

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARVEL WORLDWIDE, INC., )  
MARVEL CHARACTERS, INC. and )  
MVL RIGHTS, LLC, )

PLAINTIFFS, )  
)

vs. ) No. 10-141-CMKF

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

\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF NEAL KIRBY  
Los Angeles, California  
Wednesday, June 30, 2010

Reported by:  
SUSAN A. SULLIVAN, CSR #3522, RPR, CRR  
JOB NO. 31595

1 A That's correct.

2 Q Would you state their full names and birth  
3 dates for me if you can.

4 A My oldest sister is Susan. Her birth date  
5 is December 6, 1945. My sister who is slightly  
6 younger than me is Barbara. Her birthday is I  
7 believe November 26th and I think that -- I think she  
8 was born in '53. And my youngest sister is Lisa and  
9 I believe her birthday, I'm going with September 6th  
10 on this one.

11 Q September 6th?

12 A If I recall right. Well, let's see. She  
13 is about 13 years younger than I am so that would  
14 be -- she was probably born in '61, I guess.

15 Q Somewhere I had a note that Barbara was  
16 born in '52. Is that possible?

17 A It is possible, yes.

18 Q And what is your birth date?

19 A My birthday is May 25th, '48.

20 Q Do you have any children?

21 A Yes, I do.

22 Q How many?

23 A I have two children by my first marriage  
24 and one with my current wife.

25 Q And would you just give me the names of

1 MR. TOBEROFF: Let's take a short break.

2 MR. FLEISCHER: Let's go off the record.

3 THE VIDEOGRAPHER: This marks the end of  
4 DVD Number 1. Off video at 11:42 a.m.

5 (Recess)

6 THE VIDEOGRAPHER: Back on video at 11:51  
7 a.m. This marks the beginning of DVD Number 2  
8 of the video deposition of Neal Kirby.

9 BY MR. FLEISCHER:

10 Q Mr. Kirby, have you ever discussed the  
11 termination notices which are the subject of this  
12 lawsuit with Mr. Evanier?

13 A No, not with Mr. Evanier.

14 Q Have you ever discussed the termination  
15 notices with anyone other than Mr. Toberoff or a  
16 member of his law firm?

17 A Not that I can recall, no.

18 Q Did you ever attend any meetings between  
19 Mr. -- you are Mr. Kirby -- between Jack Kirby and  
20 anyone at Marvel at the time Mr. Kirby was working  
21 for Marvel?

22 A No, I was not -- if I went into the office,  
23 I wasn't party to any meeting.

24 Q I'm sorry, you said you went with him to  
25 the office but you didn't attend any meetings?

1           A       Yes, as a child, as a kid occasionally my  
2 parents were nice enough to let me play hooky once in  
3 awhile and I would go sit in with my father if he had  
4 to go and bring in artwork and go up to Marvel's  
5 office and just kind of sit and wait for him; a  
6 little bit later go to the zoo or something.

7           Q       Did you have an understanding at that time  
8 about who your father was meeting with when he went  
9 to the offices of Marvel?

10          A       I would just assume he would be meeting  
11 with Stan Lee or some other person in charge, I  
12 guess.

13          Q       Do you have any recollection of discussing  
14 with your father any of the meetings he had had with  
15 Stan Lee?

16          A       No, I don't.

17          Q       Was it your father's practice to talk with  
18 you about the subject of those meetings or not?

19          A       No, not really. I don't recall right now.

20          Q       Did you have an understanding of the  
21 purpose of the meetings your father was having with  
22 Mr. Lee or anyone else who might have been behind  
23 that closed door?

24          A       Well, I suppose you might say as a kid it  
25 was my understanding he was bringing his artwork to

1 New York, gave it to them; they looked at it, they  
2 bought it or didn't and on he went.

3 Q Did you have any understanding at the time  
4 that part of the function of the meetings was to  
5 discuss future assignments or work?

6 MR. TOBEROFF: Assumes facts.

7 A No, I didn't.

8 Q Am I correct then that you have no  
9 knowledge whatsoever of any discussions between your  
10 father and Stan Lee concerning your father's work for  
11 Marvel?

12 A I was never a party to any discussion.

13 Q Did your father ever tell you anything Mr.  
14 Lee had said to him?

15 A He never -- I don't recall. I don't recall  
16 anything specific where my father said something like  
17 Stan said this or anything, no.

18 Q Do you have any recollection of your father  
19 bringing in artwork that Marvel did not pay for?

20 A Yes, I do because, I know from time to time  
21 it was kind of a topic of discussion at the dinner  
22 table where my father would be upset, he might have  
23 brought in some pages and whatever might have been  
24 something that they didn't like with the pages and  
25 they had to redo them and I would know he and my

1 don't recollect specifically, only that it was at  
2 dinner so I would assume that Susan and Barbara might  
3 have been there.

4 Q Are there any documents or drawings or  
5 articles that you could refer to to refresh your  
6 recollection of which you are aware about the  
7 specifics of the discussions that you were privy to  
8 between your mother and father?

9 A I'm not aware of any, no.

10 Q Did you have an understanding one way or  
11 another as to whether the work your father presented  
12 to Marvel was being done as a result of a request by  
13 Marvel that your father do the work?

14 A I don't recall as a child, you know,  
15 knowing that, knowing the circumstances under which  
16 he did the work, only that he did do the work and  
17 occasionally brought into New York City. Like I  
18 said, it was my understanding at the time, he would  
19 bring it in, they would look at it, they would buy it  
20 or they didn't.

21 Q Apart from this one Thor drawing, can you  
22 recall any instance that you witnessed that your  
23 father brought in work that he did not -- that he  
24 returned home with?

25 A Not when I was with him, no.

1 co-created for other publishers.

2 A I believe characters such as Fighting  
3 American, there were some horror comics that he did,  
4 Black Magic and Young Romance during the late  
5 forties, early fifties, some -- honestly I don't know  
6 if it was the Marvel or pre-Marvel entity in terms of  
7 the characters but Challengers of the Unknown, The  
8 Fly which he did with Joe Simon. Oh, I'm sorry, am I  
9 not -- I'm moving out of the way there.

