any written notations from either
16 Messrs. Grimmatt, Phillips, or Hoover concerning
17 Mr. Pletten after your discussions?

18 A Did I receive anything in writing?

19 Q Yes.

20 A I don't recall.

21 Q But I suppose there would be a record someplace in the
22 office that you have now absented yourself from for this
23 new job? Your old position would have those records?

24 MS. BACON: Objection. Aren't you going
25 to ask him if the records exist?

1 MR. COHEN: Well, he said that he didn't
2 recall.

3 Q (By Mr. Cohen) But I am saying that if they do exist
4 would there be a record of them at TARCOM?

5 A I cannot answer that. I don't know. They do have records
6 disposal programs where things might be required to be
7 disposed of after a specific period. I don't know.

8 Q Did you keep everything that you received from a higher
9 command in a file?

10 A I don't recall.

11 Q What, in your normal position as a supervisor, were you
12 required to do with communications?

13 A Depending on the type of communication.

14 If it was a handwritten note addressed to
15 me informally there is no requirement to keep it for any
16 period.

17 Q I understand. But if it was a disposition form or some
18 formal type of memorandum?

19 A At that time I was keeping all material relevant to
20 Mr. Pletten in a folder and periodically would screen it
21 for material to be retained and to be disposed of.

22 Q Did you keep that material in a folder just for Mr. Pletten
23 or did you also keep a folder for complaints of a general
24 nature with regard to smoking?

25 A I only received one complaint with regard to smoking, or

1 at least from one individual, so I had no other material
2 in that folder relating to smoking.

3 I may have had other material in there
4 that related to complaints of other kinds.

5 Q Did you survey the personnel under your command and your
6 supervision as to their position with regard to smoking?

7 A Did I survey them?

8 I don't understand what that means.

9 Q Did you ask them whether they were bothered by it or if
10 they had problems with the air?

11 A Yes. Not all the people perhaps but at least on one or
12 two occasions I remember speaking with other individuals
13 on that subject.

14 Q Did you circulate a memorandum to your group in that
15 section asking their positions or opinions?

16 A No.

17 Q Why not?

18 A I did not feel the need to put any such questions in
19 writing.

20 Q So these were verbal contacts, if any, with perhaps some
21 of them but not all of them?

22 A That's correct.

23 Q How many people in that group of people that you represented
24 or that you supervised, smoked?

25 MS. BACON: I will object to that question.

1 THE WITNESS: To my best recollection, I
2 don't recall.

3 MS. BACON: Mr. Kator -- okay, never mind.

4 MR. COHEN: Your objection is noted.

5 Q (By Mr. Cohen) Do you know?

6 A No.

7 Q Sir, do you smoke?

8 A Not now.

9 Q Did you?

10 MS. BACON: Objection.

11 THE WITNESS: At that time.

12 MS. BACON: Irrelevant. Go ahead.

13 MR. COHEN: I think it is highly relevant,
14 Counselor.

15 And for the record, for Mr. Manrose when
16 he gets this, I indicate that the question of whether
17 Mr. Kator smokes or had a predisposition to favor smoking
18 or nonsmoking is an ultimate issue here.

19 The objection is noted and will be decided
20 by Mr. Manrose.

21 Q (By Mr. Cohen) Mr. Kator, how long did you smoke for?

22 A How long did I smoke?

23 Q Yes, over your lifetime.

24 MS. BACON: Let me just make a general
25 objection to the whole --

1 THE WITNESS: Let me clarify my previous
2 answer.

3 MR. COHEN: Well, wait a minute.

4 MS. BACON: Mr. Kator, wait a minute.

5 I object to the whole line of questioning.
6 That will preclude objecting to every question.

7 MR. COHEN: Objection is noted.

8 Q (By Mr. Cohen) Go ahead.

9 A There were periods of time during my time at TARCOM when
10 I did not smoke. Extended periods of two months and as
11 many as five months at one period.

12 Q Were you trying to quit?

13 A That is correct.

14 Q Why? Why were you trying to quit?

15 A Several reasons; one being expense, one being the fact
16 that my clothes have an aroma as a result of smoke that
17 I don't like and my family doesn't like; for a variety
18 of reasons.

19 Q When you say "doesn't like," would it be possible to
20 classify that as some people are irritated by the smell
21 of smoke?

