

Day 11

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BEFORE THE
ARMED SERVICES BOARD OF CONTRACT APPEALS

In the matter of:)
Appeal of:) ASBCA No. 43965
FREEDOM NY, INC.)
Contract No.)
DLA13H-85-C-0591)

Hearing Room A
Skyline Six
5109 Leesburg Pike
Falls Church, Virginia

Thursday, June 1, 2000

9:50 a.m.

BEFORE:
DAVID W. JAMES, Administrative Judge

APPEARANCES:

For the Government:

KATHLEEN HALLAM, ESQ.
Defense Supply Center Philadelphia
Defense Logistics Agency
700 Robbins Avenue
Philadelphia, PA 19111

For the Appellant:

NORMAN A. STEIGER, ESQ.
Goldberg & Connolly
66 North Village Drive
Rockville Centre, NY 11570

BRUCE LUCHANSKY, ESQ.
Kellman & Sheehan, P.A.
Sun Life Building
20 South Charles Street, 8th Floor
Baltimore, MD 21201

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PROCEEDINGS

(9:50 a.m.)

JUDGE JAMES: Let the record reflect that this is day 11 in the hearings of Freedom NY, Incorporated, ASBCA docket number 43965. The appellant has renewed it's offer of document FT-450, a group of DD250 documents into evidence. I had previously sustained the government's objection to those documents back on the 26th of May. This morning I'm overruling myself, and I'm going to receive those documents into evidence, having heard the arguments of both parties on FT-450.

(Exhibit FT-450 was received into evidence.)

JUDGE JAMES: Do you want to say anything further then about your other collection of documents?

MR. LACHANSKI: The subpoena, Your Honor?

JUDGE JAMES: Sure.

MR. LACHANSKI: Yes, Your Honor. For the record, I wanted to note that a subpoena was issued by the board at the request of the appellant for the production of two documents on or before May 29th, 2000, at 9:00 o'clock. The first document is one authored by Richard L. Promley, and the second one is one authored by Nancy Chester and Carmen Viola.

I received a telephone call yesterday from an

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
NEIL RUTTENBERG	2036	2037	2039	2043
COL. FRANK FRANCOIS	2047	2049		
LEON CABES	2061	2117	2138	2138
FRANK BANFOFF	2139	2145		

E X H I B I T S

Number	Identified	Received
FT-450		2033

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attorney in respondent's legal office who told me that at least one of the two, that one of the two documents had been located. They'd stopped looking for the other one. And Ms. Hallam instructed that the documents that they found be forwarded to her and not be produced directly to me.

These documents are support documents for the industrial assessment for the MRE program dated December, 1995, which is in the record. No motion to quash the subpoena we filed, no objection has been raised to the subpoena, and nevertheless Ms. Hallam has refused to provide me with a copy of the document as of today, citing some need for review.

We object to that. Appellant objects, believes that this is in violation of the subpoena issued by this board, and that both of these documents should have been provided during the course of this hearing today before the record is closed, and that we should have the opportunity to --

(Fire alarm sounding, building evacuated.)

JUDGE JAMES: Back on the record. Did you say what you wanted to say about the subpoena issue, Mr LaChanski?

MR. LACHANSKI: No, I was in the middle of a sentence, but --

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1 JUDGE JAMES: Refresh our memories.
 2 MR. LACHANSKI: Yes, what I wanted to conclude
 3 with was that I believe that we should be allowed the
 4 opportunity to review the document that's been located,
 5 and I believe that the government should be instructed to
 6 continue compliance with the subpoena to find that second
 7 document instead of stopping their efforts, and I do move
 8 that the record remain open until these documents be
 9 produced, so that we have an opportunity to review them
 10 and determine whether they should be appended to FT323,
 11 which is the document already in the record that refers
 12 to these subpoenaed documents.
 13 JUDGE JAMES: Does the government have anything
 14 that you wanted to put on the record about this subpoena
 15 issue?
 16 MS. HALLAM: No, just whatever he said, I
 17 haven't talked to anybody from Department of Defense, and
 18 we object to keeping the record open indefinitely.
 19 JUDGE JAMES: All right, well, I'm going to
 20 deny the motion to keep the record open for this
 21 additional documentation on account of its tardy
 22 initiation, as I said before. Anything further?
 23 MR. LACHANSKI: Just whether, for purposes of
 24 enforcement of the subpoena, even if the record has been
 25 closed, whether during the pendency of post-hearing

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1 briefs and a pending decision, whether we will be allowed
 2 to avail ourselves of any enforcement mechanism through
 3 this board in connection with our subpoena.
 4 JUDGE JAMES: Help yourself. Do you have a
 5 witness you want to call this morning?
 6 MR. LACHANSKI: Yes, Your Honor, we call Neil
 7 Ruttenberg.
 8 JUDGE JAMES: All right, you parties now are
 9 going to police the sequestration rules, right?
 10 MR. LACHANSKI: We can do that right now.
 11 JUDGE JAMES: Please state for the record your
 12 full name, spell your last name and give us your address.
 13 THE WITNESS: My name is Neil, N-e-i-l, Harris
 14 Ruttenberg, R-u-t-t-e-n-b-e-r-g. I live at 12305 Green
 15 Hill Drive, Silver Spring, Maryland 20904.
 16 Whereupon,
 17 NEIL RUTTENBERG,
 18 a witness, was called by counsel on behalf of the
 19 Appellant, and having been duly sworn by the
 20 Administrative Judge, was examined and testified as
 21 follows:
 22 DIRECT EXAMINATION
 23 BY MR. LACHANSKI:
 24 Q Mr. Ruttenberg, you're an attorney?
 25 A I am.

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1 Q Did you represent Freedom Industries during
 2 1985?
 3 A I did.
 4 Q Mr. Ruttenberg, do you recall attending a
 5 meeting at DLA in February of 1985 --
 6 A I do.
 7 Q -- on behalf of Freedom Industries?
 8 A I do.
 9 Q At that meeting, did either you or Henry Thomas
 10 or any other representative of Freedom Industries suggest
 11 that an novation be made of the MRE-5 contract from
 12 Freedom Industries to H.T. Foods?
 13 A That was not done on our suggestion.
 14 MR. LACHANSKI: That's all I have, Your Honor.
 15 JUDGE JAMES: Any cross examination?
 16 MS. HALLAM: Yes, Your Honor.
 17 CROSS EXAMINATION
 18 BY MS. HALLAM:
 19 Q Would you look at 94; would you tell us what
 20 this is?
 21 MR. LACHANSKI: May I see it, please, before
 22 you present it to the witness.
 23 MS. HALLAM: Yes, you have it.
 24 MR. LACHANSKI: Your Honor, I'm going to object
 25 to questions about this document as being outside the

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1 scope of my examination, unless she can point to
 2 something in this --
 3 MS. HALLAM: This service here represents he
 4 suggested and wrote the novation.
 5 JUDGE JAMES: Which page are you referring to,
 6 Ms. Hallam?
 7 MS. HALLAM: The first page, last paragraph.
 8 BY MS. HALLAM:
 9 Q Can you identify what this document is?
 10 A This is a document that I wrote to Mr. Randolph
 11 Gross of Banker's Leasing after I left the law firm that
 12 I was in, Quinn, Racusin and Ruttenberg, and started my
 13 own practice.
 14 Q And the purpose of the letter?
 15 A Excuse me?
 16 Q The purpose of the letter was to --
 17 A Well, I had been talking to Mr. Gross about
 18 being retained on this, and the purpose of this letter
 19 was to let him know what I had done and some of my ideas
 20 on it, and to be retained, yes.
 21 Q And the things that you put down in here were
 22 things that you felt were noteworthy, things that you
 23 were proud of?
 24 A Yes. Well, I think that they were things I
 25 thought were noteworthy, I don't know --

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1 Q And one of those things you thought were
2 noteworthy was the fact that you suggested and drafted
3 the novation agreement; isn't that what that document
4 says?

5 A I think that the wording is not quite accurate,
6 to be honest with you.

7 Q Well, that's what it says. You are a lawyer,
8 aren't you; your job is wordsmithing, isn't it?

9 A Yes, but if you'll let me explain I think I can
10 explain --

11 MS. HALLAM: I have no further questions.

12 MR. LACHANSKI: May I, Your Honor?

13 JUDGE JAMES: Sure.

14 MR. LACHANSKI: If we could put the document
15 back in front of the witness, please.

16 JUDGE JAMES: I'm going to leave it with Ms.
17 Hallam, but I will put a document in front of the
18 witness.

19 REDIRECT EXAMINATION

20 BY MR. LACHANSKI:

21 Q Mr. Ruttenberg, if you could take a look at
22 that phrase to which Ms. Hallam directed you in G-94.

23 A As I recall --

24 JUDGE JAMES: Wait a second. Let's get the
25 phrase out. I want to know what the phrase is.

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1 THE WITNESS: Do you want me to repeat it, Your
2 Honor?

3 JUDGE JAMES: Yeah, I do.

4 THE WITNESS: It says, this is in the paragraph
5 that discusses what I had done for Freedom earlier, and
6 it says I aided in obtaining the award of the MRE-5 and
7 suggested and developed the novation.

8 JUDGE JAMES: Suggested?

9 THE WITNESS: Suggested and developed the
10 novation.

11 JUDGE JAMES: Developed the novation, all
12 right. Go ahead with your question then.

13 BY MR. LACHANSKI:

14 Q Mr. Ruttenberg, can you explain what you meant
15 by that?

16 A Yeah. Well, as I recall the meeting we had
17 gone into the meeting with the only idea we had in mind,
18 was that the company that had won the contract, which I
19 believe was Freedom, would carry forward with it. And we
20 had worked up some -- I believe the major question was
21 progress payments. And we were very upset that we
22 weren't being paid progress payments, and we went into
23 the meeting demanding that progress payments under the
24 contract be paid to Freedom. And they were refusing.

25 And the question came up at the meeting about

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1 not doing business with Freedom, and novating Freedom. I
2 don't believe -- the only thing we had in mind was going
3 forward with Freedom. I believe that the government came
4 up with the idea to novate the contract, not us.

5 Now, when I say I suggested and developed, I
6 believe that was said in this letter in terms of how we
7 were going to implement what the government was telling
8 us to do. You couldn't do -- they didn't want to accept
9 these letters of credit that Henry had with him, or
10 letters from the bank. They had various reasons. They
11 didn't seem to want to do business with Mr. Thomas. They
12 wanted to do business with something else, and so in
13 terms of suggesting and developing, what we were doing
14 was implementing what the government was telling us to
15 do.

16 I don't believe to the best of my recollection
17 that we had anything in mind but doing business as
18 Freedom, and the government said it would not do it, and
19 it had to do with something else.

20 Q So to the extent that you're referring to the
21 term "novation," is it your testimony that the concept of
22 the government going forward with this contract with H.T.
23 Foods came from the government?

24 A To the best of my recollection, the government
25 said it would not do business with Freedom, but would do

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1 business with H.T. Foods. Now, to me that was the
2 government saying you've got to novate it. And I then as
3 the lawyer sat down with Henry and worked out how you
4 novate it.

5 Q So is it your testimony that the term
6 "novation" might have come from you, but the concept came
7 from the government?

8 A I don't know where the term "novation" first
9 came from. But the concept, they weren't going to do
10 business with Freedom; something else had to be done. As
11 far as I can remember, this was not our idea. We did not
12 walk into that meeting with any idea we were going to
13 novate a contract. We walked into that meeting with
14 documentation that we believed showed Freedom could do
15 it. The government said it wouldn't do it.

16 Q So did Freedom want to novate the contract, if
17 it didn't have to?

18 A No, Freedom did not want to novate any contract
19 if it didn't have to.

20 Q From a financial standpoint or contractual
21 standpoint, did it make any sense from Freedom's point of
22 view to novate the contract if they weren't required to?

23 A From my standpoint as Freedom's attorney it
24 made no sense to go from a contract that you already had
25 and with financing that you were developing, and go to

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1 something totally different. That was, as far as I can
2 remember, that was totally the government's idea.

3 Q To the best of your recollection did the
4 government, once the idea of novation was on the table,
5 was the government willing to pay any further progress
6 payments until a novation occurred?

7 A To the best of my recollection no progress
8 payments were being made, before or after, until the
9 novation occurred.

10 Q And once the government took that position what
11 efforts did you make in order to make sure the progress
12 payments would then be --

13 A We developed the novation, and that is the
14 context in which this suggested and developed the
15 novation took place. But it made absolutely no sense for
16 us to walk into a meeting where we had everything in line
17 for Freedom, say I suggest a novation. That didn't
18 occur. It doesn't make sense, and we didn't do it.

19 MR. LACHANSKI: That's all I have, Your Honor.

20 JUDGE JAMES: Any further cross?

21 MS. HALLAM: Yes.

22 RECROSS EXAMINATION

23 BY MS. HALLAM:

24 Q Could you tell me what it was that you had
25 lined up for Freedom, because everything in the record

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1 Q And was actually signed to Freedom, and not
2 H.T. Foods?

3 A I can't tell you that it was actually signed
4 Freedom and not H.T. Foods, but I have seen a document
5 from Suburban Bank that has Suburban's letterhead and is
6 signed, yes. And it's in this record, I believe.

7 MS. HALLAM: Thank you.

8 JUDGE JAMES: All right, thank you ever so much
9 for your testimony. You may step down.

10 MR. LACHANSKI: Your Honor, our next witness, I
11 know that we had discussed having all of our witnesses
12 here, and I thought we had them all lined up to be here.
13 It turns out that Frank Francois is in New York today.

14 We found that out at 4:00 o'clock yesterday afternoon.
15 He is available now by phone. I don't have any documents
16 that I intend to show him. I anticipate asking him six
17 or seven questions, so I propose that we examine him by
18 phone for the convenience of everyone.

19 JUDGE JAMES: Government have any objection to
20 that?

21 MS. HALLAM: Yes, Your Honor, I have his
22 depositions here to impeach him, and there's no way that
23 can be done telephonically. Unless I'm allowed to enter
24 his deposition transcript into the record.

25 JUDGE JAMES: Well, you're allowed to read

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1 that I've seen is passed through H.T. Foods.

2 MR. LACHANSKI: Objection, Your Honor, that
3 mischaracterizes the record badly.

4 BY MS. HALLAM:

5 Q Could you tell us what Freedom had lined up in
6 its own name?

7 MR. LACHANSKI: I'm going to object and move to
8 strike the first question.

9 JUDGE JAMES: That's granted. She's now asked
10 another question.

11 THE WITNESS: I'd have to see the documents.
12 And to be honest with you, I saw some documents for the
13 first time in 13 years yesterday. But I believe that
14 there was a letter from Suburban Bank that we were
15 working on, and I'd have to go back and look at the time
16 frame. But there were concepts we were working on.
17 There was also I think something from -- there were a
18 number of things going on. It's 13-14 years ago, but we
19 thought that we could do it through Freedom. There was
20 no reason to go to anybody else, except that the
21 government refused to deal with Freedom.

22 BY MS. HALLAM:

23 Q Have you ever seen anything from Suburban Bank
24 that had Suburban Bank's letterhead on it?

25 A Yes.

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1 portions of it. Which I would certainly allow you to do.
2 With that arrangement then are you willing to go ahead
3 with telephonic testimony of the witness?

4 MS. HALLAM: Okay.

5 JUDGE JAMES: Do you want to do that now, or do
6 you have another witness lined up?

7 MR. LACHANSKI: We'll do that now.

8 JUDGE JAMES: Fine, let's go off the record
9 briefly.

10 (Recess.)

11 THE WITNESS: (telephonically) Okay, go ahead.

12 MR. LACHANSKI: Yes, colonel, this is Bruce
13 LaChanski, and I'm going to turn this over to Judge James
14 to swear you in.

15 (Pause, bad connection.)