10 He did, let's see, Ant-Man.

11 Q Ant-Man, did you say?

12 A I believe it was called Ant-Man, yes.

13 Q A-n-t?

14 A A-n-t, yes.

15 Q Do you know whether Ant-Man was published  
16 by Marvel?

17 A No, I don't. I don't know who the  
18 publisher is.

19 Q Okay. Any others come to mind?

20 A Not that I -- I'm sure that there are many  
21 more. I can't recall any at this particular moment.

22 Q Do you have any firsthand knowledge of your  
23 father working on any character or story which is the  
24 subject of one of the termination notices here before  
25 being asked by Stan Lee or someone else at Marvel to



1 Q But my question is do you know whether any  
2 of those characters was created -- do you have  
3 knowledge one way or the other as to whether those  
4 characters were created pursuant to specific  
5 assignments or commissions by Marvel?

6 A No, I don't.

7 Q Forgive me if I've asked this before, it is  
8 not my intention to repeat questions, but did your  
9 father ever discuss with you or in your presence any  
10 assignments he had received from Marvel or Stan Lee?

11 MR. TOBEROFF: Assumes facts not in  
12 evidence.

13 A Not that I can recollect right now.

14 Q Do you know how your father was paid for  
15 the work he did and was published by Marvel?

16 A Well, like I said previously, he would  
17 bring the work when I was there, anyway, he would  
18 bring the work to New York, bring in the pages, and I  
19 believe he got paid by check in the mail.

20 Q Do you know the basis for the payments that  
21 he received for the work?

22 A He got paid by the page that they bought.

23 Q And was that something that you knew at the  
24 time or something that you have learned since?

25 A No, I knew that at the time.

1 Q Did you have an understanding at the time  
2 that that was consistent with the way other comic  
3 book artists were paid?

4 A Yes, I did.

5 Q And how did you come by that understanding?

6 A In just by kind of, you know, discussion.  
7 I could not tell you the specific time or instance  
8 but I know from time to time, you know, he said  
9 that's how he got paid, by the page.

10 Q Did you have an understanding at the time  
11 how much he was being paid by the page?

12 A No, I didn't.

13 Q Did he ever discuss financial matters in  
14 your presence?

15 A No.

16 MR. TOBEROFF: Excuse me. Give me time to  
17 object to the question before you answer.

18 THE WITNESS: Sorry.

19 MR. TOBEROFF: Vague and ambiguous as to  
20 "financial matters."

21 A If you are referring to how much he got  
22 paid, no.

23 Q Did he ever discuss how much he got paid in  
24 relation to other comic book artists?

25 A No.

1 in front of me, if that's what you are referring to.

2 Q You indicated that you weren't privy to the  
3 conversations that occurred between your father and  
4 Stan Lee or others at Marvel even when you were at  
5 the offices.

6 A That's correct.

7 Q But when he came home or when he left the  
8 Marvel office and you were together did he ever  
9 indicate that he had been asked to make changes in  
10 pages?

11 A I don't recall him like at any particular  
12 time when I was watching him draw, I don't recall him  
13 at any particular time going, "Oh, I need to make  
14 this change because they asked me to," no.

15 Q Is it possible that your father had  
16 delivered work to Marvel and was asked to make  
17 changes and, in fact, took the work home and did make  
18 changes and resubmitted it?

19 MR. TOBEROFF: Calls for speculation.

20 A I would have no way of knowing that.

21 MR. FLEISCHER: Marc, your objections are  
22 speaking objections and I have not taken issue  
23 with it but the objection that you are supposed  
24 to make is objection to form. You are not  
25 supposed to say assumes facts, you are not

1           A       Yes.  Because he had either created or  
2 co-created most of their characters, if not all of  
3 their characters during that timeframe.  If it wasn't  
4 for him the company might have and probably would  
5 have gone down the tubes.  And he put all of his  
6 heart and work and effort, even 16, hours a day, I  
7 remember that, doing all this work and got paid by  
8 the page and Marvel and other people at Marvel got  
9 very wealthy.

10          Q       Was she referring to anyone in particular  
11 when she said Marvel and other people at Marvel got  
12 wealthy?

13          A       Well, in particular Stan Lee and, you know,  
14 Marvel as a corporate entity, yes.  And I should say,  
15 I would like to say it wasn't so much the matter of  
16 the wealth, that was probably a poor choice of words  
17 on my part.  I think the genuine really cause for her  
18 upset is that he never really got due credit for what  
19 he did.

20          Q       Did she ever indicate to you that he had  
21 been treated differently than other talented comic  
22 book creators during the time that he was working for  
23 Marvel and other publishers?

24          A       Treated differently in what respect?

25          Q       Either in terms of payment or credit or any

1 other aspect of the work.

2 MR. TOBEROFF: Compound.

3 A I don't recall ever discussing with my  
4 mother how much my father was paid by the page in  
5 relation to any other artist, no.

6 Q Did you have an understanding that your  
7 father -- withdrawn.

8 Did you have an understanding that other  
9 comic book artists were paid by the page during the  
10 time that your father worked in the industry?

11 A Yes. I guess it was you might say common  
12 knowledge that that's how comic book artists were  
13 paid.

14 Q And was it your understanding that the  
15 writers of comic books were also paid by the page?

16 A That I had no knowledge of.

17 Q Do you recall ever having a discussion with  
18 your father with respect to the contribution, if any,  
19 that Stan Lee or other writers at Marvel had to the  
20 stories that he was working on?

21 A I know my father was -- there were times  
22 when he was visibly upset if Stan Lee, say, would  
23 take credit for something my father was done or  
24 didn't get due credit for something that my father  
25 had done.

1 the course of, I don't know from, maybe when I was  
2 eight years old onward, maybe even younger, up until  
3 I left for college it was kind of my daily habit. I  
4 would come home from school, go downstairs, you know,  
5 say hi to my father, see what he was working on, you  
6 know. He would kind of tell me what he was drawing,  
7 what he was doing.