22 A That's your word. I don't know what that irritated means.

23 Q Well, let's not say irritated in a physical sense. But
24 some people don't like cigarette smoke; is that correct?

25 MS. BACON: Objection. He has just stated

1 what he feels about it.

2 How can he make a statement as to what
3 some people feel or what some people --

4 MR. COHEN: I withdraw the question.
5 Let's get on with it.

6 Q (By Mr. Cohen) At the time Mr. Pletten came to you were
7 you a smoker, sir?

8 A At least part of the time, yes.

9 At the time he came to me? I don't under-
10 stand what that means.

11 Q Well, at the time his difficulty was first known to you.

12 A Do you mean when he presented to me the certificate from
13 his doctor?

14 Q Yes.

15 A As I recall, I was smoking during that period.

16 Q When you indicated to him or when you indicated to your
17 employees that Mr. Pletten had that difficulty, what did
18 you say to them, if you recall?

19 A I don't recall specifically. I made them aware that he
20 had this particular problem as noted by the physician.

21 Q Do you recall what the physician said?

22 A Yes.

23 Q What did he say?

24 A That Mr. --

25 MS. BACON: I would object at this point.

1 MR. COHEN: He can refresh his memory
2 from the documents if he would like. They are in the
3 record.

4 THE WITNESS: If the document is there.
5 I don't know that the document is there.

6 MS. BACON: The document is there.

7 THE WITNESS: Okay, yes. The subject of
8 the 25 feet was the major issue at that point in time.

9 Mr. Pletten and I and others in the area
10 were trying to see if in fact 25 feet was a prohibitive
11 distance within the confines of our office. We could not
12 find any area where anyone would not be within 25 feet
13 of smokers. And of course that also included areas
14 outside of our branch.

15 Q (By Mr. Cohen) All right.

16 Did you recommend to Mr. Pletten that he
17 write a note to the Civilian Personnel Office regarding
18 a ban on smoking?

19 A As I recall, I did.

20 Q And did you have a discussion with Mr. Pletten in that
21 regard?

22 A I'm sure I did. I don't recall the content of it.

23 Q Did you expect that that would resolve the matter?

24 I mean, what was your intention of having
25 him write such a note?

1 A After all this time I don't recall my intentions but I
2 know that it was my desire to get the matter resolved.

3 Since it was beyond my authority to ban
4 smoking outside of my area, it was necessary for him to
5 go beyond my level.

6 Q If it was beyond your authority to take ultimate relief,
7 why is it that you were put in the position of having
8 to refer to the medical officer, if you know?

9 A Why was I put in the position of doing that?

10 Q Yes.

11 A I volunteered to do that. No one assigned that to me as
12 a task.

13 Q Well, in your discussions with Messrs. Hoover, Grimmitt,
14 and Phillips did they assign you to the task at any time
15 or suggest that you volunteer?

16 A No.

17 Q Okay. Let me ask you about the disposition form which
18 is Agency's Exhibit 1, subject to my objections, which I
19 believe is in your hand.

20 I would like for you to look at paragraph
21 2, the top statement. It says,

22 "Request that you confirm the requirement
23 that Mr. Pletten not work within 25 feet of people who
24 are smoking."

25 Are you following with me?

1 A Yes.

2 Q Okay. It seems strange to me that you only ask that they
3 confirm that he not work within that.

4 Is that just a semantical difference that
5 I am seeing; that you didn't ask them to confirm or deny?

6 A Yes. I would say that in answer to your question there
7 is a semantic question there that I don't feel I follow.

8 Q Well, normally when I ask someone to investigate a
9 circumstance I would write them a note saying that they
10 confirm or deny that this is the case.

11 You wrote only that they should confirm.
12 Now, I am wondering if that is just by happenstance or
13 did you have a reason for doing it that way?

14 A No reason.

15 Q No reason? And it was in actuality -- if I can understand,
16 Mr. Kator -- that you meant for them to confirm or deny
17 the matter?

18 A I don't recall having thought that through to say that,
19 hey, he is either going to confirm or deny it... I just
20 simply wrote it as I felt it.

21 Q I understand. But you should understand, Mr. Kator, that
22 in this circumstance the question is very much at issue
23 as to whether or not Mr. Pletten can or cannot work.

24 And whether or not it was confirmed or
25 denied is now a substantive issue.

1 Do you understand why I am asking the
2 question?

3 A Of course I do.

4 Q Okay. Did you ever read the personal physician's note,
5 other than the one that is attached to the disposition
6 form?

