

1 A Over the years, I contributed to
 2 about 20 of the different Kagan newsletters.
 3 At any given time, I was usually responsible,
 4 personally responsible for 10 or 12, and wrote
 5 for most of those on at least a monthly basis,
 6 if not the entire newsletter, then the lead
 7 analysis.

8 Q And did many of those involve the
 9 cable industry?

10 A Of those dozen or so, at least a
 11 half or more related directly to the cable
 12 industry. They had titles like Cable TV
 13 programming, Cable TV Advertising, Cable
 14 Network Investor, the VOD Investor, so they
 15 were -- most of them were related to the cable
 16 programming or content. A couple of them
 17 related to cable technology.

18 Q And did these reports and
 19 newsletters ever involve the analysis of
 20 consumer demand or consumer surveys?

21 A Well, at the core -- the cable
 22 industry, as well as the television

1 programming industry, is based on providing
2 services and programming directly to
3 consumers, or subscribers. So, that's
4 basically what we obsessed about, is trying to
5 understand consumer demand for services, and
6 figuring out how much they would spend, and
7 what those various markets were worth.

8 Q Did you work for a company called
9 Nielsen Analytics?

10 A I did. I was Senior Vice
11 President and General Manager of Nielsen
12 Analytics, which is a division of the Nielsen
13 Company, which provides -- it's best known for
14 providing TV ratings, although, it does a lot
15 more than that.

16 Q And what did you do at Nielsen?

17 A My role at Nielsen Analytics was
18 really two-fold. Nielsen owns a lot of
19 intellectual property in the form of
20 databases, things like Scarborough, Claritas,
21 ACNielsen, VideoScan, a whole wide range of
22 databases. My first charge was to find ways

1 of re-purposing and analyzing those databases,
2 and trying to bring new value to them. The
3 second was to conduct both industry and
4 consumer research on emerging technologies,
5 and the impact those technologies were having
6 on some of the traditional businesses in the
7 industry.

8 Q Did you write any reports or
9 newsletters, or any other material while
10 working at Nielsen?

11 A Nielsen, at least at that point,
12 did not put out any newsletters. However, the
13 work that we were doing at Nielsen Analytics
14 was monetized in the form of reports, and I
15 authored a number of reports during my tenure
16 there.

17 Q And those reports involved the
18 analysis of consumer data, consumer survey
19 data?

20 A As a matter of fact, the very
21 first report I put out was called
22 "Benchmarking the Digital Household", and it

1 was based on analysis of eight years worth of
2 Nielsen surveys called "The Home Technology
3 Survey". They quarterly asked over 1,000
4 household literally over 100 questions about
5 their use and consumption of media, and media
6 technology, but they had never done much with
7 the data. So, my first job was to actually
8 take all of that survey data, database it,
9 sort it, analyze it, and try to extract some
10 high-level actionable opinions, or identify
11 trends, identify benchmarks that would be
12 useful to Nielsen clients.

13 Q And while at Nielsen, were you
14 ever involved in the development of consumer
15 surveys?

16 A Well, first of all, while I was at
17 Nielsen, I actually sat on their research --
18 an internal research board, which included
19 people from all the different divisions that
20 were doing consumer surveys in an attempt to
21 standardize a lot of the questions that were
22 being asked.

1 One of my core expertise over the
 2 years has been understanding emerging
 3 technologies, which is one of the reasons they
 4 brought me into the company. And I helped
 5 devise language and new survey, standardized
 6 survey questions across the company.

7 Secondly, I frequently consulted
 8 with different divisions as they were trying
 9 to develop new surveys, especially, again, in
 10 the area of emerging technologies. And then,
 11 ultimately, I gained access to the CBS
 12 Television Testing Facility in Las Vegas that
 13 Nielsen ran, and was able to actually conduct
 14 primary research, actually write surveys and
 15 field surveys directly through the television
 16 testing facility.

17 Q Have you ever testified as an
 18 expert witness before?

19 A Several dozen times.

20 Q Have you ever been disqualified?

21 A I have not.

22 Q Have you ever testified in matters

1 involving professional sports leagues?

