

Spider-man: The case for the defense

(A reply to Spider-Man: The case for Kirby)

Part 1. The Opening Speech

Part 2. The Case for Kirby; Rebuttal

Part 3. The Case against Kirby and for Lee and Ditko

Part 4. The Summation

Part 1. The Opening Speech

Ladies and Gentlemen of the Jury, we have gathered together to decide whom the rightful parents of Spider-Man are. Like any child custody case, passion runs high and tempers often flare. The Prosecution is to be commended for the professionalism of their presentation. The Defence for its part will attempt to emulate their high standard.

Our case is simple; we are for status quo.

We maintain that the existing credits are correct and just.

We maintain that Jack Kirby was involved in version of **Spider-Man** but that version was not used.

We maintain the early **Spider-Man** stories contained no crucial ideas that were original to Jack Kirby.

Finally, we maintain there is not enough evidence to seriously challenge the credits as they currently stand.

In cases such as this, it is incumbent on the challenger to prove their claims. With no new facts, the Prosecution built their case around circumstantial evidence. To gather it they adopted a Doctor Frankenstein approach, taking a limb from here and a wrong brain from there. Echoing that literary doctor, whilst their motives may have been noble, ultimately they created a monster.

There is no new evidence, no smoking gun and no killer blow. To prove their case, the Prosecution relied on the sheer magnitude of coincidences they claim exist. How these coincidences were arrived at needs to be examined very carefully, before their true worth can be assessed.

In describing their approach, the Prosecution said,

“...we all have our m.o.... It is this human trait that detectives use to narrow down the lists of suspects... All artists, graphic or literary, have patterns ... When trying to identify an unknown artist, one can compare the piece in question with other contemporaneous works to match up these patterns...”

We accept this as a sound scientific method of research.

“...Martin O’Hearn is a noted comics historian who specializes in the identification of uncredited comic writers. He matches up subject, syntax, punctuation, themes and other identifiable patterns, and have had remarkable success in matching writers to their non-credited stories...”

We accept this as a sound scientific method of research.

“...So this is how I approached the Spider-Man quandary ... I would examine their actual concurrent works to see if I could find a pattern of creation that matched up with the concepts, characters, and plot elements found in Amazing Fantasy #15...”

This, unlike the previous two examples, is not a sound method of research.

Stan Lee drew no comics, so the exacting criteria of example one does not apply to this case. Prior to the publication of **Spider-Man**, Jack Kirby received no official credit as writer so the exacting criteria of example two cannot be applied to this case. The precise science of comparing drawn line against drawn line, syntax against syntax is replaced with unscientific guesswork. The Prosecution is attempting to match pictures against words; a subjective notion not a scientific test.

Using that approach, even a comparison between the two artists would be fraught with danger. An anomaly arises that needs to be factored in. By 1962 Jack Kirby had worked in comics for about 24 years with an impressively long list of superhero titles to his credit. On the other hand, Steve Ditko had worked for a mere 8 years with only one superhero to his credit. Facts make fickle friends if your body of work is large enough you can make what appears to be a credible claim out of anything. Nostradamus, the De Vinci Code and Fox Television spring to mind.

Fact: Any comparisons of this type are mathematically **guaranteed** to produce a result distorted in Jack Kirby favour.

Stan Lee did write the early **Spider-Man** stories. Try matching “... *syntax, punctuation, themes and other identifiable patterns* ...” and it will lead you to Lee.

Steve Ditko did draw the early **Spider-Man** stories. Spend “... *endless hours comparing drawing and inking styles* ...” and you will only discover Ditko’s drawings.

What needs to be established is who contributed the *ideas* that created **Spider-Man**, a far more nebulous goal to grasp. If Jack Kirby initiated any of those ideas, the other two men’s distinctive styling would have contaminated them.

A very different approach is needed, one that acknowledges and encompasses these difficulties. To find answers we must broaden our minds and our research. Famous author and “Oxbridge” professor, C.S. Lewis once said of historical research,

“You must see the stars as they saw them.”

This will be our approach to this case, not just picking out facts in isolation but placing them in their proper historical context. By doing this we will be able to judge what was truly *modus operandi* and what was merely carbon copying of contemporary comics.

The Prosecution postulated,

“...the Devil’s in the details, and it’s these repeated details that ... make the strongest case for Kirby...”

But devilish details can be diabolically deceiving. (Sorry, that’s what happens when you read too many comic books.) To be of use, the relevancy of those details must be determined. Here’s an example of a seemingly damning detail from the Prosecutions case.

*“... In Excelsior #1, a fanzine from 1968, Kirby is being interviewed... “I created the Vision ... He was the forerunner of the **SPIDER-MAN** and Silver Surfer Eye”. (Eds. Note: The huge pupil-less eyeballs both heroes possess.)... So once again, we have Kirby...supplying a small detail concerning Spider-Man that is backed up by comparison, for the Vision...did have white blank eyes...”*

Is this evidence of a creative *modus operandi* or just a Kirby copy of a comic book trend?

A closer examination of the historical context reveals the full story. In “Golden Age” comic critique circles, **The Vision** has been acknowledged as a copy of **The Spectre**. It has even been claimed by some historians that the publisher of **The Vision**, (Martin Goodman) specifically asked for Simon and Kirby to copy **The Spectre**. **More Fun Comics** debuted the Spectre in February 1940. Simon and Kirby gave birth to **The Vision** nine months later in November of that year.

The Spectre had masked eyes that were both white and pupil-less. Unlike Simon and Kirby’s creation, **The Spectre** even had the same black eye liner that is so distinctive around **Spider-Man**’s eyes. Already we have a legitimate forerunner of Kirby’s forerunner! The similarities don’t end there.

Apart from **The Spectre**’s white eyed mask there are some other equally compelling comparisons to **Spider-Man**.

Spider-Man and **Spectre** made their costumes.

Spider-Man and **Spectre** had blank eyed masks.

Spider-Man and **Spectre** had the ability to walk up walls and across ceilings.

Spider-Man and **Spectre** had to keep their identities secret from those they loved.

Spider-Man and **Spectre** were cared for by grey haired old ladies.

Spider-Man and **Spectre** were galvanized into action by the murder of loved ones.



The Spectre shared even more “coincidences” with Steve Ditko and Stan Lee’s other comic book creation, **Doctor Strange**.

Can we link Stan Lee or Steve Ditko to any of this?

The Spectre’s writer/creator, Jerry Siegel worked with Stan Lee at **Marvel** in the early 1960’s, under the nom de plume Joe Carter. He was one of the first freelance writers to work on **Marvel**’s early superhero comics. It has even been suggested the **Human Torch**’s high school was named after his old school, Glenville High.

(Coincidentally Jerry Siegel created a character called **The Spider**, for a British comic book called **Lion**, in the 1960’s.)

Lee also employed **The Spectre**’s co-creator, artist Bernard Baily during the latter half of the 1950’s. Baily drew over 30 stories in his time at **Marvel**.

As for Steve Ditko, he was a self-confessed collector and fan of “Golden Age” comic books like **The Spectre**. In 1966 a mere four years after **Spider-Man**’s first appearance, Bob Greene of Rapport Magazine asked Ditko which comics he preferred,

“I enjoyed a wide range of them in the so-called “Golden Era,” too numerous to mention. What I enjoyed most (and still do when I look at old comics) is the great variety. There were so many artists with all kinds of styles-every kind of feature imaginable. They weren’t afraid to be different.”

Ditko had a broad knowledge of what had gone before him. There can be no doubting he was familiar with **The Spectre**. As will become apparent later in our case, this knowledge of the “Golden Age” meant Ditko would have been aware of all the previous spidemen.

So, was **The Spectre** rather than **The Vision**, the true source of **Spider-Man**?

That is a debate for another day. Today we are only concerned with the validity of creation claims made by Jack Kirby and the Prosecution.

In 1969, Jack Kirby repeated his “eyeless” invention claim to Mark Herbert of **The Nostalgia Journal**,

“I don’t know if you ever saw the Vision I created for the old Atlas mags... I set the pattern for the eyes, which were kind of mystic.”¹

As we have just proven he didn’t. Even **The Spectre** can’t claim that particular distinction.

Fact: Batman, Robin and Green Lantern’s masks all had white pupil-less eyes.

They rank amongst the most famous spandex characters ever to grace a comic book page. And they are not alone, dozens of second string heroes and villains sport opaque optics in their masks including, briefly in the late 1960’s, the aforementioned Dr Strange.



Creator Bob Kane (in a rare acknowledgement of his creative partner, Bill Finger) explained how the famous Bat cowl came about,

“I called Bill Finger ... he made several suggestions which enhanced my crude Batman sketch. He told me to remove the eyeballs from the slits in the mask to make it appear more sinister looking...”²

Note the phrase “more sinister looking”. Jack Kirby on the other hand talked of **The Vision**’s eyes being “kind of mystic”, which of course **The Vision** was. **Spider-Man**, however, was not mystic. **Batman**’s “sinister” was a far more appropriate inspiration for a longtime **Batman** fan Steve Ditko to draw on than **The Vision**’s “mystic”.

Long before Jack Kirby drew his first superhero and several years before the birth of **Batman**, Lee Falk created what was probably the first “white-eyeless” comic strip masked man, **The Phantom**.

How many of Jack Kirby’s heroes had white-eyed masks prior to **Spider-Man**? We have found none and so if it is not in his modus operandi why prescribe it to him? To be of value to Jack Kirby’s case, “white pupil-less” eyed masks must be shown to be a detail specific to Jack Kirby or at the very least a continuous theme throughout his work, thus making him the only likely source for the opaque orbs on **Spider-Man**’s mask. It would also have to be proven that Stan Lee and/or Steve Ditko could not have come up with the white-eyed concept independently of Jack Kirby. Obviously this is not the case here on either count. As we shall show later, Steve Ditko has far stronger links to this particular masked eye than Jack Kirby.

Fact: Key to any creation claim is to actually be the creator.

Fact: White-eyed masks are, and have been since the 1930's, a comic book convention.

Jack Kirby is justifiably considered a comic book legend that title is not being disputed here. Unfortunately, his desire for sole creation credit of **Spider-Man** was this particular legend's Achilles heel.

A number of artists and writers have a strong case to argue that they directly or indirectly *inspired* the creation of **Spider-Man**. This by itself is worthy of historical notation but not, we maintain, deserving of a creation credit. No matter who influenced **Spider-Man**'s creation, it can truly be said it was Stan Lee and Steve Ditko's specific interpretation made him special. Credit is, and rightfully should be, theirs alone. Anything else is only a footnote and we believe Jack Kirby most definitely **does** deserve a footnote in **Spider-Man**'s creation.

Putting preconceptions and prejudices aside, let's now go through the Prosecutions case point by point. The time has come for showing the probabilities not the possibilities, the specifics not the speculation and the obvious not the obscure.

Part 2. The Case for Kirby; Rebuttal

The Prosecution opened the case with,

“...Jack Kirby has stated clearly time and again that he created Spider-Man, most adamantly in an interview conducted by Will Eisner, and printed in ... Will Eisner’s Spirit Magazine #39...”

This was a remarkable interview; probably the most revealing Jack Kirby ever gave. Not for the facts he imparted, they were invariably wrong, but for the insight it gave into the inner working of a comic book genius’s mind. The interview reads like a mental autopsy and we can thoroughly recommend seeking it out a copy. However, what concerns us here is the creditability of the claims “most adamantly” made in this interview.

To what extent did external forces influence Jack Kirby’s comments?

This interview took place at a tumultuous time in Kirby’s life. In the 1980’s, he was at legal loggerheads with **Marvel Comics**. His (in our opinion) justifiable frustration with **Marvel** for not returning his artwork was reaching boiling point. The steam can be clearly seen rising in this interview, eventually exploding a few years later in an infamous interview with **The Comic Journal’s** Gary Groth.

