

1 TARCOM HEARING

2 APPEAL FROM MERIT SYSTEM

3 PROTECTION BOARD

4 IN THE MATTER OF:

5 LEROY J. PLETTEN,

6 Appellant,

7 -vs-

8 DEPARTMENT OF THE ARMY,

9 Appellee.

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10 Transcript of the deposition of JOHN

11 DOLLBERG, a witness in the above-entitled cause, taken before  
12 Norma J. Yeager, Notary Public in and for the County of Oakland,  
13 State of Michigan, at 3000 Town Center, Suite 1150, Southfield,  
14 Michigan 48075, on Monday, April 26, 1982, commencing at or about  
15 the hour of 3:20 p.m.

16 APPEARANCES:

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

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

21 ALSO PRESENT:

22 Leroy J. Pletten, Appellant  
23  
24  
25

1 Southfield, Michigan

2 Monday, April 26, 1982

3 3:20 p.m.

4 J O H N D O L L B E R G ,

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

7 EXAMINATION

8 BY MS. BACON:

9 Q State your name for the record, please.

10 A John Dollberg.

11 Q What is your position?

12 A Safety Engineer at Army Tank-Automotive Command.

13 Q How long have you held that position?

14 A I have been at the Tank-Automotive Command since March of  
15 1977.

16 Q What are your responsibilities and duties in that position?

17 A As Safety Engineer we are responsible for safety and health  
18 of the work force at our location, and being an engineer,  
19 I also get involved in safety of equipment, the design of  
20 vehicles used by the Army, and construction materials,  
21 handling of equipment. I am involved as alternate radiation  
22 protection officer for the Command. There are several  
23 divisions we have in the field that contain radioactive  
24 material and there are certain training requirements for  
25 that.

1 Q What kind of education and training do you have in your  
2 background?

3 A My undergraduate degree, I received a Bachelor of Science in  
4 Electrical Engineering from Valparaiso University, and I  
5 completed a Master's of Science and Industrial Engineering  
6 from Wayne State University. After I obtained my Bachelor  
7 of Science degree, I interviewed with the Army and I agreed  
8 to become a member of TARCUM Safety and Engineering program  
9 at Red River Army Depot and I was there July '75 to  
10 December '76, receiving training, and then I spent from  
11 December '76 until March '77 at the field safety activity in  
12 Charlestown, Indiana before being placed here.

13 Q What kind of qualifications are needed for your position?

14 A Well, to initially get in the intern program, you needed an  
15 engineering degree, or engineering science degree and pretty  
16 much you need to have a broad spectrum of safety programs  
17 and their standards set up by the Office of Personnel  
18 Management as to minor requirements of various safety classes  
19 and safety responsibilities you need to have.

20 Q I would direct you to the Agency's response in Tab 4 and ask  
21 you if you can identify certain documents. Can you identify  
22 that document, please?

23 A Yes.

24 Q Is that an air content --

25 MS. BACON: Let the record show, please,

1 MFR dated October 8, 1980.

2 Q (By Ms. Bacon) Did you conduct the test reflected in that  
3 particular memo?

4 A Yes, I did.

5 Q Can you identify this document?

6 A Yes.

7 MS. BACON: Let the record show these  
8 memoranda for the record, dated 6 February 81.

9 Q (By Ms. Bacon) Are those -- is that MFR reflective of a  
10 study you conducted?

11 A Yes.

12 Q Now, what equipment did you use in conducting those studies?

13 A The main instrument is a Draeger Model 31 Service Meter and  
14 it is used to detect contaminants in the air.

15 Q How sensitive is this equipment?

16 A It depends on the contaminator substance you are testing for.  
17 For the compound we tested for, the levels indicated were the  
18 lowest levels the instrument will read.

19 Q Do you do a check on accuracy in connection with your  
20 testing with this equipment?

21 A Yes. We make sure the equipment is operating properly before  
22 and after we make the test.

23 Q How many different contaminants can you test?

24 A There is hundreds that you can test for. It depends.

25 Q I noted the studies reflected that you were testing basically

1 for four different contaminants.

2 A Right.

3 Q Where were those four particular contaminants tested?

4 A Typically these are compounds that are present as by-products  
5 of some type of burning, whether smoking or any other type  
6 of air pollution.

7 Q What were the results of your testing as reflected on these  
8 reports?

9 A As we indicated, the results were less than certain parts of  
10 a million as indicated here, and these levels are below  
11 OSHA standards.

12 Q You were using OSHA standards in conducting these tests?

13 A Yes.

14 Q If you are testing, hypothetically, if you are testing and  
15 everything indicated that it was perhaps close to threshold  
16 limits under OSHA, what would the procedure be?

