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1 that was available at that time, yes.
 2 Q. Paraquat only, it says, causes
 3 effects in the mouse, right?
 4 A. Yes.
 5 Q. So, in other words, if you use the
 6 active agreement of paraquat by itself, it will
 7 cause effects in the mouse. That's what that
 8 means, correct?
 9 A. I think this might mean that
 10 paraquat -- we're talking here about
 11 Parkinson's-like pathology, isn't -- the
 12 effects are not just seen in the mouse.
 13 I think it may have been referring to the fact
 14 that there were studies in the rat,
 15 for example, in the literature.
 16 Q. Oh, okay. That's correct, and
 17 I appreciate you pointing that out because
 18 it demonstrated -- you have already
 19 demonstrated that paraquat with rats doesn't
 20 seem to cause any effect, correct?
 21 A. Yeah, in our hands we didn't see
 22 an effect with the rats but --
 23 Q. So you --
 24 A. -- obviously other people did.
 25 Q. Okay. But your study showed that

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1 you could do this. So what you, in 2007,
 2 concluded, that paraquat only causes effects
 3 in the mouse in your test animals, not in the
 4 rats, correct?
 5 A. Well, this is what we cannot say.
 6 So we can't say that paraquat only causes
 7 effects in the mouse because other
 8 researchers, although we didn't find anything
 9 in the rat, had found effects in the rat.
 10 That would be my interpretation here.
 11 Q. All right. And the next one says:
 12 "The mouse data on paraquat are not
 13 relevant to humans."
 14 You can't say that either, right?
 15 A. At that time, that was absolutely
 16 right, yes.
 17 Q. Because mouse data was relevant
 18 to humans, correct?
 19 A. The mouse data could be relevant
 20 to humans, yes.
 21 Q. And it wouldn't be appropriate
 22 to say that it wasn't. That's what this says?
 23 A. That's right.
 24 Q. Okay. And you couldn't say people
 25 aren't exposed to paraquat either, could you?

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1 A. Certainly not, no.
 2 Q. Because you knew by then, and you'd
 3 known for some period of time back, as you
 4 said, in the '90s, I think in your earlier part
 5 of the deposition you'd indicated maybe even
 6 earlier, that people using this, mixing it,
 7 loading it, applying it, were certainly exposed
 8 to paraquat, correct?
 9 A. Yes, that's correct.
 10 Q. All right.
 11 "There are no data reporting that
 12 paraquat may be associated with PD in humans."
 13 You can't say that either, right?
 14 A. Yes, we can't say that because
 15 there were some epidemiology studies with
 16 association.
 17 Q. And that you can't say that the data
 18 showed that paraquat does not cause PD in
 19 humans either, can you?
 20 A. In 2007, with the evidence in front
 21 of us, that was certainly something that is
 22 clear; we could not say definitively that
 23 paraquat does not cause Parkinson's disease.
 24 Q. All right.
 25 MR. TILLERY: Now, can we go to

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1 KT566, and this is -- we're going to pull
 2 up now --
 3 MS. BRUMITT: 89.
 4 MR. TILLERY: -- Exhibit No. 89.
 5 (Botham Exhibit 89 marked for
 6 identification.)
 7 BY MR. TILLERY:
 8 Q. Okay. Do you see that? Do you want
 9 to --
 10 A. Yeah.
 11 Q. Would you mind taking that
 12 document, sir, and looking -- refreshing
 13 yourself. This is SYNG-PQ-13131087.
 14 A. Okay. I can see that and I'm just
 15 looking through it, if that's okay?
 16 Q. Yeah. Focus on page 8, if you
 17 wouldn't mind. Look at the whole document as
 18 you wish but focus on 8.
 19 A. Okay, thank you. I've read the --
 20 up until slide -- or up until page 10.
 21 Is that sufficient for me for now?
 22 Q. It is. I think that's plenty.
 23 And if you'd go to the Conclusion page.
 24 A. Okay. That's page 8.
 25 Q. All right. The first conclusion is:

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1 "We have developed a deeper
2 understanding of Parkinsonism and Parkinson's
3 Disease."
4 Do you see that?
5 A. Yes.
6 Q. And I got ahead of myself.
7 Let's identify the document. It's called
8 a "Paraquat Update." And this is Jonathan
9 Sullivan, Lewis Smith, and Gerardo Ramos.
10 Who is Gerardo Ramos?
11 A. He's pronounced Gerardo Ramos,
12 and Gerardo was the head of crop protection
13 research.
14 Q. Worldwide?
15 A. Yes, global head. Yes.
16 Q. Global head. And what's the
17 Syngenta Executive Committee?
18 A. That was the senior leadership team
19 chaired by the chief executive officer at
20 Syngenta.
21 Q. So this was a presentation to the
22 highest-ranking -- really, highest-ranking
23 people below the board?
24 A. That is correct.
25 Q. All right. Getting back to the

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1 conclusions again, it says:
2 "We have developed a deeper
3 understanding of Parkinsonism and Parkinson's
4 Disease; We have demonstrated that [paraquat]
5 will cross the blood brain barrier."
6 Correct?
7 A. Could you just go to the right
8 page, please? I can only see page 1 at the
9 moment.
10 Q. Page 1. Okay.
11 A. Yeah, you've taken control so
12 I just need to be able to go to page 8.
13 Thank you. Thank you.
14 Q. Do you see page 8?
15 A. Yeah, I can now see it, thank you.
16 Q. If you look at the fourth bullet
17 point:
18 "We have demonstrated that
19 [paraquat] will cross the blood brain barrier."
20 In other words, paraquat gets into
21 the brain, consistent with the very last
22 exhibit we talked about, the "We can't say"
23 document. Remember?
24 A. Yes.
25 Q. All right. Now, despite recognizing