Kirby told Eisner that he created the entire Marvel Universe single-handedly without any help from any writers or even his fellow artists.

“...I had to regenerate the entire line. I felt that there was nobody there who was qualified to do it.”

Kirby later singled out Lee.

“...Stan Lee was not writing, I was doing the writing. It all came from my basement...”

Specifically on the subject of **Spider-Man**,

(Eisner) **“... you brought it to Stan?”**

(Kirby) **“That’s right. ... We (Simon/Kirby) had ... a script called the Silver Spider. The Silver Spider was going into a magazine called Black Magic. Black Magic folded with Crestwood and we were left with the script. I believe I said this could be a thing called Spider-Man, see, a superhero character; I had a lot of faith in the superhero character, that they could be brought back very, very vigorously. They weren’t being done at the time. I felt they could regenerate and I said Spider-Man would be a fine character to start with. But Joe had already moved on. So the idea was already there when I talked to Stan.”³**

Fact: The Silver Spider was never slated for an issue of **Black Magic**.

Fact: The Silver Spider was conceived and realised by Joe Simon, CC Beck and Jack Oleck.

Fact: Joe Simon came up with the name and logo **“Spiderman”** (sic).

Fact: Spider-Man was not the first **Marvel** Silver Age character.

Looking solely at the known facts, nothing Jack Kirby said to Eisner about **Spider-Man** was true. More importantly they contrast dramatically with his comments back in the 1960’s when events were still fresh in his mind.

Kirby 1982

“They weren’t being done at the time. I felt they could regenerate and I said Spider-Man would be a fine character to start with”

Kirby 1969

“... I told Stan that there might be a hope for superheroes.” “Why don’t we try Captain America again?”⁴

Jack Kirby was probably overstating his claim as a bargaining tool against **Marvel**. A reasonable enough negotiating tactic within itself but it should not be taken too seriously as a genuine creation claim. If this interview was the most adamantly Jack Kirby lodged his claim creation to **Spider-Man**, we can consider this case closed. He is wrong on every point.

Stan Lee's reaction to hearing of Kirby's claim was a little more than adamant it was downright blunt. He told Anthony Kraft, Dan Hagen and Jim Salicrup in **Comics Interview # 5**, **"...in no way, shape, manner or means did Jack Kirby create Spider-Man. I don't even know how he can dare to say that."**⁵

Evidentially Jack Kirby has no case. Emotionally, because of Kirby's loyal fan base, there lingers a flicker of sentimental doubt that, up till now, refused to be doused.

Then the Prosecution wandered off track with ...

"...Stan Lee says "all the concepts were mine" ... Can he be believed? Not really ... Stan would go so far (or stoop so low!) as to claim that a minor character named The Living Eraser ... was his creation ... this ignoble power and explanation, first appeared in a Jack Kirby story from Black Cat Mystic #59. If Lee will take credit for an obvious minor Kirby creation such as The Living Eraser...then he certainly would take credit for another's creation that has become the company's cash cow..."

Here we see an all too common double standard being applied. Stan Lee may or may not have taken the "Living Eraser" idea from **Black Cat Mystic**, we simply don't know. The benefits of legal rights are waived and Lee is presumed guilty until such time he can prove his innocence. On the other hand, we have already shown Jack Kirby took credit for Joe Simon's "**Spiderman**" name, Siegel and Baily's "**Spectre** eyes" and sole creation of the entire **Marvel** universe, yet no "stoop so lowness" is implied towards Kirby's statements. This misconception of a Satanic Stan and Christ-like Kirby has become a huge stumbling block in assessing the facts in an unbiased manner. So, in the spirit of unbiased assessment, let's pause a moment from pursuing this case and look at the facts about these two "erasing" stories.

"Today I am a--?"

(**Black Cat Mystic # 59, Harvey Publications, 1957**)

The plot revolved around a (literally) big headed boy. Thirteen years old, Paul Prescott was superhumanly intelligent, tall and handsome. He had spent most of his life in a government institution being studied by scientists. Amongst other amazing powers, he had the mental ability to teleport himself to different parts of the planet. The word erase was used twice in the story.

"Birth of Giant Man"

(**Tales to Astonish #49, Marvel Comics, 1963**)

The plot revolved around an alien who possesses no powers or advanced intelligence. In fact it would not be too harsh an assessment to call him short, ugly and stupid. He had a hand held "atomically printed circuit" device, which only allowed him to teleport directly to and from his "Dimension Z" to ours. Therein turns the tale. He used the device to kidnap scientists from earth. One of who just happened to be Hank Pym aka Giant Man. Stan Lee gave him the silly sobriquet "Living Eraser."



The first and most fundamental question remains unanswered. What compelling evidence is there to ascribe Paul Prescott's powers (there is no explanation) specifically to Jack Kirby? What evidence exists to prove this story was suggested, plotted or written by Jack Kirby rather than Joe Simon or an uncredited writer? According to ex Simon and Kirby wordsmiths, Kim Aamodt and Walter Geier there was a policy *not* to credit writers.⁶ No matter who wrote the **Black Cat Mystic** story, the fact remains there is only one element of similarity between it and the **Tales to Astonish** plot, the use of teleportation. The characters are totally different. Their powers or lack of, are diametrically opposed. The explanation of a hand held device is unique to Stan Lee's script. The word "erase" or derivatives of it do appear in both stories and the act of teleporting was drawn identically.

Fact: “The Living Eraser” had no powers, ignoble or otherwise.

Fact: The “hand held device” explanation was unique to the Living Eraser.

Fact: The idea of teleportation was not original to Stan Lee or the unknown writer.

Fact: The only striking similarity between the two stories was in the artwork.

Jack Kirby drew both stories, making the visual depiction of the act of teleportation irrelevant to this argument. This is where the Prosecution’s criteria falls down. It is vital to distinguish between written concepts and drawn depictions. Jack Kirby’s distinctive *drawing* of the teleportation bears no relevance to the *writing* of this story. Stan Lee does not claim credit for the look of The Living Eraser.

This particular issue was a major revamp of the hero, growing from Ant Man into Giant Man. It is safe to suppose Stan Lee, as editor, had a major involvement in this specific storyline. Kirby’s margin notes do not appear on the pencilled pages indicating he no plot input.

Here is the most likely scenario: Stan Lee writes a plot about a villain from another dimension, armed with a machine that makes people disappear. Accordingly, he calls him the Living Eraser. Reading the word eraser reminds Kirby of the **Black Cat Mystic** story and he recycles the eye-catching visual effect to depict the villain’s powers. To back this up we tender another example of misleading Kirby visuals.



Journey into Mystery # 90 features **Trapped by the Carbon Copy Man**, plotted and edited by Stan Lee, fully scripted by Larry Lieber and drawn by Golden Age great and long time Marvel artist, Al Hartley.

Other than pencilling the cover Jack Kirby had no discernible involvement in this book. The cover features a “cut glass” looking alien. A search back through Kirby’s career finds a similar alien gracing the cover of **My Greatest Adventure # 18**, (DC Comics, 1957). The plots are totally different. The powers are totally different but the alien artwork is, as the title says, a carbon copy. Without evidence, this piece of repetition should not be seen as an indication that Kirby wrote or even plotted the book. Nor



should it not be implied, without supporting evidence, that any writer “borrowed” material from Jack Kirby.

Returning to The Living Eraser and having dismissed the pictorial content, the next logical question is; did Stan Lee have any history of dimensional teleportation stories? Rather than trawl through Lee’s entire career, we have simply highlighted one year, 1959, or to be even more precise, a mere four months. Just to be safe, we have eliminated any collaboration with Jack Kirby.

Journey into Mystery #52 (May 1959) “**The Man with the Atomic Brain**” Steve Ditko drawn, probably plotted, possibly written, certainly edited by Stan Lee. This story features teleportation.

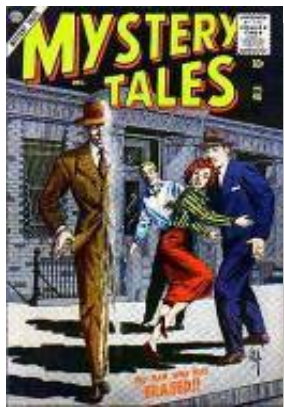
Strange Tales # 69 (June 1959) “**The threat from the 5th dimension**” Steve Ditko drawn, probably plotted, possibly written, certainly edited by Stan Lee. This story features invading aliens’ teleporting from another dimension.

Tales of Suspense #5 (Sept. 1959) “**I walk through walls**” drawn by Paul Reiman, probably plotted, possibly written, certainly edited by Stan Lee. This story features a mechanical hand held device for teleporting.

Tales to Astonish #7 (Sept 1959) features “**I saw the other world**” drawn by Dick Ayers, probably plotted, possibly written, certainly edited by Stan Lee. This story features another dimension spanning hand held device.

Tales of Suspense # 6 (Nov. 1959) features “**Mutants and me**” drawn by Joe Sinnott probably plotted, possibly written, certainly edited by Stan Lee. This story features a teleporting main character.

Five stories in just four months, to use the Prosecutions favourite word “coincidence”, 1959 also saw the release of a film called **The 4D Man** by **The Blob** director Irwin Yeaworth. Perhaps this influenced Stan Lee or publisher Martin Goodman’s thinking, we will probably never know. Clearly there was a mindset of “dimensional” stories happening in the **Marvel** bullpen during this period. To suggest that Stan Lee could not have been aware of this is stretching credibility very taut indeed.



This is where we pull out our Perry Mason impersonation. The camera zooms in. The soundtrack plays an orchestral sting. And we flop down a copy of **Mystery Tales** # 48 (Atlas Comics 1956). It contains a story called the “**Man Who Was Erased**” and Stan Lee produced it a full year before Jack Kirby drew “**Today I am a...**” This was not a lone issue; **Marvel** had a whole sub genre of dimensionally disappearing stories. We only highlighted this particular one because of the use of the word “erase”.

The final nail to be hammered into the “stoop so low” coffin comes from **Menace** # 4 (Timely, 1953). A story called “**Genius**” told of a super intelligent boy who, after meeting more of his kind, moved to another planet. Four years before “**Today I am a...?**” but with exactly the same plot. So who copied who? Beautifully drawn by Joe Maneely, the writer of this forerunner was a gentleman called Stan Lee! Like **Spider-Man**, Lee’s version had more characterisation, humour and of course the obligatory Stan Lee twist ending.

As you can see, when presented with the full facts, there is a strong case to support Stan Lee’s creation claim. Rather than stooping to some degree of lowness, it is entirely possible Stan Lee was embellishing a true story. There is a well-known legal phrase, beyond all reasonable doubt. Is there proof of Lee’s guilt beyond all *reasonable* doubt?

(A quick aside: Here in Australia erasers are called rubbers. This anomaly has led to a lot of embarrassing situations for Australian tourists buying stationary supplies in America.)

Back on track, and the Prosecution opened their “Fly”

“.... Steve specifically mentioned that he recalled The Fly as a product of Joe Simon but did not connect Jack Kirby with The Fly thus failing to also connect Kirby to Spider-Man...”

Joe Simon co-created the **Silver Spider** with Jack Oleck. It was Simon who repackaged the character as **The Fly** and sold the concept to **Archie Productions**. Most important of all, Joe Simon owns the copyright to the character.

Fact: Ditko was correct in saying **The Fly** was a product of Joe Simon.

“... It seems very odd that a man who broke into the industry with the Simon and Kirby studio ... and who had been inking over Jack Kirby the last 2 years, could remember the work of an unlisted editor, but not that of an artist whose work he was most familiar with.”

Ditko stated,

“...I didn’t believe Jack was involved in that feature (The Fly) because the issues I had seen lacked the usual Kirby flair...”⁷

What was the extent of Jack Kirby’s involvement in **Adventures of the Fly**? Was it possible Steve Ditko had seen issues that didn’t contain Jack Kirby’s input?

