

# EXHIBIT 2

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 MARVEL WORLDWIDE, INC., )  
MARVEL CHARACTERS, INC. and )  
6 MVL RIGHTS, LLC, )  
) No. 10-141-CMKF

7 Plaintiffs, )  
)

8 vs. )  
)

9 LISA R. KIRBY, BARBARA J. )  
KIRBY, NEAL L. KIRBY and )  
10 SUSAN N. KIRBY, )  
)

11 Defendants. )  
----- )

12  
13  
14  
15  
16  
17 CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
18 JOHN V. ROMITA  
19 Garden City, New York  
20 Thursday, October 21, 2010  
21

22  
23 Reported by:  
24 KRISTIN KOCH, RPR, RMR, CRR, CLR  
25 JOB NO. 34124

1 Romita - Confidential

2 A. Freelancer. No -- flying without a  
3 parachute. Absolutely no security. No  
4 unemployment insurance, because I didn't have a  
5 job. No perks, no medical insurance, no  
6 nothing. Every year I would save 2- or \$300  
7 and then the government would raise the  
8 unemployed -- the -- I forget what the tax was.  
9 There was a tax that was applicable to  
10 freelance people, and that tax went up just  
11 about whatever I had saved, so I generally  
12 broke even every year.

13 Q. And how were you paid? What was the  
14 basis for your compensation?

15 A. I would do a certain amount of pages  
16 at a certain rate, \$25 a page, \$30 a page. I  
17 would do ten pages, \$300. I would sign a  
18 voucher for \$300 worth of work and they would  
19 pay me two weeks later or something. And I  
20 would be responsible for the taxes. I don't  
21 believe they took the taxes out. I'm not sure.

22 Q. Where did you do your work? Did you  
23 do it in the Marvel office?

24 A. No. I worked home.

25 Q. Did you ever go into the Marvel

1 Romita - Confidential

2 offices?

3 A. Only to deliver the work, and  
4 occasionally have to stay in the bullpen where  
5 there was tables, other people doing production  
6 work, I would do corrections that Stan would  
7 demand. If he didn't like a certain look or a  
8 certain line, I would change things. That was  
9 common.

10 Q. How -- can you describe briefly what  
11 the process was for creating a comic book in  
12 the 1950s?

13 A. It was a shooting script similar to  
14 a film shooting script. It was a script with a  
15 title and a certain amount of pages allocated  
16 and they would say page 1, panel 1, the man  
17 walks through the door of the building and  
18 tells people "good morning everyone," that kind  
19 of thing. There are three people in the room.  
20 They give you -- they gave you directions on  
21 what is appearing. Then they had a caption at  
22 the top nine times out of ten which said "early  
23 one morning," something like that, "next day,"  
24 and then there were balloons to the characters.  
25 So I would have to decide on the size of the

1 Romita - Confidential

2 panels, depending on what was going on, where  
3 to place the captions and the balloons to the  
4 people, the dialogue balloons, and allocate the  
5 space for the illustration to explain what was  
6 happening in the story, to describe it.

7 Q. Do you know who wrote those scripts?

8 A. There was maybe a half a dozen  
9 writers working for Stan at the time. There  
10 were western writers, there were mystery  
11 writers, there were war stories, romance. So I  
12 remember three or four names vaguely.

13 Bernstein and -- I don't remember most of them.  
14 Most of the stories I did Stan Lee would write.

15 Q. Who decided which artist got which  
16 scripts?

17 A. Stan Lee. He was the editor in  
18 chief. He was the editor and only writer on  
19 staff. The rest were -- all these other  
20 writers were freelancers, like myself. They  
21 were home working, Connecticut, Carolina,  
22 California, wherever they were. So everybody  
23 was working at home except for Stan and a  
24 production manager, which was Sol Brodsky at  
25 the time, and his secretary. It was a very

1 Romita - Confidential

2 small operation up at Timely. Very small.

3 Q. After you did your drawings from the  
4 script, then what happened?

5 A. I would turn in the pencils so that  
6 they could have them lettered in ink, and then  
7 if I were inking it, I would get the pages back  
8 and I would ink them. After a while,  
9 especially when I was working at DC, I would  
10 pencil and ink them and leave space for a  
11 letterer to do the balloons, because I had  
12 become so familiar with the exact allocation of  
13 space, so it saved time. I didn't have to go  
14 back and pick up the pages again.

15 Q. Did you ever do that while you were  
16 at Marvel in the 1950s?

17 A. I think I probably did occasionally  
18 towards the end of the '70s -- the first seven  
19 years when I got so familiar and Stan trusted  
20 me, I think I -- he would say "don't bother  
21 bringing it in to be lettered, just ink it up  
22 and we will have it lettered." It was just a  
23 matter of expediency and saving time.

24 Q. Do you know who came up with the  
25 ideas for the stories?

1 Romita - Confidential

2 A. I think -- my memory is that the  
3 writers would submit a synopsis, like a  
4 half-a-page synopsis saying this is going to be  
5 a story about a cattle baron and rustlers and  
6 Indians and Stan would say "I like that story,  
7 add a pretty girl," that kind of stuff, and  
8 then they would write the story. Stan probably  
9 did all the selection. He might have -- he  
10 might have even written some synopses himself  
11 and handed them out to writers to do this.  
12 Stan's brother was a young writer and he would  
13 do the same thing. He would give his younger  
14 brother a synopsis and the younger brother  
15 would do the script.

16 Q. Do you know his brother's name?

17 A. Larry Leiber. Lawrence Leiber, I  
18 guess.

19 Q. What would happen to the script when  
20 you brought it back after it was inked and  
21 penciled, penciled and inked?

22 A. Well, that's interesting. I assume  
23 they just destroyed it. I'm not sure. Maybe  
24 he just saved it for future use. I do remember  
25 after six or seven years that I would get

1 Romita - Confidential

2 eerily similar story lines. If I would do a  
3 western, I'd say to Stan, "you know, I could  
4 swear I did this story before." They would  
5 change the names -- some writer would change  
6 the names and give -- or maybe it's just a  
7 coincidence that they had the same idea five  
8 years later, but I did remember doing a lot of  
9 duplication. It was a sausage factory kind of  
10 thing, just churning them out. Very hard to  
11 keep tabs on things. Mostly memory.

