

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

-----x	:
METHANEX CORPORATION,	:
Claimant/Investor,	:
and	:
UNITED STATES OF AMERICA,	:
Respondent/Party.	:
-----x	:
	Volume 4

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:

0610 Day 4

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1 P R O C E E D I N G S
2 PRESIDENT VEEDER: Well, good morning,
3 ladies and gentlemen. This is day four of the main
4 hearing, and we now turn to the U.S. motion to
5 exclude certain evidence adduced by Methanex. And
6 given that it's a U.S. motion, we hand the floor
7 first to the United States.

8 MS. MENAKER: Thank you.

9 Mr. President, members of the Tribunal,
10 the United States respectfully requests that all of
11 the documents that originated in Mr. Vind's files
12 be excluded from evidence in this arbitration.

13 Methanex maintains that it obtained these
14 documents by rummaging through a dumpster that was
15 in the parking lot behind Mr. Vind's old offices.
16 The manner in which these documents were even
17 allegedly obtained warrants exclusion, and I quote
18 from Justice Brennan's dissent in a U.S. Supreme
19 Court case when he said, and I quote, Most of us, I
20 believe, would be incensed to discover a meddler,
21 whether a neighbor, a reporter, or a detective,

1 scrutinizing our sealed trash containers to
2 discover some items of our personal lives, end
3 quote.

4 He continued to say, and I quote again,
5 Scrutiny of another's trash is contrary to commonly
6 accepted notions of civilized behavior, end quote.
7 And that is the case.

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

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

20 In any event, these documents were
21 obtained illegally, and therefore, they should

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1 certainly be excluded.

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

9 At first, Methanex claimed that this
10 dumpster was located on private--on, excuse me,
11 public property. Yesterday, its witnesses seemed

12 to be claiming that, only that the dumpster was
13 publicly accessible. Mr. Puglisi stated that there
14 was the flow of traffic outside to and from the
15 building, and that there was no restriction on who
16 could enter the parking lot, and it was definitely
17 publicly accessible. And thus, they maintained
18 that this was legal under California law.

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

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

11 So, there is--

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

16 MS. MENAKER: The ones that are in the
17 stack, the copies of the stack of originals when
18 Methanex has listed are not yet located.

19 PRESIDENT VEEDER: As we understand it,
20 Methanex has withdrawn those exhibits, those six
21 exhibits.

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1 MS. MENAKER: So, they are withdrawn?
2 Okay. Then I retract that statement, if those are
3 withdrawn.

4 PRESIDENT VEEDER: I think if you leave
5 those six aside, then I think your so-called
6 originals have been found to match in one form or
7 another all the copied exhibits that we have.

8 MS. MENAKER: That's correct, aside from
9 those six documents.

10 PRESIDENT VEEDER: Thank you.

11 MS. MENAKER: The fact, however, that
12 there were some documents for which no original has
13 been found places some suspicion on the method in
14 which these documents were gathered. There is no
15 reason to assume that these documents were taken
16 from a dumpster rather than from Mr. Vind's files
17 in his office or the trash can in his office. We
18 have no originals of those documents, and
19 therefore, there is no reason for us to assume that
20 the documents that Methanex still seeks to put into
21 evidence were obtained in the manner in which they

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1 alleged they were obtained.

2 Most importantly, however, neither of the
3 witnesses that Methanex proffered yesterday has any
4 personal knowledge as to how any of these documents
5 were retrieved. Neither of those individuals
6 personally retrieved any of the documents from
7 Mr. Vind's premises or from the dumpster behind the
8 building.

9 Neither of these witnesses claim to have
10 ever been in California at Mr. Vind's offices or to
11 have ever seen the premises from which these
12 documents were taken. They have no personal
13 knowledge on this topic whatsoever.

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

20 ARBITRATOR ROWLEY: Could I just ask you
21 to address the testimony of Ms. Morisset where she,

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1 I believe, said something to the effect that the
2 documents she received indicated that they may have
3 come from a dumpster because they were stained with
4 coffee and Coke and chewing gum. The reason I ask
5 you that is because that seems to me direct
6 testimony from her, which is supportive of the
7 indirect testimony that they came from a dumpster.

8 MS. MENAKER: I agree that that testimony
9 might supply evidence for the inference that those

10 documents were found in the trash. However, that
11 does not supply any type of confirmation as to how
12 those documents were retrieved from the trash or
13 where the trash was located. Those documents could
14 have been in the trash in Mr. Vind's private
15 office.

16 She doesn't--she didn't see how those
17 documents were retrieved or from what trash they
18 were retrieved. She certainly has never seen a
19 dumpster behind Mr. Vind's office in a parking lot
20 behind his office, so she has no knowledge that
21 those documents were taken from that dumpster, and

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1 that is the point that I was making.

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

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

15 MS. MENAKER: That is the way I was
16 reading it. That is the way that I understood his

17 written statement when I first read it, is that
18 these documents had somehow in one event been taken
19 from the dumpster, had been taken from Mr. Vind's
20 dumpster and sent to Methanex, and I had no
21 indication that this was an ongoing investigation

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1 and that there were actually 88 shipments of
2 documents.

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

7 MS. MENAKER: Yes, yes, that is the case.

8 However, more importantly, in his
9 statement, Mr. Puglisi said that all of the
10 documents that were the subject of the United
11 States' motion to exclude were taken from
12 discarded documents--documents that were discarded
13 behind Regent International's office, and he said
14 that they were not illegally obtained.

15 Yesterday, when questioned about that
16 statement that he made, he admitted that he did not
17 look at each and every one of the documents to
18 which his statement was supposed to refer to. He
19 said, instead, that he relied on representations
20 made by counsel that these were, in fact, the
21 documents that he had in his possession.

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1 As it turns out, however, we have now
2 learned that Mr. Puglisi can't vouch for many of
3 the documents as to which our motion is directed.
4 Some of the documents he claims to have never seen
5 before or has no recollection of having seen
6 before, and they don't bear the markings that he
7 indicated he places on documents that have been
8 received. And, in fact, Ms. Morisset later
9 testified that those documents were actually sent
10 to her law firm and not to Mr. Puglisi.

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

20 Moreover, Mr. Puglisi's testimony also
21 raises questions about the origins of many of the

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1 documents. For example, in the draft itinerary
2 that was--I'm going to get the citation for you.

3 PRESIDENT VEEDER: Tab 13 or Exhibit 151.

4 MS. MENAKER: Thank you very much.

5 First, we discovered that the original or
6 the so-called original of that document does not
7 match the document that Methanex had sought to

8 place into evidence in this arbitration. The
9 evidence that Methanex placed into--the document
10 that Methanex placed into evidence contains a draft
11 fax line at the bottom. The so-called original of
12 this document does not contain that fax line.
13 Therefore, we do not have the original of the
14 document that Methanex has sought to place into
15 evidence in this arbitration, and we have no
16 testimony to corroborate from where that document
17 came.

18 Second, the--Mr. Puglisi testified that he
19 stamped the backs of the documents to indicate when
20 we received certain documents, and if the document
21 had more than one page, he just stamped the last

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1 page. But as you can see from that exhibit, the
2 second page, which contains handwritten notes on
3 flight schedules, is stamped with a receipt date
4 that predates the draft of the itinerary to which
5 it was supposedly attached, further calling into
6 question how, when, or if Mr. Puglisi ever received
7 this document.

8 Now, as far as Ms. Morisset's testimony is
9 concerned, the documents that she testified about
10 are also suspect. As the Tribunal noted, the
11 printout of Mr. Vind's Palm Pilot, the addresses,
12 the address book found in his Palm Pilot was found
13 to be in pristine condition. Ms. Morisset
14 testified that the first page was slightly

15 dog-eared, and she pointed to what was an
16 imperceptible wrinkle, but that does not appear to
17 be a document that was found in a dumpster
18 containing an office building's trash, or at least
19 there is no evidence to suggest that this document
20 was there. There is no reason for us to believe
21 that this document was there.

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

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

19 PRESIDENT VEEDER: Ms. Menaker, does the
20 evidence show it's the same law firm, or is it two
21 law firms?

1 MS. MENAKER: My understanding from the
2 evidence is that it was the same law firm and that
3 neither witness was willing to reveal the name of
4 that law firm. That was my understanding from the
5 testimony.

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

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

21 PRESIDENT VEEDER: Ms. Menaker, how are

1 you going to deal with that objection?

2 MS. MENAKER: I would like to offer these
3 photographs into evidence and refer to them. And
4 as you know, Mr. Vind, the person who took these
5 photographs and who can authenticate these

6 photographs, is not only in Washington. He is
7 here, he is going to be testifying later. We can
8 call him to make himself available to the Tribunal
9 sooner than that, if you would like him to testify
10 to authenticate the documents.

11 PRESIDENT VEEDER: Are you saying that he
12 would be in a position to authenticate the
13 photographs?

14 MS. MENAKER: Yes.

15 PRESIDENT VEEDER: Today?

16 MS. MENAKER: Yes.

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

21 PRESIDENT VEEDER: Well, let's--what we

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1 would like to do is look at the photographs for
2 information only at this stage. We are not
3 receiving them into evidence, and we would like
4 them to be proved, not only by Mr. Vind, but if
5 photographs are to be relied on, we would like to
6 know who took them and when they took them. So, we
7 can have a look at them, subject to those
8 restrictions.

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

11 PRESIDENT VEEDER: Yes. But please make
12 sure Mr. Dugan has a set first.

13 MS. MENAKER: He does. These are the
14 photographs I gave him copies of.

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

20 Would you like to see the colored ones?

21 PRESIDENT VEEDER: Will they go up on the

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1 screen?

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

5 (Pause.)

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

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

18 MS. MENAKER: No, I believe they were
19 taken on Sunday, and that is the date at the
20 bottom, bottom. It says 6/6/04. And Mr. Vind gave

21 them to us last night when he arrived.

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1 PRESIDENT VEEDER: Can you tell us who
2 took the photographs.

3 MS. MENAKER: Mr. Vind.

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

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

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

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

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

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1 Ms. Menaker. If you're taking it with Mr. Vind, we
2 don't need to repeat the exercise twice. Just give
3 us some idea of what we are looking at.

4 MS. MENAKER: Sure. You know, if it's
5 okay with the Tribunal, Mr. Legum spent more time
6 speaking with Mr. Vind about these photographs last
7 night, so perhaps it would be better if he talked
8 you through these.

9 PRESIDENT VEEDER: Okay.

10 MR. LEGUM I will try to be brief.

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

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

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1 building was stored.

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

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

8 And X10, again more photographs of pretty
9 much the same thing from different vantage points.
10 And I think it's probably best to--well, let's see,

11 one final thing. On X10, the bottom photograph,
12 you can see there's a building over there behind
13 the building where Mr. Vind's offices was located.
14 That is the Brea mall, and that in particular is a
15 J. C. Penney's store.

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

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

21 PRESIDENT VEEDER: It may be helpful, and

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1 we put this out to both sides, if we just had a
2 small map just to indicate the public street
3 pattern around this building.

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

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

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

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

19 bannister for the stairs as it goes down.

20 There is in front of this building, as I

21 understand it, a series of--

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1 ARBITRATOR ROWLEY: Could you do that for
2 me again because I missed it.

3 MR. LEGUM: X10-- is that a close-up?
4 X10--

5 MS. MENAKER: So, even if Methanex,
6 Methanex's investigators retrieved these documents
7 from the trash from the office building in
8 Mr. Vind's prior premises, they would have had to
9 have entered the building in order to access the
10 dumpster or the trash, and that is illegal. I
11 don't believe that even Methanex has contended that
12 if the documents were obtained by entering the
13 building, that that would be legal.

14 And in any event, obtaining these
15 documents in such a manner is not legal under
16 California law. Methanex provided a legal
17 memorandum to support its proposition that it was
18 legal to go through trash on public property in
19 California, but the memo didn't cite any California
20 law on this topic.

21 Now, what I have placed on the screen and

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1 what is in your judge's folders is a city ordinance

2 from the City of Brea, California, where Mr. Vind's
3 property--Mr. Vind's office was located. This
4 ordinance was passed in July of 1996, and I will
5 quote, No person, other than the owner thereof, the
6 owner's agents or employees, or an officer or
7 employee of the City or a permittee's agents or
8 employees authorized for such purposes, shall
9 tamper or meddle with any solid waste, green waste,
10 or recyclable material receptacle or the contents
11 thereof, or remove the contents thereof, or remove
12 any receptacle from the location where the same
13 shall have been placed for collection.

14 And therefore, in the City of Brea,
15 California, it is not legal to remove documents
16 that have been placed in the trash without the
17 owner's permission, unless you are a trash
18 collector or otherwise authorized to do so by the
19 owner or the City. And that is the case, even if
20 the trash is located outside, even if it is in a
21 dumpster that is located outside, whether it be in

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1 a parking lot or at the curb.

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

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

8 PRESIDENT VEEDER: Just before you get to

9 the case, you have given us a fuller text of the
10 Brea City Code? In the event of a violation of
11 this paragraph D, the ordinance, what is the
12 penalty or consequence? Is that prescribed in the
13 municipal code or elsewhere?

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

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

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

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

16 The Court excluded those documents from

17 evidence and dismissed the case. The Court stated
18 that based on this and other acts, that the
19 plaintiff's behavior constituted, and I quote, a
20 substantial threat to the integrity of the judicial
21 process, end quote. That quote is at star two of

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1 the opinion, the one that I just quoted, and the
2 longer quote was star five.

3 And this case, as you can see, is from
4 this year, from 2004, just a few months ago, the
5 end of March of the California Supreme Court.

6 So, Mr. President, members of the
7 Tribunal, we again ask that the Tribunal exclude
8 from evidence all of the documents that were
9 documents originating from Mr. Vind's files. Even
10 if the documents were retrieved from a dumpster
11 that was on public property, that would be illegal
12 under California law. And as I indicated, there
13 was no dumpster on Mr. Vind's property. The trash
14 was actually kept inside the building, and if it
15 was received--retrieved from that trash, it is
16 clearly illegal.

17 So, for all these reasons and the others
18 that we have outlined, we respectfully request that
19 the Tribunal exclude these documents from evidence.

20 And I would just like to give the
21 Court--excuse me, the Tribunal, the citation from

1 the Court. I began by citing Brennan's dissent in
2 a U. S. Supreme Court case. That is California v.
3 Greenwood at 486 U. S. 35. It was a 1988 case. The
4 first quotation that I cited was at page 51, and
5 the second citation was taken from page 45 of that
6 opinion.

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

9 MS. MENAKER: Yes.

10 I believe it was in the materials that
11 Methanex supplied us with, that it was one of the
12 authorities on which they relied on for their legal
13 memorandum they submitted yesterday.

14 PRESIDENT VEEDER: I see, okay.

15 (Pause.)

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

19 MR. DUGAN: Members of the Tribunal, this
20 is a new argument that has been raised by the
21 United States, in particular the legal argument

1 that this violated the city ordinance of Brea.
2 This argument wasn't included in their reply to our
3 opposition to their motion to exclude, and I would
4 like the Tribunal's indulgence for a recess so we
5 can go and look into this, please.

6 PRESIDENT VEEDER: Just before you go,

7 Mr. Dugan, you want to recess to look into that,
8 but in your interjection you indicated you might
9 want to call further evidence.

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

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

14 MR. DUGAN: Could we break for 45 minutes?

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

18 MR. DUGAN: A half hour?

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

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

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

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

9 MR. DUGAN: Okay.

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

12 MR. DUGAN: That's reasonable.

13 PRESIDENT VEEDER: So, let's break for 10
14 minutes.

15 (Brief recess.)
16 PRESIDENT VEEDER: Let's resume.
17 Good morning, Mr. Listenberger.
18 THE WITNESS: Good morning.
19 ROGER LISTENBERGER, RESPONDENT/PARTY'S WITNESS,
20 CALLED
21 PRESIDENT VEEDER: You're going to be

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

5 THE WITNESS: Shall I read it?

6 PRESIDENT VEEDER: Yes, please.

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

10 PRESIDENT VEEDER: Thank you,
11 Mr. Listenberger.

12 Ms. Menaker.

13 DIRECT EXAMINATION

14 BY MS. MENAKER:

15 Q. Good morning, Mr. Listenberger. We've met
16 before, but for the record I'm Andrea Menaker. I'm
17 an attorney with the U.S. Department of State. I
18 want to ask you a few brief questions on the
19 statement that you provided in this arbitration.

20 Do you have a signed copy of that
21 statement before you?

1 A. Yes, I do.

2 Q. And is that your statement?

3 A. Yes, it is.

4 Q. Can you take a moment to review that
5 statement and just let me know when you've finished
6 doing so, please.

7 (Witness reviews document.)

8 A. All right.

9 Q. You affirm that the statements were true.
10 Are the statements in your statement correct, to
11 the best of your knowledge as you sit here today?

12 A. Yes, except for one portion in paragraph
13 five, second page, the term "pharmaceutical
14 business" is used, and the correct term should be
15 "nutraceutical" business.

16 PRESIDENT VEEDER: I'm sorry, could you
17 just spell that out.

18 THE WITNESS: I certainly hope I could do
19 it, but it would be--it's nutraceutical. It makes
20 reference to vitamins or supplement type of
21 products.

1 BY MS. MENAKER:

2 Q. Thank you.

3 In August of 1998, you were employed at
4 ADM, were you not?

5 A. Yes.

6 Q. Are you still employed there?

7 A. No, I'm not.

8 Q. When did you cease being employed there?

9 A. At the end of 2003.

10 Q. And why did you leave ADM?

11 A. I took early retirement.

12 Q. In August 19--or how long had you worked
13 for ADM before retiring?

14 A. Nearly 25 years.

15 Q. In August 1998, what was your position
16 with ADM?

17 A. I was the Vice President of Marketing for
18 Fuel Ethanol.

19 Q. And what were your job responsibilities in
20 that position.

21 A. I headed up the sales, reviewed the

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1 distribution, follow-up with all of our customers,
2 customer satisfaction.

3 Q. In your statement, you testify about a
4 dinner that you attended on August 4th, 1998.

5 Did you play any role in arranging that
6 dinner?

7 A. No, I did not.

8 Q. When did you first learn that that dinner
9 was going to take place?

10 A. I don't remember the exact date.

11 Q. Did you--do you recall whether or not you
12 had a--I withdraw the question.

13 Do you have any--why were you asked to
14 attend that dinner?

15 A. Martin Andreas, who at that time was our
16 Vice President of Marketing for the corporation and
17 Assistant to the Chief Executive Officer, a big
18 part of his job was promoting ADM and their various
19 products, and ethanol had a very high profile
20 within ADM. A lot of people wanted to know about
21 it. We frequently had guests come in to Decatur,

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1 and he would ask myself or my boss to attend one of
2 the meetings. And if there were questions that
3 came up about ethanol, we could ask them--we could
4 answer them and tell about what we were doing and
5 what we expected to do in the future.

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

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

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

14 A. Not with Mr. Davis, no.

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

17 A. Not really politicians. Mostly people who
18 were interested in ADM's products, farm cooperative
19 groups from around the country, people who are

20 involved in agriculture.

21 Q. To the best of your recollection, at what

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1 time did the dinner begin that evening?

2 A. Well, it was late and delayed by weather.

3 I don't know exactly what the time, beginning time

4 was, but it began about 8:00.

5 Q. And to the best of your recollection,

6 approximately how long did the dinner last?

7 A. One and a half to two hours.

8 Q. To the best of your recollection, who was

9 present at the dinner?

10 A. Alan Andreas, Martin Andreas, Gray Davis,

11 Richard Vind, and myself.

12 Q. And to the best of your recollection, what

13 was discussed at that dinner?

14 A. Well, Mr. Davis promoted Mr. Davis quite a

15 lot, talked about his upcoming candidacy and what

16 he had done as--in his political career in the

17 state of California, and Martin Andreas and Alan

18 Andreas promoted ADM very heavily, in talking about

19 a lot of the new products that we were in, that we

20 were involved in, particularly the new line of

21 nutraceuticals that we were involved in, and the

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1 future of nutraceuticals.

2 Q. To the best of your recollection, was

3 ethanol a topic of discussion at the dinner?

4 A. Not very much. It came up a few times.

5 Q. And what, to the best--to the best of your
6 recollection, was MTBE discussed at the dinner?

7 A. Again, not very much. It came up a few
8 times. One time in specific that I remember is as
9 we were preparing to leave or walking out of the
10 room, I asked Mr. Davis if he felt that in the
11 upcoming election if MTBE would be an issue because
12 it was getting a lot of press at that time as a
13 serious groundwater contamination problem, and I
14 asked him about that, and he said, no, he didn't
15 think it would be an issue.

16 Q. To the best of your recollection, was
17 methanol discussed at the dinner?

18 A. No, it was not.

19 Q. And to the best of your recollection, was
20 Methanex Corporation discussed at the dinner?

21 A. No, they were not.

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1 MS. MENAKER: That's all I have.

2 PRESIDENT VEEDER: Thank you, Ms. Menaker.

3 Ms. Callaway, we're now going to turn to
4 the cross-examination of Mr. Listenberger, but one
5 thing that crosses our mind, are you intending to
6 refer during the cross-examination to any of the
7 relevant Regent International documentation?

