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TABOM HEARING

APPEAL FROM MERIT SYSTEM

PROTECTION BOARD

IN THE MATTER OF:

LEROY J. PLETTEN,

Appellant,

v

DEPARTMENT OF THE ARMY,

Appellee.

The Deposition of DAVID W. STALLINGS, 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 3:45 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.

I N D E X

DAVID W. STALLINGS

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Direct Examination by Miss Bacon

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Cross-Examination by Mr. Cohen

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1 Southfield, Michigan

2 Wednesday, May 19, 1982

3 3:45 P.M.

4 D A V I D W. S T A L L I N G S,

5 having been first duly sworn by the Notary Public,
6 was examined and testified upon his oath as follows:

7
8 DIRECT EXAMINATION

9 BY MISS BACON:

10 Q General, state your name for the record?

11 A David W. Stallings.

12 Q And what is your position?

13 A I'm the Deputy Commanding General of the U.S. Army Tank
14 Automotive Command.

15 Q How long have you held that position?

16 A One year.

17 Q And what are some of the responsibilities involved with that
18 position?

19 A I am responsible for the readiness portion of the Tank
20 Command in that I supervise six different Directorates,
21 approximately four thousand people with responsibility
22 for the procurement and the stock for the United States
23 Army Tank Automotive Command.

24 Q Are you also involved in being the final authority in terms
25 of separating employees?

1 A Yes, I am.

2 Q Let me ask you if you can identify the letter at Tab 10 of
3 the Agency's submission?

4 A Yes.

5 Q What is that letter?

6 A It is a letter that I signed, to Mr. Pletten, dated
7 14 January, which pretty well states, I guess, in substance
8 that we had reviewed some data dated 11 December '81 and
9 confirmed the material and replied to him it was mailed
10 to you on 11 December, and that I would allow an additional
11 five working days for a reply relative to the material
12 that we had asked for. There's some comments in here
13 concerning Dr. Dubin's specifications of what the environment
14 had to be for Mr. Pletten to work in. It goes on to state
15 that the decision to effect the separation is proposed and
16 becomes effective 22 January, and that he has a right to
17 appeal.

18 Q Could you explain the circumstances surrounding the signing
19 of that letter?

20 A Yes. It was referred to me by his Division Chief,
21 Mr. Ed Hoover. Mr. Hoover and I had talked about it, and it
22 was his recommendation that Mr. Pletten be separated because
23 we could not meet the environmental requirements of what
24 Dr. Dubin had stated had to be for him to work, which was
25 basically an area where there was no smoking, and we were

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please tell me and let me clarify it.

Are you familiar with the January 20, 1981 letter from Dr. Bruce Dubin to the Command?

A Not specifically.

Q Well, let me show you a copy. It's in the Agency's records. You'll have to look, as doctors chicken scratch.

A I am familiar with it.

Q And what does that say? Read it for the record?

A "To Whom It May Concern:" At least that's what written up here, typed in there.

"There is not and hasn't been any medical reason for denying Mr. Pletten's ability to work and for denying him an environment reasonably free of contamination. Bruce Dubin."

Q Now, if Dr. Dubin said that, is that in conflict with any other conclusions made by doctors or conclusions you reached?

A Whether it is in conflict, or whatever you want to say, I could not read or have not ever read anything into that particular thing that said anything different than what he was maintaining all along; that we weren't able to provide him a work environment that was adequate. No. I don't get anything out of reading that right now.

Q The question is there has been a great deal of testimony as to whether or not doctors required Mr. Pletten to have a

1 smoke-free environment or an environment reasonably free of
2 contamination or reasonably smoke-free and all those
3 different terms. Now, what was your understanding of what
4 Mr. Pletten needed or required? Let me get away from the
5 word "need."

6 A That he had to have, according to the information that was
7 supplied to me in the packet that would remove Mr. Pletten
8 from service, that he had to have an environment that was
9 free of contaminants that are associated with smoking.