12 Q. When you would bring the pencils  
13 back to the office, would anybody look at them?

14 A. Stan Lee.

15 Q. And what would he do?

16 A. He would tell me if there was  
17 anything that needed to be corrected. He would  
18 tell me "don't do this too much in the future,  
19 do more of this, do more of that." I remember  
20 one time I -- for some reason I was doing a  
21 documentary type of thing or a science fiction  
22 type of thing and I did a little bit more  
23 elaborate rendering on the inking, which was a  
24 terrible mistake, because Stan Lee said "I love  
25 that technique" and I said "oh, my God," and he

1 Romita - Confidential

2 adventures in the west, love stories and war  
3 stories. So it was rather generic.

4 Q. Okay. So can you give me an example  
5 during that time period of a correction that  
6 Stan might have asked for?

7 A. He would ask for sometimes a smile  
8 on a face instead of a frown. In other words,  
9 if an artist is not thinking, sometimes he  
10 doesn't read every little subtlety in the  
11 description or in the dialogue. He might just  
12 do an automatic expression or no expression and  
13 he would say "you need more expression." Stan  
14 was always very good. Most editors were not as  
15 careful. They would take your work and never  
16 say -- they would grunt and take it and you  
17 don't know if you were right or wrong. Stan  
18 would always make sure you knew if you were  
19 right and when you were wrong, he told you,  
20 which was how I learned. Practically  
21 everything I learned was because of that extra  
22 attention he gave to things. He used to say  
23 "it's okay now, but don't do this in the  
24 future," that kind of stuff, which was always  
25 good instructions.

1 Romita - Confidential

2 Q. Was that also the case when you were  
3 at Marvel in the 1950s, that if you got -- if  
4 you did the work, you would be paid for it?

5 A. Oh, yes.

6 Q. Even if they didn't use it?

7 A. Well, unless it was a very  
8 badly-done job, I don't -- I don't remember  
9 ever seeing that. I think Alex Toth, one of  
10 the best artists in the world, once submitted a  
11 story to Roy Thomas and it was so different  
12 than Roy had asked for that he never used the  
13 story. I don't know if he paid him or not. I  
14 think he did, but that would have been an  
15 occasion when, I think, the editor or the  
16 writer would have had a right to say, "well,  
17 listen, you did this so absolutely contrary to  
18 what we wanted, we can't use it." He may have  
19 just thrown it back at him. I don't know.  
20 Because Alex Toth was one of those  
21 individualists who didn't believe in listening  
22 to anybody else.

23 Q. That would have been later, that  
24 wouldn't have been in the 1950s?

25 A. No. I think that was in the '60 --

1 Romita - Confidential

2 other, going up the West Side Highway. I would  
3 have never done it, but Jack Kirby does it and  
4 Stan Lee accepted it. And I ended up doing the  
5 drawing and made it work and they loved the  
6 story.

7 Q. Now, why was it necessary to have a  
8 pacing guide?

9 A. Because I was not familiar with the  
10 way Stan wanted the stuff done and I had not --  
11 I had not seen the books. See, I never -- I  
12 never knew what was making them tick, the same  
13 way as DC didn't think -- didn't know.

14 Q. Did you get a script when you were  
15 back -- this is 1965 -- at Marvel?

16 A. No. It was a plot. Wait a second.  
17 I'm not sure. I think it was a plot.

18 Q. And what do you mean by a plot?

19 A. A plot is either a written  
20 description of what the story is saying. At  
21 the beginning, there will be a fight for five  
22 pages, Daredevil will end up wounded, will go  
23 limping to his girlfriend's house and she will  
24 dress his wounds. Just a general sequence of  
25 events. Generally a page long, maybe a page

1 Romita - Confidential

2 and a half. Or like I foolishly did, a verbal  
3 plot. We would get together and trade ideas.

4 Q. Who would get together?

5 A. Stan and I would get together in a  
6 room and say, okay, the villain is going to be  
7 The Lizard and The Lizard is going to turn into  
8 The Lizard on page 3. He is a doctor, a  
9 one-armed doctor, and he turns into The Lizard  
10 and his family is kidnapped and he is now  
11 tearing up the city trying to find his family.  
12 That's about all we would get. And then I  
13 would have to do the nuts and bolts sequential  
14 between every episode -- every little thing  
15 that happens you have to tie them together and  
16 make them sensible, so the artist's problem --  
17 I was terrified because I had always worked  
18 with a script. This was the first time I was  
19 deciding what was going to go on the splash,  
20 what was going to go on page 2, what was going  
21 to go on page 3. It was very difficult for me,  
22 very hard, but it turned out to be the greatest  
23 thing for the industry and for me, because the  
24 comic -- the comic medium had been a script  
25 first and visual second and this made it visual

1 Romita - Confidential

2 first and script second, which was probably the  
3 greatest innovation, completely done for  
4 expediency sake. Had nothing to do with  
5 anything except expedience. They didn't -- he  
6 didn't have time to write the scripts. So he  
7 was feeding plots to artists to keep them busy  
8 temporarily. At first he used to say "I will  
9 send you a script in two days, so start the  
10 story," and it ended up being the entire story  
11 would be verbally dictated over the phone or in  
12 a personal interview with the artist.

13 Q. Why would he switch from scripts to  
14 plots?

15 A. Only expedience. Because he was  
16 doing seven or eight major titles all by  
17 himself.

18 Q. And "he" is Stan?

19 A. He used to split -- Stan Lee. Stan  
20 Lee would split the week sometimes and work two  
21 days home, three days in the office, sometimes  
22 two days in the office and three days at home,  
23 whatever it was. He would write four scripts  
24 in one day, bring them in the next day, and  
25 then the following day he would then stay home

1 Romita - Confidential

2 and do four or five more scripts. But when he  
3 was behind, when he couldn't keep up with the  
4 artists and he did not want the artists to stay  
5 idle, because the deadlines were looming, he  
6 would give them a descriptive verbal or  
7 written -- quickly-written synopsis of what to  
8 do. And that's how the plot first and script  
9 second, script third came about, which was  
10 called the Marvel method, which I believe made  
11 the comic industry what it is today. I believe  
12 there would be no comic industry if it weren't  
13 for that.

14 Q. Was that how all of the comic books  
15 at Marvel were done in the mid '60s?

16 A. I think so. There were some  
17 scripted. Rawhide Kid was still being written  
18 by Larry Leiber. Some of the other second  
19 line -- teenage romance books were still done,  
20 I think, by script. I'm pretty sure. I'm not  
21 too sure -- I'm not a hundred percent sure on  
22 that, but I believe that's the way it was --  
23 the ones that Stan had to write were generally  
24 plot -- plot first, plot, pencils, script.