8 MS. CALLAWAY: Yes, I am.

9 PRESIDENT VEEDER: Please talk into the
10 microphone, and do sit down.

11 MS. CALLAWAY: I'm sorry that I'm a novice
12 here at the World Bank hearing room.

13 Yes, I am, and if it please the Tribunal,
14 I would like to use the ELMO and sit near the ELMO
15 because I have documents that I have prepared for
16 everybody, adequate copies for the United States
17 team, for the witness, and for the Tribunal, but I
18 would like to show them on the projector, if I may,
19 if it please the Tribunal, and if the United States
20 does not object.

21 PRESIDENT VEEDER: Before we get to the

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

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

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

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

15 MS. CALLAWAY: Yes, but if it does not
16 bother anybody, including the witness, I would like
17 to sit there.

18 PRESIDENT VEEDER: Why don't we break for
19 two minutes while you re-establish yourself at the
20 end of the table.

21 MS. CALLAWAY: Thank you very much.

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

3 MS. CALLAWAY: Thank you.

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

12 (Brief recess.)

13 PRESIDENT VEEDER: Let's proceed.

14 Ms. Callaway.

15 CROSS- EXAMINATION

16 BY MS. CALLAWAY:

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

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

21 A. That's correct.

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1 Q. And is it also correct that you worked
2 there for approximately 25 years?

3 A. Yes.

4 Q. Now, Archer Daniels Midland is often
5 referred to as ADM; is that correct?

6 A. Yes.

7 Q. And is it correct that ADM is comprised of
8 four main divisions: Nutrition, animal nutrition,
9 fuel and industrials, and food ingredients?

10 A. I think you'd get some argument on that.

11 Q. Well, tell me how, in your mind, there are
12 divisions. I heard you used the term
13 nutraceuticals "nutraceuticals." Is that a
14 division?

15 A. No, it's commodities.

16 Q. Nutraceuticals are a commodity. Is lysine
17 a nutraceutical?

18 A. I don't believe so.

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

21 PRESIDENT VEEDER: One moment,

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1 Ms. Callaway. Because the witness is turning
2 towards you, unfortunately, the mike is not picking
3 up. We are not important. The most important
4 thing is the microphone, and the second most
5 important person is our shorthand writer. Unless
6 we get this down, it doesn't really count, so if
7 you could just--I know it's crude, but if you look
8 at the microphone when you answer rather than

9 Ms. Callaway.

10 BY MS. CALLAWAY:

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

13 A. That's correct.

14 Q. And that was one of a few divisions at
15 ADM; right?

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

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

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

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

7 A. That's correct.

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

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

14 Q. So, that was in your interest and ADM's
15 interest to promote its sale?

16 A. Well, it was in my interest if I was going
17 to be employed, yes.

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

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

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1 Q. So, the answer is yes; right?

2 A. I guess so.

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

5 A. Nineteen years.

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

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

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

20 A. No.

21 Q. You have seen before Mr. Andreas's

1 statements, such as this one that I have on the
2 ELMD and that I have in front of you, where
3 Mr. Andreas made clear--and this is in 1992--that
4 methanol was a foreign product and ethanol was from
5 the Middle West?

6 A. No, I'm not familiar with that.

7 Q. No pun intended, but this isn't completely
8 foreign to you, is it?

9 A. A lot of our business associates in the
10 corn processing side from the various corn and
11 agricultural movements used this type of
12 terminology.

13 Q. But Mr. Andreas wasn't just on the corn
14 processing side; right?

15 A. That's correct. He was over the entire
16 company.

17 Q. And as CEO, he was ultimately responsible
18 for everything that came in and went out of ADM; is
19 that correct?

20 A. Well, he oversaw it. There were people
21 that did that.

1 Q. But you will agree that as Archer Daniels
2 Midland's CEO, when he spoke on CNN's Money Line on
3 May 12th of 1992, he was speaking for the company;
4 is that correct?

5 A. Mr. Andreas always spoke for the company.

6 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?

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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?

- 14 A. No, when I was at ADM
- 15 Q. And when you referred to your lawyer, do
- 16 you mean an Archer Daniels Midland lawyer, or do
- 17 you mean your personal counsel?
- 18 A. I have no personal counsel. It was an ADM
- 19 attorney.
- 20 Q. Do you recall who that ADM attorney was?
- 21 A. David Smith.

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- 1 Q. I have provided a copy of this document in
- 2 the packet that was submitted to you, and I want to
- 3 be sure that I have the right document that is your
- 4 sworn statement in this case.
- 5 If you could take a couple of moments to
- 6 review it and let me know if you're familiar with
- 7 it.
- 8 A. The one in front of me or the one on the
- 9 screen?
- 10 Q. The one in front of you and the one on
- 11 the--
- 12 MS. CALLAWAY: I will represent to the
- 13 Tribunal and to the United States and to you,
- 14 Mr. Listenberger, that what I have provided to you
- 15 is what I have put on the screen.
- 16 PRESIDENT VEEDER: The witness is looking
- 17 at the document that we've provided to him, which
- 18 is his witness statement, and you can take it that
- 19 he's only provided one witness statement, and what
- 20 he's looking at is a witness statement to which he
- 21 deposed in his direct examination.

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1 MS. CALLAWAY: I will turn to the second
2 page of this that is dated October 24th, 2003.

3 BY MS. CALLAWAY:

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

6 A. Yes, it is.

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

10 A. Evidently, yes.

11 Q. And with whom at the United States, or
12 pardon me, let me rephrase that.

13 Did you communicate with one of the
14 attorneys for the United States at the time that
15 you prepared this statement?

16 A. Andrea Menaker, yes.

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

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

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

21 A. I don't recall.

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

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

4 Q. Well, you spoke to her once around the

5 time of preparing this affidavit; is that correct?

6 A. That's correct.

7 Q. Did you speak with her before then?

8 A. Yes, I believe I had a conversation with
9 her.

10 Q. How many conversations?

11 A. I said, just a few times. I don't really
12 recall how many.

13 Q. A few, maybe three, four?

14 A. Well, more like two or three possibly.

15 Q. And did you speak with her on the phone
16 after making this sworn statement?

17 A. I don't believe so.

18 Q. But you first met with her in person two
19 months ago; is that correct?

20 A. No, I first met with her in the ADM
21 offices a few weeks ago.

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1 Q. Oh, a few weeks ago. I'm sorry, I thought
2 you said two months ago earlier.

3 So she visited the ADM offices; is that
4 correct?

5 A. Yes, that could be a few months, to a few
6 weeks. I'm not really sure of the time, of the
7 date.

8 Q. So, your first meeting with her occurred
9 at ADM's offices?

10 A. That's correct.

11 Q. Who else was present at that meeting?

12 A. David Smith and Bart, and again I'm sorry,
13 I don't have the correct pronunciation of the last
14 name.

15 Q. Mr. Legum?

16 A. Yes.

17 Q. What was discussed at that meeting?

18 A. My witness statement.

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

21 A. We went over what we had talked about, the

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1 upcoming hearing that we are having today, how the
2 procedure would take place, just that type of
3 thing.

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

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

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

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

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

16 A. Yes.

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

19 A. No.

20 Q. He was there in his offices at ADM, right?
21 A. That's correct.

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1 Q. In your witness statement, you testify
2 about a secret meeting that took place at the
3 Country Club of Decatur; is that correct?

4 A. It was not a secret meeting. It was very
5 open. It was a public place.

6 Q. Was the meeting advertised?

7 A. There wasn't a billboard out in front of
8 the meeting place, but messages were--or
9 itineraries were passed around to the company
10 announcing that the meeting was going to be--the
11 participants were invited to attend.

12 Q. Did you review such an itinerary in
13 preparing this statement?

14 A. No.

15 Q. Have you reviewed an itinerary regarding
16 this meeting in preparation for your testimony
17 today?

18 A. No. I saw one at the time, I suppose, but
19 I don't remember seeing it since then.

20 Q. Have you seen a list of attendees in
21 preparation for your testimony today?

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1 A. No, I have not.

2 Q. Now, the Decatur newspapers, both of the
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3 Decatur newspapers didn't cover this meeting, did
4 they?

5 A. No.

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

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

10 A. What are you asking me?

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

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

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

16 A. I would have no knowledge of that.

17 Q. You have no knowledge of any secret
18 meetings?

19 A. No.

20 Q. I would like to show a videotape.

21 PRESIDENT VEEDER: Ms. Callaway, just tell

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1 us what this videotape is. Is this already in the
2 record or is this something you're introducing as
3 evidence, or what?

4 MS. CALLAWAY: I would like to--I will
5 move later to submit it as evidence. This is a
6 videotape from the United States Department of
7 Justice depicting a secret meeting that was
8 classified as a secret meeting by the United States
9 Department of Justice.

10 MS. MENAKER: Excuse me, we object to this
11 showing.

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

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

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

19 PRESIDENT VEEDER: Ms. Menaker.

20 MS. MENAKER: Yes. We object to the
21 showing. This is well beyond the scope of

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1 Mr. Listenberger's statement. It has not been
2 shown how this could possibly go to his
3 credibility.

4 MS. CALLAWAY: I would--

5 PRESIDENT VEEDER: Just one moment.

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

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

11 PRESIDENT VEEDER: Ms. Callaway.

12 MS. CALLAWAY: Actually, President Veeder
13 and members of the Tribunal, in one of the
14 documents that I provided this morning that is from
15 the joint submission with the caption of the
16 informant, it's one page, 7 JS tab 171, March 10th,
17 1994: Hawaii, all of the companies agree for the

18 first time on how to split the market between them
19 Quick time movie, modem connection, high speed
20 connection.

21 We put them on notice with the joint

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1 submission that this would be evidence in this
2 case.

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

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

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

15 PRESIDENT VEEDER: Thank you.

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

18 PRESIDENT VEEDER: How long is the video?

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

21 PRESIDENT VEEDER: Thank you.

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1 Ms. Menaker, you were going to say
2 something?

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

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

17 PRESIDENT VEEDER: Just wait one moment.

18 (Pause.)

19 PRESIDENT VEEDER: Ms. Callaway, we are
20 going to let you run the video for the time being
21 de bene esse. It won't stand as evidence. We

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1 understand you are introducing it in order to
2 attack this witness's credibility, but just to help
3 us understand the 90 seconds better, is this
4 witness one of the participants at this meeting?

5 MS. CALLAWAY: He is not a direct
6 participant. However, this goes to his credibility
7 in the sense that--

8 PRESIDENT VEEDER: You don't have to
9 explain it. Just run the video, and let's will see
10 where it goes.

11 MS. CALLAWAY: Thank you very much.
12 (Videotape shown.)

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

16 This is what we intended to show. Thank
17 you.

18 (Videotape shown.)

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

21 PRESIDENT VEEDER: Just before you go,

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

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

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

13 BY MS. CALLAWAY:

14 Q. Going back to your statement,
15 Mr. Listenberger, of what I called the secret

16 meeting on August 4th, but which you contend was
17 not secret, you say that it wasn't advertised on a
18 billboard; right?

19 A. That's correct.

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

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1 A. Not that I'm aware of.

2 Q. And Gray Davis was in attendance; right?

3 A. Pardon me?

4 Q. Gray Davis was in attendance; right?

5 A. At the meeting?

6 Q. Yes.

7 A. Yes.

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

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

13 Q. This is a fancy time line that we had
14 prepared that I've provided you a copy with.

15 Do you have any reason to doubt that on
16 June 2nd, 1998, Mr. Davis received the Democratic
17 nomination for Governor?

18 A. I would have no idea.

19 Q. But you do recall that it was August 4th
20 of 1998 that you met Gray Davis at the Country Club
21 of Decatur?

1 A. Yes.

2 Q. And you recall, don't you, that Mr. Davis
3 arrived in Decatur via an ADM plane; is that
4 correct?

5 A. I don't know who provided the
6 transportation.

7 Q. Do you recall that Dick Vind was with
8 Mr. Davis at that meeting?

9 A. Yes, he was.

10 Q. Do you recall that the Illinois State
11 Police escorted Mr. Davis and Mr. Vind to the
12 Country Club of Decatur?

13 A. I don't--I don't recall that.

14 Q. Not everybody who arrived at the Decatur
15 airport to have dinner at the Country Club of
16 Decatur got a police escort, did they?

17 A. I don't know if they do or not, no.

18 Q. Do you recall who else was in attendance
19 at that meeting?

20 A. Yes, Martin Andreas with ADM, Alan Andreas
21 with ADM, Richard Vind, and Gray Davis, and myself.

1 Q. Now, earlier you testified that you were
2 the Vice President in charge of Marketing Ethanol;
3 is that correct?

4 A. Fuel ethanol.

5 Q. Fuel ethanol, I apologize.

6 Now, if we were to do an organization
7 chart, Martin Andreas would be above you in the
8 organization chart; right?
9 A. Yes, he would.
10 Q. And Alan Andreas, he would be above you on
11 the organization chart; right?
12 A. Yes, he would.
13 Q. Now, was Dwayne Andreas there?
14 A. No, he was not.
15 Q. In fact, he had gone home because
16 Mr. Davis was so late; right?
17 A. I don't know.
18 Q. Do you recall waiting with him for
19 Mr. Davis to arrive?
20 A. With Dwayne Andreas?
21 Q. Yes, sir.

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1 A. No.
2 Q. Dwayne Andreas would definitely be above
3 everybody else I've named from ADM on the
4 organization chart; right?
5 A. He was Chairman of the Board at that time.
6 Q. Had he retired as CEO as of August 1998?
7 A. Alan Andreas was Chief Executive Officer
8 at that time.
9 Q. And did Alan Andreas become CEO in 1998?
10 A. I don't know when the appointment was
11 made.
12 Q. Do you recall Dwayne Andreas stepping down
13 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 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"?

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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

21 boss to come in and because he was promoting ADM

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1 and ask us to be at the meeting. And if somebody
2 had questions about fuel ethanol, we could answer
3 the questions and talk about what was going on in
4 the fuel ethanol business.

5 Q. In 1998, ethanol was regulated by the
6 State of California; right?

7 A. What do you mean by "regulated"?

8 Q. Well, you were in charge of marketing for
9 the fuel ethanol for ADM?

10 A. That's correct.

11 Q. And as somebody who was marketing that and
12 in charge of marketing, you were aware of states
13 where there were laws in place that regulated
14 ethanol, ethanol content in gasoline; is that
15 correct?

16 A. Well, the Federal EPA does that, and the
17 states can have their own regulations, but it's
18 generally set down by the Federal EPA.

19 Q. But in 1998 California had its own
20 regulations, didn't it?

21 A. Yes, they did.

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1 Q. Now, going back to your statement and this
2 meeting, California didn't regulate any of the
3 nutraceuticals that you mentioned in 1998, did

4 they?

5 A. I would have no idea.

6 Q. So, there was nobody at the August 4th,
7 1998, meeting from the corn sweetener division;
8 right?

9 A. There was no one who headed up the corn
10 processing division that was there, but Martin
11 Andreas promoted the corn processing division, as
12 he did all of the divisions.

13 Q. In the same way that he promoted the
14 ethanol division; right?

15 A. Certainly.

16 Q. In the same way that he promoted the
17 animal nutrition products; right?

18 A. Certainly.

19 Q. In the same way that he promoted food
20 ingredients; correct?

21 A. Well, that's part of the corn processing

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1 division.

2 Q. But unlike the fuel ethanol division,
3 which had you representing it, there was nobody
4 representing the food ingredient division
5 individually; is that correct?

6 A. Well, I think Martin and Alan did a pretty
7 good job, yes.

8 Q. But they weren't just there for the food
9 ingredient division; is that correct?

10 A. No, they were promoting the company in
11 general. That's their job.

12 Q. But you were just there promoting ethanol;
13 right?

14 A. That's correct.

15 Q. So, you had you there, and you had Marty
16 Andreas; correct?

17 A. That's correct.

18 Q. And Al an Andreas?

19 A. That's correct.

20 Q. Gray Davis?

21 A. Yes.

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1 Q. Dick Vind?

2 A. Yes.

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

5 A. Yes.

6 Q. What was your understanding of what
7 Mr. Vind did with ADM at that time?

8 A. Mr. Vind didn't do anything with ADM. He
9 was an independent businessman.

10 Q. Was it just happenstance that he was at
11 this dinner on August 4th of 1998, where you were
12 there to talk about ethanol?

13 A. No, he was traveling with Mr. Davis and
14 was his traveling partner to Decatur, Illinois.

15 Q. And Mr. Vind had been to Decatur,
16 Illinois, before; is that correct?

17 A. Yes, he had.

18 Q. You met with him in Decatur, Illinois,

19 before; is that correct?

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

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

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

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

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

8 A. No, I did not.

9 Q. Do you know who did at ADM?

10 A. Probably my boss at the time, Edward
11 Harjehausen, H-A-R-J-E-H-A-U-S-E-N. Took me months
12 to learn that.

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

17 A. I don't recall.

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

21 A. That's correct.

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1 Q. Did Mr. Davis have any bodyguards there?

2 A. I don't recall.

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

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

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

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

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

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1 A. I would have no idea.

2 Q. Getting back to your witness statement--

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

7 MS. CALLAWAY: I'm happy to break right
8 now, so it gives you three minutes to be prepared
9 for--

10 PRESIDENT VEEDER: I think we ought to
11 make use of those three minutes. Thank you,
12 Ms. Callaway. We'll break here.

13 MS. CALLAWAY: Okay. Thank you.

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

20 (Brief recess.)

21 DANIEL WEINSTEIN, RESPONDENT/PARTY'S WITNESS,

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1 CALLED

2 -- BY VIDEOLINK --

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

9 THE WITNESS: That is correct.

10 PRESIDENT VEEDER: Now, can you see us?

11 THE WITNESS: I now can for the first
12 time.

13 PRESIDENT VEEDER: Before we invite you to
14 be a witness in these proceedings, we're going to
15 ask you to make a declaration. I don't believe you
16 have a copy of the text before you. I'm going to

17 read out the declaration, and if you're willing to
18 make the declaration, I will repeat the words,
19 phrase by phrase. The declaration that we invite
20 you to make is as follows: "I solemnly declare
21 upon my honor and conscience that I shall speak the

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1 truth, the whole truth, and nothing but the truth."

2 Did you hear me read that?

3 THE WITNESS: Yes, I did.

4 PRESIDENT VEEDER: Are you willing to make
5 that declaration?

6 THE WITNESS: Yes. Do you want me to
7 repeat it verbatim?

8 PRESIDENT VEEDER: If you can remember it.
9 Otherwise I will go through with it phrase by
10 phrase. Let's do it slowly. I solemnly declare--

11 THE WITNESS: I solemnly declare--

12 PRESIDENT VEEDER: --upon my honor and
13 conscience.

14 THE WITNESS: Do you want me to raise my
15 right hand?

16 PRESIDENT VEEDER: No.

17 THE WITNESS: --on my honor and
18 conscience--

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

21 THE WITNESS: --that I shall speak the

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1 truth--

2 PRESIDENT VEEDER: --the whole truth--

3 THE WITNESS: --the whole truth--

4 PRESIDENT VEEDER: --and nothing but the
5 truth.

6 THE WITNESS: --and nothing but the truth.

7

8 PRESIDENT VEEDER: Thank you very much.

9 Ms. Menaker.

10 DIRECT EXAMINATION

11 BY MS. MENAKER:

12 Q. Good morning, Mr. Weinstein.

13 A. Good morning.

14 Q. As you know, I'm Andrea Menaker. We've
15 met before. I'm an attorney with the Department of
16 State, and I want to just ask you a few brief
17 questions based on the witness statement that you
18 submitted in this arbitration. Do you have a copy
19 of your signed witness statement with you?

20 A. I think in the rush to get here I may have
21 left it in the car, believe it or not. Is that a

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1 problem? I just realized that.

2 Q. I think it's okay to continue. That's
3 okay.

4 A. I am sorry about that.

5 Q. That is quite all right. I mean, if you
6 need it, we can have it faxed.

7 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?

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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

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1 and help him, and I was one of those friends.

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

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

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

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

20 A. Yes.

21 Q. Did you have any role in organizing this

1 dinner in Decatur, Illinois?

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

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

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

7 Q. Leaving the hotel--

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

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

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

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

21 A. I don't remember if Mrs. Davis joined us

1 or not. I thought she did, but I don't recall. I
2 seem to recall that she did, but I don't remember
3 exactly. We had some staff with us, California
4 Highway Patrol, some support staff, but--and they
5 went on the plane with us. They did not join us

6 for the dinner. They did not sit in on the dinner.

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

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

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

20 A. Just to put it in perspective, we were
21 somewhat reeling from the plane flight. It was a

819

1 very rough flight. We went through an electrical
2 storm, so we were just happy to be on the ground.
3 Once we got there, they took us on a little bit of
4 a walking tour, and then we had dinner in a
5 small--I remember it was a small room, so it was
6 kind of an intimate dinner, it was around a small
7 table, and they just talked about the company and
8 what they did, some of their various products the
9 countries they were in. Just kind of an overview,
10 nothing really specific, but very general.

