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TACOM HEARING  
APPEAL FROM MERIT SYSTEM  
PROTECTION BOARD

IN THE MATTER OF:

LEROY J. PLETTEN,  
  
Appellant,  
  
v  
  
DEPARTMENT OF THE ARMY,  
  
Appellee.

---

The Deposition of LEROY J. PLETTEN, a witness  
in the above entitled cause, taken before Elaine Jordan, Notary  
Public in and for the County of Wayne, acting in the County of  
Oakland, State of Michigan, at 3000 Town Center, Suite 1150,  
Southfield, Michigan 48075, on Wednesday, May 19, 1982,  
commencing at or about the hour of 1:10 P.M.

APPEARANCES:

STEVEN Z. COHEN, ESQ.  
COOPER & COHEN  
3000 Town Center, Suite 1150  
Southfield, Michigan 48075

Appearing on behalf of Appellant

EMILY SEVALD BACON, ESQ.  
UNITED STATES ARMY TANK AUTOMOTIVE COMMAND  
Detroit Arsenal  
Warren, Michigan 48090

Appearing on behalf of Appellee.

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EXHIBITS MARKED FOR IDENTIFICATION: (APPELLANT'S)

14 6	Office of Personnel Management - Disability Retirement	
15	Not Approved Form	3
16 7	TACOM DF to Civilian Personnel Office, from	
17	Chief Counsel, dated 19 June 1979	3
18 8	TACOM DF to Medical Officer, from Civilian	
19	Personnel Office, dated 12 March 1980	3
20 9	Equal Employment Opportunity Commission Decision,	
21	dated February 23, 1982	10
22 10	Letter to Mr. Wertheim, from Miss Bacon	

MI-138

1 Southfield, Michigan

2 Wednesday, May 19, 1982

3 1:10 P.M.

4 (Appellant's Proposed Exhibits 6,  
5 7 and 8 were marked for  
6 identification.)

7 L E R O Y J. P L E T T E N,

8 having been affirmed by the Notary Public, was  
9 examined and testified upon his oath as follows:

10 MR. COHEN: Let the record reflect that  
11 this is the reconvening of a hearing pursuant to orders of  
12 the Merit System Protection Board taken pursuant to notice  
13 to both Counsel and Mr. Pletten and will be used for purposes  
14 of de bene esse testimony in lieu of trial.

15 DIRECT EXAMINATION

16 BY MR. COHEN:

17 Q Would you state your name for the record?

18 A Leroy J. Pletten.

19 Q Mr. Pletten, you are the subject of this claim as a removal  
20 action. Are you familiar with the circumstances surrounding  
21 the removal?

22 A To a great extent, yes.

23 Q Have you read the proposed notice and the notice of removal  
24 in this action?

25 A Yes, I have.

1 Q Do you understand them?

2 A No, I don't.

3 Q Why is it that you don't understand them?

4 A They're clear (sic) and vague. And, you know, I've written  
5 advance notices in other cases and these letters look like  
6 sort of the start towards a possible letter. But really  
7 there's nothing in there that is anything except conclusions  
8 and no factual evidence, and it seems inconsistent and  
9 contradictory.

10 Q You are familiar with the basis of the Government's claim  
11 is that you're disqualified medically from returning to work?  
12 Do you understand that?

13 A No, I do not understand that.

14 Q What is it that you do understand as far as the medical  
15 aspect of the claim?

16 A Well, that they assert that that's the case, but I don't  
17 understand it because there's no medical qualification  
18 factors to be disqualified from.

19 Q I'm going to show you a document that I've written at the  
20 top right-hand corner as Appellant's Proposed Number 6.  
21 Can you identify this, please?

22 A Yes. This Appellant's Number 6 is a document I received  
23 from the Office of Personnel Management under the Freedom  
24 of Information Act in response.

25 Q When was that request filed under the Freedom of Information  
Act?

1 A The request was filed on the 5th of November, 1981, as I  
2 recall it.

3 MISS BACON: May I take a look, please?  
4

5 VOIR DIRE EXAMINATION ON APPELLANT'S PROPOSED EXHIBIT NUMBER 6

6 BY MISS BACON:

7 Q Mr. Pletten, do you know whose writing this is?

8 A The initials appear to be those of Dr. Carbone from a  
9 previous letter that he had sent me in August, 1981. That's  
10 how I conclude, you know, that.

11 Q You would admit that not all the blocks in this have been  
12 filled out?

13 A All the blocks --

14 MR. COHEN: Objection, Counsel. The  
15 evidence stands for itself, if it's admitted.

16 A (Continuing) All the blocks as on the final decision dealing  
17 with the Agency. This case doesn't follow any of the  
18 normal criteria, and it's an "other" kind of case; that the  
19 agency hasn't established any medical fact at all that  
20 prevents me from working.

21 Q Mr. Pletten, do you have anything to indicates where this  
22 came from, from whom it came, why it came, or anything else,  
23 outside of your bald statement that it was based on an  
24 FOIA request?

25 A I have the envelope in which it came from. I have -- You know,

1 they sent me back the entire case file, which, you know, I  
2 had never been allowed to see by the Agency. That's why  
3 I asked under the Freedom of Information Act for the entire  
4 case file so I could, even though the decision had already  
5 occurred, what is the basis for the Agency even proposing  
6 this. I asked for this before. I have been denied it.

7 Q And this form is not signed anywhere?

8 A It's initialed by, apparently, Dr. Carbone.

9 Q But you are guessing? You do not know that for a fact?

10 MR. COHEN: Objection, Counsel.

11 Mr. Pletten testified that based on prior receipt of the  
12 letter from Dr. Carbone those initials are his and to the  
13 best of his knowledge they are. Aside from the question of  
14 verification of this, that can be done by taking the  
15 testimony of Dr. Carbone or the Agency can produce prior  
16 evidence that refutes the allegations of Mr. Pletten. They  
17 are taken as true unless contradicted.

18 MISS BACON: I don't think so.

19 Are you moving for admission of this?

20 MR. COHEN: Not at this point. Not yet.

21 Not until I finish talking to him and laying a foundation.

22 DIRECT EXAMINATION (CONTINUED)

23 BY MR. COHEN:

24 Q Mr. Pletten, the writing, the handwriting across this  
25 document, did you write it?

1 A No, I did not.

2 Q Did you alter the document at any time after receiving  
3 it from the federal government?

4 A No, I did not.

5 Q And you're swearing -- Excuse me -- affirming that this  
6 document is a portion of the Freedom of Information Act  
7 request response received by you?

8 A Yes. It's part of a very large package.

9 Q And this could be verified, of course, by contact, you know,  
10 with Dr. Carbone if, indeed, it is his handwriting?

11 A Yes. That's Dr. Carbone's handwriting. I'm sure he's going  
12 to be able to say this.

13 Q You have not altered this document in any way, shape or form?

14 A No. I have no reason to alter documents. I've got a huge  
15 file. It would be silly to alter the file.

16 Q And where do you see the initials that you presume are  
17 Dr. Carbone's?

18 A Looking at the words that say "Retirement Claims Division,"  
19 the initials appear to be directly physically under the  
20 word "Retirement."

21 Q And you have other documents which lead you to believe that  
22 that is Dr. Carbone's initials?

23 A I believe I have the entire case file in my briefcase in  
24 the next room, if we need to go through the entire case file.

25 MR. COHEN: Subject to the objections of

1 Counsel -- If Counsel objects, I'll be more than happy to  
2 bring in the entire case file to verify it as a document --  
3 I believe that the foundation has been laid, and I move for  
4 admission of Appellant's Number 6.

5 MISS BACON: I object to its admission  
6 as not being clear at all from anywhere who is the preparer  
7 of that document, nor has that document be verified by the  
8 preparer, and I'm going to object.

9 MR. COHEN: Whether or not, I think  
10 Mr. Pletten has verified that it came from the Office of  
11 Personnel Management -- or the Agency pursuant to a  
12 Freedom of Information Act request.

13 THE WITNESS: Well, this came from the  
14 Office of Personnel Management and was clearly generated  
15 by them. My concern concerning the Freedom of Information  
16 Act was to obtain the entire file including whatever the  
17 Agency submitted, plus any and all internal workings of OPM.

18 Q (By Mr. Cohen) Mr. Pletten, you made your request strictly  
19 to OPM, the FOIA request?

20 A On the 5th of November that request was strictly to OPM  
21 because I had not been successful, you know, in getting  
22 anything.

23 Q This was received by the Office of Personnel Management?

24 A Oh, they sent me an acknowledgement of receipt of my request.

25 Q And they sent you this document amongst others in reply?



1 A Oh, yes.

2 Q How much did you pay for this?

3 A I specified, I recall, that I believe I shouldn't have to  
4 pay anything. In fact, I was not charged anything because,  
5 I presume, I'm entitled to see the file on my own disability  
6 retirement application, you know, that was filed by the  
7 Agency.

8 MR. COHEN: Counsel, in response to the  
9 objection, I think he's laid a foundation that he received  
10 it pursuant to the FOIA request. That he has not altered  
11 the document. The document speaks for itself. It's his  
12 impression that is Dr. Carbone's initials. Although not  
13 completely verified, which it could be by Dr. Carbone, the  
14 question then becomes whether it was part of the official  
15 Personnel Management's files. I think he's laid sufficient  
16 foundation to make that clear. Now if your objection is  
17 to the authorship --

18 MISS BACON: My objection is we do not  
19 have any independant corroboration that this is, in fact,  
20 part of OPM's file; that somebody up at OPM prepared it.  
21 My objection to it is you're showing me this document and  
22 saying, yes, this is from OPM's file. I have no independent  
23 verification of that fact.

24 MR. COHEN: Other than Mr. Pletten.

25 MISS BACON: Other than Mr. Pletten saying  
this is from OPM.

1 Q (By Mr. Cohen) Mr. Pletten, you have brought in a third  
2 class envelope from the United States -- It reads in the  
3 upper left-hand corner "United States Office of Personnel  
4 Management," and it's addressed to you at your home on  
5 Eighteen Mile Road; is that correct?

6 A Yes, it is.

7 Q Did you receive the document that we're marking as Appellant's  
8 6 within this third class envelope?

9 A Yes, I did.

10 Q And it has not -- You haven't altered the document at all  
11 since you received it?

12 A No, I have not.

13 Q And it came with other papers and documents?

14 A Yes, in response to my Freedom of Information Act request  
15 that clearly someone had underlined the part that I asked  
16 for the file in my appeal.

17 Q That letter was dated what?

18 A My appeal was dated the 5th of November, 1981.

19 Q And the FOIA request was received by them, was marked by  
20 them?

21 A There's a date stamp there that says the 10th of November,  
22 1981, and it says "Office of" -- It's partly illegible, and  
23 it says "Compensation." You can see the word partly there.

24 Q And it is your testimony that this is where you received it?

25 A Oh, yes. I had no other way of knowing that that was the

1 draft, I suppose, for the ultimate decision.

2 MR. COHEN: I move for admission.

3 MISS BACON: Well, I object to it on the  
4 grounds that I previously stated. There's no verification  
5 of who prepared it or why or where it's located.

6 MR. COHEN: Well, I think there is. I  
7 think the testimony given by Mr. Pletten is sufficient to  
8 indicate that he received it from the Office of Personnel  
9 Management. Now I will be giving you a copy, Counsel, a copy  
10 for me, and I believe two copies for the Court Reporter to  
11 send along with the transcript.

12 Q (By Mr. Cohen) Mr. Pletten, I want you to identify a  
13 document I marked as Appellant's 7.

14 A This document is entitled "Prohibition of Smoking in  
15 Civilian Personnel Division" of the 19th of June, 1979 and  
16 is a response advising the Personnel Office. This response  
17 dates from the time when I had filed the grievance in  
18 June, 1979 that I ultimately received the USARCARA report  
19 on the 25th of January, 1980.

20 Q You received this document, did you not?

21 A Someone at some point gave me a copy, yes.

22 Q And it's signed by Richard Tarnas?

23 A Well, it's signed by Frank Ortisi for Richard Tarnas.

24 Q Mr. Tarnas is Chief Counsel?

25 A Yes, he is.

1 Q Is Mr. Ortisi part of his office?

2 A Yes, he's a Division Chief.

3 Q All right. It's your belief that this document is from the  
4 Legal Office?

5 A Yes, it is my belief, and based upon knowledge that was also  
6 with the grievance file, and it was the statement that, you  
7 know, USARCARA and I discussed. You know, in fact, the  
8 answer that I received in August, 1979 that the Command  
9 doesn't have authority was contradicted by the Agency's  
10 own legal office.