25 Q. And when you say "script" in that

1 Romita - Confidential

2 the writer and it took a little bit of hard  
3 work from pencilers to do it, but it ended up  
4 being good for a penciler too, because it  
5 stretched his muscles and stretched his  
6 capabilities and his results.

7 MS. SINGER: How are we doing on the  
8 tape?

9 THE VIDEOGRAPHER: We have 24  
10 minutes left.

11 MS. SINGER: Do you need a break?

12 THE WITNESS: No, not yet. If  
13 anybody else wants a break, I will wait.

14 BY MS. SINGER:

15 Q. So when you got back to Marvel in  
16 the mid '60s, Stan asked you to do Daredevil.  
17 How long did you stay on Daredevil?

18 A. I did twelve, thirteen, fourteen,  
19 fifteen, sixteen, seventeen, eighteen -- I  
20 think I did from twelve to eighteen. Nineteen  
21 I was off the book and on Spider-Man.

22 Q. And why did you switch to  
23 Spider-Man?

24 A. He and the Spider-Man artist  
25 disagreed on almost everything.

1 Romita - Confidential

2 Q. "He" is?

3 A. Steve Ditko.

4 Q. Okay.

5 A. Steve Ditko had started Spider-Man  
6 with him --

7 Q. With --

8 A. With Stan. I'm sorry.

9 Q. That's okay.

10 A. Stan and Steve Ditko were doing  
11 Spider-Man for 38 issues plus annuals, 40-plus  
12 issues, and it was the second most -- second  
13 best selling book in the Marvel stable. Stan  
14 asked me to use Spider-Man as a guest star in  
15 Daredevil for two issues, number 16 and number  
16 17, I believe, and I put Spider-Man in and drew  
17 him as well as I could and it turned out that  
18 he was feeling me out as a possible  
19 replacement. I didn't know that he and Ditko  
20 were at odds so extremely, but they ended up  
21 not being able to work together because they  
22 disagreed on almost everything, cultural,  
23 social, historically, everything, they  
24 disagreed on characters, so he asked me "do you  
25 think you could do the book?" I assumed

1 Romita - Confidential

2 foolishly that Ditko would not stay away too  
3 long, because if I would have had a hit series  
4 that was three years and growing in audience, I  
5 would have never left it, so I attributed the  
6 same kind of sense to him, which turns out he  
7 had no intention of coming back. I thought I  
8 was going to do a short couple of months fill  
9 in and I'd go back on Daredevil, once again  
10 showing I don't know what I am talking about.  
11 And I ended up doing seven straight years and  
12 maybe fifteen years on and off on Spider-Man.

13 Q. How did it go when you first started  
14 drawing Spider-Man?

15 A. It was very difficult, because  
16 Ditko's -- I felt obliged -- I felt the reader  
17 needs not to have a jarring change on a hit  
18 book. If you are a Spider-Man fan and you are  
19 buying it for three years, I don't think you  
20 would like to see a different style and a  
21 different approach. I felt the obligation of  
22 all artists who replace another artist to  
23 simulate and use the same style, at least  
24 temporarily, at least for a while, and I didn't  
25 expect I would have to stay on it long enough,

1 Romita - Confidential

2 needed what we call the indoctrination, meaning  
3 the Stan Lee approach to comics and how to  
4 handle it, how to approach the story, the  
5 excitement level and the dynamics of the story,  
6 and I used to be able to slowly -- slowly but  
7 surely I got used to every instruction Stan  
8 gave and I would start to do it whenever he  
9 wasn't around, so I became a de facto art  
10 director without pay, without portfolio,  
11 without anything. And --

12 Q. What were your responsibilities as  
13 the de facto art director?

14 A. Well, they were nothing written out.  
15 I just ended up doing some of the things that  
16 Stan would do if he were in the office.  
17 Whenever he was not in the office, they would  
18 come to me and ask me "tell this guy what Stan  
19 would like," and so young artists used to come  
20 to me and it led to eventually an apprentice  
21 program which I supervised later on after Stan  
22 Lee level.

23 Q. So when Stan was there you mentioned  
24 that one of your duties was a correction  
25 artist. What was a correction artist?

1 Romita - Confidential

2 A. Sometimes artists would bring in the  
3 story and leave out something or put in  
4 something that he objected to and he would ask  
5 me to make a change.

6 Q. Stan would?

7 A. Stan Lee would ask me to --  
8 sometimes he didn't like a girl's face, some  
9 artists are very good at girls, at drawing  
10 girls, and some are not so good. So if a guy  
11 did a girl that he thought was not as glamorous  
12 or not as effective as it should be, he would  
13 ask me to make the changes. I used to change a  
14 lot of people's faces for which I got a  
15 reputation of being an egomaniac. They thought  
16 I was initiating it. I was just following  
17 orders like a Nazi guard. And so I -- whenever  
18 somebody's costume was wrong or whenever the  
19 setting was wrong or if it was a nighttime  
20 scene and it should have been a daytime scene,  
21 all of these little things fell into my lap to  
22 the point where we would then hire some people  
23 to be around to help out. More than one person  
24 was hired to help me out with that. I also was  
25 given the assignment of doing cover sketches.

1 Romita - Confidential

2 done, then you can -- then you know what  
3 costume to put on the person and what situation  
4 to do because it has not been done until the  
5 penciling gets done.

6 Q. You mentioned villains. Who had the  
7 idea for what villains were? How did villains  
8 come about?

9 A. Stan Lee or whoever was writing the  
10 story. Eventually other editors and writers  
11 would be on staff. So whoever was writing a  
12 story and introducing a character would come to  
13 me and say "we would like a character called  
14 The Rhino" or "we would like a character called  
15 The Shocker." Sometimes they came and said "we  
16 have a character we would like to have, he is a  
17 vigilante, we want to call him The Grim  
18 Reaper." He turned out to be The Punisher.  
19 They would just come in with a name. Some  
20 editors later on -- Stan would just give me a  
21 name. Very seldom had any visual to offer me.  
22 He would give me a name and say "The Rhino" and  
23 I would do -- devise some kind of a costume  
24 that showed rhino elements and a villain  
25 element. Nine times out of ten he accepted my

1 Romita - Confidential

2 drawing. Occasionally he would say, "no, that  
3 doesn't look right, add a little this, put a  
4 cloak on him, don't put a cloak on him, put a  
5 mask on him, don't put a mask on him." So it  
6 was give and take, but invariably most of my  
7 ideas were accepted.

