

EXHIBIT 9

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF NEW YORK

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

VS.) NO. 10 CV 141 (CM)(KNF)

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

_____)

VIDEOTAPED DEPOSITION OF MARK EVANIER

LOS ANGELES, CALIFORNIA

DECEMBER 6, 2010

REPORTED BY: CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR

JOB NO.: 34168

1 period of time. You would agree with me, would you not,
2 that under these circumstances a man like Mr. Goodman was
3 -- did have significant financial risk as a result of the
4 nature of the industry?

5 A. I would not necessarily agree with that
6 depending on the definition of "significant."

7 Q. Well, he was at financial risk, was he not, as
8 to whether or not a particular comic book would be
9 successful; correct?

10 A. He was at some financial risk, probably. Yes.

11 Q. You indicated here, among other things, that
12 he borrowed funds. That would be a financial risk,
13 wouldn't it?

14 A. Yes.

15 Q. And if a particular line of comics failed,
16 that would -- he would incur financial risk as a result of
17 that, wouldn't he?

18 A. Some financial risk. Yes.

19 Q. And, in fact, as I believe you testified,
20 publishers like Mr. Goodman often had comic books that
21 were not successful and that they had to discontinue;
22 correct?

23 A. Yes. I would phrase it slightly differently
24 than that, but I would say they often had books that they
25 discontinued because they believed they were not

1 successful or would not be successful. One of my key
2 opinions about Mr. Goodman is that he was frequently wrong
3 about that.

4 Q. But -- I will come back to that.

5 A. All right.

6 Q. You would agree, would you not, that if a book
7 had to be discontinued or was discontinued, it was because
8 the publisher concluded, rightly or wrongly, that it
9 wasn't going to make money?

10 A. There were occasional other reasons to
11 discontinue a comic.

12 Q. Putting aside the other reasons, one of the
13 reasons for sure was that the publisher made a
14 determination that he couldn't make money with a
15 particular comic book line; --

16 MR. TOBEROFF: Vague.

17 Q. -- correct?

18 A. Hold on. Putting aside the other -- putting
19 aside the other issues -- I'm sorry. The question is
20 confusing me.

21 Q. You testified that --

22 A. It sounds like you're asking me: Aside from
23 the fact that -- aside from the cases that he discontinued
24 because he wasn't making money wasn't the only reason he
25 discontinued wasn't that he was making money.

1 Q. I will rephrase it.

2 A. Let me try this. Maybe this will make it
3 simpler. Publishers made determinations to discontinue
4 books. Sometimes they were forced to discontinue them by
5 the distributors for content reasons. Sometimes they were
6 forced to discontinue them for rights reasons. Sometimes
7 they had opinions that the book would not -- did not sell
8 or would not sell. Sometimes they were right; sometimes
9 they were wrong. There were a myriad of reasons to cancel
10 a comic.

11 But if your question is: Did they cancel
12 books because they thought they were losing money? Then
13 the answer is: Yes, that was a very frequently a reason.

14 Q. Okay. That's fine.

15 A. All right.

16 Q. You mentioned that Mr. Goodman borrowed money
17 in order to set up his company. Do you happen to know who
18 he borrowed it from and how much?

19 A. No. I don't know that.

20 Q. And you also had mentioned that you made notes
21 after having been to Marvel offices from time to time to
22 put down things that you wanted to remember. Did you keep
23 those notes?

24 A. Not to this day.

25 Q. Looking at your report again on page 5. Let's

1 self-explanatory, but --

2 Q. Let me focus for a second on when you say
3 "co-created," what do you mean by "co-created"?

4 A. Co-created would be when the creation would
5 probably be credited to more than one person. So each of
6 the creators would be a co-creator.

7 Q. Now, focusing on this period between 1958 and
8 1963, and the particular comic book characters that are
9 the subject matter at issue in this case, what conclusions
10 did you reach with regard to whether those characters were
11 created solely by Mr. Kirby or were created or co-created,
12 rather, by Mr. Kirby and others, focusing specifically
13 with regard to on Mr. Lee?