10 Q Now this statement by Dr. Dubin that qualifies that, that
11 says reasonable free of smoke or contamination, that
12 qualifies it and makes it less stringent, does it not?

13 A I don't know.

14 Q You don't know. Okay.

15 A Just reading, you know, that may be yours. But I can't
16 read that and go back and decide based on all the informa-
17 tion that I've seen thus far that a statement like that
18 says that, hey, it's a new ball game. I don't get that out
19 of reading that.

20 Q Did you call Dr. Dubin yourself?

21 A No.

22 Q Why not?

23 A No reason to.

24 Q No reason to. I've had testimony here earlier, a couple of
25 weeks ago, that stated that you sometimes do an independent

1 investigation aside from the one that's provided you in a
2 packet by the Personnel Officer.

3 A I sometimes may do that.

4 Q Did you do that in this case?

5 A No.

6 Q Why didn't you?

7 A I felt very -- not very. But I felt comfortable with the
8 information supplied by the Civilian Personnel Officer,
9 Mr. Hoover, and the information that was in the packet seemed
10 clear to me. I didn't see any reason for an additional
11 investigation over that.

12 Q If I were to tell you that Mr. Braun of your own staff has
13 testified that, indeed, much of the building -- And I'm
14 characterizing his testimony now.

15 MISS BACON: Yes, you are. Let the record
16 show that.

17 MR. COHEN: I will characterize it as I
18 remember it.

19 Q (By Mr. Cohen) Mr. Braun testified there are times when
20 Building 230 does not comply with AR 1-8. Would that have
21 changed your recommendation with regard to Mr. Pletten?

22 A He's never said that to me.

23 Q Assuming he did.

24 A I don't know it. If he -- Say it again? If he were to
25 come in and say what now?

1 Q Mr. Braun has testified that there are times when the
2 Building 230, the main building, does not comply with the
3 air flow requirements of AR 1-8. He has testified to that.
4 He said the building has the capacity to comply, but there
5 are times when it just does not.

6 A Now that he's said that, now ask me the question.

7 Q Now that he said that, would that change your attitude with
8 regard to whether or not Mr. Pletten was medically
9 disqualified?

10 A I don't see where that has any relationship, whether or not
11 the building meets a hundred percent of that requirement
12 that you're talking about in the regulation, to providing him
13 a smoke cleared area where people don't smoke. I don't
14 see any relationship. So, therefore, my answer to your
15 question would be not knowing anymore than what you've just
16 said, no, I wouldn't change my mind.

17 Q AR 1-8 is what in your understanding?

18 A I'm going to be really honest with you. I have not
19 referred to that regulation.

20 Q Did you refer to it prior to the dismissal of Mr. Pletten?

21 A No.

22 Q Have you ever read it?

23 A No.

24 Q Well, let me give you a copy of it. You can look at it.
25 I believe it's Agency 18.

1 MISS BACON: I think so.

2 Q (Continuing) Agency 18 is AR 1-8. You've never seen that
3 document?

4 A To say that I've never seen it among all the Army Regulations
5 that I've ever viewed? It's hard to say. Do I remember it?
6 No way.

7 Q Did you review it concerning Mr. Pletten's case?

8 A No, I did not.

9 Q All right. Now, if the Army Tank Command and the buildings
10 did not comport with the regulation regarding air flow,
11 what do you do? What is your responsibility?

12 A If it had been reported to me, I'd find out how badly it
13 didn't meet the requirement, and then we'd have to look at
14 it from a point of view are we doing something that would
15 harm the health of the people that are working in there.
16 I would refer probably to the people that are responsible
17 for maintaining that air flow and that environmental thing,
18 and that would be Mr. Bob Shirock, who is the Safety Officer.
19 I'd get Bob in and talk to him and ask him what are we
20 talking about and what does it mean, and we'd look at it and
21 decide whether or not it should be fixed.

22 Q Would there be absolute compliance? Do you have to comply
23 with the regulation or do you have to come close?

24 A Do I have to comply exactly? Well, I guess I'd read the
25 regulation, and I'd use good common sense and judgment based

1 on how closely we met it. If we were in flagrant violation,
2 we would probably put together some sort of program to
3 correct it.

