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TARCOM HEARING  
APPEAL FROM MERIT SYSTEM  
PROTECTION BOARD

IN THE MATTER OF:

LEROY J. PLETTEN,  
Appellant,

-vs-

DEPARTMENT OF THE ARMY,  
Appellee.

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Transcript of the deposition of ERNEST

PETERS, JR., a witness in the above-entitled cause, taken before  
Norma J. Yeager, Notary Public in and for the County of Oakland,  
State of Michigan, at 3000 Town Center, Suite 1150, Southfield,  
Michigan 48075, on Monday, April 26, 1982, commencing at or about  
the hour of 2:00 p.m.

APPEARANCES:

COOPER & COHEN, 3000 Town Center, Suite 1150, Southfield,  
Michigan 48075, Appearing on behalf of the Appellant.  
BY: STEVEN Z. COHEN, ESQ.

EMILY SEVALD BACON, ESQ., United States Army-Tank Automotive  
Command, Detroit Arsenal, Warren, Michigan 48093, Appearing  
on behalf of the Appellee.

ALSO PRESENT:

Leroy J. Pletten, Appellant.

1 Southfield, Michigan

2 Monday, April 26, 1982

3 2:00 p.m.

4 E R N E S T P E T E R S , J R .

5 being first duly sworn, was examined and testified on his  
6 oath as follows:

7 EXAMINATION

8 BY MS. BACON:

9 Q State your name for the record, please.

10 A Ernest Peters, Jr.

11 Q What is your position, Mr. Peters?

12 A I am Safety Specialist.

13 Q How long have you held that position?

14 A Since July '79.

15 Q What are the duties involved in your position?

16 A In general, my duties would be to insure that the working  
17 environment for the employees at the Tank-Automotive Command  
18 meet all applicable regulations of safety and health.

19 Q What kind of training have you had, what is your background?

20 A For the Safety Specialist job, I was training for six months  
21 at the Field Safety Activity in Charlestown and -- which is  
22 the training center for safety specialists in the TARCUM  
23 community.

24 Q Not on-the-job-training?

25 A Once I got on the job at TACOM, it consisted on going around

1 with the various members of the office, Mr. Shirock and  
2 other members of the office.

3 Q I refer you to the Agency Response Tab 4 and ask you if you  
4 can identify any documents therein?

5 A Here is one dated 1 October 80, contaminants survey,  
6 Building 230; 2 October 80, Air Contaminants Survey,  
7 Room 253W, Building 230; 6 February 81, Building 230 parking  
8 lots; 2 November 81, Building 230.

9 Q Now, you have indicated that those were air contaminants  
10 surveys you, in fact, took, or testing, you, in fact, did?

11 A Yes.

12 Q What equipment did you use in the taking of those surveys?

13 A I used a Model 21-31 Draeger, D-r-a-e-g-e-r, air sampler  
14 and associated tubes that go along with the sampler.

15 Q I note that you have the test results with the particular  
16 contaminants.

17 A Yes.

18 Q Why were those particular contaminants tested?

19 A Those are the four major contaminants that you can survey  
20 for, on environmental conditions, and it includes not only  
21 industrial-type pollutants in the air from factories, and  
22 this is in the surrounding community, exhaust pollutants, but  
23 also cigarette smoking and because we had cases involving  
24 cigarette smoking, we decided to go with these as good  
25 examples.

1 Q Have you training in this?

2 A Yes, at the Field Safety Activity and on-the-job-training.

3 Q How sensitive is that equipment?

4 A Depending on the sample, or the things you are sampling for.

5 Q What standards were you doing this testing under, any  
6 particular standards?

7 A Occupational Safety and Health Administration, OSHA, 19.10.1000,  
8 CFR 29.

9 Q What was the result of your testing as reflected in the  
10 report?

11 A What areas?

12 Q In the areas you refer to the most representative one. For  
13 instance, 2 October 80 survey, that was done in Building 230.  
14 What were the results you found in that?

15 A According to the reading on the tubes, the results were  
16 negative; that is, they indicated that the amount of contami-  
17 nants in the air were below the permissible level indicated  
18 in 19.10.1000.

19 Q In OSHA standards?

20 A Yes.

21 Q Have you done air content studies at numerous places  
22 throughout the Command?

23 A Yes.

24 Q The question came up earlier of whether the new buildings  
25 have ever been tested for air content surveys. Have you had

1 occasion to conduct air content surveys in the new buildings?

2 A Yes, I have.

3 Q What was the result of that survey?

4 A They were found to be negative as well.

5 Q Meaning?

6 A Meaning that the level of contaminants in the air were below  
7 the level established by OSHA.

8 Q Based on all these studies, would you consider the air you  
9 have tested is reasonably free from contamination?

10 A Yes.

11 MS. BACON: I have no further questions at  
12 this time.

13 EXAMINATION

14 BY MR. COHEN:

15 Q Mr. Peters, tell me about your training, if any, at college.

16 A I have a degree in antropology with a minor in sociology  
17 from Southern Illinois University at Edwardsville, Illinois.

18 Q What prompted you to go into an area like safety specialist  
19 with all these calibrations and air studies?

20 A Calibrations and air studies are not the only part of my job  
21 as Safety Specialist. I took the job because it was offered.  
22 I took and passed the test, the entrance examination for  
23 college graduates, at least in my case, in the federal  
24 government, and they offered me the job as Safety Specialist  
25 and I had the opportunity to decline or accept and because

1 it dealt with people and I had a degree in anthropology, I  
2 took the job.

3 Q The safety aspects of the job?

4 A I started out in engineering and I decided to go to behavioral  
5 sciences rather than engineering because of just the way I  
6 felt at the time, and I have 22 hours of calculus, so the  
7 scientific part was intriguing. But at the time the job was  
8 offered, they offered an overall Safety Specialist job that  
9 mentioned nothing specifically about the aspects of the job.