14 MR. TOBEROFF: Vague.

15 A. Let me have it one more time.

16 MR. QUINN: Yeah, read it back.

17 (The record was read.)

18 A. I believe that the characters -- let me put it
19 this way. I believe that the properties Fantastic Four,
20 The Hulk, Thor, several others here, the overall
21 properties were co-created by Stan Lee and Jack Kirby.

22 Q. And what opinions or conclusions did you reach
23 as to how that co-creation process worked?

24 A. My understanding is that the two of them would
25 sit down. They'd bring in rough ideas they might have had

1 apart, throw them back and forth like any collaboration.
2 Jack would offer ideas for characters. Stan would offer
3 ideas for characters. Some ideas would get discarded.
4 Some ideas would get expanded upon. And then they would
5 emerge with some idea of what Jack was going to go home
6 and draw.

7 Jack would draw the story. If it was 20
8 pages, he would draw 20 pages of material. He would bring
9 it back. Assuming that Stan didn't -- assuming that Stan
10 was happy with what Jack brought in, Stan would then write
11 the copy, the dialogue, the captions on the pages. And
12 then the work would proceed from that through lettering,
13 and inking, and coloring, and publishing.

14 Q. Now, do you have any evidence or did you reach
15 any conclusion or have an opinion as to whether Kirby had
16 created or co-created any of these characters prior to
17 when he returned to Marvel in 1958? And we're focusing on
18 these particular characters.

19 A. On which particular characters were you
20 focusing on?

21 Q. The ones you mentioned.

22 A. The ones I mentioned? I believe Jack had
23 previously done, in some cases, antecedents that were a
24 starting point. He came in with ideas that were then
25 later shaped with input from Stan.

1 time is 12:28 p.m. and we are back on the record. And
2 this marks the beginning of Disk No. 3, the Deposition of
3 Mark Evanier.

4 Q. BY MR. QUINN: Before we took a break, we were
5 talking about the statement in your report in the Superman
6 case on the discussion of your understanding of the nature
7 of the work for hire relationship, and specifically the
8 reference you made to receiving some measure of
9 supervision as a factor in determining whether or not a
10 particular work was a work for hire.

11 And I was asking you what you meant by the
12 phrase, "receiving some measure of supervision."

13 MR. TOBEROFF: Mischaracterizes the statement
14 in his expert report. You can answer.

15 A. What I meant was I think you have to take that
16 sentence as a whole. Supervision, I mean, every publisher
17 supervises work to the extent of deciding whether to
18 publish or saying I won't publish it unless you change
19 this word. I've had that done to me on materials where
20 I've owned the copyright, and I've had that done to me on
21 the materials where I did not own the copyright.

22 In this particular case, this particular is
23 about the Siegel and Shuster case. And the first sentence
24 says:

25 (Reading:) I understand in the nature of the

1 the work that Mr. Kirby did in drawing these characters in
2 his basement or wherever --

3 A. It was in his basement often.

4 Q. -- that that work was performed after he and
5 Mr. Lee had sat down and discussed the general plot of
6 what was going to go on and discussed what characters were
7 going to be part of the comic book. And it was after that
8 that Mr. Kirby would then begin his drawings in his
9 basement.

10 MR. TOBEROFF: Objection. Misstates his
11 testimony.

12 A. That's not --

13 MR. TOBEROFF: He didn't say that.

14 A. I didn't say that that that was always the
15 case.

16 MR. TOBEROFF: It misstates his testimony.
17 Period.

18 Q. Fine. The record is going to be whatever it
19 is.

20 You would agree with me, would you not, that a
21 particular character or a particular comic book story or
22 plot would not be published unless -- and we're talking
23 now at Marvel --

24 A. Okay.

25 Q. -- so '58 to '63 -- would not be published

1 unless it was approved either by Mr. Lee or by Mr. Goodman
2 or both of them.

3 A. As with any publisher, yes, the publisher and
4 editor have the final say whether they're going to publish
5 something or not.