8 I would go upstairs, get a snack, get my  
9 books and I would go back down in the basement to do  
10 my homework because I kind of liked being in  
11 proximity. And I was doing homework, go into the  
12 studio and watch, go back out and do homework. And  
13 eventually we would get my homework done and we would  
14 watch T.V. together. At least I watched T.V. while  
15 he worked.

16 Q Now did your father ever discuss with you  
17 any deadlines he had in connection with the work that  
18 he was doing for Marvel?

19 A He would occasionally say that, you know,  
20 that he had to get a certain story in by a certain  
21 day or something to that effect.

22 Q And I think you said that at certain points  
23 in time your father often worked into the -- worked  
24 16- to 18-hour days.

25 A Yes.

1 Q If I recall your testimony earlier.

2 A Uh-huh.

3 Q Do you know why he worked those long hours?

4 A He worked those long hours because he was  
5 getting paid by the page. The more pages he could  
6 do, the more money he earned.

7 Q Do you recall whether those hours had  
8 anything to do with his effort to meet specific  
9 deadlines?

10 A Specifically, I couldn't say. Those long  
11 hours were consistent over the years. It wasn't like  
12 a deadline coming up, I'm going to work long hours.  
13 Those were his consistent hours.

14 Q Would you say those were his consistent  
15 hours between 1958 and 1963?

16 A I would say at least in the period of my  
17 good memory, if you wanted to do that, at least in  
18 the -- through, say, early sixties through when I  
19 went off to college, yes.

20 Q Just to set the context for how old you  
21 were at the time, in 1958 you would have been 10,  
22 correct?

23 A 10, yes.

24 Q And when would you put the point at which  
25 your recollection is its best with regard to the

1 events concerning your father's work?

2 A Probably from that point to when I went,  
3 left for college in September of '66, and my  
4 recollection during those years was that he always  
5 kept very long work hours. He would start working  
6 around lunchtime usually and would work until usually  
7 3:00 or 4:00 in the morning. Sometimes -- sometimes  
8 he had to start earlier and sometimes he would go  
9 later. But always put in a lot of hours, usually  
10 six, seven days a week. There wasn't any weekend he  
11 didn't work.

12 Q Did you have any sense at the time, at any  
13 point between the time that you were 10 and you went  
14 off to college as to where in the spectrum of comic  
15 book artists' compensation your father stood?

16 A At that time, no.

17 Q Did you later come to have an understanding  
18 about where he stood in the spectrum from low to high  
19 of compensation during those years?

20 A I never had an understanding or I never  
21 knew where he stood let's say in relation to a  
22 specific artist and I never knew exactly how much he  
23 got paid for, you know, per page. I mean, however,  
24 obviously I -- they had a house and we all ate every  
25 day so I assume he made enough money.



1 your father confided work-related issues in the  
2 fifties or sixties at any time?

3 A No, I'm not aware of any. There might have  
4 been but not that I can recall.

5 Q You were never present at a conversation  
6 where you heard your father discussing work issues  
7 with another non-family member; is that correct?

8 A Correct. That would be correct.

9 Q I want to go through a few specifics with  
10 regard to some of the characters that are the subject  
11 of the termination notices at issue in this and let  
12 me start with Spider-Man.

13 Do you have any information with regard to  
14 the circumstances under which the Spider-Man  
15 character was created?

16 A I'm not -- I'm not aware of any specific  
17 information as to the creation of Spider-Man.

18 Q Do you know if your father created the  
19 Spider-Man character or co-created the Spider-Man  
20 character?

21 A I'm aware that he had a hand in the  
22 beginnings of the character and in the design of the  
23 character. You know, again, as to meetings that  
24 might have taken place, I wouldn't have been privy to  
25 that.

1 Spider-Man was created with your sister Lisa?

2 A No, I haven't, that I can recall.

3 Q How about with Barbara or Susan?

4 A No, I don't recall discussing that with  
5 them.

6 Q Do you have any specific information with  
7 regard to your father's contribution, if any, to the  
8 actual creation of the character other than penciling  
9 the cover for the first issue?

10 A That's -- he may have done more. I don't  
11 have, that I can recall, any other specific  
12 information.

13 Q Were you ever told by your father that he  
14 had been assigned to draw the first Spider-Man and  
15 that his style of drawing was ultimately determined  
16 by Stan Lee to be too heroic for the character?

17 MR. TOBEROFF: Compound.

18 A If I recall at the time Spider-Man was  
19 being created and the script started, I know he did  
20 mention that because of all the other strips that he  
21 was doing, FF and Thor and so on, that he was too  
22 busy to do Spider-Man.

23 Q And did he tell you that at the time?

24 A I believe it did come up. Again, I  
25 couldn't recall a specific date or time or how the

1 he would get upset when Spider-Man was brought up, so  
2 to speak, you know, that, again, he and others  
3 involved basically didn't get any credit.

4 Q Of your own firsthand knowledge do you know  
5 whether the concept for the Spider-Man character and  
6 the basic powers of a Spider-Man character were  
7 conceptualized initially by Stan Lee or someone else?

8 A Well, I would say my firsthand knowledge,  
9 my first guess would be my father just because of  
10 his -- just his knowledge of science, his use of  
11 science fiction in stories, just in his if you want  
12 to call it pattern, for lack of a better word, of how  
13 do you get a human to have super powers, you know,  
14 without direct intervention from God. Well, the best  
15 way to do it was somehow altering DNA which was the  
16 big thing at the time with the Cold War going on and  
17 so on.

18 Q Now is it true that what you just described  
19 is your own speculation and, in fact, is not based on  
20 your knowledge of how the idea was first floated?

21 A Well, I'd say it is based on my knowledge  
22 of how my father worked and his knowledge and in my  
23 personal discussions with him at the time I certainly  
24 felt that way.

25 Q Well, leaving aside how you felt, can you

1 testify as a matter of fact that Stan Lee didn't come  
2 to your father initially with the idea of the  
3 Spider-Man character?