2 A On at least a couple of occasions.

3 Q Can you provide some details?

4 A Actually, there were two
5 proceedings through the Library of Congress.

6 They were copyright royalty proceedings, and
7 I testified on behalf of the Joint Sports
8 Claimants, which included the NFL, Major
9 League Baseball, the NHL, and the NCAA.

10 Q Have you ever consulted on behalf
11 of Major League Baseball?

12 A On at least two occasions
13 directly. One, they came to Kagan and we
14 developed a business plan, or a business model
15 for a baseball channel. This is very early on
16 in their decision making process as to whether
17 or not they wanted to launch their own
18 channel. And then on another occasion, there
19 was an issue related to the internal division
20 amongst teams of a pool of copyright royalty
21 funds that they had received. I believe it
22 was related to Super Stations, and they were

1 trying to figure out an equitable way of
 2 dividing those up among the teams, and we were
 3 brought in to do the analysis.

4 Q Have you ever testified before on
 5 matters involving consumer consumption, or
 6 consumer expenditures?

7 A Well, I've been involved in many
 8 litigations where at issue was the value of
 9 intellectual property, a movie library, a TV
 10 library, an individual movie or television
 11 show. Each of the revenue streams that flows
 12 into those properties is driven by consumers,
 13 including things like consumer expenditures on
 14 entertainment merchandise, things we may not
 15 necessarily think about, but become very large
 16 revenue streams, royalties from things like
 17 toys, and books, and even the case of, one
 18 instance of a series of Broadway plays that
 19 were spun out of one of the properties. So,
 20 consumer expenditures, and consumer buying
 21 behaviors are really at the core that drive a
 22 lot of the valuations, ultimately, about which

1 I testified.

2 MR. KIRK: Your Honor, we hereby
3 tender Mr. Gerbrandt as an expert witness in
4 the analysis of media and entertainment
5 industries, encompassing the cable television
6 industry. If there's no objections, I'd like
7 to move forward with summarizing his
8 testimony.

9 MR. KIM: Your Honor, I'll reserve
10 my right to object, but I don't have any
11 problem with him testifying in this
12 proceeding.

13 JUDGE SIPPEL: All right. Did you
14 have anything -- did you do any work with the
15 copyright issue with the Washington Football
16 Club here?

17 THE WITNESS: I did not.

18 JUDGE SIPPEL: You didn't do that.

19 THE WITNESS: I did not.

20 JUDGE SIPPEL: All right. Okay.

21 Ready to go.

22 BY MR. KIRK:

1 Q Mr. Gerbrandt, I'm just going to
2 ask you a few questions to help summarize your
3 testimony. What's your principal opinion in
4 this case?

5 A That there was very low demand for
6 the Orioles and the Nationals, from a very low
7 - maybe I should say it better - very low fan
8 interest in the Orioles, and the Nationals in
9 the Harrisburg, Pennsylvania market, and very
10 low fan interest in the Orioles, the
11 Nationals, and the NCAA College Basketball
12 coverage provided by MASN in Southwestern
13 Virginia.

14 Q Did you prepare any tables that
15 were used to inform your opinion in this case?

16 A I did.

17 Q Were those tables based on any
18 empirical data?

19 A They were based on a number of
20 highly quantitative sources. One being data
21 collected of actual merchandise sales of Major
22 League Baseball logoed apparel in the

1 Harrisburg, and the Roanoke-Lynchburg markets.
2 And then to confirm those, or to compare
3 those, we then conducted online surveys in
4 Harrisburg and Southwestern Virginia, and also
5 did a phone survey in the same markets.

6 Q And that was for your opinion
7 regarding interest in the Orioles and
8 Nationals. Is that correct?

9 A The online surveys were for --
10 both the phone and the online surveys was for
11 the Orioles and the Nationals. In addition,
12 we did an online survey regarding the NCAA
13 College Football, I'm sorry, College
14 Basketball in Southwestern Virginia.

15 MR. KIRK: Your Honor, may I
16 approach the witness?

17 JUDGE SIPPEL: You may, sir.

18 BY MR. KIRK:

19 Q Mr. Gerbrandt, I'm presenting you
20 with Comcast Exhibit 77, which has already
21 been admitted into evidence. It's entitled,
22 "MLB Merchandise Sales."

