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UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
CHICAGO REGIONAL OFFICE

LEROY J. PLETTEN,  
Appellant,  
vs.  
DEPARTMENT OF THE ARMY,  
Agency.

---

Transcript of the Deposition of ROBERT  
SHIROCK taken in the above-entitled cause, before TAMARA A.  
O'CONNOR, Notary Public in and for the County of Oakland and  
State of Michigan, at 3000 Town Center, Suite 1105,  
Southfield, Michigan, on Wednesday, April 28, 1982,  
commencing at or about 12:15 p.m.

APPEARANCES:

COHEN & COOPER, 3000 Town Center, Suite 1105, Southfield,  
Michigan 48075, Appearing on Behalf of the Appellant.  
BY: STEVEN Z. COHEN, ESQ.

DEPARTMENT OF THE ARMY, U. S. ARMY, TACOM, DRSTA-LA, Warren,  
Michigan 48090, Appearing on Behalf of the Agency.  
BY: EMILY SEVALD BACON, ESQ.

PENGAD CO., BATONNE, N.J. 07002 FORM SEL 2387

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WITNESS:

PAGE

ROBERT SHIROCK

Examination by Ms. Bacon

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Examination by Mr. Cohen

12

EXHIBITS:

MARKED

Agency's Exhibit No. 21

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Southfield, Michigan

Wednesday, April 28, 1982

12:15 p.m.

P R O C E E D I N G S

R O B E R T S H I R O C K

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

EXAMINATION

BY MS. BACON:

Q What is your position, Mr. Shirock?

A Civil Service lists it as a Supervisory Safety Engineer. Organizationally in the Command, I am a Safety Director.

Q Do you have any responsibilities as far as the Occupational Safety and Health Act are concerned?

A Yes. Under the law, the Director of Safety or the Chief of Safety is responsible for safety and health.

Q Can you give me some background as far as your education and training is concerned?

A I have a Bachelor of Science in Chemistry. I have done graduate work at New York University in safety engineering. I have had industrial hygiene courses, and thirty-three years of experience as a Safety Engineer.

Q Are you acquainted with the Appellant in this case, Mr.

1 Pletten?

2 A Yes.

3 Q How did you become acquainted with him?

4 A Through an OSHA complaint filed in 1979.

5 Q What is an OSHA complaint?

6 A This is when our employee feels that there is a problem  
7 as relates to safety and/or health and he has the right  
8 to bring this to the attention of his supervisor. If  
9 he is not satisfied with that answer, then to bring  
10 it to my attention for the determination as to whether  
11 it is in fact a safety or health problem.

12 Q And you say that Mr. Pletten filed an OSHA complaint?

13 A He filed an OSHA complaint. If I look at my  
14 compilation here, 14 June 1979.

15 MR. COHEN: Counsel, could I have Mr.  
16 Shirock identify what he is referring to?

17 BY MS. BACON:

18 Q Yes.

19 A It is a compilation of the OSHA complaints filed by  
20 Mr. Pletten with my office beginning in June of 1979  
21 through 21 May 1980.

22 MS. BACON: Would you like a copy?

23 MR. COHEN: Yes.

24 BY MS. BACON:

25 Q Did you provide a response back? Let me do this the

1 easy way. Can you identify the documents in this  
2 packet, please?

3 A Yes. The first is my direct reply to Mr. Pletten for  
4 his OSHA complaint, and informing him if he was not  
5 satisfied he could carry it on to General Decker.

6 The second document is his appeal to General  
7 Decker and a reply back.

8 The third document is his appeal to the  
9 Materiel Readiness Command.

10 The fourth is the reply from the Assistant  
11 Secretary of the Army dealing with his complaint.

12 Q Why don't you describe how the complaint procedure  
13 works, if you would.

14 A All right. As I say, his first reference point of  
15 contact is his supervisor. If he is not satisfied with  
16 his supervisor's response, then we have an official  
17 OSHA complaint form that Mr. Pletten filed with my  
18 office. We gave him our reply and then again we told  
19 him that he had the right to appeal this to the  
20 Commander of the Tank Automotive Command, and he  
21 appealed to General Decker.

22 He was again denied, and from there he went  
23 to DARCOM. He was turned down at that point. He then  
24 appealed to the Secretary of the Army. After the reply  
25 from the Secretary of the Army, he for some reason did

1 not choose to go on because his next step was to  
2 the Secretary of Defense, Department of Defense. If  
3 he was not satisfied with that, then he has a right to  
4 go to the Department of Labor and he did not take the  
5 last two steps.

6 That is the chronological steps.

7 Q Again, basically when you say he was not satisfied,  
8 was your basic decision not to ban smoking and that is  
9 what he was dissatisfied with?

10 A Yes.

11 MS. BACON: I would move for submission  
12 of these documents at this time.

13 MR. COHEN: I will phrase an objection as  
14 to relevance to the instant action. I would like the  
15 record to reflect that Mr. Pletten is not here today  
16 owing to a personal matter that precluded his being  
17 here, and I would like to voice my objection for the  
18 record to this being admitted on the basis of its  
19 relevance and materiality subject to my consultation  
20 with my client to determine if he wishes that objection  
21 to remain on the record.