4 Q How close is flagrant? I mean, plus or minus five units of
5 air or --

6 A I don't know. You tell me how bad it is and I'll tell you
7 whether or not I thought something should be done about it.

8 Q Well, but you didn't do any investigation of it. Understand
9 that I'm going to characterize this case for you, General.

10 Mr. Pletten's argument is that -- Mr. Pletten
11 said that he's ready to go back to work even if it's the
12 worst environment in the world. He says that's always been
13 his position. He does claim, however, that there's a
14 hazard in the building and that the army has not had the
15 building comply with the regulation, and --

16 A That has not been reported to me.

17 Q That has not. Okay. Well, if it hasn't been reported,
18 there's no use belaboring it.

19 What did you consider in Mr. Pletten's
20 case before you decided to remove him? Was it just the
21 doctors' letters?

22 A No. There was a rather voluminous package. It had
23 statements from the doctor. It also had statements from
24 the Civilian Personnel Office that included, I guess, the
25 original documents signed by Carma Averhart which said

1 you're going to be released. There was quite a large,
2 voluminous package.

3 Q Mrs. Averhart was in here to testify a couple weeks ago, and
4 I asked her if she was aware of Dr. Dubin's 1/20/81 letter,
5 which I've shown you.

6 A This one here?

7 Q Yes. And she said no. I asked her if you had been aware
8 of it, would it have changed your thinking. She said I
9 don't know if it would have changed my thinking, but --

10 A Let me go back and correct something for the record. The
11 only reason -- You know, at the time that this all came
12 about, I cannot tell you whether or not that was even in
13 the package.

14 Q Okay. I have no problem with that, General.

15 She said if it had been in it, she said
16 it may have changed my way of thinking. I would certainly
17 have made further inquiries because it seemed to her
18 there was a conflict between Dr. Dubin's statement on
19 1/20 and other statements he made at another time.

20 Now, I need to understand the process.
21 You, as a General, don't have time to go into the nuts and
22 bolts of every complaint, do you?

23 A No, I certainly don't.

24 Q You rely heavily on your personnel staff?

25 A Absolutely.

1 Q Did you review, for example, the 25 January 1980 report from
2 USARCARA regarding Mr. Pletten?

3 A I can't recall right now. I don't know if I saw it. It
4 doesn't ring a bell.

5 Q Let me show you Tab 7, I think. No. I'm wrong.

6 Let's deal with Tab 3. This has been
7 included in the Agency package, which is a USARCARA report
8 on a grievance filed by Mr. Pletten. Are you familiar with
9 those conclusions and recommendations?

10 A Are we looking at the same document, the one signed by Lang?

11 Q No. We're looking at this document here.

12 A I've read it.

13 Q Were you familiar with it before you made the decision in
14 Mr. Pletten's case?

15 A I can't remember whether or not I'd reviewed that specific
16 document or not.

17 Q It indicates here that they recommend that the Commander
18 initiate an air content study in the work area to determine
19 toxic substances. Did you see work done on that toxic
20 study?

21 A Yes.

22 Q Is it possible Mr. Pletten was telling the truth when he
23 thought it was dangerous?

24 A I don't know what was in his mind.

25 Q Okay. Did you investigate as to whether or not there were

1 other complaints in the Command about smoke related
2 endangerment of employees?

3 A I'd hear of Mr. Pletten's concerns almost from the time that
4 I came to the Command. I had discussed this with Mr. Hoover
5 and other people that he worked with. During the course of
6 our discussion I don't remember anybody even mentioned
7 that had the same concerns that Mr. Pletten had.

8 Q Were you aware, for example, that Mrs. Bertram had filed
9 a workers' compensation claim because of smoking related
10 matters?

11 A No.

12 Q Were you aware of -- I'll show you Appellant's Exhibit
13 Number 1 signed by Archie Grimmett in 1979.

14 MISS BACON: I would object to your
15 statement that that was signed by Archie Grimmett. I do
16 not see his signature on the document.