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1 internally what I've shown you in the last two
2 exhibits, the document marked Exhibit No. 88
3 and Exhibit No. 89, Syngenta's public position
4 was that paraquat would not readily cross the
5 blood-brain barrier, correct?
6 A. Yes. I think we discussed this
7 in my previous deposition, that the public
8 commentary at that time had not caught up with
9 the science that had been done.
10 Q. And that's a very polite way of
11 saying that you weren't telling the people on
12 the website what you knew scientifically about
13 the chemical, correct? You weren't actually
14 reporting it?
15 A. No, I wouldn't put it that way.
16 It's not that -- it wasn't a case that
17 we weren't telling them. I think the process
18 for updating that was not necessarily at that
19 time working as quickly as perhaps it should
20 have done.
21 MR. TILLERY: Let's go to the next
22 exhibit. This would be number 90.
23 That's 567.
24 (Botham Exhibit 90 marked for
25 identification.)

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1 BY MR. TILLERY:
2 Q. Do you know what this document is?
3 And this, just for the record, is
4 SYNG-PQ-00477567.
5 A. Okay. So this is a technical
6 position document on the subject of paraquat
7 and Parkinson's disease, written by the health
8 assessment function of Syngenta, which I was
9 a part of.
10 Q. This is a 2007 document, right?
11 A. I don't have that date in front of
12 me, so -- yes, it sounds about right.
13 Q. Okay. I could refer you to page 21
14 of that document where it has the date. We can
15 look at it if you want to, and --
16 A. That's fine. No, that's fine.
17 Q. Okay. To whom would this document
18 have been distributed?
19 A. I don't know to whom this might
20 have been distributed. This was quite a long
21 time ago so I'm not sure what list of people
22 was included.
23 Q. Would you agree this was designed,
24 from the looks of it, to be distributed outside
25 of Syngenta?

1 A. Normally, these position documents
 2 would not be for external use.
 3 Q. So this would be an internal-use
 4 document only?
 5 A. Yes, that would normally be their
 6 purpose.
 7 Q. Well then, we'll move on, okay,
 8 if that's the testimony.
 9 Would you agree that as of 2008,
 10 after these exhibits we've marked and shown
 11 as 88 and 89, Syngenta was telling the public
 12 on its Paraquat Information Center,
 13 paraquat.com, that paraquat does not cross the
 14 blood-brain barrier easily, meaning that
 15 it does not reach the specific location in the
 16 brain necessary to produce Parkinson's
 17 symptoms?
 18 MR. NARESH: I'll object to the
 19 form.
 20 Stephen, I'm not sure if you
 21 misspoke with the year or the exhibit
 22 number. I think it got confused.
 23 BY MR. TILLERY:
 24 Q. Let me refer you to SYNG-PQ-1586601,
 25 and for you, if you're looking, this is a

1 (Botham Exhibit 91 marked for
 2 identification.)
 3 MR. NARESH: We don't have a Bates
 4 number in our production but -- or a
 5 document starting with that Bates
 6 number --
 7 MR. TILLERY: Are they all that
 8 number?
 9 MR. NARESH: No, I just -- I can
 10 search our database by production/Bates
 11 beginning number and I don't have a
 12 document starting with 1586601.
 13 MR. TILLERY: It was 495 pages.
 14 It was a compilation of a number of
 15 documents. That's what the front page
 16 looks like but we can show you on the
 17 screen in a second.
 18 MR. NARESH: Okay.
 19 MR. TILLERY: Well, 490 pages.
 20 This is on page 485, and we'll pull it up
 21 for you. That's the one right there.
 22 BY MR. TILLERY:
 23 Q. Dr. Botham, this will be
 24 Exhibit No. 91.
 25 A. Okay. I can see page 485 on my

1 massive document and it was delivered to us in
 2 a paged document that was 490 pages long and
 3 we're just referencing one. It's from the
 4 Paraquat Information Center, Paraquat
 5 Frequently Asked Questions: Answers to Your
 6 Frequently Asked Questions About the Human
 7 Safety of Paraquat from the Paraquat
 8 Information Center.
 9 MR. TILLERY: We've lost Dr. Botham
 10 from our end, on the ...
 11 THE WITNESS: I'm still here.
 12 Can you hear me?
 13 MR. TILLERY: Yes, we sure can.
 14 We can hear you.
 15 I presume that we're getting
 16 a recording, at least a video recording.
 17 MR. NARESH: I'm sorry, I'm not
 18 trying to interrupt, but could you give
 19 me the Bates number again, and --
 20 MR. TILLERY: Absolutely.
 21 I'm going to give you the Bates number
 22 for this specific document. It's
 23 SYNG-PQ-1586601.
 24 Give us a second here, Dr. Botham,
 25 so you can see it.

1 screen.
 2 Q. Okay, you can. On page 485,
 3 all right. And do you see this says -- at the
 4 very top, it says:
 5 "Paraquat FAQs: Answers to Your
 6 Frequently Asked Questions About the Human
 7 Safety ..."
 8 And then it goes off.
 9 And at the top, the heading,
 10 it says, "Answers to Your ... Questions About
 11 the Human Safety of Paraquat from Paraquat
 12 Information Center."
 13 Okay?
 14 A. Yes.
 15 Q. Do you see that?
 16 A. Yes, I do.
 17 Q. Okay. All right. I think this was
 18 2008 is what our record -- yes, it is,
 19 January 18, 2008, in the lower right-hand
 20 corner.
 21 Do you see that?
 22 A. I can't see that. Now I can, yes.
 23 Q. Yes. All right. Then let's look
 24 here. It says, "Does paraquat cause ..."
 25 One of the questions is. Is paraquat

1 safe to farmers and their families? What is
2 the safety of paraquat to farmers from use long
3 term? And one of them is, Does paraquat cause
4 Parkinson's disease?