22 If he instructs me to the contrary, I will  
23 remove it. If not, the objection stands.

24 MS. BACON: Let the record show these  
25 documents have been marked in a group as Agency's

1 Exhibit No. 21.

2 (The document above referred  
3 to, was marked as Agency's  
4 Exhibit No. 21 for identification.

4 BY MS. BACON:

5 Q Mr. Shirock, the reason I think this may be of  
6 relevance is that Mr. Pletten in the course of his  
7 claim has claimed that he hasn't been answered certain  
8 questions relating to this, and that he was not  
9 provided reasonable accommodation, and at least your  
10 office has processed every OSHA complaint he has  
11 filed?

12 A That is correct.

13 Q Can you identify the documents found at Agency's  
14 Exhibit No. 4? There is a series of exhibits there?

15 A Yes.

16 Q Exhibit No. 4 reflects a Mr. Peters and a Mr. Dollberg.  
17 Are you acquainted with these individuals?

18 A Both gentlemen work for me and are assigned to my  
19 office.

20 Q Do they do their studies under your supervision?

21 A Yes.

22 Q In your capacity as Occupational Health and Safety  
23 Officer, are you acquainted with OSHA standards?

24 A Yes.

25 Q What do those studies indicate?

1 A That the contaminants that were tested for were, the  
2 results were less than the mac value or the minimum  
3 value permitted.

4 Q What substances were tested for?

5 A Carbon monoxide, hydrocyanic acid, sulfur dioxide, and  
6 nitric oxides.

7 Q What instruments were used?

8 A A draeger meter.

9 Q How sensitive is that instrument?

10 A Each tube has a different sensitivity. For example, a  
11 carbon monoxide tube will detect five parts per  
12 million and above. Our cyanide will detect one-tenth  
13 part per million. I don't want to give you the  
14 sulfur dioxide and nitric oxide because all tubes  
15 vary, but they are very indicative of amounts that  
16 are non-hazardous to employees.

17 Q Are you acquainted with the standards or the standard  
18 annunciated in AR 1-8?

19 A Yes.

20 Q Do your employees conduct studies to determine whether  
21 we are in compliance with AR 1-8?

22 A Yes.

23 Q What if any are the results of the testing?

24 A In all the readings that we have, all the surveys  
25 conducted by my office and by Mr. Braun indicate that



1 all the levels are below the mac values as listed in  
2 the various publications dealing with safety and health.

3 Q What is Mr. Braun's connection with your office?

4 A Mr. Braun is assigned to the medical department, but  
5 we have a memorandum of understanding with Dr. Holt,  
6 his superior. Mr. Braun really from a technical  
7 standpoint works for my office.

8 He performs surveys we request, and any  
9 other surveys he performs that we don't request, his  
10 report comes through my office which is the focal  
11 point of contact.

12 Q Do you work with the facility engineer Mr. Lang at all?

13 A Very closely.

14 Q What kind of association do you have with Mr. Lang?

15 A When the survey that we run indicates that we have a  
16 problem, a mechanical problem or a design problem, we  
17 then bring it to Mr. Lang's attention for correction.

18 Q And you make sure that Mr. Lang makes the correction?

19 A Oh, yes.

20 Q Who has the responsibility for ventilation? That would  
21 be Mr. Lang?

22 A Yes.

23 Q Have you ever had any OSHA complaints filed in the  
24 office relating to ventilation, if you can remember to  
25 your knowledge?

1 A The only one I know of is the one just recently in  
2 229, in one of the new buildings that we weren't getting  
3 quite enough air.

4 Q What was the result? Did you test?

5 A We ran an air flow test and we weren't getting enough.  
6 We contacted Mr. Lang and he brought Honeywell out and  
7 within three hours it was corrected. We had the  
8 problem with the dampers. They weren't opening and  
9 closing automatically the way they are supposed to.

10 Q Have you conducted any tests yourself or seen the  
11 result of any test which has indicated that we are not  
12 in compliance with AR 1-8?

13 A I have not conducted any myself, but all the results  
14 that have been brought to my desk have indicated that  
15 we are in compliance.

16 Q If one had come and said we weren't in compliance, what  
17 would you have done?

18 A We would have moved very quickly to see whether we had  
19 an engineering problem, a mechanical problem. We  
20 would have taken immediate action. It is our policy to  
21 take immediate action.

22 Q What are the purposes of the OSHA standard that you  
23 work under?

24 A To provide a safe and healthy working environment for  
25 all employees.

1 Q You are the individual charged under the Act to do that  
2 for the employees at TACOM?

3 A That's right.

4 Q Mr. Dollberg testified that you felt that if you had  
5 problems or found contaminants in a very contaminated  
6 area such as you felt a possible hazard might exist,  
7 that you had access to an environmental health agency?

8 A Let me clarify the word. It is the Surgeon General of  
9 the Army and he has an organization called the Army  
10 Environmental Hygiene Agency. We have immediate access  
11 to those both for consultation by phone or direct  
12 visits, on-site visits with those people and we do  
13 consult with them a great many times.

14 Q Have you ever had anybody make an on-site visit from  
15 that organization?

16 A Not on an air sample survey, no.

17 Q But you have had such individuals on the installation?

18 A Yes. We get periodic surveys. Most of our ventilation  
19 and air content is done in the industrial area where  
20 welding and toxic gases of that type are found.