16 JUDGE JAMES: All right, please raise your
17 right hand.

18 Please state for the record your full name,
19 spell your last name and give us your address.

20 THE WITNESS: All right, whom am I speaking to?

21 JUDGE JAMES: Judge James, down at the Armed
22 Services Board of Contract Appeals.

23 THE WITNESS: All right, I just needed to
24 understand who the person was I was speaking to. Judge
25 J-a-m-e-s?

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1 JUDGE JAMES: Correct.

2 THE WITNESS: I'm Col. Ret. U.S. Army Frank

3 Francois, F-r-a-n-c-o-i-s. My address is 5901 Mt. Eagle

4 Drive, apartment 1214, Alexandria, Virginia. My Zip code

5 is 22303-2511.

6 Whereupon,

7 COL. FRANK FRANCOIS,

8 a witness, was called telephonically be counsel on behalf

9 of the Appellant, and having been duly sworn by the

10 Administrative Judge, was examined and testified as

11 follows:

12 DIRECT EXAMINATION

13 BY MR. LACHANSKI:

14 Q Colonel, this is Bruce LaChanski. I wanted to

15 ask you, did you accompany Henry Thomas to a meeting in

16 Philadelphia on May 29th, 1986?

17 A Yes, I did.

18 Q And with whom did you meet in Philadelphia?

19 A We met with a contracting officer in

20 Philadelphia in his office.

21 Q Do you remember his name?

22 A Yes, I do.

23 Q Who was that?

24 A I just had a mental blank on his name.

25 Q Was it Frank Bankof?

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1 A Frank Bankof, I'm sorry. That's right, Frank

2 Bankof.

3 Q When you arrived and met him in his office, did

4 you stay in his office?

5 A No. Henry Thomas and I, who had gone up to

6 Philadelphia, then proceeded to a conference room.

7 Q Was David Lambert at that meeting with you and

8 Henry Thomas and Mr. Bankof?

9 A Not at that meeting, no.

10 Q Was Walt Welsh at that meeting?

11 A No.

12 Q Was anyone, other than you, Henry Thomas and

13 Frank Bankof at that meeting?

14 A No, it was just the three of us.

15 Q During that meeting did Frank Bankof ever tell

16 you to tear up a document?

17 A No, he did not.

18 Q Did Frank Bankof ever tell Henry Thomas not to

19 sign any documents?

20 A No, he did not.

21 Q Now, at some point did Frank Bankof attach a

22 cover letter to mod 25 and then leave the room?

23 A Yes, he did.

24 Q Did Frank Bankof say at that point what he was

25 going to do with those documents?

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1 A Yes, he did. He indicated he was going to send

2 it to Washington for approval.

3 Q Did he say to whom specifically he was going to

4 send it?

5 A Yes, he did.

6 Q Can you recall who that was?

7 A It was a -- the chief of the procurement

8 section down there, and his name was -- give me a mental

9 --

10 Q Was it Ray Chiesa?

11 A Ray Chiesa, that's right.

12 Q When Mr. Bankof -- what happened when Mr.

13 Bankof came back into the room?

14 A He said that he had received approval and

15 signed it, gave us a copy and we left.

16 MR. LACHANSKI: That's all I have.

17 JUDGE JAMES: Ms. Hallam, if you want to cross

18 examine the witness; Mr. Francois, the attorney that is

19 coming to the microphone now is Kathleen Hallam of the

20 Defense Department.

21 THE WITNESS: Okay.

22 CROSS EXAMINATION

23 BY MS. HALLAM:

24 Q Could you tell us what it was that Mr. Bankof

25 had approval for?

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1 A For to go ahead and sign the document at that

2 time.

3 Q And what document was that?

4 A To my knowledge that was the mod.

5 Q Was there some other document other than the

6 mod that you believe he was given approval for?

7 A Well, the other document was a cover letter

8 that Mr. Thomas had signed addressed to Mr. Chiesa.

9 Q Is it your understanding that Mr. Bankof got

10 approval to incorporate that cover letter into the

11 modification?

12 A He didn't say that. What he said was, he had

13 approval to sign the mod.

14 Q Is it your understanding that the cover letter

15 was part of the modification agreement?

16 A At that time, that's correct.

17 Q And what did that cover letter incorporate into

18 the modification, to your knowledge?

19 A Well, the cover letter was a summary of the

20 information that had been discussed with Ray Chiesa and a

21 Kabiesman, I believe his name was, the lawyer that was

22 representing the government at that time, or not the

23 government but BPSC, which is the government, and it was

24 kind of memorializing those issues that had been

25 discussed.

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1 Q Could you tell me what those issues are, or
2 were?
3 A I can give the main gist of them, obviously the
4 document was more, it was more than just the four or five
5 pieces that was there, but the pieces that I recall were
6 basically the agreement to provide some additional
7 funding to Freedom for some work that had been done in
8 the plant.
9 Q Would that be in the amount of \$522,000?
10 A If that's for some kind of security systems, et
11 cetera, that's correct.
12 Q And what else do you recall the document said?
13 A I remember in the document the issue of helping
14 Freedom get some traypack business. Which is a food
15 product as opposed to the MRE business. And also to help
16 him secure the 8A certification that he was seeking from
17 the government, Small Business Administration, and to
18 help him secure through his attorney a loan, which was a
19 government secured loan.
20 Q Anything else?
21 A There may have been one or two more items in
22 there. Let me think real quick here to see if I can
23 recall. Those are the key items as I recall. I don't
24 recall -- there may have been one or two more items, but
25 those are the key ones.

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1 Q Do you recall anything with regard to an MRE-7
2 contract being in that document?
3 A I'm sorry, say again?
4 Q An MRE-7 contract being in that document?
5 A There may have been discussions on -- assuming
6 we're talking about the next iteration of the MRE
7 contract procedures that was coming up. There could have
8 been some reference to that.
9 Q In the letter, or the cover letter?
10 A I don't recall at this point whether or not
11 there was something on the MRE-7. I haven't seen that
12 document in over five years. But I remember the
13 discussions, and I'm recalling that those discussions
14 were in fact memorialized in that document.
15 Q Was it your understanding that the government
16 somehow at that signing of mod 29 guaranteed Freedom in
17 New York and MRE-7 contract?
18 A They guaranteed it?
19 Q Yes.
20 A The word guarantee is an inoperative word.
21 They may have given some indications that they would help
22 him secure that, but I don't think the government
23 guarantees you a contract.
24 JUDGE JAMES: The board understands that you're
25 referring to POO 25, not 29, in your last question.

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1 THE WITNESS: I think she made a mistake when
2 she said 29.
3 MS. HALLAM: Yes.
4 THE WITNESS: Unless she was trying to indicate
5 whether or not I knew about some additional information.
6 MS. HALLAM: No, I wasn't setting you up.
7 BY MS. HALLAM:
8 Q So as far as you're concerned, the signing of
9 mod 25 did not incorporate a guarantee for MRE-7?
10 A I don't believe the government can guarantee a
11 contract. That's what I think. You're saying they may
12 have given some indications of assisting him in securing
13 that, but I don't think they guarantee any contracts.
14 Q As a matter of fact you told Mr. Thomas that
15 the government cannot guarantee a follow-on contract;
16 isn't that so?
17 MR. LACHANSKI: Objection, Your Honor. This
18 question is outside the scope of the meeting, what
19 happened at that meeting.
20 JUDGE JAMES: Objection is overruled.
21 BY MS. HALLAM:
22 Q Colonel?
23 A I'm sorry, I couldn't hear all of the
24 discussion, but go ahead.
25 Q Isn't it true that during the time frame that

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1 you were working for Freedom New York that you had told
2 Mr. Thomas on one or more occasions that the government
3 cannot guarantee a contract; isn't that correct?
4 A I know that to be a fact. I'm not sure on one
5 or more occasions I told that to Mr. Thomas, but if that
6 came up in a discussion I would have said that.
7 Q And you told Banker's Leasing that also, didn't
8 you, Colonel?
9 A That the government could not guarantee a
10 contract?
11 Q Yes.
12 A My answer is still the same. It's the same.
13 The government does not guarantee contracts.
14 Q And you let Mr. Thomas and Banker's Leasing
15 know that, didn't you?
16 A If there was an opportunity for us in our
17 discussions, and someone would have asked me that like
18 you are, I would have said the same thing.
19 Q Do you recall -- sorry, I have to leave for a
20 second and go get something. I'll be right back.
21 Colonel, do you recall being deposed on March
22 27th, 1989, in connection with a case entitled Banker's
23 Leasing Association versus David Lambert?
24 A Do I recall that?
25 Q Yes.

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1 A Where was it taken; this is a deposition, or
2 what?
3 Q It was a deposition. It was taken in
4 Washington, D.C.
5 A Do you know where?
6 Q No, I don't. The reporter -- it was at 20 F
7 Street, I don't know if it was taken at those offices or
8 not.
9 A Yes, that sounds like a deposition that I may
10 have given. You know, you're asking me a date and not
11 able to tell me where, but I did give a deposition in a
12 case relative to that. That's correct.
13 Q Do you recall stating in response to a
14 question, that's why I know I didn't discuss it, because
15 there's no guarantee. Referring to the discussions at
16 headquarters?
17 A There is no guarantee?
18 Q You did not discuss with headquarters the MRE-7
19 contract because there was no guarantee.
20 MR. LACHANSKI: Objection, Your Honor.
21 JUDGE JAMES: Do you have any response to that
22 objection?
23 MS. HALLAM: No, Your Honor, I'll just go
24 further back.
25 JUDGE JAMES: I sustain the objection. I think

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1 what you're read is peripheral. Got anything better?
2 MS. HALLAM: Okay.
3 BY MS. HALLAM:
4 Q Do you recall testifying that you had made it
5 clear to Mr. Gross in response to a question, did you
6 ever make that clear to Mr. Gross, that there was no
7 guarantee? Answer: Of course. When did you make it
8 that clear to Mr. Gross? Answer: I usually make that
9 clear immediately when we have people that are not very
10 proficient in understanding what government contracting
11 is all about. Question: What did you tell Mr. Gross?
12 Answer: You mean relative to the guarantees? Question:
13 That's right. Answer: That no one can guarantee a
14 contract to anyone in the government and make it stick.
15 That's usually what I tell all my clients.
16 Do you recall that line of questioning,
17 colonel?
18 A That sounds familiar, and obviously it sounds
19 like something I would have said.
20 MR. LACHANSKI: Your Honor, for the record I'm
21 just going to object because I'm not sure for what
22 purpose we're reading from the transcript. That wasn't a
23 prior inconsistent statement, that was a consistent
24 statement. So to the extent that we're just reading from
25 the transcript, I object.

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1 JUDGE JAMES: I'll keep your objection in mind
2 when we're ruling on the --
3 MS. HALLAM: Your Honor, there's no way I can
4 give him anything to refresh his memory.
5 JUDGE JAMES: Right, please just cite for the
6 record, what are the pages now that you're reading from,
7 Ms. Hallam?
8 MS. HALLAM: Fifty-six and 57.
9 BY MS. HALLAM:
10 Q Colonel, does that refresh your memory with
11 regard to discussions you might have had with Randy Gross
12 at Banker's Leasing and Mr. Thomas?
13 A You mean based on what you read just now, does
14 that refresh my memory of something I may have said to
15 them?
16 Q Yes. Advising them that there's no guarantees.
17 A Are you saying what I've already testified to
18 in a signed, I guess signed document, would I disagree
19 with it?
20 Q Does it refresh your memory of those
21 discussions?
22 A I don't know what you're getting at. Does it
23 -- if in fact those kinds of discussions came up, my
24 answer would have been the same.
25 Q And that answer would be?

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1 A That the government doesn't guarantee
2 contracts.
3 Q You also talked about I believe, in the cover
4 letter there was provision with regard to traypacks?
5 A Yes.
6 Q And was there also something with respect to 8A
7 contracts?
8 A That is correct.
9 Q What was your understanding of what the
10 government intended to do for Freedom with regard to
11 those types of add-on work?
12 A The government would make available to Freedom
13 to bid on some traypack work that they were anticipating.
14 Q And with regard to 8A contracts?
15 A Under the 8A provision, if Henry Thomas had
16 received it, he would have been able to secure those
17 contracts without competition.
18 Q And what was your understanding of what the
19 government did with regard to that add-on work?
20 MR. LACHANSKI: Objection, Your Honor. Once
21 we're into what happened after this meeting, we're in a
22 whole different scope of area here.
23 MS. HALLAM: Your Honor, he's saying this is
24 part of the mod. I have a right to find out whether he
25 feels the mod has been fulfilled.

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1 JUDGE JAMES: I sustain the objection.
 2 BY MS. HALLAM:
 3 Q With regard to the V loan, what was it that you
 4 thought the cover letter, so to speak, promised?
 5 A With regards to the government loan?
 6 Q Yes.
 7 A Now, what was your question about it; what was
 8 what?
 9 Q What was your understanding of what the
 10 government promised?
 11 A That they would assist Mr. Lambert, who at that
 12 point was putting together the package to secure the
 13 loan. And Mr. Kabiesman and Lambert worked together on
 14 getting that done.
 15 MS. HALLAM: No further questions. Wait, can I
 16 just confer with --
 17 JUDGE JAMES: Anything further?
 18 MR. LACHANSKI: No, Your Honor.
 19 JUDGE JAMES: Well, the board wants to ask you
 20 this, Col. Francois.
 21 THE WITNESS: Yes, sir.
 22 JUDGE JAMES: When you talk about this cover
 23 letter to mod -- POO 25, who was the addressee of that
 24 cover letter, as best you recall?
 25 THE WITNESS: As I recall it was to Mr. Chiesa.

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1 Is that correct, or not?
 2 JUDGE JAMES: It's your testimony, sir.
 3 THE WITNESS: Well, I understand. I haven't
 4 seen the letter in several years. I remember what
 5 occurred because I participated in the discussions, and I
 6 know that when it was memorialized and read it at that
 7 time, I was sure that what had been participated in the
 8 discussions were in fact in the letter. But I haven't
 9 reviewed it in several years.
 10 JUDGE JAMES: Does either party have any
 11 further questions of the witness?
 12 MR. LACHANSKI: No, Your Honor.
 13 MS. HALLAM: No, Your Honor.
 14 JUDGE JAMES: All right, thank you ever so
 15 much, colonel, for the testimony.
 16 THE WITNESS: Thank you.
 17 JUDGE JAMES: Goodbye.
 18 THE WITNESS: Goodbye.
 19 JUDGE JAMES: All right, do you have another
 20 witness you want to call?
 21 MR. LACHANSKI: Yes, Your Honor. Just for the
 22 record, we have decided we will not be calling one of the
 23 four witnesses, John Osterday. After going back and
 24 reviewing our notes, we believe that his testimony would
 25 simply repeat evidence that's already in the record. So

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1 John Osterday will not be called today. We have Leon
 2 Cabes as our last witness.
 3 JUDGE JAMES: All right, let's have Mr. Cabes
 4 enter and testify.
 5 All right, sir, please raise your right hand.
 6 What I'd like you to do, sir, is state for the
 7 record your name, spell your last name and give us your
 8 address.
 9 THE WITNESS: Leon Cabes, C-a-b-e-s, 4724
 10 Chateau Drive, Metairie, Louisiana. M-e-t-a-i-r-i-e.
 11 Whereupon,
 12 LEON CABES,
 13 a witness, was called by counsel on behalf of the
 14 Appellant, and having been duly sworn by the
 15 Administrative Judge, was examined and testified as
 16 follows:
 17 DIRECT EXAMINATION
 18 BY MR. LACHANSKI:
 19 Q Mr. Cabes, what degrees do you hold, sir?
 20 A I have a B.S. degree in microbiology and
 21 chemistry and a master's degree in microbiology and
 22 biochemistry from Louisiana State University.
 23 Q When did you get your B.S. degree?
 24 A B.S. was '66, 1966, and the master's was in
 25 1968.