7 A Did I ever read --

8 Q Did you read any other documents from Dr. Pollak?

9 A I think I did but I don't recall. I think there may have
10 been other correspondence from the doctor but I don't
11 recall it.

12 Q Did you contact the doctor?

13 A Yes.

14 Q Personally?

15 MR. COHEN: Let's go off the record for
16 a second.

17 (Off the record.)

18 (Back on the record.)

19 Q (By Mr. Cohen) Okay, we are back on the record.

20 A Is the question did I have contact with the doctor?

21 Q Yes.

22 A Yes, I did, because I personally had a physical problem
23 that I was seeing the doctor for.

24 Q You were seeing Dr. Pollak?

25 A I was seeing the TARCUM Health Clinic.

1 Q Oh, you are talking about Dr. Holt. I am talking about
2 Dr. Pollak, who is the doctor who wrote this little note.

3 A I'm sorry. I beg your pardon.

4 Q No.. I didn't make it clear.

5 Dr. Pollak wrote a note to you from
6 Macomb Doctors Clinic, which is attached to Proposed
7 Exhibit 1.

8 Did you speak to Dr. Pollak?

9 A No.

10 Q You didn't? Did you have permission from Mr. Pletten to
11 discuss this matter with his physician?

12 A Did I have permission? I don't recall any discussion of
13 that question.

14 MS. BACON: At this point I would object
15 that he just said he did not contact him and he did not
16 talk to him.

17 MS. COHEN: It is going to be relevant. I
18 will tie it in. I will tie it in, Counsel.

19 Q (By Mr. Cohen) Did you ask him permission to discuss
20 this matter with Dr. Holt?

21 A Go through that one again.

22 Q Did you ask Mr. Pletten for permission to contact Dr. Holt
23 with regard to his medical condition?

24 A I don't recall having done that, no.

25 Q You didn't ask him for a medical authorization, a written

1 document from Mr. Pletten?

2 A I don't recall having done that, no.

3 Q Mr. Kator, I will tell you for arguments sake that I am
4 not sure that you needed one at all, since Mr. Pletten
5 came to you with a note. That is not why I am asking
6 you the question, so don't be worried that that is where
7 I am headed.

8 Did you understand Dr. Pollak's note
9 completely?

10 A You are talking about this note that is attached here?

11 Q Yes.

12 A Did I understand it completely?

13 Q Yes.

14 A No, I did not. I understand the wording and I understand
15 what he is saying but I don't understand the underlying
16 factors that led him to write that.

17 Q Did you ask him? Did you talk to Mr. Pletten --

18 A Dr. Pollak?

19 Q Dr. Pollak. Did you ask Mr. Pletten to clarify it
20 further for you?

21 A We discussed it. I don't know that I asked him
22 specifically, "Would you mind clarifying this," but we
23 certainly discussed it at great length.

24 Q Did you indicate to Dr. Holt that he would have permission
25 to contact Dr. Pollak or should contact Dr. Pollak to

1 discuss the matter?

2 A No.

3 Q What were you saying -- well, I don't want to pry into
4 your personal business.

5 Were you seeing Dr. Holt personally for
6 your condition?

7 A Yes.

8 Q And you didn't see anybody else at the health service?

9 A Yes, I did.

10 Q Oh, you did. Besides him?

11 A Yes.

12 Q All right. Is Dr. Holt the only medical officer at that
13 facility?

14 A Is he the only medical officer?

15 Q Is he the only doctor there?

16 A As far as I know. He was at that time. I don't recall
17 of another one.

18 Q When you were going through all this -- and I know as a
19 supervisor regarding one thing, which is Position
20 Classification, there are a hundred or so regulations
21 that you are concerned with in a passing nature -- did
22 you familiarize yourself with AR 1-8, Army Regulation 1-8?

23 A I don't know that number regulation. I might know its
24 content but not by that number.

25 Q Well, I am talking about the smoking regulation for the

1 Army.

2 A Am I familiar with its contents now or was I at that
3 time?

4 Q Were you at that time?

5 A Mr. Pletten provided me with copies of the various
6 regulations regarding the higher echelon requirements for
7 smoking in nonsmoking areas, yes.