8 Q. And in the 1960s, the late 1960s,  
9 would anybody other than Stan have been giving  
10 you the ideas?

11 A. It's hard to tell when Roy started  
12 to make requests. Probably before 1970 Roy was  
13 asking for things too and we used to work  
14 together with cover ideas. Sometimes we would  
15 work out sketches in a very rough way and give  
16 them out to artists, each artist that needed a  
17 cover idea. 90 percent of the time it was Stan  
18 in the '60s. Once the '70s came Stan was not  
19 always in the office and always very busy  
20 probably as each conglomerate that took over  
21 the company -- Marvel would have different  
22 demands on him and give him a different  
23 position. He would go from editor in chief to  
24 president of the company in some instances, so  
25 his duties changed and whoever was left with

1 Romita - Confidential

2 editor in chief assignment I would then be at  
3 his mercy and at his beck and call.

4 Q. At Marvel in the 1960s who was  
5 responsible for deciding which artists would  
6 draw which stories?

7 MR. TOBEROFF: Objection to 1960s  
8 as -- do you mean after 1965 when he worked  
9 there?

10 MS. SINGER: You can answer the  
11 question.

12 A. Stan Lee decided. As far as I  
13 remember, in the '60s Stan Lee would decide.  
14 Later on when Stan was not in the office as  
15 much sometimes the production manager would  
16 make a decision like that, because he was  
17 keeping tabs on who was available and who had  
18 time, who was fast, who was slow. So other  
19 people did make that decision later on.

20 Q. Were there any other artists who  
21 were working in the offices full-time?

22 MR. TOBEROFF: Same objection.  
23 Vague as to time.

24 MS. SINGER: You can answer the  
25 question.

1 Romita - Confidential

2 couldn't take those weeks where I couldn't  
3 produce enough to pay my bills. So it was all  
4 rather casual. The same thing -- Marie went  
5 from being a production person and a colorist  
6 to a penciler in a gradual circuitous way.  
7 Larry Leiber suddenly wanted to become an  
8 artist and he started -- he gave up his writing  
9 assignments and became an artist. Herb Trimpe  
10 worked there. And we had all of the look of a  
11 bullpen, but it sort of like grew like a  
12 fungus. It didn't -- it wasn't ever planned.  
13 It just happened. Things just occurred.

14 Q. What was the mechanism for payment  
15 for your freelance work?

16 A. Whatever pages I did outside the  
17 office I would vouch for.

18 Q. What was the process of vouching for  
19 them?

20 A. If I did ten pages on a weekend, I  
21 would vouch ten pages of Spider-Man and -- I  
22 don't know how they did the bookkeeping,  
23 because some of it was done on staff and some  
24 of it was done on freelance. God knows what  
25 mayhem we caused in the --

1 Romita - Confidential

2 Q. Was there a form that you filled out  
3 or was there a voucher?

4 A. It was a voucher, an actual small  
5 slip with the name of the book, the number and  
6 month of the book, how many pages, your rate,  
7 and you sign it.

8 Q. And then what would happen after you  
9 filled out the voucher?

10 A. I would submit it to the editor and  
11 the editor would process it through the  
12 bookkeeping department and they would send me a  
13 check. Checks used to be like every two weeks  
14 or something, once a month. I'm not even sure.  
15 It varied. Especially with different  
16 incarnations of conglomerates.

17 Q. Do you recall would there be  
18 anything printed on the check?

19 A. There was a disclaimer on the back.  
20 No disclaimer.

21 MR. TOBEROFF: Vague as to time.

22 MS. SINGER: You can answer the  
23 question.

24 A. It was -- it was fairly clear. It  
25 was saying that we were giving up the rights to

1 Romita - Confidential

2 anything that was done in the books, the future  
3 rights to them, so we -- I wanted to cash the  
4 check, so I signed it.

5 Q. I am going to show you something  
6 that, for the record, has already been marked  
7 as Plaintiff's Exhibit 2 at the deposition of  
8 Stan Lee on May 13, 2010.

9 Mr. Romita, don't worry about the  
10 front of this. I just would like you to turn  
11 to the last page of Plaintiff's Exhibit 2.

12 A. The back of the old checks.

13 Q. Okay. I know this isn't your  
14 signature. It's a little hard to read.

15 A. No, that's John D'Agostino.

16 MR. TOBEROFF: I would like to  
17 object to this exhibit because the --  
18 despite the inferences in the affidavit,  
19 which I find somewhat misleading, the check  
20 is actually, I believe, a 1987 check. If  
21 you look at the markings on the back of the  
22 check, it says City National, JE-87, so  
23 it's a 1987 check we are talking about.

24 Q. So, Mr. Romita, I know it's a little  
25 hard to read, so, for the record, of the back

1 Romita - Confidential

2 of the check, we are looking at Plaintiff's  
3 Exhibit 2, says: "By acceptance and  
4 endorsement of this check, payee acknowledges,  
5 (a) full payment for payee's employment by  
6 Marvel Entertainment Group, Inc., (b) that all  
7 payee's work has been within the scope of that  
8 employment, and (c) that all payee's works are  
9 and shall be considered as works made for hire,  
10 the property of Marvel Entertainment Group,  
11 Inc." Do you see that?

12 A. Yes. I read it many times.

13 Q. And is that similar to what you  
14 recall being on the backs of your checks?

15 MR. TOBEROFF: Objection. Vague.

16 "Similar."

17 A. Basically it's the same. Same -- it  
18 always went over the same territory and to the  
19 point where some of my colleagues were  
20 threatening not to cash the checks.

21 Q. Do you recall approximately when it  
22 was that your colleagues were threatening not  
23 to --

24 A. I think somewhere in the late '70s.  
25 They would threaten, but, of course, they would

1 Romita - Confidential

2 cash the checks eventually. Barry Windsor  
3 Smith thought it was unreal. I don't know what  
4 he was creating, what he felt he was creating,  
5 but the point is they tried it. I never -- it  
6 never occurred to me not to sign the check.

7 Q. In the '60s when you were drawing  
8 Spider-Man and Daredevil, who did you think  
9 owned the rights to Spider-Man and Daredevil?