6 Q. And you testified previously that from time to
7 time Mr. Lee, when he received materials from Mr. Kirby,
8 would comment on them, and he would make changes in them;
9 correct?

10 A. He would of course comment on them. As an
11 editor, his job is to comment on them. To make changes in
12 them? If he had purchased the pages from Mr. Kirby, he
13 would make -- he could do whatever he wanted with them
14 once he bought them.

15 Q. Didn't he, from time to time, we'd agree, he
16 was being paid -- Kirby was being paid on a per page rate?

17 A. Yes.

18 Q. And did Mr. Lee from time to time ask Mr.
19 Kirby to make changes or suggest changes in material that
20 he submitted?

21 A. There were times when Stan would say, I need
22 something else here. I can't take this story as it is.
23 You've got to fix this before we can buy it. Yes.

24 Q. And Mr. Kirby would, in fact, make those
25 changes and resubmit; correct?

1 A. I think there were times he didn't make the
2 changes and offered something else, solved the problem a
3 different way or did something different. But, yes.

4 I'm sorry. Go ahead. I finished my sentence.

5 Q. Okay. And there were also times where he did
6 make the changes, resubmitted, and it got published.

7 A. Correct.

8 Q. So when you're referring to supervision in
9 this paragraph, you're talking about the fact that there
10 was nobody, Stan Lee or someone else from Marvel, in
11 Mr. Kirby's basement overseeing the actual drawings of the
12 books. Is that your --

13 A. I would make it broader than that. But
14 certainly Jack was working at home. He was drawing the
15 work on his own. He was plotting out the stories on his
16 own. He was not being supervised in the creation of the
17 work.

18 Q. You are aware that the -- -- and I believe you
19 have testified previously and written extensively that
20 with regard to these characters between '58 and '63 that I
21 believe you referred to the fact that Mr. Lee and Mr.
22 Kirby were co-plotting, was your term, co-plotting the
23 books and characters; correct?

24 MR. TOBEROFF: Vague as to the previous
25 testimony --

1 into this discussion. But you submit work to -- let me
2 give you an example.

3 I submitted scripts to DC Comics in 1968. The
4 editors -- to Charlton. And the editors there said --
5 sometimes sent them back and said we don't want this. It
6 was rejected. I was not paid for it.

7 Once or twice the editor said: If you can
8 come up with a better ending for this, I might buy it. So
9 I did a -- rewrote the ending and submitted the work
10 again.

11 Now, the first version that I submitted was
12 rejected, rejected being the opposite of accepted here.
13 The fact that some of the work didn't change doesn't
14 change the fact that the first version in totality was
15 rejected.

16 Q. So that's your understanding of "they were
17 only paid if the work was accepted"?

18 A. Yes.

19 Q. But would you agree with me that the practice
20 was if the work was accepted, the artist or writer was
21 paid, whether or not it was published?

22 A. That I would agree with. Yes.

23 Q. Now, you mention that there were times that
24 you brought things to DC Comics, I believe you said, and
25 some of the work was not accepted. Was that work that

1 work for Marvel's books. And that coincided with the
2 exhaustion of the inventory of material to the point where
3 now more material was being purchased.

4 Does that make sense what I just said? I
5 think I said that inside out, but that's what happened.

6 Q. I got it.

7 Now, during the period I think that we're
8 talking about, and prior to that, it's fair to say that
9 Martin Goodman was responsible essentially for anything
10 that happened during the time he ran Marvel?

11 A. I'm sorry. Could I have that again?

12 Q. Yeah. You've written, haven't you, that Mr.
13 Goodman was responsible for anything that happened during
14 the time you owned the company. Is that a fair statement?

15 MR. TOBEROFF: Vague.

16 A. Mr. Goodman was the publisher, the primary
17 owner of the company, so he was doing the publisher's
18 duties which -- he didn't make all the decisions there
19 certainly, but he was in charge of the company.