17 A Well, we would probably test again to make sure that we  
18 didn't make a mistake in doing our testing, and we would  
19 probably test it at another time of day, in the morning and  
20 afternoon, so we would probably collect at another time as  
21 well.

22 Q Do you have access to any more sophisticated equipment than  
23 this Draeger model?

24 A This is the instrument that we use. If we needed more  
25 sophisticated equipment, we can request it.

1 Q From whom would you request it?

2 A Well, Mr. Braun is our industrial hygienist and if we felt  
3 it looked like there was problems, since he is more knowledge-  
4 able in industrial environment hygiene operations, we would  
5 contact him.

6 Q Would you have access to Army Environmental Hygiene Agency?

7 A Yes, we can contact TARCOM, the Surgeon General's office and  
8 we can request more specialized people from the Environmental  
9 and Hygiene Agency.

10 Q That was not done by you based on your tests?

11 A No. We didn't feel it was justified.

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

14 EXAMINATION

15 BY MR. COHEN:

16 Q What, sir, would have justified additional action on your  
17 part?

18 A If we found results that were near the estimated averages.

19 Q That being the case, with three complaints, at least three  
20 and maybe more, from people who had adverse reactions to  
21 smoking --

22 MS. BACON: I object. I don't think that  
23 has been established.

24 Q (By Mr. Cohen) Let's assume for argument's sake. Are you  
25 familiar with any other smoking-related complaints?

1 A This is the main one I have worked on. I believe there was  
2 some others.

3 Q Within your office?

4 A I believe so.

5 Q If that is the case and you have other smoking-related  
6 complaints and results are coming back negative, how do you  
7 resolve the apparent difference between the complaints and  
8 the fact you don't have any results?

9 A Well, smoking is what I consider a type of nuisance condition  
10 and it may cause problems for some people, or they may feel  
11 it is affecting them, but we never found anything that  
12 exceeded the standards that we must comply with.

13 Q What standards are those?

14 A The standards established in the Occupational Safety and  
15 Health Agency.

16 Q Do you also have to look at Department of Army regulations?

17 A Yes.

18 Q Did it comply with Department of Army Regulation 1-8?

19 A Yes.

20 Q How so?

21 A 1-8 addresses the amount of air changes per hour.

22 Q But doesn't AR 1-8 also recognize that while individuals have  
23 a right to smoke, they may only smoke, "Provided such action  
24 does not endanger life or property, cause discomfort or  
25 unreasonable annoyance to non-smokers, or infringe upon their

1 rights"?

2 A Correct.

3 Q Well, if people are complaining, most particularly  
4 Mr. Pletten, and he says he is discomfoted and it annoys  
5 him, then the people seemingly, by this AR, have lost their  
6 rights to smoke, isn't that true?

7 A May I have the question again?

8 Q The AR gives an unqualified right to smokers to smoke. It  
9 says you may smoke, we recognize your right to smoke provided  
10 it does not discomfort or unreasonably annoy?

11 MS. BACON: Is that your reading of the AR?

12 Q (By Mr. Cohen) It is my construction and I invite you to  
13 differ with it, if you do, but Mr. Pletten made a complaint;  
14 you say it complies with the regulations and I am saying  
15 there is one that it does not comply with, so what is the  
16 problem, why am I wrong?

17 A Again this is subject to interpretation because it does not  
18 specifically spell out what levels of contamination they  
19 consider to be discomforting or hazardous. The only  
20 standards we have to go by are the ones under OSHA.

21 Q So the OSHA requirement, and part of this regulation that  
22 speaks to 10 cubic feet of air in circulation, are the only  
23 ones you are able to interpolate, is that correct?

24 A Correct.

25 Q The issue of Mr. Pletten's subjective problem never was



1 discussed by you?

2 A We dealt with the actual facts and acted on the standards  
3 we had to comply with.

4 Q But you dealt with the standards and regulations as you  
5 understood you had to comply with them, correct?

6 A Correct.

7 Q From my reading, and my argument to you just now, was it  
8 your responsibility to review Mr. Pletten's subjective  
9 problems? Do you think you had a responsibility to look into  
10 those?

11 A Again I am not a medical expert. That is why we contacted  
12 Mr. Braun to have the industrial hygienist survey the areas.

13 Q It does not take a medical expert to ask a man if he is in  
14 discomfort or annoyed. I am not saying you breached your  
15 duty by any means, but I am saying it is your job to look at  
16 that part of the regulation as you understand it.