10 Q What portion of your job, according to that, would be taking  
11 the Draeger test, or scientific test?

12 A What portion?

13 Q Yeah.

14 A I can't give you a figure. It varies from day to day, week  
15 to week.

16 Q Generally half the time you spend in this type of stuff,  
17 less than half, more than half?

18 A It is hard for me to answer that because the actual sampling  
19 is such a small part of the actual process of taking a  
20 sample. You have to discuss the need, figure out what you  
21 want the sample for, take into account a variety of things,  
22 and it is all part of my job.

23 Q The need for a study in this case would be obviated because  
24 of the directive to take the studies, isn't that true?

25 A I was not aware of any directive from my boss. Whether

1 people were directing over and above his head, I have no idea.

2 Q What is the gentleman's name?

3 A Shirock.

4 Q Mr. Shirock directed you to do it as reported in this record?

5 A Depending on which record you are talking about.

6 Q I am talking about the documents that are contained that

7 you have reviewed within this record.

8 A I would have to look at all of them to give you a definite

9 yes or no.

10 Q If they weren't Mr. Shirock, who were they?

11 A Part of my job description indicates I can take it upon

12 myself to go out and take air samples and perform any other

13 aspects of my job, based upon my decision to do so. In

14 Mr. Pletten's case, yes, Mr. Shirock directed me to do so,

15 but taking air samples is not from him necessarily.

16 Q In regard to Mrs. Duke's case, one of the documents is signed

17 Ernest Peters, 2 October 80.

18 A What was the question again?

19 Q Did you decide to do this on your own?

20 A No, I was directed to do that one also.

21 Q How frequently do you do these tests on your own generally?

22 A I would say not very frequently. There are certain instances

23 that come up that Mr. Shirock is not in the office, I would

24 have to go and do sampling, or perhaps at request of Medical

25 people when he is not there.

1 Q Do you do tests in conjunction with Facilities Engineers?

2 A It is not their mission to do air sample surveys.

3 Q Despite the fact that we had testimony this morning from

4 Mr. Lang, Facilities Engineer, it is indeed, he has to do

5 such air flow studies?

6 A You are talking apples and oranges. There are air flow

7 studies, air sample surveys and air flow studies --

8 Q What do we have in air flow studies?

9 A Measuring the flow of ventilation into a given area and you

10 take a sample of potential contaminated air.

11 Q The third --

12 A The combination of the two.

13 Q You work with Mr. Braun in these circumstances?

14 A On occasion, yes.

15 Q What does it take as to an Industrial Hygienist and Safety

16 Specialists to do one air study? Are you looking for

17 different things?

18 A No, I don't think looking for different things. It is

19 verifying the results you have, someone who works for the

20 civilian employment health clinic, a detachment at the

21 Tank-Automotive Command, and someone from the Safety Office,

22 which is a representative arm of the Command in general.

23 Q Have you reviewed Mr. Braun's conclusions in this regard to

24 the test you did jointly?

25 A The joint test, yes.



1 Q Do you concur in his appraisals?

2 A Subjective appraisals or objective appraisals?

3 Q Parse them if you have to. Tell me the objective ones, you

4 agree with the objective?

5 A I agree with the objective results he obtained while he

6 performed air flow studies and our air sampling survey.

7 Q What about his subjective?

8 A I don't remember subjective. I would have to look at all

9 of them to give you an honest answer.

10 Q You have not reviewed them for today?

11 A I looked at objective results.

12 Q Let's go into your studies particularly. Let me ask counsel

13 if the first would be in this list, the October 1, 1980, is

14 that the first one?

15 A I don't know this guy down here, I'm sorry.

16 Q This is the appellant, Mr. Pletten.

17 For purposes of the record, we will indicate

18 Mr. Peters expressed an interest in knowing who Mr. Pletten

19 was. Mr. Pletten had not been introduced to Mr. Peters.

20 Mr. Peters explained he had never met Mr. Pletten and they

21 introduced themselves and exchanged greetings.

22 Counsel, you concur?

23 MS. BACON: That is right.

24 Q (By Mr. Cohen) October 1, 1980, is the first in the package.

25 Pertaining to that, Mr. Peters, the conclusions that you

1 reached, you described a vault room and office area. What  
2 is the vault room and where is it located?

3 A In the Communications Detachment area in Building 230.  
4 There is a security vault in which our communications  
5 equipment that is scientific to the government. It is a  
6 classified area. It is call vault room because there is a  
7 vault on the door.

8 Q Is smoking allowed in there?

9 A Yes.

10 Q You are sure of that?

11 A Yes. I had to think for a second. I can't think of the  
12 lady's name that sits at the desk, but she does smoke and  
13 her desk is right there.

14 Q I noticed you made a point to take a reading in both areas  
15 that were next to smokers?

16 A Yes.

17 Q Was that intentional?

18 A Yes. As a matter of fact, when I take air samples, to be  
19 fair to everybody, I take the worst case sample if I can.  
20 If smokers are in the area, I attempt to take samples in  
21 that area because if you don't, there is a possibility that  
22 you are not getting the full benefit of the potential  
23 contaminants in the air.

24 Q Where they are smoking at the time you take the readings?

25 A Yes. I would not have put that statement in there if they

1 weren't smoking.

2 Q So were they puffing away at the time?

3 A Yes.

4 Q How close were they to your test medium, the Draeger?

5 A At least as close as you and I are sitting here, about two  
6 feet at the very most.

7 Q I think it is about four feet, but okay.

8 A Two feet away, two feet.

9 Q Plus or minus one?

10 A Plus or minus one.

11 Q Why did you test for these four items, carbon monoxide,  
12 nitrogen dioxide, hydrocyanic acid and sulfur dioxide?

13 A As I stated before, these are four contaminants which are  
14 very repetitive of the contaminants in the air. In other  
15 words, they are very repetitive. That is really the only  
16 way I can put it.

17 Q What is this gauged toward, cigarette smoking?

18 A Not necessarily. Cigarette smoke is one contaminant found  
19 in the air.

20 Q Are these four major byproducts of cigarette smoke?

21 A I don't know. They are just four byproducts and I think I  
22 would rather not answer that. These are some byproducts of  
23 smoke. Whether they are four major or minor, I am not going  
24 to answer because I don't know.