11 MR. COHEN: Move for admission.

12 You may voir dire.

13 MISS BACON: Yes, I would.

14 VOIR DIRE EXAMINATION ON APPELLANT'S PROPOSED EXHIBIT NUMBER 7

15 BY MISS BACON:

16 Q This document is dated 1979. Now you stated -- I don't see  
17 your name anywhere on this document. Is your name here?

18 A No. My name is not on the document.

19 Q And yet you claim to have received it somewhere. Did you  
20 receive it through official channels?

21 A I assume that during the course of the grievance process,  
22 possibly the second-step meeting with Mr. Grimmet because  
23 I know that part of the grievance discussion was to obtain  
24 information from the Legal Office as to the authority of  
25 management to, you know, do what was necessary to ban smoking

1 in the Personnel Office as Mr. Kator has suggested I write  
2 a DF to do. This was part of the discussion from the overall  
3 grievance file from that time, and it shows what they were  
4 going to do. They obviously did ask for the Legal Office  
5 opinion.

6 MISS BACON: I fail to see the relevancy  
7 to the present action.

8 MR. COHEN: Counsel, I think it stands  
9 for itself, and I think it's an indication of the chain  
10 of events surrounding Mr. Pletten. It talks about the  
11 jurisdiction or the authority of the Command to ban smoking  
12 and the interpretation of AR 1-8, which I believe goes to  
13 a great deal of the heart of this matter. I think it's  
14 relevant on that basis. I think that the authenticity of  
15 that document can be either admitted or denied by the  
16 Agency's own legal counsel, who, I will note for the record,  
17 is a subordinate officer of that office and both Mr. Tarnas  
18 and Mr. Oritisi. Since testimony is not closed in this  
19 matter until the 21st, you would have time to receive  
20 the delivery of the document.

21 MISS BACON: I have no intention of  
22 refuting the validity of the document. I just fail to see  
23 its relevance, and I base my objection on that ground.

24 DIRECT EXAMINATION (CONTINUED)

25 Q (By Mr. Cohen) Mr. Pletten, let me read to you part of

1 Appellant's Number 7, which goes this way. It says:

2 "Army Regulation 1-8 does give  
3 officials the authority to ban smoking  
4 in areas under their jurisdiction."

5 Was it your understanding that they had that authority?

6 A Yes, it is, based upon that statement and discussion that I  
7 had had with Legal Office personnel.

8 Q It says also there is a recognition of the right of people  
9 to smoke and that "to ban smoking should be undertaken only  
10 when the smoking is found to endanger life or property, cause  
11 discomfort or unreasonable annoyance to non-smokers, or  
12 infringe upon their rights." Now, that statement, as I  
13 recall it from our previous exhibits is almost a parody  
14 of AR 1-8. What is your interpretation of 1-8?

15 A I had a discussion with George Siebert's office, Department  
16 of Defense, who is the contact for the Department of Defense  
17 according to the Federal Register for, I think, August, 1977,  
18 to advise me --

19 MISS BACON: I object to the answer. I  
20 don't think you're answering the question to begin with.

21 MR. COHEN: Let me get to it, Counsel.  
22 He'll tie it up.

23 Q (By Mr. Cohen) Go ahead, Mr. Pletten.

24 A I wanted to know certain things about the Ar 1-8 based upon  
25 the events that were occurring to that point, and what's

1 the purpose of AR 1-8, is basically what I wanted to know.  
2 What is the equitable balance? And the purpose of AR 1-8 is  
3 that non-smokers, of course, have priority under the  
4 regulation. That smokers are the ones seen as being  
5 accommodated and not non-smokers. That smoking can be  
6 accommodated only if numerous criteria are met. That smoking  
7 is considered essentially to be something that is not part  
8 of the mission. I wanted to know why he thought those  
9 kinds of things. That's what I thought, you know, reading  
10 the regulation, and that's what USARCARA sustained. But  
11 there had been a case, the Shimp case, which in part  
12 had caused the Department of Defense to have concern about  
13 the problem of smoking. There have been lots of problems.  
14 It's been known since the Korean War with the British Army  
15 that smoking bothers army personnel.

16 Q Mr. Pletten, were you discomforted by the smoking?

17 A Absolutely.

18 Q But in view of the discomfort that you just testified that  
19 you have, could you, nonetheless, continue to work?

20 A Yes. Absolutely.

21 Q Are you able to work right now?

22 A Yes, I am.

23 Q Let's assume for argument's sake that the Tank Command were  
24 not to ban smoking or not to even accommodate smoking to the  
25 degree of 1-8. Let's assume that for argument's sake. Would

1           you still be able physically to work?

2    A       Yes, I would be, and I am.

3    Q       Where do we seem to have the disagreement with the Army  
4           then?  If you can work under those circumstances, what  
5           seems to be the problem here?  Why can't we get together  
6           on this?

7    A       Management has never agreed to even begin discussion with me  
8           and management won't answer me when I write to them.  
9           Management won't process my grievances.  Management won't  
10          process my EEO complaints.  I make every effort.  I go above  
11          and beyond the call of duty in trying to discuss or even  
12          deal in writing with management.  Mr. Adler of the EEO Office  
13          recognized it back in September, 1980 that management should  
14          not -- It was so obvious back then that they weren't  
15          communicating with me.  Management doesn't want to talk to me.

16   Q       Owing to that fact, where is the Tank Command, where is the  
17          Agency getting the misapprehension that you can't work?

18   A       Dr. Holt has held the view for a long time that I am  
19          perfectly able to work.  There were certain events that  
20          occurred -- You know, I would consider them pressure by  
21          management -- to force Dr. Holt to change his mind on the  
22          subject and --

23   Q       Notwithstanding, what about the letters from your doctors,  
24          Dr. Dubin, for example, that are seemingly contradictory?  
25          How do you explain those?



1 Can you identify this for me?

2 A This document I do, indeed, recognize. It's part of what I  
3 was, you know, referring to that management --

4 Q Well, no. Identify this document for me, Mr. Pletten. Did  
5 you receive it as part of the case file here?

6 A No. I did not receive it as part of the case file.

7 Q How did it come into your possession?

8 A An employee of the Dispensary who is concerned about what  
9 has happened in this case provided this document to me.

10 Q Can you describe the document for me?

11 A The document is referring to the fact that the Dispensary  
12 used to concur with --

13 Q Identify who wrote it?

14 A It's written by Mr. E. E. Hoover, the Civilian Personnel --  
15 It's signed by Mr. E. E. Hoover, the Civilian Personnel  
16 Officer, but it has the dictator's block of Mrs. Averhart  
17 from the Personnel Office.

18 Q And it's dated?

19 A It's dated the 12th of March, 1980.

20 Q You received it from an employee of the -- Which office was  
21 it?

22 A The Civilian Employees' Health Clinic.

23 MR. COHEN: Counsel, voir dire?  
24  
25

1 VOIR DIRE EXAMINATION ON APPELLANT'S PROPOSED EXHIBIT NUMBER 8

2 BY MISS BACON:

3 Q So your name is not on this anywhere?

4 A No.

5 Q This was not given to you in the regular chain of supervision?

6 A No. My name is definitely not on it. It was most certainly  
7 not given to me by the normal chain of command.

8 MISS BACON: Well, I object to it as  
9 failing verification as to whether or not Mr. Hoover, in  
10 fact, signed it or whether the medical officer, in fact, received  
11 it.

12 MR. COHEN: First of all, the document has  
13 a received stamp marked "United States Army Tank Automotive  
14 Command, Civilian Employees' Health Clinic," and it's marked  
15 "3/17/80," which eliminates one of your concerns.

16 Your second concern is the question of its  
17 validity as to Mr. Hoover's signature. I will link that up  
18 for you, if you would like.

19 DIRECT EXAMINATION (Continued)

20 BY MR. COHEN:

21 Q Mr. Pletten, are you familiar with Mr. Hoover's signature?

22 A Yes, I am.

23 Q How is it that you are familiar with it?

24 A When I worked for the Tank Automotive Command I saw his  
25 signature on numerous official documents.

1 Q Were you part of his Personnel Office?

2 A Yes, I was.

3 Q Were you one of his subordinates?

4 A Yes, I was.

5 Q Although you mentioned earlier that you didn't draft this,  
6 is your name in this document?

7 A Oh, yes. My name is in the document.

8 MR. COHEN: Counsel, I move for admission.

9 MISS BACON: Well, I object based on the  
10 grounds just enunciated.

11 Q (By Mr. Cohen) Mr. Pletten, basically I'm going to read  
12 this to you, read it into the record. It says:

13 "On 11 March 80, Leroy Pletten went  
14 to the Dispensary complaining of smoking  
15 irritation and mental distress.  
16 Dolores R. Jones, RN, took his blood  
17 pressure and temperature and found  
18 those to be normal. Despite these  
19 findings, she completed STA Form 4407,  
20 Medical Service Request, with the  
21 following statement in the section  
22 for Remarks: 'Send home, smoking  
23 irritation, mental distress.'"

24 At this point that's one third of the paragraphs. Is that  
25 essentially the truth, sir?

1 A Yes. That is the truth.

2 Q You went to the Dispensary on that day?

3 A Oh, yes. That was part of the pattern, yes.

4 Q And paragraph two says:

5 "Since Ms. Jones did nothing to determine  
6 whether or not Mr. Pleteen was indeed  
7 suffering from smoking irritation and/or  
8 mental distress, her notation in the  
9 Remarks section of STA Form 4407 is  
10 inappropriate."

11 It continues to say:

12 "Request that you advise employees in  
13 the Civilian Health Clinic that infor-  
14 mation annotated on STA Form 4407 should  
15 indicate whether medical complaints for  
16 which an employee was sent home were  
17 confirmed by a medical diagnosis at the  
18 clinic. This information is required  
19 in order for Civilian Personnel to  
20 determine appropriate leave status and  
21 employee entitlement to compensation."

22 Signed "E.E. Hoover."

23 What is your understanding? Did Ms. Jones  
24 take precautions to medically annotate your circumstances?

25 MISS BACON: I would object to that as

1 being outside the scope of Mr. Pletten's knowledge. Ms. Jones  
2 would have to testify as to what Ms. Jones did.

3 MR. COHEN: Well, I'm just asking him in  
4 his preception what did she do.

5 A She did exactly as she ought to do. She certainly did,  
6 indeed, verify the things that are stated there about the  
7 smoking irritation and/or mental distress. She did exactly  
8 as she ought to do as USARCARA had just explained this is  
9 the proper process in verifying these things.

10 Q Did she check you medically? It says here that she took  
11 your temperature and blood pressure. Did she do any other  
12 tests?

13 A She talked to me about the situation. That's the way these  
14 things are determined. In addition, I want to emphasize  
15 that, from my point of view as having won a grievance just  
16 shortly before, USARCARA had specifically told the Command  
17 that medical evidence isn't the only way that it's determined,  
18 you know, whether there is discomfort or endangerment or  
19 unreasonably annoyance from tobacco smoke. I don't have  
20 any idea what would possess anybody to think that only a  
21 medical diagnosis is the way to protect a person from  
22 smoking. That is definitely not the only way it is done to  
23 verify these things.

24 Q In other words, your interpretation of AR 1-8 we talked about  
25 before is a subjective, a personal analysis and whether

1           you were discomforted?

2   A       I wouldn't even say that it is "my" interpretation. That is  
3           the USARCARA interpretation of the regulation, and USARCARA  
4           is competent to know what the Department of Army policy is  
5           in these kinds of matters.

6   Q       When did you last work for the Tank Command?

7   A       I was separated or fired in late 1979 or early 1980 as far  
8           as, you know, in substance.

9   Q       Well, I understand that the removal action that is pending  
10           before was only initiated in 1982. What do you mean by in  
11           substance?

12   A       Well, the thing in 1982 is really proforma as sort of the  
13           end result of possibly and inexorable process that results  
14           from the Command disagreements repeatedly expressed to me  
15           with AR 1-8 and the USARCARA report. So that was to carry  
16           out decisions that had long since been made.

17   Q       In other words, you haven't worked since '79?

18   A       Well, there were periods of time when I was certainly allowed  
19           to return to duty. That was in that period of time when  
20           Dr. Holt still, you know, was accepting the way that the  
21           regulation reads and hadn't been told in anything that he  
22           has to disregard the total in context of AR 1-8. So there  
23           was periods in and periods out. You know, the periods  
24           allowed to work were a preponderance of the time, which would  
25           be normal for a situation, you know, of asthma.

1 Q When was the last time you were there for a lengthy period,  
2 say, over three weeks?

3 A The last time that I had been there would have been in the  
4 month of March, 1981 until the 17th. That would have been  
5 about the three weeks or more that you're referring to.