17 A To comply with the regulations for the Command.

18 Q What about this part, did you investigate that and make any  
19 finding with regard to his discomfort?

20 A That is what we were performing the survey for.

21 Q Did you make any surveys with Mr. Pletten to see if he was  
22 discomforted?

23 A What do you mean?

24 Q Did you talk to Mr. Pletten and say, "Are you discomforted  
25 around cigarette smoke?"

1 A No.

2 Q Did you talk to Mr. Pletten and ask him if he was annoyed  
3 by cigarette smoke?

4 A No.

5 Q Before today, did you ever meet Mr. Pletten?

6 A No.

7 Q This gentleman here is Mr. Pletten, Mr. Dollberg.  
8 Now, Mr. Shirock is your boss. Did  
9 Mr. Shirock ever suggest how you review this case in terms  
10 of regulations?

11 A He sent me to sample for contaminants.

12 Q He didn't send you to talk to Leroy Pletten?

13 A At the time I was there, he was not in the office.

14 Q You were not directed to talk to Leroy?

15 A No.

16 Q From -- I don't mean to be argumentative, but from the stand-  
17 point that that portion, that general portion of the AR was  
18 overlooked, do you still feel you have complied, that the  
19 activities that you performed made full evaluation of  
20 compliance with the regulations?

21 A Yes, I believe we made full evaluations.

22 Q As to the scientific facts, or including these human factors?

23 A The scientific facts was my side.

24 Q You didn't make any view into the human factor?

25 A In terms of whether there were contaminants exceeding the

1 regulations, we did.

2 Q In terms of subjective analysis?

3 A No, that is not really my responsibility.

4 Q If it was to be found later -- let's go on. Have you any  
5 familiarity with the January 25, 1980 USACARA report  
6 involving Mr. Pletten?

7 A No.

8 Q You were never given that to read at all?

9 A No.

10 Q I am going to quote from Page 12, although it has been  
11 pointed out by my learned opponent, this is the writing of a  
12 higher official, I would like to read to you from it. It  
13 says, "Thus it is clear that the rights of the smoker exists  
14 only insofar as discomfort or unreasonable annoyance is not  
15 caused to non-smokers." That was the interpretation of a  
16 hearing officer of USACARA on AR 1-8. In your work, do you  
17 get any guidance from Mr. Shirock, or any other person, as  
18 how you are to interpret that?

19 A Again, he wanted us to sample for contaminants in the air.

20 Q Were you the technician just going out there and getting  
21 samples and doing the scientific aspect of it?

22 A Taking readings and determining if there was a problem and  
23 any conclusions based on the readings.

24 Q Was Mr. Shirock going to look into the subjective aspect of  
25 it?

1 A I can't say specifically what he was talking about with the  
2 Medical Department.

3 Q We will have the opportunity to speak with him. Let's go on.  
4 The October 28 notation, who is  
5 Miss N. Heida?

6 A Another member of our Safety Office, a safety specialist.  
7 She is an upper mobility, so she is coming up through the  
8 ranks, so I brought her along.

9 Q You did Building 230, main building, and 219, which is  
10 where?

11 A Another building on the installation.

12 Q A smaller building than 230?

13 A It is a more industrial building; it is smaller.

14 Q You took a reading outside Building 219, but not 230. Why is  
15 that?

16 A The buildings are fairly close, so reading outside one would  
17 be equivalent to reading outside the other one.

18 Q How many places within Building 230 did you take a reading?

19 A Two on this particular survey.

20 Q How big is Building 230?

21 A In terms of people, size, square footage?

22 Q Square footage.

23 A I don't know. I would be guessing, I don't know the exact  
24 number.

25 Q If I were to suggest 250,000 square feet for all the floors?

1 It is a big building?

2 A Yes, I would say that could be reasonable.

3 Q Now, that being the case, would two areas be representative  
4 of the entire building, or only the areas you have outlined  
5 in your sketches?

6 A Representative of that portion of the building that is on the  
7 same ventilating system.

8 Q How many ventilating systems in Building 230?

9 A To my knowledge, there is three.

10 Q If I were to tell you Mr. Braun testified this morning there  
11 are, in fact, six, would that be a surprise to you?

12 A I thought there were three.

13 Q Would that have affected you if you had known there were six  
14 ventilating systems? Would you have taken six samples?