21 Q Has anyone from this agency ever indicated that they  
22 felt the environmental conditions at TACOM were  
23 anything less than healthy?

24 A No, they have not.

25 MS. BACON: I have no further questions at



1 Q I have been in there in the summer and it is awfully  
2 stuffy. Why is that?

3 A It is a normal temperature humidity condition from the  
4 outside environment. You have air flow. We have got  
5 three major systems in that building. You have floor  
6 fans to give you air movement.

7 Q Why do you need floor fans if the duct work and  
8 everything--

9 A Because it is not a temperature controlled building.  
10 It is not air conditioning. All we do is bring in  
11 outside air. If the outside air is at ninety degrees  
12 and the humidity is at sixty percent, that is what you  
13 are bringing into the building.

14 Q Would you doubt Mr. Braun's conclusions with regard  
15 to--

16 A I have nothing to verify Mr. Braun's conclusions.

17 Q Assuming I told you that was his testimony:

18 A I have nothing to dispute or agree with Mr. Braun on  
19 that because I have nothing on record.

20 Q Let's deal with a hypothetical. If Mr. Braun told you  
21 that that was the case, what would your responsibilities  
22 be? What would you do?

23 A We would then get with the engineers and verify whether  
24 it was in fact the case.

25 Q How frequently does Mr. Lang do air studies?

1 A I have no way of knowing.

2 Q He is not directed by you to do air studies?

3 A Not Mr. Lang.

4 Q He has had some troubles recalling whether he did it  
5 once or twice a year or whether he did it at all. You  
6 wouldn't have any knowledge of that?

7 A No.

8 Q And he doesn't submit his air studies to you?

9 A We may get an information copy, but he has no directive  
10 to submit them to me.

11 Q In other words, there is no directive that there be  
12 coordination amongst the three offices that may do  
13 air flow studies?

14 A There is coordination but we have no directive that  
15 says he will.

16 Q How do you know there is coordination?

17 A After eighteen years of experience at the Tank  
18 community, I know there is coordination.

19 Q In other words, you speak to Mr. Lang about it all the  
20 time?

21 A Almost daily.

22 Q You talk to him about it when he gets an air flow  
23 study?

24 A Not particularly.

25 Q So you may have gotten an information copy, but it may

1 not have struck a nerve or anything?

2 A If we have an information copy that indicates we have  
3 a problem, it would have struck a nerve.

4 Q Is Mr. Lang qualified to take air flow studies?

5 A He sure is.

6 Q On what basis?

7 A On the fact he is a professional engineer. He has  
8 people. He is in the same position I am. He has  
9 people that do the studies. Mr. Lang does not  
10 personally conduct the studies.

11 Q How do you decide where to take these studies?

12 A Random samples.

13 Q How many square feet in Building 230?

14 A I have no idea.

15 Q Would an estimation of two hundred and fifty thousand  
16 square feet for the entire building--

17 A I have no way of knowing.

18 Q Is it a large building?

19 A It is a large building.

20 Q Hundreds of people work there?

21 A It depends on how many hundreds you put there. The  
22 answer would be yes.

23 Q How many samples do you take to cover a building of that  
24 size?

25 A That is up to the people running the survey. The

1 usual thing would be one in each wing and one on each  
2 floor?

3 Q How many floors are there?

4 A Two floors.

5 Q How many wings?

6 A Two wings.

7 Q So that is four studies?

8 A Four samples.

9 Q You note in the October 1, 1980 document from Mr.  
10 Peters that Mr. Peters did a study in only two areas?

11 A That's right.

12 Q Yet the subject of this document is, Air Contamination  
13 Survey, Building 230. Is this only in the  
14 Communications detachment?

15 A That's right.

16 Q So that would not be representative for the entire  
17 building, but just for that area? Correct?

18 A It could be, yes.

19 Q It could be or is?

20 A In our determination, he did the Communications area.  
21 We have identified it as Communications area in here  
22 both in the subject and the two locations.

23 Q Where did Mr. Pletten work, if you know?

24 A In Personnel.

25 Q Is that near Communications?



1 A Quite a ways away.

2 Q So this may or may not have been indicative of the  
3 air in the Personnel Office as of October 1980?

4 A That's right.

5 Q So the relevance to this, it may be very relevant or  
6 it may be completely irrelevant?

7 A It could be.

8 Q Looking at October 2, the study responding to a request  
9 from Mrs. Mary Ellen Dukes, it indicates here the  
10 studies were taken around her desk in her room, which  
11 is Room 253-W. Right?

12 A Right.

13 Q Is that close to the Personnel Office?

14 A No.

15 Q So this like the other study may or may not be relevant  
16 to Mr. Pletten's case?

17 A That's right.

18 Q And it may or may not represent what the health  
19 environment was in the building as to the air flow  
20 or the contaminants?

21 A Let's have that one again.

22 Q In other words, that October 2nd study may or may not  
23 indicate what the air contaminants were in other  
24 parts of the building?

25 A That's right.

1 Q I refer you to your 10 October 1980 memorandum to Mr.  
2 Knudson from the Communications Command. Are you  
3 familiar with that, sir?