Twenty “**Fly**” comics were published before the first **Spider-Man** appeared. The character also featured in **Pep** and **Laugh Comics**. Jack Kirby’s contribution was limited to some of the artwork in the first two issues and one heavily re-drawn story in issue # 4. The first issue featured a cover “borrowed” from a **Tarantula** splash page (**Star Spangled Comics** #13 1941). Issue # 2 was a cut and paste cover with a **Captain America** figure altered to resemble the **Fly**. The third issue had a cover drawn by Joe Simon and a re-telling of **The Fly** origin, once again drawn by Joe Simon. All this supports Steve Ditko’s statement.

Mathematically, the odds are far greater that Steve Ditko would not have seen the stories drawn by Jack Kirby. It is also possible that Ditko may have mistaken the heavily redrawn Kirby pencils for someone else’s work.

Would Steve Ditko be likely to remember, recognise or know of someone like Joe Simon?

In the **Jack Kirby Quarterly** Kirby historian Stan Taylor stated,

*“...Joe Simon made most of the important decisions...”*⁸

Comic book writer Walter Greier told interviewer Jim Amash,

*“I was paid by the page and right on the spot, by Simon.”*⁹

Jack Kirby, himself, told Greg Theakston in 1985,

*“I let Joe do the talking ...He was smarter than I was, he had business training.”*¹⁰

Some of Steve Ditko's first comic book work was for Joe Simon. As a freelance artist, Ditko was hired and paid by Simon and having worked for Joe, he would have been more than able to recognize Simon's artistic and written style. As Stan Lee is synonymous with Marvel so then was Joe Simon was with his productions. It is not “odd” at all for Ditko to remember, recognize and generally be aware of Joe Simon's work. As all freelancers know, you keep an eye on people who might provide you with work.

Lastly and most damagingly, Jack Kirby himself acknowledged **The Fly** as a product of Joe Simon. Asked about the creation of **The Fly**, in Gary Groth infamous 1989 interview, Kirby replied,

*“When he (Simon) did the Fly...”*¹¹

If all the people actually involved regarded **The Fly** as a product of Joe Simon, what grounds are there to support any claim to the contrary? Once again, all the supporting evidence backs up Ditko's statements. He is a very credible witness.

Fact: Joe Simon was not merely “an unlisted editor”. He was creator, writer, artist, and copyright owner of **The Fly**.

Fact: Jack Kirby was working at **Marvel** when **Adventures of the Fly** first hit the newsstands in 1959.

Fact: Joe Simon's work was still being published by **Archie Comics** in 1960.

Fact: As a freelancer, it is reasonable to assume Steve Ditko would have known what Joe Simon was doing.

Fact: Jack Kirby has acknowledged that it was Joe Simon's “Fly” character.

(In his excellent, **DC History**, respected comic book historian Bob Hughes wrote under 1959,¹²

“Joe Simon brings super-heroes back to the Archie Company...Jack Kirby contributes a few pages.”)

A Question of Character

“...Ditko ... says Stan gave him a script based on a Kirby character...”

Fact: Steve Ditko has NEVER stated Stan Lee gave him a script based on a Kirby character.

At this stage it may be prudent to set aside a moment to discuss Steve Ditko's credibility as a witness. Ditko's opinions have caused a great deal controversy amongst his fans over the years. Some have labelled him eccentric; in a world of grey he remains black and white. Putting his “opinions” aside, his principles are legendary and for the purposes of this debate very useful. Rather than comprise them, he walked out off a high paying, high profile job and took work with a low paying, low profile company. Decades later, he still refused to make money to do **Spider-Man** re-creation commissions. When approached by **Marvel Comics** to be involved in the successful **Spider-Man** film franchise, he again refused, even returning the cheque **Marvel** sent him.

If Steve Ditko's creation claims were motivated by money, fame or ego, he would have accepted these offers to cash in on **Spider-Man**'s popularity. If Ditko's creation claim was motivated by revenge, it would have been aimed solely against Stan Lee or at least **Marvel Comics**, not Jack Kirby.

This is not a case of an old man and his poor memory. Ditko claimed he wrote down the events on leaving **Marvel** back in 1966. He is very specific in differentiating between his speculations and his actual remembrances. Most importantly, for us, the available evidence verifies his claims.

Unlike the other two men involved in this case, Steve Ditko is a very credible witness.

Copyright conspiracies

“...the copyright laws changed in 1976. As a result, all the artists working for Marvel in the 1960s were classified as freelancers and since they were freelancers, they could possibly make future claims for termination of copyrights for any characters they created ...One way the companies might protect their claim is by showing that the characters and concepts were created by employees ...Since Stan Lee was technically the only employee of the three men involved, suddenly all characters in Marveldom were “his” sole creation, and the artists merely illustrated his tales...”

Boring though it is, chronology is important here. The changes to copyrights came into effect in 1978. Four years before, in a book called **“Origins of Marvel Comics,”**¹³ Stan Lee claimed conceptual credits for most Marvel characters including **Spider-Man**. Lee spent a total of eight pages extolling his own virtues on the creation of **Spider-Man**. The first person pronoun abounds throughout the book.

Fact: There have been no substantial changes in Stan Lee’s **Spider-Man** claims, sudden or slow.

In merchandising terms, the “look” of a character is crucial. Tiny “Spider-Men” costumes cavort in every kindergarten from Cape Cod to Kursk. To date we have been unable to find any instance of Stan Lee claiming credit for any character’s costume design. It would be strange for **Marvel** to craft such an elaborate conspiracy with such a large loophole in it. Stan Lee always did, and still does, credit the visual creation of all the Marvel characters to their respective artists. Although interestingly there is evidence to suggest he, at the very least, had a hand in creating the Fantastic Four’s logo.

It is one of the supreme ironies that the man who popularized the use of credits in comic books, is the man most maligned for supposedly not handing out enough! It was Stan Lee who first told the world that Jack Kirby created the **Silver Surfer**.

This quote comes at the very time the copyright changes were being mooted in 1975.

“I did not really create the Silver Surfer. Those of you who are historians or archivists, take note.”¹⁴

Theories, conspiracy or otherwise, are all well and good but they should not take precedence over hard facts. Despite Stan Lee repeatedly stating the Surfer was one of his favorite characters, no fear of copyright has ever altered this Kirby creation credit for the character. The myth of a Lee led copyright conspiracy can be laid to rest once and for all.

However, Jack Kirby **did** change his story and dramatically to boot. We have already tendered Mark Herbert’s 1969 interview into evidence earlier.

“I tried to work it out with Stan, to hint about superheroes. There were a few still going but they didn’t have the big audiences they had. there was a thing I was involved in, the Fly, which got a reaction and because of that I told Stan that there might be a hope for superheroes. “Why don’t we try Captain America again?”

Post copyright Kirby would alter that story to ***“why don’t we try Spider-Man.”***¹⁵

Even that turnaround pales in comparison to a radio interview Kirby gave in 1971. Interviewer Tim Skelly asked Jack Kirby about working with Steve Ditko, as a non sequitur Jack Kirby volunteered this piece of information.

“Actually Steve created Spider-Man, and got him to roll and the thing caught on because of what he did.”¹⁶

It’s worth repeating, Jack Kirby said,

“...Steve created Spider-Man...”

It’s hard to go past isn’t it? There is no misunderstanding the meaning. And remember this was way back in 1971 pre copyright and whilst events were still fresh in his memory. Here is the whole quote in context, ***Skelly: “Another artist I wanted to ask you about is Steve Ditko. Did you ever have a chance to work with him?”***

Kirby: I’ve never worked with Steve Ditko; he’s kind of a shy fellow and I saw him rarely. He’s very likeable and very intelligent. I am real admirer of his work. He’s a very creative man. Actually, Steve created Spider-Man, and the thing caught on because of what he did.”

A volunteered confession is about as good as it gets. Did I hear anyone say case closed?

Fact: Stan Lee **did** claim credit **prior** to the copyright law changes.

Fact: Jack Kirby **changed** his story dramatically, **post**-copyright law changes.

There is no doubting **Marvel** would have wanted to protect its copyrighted assets but the Prosecution fails to point out, Jack Kirby had a vested interest in claiming a **Spider-Man** credit post copyright. And as we have just shown, he did alter his story to do just that.

Collegiate confusion

“...But Spider-Man provided a unique problem, because Stan, in a speech at Vanderbilt College in 1972, related how Kirby had first provided a proposal for Spider-Man. Stan stated that after he looked it over, he had a different idea for the “look” of Spidey, and decided that he would offer it to Steve Ditko to draw. He didn’t mention any problem with Kirby’s concepts and plot...”

In his 1972 Vanderbilt speech Stan Lee’s said,

“...When we first started to do Spider-Man, we thought Jack Kirby ought to draw the strip. Now, Jack was always my first choice, because I always felt he was about the best at anything ... So Jack tried a few pages of Spider-Man and did a fantastically beautiful job, but instead of making him look (creepy) he made him beautiful and heroic ... So by common consent, Jack decided would go with the other things...”¹⁷

Lee went on to say,

“Jack was always my first choice”.

First, we should state that we could find no admission in Stan Lee’s speech that Kirby brought him a written or verbal proposal for **Spider-Man**. Quite the opposite, the above quote states Stan Lee was offering a script/plot/synopsis **to** the artist **not** visa versa.

Also, “Beautiful and heroic” goes against more than **Spider-Man**’s “look”. It goes against the very essence of the published character.

Stan Lee goes on in his speech to sing Ditko’s praises as the ideal **Spider-Man** artist but adds this about the costume,

“... Hey Jack did you make up the Spider-Man Costume or did Steve copy yours. Or did we just forget yours and Steve make up his own? ... (Kirby) Gee, Stan, I don’t remember.”¹⁸

Shooting the messenger

“... (Kirby’s Spider-Man) proposal has never surfaced, though Jim Shooter has mentioned seeing it at Marvel in the late ’70s...”

Here is a quote from Jim Shooter relating specifically to Kirby’s **Spider-Man**.

(Shooter, talking to Kirby at the San Diego comic convention, 1986)

“In your letter you insist you created Spider-Man, and I know you developed a version of Spider-Man, but it wasn’t the one that was actually used. The one that was actually used was the one Steve did.”

*(Kirby) “Yeah, your right, that’s his...”*¹⁹

It is clear from the above, *if* Jim Shooter did see a Kirby proposal for **Spider-Man** in the 1970’s, he did not consider it, in any way shape or form, close to the published story. But, and it’s a massive but, it must be emphasized that no proof of a proposal has ever been documented. At best we have Steve Ditko’s account of five, un-credited, partially drawn, pages of a story that did not correspond to the published product. If, as is most likely, it was those five pages Jim Shooter saw, it yet again supports Steve Ditko’s version of events.

Fact: There is no documented evidence of a proposal for Spider-Man from Jack Kirby.

(Note; Shooter was the Prosecution’s witness not ours.)

“...we have conflicting eyewitness testimony. The people involved disagree....”

We respectfully disagree. As we have just shown, on the basic facts, **all** the witnesses agree. And one of those witnesses was Jack Kirby (pre-copyright change). What we don't have is corroborative testimony that supports **any** of Jack Kirby's creation claims.

External witness's, like Eric Stanton, reinforce Ditko's claim to have created all the major elements of **Spider-Man's** costume. Stanton was Steve Ditko's art studio companion from 1958 to 1968. He confirmed in an interview with Greg Theakston that Ditko created the costume in his presence, “...**the whole thing (costume) was created by Steve on his own.**”²⁰

Eyewitness testimony can be unreliable individually but when all parties relate the same basic story and that story supports the known facts, it must be taken seriously.