5 Doesn't it? Right?

6 A. Yes.

7 Q. And the answer that was given was,
8 and I'm quoting now:

9 "There is no scientific or reliable
10 epidemiological evidence so far to link
11 paraquat with Parkinson's Disease. Previous
12 studies have demonstrated that paraquat
13 does not cross the blood-brain barrier easily,
14 meaning that it does not reach the specific
15 location in the brain necessary to produce
16 Parkinson's symptoms. Epidemiology studies in
17 areas of high and long-term paraquat usage have
18 shown no increase of neurotoxic incidents."

19 Do you see that?

20 A. Yes, I see that.

21 Q. Was that correct on January 18,
22 2018 -- 2008, sorry'?

23 A. I think in 2008 that certainly had
24 some inaccuracies, I would agree. So, as
25 I said earlier, it appears that this

1 BY MR. TILLERY:

2 Q. Go ahead and answer, sir.

3 A. Okay, thank you. Yeah. So, no,
4 I can't -- I don't know why that was appearing
5 here.

6 Q. Do you understand that Syngenta
7 still claims on its website that:

8 "Paraquat, even at the maximum
9 tolerated dose, does not cause dopaminergic
10 neuronal cell loss in the area of the brain
11 associated with Parkinson's disease"?

12 Were you aware of that?

13 A. So to clarify, that is what we're
14 saying today?

15 Q. Yes.

16 A. Right. And that is, overall, still
17 our view because of the extensive work that
18 we have done in the animal model up to the
19 maximum tolerated dose, where we've been
20 unable to replicate the earlier findings that
21 we've been discussing extensively over the
22 last few days.

23 Q. In other words, the Marks findings,
24 right?

25 A. What I'm describing now are the --

1 communication had not had a chance, for
2 reasons which I can't fully explain, to catch
3 up with the science that was still emerging.

4 Q. Why was Syngenta telling the public
5 that paraquat does not cross the blood-brain
6 barrier, while acknowledging internally that
7 paraquat does cross the blood-brain barrier?

8 MR. NARESH: Object to the form.

9 THE WITNESS: I'm afraid I can't
10 answer that. I don't -- I honestly don't
11 know why that was still on paraquat.com
12 at that time.

13 BY MR. TILLERY:

14 Q. Why was Syngenta telling the public
15 that paraquat does not reach the place in the
16 brain related to Parkinson's symptoms?

17 A. Again, I can't answer that.

18 I don't know how that --

19 THE STENOGRAPHER: Sorry,

20 Mr. Naresh, I saw your lips move but
21 I didn't hear you. Sorry.

22 THE WITNESS: Yeah, I didn't hear
23 you either, Ragan, sorry.

24 MR. NARESH: I'm objecting to the
25 form.

1 is all the work that was done in the
2 Breckenridge, et al. publication, in the
3 Minnema, et al. publication and in the Smeyne,
4 et al. publication, which is when the --

5 Q. Right.

6 A. -- the research work that's been
7 done since 2008.

8 Q. Well, let's look at it this way.
9 If you look at the Marks studies 2, 3, 4 that
10 she did, is that statement correct?

11 A. In isolation, no.

12 Q. Okay. Do you mention anywhere that
13 we have also done three studies to show that
14 this statement is just absolutely flat wrong?
15 Do you say that anywhere on paraquat.com?

16 MR. NARESH: Objection to form.

17 THE WITNESS: We don't say that
18 because that statement is not flat wrong.
19 It is based on the weight of evidence
20 which we have spoken about quite a lot.
21 We have done many more studies in much
22 greater detail since Marks did her
23 studies and we have been unable
24 to replicate the finding of damage
25 to dopaminergic neurones.

1 MR. TILLERY: I move to strike your
 2 answer as unresponsive.
 3 BY MR. TILLERY:
 4 Q. If you apply just the Marks studies,
 5 you agree with me, sir, don't you, that that
 6 statement is simply not correct, right?
 7 MR. NARESH: Object to the form.
 8 THE WITNESS: Yes, it's correct,
 9 but I don't know why you would apply it
 10 to just a small part of the literature.
 11 That's not how science works. That's not
 12 how science is communicated.
 13 MR. TILLERY: Move to strike your
 14 answer as unresponsive.
 15 BY MR. TILLERY:
 16 Q. Would you agree with me, sir, that
 17 if you look just at the Marks studies 2, 3 and
 18 4, that that statement is not correct?
 19 MR. NARESH: Objection to the form.
 20 THE WITNESS: If you look at those
 21 studies only, that is correct.
 22 It isn't --
 23 BY MR. TILLERY:
 24 Q. Okay.
 25 A. Yes, that's not a correct

1 agree with me that that would have been
 2 a bald-faced lie, right?
 3 MR. NARESH: Objection to form.
 4 THE WITNESS: No. No, because by
 5 2012 we'd generated the data. It took
 6 quite some time to get the data
 7 published, so by 2012 we had done the
 8 studies that were reported in
 9 Breckenridge, et al.
 10 BY MR. TILLERY:
 11 Q. So, well, then what year? 2011?
 12 Is that when you did it?
 13 A. Again, off the top of my head,
 14 I can't give you exact dates but, certainly,
 15 it would be, yes, in the preceding two to
 16 three years. It was quite a long-term program
 17 of research.
 18 Q. Okay. Before the Breckenridge
 19 study, let's put it that way, and relying upon
 20 Dr. Marks, we both agree that that statement
 21 was clearly not correct, right?
 22 A. Before we did our work which
 23 culminated in Breckenridge and the subsequent
 24 papers, yes, the weight of evidence was
 25 different.