6 Q And when you say essentially fired, did you make attempts to  
7 go back?

8 A Oh, yes. I made attempts to go back. That would be the  
9 normal thing to do.

10 Q You made requests through your doctor for documentation?  
11 Did you provide a doctor's letter, for example?

12 A Well, you asked more than one question. I made attempts  
13 in writing verbally to return, and since there was no  
14 medical reasons for my absence, you know, that management  
15 claims to be preceiving such a need as this Exhibit 8 seems  
16 to imply. I provided evidence to them confirming my ability  
17 to work that they seemed to think were essential.

18 Q Even then they didn't take you back, or didn't let you come  
19 back to work?

20 A Yes. It was an affirmative type of discrimination telling  
21 me to leave as opposed to the passive not letting me back.  
22 It was an affirmative, you know, go away.

23 Q Are you bitter about this?

24 A No. I'm not bitter because I'm a professional. I'm a  
25 personnel specialist. I have been trained in taking adverse

1 action against employees who violate rules. So I'm always  
2 disappointed when I see those rare situations when management  
3 officials violate rules. It happens in situations on  
4 occasion, and it's very sad when that occurs.

5 Q Do you feel that you can return to work without any  
6 hard feelings or anything like that?

7 A There would be hard feelings on my part.

8 Q You're willing to go back, for example, today?

9 A Yes. Definitely.

10 MR. COHEN: Nothing further, Counsel.

11  
12 CROSS EXAMINATION

13 BY MISS BACON:

14 Q Now, Mr. Pletten, you stated at the beginning of your  
15 direct testimony that you didn't understand the notice of  
16 written proposal, which I think is found in the Agency packet  
17 at Tab 7, which stated that basically your personal physicians  
18 have indicated that your condition requires an absolutely  
19 smoke-free work environment free of any smoke particulates.

20 Now I also direct you to Tab 2 in the  
21 same Agency response, which has various letters from doctors  
22 relating to you also. I direct you especially to one written  
23 by a Dr. Solomon dated March 17, 1980 and ask you if it is  
24 your interpretation of that letter that you can work in  
25 anything less than a smoke-free work environment?



1 A Yes. He specifically said I'm clearly ready, willing and  
2 able to work. I mean, that's an unqualified statement.

3 Q Well, do you see the semicolon and the continuation. It says,  
4 "but he needs a smoke-free work environment?"

5 A Everybody needs a smoke-free work environment. That is a  
6 synonym for a non-endangering work environment. The Surgeon  
7 General in much medical evidence for probably centuries  
8 says that smoking endangers and discomforts people. So  
9 smoke-free is just a synonym for AR 1-8.

10 Q Are you saying you do need a smoke-free work environment?

11 A I needed compliance with AR 1-8, which --

12 Q But that's not what the doctor's letter says. The letter --

13 MR. COHEN: Objection. Counsel, you're  
14 being argumentative. Mr. Pletten was asked what his  
15 perception was. You asked him and he certainly answered.

16 MISS BACON: But he also seemed to  
17 indicate that the doctor somehow mentioned AR 1-8, which I  
18 fail to see.

19 A When doctors speak in terms of common knowledge they hardly  
20 would be expected as a private doctor to refer to synonyms  
21 that are commonly understood throughout the entirety of  
22 the profession. That people are not to be endangered or  
23 discomforted, unreasonably annoyed and shouldn't be around  
24 tobacco smoke, it's a very obvious kind of thing. This is  
25 just a shorthand form of conveying the long expression:

1 Don't endanger people Don't discomfort people. Don't  
2 annoy them. When you read the Surgeon General's statements,  
3 as I've done now for the last couple, two or three years,  
4 it's very clear that most people are bothered by smoke.  
5 Most people believe it is a hazard. Most people believe  
6 they're endangered by smoke. The Surgeon General emphasizes  
7 these kinds of things. If we're just referring to common  
8 knowledge, I would hardly believe that any doctor would  
9 think that it would be misinterpreted. I certainly don't  
10 see any way that it could be misinterpreted. You know,  
11 there is no way that it could be misinterpreted.

12 Q No. I'm not arguing for a moment it can be misinterpreted.  
13 Our position is that we did interpret it, in fact, correctly  
14 what exactly the doctor meant.

15 MR. COHEN: Counsel, if you want to testify,  
16 we'll have you sworn. At this point it's question and answer  
17 for Mr. Pletten.

18 Q (By Miss Bacon) If it's your position, Mr. Pletten, that you  
19 did not need a smoke-free environment and were ready and  
20 able to work all the time, why did you bring in these doctors'  
21 notes?

22 A It was very clear to me at the time of Colonel Benacquista's  
23 letter of the 15th of February, 1980 that he was, as far as  
24 I could tell as a personnel specialist, opposed to enforcing  
25 AR 1-8. He's made very clear that he feels that smoking  
is personal behavior which the government is to keep their

1 hands off. They have no business regulating it. He has  
2 made that view evident at all times, and that explains why  
3 the report has never been implemented and why the Equal  
4 Employment Opportunity Commission on the 23rd of February,  
5 1982 recognized that my complaints continued because the  
6 report was never implemented.

7 Q Now, which report is this?

8 A The 25 January, 1980 USARCARA report. It's explained to  
9 the Command the meaning of these terms you've been throwing  
10 around.

11 Q Mr. Pletten, earlier witnesses have testified that they  
12 were, in fact, aware of your sensitivity to smoking and,  
13 in fact, they did try to work around and accommodate you,  
14 meaning at first to relocate your desk to a semi-private  
15 area with partitions and then later to offer you an office  
16 which would be closed off from the rest of work area with  
17 an outside air source. Now, were you, in fact, offered such  
18 a room?

19 A There was no effort --

20 MR. COHEN: I'm going to object at this  
21 point. The question before the board is whether or not  
22 Mr. Pletten is medically disqualified from the federal  
23 service. That is the sole question framed by the letter,  
24 a proposal and the letter of removal. Accordingly, the  
25 issue of what they have tried to do in terms of what you

1 call accommodations is irrelevant. Subject to my objection,  
2 I'll allow Mr. Pletten to answer the question.

3 MISS BACON: Well, Counsel, I would point  
4 out to you that in Mr. Pletten's original appeal of that  
5 issue he very definitely alleged handicap discrimination.  
6 So that that issue is before us and the Agency will show that  
7 it attempted to reasonably accommodate Mr. Pletten.

8 MR. COHEN: My understanding is the  
9 pleadings establish the question, and that is whether or  
10 not he is medically disqualified. The side question of  
11 discrimination, I believe, is a separate case that has been  
12 growing, and I don't represent Mr. Pletten on side issues.  
13 Although you have a perfect right to ask him the question, I  
14 file the objection on behalf of Mr. Pletten in the case I  
15 represent him on. So I make that for the record, and I'll  
16 allow him to answer the question subject to the presiding  
17 official making a ruling.

18 Mr. Pletten.

19 A There has been no reasonable accommodation. Management has  
20 refused reasonable accommodation.

21 Q Mr. Pletten, that's not what I asked you.

22 A I want to answer the question. Don't interrupt again.

23 Management was expressly told by USARCARA  
24 that moving people around is not the way to accommodate

1 Q You're not answering my question.

2 MR. COHEN: Mr. Pletten, she asks the

3 questions. You give the answers. If she asks the question

4 directly, you have to give a yes or no answers. I'll be

5 able to ask you other questions to allow you to expand.

6 A What was the question?

7 Q The question was --

8 A Management made several offers and, in fact, implemented

9 several rules. Yes, indeed. Those were tried, and that's

10 what USARCARA rejected. That's not the solution in

11 enforcing the the regulation.

12 Q So to try to accommodate you to your sensitivity to something

13 is not accommodation?

14 A Absolutely not. That's not accommodation. First of all,

15 you're implying that I'm unique, which is definitely not

16 true. You know, this is a common kind of situation. And

17 moving people around in violation of the regulation is not

18 only not accommodation, it is -- Based on what Mr. Adler

19 has told me -- it is a refusal of accommodation. You do

20 not move people around.

21 Q Can you cite me the regulation that states that you cannot

22 move people around?

23 A There is no regulation that says for management reasons

24 of work accomplishment you can't move people around. But

25 you cannot move people around because they are white or

1 because they are black or because they are of a certain  
2 ethnic background or because they have a handicap. You cannot  
3 do these things, and USARCARA expressly called this to  
4 management's attention. You know, it is hard for USARCARA  
5 to have said it anymore plainly than, you know, they put  
6 it into the grievance report. But this is not the way it is  
7 done, and I've been asking please comply with the  
8 grievance report. As a personnel specialist I'm accustomed  
9 to when an employee wins a grievance that management does  
10 what they've been told to do, and I want nothing more.

11 Q Well, you'll have to point out to me where exactly USARCARA  
12 said that?

13 A Emily, you did not include the report in the file. That,  
14 I believe, because you're an alleged discriminating official.

15 MR. COHEN: Well, hang on a minute.

16 Let me interject here. Mr. Pletten, if you  
17 want to enter in the entire USARCARA report, you can do it.  
18 The USARCARA report appears, the conclusion or recommendations  
19 of that appear at Tab 3. Mr. Pletten, if you would like to  
20 refer to that in response to a question, I think that will  
21 clear things up.

22 A (Continuing) Well, the grievance, you have to recall --  
23 Although you didn't handle the case then -- was essentially  
24 an interpretation of regulations type of grievance. The  
25 CPR 771 provides for it. So Mr. Leon Buchanan of the

1 Personnel Office and I had had discussions on the precise  
2 channeling of the grievance. So the USARCARA report is  
3 essentially an exposition of the entirety of the regulation.  
4 These are simply some of the conclusions that are based  
5 upon all the facts that USARCARA had already found about  
6 who makes the decision, whether the non-smoker makes the  
7 decision as to whether there's an environment reasonably  
8 free of contamination. USARCARA now, at the point of  
9 paragraph three, the conclusion is taking for granted that  
10 everybody now understands those things. So the conclusions  
11 are based upon all the information that preceded. Those  
12 are the prerequisites for analyzing the conclusions. Now  
13 management has emphasized that they don't agree with what  
14 went before. What management is saying, as a synonym, is  
15 they don't agree with the regulation and that's why  
16 they take these conclusions clearly out of context.

17 Q Well, I direct you to paragraph three conclusion,  
18 subparagraph (e) which states, and I'll read it for the  
19 record:

20 "Consideration should be given to  
21 Mr. Pletten's health problem, and it  
22 may warrant more accommodation, e.g.,  
23 less smoking and more ventilation  
24 in assuring his work area is reasonably  
25 free of smoke contamination and other

1 "toxic substances."

2 If management says, all right, we'll look at that and we'll  
3 consider putting you in a room where there will be no smoking,  
4 where you'll have an outside air source and this will be a  
5 way we will be able to accommodate your health problem, why  
6 would you not consider that within the area of accommodation?

7 A Management has refused to do exactly that.

8 Q Management offered you that. Several witnesses have testi-  
9 fied that that is what was offered to you.

10 A You're testifying. Management has refused to make any such  
11 offer. That's why we are here. Management -- Colonel  
12 Benacquista has testified he does not believe in regulating  
13 smoking because it is personal behavior. That's why you  
14 have several grievances and safety cases that there was  
15 continued and repeated and often smoking in my room, because  
16 management, while they would move me around, would refuse  
17 and, in fact, did refuse to control smoking in those rooms.

18 Q Mr. Pletten, Mr. Kator testified, Mr. Hoover testified,  
19 Mr. Lang testified that you were offered a room with outside  
20 air ventilation with air conditioning in it that would be  
21 set aside from the rest of the work force that no smoking  
22 would be allowed in. And you just testified previously  
23 that, yes, that was offered to you.

24 A We're talking about the offers that were accepted. Those  
25 offers were for no such thing. Those offers were for moving



1 me to rooms that didn't have walls to the top and, you know,  
2 where smoking continued to occur. I don't know about these  
3 other alleged offers. If that was something they testified  
4 to three weeks or so ago, well you can't take a fact  
5 that they claim is a fact and superimpose that back on two,  
6 three years ago when I was never notified. Accommodation  
7 doesn't mean anything when you don't find out for years.

8 Q Well, gosh, Mr. Pletten, let me refer you to Agency Exhibit  
9 21, and I refer you to -- That's your safety appeal, your  
10 original safety appeal. I refer you to enclosure four thereof  
11 which is entitled "Background of OSHA Complaint." I refer  
12 you to subparagraph four which says that:

13 "On 29 May 1979 a meeting was held with  
14 my supervisor and the Personnel Officer,  
15 at which meeting it was decided to move  
16 me to a private office."

17 Now, does that jog your memory at all as to whether or not a  
18 private office was ever offered to you?

19 A Well, that was the initial move. That certainly was what  
20 USARCARA rejected. That was totally unsatisfactory. It  
21 accomplished absolutely nothing, and there was several moves  
22 subsequent to that. What are you referring to when you  
23 allege an offer was made that I didn't accept? I accepted  
24 the offers that were made, and since those weren't solving  
25 anything, so I filed a grievance and was successful in

1 having USARCARA tell management you don't move people around.  
2 You are to enforce the rules throughout the place and not  
3 in one little room, and that's the whole point of AR 1-8.