A Fly in the ointment

(The Fly) “.... *The most interesting aspect for me is the match-up of a “sixth sense” to warn of danger. While the other powers (wall climbing, etc.) might be considered generic to any insect, this warning sense is, as far as I know, something totally unique and beyond the norm of the natural attributes of insects. The addition of this unnatural extra sense showing up in both creations is just too coincidental...*”

Fact: There is no mention of a “sixth sense to warn of danger” in **Adventures of the Fly**.

The Fly does have, “**the secret of seeing in all directions**”, a seemingly pedantic point but as we shall see, a crucial one. In **The Adventures of the Fly**, Turan, emissary from the Fly dimension bestows the powers of a superhero on a small boy named Tommy Troy. Turan is what used to be called in science fiction circles, a B.E.M. (Bug Eyed Monster). He is extremely well endowed, optically that is!

A heroic figure must look ... well ... heroic, so rather than bug eyes, **The Fly** is given “**the secret of seeing in all directions**” and a pair of goggles. Note the word “secret” not the word “sense.” It is most definitely not “something totally unique and beyond the norm of the natural attributes of insects,” far from it. It is a key ingredient to a fly's biology and lifestyle. We found in this informative piece on a real fly's compound eyes.

“...**The fly has about 4,000, six sided, facets per compound eye. The two large spherical eyes give almost complete 360 degree vision...**”²¹

360 degree vision! In other words, “the secret of seeing in all directions”, it maybe biology but it certainly isn't rocket science.

Spider-Man did have something totally unique but apparently still not beyond the norm of the natural attributes of spiders. He is able to *sense* danger. Is seeing and sensing the same thing?

Author and entomologist Barbara Taylor, in her textbook “**Spiders**” (Lorenz Books 1999) says,

“**Spiders have poor eyesight and they rely on senses and vibrations to give them information about their surroundings ... Spiders use special slits on their bodies ... called lyriform organs ... to pick up vibrations ... nerve endings in the slits send signals to the spiders brain.**”

The book even refers to our special species of **Spider-Man**,

“... **he is very strong, with a keen sense that warns of danger ...**”

Ms Taylor seems to find nothing unspider-like in Peter Parker's powers.

The Fly's power is a physically based superpower. **Spider-Man's** is a mentally based superpower.

Fact: Just like real spiders, **Spider-Man** cannot see with his spider sense but he can *sense* things beyond his normal line of sight.

Fact: Just like real flies, **The Fly** can see any visible object in a 360-degree radius but cannot sense an unseen danger.

It is important to note this “**secret of seeing in all directions**” is only used in one panel out of all **The Fly** stories that Jack Kirby drew (Marco's Eyes, **Adventures of the Fly # 2**).

Nothing in Kirby's pencils depicts or even hints at this power. It is only the writer's caption (presumably Joe Simon) "**Lucky I can see from any angle!**" that makes us aware of it. That line also confirms **The Fly's** ability as being specifically 360-degree vision, and not a metaphysical "sense". It is unrealistic to think that this one line would be uppermost in Jack Kirby's mind three years later as an essential feature of a potential spider power. In interviews about **Spider-Man**, Jack Kirby never once cited **The Fly** as the source of "spider sense". More importantly to this case, the sense/seeing ability is not mentioned in the **Silver Spider** proposal that Kirby claimed his **Spider-Man** was based on.



In **Amazing Spider-Man # 1**, the **Fantastic Four's** Invisible Girl sneaks behind **Spider-Man**. **The Fly** would not have seen her because she's invisible. **Spider-Man**, however, senses her presence. It was earlier in this issue that spider-sense was used for the first time. Ditko explains, "**Stan asked me ... 'How, in a darkened room, does Spider-Man know where the Chameleon is?'...I...said, 'S-m has 'spider-senses', the way bats can detect ... objects at night'**"²²

Spider-sense was not part of **Spider-Man's** origin it was created in the second issue to solve a plot problem. We would remind the Prosecution of their statement, "**All credits for comic book creation derive solely from the first appearance of the character. Events and graphics in issues 2, 3, or 4 on may be important in the evolution of the character, but they have no bearing on creative rights.**"

(We do wonder if Ditko's use of the "bat" explanation was a Freudian slip)

Fact: There is no evidence to suggest, let alone prove, Jack Kirby came up with "the secret of seeing in all directions".

*"... According to Joe, in **The Comic Book Makers** ... when Kirby asked him about specific powers for **The Fly**, Joe told him "Hey, let him walk up buildings, and let him fly if he wants to, it's a free country Take it home and pencil it in your immortal style." Kirby did just this, and the result was **The Fly**..."*

Less astute readers of the above might get the incorrect impression that it was Jack Kirby who introduced the concept of walking up walls in the transition from the **Silver Spider** to **The Fly**. These changes were made before Jack Kirby became involved. Once again, just because Kirby drew it doesn't mean he created it.

This is what Joe Simon actually said,

*"... Kirby looked it over. "A spider man that walks straight up and down a building? If he's a fly, why doesn't he fly?" "So we'll give him wings," I said. 'Small wings, attached to his costume. The collar of his costume can be shaped like wings.' Kirby thought about it. "So he doesn't walk up and down buildings?" It was getting too complicated. "Hey let him walk up buildings and let him fly if he wants to. It's a free country. Take it home and pencil it in your immortal style..."*²³

Note Simon said the word "pencil" not the word write.

Another quote from Simon is particularly relevant to this debate.

*"Kirby changed the original **Silver Spider** costume so that the **Fly** no longer looked like...Captain Marvel.... Out went the web pistol..."*²⁴

According to Joe Simon, he had already implemented the changes from the **Silver Spider** concept long before he hired Kirby as the artist. Simon also said this about his original (pre Kirby) pitch to **Archie Productions**,

*"... at the **Archie** office, I made my verbal pitch to John Goldwater. "A superhero who climbs straight up and down a building using a fine thread that he holsters in his costume like a fishing tackle. We'll call him the **Fly**..."*²⁵

Jack Kirby's contribution seems to be limited to co-creating **The Fly's** power of flight and a new costume. (Minus the wing collar which was Simon's suggestion.) Interestingly, neither of these elements appeared in **Marvel's Spider-Man**.

Of course, just because Joe Simon said something doesn't automatically mean it's true. The fact that the very vocal Jack Kirby never challenged Joe Simon's version of events does give credence to his claims. As we shall see later, the physical evidence supports the validity of Simon's account.

"...The Fly has been granted very specific powers; inherent insect abilities, (wall clinging, exceptional agility, a sixth sense and a stinger gun- none of which was in the initial Silver Spider proposal. It is this character supplied by Jack Kirby, that is the borrowed ingredient that later show up in Spider-Man...."

Fact: There is no evidence to show that Jack Kirby introduced wall clinging, exceptional agility to **The Fly**.

In fact all the available evidence indicates that he did not introduce any of these elements.

The wonders of wall walking

According to Steve Ditko, there was no mention of any ability to walk up walls in the elusive five pages he received. Simon and Oleck's **Silver Spider** character which Jack Kirby insisted his spider man was based on, did not have the ability to climb up walls unaided.

Marvel's back catalogue does contain a previous wall crawling character and would you believe it? He was called the Fly! Well, the Human Fly to be precise and he dates back to the 1940's.

Twelve years before Joe Simon's "Fly", the Human Fly debuted in **Captain America # 60**, (Jan. 47). The writer is not credited but Stan Lee was editor at the time and heavily involved in Marvel's superhero line of comic books.

(The cover's action took place on a very Ditko style **Spider-Man** water tank and the insectoid wall crawler even had a full-face mask with pupil-less eyes.)



Thanks for the memo-ries

The Prosecution built their case on what they colourfully called a "smoking gun".

That gun was supposedly loaded with a 1954 memo. Written by Sid Jacobson the memo was sent to Leon Harvey at **Harvey Publications**. The memo reviewed Simon and Oleck's **Silver Spider** proposal.

EDITORIAL MEMORANDUM ²⁶

Physical appearance- The Silver Spider should be thought of as a human spider. All conclusions on his appearance should stem from the attributes of the spider. My first thought of the appearance of a human spider is a tall thin wiry person with long legs and arms. He should have a long bony face, being more sinister than handsome. The face of the Submariner comes to mind. Powers: The powers of the human spider should pretty much correspond to the power of a spider. He therefore he wouldn't have the power of flight but could accomplish great acrobatical tricks, an almost flight, by use of silken ropes that would enable him to swing ala Tarzan, or a Batman.

The silken threads that the spider would use might come from a special liquid, from some part of his costume that would become silken threads in much the same way as the spider. These threads would also be used in making of a web, which could also be used as a net..."

Looks pretty damning doesn't it but exactly how damning is it? Once again, its value as evidence quickly disappears with dispassionate study. The key question is; did Jack Kirby ever see this memo?

The Prosecution told us he did,

"... a written blueprint that only Kirby had seen..."

Don't believe them. There is NO proof Jack Kirby ever saw this memo. Joe Simon has never mentioned showing it to Jack Kirby and why would he? It is not exactly human nature to flaunt a critique citing your work as rubbish. We were not able to find any claim by Jack Kirby with regards the memo.

Most important of all, Kirby historian and re-discoverer of the memo, Greg Theakston says he examined all of Kirby's files and found no reference to the memo²⁷. Without a provable link to Jack Kirby, the memo is nothing more than an entertaining gimcrack. In a real court it is valueless as evidence. This, however, is not a real court, so to satisfy even the most fannish of fans, let's de-construct the memo and toss it out once and for all.

Just how original were the ideas contained in the memo? Were they unique to Sid Jacobson? Could anyone come up with the same conclusions independently of Jacobson's memo? Remember the Prosecutions own words,

"...While the other powers (wall climbing, etc) might be considered generic to any insect..."

We agree. The notion that a hero named after a spider should mimic the powers of a spider is not Einstein's theory of relativity. Here is what Sid Jacobson told **The Jack Kirby Collector's** John Morrow in 1996.

"If you're gonna do a character called The Spider, your gotta have reasons for him to be called The Spider, and you don't have here (meaning the Silver Spider concept). So you have to find a way to in some way emulate what a spider is in this character."²⁸

It sounds like a logical progression of thought. Rather than endlessly speculate whether someone could have come up with the same ideas about spider powers, let's look at some examples of people who actually did.

All Star Comics # 18, 1943, (Eleven years before the memo!) written by Gardner F. Fox featured **The Justice Society of America**, starred **Hawkman, Sandman, Dr Mid-Nite, Starman, The Atom, Dr. Fate, Johnny Thunder, Wonder Woman and The Spectre** (yes him again). The villain of this piece was called Killer Bee. He was a pest exterminator gone bad. Mr. Bee (Killer to his friends) developed an "insect extract" that gives humans the "relative strength of an insect", the ability to climb walls and web spinning capabilities



"The minute I saw that Spider man, everything went black ..." says Fred Norman, a character racked with fear and guilt over the death of a loved one.

"...I've got to find those Spider Men!" Dr Mid-Nite replies.²⁹

Another piece of dialogue, this time Hawkman,

"... various insect hormones when given to men in treatments carry the insects powers over to human beings...men who could spin webs like spiders."

This is by no means the only instance of wall crawling, web throwing characters called Spiderman. Golden Age hero **The Tarantula**, drawn by Harold Sharp for **Star Spangled Comics** in 1941, had the (albeit man made) ability to climb walls. He also had a gun that fired webs to ensnare his opponents or to swing across town with. **The Tarantula** was also referred to as the "Spiderman".

In the comic book, creator Mort Weisinger describes him thus.

"Masked, mysterious...his feet wearing vacuum disks, which can climb heights or adhere to ceilings...his greatest weapon the miraculous web-gun, which shoots strands of woven silk to snare, trap or tie...that is TARANTULA, terror of injustice!"

Note how the Weisinger's explanation of a web fluid (pictured opposite) exactly matches Sid Jacobson's comments on webs over a decade later. Both men use exactly the same term, "silk", to describe the webbing.

