

Day 5

FREEDOM NY

Condenselt™

Friday, May 19, 2000

Page 884

BEFORE THE  
ARMED SERVICES BOARD OF CONTRACT APPEALS

In the Matter of: )  
Appeal of: ) ASBCA No. 43965  
FREEDOM NY, INC. )  
Contract No. )  
DLA138-85-C-0591 )

Kings County Criminal Court Building  
120 Schermerhorn Street  
Brooklyn, New York

Friday, May 19, 2000  
9:00 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

Page 886

PROCEEDINGS

(9:00 a.m.)

JUDGE JAMES: Let the record reflect that this date five in the hearings of Freedom NY, Inc., under ASBCA docket number 43965. Appellant have a witness you want to call?

MR. STEIGER: Yes. We call Mr. Martin Bernstein.

JUDGE JAMES: okay. Mr. Bernstein, would you rise please.

Whereupon,

MARTIN J. BERNSTEIN,

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

JUDGE JAMES: What I'd like you to do, Sir, is state for the record your full name, spell your last name, and give us your address.

THE WITNESS: Martin J. Bernstein.  
B-e-r-n-s-t-e-i-n. 1514 Howell, H-o-w-e-l-l, Road,  
Valley Stream, New York, 11580-1331.

JUDGE JAMES: Thank you.

MR. STEIGER: Your Honor, we are presenting Mr. Bernstein to you as an expert witness. And with your permission what we would like to do is hand out a few aides to assist in understanding his testimony. These

Page 885

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
MARTIN J. BERNSTEIN				

E X H I B I T S

Number	Identified	Received
NONE		

Page 887

are not being offered as trial exhibits or anything like that. But simply to help follow along with what he is saying in his testimony. Would that be all right?

JUDGE JAMES: Hand them out.

THE WITNESS: You have to give me my copy.

MR. STEIGER: Yes. I will. Thank you.

DIRECT EXAMINATION

BY MR. STEIGER:

Q Mr. Bernstein, are you currently -- what is your current occupation, Mr. Bernstein?

A Retired.

Q And in your former unretired life, would you describe for us what positions and occupations you held.

A All right. I graduated college in '56, 1956. So I started to work in 1956. I essentially worked up to four years ago. As various positions in management and starting industrial engineering, manufacturing engineering. The biggest part of my career was at a company in College Point, New York. Called Edo Corporation. I was there from 1960 to 1964. And I left as manager of industrial engineering. I was responsible for all manufacturing estimating for the company.

Q Mr. Bernstein, I don't remember you saying. Do you have a degree in industrial engineering?

A I have a bachelor's in industrial engineering.

Page 888

1 I also have a bachelor's in electrical engineering which  
2 Edo Corporation helped pay for nine years later.  
3 Originally, they did mostly sonar equipment and, you  
4 know, they did more electrical stuff. Edo Corporation is  
5 known, you know, for their floats they use to fly in  
6 airplanes. In later years they got more and more, you  
7 know, mechanically involved. But anyway, I had those two  
8 degrees from NYU.

9 Q Mr. Bernstein, in preparation for your  
10 testimony and being on the stand, did you review any  
11 documents or any other things or did you speak to  
12 anybody? Tell us how you prepared for this presentation.

13 A There were numerous things. The most helpful  
14 thing to me is that a video tape, I believe, in August  
15 and December of 1985. It's a two-hour tape which three  
16 quarters of the tape doesn't relate to the manufacturer.  
17 I have seen the tape at least six times. I have watched  
18 the tape with Henry Thomas. Along with that I was given  
19 numerous documents. The proposals that went in,  
20 background papers of why this thing is going on. The  
21 problems, you know, that were documented from the being  
22 from the progress reports and money, you know, all those  
23 issues. I saw but I don't know if I mentioned the IS  
24 reports.

25 Q Is? What is it?

Page 889

1 A Industrial Specialist Reports there. I believe  
2 that's in the records or something. There's 120 pages.  
3 I saw bits of the equipment. I was able to ask questions  
4 of Brian Freck and Henry Thomas as far as what I saw in  
5 the tape. How I interpreted it. Looking at all the  
6 documents, questions there -- that I didn't quite  
7 understand or didn't make sense to me.

8 Q Just for the record, Mr. Freck was not present  
9 at the time this video.

10 A That's correct. But he had, you know, he had  
11 some further background information.

12 Q Whatever. Please just answer the question.  
13 Okay. Now let me ask you this. In connection with the  
14 operation, did you look at and examine the end item  
15 itself?

16 A I examine -- yes.

17 Q In your past experience with Edo and perhaps  
18 other jobs that you had, did you assume any  
19 responsibilities or overview with respect to assembly  
20 operations?

21 A Yes.

22 Q Could you give me an idea of what those  
23 assembly operations were?

24 A This is a conveyORIZED assembly operations --

25 Q I'm talking about your experience.

Page 890

1 A At Edo Corporation we used to do that type of  
2 work. Of assembly work. One passing what one did to the  
3 next person. You know. It's like the conveyor line  
4 thing. I worked at Signatone where they made electronic  
5 tube using the same type of manufacturing, you know,  
6 conveyor belts and sealing exhaust machines. I've seen  
7 those types of machines. In fact, that this past summer  
8 as a tourist you go out in Florida and they -- the sugar  
9 field and the rice field, you know, they grow them and  
10 eventually they package them into -- into sugar and into  
11 rice. This operation was strictly assembly. One  
12 operation going into the next. And what it requires is a  
13 lot of line balancing. Having the right people at the  
14 right time at the right place.

15 Q Thank you. Would you say that in your  
16 oversight, overview, observations over the years in your  
17 professional capacity of assembly operations that they  
18 bore familiarity with what you understood the assembly  
19 operation was on this particular contract?

20 A Yes.

21 Q Mr. Bernstein, can you quickly describe your  
22 understanding of the end item. What is it?

23 A The end item is 12 meal packages in a closed  
24 container that is given to soldiers in time of battle.  
25 And it's sealed meal packages. Not only did I see the

Page 891

1 item in the film but I also saw, a couple of weeks ago, a  
2 sample of the box. A sample of the meal bags. We opened  
3 one or two of the meal bags and I saw how the internal  
4 things were packaged. I saw how the cracker assembly  
5 vacuum looked like. I saw how the accessory -- we opened  
6 those bags and so, I mean, I actually, physically saw --  
7 actually physically saw the crackers. Everything, I  
8 think there's 168, well, there's 168 items used  
9 throughout the job. There are certainly a lot of  
10 duplicates. So, you know, I'm making a judgment because  
11 they didn't -- there's 80 and 90 different items that  
12 they bought. It was strictly buying things. I know the  
13 Government supplied an enormous amount of the building  
14 material for the, you know, for them. So there was  
15 Government furnished equipment and there was customer  
16 furnished equipment. But each thing came down to where a  
17 bag even had chewing gum. They even had toilet paper. I  
18 certainly physically have seen the items. I've never  
19 seen toilet paper quite that small and they even had  
20 matches in the thing. But I actually -- I know about the  
21 corrugated boxes. Was a very heavy duty box, 350 weight.  
22 Which is, you know, a very strong box. So I saw it two  
23 ways. And I'm glad I saw it physically, too.