11 Q. And do you recall any specific topic of
12 discussion?

13 A. The only--I do remember a couple of
14 things. The one thing I remember in terms of
15 products, they were talking about some soy
16 products, some agricultural products that they were
17 manufacturing, something with soy, and I ended up
18 in a conversation with one of them about some tofu
19 and sort of the advancements they were making in
20 that area in terms of what it takes to buy--I think
21 they were talking about some product, synthetic,

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1 that was similar to ice cream. So, we were talking
2 about desserts and things like that, I remember.

3 So, in terms of products, that is what I
4 remember. And I also remember them saying that
5 they thought that, you know, California was an
6 important state, and they just talked about, you
7 know, the--you know, just in very general about the
8 company, and it was, again, very general in nature.

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

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

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

14 A. No.

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

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

20 Q. Okay, just one final question. Do you

21 recall there being any discussion of Methanex

821

1 Corporation at the dinner?

2 A. No.

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

5 PRESIDENT VEEDER: Ms. Callaway.

6 CROSS- EXAMINATION

7 BY MS. CALLAWAY:

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

10 A. Good morning.

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

13 You are a managing director of Weatherly
14 Capital Group; is that correct?

15 A. Yes.

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

19 A. Yes.

20 Q. In 1998 you were also Managing Director at
21 Weatherly Capital Group; right?

822

1 A. Yes.

2 Q. Just before I started asking questions,
3 Attorney Andrea Menaker was asking you questions.

4 Have you spoken with Ms. Menaker before today?

5 A. Yes.

6 Q. When was the first time you spoke with

7 Ms. Menaker?

8 A. I received a call from her for the very

9 first time, could be--we could be going back about
10 a year. I don't know exactly.

11 Q. Have you ever met in person with

12 Ms. Menaker?

13 A. Yes.

14 Q. How many times?

15 A. One time.

16 Q. And when was that?

17 A. I think about a week ago. I think it was
18 last week.

19 Q. Did she visit you in Los Angeles?

20 A. Yes.

21 Q. Who else was present at that meeting?

823

1 A. She came with Bart, her associate.

2 Q. Was there anybody else present at the

3 meeting?

4 A. No.

5 Q. Have you spoken with Gray Davis about this

6 action?

7 A. Never.

8 Q. Have you spoken with anybody at Archer

9 Daniels Midland Corporation about this action?

10 A. No, I have not.

11 Q. Did you review any documents during your
12 meeting with Ms. Menaker and Mr. Legum?

13 A. I think only my sworn statement, but no
14 documents.

15 Q. Have you ever seen an agenda concerning
16 the dinner you attended in Decatur, Illinois?

17 A. I don't think I have seen it.

18 Q. Have you ever seen a list of attendees at
19 that dinner?

20 A. I was told about that.

21 Q. You were told that there was a list?

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

4 Q. Who told you about that list of attendees?

5 A. I think it may have been Andrea and Bart.
6 I did not know about it before then.

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

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

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

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

18 Ms. Menaker and Mr. Legum traveled to Los Angeles

19 to prepare this witness for his testimony today.
20 Because he is not their client, we are entitled to
21 know everything that was discussed in that meeting.

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

5 MS. CALLAWAY: Thank you very much.

6 BY MS. CALLAWAY:

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

9 A. Less than an hour. Not very long.

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

13 A. Yes.

14 Q. And what did they tell you?

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

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

20 A. Yes.

21 Q. What did they tell you was being alleged

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1 by Methanex?

2 A. I don't know the technicalities, but
3 essentially, I think Methanex was alleging that ADM
4 was given preferential treatment and, thus,
5 Methanex was penalized because ADM was supporting
6 Gray when he ran for Governor.

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

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

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

16 A. Yes.

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

19 A. No.

20 Q. Going back to your witness statement and
21 to your testimony today, you've testified that

827

1 you've been at Weatherly Capital Group for a number
2 of years; correct?

3 A. Correct.

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

6 A. Yes.

7 Q. One of those positions was in the
8 government with Kathleen Brown as the State

9 Treasurer, when she was State Treasurer; is that
10 correct?

11 A. On her political side.

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

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

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

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1 A. Yes.

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

4 A. Yes.

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

6 A. No.

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

11 A. Yes.

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

15 A. Yes.

16 Q. So, it has been 20 years, give or take,

17 that you have been working with politicians on
18 fund-raising; is that correct?

19 A. Yes, more or less.

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

829

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

3 A. I would be a part of that process.

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

6 A. Yes.

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

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

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

20 A. I'm sorry, can you repeat that? I didn't
21 hear you that well.

1 Q. That's okay. It wouldn't be the first
2 time someone couldn't hear me.

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

9 A. I think that's taken into consideration.
10 That's a part of it.

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

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

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

20 A. Friends. We have known each other for a
21 long time.

1 Q. Well, you are in fact so close to Gray
2 Davis that he appointed you as an alternate to the
3 California Coastal Commission; is that correct?

4 A. No. He appointed me to a different
5 position. I was appointed to the Coastal
6 Commission by the Speaker of the Assembly.

7 Q. Are you close friends with the Speaker of
8 the Assembly as well?

9 A. Yes.

10 Q. Now, earlier you mentioned that you were
11 asked specifically by Mr. Davis to assist him in
12 raising funds in New York?

13 A. In a number of places, but in New York as
14 well.

15 Q. Chicago?

16 A. Yes.

17 Q. Texas?

18 A. Yes. My family is from Houston, so I had
19 some relationships there and some people I was able
20 to introduce him to.

21 Q. You mentioned that he was an underdog

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1 running against well funded opponents; is that
2 correct?

3 A. Yes.

4 Q. Now, you recall that Mr. Davis received
5 the Democratic nomination for Governor in June of
6 1998; is that correct?

7 A. Yes.

8 Q. And you will recall that your sworn
9 statement talks about a meeting on August 4 of
10 1998; is that correct?

11 A. I think that is correct.

12 Q. So, in August of 1998, when you went to
13 Decatur, Illinois, Mr. Davis already had the
14 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

833

1 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?

1 A. Yes.

2 Q. And this is one of the Chicago groups that
3 he specifically asked you to assist him with for
4 fund-raising; right?

5 A. Yes.

6 Q. And that introduction was ultimately
7 successful because the AFL-CIO Executive Council
8 decided to provide some monetary support for
9 Mr. Davis, didn't they?

10 A. Yes, they did.

11 Q. And after that meeting, in which you
12 introduced Gray Davis to the AFL-CIO Executive
13 Council, Mr. Davis told you he was going to fly to
14 Decatur, Illinois, to meet with executives of
15 Archer Daniels Midland; is that correct?

16 A. Yes.

17 Q. And he invited you to join him, didn't he?

18 A. Yes.

19 Q. Now, you had flown to Chicago on a
20 commercial airliner, United Airlines; is that
21 correct?

1 A. I flew commercial. I don't recall the
2 flight, but I flew commercial.

3 Q. And you were prepared to either stay in
4 Chicago or go home that evening; correct?

5 A. I think it was I was scheduled out the
6 next day. I don't remember, but I wasn't planning
7 to leave that evening.

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

11 A. Yes.

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

15 A. Yes, it did.

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

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

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

7 A. Yes.

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

9 A. No. We went forward.

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

12 A. Yes.

13 Q. And Dick Vind was on that plane, wasn't
14 he?

15 A. Yes, he was.

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

18 A. Yes.

19 Q. Mr. Vind had already met that day with
20 some folks from Archer Daniels Midland on behalf of
21 Mr. Burton; is that correct?

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1 A. That, I wasn't aware of.

2 Q. Do you recall the details of the
3 conversation on your plane ride from Chicago to
4 Decatur with Mr. Vind?

5 A. No, because I wasn't sitting with Dick and
6 with Gray. I was--they were sitting together, and
7 I was sitting across.

8 Q. Was it a small plane?

9 A. It was pretty small plane. It was
10 private.

11 Q. Private plane, about six people, eight
12 people?

13 A. I think it was about eight passengers. I
14 think it was about an eight-seater. I don't know.
15 I think that is what it was.

16 Q. But you couldn't hear every conversation
17 on the plane; right?

18 A. I couldn't hear, and to tell you the
19 truth, I wasn't paying much attention because I was

20 watching the weather outside.

21 Q. The weather was so bad that the flight was

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1 frightening to you, wasn't it?

2 A. It was bad.

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

8 A. Yes.

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

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

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

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

19 PRESIDENT VEEDER: Well, it wasn't the
20 witness's phrase.

21 BY MS. CALLAWAY:

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1 Q. You weren't advised of the meeting with
2 the Archer Daniels Midland executives until hours

3 before the meeting was to occur, were you?

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

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

9 A. Yes.

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

12 A. No, I don't remember him.

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

16 A. No, I don't.

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

21 A. I certainly don't remember every

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1 conversation.

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

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

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

10 A. I think they were talking about it being

11 the biggest state. We talked about it being--I
12 remember Gray was talking about it being the fifth
13 or sixth largest economy, and, you know, he was
14 excited about the challenges. It was kind of sort
15 of rhetorically the stuff that he talked about with
16 people when he would talk about the campaign and
17 sort of outlining his goals and objectives and his
18 vision for California.

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

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

4 A. Yes, I do.

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

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

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

14 (Pause.)

15 BY MS. CALLAWAY:

16 Q. When were you appointed to the Coastal
17 Commission?

18 A. Let me think back. I think it was--I
19 think it was in 2000.

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

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

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

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

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

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

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

15 A. Yes, I think so.

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

21 A. Well, to tell you the truth, I can't

843

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, does 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 MBE in the state of
11 California?

12 A. I didn't know what MBE 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.

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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.

9 (Witness steps down.)

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

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

21 PRESIDENT VEEDER: If U. S. A. is content to

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1 proceed on that basis, we will continue with
2 Mr. Listenberger to the end and review the
3 situation then.

4 MS. MENAKER: That is fine with us.

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

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

10 PRESIDENT VEEDER: We will resume
11 cross-examination by Ms. Callaway.

12 Just one moment.

13 (Pause.)

14 PRESIDENT VEEDER: Thank you very much for
15 returning, Mr. Listenberger. We're now going to

16 resume your cross-examination by Ms. Callaway.

17 Ms. Callaway?

18 Just one moment.

19 (Pause.)

20 CONTINUED CROSS-EXAMINATION

21 BY MS. CALLAWAY:

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1 Q. Mr. Listenberger, before the break, you
2 testified for, give or take, 40 minutes; correct?

3 A. I believe so.

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

7 A. Some of them, yes.

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

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

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

15 A. No, I can't.

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

19 A. I talked to Andrea. She explained how the
20 meeting would run. I can only recall what I
21 recall.

1 Q. Exactly. I am sure that the United States
2 told you not to guess; right?

3 A. They told me to be as accurate as I could
4 and honest.

5 Q. Well, do you honestly know why you are the
6 witness for the United States rather than Alan
7 Andreas?

8 A. I have no idea.

9 Q. Do you know honestly why you are the
10 witness for the United States rather than Marty
11 Andreas?

12 A. I have no idea, again.

13 Q. Going back to your sworn statement in this
14 action, in your statement you estimated that dinner
15 lasted somewhere between two and two-and-a-half
16 hours; is that correct?

17 A. One-and-a-half to two hours.

18 Q. I would just like to direct you to
19 paragraph four of your statement. In the second
20 sentence, "I would estimate that the dinner lasted
21 somewhere between two and two-and-a-half hours."

1 A. Yes, but I believe I answered that
2 previously, when you asked me, about one-and-a-half
3 to two hours.

4 Q. So, is your testimony changing today?

5 A. I just didn't pay attention to that this
6 morning when I read through it.

7 Q. You would agree, wouldn't you, that your
8 recollection of events would be fresher October 24
9 than it would be today, eight months later; is that
10 correct?

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

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

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

17 Q. So, your testimony is not changing today?

18 A. No.

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

21 A. Yes.

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

4 A. No, I am not.

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

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

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

11 A. I don't know what the procedure is.
12 Normally you would submit an application and then
13 it would be reviewed.

14 Q. In your sworn statement, you testified
15 that Mr. Davis was late for his dinner that night;
16 is that correct?

17 A. Yes, I did.

18 Q. And you testified that that is because the
19 weather was bad that night; is that correct?

20 A. That is correct.

21 Q. Do you recall if it was an electrical

850

1 storm that evening?

2 A. Yeah, it was just very bad weather and--I
3 don't remember exactly what it was, but it was very
4 bad, rainy, inclement weather.

5 Q. Late summer storm--or midsummer--August
6 storm?

7 A. I suppose.

8 Q. You testified that during the two to
9 two-and-a-half hours, you and your colleagues
10 discussed ADM's business with Gray Davis; correct?

11 A. Both Mr. Marty Andreas and Alan Andreas
12 promoted ADM during that meeting, I would say. I
13 said very little.

14 Q. Going to paragraph five, the first
15 sentence, "Over the course of the dinner, I, along
16 with some of my colleagues, discussed ADM's
17 business."

18 Is that correct?

19 A. Yes. I am being rather generous about
20 myself. I said very little.

21 Q. You would admit that you couldn't hear all

851

1 of the conversations at the table; right?

2 A. I could hear quite well. It was a small
3 room.

4 Q. Is it your testimony that you heard every
5 conversation at the table?

6 A. Probably not, no.

7 Q. And it is your testimony that the
8 discussions focused primarily on ADM's presence in
9 California; isn't that correct?

10 A. No. The conversation by or the
11 conversation initiated by Martin Andreas and Alan
12 Andreas was about ADM in general.

13 Q. Going back to paragraph five, the second
14 sentence, quote, In doing so, we primarily focused
15 on ADM's presence in California and ADM's sweetener
16 and pharmaceutical businesses, with only brief
17 discussion of ADM's ethanol business.

18 Is that accurate?

19 A. Yes. There was a lot of business of ADM's
20 business in general in sweeteners and in the
21 nutraceutical side. The comments about ADM

852

1 participating in California were brought up, yes.

2 Q. In fact, eight months ago you said that
3 was the primary focus of your conversations that
4 evening; is that correct?

5 A. I said it was focused on ADM's presence in
6 California and ADM's sweetener and nutraceutical
7 businesses, which were very broad businesses all
8 over the country, and the world, for that matter.

9 Q. So it was a broad focus?

10 A. It was on that part of the business.

11 Q. But you also used the term "primarily"
12 with "focus"; right? We were just discussing
13 grammar. I am not an English teacher, but
14 "primarily," that means first and foremost;
15 correct?

16 A. Yes.

17 Q. You also discussed ADM's ethanol business
18 with Gray Davis; is that correct?

19 A. Very briefly, yes.

20 Q. In your testimony this morning ADM - I'm
21 sorry, you said ethanol came up a few times; is

853

1 that correct?

2 A. Yes.

3 Q. And you said specifically this morning
4 that as you were preparing to leave, you asked Gray
5 Davis whether he thought that MTBE contamination
6 was adequately important to be a campaign issue for
7 his run for Governor; is that correct?

8 A. That is correct.

9 Q. And he told you that he did not think it
10 was of adequate importance to be an issue for his
11 campaign; is that correct?

12 A. He didn't go into any great detail. He
13 just said, no, he didn't, and that was the end
14 of it.

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

18 A. Yes.

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

21 In your sworn statement in paragraph 2 you

854

1 say, quote, It was my understanding that the dinner
2 was arranged in order for me and others to meet
3 Mr. Davis, discuss his candidacy, comma--I'm sorry,
4 no comma there--and assess whether to support his
5 campaign.

6 That is your testimony; right?

7 A. Yes.

8 Q. You met Mr. Davis that evening; right?

9 A. That is correct.

10 Q. You discussed his candidacy; correct?

11 A. He discussed his candidacy, yes.

12 Q. You discussed it with him; correct?

13 A. We listened, yes.

14 Q. And something happened that night on
15 August 4 that made ADM assess that it should
16 support his campaign, didn't it?

17 A. I would have no idea about that.

18 Q. But less than two weeks later ADM gave
19 Gray Davis \$100,000; right?

20 A. Again, I have no knowledge of that either.
21 Q. Who would have approved a donation of

855

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.

3 Q. How about Marty Andreas? Would that have
4 been a decision that went before him?

5 A. It is possible, but I don't really know
6 how that part of the business works.

7 Q. When you say "that part of the business,"
8 you mean that in 1998, you didn't know who approved
9 campaign contributions?

10 A. No, I did not, and I still don't, by the
11 way.

12 Q. I didn't mean to interrupt you. You said
13 you still don't know?

14 A. No, I don't.

15 Q. Did you ever during your tenure at Archer
16 Daniels Midland recommend that the company make a
17 campaign contribution to a candidate?

18 A. No, I did not.

19 Q. So, it is your testimony that you don't
20 know who approved the \$100,000 donation that was
21 made less than two weeks after the August 4 secret

857

1 meeting; is that correct?

2 A. Well, I don't know about a contribution,
3 first of all, and if there was a contribution was
4 made, I don't know who would have approved it.

5 Q. To your understanding, and having worked
6 with Mr. Vind, ADM made a lot of political
7 donations; right?

8 A. I have read that, yes.

9 Q. But you have also read that ADM didn't

10 give just everybody \$100,000, did they?

11 A. I don't know what the contributions were.
12 I have never seen the list.

13 Q. You would agree with me that it would be
14 extraordinary for ADM to give somebody \$100,000 for
15 state office within two weeks of meeting them;
16 correct?

17 A. Again, I would have no idea. I have never
18 seen a list or anything like that in the past.

19 Q. Are you familiar with a book called "The
20 Informant"?

21 A. No, I have not.

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1 Q. You have never heard of it?

2 A. I have heard of it. I am not familiar
3 with it.

4 Q. Do you know what "The Informant" is about?

5 A. Not really. I have never read it.

6 Q. When you say, "not really," what is your
7 understanding what "The Informant" is about?

8 A. I gather by the title and some of the--and
9 the cover, that it has something to do with a case
10 that the company--ADM--was involved in a few years
11 ago.

12 MS. MENAKER: If I can interrupt, I'm
13 sorry, for just one minute. Is that in evidence?

14 MS. CALLAWAY: I am going to use it to
15 impeach--to cross-examine the witness on his
16 credibility.

17 MS. MENAKER: And we don't have a copy of

18 that exhibit that you are intending to use.

19 MS. CALLAWAY: I don't think it will be an
20 exhibit. I really did not expect--and this is for
21 the benefit of the Tribunal, President Veeder--I

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1 did not expect, and am somewhat surprised, by
2 Mr. Listenberger's testimony that he has no
3 knowledge of political contributions given by
4 Archer Daniels Midland.

5 PRESIDENT VEEDER: Let's just come back to
6 the book for the moment. This book, "The
7 Informant," by Kurt Eichenwald, is advertised on
8 the piece of paper you referred us to before in
9 regard to the video of the 10th of March, 1994.

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

20 PRESIDENT VEEDER: Just before you go
21 anywhere, what are we doing with "The Informant"

860

1 now?

2 MS. CALLAWAY: Nothing with "The
3 Information." We're just going to put "The
4 Informant" under the table right now.

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

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

9 BY MS. CALLAWAY:

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

12 A. No, I am not.

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

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

21 A. No, I am not.

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

5 A. Do I have any what?

6 Q. Do you have any reason to doubt the
7 accuracy of that information?

8 A. No. I don't have any knowledge about it
9 at all, so I couldn't make a judgment one way or
10 the other on that.

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

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

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

17 A. No.

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

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

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

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

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

9 A. I could have.

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

13 PRESIDENT VEEDER: Ms. Callaway, can you
14 help us because we don't have any Wall Street
15 Journal articles in our banks.

16 MS. CALLAWAY: Yes. I apologize. It is
17 7 JS tab 88.

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

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

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1 (Pause.)

2 THE WITNESS: Okay.

3 BY MS. CALLAWAY:

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

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

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

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

20 A. I appreciate the title, but I was there.
21 I don't know if they were making reference to me or

1 not.

2 Q. You were Vice President; right?

3 A. That is correct.

4 Q. Of fuel ethanol; right?

5 A. That is correct.

6 Q. So, it would be accurate to describe you
7 as an ethanol industry executive; right?

8 A. I appreciate it, yes.

9 Q. In fact, that is how you were described
10 when you spoke to the sugar lobby or other lobbies
11 from time to time; is that correct?

12 A. I spoke one time, yes.

13 Q. But that is how you were described, isn't
14 it?

15 A. I don't really remember.

16 Q. The two senior executives, that would have
17 been Alan Andreas and Marty Andreas; correct?

18 A. I don't know. Those are the two that were
19 there, but they were also talking about seven
20 people here.

21 Q. Going to the last paragraph of the

1 article, quote, Archer Daniels officials deny
2 attempting to influence Mr. Davis, saying they
3 merely wanted to educate him on all the business
4 their company does in California.

5 Is that an accurate statement, in your

6 mind?

7 A. Yes, but, they talked--as I mentioned
8 before, they talked quite a lot of other things the
9 company was involved in, particularly the
10 nutraceutical side of the business.

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

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

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

19 A. No, it does not.

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

21 A. No.

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1 Q. Corn processing?

2 A. No, it does not.

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

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

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

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

13 Q. Is this the first time that you've learned

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?

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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:

21 Q. I thought you said you weren't familiar

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1 with "Rats In The Grain"?