25 Q That is fair enough. Did you seek to find out before you

1           took the test?

2   A        I was aware these are byproducts of smoking.  If they came  
3           up with positive results --

4   Q        Are there more sophisticated tests than the Draeger?

5   A        Yes.

6   Q        Do you have that ability in your facility at your disposal?

7   A        Yes.

8   Q        Why weren't they used then?

9   A        Because we didn't come up with positive results on the  
10           Draeger.

11   Q       Let me understand.  The Draeger did not come up with a  
12           large confluence and if you had a problem, you would go to a  
13           more specific test to determine specific quantities?

14   A        Confluence through me?

15   Q       Let me try a better word.  Let's talk about accumulation of  
16           contaminants.

17   A        Repeat the question.

18   Q       It is my understanding then you would use the Draeger to  
19           establish at least a prime level with a basic level of  
20           contaminants.  Then you would use more specific tests to  
21           quantify it?

22   A        Well, the Draeger gives us from -- the reading would start  
23           zero part per million and, depending on the two, it would  
24           read the amount of contaminants in the air.  If we came up  
25           with a positive sample, if we approached threshold limit

1 value established by 29 CFR, we would have to look further.

2 Q Well, if that is as you say, there is no sense to have a  
3 meter to be read then, the Draeger. What is the name of  
4 that by the way, the apparatus?

5 A I don't know there is one particular apparatus. There is a  
6 variety of apparatus you could use.

7 Q Which are?

8 A I am not qualified to use them.

9 Q Do you know the names?

10 A Not offhand.

11 Q You know there are more sophisticated --

12 A I know there are some more sensitive.

13 Q What is the margin of error for a Draeger?

14 A I don't think there is any margin of error. Are you aware  
15 of how the tubes work?

16 Q No, tell me.

17 A There is a pump which draws a certain level of air -- I  
18 believe it is one milliliter of air -- through the bellows  
19 in this instrument. If you hook up the tube, a safe  
20 measuring tube, the tube will indicate the level of the  
21 contaminants for which you are measuring on a graduated  
22 scale. And, depending on the particular tube and discolora-  
23 tion that is present, if you find that contaminant in the  
24 air, you can read the graduations and tell how much of that  
25 contaminant is in the air.

1 Q Kind of like a litmus test?

2 A A little bit more accurate, but, yes, there is discoloration  
3 of a chemical indicated inside the tube.

4 Q And you measure the degree of discoloration?

5 A No, not degree of discoloration, how far the discoloration  
6 is down the degradation, down the tube. If there has been a  
7 definite discoloration, the tubes are very easy to read.

8 Q The thing that strikes me, and I am getting back to the  
9 original thrust of these questions, was if there are more  
10 sensitive tools, I would like to think you would want to use  
11 them at the outset, rather than less sensitive ones, to  
12 establish any level. Why is it they chose to use this one  
13 as opposed to any other? Why did you choose to use it?

14 A This is a -- it performs that test that is -- how can I say  
15 this without strain? -- it will measure accurately in  
16 parameters, which is pretty sensitive, the contaminants in  
17 the air, any contaminants, depending on what you are  
18 measuring for. These four are just four of the many you can  
19 sample for. I feel there is no need to bring in more  
20 sophisticated equipment unless you approach the threshold  
21 limit values.

22 Q How long has the Draeger been in use for?

23 A In our office or worldwide?

24 Q Generally.

25 A I have no idea.

1 Q In your office?

2 A Since I have been there; at least two and a half years.

3 Q Have you been trained on any other instrument besides the  
4 Draeger?

5 A Yes, sir. There is the Bendix model I was trained on at the  
6 Field Safety Activity and I have observed Mr. Braun using --  
7 I think Mr. Braun -- a Bendix as well.

8 Q What was the result of the readings in terms of the amount of  
9 air contaminants?

10 A As stated on the last line here, the readings do not approach  
11 the threshold limit values.

12 Q What were the threshold limit values for carbon monoxide?

13 A Five parts per million.

14 Q And Hydrocyanic acid?

15 A I am going to have to hesitate on that one and the other two  
16 because I don't really remember them right off the top of my  
17 head, but let me qualify that.

18 Q Why do you remember carbon monoxide?

19 A It is just one that sticks in my mind. Before we go on a  
20 sampling survey, we verify the functioning of the bellows,  
21 we make sure we have enough tubes to go with us on the  
22 sample, we take our list of standards with us, so that in  
23 case there is any doubt we look at the standards and we don't  
24 have to make a phone call, or rely on our memory, plus in  
25 each one of the tube boxes is an instruction sheet on how to

1 use the tube, how to read the tube, how to interpret the  
2 results and on that sheet of paper also, is the recommended  
3 threshold limit values established by OSHA.

4 Q Do you take a sampling from outside to use as a model for  
5 the other resultants?

6 A We have taken samples on the exterior of buildings at times.

7 Q I noted earlier when I was leafing through, you took one in  
8 a parking lot. How did that compare with the vault room and  
9 the office area?

10 A The results were the same, all significantly below the  
11 threshold limit values.

12 Q Were they identical 10 parts per million for carbon monoxide?

13 A We didn't measure 10 parts per million.

14 Q Excuse me. Less than.

15 A Less than 10 parts per million.

16 Q Explain to me, then, are gradations zero to 10, 10 to 20?

17 A It depends on the tubes.

18 Q How much less than 10 was it?

19 A It is impossible to tell because gradation for that  
20 particular tube I can't -- I can't say for sure. I don't  
21 have the tube in front of me. I would say they would be 10,  
22 20, 30, 40, 50.

23 Q I would say they would be easy to read.

24 A Yes. The gradations on that particular tube are in tenths.

25 Q The result of the park lot study, were they done in the same



1 gradations?