8 Q Were you familiar with it before Mr. Pletten provided it
9 to you?

10 A I don't recall that I was. No, I was not.

11 Q Okay. And the Command had never given you any training
12 in that regard?

13 A No, they had not.

14 Q Once you were aware of it did you also inquire as to the
15 OSHA requirements? That is the Office of Safety and
16 Health Administration.

17 A Did I personally inquire? No.

18 Q You did not?

19 A No.

20 Q Did any of the people like Mr. Hoover or Mr. Grimmatt or
21 Colonel Phillips direct you to inquire?

22 A No.

23 Q Did they give you any guidance at all as to how to deal
24 with Mr. Pletten?

25 A I recall many discussions that could have constituted

1 advice, yes.

2 Q What were the contents of those discussions, if you
3 recall?

4 A I don't recall specifically.

5 Q Did you ever finally come to any conclusions with regard
6 to smoking in your general area in your branch; any
7 directives for the members of the branch in general?

8 A I don't recall that I put anything in writing to the
9 members of the branch, no.

10 Q I ask you this because I recall you discussing with
11 Messrs. Hoover, Grimmett, and Phillips the issue of
12 Mr. Pletten personally.

13 You testified earlier that you discussed
14 him personally as well as things in general.

15 And I note by the disposition forms that
16 you decided to take some action with regard to Mr. Pletten.

17 Did you also decide to take some action
18 with regard to everybody else?

19 A No.

20 Q Why not?

21 A No one else seemed to have the problem.

22 Q You didn't ask everybody else if they had a problem, did
23 you?

24 A I said they seemed not to have a problem. No one made
25 me aware of a problem.

1 Q But you didn't ask them either?

2 A I don't recall if I did or did not.

3 Q Now, when you advised people of Mr. Pletten's problem
4 generally, -- you said earlier that they were not to smoke
5 in his presence -- did you tell them specifically what
6 "in his presence" meant?

7 A No, I did not.

8 Q Well, you had a directive that at least on its face says
9 25 feet, which you were not sure one way or another if
10 you could implement. Did you attempt to have people
11 implement the 25-foot limitation?

12 A Yes, in the sense that they were aware of it. I didn't
13 provide them a tape measure or go into detail as to how
14 far 25 feet may be.

15 Q No.

16 A Or if smokers were walking in his direction that they
17 needed to do something to correct it.

18 But everyone in the branch was aware of
19 the content of the note that alluded to the 25-foot
20 separation requirement.

21 Q How were they aware of Mr. Pletten's personal physical
22 matters?

23 A They were aware of the note. That was all I could make
24 them aware of.

25 Q What note is that?

1 A The note that said that Mr. Pletten was unable to work
2 within 25 feet of people who were smoking.

3 Q Isn't that a doctor's note written and directed to you?

4 A Directed to me?

5 Q Well, Mr. Pletten provided it to you, didn't he?

6 A He did. The doctor did not provide it to me.

7 Q But that is a personal matter regarding Mr. Pletten, is
8 it not? It is a doctor's note concerning Mr. Pletten's
9 condition?

10 A Yes, it is.

11 Q And Mr. Pletten allowed you to be prevy to that medical
12 information?

13 A He did.

14 Q And you made other people aware of Mr. Pletten's medical
15 condition as defined by his doctor?

16 A I did.

17 Q Specifically regarding the 25 feet?

18 A I did.

19 Q Did you direct them to attempt to give 25 feet distance
20 to Mr. Pletten?

21 A I did not so direct.

22 Q You said, "Don't smoke in his presence." What did you
23 mean by that?

24 A I meant don't smoke in his presence, when they are
25 immediately in Mr. Pletten's presence.

1 Q When you mentioned this note, made these people aware of
2 this note, how did you make them aware of it? In what
3 manner? Did you give them a copy of the note?

4 A No.. I think it was discussed in a branch meeting.

5 Q Was Mr. Pletten present?

6 A To my knowledge. I recall that he was.

7 Q And he heard the discussion of it?

8 A As I recall.

9 Q Did you discuss it at any other time with members of the
10 branch, other than at the meeting?

11 A Individually you mean?

12 Q Yes.

13 A Possibly.

14 Q Did you ridicule Mr. Pletten's circumstance?

15 A No.

16 Q Did you in any way make light of it to any of the other
17 employees?

18 A No.

19 Q Did you ever at that time continue to smoke in his
20 presence?

21 A No.

22 Q Did you keep an approximately 25-foot barrier between
23 you and Mr. Pletten when you were smoking?

24 A No.

25 Q You came within the 25 feet then sometimes?

1 A Conceivably.

2 Q Let me ask you something, Mr. Kator, because it makes
3 common sense to me.

4 After a while did you not watch closely
5 how many feet?

6 A I didn't watch even at the outset because the number of
7 feet was not that important inasmuch as there was a wall
8 between us.