The smoking gun was filled with blanks. Jacobson's memo was simply a rehash of decade old characters seen by anyone who had ten cents to spend.



Fact: Like **The Spectre** and **Spider-Man**, **The Tarantula** had a gray haired old lady who took care of him.

The earliest reference to wall crawling we could find was **Pep comics # 1** Jan. 1940. Page four, panel five, depicts **The Shield** climbing a wall in true **Spider-Man** style. The caption reads,

"Like a human fly The Shield scales the walls of the hotel."

With this high degree of exposure to all things spider, these concepts would be familiar friends to eagle eyed editor, Stan Lee and self-confessed **Tarantula** fan, Steve Ditko.

Any notions that these ideas were exclusive to Sid Jacobson and then, by some strange osmosis, would become exclusive to Jack Kirby do not stack up against the historical facts. Rather, Jacobson's memo provides proof that anyone, including Stan Lee, could arrive at a insect character with insect-like powers. And as we have shown one of them, The Human Fly had already been published by Lee.

"... What are the odds that Stan Lee, working alone, or in collaboration with Ditko, would come up with exactly the same title, the same set of powers and the same weapon ..."

... about the same odds as Sid Jacobson coming up with "exactly the same title and same set of powers " as F. Gardner Fox. Not to mention the odds of F. Gardner Fox and Sid Jacobson coming up with "exactly the same title, the same set of powers and the same weapons" as Mort Weisinger.

Fact: There was nothing original in Sid Jacobson's memo.

Fact: The power to walk up walls had been commonly used in comics.

Fact: The ability to swing by a web had already been used in comics.

Fact: The ability to use a web to catch criminals had already been used in comics.

Fact: Variations on the name **Spider- Man** were common.

Fact: There is no evidence that Jack Kirby ever knew of, let alone saw, Sid Jacobson's suggestions.

From **Black Widow** to the **The Web** spidermen and women crawled through the Golden Age of comics.

(Previous plots and similar spidermen aren't even confined to the American comic book business. There is a folk tale from the Caribbean of a spider man called Ananse.

"He is both a man and a spider. When things are going well he is a man but in times of danger he becomes a spider, Ananse is greedy and selfish but he is also funny."³⁰

This is the basic premise of the first **Spider-Man** story!)

Before we dispense with the Memo once and for all, let's raise a strange little mystery surrounding it. The memo introduced into evidence by the Prosecution was in fact a second memo from Sid Jacobson. The first was sixteen days earlier, February 8, 1954. This memo critiques the Silver Spider but offers no suggestions for improvement.

"...I don't see anything but possibilities for a run-of-the-mill character. As thus far depicted, the Silver Spider is neither exciting nor unusual to me..." Sid Jacobson³¹

Why was there a follow up memo suggesting how to improve a character that had already been dismissed? The answer may be in the **Silver Spider** proposal itself. Greg Theakston published it in his **Pure Images** #1 and alterations had clearly been made to it. There are indications that "spider" elements were added to the proposal.

On Page 6 panel 4 of the **Silver Spider** proposal, Joe Simon writes the comment, **"...Heroic, dramatic shot of Silver Spider. He should be tall, angular, as is a spider-sort of a web background here..."**³²

Then panel 6,

"...Art: Tommy has seen himself in the mirror. Looks like a spider. Spider web and a coiled silk rope hang at his belt..."

Whether these changes were made after the first memo, which would seem logical, or the second, we may never know. These memos are interesting but totally irrelevant to this case.

On second thought, the memo is of use after all. It proves conclusively that Jack Kirby did not originate the gun, web or wall crawling elements to **The Fly** or **Spider-Man**.

The Prosecution returned to the much-maligned Mr. Lee

“... Lee’s oft quoted statement that he had a long fascination with the pulp hero The Spider, may be true, but there are absolutely no resemblance in either origin, weapons, or powers between the two characters...”

It was the name Stan Lee was interested in. Here’s exactly what his ‘oft-quoted’ statement actually said. **“Now, as far as I remember, The Spider had no superhuman powers.... It was his name that grabbed me.”**³³

It’s the detail he adds, in this quote from **Origins of Marvel Comics** that rings true.

“I can still remember how the magazine’s sub-title grabbed me. It was called The Spider –but after the name were the never to be forgotten words: The Spider—Master of Men. Just play with that for a moment—roll it around on your tongue, savor the fateful fascinating flavour—The Spider, Master of Men.”

Stan Lee is not the kind of man to spend time on research. This story has the feel of a real memory. But a little research on our part found out that Stan Lee actually used the name spider man prior to Joe Simon’s **Silver Spider!**



Marvel Comics were edited by Stan Lee throughout the 1940’s, 50’s and 60’s. Apart from writing scripts Lee was responsible for editing, art direction, writing or approving basic plot ideas and writing or approving the cover blurbs. **Marvel** comics were full of spiders.

Miss America way back in 1944 fought the Black Widow, **Marvel Mystery** # 58. (Pictured shooting webs from her hands) Two years later in **Blonde Phantom** #12 she met another arachnid adversary in **Scourge of the SPIDERMAN. Uncanny Tales** #26 1954 contains an uncredited story called **“The SPIDER MAN.”** The story itself bears no resemblance to our friendly neighbourhood swinger but a pattern is starting to emerge.

Justice #29 (Sept 1952) contains another spider story called **“The Spider of Paris.”** **Strange Tales** #11 features another and **Adventures into Terror** # 15 yet another.

So prevalent were arachnid titles, even **Marvel’s** cowboy comics were not immune from them. In **Black Rider** # 27(1955), Stan Lee’s top artist and closest collaborator, Joe Maneely drew a “Spider Spry” look-alike four years before Jack Kirby used the same idea in **The Fly**.



Fact: The large number of arachnid stories put out while Lee was writer/editor supports his claim of a fascination with the “Spider” name.

Fact: Stan Lee’s association with the name “Spiderman” precedes that of Jack Kirby’s by **14** years.

What defines unique?

“...The Fly’s super strength is never explained, it’s just a given. Spider-Man’s is specifically described as the “proportional strength” of a spider--a rather unique concept...”

In fact it’s as old as superheroes ... literally!

In **Action Comics** # 1, page 1, (1938) on the very first page of the very first superhero comic book, **Superman’s** strength is explained under the title...

“A scientific explanation of Clark Kent’s amazing strength ... incredible? No! For even today on our world exist creatures with super strength. The lowly ant can support weights hundreds of times its own ...The grasshopper leaps what to a man would the space of several city blocks.”

Not only **Spider-Man** but also shades of the **Incredible Hulk!**

As we have previously shown, **All Star Comics # 18**, features, *“...men endowed with the relative strength of ants, the web spinning abilities of spiders...”*

Fact: Comic book characters with the proportional strength of an insect were not unique.

“...and surprisingly never used by any other insect inspired hero ...”

As the saying goes, never say never, **Top Notch Comics #8**, (MLJ, Sept 1940) featured a super-goodie called **Firefly**. This insect powered hero discovered the all powerful “secret strength of insects.” This was three years before even **All Star Comics** used the idea for its Killer Bee story.



Fact: Insect powered, costumed heroes have existed since the 1940's.

Post Hiroshima, creatures mutated by radiation exploded into 1950's American culture and therefore became fair game to comic book publishers. Irradiated monsters littered the literary landscape, most notably of all at **Marvel** (published under the **Atlas** logo but still under the aegis of Stan Lee's editorship). Comic book heroes no longer needed to be Super-Serum soldiers or dying planet refugees. The so-called Silver Age of comics had the excuse it needed to start mutating and amongst the first of these new radioactivated heroes was **Captain Atom** (**Space Adventures # 33**, 1960, **Charlton Comics**). He predated **Fantastic Four**, **Hulk**, and **Spider-Man**. As the name suggests, **Captain Atom** gained his powers from those, then still mysterious, wonders of radiation. His greatest and his deadliest power, however, is his ability to destroy, almost single-handedly, the Prosecution's case. We will talk more of him later.

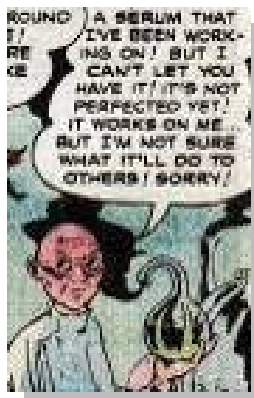
Extracting useless comparisons

*“...In **Black Cat Mystic #60** (Harvey Publications, 1957), in a story entitled “The Ant Extract,” a meek scientist discovers a serum that gives him the proportional strength of an ant...”*

“Ant Extract” sounds strikingly similar to the “Insect Extract” invented by Killer Bee in **All Star Comics #18** fourteen years earlier. Whilst **Firefly's** “Insect Extract” might have been a tad obscure, surely no one is willing to suggest Stan Lee and Steve Ditko were not familiar with Superman.

“...Because of his new power, the scientist is feared and ostracised by authorities. (sounds vaguely familiar)...”

Fact: Fenimore Flood (the central character in “The Ant Extract”) was never feared or ostracised by the authorities.



In fact, there are no authorities in this story. His colleagues nether fear or ostracise Flood, they finance his retirement to a tropical paradise. As the writer of this story tells us, Flood, *“exiles himself”*.

It may be worth noting that Fenmore Flood bore a striking to a similar scientist in a **Marvel** comic book five years earlier.

Mystic #7, 1952 **“Beware...The Bees.”** The plot revolved around a scientist who discovered how to extract a serum from bees. The protagonist of the story eventually turned into a bee man. Whilst the author of this piece is unknown, the very next issue Stan Lee's name started regularly appearing in the credits. How relevant is all this to our case? About as relevant, we suspect, as Fenmore Flood and **Ant Extract** is to Jack Kirby's **Spider-Man** claim.



Gunned down

“...Steve’s article “An Insider’s Part of Comic History” states, “Kirby’s Spider-Man had a web gun, never seen in use.” “Steve then goes on to describe what he remembers of the 5 page Kirby proposal. He says that the splash page was a “typical Kirby hero/action shot... and the other four pages are an intro, involving a teenager and a mysterious scientist neighbor. Nowhere in the five pages are Spidey’s, powers and weapons ever shown or described, in fact, according to Ditko, there was no transformation into the hero at all. If this is true, then how does Steve know that he had a “web gun” by his own words it was never shown or used? Perhaps Kirby provided some design sketches or spot illos, but that would be in dispute with Ditko’s previous statement that the 5 pages were all he received of Kirby’s, Spidey proposal...”

Actually, Ditko’s exact quote was,

“...in a discussion with me about Spider-Man, Stan said ...”³⁴

Once again, the Prosecution has limited itself to minor details and created a mystery that never existed in the big picture. According to Ditko, Stan Lee discussed the Lee/Kirby concept with Ditko before he saw Kirby’s partial pencils. As Ditko stated, this conversation supplied enough details about the character for him to recognize its similarity to **The Fly** and **The Fly** carried a gun. (No Silver Age superhero carried a gun. If a gun was suggested for **Spider-Man**, the originator of the idea was seriously out of step with Silver-Age trends.)

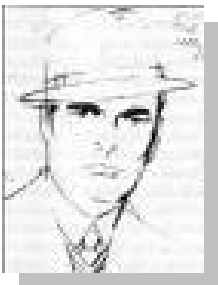
For the sake of clarity we must stress yet again, there is no evidence that the five pencilled pages Steve Ditko was referring to were a “Kirby” proposal. (**pro-pos-al**: *the act of proposing; a plan that is proposed*) The very fact that there were only five pages and the story was unresolved clearly indicates it was NOT a proposal. How do partial pencils without a super hero in them constitute a proposal for a super hero? If character proposal sketches were done, why weren’t they given to Steve Ditko instead of an unfinished story? All Ditko received were Stan Lee’s synopsis and five pencilled pages. This clearly indicates that no proposal existed. Ditko received the sum total of Lee/Kirby’s **Spider-Man**; Lee’s synopsis and Kirby incomplete pencils. If Kirby originated the character and took a proposal to Lee why wasn’t it passed on to Ditko?