1 A Thank you.

2 JUDGE SIPPPEL: This is already in
3 evidence?

4 MR. KIRK: It is, Your Honor.

5 BY MR. KIRK:

6 Q Mr. Gerbrandt, do you recognize
7 this document?

8 A I do.

9 Q What is it?

10 A This is a printout of the data, I
11 guess it was in a PDF form, that I received
12 from Nielsen SportsOneSource.

13 Q And what is SportsOneSource?

14 A SportsOneSource is a division of
15 Nielsen, again, the same company that does the
16 ratings data. They collect point of purchase
17 data from retail outlets across the country.
18 They actually -- the stores scan the UPC codes
19 that are attached to merchandise, and then
20 that data is transmitted to SportsOneSource.
21 And they have the ability to -- well, they
22 database all of those codes. In this case,

1 they were able to identify logoed merchandise
2 by Major League Baseball team. And what we
3 see here is that data assembled for both the
4 Harrisburg, as well as the Lynchburg-Roanoke
5 markets, both in terms of unit sales, as well
6 as dollar sales.

7 MR. KIRK: Your Honor, may I
8 approach the witness?

9 JUDGE SIPPEL: Yes, sir.

10 BY MR. KIRK:

11 Q Mr. Gerbrandt, I'm presenting you
12 with Comcast Exhibit 78, which is already
13 entered into evidence. Mr. Gerbrandt, do you
14 recognize this document?

15 A I do.

16 Q What is it?

17 A It is a survey that was fielded as
18 part of this case, or part of the research
19 into this case, online in Harrisburg, and
20 Southwestern Virginia, specifically to
21 determine fan interest, relative levels of fan
22 interest in Major League Baseball teams. And,

1 specifically, so that we could compare it to
2 the merchandise sales in those markets.

3 Q Who developed the survey
4 questions?

5 A I developed some of the survey
6 questions, and the balance -- I did those
7 personally, and the balance was done in
8 conjunction with Dr. Pete Gatseos.

9 Q Who is Dr. Pete Gatseos?

10 A Dr. Gatseos is someone that I've
11 known almost my entire career. He has a Ph.D.
12 in, I believe, it's audience measurement, and
13 he was -- I knew him originally in the early
14 '80s in Denver, when he was working for TCI.
15 Subsequently, he worked for ATC, which is the
16 predecessor to Time Warner Cable. He then
17 went on to work for AT&T Broadband, DirecTV,
18 and then we were actually reunited for a
19 number of years at Nielsen, so we were
20 colleagues together. But he was a highly
21 respected researcher in the cable industry.

22 Q What is an unaided survey

1 question?

2 A An unaided survey question is
3 simply one where you just ask the -- whoever
4 is being surveyed, the respondent, just a
5 simple question. For instance, what year were
6 you born, or what's the make of the car you
7 own?

8 Q And did the survey ask unaided
9 questions?

10 A It did. We asked what was a
11 fairly straightforward question, which is,
12 what Major League Baseball team do you tend to
13 follow the most?

14 Q And what is an aided question?

15 A Aided questions come in a lot of
16 flavors, but, typically, in an aided question,
17 you're asking the consumer to make a choice
18 between a list of things, or give me a -- rate
19 something from zero to five, or sort of
20 multiple choice. You give them several
21 possible answers, and they choose one of them,
22 so you're, in a way, suggesting either an

1 answer, or suggesting a possible range of
2 answers.

3 JUDGE SIPPEL: Those are the ones
4 where you kind of feel you're being set up.
5 Is that correct?

6 THE WITNESS: (Laughing.) Well,
7 you're being put into a box, to some extent.
8 And Your Honor is right, there's -- it's
9 actually well known in the industry that
10 there's sort of a respondent bias. They tend
11 to overstate the answer, because you're
12 telling people you've got to make a choice
13 here between a finite set of possibilities.

14 JUDGE SIPPEL: Okay.

15 BY MR. KIRK:

16 Q And did the survey ask aided
17 questions, as well?

18 A We did ask a number of aided
19 questions. They do serve a purpose, despite
20 the respondent bias issue, in that they can
21 sometimes confirm the unaided questions.
22 Plus, you want to try to ask a question a

1 number of different ways to see if it's
2 answered in very different ways. So, they do
3 serve a purpose, but they have to be taken
4 into context.