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1 Q Can you describe for the judge your work
 2 history beginning in 1968 after you got your master's?
 3 A After I graduated from LSU I went to work for
 4 the United States Food and Drug Administration as a field
 5 microbiologist in the New Orleans district. There I
 6 performed analysis for bacteria contamination and
 7 assisted in in-plant inspections of food processors.
 8 Q During the course of your work there did you
 9 develop some degree of expertise in those areas?
 10 A Yes. I testified in court for FDA on two
 11 occasions on bacterial contamination cases where they
 12 were bringing prosecution. Since it's a regulatory
 13 agency they would bring the companies to prosecute them
 14 for unsanitary conditions and bacterial contamination.
 15 Q In addition to the two times that you actually
 16 testified on behalf of the FDA in connection with these
 17 inspections, did you also participate on behalf of the
 18 prosecution of other cases?
 19 A Yes, after I left the Food and Drug
 20 Administration and went to the central analytical
 21 laboratories --
 22 Q Let's take that one step at a time. While you
 23 were at the FDA, in addition to the two times you
 24 testified, were you involved in other prosecutions on
 25 behalf of FDA in terms of --

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1 A Just the inspection. It was the development of
 2 evidence, but never really went to trial.
 3 Q What work did you do after you left the FDA in
 4 1972?
 5 A I opened a private testing laboratory where we
 6 offered bacterial analysis of food products and did
 7 consulting work for food manufacturing facilities.
 8 Q Were there certain areas of inspection that you
 9 and your company developed expertise in?
 10 A Yes. In the beginning stages we would do
 11 general inspection work of seafood processors and
 12 different companies that had possibilities of bacterial
 13 contamination. And then later as the canning regulation
 14 was implemented as a result of death through the
 15 commercial canning, the regulation was changed and those
 16 canning regulations that were issued by the government,
 17 we became process authorities at that point.
 18 Q Before I have you describe what a process
 19 authority is, what are the areas of analysis that you and
 20 Central Analytical Laboratories built expertise in?
 21 A We did microbiological analysis to determine
 22 contamination. These were official methods that were
 23 used by the Food and Drug Administration. We also did
 24 chemical testing for wastewater treatment, offshore
 25 platforms for oil companies in the Gulf of Mexico.

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1 Q Did you also continue to do in-plant
 2 inspections for private industry?
 3 A Yes, we did.
 4 Q You mentioned that you became a -- that the
 5 company did process authorities?
 6 A Yes.
 7 Q What are those?
 8 A Process authority was stipulated in the canning
 9 regulation that the Food and Drug Administration did not
 10 in fact issue the processes for canned foods.
 11 Q What is a process, sir?
 12 A The process is the time and temperature that's
 13 required to sterilize the canned food, so that you can
 14 keep it in an unrefrigerated state. So it's a typical
 15 item that you would keep in the pantry that are thermally
 16 processed.
 17 Q Was it your testimony that Central Analytical
 18 Laboratories became a laboratory for developing these
 19 processes?
 20 A Yes. When the regulation came out, we
 21 developed those processes. We went into plants and did
 22 the heat penetration testing to determine the heating
 23 rates of the products, and then we'd calculate how much
 24 time and temperature was necessary to sterilize the food.
 25 Q What was this necessary for; did you have a

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1 contract with anyone; what was the purpose of the
 2 processes?
 3 A When the regulation was issued, the canning
 4 regulation, all of the canning operations like Campbell's
 5 Soups, the Hormels, the Starkist, all those people had to
 6 show proof that their processes were valid.
 7 Q Proof to whom, sir?
 8 A To the United States Government, Food and Drug
 9 Administration.
 10 Q So was the processes that you developed, did
 11 your clients then submit to the USDA and FDA for
 12 approval?
 13 A That's correct. There were requirements that
 14 you file the process, certain paper work had to be filed
 15 with Food and Drug, and process authorities could do
 16 that. And we were considered a process authority by the
 17 FDA.
 18 Q And around what year were you doing these
 19 process authority --
 20 A This would have been in about '78, 1978.
 21 Q At that time you were considered to be an
 22 independent laboratory for developing process
 23 authorities?
 24 A That's correct. The process authorities in the
 25 past before the regulation were classically the can

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1 companies, the American Can Company supplied containers,
 2 so they would as a service to their customers give
 3 processing work.
 4 The equipment manufacturers would classically
 5 be thermal process, would establish the process. When
 6 the regulation hit, those companies, those corporations
 7 didn't want to get the liability of establishing a
 8 process, so it left an open door for an independent to
 9 take the lead, and that's what we did.
 10 Q At that time how many independent process
 11 authorities were there in the United States?
 12 A We were the only one.
 13 Q At some point did this work, this consulting
 14 work that you did, did you then do it for the MRE
 15 program?
 16 A Yes, we did.
 17 Q Tell me about that.
 18 A We established almost all of the processes
 19 that, I think it was the MRE-2, all of the processes for
 20 the individual pouch entree foods. A subcontractor or a
 21 prime contractor would have to produce these items for
 22 assembly, ultimate assembly, and we were responsible for
 23 in most cases going in, doing the testing, giving them a
 24 process so they could submit their first articles to the
 25 government, to the DPSC, to be able to determine whether

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1 or not they could produce the food, and then we would
2 file the necessary paper work with the proper regulatory
3 agency, whether it was the Food and Drug Administration
4 or later the Department of Agriculture.

5 The Department of Agriculture is responsible
6 for meat and poultry items, and the Food and Drug
7 Administration is responsible for all the other items.

8 Q Did you have to develop these processes for
9 each of the MRE contractors separately, or could you just
10 develop one MRE process and then they all got to use it?

11 A No, regulation called for and interpretation by
12 the Food and Drug Administration was that the individual
13 plants had to be tested because they were all different.

14 They had different boiler types, they would have
15 different steam supplies and different equipment to
16 process, to do the actual job. So the equipment was not
17 standardized, so we had to both verify the equipment as
18 well as establish the process.

19 Q And did you develop these processes only for
20 the assemblers or did that apply to the other contractors
21 also?

22 A We did it for assemblers as well as
23 subcontractors.

24 Q Can you tell me who those were back in this
25 time, MRES 2, 3, 4?

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1 A Magic Pantry in Canada. Fresh Label Meals,
2 Nalley's, SOPACO, RAFCO, Shelf Stable Foods, Ameriqua.

3 Q Now, at this time were you also still doing the
4 analytical work and inspection work that you referred to
5 a moment ago?

6 A Yes, we were.

7 Q In addition to this did you and your company
8 also do training?

9 A Yes, we did. Very early in the process of
10 trying to help clients comply with regulations there
11 arose, during the inspections, we'd find objectionable
12 conditions. We would then have to train those personnel
13 to be able to perform the right duties to keep from
14 contaminating the products.

15 Q And this was inspection training, training on
16 how to inspect or --

17 A It was inspection training for QC development.
18 It was general sanitation and basic microbiology, good
19 food handling practices for just the line workers, and
20 even management courses where we would instruct the
21 management, what their responsibilities were under the
22 law and why they had to comply.

23 Q Just to finish up your background and
24 experience, did there come a time that you were called in
25 to do training for DPSC?

1 A Yes, that's correct.

2 Q When did that happen?

3 A 1989 and '90. We did two training courses for
4 DPSC personnel at the direction of Col. LaFontaine from
5 Health Services Command. And it was a contract that was
6 through the Food and Drug Administration, and Food and
7 Drug contracted with TechniCAL, or CAL, it may have
8 changed since the early days, but --

9 Q This is the same company you referred to
10 earlier, but a name change?

11 A Right.

12 Q And so what training did you provide?

13 A The training was basically on new packaging
14 concepts, on basic sanitation. It was a gamut, it was a
15 five-day course that was performed for DPSC personnel,
16 Health Services Command personnel, which were the AVIS,
17 and I believe a few people from NADAQ.

18 Q And so on behalf of DPSC, would this have
19 included the contracting officers?

20 A I believe so, yes.

21 Q And when you refer to Health Services, would
22 this have referred to the AVI inspectors?

23 A The AVI inspectors as well as NADAQ people.

24 Q So these are all people who would have been
25 involved in MRE contracts?

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1 A Yes, definitely.

2 Q And you provided the training to them?

3 A Yes. My company did. I was a part of the
4 trainers. We had five people training for a week.

5 Q And who developed the materials for this
6 training course?

7 A My company did.

8 Q Now, Mr. Cabes, do you continue to do this work
9 that you've described even today?

10 A Yes, we do.

11 Q And you're still involved in the ownership of
12 the company that you referred to a moment ago?

13 A Yes. The company -- I have since taken
14 employment with FMC Corporation. We licensed the
15 technology, Central Analytical. At that time the name
16 was changed to TechniCAL. We sold the lab portion and
17 kept the consulting business.

18 We had a computer system that we also developed
19 that would replace the human in the processing of the
20 pouch. Instead of giving the human the instruction to
21 cook the pouch at a certain time or the container at a
22 certain time, time and temperature relationship, we
23 interfaced the sterilizer with a computer. Sterilizer,
24 retort, same thing.

25 Q So you developed a new computerized system that

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1 could assist in analyzing the MRE pouch products?

2 A Well, not analyzing it, administering the
3 process.

4 Q And then after selling that technology you
5 joined the company --

6 A I joined the company of FMC in 1994. So my
7 ownership in the previous company is in a trust. I still
8 have the stock, but it's in a trust.

9 JUDGE JAMES: What was the name of this
10 previous company, Mr. Cables?

11 THE WITNESS: Central Analytical Laboratories.
12 And then the name was changed to Technical, which is just
13 like technical, but the last CAL, we kept the CAL logo at
14 the end, and made it capital CAL, so it's Technical.

15 BY MR. LACHANSKI:

16 Q Mr. Cables, I'd like to talk about your
17 association with Freedom. While you were employed as
18 you've just described, did there come a time that you
19 also became involved with Freedom?

20 A Yes.

21 Q How did you first, before your actual
22 employment by Freedom, how did you first encounter
23 Freedom in connection with your work?

24 A The first time that I encountered Freedom,
25 which Henry Thomas at the old APF pouch facility in

1 really too, I think we did at Hunt's Point -- to have
2 steam table trays. But it was all those things that were
3 necessary to get a good product out of the factory.

4 We did the training to help manage the people
5 involved in that.

6 Q And was that training consistent with all of
7 the -- was that the type of training that you were doing
8 in the industry for other clients?

9 A That's correct. In some cases we would just do
10 the testing at the plant, and we wouldn't have a
11 follow-up inspection with periodic inspections and
12 training. We would just do the process. In other cases
13 we did the whole plan of inspections as well as the
14 initial verification of the sterilizers as well as the
15 process.

16 Q Mr. Cables, did you then become employed by
17 Freedom in connection with the MRE-5 contract?

18 A MRE-5, I was in contact with Henry the whole
19 time, with Mr. Thomas, with his status of obtaining a
20 contract. And when he did finally get the contract, I
21 think it was in November of '84, I went to visit Henry to
22 see what I could do to assist him in his endeavor at that
23 time. I think the contract had just been signed at that
24 time.

25 Q And had you been skeptical of whether Mr.

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1 Chicago, which was Mid-America Foods at that time, Henry
2 was there to evaluate equipment, to look at buying
3 equipment for his Hunt's Point operation, and I was there
4 doing testing on their particular sterilizers,
5 establishing a process for Mid-America Foods.

6 Q Did you then go on to do the process --

7 A We did, we did the processing work --

8 Q -- for Freedom?

9 A -- for Freedom, and we also did a contract with
10 Freedom after we did the processing work to inspect the
11 plant and to help train their people and comply with the
12 regulation, not on the Food and Drug and USDA
13 regulations, but also the military contract that he was
14 working on.

15 Q And that was for the MRE-3 retort contracts;
16 those were the contracts at Hunt's Point?

17 A At Hunt's Point, yes.

18 Q And what kind of training did you do for the
19 people there?

20 A We did basically the same type of training. We
21 had the basic sanitation, where we would teach the people
22 how to handle the foods and what they needed to do, and
23 then we went to specific training where we would actually
24 go through the testing procedures that were necessary to
25 test the integrity of the pouch and to be able to -- and

1 Thomas was going to get a contract?

2 A Only because of the experience at Hunt's Point,
3 because he kept telling me he was going to get it, and we
4 did a little bit of work along the lines for the assembly
5 at that point, and I wanted to make sure he had a
6 contract, because he didn't have one at Hunt's Point, it
7 fell apart. So I asked him to produce --

8 Q Are you referring to the MRE-4 contract?

9 A The assembly operation, because he was doing
10 the pouch operation, but he was also promised, or at
11 least he had in his plan, the Hunt's Point facility was
12 much larger than he needed for a pouch operation. And it
13 was for assembly.

14 Q So once Mr. Thomas showed you the contract --

15 A I asked him to show me the signed contract.

16 Q Did Mr. Thomas then hire you to work for
17 Freedom?

18 A He did.

19 Q And what position were you hired for?

20 A I was director of technical services.

21 Q Tell me and more importantly tell the board
22 what that involved; what were your actual
23 responsibilities there at Freedom; first of all, how many
24 other employees did he have at the time?

25 A As I recall he might have had some financial

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1 people, but I believe I was the first employee.
 2 Certainly in the technical aspects.
 3 Q Do you remember the date that you met with him
 4 after the signing of the contract?
 5 A It was the middle of November. As I recall it
 6 was I think the 15th, 19th, somewhere in that range.
 7 Q So to the best of your recollection, within a
 8 couple of days after the award of the contract?
 9 A Very definitely.
 10 Q Mr. Caves, could you now describe for the board
 11 what your title meant; what were your actual
 12 responsibilities; what did you set out to do with Mr.
 13 Thomas to now get the MRE-5 contract underway?
 14 A Mr. Thomas knew that we had this experience
 15 with all the pouch operations and that I had worked for
 16 the FDA, that I had a good relationship with the
 17 government people to be able to work through regulations,
 18 and what he gave me the challenge was is that we had a
 19 set of specifications and a contract that had -- the
 20 specifications were not as clear as you needed to be, so
 21 we had to meet with Col. LaFontaine and his staff at
 22 Health Services Command, and I believe it was in New
 23 Jersey. I met with his warrant officer and we went
 24 through all the details trying to manage what was
 25 absolutely necessary and cull out the information,

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1 because we couldn't just present this information to
 2 people to train.
 3 Q What kind of information are we talking about;
 4 what were you developing with the people at AVI?
 5 A Well, it's going through all of the
 6 specifications, the detail specifications, which --
 7 Q Specifications for what?
 8 A For the contract and for the assembly operation
 9 and for the testing procedures and what was necessary for
 10 each component that came in the building, and what we had
 11 to do with it. So we had to get all of that down in
 12 order to write a plan which was called for in the
 13 contract.
 14 Q What was that plan called?
 15 A The plan for the inspection job and the
 16 contractor inspection system. And I was responsible for
 17 writing that contractor inspector system, and negotiating
 18 the terms of the plan for the inspection job. So it was
 19 all of the quality control materials that we had to deal
 20 with, and how this whole assembly operation was going to
 21 work.
 22 Q Now, why were you doing this in conjunction
 23 with the AVI staff; who was the head of the AVI staff?
 24 A Col. LaFontaine was the head of the AVI staff,
 25 and when I met with Col. LaFontaine and his people, they

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1 had not administered a contract like this before either,
 2 because both --
 3 Q When you say a contract like this, what are you
 4 referring to?
 5 A Assembly. One assembler was at RAFCO and the
 6 other prime assembler was at SOPACO, and this was the
 7 first time that they had it in the New York area to deal
 8 with an assembly operation. So we were kind of going
 9 through it together to develop the joint responsibilities
 10 of what we needed to do to get what Henry had during my
 11 discussion with him, was to set up a model operation, a
 12 model plant. So I was given leeway to do what we needed
 13 to do, to get the proper people in, the proper equipment,
 14 and do a first-class job, and that's what I conveyed to
 15 Col. LaFontaine, and he was willing to work with us, and
 16 we worked pretty well.
 17 Q And in your discussions with Col. LaFontaine,
 18 when you say a model operation, what were the
 19 discussions; what do you mean by a model operation?
 20 A There were certain standards in food processing
 21 that everybody tries to comply with. What we were trying
 22 to do is establish a, from our experience, both -- Col.
 23 LaFontaine is not in this particular area, but in food
 24 processing and dealing with contractors that were
 25 supplying food as Health Services Command, and my

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1 experience of having dealt with a large number of
 2 factories and plants to come up with the best things that
 3 we knew worked, and incorporate them into a plan with
 4 Freedom, and also to utilize -- at that point the
 5 computer was emerging, and to utilize computer control as
 6 much as possible, to computerize the operation.
 7 MS. HALLAM: Your Honor, I object to all these
 8 questions. They're not rebutting anything that the
 9 government presented.
 10 MR. LACHANSKI: Let's get to that. I'll get to
 11 that with my next question. I believe that we are, but
 12 let me focus more specifically.
 13 BY MR. LACHANSKI:
 14 Q Mr. Caves, with respect to this contract
 15 inspection system that you referred to and this plan
 16 inspection job, what kind of inspection equipment was
 17 called for in the plan for inspection job?
 18 A As a result of going through all the
 19 specifications to find out what was necessary for
 20 incoming inspections, receiving inspections, on condition
 21 and count, for the subassembly of crackers and accessory
 22 bags and for final assembly, those testing parameters
 23 required certain equipment to be tested to be used in the
 24 testing of the particular item that we were looking at.
 25 Q Well, let me ask you specifically, did the plan

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1 for inspection job -- this plan for inspection job that
2 you developed with AVI, was it signed off on by both
3 Freedom and AVI?