1 statement.
 2 Q. All right. And when you look at
 3 that statement, is it important to tell the
 4 public that you, at a minimum, have had mixed
 5 results with respect to the findings?
 6 A. No. In my judgment, it's important
 7 to tell the public what we believe the
 8 totality of the evidence is showing and where
 9 the weight of the evidence is taking us, and
 10 the weight of the evidence is now taking us
 11 to the statement that now appears on the
 12 website.
 13 Q. Well, let's make sure we're clear on
 14 what you're basing that statement on the
 15 website on. You're basing that on, you said,
 16 the Smeyne study, the Breckenridge study, the
 17 Minnema study. And what else? Anything else?
 18 A. No. Those are the three main
 19 studies, yes.
 20 Q. Those are the studies you're basing
 21 your conclusions on, correct?
 22 A. That is correct.
 23 Q. Okay. So if this same statement
 24 went out in 2012, a year before the
 25 Breckenridge study was published, you would

1 Q. Okay.
 2 When I took your testimony back in
 3 February, you testified it would be
 4 inappropriate for lawyers to be telling
 5 Syngenta scientists which experiments they
 6 should or should not be conducting. Correct?
 7 A. Correct.
 8 Q. You testified:
 9 "We would not expect them to be
 10 saying you do this experiment and not that
 11 experiment."
 12 Do you remember saying that?
 13 A. I do.
 14 Q. And you stand by that today, don't
 15 you?
 16 A. I would certainly stand by that,
 17 yes.
 18 Q. It would be highly inappropriate for
 19 lawyers to be dictating what scientific studies
 20 are undertaken at Syngenta, correct? That's
 21 what you said?
 22 A. That's my view. That is my view,
 23 yes.
 24 Q. And it was then and it is now,
 25 right?

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1 A. That is correct.
 2 Q. It hasn't changed over the last
 3 couple of months, has it?
 4 A. Nothing has changed as far as
 5 I'm concerned.
 6 Q. All right.
 7 In other words, it would be
 8 inappropriate for lawyers to be advising
 9 Syngenta scientists on matters of science,
 10 right?
 11 A. On matters of science and what
 12 we -- how we conduct the science, that is
 13 true, yes.
 14 Q. And changing scientific reports,
 15 right?
 16 A. I would certainly not expect
 17 lawyers to be giving us any advice which
 18 changed the way in which the science was being
 19 interpreted. Certainly not.
 20 Q. Right. And because the scientists,
 21 to the extent that they can possibly prevail in
 22 it, wished to maintain autonomy from any
 23 influence of any kind from performing and
 24 conveying accurate empirical information from
 25 the study. That's the pursuit, isn't it?

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1 A. That's -- you described that well,
 2 yes.
 3 Q. And actually replicable science that
 4 everybody else can get the same result; a good,
 5 solid, honest laboratory that gets the same
 6 results as another good, solid, honest
 7 laboratory, correct?
 8 A. Yes. And science sometimes -- just
 9 to clarify that a little more. Sometimes
 10 a good, solid, reliable laboratory will get
 11 a different result from an equally good, solid
 12 one because -- sometimes for reasons we don't
 13 understand. But that's science for you;
 14 you can get different results.
 15 Q. But eventually what happens, after
 16 enough science is undertaken, is that the
 17 results start becoming homogenous and they
 18 become accepted scientific facts, don't they?
 19 A. Yes. Usually you'll get a degree
 20 of convergence and a consensus emerges.
 21 Q. And that's really what you call the
 22 scientific method, isn't it?
 23 A. It is.
 24 Q. And that's what you learned in
 25 graduate school, I presume. I'll bet your

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1 teachers told you exactly that, didn't they?
 2 A. Yes, indeed.
 3 Q. All right.
 4 Now, who is Jeff Wolff?
 5 A. Well, there are actually two Jeff
 6 Wolffs. So there's a Jeff Wolff --
 7 Q. Not the scientist, the other one.
 8 A. Yeah, okay. Jeff Wolff was an
 9 external legal counsel.
 10 Q. Okay. And he's an American lawyer
 11 from Texas, isn't he?
 12 A. I don't recall exactly which state
 13 he was from, so certainly from the US.
 14 Q. And he's with the law firm called
 15 Fulbright & Jaworski, right?
 16 A. Yes, that's correct.
 17 Q. And when did his association begin
 18 with Syngenta?
 19 A. I can't give you an accurate date.
 20 It was somewhere around the time that the
 21 Health Science Team was formed.
 22 Q. Now, when you and I met in February,
 23 you testified that in 2008 Syngenta was
 24 being -- the words you used were "very
 25 transparent" about Dr. Marks's paraquat Charles

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1 River mouse research.
 2 Do you remember that?
 3 A. Yes.
 4 Q. And you said that Syngenta was being
 5 very transparent at a Syngenta meeting in
 6 Atlanta, Georgia, in February 2008.
 7 Do you remember that?
 8 A. Yes.
 9 Q. And I think this is Botham
 10 Exhibit 36 that we've referenced. Let me see
 11 here. Actually, I don't think we need to call
 12 that up.
 13 That meeting I think we discussed
 14 was February 13 and 14, 2008.
 15 Where was that meeting conducted
 16 in Atlanta?
 17 A. Sorry, it's too long ago for me to
 18 remember exactly where it was.
 19 Q. Was that at the Fulbright & Jaworski
 20 law firm?
 21 A. I don't remember it being there,
 22 but, as I say, it's 12 years ago.
 23 Q. All right. And as late as
 24 January 25, 2008, the organizers of that
 25 Atlanta meeting intended it to be a meeting of