15 A Not necessarily. We were just getting sampling in typical  
16 office areas inside the building.

17 Q What time of day were these taken?

18 A 1350 hours.

19 Q That would be almost 4:00?

20 A Almost 2:00.

21 Q I'm sorry. Military time is 10 minus two?

22 A 1415 would be 2:15; 1430 would be 2:30 and 1630 would be  
23 4:30.

24 Q Are those the times most people are there?

25 A I believe so. It was early afternoon before people started

1 home; they are on flex time, so most of the contaminants we  
2 did during the day, if there were any, would be present then.  
3 Q These temperatures listed on there, these are temperatures  
4 inside the building or outside?  
5 A The first three columns are temperatures inside the building  
6 and the fourth column is the temperature outside.  
7 Q Maybe this is asinine, but I am asking where are the thermo-  
8 stats set to arrive at 78 degrees temperature, which is a  
9 23 point differential from outside?  
10 A It could have been a warm day; it was late October.  
11 Q You stated it was 55 degrees outside the building. That is  
12 not warm.  
13 A It is just heat that builds up during the day from heating,  
14 and things like that.  
15 Q Wouldn't normal circulation from air outside the building,  
16 normal venting, provide the temperature be somewhat reduced?  
17 A I am not certain on that portion of the system. They had  
18 been having trouble with thermostat settings.  
19 Q Did you read Mr. Braun's studies with regard to circulation  
20 of air ventilation?  
21 A I read one. I know I saw one. I am not sure which particular  
22 one you mean.  
23 Q How often had you been in Building 230 during the summer  
24 months, for example?  
25 A Average two times a week, I would say.

1 Q Building 230 is not one of my personal favorites. Would  
2 you say it is somewhat musty and heavy in there in the  
3 summer? Is circulation of air good or bad in your estima-  
4 tion?  
5 A I feel it is adequate.  
6 Q Is it warm in there during the summer?  
7 A Normally.  
8 Q Are there a lot of fans in the rooms?  
9 A Some, yes.  
10 Q Is that because the air does not move around or because of  
11 lack of air conditioning, or both?  
12 A They are just to help add some more cooling effect.  
13 Q Is it your position that Building 230 complies with the  
14 10 cubic feet of air flow required by AR 1-8?  
15 A Yes.  
16 Q How do you know that is true?  
17 A They sent studies of Mr. Braun.  
18 Q Mr. Braun testified this morning that although it generally  
19 complies, he says in Building 230, due to the six different  
20 ventilation systems he only estimates compliance with AR 1-8  
21 at between 70 and 90 percent of the time; it varies. Are  
22 you aware of that?  
23 A He never mentioned that to me.  
24 Q Why do you set temperatures when you are doing the studies?  
25 A We want to make certain with the instruments we use, so as

1 not to use it incorrectly, before you open up the test tube  
2 to use it, we take a temperature to make sure the temperature  
3 is still within range and to make sure that we are not going  
4 to use the instrument incorrectly, and also as a check to see  
5 if we are exceeding in temperature levels that might result  
6 in the need for people to go home.

7 Q Is it safe then to say, based on my earlier questions about  
8 the number of areas tested, there are some parts of  
9 Building 230 that may have exceeded requirements for clean  
10 air or may have been less or may have been the same as the  
11 part where you did test?

12 A I feel it would be the same. I tested other areas at differ-  
13 ent times.

14 Q But you can't be sure, based on these tests, can you?

15 A We take samples at different times.

16 Q But you said in earlier testimony that you tested in two  
17 areas of Building 230 and it is only representative of the  
18 areas you tested, not of the entire building, is that true?

19 A In that ventilating system.

20 Q And you testified you only know of three, and I told you  
21 Mr. Braun identified six ventilating systems, is that true?

22 A I said there were three, yes.

23 Q Does that leave doubt in your mind as to condition A in that  
24 part of the building, would this study still stand in your  
25 mind as representative of Building 230 on that date?



1 A Yes.

2 Q Even with the discrepancies I pointed out to you?

3 A Yes.

4 Q Why?

5 A We tested other portions of the building at different times  
6 and found similar results.

7 Q Why weren't those included in that air contaminants study?

8 A At the time we tried to select a couple of typical locations  
9 on this side of the building to test, so we selected one  
10 upstairs and one downstairs.

11 Q What was the wind velocity that day?

12 A I don't know.

13 Q Would that be a consideration in testing air samples?

14 A You mean ventilation, wind --

15 Q Let me indicate to you Mr. Braun testified, as Mr. Lang  
16 testified, that there is a percentage of air that comes in  
17 through cracks in the building and in the opening and closing  
18 of doors, and that varies, he says. So what kind of wind  
19 was there that day?

20 A I don't remember.

21 Q Would you consider that a factor to be considered in the  
22 future in these tests?

23 A I don't think so because we were sampling office areas, not  
24 in hallways.

25 Q Hallways are draftier, I presume?

1 A Normally not, but --

2 Q Aren't these bullpen areas, large open spaces?

3 A With partitions or whatever, yes.

4 Q You don't think wind outside of the building would have any  
5 effect at all, or have little effect?

6 A I would say little effect.

7 Q Why the four determinants, why these four: Carbon monoxide,  
8 hydrocyanic acid, sulfur dioxide and nitrous oxide, why only  
9 those four?