4 A That's right.

5 Q Did you write that?

6 A Right. Mr. Peters wrote it. I reviewed it and signed  
7 it.

8 Q It says that the ventilation and the amount of  
9 contaminants in that one room was sufficiently within  
10 regulations? Correct? Let me rephrase that. That  
11 Building 138-W or that room was okay as far as  
12 contaminants and ventilation according to regulations?

13 A Right.

14 Q It says:

15 "Recommend implementation of recommendation  
16 in Paragraph 4(b) in reference 1(b) above."

17 What was that?

18 A You see, Communication is not part of the Tank  
19 community. It is a separate Command operating out of  
20 Fort Wachuka, I believe, and they had a letter in from  
21 Wachuka requesting that this be done. What we are  
22 saying here is, go back to Wachuka and tell them this  
23 is what we have done.

24 Q What was the recommendation in Paragraph 4(b)?

25 A Not having it in front of me, I don't know.

1 Q I asked Mr. Peters and he didn't know either because  
2 it wasn't in front of him.

3 A That's right.

4 Q Is it available some place?

5 A We probably could go back to Communications and get a  
6 copy of it.

7 Q Let's go on. The next thing if you will keep turning  
8 with me is Mr. Peter's October 1 letter again. That  
9 is in there twice. Then we go to the next page which  
10 is an air contaminant survey of Buildings 230 and  
11 219. These are only contaminant studies, are they not?

12 A That's right.

13 Q It is not air flow?

14 A That's right.

15 Q Were air flow studies authorized by your organization  
16 contemporaneous with this study?

17 A No.

18 Q Why not?

19 A We were looking for contaminants because the complaint  
20 was on contaminants.

21 Q The complaint was not on violation of AR 1-8?

22 A If you want to talk about 1-8, you are talking about  
23 two things. You are talking about air flow and you are  
24 talking about contaminants. We did a contaminant.

25 Q I understand that, but wasn't Mr. Pletten's complaint

1 about the presence of contaminants and smoke?

2 A That's right and so we did a contaminant study.

3 Q But you didn't do a study pursuant to 1-8's air flow  
4 requirements?

5 A No, because we had done air flow studies in the past  
6 and we were meeting the requirements of 1-8.

7 Q When was it in the past?

8 A Sometime in the later part of 1979.

9 Q The later part of 1979. So you are talking almost about  
10 a year for your air flow compliance?

11 A Yes.

12 Q You mean, it doesn't change in a year?

13 A Not necessarily. We are talking about a mechanical  
14 system designed to move air and a certain volume and  
15 it doesn't change. The volume never changes.

16 Q But the dampers can change, can't they?

17 A This is the facility engineer. You would have to go  
18 back to him as far as the air flow studies.

19 Q But you are the safety man. I mean, can't it change?

20 A If you have a faulty damper.

21 Q Well, how do you know if you have a faulty damper  
22 unless you check air flow? Mr. Shirock, it is your  
23 business. Tell me. Is there anyway to determine if a  
24 damper is bad unless you go and do an air flow study?

25 A If I take what you are saying as a statement, then I

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1 would have to run an air flow study daily and this is  
2 ridiculous and not germane to what we are doing. We  
3 were checking for contaminants on Mr. Pletten's  
4 complaint.

5 Q Mr. Pletten complained to you that the air was smoke  
6 filled and contaminated and that the circumstances of  
7 the Command were not in compliance with regulations.

8 A All right. We then did a contaminant study and here  
9 it is.

10 Q But you didn't do an air flow study?

11 A No, we did not.

12 Q Why didn't you?

13 A We didn't think it was necessary.

14 Q In retrospect, how often do you do air flow studies?

15 A We do them very seldom. Mr. Lang does most of the air  
16 flow studies unless we have a complaint.

17 Q What words are needed to trigger an air flow study?

18 A If we got a complaint that it is stuffy, that they are  
19 not getting enough air, we will then do it. As far  
20 as the routine, that is Mr. Lang's responsibility and  
21 not mine.

22 Q And you didn't interpret Mr. Pletten's request to  
23 include an air flow study?

24 A No, I did not.

25 Q Do you know what the word synergistic means?

1 A I have to admit I don't.

2 Q It was in Mr. Pletten's complaint. Look at Agency's  
3 No. 21 at page three.

4 A I have no idea what it means right offhand.

5 Q How long have you been in the business?

6 A Thirty-three years.

7 Q If I suggested to you that synergistic related to the  
8 effect of one of these contaminants on the other and  
9 what combined effect they could have, would that be  
10 more clear to you?

11 A Not unless I have a dictionary. I assume you have read  
12 it in the dictionary, and if I had a dictionary I would  
13 believe it. I wouldn't believe it just because you  
14 told me.