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1 scientists to discuss science, didn't it?
 2 Do you know?
 3 A. Yes, that was my understanding of
 4 what that meeting was being set up to do.
 5 Q. You were there, weren't you?
 6 You went there?
 7 A. I was. I was there.
 8 Q. You flew to America and went to
 9 Atlanta and went to that meeting. Okay.
 10 MR. TILLERY: If we can, please,
 11 pull up the next exhibit, and that's 572.
 12 MS. BRUMITT: Number 92.
 13 MR. TILLERY: This will be
 14 Plaintiff's Exhibit 92.
 15 (Botham Exhibit 92 marked for
 16 identification.)
 17 MR. TILLERY: Why don't you give
 18 the witness that document so he can
 19 familiarize himself with that document.
 20 BY MR. TILLERY:
 21 Q. Do you have it, sir?
 22 A. I can see page 1 but it's under
 23 your control, I think, at the moment.
 24 MR. NARESH: Is this supposed to be
 25 a one-page document or is there more than

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1 one page?
 2 MR. TILLERY: It's a one-page
 3 document.
 4 MR. NARESH: Thank you.
 5 THE WITNESS: Okay, thank you.
 6 I can see the whole document now.
 7 MR. TILLERY: I don't remember
 8 reading the Syngenta number in the
 9 record. Did I do that?
 10 MS. BRUMITT: No.
 11 MR. TILLERY: I think this is
 12 SYNG-PQT-ATR-16995053, Exhibit 92.
 13 BY MR. TILLERY:
 14 Q. Can you see it?
 15 A. I can see the document, yes.
 16 Q. Yeah, it says "Agenda for PQ
 17 Scientific Review Meeting."
 18 Actually, it does say -- it was not
 19 at their office, it was at the Westin Peachtree
 20 Plaza Hotel, Tower Room, Atlanta, Georgia.
 21 Right?
 22 A. Yes. And that now meets my memory
 23 of it. I thought it was in a hotel but I
 24 wasn't sure when you asked me the previous
 25 question.

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1 Q. All right. And it says Lewis Smith
 2 was there, right?
 3 A. Correct.
 4 Q. Janis McFarland. What was her job?
 5 A. Head of regulatory affairs in North
 6 America.
 7 Q. And that included Canada, United
 8 States and Mexico, right?
 9 A. Correct.
 10 Q. Okay. Then you have Martin Wilks.
 11 What was his job?
 12 A. He was what was called product
 13 medical advisor, so he was medically qualified
 14 to deal with medical aspects of potential
 15 toxicity to our products.
 16 Q. And Lewis Smith's job or
 17 responsibility at that time was what?
 18 A. 2008, he was probably -- he was
 19 either still head of central toxicological
 20 laboratory or he was -- he had moved on to be
 21 head of development in Basel. I can't
 22 remember which of the two.
 23 Q. And Dave Berry, what did he do?
 24 A. He was a product toxicology --
 25 a junior product toxicologist supporting

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1 paraquat at that time.
 2 Q. And Phil Botham is you.
 3 A. That was me.
 4 Q. And then Nick Sturgess. We've
 5 talked about him in this deposition several
 6 times. Kim Travis we have, too, and Charles
 7 Breckenridge, right?
 8 A. Yes.
 9 Q. That's from the R&D department,
 10 right?
 11 A. Yes.
 12 Q. And then the legal department's
 13 there at a scientific meeting. So it says
 14 "Agenda for the PQ Scientific Review Meeting."
 15 But you've got a bunch of lawyers, and that's
 16 Jonathan Sullivan, Beth Quarles, Alan Nadel.
 17 Are they all Syngenta lawyers?
 18 A. They are. Or were.
 19 Q. Then you have Syngenta public
 20 relations, Sherry Ford, Basel representative,
 21 okay, "to be determined." Was there a Basel
 22 Switzerland representative there, too?
 23 A. I don't know if there eventually
 24 was one. We'd have to look at the minutes of
 25 the meeting.

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1 Q. And then we have a reference to
 2 outside counsel. That means a lawyer who
 3 is not employed by Syngenta, who is privately
 4 retained, right, as far as you know?
 5 A. Yes.
 6 Q. And that person was Jeff Wolff,
 7 Fulbright & Jaworski, correct?
 8 A. Correct.
 9 Q. And then you had outside experts,
 10 Jim Simpkins, Jack Mandel, Phil Cole. Who are
 11 those gentlemen?
 12 A. They were academic experts.
 13 Jim Simpkins is from a university in north --
 14 Q. I think we had some feedback --
 15 A. Sorry about that, yeah, could we --
 16 Q. If you wouldn't mind answering that
 17 again, please, for the reporter.
 18 A. Yes. Jim Simpkins, an academic
 19 toxicologist from the United States.
 20 Jack Mandel, again, an external expert
 21 I think, at that time, from a consultancy
 22 company. And Phil Cole, another academic
 23 expert.
 24 Q. So this was dated January 25,
 25 a draft, and then at the meeting, February 13,

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1 this became not just a PQ scientific review
 2 committee meeting but a PQ scientific and legal
 3 claims review meeting, right?
 4 A. It was a science meeting with legal
 5 people there to give advice on aspects of how
 6 to conduct our business.
 7 Q. And that was because you were going
 8 to talk about paraquat and Parkinson's disease,
 9 right? That's what this was about?
 10 A. That was certainly one reason given
 11 as the explanation for their presence, yes.
 12 MR. NARESH: I'll give a belated
 13 objection on form. Sorry about that.
 14 BY MR. TILLERY:
 15 Q. And despite that change, the primary
 16 purpose of the meeting remained scientific in
 17 nature, right?
 18 A. That's right, and that indeed was
 19 my recollection of how the meeting did play
 20 out in practice.
 21 Q. So Mr. Wolff wasn't just attending
 22 the Atlanta meeting, he was actually
 23 a participant, right?
 24 A. Yes, he was, and that agenda
 25 describes some of the more precise ways in