2 A. I am not familiar with the book, no. I
3 know of it, but I have not read it, and I don't
4 know what the content is.

5 Q. You don't know what the content is?

6 A. No. Other than looking at the cover.

7 Q. And the cover says The Dirty Tricks And
8 Trials Of Archer Daniels Midland, The Supermarket
9 To The World?

10 A. It doesn't say that.

11 Q. I guess we provided you with another
12 cover.

13 PRESIDENT VEEDER: We do indeed have a
14 different cover. That's not the cover that we
15 have.

16 MS. CALLAWAY: The dirty tricks and trials
17 of Archer Daniels Midland.

18 PRESIDENT VEEDER: That's what we have.
19 We have nothing about any supermarket.

20 Before you turn to that page, we don't
21 have that page.

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1 BY MS. CALLAWAY:

2 Q. Let me just ask you this: Archer Daniels
3 Midland was headquartered in or is still

4 headquartered in Decatur, Illinois; is that
5 correct?

6 A. Yes, it is.

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

9 A. I believe so.

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

12 A. I believe so.

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

15 A. No, I did not.

16 Q. Would you be surprised to learn that in
17 the 1997-1998 election cycle for Dennis Hastert,
18 the Speaker of the United States House of
19 Representatives, Archer Daniels Midland donated
20 \$1,500. Would that surprise you--

21 A. No, it would not.

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1 Q. Would it surprise you that in the 1997 and
2 1998 election cycle, Archer Daniels Midland donated
3 \$20,000 to a new Jersey Democrat running for the
4 Senate, Bob Torricelli?

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

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

11 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 time line, 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.

- 19 Q. You know Dick Vind; right?
20 A. Yes, I do.
21 Q. Do you have any reason to doubt Mr. Vind's

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1 veracity, his truthfulness?

2 A. No.

3 Q. If Mr. Vind stated in a witness statement
4 that Gray Davis asked him to request a meeting with
5 ADM, would you have any reason to think that wasn't
6 true?

7 A. No.

8 Q. Now, it was August 4, 1998, that you met
9 Gray Davis; right?

10 A. Yes.

11 Q. And it was August 4, 1998, that you
12 discussed ethanol a few times with Mr. Davis;
13 right?

14 A. That is correct.

15 Q. And that you discussed your business in
16 California with Mr. Davis; correct?

17 A. I didn't.

18 Q. I am sorry, that the company discussed it;
19 is that correct?

20 A. Mr. Andreas did, yes.

21 Q. And it was on August 4 of 1998, that you

873

1 asked a very pointed question of Mr. Davis about

2 MIBE; is that correct?

3 A. Yes, it was.

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

7 A. I have no idea.

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

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

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

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

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

20 A. I did not, no.

21 Q. You are saying that would have been for

874

1 the Andreases to decide?

2 A. Someone, not me.

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

5 A. No, I have not.

6 Q. How about with Alan Andreas?

7 A. No, I have not.

8 Q. Do you know whether Ms. Menaker or
9 Mr. Legum met with any of the Andreas family

10 regarding this case?

11 A. No, I don't.

12 Q. Now, after the--well, let me go back and
13 look at the time line.

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

17 A. That is correct.

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

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

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

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

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

8 A. Yes, I did.

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

13 A. Yes, I was.

14 Q. And this was just seven months after
15 meeting with you that first time in Decatur,
16 wasn't it?

17 A. Approximately, yes.

18 Q. And just seven months after you asked Gray
19 Davis if MTBE contamination was a big enough issue
20 to be an issue in his campaign?

21 A. Yes.

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

5 A. Yes, it was.

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

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

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

12 A. I thought it was a good idea.

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

15 A. I suppose, in our own way.

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

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

21 Q. Well, specifically I am asking about the

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1 conference, the sugar conference you spoke at with
2 the Mexican sugar company official--

3 A. Yes.

4 Q. You recall that conference?

5 A. I recall the conference, yes--I am sorry,
6 with whom?

7 Q. I believe there was a Mexican sugar
8 company official there as well?

9 A. It could have been. I spoke at Sun
10 Valley, Idaho, to a sugar symposium.

11 Q. Yes, at the sugar symposium in Sun Valley.

12 A. But I don't know who was there.

13 Q. I won't quiz you on the guest list, but
14 you do recall speaking at the sugar symposium?

15 A. Yes, I do.

16 Q. And you admit that ADM's ethanol sales
17 increased after the MIBE ban; correct?

18 A. I don't remember if I spoke specifically
19 about ADM. I think I spoke specifically about the
20 increased demand for the fuel ethanol industry,
21 because there were a lot of people there who were

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1 in the sugar business that were interested in
2 getting into the ethanol business.

3 Q. And excess sugar or surplus sugar can be
4 converted to ethanol; is that correct?

5 A. Sugar can be, yes.

6 Q. And you at ADM had--and I say you at ADM,
7 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

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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 product, 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.

15 Q. Are you with the National Ethanol Vehicle
16 Coalition at this time?

17 A. Yes, I am a contract employee.

18 Q. And the mission of the National Ethanol
19 Vehicle Coalition is to increase sales of vehicles
20 that use E85, a fuel that is 85 percent ethanol; is
21 that correct?

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1 A. And to promote the industry in general,
2 yes, the 85 industry.

3 Q. ADM is a member of the NEVC; correct?

4 A. No, they are not.

5 Q. ADM is a seller of ethanol, are they not?

6 A. Yes, fuel grade--three kinds, fuel grade,
7 beverage, and industrial.

8 Q. And the NEVC looks to fuel grade ethanol;
9 right?

10 A. That is correct.

11 Q. So, you went from marketing ethanol for
12 ADM, to marketing cars that consume some of ADM's
13 fuel grade ethanol?

14 A. No. I don't have anything to do with the
15 automobile industry.

16 Q. You don't work for the NEVC?

17 A. That is correct.

18 Q. So, you are promoting cars that use fuel
19 ethanol; right?

20 A. Yes. My official title is Director of
21 Fuel Networking, and what I do is help people set

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1 up networks so they can deliver fuel ethanol into
2 the marketplace.

3 Q. And the larger the network, the more
4 ethanol that is consumed; correct?

5 A. Well, the more efficient. The 85 doesn't
6 have the same privilege of large quantity of
7 shipments that fuel grade ethanol does, and so
8 there are a lot of costs associated with that, and
9 I try and keep the costs down.

10 Q. But if your job is successful, more
11 people, it is ideally, will be using these ethanol
12 vehicles; right?

13 A. The more vehicles, the more E85 they will
14 buy, and that is the goal, yes.

15 Q. That's right. And the more E85 they buy,
16 the more ethanol that will be used to produce that
17 E85; right?

18 A. That is correct.

19 Q. And you are currently under contract as a
20 consultant to ADM?

21 A. Yes. It's just a two-month contract.

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1 Q. And that is on a soy-based diesel?

2 A. Bio diesel.

3 Q. And that is a soy-blended product?

4 A. Soybean oil is the feedstock to make the
5 soil methyl ester which is bio diesel.

6 Q. And on this two-month contract, what are
7 your duties?

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

17 MS. CALLAWAY: Thank you very much. I
18 have no further questions.

19 MS. MENAKER: Can I take just one second?

20 PRESIDENT VEEDER: Yes.

21 (Pause.)

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1 PRESIDENT VEEDER: Ms. Menaker?

2 MS. MENAKER: We have nothing on redirect.

3 PRESIDENT VEEDER: Mr. Listenberger, we
4 have come to the end of your testimony. We have no
5 questions for you from the Tribunal. Again, thank
6 you for coming to be a witness at this hearing.

7 THE WITNESS: You're welcome.

8 MR. LEGUM: Excuse me, before we break for
9 lunch--

10 PRESIDENT VEEDER: We are not breaking for
11 lunch yet, but please continue.

12 MR. LEGUM: The Tribunal had asked a

13 question about the penalty for violation of that
14 provision of the city code. We have a copy of the
15 penalty provision of the city code.

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

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

21 PRESIDENT VEEDER: I wonder if Mr. Dugan

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1 if he's available could come back and just inform
2 us as to the likely timetable for this afternoon.

3 Before you disappear, Ms. Callaway, are
4 you cross-examining Mr. Miller by telephone?

5 MS. CALLAWAY: Yes.

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

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

11 PRESIDENT VEEDER: Your Honors is fine.

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

14 PRESIDENT VEEDER: We don't like whim.

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

19 PRESIDENT VEEDER: Well, subject to
20 hearing more from Mr. Dugan, we might schedule

21 Mr. Miller for 2:30. Is that a workable program or

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1 not?

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

4 International documents. Otherwise, we could
5 resume the argument on the U. S. motion.

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

10 PRESIDENT VEEDER: So when you say prefer
11 to do that, you mean--

12 MR. DUGAN: To put Mr. Miller on first to
13 and then just to give us a little bit of extra time
14 to address the issues. And with respect to
15 Mr. Vind, what I'd like to do is that if we are not
16 able to address the evidentiary issues this
17 afternoon, I would like to go forward with the
18 examination of Mr. Vind, not using any of the
19 disputed documents, and it may well be that we
20 we're not able to assemble our response both
21 factually and legally to the new evidence that the

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1 United States put in today until tomorrow morning,
2 and if that is the case, we don't want to disrupt
3 the schedule, and we'll just--we won't use any of
4 the Vind documents in the cross-examination.

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

9 MR. DUGAN: That is correct.

10 PRESIDENT VEEDER: Mr. McNeill, it is over

11 to you. If we can get Mr. Miller for 2:30.

12 MR. MCNEILL: I can confirm that

13 Mr. Miller is indeed available at 2:30.

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

17 MR. MCNEILL: Five minutes.

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

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1 cross-examination?

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

5 PRESIDENT VEEDER: So, let's say an hour.
6 It looks as though we will be coming back to you,
7 Mr. Dugan, between 3:30 and 4:00. Let's proceed on
8 that basis.

9 MR. DUGAN: That's right.

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

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

17 PRESIDENT VEEDER: At 4:30. Well, I think
18 that changes the picture. Is it possible for him

19 to put his flight back?

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

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1 5:30.

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

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

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

16 MR. LEGUM: We will look into it.

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

19 (Whereupon, at 12:38 p.m., the hearing was
20 adjourned until 2:30 p.m., the same day.)

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1

AFTERNOON SESSION

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2 PRESIDENT VEEDER: Let's resume.

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

10 MR. DUGAN: That's correct.

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

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

18 PRESIDENT VEEDER: Let's proceed then.

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

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

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

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

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

15 PRESIDENT VEEDER: We have to be certain
16 that we conclude the evidence with Mr. Vind so that
17 he gets his flight. Is that still possible,
18 Mr. Dugan?

19 MR. DUGAN: That is still very likely,
20 yes.

21 PRESIDENT VEEDER: Very likely. It's all

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1 we can ask, maybe. In the light of what counsel
2 has said, we'll start with Mr. Miller, then. And
3 Mr. Miller I think is available at the end of the
4 telephone, and we'll see what happens next.

5 (Pause.)

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

11 PRESIDENT VEEDER: Whilst we have a few
12 minutes, shall we just go through the three new
13 documents you put in. Is that you, Mr. Legum, who
14 will address this?

15 MR. LEGUM: Yes, I would be happy to do
16 that.

17 PRESIDENT VEEDER: Can you just identify
18 them for us. Can we take X11?

19 MR. LEGUM X11 is a satellite photograph
20 of the area in which Mr. Vind's apartment is.
21 Excuse me, apartment--office is.

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1 PRESIDENT VEEDER: X12 is a blow-up?

2 MR. LEGUM Exactly.

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

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

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

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

20 If we look at X8, the top photograph, I
21 believe, is taken--you see where it says

1 Robinson's, on the map?

2 PRESIDENT VEEDER: On the map?

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

10 Is that clear?

11 PRESIDENT VEEDER: Yes.

12 MR. LEGUM: Is it right? Is it correct?

13 That is my understanding, but I am not the witness.

14 Would it be better if I use the ELMO?

15 PRESIDENT VEEDER: Yes, yes.

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

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

20 (Pause.)

21 MR. LEGUM: So looking again at X8, my

1 understanding--and, again, I am not the witness--is
2 that that photograph was taken from this vantage
3 point.

4 The second photograph I believe was taken
5 from this vantage point, and the third photograph,
6 as I understand it, was taken from about there.

7 Turning to X9, I believe that is another
8 shot taken from about here, the first one, the top
9 left one, that is. And then the next one is quite
10 similar to the photograph that we have seen
11 already, which was taken from about here, and the
12 third was taken from there. And the fourth is
13 essentially the same.

14 Turning to X10, it should now be fairly
15 clear. I think the only new vantage point that we
16 see is that in the bottom two photographs, and I
17 believe that the first of those was taken from this
18 vantage point, and the second, from probably here.
19 I think you can see the Buddha-like image, as you
20 described it earlier, very small in the bottom left
21 photograph, and you just see it a little larger--is

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1 that right? I really don't know.

2 PRESIDENT VEEDER: The Buddha-like image I
3 think is between the Embassy Courts and the Embassy
4 Suites.

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

7 PRESIDENT VEEDER: No, thank you very
8 much.

9 (Pause.)

10 PRESIDENT VEEDER: There's been an
11 objection intimated by the United States to the
12 materials we've just received from Methanex, which
13 Methanex intends to put in cross-examination to
14 Mr. Miller.

15 So we turn to you first, Ms. Callaway, to
16 explain the particular purpose of these documents,
17 assuming that Mr. Miller is not listening to this
18 conversation.

19 MS. CALLAWAY: Thank you very much.

20 The United States has proffered Mr. Miller
21 as an expert, and it is within our privilege

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1 to--and I don't mean that in the sense of
2 attorney-client privilege or work product
3 privilege. It is we are granted the right to
4 establish somebody's expertise, and I believe
5 that--I would like to ask Mr. Miller some questions
6 regarding the DeWitt materials that he is one of
7 the named authors on. It is in no way intended to
8 harass Mr. Miller. I anticipate that his testimony
9 will take about 20 minutes including the documents.

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

20 MS. CALLAWAY: Yes, I do, because I know
21 that Mr. Miller is not listening at this time.

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1 These DeWitt reports contain information that, if
2 taken into consideration by Mr. Miller, would
3 affect the scope--or, I'm sorry, would affect--I
4 don't know how to say it in a fancy way--the bottom
5 line of his testimony, and I would like to ask him
6 some questions about what was taken into
7 consideration and why.

8 And it is not my intent--candidly, I don't
9 think I am smart enough to get around the May 28th
10 order, but it is certainly not my intent to get
11 around that order. It is really to--I will give it
12 all away, it is to show that you can ask a
13 question, and in answering it, you can get one
14 answer if you take certain things into
15 consideration and exclude others, but if you bring
16 in those other things, your answer does change.

17 I know it's a real novel concept in
18 cross-examining an expert, but it is important.

19 PRESIDENT VEEDER: Now, we can either
20 debate this further or wait until each question
21 arises to see its particular context. But if you

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1 want to come back to any of that--

2 MR. MCNEILL: I think it might be helpful
3 for the Tribunal if I just describe for you the
4 scope of the Miller expert report. If you look at

5 paragraph five of that report, on the second page,
6 there are four numbers there. Those numbers
7 represent methanol demand in California during
8 those four years. They were created in response to
9 four numbers in the second Macdonald affidavit,
10 which were Methanex's export numbers for those
11 years. There is no--there is--everything else in
12 the report, of substance, basically explains how
13 those numbers are derived.

14 There is nothing qualitative in the report
15 about MTBE, the merits of MTBE, the merits of
16 methanol. It is strictly an economic study that
17 looks at the demands for methanol in those four
18 years.

19 Now, if you look at the DeWitt reports,
20 those have to do with MTBE, not methanol. And, as
21 you can see, they are opinion pieces. I will also

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1 draw your attention to the exhibit, to the upper
2 right-hand corner of the exhibit that I was handed.
3 It says July 31, 2003. If you look at the four
4 years in the Miller report, those four years are
5 1998 to 2001. I really see no relationship between
6 the substance of these DeWitt reports and
7 Mr. Miller's strictly economic study.

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

12 MR. MCNEILL: Yes, that is correct. We

13 took Mr. Miller's information, and we compared it
14 to information we were given by Methanex. That
15 chart was created by us, but Mr. Miller just
16 provided us these four numbers, and his expert
17 report is limited to these four numbers
18 representing methanol demands, and it has nothing
19 to do with MTBE, which the DeWitt reports have to
20 deal with. We are willing to take it question by
21 question, but I think you can see at the outset

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1 that we are already way outside the scope of the
2 Miller report.

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

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

12 MS. CALLAWAY: Thank you.

13 DEXTER MILLER, RESPONDENT/PARTY'S WITNESS, CALLED

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

16 I am told everything is established now
17 and we are waiting for Mr. Miller to call in, and
18 when he does, it will come through on the speaker,
19 which is on the table over there.

20 Mr. Miller? It is Johnny Veeder. I am
21 the Chairman of the Arbitral Tribunal. I am here

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1 with two colleagues and with the parties' legal
2 representatives.

3 THE WITNESS: Yes, I understand.

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

10 THE WITNESS: Okay.

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

16 THE WITNESS: Yes.

17 PRESIDENT VEEDER: Are you willing to make
18 that declaration?

19 THE WITNESS: Yes, I am.

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

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1 THE WITNESS: Okay.

2 PRESIDENT VEEDER: I solemnly declare--

3 THE WITNESS: I solemnly declare--
4 PRESIDENT VEEDER: --upon my honor and
5 conscience--
6 THE WITNESS: --upon my honor and
7 conscience--
8 PRESIDENT VEEDER: --that I shall speak
9 the truth--
10 THE WITNESS: --that I shall speak the
11 truth--
12 PRESIDENT VEEDER: --the whole truth--
13 THE WITNESS: --the whole truth--
14 PRESIDENT VEEDER: --and nothing but the
15 truth.
16 THE WITNESS: --and nothing but the truth.
17 PRESIDENT VEEDER: Now, Mr. Miller, you
18 are going to be asked some questions, starting with
19 Mr. McNeill for the United States.
20 THE WITNESS: Yes.
21 PRESIDENT VEEDER: Mr. McNeill.

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1 DIRECT EXAMINATION
2 BY MR. MCNEILL:
3 Q. Mr. Miller, good afternoon.
4 A. Good afternoon.
5 Q. This is Mark McNeill from the State
6 Department on behalf of the United States.
7 A. Yes, go ahead.
8 Q. Do you have a signed copy of your expert
9 report dated December 4, 2003, in front of you?
10 A. Yes, I do.

11 Q. Do you reaffirm that the contents of the
12 expert report are true and correct to the best of
13 your knowledge?

14 A. Yes, there is one minor typographical
15 error back down in paragraph number nine, which
16 reads that the output of the four MTBE plants, and
17 it should be five, that it was referred to in six,
18 in paragraph six. That is just a typo. Otherwise,
19 I stand by it.

20 Q. The third line in paragraph nine, just for
21 clarity, should read the output of the five MTBE

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1 units?

2 A. That's right, yes.

3 Q. Mr. Miller, Can you describe for the
4 Tribunal your professional background, please.

5 A. Okay. I was an engineering graduate of
6 Princeton University. I served in the United
7 States Navy in World War II, in an engineering
8 capacity for the Naval Research Laboratory in
9 Washington. After the war, I got a Master of
10 Science degree, again, at Princeton. And then in
11 1949 I joined the M. W. Kellogg Company and served
12 with them for about 31 years working in a wide
13 variety of research and later management
14 capacities, ending up as the Chief Project Manager
15 and Director of Strategic Planning.

16 I retired from Kellogg in 1981, and I
17 worked then for six years at Fische Engineering and

18 Construction, which is another engineering and
19 procurement firm in Houston, working on a lot of
20 international design and construction operations,
21 and one of these was a feasibility study for a

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1 proposed MTBE plant in Aruba, which never got
2 built.

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

12 Q. Thank you.

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

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

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

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1 again?

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

6 Q. Thank you.

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

10 A. Okay. We were asked by you to determine
11 how much MTBE was made in California for the years
12 1998 through 2001. Now, this, I might say to begin
13 with, is distinguished from the amount of MTBE used
14 in California, and to be made in California it is
15 done in five plants. These are at BP at the Carson
16 Watson refinery, 2,500 barrels a day; two plants of
17 Chevron, one at El Segundo at 2,000 barrels a day;
18 and another at Richmond in the north at 2,300
19 barrels a day.

20 In addition, Tesoro has a 2,300 barrel a
21 day MTBE plant in San Francisco at the old Avon

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1 refinery, and then Valero had a somewhat larger
2 plant, 4,000 barrels a day at Benecia. These total
3 about 13,100 barrels a day.

4 Aside from this, there was no MTBE made in
5 California, and what that means is that methanol
6 coming into California for MTBE purposes would have
7 to go only to these plants because there are no
8 other plants that could make it.