4 A Freedom and AVI both. Sgt. Patterson, who was
5 the on-site AVI, and Col. LaFontaine, who was his boss.
6 And also Henry Thomas.

7 Q And did the plan for inspection job call for
8 the use of tensile strength testers for receipt
9 inspections?

10 A Yes, it did. We had to supply to the AVI as
11 well as have our own equipment, tensile testers as well
12 as cutters and weighing equipment.

13 Q Talk about the weighing equipment for a moment,
14 if you would. What was the weighing equipment to be used
15 for?

16 A The items that were coming in were quite
17 varied. We had pouches, which were sort of easy to
18 count, but let's say the toilet tissue had a large bulk
19 container which contained several thousand of these
20 packets. So what we worked out with Col. LaFontaine and
21 his group was that we would weigh, we'd count out a
22 certain number from so many packages; we'd get sort of a
23 standard weight for that number of items, and then we
24 would use the scale, the precision scale to weigh it,
25 come up with a standard weight for that number, average

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1 it and get a number that we could then take the case,
2 instead of counting each individual case we could then
3 use that weight.

4 Q Could you have done this receipt inspection
5 manually without the --

6 A We could have, but it would have been terribly
7 inefficient.

8 Q And when did you agree with AVI to use tensile
9 strength testers and this weighing equipment for receipt
10 inspections?

11 A That was when the plan -- it was never
12 negotiated. It was understood that it was going to be
13 there, because it was all part of the specifications that
14 were necessary to perform the job. So it was included in
15 the PIJ when it was signed, which was March of '85.

16 Q Now, Mr. Cabes, I'm going to ask you to take a
17 look at the document, part of which is in the record, the
18 first two pages are in the record. It appears now that
19 the third page is not in the record. FT --

20 JUDGE JAMES: Mr. LaChanski, can you try to get
21 a cup of water to your witness?

22 MR. LACHANSKI: Absolutely. Your Honor, the
23 number escapes me for the moment. I'd like to show the
24 witness this document.

25 JUDGE JAMES: Well, without knowing the number

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1 I don't know how Ms. Hallan and the board is going to
2 find out what you're talking about, because you have a
3 rather sizable number of documents. Is it in the FT
4 series?

5 MR. LACHANSKI: Yes, Your Honor.

6 JUDGE JAMES: What's the date of it?

7 MR. LACHANSKI: March 1985. FT106, Your Honor.

8 JUDGE JAMES: All right. Let the record
9 reflect that the board's copy of FT106 has three pages.

10 MR. LACHANSKI: May I approach and take a look
11 at that third page?

12 JUDGE JAMES: You may indeed. So may Ms.
13 Hallam if she wishes. Do you have three pages, Ms.
14 Hallam?

15 MS. HALLAM: I don't have my FTs with me.

16 MR. LACHANSKI: I have an extra copy of the
17 document I'd be happy to give Ms. Hallam.

18 BY MR. LACHANSKI:

19 Q Mr. Cabes, I'd like you to take a look at the
20 three pages that have been designated as FT106, and let
21 me know whether that equipment for the tensile strength
22 testing, the weighing equipment, that other equipment you
23 were referring to for receipt inspections is indeed
24 reflected in your agreement with AVI as to what was going
25 to be used on this contract.

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1 A Yes, on enclosure one, the plan for inspection
2 job, under block number five it tells us what we had to
3 do for the AVI inspection, to give it janitorial services
4 and equipment. The equipment was listed in the bottom,
5 and the location of where it had to be. And under items
6 tensile tester, vacuum chamber, JCL sample cutter, we
7 needed two of them in the cracker and accessory and the
8 assembly area.

9 We also needed a tensile test in the final
10 assembly area. We needed the same amount in the
11 inspection room, and we needed the precision counter
12 scale I spoke about in the receipt inspection area for
13 contractor use also. And then they also needed a
14 computer, and those items are listed on that enclosure
15 one.

16 Q Were you in charge of keeping track of all of
17 these materials that were being received?

18 A Yes. I was responsible for hiring the people,
19 getting the equipment, specifying what we needed from the
20 contractors to be -- or suppliers to be able to get that
21 necessary testing equipment in, yes.

22 Q How did you anticipate keeping track of this
23 multitude of items that were going to be received?

24 A The original plan was, is that we had a,
25 according to Mr. Thomas' contract, he had proposed to the

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1 government and it was accepted to use a computerized lot
2 tracking system.

3 Q And what was that computerized lot tracking
4 system going to consist of in terms of number of
5 computers?

6 A As I recall, it was a network of approximately
7 30 computers that would be networked throughout the
8 building in the different areas, so that these receipt
9 inspections as well as all the quality control forms and
10 all of the testing and records from all of these test
11 lots and the inspections would be computerized and be
12 able to be recalled with each lot.

13 JUDGE JAMES: I want you to think again about
14 Ms. Hallam's objection. I'm hearing this testimony, and
15 frankly it's to me redundant. I've heard all of this
16 testimony in different words before, and frankly I don't
17 hear much opposition to it. It's in a sense unopposed
18 testimony.

19 MR. LACHANSKI: Yes, Your Honor. I wanted to
20 clarify the tensile strength testing equipment that Mr.
21 Bankof had mentioned. We'll move on.

22 BY MR. LACHANSKI:

23 Q Mr. Cabes, do you remember, didn't an issue
24 arise with respect to some confusion at AVI as to the
25 point of inspection for production?

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1 A For the final assembly, yes.

2 Q Do you remember about when that occurred?

3 A I think it was about October of '85.

4 Q Now, did the plan for inspection job, the PIJ
5 that we were looking at, did that call for a particular
6 point of inspection?

7 A Yes, it did.

8 Q And what was that point of inspection?

9 A It was a moving lot on a finish case that had
10 been strapped before it was palletized. So it was a line
11 on a belt where the cases came across after they were
12 completely assembled, and strapped or sleeved, and they
13 were brought to that point, and that's where we would
14 pull our samples based upon the sampling plan that we
15 generated for that lot.

16 Q What kind of inspection, what is that called?

17 A That's called a moving lot.

18 Q Moving lot, moving lot inspection?

19 A Yes. And that's what we had agreed to in the
20 PIJ.

21 Q Do you still have the PIJ in front of you?

22 A Yes.

23 Q Can you refer to where that is provided for in
24 the PIJ?

25 A It's on the top of page two. Moving lot

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1 sampling inspection, and it goes in to say where the
2 crackers assembly and where the finished final assembly
3 cases would be sampled.

4 Q So the moving lot inspection was pulling cases
5 after the case had been completed, but before the entire
6 lot had been capped and strapped?

7 A That's correct, before it was palletized.

8 Q Before it was -- that's what you mean be
9 palletized, is having the entire pallet capped and
10 strapped?

11 A That's correct.

12 Q Did the PIJ provide for certain instances where
13 -- and what term do you use for inspection of a
14 palletized lot?

15 A That's called a stationary lot, and that was
16 provided under the (b) section of this page.

17 Q And according to the PIJ, under what
18 circumstances would a lot be inspected using a stationary
19 lot inspection?

20 A There were three reasons here. Rejected lots
21 which were reworked --

22 Q I don't want you to read all three of them, but
23 if you could summarize?

24 A Yeah, basically it was a lot that we were doing
25 a moving lot inspection. In most cases when we failed a

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1 lot, we would then take that portion and put it aside and
2 start a new sample plan, and generate a new moving lot.
3 So the material that was made previous to that was
4 palletized and then treated as a complete lot.

5 Q Did it make any sense to do a stationary lot
6 inspection for cases that had not yet been failed?

7 A No, not at all. But that's why the moving lot
8 was specified.

9 Q Now, in October of 1985 when Freedom was
10 beginning production, what confusion did you become aware
11 of with respect to AVI's -- first of all, was Freedom
12 performing moving lot inspections from the time that
13 Freedom began production?

14 A Yes. Both the cracker assembly, and I think
15 you're referring to final assembly.

16 Q Final assembly, yes.

17 A Yes. The final assembly was -- the moving lot
18 was being performed, and we had our equipment out on the
19 line, and the testing was done there. The samples were
20 pulled and the testing done there.

21 Q And pursuant to your agreement with AVI, what
22 was AVI's participation going to be in that system; what
23 were they going to be doing?

24 A AVI was supposed to be next to us, and pulling
25 from the same point that we were under their sample plan

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1 that they generated, plus observing what we were doing.
2 Q Did you become aware at some point that AVI was
3 not in fact doing that?

4 A Yes. On one of my trips back, right after
5 assembly started, I think it was like a two-week period I
6 hadn't been there. When I got back, there was
7 discrepancy, because moving lot was being performed by
8 Freedom, but AVI was not performing the test, and they
9 were delayed in their response to the stationary lot.

10 Q And so what was AVI doing?

11 A They were waiting, as I recall, for some
12 strapping material that had failed, so they were not
13 going to inspect moving lot until they got clearance that
14 the strapping material was adequate. And that forced
15 them to wait and then while we produced these moving
16 lots, they then became stationary lots for them, because
17 they were already sitting there.

18 Q This was contrary to the agreement you had
19 reached with Col. LaFontaine?

20 A That's correct.

21 Q So what steps did you take to try to resolve
22 the situation?

23 A When I realized what was going on, I called
24 Col. LaFontaine and made him aware of what the problem
25 was, and he then met at the plant and we had additional

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1 personnel come in from the other assembly, he did, not
2 me. He was aware of what was going on, and he corrected
3 the situation.

4 Q About how long did it take for him to correct
5 the situation?

6 A I believe it was about a month. I'm not real
7 sure, because I don't know the paper work, but I believe
8 it was a month, because we started around the end of
9 October, so it was well into November when this occurred.
10 At least two weeks.

11 Q During this period of time did AVI resume any
12 kind of inspection of -- did it continue any kind of
13 inspection of Freedom's lots?

14 A There was a delay, but then they started to do
15 this, I don't know the exact date that they did it, but
16 the started to do the stationary lot inspections, so we
17 were always ahead. We were producing moving lot, and we
18 had produced these, so they were then analyzing the ones
19 that we had done like weeks before. So we were getting
20 rejections based upon those stationary lots, where we
21 were supposed to be hand in hand, next to each other, so
22 that we could evaluate, especially in a start-up mode, to
23 be able to evaluate what defects were there so we could
24 correct the problem on the line if it was a problem on
25 the line, or a certain meal line or whatever the defect

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1 was, that we could correct. We didn't have that luxury.

2 Q And in a moment I'm going to show you the
3 inspection report, to identify what you're saying. But
4 you said that AVI then brought up some people to get this
5 situation resolved?

6 A Yes.

7 Q Who did they bring up; what are you talking
8 about?

9 A Part of the problem was, is I had a manager
10 that I hired, his name was Dave Corry, he was on-site and
11 he had worked at SOPACO as an AVI inspector previously.
12 So he was the only one that really knew the defects of
13 what we were looking for. He was the one that had the
14 experience.

15 Q I'll ask you that more specifically. Let me
16 focus that. First answer my question about who Col.
17 LaFontaine brought up to address this problem on behalf
18 of AVI?

19 A Well, this was -- I was telling Col. LaFontaine
20 that we didn't feel that the defects that were there,
21 that the AVIs were rejecting, were adequate, and they
22 were not equal to the other assembly operation. So Col.
23 LaFontaine brought in people I believe from both of the
24 assembly operations, certainly SOPACO, to come up and
25 work with his AVI inspectors to determine and get them

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1 calibrated, so to speak.

2 Q So during this period of time that AVI was
3 behind on its inspections, they were rejecting Freedom's
4 lots?

5 A Yes.

6 Q And did you -- were these inspectors inspectors
7 with any MRE inspection experience before?

8 A Not to my knowledge they didn't, because that
9 was not what they indicated to me when we were developing
10 the plan for the inspection job. This was the first
11 contract, so they were learning.

12 Q And it's your testimony that Dave Corry who
13 worked for you was an AVI inspector?

14 A He was previously an AVI inspector at SOPACO,
15 and he would look at the defects and say these defects
16 would not be classified as defects if it was at SOPACO.
17 So that brought Col. LaFontaine to bring the people in.

18 Q So there was a disagreement as to what the
19 defects --

20 A Very definitely.

21 MS. HALLAM: Your Honor, he's not rebutting
22 anything again. I mean we're going off into an area that
23 there was no testimony by government witnesses with
24 regard to this area. Defects different at one assembler
25 than they did at Freedom.

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1 MR. LACHANSKI: If we have a stipulation, Your
2 Honor, that this delay which I'm about to direct the
3 witness to a document that describes the period of delay
4 and the effect, if there's a stipulation that indeed this
5 delay was not Freedom's fault and was caused by the AVI
6 inspectors, I'll move on. I have no problem with that.

7 I believe Mr. Bankof's testimony, while I agree
8 was less than crystal clear, I wasn't sure whether he was
9 raising an issue about that or not. If we stipulate that
10 yes, this was AVI's problem, and I point to the document
11 that shows impact, we have to move on.

12 JUDGE JAMES: Does the government so stipulate?

13 MS. HALLAM: No, we're not stipulating to
14 anything. Our objection is that this is not rebuttal
15 testimony.

16 JUDGE JAMES: I overrule the objection. Mr.
17 Cages, what does AVI mean; do you know?

18 THE WITNESS: Army Veterinary Inspectors.

19 BY MR. LACHANSKI:

20 Q And is that an equivalent term for Health
21 Services Command?

22 A I think, yeah, it's in that department. I
23 think the department is Health Services Command, and the
24 actual individual is an AVI, which is a Army Veterinary
25 Inspector.

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1 Q I'll direct your attention to FT243 at Bates
2 stamp 01649. Mr. Cages, what is this?

3 A This appears to be a record of each lot that we
4 submitted, kind of a score sheet to show what lots were
5 submitted, when the production date was and when the
6 accept/reject date was by the AVI.