No matter how hard people try, Ditko proves to be a good witness.

Fact: There is no inconsistency in Steve Ditko’s article.

A character building experience

*“...Peter’s character is portrayed as a nerdy, wallflower science whiz. Taunted by his peers for his lack of athletic prowess and social skills. He is rejected by the opposite sex. Again after comparing the recent works of the three men, I was able to find a pattern match with only one of them ... Kirby. **CHIP HARDY** was a college freshman on a science scholarship. A regular ‘boy wonder’ taunted the other kids. Moose Mulligan, the campus jock, teased young Chip about why he didn’t try out for football, instead of “hiding behind a mess of test tubes”. Other students followed suit and mocked the youngster, labeling all science majors as “squares”. Eventually, this taunting escalated into a physical confrontation between Moose and Hardy, with young Chip getting the better of it, mimicking exactly the character template and early relationship between Peter Parker, Flash Thompson, and the other school mates.”*



Ignoring the fact that Peter Parker was at high school and not at a college in the origin issue, how similar were the two characters?

Chip Hardy had no interaction with girl students that we could find. Hardy was built like Superman and looked like Brad Pitt so he was not likely to have trouble with the opposite sex even if he were to encounter them. After his initial confrontation with the bully, Hardy earned the respect of his classmates. He was looked up to as a leader. As you see the similarities with Peter Parker are disappearing fast.

Let’s fine-tune our focus onto the specific bullying incident. Mulligan baits Hardy with the words,

“...How come a guy your size doesn’t go for the football team instead of hiding behind a mess of test tubes?”

Could you image Flash Thompson asking Peter Parker why he didn't try out for the Football team? Is this a Peter Parker plot or the antithesis of it?

Fact: The only comparison between these two characters is one very dissimilar incident of bullying.

Writer, artist and editor, Charles Biro (**Lev Gleason Comics**) regularly featured bullying stories in his **Boy** and **Daredevil Comics**. Biro was Stan Lee's guru, as far as writing and editing went. It has even been claimed that Lee telephoned Biro asking for story ideas. Lee was strongly influenced by the Gleason output.

Apart from Biro, Stan's Lee longtime co-worker Don Rico worked for **Lev Gleason**. **Marvel's Daredevil** was based on Biro and Rico's character of the same name. The power and potential of bullying sub plots would have been well known to Stan Lee.



Even Steve Ditko's early body of work contained at least one bullying story that predated Chip Hardy. In his first year as a fully-fledged professional comic book artist, Ditko drew a story called, "**Die laughing**" (*The Thing* #13 1954). The lead character, Rex Chandler was a college sports jock who bullied weaker students.

As we see again and again in this debate, **Marvel's** back catalogue contained all the ingredients for Marvel's Silver Age. **Suspense #17** (April 1952) contained an unsigned, Stan Lee edited story called "**Night of Horror**". The tale features a (blonde) Peter Parker look-alike called Joe, railing against a bullying Flash Thompson type called Happy Hobart.



Then there is Steve Ditko himself. According to comic publisher Cat Yronwode, who researched a very detailed but aborted biography of Ditko, Flash Thompson and Peter Parker were right there in Ditko's school yearbooks. Right down to Flash's stripped jumper and the architecture of the school building. Ditko was Peter Parker. Physically the similarity cannot be denied and as the series progressed, Ditko put more and more of his values into the plots. Every new detail is a little piece in the big picture.

"...in Tales To Astonish #22, (Marvel Pub. Aug. 1961) in a tale titled "I Dared to Battle the Crawling Monster" one of the many Kirby/Ayers monster stories, possibly dialogued by Larry Lieber. (unsigned by Lee) The hero is a high school student, a dorky, bookwormish sort, laughed at by the jocks for his lack of athletic ability, and taunted by the girls ... "

In **Alter Ego** vol.3 #2, writer/artist Larry Lieber described to Roy Thomas how the stories in **Tales to Astonish** were written.

(Roy Thomas) "**Did you plot some of those lead monster stories?**

(Larry Lieber) **No. Stan made up the plot, and then he'd give it to me, I'd write a script.**

.... Since I knew how to draw I'd think, "Oh this shot we'll have a guy looking down on him," and later I'd sit at the typewriter and type it up...I would always follow from Stan's plots.

(Roy Thomas) **Would Jack already have pencilled the story?**

(Larry Lieber) **No. These were all scripts in advance...**³⁵

Lieber's memory is supported by Jack Kirby's pencilled pages. Conspicuous by their absence are those famous margin notes. This would seem to indicate Kirby was working from completed or, at the very least, fully approved scripts. Looking at these facts, we must conclude, Stan Lee not Jack Kirby supplied this possible Peter Parker template.

Any reader of comics will be familiar with the Charles Atlas ads that adorned virtually every comic book. Bullying and comic book reading seemed to be inexorably linked. Realistically, bullying as a storyline is so generic that searching for an originator in is a pointless exercise.

“...As to Stan Lee and Steve Ditko, I could not find any earlier templates for the harassed, teen-age, academic style hero. None...”

In fact finding them is very easy. You need look no further than **Amazing Adult Fantasy #14** (the issue prior to **Spider-Man's** first appearance).

“**The Man in the Sky**” features a teen-age academic, Peter Parker look-alike, being harassed by his fellow students. This Ditko drawn piece of Lee literature also foreshadows the arrival of the X Men but that’s another story.



A superhero “taunted by peers for lack of athletic prowess and social skills”, “rejected by the opposite sex in favour of a college football captain”, “scientific geek, changed into a superhero by an accident in a laboratory”. What are we describing here, the plot to **Spider-Man's** first issue? No, strange as it may seem, this was the origin of **The Flash** way back in 1940! By the end of that year, **The Atom** had an identical introduction (minus the laboratory accident).

Fact: The evidence, as opposed to speculation, points to Stan Lee and Steve Ditko not Jack Kirby providing templates for Peter Parker.

Fact: Stan Lee and Steve Ditko were writing and drawing harassed teenager stories just prior to **Spider-Man's** debut.

Fact: This type of plotline was generic.

Casino crooks

“...The villain of AF#15 is a colorless petty crook who has assaulted **Spider-Man's** guardian-his uncle. His sole purpose is to create the crisis, which forces the hero into action. This match up is also found in the **Fly's** origin. The **Fly's** first use of his powers is to bring to justice, a petty crook who had assaulted Tommy's guardian. This was both characters' sole appearance....”

Fact: The villain of **The Fly** origin was not a petty crook.

Fact: There is no criminal “match up” between the **Fly** and **Spider-Man's** origins.

Unlike **Spider-Man's** antagonist, the **Fly's** criminal counterpart was important enough to have a name, McCoy. He ran an illegal casino and had a gang of at least four enforcers. He was never seen alone in the story. To consider comparing him to **Spider-Man's** lone gunman is beyond any sort credibility.



Fact: Aaron Creacher wasn't Tommy Troy's guardian.

Aaron Creacher was the manager of an orphanage. Presumably Tommy and the other children were Wards of the State. Creacher was stealing money from the orphanage funds. Uncle Ben was loved by Peter Parker and was, presumably, a pillar of society.

Fact: There is match between Aaron Creacher and Uncle Ben.

Double Trouble

“In *The Double Life of Private Strong...* (not coincidentally the companion title to *The Fly*)...”

Just like Superman, Simon and Kirby's **The Double Life of Private Strong** (Archie Comics, 1959) tells the story of an orphaned baby with superpowers.

Just like Superman, the vehicle carrying the baby crashed in near a farm.

Just like Superman, an elderly childless couple, one of, whom was called Martha, adopts the baby.

Just like Superman, the Shield was always portrayed with a kiss curl of tussled hair on his forehead.

Not surprisingly, as Joe Simon explains,

"... Years later, I learned why John Goldwater had dropped his beloved Shield like a hot potato. DC Comics' lawyers had sent a cease and desist order."³⁶



Any lingering doubts about Shield/**Superman** similarities can be laid to rest by viewing the cover of **The Double Life Of Private Strong #1**. It features Lancelot Strong ripping his shirt off, to reveal the Shield costume underneath. His head is slightly to one side and a strong jaw is jutting out heroically. It is the definitive Clark Kent/**Superman** pose.



"... the hero, Lancelot Strong, aka The Shield, is an orphaned high school senior..."

This is a tad naughty of the Prosecution. Lancelot Strong was never seen at a high school nor was any sort of schooling ever mentioned in the storyline. Lancelot Strong was not even a schoolboy per se, **The Shield's** origin story spanned from a baby to manhood. He is of school age for the total of only four pages in the entire run of the series.

"... and like Spider-Man, his surrogate parents were gentle, compassionate, and supportive..."

Lancelot Strong's illegal guardians were not related to him, he was a foundling, once again, providing a stronger link to **Superman** than **Spider-Man**. Martha (yes just like Superman's mum) and Abel appear in only six panels throughout the run of the series. No relationship is shown or developed between the three of them.

In 1960 Stan Lee wrote an origin story for the **Rawhide Kid**. In "**Beware the Rawhide Kid**" a teenager's kindly Uncle Ben is murdered, forcing him into a vigilante lifestyle outside the law. Jack Kirby drew this story and there is a similarity with stories Kirby drew for other writers. It is possible Kirby may have suggested the premise to Lee. However fellow Marvel artist, Dick Ayers confirms Stan Lee wrote all the scripts for his cowboy stories at that time. The misunderstood outlaw on the run plot is similar to virtually all the bandit cowboy origins in **Marvel's** back catalogue stretching back to the 1940's. Neither man can claim creator credit for this as an original idea.

Steve Ditko says in Kirby's **Spider-Man** pencilled pages, the male guardian was an aggressive "Thunderbolt Ross" type (referring to a character written by Lee in **The Incredible Hulk** comic book) . This is pure speculation on our part but it seems reasonable to assume that a "Thunderbolt Ross" would not have been murdered. Dramatically he would have been there to provide an on going source of conflict with Peter Parker. A role eventually filled by J.J.Jameson.

For people who like looking for any vague connections, it is worth picking up a copy of **Out of this world # 5, Charlton Comics** 1957. In "**The man who stepped out of a cloud**", Ditko drew an elderly couple who looked after an orphan teenager. The old lady bears more than a passing resemblance to Aunt May and the "Uncle Ben" character is aggressive towards the adopted teenager. As in **The Fly's** origin the boy is rescued by an alien character that befriends the teenager. This story pre dates Joe Simon's **Adventures of the Fly** story by two years.

"...His powers were the result of a scientific experiment..."

The Shield's powers were the result of years of electrical stimuli issued by his birth father Professor Malcolm Fleming.

Spider-Man gained his powers by a freak accident. The spider that bit him was not part of any controlled scientific experiment. In preparing this case we started to list the amount of stories drawn by Steve Ditko that featured failed scientific experiments. The list grew so long we abandoned the idea.

“...The next element is very important: After gaining his powers, the hero loses a loved one due to his inaction, thus providing the impetus for becoming a hero. This may be the critical element that separates Spider-Man from almost all other heroes- and it's right there in *The Double Life of Private Strong...*”

When first presented with the opportunity to help people, **Spider-Man** refused. Asked why by a security guard he replies,
“Sorry pal! That's your job! I'm thru being pushed around...by anyone! From now on I just look after number one...that means me!”

It's this failure to abide by the unwritten superhero code that brings tragic repercussions for the fledgling **Spider-Man**.

When first presented with the opportunity to help people **The Shield** doesn't wait to be asked, he springs selflessly into action saying,
“Come on! We've got to lend a hand.”