2 A Show me the paper.

3 Q February 6 after all the charts. I know they are in five  
4 parts per million and down to one part per million in other  
5 tests.

6 A I can explain that. I can explain that alleged discrepancy.

7 Q You have an alleged discrepancy?

8 A Yes.

9 Q You think maybe the trent (sic) tube?

10 A I am not sure. It is in here. I probably have it in this  
11 packet. We bought tubes from one of the suppliers in town.  
12 I don't remember which one right now, but we bought another  
13 set of tubes because we were running low and I believe the  
14 new set of tubes were just that much more sensitive.

15 Q Just for carbon monoxide?

16 A I think for that particular tube, yes. I think they went  
17 down to five parts per million.

18 Q Do you have a set of tubes for hydrocyanic acid?

19 A Yes. You can measure one chemical on each tube.

20 Q I thought at all times on hydrocyanic acid, at least from  
21 October 1 to February 6 documents, they are all 2 point or  
22 less, they are identical no matter where you are?

23 A That is right.

24 Q In the parking lot, in the building, outside the building?

25 A That is right.

1 Q Isn't that a little unusual?

2 A Not to my knowledge.

3 Q You are familiar with Building 230?

4 A Yes.

5 Q Do you think the ventilation in that building is good?

6 A Subjective analysis? I wouldn't give you a subjective  
7 analysis. I don't work in the building, I don't have an  
8 office there. I perform certain duties there, but I don't  
9 spend a significant amount of time there.

10 Q What is your impression?

11 A From an objective opinion based on reading the documents that  
12 have crossed my desk, I think, some of which are probably in  
13 here, I think the building meets Army regulations for  
14 ventilation and that is my opinion if the building meets the  
15 Army regulations.

16 Q What is your subjective opinion?

17 A I don't have a subjective opinion. My subjective opinion is  
18 my objective opinion in that case if it meets Army regula-  
19 tions. To my knowledge, there are people in Washington that  
20 know lots more about things like that than I do, and if they  
21 decided to write Army regulations saying you will have X  
22 amount of air changes, or X cubic feet of air movement, or  
23 whatever AR 1-8 states, then I am going along with that.

24 Q Mr. Peters, would it basically be your contention, then, what  
25 comes from Headquarters you believe, just based on their

1 experience, if they were to come down from higher headquarters  
2 with a statement Chicago is located in Missouri, although you  
3 know it is in Illinois, would it automatically change your  
4 opinion that Chicago is in Missouri?

5 A I wouldn't answer Chicago is Missouri. I have guidance, just  
6 like you have guidance. If my guidance says I will do one  
7 thing a particular way, or after having satisfied the  
8 standards I have, I have to follow that standard.

9 Q I am not following enumeration on standards.

10 A I don't have an opinion about my superiors' standards, no.  
11 If that is your question, I follow blindly.

12 Q In that you had two separate complaints I know, October 1,  
13 which was reference Survey 4, I presume, purposes with  
14 Mr. Pletten, and October 2, which is reference matters for  
15 Mrs. Duke, you have two complaints in this similar area.  
16 Does that peak your interest in terms of the problems that  
17 are being expressed by the employees?

18 A I think no. My interest was no more, nor any less concerning  
19 environmental quality, if you will, despite the fact there  
20 were two complaints that appeared to be one right after the  
21 other.

22 Q Would it have been significant to your study if the vent had  
23 been closed or opened, would it have affected your Draeger  
24 test?

25 A Not necessarily.

1 Q Have you been schooled in the standards set by the Department  
2 of the Army?

3 A Which standards?

4 Q The AR 1-8, are you familiar with that?

5 A I have looked at it in the past. I am not that thoroughly  
6 familiar with it. I could not answer questions on it.

7 Q Well, let me help you. I have it here. It is my favorite  
8 document of the day, Agency No. 8.

9 MS. BACON: I believe that is 18.

10 Q (By Mr. Cohen) 18, I'm sorry, I misstated it.

11 A What am I supposed to do with it?

12 Q Look at it and tell me what is the standard set by the Army  
13 with regard to smoking in buildings?

14 A Well, Paragraph 4 deals with smoking in buildings. What  
15 part of the building?

16 Q Let me ask you a specific question that may help us. It  
17 says in Part 2a that the "DA recognizes the right of  
18 individuals working in DA occupied buildings to an environ-  
19 ment reasonably free of contamination." Now, have you asked  
20 higher headquarters what "reasonably free of contamination"  
21 means?

22 A I don't have a direct line to Headquarters.

23 Q Do you have any guidance as to what that is?

24 A I do, 12169 states that all federal work places will comply  
25 with OSHA, so I do have guidance, 29 CFR 19.10.1000.

1 Q In AR 1-8 it says, "As a general rule, a minimum ventilation  
2 rate of 10 cubic feet of fresh air per minute per person is  
3 recommended to remove smoke from work areas and provide a  
4 healthful environment." Are you familiar with that?

5 A I am familiar with that statement, yes.

6 Q When you did your study, did the air comply with both AR 1-8  
7 and OSHA requirements?

8 A I never performed an air flow study in Building 230, I  
9 performed an air sample survey. To the best of my knowledge,  
10 based on statements; this is secondhand knowledge.

11 Q You can't testify as to hearsay.

12 A I can't answer the question. To the best of my knowledge,  
13 the building complies.

14 Q When did you first become aware of AR 1-8?

15 A I can't answer that, I don't know.

16 Q Did you receive training from the Command in smoking-related  
17 matters as a Safety Officer?

18 A Specifically related to smoking?

19 Q Yes.

20 A No.

21 Q How about generally?

22 A I was introduced to all Army regulations at Field Safety  
23 Activities. As Army regulations became pertinent to my job  
24 at the Tank-Automotive Command, I was introduced to them  
25 either by my boss, by Mr. Shirock, or I had to look them up

1 on my own. There is an index of Army publications employees  
2 can go through to look up specific topics if they need to.

3 Q Did you compare your outdoor experiments with regard to  
4 parking lots with any other publications listing contaminated  
5 areas?