5 Q And who conducted the actual
6 online survey?

7 A The online survey was fielded by a
8 company called e-Rewards, which is one of the
9 larger companies specializing in online
10 surveys. They maintain a database of about
11 2.6 million respondents, or potential
12 respondents from around the country, and we
13 like them, in particular, because they -- for
14 two very good reasons. One, they locally
15 recruit through affinity programs. If you're
16 a member, for instance, of a frequent flier
17 program, or if you're a member of Barnes &
18 Noble type of buying clubs, those are the
19 people who are part of the e-Rewards database.
20 That's number one.

21 Number two, we like them because,
22 as opposed to a lot of the online surveys

1 where you volunteer, in this case, they can
2 actually -- they actually ask people in to
3 respond to the survey, and that way you can
4 very easily target different parts of the
5 country.

6 Q And who prepared the tables that
7 are in this exhibit?

8 JUDGE SIPPEL: Which one are you
9 talking about now?

10 MR. KIRK: This is Exhibit 78.

11 JUDGE SIPPEL: Okay.

12 THE WITNESS: Well, as it says at
13 the top, I think on most of the pages, the
14 tabulation of the data was actually done by a
15 company called Marketlab. e-Rewards collects
16 the raw data, but they don't do their own
17 internal tabulation, so, in this case, it was
18 -- that portion of the job was contracted out
19 to Marketlabs.

20 Q And who is Marketlab?

21 A Marketlabs is actually a survey
22 company in their own right, but their

1 specialty is phone surveys, known as Random
2 Digit Dial Phone Surveys, but they also do
3 contract tabulation work for other companies
4 that don't do that work in-house.

5 Q And the tables that are set forth
6 in Exhibit 78, are those a standard format
7 used by Marketlab, or are they custom?

8 A Well, they use what is one of the
9 industry standard programs to generate --
10 that's called Quantum. A lot of the --
11 virtually every survey I've seen sort of
12 tends to look the same, has the same basic
13 format to it, so the basic format is standard.
14 And a lot of the tables, and even some of the
15 tests that are done are standard. You can
16 specify specific kinds of cross-tabs that yo
17 may want to run.

18 Q And did you rely on each one of
19 the tables set forth in Exhibit 78 to support
20 your analysis?

21 A Well, I reviewed all of the data.
22 Ultimately, after reviewing it, I realized

1 that it really came down to the unaided -- the
 2 key unaided question that was asked, which
 3 was, "What is the Major League Baseball team
 4 that you tend to follow the most"? So, the
 5 analysis was based on that. Some of the aided
 6 questions were confirmatory, but at the end,
 7 they were the best ones to compare them to,
 8 the merchandise sales data, because they
 9 encompassed all 30 teams, rather than a
 10 subset.

11 MR. KIRK: May I approach, Your
 12 Honor?

13 JUDGE SIPPEL: You may. Yes, sir.

14 BY MR. KIRK:

15 Q Mr. Gerbrandt, I'm presenting you
 16 with Comcast Exhibit 79, entitled, "MLB
 17 Telephone Survey."

18 JUDGE SIPPEL: Thank you. This is
 19 already in evidence, also?

20 MR. KIRK: It's already in
 21 evidence, Your Honor.

22 JUDGE SIPPEL: Thank you.

1 BY MR. KIRK:

2 Q Do you recognize this document,
3 Mr. Gerbrandt?

4 A I do.

5 Q What is it?

6 A This is a telephone survey, a
7 Random Digit Dial Telephone Survey fielded by
8 Marketlabs, and also tabulated by Marketlabs
9 using, essentially, the same questions that
10 were developed for the online survey. We
11 originally were working with a very tight time
12 frame in the early part of this case, and we
13 were -- when we fielded the online survey, we
14 began to run out of time in terms of the
15 responses that were coming in were slowing
16 down, and we were concerned that we would not
17 get as many responses as we'd hoped for, so we
18 put a pin in the online survey, and rolled
19 into what is, unfortunately, a much more
20 expensive phone survey. And we rushed that
21 into the market, and were able to complete it
22 in time to analyze the data. But it's

1 essentially the same questions, but only
2 conducted by Marketlabs.