24 JUDGE JAMES: Before we proceed. You testified  
25 that you worked for Edo Corporation from 1960 to 1964.

1 THE WITNESS: No. '94.

2 JUDGE JAMES: That's what I wanted to have you  
3 correct?

4 THE WITNESS: Oh, I'm sorry.

5 JUDGE JAMES: You meant '94.

6 BY MR. STEIGER:

7 Q Mr. Bernstein, would you then from what you  
8 have observed and what you looked at in preparing for  
9 this testimony, would you say that you are familiar with  
10 and knowledgeable of the manufacturing and production  
11 process which a company would likely utilize to produce  
12 this kind of an item?

13 A Yes.

14 Q And could you describe that process in some  
15 detail?

16 A Yes. I can. It would be helpful now to take  
17 out some of the charts.

18 Q The charts are all numbered.

19 A Yes. Okay. I would take out the one marked  
20 "A." I would take out the one marked "B" and I would  
21 take the one marked "C." "A" and "B" together I think  
22 will sort of do it.

23 The "B" sheet is nothing more than a summary of  
24 this chart. Whom should I point the chart to when I  
25 talk?

1 Q Everyone has the chart.

2 A Okay.

3 Q So you can just talk to it.

4 A Okay. This is a flow line assembly. There's a  
5 legend on the right-hand side. Cracker assemblies and  
6 accessories packs. The accessory packs, you could not  
7 assemble any meal unless you had the crackers, unless you  
8 had the accessory packs. More complicated the accessory  
9 packs -- there were five different configurations. And  
10 they went into C-1 for instance which is a meal plan.  
11 There were 13 meal plans. I know 12 but the 12 -- there  
12 was a 12-A and 12-B. And there's, you know, an itemized  
13 list of the Government furnished material, food,  
14 basically, that went into each one. And then before you  
15 -- so before you could assemble a C-1 meal, you had to  
16 have the "D" configuration with the accessory pack and  
17 you had to have crackers. And that in turn only went to  
18 the C-1 meal package. Meal package number 1. When you  
19 had all 12 or 12 1/2 meals done. Always 12 would be an  
20 end item. The last meal, meal number 12, was split  
21 between two different things.

22 They then could be final assembled. And that  
23 meant taking the individual meals and putting them in  
24 bags and sealing the bag. And putting a sleeve on and  
25 then bring it over to a pallet where it was capped and

1 strapped. Which is pallet assembly. So you really could  
2 not do either "D" or "E," the final box assembly or the  
3 pallet assembly until, in fact, you had the boxes done.

4 And so going to the chart "B," I'm just

5 summarizing it. As simple as these operations were you  
6 had constraints. Twenty-one different production  
7 assembly lines. Of which there were 160 items to be  
8 packaged which I mentioned before. There was one cracker  
9 assembly which is "A" in the legend. Five accessory  
10 packs which I called "B-a" through "B-e." There were 13  
11 meal, menu assemblies recognizing that 12 went in the  
12 box. And there was only one box assembly. All these  
13 menus or meals, you know, I'm switching words, were put  
14 in the box and sealed. Then it became a box and when you  
15 put the sleeve on and then you put straps on the  
16 individual box. Then it certainly was, you know, an end  
17 item that we ship by, I think, 44, I forget the exact  
18 amount on the pallet. So this chart "B" summarizes this  
19 flow chart.

20 I just wanted, again, to point out because on  
21 this job, I call it production line constraints. Which  
22 are enormous if it happens at the wrong time. Without  
23 crackers and accessory assemblies no other production  
24 line could be run. In other words, if you're out of  
25 crackers for the menu line, you can't do anything. It's

1 dead. It's a major, major plant disruption. You can't  
2 do it just in time. You can't have crackers ready for  
3 today's production, you got to be way ahead with the  
4 crackers. Without all menus, no final box assembly could  
5 be done. That's a major plant disruption, major.

6 However, I do say when it came to if you were  
7 out of a particular meal there were inefficient methods  
8 where you could so some production. If it turned out you  
9 were out of three or four menu lines it would then start  
10 to be a major proportions.

11 Q If I may interrupt you a second just to  
12 follow-up on that point, Mr. Bernstein. If in fact the  
13 Government decided that it didn't have a particular item  
14 and tried to get some kind of a substitute, could that  
15 have any major impact or disruption effect?

16 A Yes.

17 Q Would you describe how --

18 A If one meal of the 12 that were running, they  
19 were out of an item, you could still run the lines.  
20 Instead of going to final assembly you would have to take  
21 the other 11 meals and put them in large crates. You  
22 would have a very inefficient operation but you could  
23 manage. It would be very difficult because ultimately  
24 you would have to eventually get that one meal in and  
25 then you would have run that through the line then you

Page 896

1 would have to stop everything and start the final  
2 assembly. So in itself being out of one meal, let's say  
3 it was a 20 percent disaster, being out of two meal  
4 things at 30, if you were out of 4 or 5 it's almost like  
5 shutting down the line. And you're talking about an  
6 enormous amount of people, here and, you know, is major,  
7 with this type of line balancing.

8 Q Thank you. May I go on please? Are you  
9 familiar with the equipment that Freedom was planning on  
10 utilizing for the performance of this contract?

11 A Yes.

12 Q And what is the source of that familiarity?

13 A I actually saw purchase orders and the orders  
14 to buy them. I saw in the Industrial Specialist Reports  
15 references to the equipment that he was going to buy and  
16 utilize. And so, there was, you know, that was certainly  
17 my source.

18 Q Would you give us -- tell us an overview of the  
19 various pieces of equipment that they intended to buy and  
20 use on this job and how they would be used?

21 A Yes. It falls into four or five categories of  
22 equipment they were going to use. The most dramatic  
23 equipment they would use was a Koch Ray-O-Vac. That  
24 equipment then I'll just summarize all five equipments  
25 and then, you know, I'll get into the Ray-o-Vac which I

Page 897

1 have some charts.

2 This was a one machine process that would  
3 eliminate 10 or 12 little hand sealers and various other  
4 people. It would have dramatically and then I'll go over  
5 explaining that machine. It was a dramatic change in the  
6 methodology that had to be used. As far as the meal  
7 line, the line that there are 12 or 13, they were planing  
8 on a Do-Boy. A more, a bigger and sturdier piece of  
9 equipment that they had. The line -- the production line  
10 is a result of what they were using had to be run much  
11 slower because they had to worry about the heat and they  
12 couldn't continuously feed the sealing machine. So in  
13 itself they would have been a speed up of 50 to 100  
14 percent. As far as -- they bought a piece of Mark  
15 equipment that made the box -- the bottom of the box and  
16 sealed it. At some point when the boxes were filled the  
17 other part of the machine -- another machine would seal  
18 the top and glue it. The trouble with --

19 Q Excuse me, excuse me. Are we talking about  
20 what's plan --

21 A Well, no what I -- the machine that they were  
22 going to use was stronger, more sturdy machine then they  
23 had. The machine they bought -- they were going to buy  
24 an International Paper machine. It could handle 350  
25 boxes far better and easier than the machine they had.

Page 898

1 The machine they had was not sturdy enough and strong  
2 enough to handle the job. It was constant breakdowns  
3 with it. But -- so they were going to buy an  
4 International Paper one. As far as other equipment there  
5 were little subtleties of equipment. They had an  
6 automatic strapper.

7 Q I mean -- I believe you're confusing --

8 A No. No. I know what they had. I noticed what  
9 they were going to buy.

10 Q Excuse me, excuse me. Let me retrace here  
11 because there seems to be a little confusion. The  
12 question I asked you was, what did they intend to buy and  
13 how did they intend to use that equipment? Maybe I  
14 didn't make the question clear.

15 A No. I understand the question. I guess I  
16 should start a different -- way. I have chart number  
17 "D," "E," and "F." The Koch Multivac 5100 was going to  
18 be used both in the cracker assembly, was going to be  
19 used, it was not used. Was going to be used. Used --  
20 but it been used both in the cracker assembly and the  
21 assembly kit assembly line. Two machines. This similar  
22 machine -- the same machine but the dies that make the  
23 individual packets for the machine would have been  
24 different because the accessory packs had different  
25 packet sizes. And the crackers had different sizes. So

Page 899

1 when it came to the accessory packs they had to buy not  
2 along -- not only with the machine, they had to buy like  
3 five die sets. That would make the particular packets of  
4 the machine. When it came to the cracker assembly all  
5 they needed is one die set because it -- each cracker was  
6 constant throughout the job when you put the two crackers  
7 in.

8 Now the advantages on "E." You would reduce  
9 the assembly time by 70 percent. Now I have to just  
10 mention what they were doing and then compare it very  
11 quickly to what they were going to do. Someone had to  
12 pick up a bag and sometimes had trouble opening it. And  
13 then they would have to put two crackers, get two  
14 crackers, get them into the bag, and passed along a  
15 vertical conveyor belt. Someone then had to pick up that  
16 and there was a very little sealing machine and they  
17 would put it in and they would seal it. And the way the  
18 Koch machine would have worked, theoretically, 15 cycles  
19 a minute, 9 at a time, 135 a minute. Now you would have  
20 had -- they bought a large area for loading so they may  
21 of needed four or five or six girls, operators, on both  
22 sides of the machines. But now the girl with both hands  
23 could pick up crackers and load two at a time. And not  
24 only that, they would just have to drop them into the  
25 pockets. There was no bag, no parts. Other than the

1 Government's supplied crackers and the foil that made up  
2 the bottom of the base that the Koch machine formed.  
3 After it was loaded, the machine automatically put the  
4 top part. Then the machine would actually cut the three  
5 by three into slitted, vertically, and slitted  
6 horizontally and it would go into the -- into a tote box  
7 or a conveyor belt. So no -- so you would eliminate 10  
8 to 12 small vacuum sealing machines right away.

9 Q Would these be key machines that were intended  
10 to be used in the operation?

11 A This is the Koch, the key one.

12 Q Is that one you mentioned as Do-Boy? Or is  
13 that a separate one?

14 A No. That's a Koch.

15 Q There's a Koch and there was a Do-Boy.

16 A Yes. I'll get to the Do-Boy.

17 Q Okay. I'm sorry. So that was the Koch?

18 A Yes. Which, again, with both -- even though  
19 they were different machines, you know, it cost like 150,  
20 175 thousand dollars. They were the same machines with  
21 different dies. So you couldn't interchange them from  
22 one line to the other unless you changed the die. And  
23 you would have certainly needed two machines. You could  
24 not have probably done it with one machine by changing  
25 these dies because on the bottom of that sheet, using

1 that nine cycles it could produce 1.2 million assemblies  
2 a month on a one shift basis that machine but I don't  
3 think it could have handled both productions. You know,  
4 unless you would have worked a second shift.

5 Q Now what about the Do-Boy?

6 A Well, okay. The Do-Boy, they had on their line  
7 the equivalent of a band sealer. There was like a baby  
8 Do-Boy. The Do-Boy they were buying had more heating and  
9 cooling and it was more meant for a continuous flow.  
10 They had to run like the machine that they had like at  
11 150 inches a minute while the other one they could run it  
12 350. So if you look at the film and you see how fast the  
13 line was running through the meals and that it could  
14 really -- people were, like, half the time idle. If they  
15 would have had a more sturdy machine that could handle a  
16 higher capacity you would be able to, you know, certainly  
17 speed up the line almost twice.

18 Now if you take the Do-Boy, you take the Koch  
19 machine, you're talking probably around 70, 75 percent of  
20 the production of the place. Now as far as the  
21 International packing, making the box and then sealing  
22 the box, that machine would have -- I forgot the exact  
23 amount. I think it was 40 boxes a minute or I just don't  
24 remember the exact amount. It would have certainly  
25 faster but the issue with the boxes to a large degree was

1 the constant rework and the sturdiness of the machine in  
2 breaking down all the time.

3 Q Is this the machine they ended up using?

4 A No. The machine they would have bought, the  
5 International one, would have been a more sturdy machine.  
6 Probably at a little faster capacity.

7 Q So I take it you're saying that they had  
8 planned on using this International machine.

9 A Yes. And they had a purchase order and they  
10 planned to buy it.

11 Q And they ended up having to use something else.

12 A I believe a Mark machine.

13 Q They also ended up having to provide and use  
14 substitutes for the Do-Boy and Koch machines?

15 A They had to use small band sealers. That's  
16 what they actually used.

17 Q And, if I understood you, you said that or you  
18 were testifying that these had a negative effect on their  
19 productivity?

20 A Yes.

21 Q Now let me ask you this, as far as labor is  
22 concerned, production worker. By not being able to use  
23 this equipment that you indicated they planned to use,  
24 did it have any impact on the number of production  
25 workers that were needed ultimately in the operation?

1 A Yes. On two accounts. First account, the  
2 equipment wasn't efficient. They had to run the lines  
3 slower. And two, there was such a late start and problem  
4 with the job that he never could catch up and he used to  
5 throw extra people into the line and, you know, it's just  
6 inefficient. You have too many people over certain areas  
7 it's not conducive.

8 Q But as far the use of the substituted or  
9 machines and equipment they used, did that in of itself  
10 ultimately require additional labors?

11 A Yes.

12 Q How about the length of time to preform the  
13 various operations? I know you, you -- you did talk to  
14 that a little bit but can you estimate with a little more  
15 specificity how much longer the operation, the various  
16 operations may of taken by virtue of the fact that they  
17 had to use substituted equipment?

18 A The best example --

19 JUDGE JAMES: I'd like to stop before we get  
20 into his estimate. Because what I perceive you're doing  
21 is you're asking the witness not only what he saw or what  
22 he studied, what he reviewed, and a bit of his past  
23 history, now you're beginning to ask for estimates and  
24 opinion.

25 MR. STEIGER: Yes. I am. I am. I'm sorry. I

Page 904

Page 906

1 should of said that.

2 JUDGE JAMES: And I understand why. Because  
3 you've brought him as an expert.

4 MR. STEIGER: Yes. You're absolutely right,  
5 your Honor.

6 JUDGE JAMES: But I think at this point -- I  
7 think at this point we ought to give the Government an  
8 opportunity if it wishes to express its views on the  
9 expertise of the witness and/or void dire the witness.  
10 Whatever you please.

11 MR. STEIGER: Absolutely.

12 JUDGE JAMES: And/or are you willing to  
13 stipulate Mr. Bernstein's expertise?

14 MS. HALLAM: We have no objection to him being  
15 called as an expert.

16 JUDGE JAMES: Fine. If your parties have so  
17 stipulated then proceed.

18 MR. STEIGER: Okay. Then I'm going to perhaps  
19 from on rephrase my questions a little bit by referring  
20 for the most part to opinions that we're asking you to  
21 give. Okay.

22 BY MR. STEIGER:

23 Q So now, going back to the last question I  
24 asked. In your opinion, in your opinion would it --  
25 based on performing the various operations would it be

1 one baloney sealed on top. Now when they make it, they  
2 don't do it one at a time. They do a row across and a  
3 row down. And then they slice it.

4 So getting specifically, the methodology  
5 required more people doing it and more time cycled. You  
6 can't have it simpler than being able to use two hand and  
7 load crackers. And that's the end of it. You're  
8 finished. Now only that, you never saw the product  
9 again. Obviously, that also leads the less rework and  
10 leads to greater efficiency.

11 Q Now, Mr. Bernstein, concerning the overall  
12 production schedule. In your opinion, please tell us how  
13 it would be affected by having -- I think you said a less  
14 desirable or not having the equipment that had been  
15 planned on them having. The overall production schedule.  
16 How would be impacted?

17 A I'm having trouble understanding the question.

18 Q Oh, just ask me to rephrase.

19 A Are you asking me --

20 Q No. No. I will rephrase the question. Okay.  
21 I'm asking you a question concerning the overall  
22 production schedule.

23 A Oh, their schedule?

24 Q Yes. The over all production schedule. That  
25 was the schedule, say, that was imposed upon them in the

Page 905

Page 907

1 longer to do with the equipment that they ended up having  
2 to use verses the equipment that they planned on using?

3 A Yes.

4 Q Why is that?

5 A The methodology, the speeder production line,  
6 the type of equipment they used, the additional people  
7 used. I could give you again the one illustration again  
8 if you would like. The crackers is dramatic because a  
9 girl would have to get a bag -- a girl "A," she would  
10 have to pick up two crackers, she would have to open the  
11 bag. Now most of the time, the bag was not a big deal  
12 opening but I've saw on the IS report that there were  
13 times that the bag had trouble opening. So she would  
14 have to open the bag and she'd have to put two crackers  
15 on, then she would put it on a vertical slide conveyor.  
16 Then another girl would have to pick up the bag and then  
17 seal it.

18 So you had two girls doing it. You had the  
19 initial girl that she, you know, had to get a bag with  
20 one hand, open it up, then get the crackers. So you just  
21 have more operations that take more time. The other way,  
22 you could have grabbed 20 crackers and you could just  
23 drop two at a time. You had a slack. All you had to do  
24 was take the two crackers and drop them in. Boom. It's  
25 almost like seeing baloney. When you buy baloney you see

1 contract. How would that be affected by having to use  
2 this substituted or other equipment that they didn't buy?  
3 Would it remain the same? Would it extend? What would  
4 happen to that schedule?

5 A If they had the proper equipment without any of  
6 the restraints that went on with this job. And it was a  
7 normal production job, I believe they could have made  
8 their schedule.

9 Q But as a result of having to use than equipment  
10 that they had not planned on using, did that have a  
11 negative affect on the overall production schedule?

12 A Yes. Independent of all starting late or  
13 anything. If everything was perfect and they were using  
14 the equipment they had, it would have been tough.

15 Q You're not listening to the question. The  
16 question was as a result of not having the equipment --

17 A Yes. Better --

18 Q -- Did it have an impact on their production  
19 schedule?

20 A Yes.

21 Q And what was that impact?

22 A They would have trouble meeting the schedule.

23 Q Thank you. Now, you testified that they were  
24 forced or did put on extra laborers, extra workers, did  
25 that in of itself allow them to makeup the schedule and

Page 908

1 meet the schedule that they intended?

2 A I don't think so. But I think they're -- it's  
3 such a situation that there were so many different issues  
4 compounding the production that they never could get  
5 ahead of themselves. They never started right. They  
6 were always in the rush mode. They were always tuned to  
7 a schedule and from day one, they started too late. So  
8 they could never in a way catch up.

9 Q So are you saying then that just simply plowing  
10 more laborers into the operation would not have helped  
11 the overall situation?

12 A Sometimes using less is better.

13 Q I'd like to focus now on something you  
14 mentioned earlier. You mentioned CFM, you mentioned GFM.  
15 Let me ask your opinion that it -- what would have --  
16 what happens if certain contract to furnish materials  
17 were not received by Freedom in this particular job?

18 A Depending -- it's just like the labor. If you  
19 are short -- the most -- I'm picking deliberately the  
20 most dramatic one. If you don't have enough crackers,  
21 you can't and there is no backup. And when I say there's  
22 not enough crackers that means there's none in storage.  
23 So you don't have any to give the menu lines. You can  
24 close down the whole plant. There's -- it's a show  
25 stopper.

Page 909

1 If you were out accessory packs, it's almost as  
2 dramatic. I'd say 90 percent show stopper. There's  
3 little minor things. So to start off with -- the worse  
4 thing that could happen and it did happen, you know, in  
5 reading -- you have massive layoffs and then you would  
6 hire and everything but the crackers or anything that  
7 went into the accessory pack and if you didn't have  
8 enough of an inventory on hand which they never really  
9 seemed to be able to do, would shut down the line. Now  
10 let's go the menu line. Now you're out -- your  
11 particular item that goes into the menu, I'm sorry I keep  
12 on saying menu when meal, I'm not even sure what I should  
13 be calling it.

14 Q Let ask you this. Let me get straight. Let me  
15 ask you again more specifically though.

16 JUDGE JAMES: Let's just wait a second til the  
17 sirens calm down.

18 MR. STEIGER: Your Honor, being a city dweller  
19 I don't even hear it.

20 JUDGE JAMES: But her machine does.

21 BY MR. STEIGER:

22 Q Let's try to get a little more specific with  
23 respect to this program. Based on what you reviewed and  
24 what efforts you did to prepare yourself, were you -- did  
25 you learn from that, that were situations where CFM was

Page 910

1 not, in fact, received by Freedom?

2 A Yes.

3 Q How did you --

4 A Basically, from the --

5 Q Wait. Wait. I asked a very simple question.

6 A Yes.

7 Q Let me ask you. How you became aware of that?

8 A The IS reports, which is 120 pages, is a weekly  
9 report written by a Government person and it may have his  
10 viewpoint of things which, you know, may not actually be  
11 the facts as described in his written document. It's his  
12 written document. He can put down anything he wants but  
13 it does mention these little things that went out -- went  
14 on throughout the job.

15 Also, I saw a few letters that I was given by,  
16 I don't know, you or Brian Freck, mentioning some of the  
17 problems they had with vendors, with money, with strikes,  
18 and, you know, other things. So there were certainly  
19 enough of a documentation that it wasn't a pure job that  
20 the right equipment came in at the right time. And there  
21 was no rework and no problems.

22 Q Let me ask this. Could say the same with  
23 respect to Government furnished material? GFM?

24 A Absolutely.

25 Q And with your source of knowledge about this

Page 911

1 from the same -- I mean, where did you learn about GFM?

2 A Yes. I just --

3 Q Where did you learn about GFM?

4 A The same way and the same method. But I'd like  
5 to interject one thing. The last three months of the  
6 program, it was -- the Government was enormously  
7 delinquent in many, many items. It was -- it's like, if  
8 you just read the IS report in his own words. You're  
9 saying how could any production be done? I mean, it's  
10 like nuts.

11 Q Do you -- you've been mentioning the IS reports  
12 --

13 A IS.

14 Q IS. Do you recall any -- do you recall any  
15 specific report that, in fact, impressed you as to what  
16 was going on or --

17 A In those 120 pages, there's one thing that if  
18 you just read that remark. Gives you a picture how  
19 desperate things were.

20 Q I'm going to refer to a particular item in the  
21 -- in the -- in the file. And I'm talking about one of  
22 the items in the package of items that appears in Rule 4,  
23 193. And I am specifically referring to -- I am  
24 specifically referring to the report that is dated  
25 November 22, 1985. It is number 33, page number 33 on

Page 912

1 the bottom, handwritten. This is just one example of an  
2 IS report that you had been mentioning. I'm not even  
3 sure this one deals with GFM. But anyway, is there  
4 something on this report that impressed you?

5 A I think --

6 Q Do you have it in front of you? Well, maybe  
7 you best put it in front of you.

8 A I think, yes. I'd like to see but I think it's  
9 --

10 Q Okay. Yes. Go a head.

11 A You going to give me -- look at something?

12 Q Yes. We're going to give it to you.

13 A I think on page 34.

14 Q 34. There's something particularly revealing  
15 about what is being said on page 34.

16 A Yes. If you -- one, two, three, the fourth  
17 paragraph down. The last -- more or less sentence. The  
18 contractor -- You know, I'm reading the last --

19 Q You don't have to read it to us. If you could  
20 just tell us what you think the impact of it is. We  
21 would appreciate it.

22 A That is like -- this is a Government guy  
23 writing. And saying that the contractor has so much  
24 troubles, so many boxes all over the place, so much  
25 production disrupted, that he can't even track it. He's

Page 913

1 right. He doesn't know what to do. He don't know how to  
2 run the job there. It's like a room full of boxes and  
3 where does that box go. What do you do with that? How  
4 do you get -- that is the most revealing of what I call,  
5 disaster.

6 Q Well, what do you attribute -- what's  
7 attributed to this so called disaster?

8 A Again, I have a lot reading that -- I don't  
9 know much about the progress payments. I don't know --

10 Q Just tell us.

11 A -- All the trouble but all I'm saying --

12 Q Give us your opinion.

13 A -- Is they couldn't even have their tracking  
14 system because they we're able to -- it came late, it got  
15 returned because they didn't have money and as a result  
16 of it, and everything is being done manual. And there's  
17 all kinds of problems with everything that, ultimately,  
18 they reached the point where there were boxes all over  
19 the place, in different lots, and they didn't know how to  
20 track it.

21 Q So it's attributable then to not having the  
22 necessary tracking system that they had --

23 A And the problems to get to that point. You  
24 know, it's not only the tracking system but there was  
25 problems.

Page 914

1 Q In your review, is it your opinion that they  
2 planned to have an appropriate tracking system to avoid  
3 exactly what is set forth here?

4 A Yes. I -- Bruce, I'll leave this over here.

5 Q Just a couple more questions, Mr. Bernstein,  
6 please. You mentioned down near the end, the impact of  
7 not having GFM items. Do you recall any specific GFM  
8 items that were not supplied?

9 A There was jams, there was creams, there was  
10 crackers, there was some meals. Then there's something  
11 that I quite don't understand in a way even though it may  
12 of been their food that there was micro holes and medical  
13 alerts with, with vendors that, more or less, I think you  
14 had to use -- so there -- you know, I -- I'm not -- there  
15 are in the IS report there are ones that show. I didn't  
16 memorize that but they're definitely Government furnished  
17 food or material that delayed, delayed them. And you  
18 realize if you shut down for a week, you -- the IS report  
19 would write it, "Well, we ran out and we expect jams in  
20 one week later." So they assume there's a one to one but  
21 if you're laying off 70 people, it could take up to 8  
22 weeks to get back to where you were. And could I explain  
23 that one?

24 Q Yes. Certainly.

25 A Well, you lay off, you lay off some people for

Page 915

1 one week. And I'm not talking about three. I'm talking  
2 about say 70. So one week later, the big -- well, even  
3 before they get laid off they know something's up. So  
4 all the sudden the line is talking to each other.  
5 They're nervous, "My god, I'm going to lose my job one  
6 day." Okay. So you have the lay off. A week goes by  
7 and the company says, "Okay. I'm going to get back the  
8 70 people." So they call them up and when the day -- 35  
9 of the 70 -- now this is illustration. I mean, I'm not  
10 talking facts. I'm talking opinion.

11 So 35 come back that day. It takes him another  
12 two to three weeks to get the other 35 people that they  
13 needed. Now they're all new to the line and there's  
14 going to be extra rework. There's going to be extra  
15 supervision because there are industrial engineering  
16 studies. The longer the crew works together and is  
17 experienced the less rework you have and the better  
18 efficient. So from this one little week, one week, not  
19 only do you demoralize people and they say, "I'm going to  
20 get laid off again." Or they're not happy. Or in the  
21 desperation of getting people maybe they lower the  
22 requirements of the people coming in. After all this is  
23 a food plant and you have to be very protective of  
24 everything.

25 Q Let's be a little more specific. There were



Page 916

1 starts and stops and literally shut down and lay offs and  
2 stuff in the job. And you say then that based upon the  
3 general example you gave us, would you say that that  
4 would also apply to the situation in this particular  
5 contract? As you understood it.

6 A Yes.

7 Q Now let me ask you this and perhaps this is a  
8 question that you've answered before. It's going to be  
9 my last question. And that is, could the lack of  
10 Government furnished material shut down in its entirety  
11 this operation?

12 A Yes.

13 Q Thank you. I have no more questions.

14 CROSS EXAMINATION

15 BY MS. HALLAM:

16 Q Could you tell me if you've ever been connected  
17 with consulting or actually responsible for the setting  
18 up of any assembly plant, an MRE assembly plant?

19 A Yes.

20 Q What was that?

21 A I -- two experiences. At Edo Corporation --

22 Q What corporation?

23 A Edo Corporation where I worked 34 years. I was  
24 the chief industrial engineer. At times we were building  
25 large quantity items. It was my responsibility to set up

Page 917

1 the assembly lines.

2 Q I'm sorry. I wanted to know with regards to  
3 MRE assembly lines.

4 A Oh. No.

5 Q Is your information than basically just from  
6 the film and reviewing of the documents that Freedom  
7 provided to you?

8 A And my experience in the field with assembly  
9 lines and balancing conveyor lines with simply equipment  
10 between them. Sealing equipment is basically simple  
11 equipment.

12 Q And the Koch was a sealing?

13 A No. The Koch was a very expensive, high tech  
14 new technology equipment that --

15 Q Have you had experience with that particular  
16 machine?

17 A Well, I read the specs. I used to at Edo  
18 Corporation be responsible for the capital equipment  
19 budget for manufacturing. Buying machines that costs  
20 even more money than that. That was my job. Even though  
21 I knew less than a machine, the superintendent of the  
22 plant or the plant manager, but they realized you better  
23 have a guy that's independent to recognize the numbers,  
24 he could recognize the validity of the machines. So they  
25 gave me that job. So I'm familiar with buying equipment.

Page 918

1 Q But with this particular Koch machine that you  
2 were testifying about you didn't have any experience?

3 A Other than reading the specs and the purchase  
4 order that goes into detail how it was made, I didn't  
5 have any experience with it.

6 Q What machinery did you have experience with  
7 that was used on the MRE assembly or which Freedom  
8 contends it intended to use on the assembly?

9 A Packaging machines. I worked at one point for  
10 Interstate Container Corporation and we used to make the  
11 boxes. So I'm familiar with that but I'm not -- I wasn't  
12 familiar with the Koch and Do-Boys other than reading the  
13 specification and seeing pictures of it.

14 Q Is Freedom making its own boxes?

15 A No. They don't make their own boxes. They --  
16 they had equipment to assemble a box and seal the box. I  
17 -- also when you're in the corrugated -- even though it's  
18 a flat box, you still have to glue or staple. You have  
19 the same processes. You have to -- if you look at a box  
20 in the flat condition, it's still stapled or glued on one  
21 side so that that application is, you know, directly  
22 applied to it.

23 Q So when you say the machinery that used in  
24 assembling boxes -- you mean the closing up of the boxes?

25 A The Koch machine, I'm sorry, had nothing to do

Page 919

1 with closing up the boxes.

2 Q No, I didn't specifically mention, you said you  
3 had experience --

4 A With some of the equipment.

5 Q And the experience would be with regard to  
6 equipment that would like glue --

7 A Yes.

8 Q -- The box and perhaps sleeve the box?

9 A Yes.

10 Q Have you ever seen any other MRE assemblers  
11 perform any of these functions?

12 A If someone has and picks up a -- matches and  
13 puts it somewhere which like is on this job. I've seen  
14 many operations, resisters, parts, bearings on an  
15 assembly line that go get packaged through a sealed unit  
16 in the shipping department. So I have never seen, you  
17 know, an operation specifically to the product, food, and  
18 that type item being assembled. But to me, it's an  
19 object that's being assembled. So, no, I have to answer  
20 your question, no. But it's a different type of no than  
21 normal.

22 Q The people that worked on the assembly line  
23 that were just filling for the most part was that just  
24 picking up items and putting them into a bag?

25 A Yes. They work in sequence. In some cases

Page 920

1 they would have -- when it came to the accessory line  
 2 they would have people filling and then they would have  
 3 one person put the bag and shove it in. When it came to  
 4 the cracker assembly, it always was one person taking the  
 5 crackers and they're opening the bag. When it came to  
 6 the meal line, it was just putting things into a bag as  
 7 it went down the line. No, they -- what I just said is  
 8 not true. They would have a cleated conveyor. People  
 9 would put items and say there were eight or nine average  
 10 items on a meal, you know, and when it got to the, say,  
 11 tenth station, that person would take the bag and shove  
 12 in. They had like little chanel angles that you could  
 13 pull the bag into and then slip the things in. And then  
 14 they would have someone juggle it just before they put it  
 15 through the band sealer.

16 Q You were mentioning some engineering degrees  
 17 that you had. Do you have any degrees in vocational  
 18 engineering or any vocational expertise at all because  
 19 you did testify with regard to the impact on the personal  
 20 coming back.

21 A I have, I have two degrees. 1956, NYU was up  
 22 town in those days. So I have a bachelor -- I don't know  
 23 what bachelor of science and industrial engineering and  
 24 then nine years later going to night school and working,  
 25 I had a second degree. However, I have other extensive

Page 921

1 experience, not degrees if you want to hear about it, but  
 2 --

3 Q Could you tell me what you think the average or  
 4 the turn overrate in a menial type job like this is.  
 5 Menial type job.

6 A I'm giving you my opinion. I would bet double  
 7 what -- it would be higher than a -- in other types of  
 8 fields or occupations.

9 Q Do you know what Freedom's turnover rate was?

10 A It's -- no.

11 Q You testified with regard to generally to  
 12 regard to your opinion that workers in the anticipation  
 13 of being laid off are going to jump the ship.

14 A Yes. That is --

15 Q These were minimum wage workers weren't they?

16 A Yes. I think that's normal of anyone.

17 Q Where were they going to jump to?

18 A Excuse me.

19 Q Where were they be jumping to?

20 A That doesn't matter but they're nervousness  
 21 they are going to be out of a job. Anyone that has  
 22 change worries about change whatever it is. I was  
 23 worried coming to Brooklyn today. This is like my  
 24 thirteenth time in Brooklyn. I was nervous. Needless to  
 25 say I compensated by getting up very early but I was very

Page 922

1 nervous about -- I'm very nervous -- how do I get back  
 2 onto the highway? But you do it.

3 Q Tell me what statistics you looked at in  
 4 Freedom's personnel records?

5 A None.

6 Q So you don't know what workers came back and  
 7 what workers didn't come back?

8 A No. I hope -- I was giving you an  
 9 illustration. I hope I used the word illustration when I  
 10 was talking about how many workers came back. Because I  
 11 never seen one personal record at Freedom.

12 Q Have you seen any of their rework records?

13 A What records?

14 Q You talked about rework. Have you seen any of  
 15 their rework records?

16 A I saw rework records that came off the IS  
 17 report that I saw -- I didn't quite understand. But I  
 18 did see -- that's the only place that I saw rework  
 19 recorded records. They were summarized it. Out of 120  
 20 pages in that document, I'm sure 40 times there's a  
 21 little summary of that. Again, it's what the IS is  
 22 saying. I take so much exception to those IS reports and  
 23 the understanding of what that report meant and did.  
 24 That I --

25 Q Do you know where the IS got that information

Page 923

1 for those reports?

2 A From themselves, from the AVI that worked  
 3 there, from talking to people that worked at Freedom.  
 4 You know, I'm not sure but in reading reports you could  
 5 summarize because they talk about a Sargent Patterson all  
 6 the time. I think he was the local Government guy that  
 7 was head. They certainly, in the beginning, they're  
 8 listening to people's tell them what equipment summary.  
 9 There's certain things summarized that, obviously, I  
 10 think came from Freedom. But I can't say with accuracy  
 11 how the information was given.

12 Q Regard to the production workers on the  
 13 assembly line, what was the -- what was the time frame of  
 14 training these people. It seems to me anybody that walks  
 15 in off the street can put things into a bag.

16 A Well, yes, to some extent. If you could pick  
 17 up a dime, you should -- in some cases, people that are  
 18 involved with equipment would have to know something. It  
 19 wouldn't take the average person that's filling up  
 20 crackers other than, I think, the Government would  
 21 require you to understand the safety and the quality that  
 22 comes when handling food. So I'm sure there was some  
 23 introduction into safety. Introduction how you should  
 24 handle food. You know, that you had to wear stockings,  
 25 you had to wear stuff.

Page 924

Page 926

1 Q We're talking about the impact of not having  
2 the crackers or assembly packets --

3 A Accessory.

4 Q I'm sorry, you're right. Accessory packets.  
5 There's no reason why a contractor wouldn't be able to  
6 make those in advance.

7 A That's the way you better work. You should be  
8 a month or two ahead on that if -- there are numerous  
9 reasons that I'm not an expert on why they weren't. It's  
10 a crime. Not only that, you could have made those  
11 packages not even in the same company. It is crazy to  
12 ever have a shortage or be out of crackers. It's crazy  
13 on a production line like that. Now this is an opinion,  
14 between the accessory and the crackers maybe 25 to 30  
15 percent, say 25 percent of the people you needed for the  
16 job were working, you know, in this area. And they have  
17 so much of a affect on the other.

18 Q Were you aware of any the contractor  
19 requirements for the notice the contractor has to give  
20 the Government as far as its inventory of GFM?

21 A I'm sorry. I didn't understand the question.

22 Q Did you review the contract? Were you aware of  
23 the contractual requirements to give notice five days  
24 before an outage of a GFM product?

25 A I didn't know that.

Page 925

1 Q You did or you didn't?

2 A I did not know that.

3 Q We were talking about their --

4 A You're talking about the contract of actual  
5 requirements. No. I did not know that.

6 Q With regard to their rework, you said that you  
7 read a number of IS reports that talked about their  
8 rework.

9 A Yes.

10 Q Were you aware of the fact that Freedom was  
11 under an obligation to break down 40,000 cases of product  
12 and recycle the components in there?

13 A If there were 20,000 --

14 Q 40,000 cases. What impact would that have on  
15 their production if they didn't in a timely manner break  
16 those components down and use them?

17 A 40 cases, you're talking about --

18 Q 40,000 cases.

19 A That's a lot.

20 Q That's a lot. Were you aware that they had  
21 that at some period of time for months and months and  
22 months available to them?

23 A No.

24 Q Do you know if Freedom had an inventory, excuse  
25 me. Do you know if Freedom ever built a meal, a menu bag

1 inventory to support its final assembly?

2 A To give you a yes/no answer on that I find  
3 difficult. If you want me to give you a yes/no, I will.  
4 But the point is, like I said, that a times they were  
5 short meals. Certain components. So they built up the  
6 other meals so in a sense, you know, there's -- let's  
7 call it 12 meal lines, they're short one items in one  
8 meal line so what they would do instead of going to final  
9 assembly, they would get these tremendous boxes and they  
10 would run the other eleven lines. So, yes, they were  
11 building up inventory but at the same token they were  
12 going backwards. When they finally got that other thing  
13 in, the other item and then ran one. Then when they  
14 caught up with -- say that they had 10,000 meals in each  
15 one of them -- then they could finally do final assembly  
16 again.

17 Q Were you aware that Freedom ran that way from  
18 the beginning. As a matter of fact, were you aware that  
19 when Freedom first started production it only ran six  
20 lines at a time and it had nothing to do with inventory?

21 A Yes. I heard that. I also heard that they  
22 didn't have enough equipment and they had a -- in the  
23 afternoon switch equipment. So I did hear. I did hear  
24 that but I got the impression that they didn't have all  
25 the equipment then at that time and it was, you know, the

Page 927

1 problems with money and other things. Again, which I  
2 certainly am not qualified to talk about.

3 Q Okay. And you weren't aware that even after  
4 they had all their lines, all 12 lines, they were still  
5 only running them six at a time?

6 A I don't know that. I'm sure -- if it's true,  
7 I'm sure there were reasons. There's so many different  
8 possibilities of problems.

9 Q Do you know how many days and months Freedom  
10 was even operational?

11 A I know they expected to be, is it 21.55 or  
12 something, but I can't say I have a records day by day  
13 and people by people. Other than the best source that I  
14 have of information, you look at the IS reports, they're  
15 hiring 60. They're laying off 40. We have 250 people  
16 now, you know, it's documented throughout the report. So  
17 I don't -- haven't committed it to memory and I don't  
18 know how good or -- but there's a lot of that type  
19 information. It's like a newsletter the IS report.

20 Q Okay. I would like you to look at one of those  
21 newsletters. The same one you were looking at before at  
22 193, page 33.

23 A 33?

24 Q Yes.

25 A Do I have the right? Did I take the right

1 book?

2 Q Yes. It's the red book.

3 A Now, but -- I dropped it. It's somewhere. All  
4 right. November 22, yes.

5 Q Would you say at this period of time, was it --  
6 would it be your opinion that Freedom's production  
7 capacity was incapable of meeting the delivery schedule?

8 A First of all I'd have to read this page and --

9 Q I'm sorry. I thought this was the same page we  
10 were looking at.

11 A No. It was 34. Do you want me to read this  
12 page?

13 Q Sure.

14 A All right. There's a mixed bag of information.  
15 If you're -- are you talking about the accessory and  
16 crackers?

17 Q I'm talking about, in general, is it your  
18 opinion that Freedom in this time period was incapable of  
19 meeting the delivery schedule?

20 A I would have to have more information but  
21 50,000 cases of crackers is -- I don't think very much.  
22 I forget, you know, how much -- that's like a day or two,  
23 you know, I don't -- you know, right now I'm not doing  
24 the math. But I don't think that's a lot. You know, if  
25 you get the amount per day and if you -- I just don't

1 think that's a lot of stuff. Because you needed over 7  
2 million of them. And at that time only 600 because you  
3 were only 8 percent done with the job. I would have  
4 hoped they would have been 25 or 20 percent done with,  
5 you know, at this time frame with the crackers and the  
6 thing. Here you're looking at something that are 8  
7 percent done because you needed 620 times 12 which is  
8 over 7 million. So this is early as far as production  
9 goes. So it seems they're getting behind already. But I  
10 can't -- it's a very complex question.

11 Q Did I understand you to testify your response  
12 to Mr. Steiger's questioning that without the Koch and  
13 the Do-Boys that Freedom couldn't meet its delivery  
14 schedule?

15 A I don't think so.

16 Q Okay. I must have misunderstood that. Do you  
17 know how many cases a day Freedom would have had to  
18 produce to meet the delivery schedule?

19 A Well, they were -- I don't know the numbers, 5  
20 or 6 thousand a day. I know, I know that they were  
21 supposed to do like 100,000 a month or something like  
22 that. Divided by the days, 21. So I would imagine it's  
23 over 4 thousand. And I think the IS reported one day in  
24 the -- the one day they did 4,028 cases for one day.

25 Q You talked a little bit about substitutions.

1 You aware that the contract gives the Government an  
2 unlimited right to substitute?

3 A No. I didn't know that but I know they did.  
4 Whenever there was trouble in their part they immediately  
5 substituted. But, however, that causes tremendous  
6 logistic problems with lack control and if they  
7 substitute the food they were using where they had an  
8 ample supply that could the go -- next month doom them  
9 for that item. So, you know, it's great that you kept  
10 the lines going and I'm glad the Government had that --  
11 happy, at to do it. But in a way that could be so  
12 counter production to Freedom if they take say beans and  
13 franks when they only had a half month's supply, so next  
14 month you run out of that. You have to really check  
15 inventory. You would have to check when things are  
16 coming in to see that in the long run that's a good  
17 decision. It was the right decision for that second but  
18 in the long run it could hurt Freedom.

19 Q Well, you said you weren't aware of what the  
20 contractor's requirements were for maintaining inventory  
21 records and for notifying the Government, didn't you?

22 A Other than vaguely, no, that there were  
23 certainly requirements because I read that in the  
24 proposal. They had to, you know, have a dissertation on  
25 how they were going to do things with light control, how

1 they were going to do inspection. But I don't know how  
2 it intertwined exactly into the contract.

3 Q As far as the actual production and not the  
4 inventory problem, entre for entre for substitution that  
5 would just require putting a different entre on the  
6 assembly line and using a different menu bag.

7 A For that --yes. That they would be great. If  
8 they had them. Next week if they didn't have that other  
9 stuff, if they didn't have the entre they substituted  
10 then they would have a problem next week.

11 Q And like you said you weren't aware of what the  
12 requirements were. Or whether they even complied with  
13 the requirements, are you? As far as notifying the  
14 Government of the inventory levels.

15 A You had mentioned there was five day  
16 requirement. I did not know about that. I got the --  
17 this is an opinion -- I got the overall impression that  
18 Freedom was up on the things they were short.