17 MR. COHEN: Let me identify it. It's
18 a memorandum from Colonel Phillips -- Previously moved for
19 admission subject, I imagine, to objections.

20 MISS BACON: Yes, it was.

21 MR. COHEN: -- dated October 10, 1979 and
22 with various concurrences, including one from Mr. Hoover
23 that he testified to.

24 Q (Mr. Cohen) I'd ask you to look at this.

25 "In fact, at least several employees

1 "have filed claims stemming from
2 smoking related conditions."

3 Do you know about that?

4 A I wasn't there in 1979.

5 Q Once you got there did they tell you this had been a
6 problem for other people?

7 A No.

8 Q Would it have changed your reaction had it been?

9 A I guess it depends upon how many and if somebody had
10 referred it to me and said, hey, we've got some big-time
11 problems here. Maybe I would have done something.

12 Q Let me see --

13 A But nobody did.

14 Q Let me see if I can characterize Commanders for you. You'll
15 be an expert in this area. If a Commander is losing
16 personnel because of a hazard and the hazard can be
17 eliminated, you take all steps to eliminate it; is that
18 correct?

19 A Within reason.

20 Q Within reason. Okay. And rather than moving around
21 personnel, for example, if there's a hazard that can be
22 remedied, you remove the hazard. Is that also correct?

23 A Within reason.

24 Q Did you consider banning smoking at the Tank Command?

25 A No, I haven't considered banning smoking.

1 Q Do you have the authority to do that?

2 A I don't think so. I don't think that I have the authority
3 to just blanket throughout the Command say that you can't
4 smoke in there. If there is a regulation that I can
5 refer to --

6 A Let me give it to you. It's 1-8.

7 A In there it's pretty clear that there are some areas that
8 should be set aside where it doesn't -- Well, here it is.
9 Let me read it just a second.

10 Yes, I think this is the sentence that
11 gets to the heart of it right here:

12 "Work Areas: In establishing and
13 continuing a smoking policy in work
14 areas under their jurisdiction
15 officials must strive to maintain
16 exemplary balance between the rights
17 of smokers and non-smokers."

18 Q Okay. Does it also say though -- I imagine it's for
19 interpretation purposes:

20 "The right of individuals working
21 in DA occupied buildings to an
22 environment reasonably free of
23 contamination. DA also recognizes
24 the right of individuals to smoke
25 in such buildings, provided that

1 "such action doesnot endanger
2 life or property, cause discomfort
3 or unreasonable annoyance to
4 non-smokers or infringe upon their
5 rights."

6 Now, owing to that. -- And correct me I'm wrong, General --
7 doesn't that mean if somebody says that I'm discomforted,
8 I'm annoyed, that you have to provide that they can't smoke?
9 Isn't that a qualified right to smoke?

10 A What I interpret what we just read and talked about that it
11 would not be within my purview to tell everybody in the
12 Command that they cannot smoke in the working areas. I
13 would see no basis for doing that because it would cause
14 discomfort to some.

15 Q Let me ask you this: "As the Tank Commander --

16 A There are certain areas, for example, in our conference
17 rooms we try to keep them relatively free of smoking
18 so that people will not suffer a discomfort in our
19 conference rooms. In the work areas, no, I don't see that
20 as a thing that I would do.

21 Q Are there any other parts of the Command where smoking
22 is banned, for example, computer rooms?

23 A I can't tell you.

24 Q If I were to suggest to you that there are, and we've had
25 testimony that there are places where smoking is banned

1 because the smoke may interfere with the rusting of the
2 computer and that's a work area, would that change your
3 way of thinking?

4 A No, because having dealt with computers now for twenty some
5 years I know that they are very sensitive machine type things,
6 and I guess I could believe you if you told me that somebody
7 came in here and said that. Since it is air conditioned --
8 required to be air conditioned to keep the contaminants
9 out of the air to keep the machines working, that smoke
10 could probably bother them, I can accept that.