4 Q So that to put you in a room and to ban smoking in that room  
5 would not accomplish that?

6 A Management never agreed to ban smoking in any room. That's  
7 the whole issue. They don't believe that that's acceptable.

8 Q That's not the point. The point is that we've had people  
9 testify that you were offered this room and that you came  
10 back then and said that that was segregation. Is that true?

11 A Perhaps you didn't ask them adequately any questions. An  
12 offer that was accepted? How are you considering an offer  
13 that I accepted as being refused? Did they testify that  
14 I refused? I attended most of the sessions, and they  
15 basically said I accepted and that there were repeated  
16 moves. Mr. Kator couldn't even remember how many. There  
17 were several. I accepted. That was the problem. They  
18 weren't complying with the regulation. The goals were not  
19 being achieved.

20 Q So that you have never made an argument that it would be  
21 segregation to move you --

22 MR. COHEN: Objection, Counsel. He did  
23 not say that. That's characterizing his testimony. I  
24 believe the facts stand for themselves. Indeed, the action  
25 taken by the Command and contemplated would, in fact, be

1 segregation. I think also the testimony of Mr. Platten  
2 has been only that such an action not only segregates, but  
3 would more importantly not go to the issue of banning  
4 smoking in the area so that he can do his job in a smoke-  
5 free environment in compliance with 1-8. That's what he's  
6 testified to, and I object to the question as phrased as  
7 being

8 Q (By Miss Bacon) All right. So that, Mr. Platten, in fact,  
9 you do need a smoke-free environment?

10 A You keep trying to single me out. Everybody needs an  
11 environment that does not endanger, discomfort or  
12 unreasonably annoy them.

13 Q That's not what I asked you. I asked you whether you, in  
14 fact, need a smoke-free environment.

15 A We are referring to synonyms.

16 MR. COHEN: Objection, Counsel. First of  
17 all, he has testified on direct that, indeed, he could  
18 go to work even if there were smoke in the area, and that  
19 he could work in that area and that he would work in that  
20 area, and that it was his understanding that the doctors  
21 would allow him to work in that area. Although he did as  
22 a caveat indicate that any doctor worth a grain of salt  
23 would say avoid a smoke area, if you can. But it does not  
24 make that a prerequisite. Now you're asking him a question  
25 he's been asked and answered not only on direct but on

1 cross at least twice so far.

2 MISS BACON: Well, he can answer it again  
3 then.

4 Q (By Miss Bacon) Do you, in fact, need a smoke-free work  
5 environment?

6 A I don't think you understand the meaning of the word "need,"  
7 and it appears you're not comprehending the meaning of  
8 the expression "smoke free." You need to explain to me  
9 what you are asking so that I can understand your question.

10 Q All I am doing, Mr. Pletten, is quoting from your doctor:  
11 "This man needs a smoke-free work environment." I'm asking  
12 you do you need a smoke-free work environment?

13 A Everybody needs an environment that is safe. Smoke-free is  
14 a synonym for don't endanger, don't discomfort, don't  
15 unreasonably annoy.

16 Q Can you answer the question?

17 MR. COHEN: Now wait a minute. Now this  
18 time I'm taking direct umbrage. He has answered the question.  
19 The question you're asking perhaps is a little more  
20 precisely worded if you said not the question of need.  
21 I will stipulate on the record that every human being needs  
22 the best environment available for their health, everybody.  
23 You, me, the Court Reporter, Mr. Pletten and anybody else  
24 in this room needs the best that they can get. The question  
25 is is it a prerequisite to your working that the environment

1 be smoke-free.

2 MISS BACON: No, that is not the question.  
3 The question is is that the Agency was brought in certain  
4 notes from Mr. Pletten's doctor saying that he needs a  
5 smoke-free work environment. When we tell him that we can't  
6 provide him that, all of a sudden this isn't what he needs  
7 at all.

8 MR. COHEN: Counsel, you will have the  
9 opportunity to ask the doctor that question at 5:30 this  
10 afternoon. I suggest you ask Dr. Dubin what he meant. I can't  
11 have Mr. Pletten testifying as to the misunderstanding that  
12 seems to have occurred with Dr. Dubin. Now Mr. Pletten  
13 has stated he's ready to go to work. He's begged you to  
14 take him back to work.

15 MISS BACON: He has also provided us  
16 with certain doctor's notes.

17 A Dr. Holt understood those notes at all times that they mean  
18 I am able to work. But for the intimidation and pressure  
19 against Dr. Holt, there would never have been this problem,  
20 and I'm confident that if Dr. Holt is willing to testify  
21 he will indicate the problems that have been brought against  
22 him by management.

23 Q Mr. Pletten, the letters speak for themselves.

24 A The letters are clear.

25 A Yes, they are. They are very clear. They couldn't be

1 clearer.

2 MR. COHEN: Then you don't need his  
3 testimony, Counsel, to illuminate them any further.

4 Q (Miss Bacon) Mr. Pletten, you stated on direct that you  
5 felt that you had been fired years ago. Now, do you have  
6 any reason for believing this?

7 A Yes. As a personnel specialist I'm familiar with the fact  
8 that adverse actions can be taken lawfully or unlawfully.  
9 Some actions can be taken as a matter of substance, and  
10 some can be taken as a proforma matter. This was one was  
11 a matter in substance, and I've testified to that, for  
12 example, to obtain unemployment benefits. You have the  
13 transcripts of that hearing in which I indicated at that  
14 point that I had been fired in substance some long time before.  
15 We're only trying to decide how many years ago it was that  
16 I was fired.

17 Q Did you ever appeal the fact that you had been put on  
18 forced sick leave?

19 A I appealed it several times.

20 Q And what was the result to those appeals?

21 A Management --

22 MR. COHEN: Objection, Counsel. Totally  
23 irrelevant. I direct the witness not to answer.

24 MISS BACON: Well, I suggest that on  
25 cross-examination I have the right to ask certain questions.

1 He stated he was --

2 MR. COHEN: I will stipulate that the  
3 Merit Systems Protection Board has made decisions in  
4 Mr. Pletten's prior cases and they stand as public record.  
5 I will allow you, if you would like, to stipulate that  
6 Mr. Pletten's prior request to the Merit Systems Protection  
7 Board was ruled against him. Now his feelings and  
8 perceptions, I don't believe -- I think he's testified to  
9 them. I don't believe they have any legal bearing on the  
10 medical disqualification issues we're trying right now.  
11 If that's what you want, I imagine that's what I've just  
12 given you.

13 MISS BACON: All right. Then I would  
14 let the record show that at this point we would incorporate  
15 those decisions by reference.

16 MR. COHEN: Noted and accepted.

17 I think, by the way, Counsel, I think we can  
18 ask the presiding official to take official notice, and I  
19 think he would, of board decisions. He has to.

20 Q (By Miss Bacon) Now, Mr. Pletten, you also stated earlier  
21 on direct examination that you somehow have been precluded  
22 from filing grievances or EEO complaints or anything else  
23 you wanted to. Now what do you base that statement on?  
24 Has anybody ever told you they would not accept a grievance?

25 A Management has made that utterly clear by refusing to process

1 my grievances, and ultimately because of the pattern of  
2 reprisal and misconduct I just simply, well over a year ago,  
3 gave up filing grievances. There's no point in filing  
4 something that management has made clear that they don't  
5 intend to process. So I simply stopped filing them.

6 Q What is your basis that management has made clear that they  
7 would not process them? What do you base that particular  
8 statement on?

9 A Emily --

10 MR. COHEN: Counsel, if I may interject,  
11 I believe that testimony has already been given by  
12 Colonel Benacquist: that, indeed, he has directed that  
13 grievances no longer be processed because he was not going  
14 to get involved in a continual paper war.

15 MISS BACON: I believe Colonel Benacquista  
16 testified that the grievances would be consolidated. At  
17 no time did Colonel Benacquista claim that his grievances  
18 would not be processed.

19 MR. COHEN: Maybe with that clarification  
20 Mr. Pletten can answer the question.

21 A Would you repeat the question, please?

22 Q Yes. Who -- Has anyone ever told you they would not  
23 process your grievances and/or EEO complaints?

24 A Management has made it clear by the process of the letter  
25 writing that they sent to me that they aren't going to



1 process them. The word "consolidation" has the meaning under  
2 the circumstances of postponement indefinitely. It means  
3 that they will be processed at some time in the future, never  
4 defined. My EEO cases have been consolidated for several  
5 years from, I think, 1979 to the present with one exception.  
6 The Equal Employment Opportunity Commission now has that one.  
7 It's part of a pattern of refusal to process cases on the  
8 merit, but looking for technicalities on which to try to, you  
9 know, base alleged rejection. The Equal Employment  
10 Opportunity Commission noted miscalculations and errors  
11 of a multiple nature. Now there's no way that I'm aware  
12 of -- And correct me if I'm wrong -- for me to have outside  
13 agencies review that kind of a pattern in the case of  
14 grievances.

15 Q I thought you already testified USARCARA came in and  
16 investigated your grievances?

17 A No, I have not testified that they have investigated my  
18 grievances with an "s." I testified that USARCARA investi-  
19 gated the grievance of June, 1979 which, you know, the  
20 report was issued on the 25th of January, 1980. Everything  
21 that has happened thereafter has been not on the merits.  
22 In a substantive sense, based upon my knowledge and understandin  
23 of the way grievances are suppose to be processed -- And I've had  
24 experience several years in processing grievances -- and  
25 what's happened since then is clearly not the way grievances

1 are normally processed.

2 Q Is it your statement that USARCARA has not investigated any  
3 other grievances?

4 A No, that's not my position at all. You know, it's  
5 considered an actual completed case when a deliberate  
6 miscalculation or accidental miscalculation or whatever,  
7 the case is a closed case. On the EEO cases, if you misprocess  
8 a case, it's still out until you appeal it and, you know,  
9 if you either win or lose. Now on a grievance when it is  
10 misprocessed, even though there's "an investigation," there  
11 is no procedure to have a case like that reviewed. So I've  
12 gone to the Equal Opportunity channels to ask that my  
13 grievances that have not be processed be processed  
14 properly. Those are not being processed either. Now whether  
15 I'm ultimately right on the issue of they haven't been  
16 processed on the merits or not that's for other people to  
17 decide. But in my experience the cases haven't been  
18 processed properly since the first one.

19 Q In your view is the work environment that is provided at  
20 the Army Tank Automotive Command, is that hazardous?

21 A Dr. Holt has made clear that there is a hazard to me. Other  
22 people have made clear by their complaints of which I'm  
23 aware of -- And, for example, by Mrs. Evelyn Bertram, that  
24 there was a hazard to her. I worked in the same area.  
25 There has been no change in the work environment since the

1 time of Mrs. Bertram in, I think, 1977. It was a hazard  
2 then and as far as, you know, the record can show it is  
3 still a hazard. And I can only defer to the people who,  
4 you know, reviewed things. Mrs. Bertram's claim was approved.  
5 Had she not had a basis for her case, I'm sure OWCB would  
6 not have approved it. You know, I simply look at what the  
7 various decisions have been. The unemployment people, you  
8 know, find that I'm perfectly able to work. You used one  
9 of the decisions of the Merit System Protection Board, the  
10 one from July 23, 1980 and Mr. Baumgartner in an effort  
11 to show that I'm unable to work. But all that says is that  
12 there's hazard. Therefore, the non sequitur, he's unable  
13 to work. Well, that doesn't follow. The OPM finds no  
14 reasonable accommodation, sustaining my position.

15 Q No, I --

16 A As far as I can tell from the Freedom of Information Act.

17 So when I'm sustained in every channel  
18 that there's a review on the merits, you know, I can only  
19 conclude that my position is accurate. I filed a grievance  
20 in June, 1979 and was successful. The grievance examiner  
21 could not have been more clearer when he said there's a  
22 hazard to me. There are hundreds of other people that  
23 could file grievances identical to mine and there'd be  
24 a ruling it's a hazard to, you know, Fred Jones and John  
25 Smith and Susie whoever, et cetera, et cetera. Numerous

1 people could do the same thing because smoke is a hazard  
2 to everybody as far as the Surgeon General's reports go,  
3 you know, that I know about. So the expression "smoke-free"  
4 refers to hazard free.

5 While I'm a personnel specialist, I'm not  
6 a lawyer. I'm trained in reading regulations and by the Army.  
7 In Court cases they think like unqualified and absolute duty.  
8 as opposed to merely "unreasonable," as they have and as  
9 the cases I've seen, you know, show. I mean, we're able to  
10 eliminate hazards. We do that in all other cases. We can  
11 do that here, but for the views of people that they don't  
12 want to regulate "personal behavior."