15 Q Fine. Did you look it up when you got this?

16 A No, I didn't.

17 Q How did you know what he was talking about?

18 A You are wasting my time and your time.

19 Q Mr. Shirock, how did you know what he was talking about  
20 if you didn't know what the word meant?

21 A We were looking for the contaminants that he listed  
22 there.

23 Q But you don't have any idea what a synergistic effect  
24 is?

25 A No, I don't.

1 Q It didn't occur to you to ask somebody?

2 A- No.

3 Q Why not?

4 A The answer is still no. I didn't.

5 Q Why didn't you?

6 A I cannot give you a reason why I didn't.

7 Q Let's go to the 28 October letter from Mr. Dollberg.

8 Mr. Dollberg informed us the other day that he did a

9 study at various buildings. He talked about the

10 Vehicle Division of Building 230, the Special Vehicle

11 Division of Building 230, and the Packaging Division

12 in Building 219. This indicates that he took four

13 samples. Is that correct?

14 A That's right.

15 Q Where did he take the four samples?

16 A The Personnel area of 230, just as he listed there,

17 the Special Vehicle section, Materiel Management of

18 230, the Packaging area of 219, and right outside of

19 Building 219.

20 Q So he took four separate samples? Let me ask you,  
21 the Personnel area, is that where Mr. Pletten worked?

22 A That's right.

23 Q You indicated earlier that there were different  
24 variations on the tubes that were used in the draeger  
25 test?

1 A They are designed that way.

2 MR. COHEN: For the purposes of the court  
3 reporter, d-r-a-e-g-e-r.

4 BY MR. COHEN:

5 Q What was the tube calibration, if you recall, on  
6 hydrocyanic acid?

7 A I have no idea without having a tube.

8 Q You testified earlier that you thought it was point  
9 two or point one?

10 A Point one is what I think it is. As I told you then,  
11 I was giving it to you from memory.

12 Q Do you know what the OSHA requirements are with regard  
13 to hydrocyanic acid?

14 A Not without having a book in front of me. I would never  
15 give you an answer what the requirements are without  
16 having a book in front of me.

17 Q Is less than two points or two parts per million a  
18 large amount or a small amount?

19 A Very small.

20 Q But you couldn't tell me how many parts per million  
21 are required before it is dangerous?

22 A Not without having a book in front of me.

23 Q You have no idea whether these figures are close to  
24 hazardous or well below hazardous or what?

25 A I can make a statement that I believe they are well



1 below the hazardous amount or my people would have  
2 taken a slightly different approach.

3 Q What different approach would they take?

4 A If we are close to it, we have to go back and take  
5 another look and maybe make an engineering design.  
6 For example, on your carbon monoxide when they talk  
7 about five parts per million, that is so common I can  
8 tell you that fifty parts per million is the legal  
9 maximum, and we are down to five. So I am not about to  
10 move on it.

11 Q Again, would this have indicated the air contents of  
12 the entire building or just the areas tested?

13 A The area being done.

14 Q And it may or may not have been indicative of the  
15 contents of the rest of the building?

16 A That's right.

17 Q Was a test taken specifically in relationship to  
18 smokers, for example?

19 A These are general areas. They are for smokers and  
20 non-smokers.

21 Q Do you instruct Mr. Dollberg as to how they are taken  
22 or is he trained in that area?

23 A He is trained in that area.

24 Q They are not taken in hallways as opposed to specific  
25 locations?

1 A No.

2 Q Do you give recommendations to him, follow-up guidance  
3 with regard to how many people should be in the areas  
4 tested?

5 A The only guidance he has is the normal contingent of  
6 people that are concerned with the operation.

7 Q How do they decide which to test for, which tubes to  
8 use in the draeger?

9 A These are what we consider some of the major  
10 contaminants.

11 Q What are the other major contaminants if these are  
12 only some?

13 A You can go to the tune of four or five thousand and  
14 name any chemical that you can find in Sachs Handbook  
15 and probably find trace amounts.

16 Q And the items listed in Mr. Pletten's complaint, were  
17 they all tested for?

18 A No.

19 Q Why not?

20 A Because number one, we don't have the capability and  
21 number two, we didn't think it was necessary.

22 Q Why don't you have the capability?

23 A If you are talking about four thousand as Mr. Pletten  
24 indicates in his various pieces of correspondence--

25 Q Where on page three does he indicate four thousand?

1 A Other complaints listed four thousand or more.

2 Q Did this complaint? You said you responded to his  
3 request or his complaint in 1979.

4 A These were the items we decided to check.

5 Q You didn't check for all the things he requested?

6 A No.

7 Q So it is possible at the time that those items were  
8 present?

9 A It could be.

10 Q But you don't know?

11 A That's right.

12 Q How did you determine his OSHA complaint was not well  
13 founded in fact if you didn't test for everything he  
14 complained about?

15 A We had to make a decision. We made a decision this is  
16 what we were going to check for. This is what we did.

17 Q Did you ask for any guidance with regard to that  
18 decision or did you make it on your own shoulders?

19 A This decision was mine.

20 Q Are you a smoker, first of all?

21 A Yes.

22 MS. BACON: Irrelevant.

23 BY MR. COHEN:

24 Q How much do you smoke?

25 MS. BACON: I make my objection for the

1 record and then answer the question.

2 THE WITNESS: A half to three-quarters of  
3 a pack a day.

4 BY MR. COHEN:

5 Q Aside from the fact that lawyers are generally  
6 considered to be pains in the necks, do you consider  
7 Mr. Pletten a pain in the neck for all the problems he  
8 has been causing the Command?