6 A I don't really understand your question.

7 Q Let's assume there was a study done by General Motors, or by  
8 the Department of Health in the City of Warren. Did you  
9 compare your results by your Draeger test with any that were  
10 available from those organizations?

11 A I am not aware there are others available from other  
12 organizations.

13 Q You are aware there is a pollution control district and  
14 certain pollution control departments in operation by the  
15 city and state, are you not?

16 A I have not got that much knowledge about them. I am aware  
17 they exist, but I know nothing about them.

18 Q You didn't get any guidance from Mr. Shirock to go find out  
19 about them then?

20 A I don't like that question because it insinuates Shirock was  
21 aware of them and I don't know whether he was aware of them.  
22 I can't answer for him.

23 Q I don't mean to be facetious. If the tubes were bad, you  
24 wouldn't know until there is a comparison and if the  
25 comparison was there --

1 A The tubes were bad?

2 Q Let's assume you got a bad shipment of tubes for Draeger or  
3 an error there, or something beyond your responsibility that  
4 went wrong with the testing. It would certainly help you to  
5 compare it with a normal one, wouldn't it?

6 A Not necessarily because the norm over at General Motors  
7 would not necessarily be the norm at Tank-Automotive Command.  
8 I am concerned with what I am doing there. As a concerned  
9 citizen, I am concerned about air, but when you are talking  
10 samples, it is concerned with the air at the Tank Command.

11 Q You were the man who was told to go out and do a test to see  
12 if it complied with a specific regulation.

13 A No, I was told to go out and perform a test.

14 Q You didn't have to make a determination?

15 A Part of my job description and part of my duties is to go  
16 further than that. I was told to perform my service and it  
17 is a basic part of the job to go ahead and evaluate the  
18 results.

19 Q You made an evaluation that complied with the standards?

20 A Objective evaluations, yes.

21 Q How many places did you do the tests in?

22 A I can't say right offhand. I would have to look through the  
23 records and pull the files. I would say I took representa-  
24 tive samples. Of the air I took out, I think I looked  
25 closely enough. I see I took samples in all industrial

1 areas and all office areas and --

2 Q Building 230, in Building 230, in general, how many places  
3 in the building were you taking tests at, how many tubes?

4 A I can't answer that, I don't know.

5 Q Why can't you answer it? How many did you take when you were  
6 looking for Mr. Pletten?

7 A When I was looking for Mr. Pletten?

8 Q When you were directed by Mr. Shirock to perform studies  
9 pursuant to Mr. Pletten's circumstances, how many places in  
10 230 did you go with your Draeger to take tests?

11 A I would have to look through the records, I don't know.

12 Q Do you have your records with you?

13 A Not in any sort of order.

14 Q Before we get to that --

15 A Tell me why you want to know that. Maybe I can come up with  
16 an answer.

17 Q Was it more than 10, less than 20 places? Give me an  
18 approximation.

19 A I don't know. I don't want to say for sure because I really  
20 don't know. I would have to sit down and count them.

21 Q These locations of samplings that I find in the file, are  
22 these your drawings?

23 A No.

24 Q They would be Mr. Dollberg's?

25 A I don't know.



1 Q You have never made drawings such as these?

2 A I have made drawings associated with air sample surveys and  
3 other types I perform, yes.

4 Q February 1981, you did a joint survey with Mr. Dollberg?

5 A In February?

6 Q Yes.

7 A Yes.

8 Q Earlier you testified that you did not know what the major  
9 components of smoking were, major byproducts. You didn't --  
10 you didn't want to nail yourself down as using those four  
11 things as major byproducts, is that correct? Was that your  
12 earlier testimony?

13 A I think my testimony was that I did not want to say those  
14 were the only four major, or that there were four major  
15 products of smoking.

16 Q But you decided to pin yourself down. On February 6, you  
17 stated contaminant samples, four are the major products of  
18 smoking. Is that your verbiage? I am referring to  
19 Paragraph 1, the second line from the end of the paragraph.

20 A John Dollberg wrote this; I signed it, so I guess that I am  
21 saying that.

22 Q There is no problem if you would like to make a comment that  
23 -- I am not going to put words in your mouth, Mr. Peters. I  
24 don't think there is any problem in saying you are qualifying  
25 your answer and saying you don't want to be pinned down

1 exactly to that. If that is what you want, qualify it; go  
2 ahead. I don't think it is inconsistent with your previous  
3 testimony; perhaps more specific.

4 A Like I said before, I would hate to say there are just four  
5 byproducts of smoking; I would hate to say four byproducts  
6 of anything because I don't know.

7 Q Here you signed something that implies you did make that  
8 statement. At this point you would prefer to hedge, I would  
9 think?

10 A I think the word before major should be left out and I would  
11 agree with the statement.

12 Q Now it says here you did a building of -- survey of  
13 Building 230. You took a sample in Room 111-W4 and 116W, and  
14 you took outside the building. That means you took two air  
15 samples for all Building 230, is that correct?

16 A No, two air samples in Room 111-4W and 116W. That does not  
17 give a representative indication of the entire Building 230,  
18 no.

19 Q Then why does it say air contaminant survey of Building 230?  
20 I agree that --

21 A You see that in the subject up there?

22 Q Yes.

23 A It is much easier for you to copy it, put it in the title  
24 then 114W. It is convenient for the typist.

25 Q It is then safe to presume there may be parts of Building 230

1 that did not comply with regulations? It may or may not have?  
2 By the way, is it safe to assume there are other parts of the  
3 building that are not tested, that we did not know --

4 A Based on this test, it is not safe to say anything. I am not  
5 going to make judgment about the quality of air in the rest  
6 of the building. I did not take tests that day.

7 Q When this goes to the presiding official in this case and he  
8 looks at February 6, 1981 and your statement in conjunction  
9 with Mr. Dollberg, would it be safe to admonish presiding  
10 official to look at -- only for air quality outside those  
11 two rooms and, of course, the parking lot?