13 Q Now, Mr. Cohen had testified earlier that you need a smoke-free  
14 work environment and --

15 MR. COHEN: Objeciton.

16 Q -- I need a smoke-free work environment -- Or when you were  
17 making your statement earlier on the record -- and everybody  
18 needs a smoke-free work environment. Now this particular  
19 case is dealing with you and the letters that the Agency  
20 has received from your doctors indicating that you need a  
21 smoke-free work environment. Now when you're asked if you  
22 consider this a hazard you just stated, yes, you do consider it  
23 a hazard to be in a less than smoke-free environment?

24 A When a personal determination is made by an employee that  
25 there is a hazard it is to be honored by eliminating the

1 hazard. It is a very cynical kind of thing to do -- Although  
2 I respect Colonel Benacquista. I worked for him. You know,  
3 he honored my decision that there's a hazard, which is my  
4 entitlement to make, but he honored it by throwing me out.  
5 He did not honor it by getting rid of the hazard. Now, how  
6 many other people is this going to happen to?

7 Q Other people have testified that they tried to accommodate  
8 you by getting you away from the hazard.

9 A In my job I don't try to classify jobs. I succeed in  
10 classifying jobs. I don't try to read job standards. I  
11 succeed in reading them. The regulation doesn't speak in  
12 terms of trying to achieve the regulatory goals. It, in fact,  
13 goes so strong as to say take affirmative action to achieve  
14 them. There nothing at all that --

15 Q Mr. Platten, these officials have --

16 A Excuse me, Emily.

17 Q Well, let me just ask my question.

18 The officials have testified that what  
19 they mean by trying to accommodate is that they could not  
20 get equal kind of cooperation from you, meaning they were  
21 talking about moving you to a private room with outside  
22 access to the windows and that that was not amenable to you?

23 A That isn't accurate at all, except it's a summary of what  
24 they said. The fact that a statement is made as a summary  
25 of what witnesses said doesn't mean that it has any validity

1 in reality or any such alleged offer of no date, no time,  
2 no place, no nothing -- Remember, I'm a personnel specialist.  
3 I'm trained in specificity. Can you provide me an example?  
4 Can you show me where such a thing happened? I refer you to  
5 the fact that there have been numerous, you know, several  
6 moves, two or three or whatever Mr. Kator said. Then are  
7 you implying that there was some other action? If so, when,  
8 where, you know? Tell me. The problem is not me, Emily.  
9 The problem is not me. The problem is that they are  
10 unwilling to achieve the regulatory goals based upon their  
11 view that they don't want to regulate personal behavior  
12 in any room, including mine, even when the goals are not  
13 achieved.

14 Q What are you saying to me, Mr. Pletten? In your view in  
15 terms of the letters that you were providing to the Agency,  
16 in terms of the Agency's compliance with your doctors'  
17 recommendations, what, in your view, is the ultimate answer?

18 A Well, the answer is for Dr. Holt to retract his statement  
19 of the 27th of June, 1980, which has been kept, not provided  
20 to the Merit System Protection Board which I received just  
21 a few months ago, in which he explained apparently in a  
22 meeting with management officials that he declared me unfit  
23 for duty for all practical purposes because it's his view  
24 that banning smoking violates smokers' right even when the  
25 smoking is endangering, discomforting or unreasonably

1 annoying people. All he has to do is stick to the medical  
2 facts. All he has to do is stick to the real facts. This is  
3 not a medical question at all that a person needs a safe  
4 work environment. It has been clear from the very beginning,  
5 May, 1979, that there are two thoughts in process: (A)  
6 Mr. Pletten is able to work as always. Never used any sick  
7 leave obviously. (B) There is a hazard. Those are two  
8 separate and distinct thoughts. There is never, and I repeat  
9 the word "never," in my knowledge as a personnel specialist  
10 any reason for any trained person to muddle the two thoughts  
11 together. The unemployment office people, despite your  
12 using the 23 June 1980 -- 23 July 1980 decision of the  
13 Merit System Protection Board in which those two thoughts  
14 were muddled because of the input that you and Mr. Hoover  
15 provided -- You know, that's just been summarily as of a  
16 couple days ago dismissed by the unemployment office in your  
17 appeal. And --

18 Q Well, Mr. Pletten we're not --

19 A Emily --

20 Q -- dealing here with the unemployment compensation case.

21 MR. COHEN: Counsel, if everytime  
22 Mr. Pletten testifies to something you don't want in the  
23 record you're going to object and try and interrupt him,  
24 I don't think that's the way testimony goes. Mr. Pletten  
25 wants to refer to it. You can make your comments in

1 closing argument as to refuting what he says.

2 MISS BACON: Well, I'm trying to ask  
3 questions. I'm trying to get answers to my questions.  
4 When we get too much off the answers to my questions I'm  
5 trying to get us back on a little bit and have him direct  
6 his answers to the questions that I ask.

7 MR. COHEN: Then place an objection that he  
8 is not responsive after.

9 Go ahead, Mr. Pletten.

10 A I've now lost my train of thought.

11 MR. COHEN: Ask another question. Maybe  
12 we can get back on your train of thought.

13 Q (By Miss Bacon) Have you ever filed a hazardous duty claim?

14 A In my job description, as I recall, and I know from actual  
15 happening. I'm familiar with the hazard pay rules. I  
16 handled, you know, one or two or so from, for example, the  
17 Selfridge Air National Guard Base. Therefore, being familiar  
18 with the rules I, yes, indeed, did file a hazard pay claim.

19 Q That was based on the fact that you thought you were  
20 entitled to hazardous duty pay?

21 A The nature of tobacco smoke as described by the Surgeon  
22 General and other sources as being an irritant to various  
23 parts of the body, the nose, the eyes, and so forth,  
24 that is in my training awfully identical to the criteria  
25 used for fire retardant in the hazard pay regulation, but



1 essentially similar. There is also another part saying about  
2 toxic chemical materials when there's a possibility of  
3 leakage or spillage. Tobacco smoke, of course, is throughout  
4 the installation. There is no place that it isn't there.  
5 So because I'm not a lawyer, I tend to be extremely  
6 conservation and stick basically to quoting rules and laws  
7 rather than giving "interpretations." So when I file  
8 something I basically quote things.

9 Q So that you did consider that you were working in hazardous  
10 conditions and filed for hazardous duty pay?

11 A I would not say I consider it a hazard, just Leroy Pletten;  
12 but it is clear from the Surgeon General's reports and from  
13 the existence of the Army Regulations there is a likelihood  
14 of a hazard to literally any member of the entire Department  
15 of the Army. But it is a foreseeable thing to such an obvious  
16 nature as far as the Army apparently is concerned that they  
17 published an entire regulation just on one subject. So,  
18 I don't think that it would be appropriate to single me out;  
19 that I see it that way. It's a common situation, and I've  
20 been singled out, unlike Mrs. Bertram, for example, my co-worker,  
21 because I've asked that the rules be enforced to prevent  
22 the thing. There was no reason for Mrs. Bertram to have to  
23 sit there and suffer eye trouble under the regulation, but  
24 that was what she was put to. She wasn't fired even  
25 though there was a hazard to herself because she didn't ask

1 that the rules be enforced. She wanted reimbursement.  
2 She received reimbursement. I concluded that the solution  
3 is let's prevent the problem. I was fired because I want  
4 the problem resolved. When there's endangerment the  
5 endangerment is to be eliminated. The person who complains  
6 about it is not to be given just compensation and stay there  
7 and let the hazard continue. It's extremely clear from the  
8 regulation and the hazard pay regulation, of which I'm  
9 familiar, that the goal is to eliminate hazards in order  
10 to, as I say, not have to be paid.

11 Q What do you mean by having the rules enforced?

12 A The rules say do not endanger, discomfort or unreasonably  
13 annoy non-smokers. The rules say remove smoke. They don't  
14 say to bring in additional fresh air. They say to remove  
15 the smoke. There's a distinction between bringing something  
16 in and taking something out. It's a very clear and common  
17 thing that's easy to understand. You know, I'll just  
18 use it as a common, everyday analogy since it's so much on  
19 everybody's mind: When we go to the gas station to buy  
20 gas, we put gas in and we remove gas at the other end.  
21 They're two separate and distinct processes. The testimony  
22 that I heard talks about how they're adding, you know,  
23 lots of air, you know, various amounts that they can't agree  
24 on. It doesn't say anything and the testimony never is that  
25 they're removing smoke and enforcing the rules. I've listed

1 a long series of regulations that would be appropriate to  
2 enforce. These basically are quoted from the rules that  
3 I've been familiar with and having enforced for many years  
4 as a personnel specialist.

5 Q Our OSHA Officer has testified to the fact that it is his  
6 duty to make sure that the work environment at the Army  
7 Tank Automotive Commany provides a healthful environment  
8 and that it is his view that it does so. I guess my  
9 question to you would be is it your view that it does not?

10 A It's not my view.

11 MR. COHEN: Objection. Counsel, you're  
12 asking Mr. Pletten to make a view as to the current status  
13 of the Command, and he hasn't been back there for at least  
14 a year. I don't think he has the foundation or ability  
15 to answer that type of question. The testimony of the  
16 OSHA expert from the Command stands and it stands contra-  
17 dicted, I believe, by other experts from the Command.  
18 I would ask you to lay a foundation for Mr. Pletten before  
19 asking such a question.

20 Q (By Miss Bacon) Let me ask it to you this way: The last  
21 time you were out at the Command did you consider the work  
22 environment there to be safe and healthful?

23 A USARCARA had at that point just overruled Mr. Shirock's  
24 view in doing proper studies. Those studies that  
25 Mr. Shirock had relied upon had been told by USARCARA

1 "No evidence of compliance with AR 1-8." The problem is --  
2 Mr. Shirock is undoubtedly sincere -- that he sticks to  
3 objective criteria of OSHA. He does not consider the  
4 subject aspects or the Army aspects of AR 1-8. AR 1-8  
5 specifies that smoke can be a hazard under hazardous rules  
6 specifically, and it also says it can be in violation of  
7 many other factors, you know, of the pre-hazardous aspects.  
8 Smoke, when it is a hazard, causes people to be sick.  
9 The criteria that Safety Officers customarily use, as far as  
10 my reading is, is that they take into account evidence  
11 such as that people are becoming sick due to, you know, the  
12 hazard. That kind of objective evidence hasn't been  
13 considered in part, I think, because of what has happened  
14 to Dr. Holt.

15 Mr. Shirock has at one point testified  
16 that he relies on Dr. Holt. To my knowledge -- And maybe  
17 someone can correct me if I'm in error -- Dr. Holt has  
18 never informed Mr. Shirock of the fact that Dr. Holt  
19 has determined that there is a hazard. I'm sure that  
20 Mr. Shirock or his staff or both have not been provided the  
21 USARCARA report showing that there is a hazard to me.  
22 Safety rules, I'm sure Mr. Shirock would concur, apply to  
23 one or more persons. You know, when there's a hazard to  
24 one person you get rid of the hazard.

25 Mr. Hoover testified in March, 1981 that

1 when there's a hazard you simply eliminate the hazard.

2 At my unemployment compensation hearing Mrs. Conklin  
3 testified you eliminate the hazard. You do not eliminate the  
4 person. And the way that you determine the hazard is under  
5 AR 1-8. The person says there's a hazard. No evidence is  
6 required of proof.

7 I will give you an analogy, and I've done  
8 that before: If I were black and I wanted to ride on a bus,  
9 I don't need to provide any Surgeon General's report as to  
10 whether I should sit on the first seat or the second. In  
11 this situation I don't need to provide evidence there's a  
12 hazard. You know, the burden is not laid that way under the  
13 regulation on the non-smoker to prove that there's endanger-  
14 ment or discomfort or unreasonable annoyance. By definition  
15 unreasonable annoyance presumably is unreasonable.

16 Now when I talked to Mr. Siebert on this  
17 kind of matter, you know, I asked him does he really -- you know  
18 could provide a lot of insight, as I know he's at the  
19 Department of Defense level.

20 MR. COHEN: Mr. Pletten, may I interrupt?

21 I caution you that if you're going to  
22 testify as to what Mr. Siebert said that's going to be  
23 a hearsay statement. Only what your understanding of the  
24 regulation would be, not what Mr. Siebert told you. I think  
25 I'm anticipating my opposing counsel. Let me caution you.

Go ahead.