20 Q. He had the final say so --

21 A. I would --

22 Q. -- as to what got published and what didn't?

23 A. Yes, I would assume he had the final say so.

24 Q. And that was because it was his money on the
25 line. Fair?

1 A. His family's money.

2 Q. His family?

3 A. His family owned the company. He had a lot of
4 relatives on the payroll.

5 Q. Right. And it was their money on the line
6 with regard to the company; right?

7 A. I don't know which relatives had money in the
8 company or not. They used to refer to it as Martin's
9 House of Nepotism.

10 Q. The Goodman family money was on the line;
11 right?

12 A. Somebody's money. Somebody who was named
13 Goodman had their money on the line.

14 Q. Fair enough. And Martin was at the top of
15 that list?

16 A. I believe so. Yes.

17 Q. Is it fair to say that because he was the
18 ultimate decision maker that he had the final authority on
19 decisions about story lines or characters or what books --
20 what new books would be begun and which ones would be
21 canceled?

22 A. He certainly had the final say on which books
23 would be begun and canceled, to answer the second part of
24 your question first.

25 Insofar as story lines are concerned, every

1 his work. Do you see that?

2 A. Yes. I may have been wrong about that.

3 Q. You may have been wrong, but you wrote it.

4 A. Yes, I wrote it.

5 Q. Somewhere in the last two years; right?

6 A. Yes. Yes.

7 Q. But now, because it's inconsistent with what
8 your prior testimony, you may have been wrong. Is that
9 your current testimony?

10 A. No, I just don't know where I heard that he
11 was paid.

12 Q. But you wrote it down anyway.

13 A. Yeah, I wrote it, and I think I may have been
14 wrong.

15 Q. By the way, it was Mr. Lee that made the
16 assignments as to which artist would work on which
17 particular book; right?

18 A. During this period?

19 Q. Yes, this was --

20 A. During the period of this? Yes.

21 Q. Yes, "this" being because this referred to
22 1965, I guess. During this period, you know late 50s,
23 early 60s, it was Mr. Lee who determined which artists
24 would work on which book; right? That was part of --

25 A. Yes.

1 A. Yes.

2 Q. And you are aware, aren't you, that, for
3 example, Mr. Lieber, Larry Lieber, has said on many
4 occasions that he wrote full scripts for the comics that
5 he was doing. You're aware of that?

6 A. Yes, he has said that.

7 Q. And that, in fact, includes a number of the
8 comics that Jack was doing the artwork for; correct?

9 A. Yes.

10 Q. By the way, do you have any basis for
11 disagreeing with Mr. Lieber's statements that he would
12 write the scripts before the panels would be drawn?

13 MR. TOBEROFF: Vague as to what we're talking
14 about exactly.

15 Q. With regard to those comics that Mr. Lieber
16 wrote the scripts for, do you have any basis for
17 disagreeing that he wrote those scripts before the panels
18 were drawn?

19 A. My understanding is that Larry Lieber wrote
20 scripts before the panels were drawn, but that that
21 statement as you phrased it does not give a full portrait
22 of the process.

23 Q. Other than the phone call that you described
24 in 1969, do you have any other personal direct knowledge
25 of how the comic books that Lee and Kirby worked on

1 A. When he was not given enough of a story line
2 from the putative writer to create a coherent story
3 without them.

4 I also say here, (Reading:) This breakdown of
5 the rules of writer and artist, with the artist
6 assuming much of what had traditionally been done
7 by writer, led to much confusion and debate
8 within the comics industry, community.

9 There are people in comics -- there are
10 artists in comics who have been in comics for 20 or 30 or
11 40 years who never invented a villain, recurring villain
12 or hero. They just drew what the writer told them to do.

13 Q. Isn't it true that often Mr. Kirby would
14 submit material and that he would be very upset when Stan
15 would widely make changes that widely deviated from what
16 Jack had intended?