9 Q Did you contact Mr. Braun about this survey?

10 A I don't recall.

11 Q Did you discuss with Mr. Braun the work habits of your
12 branch?

13 A I don't recall any discussions with Mr. Braun at all. I
14 may have talked with him but I don't recall the content.

15 Q You didn't send him any memoranda as to outlining the
16 branch's makeup as to how things would be operating?

17 A No.

18 Q You didn't ask if he needed any input? You didn't write
19 a DF asking if he needed any input so that he could make
20 his investigation?

21 A I don't think so. I don't recall it.

22 Q When you changed Mr. Pletten's location -- well, how many
23 times did you change his location?

24 A Well, the entire branch location was changed at one point
25 in time. I believe that was during the period Mr. Pletten

1 was sitting adjacent to the windows. We moved from the
2 approximate middle of that room to the western end of that
3 room. So, obviously, that was one period of time when
4 his location was changed.

5 The only other time I recall was when he
6 was moved into the room that we discussed before.

7 Q When the offices moved was there another air study done?

8 A No.

9 Q Why not?

10 A Not to my knowledge.

11 Q Why not?

12 A Well, I don't --

13 MS. BACON: Objection. He has just
14 testified as not to his knowledge.

15 Q (By Mr. Cohen) Well, I am asking, did you ask for one to
16 be done?

17 A Well, as I recall the first move that I alluded to, when
18 we moved from the center of the room to the end, was prior
19 to the discussion of Mr. Pletten's requirement to be
20 separated by 25 feet.

21 Q Was there a move to the word processing area, next to word
22 processing also, aside from the other things you mentioned
23 for Mr. Pletten?

24 A Yes. As I recall now, there was a period of time that he
25 was in a room -- I don't remember to be honest with you

1 whether that was the word processing room or where it was.

2 Q Okay, so there are two moves now.

3 Now, Mr. Braun had done a study of the area
4 where he was originally sitting next to the window; is
5 that correct?

6 A Yes.

7 Q Did you alert Mr. Braun that he had been moved another
8 time?

9 A No.

10 Q Did you ask for a follow-up with regard to his recommenda-
11 tion?

12 A Did I ask Mr. Braun for a follow-up?

13 Q Yes.

14 A No.

15 Q Weren't you concerned that the move would cause
16 Mr. Pletten problems?

17 A The move into the semiprivate room?

18 Q Yes.

19 A That was to alleviate his problem.

20 Q That was the first one. How about the second move?

21 A I am confused regarding which is number one and which is
22 number two.

23 Q Well, you tell me then. You tell me which we will
24 classify as one and --

25 A You just reminded me of a move that I had even forgotten

1 about, so I can't remember the details.

2 Q Well, all right. Let me ask you this.

3 Did the determination by Mr. Braun indicate,
4 from the face of the record, that he was to be moved
5 closer to the three rows of ceiling air supply?

6 A Right.

7 Q Subsequent to that he was moved, is that correct?

8 A That is correct, to my knowledge.

9 Q And he was moved to a semiprivate office?

10 A That's correct.

11 Q And again after that he was moved to another office, as
12 we have just remembered?

13 A No, not after that. That was prior to as I recall.

14 Q Would that be prior to Mr. Braun's disposition form?

15 A Having forgotten that move totally and you had to remind
16 me, I don't recall which came first.

17 Q Was there a part of the office that was more susceptible
18 to -- was there a part of the office that was less
19 circulatory, let's say, where the air was a little
20 heavier?

21 A Gee, I really am unaware of that. I don't know.

22 Mr. Braun I don't think spoke to that. Excepting that in
23 his studies he talked of the window area as being that
24 where the smoke was being drawn.

25 Q Is building 230 air conditioned?

1 A Excuse me?

2 Q Is building 230 air conditioned or was it at the time you
3 were there?

4 A If it was it was not working because it was awfully warm.

5 Q I agree with you. I have been in building 230 and I agree
6 with you that if it is air conditioned it doesn't work
7 very well.