1 A (Continuing) Okay. My understanding of the regulation -- And  
2 I think there's reason for it -- says that when people are  
3 endangered, you know, you do not allow the endangerment to  
4 occur. If there's repeated incidents of sick leave, then  
5 cynically I might have asked: Can we allow a lot of  
6 incidents of sick leave in order that a person, you know,  
7 then be separated because he used too much sick leave? It  
8 would be reasonable to conclude that any person who would  
9 be familiar with rules would say that is an obvious  
10 evasion and disregard of a regulation. You do not allow  
11 the endangerment to occur to that extent. You make repeated  
12 incidents and then say, ah ha, you've been endangered too  
13 much. Now you're disabled. Now goodbye. And then leave  
14 the hazard in effect to do this to other people over and  
15 over again. There was a purpose for the regulation.

16 Q Well, Mr. Pletten, let me ask you this: You brought in  
17 not just one doctor's note, but many doctors' notes  
18 indicating that, whatever the interpretation is, indicating  
19 that you need a smoke-free work environment. Now the Agency,  
20 I think the record has shown, took that seriously, and the  
21 evidence indicated made a determination that it considered  
22 the work area to meet minimum standards and made a deter-  
23 mination that it was a safe and healthful environment, but  
24 also decided to not ignore your doctor's note but, in fact,  
25 to take your doctor's note seriously. Now what is your

1 objection to that?

2 MR. COHEN: Counsel, I don't know -- I mean,  
3 no objection. There's an objection to the question as being  
4 completely irrelevant. The objection to the Agency's action,  
5 I think, is obvious. Mr. Pletten specifically objects to the  
6 conclusion that he is medically disqualified. He is attempt-  
7 ing to refute that. If you're asking him to give testimony  
8 to justify the Agency's action, you're totally mistaken.

9 MISS BACON: That's not what I'm doing,  
10 Mr. Cohen. I resent your characterization of the question  
11 that way.

12 MR. COHEN: You're asking him if he objects  
13 to what the Agency did. Obviously we wouldn't be trying  
14 this case if he agreed with it. He would have stipulated  
15 to removal, and I don't think there's any way he's going to  
16 do that.

17 MISS BACON: Well, Mr. Pletten now has  
18 stated that it was considered a hazard to him and that the  
19 Agency's attempting to remove him from the hazard wasn't  
20 enough, and that they're seemingly -- And I think this is  
21 a fair characterization -- taking his doctor's note too  
22 seriously, or that they didn't really mean this at all;  
23 they meant he could come back at any time, was an improper  
24 answer. I'm asking him now why does he think that.

1 A I can answer that. When you used the expression "remove  
2 him from the hazard," I'm a personnel specialist, you do not  
3 remove employees from hazards. You remove hazards. The  
4 Agency has deliberately pretended that there is a problem  
5 with the medical statements when there is none. I repeat  
6 once again that there is, as every personnel specialist  
7 undoubtedly knows, in the State of Michigan -- It's confirmed --  
8 the concept of a person is able to work, concept one.  
9 Concept two, there is a hazard. When there's a hazard to  
10 one person you eliminate the hazard. Now there's nothing  
11 "that a person recovers from." Hazards are such a thing  
12 that you prevent the hazard.

13 Now I have letters from the Agency saying  
14 that the sole reason why they haven't followed the normal  
15 procedure with hazards is some sort of tradition they have  
16 in mind without saying what that is. We all know that  
17 traditions do not take the place of personnel regulations.  
18 The Agency, according to Colonel Benacquista, has said that  
19 if you say it's a hazard to you we'll throw you out for all  
20 practical purposes. That's not taking it seriously, and  
21 you said that there is "meeting the minimum OSHA requirements."  
22 That's a clear confession, Emily, that they haven't complied  
23 with the other rules that apply and they certainly haven't  
24 complied with reasonable accommodation. Reasonable  
25 accommodation presupposes that you have complied with OSHA.



1                   Your own witnesses have testified that they  
2 have studied two, three, maybe four items. I've read the  
3 Surgeon General's report on sulfur dioxide. I can't even  
4 find that reference in the Surgeon General's report that  
5 is even of the slightest relevance. I contacted the State  
6 of Michigan to find out how they do studies, and their  
7 studies are of the kinds of items that are cited. They do  
8 about eight thousand a year. You know, this is a few miles  
9 from here. They don't do four, five, six a year. They do  
10 thousands because the standards are in terms of each hour.

11                   So when Mr. Cohen asked the question have  
12 you compared the results, you know, that are claimed to be  
13 here with some objective kind of thing from other areas --  
14 And Mr. Dollberg, as I recall, said no, they didn't think  
15 that was necessary.

16                   Now, I am a personnel specialist and I've  
17 dealt with engineers before, and I had a couple of  
18 disciplinary actions on engineers. While I am not an  
19 engineer -- I want to emphasize I'm not an engineer, When the  
20 engineers, you know, head of Personnel, Mr. Blakely and  
21 their supervisor -- Those people are not engineers and  
22 I'm not an engineer -- were able to access their work on  
23 an administrative basis of see if it meets administrative  
24 kinds of criteria, doesn't look like it meets professional  
25 standards.

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MR. COHEN: Can we go off the record for a minute?

MISS BACON: Yes.

(An off-the-record discussion was had.)

MR. COHEN: Let the record reflect there was an off-the-record discussion where I asked the witness to limit his answers and responses to questions, if he could, in response to a shorter duration because of the time constraints we're under.

Now I believe I've interrupted his train thought. Miss Bacon, if you'd like to start asking another question.

Q (By Miss Bacon) Okay. We'll go on to something else.

Now, Mr. Pletten, we've gone through the fact that you didn't understand the proposed notice and didn't feel it put you on notice of anything, I would direct you to -- Let me phrase the question to you this way: Have you ever been asked to provide something to the Command indicating that you could work in the environment which we have?

A Can you be more specific, please, Emily?

Q Were you ever asked to provide anything to the Command which indicated that you could work in the environment that we have?

A I don't understand what the environment is that you have.

1 You know, I've complained repeatedly that management won't  
2 even give me copies of studies, and there are some grievances  
3 or EEO cases that management has refused to give me studies.  
4 So what your environment is, I don't know what it is.

5 Q Has anybody ever indicated to you we have less less than  
6 a smoke-free work environment?

7 A It has been told to me on more than one occasion by the  
8 Merit System Protection Board that smoking has been abolished  
9 in the Personnel Office, and Mr. Manrose says we have a  
10 smoke-free environment. So that certainly causes tremendous  
11 confusion, and I tried very hard to verify the fact that  
12 smoking is banned. I wrote all over the Command to find out,  
13 and management refused to answer my questions. You know,  
14 I don't know if they've banned it or not. Maybe they  
15 already have.

16 Q I ask you if you recognize at Tab 8 of the Agency's  
17 submission a letter from Mr. O'Connor?

18 A Yes, I recognize the letter of November 2, 1981 from  
19 Mr. O'Connor.

20 Q Did you, in fact, receive that letter?

21 A Yes, I received that letter.

22 Q The letter asked you provide an updated position statement  
23 concerning your current medical status. Did you, in fact, do  
24 that?

25 A Yes, I did.

1 Q And the letter that you -- Is this the doctor's statement  
2 that you, in fact, provided?

3 A Yes. The November 11, 1981 letter from Dr. Solomon, M.D.  
4 is the response to the letter from Mr. O'Connor.

5 Q Now, does that letter indicate that you can work in anything  
6 less than a smoke-free work environment?

7 A The doctors have never said anything about that I can't.  
8 That is someone who is adding on. When they say he is  
9 able to work some people -- And I don't understand what  
10 possesses them to do this -- automatically add, you know, a  
11 thought in there, but he can't work just in smoke -- in a  
12 smoking environment. They're adding something in. So  
13 they're making a presupposition. They're ignoring the  
14 long-standing distinction, ability to work versus a hazard.  
15 You know, it's not the thing to ask people can you work in  
16 a hazard. There's no contemplation under personnel rule  
17 that I'm familiar with to ask people to work in hazards.  
18 We customarily eliminate hazards, and my experience is, you  
19 know, that we have done that with all other hazards except  
20 this one. I can't understand why this one has been singled  
21 out except for the personal desire not to regulate  
22 personal behavior even when it causes endangerment or a  
23 hazard.

24 Q Well, Mr. Pletten, let me direct you back to the March 17th,  
25 1980 letter from Dr. Solomon which you presented to the

1 Dispensary. That letter which, of course, speaks for itself,  
2 is found at Tab 2D of the Agency's response, says that you  
3 need a smoke-free work environment at all costs and that  
4 you are, in fact, ready, willing and able to work, but that  
5 you need a smoke-free work environment. It later says, "It  
6 is considered inadvisable for him to return to duty to a  
7 safety hazard and risk further repeated harm."

8 MR. COHEN: Counsel, I didn't hear exactly  
9 what it was. Was it inadvisable?

10 MISS BACON: Yes.

11 MR. COHEN: Not verboten, just inadvisable?

12 MISS BACON: The letter speaks for itself.

13 MR. COHEN: Okay.

14 A Now you're referring to the smokier office that I had been  
15 assigned as a penalty for my complaining? That USARCARA,  
16 you know, said that's a safety hazard to the individual?  
17 Why does the Command want to keep returning me to that room?  
18 You know, why don't they make some offer like you claim  
19 occurred and provide a less smokey room? Why was a more  
20 smokey room made, you know, that I was put in.

21 Q Three people have testified, Mr. Pletten, that another room  
22 was offered. Now are you stating that such other room was  
23 not, in fact, offered to you?

24 A No offer has been made that I have knowledge of. Mr. Hoover  
25 testified and Colonel Phillips in March, 1981 that they

1 weren't aware of any such alleged offer.

2 MISS BACON: I object to that.

3 MR. COHEN: You were there.

4 MISS BACON: It's irrelevant and hearsay.

5 THE WITNESS: I brought the transcript  
6 along.

7 MR. COHEN: Mr. Pletten was there. He can  
8 testify as to his own knowledge as people have been here to  
9 rebut that testimony. But, Counsel, your objection is noted.

10 Q (By Miss Bacon) Mr. Pletten, it has been testified to by  
11 your supervisor for one that you said you had a doctor's note  
12 that would, in fact, clear you for duty and that if, in fact,  
13 you had one you were to take it to the Dispensary. Is that  
14 an accurate statement?

15 A I wouldn't say that's accurate.

16 Q But you were never told to take any doctor's note that  
17 cleared you for duty to the Dispensary?

18 A All these notes clear me for duty. You know, there are  
19 none that say I'm unable to work.

20 MR. COHEN: Mr. Pletten, if I may interrupt.

21 Mrs. Bacon has asked you directly. I  
22 think it deserves an answer. Were you instructed by somebody  
23 to take a note to the Dispensary? Yes or no. I'd like to  
24 hear your answer myself.

25 A Absolutely not. I recall no such instructions. You know,  
when did this happen?

1 Q (By Miss Bacon) I just asked you and you said no.

2 A Well, you know, there was a letter, I think, of the 2nd of  
3 November, 1981 that said being something in that I attempted  
4 to comply with. But, you know, stating that a person needs  
5 a safe work environment is construed -- And I don't know  
6 why -- as saying that the person is unable to work. So,  
7 you know, there have been that. Are you referring to some  
8 other incident?

9 Q It's your testimony now that you can, in fact, work in  
10 something less than a smoke-free work environment, correct?

11 A My testimony is that management has never asked this. I  
12 don't understand why people wouldn't want --

13 MR. COHEN: Mr. Pletten, if I may interrupt  
14 you.

15 Mrs. Bacon has asked you a question. Give  
16 her a direct answer. Can you work in a non-smoke free  
17 environment? Yes or no.

18 A Well, the answer is yes, as it always has been.

19 Q (By Miss Bacon) So that your statement is that all of the  
20 medical evidence that we have in this file right now indicates  
21 that?

22 A All the evidence indicates two thoughts: (A) This person is  
23 able to work and there are no limitations whatsoever,  
24 because a limitation that says, you know, a right of not  
25 endangering environment is not a limitation under the

1 civil service rules. And number two, of course, eliminate  
2 the hazard, and that's the purpose of the EEO case. I want  
3 the hazard eliminated. That doesn't mean I can't work.

4 You know, at the UAW they have bushels of  
5 grievances continually according to the newspapers dealing  
6 with hazards. We do not close down auto factories and pretend  
7 everybody is sick because people file grievances and want  
8 hazards eliminated. Various witnesses have testified, and  
9 I think Mr. Hoover might have, that he's seen cases of  
10 complaints of safety hazards other than mine. Well, are  
11 we getting rid of those people? Mrs. Bertram complained.  
12 Mr. Grimmett had a note here that several people were  
13 complaining about the hazard under workers' compensation.  
14 I forget the exhibit number. It's Appellant's Exhibit Number  
15 1. Are we getting rid of all those people because they say  
16 there's a hazard? Well, the reason that we're not getting  
17 rid of those people is because they aren't saying let's  
18 get rid of the hazard. I'm asking. And a co-worker of mine  
19 just told me because, Leroy, you want the hazard eliminated  
20 they're going to get rid of you. Mr. Kator has told me that,  
21 I think, in May, 1979, if I want an environment --

22 MR. COHEN: Brevity, Mr. Pletten.

23 (At 2:45 P.M. the proceedings in  
24 this matter were recessed.)