The Shield did what EVERY hero in the history of comics did; protect truth, justice and the heroic way. **Spider-Man** on the other hand did what no hero in comics had ever done, watched a crime being committed and refused to help.

By the end of his story, the Shield is a fully fledged hero. In contrast, by the end of his story, **Spider-Man** has done nothing heroic.

Fact: The Shield does react and it's his reaction not *inaction* that *allegedly* causes consequences to his friend.

“While rushing off to test his newfound powers against a rampaging alien monster, The Shield, (Lancelot Strong), in his teen exuberance, ignores and leaves his best friend Spud in harms way. After defeating the brute, the Shield returns to celebrate his triumph only to learn that the monster has killed Spud. The distraught Shield blames himself, and vows that it will never happen again.”

The Prosecutions description above is totally incorrect, checking it against the actual comic book a very different story is revealed.

Lancelot Strong aka **The Shield** rushed off to help fight a forest fire, he discovered the monster later. Spud never met the monster; it was the forest fire that injured him. That fire was in the far distance when the Shield left me, Spud was never portrayed in any danger. If **The Shield** had taken his friend to safety, in the time lost, dozens of innocent people would be killed. Now *that* would be something to feel guilty about! Forgetting for a moment that Spud was a fictional character, let's examine his options. He could have run for safety or followed **The Shield** and helped to fight the forest fire. As he is caught in the fire, we must assume he did the latter. His fate, therefore, was of his own choosing.

Of course that's the fan boy version. In the real world, Spud is simply a plot device. Joe Simon wrote him into the script so Jack Kirby had something a bit more dramatic to draw than a seven-panel monologue. Unfortunately for Spud, having served his plot purpose he became a plot problem. He knew the secret identity of **The Shield** and that is the real reason why he had to go; it was nothing to do with remorse. Spud's alleged death is dealt with in two panels and was never mentioned again. Even though the next story recaps the events, Spud's death is expunged from the script. Joe Simon makes it very clear **The Shield's** motivation was to fulfil his real father's wishes to help mankind.

Second story page four, panel two,

“When you are old enough ... you'll be wise enough to use your powers as a shield against the evil forces that threaten mankind.”

To make sure the reader gets the “sense of duty to his father” angle Simon had Lancelot Strong repeat it.

“...I'll be what you hoped for... a shield against evil!”

The scenario of Spud dying because he knew the hero's identity is used as part of the storyline in **Archie's** 1980's revival of the character.



“...Similarly, Spider-man, in a moment of conceit and arrogance, ignores a thief, only to learn that same thief would go on to kill his Uncle, which in turn, spurs him into action. He then vows that it will never happen again...”

In **Spider-Man**, Uncle Ben's death and its repercussions was the driving force for the character throughout Ditko's run. Peter Parker has no desire to serve the world because of Uncle Ben's death. His grief is purely personal. Part of what made **Spider-Man** so unique was the fact he did not vow anything. Unlike **Batman** and virtually every other “noble-revenge” hero, (including **The Fly** and **The Shield**) **Spider-Man** did nothing. In the second issue Peter Parker even toys with the idea of using his powers to steal money. It takes a total of nine stories before **Spider-Man** is motivated purely by a desire to help someone (**Face to face with the Lizard, Amazing Spider-Man # 6**).



The last panel of each story emphasizes the huge chasm between the two comics. In **The Double Life of Private Strong**, a lantern jawed, steely-eyed, heroically posed, Clark Kent, look-alike, vows solemnly to use his new found powers to help the world be a better place. The new hero dominates the panel with all the implied heroic deeds yet to come.



In *Amazing Fantasy*, a silhouetted, slouched tiny figure, “**slowly fades into the gathering darkness.**” Barely visible, hemmed in by tall dark buildings and shackled by the knowledge that, “**... with great power there must also come - - great responsibly!**”

In the origin issue, **Spider-Man** has no intention of becoming a superhero let alone helping anyone. There is no vehement vow, no promise of truth, justice and the American comic book way. Unlike **The Shield**, the advertising blurb makes no promises of great heroic deeds to come. **Spider-Man** is simply an all too human teenage boy, consumed with guilt. Shocked readers are left to wonder just what is going to happen next. In keeping with Stan Lee's directions to replace Ditko's original cover with Kirby's more menacing one, **Spider-Man** could become a hero or a villain. A masterpiece of salesmanship, guaranteeing we would all be back to find out which. One thing even Stan Lee's detractors will agree on is his trademark salesman ability. This was the unique essence of **Spider-Man**.



Actions and their consequences are a recurring Ditko lief motif. **Captain Atom's** origin features a panel that eerily foreshadows **Spider-Man's** grief. Perhaps because of his famous Randian beliefs, Ditko continually explored the rights and wrongs of actions and their consequences.

“...The second *Shield* story involves the hero tracking down a Communist spy attempting to steal scientific secrets; the villain tries to escape in a submarine that the hero has to put out of action. This is also the plot of the *Chameleon* story, in *Amazing Spider-Man #1*...”



Fact: Agent Four (the villain in *The Shield*) is never shown anywhere near a submarine and is certainly never shown escaping to one.

Fact: The Chameleon escaped in a helicopter not a submarine.

There is absolutely no similarity between the two stories in this regard. There were however some compelling comparisons between the early **Spider-Man** stories and some previous comic book stories but they were ones drawn by Steve Ditko. Pictured left is a panel featuring the Chameleon from **Amazing Spider-Man # 1**. Note the hanging masks in the foreground and the villain demasking in the background.

Pictured right is a panel from **Out of this World # 6 (Charlton 1957)**. It features a villain called the Spymaster who steals secret papers.³⁷

"I am a man of a thousand faces!"

boasted the Spymaster. Duplicating the Chameleon panel, **Out of this World #6** pre-dates **The Double Life Of Private Strong** by two years.

To show this was no fluke, that same year Ditko drew a similar scene in **"The man who lost his face,"** in **Strange Suspense Stories #34**.



Tales to Astonish, #11, 1960 has yet another duplicate panel, in a Ditko drawn story called **"I wore the mask of Drothar."**

Did someone mention modus operandi? The exactness with which these panels match cannot be considered to be in the realm of coincidence. In Steve Ditko's work, masks are an important sub text. The themes and look of the Chameleon are an essential part of Steve Ditko's modus operandi. Once Ditko was chosen as collaborator on Spider-Man, a faceless foe was guaranteed to appear.

"...In the third Shield, and Spider-Man stories, we are introduced to the recurring pain-in-the-ass authority figure/ nemesis - the one who always gets hoisted on his own petard A Kirby icon, dating back to Captain America. ..."

It is interesting that the Prosecution should connect the "pain-in-the-ass authority figure" with **Captain America**. Stan Lee's first ever piece of comic book work was printed in **Captain America Comics # 3**. **"Traitors Revenge"** is a text piece in which Lee introduces a "pain-in-the-ass authority figure" that chides Steve Rogers for being a useless soldier. It is believed Joe Simon did all the writing in the early stages of the Simon/Kirby partnership. Simon told Will Eisner,

(Simon) **"...I would start the collaboration by writing the script.**

(Eisner) **... On the board itself or on a sheet of paper?**

(Simon) **We had no paper. I would write it on the board.**"³⁸

This template of the "pain-in-the-ass authority figure" was derived from Joe Simon and Stan Lee not Jack Kirby. So yet again we see Stan Lee providing provable "prototypes" in his modus operandi.

"...In both stories the adult child of that authority figure gets into a jam and needs the costumed hero to save him or her. In the Shield's case, it's the daughter of the general in charge of the base he is assigned to after being drafted. After she gets trapped in a runaway tank, the Shield must save her. In Spider-Man's story, it's the son of the editor of the newspaper who hires Peter Parker, and he is trapped in a runaway space capsule that Spider-Man must rescue."

"Even after saving their offspring, neither of the authoritarian figures considers the hero a particularly positive force, and both think the alter ego positive force, and both think the alter ego quality is a bumbling idiot..."

The Prosecution is wrong, the storyline they describe never happened.

Fact: The General's daughter was never trapped in a runaway tank therefore was never saved from it.

Fact: the General made no comment about **The Shield** good or bad.

In the course of preparing this case we **did** find a superhero whose early adventures did bear a striking and provable similarity to **Spider-Man's** first three stories. Remember **Captain Atom**? He debuted in **Space Adventures #33 (Charlton Comics, March 1960)** a mere two years before **Spider-Man**.



Captain Atom was one of the first Silver Age heroes to have gained his powers by an accident involving radiation. In the very next issue **Captain Atom** rescued a test pilot in a runaway space capsule. He did it by riding the capsule.



In **Space Adventures** 39, **Captain Atom** defeated communist spies who were trying to steal government documents. Compelling comparisons to **Spider-Man!** Even more compelling, **Captain Atom** was the ONLY other character Steve Ditko co-created before **Spider-Man**. These are not vague interpretations from half-forgotten, obscure, failed comics. They are exact duplicates from the same artist that drew them in **Spider-Man**.

In 1962, Colonel John Glenn's capsule, Friendship 7, malfunctioned during a space flight. He had to manually land the spacecraft, making headline news. Malfunctioning space capsules were easy topical plots for Lee to pick up on.

The space capsule Ditko drew for **Spider-Man** was clearly based on the Friendship 7 craft adding credibility to this theory (Ditko's prior space capsule in **Captain Atom** was far more generic Sci Fi in design). Glenn was the same rank as J.J. Jameson's son, adding further weight to the theory. After the Cuban missile crisis in 1962, "Red" fifth columnists, ala Chameleon, were also a very topical. Yet again, by looking at the broader picture we see some more *down to earth* inspirations.

The Prosecutions attempt to connect "**The Private Life of Lancelot Strong**" is by far, the weakest part of their case. It stretches credibility so thin you need a Reed Richards Sub Atomic particle analyzer to even see it. As we have shown there is no resemblance with the first three **Spider-Man** stories. No matter what other points fans may continue to argue about, we can positively lay poor Private Strong to rest (next to Spud) as any sort of template for **Spider-Man**. Let us now quickly dismiss the other supposed Kirby connections.

The Vultures circled overhead

"...The Vulture story from AS#2 is interesting because not only does it have plot elements from an earlier Kirby story, the bad guy is an exact duplicate of the villain from that same Kirby story. In the first Manhunter story, (Adventure Comics #73, DC Pub. 1942) Kirby introduced The Buzzard, who, in an uncanny parallel to the Vulture, is a skinny, stoop shouldered, hump-backed, beak nosed maniac, dressed in a green body suit with a feathered collar that encircles the neck..."

...and in an "uncanny parallel" to The Buzzard, **Doll Man Quarterly** #1, Pub.1941 (a year before Simon and Kirby's Manhunter story) featured a villain called The Vulture! He too is skinny, stoop shouldered, hump-backed, beak nosed maniac, dressed in a green body suit. He steals diamonds and fights the hero twice in the story, duplicating the plot to **Amazing Spider-Man #2** and **Manhunter**.



The Prosecution credits Kirby for a character that was in turn copied from John Cassone. Once again we see pictures compared to words. There is no evidence, as the Prosecution tries to suggest; that "Kirby introduced The Buzzard". Joe Simon or one of the staff writers would actually have been the ones to have "introduced The Buzzard".

Cassone and Simon weren't the only ones to use that plot line. A similar, winged villain appeared in a 1946 Hawkman story.

The Vision was copied from **The Spectre**. **Captain America** was copied from **The Shield**. The Red Skull was copied from The (Green) Skull. The Buzzard was copied from The Vulture. **The Fly** was copied from **The Silver Spider**, which in turn was copied from **Captain Marvel** and Lancelot Strong is copied from **Superman**. This is where credits become complicated and where it becomes vital to, **"...see the stars as they saw them"**.