10 A. Marvel Comics.

11 MR. TOBEROFF: I am just going to  
12 make a running objection so I don't have to  
13 interrupt the flow of this. When you say  
14 "in the '60s," my objection is we are  
15 really talking about after 1965, so I am  
16 going to have a running objection.  
17 Whenever you say "in the '60s," my  
18 objection is it's vague as to time.

19 MS. SINGER: Okay. You can have a  
20 standing objection to that.

21 MR. TOBEROFF: Thanks.

22 Q. Mr. Romita, did Stan ever reassign a  
23 book or a character that you were working on to  
24 somebody else?

25 A. Yeah. He would have replacements

1 Romita - Confidential

2 for me, substitutes, guest artists do  
3 Spider-Man if he needed me on another book.  
4 Occasionally Captain America and then at one  
5 time Fantastic Four obviously needed to be done  
6 and he would ask me to do them and someone  
7 would fill in on Spider-Man for me during those  
8 periods. I sometimes did three, four or five  
9 months on Captain America and I did four  
10 issues, I believe, on Fantastic Four.  
11 Spider-Man was done by John Buscema and Gil  
12 Kane in those instances.

13 Q. Do you know why he would reassign  
14 books or have artists do different things?

15 A. I never questioned it. I assumed it  
16 was because Captain America needed help and he  
17 didn't have a proper artist to do Captain  
18 America to his liking and he liked the way I  
19 did Captain America, so he would -- he used to  
20 use me like a bullpen pitcher. I would come in  
21 and relieve. Whatever he felt was a bad  
22 situation, I would do the book and revive it  
23 and sometimes he used me to do -- to establish  
24 a certain style and direction in the book and  
25 then he would give it to somebody like Jim

1 Romita - Confidential

2 Steranko or somebody else to carry it on after  
3 I would go back on Spider-Man.

4 Q. We talked about this a little bit,  
5 but who would write the dialogue?

6 A. The person who wrote the script,  
7 Stan Lee in his cases, Roy Thomas in his cases.  
8 They wrote all the dialogue.

9 Q. Did artists ever write dialogue?

10 A. The only thing we used to do,  
11 because we worked from a plot, we used to write  
12 notes above and below the artwork and sometimes  
13 in the margins to -- we would make notes and  
14 say -- to remind him what we had talked about  
15 in the plot and this is my response to it and  
16 this is how I'm building up to it. So yes,  
17 remember that this is -- we are now going into  
18 the fight phase and such and such, on the next  
19 page we would go to -- so there were  
20 instructions by the artists as a reminder to  
21 the writer what we plotted, or if we were  
22 deviating from it slightly. Say I needed to  
23 add a panel here because we forgot how he was  
24 going to get from the east side to the west  
25 side in thirty seconds. You know, that kind of

1 Romita - Confidential

2 stuff. So a lot of writers disregarded those  
3 things, and when you do the artwork, you are  
4 faced with the reality of actual bridges and  
5 connections. You can't just make believe --  
6 Spider-Man used to swing to Manhattan from  
7 Queens, go on the rooftop, take an elevator  
8 down and come out as Peter Parker, and I used  
9 to tell Stan -- and I was such a fanatic for  
10 believability and sense, common sense, I said,  
11 "Stan, what did he do, how did he -- where is  
12 his costume?" He said, "it's underneath." And  
13 then he would forget. Sometimes he would have  
14 him go into a doctor's office and take off his  
15 shirt and be examined and I would say, "Stan,  
16 he has got the costume on underneath." He  
17 never thought of those things. I had him so  
18 browbeat with my reality check that he once  
19 made me for a year take off Peter Parker's  
20 shoes and I had to put them on -- tie the  
21 shoelaces and put them around his neck so that  
22 as Peter Parker he could walk up a wall,  
23 because somebody told him -- after all the  
24 times I had tried to make him think  
25 realistically, somebody told him, "well, how

1 Romita - Confidential

2 can he walk up the walls when he has got shoes  
3 on?" His spider abilities doesn't -- he should  
4 have even taken his socks off. The point is I  
5 had to do the damn shoes for at least a year or  
6 six months. That's the -- I also created a web  
7 pack where Peter Parker would take his clothes  
8 and put them in a web sack and put them around  
9 on his back like a knapsack so that when he got  
10 to New York he could take his clothes out of  
11 the web sack, put them on and leave his -- and  
12 go downstairs, you know. In other words, now  
13 at least you know he could put his clothes on.  
14 Where the hell were his clothes all the time?  
15 You know. So I was a realist and Stan was  
16 always -- "it's not important. The reader  
17 doesn't think of those things." Well, I think  
18 of them. I can't stand it that way. So that's  
19 the kind of stuff we used to have. That's  
20 where all of the changes come from.

21 Q. So what would Stan do with notes or  
22 the dialogue in the margins?

23 A. I used to write notes that I thought  
24 were clever. I'd say "maybe he should say  
25 'what's up'," you know, something like that.

1 Romita - Confidential

2 They sounded clever to me while I was doing the  
3 drawing. 3 in the morning everything sounds  
4 clever. He invariably would not use them, and  
5 I asked him once "why wouldn't you use -- why  
6 wouldn't you let him" -- he said something  
7 similar. He said, "because I can't speak in  
8 somebody else's vernacular." He says, "when I  
9 am writing my characters, I am writing in Peter  
10 Parker's personality and Aunt May's personality  
11 and I write the captions in my personality. If  
12 I start putting your personality in there, I am  
13 going to confuse the reader." So he used to --  
14 he told me -- he invariably did not use  
15 anything that was in the margins that was  
16 cleverly suggested by the artists, because he  
17 said he did not want to stray from his normal  
18 approach. He had a dialogue going with the  
19 reader. Saying "dear reader, this is your  
20 editor speaking right now." He used to do  
21 that. It used to drive me crazy. I used to  
22 tell him "you are puncturing the illusion."  
23 It's like opening a door in the theater and  
24 letting the sunlight in and everybody realizes  
25 they are watching a movie now. I said "you are

1 Romita - Confidential

2 ruining" -- he said, "it doesn't matter. I am  
3 talking to my readers."

4 Q. Do you know whether it was just your  
5 dialogue he wouldn't use? Would he use anybody  
6 else's dialogue in the margins?