9 All right. Based on that, we looked at
10 the amount of MTBE that was used in California, and
11 starting from 2000, the California Energy
12 Commission has published on a quarterly basis the
13 amount of MTBE used in every refinery in California
14 including the five refineries that we just talked
15 about. This data shows that from 2000 onward, all
16 of these refineries ran at substantially the same
17 rate as far as MTBE is concerned. That is to say,
18 that the Chevron plant at Richmond used--had a
19 2,300 barrel a day capacity. It ran at that in
20 2000. It ran at 2,450 in 2001, 3,725 and 4,700.
21 This means, of course, that they were getting MTBE

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1 from somewhere else.

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

11 On that basis, and bearing in mind that
12 the demand in California was going up all the time,
13 we estimated that they ran at 11,000--11,5, 12,6
14 and 12.1 thousand barrels a day capacity, or at
15 about 90 percent of capacity through 2001.

16 We then convert this back to methanol. To
17 begin with, a barrel of--a thousand barrels a day
18 of MTBE is 43,134 tons per year of MTBE, and each
19 ton of MTBE requires 0.363 tons of methanol to
20 produce it, and that is based simply on the
21 chemistry involved. So that this then came up with

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1 the eventual conclusion--which is shown in
2 paragraph five, requiring 172.2 thousand tons of
3 methanol in '98, and then going up to 197 in 2000
4 and then falling off in 2001.

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

14 So I was fairly well convinced, quite well
15 convinced, that these plants were running
16 throughout this whole period at essentially their
17 80 to 90 percent capacity.

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

20 A. I can say--can you speak a little louder.
21 I couldn't quite hear that.

1 Q. Can you--drawing your attention to
2 paragraph 5, can you describe briefly the
3 conclusion of your expert report.

4 A. Well, based on this information that I
5 just gave you, we calculate that the amount of
6 methanol demand for MTBE for production in plants
7 in California, between 1998 and 2001, was 172.2
8 thousand tons of methanol in '98, going up to
9 189.45 thousand tons in 2001.

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

12 PRESIDENT VEEDER: Thank you.

13 Ms. Callaway.

14 CROSS- EXAMINATION

15 BY MS. CALLAWAY:

16 Q. Good afternoon, Dr. Miller.

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

21 Q. As my father used to say, Ph.D.s teach and

1 Masters do. It is really an honor to have an
2 opportunity to ask you questions today, and I would
3 like to ask you about the information contained in
4 your expert report.

5 A. Yes, ma'am.

6 Q. Your expert report very clearly sets out

7 the information that you derived regarding about 15
8 percent of the total MTBE used in California for
9 the years '98, '99, 2000, and 2001; is that
10 correct?

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

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

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1 produced by these five refineries.

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

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

8 A. That is right.

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

13 A. That is correct. It varied, but not by

14 more than 10 percent one way or the other.

15 Q. Now, your analysis, and I am reading from
16 paragraph six, states that the 13,100 barrels per
17 day of MTBE, that nominal capacity, is only about
18 15 percent of the total MTBE used in California; is
19 that correct?

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

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

3 A. Yes.

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

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

11 PRESIDENT VEEDER: Excuse me one second,
12 Mr. Miller. Did you say 9,000 barrels a day or
13 90,000 barrels a day?

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

20 BY MS. CALLAWAY:

21 Q. And in paragraph six of your expert

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1 report, your last sentence observes that the
2 balance of the MTBE used by the refiners was
3 primarily imported; correct?

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

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

8 A. That is right.

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

12 A. Yeah, right.

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

16 A. No.

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

20 A. Well, I am not so sure. It is beyond my
21 immediate expertise, but we do know that methanol

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1 gets imported into, you know, from various places
2 and certainly some of it--it had to come from
3 somewhere, and Canada was a good source for it. On
4 the other hand, simply the fact if that is when

5 methanol was imported into the state doesn't mean
6 it was used for MTBE. It could be used for other
7 purposes.

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

13 A. Okay.

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

19 A. That is true, but on the other hand,
20 this--the MTBE production that we are talking
21 about, from these five different plants, they all

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1 had to use methanol, and it had to come from
2 somewhere because nobody in California makes it.

3 Q. Right.

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

5 Q. Right. Did you also look at the year
6 2002?

7 A. Yes.

8 Q. And did you see a decrease in the year
9 2002?

10 A. Actually not--a slight decrease, yes, but
11 not a big one. The 2002 was just about the same as

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

20 same time, surely.

21 Q. Right. And is it your testimony that the

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1 demand for ethanol was increasing at the same time?

2 A. Oh, yes.

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

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

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

14 A. That was all brought into California as
15 MTBE.

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

18 A. We know that much was used because all
19 kinds of data can come to the same conclusion. The
20 government data shows they used that much. The
21 imports of MTBE published by the Census Bureau show

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1 that that much came into California. It all kind
2 of adds up. Sometimes you have to juggle the

3 numbers a little bit, but they do agree in general.

4 Q. And it is the availability of that data
5 that allowed even me to back out that 565,000 tons
6 produced give or take amount; right?

7 A. Yes.

8 Q. You are testifying as a global gasoline
9 and oxygenate expert; correct?

10 A. Well, I guess you might say so, yes.

11 Q. I have no reason to flatter you, but that
12 is what you are here for; right?

13 A. Yes, ma'am.

14 Q. And as part of your expertise and during
15 your time working with DeWitt, you were one of the
16 authors of the MTBE Oxygenates and Clean Fuels
17 Newsletter; is that correct?

18 A. I contributed to them, yes.

19 Q. And did you contribute an analysis of MTBE
20 production in California at any time?

21 A. Yes, frequently.

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1 Q. In doing those analyses of MTBE production
2 in California, did you take a number of market
3 factors into account?

4 A. I am not sure I understand what you mean
5 there.

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

8 When you were analyzing MTBE production in
9 California and projecting future MTBE needs or

10 productions in California, did you look to current
11 and future regulation in making your analyses?

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

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

21 A. What I had expected was that they would be

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1 able to make the transition but that it would be
2 costly and that the price of gasoline would be
3 somewhat higher than it had been before, and that
4 is what happened.

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

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

18 PRESIDENT VEEDER: Ms. Callaway?
19 MS. CALLAWAY: I would like to ask
20 Mr. Miller about December 12, 2002, the MTBE
21 oxygenate report that states there was a take no

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1 prisoners campaign against MTBE because I do think
2 that it affects the amount of methanol that was
3 refined into MTBE, and I would like to start with
4 that question.

5 THE WITNESS: Which one are you talking
6 about?

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

12 MS. CALLAWAY: I provided several of the
13 DeWitt reports, President Veeder, July 31, of
14 2003--there were four from 2003--five from 2003,
15 one from 2002, two from 2001 and two from 1999, and
16 candidly most of them just talk about California
17 officials meeting in Sacramento to lay the
18 groundwork for an in-state ethanol industry,
19 resurgence of ozone and pollution problems from
20 ethanol.

21 But the December 12, 2002, report talks

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

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

11 MS. CALLAWAY: Yes.

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

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

925

1 used and whether ethanol was used.

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

7 MS. CALLAWAY: Yes. And we have no issue

8 regarding--I will submit for the record, we don't
9 have an issue regarding Mr. Miller's credibility.
10 To the contrary, we think his credibility is beyond
11 reproach. And I recognize that the United States
12 has offered him as a witness, but we also recognize
13 that his calculations stopped in 2001, and he just
14 testified that after 2001, the drop in MTBE--the
15 drop in methanol and MTBE corresponded with the
16 increase in ethanol and the drop and the increase
17 for both were quite dramatic.

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

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

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1 case, but not to Dr. Miller, that they stopped in
2 2001, and that is not to cast any aspersion on
3 Mr. Miller whatsoever.

4 PRESIDENT VEEDER: Thank you.

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

7 MR. MCNEILL: Yes, I do. I think this is
8 a very easy decision for the Tribunal. I think if
9 the parties' agreement and the Tribunal's order is
10 going to have any meaning, then it should apply
11 here, and Ms. Callaway should not be permitted to
12 ask Mr. Miller questions about taking no prisoners
13 campaign that allegedly happened at the end of
14 2002. Mr. Miller's report, as you noted, his
15 analysis ends at the end of December 2001.

16 Ms. Callaway asked Mr. Miller what happened in
17 2002. I permitted that question, but that does not
18 stretch the scope of his expert report.

19 PRESIDENT VEEDER: Ms. Callaway, the
20 question you asked, did you anticipate any
21 environmental effects from the switch from MTBE to

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1 ethanol we do not regard as arising from the
2 witness statement or the questions put to this
3 witness in chief?

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

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

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

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

17 BY MS. CALLAWAY:

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

21 A. Yes, ma'am. I mean, yes, I am. She gave

1 speeches at several conferences and I've read her
2 papers.

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

5 MR. MCNEILL: I am going to object again.

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

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

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

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

21 MS. CALLAWAY: I understand, but I very

1 much appreciate that, and what I would like to do,
2 however, is respect the May 28 agreement to stay
3 within the scope and not to go afield. I do,
4 however, believe that we are entitled to present
5 hypotheticals to the expert witnesses that are

6 within the scope of their expertise, whether it
7 goes to their direct testimony or not.

8 PRESIDENT VEEDER: For what purpose?

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

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

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

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

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

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

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

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

11 MR. MCNEILL: Thank you.

12 (Pause.)

13 BY MS. CALLAWAY:

14 Q. Dr. Miller, in formulating your opinions
15 as an expert in the field of gasoline and
16 oxygenates, do you formulate your analyses in a
17 vacuum?

18 A. I would hope not.

19 Q. In fact, isn't it true that your analyses
20 are based on your, as you say in your expert
21 report, on your own personal knowledge as well as

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1 your review of the data; is that correct?

2 A. That is correct.

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

6 A. That is correct.

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

11 A. Yes, indeed.

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

16 A. Well, I don't think that Dr. Williams's
17 position has anything to do with what I was
18 estimating here for the purposes of this particular
19 study. But Dr. Williams is a very able advocate of
20 one side of the situation, in which she maintains

21 that MTBE is much less dangerous to the environment

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1 than a lot of people would like to put it out to
2 be, and she is very effective in that respect, but
3 it is not the whole story.

4 Q. So, as a scientist, you look at both sides
5 of the story; is that correct?

6 A. You have to, yes.

7 Q. And sometimes there is more than one side
8 of the story; is that correct?

9 A. That is absolutely right.

10 Q. And as a scientist, it is your
11 understanding that before you make a decision, you
12 have to look at more than just one side of the
13 story; is that correct?

14 A. That is usually wise, yes.

15 Q. It is wise not just as a scientist but in
16 life; is that correct?

17 A. Always wise.

18 MS. CALLAWAY: Just one moment.

19 (Pause.)

20 BY MS. CALLAWAY:

21 Q. Without asking you the content--about the

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1 content of any DeWitt reports, I would like to
2 clarify that you made contributions regularly to
3 the MTBE oxygenates and clean fuels reports?

4 A. Yes, I did.

5 Q. And did some of your contributions to
6 those reports contain editorial opinions?

7 A. Yes, ma'am.

8 Q. And without asking you about those
9 opinions, would you say that you were proud to have
10 your name on those reports?

11 A. I was paid to have my name on those
12 reports.

13 Q. And you were paid for your testimony in
14 this case; is that correct?

15 A. Surely.

16 Q. And would you say you were equally proud
17 of your MBE oxygenate and clean fuels reports as
18 you are of your testimony in this case?

19 A. I don't think you can compare the two. I
20 mean I worked for 15 years at DeWitt studying MBE
21 upside down and backwards, and in this particular

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1 case I was asked a very narrow question, which I
2 answered.

3 Q. And in answering your narrow question, you
4 were compensated; correct?

5 A. Yes, to a degree. Mildly.

6 Q. Well, I think there are some government
7 lawyers that can talk to you about mild
8 compensation at the table. But you were also
9 compensated for a labor of love for 15 years at the
10 MBE Oxygenates and Clean Fuels Group that you were
11 with at DeWitt; isn't that correct?

12 A. That is true.

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

15 A. Tried to, yes.

16 MS. CALLAWAY: Thank you very much.

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

21 THE WITNESS: Okay.

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1 PRESIDENT VEEDER: Mr. McNeill?

2 MR. MCNEILL: We have nothing.

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

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

14 PRESIDENT VEEDER: Thank you very much.

15 Bye-bye. It is a quarter to four. I am less

16 concerned about the time than I was a moment ago.

17 Do we have time for five-minutes and we will change
18 over for Mr. Vind?

19 MR. LEGUM What is next on the schedule,
20 is it the argument or Mr. Vind?
21 PRESIDENT VEEDER: Mr. Vind.

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

2 PRESIDENT VEEDER: If you would.

3 (Recess.)

4 PRESIDENT VEEDER: Let's resume.

5 RICHARD VIND, RESPONDENT/PARTY'S WITNESS, CALLED

6 PRESIDENT VEEDER: Good afternoon,

7 Mr. Vind. Before you give evidence, we shall
8 invite you to make a declaration in the form of the
9 text which is before you. If you are prepared to
10 make that declaration, we invite you to do so now.

11 THE WITNESS: Yes, I am

12 I solemnly declare upon my honor and
13 conscience that I shall speak the truth, the whole
14 truth, and nothing but the truth.

15 PRESIDENT VEEDER: Thank you. Mr. Legum

16 DIRECT EXAMINATION

17 BY MR. LEGUM

18 Q. Mr. Vind, you are now sitting in front of
19 an overhead projector that is called an ELMO, and
20 what I would like to do briefly is to have you
21 indicate for the Tribunal where your former offices

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1 were located on the map that is in front of you,

2 and then we will establish where you were when you
3 took the photographs that have been marked as X9
4 through X10.

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

8 PRESIDENT VEEDER: How about X13?

9 MR. LEGUM: It is X13, but he is going to
10 mark that up.

11 PRESIDENT VEEDER: How about X13A?

12 BY MR. LEGUM:

13 Q. Before we get started, Mr. Vind, where did
14 this document come from?

15 A. This came from my office building lease
16 files. This was Exhibit A to the building lease
17 that we had when we originally moved into this
18 office building.

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

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1 What you've just highlighted is actually
2 where in the building your offices were located?

3 A. My offices were located in that section of
4 the building on the top floor. There were two
5 floors to the building.

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

8 Could you indicate on X13A, your position
9 when you took the photograph that is on the top

10 part of X8. Perhaps the best way to do that,
11 unless the Tribunal has a better idea, would be for
12 you to kind of have an arrow showing your point of
13 view and where you shot the photograph.

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

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

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

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

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

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

12 A. I do.

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

15 A. Approximately the same location as
16 aforementioned on the other. Across the street,

17 but I took it at a slightly different angle to show
18 the hotel entrance.

19 Q. So your back was to the J. C. Penney's?

20 A. Yes, correct. I am looking north.

21 Q. For the top right photograph, is that

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1 essentially the same thing?

2 A. No. That was from the hotel entrance
3 looking at the entrance to the office building. My
4 office is the window area directly above the salon.
5 On the ground floor were retail shops, and a
6 physical fitness, and my office was directly above
7 the salon, directly--my office physically sat
8 directly above the two closed doors which housed
9 the trash area.

10 Q. Okay. The next two shots on X9 are
11 essentially the same thing that appears on the
12 bottom photograph?

13 A. The one is a repeat of the one on X8. The
14 other one is simply a close-up view of the locked
15 trash receptacle area.

16 Q. Let's come back to that in a moment. Turn
17 to X10.

18 A. The only thing different than what you
19 have already seen would be the bottom right-hand
20 picture which shows the walkway leading
21 from--actually, you can see where one of the

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1 Embassy Suites Hotel cars is parked. And if you
2 walk down that area, which would be right down
3 here, I took it from approximately this location
4 here, and you walk down, and there is the entrance
5 to my office building.

6 Q. I see.

7 A. That is a fountain, decorative fountain in
8 front of the office building. There is a courtyard
9 directly down below.

10 Q. Can you point to the courtyard on the map
11 so we can see where that is?

12 A. Courtyard would be here. And beneath that
13 then is the access to the underground parking.
14 There is no aboveground parking for the office
15 building or for the hotel, only temporary parking
16 for people to check into the hotel, and also there
17 are two handicapped spaces.

18 Q. Returning to X13A, we have been focusing
19 primarily on a couple of areas here, the area where
20 you were in front of J. C. Penney's which is marked
21 as Robinson's on this, and then the area in between

942

1 your building and the Embassy Suites Hotel. Can
2 you describe for us what is on the other side of
3 your building?

4 A. You are talking to the east, this area
5 here?

6 Q. Yes.

7 A. That is the main entrance to the Brea mall

8 coming from Birch Street, which is the north
9 entrance to the mall. Ingress flows this way.
10 There is a stop light. Ingress goes this way,
11 around this way over to the Nordstrom's parking
12 area, which is here, or turning to the left, around
13 to the covered parking structure for the rest of
14 the mall, which is here. It is a two-story covered
15 parking structure.

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

18 A. I do.

19 Q. What is that area?

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

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

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

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

8 A. Landscaped.

9 Q. Thank you very much.

10 A. You're welcome.

11 Q. Now, on the other side of the building is
12 Birch Street; is that correct?

13 A. That is correct.

14 Q. What is across Birch Street?

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

18 Q. Now, is there a parking lot that is
19 adjacent to your offices, directly adjacent to your
20 offices?

21 A. No, there is not. Two-story underground

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1 parking.

2 Q. Is there a dumpster that is adjacent to
3 your offices?

4 A. No, there is not.

5 Q. You mentioned earlier that the trash is
6 kept inside the building.

7 A. It is inside the building behind those
8 doors, steel doors?

9 Q. How do people access that?

10 A. To access--what do you mean by "people"?
11 I'm not sure I understand.

12 Q. How do the people that putting the garbage
13 in and taking the garbage out access it?

14 A. They would come to my office and the other
15 offices, take the trash from the trash receptacles
16 in the offices themselves, put them in plastic
17 bags, tie the bags up, and then deposit them inside
18 that closed trash area underneath my office, which,
19 by the way, I want to clarify, is part of the
20 common area for those tenants in the office
21 building, and I pay the common area charge every

1 month for the privilege of having that there,
2 because you must understand, the Embassy Suites
3 Hotel is a very fine hotel, and there is no way
4 that they were going to allow us to have trash out
5 in the open. So, therefore, the builder who built
6 the hotel is the same builder that built the office
7 building, and he designed in this private trash
8 area so it would not be a nuisance, or it would not
9 be available to the public.

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

15 PRESIDENT VEEDER: Just one moment.

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

1 THE WITNESS: Well, that is actually the
2 storage area where the files were kept. The one to
3 the right is my actual physical office space. You
4 had to go through my office or through the rest
5 room in order to get to the files.

6 PRESIDENT VEEDER: Let's leave the files
7 aside for the moment. But if we then go down to
8 the white lines that we see marked on the roadway
9 in that photograph, are those parking places?

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

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

18 THE WITNESS: If you were to look at
19 the--unfortunately you can't see it, but if you
20 were to look past those shrubs in the upper
21 left-hand picture, directly past that would be, on

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1 your left, is the entrance to the hotel. And I
2 want to also point out that the way we are looking
3 on X9, going north, is a one-way. You cannot come
4 into the hotel entrance going southbound. You must
5 wrap around, either going this way and coming
6 through that way or you can go into the underground
7 parking structure, wrapping around this way and
8 then enter the hotel complex, go up to the main
9 lobby area of the hotel and walk across the street
10 or what is technically I guess an alleyway, or a
11 foyer, I don't know how to describe it exactly, but
12 you can see in this picture, on X9, that the

13 parking would be diagonal parking, either five or
14 six parking spaces, on the far end of the building,
15 right here, two handicapped and three or four
16 temporary, either 20 minute or one hour, something
17 like that, for guests to check into the hotel.

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

21 MR. DUGAN: No.

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

3 BY MR. LEGUM

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

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

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

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

13 BY MR. LEGUM

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

16 A. Yes, I do.

17 Q. Now, turning to page 2 and page 3 of that
18 witness statement, you address two topics: One is
19 the August 4, 1998 dinner, and the other is Regent
20 documents submitted by Methanex. Could you briefly

21 summarize for the Tribunal your testimony on the

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1 August 4, 1998 dinner.

2 A. Well, I reread this this morning, and it
3 states exactly what happened and what I did. I can
4 go into it in more detail, but this is a very, I
5 think, very well thought-out recitation of what in
6 fact took place. There is nothing more, nothing
7 less than that. Would you like me to expand on
8 that?

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

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

15 Q. Please.

16 A. In paragraph 1, I state that I have no
17 present or past relationship with anyone, and it
18 turns out that in 1996, my company did apply to
19 become a customer of Methanex, to purchase
20 methanol. I don't believe we ever did, but we did
21 receive price sheets on methanol from Methanex,

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1 which in reviewing my files, I found some, so I
2 want to clarify that.

3 The last item is on item 15 on the last
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4 page. I myself did not contact the FBI, it was my
5 lawyer, Richard Crane, who is a former federal
6 prosecutor, who in fact contacted the FBI at my
7 request. Other than that, I stand on the record
8 here.