9 A He has a right to.

10 Q He has a right to request information?

11 A He has the right to file a complaint and follow the  
12 procedure. Mr. Pletten's happens to be a voluminous  
13 complaint, but we have complaints continuously on a  
14 machine not being guarded, this being done right.  
15 When you are responsible for four hundred thousand  
16 vehicles around the world, we get a lot of complaints.

17 Q But you chose to parch this complaint that he made and  
18 only test for some of the things? Was it a cost factor  
19 involved? Is that why?

20 A A capability factor.

21 Q You said the draeger has thousands of different tubes  
22 that can be used?

23 A Yes.

24 Q I presume they have tubes for ones that he requested,  
25 didn't they?

1 A They could have. We don't have them.

2 Q Did you check?

3 A Did I check what?

4 Q With the people who makes the tubes to see if they are available?

5 A You are right. They have thousands of tubes, and I will go back to a statement I made and I am going to stick with it. I made the decision this is what we would check for. It was my decision alone and this is what we done. I did not check for all the contaminants that Mr. Pletten had listed there.

6 Q Would it then have been more proper to inform higher command or whoever was in receipt of this communication or these series of communications as to the contamination studies that had been requested that I test for these items, that I have decided not to?

7 A No. I have the right and authority to make a decision.

8 Q The conclusion in the February 6th memorandum from Mr. Peters and Mr. Dollberg indicates:

9 "The survey results indicate no significant amount of air contaminants in the areas surveyed."

10 Does that mean all air contaminants or just the ones tested?

11 A The ones tested.

1 Q So there may have been contamination at that area?

2 A That's right.

3 Q Mr. Pletten then may have had a legitimate claim?

4 Isn't that true?

5 A I have no comment on that.

6 Q Is it possible that Mr. Pletten's complaints about  
7 contaminants could have been well founded?

8 A No comment.

9 Q I need a comment from you, sir. Is it possible?

10 A It is only possible to the fact that there might have  
11 been contaminants, but they possibly were not in any  
12 quantity exceeding the TLV, the threshold limit  
13 value.

14 Q What is TLV?

15 A Threshold limit value.

16 Q As determined by whom?

17 A The Conference of American Industrial Hygienists.

18 Q And if you don't test for them, how do you know it  
19 doesn't reach the TLV?

20 A I don't know.

21 Q So then it is possible that they were there in excess  
22 of the TLV?

23 A I can't say that they were or weren't.

24 Q Because you didn't bother to do the testing?

25 A I resent the word bother very much. I didn't do the

1 testing. This is what we tested for.

2 Q Did you at least instruct anybody with regard to  
3 compliance or reasonable accommodation of Mr. Pletten?  
4 Were you involved in that at all?

5 A No.

6 Q You didn't make recommendations for accommodations?

7 A No.

8 Q You didn't discuss this with anybody?

9 A No.

10 Q What do you say to Mr. Braun's testimony as I have  
11 categorized it and as I have characterized it?

12 A Mr. Braun is a highly qualified industrial hygienist.

13 Q In other words, if he says that Building 230 at times  
14 doesn't meet AR requirements, you would agree with  
15 him?

16 A As I said before, I think if he said it doesn't meet  
17 the requirements and we have an air flow problem that  
18 I would get involved or verify that we do in fact have  
19 an air flow problem.

20 Q For the record, I suggest you contact Mr. Braun and  
21 discuss the matter with him, just for the record. In  
22 the study of February 6, Mr. Peters and Mr. Dollberg  
23 indicated that they did studies in two rooms: 111-W4,  
24 and 116, as well as parking lot Z. Are those rooms  
25 close together in Building 230?

1 A One is right across the hall from the other if you  
2 will read paragraph two.

3 Q I refer you to November 2, 1981. That is about four  
4 pages down in the submission. I note there was room  
5 114W, 111-W1, and 113W, as well as the men's room M2  
6 where air studies were performed. Are those all in the  
7 same area?

8 A Yes.

9 Q When I asked you where you would take a study if you  
10 wanted a sample of air in Building 230, you told me you  
11 take at least four, two on each floor, one in each  
12 wing. Correct?

13 A Yes.

14 Q Now from what I read here, none of these memoranda  
15 refer to that type of a study where one was done on  
16 each wing and each floor. Is that correct?

17 A You are talking about a major study. Now if you will  
18 look, each one of their areas is in a different part  
19 of Building 230. In other words, they didn't go back  
20 to the same areas, and their studies were across the  
21 board.

22 Q There is a pretty big gap in time though from February  
23 6, 1981 to November 2, 1981. That is nine months.

24 A There is nothing that indicates that we continuously  
25 run air contaminant studies.



1 Q Not even twice a year?

2 A No.

3 Q So in other words, until there is a complaint you  
4 really don't run the studies?

5 A As long as we have the ventilation operating properly,  
6 no we don't.

7 Q Who gives you the assurance the ventilation is running  
8 right?

9 A The facility's engineer.

10 Q If Mr. Braun is telling me and telling Ms. Bacon and  
11 telling the hearing that the facility engineer can't  
12 work the damper systems at 230 because there are all  
13 of six different ventilation systems in that building,  
14 then what conclusions am I to draw from that? How do  
15 you know that it is ever working?