8 Were there fans in the branch?

9 A Yes.

10 Q Were they used frequently?

11 A I don't know what frequently means.

12 Q Like when it was hot.

13 A I didn't like the fans because they would have a tendency
14 to blow the papers on my desk. I didn't have a fan
15 directly in my office.

16 Q When the fans were in use did it occur to you or does it
17 occur to you now that the air pattern of the office may
18 have changed from what Mr. Braun saw?

19 A I don't know what Mr. Braun saw. I don't recall him
20 having addressed the subject of the fans. I know there
21 were fans in the room.

22 Q And the fans were there to circulate air I presume?

23 A I would assume so.

24 Q Because the circulation was bad in the office?

25 A I think it would be more related to the heat rather than

1 the air being bad.

2 Q I know you have answered the question as to whether you
3 knew there were any smokers. But was there never a time
4 when the smoke was particularly heavy, if you recall, in
5 the branch?

6 A No, I don't recall.

7 Q At any time prior to your ban on smoking at meeting,
8 wasn't smoking allowed at meetings?

9 A Prior to my arrival I can't say what the policy was.

10 Q No, for you? For you personally? Or did you ban smoking
11 at meetings when you first got there?

12 A I don't remember. I really don't remember. At that time
13 I was smoking as I recall and I may have smoked. I do
14 know and am aware that there is a regulation prohibiting
15 smoking at "meetings or conferences."

16 Q In conference rooms?

17 A Yes.

18 Q Did you ever receive a directive from higher Command for
19 the rest of your branch regarding smoking subsequent to
20 your dealing with Mr. Pletten and moving him?

21 A No, not to my recollection.

22 Q You told me you had talked to Colonel Phillips and
23 Mr. Grimmett and Mr. Hoover, all civilian personnel
24 experts, and after all this discussion they never gave
25 you a directive?

1 MS. BACON: I would object that he has
2 already answered that question at least three or four
3 times.

4 MR. COHEN: He can answer it.

5 Q (By Mr. Cohen) Answer it now.

6 A A directive?

7 Q A formal memo saying that this is what you should be
8 doing?

9 A No, I don't recall having received any such formal
10 memorandum.

11 Q Didn't that put the heat on you, Mr. Kator, to handle
12 the problem?

13 A I felt some obligation to do my best to resolve the
14 problem, yes.

15 Q Well, why is it -- well, I can't ask you to pry into the
16 minds of Messrs. Hoover, Grimmett, and Phillips.

17 Did you express any concern that they
18 should take a stand?

19 A It is not my position to tell them what they need to do.
20 I work for them.

21 Q Even if you thought it was the right thing to do you
22 generally just followed the order?

23 A Well, I could appreciate their position and the frustration
24 that was inherent in their making an effort to resolve the
25 problem. So I didn't push for them to come up with a

1 directive to me to solve the problem.

2 Q In your discussions with Mr. Pletten about compliance in
3 making things better for him did you have any troubles
4 with Mr. Pletten? Was he abusive at any time to you?

5 A I don't recall any instance where he was abusive to me,
6 no.

7 Q How would you classify Mr. Pletten's actions; those of
8 concern or what?

9 A His actions with regard to what?

10 Q On his own behalf. His dealings with you.

11 How did he present himself?

12 Let's ask it this way: Was he a good
13 employee?

14 A Technically, yes. Absolutely.

15 Q Nontechnically, generally, was he a good employee?

16 A Well, that covers a wide span. I would say that
17 Mr. Pletten was very capable and very conscientious. I
18 had no difficulties with his work product.

19 Q That implies you had difficulties with other areas.

20 Did you have any problems with Mr. Pletten?

21 A We are here talking about a problem with Mr. Pletten.
22 Obviously there was this problem if you wish to define it
23 as a problem.

24 Q I don't. But let's assume that you do.

25 Aside from the smoking incident and

1 circumstances were there any other problems that you had
2 with Mr. Pletten?

3 A No.

4 Q So other than this problem about where to put him with
5 regard to smoke, then you could say generally you had
6 absolutely no problem with Mr. Pletten? Other than this
7 smoking circumstance?

8 MS. BACON: Don't put words in the
9 witness' mouth.

10 MR. COHEN: I am on cross-examination. I
11 can lead him.

12 THE WITNESS: Well, you say absolutely no
13 problems. I don't understand.

14 Q (By Mr. Cohen) Well, you clarify it.

15 A I don't remember any other problems but I am not here to
16 say that I had absolutely no other problems either. I
17 just don't recall any.