7 Q Can you describe briefly, just summarize, what
8 this shows with respect to AVIs, the time of the AVI's
9 inspection of Freedom's lots beginning October 31st, the
10 rejection rate and the solution to this issue?

11 A The rejections are noted by the remarks on
12 notes, or leakage in the first unit, or the first unit
13 that's listed there.

14 Q First, this shows production date beginning as
15 of what date?

16 A The first, very first one is the 31st of
17 October. That's the second column of numbers going down,
18 production date. And then the 4th, the 6th, the 8th, the
19 14th, the 1st, the 19th, the 20th, down the line
20 accordingly.

21 Q So in the third column, you're referring to the
22 third column on this chart?

23 A The third column is the lots, yes. Those were
24 the lots, and the date is next to it on the left.

25 Q In the second column where it says ACC/REJ

1 date, is that acceptance or rejection date?

2 A That's acceptance or rejection date, that's
3 correct.

4 Q And whose acceptance or rejection date,
5 rejection, does that reflect?

6 A That's the AVI inspectors.

7 Q And so what does that column reflect with
8 respect to the date on which AVI inspected Freedom's
9 lots?

10 A There's a delay. The 31st was actually
11 produced on the 31st of October, so it wasn't analyzed by
12 the AVI until the 12th of November. The next one was the
13 4th of November, and it wasn't until the 15th of November
14 and so forth.

15 Q With respect to the 5th and 6th columns,
16 submitted, accepted and cumulative accepted, what do
17 those show?

18 A I'm not real sure. I think that's a tally of
19 what they were, what their actual defects were, but I'm
20 not certain of that.

21 Q And then the next column, submitted, rejected,
22 is that the column that shows how many cases AVI
23 rejected?

24 A I think so, yes.

25 Q Now, the October 31st lot number one, it

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1 appears that all 242 cases were accepted. What does this
2 chart show with respect to the lots that then followed
3 all the way up to December 19th?

4 A The start of December 19th was when the line
5 went -- when Col. LaFontaine --

6 Q What does it show up until December 19th?

7 A That we had rejections. We had 31, cumulative,
8 which column this is -- let's see, one, two, three, four,
9 five, six -- eighth column, which is circled on my
10 document, circled number 31-8-17 is the cumulative number
11 of rejected cases.

12 Q And those would have been rejected by whom?

13 A AVI.

14 Q With respect to the second and third column for
15 each of the rows showing the different lots, again, does
16 each row show the discrepancy, the delay between the date
17 of production of each lot and the date of AVI inspection?

18 A We have no more rejections, which is December
19 the 19th --

20 Q Well, I'm still not talking -- the time period
21 from October 31st to December 19th. During that time
22 period, do these rows show a delay between the time of
23 production and the time of AVI inspection?

24 A Yes, they do.

25 Q And that corresponds with the rejections that

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1 were just described?

2 A That's correct.

3 Q What happened as of December 19th?

4 A December 19th was when -- I'm assuming this,
5 because this is the date that no more rejections were
6 noted. The AVIs as a result of Col. LaFontaine's action
7 brought in SOPACO inspectors as well as moved the
8 analysis to on-line rather than in the stationary lot,
9 AVI room. So on the 19th of December we started getting
10 passing lots, and it continued from that point on.

11 Q Now, as of December 19th, was there any change
12 in the actual condition of the cases being produced by
13 Freedom?

14 A No. Freedom was basically doing the same
15 thing. We had instructed our personnel to assemble the
16 cases in a certain way, so we didn't really do anything
17 other than try and work with them to better perform. But
18 nothing real substantial, they were doing the same thing.

19 Q Did Freedom continue to produce cases that had
20 the problems or the conditions for which AVI had been
21 rejecting cases from November 12th through December 19th?

22 A We were doing the same exact thing to my
23 knowledge. We were doing exactly the same. We didn't
24 institute any different equipment or any different
25 procedures. We were doing the same thing.

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1 The one thing that is worth noting on this is
2 that when we did a production lot, the contractor was
3 responsible for doing the inspection. If we found a
4 defect in our own inspection, we would not even submit it
5 to the AVI. We would rework it.

6 So these were all passing lots by Freedom's
7 analysis. The inspection plan.

8 Q And so to answer my question, as of December
9 19th to the best of your knowledge, did Freedom's cases
10 continue to be produced with the conditions for which AVI
11 had been rejecting it's cases previously?

12 A That's right.

13 Q But as of this point, was AVI passing those
14 cases?

15 A After the 19th they started passing the -- I
16 think what really happened was, I'm not privy to this,
17 but since the people from SOPACO came in and Col.
18 LaFontaine worked with his people, they calibrated what
19 the defects were and then we start looking at the same
20 thing, and they were agreeing that those defects -- I
21 have to assume that somebody from the outside, Col.
22 LaFontaine or the AVI from SOPACO, sort of straightened
23 them out with what the defects were and allowed these
24 lots to be accepted.

25 And that's what we did. We started accepting,

1 they started accepting cases and the rejection number
2 went down, or stayed the same.

3 Q Now, once that occurred was Freedom then simply
4 able to ask for the 31,000 cases to be reapproved or
5 reaccepted by AVI?

6 A I believe the requirement was that we had to do
7 some kind of reconditioning to it, when it rejected. We
8 had to go through it and cull out the defects, reanalyze
9 the whole lot. And I don't think we ever did that.

10 Q Could Freedom just reinspect those cases right
11 on the spot and then say okay, we're good to go now?

12 A No, the rejection of lots had to be reworked to
13 be able to submit back to the AVI, as a item. This was a
14 technicality because we really didn't change anything
15 between what we were doing. It was more like they were
16 looking at the wrong defects. I mean when you look at
17 the record here.

18 Q Mr. Cabes, I want to talk to you about this
19 testing situation. Is that something you're familiar
20 with?

21 A Very.

22 Q Is that something that falls within your
23 bailiwick of microbiological background and all that
24 stuff?

25 A Yes.

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1 Q Please describe for us as briefly, succinctly
2 and in layman's terms as you can as to what the Zyglo
3 testing problem was; first of all, it arose in about
4 March of 1986; is that right?

5 A I think so.

6 Q Tell me what happened that led to the
7 government raising an alarm about these pouches.

8 A There was an inspection at Star Food Processing
9 in Texas that was doing MRE thermal stabilized pouches.
10 And I got a call from Sgt. Patterson who informed me that
11 he got a call that said there were holes in the pouches,
12 micro-holes in the pouches that Star was producing, and
13 that they needed to sample certain lots. He was given
14 instructions to sample certain lots, and to send them to
15 San Antonio for testing.

16 Q Did this concern on behalf of the government
17 affect Freedom?

18 A At the beginning stage, Freedom had Star Foods
19 product in it's warehouse as a contractor furnished
20 material.

21 Q So tell me what happened; what did the
22 government do that affected Freedom?

23 A As a result of this problem with micro-holes in
24 pouches, or suspected micro-holes in pouches, those items
25 that were produced by Star were put on medical hold in

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1 the warehouse. So essentially the stock that we had
2 received into the warehouse, as I believe Star was
3 contractor furnished material opposed to government
4 furnished, it was contractor furnished, those items were
5 immediately put on medical hold so we could --

6 Q Did medical hold then only apply to product
7 currently being produced by Star, or did it also apply to
8 product that Star previously produced that was in
9 inventory?

10 A It was previous product as well as current
11 product.

12 Q And so was Freedom then able to use any of the
13 Star Food product that was in it's inventory?

14 A No.

15 Q Where was Freedom supposed to get the -- and
16 what type of product are we talking about, meal bags?

17 A No. We're talking about the individual thermal
18 stabilized products, the applesauce, the beans and
19 tomatoes, I believe, and meatballs. I think that was the
20 three items. It could have been more, but those three
21 for sure.

22 Q So Freedom was still being expected to produce
23 cases during this time; is that right?

24 A Yes.

25 Q Well, where was Freedom expected -- where did

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1 the government expect Freedom to get this CFM from, this
2 food, to assemble it's cases?

3 A I'm not sure where they expected them to get it
4 from, but I know that they did issue some substitutions
5 on items so we could pack the cases.

6 Q I want to direct your attention to M43.
7 Referring you to this first paragraph of substitutions
8 dated March 11th through 14th, are these to the best of
9 your recollection substitutions that related to the Star
10 Foods inventory?

11 A I believe so.

12 Q Do you recall specifically which menu items --
13 according to this document, what were the substitutions
14 that were being made in March of 1986, and it talks about
15 menu items five, seven, nine, 11, four, three, six,
16 eight, ten; what does that mean?

17 A This was a specification of menus, had sort of
18 a menu that on each bag, each meal bag had to contain
19 certain types of products, the meatballs, the beef stew
20 and items like that. That would be involved in each bag,
21 and they were specific for each bag. So we had a line to
22 make a bag one, a bag two, a bag three, a bag four all
23 the way up to bag 12. I'm assuming that three, six,
24 eight and ten were the items that had Star Food product
25 in them. And they had to then, because they were on

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1 medical hold, and to resubstitute it with other items, so
2 you would put a five, a seven, a nine and 11, so we'd
3 have two fives, two sevens, two nines and two 11s.

4 Q If you saw a menu would you be able to identify
5 whether those three, six, eight and ten were actually
6 Star Food?

7 A Yes. I could.

8 Q Is this the menu that would provide that
9 information to you?

10 JUDGE JAMES: Please identify the document
11 you're showing the witness.

12 MR. LACHANSKI: Yes, Your Honor. I'm showing
13 the witness a Meal Ready to Eat program, brochure, that
14 has in it menus and components of Meal Ready to Eat, MRE,
15 which applied to the MRE-5 program.

16 JUDGE JAMES: Which specific document in the
17 record are you referring to?

18 MR. LACHANSKI: It's not in the record, Your
19 Honor. I'm using it to refresh the witness'
20 recollection.

21 JUDGE JAMES: I believe that's proper. I would
22 prefer if you got it from the record, show him something
23 in the record.

24 MR. LACHANSKI: I don't know what I would have
25 in the record that reflects that, and again, I'm really

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1 asking just to refresh the witness' recollection, I
2 believe under the rules of evidence I can show him pretty
3 much anything without introducing it into evidence, and
4 that's what I'm asking to do, but --

5 BY MR. LACHANSKI:

6 Q Would that information be contained in the
7 solicitation, to the best of your knowledge?

8 A It's possible, yes. I think it would have to
9 be, yes. That was a promotional document. The other was
10 actual specifications.

11 Q To the best of your recollection do you recall
12 whether these menu items, three, six, eight and ten, were
13 Star Foods produced items?

14 A I have to assume they are, because of the
15 timing of the occurrence and the reason for substitution.
16 The only reason we substituted meal bags was because of
17 the Zygo problem with the Star Foods issue. Other types
18 of substitutions not reflected in here would be for a
19 replacement of a jelly pack, a different jelly pack, a
20 different candy bar, if you didn't have that particular
21 component going. That was a substitution of individual
22 items, but a substitution of a meal bag was to my
23 knowledge and to my recollection, was the Star Foods
24 product, so I would pretty much assume that three, six,
25 eight and ten contained it.

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1 Q Well, let me ask you this: Mr. Bankof had
2 testified I believe to the effect of substitutions are no
3 big deal because to the extent they're the same size,
4 they shouldn't really cause any problem --

5 MS. HALLAM: Your Honor, I don't believe that
6 was his testimony. I think he testified with regard to
7 the rights under the contract.

8 JUDGE JAMES: Rather than characterizing Mr.
9 Bankof's testimony, why don't you simply ask the witness
10 a question.

11 MR. LACHANSKI: Yes, Your Honor.

12 BY MR. LACHANSKI:

13 Q Were the substitute meal items as set forth in
14 M43, were the substitute meal items the same size as the
15 ones for which they were substituted?

16 A No.

17 Q What impact did that have on your attempts to
18 assemble these cases?

19 A Some of the meal bags were essentially the
20 same, but we didn't have to have too much bulk, to many
21 different units to fit in the case. The case was a
22 certain dimension that had to be fit, and it was
23 difficult to get those menus in, when we did
24 substitutions to put the menu in the case. It was a
25 tight fit under the normal circumstance, but when you

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1 started changing and making two of a certain menu, some
2 menus are slightly larger than the others.

3 Q What impact did that have on the speed with
4 which you were able to assemble the cases?

5 A It reduced, because they couldn't put the meal
6 bags into the boxes, into the cases.

7 Q And what affect did that have on the labor
8 force necessary to assemble these cases?

9 A It slowed them down. We needed more people to
10 do it, and it caused the bulging of the case and sealing
11 problems and everything else down the line.

12 Q And by having to use other -- where did you get
13 these substitutions from; were these sent to you from the
14 government?

15 A The substitutions came out of inventory that
16 was at the warehouse.

17 Q So what impact did that have on Freedom's
18 inventory with respect to cases it was later going to
19 have to assemble?

20 A It depleted that supply.

21 Q So do I understand correctly, that while you
22 were provided with authority to make substitutions for
23 these menu items, the government did not then ship you
24 the additional bags themselves to be the replacements for
25 these cases?

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1 A I don't think they did.

2 Q Now, in addition to these substitutions, did
3 the government require any additional testing; did the
4 government require Freedom to perform any additional
5 testing in connection with this Zyglo situation?

6 A Yes, Zyglo we didn't really explain, we kind of
7 went over that, but Zyglo was, as a result of the
8 suspected holes in the pouches that store foods, the
9 government at Health Services Command in San Antonio
10 decided to use a fluorescent dye which was a penetrating
11 dye that would be introduced inside the pouch to detect
12 these micro-holes.

13 This is a technique that was not used in the
14 canning industry or any other previous test. Normally
15 you would test this on product that was spoiling in a
16 warehouse, there was a reason to show spoilage. If there
17 were in fact holes that were big enough in the pouches
18 for bacteria to gain access, they would then grow in the
19 food and spoil the food. And the extent of the problem
20 was not substantiated by spoilage, so this was sort of a
21 test that got out of hand, basically.

22 Q What sampling did the government require
23 Freedom to do as a result of the Star Foods issue?

24 A Freedom had to then go back and sample the
25 thermal stabilized pouches from Star, and then it

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1 eventually turned into other pouch manufacturers. all the
2 pouch manufacturers that were receiving product, that we
3 were receiving product. We had to do a I believe 200
4 sample analysis to look at the pouches, visually inspect
5 the 200 samples and look for, this is the ironic part, to
6 look for holes that we couldn't see. And the other was,
7 is 50 samples of that, I believe 50 additional samples.
8 It could have been of the 200, but 50 of those samples
9 had to be sent to San Antonio for the Zyglo test.

10 Q These numbers you're giving, 50 and 200, was
11 that per lot?

12 A Yes.

13 Q So 50 samples per lot had to be pulled and sent
14 to San Antonio for testing with this Zyglo material?

15 A That's correct.

16 Q Two hundred samples per lot had to be pulled,
17 and are you saying visually inspected by Freedom's
18 personnel?

19 A Yes.

20 Q Visually inspected?

21 A Yes. Visually inspected for holes that we
22 couldn't see.

23 Q What do you mean, holes you couldn't see; what
24 were they supposed to be looking for?

25 A The dye was detecting holes that were

1 invisible.

2 Q Is this micro-holes?

3 A These are micro-holes. These holes were

4 demonstrated to be smaller than a hole that would allow

5 bacteria to get through, so the material had holes in it

6 from its production, but they were so small they had no

7 effect on the contamination level of bacteria gaining

8 entrance.

9 Q Did you raise with the government the absurdity

10 of having people on the line inspecting for holes that by

11 definition were not visible to the naked eye?

12 A Yes, we did.

13 Q Did they allow you to stop doing this

14 inspection?

15 A No.

16 Q Did they require you to continue doing this

17 inspection?

18 A Yes.

19 Q How long did this last for?

20 A Six or eight months.

21 Q And what impact did this have on your staff and

22 your production?