17 A. That did happen.

18 Q. In fact, you wrote about it happening, didn't
19 you?

20 A. Yes.

21 Q. And it happened on a fairly regular basis,
22 didn't it?

23 A. I don't think I said it happened on a fairly
24 regular basis.

25 Q. Let's look at your book, 292. You write that,

1 (Reading:) Sometimes Stan's would deviate
2 wildly from what Jack had intended. Jack didn't
3 like that either. He loved the stories he
4 developed and would often feel that Stan's word
5 balloons stripped some issue of its meaning or
6 inverted a key concept. Jack especially resented
7 it when Stan would take the first part of a story
8 in a different direction than he intended. Not
9 only would Jack feel his work was being harmed,
10 but it also meant that he would have to withdraw
11 the last half without pay, of course, to
12 correspond.

13 That's what you wrote here.

14 A. Redraw, not withdraw.

15 Q. Oh.

16 A. Yes.

17 Q. "To redraw the last half without pay, of
18 course, to correspond."

19 A. Yes. I wrote that. Yes.

20 Q. And you believe that to be accurate; right?

21 A. I believe that to be accurate. Yes.

22 Q. Because Stan would often take what was given
23 to him and totally change the meaning around, wouldn't he?

24 A. I said sometimes. You're saying often.

25 Q. Sometimes.

1 A. I said sometimes.

2 Q. Okay. We'll agree on sometimes.

3 A. All right.

4 Q. Not always, but sometimes.

5 A. Yeah. Sometimes.

6 Q. But he had the right to do it all the time,
7 didn't he, --

8 MR. TOBEROFF: Objection.

9 Q. -- as the editor?

10 MR. TOBEROFF: Calls for a legal conclusion.

11 Outside the scope of his testimony.

12 A. The right to do it?

13 Q. Yeah, as his job as editor.

14 MR. TOBEROFF: Excuse me. When I object,
15 you've got to pause --

16 THE WITNESS: Okay.

17 MR. TOBEROFF: -- and let me object.

18 THE WITNESS: I will learn to do that some
19 day.

20 MR. TOBEROFF: Thanks.

21 The objection is, as to Stan Lee's rights it
22 calls for a legal conclusion. It's outside the scope of
23 Mr. Evanier's expert assignment.

24 A. Can I have the question again in full?

25 Q. You understood that even though Mr. Lee, as

1 have somebody else make the changes. Isn't that right?

2 MR. TOBEROFF: Same objection. Calls for a
3 legal conclusion.

4 A. He could, once he had purchased the material,
5 he could ask someone else to make the corrections. Or he
6 could -- or he could say he could not purchase the
7 material in its present state unless Jack made the
8 corrections.

9 What he could not do was to make the changes
10 in the material and then say, oh, we're not going to buy
11 this story or we're not going to buy this sequence. We're
12 going to send it back to Jack.

13 Maybe I'm splitting hairs here, but I'm trying
14 to answer the question you're asking me, which is --

15 Q. Go ahead.

16 A. -- compounded here somehow.

17 Q. You're aware that there are instances where
18 there was work submitted by Jack as part of this whole
19 process you have described in your report where he was
20 asked to make changes. And there was also work submitted
21 where Stan had somebody else make changes.

22 A. That's correct.

23 Q. Correct?

24 A. That is correct. Yes.

25 Q. And, in fact, there was situations where Stan

1 where Jack did the entire writing on his own.

2 Q. Other than those, can you think of any others?

3 A. Then later, when he went back to Marvel in the
4 70s, there were quite a few stories.

5 Q. No, we're talking about in the 60s.

6 A. In the 60s I think that's the only ones. I
7 might have missed one.

8 Q. Any of the others --

9 A. Yeah, there was a story in one of the western
10 books, I believe, in the 60s.

11 Q. Do you know what time period? Between '58 and
12 '63 or later?

13 A. I believe that would have been later.

14 Q. Yeah. You also have written that Stan gave up
15 writing full scripts around 1962. Is that your
16 understanding?

17 A. Yes.

18 Q. So prior to 1962 he was writing full scripts?

19 A. No. Well, he started writing Marvel style
20 Marvel Method scripts around 1955 or -56, but he wrote
21 full scripts for some artists or some situations for a
22 while there.