18 Q Would you recommend Mr. Pletten to somebody else for a
19 position?

20 A I would recommend Mr. Pletten for a position as a
21 classification specialist because of his technical
22 capability. Yes, indeed.

23 Q Is there any reason you wouldn't recommend him?

24 A No.

25 Q Did you give an in-grade increase to him during the time

1 period that this occurred?

2 A Did I give him one?

3 Q Yes.

4 A It's not up to me as a supervisor to give him one.

5 Q Did you recommend that he get one?

6 A Those are an automatic and you would have to take the
7 initiative to keep him from getting one and I did not do
8 that. So, obviously, he must have received one.

9 Q And you would have signed an in-grade?

10 A I would have signed it, yes.

11 Q Do you think during the time period you were dealing with
12 Mr. Pletten that he appeared at any time to you to be
13 disabled from working?

14 A Did he appear to be?

15 Q Yes.

16 A No.

17 Q Did he inform you that he was ill, other than the
18 incidents with smoking and a request to be kept away?

19 A Restate that.

20 Q Let me rephrase the question.

21 Did he have an asthma attack while on the
22 job?

23 A Not to my knowledge.

24 Q Did anybody ever have to call medical authorities to
25 come to his aid while he was there?

1 A I don't recall that having happened, no.

2 Q If that had happened you would have been made aware of
3 it as chief, wouldn't you?

4 A If I had been there, yes.

5 Q When you say you implemented the recommendation by
6 Mr. Braun by moving him, if you had moved the office
7 subsequent to removing Mr. Pletten -- well, let me ask
8 you this way.

9 Did you move the office over to the other
10 side subsequent to Mr. Braun's recommendation?

11 A Did I move the office?

12 Q Was the office moved?

13 I am trying to figure out what went first
14 and I agree with you that two moves are hazy. I am trying
15 to figure out what went first.

16 A Okay. I can tell you to my best recollection the
17 sequence of moves.

18 When I came to TARCOM the branch was
19 situated almost in the center of that large room. And
20 subsequent to that we were granted space across the hall
21 so our function, our branch, was moved up to the west end
22 of that room near the personnel officers' space. So
23 everyone in the branch moved up to that end.

24 Now subsequent to that this discussion came
25 up regarding the 25 feet and the study by Mr. Braun, at

1 which time Mr. Pletten was moved into the semiprivate
2 office. That did come subsequent to the movement of the
3 entire branch.

4 Q And you didn't direct any studies and you don't know of
5 any other studies that were done as to the area?

6 A I don't know of any others, that's right.

7 Q Did anybody ask you for a smoke-free environment for
8 Mr. Pletten?

9 A Did anyone other than Mr. Pletten?

10 Q Did Mr. Pletten ask you for a smoke-free environment?

11 A I recall that term. I don't know the origin of it but
12 I know that was a point of discussion, that the environ-
13 ment should be smoke free.

14 Q Did Mr. Pletten forward that to you?

15 A I don't remember how it came about.

16 Q Is it possible to make that area smoke free?

17 A Is it possible to make any area smoke free?

18 Q Well, let me ask you.

19 Could you have ordered, in your authority
20 as supervisor, that everybody stop smoking, including
21 yourself?

22 A Could I have ordered the employees that worked for me?

23 Q Yes.

24 A Yes, I had that authority in my opinion.

25 Q Did you talk about exercising that authority with anybody?

1 A Yes.

2 Q With who?

3 A With Mr. Pletten, with Mr. Hoover, and, I don't recall,
4 but I think Mr. Grimmett as well.

5 Q Did the term smoke free originate with Dr. Holt to your
6 recollection? If that would help you refresh your memory.

7 A As I recall it may well have, yes.

8 Q In other words it may not have been Mr. Pletten, it may
9 have been Dr. Holt?

10 A May have been.

11 MR. COHEN: We can ask Dr. Holt.

12 MS. BACON: Yes.

13 MR. COHEN: I don't think I have any
14 further questions.

15 Your witness.

16 MS. BACON: I don't have any further
17 questions for you either, Mr. Kator.

18 I realize you are pressed for time and I
19 would not wish to hold you any further.

20 MR. COHEN: Neither would I and I would like
21 to thank you.

22 - - - (12:40 p.m.)

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