23 A They were now trying to learn something

24 different, but I mean how do you teach somebody to look

25 for a hole in a pouch that you can't see the hole?

1 Q Did you try?

2 A Without being too much of an idiot, yes.

3 Q And based upon your development of the plan for

4 inspection and the contract inspection, CIS, contract

5 inspection system, were these tasks included in Freedom's

6 contract originally?

7 A No, it was additional. After this problem came

8 up it was added.

9 Q Were additional people necessary to perform the

10 sampling and testing?

11 A Yes.

12 Q Did it require additional time to produce cases

13 as a result of this sampling and testing?

14 A Yes.

15 Q Last area I want to ask you about, Mr. Cabes, I

16 want to talk to you for a minute about crackers. I want

17 to talk to you about crackers towards the end of the

18 1986, that time frame. And I'm going to focus there in a

19 minute, but let me ask you in general, during the course

20 of delivery of crackers, crackers was CFM?

21 A Yes.

22 Q What role did you play in terms of inspecting

23 crackers upon receipt?

24 A We had a, according to the CIS plan, we had a

25 receiving inspection specifically for crackers as well as

1 other items, but specifically for the crackers we had a

2 count and condition requirement. And the condition, one

3 of the conditions was is that it couldn't be cracked. It

4 couldn't be a cracked cracker. It had to be an intact

5 cracker.

6 So basically when we encountered those samples

7 in our inspection, those would be rejected and culled

8 from the lot.

9 Q And that was at the time of delivery?

10 A At the time of delivery, of receipt inspection,

11 yes.

12 Q Would Freedom's people do this inspection

13 alone, or was it in conjunction with anyone else?

14 A The AVI was always present to observe what

15 Freedom was doing. They could sample if they chose to,

16 but they would definitely observe our sampling plan as

17 well as our inspection technique.

18 Q Did this inspection that you performed occur

19 before or after acceptance of the product?

20 A Before, because we would not accept anything

21 into the warehouse that was damaged. That was the reason

22 to look for condition.

23 Q So tell me what would happen; where there

24 occasions during the contract when crackers would be

25 delivered and Freedom would perform inspections, when

1 Freedom would find crackers that were unacceptable?

2 A That's correct. The AVI would be notified, and

3 those crackers would be placed in a trailer which was

4 on-site in the warehouse, a trailer to contain this

5 material that had been rejected so it wouldn't get into

6 the warehouse at all.

7 Q And at whose suggestion or requirement were the

8 rejected crackers placed into storage?

9 A The rejected crackers, since it was government

10 furnished material, the AVI was notified and he made the

11 decision as to whether or not to destroy it or to keep it

12 for a thing called troop issue.

13 Q What's your understanding as to what troop

14 issue is?

15 A It can't be used in the MRE program, but it can

16 be used in other places, like prisons and hospitals and

17 --

18 Q What would Freedom then do with respect to

19 those portions of the lots that it deemed to be

20 acceptable?

21 A They would go into our inventory and be stored

22 in the warehouse.

23 Q Over the course of this contract, were there

24 occasions on which you received orders from the

25 government to ship out the damaged crackers that Freedom

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1 had rejected and which were being maintained in storage?

2 A Yes.

3 Q And what notification did you receive?

4 A They would issue a shipping notice to ship

5 these products out to a certain location that they chose

6 to do it, so we would get them off premises so that --

7 within our plan for the inspection job we had provisions

8 that this troop material couldn't add to the

9 contamination level, and we had to manage it in those

10 trailers. And since it was government furnished

11 material, they had to have a timely removal of these

12 items. We couldn't store it to the end of the contract.

13 So it was an ongoing process.

14 Q So to the best of your knowledge, was the

15 government authorized to require troop issue shipment of

16 crackers that had been accepted by Freedom?

17 A That had been accepted --

18 Q Accepted by Freedom. Could they order troop

19 issue of any of the crackers that you had accepted?

20 A I don't think we got into that. I never had a

21 situation of that. It was always the rejected material.

22 The received material we had to account for as a

23 government furnished material, and we had to be able to

24 know where it was and use it in our production. So that

25 number would -- the rejected amount would be depleted, at

1 least deducted from what we received.

2 MR. LACHANSKI: Your Honor, at this time I have

3 a few documents that are not in the record that I would

4 propose to use for purposes of rebuttal, because of the

5 cracker issue that had come up with Mr. Bankof. And I

6 would request the opportunity to present them to the

7 government and ask the witness to identify them and offer

8 them into evidence.

9 JUDGE JAMES: Show them to the government.

10 MS. HALLAM: Again we object, Your Honor. I

11 mean it's a little late in the day to be introducing more

12 documents.

13 JUDGE JAMES: So the government objects to your

14 new document collection. Any response to that?

15 MR. LACHANSKI: Yes, Your Honor, again to the

16 extent that we presented evidence in the record on direct

17 with respect to the cracker situation and the delay, and

18 whose responsibility it is, and that's in the record. To

19 the extent that the government wants to stipulate that

20 Mr. Bankof did not raise any issue with respect to whose

21 fault or whose responsibility this was, we accept that

22 and I'll withdraw this proposal.

23 But to the extent that Mr. Bankof has taken the

24 position that he challenged the responsibility for

25 replacing these crackers at the end of the contract, I'm

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1 claiming that this is now rebuttal evidence that refutes

2 Mr. Bankof's position.

3 In that sense it wasn't a requirement that

4 every single scrap of paper in this entire record be put

5 in on direct. There was evidence on direct; this is now

6 rebuttal.

7 JUDGE JAMES: Well, Mr. LaChanski, that's your

8 interpretation, that isn't necessarily a board

9 interpretation of what I said originally about producing

10 documents. So I sustain the government's objection.

11 BY MR. LACHANSKI:

12 Q Mr. Cates, did there come a time down in the

13 fall of 1986 when Mr. Levin raised an objection to --

14 well, let me ask you this: Now referring to all the

15 crackers that had been rejected by Freedom and placed in

16 storage, and were being used for troop issue, what was

17 Freedom's understanding as to whose responsibility it was

18 to replace those crackers?

19 A It was government furnished material. Any

20 government furnished material had to be replaced by the

21 government.

22 Q Did there come a time in the fall of 1986 when

23 Mr. Levin raised an issue as to whether it was the

24 government's obligation to replace these crackers, or

25 Freedom's obligation to replace these crackers?

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1 A Yes, he did.

2 Q Can you tell me whether there was a conference

3 call that took place to resolve this issue?

4 A Yes, there was.

5 Q Tell me about that call.

6 A I'm not sure of the exact date, but I know it

7 was an issue with the shipment of the crackers and the

8 verification that those crackers were in fact in the

9 place, in Freedom, and to determine the numbers that were

10 there, what we had received and what we had produced, and

11 what was the discrepancy in the number. And there was an

12 inspection that -- I forget the guy's name, Ray

13 something, Ray Triano I think his name was -- who would

14 come periodically to the plant to inspect and challenge

15 our system of counts and other things. This was just one

16 of the instances when he was there to verify the cracker

17 issue, and to report back to the DPS inventory person the

18 fact that these crackers were in fact in the government

19 storage for troop issue.

20 Q I'll refer you to Government's Rule 4 set of

21 documents, 193, which are the plant visit reports, and

22 direct you to a plant visit report dated October 24th,

23 1986. If it's convenient for the board I do have an

24 extra copy, although it would be found at 193 in

25 chronological order.

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1 JUDGE JAMES: What's the date of the report,
2 Mr. LaChanski?
3 MR. LACHANSKI: October 24th, 1986.
4 BY MR. LACHANSKI:
5 Q Mr. Cabes, does this plant visit report refer
6 to the conference call that you were just testifying
7 about?
8 A Yes, it does.
9 Q And who is Ron Silver?
10 A I believe he's the clerk at -- or the DPSC
11 person that controls the inventory. I'm not real
12 certain.
13 Q Where in this report do you understand
14 confirmation of your understanding that responsibility
15 for replacing those crackers rests with the government?
16 A What he's doing here is he's looking at, he's
17 counting all of the accessory packs, and specifically for
18 crackers, the sufficient quantity to produce a total of
19 cases. He was verifying that those crackers were in fact
20 there, and the reason to call DPSC, to let them know, is
21 that they had at best a three-day supply of crackers that
22 all remained in inventory, so that they couldn't be able
23 to produce unless those crackers were replaced. So he
24 was recommending to them to get the product in to Freedom
25 so that they could continue to produce crackers.

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1 Q If you'll look on that page at the bottom of
2 that paragraph, below the line "recommendations" where it
3 says the IS requested; do you see that?
4 A Ron Silver aggressively pursued --
5 Q No, I don't want you to read it, just do you
6 see that below the line "recommendations"?
7 A Yes.
8 Q To the best of your understanding, what is
9 being referred to here as the previous agreement between
10 DPSC and the contractor?
11 A I think that's the contract itself, that we
12 were working under.
13 Q And with respect to this issue of crackers,
14 what did that refer to based on your participation in
15 that conference call?
16 A Government furnished material that needed to be
17 replaced, because it was for troop issue. So we couldn't
18 use it in the MRE program.
19 Q If you'll turn to the next page and look at
20 "subjects discussed" under (b); what meaning is there in
21 the second sentence starting with DPSC, and based upon
22 your participation in that conference call?
23 A Again, it was government furnished material, so
24 it seems that the DPS was agreeing to supply the balance
25 of crackers required to complete the contract.

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1 JUDGE JAMES: Well, Mr. Cabes, do you
2 understand what these initials IS mean?
3 THE WITNESS: This was the industrial
4 specialist, I believe, and he was the guy who came in, I
5 don't know if he's independent or what --
6 JUDGE JAMES: That's fine. All I wanted to
7 know is what --
8 THE WITNESS: Okay.
9 MR. LACHANSKI: That's all I have, Your Honor.
10 JUDGE JAMES: Government have any cross
11 examination?
12 MS. HALLAM: Yes. Can we have a ten-minute
13 break?
14 JUDGE JAMES: Sure. Off the record.
15 (Recess.)
16 JUDGE JAMES: Does the government want to cross
17 examine the witness?
18 MS. HALLAM: Yes, Your Honor.
19 CROSS EXAMINATION
20 BY MS. HALLAM:
21 Q With regard to this document that's Bates
22 stamped 01649, I forget the FT cite, Mr. Cabes; it looks
23 like this (indicating).
24 A I gave those back to --
25 JUDGE JAMES: FT243.

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1 MS. HALLAM: Thank you.
2 BY MS. HALLAM:
3 Q With regard to this document, is this a Freedom
4 document or a government document?
5 A I think it's a government document.
6 Q Have you seen this document before this
7 litigation?
8 A I saw it, not this particular one, but the same
9 information on a sheet that was a government sheet.
10 Q And when did you see that?
11 A I saw that when I was going through my files
12 looking at the materials that I had from the Freedom
13 employment.
14 Q And that was after the contract, after the end
15 of the contract period?
16 A This was last week.
17 Q You testified with regard to these rejected
18 cases. Did I understand your testimony to be correct
19 that there were 31,000 cases rejected based on improper
20 inspection?
21 A Well, there was thirty-one hundred and
22 eight-seventeen government rejected by the AVI, which is
23 according to the scenario that they were produced in a
24 moving lot, and the fact that AVI was not on line
25 inspecting these. I can only assume that when the people

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1 came from -- my objection to Col. LaFontaine was that I
2 didn't think the defects were being characterized
3 properly. And that the AVIs were not on line where they
4 had agreed to be in our inspection.

5 He came in, and the result of that was, I mean
6 he didn't discuss this with me any, he went with his own
7 people, but the result of it was the lots, they moved out
8 to the line where they were supposed to be according to
9 our job, and he brought in the AVI from SOPACO, and they
10 worked with his people and after that time we started
11 passing lots.

12 Q Wasn't there a Sgt. Patterson that was assigned
13 to this plant for the entire contract performance period?

14 A Yes, he was.

15 Q And he was the what, the chief AVI or --

16 A He was the AVI on staff or on-site at the
17 plant.

18 Q And Mr. Fontaine or Col. Fontaine was not; is
19 that correct?

20 A Col. LaFontaine, that's correct.

21 Q Explain to me again what defects were found in
22 here that you're saying were improperly culled that
23 resulted in the 31,000 cases being rejected?

24 A The first problem that we have, these defects
25 down the line, the leakage and all these other, table

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1 nine, not of one each, those different types of products,
2 tears and different table nine defects could be tears in
3 the packaging of some type and it was the extent of what
4 the tears were, and all those individual -- I can't tell
5 you exactly what it was without looking at the details.

6 But I do know that the delayed inspection, the
7 two things that stuck in my mind from when we were
8 dealing with this, was that we had agreed to do moving
9 lot inspection and that was not happening. And that
10 severely hampered our inspection technique because of the
11 fact that we didn't have the AVI with us.

12 Q Could you focus on this document and tell me,
13 what tears or what defects are listed on here that you
14 think or know were improperly culled?

15 A I'm saying that these -- I can't say
16 specifically because I don't know the actual defect that
17 was noted here.

18 Q Well, when you were working for Freedom
19 Industries or H.T. Foods or whoever the name was at this
20 particular point in time, were you advised of these
21 rejections as they were occurring?

22 A Yes. These, I was not present at the
23 inspection, but they would show me the types of
24 inspection. That was where Mr. Corry explained to me
25 that he didn't feel that these defects were valid. The

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1 fact that they were delayed in their response in
2 inspecting caused us hardship.

3 Q What is the basis for thinking that the defects
4 were not valid?

5 A Mr. Corry was pulling from his experience, from
6 the SOPACO involvement when he was an AVI, to advise me
7 that a lot of these defects, maybe not all of them, but
8 certainly a good portion of them, were not exactly right.
9 That they were interpreting them as to be more severe
10 than what it was supposed to be.

11 Q Which defects were not right? Was Mr. what was
12 his name --

13 A Corry.

14 Q Was Mr. Corry present when they were being
15 inspected and rejected?

16 A Yes, he was.

17 Q And he told you at each point in time as each
18 case was being rejected, or each lot?

19 A No, these lots had been rejected, it was a
20 delay. We were producing the lots, and according to the
21 sheet we rejected one lot, which was number two. The
22 second lot we rejected, because we resubmitted it as 2-A,
23 which was culled for improvisation. If we had a rejection
24 on our own, we would renumber it an A and we would
25 resubmit it.

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1 The fact was is that for the first 16 lots or
2 whatever these lots are down to the 19th of December,
3 those were all delayed from when they were inspected.
4 They were supposed to be inspected on the line so we
5 could in fact look at these defects as we were going. We
6 didn't have that luxury, and that was a problem.

7 Q What defects are you aware of that were
8 improperly culled?

9 A The defects that are in the table of final
10 inspection for what we had to do for particular items.
11 It could be rejected for any number of things. So I
12 can't answer that question without seeing the detail
13 sheets. All I'm telling you is that they were rejected
14 for some reason, and he's referring to table nine, he's
15 referring to table ten. There's different reasons in
16 here, and I can't do that unless I see what the actual
17 table contains. I can't recall what that is.

18 Q And when were you made aware of the fact that
19 someone disputed the -- this was one of Freedom's
20 employees?

21 A Mr. Corry was an employee of Freedom, yes.

22 Q And when did you become aware of the fact that
23 one of Freedom's employees disputed the validity of those
24 defects?

25 A It was during this time that I was in contact

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1 with Mr. Corry, I wasn't present at the plant 24 hours a
2 day, seven days a week. I would come back and forth from
3 New Orleans. So during this time period I was advised
4 that there were problems, and he told me that these
5 defects were in fact occurring, and he didn't think that
6 they were valid. And that we needed to do something, and
7 that's when I told Col. LaFontaine.