11 Q In other words, the Command's position would be that it
12 would ban smoking for the benefit of a machine, even though
13 it might bother people in the working area, but they won't
14 ban it if it's going to help a human being? I know it's
15 a stricter way of interpreting it, but is that basically it?

16 A No.

17 Q Well, what is the circumstance in the Command?

18 A The banning of smoking in a very restricted machine room
19 is not relatable to an entire Command where people are
20 working every day. I don't see any relationship.

21 Q If the Tank Command had a large oil depot where cigarette
22 smoking is like smoking in the middle of a gas station --
23 You don't do it because it's dangerous. Somebody might
24 go up in flames -- can you see banning it in that type of a
25 setting?

A Certainly.

1 Q But the Command has had no discussions about the banning
2 of smoking in the Command entirely or in large sections?

3 A I would say the opposite is true. I would say there has been
4 discussions specifically out of the concerns Mr. Pletten has
5 raised. At no time did it ever seem reasonable to me to
6 ban smoking throughout the entire Command.

7 Q But you're the one that makes that decision on that balance?
8 Is that your job? I don't know.

9 A I guess, to be honest with you, I'd have to say that, no,
10 I wouldn't make that decision. I've got a boss. He's a
11 Major General and he runs that place. Before I ever
12 said that we weren't going to smoke throughout the Command
13 I'd talk to the Major General.

14 Q I would expect that he would be pleased to hear you say that.

15 Let's deal with the removal letters at
16 Tab 7. Is this prepared for you, this letter?

17 A State your question again?

18 Q Tab 7, that's the removal letter. I presume you signed that,
19 sir?

20 MISS BACON: No, I think you're wrong.

21 Q (By Mr. Cohen. Excuse me. I'm sorry. That's Carma
22 Averhart. That is the proposal to remove. Where is the
23 final notice?

24 Ten is your letter to Mr. Pletten; is
25 that correct?

1 A Yes.

2 Q You signed that letter?

3 A Yes.

4 Q Who prepared it for you?

5 A It was prepared in the Civilian Personnel Office.

6 Q By Miss Bertram, whose name is referenced in the upper
7 right-hand corner?

8 A I can't tell you. I don't know.

9 Q You don't read the transmittal things?

10 A I don't read this line up here because I'm dealing with the
11 Civilian Personnel Officer himself, who is the supervisor,
12 and he brought the letter to me.

13 Q Did you independently review the doctors' letters so as to
14 make sure they conform with what you have written?

15 A I did review what the doctors had to say.

16 Q And it was your opinion that the doctors required that
17 Mr. Pletten have an utterly -- Excuse me -- an environment
18 completely and utterly free from the smell, odor or content
19 of tobacco smoke?

20 A That was my understanding.

21 Q And you lifted that from one of the letters?

22 A No, I didn't lift it.

23 Q But I mean the people who prepared it. Did it come out of
24 one of the doctor's letters?

25 A I can't answer that question. Which paragraph are you
talking about?

1 Q Well, it's in quotes.

2 A Then I would say that based on that it came out of Dr. Dubin's
3 statement.

4 Q And Dr. Dubin's other statement that it's nothing medically
5 that says he can't go back to work didn't persuade you?

6 A I didn't read it that way.

7 Q You are not sure if you had the 1/20/81 letter, you told me
8 earlier?

9 A (Witness nods negatively.)

10 Q You have to answer.

11 A No.

12 Q If you had that letter now in view of this, couldn't you see
13 a question as to whether or not Dr. Dubin had kept his story
14 straight? You read 10 and I'll get you 3.

15 A Let me read this to myself.

16 "There has not been any medical reason
17 for denying Mr. Pletten's ability to work."
18 It sounds like he's saying there's not any reason for denying
19 the environment is reasonably free of contamination. I
20 don't know.