9 Q. So, with those two corrections, this
10 witness statement is true, to the best of your
11 knowledge today?

12 A. Absolutely.

13 MR. LEGUM: No further questions.

14 PRESIDENT VEEDER: Thank you.

15 Mr. Dugan?

16 CROSS- EXAMINATION

17 BY MR. DUGAN:

18 Q. Good afternoon, Mr. Vind. We met just
19 briefly. My name is Christopher Dugan. I am here
20 on behalf of Methanex Corporation, and I will be
21 asking you some cross-examination questions,

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1 questions about your witness statement, primarily.
2 Now, you just mentioned a clarification that you
3 put in the record. You said that in paragraph 15
4 you were actually not the one who reported the
5 break-in and the illegal copying of documents; is
6 that correct?

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

10 Q. Right. But when you signed this witness

11 statement, you said that you had reported it?

12 A. Through my lawyer, yes, I did.

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

14 reported it.

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

16 Q. You did just correct the record, but what

17 I'm asking you is at the time you signed this

18 witness statement did you know that you hadn't

19 reported it?

20 A. In my mind, I'd reported it through my

21 attorney. Is that sufficient?

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1 Q. That is not what it says, is it? It says,

2 I reported the break-in to the FBI. I take it that

3 is not correct.

4 A. That is not correct.

5 Q. Thank you. Now, did you meet with

6 officials from the State Department with respect to

7 the preparation of your witness statement?

8 A. I did not meet with them. I talked with

9 one official over the telephone.

10 Q. Who is that?

11 A. Andrea Menaker.

12 Q. What did you talk about?

13 A. She asked me for a description of what

14 took place, and I described it to her, and she

15 prepared a draft for me to review and revise, which

16 I did. I sent it back to her to prepare the final,

17 finished form. I don't have a secretary, and I am

18 basically semi-retired, and I do not have really

19 good access to that type of help, so she offered to
20 do that for me, and I took her up on it.

21 Q. Did you talk about the case, this

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1 arbitration?

2 A. To who?

3 Q. With Ms. Menaker.

4 A. Of course, I did.

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

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

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

11 A. Yes, I have.

12 Q. What did you say to her?

13 A. I have expanded upon that in a subsequent
14 meeting that she came out to Los Angeles, about two
15 or three weeks ago, when she wanted clarification,
16 and she went over the format of the Tribunal, and
17 what the Tribunal meant, and the participants, the
18 President and the members, and what to expect.
19 This is my first approach to anything like this
20 other than the courtroom or before the Congress.
21 So I have not really had any significant, you know,

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1 instruction on how to deal with a Tribunal. I

2 don't know what the rules are. So, that is what we
3 talked about at great length.

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

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

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

15 A. I have not.

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

18 A. No, I have not.

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

21 A. What does that mean?

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

3 A. I have not. About this case?

4 Q. Yes.

5 A. I have not.

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

8 A. No, I did not.

9 Q. You meet him in Chicago?
10 A. Yes, he met me in Chicago.
11 Q. And then you flew from Chicago down to
12 Decatur; is that right?
13 A. We flew from Meigs Field, Chicago, to
14 Decatur airport, that's correct.
15 Q. Who was on the plane?
16 A. I believe that it is listed on my witness
17 statement. On the airplane, as I recall, was a Dan
18 Weinstein, myself, the Lieutenant Governor Davis,
19 there was one or two--I think there were two
20 California Highway Patrolmen who were serving as
21 both driver and bodyguard for the Lieutenant

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1 Governor and then, of course, the two pilots.
2 Q. How well do you know Governor Davis?
3 A. I have known ex-Governor Davis since
4 approximately 1981. Casually only.
5 Q. Do you talk to him often?
6 A. I do not.
7 Q. Does he call you often?
8 A. Absolutely not.
9 Q. Does his office ever call you?
10 A. No.
11 Q. Never?
12 A. Does his office ever call me? That is in
13 the present tense, isn't it, Mr. Dugan?
14 Q. Has his office ever called you?
15 A. His office has called me in response to
16 the requests for them to return my phone calls.

17 Q. Has his office ever called you for
18 anything else?

19 A. No.

20 Q. When you called him, what were you calling
21 about?

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1 A. I have never called Gray Davis after he
2 was elected to Governor.

3 Q. When you called him before that, why did
4 you call him?

5 A. I might have called him, but usually he
6 was not available, and I would have to go through
7 one of his staff members.

8 Q. And why were you calling him?

9 A. Because I was arranging the meeting in
10 Decatur at his request.

11 Q. Did you ever talk to Davis or his staff
12 members about political contributions?

13 A. Of course I did.

14 Q. Why did you say "of course"?

15 A. Because he requested that I raise money
16 for him.

17 Q. Was that usually the subject of your
18 conversations with Davis and his staff, money?

19 A. With Gray Davis that was almost always the
20 subject of conversations.

21 Q. Why is that?

1 A. Because the man was a very prolific
2 fundraiser.

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

5 A. That is correct.

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

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

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

12 A. No, it is not.

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

15 A. No, it is not.

16 Q. Is the price of ethanol up?

17 A. Up from what?

18 Q. Up over the last two years.

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

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

3 A. I would guess that ethanol is someplace
4 above \$1.50.

5 Q. You have no knowledge today--

6 A. I do not have any direct knowledge of what

7 the price of ethanol is today. I explained to you
8 I have been retired since September. I have not
9 gone into the office since September. I do not
10 sign checks. I am not involved in the day-to-day
11 operation in any way.

12 Q. Do you read the newspaper?

13 A. Of course I read the newspaper.

14 Q. Never noticed any newspaper articles about
15 the price of ethanol?

16 A. No, I have not.

17 Q. How many years did you spend in the
18 ethanol business?

19 A. I spent 23 years in the ethanol business.

20 Q. You haven't read any news articles about
21 ethanol since you retired?

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1 A. I don't get any trade publications, I
2 don't read them. Frankly, I am sick and tired of
3 the business. I worked for 48 years, and I decided
4 now is the time to hang it up, and you know what, I
5 like to go fishing and play golf and dabble in some
6 real estate, and that is all I am doing.

7 MR. LEGUM: I would like to ask Mr. Vind
8 to wait for the question to finish before you begin
9 your answer so that the court reporter can take
10 down everything that's said.

11 BY MR. DUGAN:

12 Q. So, just to go back, you haven't read
13 newspaper stories in regular publications, not
14 trade publications involving the price of ethanol?

15 A. I don't recall. Since when? You have to
16 clarify that for me.

17 Q. Since you retired.

18 A. No, I have not.

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

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1 A. I did not drive to the country club.

2 Q. You were driven to the country club?

3 A. That is correct.

4 Q. Who was in the car with you?

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

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

14 A. No, I did not.

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

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

20 Q. I am just asking if you are certain of
21 that.

1 A. I am absolutely certain.

2 Q. And you believe that you did sit next to
3 him in the car on the drive from -

4 A. That is possible.

5 Q. What happened when you got to the country
6 club?

7 A. We shook hands with the ADM personnel. We
8 went into a dining room. We had dinner. That
9 is it.

10 Q. Did you have cocktails first?

11 A. I don't remember. I don't recall. I
12 don't know if they were served outside the room. I
13 think wine was served. I don't recall that.

14 Q. The normal practice would be to have
15 cocktails, wouldn't it?

16 A. Yes. Normal practice would be.

17 Q. How many people total do you recall at the
18 dinner?

19 A. Six or seven.

20 Q. Now, you don't recall whether there were
21 cocktails so I take that means you don't recall

1 whether you went in and sat down immediately or
2 whether you stood around and had cocktails; is that
3 right?

4 A. It was late in the evening, and I don't

5 believe the country club itself was still open
6 necessarily or not well attended at that time of
7 night. I would say that we went directly from the
8 meet-and-greet into the dining area and probably
9 either had cocktails, or I do recall wine being
10 served.

11 Q. And did you stand around and drink the
12 wine before you sat down? Do you recall?

13 A. I don't remember.

14 Q. And the table had about seven or eight
15 people; is that right?

16 A. That is correct.

17 Q. And who were you sitting next to?

18 A. I believe I was sitting next to Gray
19 Davis.

20 Q. Who was on your other side, do you recall?

21 A. No, I don't remember.

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1 Q. Was there just one dinner conversation or
2 did it break up into smaller conversations?

3 A. It was primarily dominated by Gray Davis,
4 and I would suspect that the other part of the
5 conversations were generally either, as I recall,
6 Alan Andreas and Marty Andreas. They were having
7 most of the conversation during the dinner.

8 Q. Different people talked to different
9 people at different times?

10 A. Not a lot. Because it was so late in the
11 day, everybody was very anxious to get on with
12 things. It is important to recognize that Gray

13 Davis was extremely late getting to the airport,
14 and the weather had deteriorated, and there was
15 some question as to whether we were even going to
16 fly there or not. So the chairman at the time,
17 Dwayne Andrea, did not even attend the dinner
18 because it was so late in the evening.

19 Q. Did you talk to Mr. Davis about ethanol?

20 A. Yes, I did.

21 Q. What did you say to him?

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1 A. I said ethanol is a very good fuel, it is
2 a good renewable product, and we talked about that.

3 Q. Did you talk about expanding the use of
4 ethanol in California?

5 A. Oh, yes.

6 Q. Did you talk about how he could expand the
7 use of ethanol in California?

8 A. Yes. I said one of the ways you can do
9 that is to encourage the construction of
10 manufacturing facilities in the state of
11 California. For the benefit of the members and
12 Mr. President, there was only one small ethanol
13 manufacturing plant in the state of California. I
14 believe there are only two today. Almost
15 everything that comes into California comes in
16 either through ship, through the Panama Canal, or
17 it comes by rail.

18 Q. Were you aware at the time that there was
19 controversy about the use of MTBE in gasoline in

20 1998?

21 A. Yes, I was.

966

1 Q. Were you aware of the fact that it had
2 been proposed by many people that MTBE be banned?

3 A. That is correct.

4 Q. And were you aware that if MTBE were
5 banned, it was entirely possible that ethanol would
6 substitute for MTBE?

7 A. That was my hope.

8 Q. Did you talk about MTBE with Governor
9 Davis?

10 A. No, not with Governor Davis. With
11 Lieutenant Governor Davis, I did. That is correct.

12 Q. At that time?

13 A. At the time, yes.

14 Q. And what did you talk to him about?

15 A. I reinforced with Lieutenant Governor
16 Davis that ethanol was renewable, that it was clean
17 burning, that it did not pollute the groundwater,
18 whereas MTBE had been determined to be a serious
19 problem in the state of California, having had the
20 City of Santa Monica lose I think two or three
21 wells representing a significant portion of their

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1 water supply, and having Lake Tahoe, South Lake
2 Tahoe be contaminated, and various things that took

3 place throughout the state. It was starting to
4 become a huge, huge issue in the state of
5 California, such that the Legislature passed a law
6 which was signed by Gray Davis's predecessor, Pete
7 Wilson, which mandated that the effects of MTBE be
8 studied--

9 Q. Is this what you told Governor Davis? I
10 mean, you are not here to give speeches?

11 A. I will give a little speech here, because
12 I think it is important to clarify this.

13 Q. I just asked you a simple question. Did
14 you tell him about MTBE?

15 A. Yes, I did.

16 Q. Now, did you tell him that MTBE--

17 MR. LEGUM: Excuse me, just if I can
18 interrupt for one second. Just for the sake of the
19 clarity of the record, I think it would be useful
20 if we could clarify whether the discussion with
21 Mr. Davis that you have been asking about is one

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1 that took place at the dinner or whether it took
2 place at some other time because I believe that has
3 become muddled.

4 MR. DUGAN: I believe he already said it
5 took place at the dinner.

6 PRESIDENT VEEDER: Mr. Legum, you can come
7 back to this on redirect. We have noted the point.
8 And we'll see.

9 BY MR. DUGAN:

10 Q. How would the ethanol industry go about

11 expanding the use of ethanol in California?

12 A. Number of ways. The price of gasoline
13 were to reach a certain level, then it becomes
14 economically viable to transport it from the
15 Midwest because the major market for ethanol at
16 that time was in the Midwest, where some cities and
17 in fact some states, such as the City of Denver,
18 the City of Phoenix, some other cities closer to
19 the area of production had mandated the use of 3.5
20 percent oxygen by weight, which in fact is ethanol.
21 MTBE cannot be blended legally at that level, only

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1 ethanol could. So there were a lot of precedents
2 for ethanol taking a big market share outside of
3 California.

4 Q. And if Governor Davis banned MTBE, that
5 would expand the use of ethanol, wouldn't it?

6 A. That is true.

7 Q. Did you talk to Governor Davis about that
8 at the meeting?

9 A. I did not.

10 Q. Did you ever talk to him about that?

11 A. I only talked to him after the fact, after
12 he was elected Governor, when, at a birthday party
13 held in his honor, he came over to me and asked
14 that I intercede with the oil companies and the
15 ethanol producers to try to see if some
16 accommodation could not be reached so that there
17 would not be shortages of gasoline supply in the

18 state of California, which was his fear.

19 Q. And what did you do? Did you act upon
20 that request?

21 A. I, in fact, did. I went to the Secretary

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1 of CalEPA, I contacted at least one Chairman of one
2 major oil company, and I contacted people at ADM
3 and some other suppliers of ethanol to try to see
4 if I couldn't negotiate some type of a compromise
5 that would allow for perhaps some type of a
6 shifting--where the refiners could, in fact, comply
7 with Federal law. Federal law requires the
8 addition of oxygen to gasoline in non-attainment
9 areas. So the refiners in California were
10 concerned about was not so much the use of ethanol,
11 but whether they had to be refinery-specific or
12 whether it had to be throughout the entire state.
13 So, that was the thrust of my conversations and my
14 meetings.

15 Q. Were they concerned that there was an
16 insufficient supply of ethanol at that time?

17 A. Initially that was the concern of the
18 refiners, that was the concern of the
19 administration, from Secretary Hickox, and certain
20 members of his agency. Those all proved to be
21 groundless fears.

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1 Q. And as part, because they were concerned
2 about the short supply of methanol, they asked you
3 to see if you could work out some type of
4 arrangement that would accommodate that and
5 accommodate the refiners' concerns, and still
6 involve an expansion of the use of ethanol; is that
7 correct?

8 A. I can't hear you well. I don't know if
9 you are saying methanol or ethanol.

10 Q. Ethanol.

11 A. You're saying ethanol.

12 Q. Ethanol, correct?

13 A. Now I lost my train of thought. Can you
14 go over that one more time.

15 Q. What you're saying is that the Governor
16 contacted you and asked you if you could mediate
17 some type of compromise that in taking into account
18 the possible short supply of ethanol, you would
19 accommodate the refiners' concerns and yet still
20 adopt or still allow a significant amount of
21 ethanol to be introduced into the market, a

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1 compromise between both sets of interests?

2 A. That is generally what he asked me to do.
3 This was a very brief conversation held. Maybe it
4 took two minutes as the birthday party was breaking
5 up. That was the, as I recall, probably the only
6 time I had met with--meeting is too strong a word.
7 The only time I had talked to Governor Davis--and I
8 believe that is the only time I've talked to him

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?

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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?

16 A. Well, I remember the conversations
17 generally that took place at the dinner table which
18 was the vast bulk of the time that was spent.

19 Q. You remember all of the conversations that
20 took place at the dinner table?

21 A. Absolutely not.

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1 Q. Were you party to all of the conversations
2 that took place that evening?

3 A. I don't know. I don't know. I am not
4 party to--if somebody got up and went to the men's
5 room. If they talked to somebody, I have no idea.

6 Q. Can you say here positively that you were
7 party to all of the conversations that took place
8 that night?

9 A. No, I cannot.

10 Q. Let's go, if we could, to your witness
11 statement, please.

12 Now, in paragraph four, you say that you
13 participated with ADM in encouraging the use of
14 ethanol through lobbying and educating government
15 officials as to the benefits of ethanol; correct?

16 A. Are you asking me if--if that is what is
17 on the piece of paper?

18 Q. Let me ask you, is that true?

19 A. That is true.

20 Q. And on the next page, a continuation of
21 paragraph four, you state that--line two, we

1 jointly and independently supported various
2 legislators and members of Congress who we felt
3 might support the expanded use of ethanol; is that
4 correct?

5 A. That is correct.

6 Q. You were looking for legislators who would
7 support the expanded use of ethanol?

8 A. That is correct.

9 Q. And it was to those legislators that you
10 directed your contributions; correct?

11 A. That's correct.

12 Q. And if they didn't support expanded use of
13 ethanol, you wouldn't give them any money?

14 A. That is not necessarily true at all. I
15 met with a variety of legislators, some of whom did
16 not embrace the expanded use of ethanol, but I
17 tried to convince them that ethanol was a good
18 renewable product. So that was the whole thrust of
19 my conversations and arguments.

20 PRESIDENT VEEDER: The question was
21 whether you would still give them money, not

1 whether you'd meet them.

2 THE WITNESS: I would raise money for
3 legislators in California and at the federal level
4 who supported the use of ethanol as a renewable
5 fuel and the expanded use of ethanol and the
6 expanded production of ethanol, that is correct.

7 BY MR. DUGAN:

8 Q. Now, if you had a legislator, either at
9 the state level or the federal level, and you gave
10 them money but they refused to support the expanded
11 use of ethanol, would you continue to raise money
12 for them?

13 A. Probably not.

14 Q. You are familiar with Senator Torricelli,
15 aren't you?

16 A. What does that mean? Am I familiar?

17 Q. Do you know him?

18 A. Do I know former--

19 PRESIDENT VEEDER: Do you want to rephrase
20 that question?

21 BY MR. DUGAN:

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1 Q. Do you know former Senator Torricelli?

2 A. Yes, I do.

3 Q. Now, I would like to call the Tribunal's
4 attention to 11 JS Tab 231, which is a news article
5 concerning former Senator Torricelli and Mr. Vind.

6 MR. LEGUM: Do you have copies for us or
7 should we look for it in the volumes?

8 MR. DUGAN: I have copies.

9 BY MR. DUGAN:

10 Q. Before we look at the article, how did you
11 meet Senator or then-Representative Torricelli, do
12 you recall?

13 A. Yes, I recall.

14 Q. How was that, could you describe that for
15 us?

16 A. Yes. I met him at the U.S. Embassy at San
17 Salvador, El Salvador.

18 Q. Then you contributed \$500 to his campaign
19 March 1, 1996; is that correct?

20 A. I can't confirm that. That is what the
21 article says, but I don't know.

978

1 Q. You don't know because you don't recall--

2 A. I don't recall.

3 Q. But you did make contributions to
4 then-Representative Torricelli; is that correct?

5 A. That is correct.

6 Q. Did you at that time ask Mr. Torricelli to
7 intervene on your behalf and write a letter to U.S.
8 Trade Representative Mickey Cantor?

9 A. What do you mean by "at that time"?

10 Q. After you gave the contribution?

11 A. I don't recall if it was before or after.

12 Q. So, you don't recall that you gave him a
13 contribution on March 1, 1996?

14 A. I don't know the date.

15 Q. And you don't recall that on March 13 he
16 did, in fact, write a letter for you?

17 A. You are asking me to remember dates that
18 are, what, eight years ago, and if that is what the
19 article says, I assume that that was reasonably
20 accurate.

21 Q. Well, do you recall from your own

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1 recollection that there was a fairly prompt
2 response and a fairly favorable response from
3 Representative Torricelli to your contribution of
4 \$500?

5 A. It was a favorable response, but I am not
6 saying it was in response to my contribution. It
7 was a favorable response in response to my request
8 for assistance in trying to get the Government of
9 El Salvador to stop expropriating my assets in that
10 country.

11 Q. Do you recall that two weeks after
12 Senator--then-Representative Torricelli sent the
13 letter you made another contribution of \$500?

14 A. I don't recall.

15 Q. Do you recall that throughout that year of
16 1996, you and your family gave thousands of dollars
17 to Senator Torricelli and to the Senate Democratic
18 Committee?

19 A. What time period are you talking about?

20 Q. 1996, when Senator Torricelli was running
21 for the Senate--when then-Representative Torricelli

980

1 was running for the Senate?

2 A. That is entirely possible, yes, sir.

3 Q. But you don't remember it?

4 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

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1 to deny that that is an accurate figure.

2 BY MR. DUGAN:

3 Q. Do you recall asking Archer Daniels
4 Midland to also send some money, campaign
5 contributions to Representative Torricelli?

6 A. Yes, I do recall that.

7 Q. And did they?

8 A. I don't remember.

9 Q. If you turn to 001330, it talks about your
10 letter, it says, (reading) Weeks later ADM made a
11 \$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

982

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.

20 Q. Do you know whether Mr. Cantor intervened
21 on your behalf with the Government of El Salvador?

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1 A. No, I don't believe that Mr. Cantor
2 himself did. I think he bucked it down to one of
3 his staff members who then wrote a letter. Maybe
4 Mr. Cantor did. I know that they wrote a letter
5 to--either to the Embassy, to the Ambassador to the
6 United States wrote a letter directly to the
7 President of El Salvador, I don't recall which.

8 Q. But the United States Government did do
9 something on your behalf in El Salvador?

10 A. It didn't work.

11 Q. That is not what I asked you. They did do
12 something on your behalf; is that right?

13 A. Yes, they did.

14 Q. Did you interest other legislators in the
15 problem you had prior to the time you dealt with
16 Mr. Torricelli?

17 A. I met with my local Congressman at the
18 time, who I had known for some time, but he was a
19 member of the minority party at the time and didn't
20 offer me much hope that he would be able to do
21 anything.