4 A Well, I can't -- I can't say what might or  
5 might not have been discussed between my father and  
6 Stan Lee or Stan Lee and anybody else given that I  
7 was a teenager and not privy to those discussions.

8 MR. FLEISCHER: Would you mark this as  
9 Kirby 2.

10 MR. TOBEROFF: Thank you.

11 (Neal Kirby Exhibit 2, a document, marked  
12 for identification, as of this date.)

13 Q Mr. Kirby, I place before you an article  
14 marked for identification as Neal Kirby Exhibit 2.

15 A Uh-huh.

16 Q Have you ever seen the story reflected in  
17 this exhibit?

18 A I will let you know as soon as I read it.

19 MR. TOBEROFF: It is hard to tell looking  
20 at the exhibit what it is. Can you tell me what  
21 this is? Or I should say this looks like a blog  
22 entry.

23 MR. FLEISCHER: Apart from what it appears  
24 to be on the face of it, I can't offer you any  
25 information about it.

1 Q Have you ever seen the interview your  
2 father appears to have given to The Spirit creator  
3 Will Eisner concerning the Spider-Man character?

4 MR. TOBEROFF: Assumes facts not in  
5 evidence.

6 A No, I haven't seen that interview.

7 Q What information, if any, Mr. Kirby, do you  
8 have concerning the circumstances of the creation of  
9 the Iron Man character?

10 A I'm trying to recall. At this time I don't  
11 have any recollection of Iron Man specifically, how  
12 that came about.

13 Q Do you know what contribution, if any, your  
14 father made to the Iron Man character?

15 A Again, I believe at the very least, I  
16 believe he designed the costume. As to the initial  
17 idea and creation of the character, I'm sure at the  
18 very least he probably contributed to that.

19 Q Is that just sheer speculation on your  
20 part?

21 A Well, I wouldn't call it speculation, I  
22 would call it based on -- based on the knowledge of  
23 that he pretty much had a hand in everything Marvel  
24 did and based on my knowledge of his creativity.

25 Q Well, was he the artist assigned to draw

1 the initial issue of Iron Man?

2 A That I do not know.

3 Q Do you have any basis to contradict Mr.  
4 Lee's testimony that the concept for the Iron Man  
5 character was his?

6 A Do I have any basis for that? I have the  
7 basis that I know my father's creativity versus Mr.  
8 Lee's creativity and Mr. Lee was an excellent  
9 marketer, he was an excellent manager, excellent  
10 self-promoter. I honestly don't believe he had any  
11 creative ability.

12 Q You've never met Mr. Lee, have you?

13 A When I was younger, yes, I met him several  
14 times.

15 Q And is it on the basis of your assessment  
16 of him as a teenager that you make that statement  
17 that he wasn't creative?

18 A It is on that basis. It is on the basis  
19 of, you know, having seen and read some of his  
20 interviews and so on.

21 Q Am I correct that you have no firsthand  
22 knowledge about whose idea the Iron Man character  
23 was; is that correct?

24 A I cannot recall at this moment.

25 Q Do you recall being aware that Don Hecht

1 was the artist who drew the first issue of Iron Man?

2 A He may have been. You know, I'm not aware  
3 of who drew the first issue.

4 Q Do you know whether the cover for the Iron  
5 Man book that your father did was created before or  
6 after the panels for the first publication were  
7 created?

8 A I don't have any recollection of that.

9 Q Are you saying -- when you say you don't  
10 have any recollection, do you believe at one point  
11 you knew and have forgotten or are you saying that  
12 you never knew?

13 A No, I'm saying that I don't remember. I  
14 may have at one point in the past. Right at this  
15 moment I don't recall.

16 Q Is there anything of which you are aware  
17 that would refresh your recollection about that  
18 subject?

19 A Well, I don't know. I suppose we can get a  
20 Psychology 101 book and get out all the standard  
21 memory refreshers. But it is possible something  
22 could pop up in the future that might refresh my  
23 memory, I don't know.

24 Q You are not aware of any document or  
25 drawing or anything that currently exists of which

1 you are aware that could refresh your recollection;  
2 is that correct?

3 A I have not seen anything recently that I  
4 would say would, can refresh my memory.

5 MR. TOBEROFF: Before you go on to a new  
6 character, there was a name you mentioned in  
7 connection with Exhibit 2 and I just wanted  
8 to -- rather than having her go back to the  
9 record can you tell me that name.

10 MR. FLEISCHER: Will Eisner?

11 MR. TOBEROFF: No, the person who --

12 MR. FLEISCHER: Al Nickerson?

13 MR. TOBEROFF: Yeah.

14 MR. FLEISCHER: It is in the article  
15 itself.

16 THE VIDEOGRAPHER: We have to change tapes  
17 in about five minutes.

18 MR. TOBEROFF: I'm sorry, I didn't see it.

19 Q Mr. Kirby, a minute ago you said something  
20 to the effect that your father had a hand in  
21 everything that Marvel did. During what period of  
22 time were you referring?

23 A Referring to the time late fifties to early  
24 sixties.

25 Q And how do you know for a fact that that



1 was the case?

2 A Just my, again, my understanding of the  
3 way -- the way my father operated and contributed  
4 ideas and came up with and created ideas.

5 Q Anything else on which you make that  
6 statement?

7 A And, again, based on the fact I don't know  
8 what other creative forces at Marvel existed other  
9 than my father at that period of time.

10 Q Well, not being aware of what other  
11 creative forces existed, how can you make that  
12 statement?

13 MR. TOBEROFF: Argumentative.

14 A Again, just my -- just my knowledge and  
15 basis of, you know, having been around my father and  
16 at the time that the things were, at Marvel things  
17 were happening. I don't know another way of wording  
18 it.

19 Q Well, you are suggesting that there was no  
20 other creative force at Marvel other than your  
21 father. Do you have a basis for that understanding?