16 A I don't know what conclusions you are going to draw  
17 from it.

18 Q What do you draw from it?

19 A I draw from the fact that it is working.

20 Q And you know that based on what?

21 A Based on being in the building almost on a daily basis  
22 and the lack of complaints on ventilation.

23 Q It seems to me we have got a complaint on ventilation.  
24 They take a study nine months apart. Isn't that true?

25 A No. You take a complaint, and you immediately move

1 out and find out.

2 Q Well, they don't take the air studies seemingly. The  
3 only places I have seen on any of these where they  
4 have taken a study in the location that Mr. Pletten was  
5 working at was that one time and that was when Mr.  
6 Dollberg did it 28 October 1980. Is that correct?

7 A That's right.

8 Q Even at the time of his OSHA complaint in 1979, you  
9 didn't do an air contamination study in his area?  
10 Is that correct?

11 A That's right.

12 Q You said you do these in response to complaints. Why  
13 didn't you take the air study in his area?

14 A Because at that time we checked with Mr. Lang. His  
15 air flow studies do go back somewhere in here. We will  
16 find that it did meet the requirements of the AR as  
17 far as the air flow study and that is what we based our  
18 position on.

19 Q But you didn't talk about contaminants back in 1979.  
20 Why not? He specifically said and you pointed out to  
21 me, he says:

22 "Airborne toxic substances are present."

23 Does that seem to indicate you should have  
24 taken an air contamination study?

25 A We went with the air flow study that Mr. Lang indicated

PENGAD CO., BAYONNE, N.J. 07002 FORM 581 2-77

1 that the air flow met the requirements of the AR.

2 Q Air flow but not air contamination because at that time  
3 you didn't know. So in response to his OSHA  
4 requirement you had no information? Is that correct,  
5 other than the air flow study?

6 A I have no information on the record. That's right.

7 Q What information do you have off the record?

8 A I don't know at this moment.

9 Q With regard to the air flow study, you relied on Mr.  
10 Lang's air flow study in 1979?

11 A Right.

12 Q Do your people do air flow studies also?

13 A No. Mr. Braun does. We don't.

14 Q And you would have relied on Mr. Braun's air flow  
15 studies?

16 A That's right.

17 Q Are you familiar with AR 1-8 in its entirety?

18 A Right.

19 Q Let's look at it together. Read in particular, General,  
20 Section 2?

21 A Yes.

22 Q It says that:

23 "DA recognizes the right of individuals  
24 working in DA occupied buildings to an  
25 environment reasonably free of contamination."

1 Right?

2 A Yes.

3 Q I presume that is what your job is, to make sure that  
4 there is an environment reasonably free of  
5 contamination?

6 A That's right.

7 Q Have you ever interpreted the next sentence or drawn  
8 any conclusions as to how the next sentence of the DA  
9 regulation is implemented?

10 A You have to be more specific.

11 Q It says:

12 "DA also recognizes the right of individuals  
13 to smoke in such buildings provided such  
14 action does not endanger life or property,  
15 cause discomfort or unreasonable annoyance  
16 to non-smokers, or infringe upon their  
17 rights."

18 A Now, what is the question.

19 Q The question is, does that mean that smokers have the  
20 right to smoke or is that right qualified?

21 A Smokers have a right to smoke.

22 Q But it also says in the regulation they have a right  
23 to smoke provided that it doesn't hurt anybody?

24 A That's right.

25 Q Who makes the decision that it is hurting somebody?

1 A The person smoking decides whether it is hurting somebody.  
2 If you are talking about the people in the area, this  
3 is a local decision. They have a right to find out  
4 are they in fact being exposed to contaminants. This  
5 is what we try to do.

6 Q Let me understand. You say the person who smokes has  
7 the right to decide whether he is causing--

8 A I said the people in the area. Hear me. Don't put  
9 anything in my mouth.

10 Q I am not trying to.

11 A The decision is made whether people smoke in that area  
12 or not.

13 Q So Mr. Pletten in all of this has said, "I am  
14 discomforted and I am annoyed and I am bothered by  
15 cigarette smoking."

16 A That's right.

17 Q Does that mean the people in his area then don't have  
18 the right to smoke?

19 A Let's back up a little bit. In order to accommodate Mr.  
20 Pletten, he was given a private office on which he  
21 hung a big sign.

22 Q I asked you earlier if you had any knowledge of the  
23 accommodations and you indicated no.

24 A You asked me if I had anything to do with them. I did  
25 not.

1 Q You have knowledge of them?

2 A I have knowledge of them. He was given a private office  
3 on which a big sign was put no smoking in his office,  
4 and he was accommodated that way.

5 Q And you feel that is sufficient?

6 A That is sufficient. That meets the requirements of  
7 the AR.

8 Q How does it meet the requirements of the AR when Mr.  
9 Pletten is the only one to determine whether he is  
10 uncomfortable or not?

11 A I think the determination is not only Mr. Pletten's.  
12 It is the rest of the people in the area.

13 Q How would they know whether or not Mr. Pletten is  
14 discomforted or unreasonably annoyed?

15 A When he was given a private office he was taken care  
16 of. The other people in the area make their own  
17 decision as to whether they are going to be smokers or  
18 non-smokers.