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1 Q. Now why did you as a citizen of California
2 turn to Representative from New Jersey?

3 A. Well, no one knew the situation in El
4 Salvador better than Mr. Torricelli because he had
5 been there, and we had talked about the problems in
6 El Salvador. He was my logical go-to guy because
7 as I recall he was either at the time a member of
8 the House or Senate, either Foreign Relations
9 Committee or some committee that had some purview
10 over Central America.

11 Q. Let's go back to the sequence of
12 contributions as reported by this newspaper
13 article. It reports a March 6, 1996 contribution
14 of \$500, and then a letter from Mr. Torricelli to
15 Mr. Cantor, and then another contribution of \$500
16 on March 28, and then in September of that year,
17 thousands of dollars, six or \$7,000 from yourself
18 and your family.

19 Now, after the letter was sent by
20 Mr. Torricelli to Mr. Cantor, if Mr. Torricelli had
21 not sent that letter to Mr. Cantor, would you have

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1 continued to contribute thousands of dollars to
2 Mr. Torricelli's campaign?

3 A. You are asking me a hypothetical question.
4 I don't have any way to respond to that.

5 Q. Of course you do.

6 A. No, I don't. I don't know what I would
7 have done.

8 Q. So, you refuse to answer that question.

9 A. I don't refuse to answer. I just don't

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 --

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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

18 that it is legal political contributions.

19 MR. DUGAN: That, I don't know. I'm asking
20 about contributions.

21 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
3 that you don't know whether you would continue to
4 make thousands of dollars in political
5 contributions to a politician who was nonresponsive
6 to your specific request for help?

7 A. I don't know that because it depends upon
8 what other agenda items I have with that particular
9 individual.

10 Q. So you think--you are actually telling
11 this Tribunal that you can think of times where you
12 would continue to spend thousands of dollars for a
13 politician that just refused to help you?

14 A. That is entirely likely. I have supported
15 politicians in the past who have sometimes voted
16 exactly opposite from the way I asked them to.
17 That happens all the time.

18 Q. You say it is entirely likely you would
19 continue to support them after they vote against
20 you?

21 A. Sometimes you have to. Sometimes you have

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1 to demonstrate that you are willing to support them
2 because they are a good elected official, and then
3 you try to lobby them in order to see if you cannot
4 change their mind. Sometimes they are committee
5 chairmen who are going to be there a long time, and
6 it just takes that amount--you have to contribute
7 to the campaign in order to have access to these
8 politicians. Unfortunately, that is the American
9 way of life. That is particularly the way of life
10 in California from a political standpoint.

11 Q. But you were looking for more than access.
12 You were looking for help, weren't you?

13 A. I am not sure I understand what you are
14 saying here.

15 Q. You were looking for help from
16 Mr. Torricelli on your El Salvador?

17 A. I was looking for help from Mr. Torricelli
18 on my problem in El Salvador; that is correct.

19 Q. And you were also looking for help from
20 Mr. Torricelli on the ethanol fuel tax excise
21 credit; correct?

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1 A. Yes, I believe so. Is that what it says
2 in the article?

3 Q. I am asking you. Did you ask him to--did
4 you ever talk with him about the excise tax credit
5 for ethanol?

6 A. I don't remember.

7 Q. You don't remember. Do you remember

8 whether he voted your way, voted ethanol's way with
9 respect to the credit?

10 A. I don't remember.

11 Q. Let's read what it says here and see
12 whether it refreshes your recollection. This is at
13 the bottom of page 1131, and it is talking about
14 Senator Torricelli--it says: Three votes is
15 evidence of his long-time support for ethanol, but
16 only one of those votes involved a bill that
17 included a tax credit subsidy, and that vote was in
18 favor of a sweeping national energy policy bill,
19 that also dealt with nuclear power plants, electric
20 utilities, and a host of other issues. His Senate
21 votes, his first that dealt solely with the tax

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1 credit issue, were unusual for a New Jersey
2 Senator. Senator Frank Lautenberg voted against
3 the credit, and for years, Senator Torricelli's
4 predecessor in the Senate, Bill Bradley, was known
5 as a leading opponent of the credit accusing
6 supporters of reaching deeper and deeper into the
7 pockets of American taxpayers to benefit a handful
8 of special interests.

9 Does that refresh your recollection in any
10 way about your ability to turn around the Senator
11 from New Jersey and get him to vote for the excise
12 tax credit for ethanol?

13 A. I'm sorry, I don't understand what you
14 mean by "turn around."

15 Q. It just said the Senator from New Jersey

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

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1 he decided to vote the way he did. I more than
2 likely lobbied him on behalf of the ethanol
3 industry, which would be a logical thing for me to
4 do. Any time I have access to a political figure
5 and they are willing to sit down and talk with me
6 about it, I would have been consistent in my
7 approach over the years to try to advocate the use
8 of clean burning renewable fuels of which ethanol
9 is a primary one.

10 Q. And you have been consistent in your
11 attempts to use political support for those
12 politicians who will support the expanded use of
13 ethanol; correct?

14 A. Support ethanol and the expanded use of
15 ethanol, that is correct.

16 Q. Now, if you turn to page 1327. Third and
17 fourth paragraphs, (reading) We are a free country
18 and I can go ahead and support anybody I want, Vind
19 said. If I think a guy is going to be a bulldog
20 and going to weigh in and going to support American
21 businessmen in these Banana Republics, hell yes, I

1 will support him. But is there a quid pro quo?

2 Absolutely not.

3 What did you mean by "quid pro quo"?

4 A. The reporter asked me the same type of
5 leading questions you're trying to ask me here
6 which is to imply somehow that for \$500 I could buy
7 off a U.S. Senator, which is total nonsense. What
8 I am saying is that you get access if you are
9 supporting those particular politicians, but there
10 is never a quid pro quo. That is a crime. That is
11 called bribery, and I don't do that, sir.

12 Q. But you were looking for help; correct?

13 A. You have asked me that probably six times.
14 The answer is yes.

15 Q. And by "quid pro quo," you mean that there
16 was no express agreement whereby you would receive
17 help in exchange for your contribution; is that
18 correct?

19 A. That is absolutely correct.

20 Q. Was there any implicit understanding?

21 A. Absolutely not.

1 Q. Did you make any contributions to Governor
2 Wilson?

3 A. Yes, I did.

4 Q. How much?

5 A. I don't remember.

6 Q. Now I would like to show you
7 Mr. Listenberger's witness statement, and that
8 is--I'm sorry, I don't have copies of that.
9 I am going to read you paragraph 2--
10 MR. LEGUM: Would you mind holding off
11 until we get a copy?
12 MR. DUGAN: Sure. Could you pull one out
13 of your record. I don't have them with me.
14 MR. LEGUM: Do you want the witness to
15 have a copy in front of him as well?
16 MR. DUGAN: Please. I can read it to him.
17 I am going to read only one sentence.
18 PRESIDENT VEEDER: We can lend him a copy
19 from our files. We are looking at our copy of
20 Volume 13.
21 BY MR. DUGAN:

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1 Q. Paragraph 2, the last sentence, (reading)
2 It was my understanding that the dinner was
3 arranged in order for me and others to meet
4 Mr. Davis, discuss his candidacy, and assess
5 whether to support his campaign.
6 You see that?
7 A. Yes.
8 Q. Was it your understanding that ADM had not
9 decided whether to support Mr. Davis at this time?
10 A. That is my understanding. Yes, that's
11 correct.
12 Q. Are you aware of the fact that after this
13 meeting took place ADM decided to contribute

14 hundreds of thousands of dollars to Mr. Davis?

15 A. I am aware that they decided to contribute
16 \$100,000.

17 Q. You are unaware of the contributions that
18 took place after that?

19 A. You'd have to refresh my recollection. I
20 don't know if there were others. I assume there
21 were.

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1 Q. Yes, there were.

2 A. Okay.

3 Q. Now, you said in your witness statement
4 that you worked with ADM to support various
5 legislators and members of Congress whom you felt
6 might support the expanded use of ethanol. Did
7 Mr. Davis agree to support the expanded use of
8 ethanol?

9 A. He was generally supportive of ethanol and
10 had been over the years. In fact, going back to
11 1981, when he was Chief of Staff to then-Governor
12 Jerry Brown, Mr. Davis reminded me, years later,
13 that he was the one who had urged the Governor to
14 sign a bill that I had helped to draft and
15 sponsored in the state of California that gave
16 partial tax exemptions to ethanol blends with
17 gasoline.

18 Q. At this dinner, at this meeting, was there
19 any type of agreement, express or implicit, that he
20 was going to agree to the expanded use of ethanol?

21 A. No, not at all. In fact--let me rephrase

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1 that. Governor Davis, then-Lieutenant Governor
2 Davis, came to me approximately one year prior to
3 this dinner, this infamous dinner now, and asked me
4 to support him in his run for Governor. It might
5 have been less than a year, but within a year's
6 time frame. He met me in my office and spent about
7 three hours. At the time he was running very, very
8 badly in the polls, and my comment to him was, I am
9 not going to support you. And he wore me down
10 because he is a, as I say, very aggressive person,
11 although he doesn't seem so when you see him on
12 television.

13 He reminded me at the time that he had
14 been fully supportive of the bill that I had
15 sponsored in 1981, the one I previously mentioned,
16 and also some three or four other bills that I had
17 helped to draft and sponsored in the state of
18 California that would do various things to promote
19 the expanded use of ethanol. So the answer to that
20 is that I agreed to go ahead and support him, and
21 subsequent to that conversation, I believe through

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1 one of his chief campaign staffers, they contacted
2 me, and I don't recall whether it was Lieutenant
3 Governor Davis himself or whether it was one of his

4 staff people that said, could you arrange a meeting
5 with the ADM folks. And I said, yes, I would. I
6 said, what do you want to do? He said, can you
7 raise money for us from ADM? And I said, I don't
8 have no idea, but I will try to see if I can
9 possibly set up a meeting and see what happens from
10 there.

11 Q. And then you proceeded to raise quite a
12 bit of money for Governor Davis; correct?

13 A. Yes.

14 Q. And then he proceeded to ban MBE and
15 substituted ethanol for MBE; is that correct?

16 A. No, it's not correct. He did not
17 substitute ethanol for MBE. That was Federal law.

18 Q. All right, let's go to the portion of your
19 witness statement where you talk about the
20 documents. Now, first of all, have you talked with
21 the State Department about any of the testimony

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1 that was given yesterday with respect to the
2 documents?

3 A. No.

4 Q. Have you reviewed any transcripts?

5 A. No.

6 Q. Have you talked with anyone else about
7 what happened yesterday?

8 A. No.

9 Q. Paragraph 14 of your witness statement.
10 You state that you realized that someone had broken
11 into your office. How did you come to realize

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 Palm Pilot
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

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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 Q. Excuse me--

13 A. I am answering your question.

14 Q. I asked how you came to realize it. You
15 are giving a long narrative explanation.

16 A. Yes, I am because I began to realize--

17 Q. You said the State Department contacted
18 you and told you they had your documents.

19 A. Wait a minute. You're not allowing me to
20 answer the question.

21 PRESIDENT VEEDER: Mr. Dugan, let the

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1 witness finish the answer.

2 THE WITNESS: This is very important,
3 Mr. President, because the cleaning service that
4 cleaned our office, which was leased space--and you
5 have seen pictures of where the office was--was
6 provided by the landlord. On more than one
7 occasion, on a Saturday, I would go to that office
8 to get something or do some work at my office. The
9 door would be wide open. The cleaning people would
10 leave the entrance to the office complex itself
11 wide open and go down the hallway to clean other
12 offices and other retail establishments, and I
13 would walk into my office and I wouldn't see
14 anybody for an hour. I would try to find them. I
15 complained on numerous occasions, and had my people
16 complain on numerous occasions about this breach of
17 security to the landlord. It was not cleared up.
18 It would have been absolutely a piece of cake for
19 anybody to walk in there at nighttime or on a
20 Saturday or Sunday, when the cleaning people were
21 in there, and go in there and take anything they

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1 wanted at any time.

2 And I want to clarify also, my original
3 suspicion was that documents were copied and then
4 put back in the file. That turns out not to be
5 true. Documents were stolen, taken from my files,
6 and I don't have them. They are not there today.

7 So, therefore, I contacted the Attorney
8 General of the State of California, who I have
9 known for a number of years, and I personally met
10 with him and said, Mr. Lockyer, this is, in fact,
11 really a problem, and he was aware of this case
12 because he represents the State of California as
13 the chief law enforcement officer.

14 And then I contacted my lawyer and asked
15 that he contact the FBI because the Attorney
16 General said to me in response to my question--I
17 said if these stolen documents are used in
18 interstate commerce, is that not a federal crime?
19 And he said, yes, it is. I said, then is the
20 agency that has privy over this the Federal Bureau
21 of Investigation? And he said, yes, it would be,

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1 and that is the reason I had my lawyer contact the
2 FBI. But I got no response from them because by
3 this time it is after 9/11 and they were so
4 involved with terrorism things, they don't have the
5 manpower to spare on what I call white collar
6 crime.

7 It is a long answer, but it answered it.

8 Q. You said you realized that someone had
9 broken into your office?

10 A. Well, I don't know what the legal term
11 "breaking in" is, but I think if you enter an
12 office building during off hours when there's
13 nobody there and you're not supposed to be there, I
14 think that is a break-in.

15 Q. You mean entering your office?

16 A. Absolutely.

17 Q. Is that what happened?

18 A. I am absolutely convinced of that.

19 Q. Do you know that?

20 A. Do I know that? No, but that is the only
21 way they could have gotten these documents

1003

1 themselves.

2 Q. Do you have any personal knowledge as to
3 how it actually happened?

4 A. No, I don't know how it actually happened.
5 I'm very curious. Perhaps your clients can tell
6 me how it happened.

7 Q. You never filed a report with the local
8 police, did you?

9 A. No, I did not.

10 Q. Why not if it was a break-in?

11 A. It wasn't a break-in per se, and it
12 happened over I guess a period of almost a year,
13 according to the record now, if I understand it.

14 Q. Why did you use the term "break-in"?

15 A. Because it is the most descriptive
16 adjective I can use.

17 Q. It is a verb. But breaking in implies
18 smashing and breaking, doesn't it?

19 A. Well, break-in could be either way,
20 whatever it is. Does it imply that? I'm not sure
21 that's true.

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1 Q. What did you mean. You said broke in.
2 What did they break?

3 A. They didn't break anything. They entered
4 illegally.

5 Q. They didn't break in; is that correct?

6 A. That is your statement, not mine.

7 Q. So you are saying they did break in?

8 A. I don't know how they got access, my
9 friend.

10 Q. You didn't have any hesitation saying they
11 had broken in. And now you say you don't know how
12 they got access.

13 A. I don't know exactly how they got in. I
14 don't know whether that makes any difference or not
15 if they got in there illegally.

16 Q. You submitted a sworn statement under
17 perjury that they broke in, and now you are saying
18 you don't know how they got in.

19 MR. LEGUM Mr. President, Mr. Dugan is
20 now badgering the witness. I think it's time for
21 us to move on.

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1 MR. DUGAN: I think this is a critical
2 statement. He is accusing someone of committing a
3 crime, and now he is saying he has no idea how it
4 happened. This is a critical point.

5 PRESIDENT VEEDER: Just one moment. I
6 think you have made your point, Mr. Dugan. I don't
7 think you need to make it anymore.

8 BY MR. DUGAN:

9 Q. Did you ever complain to the landlord that
10 the cleaning staff did it?

11 A. The cleaning staff did what?

12 Q. You say here that you suspect the cleaning
13 staff had--someone had induced the cleaning service
14 to grant them access to my office?

15 A. I said there were a couple of
16 possibilities. One was they could have walked in
17 by themselves, they could have induced the cleaning
18 people to either give them access or give them a
19 key, and the alarm code. There are a variety of
20 ways that someone can do a black-bag job on an
21 office if they want to. I am not skilled enough in

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1 that area of the law to be able to determine how
2 they did it. All I know is that someone got in
3 there and stole my records out of my files.

4 Q. What is a black-bag job?

5 A. That is just a term of art, I guess,
6 meaning someone goes in and takes stuff without
7 leaving a record of when they were there or who

8 they were.

9 Q. Someone goes into your office and takes
10 stuff. Is that what you're talking about?

11 A. Somebody goes into my office--they
12 physically had to go through my office itself,
13 through a door into an area that contained the
14 filing cabinets and open the drawers and take the
15 documents out. The number one missing documents
16 are correspondence between myself and Archer
17 Daniels Midland Company, specifically the Chairman,
18 Mr. Dwayne Andreas, with whom I had a longstanding
19 professional and business relationship.

20 Q. You are saying that is what they did, they
21 went in and took those, copies of those letters out

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1 of your files?

2 A. That is the only thing I--that's the only
3 logical answer to it.

4 Q. You don't have any personal knowledge of
5 that, though?

6 A. You have asked me that before. No, I do
7 not.

8 Q. Did you ever throw documents out?

9 A. Yes, I do throw documents out.

10 Q. Do you use a shredder?

11 A. We do use a shredder.

12 Q. Have you always used a shredder?

13 A. No, we have not always used a shredder.

14 Q. When did you start using a shredder?

15 A. After we moved offices in probably January
16 of 2001.

17 Q. And when you threw the documents out,
18 where did you throw them?

19 A. We took a number of documents, my son and
20 I, in a truck and hauled some of these--you call
21 them documents. We are talking about business

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1 correspondence, we are talking about invoices and
2 things that are beyond the statutory requirement
3 for recordkeeping, and we would take them in their
4 cardboard filing boxes and haul them up to the Brea
5 dump, which is about six or eight miles away and
6 personally toss them into the trash.

7 But I want to reiterate, there is no
8 reasonable explanation for me to take
9 correspondence between myself and the Chairman of
10 Archer Daniels Midland and take those and throw
11 them away. If I understand the time period here,
12 that correspondence was only three or four years
13 old. That is illogical for me to do that.

14 Q. Do you throw documents out of the office
15 on a daily basis when you are working?

16 A. First of all, I am not working now. Did I
17 throw documents on a daily basis? Not file copies,
18 no, sir.

19 Q. Did you throw trash away on a regular
20 basis?

21 A. Yes, of course.

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1 Q. Did you throw things away like message
2 books?

3 A. No.

4 Q. No?

5 A. No.

6 Q. You never threw them away. So your office
7 is filled with those telephone message books--

8 A. I'm sorry, I thought you were talking
9 about my address books. No, the message books
10 would be thrown away after about a year or so.

11 Q. Is your address book on your Palm Pilot
12 you said?

13 A. It is, correct.

14 Q. Have you ever printed that out?

15 A. Yes, I did.

16 Q. What did you do with the printed copies?

17 A. I kept one printed copy on my desk so that
18 I wouldn't have to worry about whether I'd hot
19 synch my Palm Pilot to my desktop because my
20 desktop was crashing. So, I printed out the
21 address book and kept it for ready reference. It

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1 is hard to read those on the small little screen on
2 the Palm Pilot, and my batteries would always run
3 down.

4 Q. After you updated it, what did you do with
5 the hard copy?

6 A. I didn't update it. I believe I only made
7 one.

8 Q. Only made one?

9 A. I believe so.

10 Q. Did there come a time when you noticed
11 that hard copy was missing?

12 A. No, not really.

13 Q. It was always sitting on your desk?

14 A. Yes, it was sitting on my desk, but I
15 didn't refer to it all the time.

16 Q. Is it still there?

17 A. No. I am not there.

18 Q. Was it still there when you left?

19 A. No.

20 Q. But you don't recall any time when it went
21 missing?

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1 A. No, I sure don't.

2 Q. And you don't recall any time when you
3 threw it out?

4 A. I do not.

5 Q. I would like to show you the declaration
6 of a woman by the name of Claire Noelle Morriset.

7 MR. LEGUM: While you are doing that, we
8 have been going for about an hour now. It might be
9 convenient to take a coffee break in the next half
10 hour or so.

11 (Pause.)

12 THE WITNESS: All right. I have read it.

13 BY MR. DUGAN:

14 Q. Now, Mr. Vind, those pictures that you
15 brought with you today or last night or whenever
16 you came here, why did you take those pictures?

17 A. Because I wanted to point out to the
18 Tribunal the fact that even if some of these
19 documents were obtained through going through the
20 trash, it is not on public property. It is behind
21 closed doors. I had every expectation that

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1 anything I would throw out would go immediately to
2 the licensed waste disposal contractor and be
3 disposed of in a proper manner, not pilfered by
4 illegal means.

5 Q. So, did the State Department tell you that
6 there was testimony in the record that your
7 documents had been obtained from documents you
8 discarded?

9 A. I read the--Mr. Puglisi's deposition here
10 some time ago.

11 Q. His deposition or his statement?

12 A. His statement, I guess it is.

13 Q. Let's go back again to your trash disposal
14 practices. On a daily basis when you were working
15 say in 1997, '98, '99, 2000, did you at the end of
16 the day throw out your documents? Did your staff
17 throw out your documents?