8 Q Are you aware that the contract allowed for
9 reinspection for technical reasons?

10 A Yes.

11 Q Why didn't you ask for reinspection of these
12 cases, since you were of the belief that they were
13 improperly culled for defects?

14 A The reinspection in this whole lot of material,
15 we were under the gun to produce lots, and my
16 responsibility was not to negotiate with the government
17 as to what would be replaced or how we would resubmit
18 lots. I would only be advised to rework the lot and go
19 forward. Mr. Thomas chose not to rework the lots, so I
20 asked for a technical reason because basically we were
21 trying to get started at that time, and Col. LaFontaine
22 seemed to clear up the mess, so we started coasting on
23 the 19th of December.

24 Q I've asked you why you did not request a
25 reinspection. I didn't ask you why you didn't do rework.

1 the government was going to replace these crackers
2 because it was somehow liable and that was your reading
3 of that statement in this report; is that correct?

4 A That's correct.

5 Q I know you don't have the advantage of having
6 the previous report before you, but the report that's at
7 tab 193, page 97 and 98 -- I'm sorry -- indicates that
8 the government was anticipating supplying crackers as of
9 October 17th, and I'll show you this document --

10 JUDGE JAMES: You keep the document, I'll show
11 the witness --

12 MS. HALLAM: Okay.

13 BY MS. HALLAM:

14 Q I'm looking at paragraph two in "action taken"
15 section. The last section there, the government would
16 invoice the contractor for whatever quantities of
17 crackers are required; do you see that?

18 A Yes.

19 Q Could you explain to me what your understanding
20 of the result of the conference call was then that you
21 had?

22 A The result that I understood was that the
23 government was going to replace the crackers.

24 Q At the contractors' expense; isn't that
25 correct?

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1 The contract allowed the contractor to request a
2 reinspection. Do you know why no reinspection was
3 requested?

4 A No, I don't.

5 Q I'd like to refer you back to this FT243 again.
6 Would you tell me the date that the inspection of these
7 cases occurred?

8 A The date that the inspections occurred, by
9 whom?

10 Q By the government when these cases that were
11 all stored or piled up because the government wasn't
12 doing moving lot inspection; when did that occur?

13 A The production date is in the third column. It
14 says October 31st. The date right left of that was when
15 the AVI accepted or rejected it. November 12th was the
16 date that he accepted it. Then on the 4th we produced a
17 moving lot inspection, and it was analyzed and rejected
18 on the 15th of November. So 11 days later.

19 It was supposed to be being done on line, at
20 the time we produced it.

21 Q I'll get back to this in a minute. I just want
22 to move on to the cracker issue. You testified with
23 respect to a government report that's in Rule 4, tab 193,
24 dated October 24th. And you testified -- it's this one
25 here -- I believe you said it was your understanding that

1 A I didn't hear that.

2 Q You didn't hear that?

3 A No.

4 Q When crackers are rejected upon receipt, the
5 entire lot is rejected; isn't that correct?

6 A No.

7 Q No?

8 A No, not to my knowledge.

9 JUDGE JAMES: Are you talking about a lot of
10 crackers or a lot of something else?

11 MS. HALLAM: A lot of crackers.

12 THE WITNESS: I don't think the -- I think they
13 would be culled out, depending upon the damage. The
14 concealed damage that was there.

15 BY MS. HALLAM:

16 Q Whose responsibility was it to make out damage
17 reports?

18 A It was our responsibility with the AVI. We had
19 to report all damage to government furnished material to
20 the AVI. And then he instructed as to what we were going
21 to do with it.

22 Q And do you recall Freedom having numerous
23 requests from the contracting officer with regard to
24 submitting damage reports?

25 A No, I really don't, because all I know is that

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1 in our plan we had to give reports to the AVI, and if we
2 were negligent in giving the report to the AVI he would
3 have taken it up with us.

4 Q When a lot is rejected, is it your testimony
5 that the contractor can go through and pick bits and
6 pieces out of that lot and use it?

7 A I don't recall that without my notes, without
8 having a flow diagram. I can't answer that for sure.

9 Q How often were you in the plant?

10 A About every other week.

11 Q For how long?

12 A From 1984 to the end of '86.

13 Q How long were you actually in the plant every
14 other week; you were in there for the week, every other
15 week?

16 A A whole week, yes. I would come in on Sunday
17 night and leave on Friday.

18 Q Could you tell me what receipt inspections
19 required tensile strength inspecting?

20 A Certainly the bag material, the meal bag, the
21 accessory pack and also the cracker bag.

22 Q The cracker bags and accessories were assembled
23 at Freedom; isn't that correct?

24 A No, the bags were not assembled. The bags were
25 sealed. We received the bags in three sides sealed, and

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1 we --

2 Q These tensile strength requirement came into
3 place on the finished assembly, assembled product?

4 A It was required in the subassembly, but it was
5 also required on the receipt inspection.

6 Q With regard to crackers an accessory packets,
7 when was the tensile strength inspection required?

8 A It was required on our seal, the seal that we
9 placed on the unit after we sealed the bag. We received
10 the bag, both meal bags as well as -- well, I'm not sure
11 about the meal bag. Yes, I think it was an individual
12 bag. But certainly the cracker bag and the accessory
13 bags were bags, empty bags that were sealed on three
14 sides with the top open. And part of our subassembly was
15 it to put components into that, whether it was crackers
16 or whether it was the accessory pack items, and then seal
17 it. And it was that seal that we had to check, so we
18 would -- on incoming we were checking the contractor's
19 seal, the three seals around the received bag, empty, and
20 then when we actually assembled the goods we checked --
21 and sealed the top -- we would then cut the strip from
22 our seal and do a tensile test on it based upon the
23 requirement that was in both the subassembly and the
24 receiving inspection.

25 Q So with regard to receipt inspection into

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1 plant, is it your testimony that you were only required
2 to do tensile strength testing, or you were required to
3 do tensile strength testing on CFM meat entrees; is that
4 correct?

5 A No. Never said anything about CFM meat
6 entrees. The tensile testing was done on our -- I can't
7 really tell you exactly, because I have a whole diagram,
8 a flow diagram of what we did on analyzing each
9 component, and I could very easily show you, it was
10 designed to train the personnel in the necessary tests
11 that were to be performed. And the necessary paper work
12 that needed to be filled out. And that is in a flow
13 diagram, so when we go over to receiving meal bags, it
14 would go through and show us all of the analyses that had
15 to be performed, the count, the condition, the seal
16 strength and all the other things.

17 Q Is tensile strength testing done on unfilled
18 bags?

19 A Yes, absolutely.

20 Q By you, the contractor?

21 A It was a requirement by the contractor, as a
22 receipt inspection of meal bags, of bag material.

23 Q Why would Freedom do tensile strength
24 requirements when everyone else in the industry is
25 relying on COCs?

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1 A I can't answer that. The fact is, we did them.
2 And they were specified to be done with AVI.

3 Q Could you tell me where that's required, either
4 in the spec or anywhere else in the contract?

5 A If you can give me -- can I have the CIS book,
6 or not. Is that in the record?

7 JUDGE JAMES: No, it's not.

8 MR. LACHANSKI: The plant inspection job pages
9 you looked at before is in the record -- the red booklet
10 --

11 THE WITNESS: I have to see something. I can't
12 recall the --

13 BY MS. HALLAM:

14 Q What is the CIS that you're talking about?

15 A The CIS was the contractor inspection system, a
16 written document, that was taken from the documents that
17 were required in the contract and condensed down to a
18 flow diagram with the blessing of Col. LaFontaine and all
19 of the AVIs as a training tool to let people visually see
20 what testing had to be done in a flow pattern to know
21 exactly what we had to do on each component that we
22 received.

23 Q That was something that Freedom put together,
24 or --

25 A Something I put together with -- when I

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1 mentioned before about we were setting up a model plant,
2 this was one of the techniques that I learned over my
3 years of experience in training people, it was much
4 easier to show them a flow diagram, and then this was the
5 form they had to fill out to show where it fit in that
6 analysis so you could train them adequately.

7 Q Do you know where in the specification it
8 requires tensile strength testing for the CFM bags; do
9 you even know what part of the spec even talks about it?

10 A Again, if I can look at my document, I can tell
11 you.

12 Q So no, you can't say sitting here today where
13 it's even addressed?

14 A It's in receiving inspections on meal bags. I
15 didn't make it up.

16 Q I'd like you to look now at M43. You talked
17 about the various substitutions and the impact of the
18 substitutions. Could you give me one example of where a
19 substitution was made, a specific substitution, where the
20 substituted item was larger than the item that it was
21 substituted for?

22 A The beans in tomato sauce was normally in a
23 flat pouch, very flat. The beef stew was a little bit
24 thicker, even though it was in the same outer box. That
25 box could bulge based upon what was in each menu, in the

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1 carton. So the carton for beef stew and the carton for
2 beans and tomato would be essentially the same carton
3 dimension-wise, but if you put beef stew in that carton
4 it could very well bulge out a little bit.

5 When you took those items and placed them in
6 the meal bag with the other items, you had some -- in
7 some cases those meal bags would be wider than others.
8 Not much, but enough.

9 Q Do you know of any specific instances, looking
10 at this chart why the substitution was authorized that
11 required different sized substitutions?

12 A I don't understand the question.

13 Q You're talking about beans; could you give me
14 one instance where beans were substituted for something
15 of a different size?

16 A I couldn't look at the three, six, eight and
17 ten menu before, and I don't know if that contained
18 beans. You asked me to give you an example of what
19 happened as I recall. As I recall, the substitutions,
20 whatever they were, caused that case, the expansion of
21 just slightly the meal bags that we had to put in, caused
22 a difficult time in putting those bags, physically
23 putting them into the case that we was assembled. That's
24 what I recall.

25 Q So you don't recall any times that the

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1 government substituted one product for another and the
2 substituted product was larger than the one that it was
3 being substituted for?

4 A That's what I'm saying.

5 MR. LACHANSKI: Objection.

6 BY MS. HALLAM:

7 Q Were you aware that there was reverse
8 substitutions that went into effect under the contract?

9 A I don't know what you mean by reverse
10 substitutions.

11 Q So I guess you're not aware of the reverse
12 substitution authority?

13 A I'm not sure of the term. I might know of an
14 actual condition, but I don't know what a reverse
15 substitution is.

16 Q Were you aware that if the government said use
17 item A for item B for 30,000 cases, at some later date
18 they would say reverse the substitution and use B for A?

19 MR. LACHANSKI: Objection.

20 MS. HALLAM: On what basis?

21 MR. LACHANSKI: Other than outside the scope?

22 MS. HALLAM: He talked about substitutions. He
23 talked about the problems.

24 MR. LACHANSKI: I understand. My objection
25 still stands.

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1 JUDGE JAMES: I overrule the objection.

2 BY MS. HALLAM:

3 Q Were you aware of that?

4 A There's two instances that I remember on
5 substitutions. One was the entire meal bags, which that
6 problem caused the entire 12 meals to swell just a little
7 bit so that they wouldn't fit in the case. That was one
8 instance.

9 JUDGE JAMES: Well, that's not answering her
10 question. She's talking about reverse substitutions,
11 which she's now defined for you. Do you recall any
12 instances of that, sir?

13 THE WITNESS: Reverse substitutions where you
14 would use a component like grape jelly one time, and then
15 substitute back to -- back and forth?

16 BY MS. HALLAM:

17 Q Right.

18 A Yes. That was done.

19 Q That was done throughout the entire contract
20 period when substitutions were made, wasn't it?

21 A Right, in the interest of keeping the line
22 running, yes.

23 Q And as a result of that reverse substitutions,
24 if you're reversing the substitution that wipes out any
25 impact of not having components at the end of the

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1 contract; isn't that correct?

2 A If you balanced it, yes.

3 Q Do you know of any instances when it wasn't

4 balanced?

5 A I can't recall that.

6 Q Looking again at this thing here, this M43, do

7 you know what menus, bags, meals were GSM entrees and

8 which were CFM entrees?

9 A Not without looking at the list and getting our

10 list of -- I don't remember that detail.

11 Q Do you know if the substitution of menus five,

12 seven, nine and 11 for three, six, eight and ten is

13 actually the government is allowing their GFM to be

14 substituted for CFM?

15 A I don't believe so, because -- substituted for

16 CFM, yes, that's possible. To replace the stored food,

17 entrees.

18 Q There are other suppliers of CFM product that

19 Star was producing, aren't there, or weren't there at

20 that time?

21 A Yes.

22 Q One final question. With regard to the Zyglo

23 testing, would you tell me when Freedom, during the

24 course of the contract, ever notified the government as

25 to any increased cost due to Zyglo testing?

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1 A I can't say specifically what date. I'm

2 assuming that it was brought up to the government, but I

3 don't have any knowledge of that.

4 Q You don't know?

5 A No.

6 Q Are you familiar with the Zyglo, the

7 modification that provided for the Zyglo testing?

8 A To the contract initially, the one that was

9 provided that said you would start looking at these and

10 sending off the samples?

11 Q Right.

12 A Yes.

13 Q And under that modification the contractor was

14 given 90 days to submit costs. Do you know if the

15 contractor ever submitted any costs?

16 A I don't know that.

17 Q Do you know how many samples were actually

18 pulled and sent to any lab for the Zyglo testing?

19 A Any lab? It was specified to be sent to the

20 AVI lab.

21 Q Do you know how many samples were actually

22 pulled under the contract?

23 A Not without the records, no. I have no way of

24 knowing that.

25 Q Do you know if any were sent?

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1 A I don't know.

2 Q With regard to your making light of the

3 government's requirement to have the contractor look at a

4 sample of 200 for holes, isn't it true that ultimately

5 these holes, it was discovered that these holes could be

6 seen with the naked eye, and they stopped the Zyglo

7 testing?

8 A Yes, but in the initial part it took some time,

9 and my company was very instrumental in getting that

10 changed. We made presentations before the senate Armed

11 Forces Committee, and several other people, R&DA

12 Associates. We were sort of leading, and took a position

13 that the contamination did not support, and what they

14 were looking at initially was reviewed as micro-holes,

15 and what ultimately came it was it was in fact holes in

16 the pouches, but it's a much different problem because a

17 hole in a pouch that can allow food to leak and bacteria

18 to get in, you have a natural control feature because

19 this pouch is going to spoil.

20 JUDGE JAMES: Mr. Cabés, what you're telling

21 us, I take it, is that micro-holes suspected became

22 macro-holes in actuality; is that right?

23 THE WITNESS: That's correct.

24 JUDGE JAMES: Next question.

25 BY MS. HALLAM:

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1 Q Do you know if there were any additional, no,

2 never mind.

3 MS. HALLAM: I have no further questions.

4 JUDGE JAMES: Any redirect by the appellant?

5 MR. LACHANSKI: One question, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. LACHANSKI:

8 Q Mr. Cabes, with respect to those plant visit

9 reports Ms. Hallam had you look at, a plant visit report

10 the week before the one you and I had reviewed together,

11 based on your review of those two plant visit reports do

12 you recall whether the conference call that you

13 participated in a week later was for purposes of

14 clarifying the position that was taken the week before

15 regarding who was going to be charged for those crackers?

16 A I think it was. I was in the meeting, but I

17 don't remember exact details, that was a while ago.

18 MR. LACHANSKI: That's all I have.

19 JUDGE JAMES: Anything further?

20 RECROSS EXAMINATION

21 BY MS. HALLAM:

22 Q Show me where on that October 24th plant visit

23 report it says anything about the government absorbing

24 the cost of it, of the crackers. Silent, isn't it, as to

25 who is going to be financially responsible?