Comics were a quick hit medium. Volume and turnaround were all that mattered. Simon and Kirby took from other people, other people took from them. Nobody cared unless it became a big money-spinner. The conundrum comic historians' face is; even if it could be proved Jack Kirby not Joe Simon came up with the Buzzards, should he be given credit for John Cassone's character?

Remember the character from **Pep Comics # 1** who crawled up walls in 1940? Ten issues later, his juvenile side kick, Dusty (great name for a superhero by the way) faced what was to become a recurring nemesis, dressed in green and stooped shouldered. He was called... well I think you've guessed haven't you. This Vulture didn't have wings but appeared again in issues 13 and 16, all drawn by occasional **Timely/Atlas** artist Irv Norvick. All these stories pre-date The Buzzard's first and only appearance.

The smarter ones amongst you are probably wondering, so who did bring the Vulture to **Marvel** if Jack Kirby didn't?



The answer is no one. He was already a **Marvel** (well, Timely to be exact) copyrighted character and its possible Stan Lee even created him! This villainous Vulture first appeared in **Captain America Comics # 14** (May, 1942) in an un-credited story, called "The horde of the Vulture". He popped up regularly in Marvel publications after that.

All Winners # 10, All Select # 1 and Captain America # 32.

When Marvel revived their heroes briefly in the 1950's, The Vulture was right there with them in **Captain America # 76** and then duking it out with the **Human Torch** in **Young Men # 26**. Yes, he was a green, stoop shouldered, hump backed, bald headed, old man with wings.

Stan Lee also wrote another green bird villain into the **Marvel** universe, he was called the Parrot.

As with everything in this case, when investigated, bizarre coincidences give way to the obvious and the mundane. Given the choice between a, one appearance, character, copied by Joe Simon from Cassone and a regular Marvel villain, which one is the most credible source for **Spider-Man's** Vulture?

"...The Tinkerer story in AS#2, has a very interesting hook, a plot element where a radio is doctored and infiltrated into scientists and government officials' houses in order to spy and/or control them. This is not some generic scheme, but a very detailed and specific plot element used by Jack Kirby several times....Captain America #7... "Horror Plays the Scales".

"Kirby again used this element in a crime story from Headline Comics#24 ... "Murder on a Wavelength". The alien aspect of this Spidey story appears adapted from a Kirby, Dr. Droom story... Droom is following a suspicious character and overhears a plan by aliens in which one will infiltrate humanity and lay the groundwork for an alien invasion..."

Here is a classic case of Doctor Frankenstein research. Disparate details are forced together to produce an ill fitting whole. "**Horror Plays the Scales**" and "**Murder on a Wavelength**" are about killing people not spying on them. The idea of bugging officials for information is "*generic*". The alien invasion plot line was common to Lee/Ditko stories prior to **Spider-Man** and the twist ending is quintessential Lee/Ditko. **Amazing Adult Fantasy #13** aliens used TV sets to infiltrate humanity. **Amazing Fantasy #15** aliens masquerade as humans. **Journey into Mystery #74** features an identical twist ending to **Amazing Spider-Man # 2**. **Journey into Mystery # 82** has the same denouement as **Amazing Spider-Man # 2**. **Amazing Spider-Man # 2** was archetypical of their work together. Most important of all, these examples are contemporary to the early **Spider-Man** stories. Why on earth would Stan Lee and Steve Ditko need to be given plot suggestions identical to the ones they were currently executing?

Fact: The early **Spider-Man** stories mimicked the stories Lee and Ditko were already producing.

"... All these stories are constructed in typical Kirby style, with little characterisation, all out action endings, devoid of any subtlety, pathos, or irony usually associated with Lee/Ditko offerings."

We are staggered by this statement! **Amazing Fantasy # 15** is legendary for its pathos. The ending is definitely NOT action orientated in fact there is no real superhero action in the entire story. The entire plot is a twist.

To suggest that J.J. Jameson lacks characterisation is clearly nonsensical. The Chameleon story ends with a Lee/Ditko de rigueur non-action, twist, as does the runaway space capsule story. That space capsule story is a duplicate of a Ditko Captain Atom story. The Vulture story has a very unusual twist (for **Spider-Man**), a happy ending! Again there is absolutely no action on the last page. And as we have already stated, The Terrible Tinkerer story is quintessential Lee/Ditko.

A costume drama

“...there is this little quote from Foom Magazine #11, 1975. In the middle of an article about Kirby’s return to Marvel after his brief layover at DC, the author states, “It’s not generally known that it was Jack Kirby who designed Spider-Man’s costume.” This isn’t in a fanzine, it’s not a quote from an interview with Kirby, and it’s not in a reference book, it’s right there in an in-house publication of Marvel’s.”

“As with all quotes, I can’t guarantee its accuracy, but it seems that at least at that time (1975) the feeling at Marvel was that Kirby had designed the costume...”

Sloppy research by the **Foom** writers should not be confused with any kind of inside knowledge. This appears to be a cut and paste from **Foom # 3, Everything you always wanted to know about Spider-Man** (Fall 1973) two years earlier. By reading what was written in that issue we can understand how much, or more to the point, how little credibility should be given to the idea of inside knowledge.

“...Kirby had earlier thought up a character called Spider-Man for another company and had gone as far as a cover mock-up, the company folded, and the character seemingly died before he was ever born, however, Kirby later recalled the name, suggested it to Marvel, and designed a costume for Spider-Man. A closer look at the cover of Amazing Fantasy...reveals that it was penciled by Kirby...”

If the authors of the **Foom** articles had bothered to do any kind of research he/she/they would have known that Ditko’s original **Spider-Man** cover had been printed in **Foom’s** forerunner **Marvelmania # 2** in 1970. Jack Kirby simply amended Ditko’s cover, presumably at the request of Stan Lee, for a more dynamic design pose.

The article seems to have been plagiarized from a praise piece in the **Kirby Unleashed Portfolio** written by Steve Sherman and Mark Evanier.

“...They had a projected character called Spiderman who had progressed as far as cover mock-ups before the company folded. Recalling the name Kirby suggested it to Marvel, and designed a costume for Spider-Man...” (Note even they say “a” costume and not “the” costume)

Fact: Jack Kirby’s **Amazing Fantasy** cover was not an original costume design.

Fact: Jack Kirby did not draw **The Silver Spider**.

Fact: **The Silver Spider** never had a cover, mock up or otherwise.

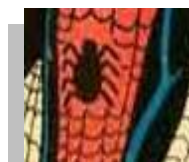
It is significant both articles use the same wording and make the same inaccurate claims about the cover. It was these types of outrageous claims that prompted the notoriously reclusive Ditko to write the article in Robin Snyder’s magazine, **The Comics**, that we and the Prosecution have been quoting from throughout this case. No credibility should be given to the idea the **Foom** writers had any factual inside information.

“...Another small but aggravating item: Spider-Man has always been drawn with a strange looking spider icon on his back. Fact is, it doesn’t look like a spider so much as a tick or other small single-bodied insect. The spider drawn on the front of Spidey’s costume is much more accurate, showing a double sectioned body with the legs coming out of the torso section. Why would Ditko use such a different and inaccurate icon for the back of the costume? I can’t answer that question, but the spider on the back of the costume is remarkably similar to the spider icon that appears on the Kirby designed character Spider Spry from the Fly series (yes, him again) ...”



Fact: In the origin and the two following stories, **Spider-Man** had the same spider emblem on the front and the back of his costume.

Fact: **Spider-Man’s** emblem in these stories had a head, a body and eight legs.



Fact: Spider Spry's emblem did not have a head and it only had four legs.

Ditko's spider emblem is identical to the spider on the contents page of **Amazing Adult Fantasy # 14**. It is also identical to the spider on the splash page of AF #15 and the spider that bites Peter Parker. It is also identical to the spider in the alleyway on page 4 of AF #15. It is also identical to the spider in "**I wore the mask of my brother**", TTA #11. It is also identical to the spiders on the cover of **Out of this World # 8**, May 1958. It is also identical to the spiders in "**Something lurks inside**" TTA #10, 1960. It is, in fact, simply the way Ditko always drew his spiders.

Steve Ditko evolved the back "spider" emblem throughout the early Spider-Man stories, eventually settling for design that featured continually throughout his modus operandi.



Space Adventures # 35 sports this Ditko drawn gentleman. Six legs might be missing but the style is unmistakable and it is a full two years before **Spider-Man**. **Dead reckoning, Space Adventures #11** (Charlton Comics 1954) features a headless spider style motif on the wing of a spaceship. The pilot has a similar design on his headdress. This was six years before Spider Spry. **King of Planetoid X, Mysteries of Unexplored Worlds # 7** (Charlton Comics 1958) features the oval logo repeated on another headdress. This was a year before Spider Spry. **The Wrong Planet, Space Adventures #27** (Charlton Comics, 1959) also features the increasingly familiar shape. This time more significantly as a logo on the characters back. This was several months

before Spider Spry. Even while he was at Marvel just prior to **Spider-Man**, Ditko continued to experiment with the design in stories like **Do Not Panic** in **Tales of Suspense**.

Masking a problem

"...Steve Ditko says that he gave Spider-Man a full, facemask in order to hide Peter Parker's boyish face, and to add mystery... Kirby's first hero, The Lone Rider, had a full, facemask, as did Manhunter, Iron Man, Black Panther, and Mister Miracle, etc..."

No Kirby character had a *full* facemask. The mouth and nose are visible on some and the eyes are visible on most of them. Again, a pedantic point but is actually quite important. Jack Kirby never drew **Spider-Man's** mask successfully and the reason, we believe, is because it was a full mask. No eyes visible, no mouth visible and no nose visible. Kirby's masks fitted into four basic categories and none of them fit **Spider-Man's** criteria:

The Lone Rider's mask was a loose fitting sack (literally) with eyeholes cut into it. The eyes were visible. Artistically, this allowed Kirby to draw a draped effect around the facial features suggesting nose and even mouth. The visible eyes also provided expression. There was no design or pattern on the mask.

Captain America's, Kirby's most common mask, covered only half his face. Almost all the face was visible. Artistically, this allowed the full of the range of facial features to be drawn. There was minimal pattern on it.

Dr Doom had large eyeholes and the nose and mouth were defined in the mask. Artistically, this allowed a great deal of expression. Again the mask had minimal pattern on it.

Mr. Miracle's mask was skin-tight, more akin to a painted face than a mask. The eyes and mouth were visible. Artistically, this allowed a full facial expression range. Once more, patination was minimal.

There was one and only one Kirby character that differs from these types. He was created post **Spider-Man** so technically he doesn't apply, but his mask was very similar to **Spider-Man's**. It is what Jack Kirby left out of this mask that highlights his problem with **Spider-Man**.

The **Black Panther** had a mask similar to **Spider-Man's**, although, very importantly, the eyes were still visible allowing facial expression. It was without any patination.



As originally drawn by Kirby the **Black Panther**, then called by the appalling appellation Coal Tiger, had no mask. Stan Lee had the costume and name changed. Yes believe it or not Stan Lee didn't give Jack Kirby free reign to create characters without his approval. Even after the editorial changes Kirby still avoided drawing a full mask. Pencils for **Fantastic Four #52** shows, a rather cute and cuddly, **Black Panther** in a **Captain America** style half mask. In the published comic, someone (*Joe Sinnott?*) heavily shaded the face giving the appearance of a full-face mask.



Spider-Man presented an even bigger problem for Jack Kirby. Besides having no visible facial features, **Spider-Man** has a webbing design over the entire mask. This made shading and draping difficult. The mask can, and in Kirby's case always did, make the face look flat. No emotion is visible through **Spider-Man's** mask. This lack of emotion was probably deliberate on Ditko's part. As we showed you earlier, his work is littered with faceless people. Why couldn't some one of Jack Kirby's artistic talents draw this type of mask successfully? We can only guess and guessing is something we promised not to do. The point here is, he couldn't, and his work is evidence of that.

"...On the other hand, