IN THE ARBITRATION UNDER CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND UNDER THE UNICITRAL ARBITRATION RULES BETWEEN

METHANEX CORPORATION, Claimant/Investor, and UNITED STATES OF AMERICA, Respondent/Party.

FINAL AMENDED TRANSCRIPT
Thursday, June 10, 2004
The World Bank
1818 H Street, N.W
MC Building
Conference Room 13-121
Washington, D.C.

The hearing in the above-entitled matter came on, pursuant to notice, at 9:05 a.m. before:

V. V. VEEDER, Q.C., President
PROF. W. MICHAEL REISMAN, Arbitrator
J. WILLIAM ROWLEY, Q.C., Arbitrator

Also Present:

SAMUEL WORDSWORTH, Tribunal Legal Secretary

MARGRETE STEVENS, Senior ICSID Counsel
Tribunal Administrative Secretary

Court Reporter:
APPEARANCES: (Continued)

On behalf of the Respondent/Party:

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PRESIDENT VEEDER: Well, good morning, ladies and gentlemen. This is day four of the main hearing, and we now turn to the U.S. motion to exclude certain evidence adduced by Methanex. And given that it's a U.S. motion, we hand the floor first to the United States.

MS. MENAKER: Thank you. Mr. President, members of the Tribunal, the United States respectfully requests that all of the documents that originated in Mr. Vind's files be excluded from evidence in this arbitration. Methanex maintains that it obtained these documents by rummaging through a dumpster that was in the parking lot behind Mr. Vind's old offices. The manner in which these documents were even allegedly obtained warrants exclusion, and I quote from Justice Brennan's dissent in a U.S. Supreme Court case when he said, and I quote, Most of us, I believe, would be incensed to discover a meddler, whether a neighbor, a reporter, or a detective, scrutinizing our sealed trash containers to discover some items of our personal lives, end quote.
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He continued to say, and I quote again,

Scrutiny of another's trash is contrary to commonly accepted notions of civilized behavior, end quote.

And that is the case.

That is a citation from the Greenwood case, is a U.S. Supreme Court case, and I will at a break get you the exact citation for that.

The manner in which these documents were allegedly obtained is not envisioned by either the UNICITRAL Arbitration Rules or Articles 4 or 5 of the International Bar Association's rules on the gathering of evidence. Admitting such documents, documents of such dubious origin, in this case would undermine the integrity of international arbitration, and this Tribunal should wash its hands of these documents.

In any event, these documents were obtained illegally, and therefore, they should certainly be excluded.

Methanex maintains, as I just said, that it received these documents through a private investigator who, in turn, hired another investigator, who retrieved or allegedly retrieved these documents from a dumpster that was located in the parking lot behind Regent International's former offices.

At first, Methanex claimed that this dumpster was located on private--on, excuse me, public property. Yesterday, its witnesses seemed
to be claiming that, only that the dumpster was
publicly accessible. Mr. Puglisi stated that there
was the flow of traffic outside to and from the
building, and that there was no restriction on who
could enter the parking lot, and it was definitely
publicly accessible. And thus, they maintained
that this was legal under California law.

As has been the case throughout these
proceedings, Methanex is wrong on both the facts
and on the law.

First, let me discuss their witnesses, the
testimony we heard yesterday. As we know, their
witnesses could not even vouch for all of the
documents that Methanex has sought to submit into
evidence in this proceeding. Some of those
documents were identified from Mr. Vind as having
originated from his files, and yet, neither
Mr. Puglisi nor Ms. Morisset could say that they
had ever seen those documents before because no
original for those documents has been located.

So, there is--

PRESIDENT VEEDER: Just to interrupt you
now, Ms. Menaker, what particular tabs are you
referring to when you say that, that the
originals--

MS. MENAKER: The ones that are in the
stack, the copies of the stack of originals when
Methanex has listed are not yet located.
PRESIDENT VEEDER: As we understand it, Methanex has withdrawn those exhibits, those six exhibits.

MS. MENAKER: So, they are withdrawn?
Okay. Then I retract that statement, if those are withdrawn.
PRESIDENT VEEDER: I think if you leave those six aside, then I think your so-called originals have been found to match in one form or another all the copied exhibits that we have.
MS. MENAKER: That's correct, aside from those six documents.
PRESIDENT VEEDER: Thank you.
MS. MENAKER: The fact, however, that there were some documents for which no original has been found places some suspicion on the method in which these documents were gathered. There is no reason to assume that these documents were taken from a dumpster rather than from Mr. Vind's files in his office or the trash can in his office. We have no originals of those documents, and therefore, there is no reason for us to assume that the documents that Methanex still seeks to put into evidence were obtained in the manner in which they alleged they were obtained.
Most importantly, however, neither of the witnesses that Methanex proffered yesterday has any personal knowledge as to how any of these documents were retrieved. Neither of those individuals personally retrieved any of the documents from Mr. Vind's premises or from the dumpster behind the building. Neither of these witnesses claim to have ever been in California at Mr. Vind's offices or to have ever seen the premises from which these documents were taken. They have no personal knowledge on this topic whatsoever.

And moreover, much of the evidence that these--much of the testimony casts doubt on the conclusion that these witnesses would like you to draw from their testimony, and that is that these documents were taken from a dumpster behind Mr. Vind's offices.

ARBITRATOR ROWLEY: Could I just ask you to address the testimony of Ms. Morisset where she, I believe, said something to the effect that the documents she received indicated that they may have come from a dumpster because they were stained with coffee and Coke and chewing gum. The reason I ask you that is because that seems to me direct testimony from her, which is supportive of the indirect testimony that they came from a dumpster.

MS. MENAKER: I agree that that testimony might supply evidence for the inference that those
documents were found in the trash. However, that does not supply any type of confirmation as to how those documents were retrieved from the trash or where the trash was located. Those documents could have been in the trash in Mr. Vind’s private office. She doesn't--she didn't see how those documents were retrieved or from what trash they were retrieved. She certainly has never seen a dumpster behind Mr. Vind's office in a parking lot behind his office, so she has no knowledge that those documents were taken from that dumpster, and that is the point that I was making.

Moreover, much of the testimony was questionable. Mr. Puglisi stated in his statement that the documents in question had been forwarded to him in a sealed box. We now know that there were at least, I believe, 88 shipments of documents that were sent to Mr. Puglisi, so there was no one sealed box of documents.

PRESIDENT VEEDE: I think that's an unkind reading, maybe, of his affidavit. I don't think he was indicating in his written affidavit, as he made clear in his oral testimony, that there was only one sealed box, but that's the way you're reading it, isn't it?

MS. MENAKER: That is the way I was reading it. That is the way that I understood his
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written statement when I first read it, is that
these documents had somehow in one event been taken
from the dumpster, had been taken from Mr. Vind’s
dumpster and sent to Methanex, and I had no
indication that this was an ongoing investigation

and that there were actually 88 shipments of
documents.

PRESIDENT VEEDER: It may have been
inelegantly worded, but it's quite clear that his
evidence is that there's more than one package,
more than one box.

MS. MENAKER: Yes, yes, that is the case.
However, more importantly, in his
statement, Mr. Puglisi said that all of the
documents that were the subject of the United
States’s motion to exclude were taken from
discarded documents--documents that were discarded
behind Regent International’s office, and he said
that they were not illegally obtained.

Yesterday, when questioned about that
statement that he made, he admitted that he did not
look at each and every one of the documents to
which his statement was supposed to refer to. He
said, instead, that he relied on representations
made by counsel that these were, in fact, the
documents that he had in his possession.
As it turns out, however, we have now learned that Mr. Puglisi can't vouch for many of the documents as to which our motion is directed. Some of the documents he claims to have never seen before or has no recollection of having seen before, and they don't bear the markings that he indicated he places on documents that have been received. And, in fact, Ms. Morisset later testified that those documents were actually sent to her law firm and not to Mr. Puglisi.

Therefore, the statements that he made in his statement, not only are they hearsay statements not based on personal knowledge, but he did not even have the information that he needed to make those statements in good faith. He just said quite conclusively these documents weren't illegally obtained, they were found discarded, without any basis for making the statement with respect to many of these documents at issue.

Moreover, Mr. Puglisi's testimony also raises questions about the origins of many of the documents. For example, in the draft itinerary that was--I'm going to get the citation for you.

PRESIDENT VEEDER: Tab 13 or Exhibit 151.

MS. MENAKER: Thank you very much.

First, we discovered that the original or the so-called original of that document does not match the document that Methanex had sought to...
place into evidence in this arbitration. The evidence that Methanex placed into the document that Methanex placed into evidence contains a draft fax line at the bottom. The so-called original of this document does not contain that fax line. Therefore, we do not have the original of the document that Methanex has sought to place into evidence in this arbitration, and we have no testimony to corroborate from where that document came.

Second, Mr. Puglisi testified that he stamped the backs of the documents to indicate when we received certain documents, and if the document had more than one page, he just stamped the last page. But as you can see from that exhibit, the second page, which contains handwritten notes on flight schedules, is stamped with a receipt date that predates the draft of the itinerary to which it was supposedly attached, further calling into question how, when, or if Mr. Puglisi ever received this document.

Now, as far as Ms. Morisset's testimony is concerned, the documents that she testified about are also suspect. As the Tribunal noted, the printout of Mr. Vind's Palm Pilot, the addresses, the address book found in his Palm Pilot was found to be in pristine condition. Ms. Morisset testified that the first page was slightly
dog-eared, and she pointed to what was an
imperceptible wrinkle, but that does not appear to
be a document that was found in a dumpster
containing an office building's trash, or at least
there is no evidence to suggest that this document
was there. There is no reason for us to believe
that this document was there.

And finally, Ms. Morisset, of course, had
no personal knowledge about how these documents
were retrieved. She asks, instead, that we rely
essentially on her word. She says that her law
firm is adamant about respecting the law, and says
that they would not hire anyone to do anything that
was illegal. I would like to know and look into
the reputation of her law firm so I could find and
make a determination on my own whether I think her
law firm has this stellar reputation, but we are
denied that right because she won't reveal the
identity of the law firm for which she worked.

Mr. Puglisi similarly won't reveal the law
firm that hired him so we're asked to take their
word that this law firm is so upstanding that it
would never engage in any of this activity, were it
to be illegal, and yet they're unwilling to reveal
to us the name of the law firm

PRESIDENT VEEDE: Ms. Menaker, does the
evidence show it's the same law firm or is it two
law firms?
MS. MENAKER: My understanding from the evidence is that it was the same law firm and that neither witness was willing to reveal the name of that law firm. That was my understanding from the testimony.

Now, these witnesses have been offered that don’t have any personal knowledge. We believe there is strong evidence that what they’ve said or what they believe to be the case is not the case. The documents were not taken from a dumpster in a parking lot that was on public property behind Mr. Vind’s office. There is no parking lot behind Mr. Vind’s office that contains a dumpster, and I would like to show you some photographs—

MR. DUGAN: I’m going to object to this. There is no testimony in the record with respect to that. The photographs have not been authenticated. We don’t know what they are. They stand alone. There’s absolutely no testimony with respect to this. There is no evidence with respect to this.

PRESIDENT VEEDER: Ms. Menaker, how are you going to deal with that objection?

MS. MENAKER: I would like to offer these photographs into evidence and refer to them. And as you know, Mr. Vind, the person who took these photographs and who can authenticate these
photographs, is not only in Washington. He is here, he is going to be testifying later. We can call him to make himself available to the Tribunal sooner than that, if you would like him to testify to authenticate the documents.

PRESIDENT VEEDE: Are you saying that he would be in a position to authenticate the photographs?

MS. MENAKER: Yes.

PRESIDENT VEEDE: Today?

MS. MENAKER: Yes.

MR. DUGAN: If that's the case, we would like to have the chance to put in rebuttal testimony from the investigators themselves, videotape, video testimony.

PRESIDENT VEEDE: Well, let's--what we would like to do is look at the photographs for information only at this stage. We are not receiving them into evidence, and we would like them to be proved, not only by Mr. Vind, but if photographs are to be relied on, we would like to know who took them and when they took them. So, we can have a look at them subject to those restrictions.

MS. MENAKER: Okay. So, may I--would you like to see them now? May I refer to them?

PRESIDENT VEEDE: Yes. But please make sure Mr. Dugan has a set first.
MS. MENAKER: He does. These are the photographs I gave him copies of.

My assistant will be passing you out photocopies. These are--we received these photographs last night, so we only have one set of the original in color. These are black-and-white photos.

Would you like to see the colored ones?

PRESIDENT VEEDER: Will they go up on the screen?

MS. MENAKER: They will go up on the screen, but I can bring them to you, if you would like to see them first.

(Pause.)

PRESIDENT VEEDER: For identification purposes only, not as exhibits, we've marked them X8, X9, and X10. X8 is the sheet with the tree in the middle of the top photograph. X9 is the sheet with the tree on the top left photograph, and X10 has a Buddha-like figure in the bottom right of the photograph.

Ms. Menaker, we're looking at X8 up on the screen in color. Do you want to just talk us through what these photographs are? You say they were taken yesterday or received yesterday, taken earlier?

MS. MENAKER: No, I believe they were taken on Sunday, and that is the date at the bottom. It says 6/6/04. And Mr. Vind gave...
PRESIDENT VEEDER: Can you tell us who took the photographs.

MS. MENAKER: Mr. Vind.

PRESIDENT VEEDER: Can you talk us through the photographs, what you say they show.

MS. MENAKER: Yes. This is what I understand the photographs to show. The top picture on the right, X8, if you look at X8, the top picture, the building to the right is Mr. Vind's office building. His office was located on the second floor of that building. Across the street from that building is an Embassy Suites hotel, which is over there. That is, you know, in front of the lobby, like a carport that you drive through.

PRESIDENT VEEDER: You say "across the street." Is that a street?

MS. MENAKER: It's a passage. It has--the plant is in front of it. It's a passageway.

PRESIDENT VEEDER: We just want to get some rough idea what we are looking at,

MS. Menaker. If you're taking it with Mr. Vind, we don't need to repeat the exercise twice. Just give us some idea of what we are looking at.
MS. MENAKER: Sure. You know, if it's okay with the Tribunal, Mr. Legum spent more time speaking with Mr. Vind about these photographs last night, so perhaps it would be better if he talked you through these.

PRESIDENT VEEDER: Okay.

MR. LEGUM: I will try to be brief.

So, on X8, the top photograph on the left-hand side, you can see that's a hotel, and that's the drive-through on the left-hand side for the hotel. The middle photograph shows where Mr. Vind's offices were located. The second floor of that building that's depicted there above the Salon sign is where his offices were located.

If you look below that on the right-hand side of the photograph, there is a set of doors which look vaguely pinkish in the original photograph. That is where the trash for this building was stored.

And the bottom photograph in this series, of X8 that is, is a more detailed photograph of the doors where the trash was located.

X9 is essentially different perspectives on the same thing, so I will skip over that quickly.

And X10, again more photographs of pretty much the same thing from different vantage points. And I think it's probably best to--well, let's see,
one final thing. On X10, the bottom photograph, you can see there's a building over there behind the building where Mr. Vind's offices was located. That is the Brea mall, and that in particular is a J.C. Penney's store.

PRESIDENT VEEDER: That is across the street, isn't it, the Brea mall?

MR. LEGUM: It is across a driveway, as I understand it. The street itself is on the other side of the building.

PRESIDENT VEEDER: It may be helpful, and we put this out to both sides, if we just had a small map just to indicate the public street pattern around this building.

MR. LEGUM: I would suggest that when Mr. Vind appears we can have him draw a diagram.

ARBITRATOR REISMAN: May I refer you to X10, the top row of photos, right-hand side. Isn't that a parking lot behind the doors we know to be pink?

MR. LEGUM: No, my understanding is that is not a parking lot.

In front of the building, see let's if we can see this. And again, it's probably better for Mr. Vind to explain this than for me to do it, but on X10, if you look at the middle row of photographs, the right-hand side, you can see a set of stairs there. That is what you're seeing in the top photograph to the right. You can see the
bannister for the stairs as it goes down.

There is in front of this building, as I understand it, a series of--
from the City of Brea, California, where Mr. Vind's property—Mr. Vind's office was located. This ordinance was passed in July of 1996, and I will quote, No person, other than the owner thereof, the owner's agents or employees, or an officer or employee of the City or a permittee's agents or employees authorized for such purposes, shall tamper or meddle with any solid waste, green waste, or recyclable material receptacle or the contents thereof, or remove the contents thereof, or remove any receptacle from the location where the same shall have been placed for collection.

And therefore, in the City of Brea, California, it is not legal to remove documents that have been placed in the trash without the owner's permission, unless you are a trash collector or otherwise authorized to do so by the owner or the City. And that is the case, even if the trash is located outside, even if it is in a dumpster that is located outside, whether it be in a parking lot or at the curb.

Brea is not the only city in California to have such an ordinance. Many cities in California have similar ordinances.

And I have included in your judges' packet one case which is Schlesinger versus the Walt Disney Company.

PRESIDENT VEEDE: Just before you get to
the case, you have given us a fuller text of the Brea City Code? In the event of a violation of this paragraph D, the ordinance, what is the penalty or consequence? Is that prescribed in the municipal code or elsewhere?

MS. MENAKER: I will take a look at that. I can discuss this case which interprets a similar code that the City of Burbank had.

In that case, the plaintiff had hired a private investigator to obtain corporate documents from Disney, and the plaintiff argued that it had instructed its investigator to only obtain Disney documents by lawful means. These documents were

taken out of an outside dumpster that was on private property, and that was deemed to be an illegal trespass under a Burbank, California, municipal code that's very similar to the Brea Code at issue in this case.

The Court rejected plaintiff's argument that it had instructed the investigator to only obtain the documents by legal means so it should be okay, and the Court stated, and I quote, The plaintiff claims that it instructed Sands to only obtain Disney documents by lawful means, but SSI, which is Schlesinger, full remains fully responsible for Sands's misconduct, even if his acts as SSI's agent were contrary to SSI's explicit instructions, end quote.

The Court excluded those documents from
evidence and dismissed the case. The Court stated that based on this and other acts, that the plaintiff's behavior constituted, and I quote, a substantial threat to the integrity of the judicial process, end quote. That quote is at star two of the opinion, the one that I just quoted, and the longer quote was star five.

And this case, as you can see, is from this year, from 2004, just a few months ago, the end of March of the California Supreme Court. So, Mr. President, members of the Tribunal, we again ask that the Tribunal exclude from evidence all of the documents that were documents originating from Mr. Vind's files. Even if the documents were retrieved from a dumpster that was on public property, that would be illegal under California law. And as I indicated, there was no dumpster on Mr. Vind's property. The trash was actually kept inside the building, and if it was received--retrieved from that trash, it is clearly illegal. So, for all these reasons and the others that we have outlined, we respectfully request that the Tribunal exclude these documents from evidence. And I would just like to give the Court--excuse me, the Tribunal, the citation from
the Court. I began by citing Brennan's dissent in a U.S. Supreme Court case. That is California v. Greenwood at 486 U.S. 35. It was a 1988 case. The first quotation that I cited was at page 51, and the second citation was taken from page 45 of that opinion.

PRESIDENT VEEDE: Would you be able to supply with us a copy of that decision?

MS. MENAKER: Yes. I believe it was in the materials that Methanex supplied us with, that it was one of the authorities on which they relied on for their legal memorandum they submitted yesterday.

PRESIDENT VEEDE: I see, okay.

(Pause.)

PRESIDENT VEEDE: Thank you, Ms. Menaker. If you have come to the end of your submissions, we will turn the floor over to Mr. Dugan.

MR. DUGAN: Members of the Tribunal, this is a new argument that has been raised by the United States, in particular the legal argument that this violated the city ordinance of Brea. This argument wasn't included in their reply to our opposition to their motion to exclude, and I would like the Tribunal's indulgence for a recess so we can go and look into this, please.

PRESIDENT VEEDE: Just before you go,
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Mr. Dugan, you want to recess to look into that, but in your interjection you indicated you might want to call further evidence.

MR. DUGAN: Correct, and we are trying to arrange for that, as well.

PRESIDENT VEEDER: Okay. So, how long would you like for us to break for at this stage?

MR. DUGAN: Could we break for 45 minutes?

PRESIDENT VEEDER: 45 minutes is a long time. We're certainly willing to give you every indulgence.

MR. DUGAN: A half hour?

PRESIDENT VEEDER: No, no, I'm just wondering whether we--is it something you need time for, or could we proceed with one of our witnesses?

It depends on if you're involved in the 45-minute activity or not.

MR. DUGAN: We could proceed with one of the witnesses, I believe.

PRESIDENT VEEDER: Let's break for 10 minutes and then if you could just tell us informally whether you would be content for us to go forward with another witness.

MR. DUGAN: Okay.

PRESIDENT VEEDER: While others do the work that you could set in place.

MR. DUGAN: That's reasonable.

PRESIDENT VEEDER: So, let's break for 10 minutes.
(Brief recess.)

PRESIDENT VEEDER: Let's resume.

Good morning, Mr. Listenberger.

THE WITNESS: Good morning.

ROGER LISTENBERGER, RESPONDENT/PARTY'S WITNESS, CALLED

PRESIDENT VEEDER: You're going to be

examined and cross-examined as a witness in these proceeding, but before we proceed, I would invite to you make the declaration in the form of the text which is before you.

THE WITNESS: Shall I read it?

PRESIDENT VEEDER: Yes, please.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT VEEDER: Thank you.

Mr. Listenberger.

Ms. Menaker.

DIRECT EXAMINATION

BY MS. MENAKER:

Q. Good morning, Mr. Listenberger. We've met before, but for the record I'm Andrea Menaker. I'm an attorney with the U.S. Department of State. I want to ask you a few brief questions on the statement that you provided in this arbitration. Do you have a signed copy of that statement before you?
A. Yes, I do.
Q. And is that your statement?
A. Yes, it is.
Q. Can you take a moment to review that statement and just let me know when you've finished doing so, please.
(Witness reviews document.)
A. All right.
Q. You affirm that the statements were true. Are the statements in your statement correct, to the best of your knowledge as you sit here today?
A. Yes, except for one portion in paragraph five, second page, the term "pharmaceutical business" is used, and the correct term should be "nutraceutical" business.
PRESIDENT VEEDER: I'm sorry, could you just spell that out.
THE WITNESS: I certainly hope I could do it, but it would be--it's nutraceutical. It makes reference to vitamins or supplement type of products.

BY MS. MENAKER:
Q. Thank you.
In August of 1998, you were employed at ADM, were you not?
A. Yes.
Q. Are you still employed there?
A. No, I’m not.
Q. When did you cease being employed there?
A. At the end of 2003.
Q. And why did you leave ADM?
A. I took early retirement.
Q. In August 19--or how long had you worked for ADM before retiring?
A. Nearly 25 years.
Q. In August 1998, what was your position with ADM?
A. I was the Vice President of Marketing for Fuel Ethanol.
Q. And what were your job responsibilities in that position?
A. I headed up the sales, reviewed the distribution, follow-up with all of our customers, customer satisfaction.
Q. In your statement, you testify about a dinner that you attended on August 4th, 1998. Did you play any role in arranging that dinner?
A. No, I did not.
Q. When did you first learn that that dinner was going to take place?
A. I don’t remember the exact date.
Q. Did you--do you recall whether or not you had a--I withdraw the question.
Do you have any--why were you asked to attend that dinner?

A. Martin Andreas, who at that time was our Vice President of Marketing for the corporation and Assistant to the Chief Executive Officer, a big part of his job was promoting ADM and their various products, and ethanol had a very high profile within ADM. A lot of people wanted to know about it. We frequently had guests come into Decatur, and he would ask myself or my boss to attend one of the meetings. And if there were questions that came up about ethanol, we could ask them--we could answer them and tell about what we were doing and what we expected to do in the future.

Q. Okay. What was your understanding as to the purpose of this dinner?

A. My understanding was that Mr. Davis was going to come into town and want to meet some people from ADM and promote his candidacy for becoming Governor of the State of California.

Q. Had you attended dinners or events like this previously?

A. Not with Mr. Davis, no.

Q. Had you attended dinners or events with other politicians or candidates previously?

A. Not really politicians. Mostly people who were interested in ADM's products, farm cooperative groups from around the country, people who are
Q. To the best of your recollection, at what time did the dinner begin that evening?
A. Well, it was late and delayed by weather. I don't know exactly what the time, beginning time was, but it began about 8:00.
Q. And to the best of your recollection, approximately how long did the dinner last?
A. One and a half to two hours.
Q. To the best of your recollection, who was present at the dinner?
A. Alan Andreas, Martin Andreas, Gray Davis, Richard Vind, and myself.
Q. And to the best of your recollection, what was discussed at that dinner?
A. Well, Mr. Davis promoted Mr. Davis quite a lot, talked about his upcoming candidacy and what he had done as--in his political career in the state of California, and Martin Andreas and Alan Andreas promoted ADM very heavily, in talking about a lot of the new products that we were in, that we were involved in, particularly the new line of nutraceuticals that we were involved in, and the future of nutraceuticals.
Q. To the best of your recollection, was
ethanol a topic of discussion at the dinner?
A. Not very much. It came up a few times.
Q. And what, to the best--to the best of your
recollection, was MTBE discussed at the dinner?
A. Again, not very much. It came up a few
times. One time in specific that I remember is as
we were preparing to leave or walking out of the
room I asked Mr. Davis if he felt that in the
upcoming election if MTBE would be an issue because
it was getting a lot of press at that time as a
serious groundwater contamination problem and I
asked him about that, and he said, no, he didn't
think it would be an issue.
Q. To the best of your recollection, was
methanol discussed at the dinner?
A. No, it was not.
Q. And to the best of your recollection, was
Methanex Corporation discussed at the dinner?
A. No, they were not.

MS. MENAKER: That's all I have.
PRESIDENT VEEDER: Thank you, Ms. Menaker.

Ms. Callaway, we're now going to turn to
the cross-examination of Mr. Listenberger, but one
thing that crosses our mind, are you intending to
refer during the cross-examination to any of the
relevant Regent International documentation?
MS. CALLAWAY: Yes, I am
PRESIDENT VEEDER: Please talk into the
microphone, and do sit down.
MS. CALLAWAY: I'm sorry that I'm a novice here at the World Bank hearing room.
Yes, I am, and if it please the Tribunal, I would like to use the ELMO and sit near the ELMO because I have documents that I have prepared for everybody, adequate copies for the United States team, for the witness, and for the Tribunal, but I would like to show them on the projector, if I may, if it please the Tribunal, and if the United States does not object.

PRESIDENT VEEDER: Before we get to the

ELMO, how far into your cross-examination will you get before you refer to the first of the Regent International documents?

MS. CALLAWAY: Oh, I'm sorry, the Regent International documents. Oh, no, President Veeder, I won't be using any of the Regent International documents. I apologize for my misunderstanding. I was just doing housekeeping about wanting to use the fancy projector.

PRESIDENT VEEDER: Okay. Let's move to that.

Now, if you want to operate the ELMO, you will be a very long way from the witness in this room as you appreciate.

MS. CALLAWAY: Yes, but if it does not bother anybody, including the witness, I would like to sit there.
PRESIDENT VEEDER: Why don't we break for two minutes while you re-establish yourself at the end of the table.

MS. CALLAWAY: Thank you very much.

PRESIDENT VEEDER: Make sure that it works in the way you want it to work.

MS. CALLAWAY: Thank you.

PRESIDENT VEEDER: Mr. Listenberger, forgive me, please wait there, and I will tell you now to save saying it later, once you start giving your evidence, we ask you don't discuss your testimony, save in the face of the Tribunal, so please don't discuss it with your colleagues or those beside or behind you. You can talk about the weather or anything else, but not about this case.

(Brief recess.)

PRESIDENT VEEDER: Let's proceed.

Ms. Callaway.

CROSS-EXAMINATION

BY MS. CALLAWAY:

Q. Good morning, Mr. Listenberger, and thank you very much for being here.

You testified that you no longer work for Archer Daniels Midland; is that correct?

A. That's correct.
Q. And is it also correct that you worked there for approximately 25 years?
A. Yes.

Q. Now, Archer Daniels Midland is often referred to as ADM is that correct?
A. Yes.

Q. And is it correct that ADM is comprised of four main divisions: Nutrition, animal nutrition, fuel and industrials, and food ingredients?
A. I think you'd get some argument on that.

Q. Well, tell me how, in your mind, there are divisions. I heard you used the term nutraceuticals "nutraceuticals." Is that a division?
A. No, it's commodities.

Q. Nutraceuticals are a commodity. Is lysine a nutraceutical?
A. I don't believe so.

Q. You worked in the fuel division at ADM is that correct?

PRESIDENT VEEPER: One moment,

Ms. Callaway. Because the witness is turning towards you, unfortunately, the microphone is not picking up. We are not important. The most important thing is the microphone, and the second most important person is our shorthand writer. Unless we get this down, it doesn't really count, so if you could just—I know it's crude, but if you look at the microphone when you answer rather than...
BY MS. CALLAWAY:

Q. You worked in the fuel division; is that correct?

A. That's correct.

Q. And that was one of a few divisions at ADM, right?

A. Fuel ethanol is a part of the corn processing division. There is no real, true fuel division.

Q. For a number of years you were responsible for ADM's fuel ethanol sales in the western United States; is that correct?

A. Western Marketing Manager was one of my titles, but my last title was Vice President of Marketing, and that was all over the United States.

Q. So, for approximately 13 years, you were responsible for marketing of fuel ethanol throughout the United States?

A. That's correct.

Q. You would agree, wouldn't you, that in your capacity as being in charge of the sale of fuel ethanol you had an active interest in promoting its sale; is that correct?

A. My job was to promote ethanol sales to all of our customers.

Q. So, that was in your interest and ADM's interest to promote its sale?
A. Well, it was in my interest if I was going
to be employed, yes.

Q. So, you would agree that it was in your
interest; right? So, you would agree that it was
in your interest; right?

A. It was my interest to do a good job, yes.

Q. So, the answer is yes; right?

A. I guess so.

Q. And you would agree that by 1998, you had
been at ADM for approximately 20 years?

A. Nineteen years.

Q. And within 19 years, you would agree that
you were familiar with ADM's corporate culture;
correct?

A. I was very familiar with my job in the
corn processing division. I couldn't say that I
was totally familiar with the entire corporate
culture, no.

Q. As the person in charge of marketing fuel
ethanol in the United States and as somebody who
had been at Archer Daniels Midland for
approximately 19 years, you were familiar with
Dwayne Andreas's--its Middle East versus Middle
West analogy regarding ethanol and methanol; is
that correct?

A. No.

Q. You have seen before Mr. Andreas's
statements, such as this one that I have on the
ELMO and that I have in front of you, where
Mr. Andreas made clear--and this is in 1992--that
methanol was a foreign product and ethanol was from
the Middle West?
A. No, I'm not familiar with that.
Q. No pun intended, but this isn't completely
foreign to you, is it?
A. A lot of our business associates in the
corn processing side from the various corn and
agricultural movements used this type of
terminology.
Q. But Mr. Andreas wasn't just on the corn
processing side; right?
A. That's correct. He was over the entire
company.
Q. And as CEO, he was ultimately responsible
for everything that came in and went out of ADM; is
that correct?
A. Well, he oversaw it. There were people
that did that.

Q. But you will agree that as Archer Daniels
Midland's CEO, when he spoke on CNN's Money Line on
May 12th of 1992, he was speaking for the company;
is that correct?
A. Mr. Andreas always spoke for the company.
Q. You've provided a sworn statement in this
7 case; is that correct?
8 A. Yes, I have.
9 Q. And earlier with Ms. Menaker she mentioned
10 that you had met her before; is that correct?
11 A. Yes.
12 Q. When was the first time that you met
13 Andrea Menaker?
14 A. I believe it was about two months ago.
15 Q. Approximately how many times have you met
16 with Ms. Menaker?
17 A. Including today, three times.
18 Q. How many other attorneys representing the
19 United States in this case have you met with?
20 A. One that I know of.
21 Q. And who is that?

1 A. Bart--I'm sorry--
2 MR. LEGUM Legum
3 BY MS. CALLAWAY:
4 Q. In addition to in-person meetings, have
5 you had telephone conversations with Ms. Menaker?
6 A. Yes, I have.
7 Q. Did you have your attorney present during
8 those conversations?
9 A. At least one time, and then another time
10 she called me and asked me a question at my desk.
11 Q. And when you say, "at your desk," was that
12 your desk at ADM or at the National Ethanol Vehicle
13 Coalition?
A. No, when I was at ADM.

Q. And when you referred to your lawyer, do you mean an Archer Daniels Midland lawyer, or do you mean your personal counsel?

A. I have no personal counsel. It was an ADM attorney.

Q. Do you recall who that ADM attorney was?

A. David Smith.

Q. I have provided a copy of this document in the packet that was submitted to you, and I want to be sure that I have the right document that is your sworn statement in this case.

If you could take a couple of moments to review it and let me know if you're familiar with it.

A. The one in front of me or the one on the screen?

Q. The one in front of you and the one on the--

MS. CALLAWAY: I will represent to the Tribunal and to the United States and to you, Mr. Listenberger, that what I have provided to you is what I have put on the screen.

PRESIDENT VEEDER: The witness is looking at the document that we've provided to him which is his witness statement, and you can take it that he's only provided one witness statement, and what he's looking at is a witness statement to which he deposed in his direct examination.
MS. CALLAWAY: I will turn to the second page of this that is dated October 24th, 2003.

BY MS. CALLAWAY:

Q. Looking on the screen, is that your signature, Mr. Listenberger?

A. Yes, it is.

Q. And October 24th, 2003, that's the date that you made your sworn statement in this case; is that correct?

A. Evidently, yes.

Q. And with whom at the United States, or pardon me, let me rephrase that. Did you communicate with one of the attorneys for the United States at the time that you prepared this statement?

A. Andrea Menaker, yes.

Q. And was that the first time that you spoke with Ms. Menaker?

A. No, I spoke to her prior to this.

Q. When did you first speak with Ms. Menaker?

A. I don't recall.

Q. You would agree that you spoke with Ms. Menaker on the phone a handful of times?

A. What is a handful? Just once or twice?

Q. Well, you spoke to her once around the
time of preparing this affidavit; is that correct?
A. That's correct.
Q. Did you speak with her before then?
A. Yes, I believe I had a conversation with her.
Q. How many conversations?
A. I said, just a few times. I don't really recall how many.
Q. A few, maybe three, four?
A. Well, more like two or three possibly.
Q. And did you speak with her on the phone after making this sworn statement?
A. I don't believe so.
Q. But you first met with her in person two months ago; is that correct?
A. No, I first met with her in the ADM offices a few weeks ago.

Q. Oh, a few weeks ago. I'm sorry, I thought you said two months ago earlier.
A. Yes, that could be a few months, to a few weeks. I'm not really sure of the time, of the date.
Q. So, your first meeting with her occurred at ADM's offices?
A. That's correct.
Q. Who else was present at that meeting?
A. David Smith and Bart, and again I'm sorry, I don't have the correct pronunciation of the last name.

Q. Mr. Legun?

A. Yes.

Q. What was discussed at that meeting?

A. My witness statement.

Q. And what did you discuss about your witness statement?

A. We went over what we had talked about, the upcoming hearing that we are having today, how the procedure would take place, just that type of thing.

Q. So, it was you and Mr. Smith on behalf of ADM, right?

A. I don't know if he was really on behalf of ADM other than just being there. He was providing the office space and attended the meeting.

Q. So, he was there in his capacity as a lawyer; right?

A. Well, I'm not really sure what capacity he was there as. My meeting was with Andrea and Bart, and David attended the meeting.

Q. So, he was present for the entire meeting; correct?

A. Yes.

Q. He wasn't dressed like a Little League coach; right?

A. No.
20    Q.  He was there in his offices at ADM, right?
21    A.  That's correct.

1    Q.  In your witness statement, you testify about a secret meeting that took place at the Country Club of Decatur; is that correct?
3    A.  It was not a secret meeting. It was very open. It was a public place.
4    Q.  Was the meeting advertised?
5    A.  There wasn't a billboard out in front of the meeting place, but messages were--or itineraries were passed around to the company announcing that the meeting was going to be--the participants were invited to attend.
6    Q.  Did you review such an itinerary in preparing this statement?
7    A.  No.
8    Q.  Have you reviewed an itinerary regarding this meeting in preparation for your testimony today?
9    A.  No. I saw one at the time, I suppose, but I don't remember seeing it since then.
10    Q.  Have you seen a list of attendees in preparation for your testimony today?
11    A.  No, I have not.
12    Q.  Now, the Decatur newspapers, both of the
Decatur newspapers didn't cover this meeting, did they?

A. No.

Q. And the people who came from California--I'm sorry, let me rephrase that.

Let me ask you this: Is it your testimony that ADM didn't hold secret meetings?

A. What are you asking me?

Q. I'm asking if it's your testimony that ADM didn't hold secret meetings.

A. I didn't feel it was a secret meeting.

Q. Is it your testimony that ADM didn't hold any secret meetings?

A. I would have no knowledge of that.

Q. You have no knowledge of any secret meetings?

A. No.

Q. I would like to show a videotape.

PRESIDENT VEEDEER: Ms. Callaway, just tell us what this videotape is. Is this already in the record or is this something you're introducing as evidence, or what?

MS. CALLAWAY: I would like to--I will move later to submit it as evidence. This is a videotape from the United States Department of Justice depicting a secret meeting that was classified as a secret meeting by the United States Department of Justice.
MS. MENAKER: Excuse me, we object to this showing.

PRESIDENT VEEDER: Just for the moment hold up for the showing of the videotape while we sort this out.

Does this go to the witness's credibility or is it directed at a factual witness in the case?

MS. CALLAWAY: It goes to the witness's credibility.

PRESIDENT VEEDER: Ms. Menaker.

MS. MENAKER: Yes. We object to the showing. This is well beyond the scope of Mr. Listenberger's statement. It has not been shown how this could possibly go to his credibility.

MS. CALLAWAY: I would--

PRESIDENT VEEDER: Just one moment.

Have you seen this video? Do you know what this video is about?

MS. MENAKER: We have not ever before seen this or heard about this video, so, no, I do not know what it's about, and we have not seen it.

PRESIDENT VEEDER: Ms. Callaway.

MS. CALLAWAY: Actually, President Veeder and members of the Tribunal, in one of the documents that I provided this morning that is from the joint submission with the caption of the informant, it's one page, 7 JS tab 171, March 10th, 1994: Hawaii, all of the companies agree for the
first time on how to split the market between them.
Quick time movie, modem connection, high speed connection.
We put them on notice with the joint submission that this would be evidence in this case.

MS. MENAKER: Excuse me, I would like to respond to that. When we have--

PRESIDENT VEEDER: We are lagging behind, I'm sorry. I just found the piece of paper, "The Informant," Article by Kurt Akbar. Which video are we looking at in the list of these videos?

MS. CALLAWAY: Actually, you know, it's March 10 of 1994 in Hawaii, and it's during an illegal meeting. A fake agenda for a bogus industry association is handed out. The executives discuss how this can be used as cover for their illicit activities.

PRESIDENT VEEDER: Thank you.

MS. CALLAWAY: And it's under the title "Video."

PRESIDENT VEEDER: How long is the video?

MS. CALLAWAY: I would say it's approximately 90 seconds.

PRESIDENT VEEDER: Thank you.
Ms. Menaker, you were going to say something?

MS. MENAKER: Yes, the document that was submitted into evidence is this document. No audiotape was submitted or videotape was submitted into evidence. There is no rule that we are put on notice that a videotape may be submitted into evidence because a piece of paper refers to an audio or a videotape.

And to the contrary, the United States has submitted audio materials into evidence. We have one of, I believe it was Pierre Choquette's annual teleconference, and when we wanted to submit that audiotape into evidence, we had a transcript, and we submitted the CD-ROM containing that audio into evidence. This is impermissible.

PRESIDENT VEEDER: Just wait one moment.

(Pause.)

PRESIDENT VEEDER: Ms. Callaway, we are going to let you run the video for the time being de bene esse. It won't stand as evidence. We understand you are introducing it in order to attack this witness's credibility, but just to help us understand the 90 seconds better, is this witness one of the participants at this meeting?

MS. CALLAWAY: He is not a direct participant. However, this goes to his credibility in the sense that--
PRESIDENT VEEDER: You don't have to explain it. Just run the video, and let's will see where it goes.

MS. CALLAWAY: Thank you very much.

(Videotape shown.)

MS. CALLAWAY: I apologize. It must have been rewound. It was not our intention to show this--to show the entire meeting.

This is what we intended to show. Thank you.

(Videotape shown.)

MS. CALLAWAY: And this is where I would like to end. Thank you. Going back to--

PRESIDENT VEEDER: Just before you go,

Ms. Callaway, just for the transcript, since this won't be transcribed into the transcript, given the poor quality of the sound, what you showed was a video with subtitles of a meeting that apparently took place apparently on the 10th of March 1994 in Hawaii; is that correct?

MS. CALLAWAY: Yes. In a meeting that the United States Department of Justice has identified as being an illegal meeting, using a fake agenda for a bogus industry association.

I don't believe that meeting was advertised, either, President Veeder.

BY MS. CALLAWAY:

Q. Going back to your statement,

Mr. Listenberger, of what I called the secret
meeting on August 4th, but which you contend was not secret, you say that it wasn't advertised on a billboard; right?

A. That's correct.

Q. At the Country Club of Decatur, it wasn't listed on the meeting events that day, was it?

A. Not that I'm aware of.

Q. And Gray Davis was in attendance; right?

A. Pardon me?

Q. Gray Davis was in attendance; right?

A. At the meeting?

Q. Yes.

A. Yes.

Q. And at that time, he was a candidate for the Governor of California; is that correct?

A. I don't know if he was really a candidate at that time or he was preparing to become a candidate.

Q. This is a fancy timeline that we had prepared that I've provided you a copy with. Do you have any reason to doubt that on June 2nd, 1998, Mr. Davis received the Democratic nomination for Governor?

A. I would have no idea.

Q. But you do recall that it was August 4th of 1998 that you met Gray Davis at the Country Club of Decatur?
Q. And you recall, don't you, that Mr. Davis arrived in Decatur via an ADM plane; is that correct?
A. I don't know who provided the transportation.
Q. Do you recall that Dick Vind was with Mr. Davis at that meeting?
A. Yes, he was.
Q. Do you recall that the Illinois State Police escorted Mr. Davis and Mr. Vind to the Country Club of Decatur?
A. I don't--I don't recall that.
Q. Not everybody who arrived at the Decatur airport to have dinner at the Country Club of Decatur got a police escort, did they?
A. I don't know if they do or not, no.
Q. Do you recall who else was in attendance at that meeting?
A. Yes, Martin Andreas with ADM, Alan Andreas with ADM, Richard Vind, and Gray Davis, and myself.

Q. Now, earlier you testified that you were the Vice President in charge of Marketing Ethanol; is that correct?
A. Fuel ethanol.
Q. Fuel ethanol, I apologize.
Now, if we were to do an organization chart, Martin Andreas would be above you in the organization chart; right?

A. Yes, he would.

Q. And Alan Andreas, he would be above you on the organization chart; right?

A. Yes, he would.

Q. Now, was Dwayne Andreas there?

A. No, he was not.

Q. In fact, he had gone home because Mr. Davis was so late; right?

A. I don't know.

Q. Do you recall waiting with him for Mr. Davis to arrive?

A. With Dwayne Andreas?

Q. Yes, sir.

A. No.

Q. Dwayne Andreas would definitely be above everybody else I've named from ADM on the organization chart; right?

A. He was Chairman of the Board at that time.

Q. Had he retired as CEO as of August 1998?

A. Alan Andreas was Chief Executive Officer at that time.

Q. And did Alan Andreas become CEO in 1998?

A. I don't know when the appointment was made.

Q. Do you recall Dwayne Andreas stepping down as the CEO?
14   A. I don't know when the progression took
15   place.
16   Q. But you do recall that he was once CEO and
17   then he wasn't CEO anymore; is that correct.
18   A. Was a gentleman named Mr. "Reiser" at the
19   meeting?
20   A. I don't recognize the name.
21   Q. An attorney named Rick "Reiser"?

1   A. Rick Reising?
2   Q. Yes, I apologize. Archer Daniels
3   Midland's head lawyer, was he at the meeting?
4   A. No, he was not.
5   Q. If his name was on an agenda for the
6   meeting, would that have been an error?
7   A. No. It was not unusual for the agendas to
8   come out for meetings and have several people's
9   names on them and then for one reason or another,
10   someone couldn't make the meeting, or substitutions
11   were made.
12   Q. Earlier you testified that you were asked
13   to attend to answer questions about ethanol; is
14   that correct?
15   A. Yes, I was.
16   Q. And you also testified that you had not
17   attended other meetings with politicians; is that
18   correct?
19   A. That's correct, as I mentioned before,
20   Martin Andreas frequently would ask myself or my
boss to come in and because he was promoting ADM and ask us to be at the meeting. And if somebody had questions about fuel ethanol, we could answer the questions and talk about what was going on in the fuel ethanol business.

Q. In 1998, ethanol was regulated by the State of California; right?
A. What do you mean by "regulated"?
Q. Well, you were in charge of marketing for the fuel ethanol for ADM?
A. That's correct.
Q. And as somebody who was marketing that and in charge of marketing, you were aware of states where there were laws in place that regulated ethanol, ethanol content in gasoline; is that correct?
A. Well, the Federal EPA does that, and the states can have their own regulations, but it's generally set down by the Federal EPA.
Q. But in 1998 California had its own regulations, didn't it?
A. Yes, they did.

Q. Now, going back to your statement and this meeting, California didn't regulate any of the nutraceuticals that you mentioned in 1998, did
they?
A. I would have no idea.
Q. So, there was nobody at the August 4th, 1998, meeting from the corn sweetener division; right?
A. There was no one who headed up the corn processing division that was there, but Martin Andreas promoted the corn processing division, as he did all of the divisions.
Q. In the same way that he promoted the ethanol division; right?
A. Certainly.
Q. In the same way that he promoted the animal nutrition products; right?
A. Certainly.
Q. In the same way that he promoted food ingredients; correct?
A. Well, that’s part of the corn processing division.
Q. But unlike the fuel ethanol division, which had you representing it, there was nobody representing the food ingredient division individually; is that correct?
A. Well, I think Martin and Alan did a pretty good job, yes.
Q. But they weren’t just there for the food ingredient division; is that correct?
A. No, they were promoting the company in general. That’s their job.
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12 Q. But you were just there promoting ethanol; right?
13 A. That's correct.
14 Q. So, you had you there, and you had Marty Andreas; correct?
15 A. That's correct.
16 Q. And Alan Andreas?
17 A. That's correct.
18 Q. Gray Davis?
19 A. Yes.

Q. Dick Vind?
A. Yes.

Q. Had you met Dick Vind prior to August 4th of 1998?
A. Yes.

Q. What was your understanding of what Mr. Vind did with ADM at that time?
A. Mr. Vind didn't do anything with ADM. He was an independent businessman.

Q. Was it just happenstance that he was at this dinner on August 4th of 1998, where you were there to talk about ethanol?
A. No, he was traveling with Mr. Davis and was his traveling partner to Decatur, Illinois.
Q. And Mr. Vind had been to Decatur, Illinois, before; is that correct?
A. Yes, he had.
Q. You met with him in Decatur, Illinois,
before; is that correct?

A. I had seen him in Decatur, Illinois, yes.

Q. And Mr. Vind had done work on behalf of

various ethanol trade associations or trade associations that promoted the use of ethanol; is that correct?

A. Not various. He promoted fuel ethanol in the state of California.

Q. Did you work with Mr. Vind on projects involving fuel ethanol in the state of California?

A. No, I did not.

Q. Do you know who did at ADM?


Q. Well, I'll come back to Mr. Harjehausen later, but at this meeting, was there also a gentleman by the name of Dan Weinstein in attendance?

A. I don't recall.

Q. So, it was just the high-ranking ADM executives, you, Mr. Davis, and Mr. Vind; is that your recollection?

A. That's correct.

Q. Did Mr. Davis have any bodyguards there?
A. I don't recall.

Q. Well, this was an important meeting for ADM, wasn't it?

A. Oh, I don't know if you would say that it was important. Anybody that came to Decatur and visited ADM is important, but I wouldn't classify it as being a terribly important meeting.

Q. Well, if my son's class went and toured ADM, they wouldn't get to go to dinner with Marty Andreas and Alan Andreas at the Country Club of Decatur; is that right?

A. No, you would be surprised. We frequently put on large dinners for people at our large media room in Decatur, Illinois, and serve them harvest burgers and soy milk and take them out and show them the fish, so, yes, they're very important.

Q. How frequently do you give political visitors who are campaigning for office $100,000 within two weeks of meeting them at the Country Club of Decatur?

A. I would have no idea.

Q. Getting back to your witness statement--

PRESIDENT VEEDEER: Just before you do that, remember that we have to break sharp at five to, so if you are coming to a natural break, I suggest you come to it before five to.

MS. CALLAWAY: I'm happy to break right now, so it gives you three minutes to be prepared for--
PRESIDENT VEEDER: I think we ought to make use of those three minutes. Thank you, Ms. Callaway. We'll break here.

MS. CALLAWAY: Okay. Thank you.

PRESIDENT VEEDER: Mr. Listenberger, I hope you've been told, I have to interpose a witness in the middle of your evidence, so we would ask you to withdraw, but again, don't discuss your evidence until you come back before the Tribunal. We'll hear the other witness in the meantime.

(Brief recess.)

DANIEL WEINSTEIN, RESPONDENT/PARTY'S WITNESS,

CALLED

-- BY VI DEOLI NK --

PRESIDENT VEEDER: My name is John Veeder, and I am Chairman of the Tribunal in these arbitration proceedings here, and I am sitting with my colleagues and the legal representatives of the parties. And I think we're seeing you, Mr. Weinstein; is that right?

THE WITNESS: That is correct.

PRESIDENT VEEDER: Now, can you see us?

THE WITNESS: I now can for the first time.

PRESIDENT VEEDER: Before we invite you to be a witness in these proceedings, we're going to ask you to make a declaration. I don't believe you have a copy of the text before you. I'm going to
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read out the declaration, and if you're willing to
make the declaration, I will repeat the words,
phrase by phrase. The declaration that we invite
you to make is as follows: "I solemnly declare
upon my honor and conscience that I shall speak the

17  Did you hear me read that?
18  THE WITNESS: Yes, I did.
19  PRESIDENT VEEDER: Are you willing to make
20  that declaration?
21  THE WITNESS: Yes. Do you want me to
22  repeat it verbatim?
23  PRESIDENT VEEDER: If you can remember it.
24  Otherwise I will go through with it phrase by
25  phrase. Let's do it slowly. I solemnly declare--
26  THE WITNESS: I solemnly declare--
27  PRESIDENT VEEDER: --upon my honor and
28  conscience.
29  THE WITNESS: Do you want me to raise my
30  right hand?
31  PRESIDENT VEEDER: No.
32  THE WITNESS: --on my honor and
33  conscience--
34  PRESIDENT VEEDER: --that I shall speak
35  the truth--
36  THE WITNESS: --that I shall speak the
PRESIDENT VEEDER: --the whole truth--
THE WITNESS: --the whole truth--
PRESIDENT VEEDER: --and nothing but the truth.
THE WITNESS: --and nothing but the truth.

PRESIDENT VEEDER: Thank you very much.
Ms. Menaker.

DIRECT EXAMINATION
BY MS. MENAKER:
Q. Good morning, Mr. Weinstein.
A. Good morning.
Q. As you know, I'm Andrea Menaker. We've met before. I'm an attorney with the Department of State, and I want to just ask you a few brief questions based on the witness statement that you submitted in this arbitration. Do you have a copy of your signed witness statement with you?
A. I think in the rush to get here I may have left it in the car, believe it or not. Is that a problem? I just realized that.
Q. I think it's okay to continue. That's okay.
A. I am sorry about that.
Q. That is quite all right. I mean, if you need it, we can have it faxed.
Do you recall--
8      A.   I think I am fine.
9      Q.   Do you recall having signed this witness
10     statement?
11     A.   Yes, I do.
12     Q.   And you attested that the statements you
13     made were truthful.  Are the statements correct, to
14     the best of your knowledge, as you sit here today?
15     A.   Yes.
16     Q.   What do you do for a living,
17     Mr.  Weinstein?
18     A.   We have a small boutique investment
19     banking firm in Los Angeles, financial services.
20     Q.   And when did you first meet Governor
21     Davis?

1     A.   I believe it was 1985, when he was an
2     assemblyman, a state assemblyman.
3     Q.   Could you describe your relationship with
4     Governor Davis.
5     A.   We developed a friendship when he was in
6     his second term as an assembly member, and I went
7     to work for him when he ran for statewide office
8     for the first time in 19--at the end of '85, when
9     he ran for State Controller.
10     Q.   And what was your role in Governor Davis's
11     campaign for Governor back in 1998?  Did you play a
12     role in that campaign?
13     A.   I was a volunteer.
14     Q.   And as a volunteer, what did you do for
15 him during the campaign?
16   A. I was a friend of Gray's, as I said, for a
17 number of years, and during that race in 1998, he
18 was the underdog in the race. He was running
19 against two very well funded opponents, so he
20 really didn't have much money, so he called on a
21 number of his friends to try to donate some time

and help him and I was one of those friends.

Q. In your statement you say that you were in
Chicago on August 4, 1998. Why were you in Chicago
with Governor Davis?

A. At the time Gray was the Lieutenant
Governor, and he was also, as you say, a candidate
for Governor. One of the things that he had asked
me to do was help him with groups outside of
California, potential donors in New York and
Chicago and Texas and in D.C. So, I helped him
with his national fund-raising.

And I had also worked with some of the
labor unions. I had worked for the AFL-CIO many
years ago, and I had some relationships with the
labor unions. So we went to a, I think it was, an
Executive Committee meeting of the AFL-CIO in
Chicago and that is why we were there.

Q. And I understand later that evening you
attended a dinner in Decatur; is that correct?

A. Yes.

Q. Did you have any role in organizing this
dinner in Decatur, Illinois?

A. No. I didn't know about it until Gray invited me to join him.

Q. And when did he invite you to join him?

A. As we were leaving the hotel. I was going to--he invited me as we were leaving the hotel.

Q. Leaving the hotel--

A. It was not unusual--yes, I'm sorry, I think it was the Drake. I am not sure of the hotel, but it was in Chicago, and he just invited me along.

Q. Okay. And do you recall who was at the dinner?

A. Yes. It was myself and Gray and Dick Vind, who was based in California, and I knew Dick only in passing, a little bit, not very well, and his client was the one we were going to see. He was their representative in California.

Q. And do you recall who else in addition to you, Gray, and Mr. Vind were there?

A. I don't remember if Mrs. Davis joined us or not. I thought she did, but I don't recall. I seem to recall that she did, but I don't remember exactly. We had some staff with us, California Highway Patrol, some support staff, but--and they went on the plane with us. They did not join us.
for the dinner. They did not sit in on the dinner.

Q. And what about the people in Decatur, Illinois, who you were going to visit? Who from Decatur was actually at the dinner, to the best of your recollection?

A. The two I remember were two of the Andreas--two people from the Andreas family. I remember one of them was Marty Andreas, I don't remember the other gentleman's name, and then there may have been one or two other executives from the company. But I don't recall all that well. I remember the two gentlemen.

Q. Okay. To the best of your recollection, what was the conversation at that dinner about?

A. Just to put it in perspective, we were somewhat reeling from the plane flight. It was a very rough flight. We went through an electrical storm so we were just happy to be on the ground. Once we got there, they took us on a little bit of a walking tour, and then we had dinner in a small--I remember it was a small room so it was kind of an intimate dinner, it was around a small table, and they just talked about the company and what they did, some of their various products the countries they were in. Just kind of an overview, nothing really specific, but very general.

Q. And do you recall any specific topic of discussion?
A. The only--I do remember a couple of things. The one thing I remember in terms of products, they were talking about some soy products, some agricultural products that they were manufacturing, something with soy, and I ended up in a conversation with one of them about some tofu and sort of the advancements they were making in that area in terms of what it takes to buy--I think they were talking about some product, synthetic, that was similar to ice cream. So, we were talking about desserts and things like that, I remember. So, in terms of products, that is what I remember. And I also remember them saying that they thought that, you know, California was an important state, and they just talked about, you know, the--you know, just in very general about the company, and it was, again, very general in nature.

Q. And do you recall specifically any discussion of ethanol at the dinner?

A. No, I don't recall that at all.

Q. Do you recall there being any discussion of MTBE at the dinner?

A. No.

Q. Do you recall there being any discussion of methanol at the dinner?

A. No, none at all. Again, I think the one thing that I do recall was I think about tofu and food products and ag-related and things like that.

Q. Okay, just one final question. Do you...
21 recall there being any discussion of Methanex Corporation at the dinner?

Q. Okay. Well, thank you, and now someone else will be asking you some questions.

PRESIDENT VEEDER: Ms. Callaway.

CROSS-EXAMINATION

BY MS. CALLAWAY:

Q. Good morning. I'm Claudia Callaway. I am here on behalf of Methanex.

A. Good morning.

Q. I am sorry about the delay, and I will try to wait for the delay, the speed of sound.

A. You are a managing director of Weatherly Capital Group; is that correct?

A. Yes.

Q. And you just testified that Weatherly Capital Group is a small boutique investment banking firm; is that correct?

A. Yes.

Q. In 1998 you were also Managing Director at Weatherly Capital Group; right?
Have you spoken with Ms. Menaker before today?
A. Yes.
Q. When was the first time you spoke with Ms. Menaker?
A. I received a call from her for the very first time, could be--we could be going back about a year. I don't know exactly.
Q. Have you ever met in person with Ms. Menaker?
A. Yes.
Q. How many times?
A. One time.
Q. And when was that?
A. I think about a week ago. I think it was last week.
Q. Did she visit you in Los Angeles?
A. Yes.
Q. Who else was present at that meeting?
A. She came with Bart, her associate.
Q. Was there anybody else present at the meeting?
A. No.
Q. Have you spoken with Gray Davis about this action?
A. Never.
Q. Have you spoken with anybody at Archer Daniels Midland Corporation about this action?
A. No, I have not.
Q. Did you review any documents during your meeting with Ms. Menaker and Mr. Legum?
A. I think only my sworn statement, but no documents.

Q. Have you ever seen an agenda concerning the dinner you attended in Decatur, Illinois?
A. I don't think I have seen it.

Q. Have you ever seen a list of attendees at that dinner?
A. I was told about that.

Q. You were told that there was a list?

A. Yes. I didn't see it, but I was told there was a list of attendees and that I was on that list.

Q. Who told you about that list of attendees?
A. I think it may have been Andrea and Bart. I did not know about it before then.

Q. What did Ms. Menaker and/or Mr. Legum tell you about the case of the claimant, Methanex, in this case?

MS. MENAKER: Excuse me. This is beyond the scope of his statement.

PRESIDENT VEEDER: Just one moment, Mr. Weinstein. There is an objection to that question, Ms. Callaway. Did you hear the objection?

MS. CALLAWAY: Yes, I did. And it's not--the scope objection does not qualify here.

Ms. Menaker and Mr. Legum traveled to Los Angeles
to prepare this witness for his testimony today.

Because he is not their client, we are entitled to know everything that was discussed in that meeting.

PRESIDENT VEEDER: But you have put the question on a very broad basis. You might want to narrow it down to make it a bit more easily understood by the witness.

MS. CALLAWAY: Thank you very much.

BY MS. CALLAWAY:

Q. How long did you meet with Ms. Menaker and Mr. Legum last week?

A. Less than an hour. Not very long.

Q. During that meeting, did Mr. Legum or Ms. Menaker mention anything about the case that Methanex, the claimant in this case, is presenting?

A. Yes.

Q. And what did they tell you?

A. They just explained that Methanex was, I think, filing a claim under NAFTA and then just explained it to me generally.

Q. Did they tell you what was being alleged by Methanex?

A. Yes.

Q. What did they tell you was being alleged by Methanex?
A. I don't know the technicalities, but essentially, I think Methanex was alleging that ADM was given preferential treatment and, thus, Methanex was penalized because ADM was supporting Gray when he ran for Governor.

Q. Did Ms. Menaker or Mr. Legum ever tell you, either in person or by telephone or by letter, why you were chosen by the United States as a witness in this case?

A. Yes, I think, because I was present at that dinner. I think they said that I would probably be called to testify.

Q. Gray Davis was present at that dinner as well; is that correct?

A. Yes.

Q. Did Ms. Menaker or Mr. Legum ever tell you why Gray Davis is not a witness in this case?

A. No.

Q. Going back to your witness statement and to your testimony today, you've testified that you've been at Weatherly Capital Group for a number of years; correct?

A. Correct.

Q. Prior to that, you held different positions; is that correct?

A. Yes.

Q. One of those positions was in the government with Kathleen Brown as the State
Treasurer, when she was State Treasurer; is that correct?

A. On her political side.

Q. And when you say, "political side," what did your job entail?

A. I was working for her when she was contemplating and then eventually running for Governor--first contemplating a run, forming a committee, and then ultimately running for Governor.

Q. And one of your positions was on the political side for Gray Davis's first statewide election, you said?

A. Yes.

Q. And when you say it was on the political side, did you have a paid political position?

A. Yes.

Q. So, that wasn't on a volunteer basis?

A. No.

Q. Prior to your time working for Ms. Brown or Mr. Davis, one of the positions you held was as Political Director for the United Food and Commercial Workers Group; is that correct?

A. Yes.

Q. And as the union's Political Director, you met with a number of candidates and elected officials; is that correct?

A. Yes.

Q. So, it has been 20 years, give or take,
that you have been working with politicians on fund-raising; is that correct?

A. Yes, more or less.

Q. When you worked at the Food Workers Union, you assisted the Union in deciding which candidates

and which elected officials would receive the union's political contributions; correct?

A. I would be a part of that process.

Q. Right. And that was one of your jobs at the union; right?

A. Yes.

Q. So, you understood what goes on when a union is determining whether to make an investment--I am sorry, I was thinking of your investment banking--make a contribution to a candidate; is that correct?

A. I think--yes. They weighed several factors in determining who to support.

Q. One of the factors that a group weighs is the--let me rephrase that. I apologize. When a group is determining whether to contribute money to a political candidate, they want to know the candidate's views on issues important to that group; isn't that correct?

A. I'm sorry, can you repeat that? I didn't hear you that well.
Q. That's okay. It wouldn't be the first time someone couldn't hear me.

When a group is determining whether to give money to a political candidate or an elected official, one of the things that they look at is that candidate's or that elected official's position on issues that are important to that group; is that correct?

A. I think that's taken into consideration.

That's a part of it.

Q. You have never been with a group contemplating a political contribution that would give money to a candidate whose views were directly opposed to the most important issues for that group, have you?

A. Offhand, I can't think of any, any example, but I think that is unlikely.

Q. Now, in your sworn statement you admit to being a close friend of Gray Davis, don't you?

A. Friends. We have known each other for a long time.
Q. Are you close friends with the Speaker of the Assembly as well?
A. Yes.
Q. Now, earlier you mentioned that you were asked specifically by Mr. Davis to assist him in raising funds in New York?
A. In a number of places, but in New York as well.
Q. Chicago?
A. Yes.
Q. Texas?
A. Yes. My family is from Houston, so I had some relationships there and some people I was able to introduce him to.
Q. You mentioned that he was an underdog running against well funded opponents; is that correct?
A. Yes.
Q. Now, you recall that Mr. Davis received the Democratic nomination for Governor in June of 1998; is that correct?
A. Yes.
Q. And you will recall that your sworn statement talks about a meeting on August 4 of 1998; is that correct?
A. I think that is correct.
Q. So, in August of 1998, when you went to Decatur, Illinois, Mr. Davis already had the Democratic nomination wrapped up; right?
15     A. Yes.
16     Q. He was only raising money going forward
17     for his campaign against the Republican candidate;
18     correct?
19     A. Yes.
20     Q. Now, since 1986, when you were working as
21     the Political Director for the Union, you have been

 helping Gray Davis raise capital; is that correct?
2     A. On and off, at certain times.
3     Q. And in the summer of--
4     A. Not continuously.
5     Q. Okay. But going to your sworn statement
6     in the summer of 1998, you accompanied Gray Davis
7     to Chicago to introduce him to some members of the
8     AFL-CIO Executive Council; is that correct?
9     A. Well, he knew a number of them but I was
10     making some additional introductions and just
11     accompanying him on the trip.
12     Q. Just to recap, and I'm sorry that you
13     don't have a copy in front of you, but in reading
14     paragraph three of your sworn statement, you state,
15     quote, In the summer of 1998, Gray Davis asked me
16     to join him on a trip to Chicago to introduce him
17     to some representatives at the AFL-CIO Executive
18     Council meeting, which was being held at the Drake
19     Hotel.
20     So you did introduce him to some of the
21     representatives; is that correct?
A. Yes.
Q. And this is one of the Chicago groups that he specifically asked you to assist him with for fund-raising; right?
A. Yes.
Q. And that introduction was ultimately successful because the AFL-CIO Executive Council decided to provide some monetary support for Mr. Davis, didn't they?
A. Yes, they did.
Q. And after that meeting, in which you introduced Gray Davis to the AFL-CIO Executive Council, Mr. Davis told you he was going to fly to Decatur, Illinois, to meet with executives of Archer Daniels Midland; is that correct?
A. Yes.
Q. And he invited you to join him didn't he?
A. Yes.
Q. Now, you had flown to Chicago on a commercial airliner, United Airlines; is that correct?
A. I flew commercial. I don't recall the flight, but I flew commercial.
Q. And you were prepared to either stay in Chicago or go home that evening; correct?
A. I think it was I was scheduled out the next day. I don't remember, but I wasn't planning to leave that evening.

Q. But as a volunteer fund-raiser to Gray Davis's campaign, you agreed to accompany him on the flight to Decatur; is that right?

A. Yes.

Q. But when you got to the airport in Chicago for that flight to Decatur, the weather had turned very stormy, hadn't it?

A. Yes, it did.

Q. In fact, it was so stormy that you considered canceling the trip to meet the Archer Daniels Midland officials, didn't you?

A. Well, I don't know about--no. We--we were--I think collectively, the group, we were, you know, debating whether to fly or not.

Q. Again, going back to your sworn statement, and, again, I apologize that you don't have a copy in front of you, in paragraph four, you testify, quote, We considered canceling the trip, but eventually went ahead with the flight, unquote. Is that accurate testimony?

A. Yes.

Q. But you didn't cancel the trip, did you?

A. No. We went forward.

Q. And a private plane picked you up, didn't it?

A. Yes.
0610 Day 4

Q. And Dick Vind was on that plane, wasn't he?
A. Yes, he was.

Q. So, you and Dick Vind and Gray Davis took the flight to Decatur; is that correct?
A. Yes.

Q. Mr. Vind had already met that day with some folks from Archer Daniels Midland on behalf of Mr. Burton; is that correct?
A. That, I wasn't aware of.

Q. Do you recall the details of the conversation on your plane ride from Chicago to Decatur with Mr. Vind?
A. No, because I wasn't sitting with Dick and with Gray. I was--they were sitting together, and I was sitting across.

Q. Was it a small plane?
A. It was pretty small plane. It was private.

Q. Private plane, about six people, eight people?
A. I think it was about eight passengers. I think it was about an eight-seater. I don't know. I think that is what it was.

Q. But you couldn't hear every conversation on the plane; right?
A. I couldn't hear, and to tell you the truth, I wasn't paying much attention because I was
The weather was so bad that the flight was frightening to you, wasn't it?

A. It was bad.

Q. In your sworn statement you state that, quote, I don't recall much about the trip other than the fact that the flight was frightening because of the bad weather, unquote. Is that accurate?

A. Yes.

Q. I would like to ask you about the secret meeting in Decatur with Gray Davis. You weren't told about the meeting until your AFL-CIO meeting was finished?

MS. MENAKER: Excuse me, I would like to object to the phrasing of that question.

PRESIDENT VEEDEER: Well, I think we are used to the phrase. Let it be.

MS. MENAKER: Yes, we may be, but I don't know if the witness is.

PRESIDENT VEEDEER: Well, it wasn't the witness's phrase.

BY MS. CALLAWAY:

Q. You weren't advised of the meeting with the Archer Daniels Midland executives until hours
before the meeting was to occur, were you?

A. Literally right before we were leaving, that is when I first became aware of it.

Q. Now, you earlier testified that you recalled that two of the Andreas family members were present; is that correct?

A. Yes.

Q. Do you recall that a lawyer for Archer Daniels Midland named Rick Reising was there?

A. No, I don't remember him.

Q. Do you recall that Roger Listenberger, who was ADM's ethanol marketing executive--do you recall him being there?

A. No, I don't.

Q. Well, just like you couldn't hear every conversation in the eight-seat airplane, which was an intimate setting, you couldn't hear every conversation at the table that night, could you?

A. I certainly don't remember every conversation.

Q. You can't remember everything that was discussed, can you?

A. I remember very little about what was discussed. I just remember generally from six years ago a little bit about the company.

Q. But earlier today you testified that you recall that ADM said that California was an important state; is that correct?

A. I think they were talking about it being
the biggest state. We talked about it being--I remember Gray was talking about it being the fifth or sixth largest economy, and, you know, he was excited about the challenges. It was kind of sort of rhetorically the stuff that he talked about with people when he would talk about the campaign and sort of outlining his goals and objectives and his vision for California.

Q. Just to repeat your earlier testimony, and if you would like, I can go to the exact quote, but earlier when you were being questioned by

Ms. Menaker, you stated that you recall ADM saying that California was an important state. Do you recall using that word this morning?

A. Yes, I do.

Q. At the time of the secret dinner, you didn't know what MTBE was, did you?

A. Well, I didn't know it was a secret dinner, but--and I did not know--I never heard of MTBE until probably a couple of years later, after Gray became Governor and that became an issue in California.

MS. CALLAWAY: The Tribunal's indulgence for a moment?

(Pause.)

BY MS. CALLAWAY:

Q. When were you appointed to the Coastal Commission?
A. Let me think back. I think it was--I think it was in 2000.

Q. And that's a commission that monitors environmental issues?

A. It does. It's basically preservation of the coastal line, coastal protection.

Q. Protecting the coastline and the water that forms the coast; is that correct?

A. Yes. It really has to do with development on the coast and public access and issues like that.

Q. And as a resident of California, had you followed those issues for some time?

A. I had followed it, but not--I had not paid particular close attention to it. The Speaker asked me to serve, and I accepted.

Q. But you were a close friend of Gray Davis when he was elected; right?

A. Yes, I think so.

Q. And as a close friend of his, and somebody who helped him raise funds across the country, you were certainly aware of what some of his first acts in office were, first official acts; is that correct?

A. Well, to tell you the truth, I can't
1 remember his first official act. Now we are going
2 back to January 1999. It is hard to remember what
3 he did in those first 100 days. I remember his
4 focus was on education. That is what he got
5 elected on, and that was his primary focus at the
6 outset.
7 Q. Well, then, doe it surprise you that if he
8 was elected on education, one of his first
9 Executive Orders in March of 1999, within his first
10 100 days, was to ban MTBE in the state of
11 California?
12 A. I didn't know what MTBE was.
13 MS. CALLAWAY: Thank you very much for
14 coming to testify this morning. I appreciate it.
15 And I have no further questions.
16 THE WITNESS: Thank you.
17 PRESIDENT VEEDER: If you wouldn't mind
18 waiting for a moment, we have some more questions
19 from Ms. Menaker.
20 MS. MENAKER: Actually, we have no
21 redirect.

1 PRESIDENT VEEDER: Mr. Weinstein, we have
2 come to the end of your questions because there are
3 no more questions from the parties or the Tribunal.
4 Again, from the Tribunal's perspective, we thank
5 you for the trouble you have taken to come to be a
6 live witness, and we now come to the end of this
7 session. Thank you very much indeed.
8 THE WITNESS: Okay. Thank you.
(Witness steps down.)

PRESIDENT VEEPER: Shall we resume with Mr. Listenberger's cross-examination? While he is being brought, can we just invite Mr. Dugan to indicate what progress has been made in regard to the response to the U.S.A.'s motion?

MR. DUGAN: We are making progress, but we would like some more time, and I think the way that the schedule will play out today, it looks like Mr. Listenberger will conclude before lunch, and then we could perhaps have a lunch break and then revisit it before Mr. Vind comes on.

PRESIDENT VEEPER: If U.S.A. is content to proceed on that basis, we will continue with Mr. Listenberger to the end and review the situation then.

MS. MENAKER: That is fine with us.

PRESIDENT VEEPER: Ms. Callaway, it's over to you again. Are you going to sit at the end of the table?

MS. CALLAWAY: Yes. It is the only time I get to sit at the head of a long table.

PRESIDENT VEEPER: We will resume cross-examination by Ms. Callaway.

Just one moment.

(Pause.)

PRESIDENT VEEPER: Thank you very much for returning, Mr. Listenberger. We're now going to
Mr. Listenberger, before the break, you testified for, give or take, 40 minutes; correct?

A. I believe so.

Q. And in response to a number of my questions, you responded by saying, I don't recall certain details; is that correct?

A. Some of them, yes.

Q. For example, you couldn't recall if ADM's head lawyer was at the meeting, the secret meeting August 4th of 1998?

A. I don't believe Mr. Reising was at that meeting, no.

Q. And you cannot recall if a gentleman named Dan Weinstein was there; is that correct?

A. No, I can't.

Q. If you can't recall these things—you must have prepared for your testimony with the lawyers for the United States; is that correct?

A. I talked to Andrea. She explained how the meeting would run. I can only recall what I recall.
Q. Exactly. I am sure that the United States told you not to guess; right?
A. They told me to be as accurate as I could and honest.
Q. Well, do you honestly know why you are the witness for the United States rather than Alan Andreas?
A. I have no idea.
Q. Do you know honestly why you are the witness for the United States rather than Marty Andreas?
A. I have no idea, again.
Q. Going back to your sworn statement in this action, in your statement you estimated that dinner lasted somewhere between two and two-and-a-half hours; is that correct?
A. One-and-a-half to two hours.
Q. I would just like to direct you to paragraph four of your statement. In the second sentence, "I would estimate that the dinner lasted somewhere between two and two-and-a-half hours."
A. Yes, but I believe I answered that previously, when you asked me, about one-and-a-half to two hours.
Q. So, is your testimony changing today?
A. I just didn't pay attention to that this morning when I read through it.
Q. You would agree, wouldn't you, that your recollection of events would be fresher October 24 than it would be today, eight months later; is that correct?

A. I feel very comfortable with the comments that I have on here today and as I did then.

Q. You don't feel as comfortable with them today?

A. No, I said I feel comfortable with the same comments today as I did then.

Q. So, your testimony is not changing today?

A. No.

Q. Well, going to the second page of your sworn statement--

A. Yes.

---

Q. --and going back to 1998 and to the dinner at the Country Club of Decatur, were you a member of the Country Club of Decatur, Mr. Listenberger?

A. No, I am not.

Q. Was Mr.--were either of the Messrs. Andreas members of the Country Club of Decatur?

A. I don't really know if they are or not.

Q. Is this a country club that needs to invite you to become a member before you join?

A. I don't know what the procedure is. Normally you would submit an application and then it would be reviewed.
Q. In your sworn statement, you testified that Mr. Davis was late for his dinner that night; is that correct?
A. Yes, I did.
Q. And you testified that that is because the weather was bad that night; is that correct?
A. That is correct.
Q. Do you recall if it was an electrical storm that evening?
A. Yeah, it was just very bad weather and--I don't remember exactly what it was, but it was very bad, rainy, inclement weather.
Q. Late summer storm or midsummer--August storm?
A. I suppose.
Q. You testified that during the two to two-and-a-half hours, you and your colleagues discussed ADM's business with Gray Davis; correct?
A. Both Mr. Marty Andreas and Alan Andreas promoted ADM during that meeting, I would say. I said very little.
Q. Going to paragraph five, the first sentence, "Over the course of the dinner, I, along with some of my colleagues, discussed ADM's business."
Is that correct?
A. Yes. I am being rather generous about myself. I said very little.
Q. You would admit that you couldn't hear all
of the conversations at the table; right?
A. I could hear quite well. It was a small room.

Q. Is it your testimony that you heard every conversation at the table?
A. Probably not, no.

Q. And it is your testimony that the discussions focused primarily on ADM's presence in California; isn't that correct?
A. No. The conversation by or the conversation initiated by Martin Andreas and Alan Andreas was about ADM in general.

Q. Going back to paragraph five, the second sentence, quote, In doing so, we primarily focused on ADM's presence in California and ADM's sweetener and pharmaceutical businesses, with only brief discussion of ADM's ethanol business. Is that accurate?
A. Yes. There was a lot of business of ADM's business in general in sweeteners and in the nutraceutical side. The comments about ADM participating in California were brought up, yes.

Q. In fact, eight months ago you said that was the primary focus of your conversations that evening; is that correct?
I said it was focused on ADM's presence in California and ADM's sweetener and nutraceutical businesses, which were very broad businesses all over the country, and the world, for that matter.

Q. So it was a broad focus?
A. It was on that part of the business.
Q. But you also used the term "primarily" with "focus"; right? We were just discussing grammar. I am not an English teacher, but "primarily," that means first and foremost; correct?
A. Yes.
Q. You also discussed ADM's ethanol business with Gray Davis; is that correct?
A. Very briefly, yes.
Q. In your testimony this morning ADM—I'm sorry, you said ethanol came up a few times; is that correct?
A. That is correct.
Q. And he told you that he did not think it was of adequate importance to be an issue for his campaign; is that correct?
A. He didn't go into any great detail. He just said, no, he didn't, and that was the end of it.

Q. In fact, your testimony is, Mr. Davis responded that he did not think so. That is accurate; right?
A. Yes.

Q. Something happened--well, I'm sorry. Scratch that.

In your sworn statement in paragraph 2 you say, quote, It was my understanding that the dinner was arranged in order for me and others to meet Mr. Davis, discuss his candidacy, comma--I'm sorry, no comma there--and assess whether to support his campaign.

That is your testimony; right?
A. Yes.

Q. You met Mr. Davis that evening; right?
A. That is correct.

Q. You discussed his candidacy; correct?
A. He discussed his candidacy, yes.

Q. You discussed it with him correct?
A. We listened, yes.

Q. And something happened that night on August 4 that made ADM assess that it should support his campaign, didn't it?
A. I would have no idea about that.

Q. But less than two weeks later ADM gave Gray Davis $100,000; right?
20      A.   Again, I have no knowledge of that either.
21      Q.   Who would have approved a donation of

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1      $100,000 to a political candidate in August of
2      1998?
3      A.   I would suppose any expenditure of that
4      size would have to be President and Chief Executive
5      Officer, Chairman of the Board, probably.
6      Q.   Who was the President at the time?
7      A.   I believe Alan was President and Chief
8      Executive Officer.
9      Q.   And in asking this, it is not to trip you
10     up or to be a quiz.  I really don't have a 10-Q or
11     10-K in front of me.  You believe Alan Andreas was
12     the President at that time; is that correct?
13     A.   I believe so.
14     Q.   Would he have been one of the people who
15     would be qualified to approve a $100,000
16     contribution to a political candidate?
17     A.   I certainly can't say that for certain,
18     but I would think that he would at least be aware
19     of it.
20     Q.   Would Dwayne Andreas, to your knowledge,
21     be qualified to make that decision?

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1      A.   I don't know if that decision would go
2      before him

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Q. How about Marty Andreas? Would that have been a decision that went before him?
A. It is possible, but I don't really know how that part of the business works.
Q. When you say "that part of the business," you mean that in 1998, you didn't know who approved campaign contributions?
A. No, I did not, and I still don't, by the way.
Q. I didn't mean to interrupt you. You said you still don't know?
A. No, I don't.
Q. Did you ever during your tenure at Archer Daniels Midland recommend that the company make a campaign contribution to a candidate?
A. No, I did not.
Q. So, it is your testimony that you don't know who approved the $100,000 donation that was made less than two weeks after the August 4 secret meeting; is that correct?
A. Well, I don't know about a contribution, first of all, and if there was a contribution was made, I don't know who would have approved it.
Q. To your understanding, and having worked with Mr. Vind, ADM made a lot of political donations; right?
A. I have read that, yes.
Q. But you have also read that ADM didn't
Q. You have never heard of it?
A. I have heard of it. I am not familiar with it.

Q. Do you know what "The Informant" is about?
A. Not really. I have never read it.

Q. When you say, "not really," what is your understanding what "The Informant" is about?
A. I gather by the title and some of the--and the cover, that it has something to do with a case that the company--ADM--was involved in a few years ago.

MS. MENAKER: If I can interrupt, I'm sorry, for just one minute. Is that in evidence?
MS. CALLAWAY: I am going to use it to impeach--to cross-examine the witness on his credibility.

MS. MENAKER: And we don't have a copy of
that exhibit that you are intending to use.

MS. CALLAWAY: I don't think it will be an exhibit. I really did not expect--and this is for the benefit of the Tribunal, President Veeder--I did not expect, and am somewhat surprised, by Mr. Listenberger's testimony that he has no knowledge of political contributions given by Archer Daniels Midland.


MS. CALLAWAY: Yes, and, you know, absent-minded mother that I am I brought up "The Informant" not as an advertisement, but in error. I have no interest in this. I have no financial interest in this book. I did think that what I wanted to show was in this book. It is actually the book "Rats In The Grain," and we have provided some excerpts from "Rats In The Grain," and let me ask if you are familiar with this book.

Mr. Listenberger.

PRESIDENT VEEDER: Just before you go anywhere, what are we doing with "The Informant"
MS. CALLAWAY: Nothing with "The Information." We're just going to put "The Informant" under the table right now.

PRESIDENT VEEDER: Fine. So, we are now coming to "Rats In The Grain"?

MS. CALLAWAY: We're now coming to "Rats In The Grain." I apologize.

BY MS. CALLAWAY:

Q. Are you familiar with a book called "Rats In The Grain"?

A. No, I am not.

Q. I believe that there is a portion of "Rats In The Grain" in the documents that were provided to you this morning.

Are you aware that political donations and the--well, publicly disclosed political donations have their information made available through the FEC, Federal Election Commission--are you familiar with that?

A. No, I am not.

Q. Do you have any reason to doubt the information available through the FEC concerning the political contributions made to Gray Davis between May 28 of 1998, and September 24 of 1999?

A. Do I have any what?

Q. Do you have any reason to doubt the accuracy of that information?
A. No. I don't have any knowledge about it at all, so I couldn't make a judgment one way or the other on that.

Q. You have no reason to think that the Federal Election Commission would misrepresent something that was filed by ADM, right?

A. Well, I certainly hope they wouldn't.

Q. You don't have any basis to believe that they would, do you?

A. No.

Q. Is this the first time you are learning about the number of contributions and the amount of contributions made by ADM to Gray Davis?

A. No. I read about it in the newspaper.

Q. So, you are familiar with the fact that within two weeks after your meeting on August 4, ADM gave Mr. Davis $100,000; right?

A. I don't have any knowledge of the timetable of any contributions or the amounts, other than what I read in the newspaper.

Q. Did you read about this in the Wall Street Journal, by any chance?

A. I could have.

Q. Turning to the documents that you have in the package I provided to you, there is a copy of a Wall Street Journal article.

PRESIDENT VEEDER: Ms. Callaway, can you help us because we don't have any Wall Street Journal articles in our banks.
MS. CALLAWAY: Yes. I apologize. It is
7 JS tab 88.

MS. MENAKER: It wasn't included in the
witness's package, nor ours.

MS. CALLAWAY: I apologize, and I would be
happy to provide this copy to the witness. Thanks.

(Pause.)

THE WITNESS: Okay.

BY MS. CALLAWAY:

Q. In reviewing this article, do you think
that this might have been the newspaper in which
you read about ADM contributions to Gray Davis?

A. I don't know. I don't really read the
Wall Street Journal, but I may have seen it in a
clipping or some other publication, but I couldn't
say for sure what.

Q. In the second paragraph where it says,
quote, According to an itinerary of the August 4
visit, two of the seven officials scheduled to
attend were ethanol industry executives, and two
more were Archer Daniels' senior executives heavily
involved in that company's ethanol business.

You would agree that you are one of the
ethanol--you could be described at that time as an
ethanol industry executive; correct?

A. I appreciate the title, but I was there.

I don't know if they were making reference to me or
not.

Q. You were Vice President; right?
A. That is correct.

Q. Of fuel ethanol; right?
A. That is correct.

Q. So, it would be accurate to describe you as an ethanol industry executive; right?
A. I appreciate it, yes.

Q. In fact, that is how you were described when you spoke to the sugar lobby or other lobbies from time to time; is that correct?
A. I spoke one time, yes.

Q. But that is how you were described, isn't it?
A. I don't really remember.

Q. The two senior executives, that would have been Alan Andreas and Marty Andreas; correct?
A. I don't know. Those are the two that were there, but they were also talking about seven people here.

Q. Going to the last paragraph of the article, quote, Archer Daniels officials deny attempting to influence Mr. Davis, saying they merely wanted to educate him on all the business their company does in California.

Is that an accurate statement, in your
A. Yes, but, they talked—as I mentioned before, they talked quite a lot of other things the company was involved in, particularly the nutraceutical side of the business.

Q. But the company spokesperson focused on California; is that correct?

A. They focused on California but also the other parts of the business, as I mentioned.

Q. I understand your desire to provide your view. I am just asking you to read this last sentence. This doesn't talk about nutraceuticals, does it?

A. No, it does not.

Q. It doesn't talk about sugar, does it?

A. No.

Q. Corn processing?

A. No, it does not.

Q. Talks about business that the company does in California; is that correct?

A. That is correct, and they did cover that.

Q. Now going back to political contributions, you testified you were aware of the $200,000 that the company gave Gray Davis?

A. No, I was not aware of that. I was aware by reading the newspapers that there were some contributions made. The timing and the amount I was not aware of.

Q. Is this the first time that you've learned
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14 of the $200,000 given to Governor Davis?
15 A. I have heard various amounts over the
16 time, but I don’t know what the exact amount was.
17 Q. Ms. Menaker didn’t tell you about any
18 amounts?
19 A. We didn’t discuss the amounts, no.
20 Q. Did she discuss the fact of the
21 contributions?

1 A. We discussed that would be part of what
2 the hearing was about.
3 Q. So you knew I would ask you questions
4 about contributions; right?
5 A. I didn’t think I could avoid it.
6 Q. But you didn’t go back and look at any
7 information about the contributions?
8 A. No, I did not.
9 Q. You’ve stated that you are not familiar
10 with the book called “Rats In The Grain,” but I
11 would like to ask you some questions. I am not
12 offering this into evidence. I’d just like to
13 cross-examine you on this.
14 MS. MENAKER: I apologize, but I believe
15 when you asked that question, it was with respect
16 to the other book, “The Informant.” I don’t know
17 if you asked him if he was familiar with this book.
18 MS. CALLAWAY: I’m sorry, I thought I did
19 ask him
20 BY MS. CALLAWAY:
Q. I thought you said you weren't familiar with "Rats In The Grain"?
A. I am not familiar with the book, no. I know of it, but I have not read it, and I don't know what the content is.
Q. You don't know what the content is?
A. No. Other than looking at the cover.
Q. And the cover says The Dirty Tricks And Trials Of Archer Daniels Midland, The Supermarket To The World?
A. It doesn't say that.
Q. I guess we provided you with another cover.
PRESIDENT VEEDER: We do indeed have a different cover. That's not the cover that we have.
MS. CALLAWAY: The dirty tricks and trials of Archer Daniels Midland.
PRESIDENT VEEDER: That's what we have. We have nothing about any supermarket.
Before you turn to that page, we don't have that page.

BY MS. CALLAWAY:
Q. Let me just ask you this: Archer Daniels Midland was headquartered in or is still
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headed in Decatur, Illinois; is that correct?

A. Yes, it is.

Q. Dennis Hassert is the Speaker of the United States House of Representatives, is he not?

A. I believe so.

Q. And he hails from Illinois; is that correct?

A. I believe so.

Q. Did you ever attend any fund-raisers for Mr. Hassert?

A. No, I did not.

Q. Would you be surprised to learn that in the 1997-1998 election cycle for Dennis Hastert, the Speaker of the United States House of Representatives, Archer Daniels Midland donated $1,500. Would that surprise you--

A. No, it would not.

Q. Would it surprise you that in the 1997 and 1998 election cycle, Archer Daniels Midland donated $20,000 to a New Jersey Democrat running for the Senate, Bob Torricelli?

A. I don't know what you mean by "surprise."

Q. Would it seem unusual to you that a New Jersey Democrat would receive $20,000 three consecutive election cycles when Denny Hastert only received $1,500 from your company in only two of three election cycles?

A. I would have no idea what was behind the
12 decisions to make contributions.
13 Q. So, you don't know what was behind the
14 $100,000 that you used to throw your support behind
15 Mr. Davis after his dinner August 4, 1998; is that
16 correct?
17 A. I don't know anything about the dollar
18 amount, but I would have no idea why contributions
19 were made.
20 Q. You have stated that you don't know
21 anything about the dollar amount; right?

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1 A. That is correct.
2 Q. Walking you through the timeline, and I
3 can point to the supporting documents for the
4 Tribunal, if the Tribunal issue wishes, on May 28,
5 of 1998, Mr. Davis received a contribution of
6 $5,000 from ADM Were you aware of that?
7 A. No, I was not.
8 Q. On June 2, 1998, Davis received a
9 contribution of $5,000 from ADM Were you aware of
10 that?
11 A. No, I was not.
12 Q. Were you aware that Gray Davis had
13 specifically asked Dick Vind to request a meeting
14 with ADM?
15 A. I would--I can only guess at this, and I
16 would guess at the reason that Gray Davis came to
17 Decatur with Dick Vind was because Dick Vind asked
18 for the meeting.
Q. You know Dick Vind; right?
A. Yes, I do.
Q. Do you have any reason to doubt Mr. Vind's veracity, his truthfulness?
A. No.
Q. If Mr. Vind stated in a witness statement that Gray Davis asked him to request a meeting with ADM, would you have any reason to think that wasn't true?
A. No.
Q. Now, it was August 4, 1998, that you met Gray Davis; right?
A. Yes.
Q. And it was August 4, 1998, that you discussed ethanol a few times with Mr. Davis; right?
A. That is correct.
Q. And that you discussed your business in California with Mr. Davis; correct?
A. I didn't.
Q. I am sorry, that the company discussed it; is that correct?
A. Mr. Andreas did, yes.
Q. And it was on August 4 of 1998, that you asked a very pointed question of Mr. Davis about
MTBE; is that correct?

A. Yes, it was.

Q. And then it's August 17, 1998, less than two weeks later, that Mr. Davis received a contribution of $100,000 from ADM; is that correct?

A. I have no idea.

Q. If it were true, that would indicate that ADM assessed the candidacy of Mr. Davis and decided to support his candidacy. Isn't that correct?

A. Again, I would have no involvement in that type of a decision. I don't know.

Q. You have stated in your witness statement that one of the purposes of the meeting was to assess whether to support his candidacy; is that correct?

A. I believe that is the way I put it, yes.

Q. Are you saying you had no role in that assessment?

A. I did not, no.

Q. You are saying that would have been for the Andreases to decide?

A. Someone, not me.

Q. Have you talked about this case with Marty Andreas?

A. No, I have not.

Q. How about with Alan Andreas?

A. No, I have not.

Q. Do you know whether Ms. Menaker or Mr. Legum met with any of the Andreas family?
A. No, I don't.

Q. Now, after the--well, let me go back and look at the timeline.

You say that you weren't aware of the fact of any of these contributions by ADM to Mr. Davis; is that correct?

A. That is correct.

Q. But you were aware that Mr. Davis was elected Governor on November 3 of 1998; correct?

A. I know he was elected Governor. I don't know when the time was.

Q. And you were aware that on March 25, 1999, Davis issued an Executive Order banning MTBE; is that correct?

A. I know he issued the order. Again, I don't know the exact date.

Q. Well, you knew when that order was issued that it had been issued, didn't you?

A. Yes, I did.

Q. As an ethanol industry executive who kept an eye on what was going on with ethanol and the issues that affected ethanol, you were well aware of that, weren't you?

A. Yes, I was.

Q. And this was just seven months after meeting with you that first time in Decatur, wasn't it?
Q. And just seven months after you asked Gray Davis if MTBE contamination was a big enough issue to be an issue in his campaign?

A. Yes.

Q. Now, as ADM's head of ethanol marketing at the time, the California MTBE ban required you to project how much additional ethanol would be required after the ban; is that correct?

A. Yes, it was.

Q. You would agree that the ban was good for ADM's ethanol sales, wouldn't you?

A. It had the potential to be very good for the ethanol sales of the entire industry, yes.

Q. In fact, ADM celebrated this ban, didn't they?

A. I thought it was a good idea.

Q. So by thinking it was a good idea, you celebrated, didn't you?

A. I suppose, in our own way.

Q. And by 2001, you publicly acknowledged in the media that ethanol would replace MTBE that was being sent to California, didn't you?

A. Archer Daniels Midland? There could have been some news releases. I don't recall them.

Q. Well, specifically I am asking about the
conference, the sugar conference you spoke at with
the Mexican sugar company official--
A. Yes.
Q. You recall that conference?
A. I recall the conference, yes--I am sorry, with whom?
Q. I believe there was a Mexican sugar company official there as well?
A. It could have been. I spoke at Sun Valley, Idaho, to a sugar symposium.
Q. Yes, at the sugar symposium in Sun Valley.
A. But I don't know who was there.
Q. I won't quiz you on the guest list, but you do recall speaking at the sugar symposium?
A. Yes, I do.
Q. And you admit that ADM's ethanol sales increased after the MTBE ban; correct?
A. I don't remember if I spoke specifically about ADM. I think I spoke specifically about the increased demand for the fuel ethanol industry, because there were a lot of people there who were

in the sugar business that were interested in getting into the ethanol business.
Q. And excess sugar or surplus sugar can be converted to ethanol; is that correct?
A. Sugar can be, yes.
Q. And you at ADM had--and I say you at ADM I don't mean you specifically, Mr. Listenberger,
8 because I know you were with fuel ethanol, but ADM
9 at the time of the MTBE ban had already determined
10 that sugar consumption per person was unlikely to
11 grow any further in the U.S.; is that correct?
12 A. I don't know. I didn't have anything to
13 do with that.
14 Q. Because you weren't involved in the sugar
15 side; is that correct?
16 A. Yes.
17 Q. You just spoke at the sugar symposium
18 right?
19 A. Yes.
20 Q. You will admit that ADM's ethanol--you
21 will admit today, as you sit here, six years after

1 having met Mr. Gray Davis and five years after the
2 MTBE ban, that ADM's sales of ethanol increased
3 after that ban?
4 A. Yes, they did.
5 Q. I am almost finished, Mr. Listenberger,
6 but I would just like to ask you a few questions
7 before we break at 12:30. You no longer work for
8 ADM, do you?
9 A. Not directly. I do do--I have a
10 consulting project with them on another product.
11 Q. And through your consulting project, what
12 is that--through your consulting project, what is
13 that product that you consult on?
14 A. It is soy-based bio diesel.
Q. Are you with the National Ethanol Vehicle Coalition at this time?
A. Yes, I am a contract employee.

Q. And the mission of the National Ethanol Vehicle Coalition is to increase sales of vehicles that use E85, a fuel that is 85 percent ethanol; is that correct?
A. And to promote the industry in general, yes, the 85 industry.

Q. ADM is a member of the NEVC; correct?
A. No, they are not.

Q. ADM is a seller of ethanol, are they not?
A. Yes, fuel grade—three kinds, fuel grade, beverage, and industrial.

Q. And the NEVC looks to fuel grade ethanol; right?
A. That is correct.

Q. So, you went from marketing ethanol for ADM to marketing cars that consume some of ADM's fuel grade ethanol?
A. No. I don't have anything to do with the automobile industry.

Q. You don't work for the NEVC?
A. That is correct.

Q. So, you are promoting cars that use fuel ethanol; right?
A. Yes. My official title is Director of Fuel Networking, and what I do is help people set
up networks so they can deliver fuel ethanol into
the marketplace.

Q. And the larger the network, the more
ethanol that is consumed; correct?
A. Well, the more efficient. The 85 doesn't
have the same privilege of large quantity of
shipments that fuel grade ethanol does, and so
there are a lot of costs associated with that, and
I try and keep the costs down.

Q. But if your job is successful, more
people, it is ideally, will be using these ethanol
vehicles; right?
A. The more vehicles, the more E85 they will
buy, and that is the goal, yes.

Q. That's right. And the more E85 they buy,
the more ethanol that will be used to produce that
E85; right?
A. That is correct.

Q. And you are currently under contract as a
consultant to ADM?
A. Yes. It's just a two-month contract.
Q. And on this two-month contract, what are your duties?

A. ADM has a couple of bio diesel plants in Europe, and some of the engineers associated with the construction and sales of bio diesel in Europe would like to--they would like to see if there is potential to build a bio diesel plant in the United States, and they are asking me to give them some contacts and introduce them to some of the people that I worked with at some of the major oil companies, the refiners.

Ms. CALLAWAY: Thank you very much. I have no further questions.

Ms. MENAKER: Can I take just one second?

PRESIDENT VEEDER: Yes.

(Pause.)
question about the penalty for violation of that
provision of the city code. We have a copy of the
penalty provision of the city code.

PRESIDENT VEEDER: Could you add that in
to the materials we have. Is it copied for
everybody?

MR. LEGUM: Yes, we have many copies.
We'll distribute it.

PRESIDENT VEEDER: I wonder if Mr. Dugan

if he's available could come back and just inform
us as to the likely timetable for this afternoon.
Before you disappear, Ms. Callaway, are
you cross-examining Mr. Miller by telephone?

MS. CALLAWAY: Yes.

PRESIDENT VEEDER: Is there any preferred
time for you to do that this afternoon? We have to
confirm Mr. Miller at some stage.

MS. CALLAWAY: Your Honors--I'm sorry,

Tribunal-

PRESIDENT VEEDER: Your Honors is fine.

MS. CALLAWAY: It is at the whim of the
Tribunal.

PRESIDENT VEEDER: We don't like whim

MS. CALLAWAY: If there is a time that the
parties can agree to or if there is a time, of
course, that is preferable to you, that is when we
will schedule it.

PRESIDENT VEEDER: Well, subject to

hearing more from Mr. Dugan, we might schedule
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21 Mr. Miller for 2:30. Is that a workable program or

not?

1

2 MS. CALLAWAY: That works for Methanex.

3 MR. LEGUM I will ask my colleague Mark

4 McNeill to address that.

5 PRESIDENT VEEDER: Mr. McNeill?

6 MR. MCNEILL: I will double-check with

7 Mr. Miller. I think he was planning on going on a

8 little later than that, but I'll double-check if

9 he's available.

10 PRESIDENT VEEDER: We were trying to make

11 it, more convenient for Mr. Miller. If it's

12 inconvenient for 2:30--

13 MR. MCNEILL: If it is convenient for him

14 then he can go on at that time.

15 PRESIDENT VEEDER: We will wait for a

16 moment. We'll get Mr. Dugan back, but he is the

17 logical next witness at this stage.

18 (Pause.)

19 PRESIDENT VEEDER: Thank you, Mr. Dugan.

20 We were just looking at the program for this

21 afternoon. We have now finished the evidence of

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1 Mr. Listenberger. It may be possible to list

2 Mr. Miller for 2:30, provided his cross-examination

3 doesn't raise any of the disputed Regent
International documents. Otherwise, we could resume the argument on the U.S. motion.

MR. DUGAN: We would definitely prefer to do that, and we'll make sure that the cross-examination of Mr. Miller does not use any of the Vind documents.

PRESIDENT VEEDE: So when you say prefer to do that, you mean-

MR. DUGAN: To put Mr. Miller on first to and then just to give us a little bit of extra time to address the issues. And with respect to Mr. Vind, what I'd like to do is that if we are not able to address the evidentiary issues this afternoon, I would like to go forward with the examination of Mr. Vind, not using any of the disputed documents, and it may well be that we're not able to assemble our response both factually and legally to the new evidence that the United States put in today until tomorrow morning, and if that is the case, we don't want to disrupt the schedule, and we'll just--we won't use any of the Vind documents in the cross-examination.

PRESIDENT VEEDE: As we understand it, at least as regards Mr. Miller, none of the disputed documents will be put to Mr. Miller in cross-examination?

MR. DUGAN: That is correct.

PRESIDENT VEEDE: Mr. McNeill, it is over
to you. If we can get Mr. Miller for 2:30.

MR. MCNEILL: I can confirm that Mr. Miller is indeed available at 2:30.

PRESIDENT VEEDER: Again, just give us some time, your evidence in chief with him will be how long?

MR. MCNEILL: Five minutes.

PRESIDENT VEEDER: Five minutes. And who is cross-examining? Ms. Callaway, again, we are not holding you to it but just for administrative purposes, how long do you think in

cross-examination?

MS. CALLAWAY: Less time than Mr. Listenberger. More time than Mr. Weinstein. I would say 50 minutes to an hour.

PRESIDENT VEEDER: So, let's say an hour.

It looks as though we will be coming back to you, Mr. Dugan, between 3:30 and 4:00. Let's proceed on that basis.

MR. DUGAN: That's right.

PRESIDENT VEEDER: Well, let's proceed on that basis.

MR. LEGUM: May I add one other note, which is my understanding is that Mr. Vind has a flight at 7:00 this evening from Dulles which means that normally he would need to leave if he's going to make that flight at 4:30.

PRESIDENT VEEDER: At 4:30. Well, I think that changes the picture. Is it possible for him
to put his flight back?

MR. LEGUM: I don’t know. We were working on the assumption that the hearing day would end at

5:30.

PRESIDENT VEEDER: The alternative is if your cross-examination, Mr. Dugan, would not involve the Regent International documents, we could start with Mr. Vind at 2:30.

MR. DUGAN: We could. I am not sure I will be done by 4:30 in any case. If that is the time when he has to leave, that could cause a problem.

PRESIDENT VEEDER: Can we leave you two to discuss between the two? I think we have a problem with Mr. Vind whatever happens, whether we start with him at 2:30 or a later time. If you could see if he could get a later flight, it would I think facilitate enormously our task.

MR. LEGUM: We will look into it.

PRESIDENT VEEDER: Thank you. But otherwise, let's break now and resume at 2:30.

(Whereupon, at 12:38 p.m., the hearing was adjourned until 2:30 p.m., the same day.)
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PRESIDENT VEEDER: Let's resume.

As we understand it, Mr. Vind is available to give evidence now and has put his flight back at the request of the Tribunal, and as we also understand it, Mr. Dugan, you will be cross-examining Mr. Vind, at least initially, without reference to the so-called Regent International documents.

MR. DUGAN: That's correct.

PRESIDENT VEEDER: Just to get some better idea of the estimate, originally I think it was indicated that Mr. Vind would be cross-examined for two hours. Is that still the estimate without reference to the Regent International documents?

MR. DUGAN: I don't think it will take that long.

PRESIDENT VEEDER: Let's proceed then.

It was my understanding that we will start with Mr. Miller first and then Mr. Vind? I thought the idea was to endeavor that we would finish with

Mr. Vind, that we would start with him at 2:30, but I may have misunderstood. I understood Mr. Miller might take over an hour.

MR. DUGAN: Right, but I thought you were going to give us another hour to go back down and see whether we can address the evidentiary motion this afternoon and that if we can't, then I would cross-examine Mr. Vind without the Regent

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documents. I thought we had decided that Mr. Miller was going to go next.

Mr. McNeill: We are happy to do whatever the Tribunal wishes. Our understanding was that Mr. Miller would go at 2:30, but we are happy to do it either way.

President Veder: We have to be certain that we conclude the evidence with Mr. Vind so that he gets his flight. Is that still possible, Mr. Dugan?

Mr. Dugan: That is still very likely, yes.

President Veder: Very likely. It's all we can ask, maybe. In the light of what counsel has said, we'll start with Mr. Miller, then. And Mr. Miller I think is available at the end of the telephone, and we'll see what happens next.

(Pause.)

Mr. McNeill: Mr. President, Mr. Singh is apparently having trouble contacting Mr. Miller right now, but I spoke with him not too long ago, and he is there, and so we should be able to contact him shortly.

President Veder: Whilst we have a few minutes, shall we just go through the three new documents you put in. Is that you, Mr. Legum, who will address this?

Mr. Legum: Yes, I would be happy to do that.
PRESIDENT VEEDER: Can you just identify them for us. Can we take X11?

MR. LEGUM: X11 is a satellite photograph of the area in which Mr. Vind's apartment is.

Excuse me, apartment--office is.

PRESIDENT VEEDER: X12 is a blow-up?

MR. LEGUM: Exactly.

PRESIDENT VEEDER: And if you would just help us identify where the office might be.

MR. LEGUM: I think it is easiest if we looked at X13, which corresponds to the same area. If we look at X13, roughly towards the center of this document there is a reference to Embassy Court. Can you find that? That is the building. So, it is not where the words appear, Embassy Court, but you can see there is a line that points to it.

PRESIDENT VEEDER: Can you just by reference to the documents we had this morning, that's X8 to X10, just orientate the photographs by reference to this Embassy Court?

MR. LEGUM: I can try, but let me--I will try subject to correction by Mr. Vind who, unlike me, has actually been there.

If we look at X8, the top photograph, I believe, is taken--you see where it says
Robinson's, on the map?

PRESIDENT VEEDER: On the map?

MR. LEGUM Yes. That is currently a J.C. Penney's store, but I believe that was taken with the photographer's back to Robinson's. So you see on the right-hand side, Mr. Vind's former building, Embassy Court, and on the left-hand side, the Embassy Suites Hotel and the little drive-through there.

Is that clear?

PRESIDENT VEEDER: Yes.

MR. LEGUM Is it right? Is it correct?

That is my understanding, but I am not the witness. Would it be better if I use the ELMO?

PRESIDENT VEEDER: Yes, yes.

MR. LEGUM I am not necessarily proficient with it, but I'll give it a try.

PRESIDENT VEEDER: As soon as Mr. Miller is available, we will interrupt you.

(Pause.)

MR. LEGUM So looking again at X8, my understanding—and, again, I am not the witness—is that that photograph was taken from this vantage point.

The second photograph I believe was taken from this vantage point, and the third photograph, as I understand it, was taken from about there.
Turning to X9, I believe that is another shot taken from about here, the first one, the top left one, that is. And then the next one is quite similar to the photograph that we have seen already, which was taken from about here, and the third was taken from there. And the fourth is essentially the same.

Turning to X10, it should now be fairly clear. I think the only new vantage point that we see is that in the bottom two photographs, and I believe that the first of those was taken from this vantage point, and the second, from probably here. I think you can see the Buddha-like image, as you described it earlier, very small in the bottom left photograph, and you just see it a little larger—is that right? I really don't know.

PRESIDENT VEEDE: The Buddha-like image I think is between the Embassy Courts and the Embassy Suites.

MR. LEGUM: Is there anything more I can usefully do?

PRESIDENT VEEDE: No, thank you very much.

(Pause.)

PRESIDENT VEEDE: There's been an objection intimated by the United States to the materials we've just received from Methanex, which Methanex intends to put in cross-examination to Mr. Miller.
So we turn to you first, Ms. Callaway, to explain the particular purpose of these documents, assuming that Mr. Miller is not listening to this conversation.

MS. CALLAWAY: Thank you very much.

The United States has proffered Mr. Miller as an expert, and it is within our privilege to—and I don't mean that in the sense of attorney-client privilege or work product privilege. It is we are granted the right to establish somebody’s expertise, and I believe that—I would like to ask Mr. Miller some questions regarding the DeWitt materials that he is one of the named authors on. It is in no way intended to harass Mr. Miller. I anticipate that his testimony will take about 20 minutes including the documents.

PRESIDENT VEEDER: I think the concern expressed by the United States was in reference to our order of the 28 of May, paragraph seven, where we recorded the agreement of the parties and the intent of the Tribunal that the scope of cross-examination shall be confined to the scope of the witness's written testimony and any additional evidence in chief. Now, we leave aside credibility, but you intend to live within the scope of this particular order?

MS. CALLAWAY: Yes, I do, because I know that Mr. Miller is not listening at this time.
These DeWitt reports contain information that, if taken into consideration by Mr. Miller, would affect the scope—or, I'm sorry, would affect—I don't know how to say it in a fancy way—the bottom line of his testimony, and I would like to ask him some questions about what was taken into consideration and why.

And it is not my intent—candidly, I don't think I am smart enough to get around the May 28th order, but it is certainly not my intent to get around that order. It is really to—I will give it all away, it is to show that you can ask a question, and in answering it, you can get one answer if you take certain things into consideration and exclude others, but if you bring in those other things, your answer does change. I know it's a real novel concept in cross-examining an expert, but it is important.

PRESIDENT VEEDER: Now, we can either debate this further or wait until each question arises to see its particular context. But if you want to come back to any of that—

MR. MCNEILL: I think it might be helpful for the Tribunal if I just describe for you the scope of the Miller expert report. If you look at
paragraph five of that report, on the second page, there are four numbers there. Those numbers represent methanol demand in California during those four years. They were created in response to four numbers in the second Macdonald affidavit, which were Methanex's export numbers for those years. There is no--there is--everything else in the report, of substance, basically explains how those numbers are derived. There is nothing qualitative in the report about MTBE, the merits of MTBE, the merits of methanol. It is strictly an economic study that looks at the demands for methanol in those four years.

Now, if you look at the DeWitt reports, those have to do with MTBE, not methanol. And, as you can see, they are opinion pieces. I will also draw your attention to the exhibit, to the upper right-hand corner of the exhibit that I was handed. It says July 31, 2003. If you look at the four years in the Miller report, those four years are 1998 to 2001. I really see no relationship between the substance of these DeWitt reports and Mr. Miller's strictly economic study.

PRESIDENT VEEDER: Again, as we understand it, what you used paragraph five for was for the purpose of your submissions on day two. This was page 22 of the handout that you provided us.

MR. MCNEILL: Yes, that is correct.
took Mr. Miller's information, and we compared it to information we were given by Methanex. That chart was created by us, but Mr. Miller just provided us these four numbers, and his expert report is limited to these four numbers representing methanol demands, and it has nothing to do with MTBE, which the DeWitt reports have to deal with. We are willing to take it question by question, but I think you can see at the outset that we are already way outside the scope of the Miller report.

MS. CALLAWAY: I don't know if you would like to take it question by question--

PRESIDENT VEEDER: We think the most efficient way of dealing with now is we have understood the context of the debate. We have understood your position, Ms. Callaway. So, we will take it question by question, and obviously if a specific objection is taken to a particular question, we will revisit this.

MS. CALLAWAY: Thank you.

DEXTER MILLER, RESPONDENT/PARTY'S WITNESS, CALLED

PRESIDENT VEEDER: I just wonder if Mr. Miller is now available.

I am told everything is established now and we are waiting for Mr. Miller to call in, and when he does, it will come through on the speaker, which is on the table over there.
Mr. Miller? It is Johnny Veeder. I am the Chairman of the Arbitral Tribunal. I am here with two colleagues and with the parties' legal representatives.

THE WITNESS: Yes, I understand.

PRESIDENT VEEDER: What I am going to ask you first is to ask you if you are willing to make a declaration as a witness. I will read out the words of the declaration, and if you are willing to make the declaration, I will repeat it phrase by phrase.

THE WITNESS: Okay.

PRESIDENT VEEDER: But this is the declaration we invite you to make. I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

THE WITNESS: Yes.

PRESIDENT VEEDER: Are you willing to make that declaration?

THE WITNESS: Yes, I am.

PRESIDENT VEEDER: If you'll repeat it after me, phrase by phrase.

THE WITNESS: Okay.

PRESIDENT VEEDER: I solemnly declare--
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THE WITNESS: I solemnly declare--

PRESIDENT VEEDER: --upon my honor and conscience--

THE WITNESS: --upon my honor and conscience--

PRESIDENT VEEDER: --that I shall speak the truth--

THE WITNESS: --that I shall speak the truth--

PRESIDENT VEEDER: --the whole truth--

THE WITNESS: --the whole truth--

PRESIDENT VEEDER: --and nothing but the truth.

THE WITNESS: --and nothing but the truth.

PRESIDENT VEEDER: Now, Mr. Miller, you are going to be asked some questions, starting with Mr. McNeill for the United States.

THE WITNESS: Yes.

PRESIDENT VEEDER: Mr. McNeill.

DIRECT EXAMINATION

BY MR. MCNEILL:

Q. Mr. Miller, good afternoon.

A. Good afternoon.

Q. This is Mark McNeill from the State Department on behalf of the United States.

A. Yes, go ahead.

Q. Do you have a signed copy of your expert report dated December 4, 2003, in front of you?

A. Yes, I do.
Q. Do you reaffirm that the contents of the expert report are true and correct to the best of your knowledge?
A. Yes, there is one minor typographical error back down in paragraph number nine, which reads that the output of the four MTBE plants, and it should be five, that it was referred to in six, in paragraph six. That is just a typo. Otherwise, I stand by it.

Q. The third line in paragraph nine, just for clarity, should read the output of the five MTBE units?
A. That's right, yes.

Q. Mr. Miller, Can you describe for the Tribunal your professional background, please.
A. Okay. I was an engineering graduate of Princeton University. I served in the United States Navy in World War II, in an engineering capacity for the Naval Research Laboratory in Washington. After the war, I got a Master of Science degree, again, at Princeton. And then in 1949 I joined the M.W Kellogg Company and served with them for about 31 years working in a wide variety of research and later management capacities, ending up as the Chief Project Manager and Director of Strategic Planning. I retired from Kellogg in 1981, and I worked then for six years at Fische Engineering and...
Construction, which is another engineering and procurement firm in Houston, working on a lot of international design and construction operations, and one of these was a feasibility study for a proposed MTBE plant in Aruba, which never got built.

I then joined the consulting firm of DeWitt & Company in 1988, where I worked for a lot of international markets and studies for MTBE, looking on government and industry data to see how gasoline is supplied and made, and we did a lot of work for estimates to clients for supply and demand and so forth. I retired finally from DeWitt in August of 2003, and I have been an independent consultant ever since.

Q. Thank you.

To the best of your knowledge, what was the exact date that you left DeWitt?

A. I resigned from DeWitt in July of--as of July, in the middle of July, 2003. I didn't officially leave them until August, but I had nothing to do with them after July. I was on vacation.

Q. Thank you. And just to clarify, you said your current employment. Can you describe that
again?

A. I am an independent consultant. My major client at the moment is Jim Jordan & Associates here in Houston, and they are a petrochemical expelling firm mostly working in the methanol area.

Q. Thank you.

Mr. Miller, can you describe for the Tribunal the principal conclusions of your expert report.

A. Okay. We were asked by you to determine how much MTBE was made in California for the years 1998 through 2001. Now, this, I might say to begin with, is distinguished from the amount of MTBE used in California, and to be made in California it is done in five plants. These are at BP at the Carson Watson refinery, 2,500 barrels a day; two plants of Chevron, one at El Segundo at 2,000 barrels a day; and another at Richmond in the north at 2,300 barrels a day.

In addition, Tesoro has a 2,300 barrel a day MTBE plan in San Francisco at the old Avon refinery, and then Valero had a somewhat larger plant, 4,000 barrels a day at Benecia. These total about 13,100 barrels a day.

Aside from this, there was no MTBE made in California, and what that means is that methanol coming into California for MTBE purposes would have to go only to these plants because there are no other plants that could make it.
All right. Based on that, we looked at the amount of MTBE that was used in California, and starting from 2000, the California Energy Commission has published on a quarterly basis the amount of MTBE used in every refinery in California including the five refineries that we just talked about. This data shows that from 2000 onward, all of these refineries ran at substantially the same rate as far as MTBE is concerned. That is to say, that the Chevron plant at Richmond used---had a 2,300 barrel a day capacity. It ran at that in 2000. It ran at 2,450 in 2001, 3,725 and 4,700. This means, of course, that they were getting MTBE from somewhere else.

Every other refinery on this list used much more MTBE than the small plants that they had in the refineries which would require---since they were using this essentially and because refineries in California are running flat-out or nearly so, we estimated that all four of these plants continued to operate at least through 2001. That was the period you asked for. Actually, they continued operating well into 2003.

On that basis, and bearing in mind that the demand in California was going up all the time, we estimated that they ran at 11,000--11,5, 12,6 and 12.1 thousand barrels a day capacity, or at about 90 percent of capacity through 2001.
We then convert this back to methanol. To begin with, a barrel of--a thousand barrels a day of MTBE is 43,134 tons per year of MTBE, and each ton of MTBE requires 0.363 tons of methanol to produce it, and that is based simply on the chemistry involved. So that this then came up with the eventual conclusion--which is shown in paragraph five, requiring 172.2 thousand tons of methanol in '98, and then going up to 197 in 2000 and then falling off in 2001.

All of this data came from the--from reliable sources such as the Department of Energy, which listed all of these refineries having this MTBE capacity; from the California Energy Commission, which published the amount of methanol concerned; and then balancing this against the imports provided by the Census Bureau for MTBE, and the whole MTBE picture balances well with these plants in operation.

So I was fairly well convinced, quite well convinced, that these plants were running throughout this whole period at essentially their 80 to 90 percent capacity.

Q. Okay. Can you describe very briefly the conclusion of your expert report?

A. I can say--can you speak a little louder. I couldn't quite hear that.
Q. Can you—drawing your attention to paragraph 5, can you describe briefly the conclusion of your expert report.

A. Well, based on this information that I just gave you, we calculate that the amount of methanol demand for MTBE for production in plants in California, between 1998 and 2001, was 172.2 thousand tons of methanol in '98, going up to 189.45 thousand tons in 2001.

MR. MCNEILL: Thank you. That is all I have.

PRESIDENT VEEDER: Thank you.

Ms. Callaway.

CROSS-EXAMINATION

BY MS. CALLAWAY:

Q. Good afternoon, Dr. Miller.

A. It is Dexter Miller, not Doctor. But go ahead. I didn't quite make it to the--I just made it through to the master's degree, but that's all right.

Q. As my father used to say, Ph.D.s teach and Masters do. It is really an honor to have an opportunity to ask you questions today, and I would like to ask you about the information contained in your expert report.

A. Yes, ma'am

Q. Your expert report very clearly sets out
the information that you derived regarding about 15 percent of the total MTBE used in California for the years '98, '99, 2000, and 2001; is that correct?

A. That is about right. Actually the use in California in 2000 was 99,000 barrels a day. So that would be compared to the -- 12, 15 percent, it's in that range. What I'm saying is simply that the total demand for MTBE in California during this whole period was much larger than simply these four-- these five plants.

Q. And when I did my reverse math -- and I will admit that I do not have an engineering degree from Princeton -- I backed this out, and for each year I found an average of about 565,000 tons of MTBE produced by these five refineries.

A. Yes, that is about right -- actually, that is a little high.

Q. It is sort of an average, I would say, and the reason I ask this is you based this on information that you had available to you, and your personal knowledge and experience; right?

A. That is right.

Q. And in doing so, you assumed, based on your personal knowledge and experience, that the total MTBE tons produced by these five refineries remained somewhat constant during those four years.

A. That is correct. It varied, but not by
more than 10 percent one way or the other.

Q. Now, your analysis, and I am reading from paragraph six, states that the 13,100 barrels per day of MTBE, that nominal capacity, is only about 15 percent of the total MTBE used in California; is that correct?

A. Yes, that is what it says. I am not sure that is exactly accurate, but it is close.

Q. Right. Close enough for horseshoes and hand grenades; right?

A. Yes.

Q. And for your report as well; right, Mr. Miller?

A. I can tell you that in 2000 and 2001, just reading it right in front of me, there was 99,000 barrels a day of MTBE used in California; in 2000 and 89.9 in 2001, so that compares to the 10, 11, or 12 estimate, as we have indicated.

PRESIDENT VEEDER: Excuse me one second, Mr. Miller. Did you say 9,000 barrels a day or 90,000 barrels a day?

THE WITNESS: 90,000. California uses about a million barrels a day of gasoline. A little less, about 900,000. The law in California requires 28 percent oxygen in all that gasoline, and that translates to about 99,000 barrels a day of MTBE use for the purpose.

BY MS. CALLAWAY:

Q. And in paragraph six of your expert
In your last sentence, you observe that the balance of the MTBE used by the refiners was primarily imported; correct?

A. That is right. Well, imported and transferred in from elsewhere.

Q. Right. I mean imported, rather it's interstate or international?

A. That is right.

Q. So when I say "imported," I mean Canada, the Middle East, Asia, Texas and Wyoming, and Texas, just as you do?

A. Yeah, right.

Q. Now, did you--were you asked to look at a decline at all in imports to California of methanol for the purpose of refining MTBE?

A. No.

Q. That information would have been easily available if you were asked to do so; is that correct?

A. Well, I am not so sure. It is beyond my immediate expertise, but we do know that methanol gets imported into, you know, from various places and certainly some of it--it had to come from somewhere, and Canada was a good source for it. On the other hand, simply the fact if that is when...
methyl alcohol was imported into the state doesn't mean it was used for MTBE. It could be used for other purposes.

Q. Let me rephrase my question because I said "easily available," and I think that in using that term, I meant to somebody of your experience and your stature within the global oxygenate and fuel communities. So let me rephrase that question.

A. Okay.

Q. If you had been asked to measure an increase or decline in the import of methyl alcohol to California for these years for the purpose of being refined into MTBE, that is information that you would have sought to track down; is that correct?

A. That is true, but on the other hand, this--the MTBE production that we are talking about, from these five different plants, they all had to use methyl alcohol, and it had to come from somewhere because nobody in California makes it.

Q. Right.

A. So if it didn't, it came from wherever.

Q. Right. Did you also look at the year 2002?

A. Yes.

Q. And did you see a decrease in the year 2002?

A. Actually not--a slight decrease, yes, but not a big one. The 2002 was just about the same as
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12 2001 until the last quarter, and then it really
13 dropped off.
14 Q. And it really dropped off in the last
15 quarter?
16 A. In the last quarter of 2002, and in
17 2003--by the end of 2003, there wasn't any used,
18 but in the first quarter of 2003, methanol use for
19 MTBE--MTBE use in California drops by 75 percent.
20 Q. And that was just in the first quarter of
21 2003; is that correct?

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1 A. Just in the first quarter. Now, what
2 happened there it is fairly straightforward, and
3 that is the gasoline that formerly contained MTBE
4 had to have ethanol put in to replace it. You
5 can't mix the two. Starting the beginning in 2003,
6 the pipelines began to accept only gasoline
7 suitable for blending of ethanol. That was the
8 case--all of a sudden, it was just a big drop, and
9 everybody was switching over to ethanol.
10 Q. Dr. Miller--
11 A. Yes, ma'am
12 Q. It is awkward to ask you questions without
13 being able to see your face, and I am sorry if I am
14 kind of slow in doing this.
15 Your report also indicates that the demand
16 for MTBE and methanol declined at the same time; is
17 that correct?
18 A. Well, the demand for MTBE and the demand
19 for methanol for use in MTBE had to go down at the
Q. Right. And is it your testimony that the demand for ethanol was increasing at the same time?

A. Oh, yes.

Q. And as a scientist, and as somebody who is retained as an expert, you would testify that there is a corresponding relationship between the decreasing demand for the MTBE and methanol and the increasing demand for ethanol?

A. Oh, absolutely, because one has to be substituted for the other in the same gasoline.

Q. Your testimony talks about the 15 percent of the MTBE produced by the five refineries. What about the other 85 percent? How do you account for that?

A. That was all brought into California as MTBE.

Q. And you are assuming that it was indeed brought in at the 90,000 barrels a day--

A. We know that much was used because all kinds of data can come to the same conclusion. The government data shows they used that much. The imports of MTBE published by the Census Bureau show that that much came into California. It all kind of adds up. Sometimes you have to juggle the
Q. And it is the availability of that data that allowed even me to back out that 565,000 tons produced give or take amount; right?
A. Yes.

Q. You are testifying as a global gasoline and oxygenate expert; correct?
A. Well, I guess you might say so, yes.

Q. I have no reason to flatter you, but that is what you are here for; right?
A. Yes, ma'am

Q. And as part of your expertise and during your time working with DeWitt, you were one of the authors of the MTBE Oxygenates and Clean Fuels Newsletter; is that correct?
A. I contributed to them, yes.

Q. And did you contribute an analysis of MTBE production in California at any time?
A. Yes, frequently.

Q. In doing those analyses of MTBE production in California, did you take a number of market factors into account?
A. I am not sure I understand what you mean there.

Q. To be honest, I don't think I asked a very good question.

When you were analyzing MTBE production in California and projecting future MTBE needs or
productions in California, did you look to current and future regulation in making your analyses?

A. Well, yes, we tried to look at the requirements of the laws, and as we thought they might change. We tried to anticipate what might happen when California switched over from using MTBE to ethanol, and it worked out more or less as we expected with some difficulties we all know about.

Q. When you say "it worked out more or less as we expected," what had you expected?

A. What I had expected was that they would be able to make the transition but that it would be costly and that the price of gasoline would be somewhat higher than it had been before, and that is what happened.

Q. Did you anticipate any environmental effects from the switch from MTBE to ethanol?

MR. MCNEILL: Mr. Miller, I'm going to stop you for one second. I am going to object here. Ms. Callaway is asking about anticipated effects, environmental effects of the switch from MTBE to ethanol. This is very, very, very far outside the scope of analyzing simply four--methanol demand for four years. As I said, Mr. Miller's report is based simply on an economic study, and Methanex is now asking about anticipated effects on the environment. This has nothing to do with the Miller reports.
PRESIDENT VEEDER: Ms. Callaway?

MS. CALLAWAY: I would like to ask Mr. Miller about December 12, 2002, the MTBE oxygenate report that states there was a take no

THE WITNESS: Which one are you talking about?

PRESIDENT VEEDER: Mr. Miller, one moment. There has been an objection to the question by counsel for the United States. So before the question is put to you, we have to sort out whether it is a permissible question.

MS. CALLAWAY: I provided several of the DeWitt reports, President Veeder, July 31, of 2003--there were four from 2003--five from 2003, one from 2002, two from 2001 and two from 1999, and candidly most of them just talk about California officials meeting in Sacramento to lay the groundwork for an in-state ethanol industry, resurgence of ozone and pollution problems from ethanol.

But the December 12, 2002, report talks

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about the industry being engaged in a take-no-prisoners campaign against MTBE, and the April 24, 2003, report talks about California officials meeting to lay the groundwork for an in-state ethanol industry. I think that a take-no-prisoners campaign against MTBE--

PRESIDENT VEEDE: Ms. Callaway, let's get back to the question you asked: Did you anticipate any environmental effects from the switch from MTBE to ethanol? That is the question you asked.

MS. CALLAWAY: Yes.

PRESIDENT VEEDE: Now, does that go to the witness's credit or the admissibility of his expert evidence?

MS. CALLAWAY: I think that it goes to the admissibility—it goes to the parameters used in extracting the expert evidence because, as an expert in this field and as somebody who is a leading authority on this, it is more than taking numbers and dividing them. It is looking at the issues that are going to affect whether MTBE was used and whether ethanol was used.

PRESIDENT VEEDE: Just let me stop you because what you are saying, then, it is not a credibility question. It's going to his calculations principally in paragraph five of his witness statement; is that right?

MS. CALLAWAY: Yes. And we have no issue
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regarding--I will submit for the record, we don't
have an issue regarding Mr. Miller's credibility.
To the contrary, we think his credibility is beyond
reproach. And I recognize that the United States
has offered him as a witness, but we also recognize
that his calculations stopped in 2001, and he just
testified that after 2001, the drop in MTBE--the
drop in methanol and MTBE corresponded with the
increase in ethanol and the drop and the increase
for both were quite dramatic.

PRESIDENT VEEDER: Please remember the
paragraph five finishes in 2001.

THE WITNESS: Yes, it does, and I do think
it goes to the credibility of the United States's

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case, but not to Dr. Miller, that they stopped in
2001, and that is not to cast any aspersion on
Mr. Miller whatsoever.

PRESIDENT VEEDER: Thank you.

Do you want to come back to that, Mr.
McNeill?

MR. MCNEILL: Yes, I do. I think this is
a very easy decision for the Tribunal. I think if
the parties' agreement and the Tribunal's order is
going to have any meaning, then it should apply
here, and Ms. Callaway should not be permitted to
ask Mr. Miller questions about taking no prisoners
campaign that allegedly happened at the end of
2002. Mr. Miller's report, as you noted, his
analysis ends at the end of December 2001.
Ms. Callaway asked Mr. Miller what happened in 2002. I permitted that question, but that does not stretch the scope of his expert report.

   PRESIDENT VEEDER: Ms. Callaway, the question you asked, did you anticipate any environmental effects from the switch from MTBE to ethanol we do not regard as arising from the witness statement or the questions put to this witness in chief?

   MS. CALLAWAY: I will withdraw the question, President Veeder, and I will withdraw the question to the United States, as well.

   As an expert witness, however, I do believe I am entitled to ask--

   PRESIDENT VEEDER: I think you are not an expert witness. You're putting questions to him

   MS. CALLAWAY: I don't mean that I'm--please, I am sorry if it sounded that way. I don't think I am expert on much, certainly not in science, but I am permitted to ask this expert witness what materials he has reviewed in relation to this case; is that correct?

   BY MS. CALLAWAY:

   Q. Mr. Miller, are you familiar with any studies or expert reports done by a scientist known as Pamela Williams?

   A. Yes, ma'am. I mean, yes, I am. She gave
speeches at several conferences and I've read her
papers.

Q. And have you formed any opinions on your
own regarding Dr. Williams's report on MTBE?

MR. MCNEILL: I am going to object again.

Ms. Callaway said she was entitled to ask what
materials we used in the preparation of Mr. Miller,
and I thought that is where the question was going
and now it is turned into an opinion on a
completely unrelated expert report.

PRESIDENT VEEDER: Ms. Callaway, where is
it going?

MS. CALLAWAY: I think that being
proffered as a global gasoline and oxygenate
expert, I would like to know his opinion. But if
it is beyond the scope, then I withdraw that
question as well.

PRESIDENT VEEDER: We are not trying to
head you off. We are trying to understand the
purpose of your questions.

MS. CALLAWAY: I understand, but I very

much appreciate that, and what I would like to do,
however, is respect the May 28 agreement to stay
within the scope and not to go afield. I do,
however, believe that we are entitled to present
hypotheticals to the expert witnesses that are
within the scope of their expertise, whether it
goes to their direct testimony or not.

PRESIDENT VEEDER: For what purpose?

MS. CALLAWAY: For the purpose of
establishing both the credibility--

PRESIDENT VEEDER: I thought you said
there was no issue as to credibility of his
witness?

MS. CALLAWAY: That is the credibility of
our witness. For purposes of establishing the
credibility of our witness, Dr. Williams. And I do
believe we are permitted to ask questions regarding
the materials that they have considered and whether
they found those materials to be credible.

PRESIDENT VEEDER: I think there are
certain logical steps we haven't gone through. Do

we know whether Mr. Miller has considered any of
Dr. Williams's material in this case?

MS. CALLAWAY: I will ask him I didn't
ask that question very well, and I will rephrase
it.

PRESIDENT VEEDER: Why don't you just take
it stage by stage and we will see where it is
going.

Mr. McNeill, you reserve your position,
and if need be, we will come back to you.

MR. McNEILL: Thank you.

(Pause.)

BY MS. CALLAWAY:
Q. Dr. Miller, in formulating your opinions as an expert in the field of gasoline and oxygenates, do you formulate your analyses in a vacuum?

A. I would hope not.

Q. In fact, isn't it true that your analyses are based on your, as you say in your expert report, on your own personal knowledge as well as your review of the data; is that correct?

A. That is correct.

Q. And part of your personal knowledge comes from your study of current major issues in fuel oxygenate industries; is that correct?

A. That is correct.

Q. And as part of your study of the fuel oxygenate industry, it is your business to be familiar with current major reports on the industry; is that correct?

A. Yes, indeed.

Q. And earlier I asked you about reports by a Dr. Pamela Williams concerning MTBE. Did you consider any of Dr. Pamela Williams's reports as an expert within the oxygenate and gasoline industry?

A. Well, I don't think that Dr. Williams's position has anything to do with what I was estimating here for the purposes of this particular study. But Dr. Williams is a very able advocate of one side of the situation, in which she maintains...
that MTBE is much less dangerous to the environment than a lot of people would like to put it out to be, and she is very effective in that respect, but it is not the whole story.

Q. So, as a scientist, you look at both sides of the story; is that correct?
A. You have to, yes.
Q. And sometimes there is more than one side of the story; is that correct?
A. That is absolutely right.
Q. And as a scientist, it is your understanding that before you make a decision, you have to look at more than just one side of the story; is that correct?
A. That is usually wise, yes.
Q. It is wise not just as a scientist but in life; is that correct?
A. Always wise.

MS. CALLAWAY: Just one moment.
(Pause.)
BY MS. CALLAWAY:
Q. Without asking you the content--about the content of any DeWitt reports, I would like to clarify that you made contributions regularly to the MTBE oxygenates and clean fuels reports?
A. Yes, I did.
Q. And did some of your contributions to those reports contain editorial opinions?
A. Yes, ma'am.
Q. And without asking you about those opinions, would you say that you were proud to have your name on those reports?
A. I was paid to have my name on those reports.
Q. And you were paid for your testimony in this case; is that correct?
A. Surely.
Q. And would you say you were equally proud of your MTBE oxygenate and clean fuels reports as you are of your testimony in this case?
A. I don't think you can compare the two. I mean I worked for 15 years at DeWitt studying MTBE upside down and backwards, and in this particular case I was asked a very narrow question, which I answered.
Q. And in answering your narrow question, you were compensated; correct?
A. Yes, to a degree. Mildly.
Q. Well, I think there are some government lawyers that can talk to you about mild compensation at the table. But you were also compensated for a labor of love for 15 years at the MTBE Oxygenates and Clean Fuels Group that you were with at DeWitt; isn't that correct?
A. That is true.

Q. And that is where you took all sides of the MTBE debate into account, didn't you?

A. Tried to, yes.

MS. CALLAWAY: Thank you very much.

I should also add there is an associate from the private sector who has complaints about mild compensation, as well. Thank you very much, Dr. Miller, I have no further questions.

THE WITNESS: Okay.

PRESIDENT VEEDER: Mr. McNeill?

MR. MCNEILL: We have nothing.

PRESIDENT VEEDER: Mr. Miller, thank you very much. There are no more questions from the Tribunal.

THE WITNESS: Okay. I hope I have been able to answer your questions. And I concluded that one of the things I learned a long time ago is when the inevitable time comes and St. Peter looks at my records and stands before the Pearly Gates, he will say, you were an expert in what? Thank you very much for your time and I hope I have been helpful.

PRESIDENT VEEDER: Thank you very much.

Bye-bye. It is a quarter to four. I am less concerned about the time than I was a moment ago. Do we have time for five minutes and we will change over for Mr. Vind?
What is next on the schedule, is it the argument or Mr. Vind?

PRESIDENT VEEDER: Mr. Vind.

MS. CALLAWAY: I will go get Mr. Dugan.

PRESIDENT VEEDER: If you would.

(Recess.)

PRESIDENT VEEDER: Let's resume.

RICHARD VIND, RESPONDENT/PARTY'S WITNESS, CALLED

PRESIDENT VEEDER: Good afternoon, Mr. Vind. Before you give evidence, we shall invite you to make a declaration in the form of the text which is before you. If you are prepared to make that declaration, we invite you to do so now.

THE WITNESS: Yes, I am I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT VEEDER: Thank you. Mr. Legum

DIRECT EXAMINATION

Q. Mr. Vind, you are now sitting in front of an overhead projector that is called an ELMO, and what I would like to do briefly is to have you indicate for the Tribunal where your former offices were located on the map that is in front of you,
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and then we will establish where you were when you
took the photographs that have been marked as X9
through X10.

First, why don't we begin—if you could
just mark at the bottom of that, I'm sorry. If you
could mark that as X14.

PRESIDENT VEEDE: How about X13?
MR. LEGUM: It is X13, but he is going to
mark that up.

PRESIDENT VEEDE: How about X13A?

BY MR. LEGUM:

Q. Before we get started, Mr. Vind, where did
this document come from?
A. This came from my office building lease
files. This was Exhibit A to the building lease
that we had when we originally moved into this
office building.

Q. Now, using the yellow Highlighter, can you
highlight for us on X13A where your offices were,
the building in which your offices were.

What you've just highlighted is actually
where in the building your offices were located?
A. My offices were located in that section of
the building on the top floor. There were two
floors to the building.

Q. Very good. Andy, would you mind handing
Mr. Vind X8.

Could you indicate on X13A, your position
when you took the photograph that is on the top
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part of X8. Perhaps the best way to do that, unless the Tribunal has a better idea, would be for you to kind of have an arrow showing your point of view and where you shot the photograph.

A. Certainly. For edification, I was standing across the street, in front of what is now the J.C. Penney's store, looking north at the office building on the right, which is here, and the Embassy Suites hotel, which is on the left there.

Q. Can you do the same thing for the middle photograph on X8?

A. Yes. I was in the--standing in front of the hotel looking in this direction.

Q. We are probably going to run out of space here pretty quickly, but could you indicate--were you basically in the same place when you shot the third photograph in X8?

A. I walked about, looks like 50 feet closer, so I would have been approximately right here, in that area.

Q. Turning to the next exhibit, that's X9, do you have that in front of you?

A. I do.

Q. Where were you when you took the photograph in the top left-hand corner?

A. Approximately the same location as aforementioned on the other. Across the street,
but I took it at a slightly different angle to show the hotel entrance.

Q. So your back was to the J.C. Penney's?
A. Yes, correct. I am looking north.
Q. For the top right photograph, is that essentially the same thing?
A. No. That was from the hotel entrance looking at the entrance to the office building. My office is the window area directly above the salon. On the ground floor were retail shops, and a physical fitness, and my office was directly above the salon, directly--my office physically sat directly above the two closed doors which housed the trash area.
Q. Okay. The next two shots on X9 are essentially the same thing that appears on the bottom photograph?
A. The one is a repeat of the one on X8. The other one is simply a close-up view of the locked trash receptacle area.
Q. Let's come back to that in a moment. Turn to X10.
A. The only thing different than what you have already seen would be the bottom right-hand picture which shows the walkway leading from--actually, you can see where one of the
Embassy Suites Hotel cars is parked. And if you walk down that area, which would be right down here, I took it from approximately this location here, and you walk down, and there is the entrance to my office building.

Q. I see.
A. That is a fountain, decorative fountain in front of the office building. There is a courtyard directly down below.

Q. Can you point to the courtyard on the map so we can see where that is?
A. Courtyard would be here. And beneath that then is the access to the underground parking. There is no aboveground parking for the office building or for the hotel, only temporary parking for people to check into the hotel, and also there are two handicapped spaces.

Q. Returning to X13A, we have been focusing primarily on a couple of areas here, the area where you were in front of J. C. Penney's which is marked as Robinson's on this, and then the area in between your building and the Embassy Suites Hotel. Can you describe for us what is on the other side of your building?
A. You are talking to the east, this area here?
Q. Yes.
A. That is the main entrance to the Brea mall
coming from Birch Street, which is the north entrance to the mall. Ingress flows this way.

There is a stop light. Ingress goes this way, around this way over to the Nordstrom's parking area, which is here, or turning to the left, around to the covered parking structure for the rest of the mall, which is here. It is a two-story covered parking structure.

Q. Do you see where the words "Embassy Court" are on that map?

A. I do.

Q. What is that area?

A. That is the retail, combined retail and office building—the two-story office building.

I'm sorry, I wasn't clear. I am not referring to your building but rather just where the words are?

A. That is a greenbelt area. This entire section here is all greenbelt.

Q. And for someone like myself who is not well versed in what greenbelt means, could you--

A. Landscaped.

Q. Thank you very much.

A. You're welcome.

Now, on the other side of the building is Birch Street; is that correct?

A. That is correct.

Q. What is across Birch Street?

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Across Birch Street is another retail shopping center, more of a strip center than a major shopping mall.

Now, is there a parking lot that is adjacent to your offices, directly adjacent to your offices?

No, there is not. Two-story underground parking.

Is there a dumpster that is adjacent to your offices?

No, there is not.

You mentioned earlier that the trash is kept inside the building.

It is inside the building behind those doors, steel doors?

How do people access that?

To access--what do you mean by "people"?

I’m not sure I understand.

How do the people that putting the garbage in and taking the garbage out access it?

They would come to my office and the other offices, take the trash from the trash receptacles in the offices themselves, put them in plastic bags, tie the bags up, and then deposit them inside that closed trash area underneath my office, which, by the way, I want to clarify, is part of the common area for those tenants in the office building, and I pay the common area charge every
month for the privilege of having that there, because you must understand, the Embassy Suites Hotel is a very fine hotel, and there is no way that they were going to allow us to have trash out in the open. So, therefore, the builder who built the hotel is the same builder that built the office building, and he designed in this private trash area so it would not be a nuisance, or it would not be available to the public.

MR. LEGUM Thank you, Mr. Vind. I don't have any questions for you that require your being in that seating vantage point. But before you get up, let me just ask whether the Tribunal has any questions.

PRESIDENT VEEDER: Just one moment.

Mr. Vind, if you could look at the photograph on X9, which is the photograph of the top right-hand side of the page, and we see the word "Salon," and as you describe it, your office was the window above salon to the right immediately above the doors.

THE WITNESS: Well, that is actually the storage area where the files were kept. The one to the right is my actual physical office space. You had to go through my office or through the rest room in order to get to the files.
PRESIDENT VEEDER: Let's leave the files aside for the moment. But if we then go down to the white lines that we see marked on the roadway in that photograph, are those parking places?

THE WITNESS: No. They are specifically--maybe it is not readily visible, but it says "No Parking." It was designed to have no parking in that area because that is directly across, maybe 30 or 40 feet from the entrance to the hotel.

PRESIDENT VEEDER: What was the temporary parking you described in your evidence?

THE WITNESS: If you were to look at the--unfortunately you can't see it, but if you were to look past those shrubs in the upper left-hand picture, directly past that would be, on your left, is the entrance to the hotel. And I want to also point out that the way we are looking on X9, going north, is a one-way. You cannot come into the hotel entrance going southbound. You must wrap around, either going this way and coming through that way or you can go into the underground parking structure, wrapping around this way and then enter the hotel complex, go up to the main lobby area of the hotel and walk across the street or what is technically I guess an alleyway, or a foyer, I don't know how to describe it exactly, but you can see in this picture, on X9, that the
parking would be diagonal parking, either five or six parking spaces, on the far end of the building, right here, two handicapped and three or four temporary, either 20 minute or one hour, something like that, for guests to check into the hotel.

PRESIDENT VEEDER: Would you like the witness to remain where he is if you are going to ask questions about this?

MR. DUGAN: No.

MR. LEGUM: Actually, may I make one request.

BY MR. LEGUM:

Q. Since you have referred to north on the map, north and south, can you indicate which direction is north and south?

A. Actually it is on here but it is not necessary easy to see. North is this way.

MR. LEGUM: Thank you. We will try to make color copies, if it is possible.

I won't be very long with this part of the examination.

BY MR. LEGUM

Q. Mr. Vind, do you have the witness statement you gave in this case.

A. Yes, I do.

Q. Now, turning to page 2 and page 3 of that witness statement, you address two topics: One is the August 4, 1998 dinner, and the other is Regent documents submitted by Methanex. Could you briefly
A. Well, I reread this this morning, and it states exactly what happened and what I did. I can go into it in more detail, but this is a very, I think, very well thought-out recitation of what in fact took place. There is nothing more, nothing less than that. Would you like me to expand on that?

Q. No. I am sure Mr. Dugan will have some specific questions for you, but I think that's probably good enough for the time being.

A. And the same is true for the second part of that, the Regent documents, but I would like to make a couple minor clarifications, if I could.

Q. Please.

A. In paragraph 1, I state that I have no present or past relationship with anyone, and it turns out that in 1996, my company did apply to become a customer of Methanex, to purchase methanol. I don't believe we ever did, but we did receive price sheets on methanol from Methanex, which in reviewing my files, I found some, so I want to clarify that.

The last item is on item 15 on the last
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Q. So, with those two corrections, this witness statement is true, to the best of your knowledge today?

A. Absolutely.

MR. LEGUM: No further questions.

PRESIDENT VEEGER: Thank you.

Mr. Dugan?

CROSS-EXAMINATION

BY MR. DUGAN:

Q. Good afternoon, Mr. Vind. We met just briefly. My name is Christopher Dugan. I am here on behalf of Methanex Corporation, and I will be asking you some cross-examination questions, questions about your witness statement, primarily.

Now, you just mentioned a clarification that you put in the record. You said that in paragraph 15 you were actually not the one who reported the break-in and the illegal copying of documents; is that correct?

A. I specified that I did not myself personally do it, but Richard Crane, my lawyer that I hired to represent me on this matter, did.

Q. Right. But when you signed this witness
statement, you said that you had reported it?

A. Through my lawyer, yes, I did.

Q. That is not what it says. It says I reported it.

A. I just corrected the record, didn't I?

Q. You did just correct the record, but what I'm asking you is at the time you signed this witness statement did you know that you hadn't reported it?

A. In my mind, I'd reported it through my attorney. Is that sufficient?

Q. That is not what it says, is it? It says, I reported the break-in to the FBI. I take it that is not correct.

A. That is not correct.

Q. Thank you. Now, did you meet with officials from the State Department with respect to the preparation of your witness statement?

A. I did not meet with them. I talked with one official over the telephone.

Q. Who is that?

A. Andrea Menaker.

Q. What did you talk about?

A. She asked me for a description of what took place, and I described it to her, and she prepared a draft for me to review and revise, which I did. I sent it back to her to prepare the final, finished form. I don't have a secretary, and I am basically semi-retired, and I do not have really
good access to that type of help, so she offered to
do that for me, and I took her up on it.

Q. Did you talk about the case, this arbitration?

A. To who?

Q. With Ms. Menaker.

A. Of course, I did.

Q. What did you say about the case to
Ms. Menaker?

A. Well, I have four pages of a witness
statement that I said about this case.

Q. Did you say anything else about the case
to her?

A. Yes, I have.

Q. What did you say to her?

A. I have expanded upon that in a subsequent
meeting that she came out to Los Angeles, about two
or three weeks ago, when she wanted clarification,
and she went over the format of the Tribunal, and
what the Tribunal meant, and the participants, the
President and the members, and what to expect.
This is my first approach to anything like this
other than the courtroom or before the Congress.
So I have not really had any significant, you know,
instruction on how to deal with a Tribunal. I
don't know what the rules are. So, that is what we talked about at great length.

Q. Did Ms. Menaker say anything about the case to you other than what is in your witness statement?

A. She gave no additional information about anything that other witnesses have said or testified to. They have been very scrupulous in making sure that there have been no breaches of any confidence or I guess lawyer-client, or whatever you would call it. So I want to be very careful.

Q. Have you talked with Gray Davis about your testimony?

A. I have not.

Q. Have you talked with representatives of Gray Davis about your testimony?

A. No, I have not.

Q. You haven't talked with Gray Davis in any indirect fashion?

A. What does that mean?

Q. Well, have you talked to someone who you knew would talk to him?

A. I have not. About this case?

Q. Yes.

A. I have not.

Q. Let's go to the dinner, if we could. Did you fly out with Mr. Davis to Chicago?

A. No, I did not.
Q. You met him in Chicago?
A. Yes, he met me in Chicago.
Q. And then you flew from Chicago down to Decatur; is that right?
A. We flew from Meigs Field, Chicago, to Decatur airport, that's correct.
Q. Who was on the plane?
A. I believe that it is listed on my witness statement. On the airplane, as I recall, was a Dan Weinstein, myself, the Lieutenant Governor Davis, there was one or two—I think there were two California Highway Patrolmen who were serving as both driver and bodyguard for the Lieutenant Governor and then, of course, the two pilots.
Q. How well do you know Governor Davis?
A. I have known ex-Governor Davis since approximately 1981. Casually only.
Q. Do you talk to him often?
A. I do not.
Q. Does he call you often?
A. Absolutely not.
Q. Does his office ever call you?
A. No.
Q. Never?
A. Does his office ever call me? That is in the present tense, isn't it, Mr. Dugan?
Q. Has his office ever called you?
A. His office has called me in response to the requests for them to return my phone calls.
Q. Has his office ever called you for anything else?
A. No.
Q. When you called him, what were you calling about?

A. I have never called Gray Davis after he was elected to Governor.
Q. When you called him before that, why did you call him?
A. I might have called him but usually he was not available, and I would have to go through one of his staff members.
Q. And why were you calling him?
A. Because I was arranging the meeting in Decatur at his request.
Q. Did you ever talk to Davis or his staff members about political contributions?
A. Of course I did.
Q. Why did you say "of course"?
A. Because he requested that I raise money for him.
Q. Was that usually the subject of your conversations with Davis and his staff, money?
A. With Gray Davis that was almost always the subject of conversations.
Q. Why is that?
A. Because the man was a very prolific fundraiser.

Q. Now, your business is ethanol; is that correct?

A. That is correct.

Q. Business is pretty good right now, isn't it?

A. I don't know what you mean by "pretty good."

Q. Is it more profitable now than it as a couple years ago?

A. No, it is not.

Q. Is it more profitable now than it was five years ago?

A. No, it is not.

Q. Is the price of ethanol up?

A. Up from what?

Q. Up over the last two years.

A. You know, I don't really know the price of ethanol today because I have been retired since last September. My son is running the business.

Q. And you have no idea what the price of ethanol is?

A. I would guess that ethanol is somewhere above $1.50.

Q. You have no knowledge today--

A. I do not have any direct knowledge of what
the price of ethanol is today. I explained to you
I have been retired since September. I have not
gone into the office since September. I do not
sign checks. I am not involved in the day-to-day
operation in any way.
Q. Do you read the newspaper?
A. Of course I read the newspaper.
Q. Never noticed any newspaper articles about
the price of ethanol?
A. No, I have not.
Q. How many years did you spend in the
ethanol business?
A. I spent 23 years in the ethanol business.
Q. You haven't read any news articles about
ethanol since you retired?
A. I don't get any trade publications, I
don't read them. Frankly, I am sick and tired of
the business. I worked for 48 years, and I decided
now is the time to hang it up, and you know what, I
like to go fishing and play golf and dabble in some
real estate, and that is all I am doing.
MR. LEGUM: I would like to ask Mr. Vind
to wait for the question to finish before you begin
your answer so that the court reporter can take
down everything that's said.
BY MR. DUGAN:
Q. So, just to go back, you haven't read
newspaper stories in regular publications, not
trade publications involving the price of ethanol?
A. I don't recall. Since when? You have to clarify that for me.

Q. Since you retired.

A. No, I have not.

Q. Now, going back to the dinner in Decatur, you landed in Decatur and then you drove to the country club; is that correct?

A. I did not drive to the country club.

Q. You were driven to the country club?

A. That is correct.

Q. Who was in the car with you?

A. I don't remember. There were two vans. There were the ADM security people. There were drivers, the contingent that was on the airplane. So there were probably—I don't remember who was in the car. I think Lieutenant Governor Davis was with me driving to the country club, but I can't say for sure.

Q. And you sat next to Governor Davis on the flight down from Chicago; correct?

A. No, I did not.

Q. You did not. You are certain of that?

A. If you mean sitting next to me and sitting next to him I did not sit next to Governor Davis on the plane trip going to Decatur. That's a true statement.

Q. I am just asking if you are certain of that.
A. I am absolutely certain.

Q. And you believe that you did sit next to him in the car on the drive from--

A. That is possible.

Q. What happened when you got to the country club?

A. We shook hands with the ADM personnel. We went into a dining room. We had dinner. That is it.

Q. Did you have cocktails first?

A. I don't remember. I don't recall. I don't know if they were served outside the room. I think wine was served. I don't recall that.

Q. The normal practice would be to have cocktails, wouldn't it?

A. Yes. Normal practice would be.

Q. How many people total do you recall at the dinner?

A. Six or seven.

Q. Now, you don't recall whether there were cocktails so I take that means you don't recall whether you went in and sat down immediately or whether you stood around and had cocktails; is that right?

A. It was late in the evening, and I don't
believe the country club itself was still open necessarily or not well attended at that time of night. I would say that we went directly from the meet-and-greet into the dining area and probably either had cocktails, or I do recall wine being served.

Q. And did you stand around and drink the wine before you sat down? Do you recall?
A. I don't remember.

Q. And the table had about seven or eight people; is that right?
A. That is correct.

Q. And who were you sitting next to?
A. I believe I was sitting next to Gray Davis.

Q. Who was on your other side, do you recall?
A. No, I don't remember.

Q. Was there just one dinner conversation or did it break up into smaller conversations?
A. It was primarily dominated by Gray Davis, and I would suspect that the other part of the conversations were generally either, as I recall, Alan Andreas and Marty Andreas. They were having most of the conversation during the dinner.

Q. Different people talked to different people at different times?
A. Not a lot. Because it was so late in the day, everybody was very anxious to get on with things. It is important to recognize that Gray
Davis was extremely late getting to the airport, and the weather had deteriorated, and there was some question as to whether we were even going to fly there or not. So the chairman at the time, Dwayne Andrea, did not even attend the dinner because it was so late in the evening.

Q. Did you talk to Mr. Davis about ethanol?
A. Yes, I did.

Q. What did you say to him?

A. I said ethanol is a very good fuel, it is a good renewable product, and we talked about that.

Q. Did you talk about expanding the use of ethanol in California?
A. Oh, yes.

Q. Did you talk about how he could expand the use of ethanol in California?
A. Yes. I said one of the ways you can do that is to encourage the construction of manufacturing facilities in the state of California. For the benefit of the members and Mr. President, there was only one small ethanol manufacturing plant in the state of California. I believe there are only two today. Almost everything that comes into California comes in either through ship, through the Panama Canal, or it comes by rail.

Q. Were you aware at the time that there was controversy about the use of MTBE in gasoline in
Q. Were you aware of the fact that it had been proposed by many people that MTBE be banned?
A. That is correct.
Q. And were you aware that if MTBE were banned, it was entirely possible that ethanol would substitute for MTBE?
A. That was my hope.
Q. Did you talk about MTBE with Governor Davis?
A. No, not with Governor Davis. With Lieutenant Governor Davis, I did. That is correct.
Q. At that time?
A. At the time, yes.
Q. And what did you talk to him about?
A. I reinforced with Lieutenant Governor Davis that ethanol was renewable, that it was clean burning, that it did not pollute the groundwater, whereas MTBE had been determined to be a serious problem in the state of California, having had the City of Santa Monica lose I think two or three wells representing a significant portion of their water supply, and having Lake Tahoe, South Lake Tahoe be contaminated, and various things that took
place throughout the state. It was starting to
become a huge, huge issue in the state of
California, such that the Legislature passed a law
which was signed by Gray Davis’s predecessor, Pete
Wilson, which mandated that the effects of MTBE be
studied--
Q. Is this what you told Governor Davis? I
mean, you are not here to give speeches?
A. I will give a little speech here, because
I think it is important to clarify this.
Q. I just asked you a simple question. Did
you tell him about MTBE?
A. Yes, I did.
Q. Now, did you tell him that MTBE--
MR. LEGUM: Excuse me, just if I can
interrupt for one second. Just for the sake of the
clarity of the record, I think it would be useful
if we could clarify whether the discussion with
Mr. Davis that you have been asking about is one
that took place at the dinner or whether it took
place at some other time because I believe that has
become muddled.
MR. DUGAN: I believe he already said it
took place at the dinner.
PRESIDENT VEEDER: Mr. Legum, you can come
back to this on redirect. We have noted the point.
And we’ll see.
BY MR. DUGAN:
Q. How would the ethanol industry go about
expanding the use of ethanol in California?

A. Number of ways. The price of gasoline were to reach a certain level, then it becomes economically viable to transport it from the Midwest because the major market for ethanol at that time was in the Midwest, where some cities and in fact some states, such as the City of Denver, the City of Phoenix, some other cities closer to the area of production had mandated the use of 3.5 percent oxygen by weight, which in fact is ethanol. MTBE cannot be blended legally at that level, only ethanol could. So there were a lot of precedents for ethanol taking a big market share outside of California.

Q. And if Governor Davis banned MTBE, that would expand the use of ethanol, wouldn't it?

A. That is true.

Q. Did you talk to Governor Davis about that at the meeting?

A. I did not.

Q. Did you ever talk to him about that?

A. I only talked to him after the fact, after he was elected Governor, when, at a birthday party held in his honor, he came over to me and asked that I intercede with the oil companies and the ethanol producers to try to see if some accommodation could not be reached so that there would not be shortages of gasoline supply in the
Q. And what did you do? Did you act upon that request?
A. I, in fact, did. I went to the Secretary of CalEPA, I contacted at least one Chairman of one major oil company, and I contacted people at ADM and some other suppliers of ethanol to try to see if I couldn't negotiate some type of a compromise that would allow for perhaps some type of a shifting—where the refiners could, in fact, comply with Federal law. Federal law requires the addition of oxygen to gasoline in non-attainment areas. So the refiners in California were concerned about was not so much the use of ethanol, but whether they had to be refinery-specific or whether it had to be throughout the entire state. So, that was the thrust of my conversations and my meetings.

Q. Were they concerned that there was an insufficient supply of ethanol at that time?
A. Initially that was the concern of the refiners, that was the concern of the administration, from Secretary Hickox, and certain members of his agency. Those all proved to be groundless fears.
Q. And as part, because they were concerned about the short supply of methanol, they asked you to see if you could work out some type of arrangement that would accommodate that and accommodate the refiners' concerns, and still involve an expansion of the use of ethanol; is that correct?

A. I can't hear you well. I don't know if you are saying methanol or ethanol.

Q. Ethanol.

A. You're saying ethanol.

Q. Ethanol, correct?

A. Now I lost my train of thought. Can you go over that one more time.

Q. What you're saying is that the Governor contacted you and asked you if you could mediate some type of compromise that in taking into account the possible short supply of ethanol, you would accommodate the refiners' concerns and yet still adopt or still allow a significant amount of ethanol to be introduced into the market, a

compromise between both sets of interests?

A. That is generally what he asked me to do.

This was a very brief conversation held. Maybe it took two minutes as the birthday party was breaking up. That was the, as I recall, probably the only time I had met with--meeting is too strong a word. The only time I had talked to Governor Davis--and I believe that is the only time I've talked to him
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9 since he was elected Governor.

10 Q. Was that before the ban implemented--was
11 that before the ban was announced?
12 A. No. That would have been after the ban
13 was announced.
14 Q. You're sure about that?
15 A. I am absolutely certain because it was a
16 birthday party honoring Governor Davis, so it had
17 to be after the ban was announced, because if I
18 remember, the ban was announced in January or
19 February or something like that of 1999. Am I
20 correct?
21 Q. When is the Governor's birthday?

1 A. I don't remember when it is. I just
2 remember the event.
3 Q. How do you know it was before, that the
4 event was where the ban?
5 A. Well, as I mentioned, he was Governor
6 Davis at the time, and it was sometime
7 substantially after he had been elected. That is
8 all I can remember. I don't know when his--I can't
9 remember the time.
10 Q. You can't remember the time?
11 A. No.
12 Q. All right. Now, one final question about
13 dinner--going back to the dinner in Decatur, you
14 don't remember all the conversations everybody had
15 there, do you?

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Q. Were you party to all of the conversations that took place that evening?
A. I don't know. I don't know. I am not party to--if somebody got up and went to the men's room. If they talked to somebody, I have no idea.
Q. Can you say here positively that you were party to all of the conversations that took place that night?
A. No, I cannot.
Q. Let's go, if we could, to your witness statement, please.
Now, in paragraph four, you say that you participated with ADM in encouraging the use of ethanol through lobbying and educating government officials as to the benefits of ethanol; correct?
A. Are you asking me if--if that is what is on the piece of paper?
Q. Let me ask you, is that true?
A. That is true.
Q. And on the next page, a continuation of paragraph four, you state that--line two, we
jointly and independently supported various legislators and members of Congress who we felt might support the expanded use of ethanol; is that correct?

A. That is correct.

Q. You were looking for legislators who would support the expanded use of ethanol?

A. That is correct.

Q. And it was to those legislators that you directed your contributions; correct?

A. That's correct.

Q. And if they didn't support expanded use of ethanol, you wouldn't give them any money?

A. That is not necessarily true at all. I met with a variety of legislators, some of whom did not embrace the expanded use of ethanol, but I tried to convince them that ethanol was a good renewable product. So that was the whole thrust of my conversations and arguments.

PRESIDENT VEEDER: The question was whether you would still give them money, not whether you'd meet them.

THE WITNESS: I would raise money for legislators in California and at the federal level who supported the use of ethanol as a renewable fuel and the expanded use of ethanol and the expanded production of ethanol, that is correct.
Q. Now, if you had a legislator, either at the state level or the federal level, and you gave them money but they refused to support the expanded use of ethanol, would you continue to raise money for them?
A. Probably not.

Q. You are familiar with Senator Torricelli, aren't you?
A. What does that mean? Am I familiar?
Q. Do you know him?
A. Do I know former--
PRESIDENT VEEDER: Do you want to rephrase that question?

BY MR. DUGAN:

Q. Do you know former Senator Torricelli?
A. Yes, I do.
Q. Now, I would like to call the Tribunal's attention to 11 JS Tab 231, which is a news article concerning former Senator Torricelli and Mr. Vind.
MR. LEGUM: Do you have copies for us or should we look for it in the volumes?
MR. DUGAN: I have copies.

BY MR. DUGAN:

Q. Before we look at the article, how did you meet Senator or then-Representative Torricelli, do you recall?
A. Yes, I recall.
Q. How was that, could you describe that for us?

A. Yes. I met him at the U.S. Embassy at San Salvador, El Salvador.

Q. Then you contributed $500 to his campaign March 1, 1996; is that correct?

A. I can't confirm that. That is what the article says, but I don't know.

Q. You don't know because you don't recall--

A. I don't recall.

Q. But you did make contributions to then-Representative Torricelli; is that correct?

A. That is correct.

Q. Did you at that time ask Mr. Torricelli to intervene on your behalf and write a letter to U.S. Trade Representative Mickey Cantor?

A. What do you mean by "at that time"?

Q. After you gave the contribution?

A. I don't recall if it was before or after.

Q. So, you don't recall that you gave him a contribution on March 1, 1996?

A. I don't know the date.

Q. And you don't recall that on March 13 he did, in fact, write a letter for you?

A. You are asking me to remember dates that are, what, eight years ago, and if that is what the article says, I assume that that was reasonably accurate.

Q. Well, do you recall from your own
recollec__979__tion that there was a fairly prompt
response and a fairly favorable response from
Representative Torricelli to your contribution of
$500?

A. It was a favorable response, but I am not
saying it was in response to my contribution. It
was a favorable response in response to my request
for assistance in trying to get the Government of
El Salvador to stop expropriating my assets in that
country.

Q. Do you recall that two weeks after
Senator--then-Representative Torricelli sent the
letter you made another contribution of $500?

A. I don't recall.

Q. Do you recall that throughout that year of
1996, you and your family gave thousands of dollars
to Senator Torricelli and to the Senate Democratic
Committee?

A. What time period are you talking about?

Q. 1996, when Senator Torricelli was running
for the Senate--when then-Representative Torricelli

A. That is entirely possible, yes, sir.

Q. But you don't remember it?

A. I gave many dollars to many politicians
5 legally as campaign contributions. When asked if
6 they were people I knew or people that were
7 supportive of my request to expand the use of
8 ethanol or to assist in my foreign problems, yes, I
9 did.
10 Q. But you gave so many contributions to so
11 many legislators you just don't remember the
12 details; is that correct?
13 A. That is correct.
14 Q. And it says in this article that you gave
15 184,800 between 1984 and 1996, you and your family.
16 Do you have any reason to doubt the accuracy of
17 that statement?
18 MR. LEGUM: Is there a page reference?
19 MR. DUGAN: It's on page 1329. Bates
20 stamps 1329.
21 THE WITNESS: That appears--I am not going
22 to deny that that is an accurate figure.
23 BY MR. DUGAN:
24 Q. Do you recall asking Archer Daniels
25 Midland to also send some money, campaign
26 contributions to Representative Torricelli?
27 A. Yes, I do recall that.
28 Q. And did they?
29 A. I don't remember.
30 Q. If you turn to 001330, it talks about your
31 letter, it says, (reading) Weeks later ADM made a
32 $5,000 contribution to Torricelli from its
12 Political Action Committee. Does that refresh your 13 recollection in any way as to a campaign 14 contribution made by ADM to Representative 15 Torricelli after you asked them to?
16      A. Well, it says here that it was the PAC 17 that gave the $5,000, that's a Political Action 18 Committee. It's not ADM. Corporations were 19 prohibited from giving money to Federal political 20 candidates, as I recall.
21      Q. It says ADM made a 5,000 contribution, but

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1 I think technically you are right. Let's put it in 2 those terms. Does this refresh your recollection 3 about the ADM PAC contribution of 5,000 to 4 Mr. Torricelli?
5      A. No, it does not.
6      Q. Do you have any reason to believe that 7 this accounting of how the events played out is 8 inaccurate?
9      A. Do I believe it is inaccurate? No, I do 10 not believe it is inaccurate.
11      Q. Now, after Representative Torricelli wrote 12 the letter to United States Trade Representative 13 Mickey Cantor, did he then take up your personal 14 issue with the Government of El Salvador?
15      A. I don't recall if he got directly involved 16 with the Government of El Salvador or went strictly 17 through the U.S. Trade Representative, Mickey 18 Cantor. I know that he did contact the U.S. Trade 19 Representative on my behalf, at my request.
Q. Do you know whether Mr. Cantor intervened on your behalf with the Government of El Salvador?

A. No, I don't believe that Mr. Cantor himself did. I think he bucked it down to one of his staff members who then wrote a letter. Maybe Mr. Cantor did. I know that they wrote a letter to--either to the Embassy, to the Ambassador to the United States wrote a letter directly to the President of El Salvador, I don't recall which.

Q. But the United States Government did do something on your behalf in El Salvador?

A. It didn't work.

Q. That is not what I asked you. They did do something on your behalf; is that right?

A. Yes, they did.

Q. Did you interest other legislators in the problem you had prior to the time you dealt with Mr. Torricelli?

A. I met with my local Congressman at the time, who I had known for some time, but he was a member of the minority party at the time and didn't offer me much hope that he would be able to do anything.

Q. Now why did you as a citizen of California turn to Representative from New Jersey?
A. Well, no one knew the situation in El Salvador better than Mr. Torricelli because he had been there, and we had talked about the problems in El Salvador. He was my logical go-to guy because as I recall he was either at the time a member of the House or Senate, either Foreign Relations Committee or some committee that had some purview over Central America.

Q. Let's go back to the sequence of contributions as reported by this newspaper article. It reports a March 6, 1996 contribution of $500, and then a letter from Mr. Torricelli to Mr. Cantor, and then another contribution of $500 on March 28, and then in September of that year, thousands of dollars, six or $7,000 from yourself and your family.

A. Now, after the letter was sent by Mr. Torricelli to Mr. Cantor, if Mr. Torricelli had not sent that letter to Mr. Cantor, would you have continued to contribute thousands of dollars to Mr. Torricelli's campaign?

A. You are asking me a hypothetical question. I don't have any way to respond to that.

Q. Of course you do.

A. No, I don't. I don't know what I would have done.

Q. So, you refuse to answer that question.

A. I don't refuse to answer. I just don't...
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10 know how to answer it.
11 Q. You have no idea whether you would
12 continue to pay thousands of dollars to a
13 politician who wasn't responsive to your requests?
14 A. Wait a minute. You say pay thousands of
15 dollars to a politician. I take great exception to
16 that. Stop that.
17 Q. I'll rephrase the question.
18 A. Don't put words in my mouth.
19 Q. I'll rephrase the question.
20 A. I am sorry, but he is impugning my
21 personal--

1  PRESIDENT VEEDER: Mr. Dugan wasn't
2 intending to do that.
3 THE WITNESS: I think he was.
4 MR. DUGAN: Well, I'll set the record
5 straight. When I am talking about money to
6 politicians, I'm talking about political
7 contributions only. And if I'm not talking about
8 political contributions, I'll let you know. And if
9 I stray from the record and don't use the precise
10 term "political contributions," you can take it as
11 my universal intent that I'm always talking about
12 political contributions.
13 THE WITNESS: You are talking about legal
14 political contributions?
15 MR. DUGAN: I'm talking about political
16 contributions.
17 THE WITNESS: Well, I want it clarified
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18 that it is legal political contributions.

19 MR. DUGAN: That, I don't know. I'm asking about contributions.

20 THE WITNESS: I just clarified it for you.

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1 BY MR. DUGAN:

2 Q. Let's go back to the timing. Are saying that you don't know whether you would continue to make thousands of dollars in political contributions to a politician who was nonresponsive to your specific request for help?

3 A. I don't know that because it depends upon what other agenda items I have with that particular individual.

4 Q. So you think--you are actually telling this Tribunal that you can think of times where you would continue to spend thousands of dollars for a politician that just refused to help you?

5 A. That is entirely likely. I have supported politicians in the past who have sometimes voted exactly opposite from the way I asked them to. That happens all the time.

6 Q. You say it is entirely likely you would continue to support them after they vote against you?

7 A. Sometimes you have to. Sometimes you have
to demonstrate that you are willing to support them because they are a good elected official, and then you try to lobby them in order to see if you cannot change their mind. Sometimes they are committee chairmen who are going to be there a long time, and it just takes that amount—you have to contribute to the campaign in order to have access to these politicians. Unfortunately, that is the American way of life. That is particularly the way of life in California from a political standpoint.

Q. But you were looking for more than access. You were looking for help, weren't you?
A. I am not sure I understand what you are saying here.

Q. You were looking for help from Mr. Torricelli on your El Salvador?
A. I was looking for help from Mr. Torricelli on my problem in El Salvador; that is correct.

Q. And you were also looking for help from Mr. Torricelli on the ethanol fuel tax excise credit; correct?

A. Yes, I believe so. Is that what it says in the article?
Q. I am asking you. Did you ask him to—did you ever talk with him about the excise tax credit for ethanol?
A. I don't remember.
Q. You don't remember. Do you remember
whether he voted your way, voted ethanol's way with respect to the credit?
A. I don't remember.
Q. Let's read what it says here and see whether it refreshes your recollection. This is at the bottom of page 1131, and it is talking about Senator Torricelli--it says: Three votes is evidence of his long-time support for ethanol, but only one of those votes involved a bill that included a tax credit subsidy, and that vote was in favor of a sweeping national energy policy bill, that also dealt with nuclear power plants, electric utilities, and a host of other issues. His Senate votes, his first that dealt solely with the tax credit issue, were unusual for a New Jersey Senator. Senator Frank Lautenberg voted against the credit, and for years, Senator Torricelli's predecessor in the Senate, Bill Bradley, was known as a leading opponent of the credit accusing supporters of reaching deeper and deeper into the pockets of American taxpayers to benefit a handful of special interests.

Does that refresh your recollection in any way about your ability to turn around the Senator from New Jersey and get him to vote for the excise tax credit for ethanol?
A. I'm sorry, I don't understand what you mean by "turn around."
Q. It just said the Senator from New Jersey
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16 had not supported the tax credit and all of a
17 sudden Senator Torricelli, after he receives
18 contributions from you, does support the tax
19 credit?
20 A. I have no way of knowing what
21 Mr. Torricelli's reasoning was or the reason that

he decided to vote the way he did. I more than
likely lobbied him on behalf of the ethanol
industry, which would be a logical thing for me to
do. Any time I have access to a political figure
and they are willing to sit down and talk with me
about it, I would have been consistent in my
approach over the years to try to advocate the use
of clean burning renewable fuels of which ethanol
is a primary one.

Q. And you have been consistent in your
attempts to use political support for those
politicians who will support the expanded use of
ethanol; correct?

A. Support ethanol and the expanded use of
ethanol, that is correct.

Q. Now, if you turn to page 1327. Third and
fourth paragraphs, (reading) We are a free country
and I can go ahead and support anybody I want, Vind
said. If I think a guy is going to be a bulldog
and going to weigh in and going to support American
businessmen in these Banana Republics, hell yes, I
will support him. But is there a quid pro quo?
Absolutely not.

What did you mean by "quid pro quo"?

A. The reporter asked me the same type of
leading questions you're trying to ask me here
which is to imply somehow that for $500 I could buy
off a U.S. Senator, which is total nonsense. What
I am saying is that you get access if you are
supporting those particular politicians, but there
is never a quid pro quo. That is a crime. That is
called bribery, and I don't do that, sir.

Q. But you were looking for help; correct?
A. You have asked me that probably six times.
The answer is yes.

Q. And by "quid pro quo," you mean that there
was no express agreement whereby you would receive
help in exchange for your contribution; is that
correct?

A. That is absolutely correct.

Q. Was there any implicit understanding?
A. Absolutely not.

Q. Did you make any contributions to Governor
Wilson?
A. Yes, I did.

Q. How much?
A. I don't remember.
Q. Now I would like to show you Mr. Listenberger's witness statement, and that is--I'm sorry, I don't have copies of that.

I am going to read you paragraph 2--

MR. LEGUM: Would you mind holding off until we get a copy?

MR. DUGAN: Sure. Could you pull one out of your record. I don't have them with me.

MR. LEGUM: Do you want the witness to have a copy in front of him as well?

MR. DUGAN: Please. I can read it to him.

I am going to read only one sentence.

PRESIDENT VEEDER: We can lend him a copy from our files. We are looking at our copy of Volume 13.

BY MR. DUGAN:

1 Q. Paragraph 2, the last sentence, (reading)
2 It was my understanding that the dinner was arranged in order for me and others to meet Mr. Davis, discuss his candidacy, and assess whether to support his campaign.
3 You see that?
4 A. Yes.
5 Q. Was it your understanding that ADM had not decided whether to support Mr. Davis at this time?
6 A. That is my understanding. Yes, that's correct.
7 Q. Are you aware of the fact that after this meeting took place ADM decided to contribute

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hundreds of thousands of dollars to Mr. Davis?
A. I am aware that they decided to contribute $100,000.
Q. You are unaware of the contributions that took place after that?
A. You'd have to refresh my recollection. I don't know if there were others. I assume there were.

Q. Yes, there were.
A. Okay.
Q. Now, you said in your witness statement that you worked with ADM to support various legislators and members of Congress whom you felt might support the expanded use of ethanol. Did Mr. Davis agree to support the expanded use of ethanol?
A. He was generally supportive of ethanol and had been over the years. In fact, going back to 1981, when he was Chief of Staff to then-Governor Jerry Brown, Mr. Davis reminded me, years later, that he was the one who had urged the Governor to sign a bill that I had helped to draft and sponsored in the state of California that gave partial tax exemptions to ethanol blends with gasoline.
Q. At this dinner, at this meeting, was there any type of agreement, express or implicit, that he was going to agree to the expanded use of ethanol?
A. No, not at all. In fact—let me rephrase that. Governor Davis, then-Lieutenant Governor Davis, came to me approximately one year prior to this dinner, this infamous dinner now, and asked me to support him in his run for Governor. It might have been less than a year, but within a year's time frame. He met me in my office and spent about three hours. At the time he was running very, very badly in the polls, and my comment to him was, I am not going to support you. And he wore me down because he is a, as I say, very aggressive person, although he doesn't seem so when you see him on television.

He reminded me at the time that he had been fully supportive of the bill that I had sponsored in 1981, the one I previously mentioned, and also some three or four other bills that I had helped to draft and sponsored in the state of California that would do various things to promote the expanded use of ethanol. So the answer to that is that I agreed to go ahead and support him and subsequent to that conversation, I believe through one of his chief campaign staffers, they contacted me, and I don't recall whether it was Lieutenant Governor Davis himself or whether it was one of his
staff people that said, could you arrange a meeting with the ADM folks. And I said, yes, I would. I said, what do you want to do? He said, can you raise money for us from ADM? And I said, I don't have no idea, but I will try to see if I can possibly set up a meeting and see what happens from there.

Q. And then you proceeded to raise quite a bit of money for Governor Davis; correct?
A. Yes.

Q. And then he proceeded to ban MTBE and substituted ethanol for MTBE; is that correct?
A. No, it's not correct. He did not substitute ethanol for MTBE. That was Federal law.

Q. All right, let's go to the portion of your witness statement where you talk about the documents. Now, first of all, have you talked with the State Department about any of the testimony that was given yesterday with respect to the documents?
A. No.

Q. Have you reviewed any transcripts?
A. No.

Q. Have you talked with anyone else about what happened yesterday?
A. No.

Q. Paragraph 14 of your witness statement. You state that you realized that someone had broken into your office. How did you come to realize
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12 that?

13 A. When I was advised by the Department of
14 State that a number of items of correspondence, my
15 telephone message pads, my personal PalmPilot
16 address book, messages from my wife saying she is
17 going to be late from work, messages from the rest
18 home where my 98-year-old aunt was kept, these
19 types of things, were made public as a horrible
20 intrusion of my privacy, and then I became very
21 concerned about where these records came from. My

1 initial thought was, well, maybe it is somebody in
2 my office that turned on me somehow, but I only
3 have four people--my son, myself, my controller,
4 and supply and distribution manager--at the time.
5 Both of those women had been with me for over 15
6 years, so it was unlikely that anybody would have
7 done that. So I eliminated that scenario, and then
8 I started thinking, well, how could this possibly
9 happen? And I will tell you that it was entirely
10 possible because my landlord is the one responsible
11 for--
12
13 Q. Excuse me--
14 A. I am answering your question.
15 Q. I asked how you came to realize it. You
16 are giving a long narrative explanation.
17 A. Yes, I am because I began to realize--
18 Q. You said the State Department contacted
19 you and told you they had your documents.
A. Wait a minute. You're not allowing me to answer the question.

PRESIDENT VEEDE: Mr. Dugan, let the witness finish the answer.

THE WITNESS: This is very important, Mr. President, because the cleaning service that cleaned our office, which was leased space--and you have seen pictures of where the office was--was provided by the landlord. On more than one occasion, on a Saturday, I would go to that office to get something or do some work at my office. The door would be wide open. The cleaning people would leave the entrance to the office complex itself wide open and go down the hallway to clean other offices and other retail establishments, and I would walk into my office and I wouldn't see anybody for an hour. I would try to find them I complained on numerous occasions, and had my people complain on numerous occasions about this breach of security to the landlord. It was not cleared up. It would have been absolutely a piece of cake for anybody to walk in there at nighttime or on a Saturday or Sunday, when the cleaning people were in there, and go in there and take anything they wanted at any time.
And I want to clarify also, my original suspicion was that documents were copied and then put back in the file. That turns out not to be true. Documents were stolen, taken from my files, and I don't have them. They are not there today.

So, therefore, I contacted the Attorney General of the State of California, who I have known for a number of years, and I personally met with him and said, Mr. Lockyer, this is, in fact, really a problem and he was aware of this case because he represents the State of California as the chief law enforcement officer.

And then I contacted my lawyer and asked that he contact the FBI because the Attorney General said to me in response to my question—I said if these stolen documents are used in interstate commerce, is that not a federal crime? And he said, yes, it is. I said, then is the agency that has privy over this the Federal Bureau of Investigation? And he said, yes, it would be,

and that is the reason I had my lawyer contact the FBI. But I got no response from them because by this time it is after 9/11 and they were so involved with terrorism things, they don't have the manpower to spare on what I call white collar crime.

It is a long answer, but it answered it.

Q. You said you realized that someone had broken into your office?
A. Well, I don't know what the legal term "breaking in" is, but I think if you enter an office building during off hours when there's nobody there and you're not supposed to be there, I think that is a break-in.

Q. You mean entering your office?
A. Absolutely.

Q. Is that what happened?
A. I am absolutely convinced of that.

Q. Do you know that?
A. Do I know that? No, but that is the only way they could have gotten these documents themselves.

Q. Do you have any personal knowledge as to how it actually happened?
A. No, I don't know how it actually happened. I'm very curious. Perhaps your clients can tell me how it happened.

Q. You never filed a report with the local police, did you?
A. No, I did not.

Q. Why not if it was a break-in?
A. It wasn't a break-in per se, and it happened over I guess a period of almost a year, according to the record now, if I understand it.

Q. Why did you use the term "break-in"?
A. Because it is the most descriptive adjective I can use.
Q. It is a verb. But breaking in implies smashing and breaking, doesn't it?
A. Well, break-in could be either way, whatever it is. Does it imply that? I'm not sure that's true.

Q. What did you mean. You said broke in. What did they break?
A. They didn't break anything. They entered illegally.
Q. They didn't break in; is that correct?
A. That is your statement, not mine.
Q. So you are saying they did break in?
A. I don't know how they got access, my friend.
Q. You didn't have any hesitation saying they had broken in. And now you say you don't know how they got access.
A. I don't know exactly how they got in. I don't know whether that makes any difference or not if they got in there illegally.
Q. You submitted a sworn statement under perjury that they broke in, and now you are saying you don't know how they got in.
MR. LEGUM Mr. President, Mr. Dugan is now badgering the witness. I think it's time for us to move on.
MR. DUGAN: I think this is a critical statement. He is accusing someone of committing a crime, and now he is saying he has no idea how it happened. This is a critical point.

PRESIDENT VEEDER: Just one moment. I think you have made your point, Mr. Dugan. I don't think you need to make it anymore.

BY MR. DUGAN:

Q. Did you ever complain to the landlord that the cleaning staff did it?

A. The cleaning staff did what?

Q. You say here that you suspect the cleaning staff had--someone had induced the cleaning service to grant them access to my office?

A. I said there were a couple of possibilities. One was they could have walked in by themselves, they could have induced the cleaning people to either give them access or give them a key, and the alarm code. There are a variety of ways that someone can do a black-bag job on an office if they want to. I am not skilled enough in that area of the law to be able to determine how they did it. All I know is that someone got in there and stole my records out of my files.

Q. What is a black-bag job?

A. That is just a term of art, I guess, meaning someone goes in and takes stuff without leaving a record of when they were there or who
they were.

Q. Someone goes into your office and takes stuff. Is that what you're talking about?
A. Somebody goes into my office--they physically had to go through my office itself, through a door into an area that contained the filing cabinets and open the drawers and take the documents out. The number one missing documents are correspondence between myself and Archer Daniels Midland Company, specifically the Chairman, Mr. Dwayne Andreas, with whom I had a longstanding professional and business relationship.

Q. You are saying that is what they did, they went in and took those, copies of those letters out of your files?
A. That is the only thing I--that's the only logical answer to it.

Q. You don't have any personal knowledge of that, though?
A. You have asked me that before. No, I do not.

Q. Did you ever throw documents out?
A. Yes, I do throw documents out.

Q. Do you use a shredder?
A. We do use a shredder.

Q. Have you always used a shredder?
A. No, we have not always used a shredder.

Q. When did you start using a shredder?
A. After we moved offices in probably January of 2001.

Q. And when you threw the documents out, where did you throw them?

A. We took a number of documents, my son and I, in a truck and hauled some of these—you call them documents. We are talking about business correspondence, we are talking about invoices and things that are beyond the statutory requirement for recordkeeping, and we would take them in their cardboard filing boxes and haul them up to the Brea dump, which is about six or eight miles away and personally toss them into the trash.

But I want to reiterate, there is no reasonable explanation for me to take correspondence between myself and the Chairman of Archer Daniels Midland and take those and throw them away. If I understand the time period here, that correspondence was only three or four years old. That is illogical for me to do that.

Q. Do you throw documents out of the office on a daily basis when you are working?

A. First of all, I am not working now. Did I throw documents on a daily basis? Not file copies, no, sir.

Q. Did you throw trash away on a regular basis?

A. Yes, of course.
Q. Did you throw things away like message books?
A. No.
Q. No?
A. No.
Q. You never threw them away. So your office is filled with those telephone message books--
A. I'm sorry, I thought you were talking about my address books. No, the message books would be thrown away after about a year or so.
Q. Is your address book on your Palm Pilot you said?
A. It is, correct.
Q. Have you ever printed that out?
A. Yes, I did.
Q. What did you do with the printed copies?
A. I kept one printed copy on my desk so that I wouldn't have to worry about whether I'd hot synch my Palm Pilot to my desktop because my desktop was crashing. So, I printed out the address book and kept it for ready reference. It is hard to read those on the small little screen on the Palm Pilot, and my batteries would always run down.
Q. After you updated it, what did you do with the hard copy?
A. I didn't update it. I believe I only made one.

Q. Only made one?

A. I believe so.

Q. Did there come a time when you noticed that hard copy was missing?

A. No, not really.

Q. It was always sitting on your desk?

A. Yes, it was sitting on my desk, but I didn't refer to it all the time.

Q. Is it still there?

A. No. I am not there.

Q. Was it still there when you left?

A. No.

Q. But you don't recall any time when it went missing?

A. No, I sure don't.

Q. And you don't recall any time when you threw it out?

A. I do not.

Q. I would like to show you the declaration of a woman by the name of Claire Noelle Morriset.

MR. LEGUM While you are doing that, we have been going for about an hour now. It might be convenient to take a coffee break in the next half hour or so.

(Pause.)

THE WITNESS: All right. I have read it.
BY MR. DUGAN:

Q. Now, Mr. Vind, those pictures that you brought with you today or last night or whenever you came here, why did you take those pictures?

A. Because I wanted to point out to the Tribunal the fact that even if some of these documents were obtained through going through the trash, it is not on public property. It is behind closed doors. I had every expectation that anything I would throw out would go immediately to the licensed waste disposal contractor and be disposed of in a proper manner, not pilfered by illegal means.

Q. So, did the State Department tell you that there was testimony in the record that your documents had been obtained from documents you discarded?

A. I read the--Mr. Puglisi’s deposition here some time ago.

Q. His deposition or his statement?

A. His statement, I guess it is.

Q. Let’s go back again to your trash disposal practices. On a daily basis when you were working say in 1997, '98, '99, 2000, did you at the end of the day throw out your documents? Did your staff throw out your documents?

A. I am not sure I know what you mean by "documents." That is certainly too broad. What are you asking me?
Q. Did you put documents in the trash can?

A. Did I put documents in the trash can? No, I would probably throw away drafts or working copies or some other types of things, but I want to clarify, that the procedure was—and I clarified this with my secretary who worked for me during this time. I called her last week to be certain that I was going to give you accurate testimony.

The procedure was for her to type up on her computer a memo or a letter. Then I would review it and sometimes make corrections, and that particular corrected copy would be, of course, thrown away, but then she would type up the finished article, finished correspondence. I would sign it, either Richard B. Vind or Dick or whatever I would put on there. She would then make a copy of that, sometimes two copies. One copy would go, for example, if it were a letter to Mr. Dwayne Andreas, the file copy would go in the ADM file. That was it. The original, of course, would be sent to Mr. Andreas.

Q. And there were never any excess copies made?

A. Sometimes there would be an extra copy made if there was a subfile. For example, if I was
communicating with Mr. Andreas on some matter such as the lawsuit I filed against the State of California, the California EPA, then a copy would be put in the--probably put in the EPA file. That is correct.

Q. So drafts would go in the trash for sure?
A. Drafts would more than likely go--that is absolutely correct.

Q. So, you don't have any doubt that the drafts that were in the documents that you saw could have been recovered from your trash?
A. I don't have any question about that. There were some things that were obviously--drafts that were corrected by my son, for example. There were some things I gave him that he would probably throw in the trash. That's correct.

Q. Or your telephone message book, for example?

A. Not my message book.
Q. The telephone message book where all the message slips had already been filled out and you had to buy a new telephone message book?
A. It was the practice to keep them for a protracted period of time, but not for years. Sometimes it was my practice to say, can you get the phone number off of that of so and so who called six months ago, and I don't have it written down or you don't have it. So she would go back...
through. That is a standard practice, yes.

Q. So you would keep it for six months or so?

A. That's all?

Q. I don't know, six months, a year, could be two years. We had three or four of them going at any one time because more than one person answered the phones in the office at that time. There were five people total in the office complex.

Q. But it is your testimony that other than drafts, nothing got thrown away?

A. No, I didn't say that. I said that the telephone message pads would be thrown away at some point, but I couldn't tell you how long they were kept there.

Q. And perhaps you have a different understanding, but my understanding in most offices is that trash cans fill up with documents on a regular basis. That didn't happen in your office?

A. We are a very small office.

Q. And nothing went into the trash in the way of documents unless it was a draft; is that right?

A. That is generally true. That is a correct statement.

Q. And you are certain of that?

A. Am I certain to that? I am not saying 100 percent of the time. I can't speak for my people 100 percent of the time. But the practice was just as I described it.

Q. Did you ever look in the trash cans? Do
you have any idea what was in the trash cans?

A. No, I am not used to rummaging through trash cans, Mr. Dugan.

Q. So you have no personal knowledge of what was thrown out?

A. Yes, of course I have personal knowledge of what was thrown out in my trash container, because I put it there.

Q. Your secretary didn't put anything there, your son didn't put anything there?

A. In their own.

Q. In their own. So they threw those out; correct? Those were Regent International documents that they threw out?

A. They did not throw them out. You're using an incorrect statement. They put them there in order for the cleaning people to then put them into a trash bag and tie it up and carry it down to the closed trash disposal area directly below my office. Yes, that is correct.

Q. So they threw them out?

A. No, they didn't throw them out.

Q. What verb would you use?

PRESIDENT VEEDER: Mr. Dugan, I think we are playing with words.
BY MR. DUGAN:

Q. Now, you talked about the closed trash area. Was that area locked?

A. It was supposed to be locked. I think in practice, the cleaning people being as lax as they were, did not keep it locked at all times.

Q. So anybody could have walked in and opened the doors?

A. It was unmarked. They'd have to know what was in there.

Q. But they could have walked in?

A. Walked in? I guess so.

Q. It was adjacent to a no parking area; is that right?

A. No, it is not. That is not correct.

Q. What is right in front of it?

A. Right in front of it is an area where a trash truck was designed so the trash truck could back up in there and unload the dumpster. I believe the practice was to roll the dumpster out, and then the trash truck could pick it up, which in the U.S. that's how they do it and toss it all in the trash truck.

Q. Was it only your trash that was in that dumpster or was there trash from other tenants?

A. Trash from other tenants. There were one, two, three, four, maybe five other tenants in the office complex.
Q. I believe you said it was a common area and so everyone's trash went in there?
A. That is correct. We all paid the common area charges for that trash area. That's correct.
Q. And the area in front, where the trash truck came, I mean, that is a publicly accessible area, the public can walk all around there if they want; correct?
A. You can, if you want to.

MR. DUGAN: I have no further questions.

MR. LEGUM: Can we have five minutes?

PRESIDENT VEEDE R: Of course. Mr. Vind, we are going to break for five minutes. We say this to all witnesses. We ask witnesses not to discuss their evidence away from the Tribunal. For the next five minutes, please don't discuss this case with anybody. Talk about the weather, but not about this case.

THE WITNESS: I don't want to talk about the weather outside right now.

PRESIDENT VEEDE R: We will break for five minutes.

(Recess.)

MR. DUGAN: I have one more series of questions pursuant to my agreement with The Tribunal.

(Brief recess.)

PRESIDENT VEEDE R: Yes.

BY MR. DUGAN:
Q. Does it continue to be your testimony that someone broke into your office to obtain these documents?

A. Perhaps a better term would be "illegally enter my office."

Q. But it is your testimony that someone actually illegally entered your office. You are saying that as a matter of fact is what happened?

A. No, that is not what I testified to. I took great pains in explaining to you that is my best judgment, that is the only thing I can figure out as to the way someone got file copies out of my files.

Q. So it is just a guess?

A. It is a guess.

MR. DUGAN: No further questions.

PRESIDENT VEEDER: Mr. Legum, do you have any questions?

MR. LEGUM: I do. Just a few. Just off the record.

PRESIDENT VEEDER: It is difficult to be off the record.

MR. LEGUM: Is it worth taking the time for Mr. Vind to look at X11 and X12?

PRESIDENT VEEDER: It is entirely up to you.
REDIRECT EXAMINATION

BY MR. LEGUM

Q. First some administerial matters I should have taken care of before. To your left--sorry, to your right, you have some documents. Can you first take the photographs--what are the exhibit numbers at the bottom?

A. X8, X9, X10.

Q. Is that your handwriting at the bottom of those?

A. My signature and the date.

Q. And the date is 6/6/04?

A. That is correct.

Q. What does that date signify?

A. That is the date I took the photographs.

Q. Can you look at the satellite photographs--

A. Are you referring to X11 and X12?

Q. I believe I am. Are those to the best of your understanding and knowledge, are those satellite photographs of the area where your office was located?

A. Yes, they are.

Q. Under examination from Mr. Dugan you referred to a conversation with then-Lieutenant Governor Davis concerning ethanol and MTBE. Do you remember that testimony?
A. I do remember the testimony, yes.

Q. Was that conversation with Lieutenant Governor Davis at the dinner on August 4, 1998?

A. No, it was not.

Q. Where did that conversation take place?

A. That conversation took place in my office when he approached me to support him in his run for the governorship.

Q. Now, under examination by Mr. Dugan, you testified that you supported politicians who supported ethanol, and that politicians--sorry, do you recall that testimony?

A. I do.

Q. Did politicians always respond to your support by supporting ethanol?

A. No, they did not.

Q. With respect to Governor Davis after he went into office, you are aware that he signed an Executive Order that postponed the effective date of the MTBE ban by one year, are you?

A. Yes, I am.

Q. Did that action benefit ethanol?

A. No, it did not.

Q. Was that action beneficial for your company?

A. It was not.

Q. Are you aware that Governor Davis and the California government during his administration requested an oxygenate--a waiver of the federal...
oxygenate requirement?

A. I am very much aware of it, yes.

Q. Did that action benefit ethanol?

A. No, it did not.

MR. DUGAN: Can I object for a second.

This wasn't covered in cross-examination, I don't think.
A. Yes.
Q. Did that action benefit ethanol?
A. It did not benefit ethanol.
Q. Did that action benefit your company?
A. It did not benefit my company.
Q. One final question, on the airplane from Meigs Field to Decatur, where on the airplane were you sitting in relationship to Lieutenant Governor Davis?
A. Lieutenant Governor Davis was sitting in the chairman's seat, which is the back right seat, and I was sitting across the aisle from him. It was club seating, four seats.
Q. Were you positioned so you could have a conversation with him?
A. A brief conversation because the weather was so bad that Lieutenant Governor Davis basically locked up on me and went catatonic, and I guess he is a very nervous flier, and we had a brief conversation because there was all kinds of weather—the plane was bouncing around, and so,

yes, we had a brief conversation, yes.
MR. LEGUM: I have no further questions.
Thank you very much.
PRESIDENT VEEDER: We have no questions
from the Tribunal at this stage, but just wait there for a moment. We have to come back to Mr. Dugan.

Mr. Dugan, you have finished your cross-examination without reference to the Regent International documentation. What do you propose we do next?

MR. DUGAN: I propose tomorrow morning we revisit the issue of the Regent International documents.

PRESIDENT VEEDER: You will not be submitting those documents to Mr. Vind because he will now conclude his testimony. Do you want five minutes to think about this?

MR. DUGAN: I would, yes, please.

THE WITNESS: I am not going to be here tomorrow.

PRESIDENT VEEDER: This is what we appreciate which is why we try to sort things out now. We were told you are on a 9:00 flight, so you have to leave here before 7, effectively.

THE WITNESS: Yes.

PRESIDENT VEEDER: Why don’t we take a ten-minute break. I am sorry we have to keep you here, but during this break, please don’t discuss your evidence.

MR. DUGAN: Actually, I think we can—if, after the argument tomorrow, if I am able to use the documents, it will be for a very short period,
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and I will make it subject to trying to work out an arrangement where we can do it by phone or by video conference, if that is acceptable.

PRESIDENT VEEDER: When you say by phone or video conference, with what witness?

MR. DUGAN: Mr. Vind.

PRESIDENT VEEDER: Mr. Legum?

(Pause.)

MR. LEGUM: Our view is it is not fair to

Mr. Vind for him to be subject to further examination at some indeterminate period of time. He has come all the way out here to testify, he is here, he has waited here all day long. Therefore, we would suggest that if Mr. Dugan wants to examine him further, he should get it over with tonight before he has to catch a plane.

PRESIDENT VEEDER: Mr. Vind, I am sorry to ask you to do this, and please don't take offense, but it may be easier if we could talk to counsel in your absence. If you would just leave the room for a few minutes but don't disappear. If you could make sure you can come back so we will tell you what the result of this is. Maybe we can speak more openly with counsel.

(The witness leaves room)

PRESIDENT VEEDER: Mr. Dugan, how do you see this going forward, this debate on the United States's motion--are you ready to address this now?
MR. DUGAN: No, I am not ready to address it now, bearing in mind it bears on evidence that was just presented today for the first time, and an argument was presented today for the first time, and I don't think it would be fair to resolve the U.S. objection until we have had adequate time to consider it and respond to it.

Now, that said, if we are to use the Vind documents to cross-examine Mr. Vind, it can't be done until after the ruling, and I don't see any way to get the ruling before tomorrow. It seems as a matter of equity to us, especially since this is caused by the very, very last minute introduction of evidence by the United States--

PRESIDENT VEEDER: Keep it at a level of practicality.

MR. DUGAN: We ought to work out some type of contingent arrangement so that if the documents are admitted for purposes of cross-examination, for example, we can have some type of supplemental procedure or video or telephone procedure, like we accommodated for Mr. Weinstein and Mr. Miller.

PRESIDENT VEEDER: Pushing you a little bit further, what do you intend to do tomorrow, do you intend to call further evidence or is it
limited to argument?

MR. DUGAN: There may be some photographs—there will be some photographs but that is it, and for the most part, it will be limited to further argument but for the photographs.

PRESIDENT VEEDER: On your current expectations, can we start at 9:00 or 9:30?

MR. DUGAN: Yes. We can start at 9:00, if you would like.

PRESIDENT VEEDER: Again, your current expectation, if you are entitled to put certain of the disputed documents to Mr. Vind by telephone or video link, you say "fairly short." What are you talking about?

MR. DUGAN: Fifteen minutes.

MR. LEGUM: The Tribunal will recall that by our second letter of April 23, 2004, the United States proposed a briefing schedule on this motion,

this motion to exclude this evidence that provided for an initial submission, a responsive submission, a reply and a rejoinder that would have had this issue fully briefed and submitted weeks before the hearing started. Methanex, for whatever reason, decided that it did not want to have full briefing on the issue, and, therefore, it decided that it would simply leave the issue to be addressed in a more hasty fashion at the hearing. It is, at least in our view, as a result of that decision on
PRESIDENT VEEDER: It may be the Tribunal's decision that you are criticizing, Mr. Legum, because it was our decision not to decide the point before the hearing started.

Let's take a level of practicality. Obviously it would be quite improper to ask Mr. Vind to stand by the telephone or video link tomorrow. He is taking the red eye back to Los Angeles, so tomorrow is out. But do you know about his movements next week, Monday or Tuesday?

MR. LEGUM: I know his wife is having surgery next week. I don't know what date that is.

PRESIDENT VEEDER: I don't think we can do anything more but conclude Mr. Vind's evidence today. We will hear argument tomorrow on the U.S. motion and we will start early, if that is acceptable to my colleagues and the parties, with your response, and we will have to make a ruling as soon as we can, about the disputed documents, and then we will hear an application from you, if we allow you to make use of these documents, an application to cross-examine further Mr. Vind by telephone or videolink, but there may be some practical difficulties given what Mr. Legum has just said. That is all we can do. For the time
being, if we can have Mr. Vind back, we can conclude this part of his testimony, at least.

(The witness returns to the room)

PRESIDENT VEEDER: Mr. Vind, we have come to the end, at least of this part of your testimony. So we want to thank you for coming today, and we wish you a safer trip back to Los Angeles than the flight you have been describing. It is possible that a request will be made to see if you could answer further questions, but an approach will be made through the U.S. State Department, and it won't be in person; it will be by telephone or some other arrangement which won't require you to come back to Washington, D.C., but thank you very much for coming today.

There is one thing we have to discuss, which we will have to discuss when Mr. Vind leaves the room.

The terms of our Order made yesterday, covered the period up to the time when Mr. Vind began his evidence. Given that, Mr. Dugan, you haven't put the documentation to Mr. Vind, we wonder whether we should be doing something about amending that Order.

MR. DUGAN: Are you talking about the
Embargo Order?

PRESIDENT VEEDER: Wasn't going to call it the Embargo Order but it is the Embargo Order.

MR. DUGAN: I don't have any objection to terminating the Embargo Order at this point.

MR. LEGUM: No objection here.

PRESIDENT VEEDER: It is not a question of terminating the Embargo Order. The Order stands but in accordance with its terms, it changed the minute Mr. Vind began his evidence. Unless there is something else somebody wanted to raise, we will start tomorrow morning at 9:00.

MR. LEGUM: Fine with us.

PRESIDENT VEEDER: Before we depart, why don't we go through the schedule after the argument tomorrow?

Mr. Dugan, you will take a certain amount of time, but take your time, it is an important issue. There will be a response from the United States. Assume we are through that by 11:00, can we go through the timetable tomorrow?

MR. DUGAN: We have two experts to cross-examine tomorrow, Fogg and Happel, and I assumed it would be one before lunch and one after lunch. I don't think that the examinations are intended to be particularly lengthy. It is my understanding from my partner, Ms. Callaway, that we should have no trouble finishing by 5:30, and probably well before then.
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MS. MENAKER: Excuse me, if I may, I believe that Mr. Simeroth is also scheduled for tomorrow.

MR. DUGAN: I don't think—that may push us to 5:30, but I don't think beyond that.

PRESIDENT VEEDER: Anything else?

MR. LEGUM: Not here.

PRESIDENT VEEDER: Thank you very much.

Until 9:00 tomorrow.

(Whereupon, at 5:53 p.m., the hearing was adjourned until the following day.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby testify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true record and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.
CERTIFICATE OF REPORTER

I, Cathy Jardim, RPR, Court Reporter, do hereby testify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true record and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

________________________

CATHY JARDIM, RPR