22 A Well, in terms of -- I think if you look at  
23 Marvel after my father left I'm not sure, and, again,  
24 I'm not sure that anything new came out of Marvel  
25 after he left the company so you could look at it in

1 that aspect.

2 Q Does that as a scientist speak to what  
3 happened while your father was there?

4 MR. TOBEROFF: Argumentative.

5 A Well, as a scientist I'm not sure how we  
6 apply scientific method to this but, no, it just goes  
7 on the basis of what I have known and just my  
8 discussions with my father.

9 Q Did your father ever tell you that he was  
10 the sole creative force at Marvel during his tenure  
11 there?

12 A I don't recall him using -- again, my  
13 father would have been too humble a person to even  
14 word anything like that but I know in discussions it  
15 just, to me, he certainly seemed that way.

16 Q It seemed that way because you were aware  
17 of what else was going on at Marvel other than what  
18 you saw your father do?

19 A Well, yes. We got all the comic books and  
20 pretty much knew what was going on at Marvel at the  
21 time as children.

22 Q And was it your view at the time that Mr.  
23 Hecht who was a Marvel artist at the time was not a  
24 significant creative force at Marvel?

25 A I couldn't say one way or the other. I

1 never met Mr. Hecht.

2 Q Are you aware of the work of Bill Everett?

3 A I know his name.

4 Q Is it your view that Mr. Everett was not a  
5 creative force at Marvel in the fifties and sixties?

6 A Again, I never met Mr. Everett and I'm not  
7 totally familiar with his work so I wouldn't  
8 conjecture on that one way or the other.

9 Q So my question is how can you say that your  
10 father was effectively the sole creative force at  
11 Marvel during the fifties or sixties.

12 A Again, that's come just from my discussions  
13 with my father and my perception of the situation at  
14 the time.

15 Q Do you know who the editor and chief at  
16 Marvel was during the fifties and sixties?

17 A I would guess that would have been Stan  
18 Lee.

19 Q Do you know if it was part of the work that  
20 your father did on Marvel's behalf to review and  
21 direct Marvel publications other than the ones that  
22 he was working on as an artist?

23 A Are you staying it was Stan Lee's job?

24 Q No, your father's job.

25 A To edit other artists' work? I'm not quite

1           A       He never mentioned to me that he worked off  
2 a synopsis and usually he was penciling stories in  
3 the margins of the comics. He usually, if I could  
4 jump in there, he usually started, he always started  
5 in the middle of a story and then he went back to the  
6 beginning and then he would finish up and do the end,  
7 that was just the way he worked. I would think if  
8 you are working off a story or a synopsis that you  
9 don't need to do that but --

10          Q       As you have indicated, though, you don't  
11 know what conversations may have occurred between  
12 Stan and your father before you saw him working on a  
13 drawing, correct?

14          A       I wouldn't have been privy to those  
15 conversations.

16          Q       Right. And you don't know whether or not  
17 your father had been given a synopsis or a script  
18 before he began working on a particular story; is  
19 that correct?

20                   MR. TOBEROFF: Asked and answered.

21          A       Yes. I never saw a script or synopsis by  
22 his drawing board.

23          Q       What information, if any, do you have  
24 concerning the creation of The Fantastic Four?

25          A       In discussions with my father The Fantastic

1 Four basically was a derivative of the, from what he  
2 told me, basically he came up with the idea just as a  
3 derivative from the Challengers of the Unknown that  
4 he had done several years earlier.

5 Q So your father told you that The Fantastic  
6 Four was his idea?

7 A Yes.

8 Q Did your father ever tell you about any  
9 discussions that he had with Stan Lee concerning The  
10 Fantastic Four?

11 A Any specific discussions, not that I can  
12 recall.

13 Q Did your father ever discuss with you any  
14 synopsis that Stan Lee had given to your father?

15 A No, he never discussed that with me and as  
16 I said previously, I never saw him work on a  
17 synopsis.

18 (Neal Kirby Exhibit 3, a document, Bates  
19 Nos. MARVEL0014587 to MARVEL0014588, marked  
20 for identification, as of this date.)

21 MR. FLEISCHER: Would you mark that as  
22 three, please.

23 MR. TOBEROFF: I just want to clarify, any  
24 document that you produce in this action will  
25 have Bates stamps and if it is a document like

1 work on The Fantastic Four?

2 A Again, I can only say what I said before.  
3 I had never seen him work from a synopsis, he never  
4 had a synopsis or a story on his drawing table or  
5 anywhere near his drawing table that I could see when  
6 he was working, and in none of our discussions did he  
7 ever mention to me working off of any kind of  
8 synopsis by Stan Lee.

9 Q Apart from those observations you made as a  
10 young man or teenager, do you have any reason to  
11 doubt the veracity of Stan Lee's testimony to the  
12 effect that this is a synopsis he created and gave to  
13 your father for the purposes of assisting his work as  
14 the artist on The Fantastic Four?

15 A Do I have reason to disbelieve him?

16 Q Yes.

17 A Yes, I do have reason to disbelieve him.

18 Q And what is the basis for your disbelief?

19 A The basis for my disbelieve is that I  
20 believe Stan Lee, and I'm trying not to be  
21 mean-spirited here at all or anything like that, who  
22 was brought up to be respected by my elders and at my  
23 age it is nice to call someone else an elder, but I  
24 believe Stan Lee is -- he is basically a self-  
25 promoter so I believe, you know, I believe he is

1 narcissistic and I believe he is a self-promoter and  
2 I believe he will do whatever needs to be done to  
3 carry on the myth that he was the creator of  
4 everything at Marvel.

5 Q Did your father ever tell you that he  
6 created the names of The Fantastic Four characters?

7 A They came up in discussion, yes, that my  
8 father was joining them, this is so is so, this is so  
9 and so.

10 Q Do you know if those were the names he gave  
11 to the characters or the names that Stan Lee had  
12 given to the characters or someone else had given to  
13 the characters?