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1 which he made his input.
 2 Q. Had he attended any other paraquat
 3 Health Science Team meetings before February
 4 2008?
 5 A. I don't recall whether he did or
 6 not, I'm afraid. We would need to check the
 7 record.
 8 Q. And within the first 15 minutes of
 9 this mostly scientific meeting, Mr. Wolff and
 10 another lawyer, Jonathan Sullivan, presented
 11 for 45 minutes, didn't they?
 12 A. That was the intention, yes.
 13 Q. And if you look on the agenda,
 14 that's what it shows, doesn't it?
 15 A. Yes. An agenda is an intent,
 16 of course. How long they spoke for, I don't
 17 know.
 18 Q. And the agenda item for Mr. Sullivan
 19 says "Discussion of overall government's
 20 framework." What does that mean? What did
 21 he talk about?
 22 A. So this would have been to describe
 23 how -- what this group, which soon after this
 24 became known as the Paraquat Health Science
 25 Team, so it was not called that at this point

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1 in time, how that Health Science Team and its
 2 work should report, within the internal
 3 structure of R&D and the company more broadly,
 4 to people that we would need to keep informed
 5 and to seek counsel from as our work
 6 progressed.
 7 Q. And then Mr. Wolff talked for half
 8 an hour about attorney-client privilege and
 9 communications management, right?
 10 A. Yes.
 11 Q. So there were a whole lot of
 12 scientists, mostly talking about science at
 13 a science meeting, starting off their meeting
 14 with a lecture on attorney-client privilege,
 15 right?
 16 A. That's correct.
 17 Q. What is communications management?
 18 A. Well, this, if I remember
 19 correctly, as it says in brackets there in the
 20 words in italics, was, for example, to do with
 21 how we should be taking notes of the meeting,
 22 how we would be best advised to record what
 23 was in our own notebooks or what would appear
 24 in minutes, so that they -- this was done in
 25 ways in which, if we needed to, attract

1 attorney-client privilege and in further
 2 communication it would do so.
 3 Q. Right. And, in fact, the point of
 4 this, getting to the bottom line, is that the
 5 lawyers at the meeting were reminding Syngenta
 6 scientists to keep their communications secret
 7 using attorney-client privileged
 8 communications. Wasn't that really what this
 9 was about?

10 MR. NARESH: Objection to form.

11 THE WITNESS: No, I think that's
 12 not the way I would put it. It was
 13 to ensure that our ability to
 14 communicate, so management of
 15 communications, was being properly
 16 managed, effectively managed. Not to say
 17 the whole thing had to be secret;
 18 that was not the intention.

19 BY MR. TILLERY:

20 Q. Well, are you telling me -- we're
 21 going to look at a number of additional
 22 exhibits, I'm just giving you fair warning.

23 Are you telling me that you didn't
 24 learn from these lawyers how to run the
 25 documents through a central lawyer to try to

1 MR. NARESH: Objection to form.
 2 THE WITNESS: I certainly recall
 3 that he was giving us guidance on how
 4 to communicate. I don't know whether
 5 he used the word "secret." I don't
 6 recall if he used that word or not.

7 BY MR. TILLERY:

8 Q. And he told the label -- strike
 9 that.

10 He told the scientists the label
 11 they should use is work product and
 12 attorney-client privilege on their subject
 13 matter label, didn't he?

14 A. Yes, I certainly remember that
 15 we were given guidance on the use of those
 16 terms.

17 Q. And Mr. Wolff also told the
 18 scientists that if an outside lawyer like him
 19 requested work by the scientists, then they
 20 would have a higher level of privilege than if
 21 an in-house Syngenta lawyer requested the work,
 22 right?

23 MR. NARESH: Objection to the form.

24 THE WITNESS: I don't remember
 25 precisely whether he said that, so you --

1 keep them from public scrutiny? Is that what
 2 you're telling me?

3 MR. NARESH: Object to the form.

4 THE WITNESS: No, I'm not saying --
 5 I'm not telling you that. That was part
 6 of the way in which the management of our
 7 recordkeeping was -- we were asked
 8 to comply with.

9 BY MR. TILLERY:

10 Q. Well, in fact, Jeff Wolff told the
 11 scientists at the 2008 meeting that if they
 12 sent emails only to lawyers, then they would be
 13 privileged, didn't he?

14 MR. NARESH: Objection to form.

15 THE WITNESS: I can't recall if
 16 that's what he said.

17 BY MR. TILLERY:

18 Q. And he said that merely Cc'ing the
 19 lawyers -- excuse me. Excuse me. Let me start
 20 over. Withdraw that.

21 He said that merely Cc'ing the
 22 lawyers or copying them on email, that wouldn't
 23 be good enough; they had to send the emails
 24 only to the lawyers in order to keep them
 25 secret. That's what he told you, wasn't it?

1 it may appear in the minutes but I can't
 2 confirm that.

3 MR. TILLERY: Well, let's go to the
 4 next document to see if I can refresh
 5 your recollection.

6 Is that 93?

7 MS. BRUMITT: 93.

8 MR. TILLERY: Okay, this is
 9 Plaintiff's Deposition Exhibit 93.

10 (Botham Exhibit 93 marked for
 11 identification.)

12 MR. NARESH: Before we get into
 13 this document, I see this was produced
 14 pursuant to rule -- or 502(d)
 15 stipulation, so I, as a general matter,
 16 don't object to questioning on this
 17 document; however, I reserve the right
 18 to object to any specific question on
 19 privilege or work product grounds,
 20 so long as we have an agreement that your
 21 questioning here is done pursuant to the
 22 502(d) stipulation, i.e. Syngenta is not
 23 waiving the ability to object to the
 24 production of any testimony related
 25 to this document under 502(d).