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1 A Without reading the whole document, probably
 2 yes, it's silent. It was implied, I think.
 3 MS. HALLAM: No further questions.
 4 JUDGE JAMES: Thank you ever so much, Mr.
 5 Cabes, for your testimony. You may step down. Appellant
 6 have any further witness you want to call?
 7 MR. LACHANSKI: No, Your Honor.
 8 JUDGE JAMES: Does the government have any
 9 surrebuttal testimony you want to adduce?
 10 MS. HALLAM: Yes, Frank Bankof.
 11 JUDGE JAMES: Mr. Bankof, please take the
 12 stand. Remember you're already under oath.
 13 THE WITNESS: Yes, sir.
 14 Whereupon,
 15 FRANK BANKOF,
 16 a witness, was recalled by counsel on behalf of the
 17 Government, and having been previously duly sworn by the
 18 Administrative Judge, was examined and testified further
 19 as follows:
 20 DIRECT EXAMINATION
 21 BY MS. HALLAM:
 22 Q This is FT, I believe it was marked 450.
 23 A Yes.
 24 Q Did you have a chance to look at those DD250s?
 25 A Yes, briefly, but yes.

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1 Q I don't have a copy of them here, so I'll just
 2 ask you, what is your understanding of the impact on
 3 those shipments out of Freedom's plant on Freedom?
 4 A My understanding is they would have no impact.
 5 First of all, the company shut down for all intents and
 6 purposes on 6 November. It certainly never came back up
 7 again for final assembly. It looks like the first
 8 shipments out of here are 17 November, almost two weeks
 9 after the shutdown, and it looks to be an expedited
 10 delivery of jellies to SYNPA. It also looks to be a one
 11 day delivery, ships out the 17th and is basically
 12 received it looks like on the 18th.
 13 The other deliveries are again, some in January
 14 '87, some in February '87, and then the rest of course in
 15 March and April when the plant was getting shut down and
 16 we had to go in and get our stuff out.
 17 Again, as far as I can tell this is only after
 18 the plant is shut down or production is stopped. We
 19 expedited shipments out, and as I said before, had
 20 Freedom ever indicated its ability to get back up again,
 21 we would have, just like we did an expedited shipment
 22 out, we would have done an expedited shipment in from the
 23 other assemblers.
 24 I really think at this point that in late
 25 November, and as January came in and February, it was

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1 almost that Freedom did not at that time get the MRE-7
 2 and we didn't know if it was going to get back up.
 3 Q Do you know when the electricity was turned off
 4 at Freedom?
 5 A I'm not sure.
 6 Q You said you could get them from other
 7 assemblers. Weren't the other assemblers gearing up for
 8 MRE-7, or already started MRE-7?
 9 A The other assemblers, at 17 November '86 they
 10 were probably finishing MRE-6. It's even possible that
 11 at the end of 7 January they could have been finishing
 12 MRE-6. It's just as possible that in fact this shipment
 13 314 of accessory pack components that went could have
 14 been for the start of MRE-7 accessory packets, or it
 15 could have been to finish MRE-6.
 16 But the point is that in November, certainly by
 17 January '87, the industry was in a get-well position,
 18 inventories were starting to build up for MRE-7 and just
 19 as I said on direct, had Freedom needed components,
 20 whether we got them there a day before they needed them
 21 or two days or a week, we would have had them there
 22 before they needed them.
 23 Q Was there an issue with the MRE-5, or I'm
 24 sorry, MRE-6 configuration; was that any different than,
 25 were there any differences between the MRE-6 and 7

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1 configurations?
 2 A No. Regarding most of these shipments, the
 3 jellies, the crackers, the spreads, the fruit mix,
 4 dehydrated -- I don't know if we had fruit mix dehydrated
 5 in MRE-7. Certainly I know we had them in MRE-6. So no,
 6 the components were the same. We could have brought
 7 MRE-7 components back in for use for the MRE-6.
 8 As you can also see on shipment 315, the
 9 products that went out were the eight-ounce entrees. So
 10 again, we had eight-ounce entrees in there to originally
 11 complete the rest of the 114,000 cases.
 12 Q One more time with this tensile strength
 13 testing. Do you know if the spec requires tensile
 14 strength testing for the empty GFM bags?
 15 A It does not. The spec that Mr. Cabes was
 16 referring to would have been the assembly specification.
 17 That would detail what the CFM items, other than the
 18 retort pouches -- the requirement for cracker bags and
 19 accessory bags is located in the assembly document, mill
 20 M44074. There is a requirement for the configuration of
 21 cracker bags and accessory bags, and again we talked
 22 about so much polyethylene, so much aluminum, so much
 23 polyester or polypropylene and so forth. There are even
 24 requirements for the performance and characteristics of
 25 that material.

1 But no where -- it's a design specification,
2 it's not a performance specification. No where in there
3 does it require that the bag once formed to spec has to
4 seal to this much weight, and again, nobody that I know
5 was doing any kind of receipt inspections other than
6 again, count, condition, identity on accessory bags and
7 cracker bags. And Freedom was getting the bags from the
8 same manufacturers as everybody else. Everybody was
9 using the COC.

10 If Mr. Caves actually performed tensile
11 strength testing --

12 MR. LACHANSKI: Objection. I think we're
13 beyond the scope of the question at this point.

14 JUDGE JAMES: Objection's sustained.

15 BY MS. HALLAM:

16 Q I'd like to talk to you about the problem with
17 the rejections. We'd earlier talked about the lengths
18 you went through to get these cases accepted through
19 NADAQ and whatnot. Could you tell me in this time period
20 after you had come on board and you were trying to get
21 waivers or whatnot, did anyone from Freedom ever approach
22 you and tell you that they thought those cases were
23 improperly rejected because of bad calls?

24 A No, my recollection --

25 Q Or invalid calls?

1 A No. My recollections were Freedom didn't ask
2 for reinspections, whatever. Freedom understood, we all
3 understood we had defective product here, and in fact I
4 tried to, other than the inspection issue of where it was
5 going to be inspected, Freedom didn't even, you know,
6 seem that distraught. I felt more distraught --

7 MR. LACHANSKI: Objection, Your Honor, move to
8 strike the last part of the testimony. He answered the
9 question, you know, and now we're getting beyond the
10 scope of the question.

11 JUDGE JAMES: Granted, stricken. Go ahead.

12 THE WITNESS: I don't know how to answer this.
13 You're asking me a question --

14 JUDGE JAMES: Please, Mr. Bankof, wait till you
15 get a question from your attorney.

16 BY MS. HALLAM:

17 Q My question was, did anyone at Freedom ever
18 approach you and let you know that they felt that these
19 cases were improperly rejected in the first instance?

20 A I don't believe so, no.

21 Q Well, would you remember if someone had?

22 A I think we probably, given that time, would
23 have done everything we could to authorize reinspections.
24 My emphasis as I recall was trying to get the cases
25 accepted. Price adjustment or without, but I wanted the

1 cases to get accepted. I mean like I said on direct --

2 MR. LACHANSKI: Objection.

3 JUDGE JAMES: Sustained. Next question.

4 MS. HALLAM: No more questions, Your Honor.

5 JUDGE JAMES: Cross?

6 MR. LACHANSKI: Yes, just a few questions, Your
7 Honor.

8 CROSS EXAMINATION

9 BY MR. LACHANSKI:

10 Q Mr. Bankof, at the time that you were
11 authorizing the shipment, referring to FT-450, at the
12 time you were authorizing the shipment of GFM out of the
13 Freedom plant, you had not yet terminated the contract,
14 had you?

15 A No.

16 Q Indeed, whether -- Freedom had shown signs of
17 life as you describe it, after this point, didn't they?
18 Indeed they made efforts to assemble cases after the time
19 of your shipment of GFM out of their plant, didn't they?

20 A Not that I know of.

21 Q Isn't it true that they indeed in January of
22 1987 began to assemble cases again with what they had?

23 A I think they started up on cracker and
24 accessory subassemblies.

25 Q Now, isn't it true that by shipping out this

1 GFM that before this contract was terminated that this
2 certainly assured that Freedom would not be able to
3 assemble cases with that GFM that was in-house at that
4 time?

5 A No.

6 Q By taking this GFM out of their inventory and
7 not having it on hand, did that not impede Freedom's
8 ability to assemble cases at that time?

9 A No.

10 Q Isn't it true, Mr. Bankof, that with respect to
11 the remaining cases to be assembled by Freedom that you
12 had not actually purchased all of the GFM necessary for
13 them to assemble the remaining cases as of this time,
14 October --

15 A I've already said I don't know that to be the
16 case.

17 Q You don't remember one way or the other?

18 A I don't know that to be the case. All I know
19 is that I had enough components on hand at the facilities
20 to complete that contract.

21 Q In other words, that would have meant pulling
22 components from other places to give it to Freedom?

23 A Very possibly.

24 Q But you don't remember as you sit here today
25 that you actually had secured access to GFM components

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1 sufficient for Freedom to complete these cases; isn't
2 that right?

3 A I've already said that.

4 Q So that's true?

5 A As far as knowing whether or not exactly what
6 was on contract, I don't know.

7 Q I'm sorry, I missed a reference when you were
8 referring to tensile strength testing; which mill spec
9 were you referring to?

10 A Mill M, the assembly spec.

11 Q You referenced a specific spec, M --

12 A 44074.

13 Q And where is that mill spec found?

14 A Where is that mill spec found? It's referenced
15 in the contract. It is the assembly spec. It's the MRE
16 assembly specification.

17 Q Now, to the extent that Freedom would have
18 developed -- do you agree that a contract inspection
19 system is called for in the specifications as well?

20 A Absolutely.

21 Q And a plan for inspection job is also called
22 for under this contract?

23 A Yes.

24 Q And to the extent that Freedom developed -- it
25 was appropriate for Freedom to develop the plan for

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1 inspection job with AVI, correct?

2 A Yes.

3 Q That was called for under the contract?

4 A Yes.

5 Q And to the extent that Freedom would have
6 performed any -- failed to perform any inspections
7 provided for in the plan for inspection job, that would
8 have been a basis for AVI to reject Freedom's components,
9 correct?

10 A No.

11 Q If the agreement between AVI and Freedom as to
12 how the inspection was going to be performed, it's your
13 testimony that Freedom could disregard that agreement and
14 not risk any rejection by AVI?

15 A Yes.

16 Q Mr. Bankof, you testified about what Freedom
17 told you or didn't tell you about these 31,000 cases.
18 You don't recall precisely what Freedom talked to you
19 about at that time, do you? You don't recall it
20 precisely, do you?

21 A Exactly?

22 Q Yes.

23 A Of course not.

24 Q And you don't recall one way or the other for
25 sure whether Freedom did talk to you about the specific

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1 defects that AVI was noting, do you?

2 A Yeah, we talked about the defects.

3 Q You don't recall for sure whether Freedom
4 pointed out to you that they believed AVI was imposing a
5 higher standard than was appropriate?

6 A I don't remember that at all. I would say no,
7 they didn't.

8 Q You would say, but you don't recall for sure
9 one way or the other; it's possible that Freedom did talk
10 to you about it, it's possible they didn't. But you
11 don't recall one way or the other for sure whether they
12 did; isn't that right?

13 A Today, looking back 15 years, I can only for
14 the most part --

15 Q Surmise.

16 A Well, talk about what my feeling was from the
17 discussion.

18 Q Right, and what probably happened, what might
19 have happened, but you can't testify from memory with
20 certainty that Freedom did not approach you at that time,
21 October through December of 1986, to complain about the
22 standard being applied to them as being too high or
23 inappropriate; isn't that right?

24 A Did you say December?

25 Q October through December of 1985. If I said

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1 '86, I apologize. October through December.

2 A I can't testify to any sentence that, or one
3 minute of conversation that I might have had with
4 anybody.

5 Q So you don't recall for sure?

6 A Of course not.

7 MR. LACHANSKI: That's all I have.

8 JUDGE JAMES: Any redirect?

9 MS. HALLAM: No, Your Honor.

10 JUDGE JAMES: Thank you ever so much, Mr.

11 Bankof, for your testimony. You may step down from the
12 witness stand. Does the government have any further
13 evidence to adduce?

14 MS. HALLAM: No, Your Honor.

15 JUDGE JAMES: All right, let's go off the
16 record briefly.

17 (Off the record.)

18 JUDGE JAMES: Let the record reflect that while
19 off the record, the parties discussed with the board two
20 subjects; documents and exhibits received in evidence, as
21 to which the board recited what it perceived were in
22 evidence and which ones had been rejected from evidence,
23 as to which the parties were in agreement with the board
24 as to what was recited, and I'm not going to recite it
25 all over again.

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1 The second topic was briefs, and the parties
 2 propose and the board agrees that we'll have sequential
 3 briefs, and what we mean by that is, that at some point
 4 the court reporter will send the transcripts, a copy to
 5 the board, duplicate copy to the government, which we
 6 will then send out to the government, by a little board
 7 letter which will say the transcripts have been received,
 8 the parties are to submit their post-hearing briefs as
 9 decided at the conclusion of the hearing.

10 When you see that document, then you, the
 11 appellant, will take that document, note its date and add
 12 90 calendar days to that. That will give you the end
 13 date by which you are to submit your post-hearing brief.

14 Once the government gives a little one sentence
 15 note that says yes, you've received the appellant's
 16 brief, then you the government will have 60 calendar days
 17 after you receive that appellant's brief to submit the
 18 government's brief. Then once the government's brief has
 19 been submitted and you, the appellant, have received it,
 20 if either party wishes then you may submit reply briefs,
 21 and appellant's reply brief would be due 30 days after
 22 receiving the government's brief, and then the
 23 government's reply brief if any would be due 30 days
 24 after she has received appellant's reply brief.

25 We've decided there would be no page limits on

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1 the briefs, and that's about it, so far as I recall, as
 2 our summary of what the briefing discussion was.

3 Does either party have any further matters to
 4 bring up for this proceeding?

5 MR. LACHANSKI: Only to confirm, Your Honor,
 6 that my objection from earlier today regarding the
 7 closing of the record is still in existence, and that
 8 there's no need to renew it, or rather that it's still --

9 JUDGE JAMES: I've ruled that as of right now
 10 the record is closed. No more facts are going to be
 11 introduced into the record. And I'm aware that you had
 12 requested subpoenas, and I signed a subpoena on Friday,
 13 May 12th, just before leaving for Brooklyn. And so far
 14 you have apparently not received any documents as a
 15 result of that subpoena. If you're still desirous of
 16 receiving them, so be it. But I'm closing the record as
 17 of right now, and my basic reason for closing the record
 18 is that I believe your document gathering attempt was
 19 greatly belated.

20 Anything further from the government?

21 MS. HALLAM: No, Your Honor.

22 JUDGE JAMES: Nothing further from the
 23 appellant?

24 MR. LACHANSKI: No, Your Honor.

25 JUDGE JAMES: Then we're off the record, we're

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1 closed, we're adjourned for the day and for this appeal.
 2 I appreciate your cooperation one with the other, and I
 3 have noted throughout, Brooklyn and Falls Church, that
 4 you have been very cooperative one with the other,
 5 notwithstanding championing your client's interest of
 6 course, but you have shown professional courtesy and I
 7 appreciate that.

8 (Whereupon, at 1:33, p.m., the hearing was
 9 concluded.)

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CERTIFICATION OF TRANSCRIPT

1 This is to certify that the attached
 2 proceedings before Administrative Judge DAVID W. JAMES,
 3 Department of Defense, Armed Services Board of Contract
 4 Appeals, in the matter of FREEDOM NY, INC., at Brooklyn,
 5 New York, on Thursday, June 1, 2000 were had as therein
 6 appears, and that this is the original transcript thereof
 7 for the files of the Department of Defense.

8 We, the undersigned, do hereby certify that
 9 this is a true, accurate and complete transcript prepared
 10 from the tape made by electronic recording by B. Charles
 11 Hopchas, Official Reporter, on the aforementioned date,
 12 and have verified the accuracy of the transcript by
 13 comparing the typewritten transcript against the verbal
 14 recording.

15 Date: 7/24/00

16 _____
 17 Transcriber

18 _____
 19 Proofreader