14 MR. TOBEROFF: Compound.

15 A It was my understanding from our discussion  
16 that he had given the names to the characters.

17 Q He had told you that he had given the names  
18 to The Fantastic Four characters?

19 A I believe so, yes.

20 Q Did he tell you that when the initial issue  
21 of Fantastic Four was on the drawing board or some  
22 other time?

23 A If I recall, it was -- it was -- I don't  
24 recall honestly if it was while he was still drawing  
25 it or if it was before the actual published book

1 And then the next opportunity for a war book being  
2 the Combat book which was just really a compilation  
3 of stories.

4 Q Now do you -- and the basis for your  
5 statement that your father created the name Sergeant  
6 Fury or Nick Fury, whichever is appropriate --

7 A Sergeant Nick Fury.

8 Q Sergeant Nick Fury is what?

9 A That he told me.

10 Q Any other information concerning the name  
11 of that character that you have?

12 A Not that I can recall.

13 Q And am I correct that you have no knowledge  
14 with regard to conversations that occurred between  
15 your father and Stan Lee concerning Sergeant Nick  
16 Fury prior to the introduction of that character? Is  
17 that correct?

18 A It is correct in saying that my father  
19 didn't -- in my discussions with my father that did  
20 not come up.

21 Q And you weren't present at any  
22 conversations as you have indicated between your  
23 father and Stan Lee.

24 A That would be correct.

25 Q Do you recall who was the assigned writer



1 to the Thor comic book at the time of its first  
2 issue?

3 A No, I don't recall that.

4 Q Do you know what contribution the assigned  
5 writer of Thor made to that character?

6 A I don't recall right now. No, I don't  
7 recall what that might have been.

8 Q Do you recall what discussions took place  
9 between Stan Lee and your father prior to your father  
10 beginning work on the Thor comic book?

11 A I have no knowledge of what their  
12 discussions might have been. Same thing. My  
13 discussions with my father were about basically  
14 creating, you know, a book around Norse mythology.

15 Q Do you know if Stan Lee asked your father  
16 to create a book based on Norse mythology?

17 A I have no recollection or knowledge of  
18 that.

19 Q Was it your understanding your father would  
20 begin working on a book without any discussion with  
21 Stan before doing so?

22 A I would say it was my understanding if my  
23 father had an idea for a book or a character to  
24 create he could bring it up and get a yea or nay.

25 Q Was it your understanding that he would

1 begin working; that is, drawing panels prior to  
2 getting a go ahead from Marvel or Stan Lee?

3 A I don't believe -- that is not my  
4 understanding. My father didn't do work on spec, he  
5 was getting paid by the page.

6 Q Let's talk about Ant-Man for a minute.

7 A If I could just interject here, if he was  
8 to do something on spec like that and do a whole 20-  
9 page story which would take him hours and hours and  
10 hours to do and bring that into New York and oh,  
11 sorry, you know, idea but not now let's wait a couple  
12 of years, he doesn't get paid for it so that wouldn't  
13 have been the way my father would operate.

14 Q Okay. What information, if any, do you  
15 have about the circumstances surrounding the creation  
16 of Ant-Man?

17 A I really don't recall that. Ant-Man would  
18 have been when I was really young.

19 Q You read, as you said, Mr. Lee's deposition  
20 testimony, correct?

21 A Uh-huh.

22 Q And he described the circumstances of his  
23 idea about Ant-Man to your father. Do you remember  
24 reading that testimony?

25 A Actually, no, I don't. I did read through

1 going on and him explaining the characters. Usually  
2 he would say something to the effect of this is a new  
3 story I've come up with, what do you think of this  
4 and here is where I'm going with this. That's how  
5 our discussions would go.

6 Q Specifically with regard to the X-Men did  
7 your father say the concept and basic story of the  
8 X-Men universe was solely his creation?

9 A I do recall him saying again along those  
10 same lines this is the new characters and story, you  
11 know, I've come up with.

12 Q You read Mr. Lee's testimony concerning the  
13 creation of X-Men, correct?

14 A Yes, I did.

15 Q And Mr. Lee testified under oath that the  
16 concept was his and that he assigned the book to your  
17 father, correct?

18 A Uh-huh.

19 Q Do you have any reason to believe that that  
20 testimony was not correct?

21 A Again, as I stated before, my reasons for  
22 not believing Mr. Lee is that, you know, I have no  
23 reason not to disbelieve my father and pretty much  
24 every reason to disbelieve Mr. Lee. I just don't  
25 believe in his deposition he was telling the truth or

1 maybe he just didn't recall the truth properly. I  
2 will try to be somewhat respectful.

3 Q Are there -- apart from your own  
4 recollections of what your father told you that you  
5 have testified about with respect to X-Men, are you  
6 aware of any evidence to corroborate your belief that  
7 the X-Men story was a creation solely of your  
8 father's?

9 A I am not aware if you are referring to like  
10 some kind of written evidence or -- I'm not quite  
11 sure exactly what you are referring to.

12 Q Any -- any evidence, whether it is written  
13 or something you observed.

14 A Well, I observed him drawing X-Men, Number  
15 1, and talking -- and talking to the -- talking about  
16 the story with me so, again, that's where it is  
17 coming from. I have no knowledge, I cannot recall  
18 anything about there being any other type of written  
19 evidence that might exist.

20 Q Well, if your father had been assigned the  
21 story by Mr. Lee who had suggest an outline for the  
22 story or a synopsis, whether verbally or in writing,  
23 you would have still observed your father drawing the  
24 first issue of X-Men, correct?

25 MR. TOBEROFF: Argumentative.

1 Galactus, he is going to be a planet eater, planet  
2 destroyer, went into the concept of the Silver Surfer  
3 of being his scout or herald, as he called it.

4 Q Did he indicate in front of anyone else  
5 that he had created the names Galactus and the Silver  
6 Surfer?

7 A He might have.

8 Q Do you have a recollection of him having  
9 done so?

10 A I don't recall him saying that in front of  
11 me and someone else.

12 Q Are you aware of your father ever giving an  
13 interview in which he claimed credit for naming the  
14 Silver Surfer?