3 Q And, again, are these tables
4 custom or standard as set forth in Comcast
5 Exhibit 79?

6 A Well, they're basically the same
7 approach as was taken with the online data.
8 Obviously, the source data is different. This
9 comes from a telephone survey, but it's the
10 same questions. For comparison purposes,
11 since we wanted to look at both the online and
12 compare it to the larger phone survey, as well
13 as to be able to go back and compare it to the
14 merchandise sales data. We kept the format
15 the same.

16 Q And, for purposes of this exhibit,
17 Comcast Exhibit 79, did you rely on all the
18 tables in this exhibit?

19 A Again, I reviewed all the data,
20 but it basically came down to the single
21 unaided question, which was, "What Major
22 League Baseball team do you tend to follow the

1 most"?

2 MR. KIRK: May I approach, Your
3 Honor?

4 JUDGE SIPPEL: You may. Yes, sir.

5 BY MR. KIRK:

6 Q Mr. Gerbrandt, I am handing you
7 Comcast Exhibit 80, entitled, "NCAA Survey."

8 A Thank you.

9 Q This has already been entered into
10 evidence. Can you identify this document, Mr.
11 Gerbrandt?

12 A I can. This is an online survey
13 that was fielded by e-Rewards, which fielded
14 the online Major League Baseball survey, and
15 it was tabulated, or cross-tabbed by
16 Marketlabs, the same way the online survey was
17 done.

18 Q And who developed the survey
19 questions?

20 A I consulted with Dr. Gatseos in
21 terms of the kind of findings we were looking
22 for from this, which specifically focuses on

1 interest in collegiate, the various collegiate
2 conferences, as well as, specifically,
3 college-level basketball. He then developed
4 most of the specific questions. I reviewed
5 those with him, and a lot of them follow some
6 of the same format that we had already
7 developed in doing the online and phone Major
8 League Baseball surveys.

9 Q And did the survey ask both aided
10 and unaided questions?

11 A Yes, it did.

12 Q And did you rely on each of the
13 tables for your analysis?

14 A Once again, I reviewed all the
15 tables. At the end of the day, there were
16 four key -- in this one, there were four key
17 unaided questions that really were the --
18 formed the core of the analysis. One was,
19 "What conference, college conference,
20 basketball conference do you tend to follow,
21 ACC, SCC, Big East, Big Ten", was an unaided
22 question, simply, "What do you tend to

1 follow"? And then we asked a series of
2 unaided questions, "What's the one NCAA or
3 college basketball team that you tend to
4 follow the most"? Then we also asked, "What's
5 the second most", and we even asked a third
6 most.

7 Q In the exhibits that I just handed
8 you, are those the ones that you relied on to
9 inform you in forming your opinion?

10 A Yes, this was the source data.

11 MR. KIRK: Your Honor, may I
12 approach the witness one final time?

13 JUDGE SIPPEL: Yes, sir. Getting
14 tired of that walk, huh?

15 (Laughter.)

16 MR. KIRK: This is Comcast Exhibit
17 100, and it has not yet been entered into
18 evidence. It was introduced earlier this week
19 with Mr. Cuddihy.

20 MR. KIM: It was identified, Your
21 Honor. It was not introduced.

22 JUDGE SIPPEL: Do you intend to

1 introduce it today?

2 MR. KIRK: I do.

3 BY MR. KIRK:

4 Q Mr. Gerbrandt, have you seen this
5 document before?

6 A I have had a chance to review it,
7 yes.

8 Q Can you read Question 10 for me?

9 MR. KIM: Objection, Your Honor.

10 JUDGE SIPPEL: Why?

11 MR. KIM: What's the purpose of
12 this? This is not in his report. This is not
13 something he's relied upon. It's never been
14 identified as any basis for his opinion. This
15 is the first time Mr. Gerbrandt is doing
16 anything with this document.

17 JUDGE SIPPEL: We don't know why
18 he's intro -- he may not -- that might have
19 nothing to do with his opinion.

20 MR. KIM: Your Honor, then it's
21 outside the scope of his direct testimony.

22 JUDGE SIPPEL: Well, anybody -- if