7 A. I don't think so.

8 MR. TOBEROFF: Calls for  
9 speculation.

10 A. I don't think so. I don't think he  
11 ever -- I think he -- more than once I've heard  
12 him saying he avoided anybody else's  
13 expressions in the scripts.

14 Q. Who had the final say on what the  
15 dialogue would be, what the characters would  
16 say?

17 A. Stan.

18 MR. TOBEROFF: Vague as to time.

19 A. Stan edited the book until the  
20 minute it was yanked out of his hands to take  
21 to the publisher and nobody had anything to say  
22 after that.

23 Q. When did you first meet Jack Kirby?

24 A. Shortly after -- between July of '65  
25 and January of '66 I brought some artwork in

1 Romita - Confidential

2 and Jack was sitting doing a correction the way  
3 I eventually would do all the corrections on a  
4 Steve Ditko cover, Jack was making a change,  
5 and I was introduced to Jack Kirby, who ten  
6 years earlier, twelve years earlier had been my  
7 idol when I was a kid and Captain America came  
8 out. It was like meeting, you know, the  
9 president of the United States.

10 Q. Why would Jack Kirby have been  
11 making changes to a Steve Ditko cover?

12 A. Because of Stan's long-honored  
13 tradition. Whoever was caught in the office  
14 when he needed a change was subject to the  
15 assignment. If you came in, you had to have a  
16 pencil with you. If you didn't have a pencil  
17 with you, you were out of luck. But Jack was  
18 amenable to making the change. Stan didn't  
19 like something Ditko had done on the cover and  
20 Jack changed it. Whenever I -- even in the  
21 first seven years before Marvel Comics existed  
22 I would go in and deliver a mystery story, four  
23 pages, and hope for another script. Stan would  
24 say, "while you are here, can you do me a favor  
25 and change -- this is Arthur Peddy's romance

1 Romita - Confidential

2 story here. Would you change this expression,  
3 would you change this figure, would you add a  
4 car in this scene." He did it all the time.  
5 No pay. "Just do me a favor." You know, and  
6 the inference was you want a script, do me some  
7 corrections.

8 Q. Did you ever make any changes to any  
9 of Jack Kirby's work?

10 A. Yes. And it was hard for me,  
11 because I idolized the man's stuff. I used to  
12 change occasionally girl's faces. Now, Jack  
13 used to do girls that I loved. I loved his  
14 girls. But Stan used to find sometimes  
15 something that he didn't like, an expression,  
16 two wide a face, too narrow a face, mostly too  
17 wide, and he would ask me to adjust it. He  
18 liked the way I did one of the female  
19 characters in Captain America better than the  
20 way Jack did it, so I would occasionally change  
21 the faces. Much to my chagrin, people accused  
22 me of being an egomaniac, again, because they  
23 thought I was the one changing it. Since I was  
24 a de facto art director, they said, "look this  
25 Romita, he is changing everybody's work."

1 Romita - Confidential

2 Barry Smith almost put a contract out on me  
3 because I changed somebody -- a girl's face on  
4 a Conan cover. To this day I still don't know  
5 why he is talking to me. We are friends, but I  
6 know he wanted to kill me then.

7 Q. Whose idea were those changes? Were  
8 they ever yours?

9 A. Uh-uh, never. I would never change  
10 anybody -- I had to change Jack Kirby's work,  
11 Gene Colan's work, John Buscema's work. I  
12 idolized all of these guys. I would -- it  
13 violated me to have to do it. I cringed. And  
14 I will tell you, the worst thing is initially  
15 we didn't have the equipment or the technology  
16 to do it less obtrusively, because originally  
17 we didn't have photostats and xeroxes to work  
18 with. I erased things. To this minute I --  
19 the hair on the back of my neck stands up when  
20 I am thinking I am erasing a Jack Kirby face  
21 and putting my face in there. That, to me, is  
22 a criminal act. I did it because I had no  
23 choice. Stan asked me to change it. We had no  
24 technology. As soon as I was art director and  
25 Stan was on the west coast and we had the

1 Romita - Confidential

2 technology to have a photostat, I devised a  
3 system with iodine to erase things on a  
4 photostat with iodine and I would get a clean  
5 photostat, perfect surface, and eliminate a  
6 face. So I would take a photostat of a page or  
7 a panel, I would iodine the face out, I would  
8 put in the face that stand wanted or the  
9 editor -- Roy Thomas or whoever was the editor  
10 then, and we would paste that over the artwork.  
11 At least I could say to myself when the art  
12 goes back to the guy I idolized, he could peel  
13 it off and you could see his original art.  
14 Then I felt better. But until we had the  
15 technology, I used to actually deface artwork  
16 that I idolized. And it was not fun, but I did  
17 my duty as I was instructed.

18 Q. Did it ever occur to you not to do  
19 it if Stan asked you to?

20 A. It occurred to me, but I never  
21 figured it was worth it. You know, one thing I  
22 gotta constantly remind people of. I did not  
23 envision a world where anyone would not only  
24 care or even remember that there was a comic  
25 industry. From the '50s on I assumed the comic

1 Romita - Confidential

2 Stan were buddies. Every time he visited, "I  
3 want to give him a daily, I want to give him a  
4 Sunday." I would take one of my Sunday pieces  
5 of art and sign it "to Andre, John Romita." He  
6 would sign it, and we would give it to him. I  
7 gave away artwork that is now selling for  
8 \$50,000. I gave them away in the office.  
9 That's my -- that was my -- my take on the  
10 future of comics and the future worth of the  
11 artwork was absolutely who is gonna give a damn  
12 about this. In five years nobody will even  
13 remember we lived here. So help me. That was  
14 my take. So as much as I cringed changing it,  
15 I never felt serious guilt because I thought  
16 who is gonna care. That's my defense. I mean,  
17 maybe I would still get convicted of a crime.  
18 I don't know. That would be my defense.

19 Q. Do you know whether Jack Kirby was  
20 working from -- do you know how he would get  
21 his stories in the 1960s?

22 MR. TOBEROFF: Calls for -- vague as  
23 to time and calls --

24 A. No, no, he was plotting them the  
25 same as I was. With Stan.

1 Romita - Confidential

2 MS. SINGER: Let him say his peace  
3 and then --

4 THE WITNESS: Oh, I'm sorry.

5 MS. SINGER: That's okay.

6 MR. TOBEROFF: It's not my peace. I  
7 make certain objections as to form in a  
8 deposition, so I am just objecting to the  
9 form of the question and then after I  
10 object, you can answer, but I have to get  
11 my -- sorry to interrupt. I have to get my  
12 objection in before you answer.