15 A He may have. Again, I have no recollection  
16 of one in specific.

17 Q Are you familiar with a character called  
18 Rawhide Kid?

19 A Yes, I am.

20 Q And do you have any information concerning  
21 the circumstances under which that character was  
22 created?

23 A Rawhide Kid I don't. I don't recall. I  
24 believe the Rawhide Kid was one of the first things  
25 that he did when he went -- at that time with Marvel.

1           MR. TOBEROFF: You can answer that as long  
2           as your answer does not implicate the substance  
3           of conversations with me.

4           A     My role would have been in helping to  
5           identify the characters that I was aware of.

6           Q     Rawhide Kid is a character that is the  
7           subject of the notice, correct?

8           A     I believe recall all 45 them off the top of  
9           my head.

10          Q     What information did you have about the  
11          creation of Rawhide Kid that was pertinent to the  
12          notices?

13          A     I don't recall at this time.

14          Q     The notices pertain to characters that  
15          appeared in publications that were made between 1958  
16          and 1963, correct?

17          A     I believe so.

18          Q     And can you tell me what characters which  
19          are the subject of those notices you and your sisters  
20          contend were created solely by your father as opposed  
21          to co-creations?

22          A     As opposed to co-creations.

23                 MR. TOBEROFF: Calls for a legal  
24                 conclusion.

25          A     You know, again, I could only go on the

1           A     No, I don't.

2           Q     Do you have any information concerning the  
3     circumstances of the creation of The Incredible Hulk?

4           A     That honestly I don't recall. I recall my  
5     father again working on the first issue and obviously  
6     subsequent issues and going over the storyline with  
7     me about how he becomes the Hulk and so on, Bruce  
8     Banner and all that. I cannot recall right now  
9     discussions about creation, creation of that  
10    character.

11          Q     Are you aware of any documents that would  
12    assist you in refreshing your recollection?

13          A     No, I'm not aware of anything that I can  
14    think of.

15          Q     Do you contend that The Incredible Hulk was  
16    the sole creation of your father?

17          A     Again, my personal knowledge is after it  
18    had been released he had a major part in the creation  
19    of it.

20          Q     Would it be correct to say you don't know  
21    one way or the other as to whether there were others  
22    who made a significant contribution to The Incredible  
23    Hulk?

24          A     I would say my personal knowledge is there  
25    may have been. I don't know how significant it might

1 have been.

2 Q Did you review Stan Lee's testimony  
3 concerning the concept for The Incredible Hulk  
4 character?

5 A I did read it. I don't recall all of it.

6 Q Do you have any reason to believe that the  
7 idea for the character was not a creation of Stan  
8 Lee's?

9 A I could only say, as I said before,  
10 according to Stan Lee's deposition he created  
11 everything solely. Again, trying to be somewhat  
12 respectful, you know, but to say that would seem  
13 highly unlikely. You know, honestly I just think Mr.  
14 Lee is again propping up his own ego with whatever he  
15 sees fit at this point. What's the expression, he  
16 has the benefit of being the last man standing, so to  
17 speak.

18 Q Do you feel that Mr. Lee's testimony in  
19 some way diminished the contribution that your father  
20 made to the various characters that he worked on at  
21 Marvel?

22 A Diminished I think is -- I think diminished  
23 is the least of it. I think Stan Lee is kind of  
24 rewriting history but --

25 Q You know, with respect to the creation of a



1 you know, met with somebody else saying gee, I have  
2 this good idea for a character, you know, would you  
3 like to go for it, that he would have done it, you  
4 know. Definitely I would consider that coming up  
5 with an idea and speculation. There's no -- there's  
6 no guarantee if you are going to come up with an idea  
7 that they're going to say yea, nay or otherwise. I'm  
8 sorry.

9 MR. TOBEROFF: Feel free to finish your  
10 answer.

11 A In terms of would he, maybe this was a  
12 little confusing before, what I was trying to get at.

13 In terms of would he sit down and spend  
14 three days, four days, however long, actually  
15 doing -- I don't recall how long comic books were at  
16 the time, I think they were 22 pages, something like  
17 that, would he sit down and do a 22-page comic book  
18 and then bring that in to -- bring that in to Stan  
19 Lee or anyone else and go, "Would you like to buy  
20 this," probably not. Because if they said no he is  
21 out five days worth of work and all those pages. So  
22 in regards to just to clarify my statement as to, you  
23 know, as to on spec.

24 Q So if I understand what you are saying, you  
25 believe that he never sat down to draw a story until

1 being given an okay by someone on the editorial staff  
2 at Marvel?

3 A I'm saying that he wouldn't draw, I don't  
4 believe that he would draw a brand new out-of-his-  
5 head idea story, actual set it pencil to paper,  
6 without knowing in advance that it would be  
7 purchased.

8 Q And do you have any information one way or  
9 the other as to whether any of the stories that he  
10 worked on as an artist for Marvel were the result of  
11 the collaboration on the story idea between your  
12 father and Stan Lee?

13 A I'm sorry, could you just repeat the  
14 question, please?

15 Q Sure.

16 (Record read)

17 A I would have no information that I can  
18 think of right now for that.

19 Q Do you believe that Marvel had the right to  
20 exercise creative control with respect to the  
21 contributions your father submitted to Marvel?

22 MR. TOBEROFF: Calls for a legal  
23 conclusion.

24 A It was my understanding that they were  
25 purchasing their artwork. As to what legal rights

1 that entitled them to, I don't have the knowledge to  
2 answer that question.

3 Q Well, you have indicated that you think  
4 that there were pages that your father had brought to  
5 Marvel that were rejected.

6 A Correct.

7 Q And I think your testimony was that you  
8 don't recall whether there were instances in which  
9 your father brought artwork to Marvel and corrections  
10 were requested but would you agree that that could  
11 have happened?

12 A That corrections --

13 MR. TOBEROFF: Calls for speculation.

14 Q That your father brought in work and then  
15 Marvel may have asked that corrections be made or  
16 changes be made.