10 A These are typically the major components of any burning  
11 process.

12 Q What about other contaminants, what other types of contami-  
13 nants do you test for?

14 A Depending on the operation, we would test for, like for  
15 example, if it was a welding operation, we would test more  
16 for lead, chrome and nickel, things like that.

17 Q You signed with Mr. Peters a letter of February 6, a memo  
18 for the record. In it you indicated you looked at two rooms  
19 in Building 230 and the parking lot and obtained samples.  
20 Now, I asked Mr. Peters what were the major products of  
21 smoking. He was unable to state what the four major products  
22 of smoking were. He directed me to you. When I asked him  
23 about the February 6 letter that he signed, that there were  
24 these four major contaminants, he said he had to change, he  
25 had to qualify that to say what the four major products were.

1           Would you want to qualify that as well?

2    A       I said our major byproducts of smoking.

3    Q       Do you know what the major byproducts of cigarette smoking

4           are?

5    A       For the most part, carbon monoxide, because of the burning

6           process, and also traces of sulfur and noxious gases, and

7           also cyanic acid because of the free carbon.

8    Q       Anything else?

9    A       We felt they were the major ones.

10   Q       Obviously he didn't because Mr. Peters testified he would

11           not have said that. He said that, if I remember correctly,

12           they didn't know what all the major products were. Did you

13           investigate what the major byproducts were, did you ask the

14           Lung Association or anybody else?

15   A       We had seen some literature and again -- we had read some

16           of the literature and I felt, I read that these were some of

17           them and Mr. Shirock agreed we would test for these.

18   Q       I am very impressed with the temperature figures in Room 111-W

19           showing a temperature of 80 degrees, 80 degrees. In Room 116

20           the temperature was 78 degrees and out in the parking lot it

21           was 18 degrees. Why was it set up so hot in the buildings,

22           Building 230 particularly?

23   A       Again, probably problems with the ventilation system.

24   Q       Well, if they had problems with the ventilation system, are

25           you sure they were in compliance with AR 1-8?

1 A Again, they probably had problems with the ventilating  
2 system, but it was still ventilating.

3 Q If you recall a president in the past, he said dial down to  
4 68. Did he have trouble with the temperature setting?

5 MS. BACON: I will object. He probably would  
6 not have a problem with a temperature setting.

7 Q (By Mr. Cohen) How do you define the definition of the term  
8 significant? You say survey results indicates no significant  
9 amount of air contaminants. What is significant?

10 A Ones that are at the estimated average or above.

11 Q Estimated average?

12 A Correct.

13 Q What are those?

14 A The standards established by OSHA for the particular contami-  
15 nants.

16 Q Mr. Peters testified that when he said no significant amount,  
17 that meant it had not registered on the calibrations. Is  
18 that what you mean, on your little tubes?

19 A Right. It was not registering on there, but you asked me my  
20 definition of significant and I said something at the  
21 estimated average or above.

22 Q Were any of them near the estimated averages established by  
23 OSHA?

24 A No.

25 Q Now, once again they were taken outside of two rooms in

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Building 230.

A Inside two rooms.

Q They were taken next to smokers?

A We were taking representative samples, but I don't remember.

Q How many people in a square -- 10-foot square area where you took the samples?

A Again, I didn't record that.

Q So it could have been there was one person in the area or 15 or 20 people and if there were 10 or 20 people smoking, you would have more smoke to deal with than just one, isn't that logical to presume?

A There may have been smoke in the air, if that is what you mean.

Q It may have registered, Mr. Dollberg, if you had taken it where there were few people?

A I don't know. It depends on the test.

Q I am going to take one last run at this. It is the last part of my questioning.

You are responsible for Army regulations and OSHA regulations?

A Yes.

Q If you don't take into consideration the subjective human portion of AR 1-8, who orders compliance? Is that Mr. Shirock's responsibility?

A It would be more his.

1 Q Are you familiar with the fact that several employees have  
2 filed claims stemming from smoking-related conditions?

3 A I don't know what you mean by claim.

4 Q You mentioned you were aware of other claims in the office.  
5 How many are you aware of?

6 A I knew of one other.

7 Q Who was that involving, please?

8 A I don't know the individual's name, but it is in a different  
9 building than Building 230.

10 MR. COHEN: All right. No further questions.

11 MS. BACON: Nothing further.

12 (3:55 p.m.)

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