19 Q Is it your attitude that Mr. Pletten had been  
20 reasonably accommodated throughout the series of  
21 complaints?

22 A Yes.

23 Q Did that presumption on your part that he had been  
24 accommodated affect the way you did any of your studies?

25 A No.

1 Q You didn't do any less work?

2 A No.

3 Q The regulation also requires on the second page that  
4 ventilation must be a minimum of ten cubic feet of  
5 fresh air per minute per person.

6 A Yes.

7 Q Do you meet those requirements?

8 A Yes.

9 Q And you have taken air flow studies at Building 230?

10 A Mr. Lang has run them and they do meet them.

11 Q By Mr. Lang's assessment?

12 A That's right.

13 Q Mr. Lang has supplied us with a document regarding his  
14 air studies at tab four. I have had lengthy discussions  
15 with him about this. He indicates at the first  
16 paragraph:

17 "During the winter months with the dampers  
18 closed, we are still bringing in eight to  
19 ten percent of fresh air."

20 Are you aware of that?

21 A Yes.

22 Q If he is only bringing eight percent, does that mean  
23 he is in compliance?

24 A You are talking about volume now and yes. You are  
25 talking about a percentage of volume. You are not

1 talking about cubic feet of air. You are talking about  
2 a percentage of volume. Understand what he is saying.  
3 He is talking about volume.

4 Q You have discussed this with him then?

5 A I know. Yes.

6 Q Aren't there exact measures that can be made as to  
7 volume?

8 A Yes. The system probably is designed with a certain  
9 volume.

10 Q And how do you know if the system is living up to its  
11 volume?

12 A Based on what he has said here and our discussion with  
13 him, it does.

14 Q He says here that the system providing air to the area  
15 has a capacity of forty-eight hundred cubic feet per  
16 minute, but it doesn't say whether it is doing so.

17 Is there a test that can be performed to determine if  
18 they are moving forty-eight hundred cubic feet of air?

19 A Yes.

20 Q What is that test?

21 A It is an air flow test. You can put it right into the  
22 system.

23 Q I mean, you would get actual numbers then, wouldn't you?

24 A You will get a percent of efficiency is what you will  
25 get.



1 Q How do you determine percent of efficiency unless you  
2 can determine how many cubic feet of air are moving?

3 A The meters to determine this are based on a percent of  
4 efficiency. You know what you designed for and you  
5 run a flow meter on it, and it will give you ninety-one,  
6 ninety-eight, a hundred percent efficiency which means  
7 you are getting forty-eight hundred feet.

8 Q It doesn't have any numbers like that, the rate of  
9 efficiency, does it?

10 A No, but he is telling you it has got forty-eight  
11 hundred cubic feet a minute.

12 Q But you don't know how much of the forty-eight hundred  
13 you are getting?

14 A By reading this I would say all of it.

15 Q You would say all of it but it doesn't say all of it,  
16 does it? It doesn't say specifically he is getting  
17 all forty-eight hundred cubic feet?

18 A My reading of it is, he is getting forty-eight hundred.

19 Q Does it say it specifically, and if so, show me.

20 A Hear what I said. My reading of it says they are  
21 getting forty-eight hundred feet. I am not saying to  
22 you that he says we have forty-eight hundred feet. My  
23 reading of it. Hear my words.

24 Q It is hard to hear them when I ask you a question does  
25 the document state he is getting forty-eight hundred

1 cubic feet.

2 A The document does not say forty-eight hundred, but my  
3 reading of it does say forty-eight hundred feet.

4 Q You base that on what?

5 A On knowing the system and the way I read the document.

6 Q And your discussions with Mr. Lang, of course?

7 A Yes. We have talked about it.

8 Q Do you have such instruments that measure the  
9 efficiency?

10 A Mr. Lang has.

11 Q Does he use them?

12 A You would have to ask Mr. Lang that question.

13 Q I asked him. He said he uses whatever he had.

14 A I have no idea.

15 MR. COHEN: Nothing further.

16 MS. BACON: I have nothing further.

17 (Deposition concluded.)

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1 STATE OF MICHIGAN )  
 )ss.:  
2 COUNTY OF OAKLAND )

3  
4 I, TAMARA A. O'CONNOR, Notary Public in  
5 and for the above county and state, do hereby certify that  
6 the foregoing deposition was taken before me at the time and  
7 place hereinbefore set forth; that the witness was duly sworn  
8 to testify to the truth, the whole truth and nothing but the  
9 truth; that thereupon the foregoing questions were asked and  
10 foregoing answers made by the witness, which were duly  
11 recorded by me, by Stenomask, and later reduced to typewriting  
12 under my supervision; and I do further certify that this is  
13 a true and correct transcription of my said Stenomask notes  
14 so taken.

15 I further certify that I am not of  
16 counsel to either party nor interested in the outcome of this  
17 cause.

18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand and affixed my notarial seal at West Bloomfield,  
20 Michigan, County of Oakland and State of Michigan, this 7th  
21 day of May, 1982.

22 Tamara A. O'Connor  
23 TAMARA A. O'CONNOR, CSMR-2656  
24 Notary Public and Court Reporter  
25 Oakland County, Michigan  
My Commission Expires: 7-2-84

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