21 Q It's kind of hazy, isn't it?

22 A Well, I see nothing there that would make me change my mind.

23 Q Did anybody, did Mrs. Bertram or anybody to your knowledge
24 contact Dubin and ask him what in God's name he meant?

25 A I can't answer that.

1 Q You didn't though?

2 A No, I didn't.

3 Q You didn't direct any of your adjutants or staff?

4 A Absolutely not.

5 Q Do you smoke, sir?

6 A No.

7 Q Did you ask Mr. Hoover if he had banned smoking in the
8 Personnel Office?

9 A No.

10 Q Are you aware that there was a misunderstanding. It has
11 been cleared up by Counsel. But at one time the MSPB
12 thought you had. Was that ever contemplated by you?

13 A No.

14 Q Are there any -- Did anybody ever question Mr. Pletten to
15 your knowledge if he'd work even if there was a hazard?

16 A I can't say for sure, but I feel certain that people, during
17 the course of approximately over a year's period, had
18 discussed it with him many times. You're going to have ask
19 the people you're talking about there.

20 Q But let me ask you --

21 A But I didn't.

22 Q You didn't?

23 A No.

24 Q But he has testified today he's ready, willing and able to
25 go back to work no matter what the circumstances. Now are

1 there people in the Command that work under hazards,
2 dangerous jobs, for example?

3 A Not very.

4 Q Not very. But some danger, like iron workers?

5 A No more than the average guy that would work in a machine
6 shop.

7 Q But there are some inherent dangers that they assume the
8 risk for, correct?

9 A Yes.

10 Q If there's a hazard it's the duty of everybody to try and
11 eliminate the hazards, is it not?

12 A If it's going to hurt somebody's health, yes.

13 Q If Mr. Pletten thinks that smoking is going to hurt somebody
14 and he makes a series of grievances and a request to try and
15 eliminate that hazard, as he perceives it, there's nothing
16 wrong with it, is there?

17 A I think that there has to be some sort of reasonable, what-
18 ever anybody wants. When you go beyond the bounds of being
19 reasonable, then it doesn't make any sense because you
20 can't do what the guy is asking. I think this case is
21 clearly part of that.

22 Q But as far as seeking to eliminate the hazard --

23 A First, you've got to establish whether or not it's a hazard.

24 Q If we've established now that there's no compliance or
25 there has been several times when there's not compliance with

86-11-14

1 an Army Regulation, that would at least alert you to look
2 into it?

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

4 Q I'm representing what the testimony said. But if that were
5 the case, you've told me that you'd go to Shirock and say,
6 what's the story?

7 A Absolutely.

8 Q And if it's your understanding now, if I told you that based
9 on the transcripts that I can provide you, you would go back
10 as part of your duty and talk to Mr. Shirock and say, what
11 does this mean; why is Braun saying these nasty things about
12 our air?

13 A I'd find out about it.

14 Q Did you talk to Mr. Pletten at any time personally?

15 A No.

16 Q So the entire extent of your contact with the Pletten case
17 is your knowledge from the Civilian Personnel Office, and
18 Mr. Hoover in particular?

19 A Yes.

20 Q In other words, if Mr. Hoover or any of his subordinates
21 in preparing the documents did not do a complete job or
22 misrepresented anything, then you would have made your
23 decision based on those statements?

24 A Of course you have to understand this information was
25

1 supplied to him. He had a chance to reply in writing,
2 In fact, he was invited in to visit Mr. Hoover at one
3 particular time. So I suppose that all that information would
4 flow to me to make a decision.

5 Q But if there was a foul up in the procedure or a breakdown
6 with the individuals that are involved in the procedure,
7 you wouldn't know? You would have to rely on your subordinates

8 A I rely on subordinates, and I have no reason to believe
9 there was a breakdown in this case.

10 Q Did you review any of the Surgeon General's reports with
11 regard to smokers and in connection with smoking?

12 A You mean what he has been saying for the last ten years?

13 Q What he said most recently. Did you review any of the
14 Surgeon General's statements?

15 A I didn't read any of them. I've heard people discuss them,
16 but I didn't read them.

17 Q Are you familiar with his most recent statement by the
18 Surgeon General that says connection with smokers, even though
19 you're not a smoker, may prove hazardous by the intake of
20 ambient smoke?