23 During the period when they were not buying a
24 lot of material, he wrote a lot of full scripts so he
25 could get paid for them. The scripts that were done for

1 inventory, he couldn't work Marvel Method because there
2 was no artist involved in those scripts. In those
3 projects the artist would come much later.

4 Q. After the scripts had been produced.

5 A. Yes.

6 Q. In your book on Kirby --

7 A. Yes.

8 Q. -- page 299. Turn to that page.

9 A. We're using the K numbers; right?

10 Q. The K numbers?

11 A. Yeah. 299. Got it. Yes.

12 Q. And there's a drawing, pencil drawing, and
13 some handwritten notes. Do you see that?

14 A. Yes. Yes.

15 Q. And could you tell me whose handwriting are
16 the handwritten notes?

17 A. I believe the handwriting notes are from Stan.

18 Q. And he's saying in one instance, "Jack, can
19 this be the" -- oh, boy.

20 A. The Rainbow Bridge.

21 Q. -- the Rainbow Bridge?"

22 And in another instance he's saying, "Put Oden
23 here." Is he telling him to move --

24 A. Omit Oden here. He'll cut into Masthead too
25 much. In other words, Oden will cut into the title letter

1 when it's placed, so we have to keep that area clean.

2 So --

3 Q. Oh, that's the top one. I see.

4 A. -- let's put Oden in the bottom.

5 Q. So he's essentially telling him to move some
6 of the stuff on the drawing?

7 A. Yes.

8 Q. Is that something that he typically did after
9 seeing some of the drawings?

10 A. This is very rare. I think I say on the next
11 page that they almost never even worked this way. This is
12 a very rare artifact. It's one of the few times Jack ever
13 did a cover sketch like this.

14 Q. But this is an example of Jack actually giving
15 some pretty specific directions -- of Stan giving Jack
16 some pretty specific directions with regard to at least
17 this particular drawing; right?

18 A. I don't know they're that specific. "Can this
19 be the Rainbow Bridge?" Leaving it up to Jack to decide.

20 "Put Oden here somehow if you can." That's
21 leaving it up to Jack to decide.

22 Usually a cover usually when an editor goes
23 over a cover sketch -- and Jack didn't do very many cover
24 sketches in his career -- usually the editor does a much
25 more detailed composition. They would have something done

1 in the office. They do an overlay and have another artist
2 maybe move things around and show where to put them.

3 This is very undetailed, a very undetailed set
4 of suggestions.

5 Q. It's fair to say that it's an example, at
6 least, of Mr. Lee giving at least some direction to Mr.
7 Kirby about how he should do this drawing. Isn't that
8 fair?

9 A. Very little direction. I'm not sure what
10 you're trying to get me to say here.

11 Q. I'm not trying to get you to say anything.
12 I'm trying to get some testimony here. That's all. Say
13 whatever you want.

14 A. As we've established before, there were times
15 when Stan sent things back to Jack and said, This has to
16 be -- you know, I can't use this in the form it's in.
17 Let's do something different. This is an example of that,
18 I would suppose.

19 Are we done with this book?

20 Q. Yeah. Don't let it go too far away. But
21 yeah.

22 A. All right. Okay. Can I get a glass of water
23 at some point here?

24 MR. QUINN: Why don't you get it now.

25 MR. TOBEROFF: I will get it.

1 believe Stan sent Jack off to draw an important first
2 issue without preliminary sketches and conferences."
3 Right?

4 A. Yes.

5 Q. Okay. And so isn't what you're saying here is
6 that obviously Stan and Jack had conferences before he
7 sent him off to draw.

8 A. Yes.

9 (Plaintiffs counsel confer.)

10 Q. On the two pages later, referring to the first
11 issue, it says, "The first issue was clearly cobbled up in
12 a hurry and does show some surface attempt to comply with
13 Goodman's directive and replicate DC's Justice League of
14 America."