12 A I can't answer that because I don't know what the presiding  
13 official would determine. If he read the whole thing, he  
14 would say it was clarified.

15 Q You did instruct him you are only referring to those two  
16 rooms, not the entire building?

17 A There is no need to. It is clarified in Paragraph 2.

18 Q Let's assume for argument's sake, presiding official does not  
19 see it as being clear. You would tell him if he were here,  
20 Mr. Manrose, who is presiding official, Mr. Manrose, these  
21 should be clarified; I only tested those two rooms and it is  
22 not representative of the entire building. Is that what you  
23 would tell him?

24 A If he needed the clarification, yes, I would tell him.

25 Q I am not trying to trick you, Mr. Peters. I just want to

1 make sure he understands that.

2 Let's go on to November 2. Mrs. Bertram asked  
3 you to make a study, air sample survey of a variety of areas  
4 within Building 230. How many places did you look at  
5 according to the study results on November 2?

6 A Four areas.

7 Q Is that representative of the entire building or just the  
8 four areas tested?

9 A Of the four areas tested.

10 Q Are these all within close proximity to one another?

11 A It appears they are in the west wing of Building 230.

12 Q Other areas in the building may have been better as far as  
13 air is concerned, or may have been worse or may have been the  
14 same?

15 A Yes.

16 Q Building 230 is how big a building?

17 A I have no idea.

18 Q If I were to suggest to you 250,000 square feet?

19 A I have no idea.

20 Q Let's say it is a large building, sir.

21 A Compared to what?

22 Q Compared to this office, this library.

23 A It is larger than this office.

24 Q It is an office building wherein hundreds, if not thousands  
25 of people work?

1 A I am not sure how many people work in Building 230.

2 Q Are there hundreds?

3 A Hundreds.

4 Q That is a large building, I think.

5 A I didn't say that.

6 Q I know. I presume the presiding official could take official  
7 notice a place with hundreds of people working in a span of  
8 one day, is a large building and we have testimony on the  
9 record indicating --

10 MS. BACON: Mr. Manrose is going to make his  
11 own definitions as to large building.

12 Q (By Mr. Cohen) Your results here indicated no hazardous  
13 concentration of contaminants sampled for any area survey.

14 A Yes.

15 Q Did you have any concentration of contaminants although they  
16 might not have been hazardous?

17 A None definable, or you could always put it readable amounts  
18 off the tube. The tube did not indicate any concentration.  
19 I got no positive results on the tube at all.

20 Q So why did you put results in as less than one, or less than  
21 five?

22 A As I stated before, the tubes are graduated and if you get  
23 no reading, so to speak, you can't necessarily put zero  
24 parts per million.

25 Q Why?

1 A Because the tubes -- you can't read the tubes that way as  
2 zero parts per million because I don't know they are reading  
3 zero parts per million. The tubes indicate to me there is  
4 no discoloration, that there is less than the first mark on  
5 the tube.

6 Q What is the margin of error on these tubes?

7 A I would have to pull a tube box out for each individual tube.

8 Q You don't know the competence level?

9 A It is good. They are calibrated before they leave the  
10 manufacturer.

11 Q There is no margin of error?

12 A There is a margin of error in the reading of the tubes, but  
13 like I stated, the tubes are graduated and if there is dis-  
14 coloration, you can read the tubes and read the amount of  
15 discoloration.

16 Q Are you familiar with OSHA requirement regarding the presence  
17 of carcinogens such as Benzene?

18 A I am aware that OSHA has a standard on Benzene, yes.

19 Q Do you know what the standard is?

20 A Not right offhand.

21 Q If I were to say to you that OSHA indicated a zero reading  
22 was ideal with regard to Benzene, would that refresh your  
23 memory?

24 A No.

25 Q Aside from the -- you were testing only for smoke and

1 contaminants in the air, is that correct?

2 A I was testing for contaminants in the air, smoke of which is  
3 one of the contaminants.

4 Q And you took a study next to two smokers to give the worst  
5 possible situation?

6 A Yes.

7 Q Did you get into the other hazards of smoking besides just  
8 smoke? Did you explore the other safety elements of cigarette  
9 smoke?

10 A Safety in which regard?

11 Q In regard to the other parts of your job?

12 A Safety regulations address smoking in those areas in which  
13 there is flammability or combustibility potential such as  
14 fuel stations, gas stations, flammable storage areas and  
15 other areas associated with combustibility-flammability  
16 hazard. That is one of my job duties is to make sure people  
17 don't smoke in no-smoking areas as associated with industrial  
18 type of no-smoking hazards.

19 Q Then you probably interpolated Agency No. 18, which refers  
20 to the following language that, "DA also recognizes the right  
21 of individuals to smoke in such buildings, provided such  
22 action does not endanger life or property, cause discomfort  
23 or unreasonable annoyance to non-smokers, or infringe upon  
24 their rights." Are you familiar with that portion?

25 A I am familiar with that portion, yes.

1 Q Is it your responsibility to enforce that section as well as  
2 within your job description?

3 A To enforce that section, no. It is my duty as Safety  
4 Specialist to insure that other people who are responsible  
5 for enforcement, enforce their portion of any regulation,  
6 not necessarily this one, all regulations being enforced,  
7 regulations in my area of responsibility.

8 Q And you can enforce this one, I take it?

9 A I can require enforcement by those in charge of those for  
10 enforcement.

11 Q Did you recommend enforcement of this recommendation with  
12 regard to Mr. Pletten?

13 A That is a pretty broad question because that is a pretty  
14 broad sentence in there.

15 Q How do you interpret it? It may be broad, sir, but your  
16 responsibility is to interpret and implement.

17 A I interpret and make recommendations for implementation.

18 Q For what part?

19 A It is not my job responsibility for those two associated  
20 areas that you talked about in there to recommend enforcement.  
21 I can recommend enforcement when it deals with safety hazards.

22 Q But by definition isn't that portion identifying what safety  
23 hazard is if the employees' smoke bothers my client?