21 A I've heard that.

22 Q Did you take any steps at the Command to implement a
23 program to eliminate that hazard?

24 A Only within the Directorate compliance with Regulation 1-8.

25 Q But you're not particularly sure -- Whose job is it to make
sure that compliance with 1-8 occurs?

1 sure that compliance with 1-8 occurs? Is it your job?

2 **A** No.

3 **Q** Is that Shirock's job?

4 **A** Well, that's not a simple -- Hold on just a second. Let me
5 think about it.

6 The totality of the environment of that
7 place is the responsibility of the Commanding Officer.
8 Specifically within that we have a man who is responsible
9 for advising him on how safe the environment is. To the best
10 of my belief and knowledge that is Bob Shirock.

11 **Q** And --

12 **A** And my place in it is that I happen to be one of the
13 supervisors in the chain of command. It just happens to be
14 that I supervise about four thousand of the five thousand
15 people that are there.

16 **Q** I just have a couple more, General.

17 The first one concerns whether or not
18 the Command has ever undertaken any studies or surveys
19 of their personnel to determine whether or not they want
20 smoking banned or anything regarding a smoking survey?

21 **A** I can't answer the question. I personally have not caused
22 one to happen.

23 **Q** Were you aware of the recommendation by Mr. Adler, I believe,
24 of the Equal Employment Office that such a survey be taken?

25 **A** No, I was not.

1 Q If you were aware of it, would you have ordered that one be
2 taken?

3 A I'd consider it. I don't know. I'd have to think about that
4 for a while.

5 Q You'd have to analyze the cost, I'm sure?

6 A I'd have to think about it for a while. I suspect that I
7 would not because smoking -- I don't think we're going to
8 change the habits of the people that are working at the
9 Command overnight, and I guess that's what we would be
10 talking about. So the fact that one person suggested that
11 we ought to take a poll of all the people to see what they
12 would like to do, all you'd have to do is just be at the
13 Command and watch the people. You can see that there is
14 a large number of smokers.

15 Q You said you weren't going to change them overnight, but are
16 you trying to change them gradually?

17 A No. I'm personally not trying at all.

18 Q Is the Command policy to try and eliminate cigarette smoking?
19 Do they have such a policy?

20 A Not to my knowledge. You mean the individual -- Wait a minute.

21 Q At work. I'm not talking about after they go home. I don't
22 care what they do. But at the Command, is there a policy?

23 A Not to my knowledge.

24 Q Any cost analysis done about what smoking actually costs
25 the Command?

1 A I can't answer the question. I don't know.

2 Q I'm concerned when you say you didn't speak to Mr. Pletten
3 pursuant to the removal, let me get this straight. Was it
4 because Mr. Hoover had already offered him the opportunity
5 to speak to him that you didn't speak to him?

6 A I have a great deal of confidence in Mr. Hoover. Part of
7 that stems from the -- especially when it comes to
8 personnel actions. Since he is the Civilian Personnel
9 Officer with many years of experience in these matters,
10 I rely on him very heavily in these matters. In this
11 particular case I felt as though I was getting correct
12 response from Mr. Hoover.

13 Q You heard a lot about Mr. Pletten from the day you got there?

14 A Yes, I'd heard of him.

15 Q Did you think he was a crackpot or a freak incident with
16 the Command or a source of joking, for example?

17 A No. I don't judge people in that manner. I can't afford
18 to in my position. I didn't judge Mr. Pletten. I'd never
19 met him, and I'd only heard that he had registered many
20 complaints over the period and I just let that stand. In
21 my position I can't afford to judge people that way.

22 Q And you would have been willing to meet with him?

23 A Oh, absolutely.

24 MR. COHEN: Nothing further.

25 MISS BACON: I have nothing further.

-28- (Deposition concluded at
4:30 P.M.)