1 (At 2:55 P.M. the proceedings in this  
2 matter were resumed.)

3 CROSS-EXAMINATION (Continued)

4 BY MISS BACON:

5 Q Mr. Pletten, now several officials have testified that you  
6 were offered a private room with this access to the outside  
7 air, and you testified that that is not the case?

8 A I recall no offer. You know, if there was, when did it  
9 happen? Someone has to say something.

10 Q I'm just asking you if there was an offer?

11 A I think I've said repeatedly that there was no such offer  
12 that I am any time aware of, and if you're telling me two  
13 years after the fact, or a year after the fact there was  
14 some fifth or seventh or ninth offer, whatever you're  
15 alleging, you know, I'd like to know what did I say when their  
16 offer was made? You know, can you give me some evidence?

17 MR. COHEN: Mr. Pletten, she asked you a  
18 direct question. It requires a yes or no answer.

19 Go ahead, Miss Bacon.

20 Please answer the question.

21 Q (By Miss Bacon) Well, let me ask you would that have been  
22 amenable to you?

23 MR. COHEN: Objection, Counsel. There's  
24 no relevance at all to what would have been amenable to  
25 Mr. Pletten. The question before the board is disqualification

1 MISS BACON: I understand that, Counsel.

2 MR. COHEN: And I object and direct him  
3 not to answer.

4 MISS BACON: You're directing your client  
5 not to answer?

6 MR. COHEN: Well, let me withdraw that.  
7 I'll direct him to answer, but I'm even  
8 sure he could testify as to what his present sense impression  
9 was two years ago.

10 But, Mr. Pletten, if you can formulate an  
11 answer, you can answer it.

12 A It would be just hypothetical. I'd need to know something  
13 specific, you know, as to what the room is going to consist  
14 of, what would be the area, what would be the toxic chemicals.  
15 I don't know.

16 Q (By Miss Bacon) The reason I ask you, Mr. Pletten, is  
17 because you have stated it in several different grievances  
18 that your objections were to segregation. Let me ask you  
19 point blank: What do you consider to be segregation?

20 MR. COHEN: Objection. Counsel, that is  
21 totally outside the bounds of this discussion and the nature  
22 of the case. Mr. Pletten has said he will go back to work  
23 period. He is a man that takes orders, and if the Command  
24 orders him back to work, he'll go. The question as to  
25 whether or not he likes the environment is something he'll

1 have to pursue on his own to try and change a hazard. But  
2 he will go back to work at any place that the Command demands  
3 that he do so period, and we have so testified.

4 MISS BACON: Well, your objection is so  
5 noted.

6 Q (By Miss Bacon) I would ask Mr. Pletten to answer the question.

7 A Emily, I am incredibly surprised at that question. Management  
8 has never asked that before. Why are you asking it now?

9 Q Well, Mr. Pletten, you have several grievances that have  
10 been filed objecting to segregation. I can provide copies  
11 of them as part of the record, if you'd like, that separate  
12 but equal is inherently unequal and separate work areas are  
13 unconstitutional. Now, do you remember making statements  
14 like that?

15 A I also remember that USARCARA agreed and USARCARA understood  
16 very well that my definition of segregation is an area  
17 where rules are not enforced. I want AR 1-8 enforced  
18 throughout the installation. TACOM seems to be a place  
19 that doesn't have the capacity to enforce the rules  
20 throughout the installation. Segregation comes in where  
21 you don't enforce rules, like on a bus where a black person  
22 is told you can't sit there. I want the rules enforced  
23 wherever, not pretend you're enforcing it in Leroy's room.  
24 Then say now, Leroy, you're going to sit there in that  
25 little room and you can't walk out and read job standards

1 or you can't walk out to interview your people. Segregation  
2 is not practical for a job function, and USARCARA agreed with  
3 me completely on that.

4 Q So that to provide you with a separate smoke-free area would  
5 not -- you would not consider that to be accommodation?

6 A USARCARA does not consider that to be accommodation.

7 Q I'm not asking you --

8 MR. COHEN: Objection. Counsel, you're  
9 determining the question. Mr. Pletten has stated that anyplace  
10 that the Command orders him to work he will work. The  
11 question whether it accommodates him in terms of a hazard is  
12 a separate question. I think if you ask Mr. Pletten whether  
13 he would work anywhere the Command orders him to, he has  
14 been asked that and he answered, yes, he would. The question  
15 is would he consider the hazard eliminated and the answer is,  
16 no, he wouldn't. That he would like them to enforce the  
17 standards throughout the Command. Now whether they will or  
18 not is a question for the Command to answer pursuant to  
19 other matters that are pending.

20 Q (By Miss Bacon) Mr. Pletten, you have stated previously  
21 several times that you are, in fact, a personnel specialist,  
22 correct?

23 A Yes, I was until I was separated. Yes.

24 Q To your knowledge is it a good personnel move to order  
25 somebody back to an environment that that person claims is a

1 hazard to him or her?  
2 A Colonel Benacquista answered that question before, and  
3 relates to the fact that the doctors' statements haven't  
4 been taken seriously. It is a terrible practice to order  
5 people to work in hazards. That's why the rules forbid  
6 hazards. It's perfectly legal to do that, but it would be  
7 exposing the Command to the kind of liability that I think  
8 Mrs. Bertram referred to. If there's a hazard to me, Leroy,  
9 you can't work. That's not acceptable. If there's  
10 endangerment -- And endangerment and threats and hazards  
11 are synonyms -- and I don't understand why people can't, you  
12 know, seem to get that. If there's a hazard, you don't  
13 say the person cannot work.

14 MISS BACON: Well, I have nothing further  
15 at this time.

16 (Appellant's Proposed Exhibits Number 9  
17 was marked for identification.)

18 REDIRECT EXAMINATION

19 BY MR. COHEN:

20 Q Mr. Pletten, I'm going to ask you to look at a document  
21 I've listed as Appellant's Number 9. Do you recognize that?

22 A Yes, I do. This is a recent EEOC decision.

23 Q And that was issued in the case called Leroy Pletten v  
24 Department of Army?

25 A Yes, it was.

1 Q Mr. Pletten, you've identified this as an Equal Employment  
2 Opportunity's decision in this case?

3 A Yes.

4 Q Is it the complete text to your knowledge?

5 A You asked if this is the complete text. There was also a  
6 transmittal letter.

7 MR. COHEN: I move for admission of  
8 Appellant's Number 9.

9 MISS BACON: I would object to its admission  
10 on the ground that it's totally irrelevant to this particular  
11 proceeding. It's being taken care of in a separate  
12 proceeding, and it's not the least bit relevant.

13 MR. COHEN: Counsel, you referred in your  
14 cross-examination of Mr. Pletten to certain things. I will  
15 intend to link it up by testimony referring to the document,  
16 and subject to that I would ask for its admission.

17 Q (By Mr. Cohen) Mr. Pletten, I ask you to look at Page 2 of  
18 the decision.

19 A I'm looking at it.

20 Q All right. I will quote to you:

21 "The record indicates that as early as  
22 February, 1980 Appellant was denied  
23 EEO counseling and prevented from filing  
24 further complaints. As indicated in  
25 the Appendix, the Agency failed to

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"provide this Commission with several complaint files and the only information concerning these complaints were supplied by Appellant and must be accepted by this Commission as uncontradicted."

Do you read that with me, sir?

A Yes, I'm reading it.

Q Now, earlier testimony was required by Miss Bacon as to whether or not you had been denied the right to file further complaints. Can you tell me now as to whether or not you were allowed to file a complaint?

A It's a very scary situation to have things mishandled, and by reason of the training that I have until I gave up on the grievances I did decide to file the cases no matter what. I was contacted by EEOC that I could do this.

Q Let me understand. Did you file, in fact, papers that were ignored or lumped together by the Command?

A Oh, yes, that happened.

Q And this complaint that the EEOC has apparently ruled on comes to some conclusions; is that correct?

A Yes, it does.

Q The conclusion section, I think, reads as follows:

"Based upon a review of the record, the decision of the Equal Employment Opportunity Commission is to reverse

1 "the final Agency decisions in all the  
2 instant cases which rejected Appellant's  
3 complaints for the reasons indicated  
4 and rescind said complaints for further  
5 processing in accordance with this  
6 decision. Upon reprocessing said  
7 complaints, the agency may consider the  
8 consolidation of all the instant cases."

9 And that's the end of the quote.

10 Is that your understanding of what's  
11 taken place?

12 A Well, number one, I would make a typographical correction.  
13 The word "rescind" there undoubtedly refers to remand.  
14 Management has not processed these cases at this point.  
15 They are --

16 Q To your knowledge?

17 A Well, they said they're going to consolidate them with all  
18 the subsequent cases, which means since there is no deadline --  
19 And I have begged them to give me a deadline for a long time.

20 Q Basically though the matter is still pending?

21 A Oh, it's still pending.

22 Q The EEOC decision was dated February 23, 1982?

23 A Yes, it was.

24 Q So it seems to bolster your argument then, sir, does it not,  
25 that, in fact, some of your inquiries and requests were



1 not dealt with by the Command?

2 A I would say that the word "some" is a very great under-  
3 statement.

4 Q Now, other testimony that Mrs. Bacon has solicited from you  
5 concerns Dr. Solomon's letter of November, 1981. In that  
6 letter did Dr. Solomon say that you could not return to work?

7 A No, he did not.

8 Q Did he say that you couldn't return to work absent a smoke-  
9 free environment?

10 A No, he didn't say that.

11 Q What did he say in specifics?

12 A There are two themes in this letter which seems to have  
13 been evident from, oh, May, 1979 in that Mr. Pletten is  
14 able to work and that there is a hazard, and that whatever  
15 is normally done with hazards, do that. But don't make  
16 that appear that he's unable to work. You know, the theme  
17 is very clear-cut all the way through every letter.

18 Q I direct you to the last sentence in the letter. It says:

19 "Mr. Pletten should be returned to  
20 duty whenever Dr. Holt confirms  
21 that actual nature of the environment  
22 and its safety."

23 Now, has Dr. Holt confirmed that the atmosphere is safe?

24 A No. Dr. Holt, to my knowledge, has confirmed that the environ-  
25 ment is so unsafe as to, you know, render me unable to work for

1 Q For argument's sake, if Dr. Holt had said that the place  
2 is safe, then by reference to this letter you should return  
3 to work; is that correct?

4 A Oh, even back as far as March 17, 1980 all Dr. Holt would  
5 have done had he thought it was safe is say it's safe and,  
6 you know, there is no hazard in your office. But he agreed  
7 that there was, in fact, a hazard that had caused a pattern  
8 of incidents as far as I know.

9 Q Assuming that there is a hazard, even in view of a hazard  
10 would you work?

11 A Oh, yes.

12 Q All right. Now why is that? What would possess a man to  
13 work in view of a hazard?

14 A There was a law review article that explained that. People  
15 need to eat. People need money. People accept gross and  
16 extreme violations of their rights. Black people have for  
17 centuries. You know, Coal miners do. You know, people  
18 work in the grossest and unsafe conditions, but that's why  
19 laws are passed and rules are passed to prevent those  
20 hazards recognizing, of course, that people work regardless  
21 of how extreme the hazard is.

22 Q What is your position then? Let's assume for argument's  
23 sake that the Command would take you back. You would then  
24 work regardless of the circumstances, if my understanding  
25 is correct?

1 A Oh, yes.

2 Q All right. But you would still try and eliminate the hazard?

3 A AR 385-10 says that it's our duty, as I recall it -- I can't  
4 give you the exact quote -- that we are to report hazards,  
5 and I've been doing that. The legal office agreed in various  
6 legal opinions over a long period of time that that's, indeed,  
7 an employee's duty.

8 Q And the statements in Appellant's Number 3, I point you to  
9 the underlined portion that says:

10 "No information is available on the  
11 fumes to which Mr. Pletten may have  
12 been exposed."

13 That was written by Mr. Hoover and identified by him as such  
14 in his deposition. Is it your position that they have never  
15 really done accurate studies?

16 A USARCARA agreed that there had been no studies done that  
17 were any evidence of compliance. So it's not really my  
18 position. I'm merely pointing out something that other  
19 people recognize as accurate. There have been no studies  
20 of significant items of tobacco smoke.

21 Q Mrs. Bacon has been pointedly asking you whether or not  
22 you were offered another room, and the testimony that we've  
23 had is that, indeed, you were told that you would be put  
24 in another room. Now were you, in fact, put in a separate  
25 room?