19 Q Do you know how often they shut down because of  
20 contractor furnish materials?

21 A No. I don't know. But I also -- no. I don't  
22 know.

23 Q I've no further questions.

24 JUDGE JAMES: Any redirect by the appellant?

25 MR. STEIGER: Just a couple, your Honor.

Page 932

REDIRECT EXAMINATION

BY MR. STEIGER:

Q Just on this -- I'd like your opinion on the substitutions. If in fact the substitutions involved an item to be replaced that might have had some slightly different --

A Chicken to turkey.

Q -- Different dimensions. Or different density or something of that nature. Could it have an impact on the production capabilities and efficiencies?

A My first thought that the packages -- would say to myself -- I wouldn't think substituting turkey for chicken.

Q Turkey for chicken was your substitution. I talked about substitutions in general. And --

A I'm not familiar how each and every package. They look the same. The outer package looked the same.

Q But if in fact, the dimensions of the item were different, could it have had an impact the efficiency of the operation?

A Yes. If each -- if the meal bags were different.

Q Let me ask you this. That report that everybody was referring to. You said that the report came out early in the production schedule. Do you know

Page 933

how early?

A What report?

Q The one we just referred to. The IS report.

A That's early.

Q How early? Do you know how early? I mean, if you don't know tell me.

A Well, it's on page 33, designer 20 pages and it goes through and as I referred to you, they're only 8 percent done with the crackers and the accessories because you needed over 7 million. And to that date they only had 600,000. So you're talking heroic.

Q Now, from your experience with work forces would it be customary for a work force of this nature to encounter some kind of difficulties in their initial production activities?

A Yes. That's why you have training and that's why you have what I call pilot production. And something with machinery you call it, infant mortality. When you start running a machine early on the program, you discover something that you would not anticipated. So if you -- you need a tryout period. A lot of companies like Sonatone, used to have a pilot production department that did exactly that. So when you went into production you had less and less problems. You know, proto type verses pre-production verses production. So, and anything you

Page 934

do for the first time, it's certainly good to have a pilot or a pre-production.

Q But even, but even with training of -- is it customary for companies to encounter this kind of difficulty at the outset?

A Yes.

Q Thank you. I have no further questions.

MS. HALLAM: Just one.

RECROSS EXAMINATION

BY MS. HALLAM:

Q Can you give us an example of a substitution of a different size item?

A No. I can't. There were substitutions. I -- in reading the report, I wasn't smart enough to pick up the fact that a frank may have a smaller package than a beef stew. So, no. I can't give you a specific example. I thought, sort to speak, they were all about the same which is obvious they're not.

Q Okay. No further questions.

JUDGE JAMES: Well, Mr. Bernstein, as a result of your reviewing the information you did review, were you able to ascertain whether this company, Freedom, in the performance of this MRE-5 contract had -- did what you call a pilot production?

THE WITNESS: I didn't see any instance of it.

Page 935

JUDGE JAMES: So far as you're able to determine, they did not do that procedure?

THE WITNESS: Yes. I didn't see any information other than talking, you know, -- No. I didn't see anything but in talking to Henry Thomas on this, he evidently anticipated that. But, I mean, I saw no documentation of that.

JUDGE JAMES: Okay. I just want to call your attention to your number A, you discussed. And going from left to right, you've got A, B, C, D, E processes. Is that right?

THE WITNESS: Yes. With a legend on the bottom.

JUDGE JAMES: Should the Board understand in looking at that that is just intended to be a concept or is that intended to be an actual plan view. So that from left to right that's how the company actually setup these lines.

THE WITNESS: No. It's not. It's meant to show how the -- No. It wasn't meant to, good point, it wasn't meant that way because A and B could have been run and I have a chart says they could have been run completely separate and in a different place. That's just a flow. That if you didn't have A and B you couldn't do C. In other words, you could start A and B.

Page 936

1 Crackers and accessory in the warehouse and I even said  
2 they should have been a month or two ahead. And then  
3 when they were ready to do the meals that they had all  
4 the things. They could have brought from the warehouse a  
5 lot of the crackers and accessories and start the line.

6 JUDGE JAMES: But from your review of the  
7 materials you did review, yours are after the fact, of  
8 course, were you able to ascertain that Freedom had 12 or  
9 13 meal lines?

10 A I saw, I saw the film a few times and they had  
11 13 lines. It's, you know, at one time they were only  
12 using six. But they had 13 -- they had 12 lines. The  
13 13th line is they would just substitute a different meal.  
14 I mean, there were 13 lines but 12 meal lines. I'm  
15 sorry. The last, the last -- the 12th menu had either/or  
16 to half the job. Say chicken for half. And turkey for  
17 the half. So they had 12 lines. They had 12 pieces of  
18 equipment although I think he wanted to buy 13 to have a  
19 spare. Especially if one of them broke down. But there  
20 were 12 lines. And they were together.

21 JUDGE JAMES: Okay. And then for final, for  
22 final boxes assembly. D as you've called it here. Did  
23 the company so far as you're able to ascertain just have  
24 one final assembly area or did they have two or more?

25 THE WITNESS: The final assembly meant sealing

Page 937

1 the box. There was only one machine that did it. So all  
2 work was done in that area. They had, of course, a very  
3 big, big plant and when it came to getting the box that  
4 was strapped off to a pallet area they had the ability.  
5 Since you could move pallets all over the place it would  
6 be obvious in the beginning to have the pallet right near  
7 the machine so no one has to walk and save, you know,  
8 save time. So they had everything together but then they  
9 would -- as things -- as the pallets filled up, they  
10 would take them away and put them somewhere else where  
11 they would have to strap it and cap the top and bottom  
12 and strap it. That could be done away from -- where the  
13 box assembly was done.

14 JUDGE JAMES: So I guess what you're telling me  
15 then, is on E pallet assembly, although it started out  
16 with let's say a single pallet assembly, it multiplied  
17 until they had many pallet assemblies?

18 THE WITNESS: Yes. Well, they would start  
19 working, you didn't have to do them one to one and I  
20 didn't stop any line. They had their crew. Even if  
21 there were a day behind, I have no idea if they were a  
22 day behind, on time -- everything. It didn't matter as  
23 long as you had the pallet capped, you know, you put a  
24 bottom thing. You load it up.

25 I think what I was saying is that when they --

Page 938

1 it wasn't a large operation. It wasn't a time-consuming  
2 operation with two men to put the four straps that were  
3 needed on. So it didn't take very long to be able to do  
4 a lot of pallets in a day.

5 JUDGE JAMES: As a result of the Board's  
6 questions to the witness, does the appellant have any  
7 further questions you want to ask him?

8 MR. STEIGER: No, sir. We do not.

9 JUDGE JAMES: Or the Government?

10 MS. HALLAM: No.

11 JUDGE JAMES: All right. Thank ever so much,  
12 Sir, for your testimony. You may step down from the  
13 witness stand.

14 THE WITNESS: Thank you.

15 MR. STEIGER: Just leave. Well, take care of  
16 everything.

17 JUDGE JAMES: I gather than the appellant has  
18 no further witnesses you want to call today?

19 MR. STEIGER: I'm sorry, Sir. We do not.

20 JUDGE JAMES: All right. Let's go off the  
21 record.

22 (Whereupon, at 11:30 a.m., the hearing was  
23 recessed.)  
24  
25

Page 56

## 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 Friday, May 19, 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 Donna  
11 Hughes, 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: 7/11/00

16 \_\_\_\_\_  
17 Transcriber

18 \_\_\_\_\_  
19 Proofreader  
20  
21  
22  
23  
24