15 What did you mean by that?

16 A. The cover scene on Fantastic Four No. 1
17 depicts a scene that appears nowhere in the story.
18 Designed a cover that doesn't connect with the story
19 therein, but it does kind of look a little like the
20 composition of a DC Comic called The Brave and the Bold,
21 issue No. 28, which first introduces the Justice League.

22 And Jack's layouts inside the comic, his page
23 layouts look more like a DC Comic in terms of the panel
24 shapes. It's like somebody had shown him Justice League
25 and said, Let's try and make the book look a little bit

1 like that in the room helping flesh out whatever ideas you
2 had, change them, and bring in his input.

3 I'm not saying Stan is lying. I'm saying he's
4 choosing his words carefully, remembering a version. I
5 disagree with Stan about some aspects of Marvel history.
6 We've had friendly arguments about certain issues and
7 certain comics and how things came about and how they were
8 published. And sometimes I get him to agree with me. I
9 show him evidence.

10 Q. Well, one thing we've established, during this
11 period from '58 to '63, Stan was there, and you weren't.

12 A. Yes.

13 Q. You say in your expert report at page 15
14 carrying over to 16 that "It is also worth noting that
15 Stan Lee did not create any important characters either
16 before Jack Kirby first worked with Lee or after Jack
17 Kirby stopped working with Lee in 1970."

18 Do you see that bottom of 15 over to 16 in
19 your report?

20 A. Hold on here. Yes, I see that.

21 Q. After he stopped working for Lee in 1970, what
22 successful characters did Kirby create?

23 A. Well, he created a series for DC called The
24 New Gods. Featured a villain called Dark Side, one of the
25 most important villains in Allied DC Comics. Did a book

1 A. Yes.

2 Q. And isn't that correct with regard to much of
3 your testimony? Most of the time you're just guessing;
4 isn't that right?

5 A. No, I don't think so.

6 Q. On page 16 of your report in the middle
7 paragraph under Mighty Thor, referring to The Mighty Thor
8 -- am I correct, by the way, Larry Lieber was the one who
9 actually wrote the script for The Mighty Thor?

10 A. Larry Lieber did the script for the first Thor
11 story in Journey into Mystery No. 83.

12 THE REPORTER: In -- what?

13 A. Thor story in Journey into Mystery No. 83.

14 THE REPORTER: Thank you.

15 THE WITNESS: As the day winds down, I get
16 less coherent.

17 THE REPORTER: And I get more tired.

18 Q. BY MR. QUINN: And was it your understanding
19 that Lieber wrote the script before Kirby drew the panels?

20 A. It's my understanding that Lieber wrote the
21 script before Kirby drew the panels. Yes.

22 Q. And is it also your understanding that Larry
23 Lieber named Thor's alter ego Don Blake?

24 A. Larry says he did.

25 Q. Do you have any reason to disbelieve him?

1 Q. They're both lying, with a question mark.

2 A. I would not use the term "lying." I think they
3 both have their versions. And when I report the history,
4 I will report both of them and let the reader decide.

5 Q. You are aware that Larry Lieber was -- did --
6 was assigned to write the full script; correct?

7 A. Larry Lieber wrote a script. Yes.

8 Q. And he wrote the script before Heck drew the
9 -- before he drew the comic?

10 A. Yes.

11 Q. And what role does Kirby say he played in the
12 first issue of Iron Man?

13 A. Jack says he came up with the concept,
14 presented it to Stan as an idea that they would do
15 together. They talked it out. The idea was put on hold
16 because there was no place to do it at that moment. And
17 then subsequently Stan did it with Don Heck or put it into
18 Tales of Suspense and had Don Heck draw the first one. He
19 wasn't happy with what Heck did, so Jack came in and
20 started drawing it after that.

21 Let me finish. Jack also --

22 Q. Please. By all means finish.

23 A. And Jack also drew the cover of the first
24 issue, and on that cover he designed the look of Iron Man
25 and the idea of the character putting on this iron which