18 A. I am not sure I know what you mean by
19 "documents." That is certainly too broad. What
20 are you asking me?

21 Q. Did you put documents in the trash can?

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1 A. Did I put documents in the trash can? No,
2 I would probably throw away drafts or working
3 copies or some other types of things, but I want to
4 clarify, that the procedure was--and I clarified
5 this with my secretary who worked for me during
6 this time. I called her last week to be certain
7 that I was going to give you accurate testimony.

8 The procedure was for her to type up on
9 her computer a memo or a letter. Then I would
10 review it and sometimes make corrections, and that
11 particular corrected copy would be, of course,
12 thrown away, but then she would type up the
13 finished article, finished correspondence. I would
14 sign it, either Richard B. Vind or Dick or whatever
15 I would put on there. She would then make a copy
16 of that, sometimes two copies. One copy would go,
17 for example, if it were a letter to Mr. Dwayne
18 Andreas, the file copy would go in the ADM file.
19 That was it. The original, of course, would be
20 sent to Mr. Andreas.

21 Q. And there were never any excess copies

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1 made?

2 A. Sometimes there would be an extra copy
3 made if there was a subfile. For example, if I was

4 communicating with Mr. Andreas on some matter such
5 as the lawsuit I filed against the State of
6 California, the California EPA, then a copy would
7 be put in the--probably put in the EPA file. That
8 is correct.

9 Q. So drafts would go in the trash for sure?

10 A. Drafts would more than likely go--that is
11 absolutely correct.

12 Q. So, you don't have any doubt that the
13 drafts that were in the documents that you saw
14 could have been recovered from your trash?

15 A. I don't have any question about that.
16 There were some things that were obviously--drafts
17 that were corrected by my son, for example. There
18 were some things I gave him that he would probably
19 throw in the trash. That's correct.

20 Q. Or your telephone message book, for
21 example?

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1 A. Not my message book.

2 Q. The telephone message book where all the
3 message slips had already been filled out and you
4 had to buy a new telephone message book?

5 A. It was the practice to keep them for a
6 protracted period of time, but not for years.
7 Sometimes it was my practice to say, can you get
8 the phone number off of that of so and so who
9 called six months ago, and I don't have it written
10 down or you don't have it. So she would go back

11 through. That is a standard practice, yes.

12 Q. So you would keep it for six months or so?
13 That's all?

14 A. I don't know, six months, a year, could be
15 two years. We had three or four of them going at
16 any one time because more than one person answered
17 the phones in the office at that time. There were
18 five people total in the office complex.

19 Q. But it is your testimony that other than
20 drafts, nothing got thrown away?

21 A. No, I didn't say that. I said that the

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1 telephone message pads would be thrown away at some
2 point, but I couldn't tell you how long they were
3 kept there.

4 Q. And perhaps you have a different
5 understanding, but my understanding in most offices
6 is that trash cans fill up with documents on a
7 regular basis. That didn't happen in your office?

8 A. We are a very small office.

9 Q. And nothing went into the trash in the way
10 of documents unless it was a draft; is that right?

11 A. That is generally true. That is a correct
12 statement.

13 Q. And you are certain of that?

14 A. Am I certain to that? I am not saying 100
15 percent of the time. I can't speak for my people
16 100 percent of the time. But the practice was just
17 as I described it.

18 Q. Did you ever look in the trash cans? Do

19 you have any idea what was in the trash cans?

20 A. No, I am not used to rummaging through
21 trash cans, Mr. Dugan.

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1 Q. So you have no personal knowledge of what
2 was thrown out?

3 A. Yes, of course I have personal knowledge
4 of what was thrown out in my trash container,
5 because I put it there.

6 Q. Your secretary didn't put anything there,
7 your son didn't put anything there?

8 A. In their own.

9 Q. In their own. So they threw those out;
10 correct? Those were Regent International documents
11 that they threw out?

12 A. They did not throw them out. You're using
13 an incorrect statement. They put them there in
14 order for the cleaning people to then put them into
15 a trash bag and tie it up and carry it down to the
16 closed trash disposal area directly below my
17 office. Yes, that is correct.

18 Q. So they threw them out?

19 A. No, they didn't throw them out.

20 Q. What verb would you use?

21 PRESIDENT VEEDER: Mr. Dugan, I think we

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1 are playing with words.

2 BY MR. DUGAN:

3 Q. Now, you talked about the closed trash
4 area. Was that area locked?

5 A. It was supposed to be locked. I think in
6 practice, the cleaning people being as lax as they
7 were, did not keep it locked at all times.

8 Q. So anybody could have walked in and opened
9 the doors?

10 A. It was unmarked. They'd have to know what
11 was in there.

12 Q. But they could have walked in?

13 A. Walked in? I guess so.

14 Q. It was adjacent to a no parking area; is
15 that right?

16 A. No, it is not. That is not correct.

17 Q. What is right in front of it?

18 A. Right in front of it is an area where a
19 trash truck was designed so the trash truck could
20 back up in there and unload the dumpster. I
21 believe the practice was to roll the dumpster out,

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1 and then the trash truck could pick it up, which in
2 the U.S. that's how they do it and toss it all in
3 the trash truck.

4 Q. Was it only your trash that was in that
5 dumpster or was there trash from other tenants?

6 A. Trash from other tenants. There were one,
7 two, three, four, maybe five other tenants in the
8 office complex.

9 Q. I believe you said it was a common area
10 and so everyone's trash went in there?

11 A. That is correct. We all paid the common
12 area charges for that trash area. That's correct.

13 Q. And the area in front, where the trash
14 truck came, I mean, that is a publicly accessible
15 area, the public can walk all around there if they
16 want; correct?

17 A. You can, if you want to.

18 MR. DUGAN: I have no further questions.

19 MR. LEGUM: Can we have five minutes?

20 PRESIDENT VEEDER: Of course. Mr. Vind,
21 we are going to break for five minutes. We say

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1 this to all witnesses. We ask witnesses not to
2 discuss their evidence away from the Tribunal. For
3 the next five minutes, please don't discuss this
4 case with anybody. Talk about the weather, but not
5 about this case.

6 THE WITNESS: I don't want to talk about
7 the weather outside right now.

8 PRESIDENT VEEDER: We will break for five
9 minutes.

10 (Recess.)

11 MR. DUGAN: I have one more series of
12 questions pursuant to my agreement with The
13 Tribunal.

14 (Brief recess.)

15 PRESIDENT VEEDER: Yes.

16 BY MR. DUGAN:

17 Q. Does it continue to be your testimony that
18 someone broke into your office to obtain these
19 documents?

20 A. Perhaps a better term would be "illegally
21 enter my office."

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1 Q. But it is your testimony that someone
2 actually illegally entered your office. You are
3 saying that as a matter of fact is what happened?

4 A. No, that is not what I testified to. I
5 took great pains in explaining to you that is my
6 best judgment, that is the only thing I can figure
7 out as to the way someone got file copies out of my
8 files.

9 Q. So it is just a guess?

10 A. It is a guess.

11 MR. DUGAN: No further questions.

12 PRESIDENT VEEDER: Mr. Legum, do you have
13 any questions?

14 MR. LEGUM: I do. Just a few.

15 Just off the record.

16 PRESIDENT VEEDER: It is difficult to be
17 off the record.

18 MR. LEGUM: Is it worth taking the time
19 for Mr. Vind to look at X11 and X12?

20 PRESIDENT VEEDER: It is entirely up to
21 you.

1 REDIRECT EXAMINATION

2 BY MR. LEGUM

3 Q. First some administrative matters I should
4 have taken care of before. To your left--sorry, to
5 your right, you have some documents. Can you first
6 take the photographs--what are the exhibit numbers
7 at the bottom?

8 A. X8, X9, X10.

9 Q. Is that your handwriting at the bottom of
10 those?

11 A. My signature and the date.

12 Q. And the date is 6/6/04?

13 A. That is correct.

14 Q. What does that date signify?

15 A. That is the date I took the photographs.

16 Q. Can you look at the satellite
17 photographs--

18 A. Are you referring to X11 and X12?

19 Q. I believe I am. Are those to the best of
20 your understanding and knowledge, are those
21 satellite photographs of the area where your office

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1 was located?

2 A. Yes, they are.

3 Q. Under examination from Mr. Dugan you
4 referred to a conversation with then-Lieutenant
5 Governor Davis concerning ethanol and MTBE. Do you
6 remember that testimony?

7 A. I do remember the testimony, yes.

8 Q. Was that conversation with Lieutenant
9 Governor Davis at the dinner on August 4, 1998?

10 A. No, it was not.

11 Q. Where did that conversation take place?

12 A. That conversation took place in my office
13 when he approached me to support him in his run for
14 the governorship.

15 Q. Now, under examination by Mr. Dugan, you
16 testified that you supported politicians who
17 supported ethanol, and that politicians--sorry, do
18 you recall that testimony?

19 A. I do.

20 Q. Did politicians always respond to your
21 support by supporting ethanol?

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1 A. No, they did not.

2 Q. With respect to Governor Davis after he
3 went into office, you are aware that he signed an
4 Executive Order that postponed the effective date
5 of the MBE ban by one year, are you?

6 A. Yes, I am.

7 Q. Did that action benefit ethanol?

8 A. No, it did not.

9 Q. Was that action beneficial for your
10 company?

11 A. It was not.

12 Q. Are you aware that Governor Davis and the
13 California government during his administration
14 requested an oxygenate--a waiver of the federal

15 oxygenate requirement?

16 A. I am very much aware of it, yes.

17 Q. Did that action benefit ethanol?

18 A. No, it did not.

19 MR. DUGAN: Can I object for a second.

20 This wasn't covered in cross-examination, I don't

21 think.

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1 PRESIDENT VEEDER: Mr. Legum, how does
2 that come out of the cross-examination?

3 MR. LEGUM: Mr. Legum.

4 Mr. Dugan, through his questions, suggested that
5 every time a political contribution was made to a
6 politician, and every time someone supported a
7 politician, that politician acted in accordance
8 with that person's interests, and I am simply
9 responding to that. That is my final question.

10 MR. DUGAN: That is much too broad an
11 interpretation of cross.

12 PRESIDENT VEEDER: We will allow the
13 question.

14 BY MR. LEGUM:

15 Q. Mr. Vind, do you remember the question
16 concerning the oxygenate waiver?

17 A. Would you repeat it for me, please?

18 Q. You recall that Governor Davis during his
19 administration requested a waiver of the oxygenate
20 requirement from the U.S. Environmental Protection
21 Administration?

1 A. Yes.

2 Q. Did that action benefit ethanol?

3 A. It did not benefit ethanol.

4 Q. Did that action benefit your company?

5 A. It did not benefit my company.

6 Q. One final question, on the airplane from
7 Meigs Field to Decatur, where on the airplane were
8 you sitting in relationship to Lieutenant Governor
9 Davis?

10 A. Lieutenant Governor Davis was sitting in
11 the chairman's seat, which is the back right seat,
12 and I was sitting across the aisle from him. It
13 was club seating, four seats.

14 Q. Were you positioned so you could have a
15 conversation with him?

16 A. A brief conversation because the weather
17 was so bad that Lieutenant Governor Davis basically
18 locked up on me and went catatonic, and I guess he
19 is a very nervous flier, and we had a brief
20 conversation because there was all kinds of
21 weather--the plane was bouncing around, and so,

1 yes, we had a brief conversation, yes.

2 MR. LEGUM: I have no further questions.
3 Thank you very much.

4 PRESIDENT VEEDER: We have no questions

5 from the Tribunal at this stage, but just wait
6 there for a moment. We have to come back to
7 Mr. Dugan.

8 Mr. Dugan, you have finished your
9 cross-examination without reference to the Regent
10 International documentation. What do you propose
11 we do next?

12 MR. DUGAN: I propose tomorrow morning we
13 revisit the issue of the Regent International
14 documents.

15 PRESIDENT VEEDER: You will not be
16 submitting those documents to Mr. Vind because he
17 will now conclude his testimony. Do you want five
18 minutes to think about this?

19 MR. DUGAN: I would, yes, please.

20 THE WITNESS: I am not going to be here
21 tomorrow.

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1 PRESIDENT VEEDER: This is what we
2 appreciate which is why we try to sort things out
3 now. We were told you are on a 9:00 flight, so you
4 have to leave here before 7, effectively.

5 THE WITNESS: Yes.

6 PRESIDENT VEEDER: Why don't we take a
7 ten-minute break. I am sorry we have to keep you
8 here, but during this break, please don't discuss
9 your evidence.

10 MR. DUGAN: Actually, I think we can--if,
11 after the argument tomorrow, if I am able to use
12 the documents, it will be for a very short period,

13 and I will make it subject to trying to work out an
14 arrangement where we can do it by phone or by video
15 conference, if that is acceptable.

16 PRESIDENT VEEDER: When you say by phone
17 or video conference, with what witness?

18 MR. DUGAN: Mr. Vind.

19 PRESIDENT VEEDER: Mr. Legum?

20 (Pause.)

21 MR. LEGUM: Our view is it is not fair to

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1 Mr. Vind for him to be subject to further
2 examination at some indeterminate period of time.
3 He has come all the way out here to testify, he is
4 here, he has waited here all day long. Therefore,
5 we would suggest that if Mr. Dugan wants to examine
6 him further, he should get it over with tonight
7 before he has to catch a plane.

8 PRESIDENT VEEDER: Mr. Vind, I am sorry to
9 ask you to do this, and please don't take offense,
10 but it may be easier if we could talk to counsel in
11 your absence. If you would just leave the room for
12 a few minutes but don't disappear. If you could
13 make sure you can come back so we will tell you
14 what the result of this is. Maybe we can speak
15 more openly with counsel.

16 (The witness leaves room.)

17 PRESIDENT VEEDER: Mr. Dugan, how do you
18 see this going forward, this debate on the United
19 States' s motion--are you ready to address this now?

20 MR. DUGAN: No, I am not ready to address
21 it now, bearing in mind it bears on evidence that

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1 was just presented today for the first time, and an
2 argument was presented today for the first time,
3 and I don't think it would be fair to resolve the
4 U.S. objection until we have had adequate time to
5 consider it and respond to it.

6 Now, that said, if we are to use the Vind
7 documents to cross-examine Mr. Vind, it can't be
8 done until after the ruling, and I don't see any
9 way to get the ruling before tomorrow. It seems as
10 a matter of equity to us, especially since this is
11 caused by the very, very last minute introduction
12 of evidence by the United States--

13 PRESIDENT VEEDER: Keep it at a level of
14 practicality.

15 MR. DUGAN: We ought to work out some type
16 of contingent arrangement so that if the documents
17 are admitted for purposes of cross-examination, for
18 example, we can have some type of supplemental
19 procedure or video or telephone procedure, like we
20 accommodated for Mr. Weinstein and Mr. Miller.

21 PRESIDENT VEEDER: Pushing you a little

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1 bit further, what do you intend to do tomorrow, do
2 you intend to call further evidence or is it

3 limited to argument?

4 MR. DUGAN: There may be some
5 photographs--there will be some photographs but
6 that is it, and for the most part, it will be
7 limited to further argument but for the
8 photographs.

9 PRESIDENT VEEDER: On your current
10 expectations, can we start at 9:00 or 9:30?

11 MR. DUGAN: Yes. We can start at 9:00, if
12 you would like.

13 PRESIDENT VEEDER: Again, your current
14 expectation, if you are entitled to put certain of
15 the disputed documents to Mr. Vind by telephone or
16 video link, you say "fairly short." What are you
17 talking about?

18 MR. DUGAN: Fifteen minutes.

19 MR. LEGUM: The Tribunal will recall that
20 by our second letter of April 23, 2004, the United
21 States proposed a briefing schedule on this motion,

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1 this motion to exclude this evidence that provided
2 for an initial submission, a responsive submission,
3 a reply and a rejoinder that would have had this
4 issue fully briefed and submitted weeks before the
5 hearing started. Methanex, for whatever reason,
6 decided that it did not want to have full briefing
7 on the issue, and, therefore, it decided that it
8 would simply leave the issue to be addressed in a
9 more hasty fashion at the hearing. It is, at least
10 in our view, as a result of that decision on

11 Methanex's part, that we find ourselves addressing
12 and spending so much of our time at this hearing on
13 this issue.

14 PRESIDENT VEEDER: It may be the
15 Tribunal's decision that you are criticizing, Mr.
16 Legum, because it was our decision not to decide
17 the point before the hearing started.

18 Let's take a level of practicality.
19 Obviously it would be quite improper to ask
20 Mr. Vind to stand by the telephone or video link
21 tomorrow. He is taking the red eye back to Los

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1 Angeles, so tomorrow is out. But do you know about
2 his movements next week, Monday or Tuesday?

3 MR. LEGUM: I know his wife is having
4 surgery next week. I don't know what date that is.

5 PRESIDENT VEEDER: I don't think we can
6 do anything more but conclude Mr. Vind's evidence
7 today. We will hear argument tomorrow on the U.S.
8 motion and we will start early, if that is
9 acceptable to my colleagues and the parties, with
10 your response, and we will have to make a ruling as
11 soon as we can, about the disputed documents, and
12 then we will hear an application from you, if we
13 allow you to make use of these documents, an
14 application to cross-examine further Mr. Vind by
15 telephone or videolink, but there may be some
16 practical difficulties given what Mr. Legum has
17 just said. That is all we can do. For the time

18 being, if we can have Mr. Vind back, we can
19 conclude this part of his testimony, at least.

20 (The witness returns to the room)

21 PRESIDENT VEEDER: Mr. Vind, we have come

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1 to the end, at least of this part of your
2 testimony. So we want to thank you for coming
3 today, and we wish you a safer trip back to Los
4 Angeles than the flight you have been describing.
5 It is possible that a request will be made to see
6 if you could answer further questions, but an
7 approach will be made through the U. S. State
8 Department, and it won't be in person; it will be
9 by telephone or some other arrangement which won't
10 require you to come back to Washington, D. C. , but
11 thank you very much for coming today.

12 There is one thing we have to discuss,
13 which we will have to discuss when Mr. Vind leaves
14 the room.

15 The terms of our Order made yesterday,
16 covered the period up to the time when Mr. Vind
17 began his evidence. Given that, Mr. Dugan, you
18 haven't put the documentation to Mr. Vind, we
19 wonder whether we should be doing something about
20 amending that Order.

21 MR. DUGAN: Are you talking about the

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1 Embargo Order?

2 PRESIDENT VEEDER: Wasn't going to call it
3 the Embargo Order but it is the Embargo Order.

4 MR. DUGAN: I don't have any objection to
5 terminating the Embargo Order at this point.

6 MR. LEGUM: No objection here.

7 PRESIDENT VEEDER: It is not a question of
8 terminating the Embargo Order. The Order stands
9 but in accordance with its terms, it changed the
10 minute Mr. Vind began his evidence.

11 Unless there is something else somebody wanted to
12 raise, we will start tomorrow morning at 9:00.

13 MR. LEGUM: Fine with us.

14 PRESIDENT VEEDER: Before we depart, why
15 don't we go through the schedule after the argument
16 tomorrow.

17 Mr. Dugan, you will take a certain amount
18 of time, but take your time, it is an important
19 issue. There will be a response from the United
20 States. Assume we are through that by 11:00, can
21 we go through the timetable tomorrow?

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1 MR. DUGAN: We have two experts to
2 cross-examine tomorrow, Fogg and Happel, and I
3 assumed it would be one before lunch and one after
4 lunch. I don't think that the examinations are
5 intended to be particularly lengthy. It is my
6 understanding from my partner, Ms. Callaway, that
7 we should have no trouble finishing by--certainly
8 by 5:30, and probably well before then.

9 MS. MENAKER: Excuse me, if I may, I
10 believe that Mr. Simeroth is also scheduled for
11 tomorrow.

12 MR. DUGAN: I don't think--that may push
13 us to 5:30, but I don't think beyond that.

14 PRESIDENT VEEDER: Anything else?

15 MR. LEGUM: Not here.

16 PRESIDENT VEEDER: Thank you very much.
17 Until 9:00 tomorrow.

18 (Whereupon, at 5:53 p.m., the hearing was
19 adjourned until the following day.)

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1 CERTIFICATE OF REPORTER

2

3 I, David A. Kasdan, RDR-CRR, Court
4 Reporter, do hereby testify that the foregoing
5 proceedings were stenographically recorded by me
6 and thereafter reduced to typewritten form by
7 computer-assisted transcription under my direction
8 and supervision; and that the foregoing transcript
9 is a true record and accurate record of the
10 proceedings.

11 I further certify that I am neither
12 counsel for, related to, nor employed by any of the
13 parties to this action in this proceeding, nor
14 financially or otherwise interested in the outcome
15 of this litigation.

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1 CERTIFICATE OF REPORTER

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3 I, Cathy Jardim, RPR, Court Reporter, do
4 hereby testify that the foregoing proceedings were
5 stenographically recorded by me and thereafter
6 reduced to typewritten form by computer-assisted
7 transcription under my direction and supervision;
8 and that the foregoing transcript is a true record
9 and accurate record of the proceedings.

10 I further certify that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to this action in this proceeding, nor
13 financially or otherwise interested in the outcome
14 of this litigation.

15

16 CATHY JARDIM, RPR

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