13 THE WITNESS: I'm sorry I  
14 interrupted you.

15 MR. TOBEROFF: So my objection is  
16 vague as to time. Calls for speculation.  
17 Calls for opinion testimony.

18 A. I was present at at least two  
19 plotting sessions of John -- Jack and Stan Lee.  
20 They were the same as my plotting sessions and  
21 the same as Gene Colan's and Herb Trimpe's and  
22 John Buscema. John Buscema actually did his  
23 plotting by phone, because he lived two hours  
24 away from the city. But anybody else who went  
25 in, Colan would come in, Jack Kirby would come

1 Romita - Confidential

2 in, I was at the office, we would plot in  
3 Stan's office, and with Stan and Jack, most of  
4 the time -- some of the times Jack would --  
5 Stan would drive both of us home on a Friday  
6 night or whatever night he was in plotting.  
7 They would finish or almost finish and then  
8 Stan would say, "come on, I will drive you guys  
9 home." He would drop me off first and then he  
10 would take Jack, who lived about twenty minutes  
11 past me in the same general area of Long  
12 Island. So I was in the back seat of Stan's  
13 Cadillac on two occasions that I remember  
14 distinctly, maybe more, where they were  
15 continuing what they had not finished in the  
16 office, continued plotting. I remember one  
17 particular Fantastic Four plot about the birth  
18 of the son of the two major characters in the  
19 Fantastic Four. Mr. Fantastic and  
20 The Invisible Girl were having a baby and it  
21 was a boy and they were discussing whether the  
22 boy would be gifted, a mutant like they were  
23 and gifted with powers and talents, or whether  
24 he would be a normal boy, and I remember the  
25 reference -- I even referred to them and said

1 Romita - Confidential

2 it's like the Munsters. There was -- in the  
3 Munsters television show they were all bizarre  
4 mutated people except for the little boy who  
5 was raised -- or there was a girl. I think  
6 there was a girl. She was the only normal  
7 person. So I said you could make the kid a  
8 normal guy in a family of mutants. And then  
9 they said they considered that, and then said,  
10 "well, I don't know" -- and I was thinking to  
11 myself, wow, wouldn't it be great if they had  
12 him and you never know if the kid has powers  
13 and slowly but surely he would exhibit -- for  
14 instance, he would levitate a glass or  
15 something. And so I am thinking all these  
16 things while they are talking and I remember  
17 them talking. One guy would make a suggestion,  
18 Jack would say, "that's not a bad idea, but  
19 what if we did it this way," and then Stan  
20 would say, "okay, but only if we did it that  
21 way" and "only if we did it this way." They  
22 were both talking different plots and it's --  
23 and the reason I know it is because when Stan  
24 and I would plot, I foolishly did it from  
25 memory. I never recorded it. Gene Colan was

1 Romita - Confidential

2 his setting, I would do everything he would ask  
3 for, but I had to do the nuts and bolts of the  
4 story. When it comes to characters, he would  
5 ask me "give me a character called The  
6 Shocker." I would create -- he would tell  
7 me the -- he has the powers to shock people  
8 with electric bolts from his wrists. So he  
9 shocks people.

10 Q. Stan would tell you that?

11 A. Yeah, he would say that's what  
12 The Shocker is. So I would create a costume  
13 for it. I didn't create the name. I didn't  
14 create anything else. I didn't create the  
15 powers. I just created the costume. I put him  
16 in a quilted outfit, believe it or not. I  
17 thought it was going to be laughed at. Stan  
18 accepted. He was quilted so he could absorb  
19 his own shocks. The next time it would be  
20 The Rhino. He is a man in a rhino skin. He  
21 could drive himself through a wall. Just butt  
22 head right through a wall. I just did a guy in  
23 a rhino skin with his face showing through the  
24 open mouth of the rhino. Brilliant. Stan  
25 accepted it. And then he would take the

1 Romita - Confidential

2 character and make him valid. He would make  
3 him valid by his behavior, by his dialogue, by  
4 his -- the results of what he does, the mayhem  
5 he caused, and he would give the guy a  
6 personality. That's all it was.

7 Q. Who owned those characters?

8 A. Marvel Comics.

9 MR. TOBEROFF: Calls for a legal  
10 opinion.

11 THE WITNESS: I'm sorry.

12 MR. TOBEROFF: It's okay.

13 Q. What was your understanding of who  
14 owns those characters?

15 MR. TOBEROFF: Calls for a legal  
16 opinion.

17 MS. SINGER: You can answer.

18 A. I assumed Marvel Comics owned them.  
19 I know Stan didn't own them and I didn't own  
20 them.

21 Q. When Jack Kirby would bring his  
22 pages in when you were working in the office,  
23 what would happen to Jack's pages?

24 MR. TOBEROFF: Vague as to time.

25 A. I remember one thing about them. As

1 Romita - Confidential

2 back of a costume. I remember one pirate shot  
3 he did was glorious. It was on the back of the  
4 page. I am sure -- I haven't seen all of the  
5 Kirby collectors magazines and oversized books,  
6 reprints. I'm sure some of those are in there,  
7 some of the glorious drawings. John Buscema  
8 used to do works of art on the backs of his  
9 pages just to loosen up his wrist before he  
10 started to pencil. He would do beautiful  
11 animals, beautiful girls. People used to copy  
12 the front of the page with Buscema and the back  
13 of the page. That's all I could tell you.  
14 That's my memory of seeing those pages. Until  
15 I had to make changes on them.

16 Q. Did Jack know that you were making  
17 changes to his artwork?

18 A. You know, I never asked him.

19 MR. TOBEROFF: Vague as to time.

20 A. I never asked him. I assumed he  
21 did, because I assumed he would look at the  
22 book and see things were changed, although,  
23 frankly, I think Jack probably never even  
24 bothered to look.

25 Q. Why do you think that?

1 Romita - Confidential

2 scratch his nose. He will lose an eye. So I  
3 said all right, make them retractable. They  
4 retract. Like a cat puts its claws out and  
5 retracts them, right? Make them retractable  
6 into his forearm. That's all I said. So I  
7 created that part of him. But I didn't create  
8 the name. I just created the costume. And I  
9 never considered that I created him. I always  
10 tell people I created the costume. But I  
11 didn't name him and I did not give him a  
12 personality.