24 A That is not a safety hazard; it involves flammability and  
25 combustibility.



1 Q Does it not involve a physical hazard to Mr. Pletten?

2 A I am still talking about that sentence.

3 Q I am too, but let's assume for argument's sake Mr. Pletten  
4 has specific sensitivity to cigarette smoke.

5 A That is not a safety hazard, that is a physical or health  
6 hazard. I am not a medical officer, I am a Safety  
7 Specialist.

8 Q It means to me, Mr. Peters, that you protect the plant and  
9 the papers and contents of the plant and of the Command, but  
10 not necessarily the individual.

11 A You can't say that because by protecting the physical plant,  
12 so to speak, and the facility, I am also protecting the  
13 people.

14 Q But you would not interpose your position with regard to  
15 Mr. Pletten's illness, or lack of illness?

16 A I am not a medical authority, so I cannot make any judgment  
17 on his physical condition at all.

18 Q I refer you to -- have you read any USACARA reports regarding  
19 Mr. Pletten?

20 A No.

21 Q I will indicate to you in January 25, 1980, USACARA report,  
22 the hearing examiner stated, and I quote, "Mr. Pletten has  
23 established that insofar as he personally is concerned,  
24 smoking does not constitute a safety hazard to him." In  
25 view of that description by the hearings examiner that

1 Mr. Pletten is posed with a safety hazard in view of smoking,  
2 we then come within the purview of your office?

3 MS. BACON: I would object to the question.  
4 What you just read was a USACARA examiner's report and her  
5 opinion.

6 MR. COHEN: Well, judges are as judges have  
7 been. She made the report. It can be noted I will note the  
8 objection for the record and agree that the objection stems  
9 to her characterization, but that is the decision as it  
10 stands for whatever use Mr. Manrose wishes to make use of it.

11 Q (By Mr. Cohen) Does he now come within the purview of your  
12 good offices as Safety Officer?

13 A What a USACARA official states is a safety hazard and what I  
14 interpret as a safety hazard may, in some cases differ. What  
15 that person had in mind, I have no idea.

16 Q Command says that they implemented and accept, they accepted  
17 conclusions and recommendations, but they did not necessarily --

18 MS. BACON: I object to that. I believe the  
19 record indicates Command accepted the recommendations.

20 MR. COHEN: Let me indicate what it says at  
21 Tab 13, which says that I believe they accepted two conclu-  
22 sions and the recommendations, but not necessarily all the  
23 findings of fact. It says -- I'm sorry. It says Agency,  
24 though not agreeing with all findings of facts, accepted the  
25 recommendations. That is clearer.

MS. BACON: Yes.

1  
2 Q (By Mr. Cohen) Did you provide copies of your report to  
3 various people from the Command, your series of reports?

4 A It depended on the reports. In some cases I did supply  
5 copies to various individuals, yes, or offices.

6 Q Who is Mr. B. Olson?

7 A I don't know right offhand, I would have to see the paper.

8 Q Would these have gotten back -- one of these is made directly,  
9 if I am not mistaken, for Dr. Holt. Is he your superior?

10 A No.

11 Q I'm sorry. One was made for Mr. Braun. At least he got a  
12 copy of it?

13 A Yes.

14 Q Several of them Mr. Braun received copies of. Did these get  
15 to the Personnel Office, do you know?

16 A I have no knowledge as to that. I don't know.

17 Q I indicate to you -- first of all, I would like you to look  
18 at that document. Tell me if you have seen it.

19 A I have never seen this.

20 MR. COHEN: I would like this marked as  
21 proposed Appellant's 3 for the record. I will have copies  
22 made and distributed. I will not move its admission at this  
23 time, but I would like to refer to it and it will be linked  
24 up on later testimony. It is an August 19, 1980 letter we  
25 will later introduce into evidence, that a letter transmitted

1 from Mr. Hoover, Civilian Personnel Officer, to Ms. Marie A.  
2 Wyman, Employment Standards Administration, Office of  
3 Workers' Compensation Programs, Division of Federal Employees'  
4 Compensation, 1240 East 9th Street, Room 857, Cleveland,  
5 Ohio 44199, pursuant to Mr. Pletten's claim for Workers'  
6 Compensation benefits.

7 Q (By Mr. Cohen) He indicated at Tab B of that letter that,  
8 "No information is available on the fumes to which  
9 Mr. Pletten may have been exposed." This was written  
10 19 August 80 several months, in many cases, after -- before  
11 and after your studies. Most particularly, it was after, if  
12 I don't miss my guess, your specific studies, is it not, or  
13 the studies of Mr. Braun in June and preceding June 1979, and  
14 it certainly is contradictory of some of the things you are  
15 talking about.

16 MS. BACON: I would object to that question.

17 Both the letter and the studies speak for themselves.

18 Q (By Mr. Cohen) Did you perform any studies prior to  
19 October 1980?

20 A I would have to look at the records.

21 Q Do you have that part of the record with you also? You  
22 don't have to look now, you can look later.

23 A I am not sure. I would have to look in the files.

24 Q We will give you, before we finish, we will give you an  
25 opportunity to do so.

1 Did you ever see any of the doctors' reports  
2 regarding Mr. Pletten?

3 A No.

4 Q And you are not privileged to that information at any time  
5 referred to or discussed with any of Mr. Pletten's physical  
6 circumstances?

7 A I was made aware of Mr. Pletten, what I was aware of of his  
8 physical conditions. I never saw any documents.

9 Q Who made comments to you about Mr. Pletten's physical  
10 condition?

11 A I heard things, statements from Mr. Shirock, my boss, and  
12 Mr. Braun who explained the details of which I can't remember,  
13 but they explained Mr. Pletten had a physical condition that  
14 warranted additional attention. I think that is a neutral  
15 statement and that is what I meant it to be anyway.