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1 MR. TILLERY: We agree to that --
 2 we agree to that, counsel. Right.
 3 BY MR. TILLERY:
 4 Q. Can you look at that document, sir,
 5 and that's 502(d)-010660.0001. It's a
 6 two-page --
 7 THE STENOGRAPHER: Sorry,
 8 Mr. Tillery, could you say those numbers
 9 again, please? Sorry.
 10 MR. TILLERY: Do you want me to say
 11 it even faster? Sorry. Okay.
 12 502(d)-010660.0001. Okay?
 13 THE STENOGRAPHER: Thank you.
 14 MR. TILLERY: You're welcome.
 15 BY MR. TILLERY:
 16 Q. That's a two-page document, sir.
 17 MR. NARESH: Hang on. Hang on.
 18 I think there's something getting
 19 confused because the document you just
 20 identified is not the document that's on
 21 the screen.
 22 MR. TILLERY: You're right.
 23 MR. NARESH: My little speech
 24 earlier was related to the document
 25 that's on the screen. It may be the same

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1 for the document that you're intending
 2 to ask about but I --
 3 MR. TILLERY: No, you're right.
 4 You're right. I gave you the wrong
 5 number. I apologize, sir. Excuse me.
 6 Yes, I'm sorry, I gave you the
 7 wrong number.
 8 Leah, the correct number is
 9 502(d)-022360.0001.
 10 Thank you.
 11 BY MR. TILLERY:
 12 Q. Do you have that on your screen,
 13 Dr. Botham?
 14 A. I do. I don't have control on the
 15 document now but I can see part of the first
 16 page.
 17 MR. TILLERY: Okay. Why don't you
 18 turn that over to him and let him --
 19 THE WITNESS: No, it's okay. I did
 20 see the full document up until this point
 21 so you don't need to do that. Please go
 22 ahead.
 23 MR. TILLERY: Okay. Can you put it
 24 back for display, please. All right,
 25 thank you.

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1 BY MR. TILLERY:
 2 Q. This is a document called "Action
 3 Notes from Atlanta Meeting 13-14 February
 4 2008."
 5 Right?
 6 A. That's correct.
 7 Q. And these are the same people that
 8 we referred to earlier who attended the Atlanta
 9 meeting, right?
 10 A. Yes, with a couple of additional
 11 people.
 12 Q. And you're on that list,
 13 Dr. P.A. Botham, right?
 14 A. That's correct, that's me.
 15 Q. Okay. From looking at this, these
 16 look to appear to be the notes summarizing what
 17 was said at that meeting, correct?
 18 A. That's correct.
 19 Q. Now, would you read for the record
 20 what that second bullet says. Do you see the
 21 second bullet there?
 22 A. Under the "General housekeeping
 23 rules"?
 24 Q. Yes.
 25 A. Okay. What that says is:

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1 "Internal communications with
 2 internal or external counsel should make it
 3 clear that the correspondence is privileged
 4 and that it is for potential paraquat
 5 PD litigation."
 6 Q. This whole thing was about paraquat
 7 PD litigation; is that what this was?
 8 A. What do you mean by "the whole
 9 thing"?
 10 Q. This meeting.
 11 A. No, it was not the whole thing.
 12 It was not just about litigation. It was the
 13 start of the Health Science Team work, which
 14 continued for many years afterwards, and still
 15 is continuing, with one aspect that we needed
 16 to understand, being the potential for
 17 paraquat/PD litigation, but --
 18 Q. And that's why --
 19 A. -- I don't --
 20 Q. Sorry. Go ahead and finish.
 21 I'm sorry.
 22 A. It was not driven by the
 23 litigation.
 24 Q. Okay. So when it says "internal
 25 communications with internal or external

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1 counsel," that would be Mr. Wolff, right?
 2 Right?
 3 A. He would be external counsel, yes.
 4 Q. Right.
 5 "... should make it clear that the
 6 correspondence is privileged and that it is for
 7 potential paraquat PD ..."
 8 Does that stand for Parkinson's
 9 disease?
 10 A. Yes, it does.
 11 Q. "... litigation."
 12 That's what the document actually
 13 says, doesn't it?
 14 A. That's what that says, yes.
 15 Q. Yes. You don't dispute that that's
 16 a summary, a good summary, of what was spoken
 17 at that meeting either, do you?
 18 A. No, I don't, and this was about
 19 communication rather than the content of what
 20 we were discussing.
 21 Q. Okay. Now let's look at the fourth
 22 and fifth bullets. If you'd look at those, it
 23 says:
 24 "Study work should be labelled Work
 25 Product Doctrine Material - Confidential, and

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1 carry the Attorney Client Privilege statement."
 2 Right?
 3 A. Yes.
 4 Q. And the next one:
 5 "Information cc'd to external
 6 Counsel is not privileged."
 7 Do you see that?
 8 A. Yes.
 9 Q. So, in fact, Jeff Wolff did tell you
 10 scientists at the 2008 Atlanta meeting that
 11 if they sent emails only to lawyers, they
 12 would then be privileged documents, didn't he?
 13 That's what he told you?
 14 A. That's what this says, certainly.
 15 Q. And he did say that merely Cc'ing
 16 the lawyers, copying them on email, wouldn't be
 17 good enough; that he had to send the emails
 18 only to the lawyers in order to keep them
 19 secret. Correct?
 20 MR. NARESH: Objection to form.
 21 THE WITNESS: In order to keep
 22 them -- to have the ability for them
 23 to carry the attorney-client privilege
 24 statement, yes.
 25 ///