1 A I was put in several separate rooms to use the word "put."  
2 I follow orders. When they say go there, I go there.  
3 Q In other words, there was never an offer and acceptance type  
4 of thing. It was an order?  
5 A I would say an order. That would be what I'm emphasizing.  
6 Q In other words, you don't deny that you were put in such a  
7 room, but you deny having a choice?  
8 A I deny having a choice. That's why I complained.  
9 Q And some of the rooms, were they -- When you mentioned earlier  
10 the walls were floor to ceiling, were some of the rooms just  
11 with partitions that allowed smoke over the top of the  
12 partition?  
13 A Definitely. Yes. That was the case in August, or thereabouts  
14 1979 on.  
15 Q Did they try and make any arrangements or talk to you about  
16 arrangements in the course of your duties to eliminate  
17 cigarette smoke when you went to interview people?  
18 A Management has never agreed to do that.  
19 Q Did they give you any directives as to what to do in terms  
20 of your encountering cigarette smokers in the course of  
21 your employ?  
22 A Definitely not. No guidance was provided.  
23 Q You've heard testimony from Mr. Braun indicating that, in  
24 fact, AR 1-8 is complied with in totality at the Tank  
25 Command. Did you make them aware of that? Did you talk

1 to them about it?

2 A I talked to them about it to the point that I've been fired  
3 because of my complaints. This issue of my being medically  
4 disqualified is a red herring. I've been fired because of  
5 my complaints. An MSPB decision of sometime back cited  
6 a lot of alleged quotes in my grievance and said because  
7 you said those things you're not fit for duty.

8 Q All right. Now let me ask you this: Now Mrs. Bacon has  
9 provided us with a letter to the Merit System Protection  
10 Board clarifying the fact that the -- Well, let me put it  
11 this way: Mr. Wertheim of the board filed in his decision  
12 one of the basis that smoking had been banned in the  
13 Civilian Personnel Office. Mrs. Bacon provided a letter  
14 that she wrote to Mr. Wertheim indicating that, in fact,  
15 smoking had not been banned in the Civilian Personnel Office.

16 MR. COHEN: Is that correct?

17 MISS BACON: Yes. That's correct.

18 Q (Continuing) Now, owing to that, do you have any other  
19 knowledge as to the current status of the Tank Command in the  
20 area where you would have worked as to what the environment  
21 is like?

22 A This is only the second time that I was informed that there  
23 was some ex-parte letters to the Merit System Protection  
24 Board. Mrs. Bertram made some allegations of it. So I've  
25 never seen any such letter.

1 Q Well, I could provide it for the record, Mr. Pletten, but  
2 I'm talking as both your attorney and an officer of the  
3 Court that it does exist and I have received it, the letter.

4 MR. COHEN: As a matter of fact, I think  
5 we'll include it in the file. By stipulation, Counsel?

6 MISS BACON: Fine. We will stipulate.

7 MR. COHEN: We'll make that Appellant's 10,  
8 and I'll provide it for the file.

9 Q (By Mr. Cohen) Are you familiar with any other circumstances  
10 surround the work environment? Have they made that informa-  
11 tion available to you?

12 A I filed a Freedom of Information Act finally in desperation  
13 to get information on these alleged studies after  
14 Mrs. Bertram deliberately and probably, I'm sad to say --  
15 She was a co-worker -- maliciously told me, Leroy, you need  
16 these studies to give to your doctor. -- She said that in  
17 July, 1981 -- but I won't give them to you. So I filed  
18 a grievance about her behavior. I would really like to  
19 see some studies.

20 MISS BACON: I would object to that as  
21 hearsay.

22 MR. COHEN: Mrs. Bertram testified here  
23 and she's, of course, at the recall of the Command, if  
24 you'd like.

25 Go ahead.

1 A (Continuing) I would like to see some studies. You know,  
2 USARCARA said to do studies, and I've looked at the Surgeon  
3 General's report and I see lots of items that are major  
4 contaminants in tobacco smoke. The Command are studying  
5 things that -- I don't know why they're studying those except  
6 like the 20 February 1980 statement says they're studying  
7 what they hope to find very little of. They're studying  
8 things that the TLV's are real lenient, and there are a lot  
9 items in tobacco smoke where the TLV's are very strict. They  
10 don't study those items.

11 Q But you don't have any information other than what you've  
12 just been told about as to the status of the work environment?

13 A Well, the information I have is extremely perfunctory  
14 and extremely fragmentary. It's hard to know what the  
15 environment is there.

16 MR. COHEN: Nothing further.

17  
18 RE-CROSS-EXAMINATION

19 BY MISS BACON:

20 Q I have a couple of things, Mr. Pletten.

21 The Appellant's Exhibit 9, which is the  
22 EEOC decision, I direct your attention to Page 4  
23 of that decision.

24 MR. COHEN: Counsel, are you now withdrawing  
25 your objection as to the admission?

1 MISS BACON: No, I am not withdrawing my  
2 objection.

3 MR. COHEN: Oh, okay. I just wanted to  
4 check.

5 Q (By Miss Bacon) Now, under the top paragraph which says,  
6 "Implementation of the Commission Decision," it indicates  
7 that the Agency must report to the Commission what action is  
8 going to be taken and a copy of that report should be sent  
9 to the Appellant. Have you ever received a copy of such a  
10 report?

11 A I received a copy of a letter saying that these cases are  
12 going to be consolidated with all the others, which is a  
13 synonym from the way the pattern has been that, you know, it will  
14 at no time ever be processed. I pleaded with the EEO officers  
15 to please give me a time frame as to when these cases will  
16 be processed. They have at all times been unable to. I  
17 have an impression that the EEO Office locally has been  
18 striped of its authority to process EEO cases, and I've  
19 complained to the Equal Opportunity Commission and, I think,  
20 to the Merit System Protection Board that EEO has no  
21 authority to process my cases anymore. And Mr. Adler  
22 recommended in my favor in September, 1980. That was it  
23 for him. You know, don't process Leroy's cases again.

24 Q I thought you said to Mr. Cohen under the conclusion part  
25 of this decision the EEO specifically says the Agency may



1 consider consolidation?

2 A They're talking about nine cases that were decided here,  
3 and I'm sure they're not referring to the fact that the Agency  
4 has any large backlog of cases that the Agency has refused  
5 to process within any time limit. As a personnel specialist  
6 I'm not accustomed to processing cases many years after they  
7 are filed.

8 Q Well, you also can't speak --

9 MR. COHEN: Counsel, if I might clarify.  
10 It says, "Upon reprocessing said complaints, the Agency may  
11 consider the consolidation of all the instant cases,"  
12 referring to cases referenced on their docket numbers at the  
13 beginning of the decision, the instant cases. I think that  
14 qualifies it for you. I think Mr. Pletten's characterization  
15 of it is correct in view of that special sentence.

16 MISS BACON: Well, I think the decision  
17 will have to speak for itself. Again, I think it's  
18 irrelevant to this proceeding.

19 MR. COHEN: Then I would suggest -- Would  
20 have suggested that you shouldn't have asked him the  
21 question.

22 Q (By Miss Bacon) Let me just clarify one thing and then  
23 I will have nothing further.

24 You state now that you are willing to  
25 come back to work in spite of the hazard?

1 A I accepted and said that in a DF to Carma Averhart on the  
2 19th of March, 1980, that, you know, there are certain level  
3 rules that are followed. The fact that there's a hazard  
4 doesn't mean inability to work. You know, there are certain  
5 reasons that I, as a personnel specialist, trained to  
6 notice certain behaviorisms of individuals, and I have to  
7 have certain ideas as to why they are causing a contradiction  
8 that doesn't exist.

9 USARCARA confirmed my view because after  
10 I had been told in 1979 that, Leroy, if you're endangered  
11 we're going to have to have you off the rolls, disability  
12 retirement or something. I asked USARCARA, and I put it  
13 in the grievance and you have it here, is there anything  
14 in the qualifications standards or explanations or the like  
15 that the choice to smoke or the choice not to smoke would  
16 result in discharging the employee. USARCARA expressly  
17 answered, you know, that the choice to smoke or not to smoke  
18 is not a thing that is a qualification standard. So the  
19 fact that, you know, I choose not to smoke that's not a  
20 medical or any other kind of qualification standard. There's  
21 no basis because there is no standard.

22 Q Just one further question. You stated before that you had  
23 never been provided any air content studies?

24 A I've even had to file EEO cases in order to obtain them  
25 because management objects so strenuously to providing them.

1 Q Well, let me refer you to Agency Exhibit 8, the letter from  
2 Mr. O'Connor, which you stated previously that you had  
3 received. In it it refers to an updated air quality content  
4 survey is attached to it for your review and the doctor's  
5 review as to what the contaminant percentage or quantities  
6 in the air. Now, that's an air content study, wouldn't you  
7 agree?

8 A No, I wouldn't agree at all. That has nothing to do with  
9 the issue. Mr. Shirock hedges very much on that and says  
10 that's for the items studies. He's not saying that that's  
11 from tobacco smoke at all. Their own witnesses haven't  
12 confirmed that.

13 Q Well, I think they have testified that those are the major  
14 contaminants.

15 A They retracted that very specifically.

16 Q Well, their testimony speaks for itself.

17 MR. COHEN: Counsel, the argument between  
18 you and my client is not going to get us anywhere. I think  
19 we can stipulate on the record that Mr. Pletten received  
20 something from Mr. O'Connor that purported to be an updated  
21 air quality content survey, a report. It did not give the  
22 actual findings. I think Mr. Pletten's statements also  
23 stand as true since he has not received, except by the  
24 Freedom of Information Act, certain information and evidence  
25 that he has requested.

1 A My Freedom of Information Act was sarcastically denied on  
2 the basis that I'd have to send the Command about Fifty  
3 Dollars to receive these items, and that really wasn't  
4 providing me the data. You know, they claim that they are  
5 making it available, and sending me a bill isn't making it  
6 available.

7 Q Do you know if your doctors have been provided with air  
8 content studies?

9 A There have been no air content studies --

10 MR. COHEN: Objection, Counsel. The  
11 question calls for him to know what his doctors received. He  
12 has no knowledge.

13 Q (By Miss Bacon) To the best of your knowledge?

14 MR. COHEN: I don't think he'd even be  
15 qualified by that. You have in the record various times  
16 when you have provided them to doctors and notes of  
17 transmittal, and I think those stand for themselves. What  
18 information the doctors have they will have to provide us  
19 on their own testimony.

20 Q (By Miss Bacon) Have you ever received from your doctors  
21 any air content studies performed by individuals of the  
22 Command?

23 A I do not think that doctors have ever been provided any  
24 air content studies of tobacco smoke. That the items that  
25 are studied, if they're studied at all -- And it's an

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1 intriguing thing that the alleged studies are always when  
2 I'm never in the room.

3 MR. COHEN: Mr. Pletten, please, direct  
4 your comments to the question asked.

5 Did you receive any studies from the doctors,  
6 any copies of studies?

7 THE WITNESS: I think I saw some alleged  
8 studies of maybe a year or so ago, but they were so vague and  
9 they were just some documents provided.

10 MR. COHEN: To your doctor, that your  
11 doctor shared with you?

12 THE WITNESS: Probably just shared, you  
13 know, saw, whatever. They have nothing to do with anything.

14 MISS BACON: I'm done.

15 MR. COHEN: So am I.

16 (At 3:42 P.M. the deposition was  
17 concluded.)

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1 CERTIFICATION OF NOTARY PUBLIC - COURT REPORTER

2 STATE OF MICHIGAN)  
3 ) ss.  
4 COUNTY OF WAYNE )

5 I, Elaine Jordan, do hereby certify that  
6 the witness, whose attached deposition was taken before me in the  
7 above entitled matter, was by me first affirmed to testify to the  
8 truth; that the testimony contained herein was by me reduced to  
9 writing in the presence of the witness by means of stenography,  
10 and afterwards transcribed upon a typewriter. The deposition is a  
11 true and complete transcript of the testimony given by the witness.

12 I do further certify that I am not  
13 connected by blood or marriage with any of the parties, their  
14 attorneys or agents, and that I am not an employee of either of  
15 them, nor interested directly or indirectly in the matter of  
16 controversy.

17 I do further certify that no request was  
18 made that the foregoing deposition be submitted to the said  
19 deponent for examination and correction by him, or that he sign  
20 the same.

21 IN WITNESS WHEREOF I hereunto set my hand  
22 at Detroit, Michigan, County of Wayne, State of Michigan, this  
23 24th day of May, 1982.

24 *Elaine Jordan*

25 ELAINE JORDAN, Certified Shorthand Reporter  
#0026

Notary Public, Wayne County, Michigan  
Acting in Oakland County, Michigan  
My commission expires January 22, 1984.