16 Q Did you ever speak to Mr. Pletten before today?

17 A Never.

18 MS. BACON: I think the record speaks for  
19 itself.

20 THE WITNESS: Never met the gentleman.

21 Q (By Mr. Cohen) If the USACARA report indicated that some-  
22 thing was a safety issue and you disagreed with it, how does  
23 USACARA enforce its will? If a USACARA report comes down  
24 indicating something is a safety matter, why don't you  
25 immediately adopt it?

1 MS. BACON: I object. There is no foundation  
2 that Mr. Peters would be aware of USACARA reports.

3 Q (By Mr. Cohen) I am asking him seriously if something comes  
4 down as a safety matter to you, does it get to you?

5 A It goes through Mr. Shirock.

6 Q Then he would communicate to you, "Hey, this is a safety  
7 problem"?

8 MS. BACON: I would object. Mr. Shirock would  
9 have to see what to do under any circumstances.

10 Q (By Mr. Cohen) Mr. Shirock would have passed on guidance?

11 A Mr. Shirock would have passed on guidance, whatever way that  
12 guidance went. I have no idea what he would have said in  
13 that case.

14 Q Are you familiar with legal concepts of a person's right to  
15 remain and work in a safe condition?

16 A No.

17 Q You are not aware of that at all?

18 A I am not aware of it as it is stated there. It would be an  
19 assumption on my part.

20 Q Let's assume it was part of OSHA standards. Does that  
21 refresh your memory, the right of a person to remain at work  
22 in a safe condition?

23 A There is a statement in OSHA that addresses that. What the  
24 statement says exactly, I don't know. If it is in OSHA, I  
25 am familiar with the statement that resembles that.

1 Q It is part of your job and responsibility to enforce that  
2 concept?

3 A No. It is my responsibility to insure other people enforce  
4 it. I make recommendations, enforce regulations as they  
5 pertain to my area of responsibility as Safety Officer.

6 Q Maybe I am not clear. As Safety Officer you can go anywhere  
7 in Command and tell people you are not following safety  
8 regulations?

9 A Yes.

10 Q In Mr. Pletten's case, obviously OSHA dictates he has a right  
11 to work in a safe work environment and condition?

12 A I don't want to respond to a statement until I get what  
13 OSHA says exactly.

14 Q Put it hypothetically. Presume it does say that. What  
15 happens if you get a complaint Mr. Pletten is having  
16 trouble, or OSHA says he has a right to work in safe working  
17 conditions? What is the chain? How do you get involved?

18 A It depends on the hazard that the individual is faced with.

19 Q Obviously for purposes of our discussion, let's talk about  
20 cigarette smoke.

21 A Oh boy. Cigarette smoke. I took air samples in his area as  
22 well as other areas surrounding the office in which he was  
23 sitting, which he was assigned, I guess, and Mr. Braun  
24 performed some air flow surveys, but that is -- I should  
25 retract it. That is Army regulations, not OSHA. I sampled

1 for air contaminants.

2 Q Let's assume for argument's sake you have a circumstance  
3 where there is an oil slick on a floor; you walk into an  
4 area and see a big patch of oil. What is the procedure  
5 there? You tell somebody to clean it up, don't you?

6 A I talk to the supervisor in the area and recommend that he  
7 clean up the oil spot before somebody hurts themselves, yes.

8 Q Now, if you take it to -- it may not necessarily be  
9 comparable -- but if you take that same thing, you see a  
10 spot of oil somebody could slip on and break their neck and  
11 you say to a supervisor I think you should clean that up?  
12 That makes sense? You ask them to abate the problem prima  
13 facia before potential harm, but with smoking you find out  
14 if harm exists. If a person says, prima facia, I have a  
15 problem, why wouldn't the Safety Officer have the smoking  
16 stopped?

17 A We are talking apples and oranges. We are relating a health  
18 problem with a safety problem and the two don't necessarily  
19 mix. I took air samples in the area in response to a  
20 complaint about contaminants, from smoking, in the air and I  
21 found negative results.

22 Q Workers' Comp cases are referred to you, are they not, the  
23 Safety Officer, if there is a problem, somebody is hurt on  
24 the job?

25 A I am not involved in that aspect of the office. Our office



1 does integrate with Personnel as far as Workers' Compensation  
2 cases are concerned, but I don't know the extent of our  
3 involvement.

4 Q Are you familiar with any other employees having filed  
5 claims stemming from smoke-related conditions?

6 A I am familiar with certain cases, yes.

7 Q How many?

8 A I don't know. I would say at least two or three others.

9 Q Is the problem at the Command?

10 A Is what a problem?

11 Q Smoking.

12 A In what regard?

13 Q In that you have two or three complaints, smoking-related.

14 A I don't like that question.

15 Q I don't care if you like it.

16 A Is smoking a problem at Command because we have two or three  
17 complaints?

18 Q Tell me -- let me give you a better question perhaps. Is it  
19 a major concern of the Safety Office?

20 A Smoking per se?

21 Q Yes.

22 A No.

23 Q Why not? It seems to be the concern of the Surgeon General  
24 of the United States.

25 A It is a major concern in the Safety Office as it pertains to

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flammable and combustible storage and smoking therein.

Q But other than it, your office is almost unrelated to the physical ailments of people other than if you make a change in Safety, it may benefit the physical?

A Yes. I would say that. I don't like the question, but I would answer yes to it.

MR. COHEN: I have nothing further.

MS. BACON: Nothing further.

(3:16 p.m.)

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STATE OF MICHIGAN)  
COUNTY OF OAKLAND)

SS

I, Norma J. Yeager, Notary Public in and for the above county and state, do hereby certify that the foregoing deposition was taken before me at the time and place hereinbefore set forth; that the witness was duly sworn by me to testify to the truth, the whole truth and nothing but the truth; that the foregoing questions and answers were duly recorded by me in stenotype and later reduced to typewritten form under my supervision; and that the foregoing is a full, true and correct transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Southfield, Michigan this 10<sup>th</sup> day of July 1982.

*Norma J. Yeager*  
Norma J. Yeager (CSR0015)  
Notary Public  
Oakland County, Michigan  
My Commission Expires: 7-19-83