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1 BY MR. TILLERY:
 2 Q. And he did tell you scientists
 3 to label your work as work product and
 4 attorney-client privilege, didn't he?
 5 You didn't know that without him telling you,
 6 did you?
 7 A. No. This was something that
 8 we were being given guidance on, the first --
 9 Q. And Mr. Wolff did tell you
 10 scientists that if an outside lawyer like him
 11 requested work, then that would have a higher
 12 level of privilege than if an in-house Syngenta
 13 lawyer requested it too, didn't he?
 14 A. No. This is -- my understanding of
 15 this is this is nothing to do with him
 16 requesting work. This is if we are
 17 communicating about study work, that it should
 18 correspond with this guidance.
 19 Q. In 2008, you were a member of
 20 Syngenta's paraquat health science group,
 21 right?
 22 A. Yes.
 23 Q. And that's what this group of
 24 scientists that are on this document really
 25 made up, that particular group; correct?

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1 A. Yes. As I said earlier, this
 2 meeting led to roughly the same group of
 3 people becoming what was known as the Health
 4 Science Team.
 5 Q. And in late February 2008, as
 6 a result of the discussions at the Atlanta
 7 meeting, someone at Syngenta drafted a document
 8 called "The Paraquat Health Science Group
 9 Strategy Discussion Document."
 10 Correct?
 11 A. Well, I think -- I take your word
 12 for it. I haven't -- I can't recall exactly
 13 that document now.
 14 Q. Do you know who would have been the
 15 author of the document?
 16 A. No, I don't, so if you're able to
 17 show it to me I might be able to help.
 18 Q. We're going to do that.
 19 MR. TILLERY: Is this 597?
 20 MR. NARESH: Just for the record,
 21 it's about 6 o'clock in the UK now and
 22 I know that there's a little bit of grace
 23 period built in, but I just wanted to let
 24 you know that Dr. Botham needs to wrap up
 25 in the next 10 to 15 minutes or so.

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1 BY MR. TILLERY:
2 Q. Dr. Botham, you tell us when, okay?
3 A. Yeah. Fifteen minutes would be
4 a good target to reach, if we could.
5 Q. Well, I'm about to start a new area
6 there so I'd like, if we could, to switch
7 signals here and let me ask you a question
8 about something else. Hold on just one second,
9 sir.
10 MR. NARESH: I don't know if it's
11 me or if it's anybody else, but Steve's
12 video pane is frozen for me. Everybody
13 else is moving but Steve is frozen.
14 THE WITNESS: Yeah, Steve has been
15 frozen for quite some time actually.
16 MR. TILLERY: Well, it's probably
17 because the camera gave out at my image,
18 but ...
19 Is it frozen for you?
20 MS. BRUMITT: It is.
21 MR. TILLERY: Yes, it is, I see it.
22 Well --
23 THE WITNESS: Is that a matter for
24 the record, Wendy?
25 THE VIDEOGRAPHER: Sorry?

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1 THE WITNESS: Does the fact that
2 Mr. Tillery's image has been frozen for
3 the last ten minutes matter for the
4 record?
5 THE VIDEOGRAPHER: Absolutely not.
6 I'm just focused on you.
7 THE WITNESS: Okay, that's fine.
8 Thank you.
9 THE VIDEOGRAPHER: I can only see
10 you.
11 THE WITNESS: Right.
12 THE VIDEOGRAPHER: Thank you.
13 BY MR. TILLERY:
14 Q. I just want to clear up something
15 that has nothing to do with what we have been
16 talking about while we've had just a few
17 minutes left to clarify something, and we're
18 going to switch topics. We'll come back to
19 this tomorrow, where we were, okay.
20 Do you know anything about what's
21 called the Deep Store documents?
22 A. I do.
23 Q. Okay. And what are they?
24 A. These are archived documents from
25 Syngenta, from a number of Syngenta

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1 facilities. Deep Store is the name of an
2 organization and it's called that because the
3 storage is actually in a salt -- a disused
4 salt mine in the United Kingdom, underground.
5 Q. Okay. And what documents are stored
6 there?
7 A. Documents such as reports, study
8 files, lab notebooks, pathology slides from
9 toxicology studies but also from other R&D
10 departments, regulatory documents.
11 Q. Okay.
12 MR. TILLERY: Yeah, if you pull it
13 up.
14 BY MR. TILLERY:
15 Q. The one I wanted to talk to you
16 about, of the recitation of items that are
17 stored there, is laboratory notebooks.
18 And Syngenta stores thousands of lab notebooks
19 there, doesn't it?
20 A. Yes, it does.
21 Q. And have you ever personally needed
22 to retrieve a lab notebook from Deep Store?
23 A. No, I haven't.
24 Q. If you needed to retrieve a lab
25 notebook from Deep Store, how would you

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1 identify the notebook you wanted to retrieve?
2 A. Well, I would go to our archive
3 expert with either the person whose lab
4 notebook it was, a name, or a department,
5 or even a subject that it might refer to.
6 Q. All right. Let's show you a
7 document. All I'm doing is just showing you
8 this to illustrate what we've been given and
9 I just need to clarify some things.
10 MR. TILLERY: Just pull it up.
11 You know, Ragan, I don't honestly
12 think this needs to be a deposition
13 exhibit. It's a demonstrative and
14 I'm just trying to get some answers
15 to some questions.
16 This is -- is that our number or
17 theirs?
18 MS. BRUMITT: I don't --
19 MR. TILLERY: Let's just put it on
20 the screen for them to see.
21 This is something you gave us but
22 I just wanted to -- I wanted to ask him
23 about what we would ask for.
24 BY MR. TILLERY:
25 Q. Let me know when you can see the