17 A The only thing that I can say, I don't know  
18 what Marvel may or may not do or what they may or may  
19 not have requested my father to do. I do know that  
20 he never mentioned to me in any of our discussions  
21 look, I'm making a change on a page because so and so  
22 asked me to do so.

23 Q Given your knowledge of the industry as  
24 you've suggested you have earlier, isn't it  
25 commonplace for art directors and editors to make

1 changes or request changes by artists and writers in  
2 connection with the stories?

3 A My limited knowledge of the industry is,  
4 you know, that might take place.

5 Might I add something that -- oh, I'm  
6 sorry.

7 Q There's no pending question.

8 In Paragraph 10, I will read the first  
9 sentence.

10 "Any contributions made by Kirby to the  
11 Works were done at the expense of the Marvel  
12 Entities."

13 And that allegation, as well as the second  
14 sentence that is part of Paragraph 10, is denied.

15 A Uh-huh.

16 Q What is the factual basis for the denial  
17 that the contributions made by your father to the  
18 comic books he worked on for Marvel were made at  
19 Marvel's expense?

20 MR. TOBEROFF: Calls for a legal  
21 conclusion.

22 A To the best of my knowledge, as we  
23 discussed previously, my parents paid for all their  
24 own supplies, obviously his studio was in the house,  
25 that was at their expense, and to the best of my

1 knowledge they were not reimbursed for those  
2 expenses.

3 Q I thought you testified earlier that you  
4 had no knowledge one way or the other as to whether  
5 or not they were reimbursed.

6 A I can't recall exactly what I said but,  
7 however, there would be -- if my mother or if my  
8 parents were getting reimbursed for their expenses  
9 there would have been no reason for them to complain  
10 about them or to even bring that up since it would be  
11 a net wash.

12 Q Do you have an understanding of the  
13 earliest date on which any of the 45 termination  
14 notices becomes effective?

15 A If I recall right, it is somewhere around  
16 2014, I believe, somewhere in that area. I don't  
17 recall specifically.

18 Q I think you are correct.

19 A I don't recall which character.

20 Q And in respect to the characters which are  
21 the subject of the termination notices, are you aware  
22 of any limitations on Marvel's rights to exploit the  
23 copyrights associated with those characters prior to  
24 the effective date of the termination notices?

25 A I can't say that -- you know, I can't say

1 to be worded, that's not my area of expertise.

2 Q You were willing to suggest that the credit  
3 that was given to your father on the Hulk film was  
4 inappropriate in some fashion.

5 A Yes. Because I would have preferred the  
6 word "created" in it as I mentioned before.

7 Q Are you aware that Wolverine's first  
8 appearance was in 1974 well after your father had  
9 stopped work on X-Men?

10 MR. TOBEROFF: Assumes facts not in  
11 evidence.

12 A No, I was not aware of that. No. I don't  
13 recall that.

14 Q Did you do any research to determine  
15 whether any of the characters that were the subject  
16 of your notices were in fact created by your father  
17 or co-created by him?

18 A I did some.

19 Q What research did you do?

20 A Oh, just some with books that I have or a  
21 little talking with my sister and so on.

22 Q Which sister?

23 A Lisa.

24 Q And what books?

25 A Oh, just the coffee table history of comic

1 kind of books.

2 Q Can you be more specific? Are these books  
3 that you have in your home?

4 A Yes, they are.

5 Q And do you still have them in your home?

6 A I do, yes.

7 Q And do you recall specifically what titles  
8 and what authors?

9 A No, I can't at the moment. There's one  
10 book by Mark Evanier which I guess is the newest  
11 book. I think it is just titled "Jack Kirby, King of  
12 Comics," I believe.

13 Q Did you ever inquire of Mr. Evanier as to  
14 whether he had any direct knowledge of the  
15 circumstances of the creation of the characters that  
16 your father drew for Marvel?

17 A No, I haven't had any conversations with  
18 Mark Evanier.

19 Q Do you know if Mark Evanier was privy to  
20 any of the meetings or discussions at Marvel between  
21 your father and Stan Lee?

22 A Mark Evanier, as far as I know, would not  
23 have been around at that time.

24 Q Do you know what the basis for Mr.  
25 Evanier's statements in the book that you relied on

1 litigation was commenced?

2 A No.

3 I'm mean, I'm sorry, yes, you are correct  
4 in that.

5 Q Are you aware of any significance these  
6 pages have to the issue of the circumstances of the  
7 creation of any of the characters depicted in these  
8 pages?

9 A That I honestly cannot say that I'm aware  
10 of that.

11 Q Now a lot of the pages have either captions  
12 or other handwritten notations other than the ones  
13 that appear to be actually printed. Do you see that?

14 A Yes, I do.

15 Q Let's take an example, K 10. Can you  
16 identify the handwriting at the foot of the pages  
17 saying "Hunters say"?

18 A That would appear to be my father's.

19 Q And do you know what that notation was  
20 intended to represent or be?

21 A My father used to add comments in the  
22 margins. If sometimes he did not write dialogue  
23 directly, from what I understand, he would add those  
24 comments to guide the person adding the dialogue in  
25 the balloons.



1 Q And do you know if the comments that your  
2 father would make in the margins were ever used  
3 verbatim in the final version of the story?

4 A That I would really -- I don't know, I  
5 couldn't tell you.

6 Q Was it your understanding that those  
7 marginal notations that your father put on the  
8 drawings were subject to the inclusion or not  
9 inclusion at the discretion of the editor or art  
10 director?

11 A I couldn't say at the time if I had any  
12 knowledge of that, if that was going to happen or  
13 not. I do know that, you know, that my father was  
14 adding to guide the story and sometimes he would do  
15 the work because I know he mentioned the letterer  
16 will go over these at a later date, something to that  
17 effect.

18 Q The notations that you are talking about  
19 were not notations that were intended to be going  
20 over by the letterer, were they?

21 A Not the ones in the margins, no.

22 Q Was it your father's custom, do you know,  
23 to actually put in captions or balloons on the  
24 drawings themselves?

25 A I can't say if he did it every time. I