13 Q. Who would give characters  
14 personality?

15 A. The writer.

16 MR. TOBEROFF: Vague.

17 A. I mean, the writer is the one who  
18 gives him his dialogue and his history. The  
19 history of a -- we used to have a series of  
20 books called the Marvel -- I can't remember the  
21 name of it, but it was the history of every  
22 character, the look of it and how it was  
23 devised and what his history was, and that was  
24 written by the editor or the writer. It could  
25 have been the editor, it could have been the

1 Romita - Confidential

2 writer. The editor sometimes tells the writer  
3 to give him a history of the character. So the  
4 personality of the character is done by the  
5 writer and the editor. The look of the  
6 character is done by the artist.

7 Q. Did Jack Kirby have anything to do  
8 with Wolverine?

9 A. I don't think so. No. In fact,  
10 Wolverine was not a member of the original  
11 X-Men. It came -- it was in a Hulk book the  
12 first time. He was a character -- a Canadian  
13 villain out of Canada. That's another part of  
14 the history that was created that I didn't  
15 create. He was a Canadian and he appeared in  
16 the Hulk. He had nothing to do with the X-Men.  
17 He was added to the X-Men when the X-Men was  
18 being done by Cockrum. Dave Cockrum was doing  
19 the artwork and Len Wein was writing it. They  
20 created the new X-Men and they included  
21 Wolverine in the X-Men. That's all.

22 Q. How about Kingpin, how did Kingpin  
23 come about?

24 A. Again, like The Rhino and  
25 The Shocker, he would say "next month I want

1 Romita - Confidential

2 Mr. Amash that there was something inaccurate  
3 about his quotes of your statements in this  
4 interview?

5 A. Not that I remember.

6 Q. Turn to page, please, 428. In the  
7 first column of the interview it says, if you  
8 look at the second full paragraph on the left  
9 side: "Timely publisher Martin Goodman used to  
10 close shop at the drop of a hat. If expenses  
11 got too high, he'd say "the hell with it," and  
12 close shop. Nobody had any protection because  
13 there were no pensions, no severance pay or  
14 insurance plans, or saving plans. Everyone who  
15 worked in comics were flying by the seat of  
16 their pants."

17 A. True.

18 Q. Is that a true statement?

19 A. That was my impression.

20 Q. That's your understanding?

21 A. That was my impression of the way  
22 the industry -- the way he ran his company. I  
23 wasn't very bright.

24 Q. Does what you said about Marvel also  
25 apply to your experience at DC after you left

1 Romita - Confidential

2 Q. But did you usually work from a  
3 script during the period you worked in the  
4 '50s?

5 A. I always worked from a script at  
6 that time.

7 Q. And that's when -- that's -- the  
8 period you spoke about was more of a kind of I  
9 think you used the term sausage factory?

10 A. Yeah, they were turning them out.  
11 The scripts were repetitious and similar and  
12 the artwork was somewhat the same. Most of us  
13 were just trying to make a dollar.

14 Q. And do you recall how much in the  
15 '50s they would pay you for your work?

16 A. It ranged from the mid 20s to the  
17 mid 40s. There were weeks -- there were years  
18 where we had terrible times and there were good  
19 years and there were bad years. Two good  
20 years, one bad year. Two bad years, one good  
21 year. In comics -- in those fifteen years  
22 there was nothing you could count on. I could  
23 make \$6,000 one year, I could make \$8,000 the  
24 next year and I could make \$5,000 the third  
25 year, because the ebb and flow was always

1 Romita - Confidential

2 questionable. Martin Goodman would decide he  
3 wasn't going to publish as many books. Then he  
4 would decide to publish 25 more books. So it  
5 was very erratic, very hard -- very difficult  
6 to plan a life when you didn't know where the  
7 money was coming from. It was a dumb way to  
8 live.

9 Q. When you worked in this freelance  
10 fashion, they always bought your work by the  
11 page?

12 A. By the page.

13 Q. You referred to your working at some  
14 point at Marvel as a correction artist. I  
15 believe it was after you started working as a  
16 full-time employee.

17 Can you try and pin down for me the  
18 date or approximate date when you started  
19 working as a correction artist on staff at  
20 Marvel?

21 A. I don't believe there was any actual  
22 date. It sort of -- it sort of crept into  
23 the process. It preceded my eight years at DC,  
24 by the way. By the way, I also did corrections  
25 at DC sometimes. Whenever I was in there, they

1 Romita - Confidential

2 THE WITNESS: Thank you.

3 MS. SINGER: I have just a couple,  
4 I'm sorry, and then we will get you out of  
5 here.

6 MR. TOBEROFF: In that case I might  
7 have more questions.

8 FURTHER EXAMINATION BY

9 MS. SINGER:

10 Q. A couple of things. When you were  
11 talking with Mr. Toberoff, you mentioned that  
12 the Fantastic Four was a trademark book of  
13 Jack's.

14 When you used the word "trademark,"  
15 were you using that in a legal sense?

16 A. No. It was -- he was associated  
17 with it as a successful title. That's what I  
18 meant. He had started it with Stan and they  
19 were riding the crest of a wave of success.

20 Q. Do you know whether Jack owned any  
21 of the characters or any of the works for  
22 Fantastic Four?

23 A. I don't believe so.

24 Q. You were talking about the legends  
25 on the back of the check.

1 Romita - Confidential

2 When you were at Marvel in the 1950s  
3 before you left in '57 or '58, when you would  
4 get checks from Marvel or Timely or whoever it  
5 was for your page rate, do you recall whether  
6 there was a legend on the back of the check?

7 A. I believe there was. I think they  
8 wouldn't have -- well, I'm assuming there was.  
9 I think I vaguely remember there was.  
10 Sometimes a shorter paragraph, sometimes a  
11 longer paragraph.

12 MS. SINGER: Okay. I have no  
13 further questions.

14 MR. TOBEROFF: I will let you off  
15 the hook. I have no further questions.

16 MS. SINGER: Before we go off the  
17 record, I just want to clarify, Marc, that  
18 Mr. Romita has appeared today both in  
19 response to our subpoena, in response to  
20 your subpoena, you have cross-examined him,  
21 he has fully answered all your questions on  
22 your subpoena and he is done. Are you in  
23 agreement on that? You have had your  
24 opportunity to question him.

25 MR. TOBEROFF: I am not -- I think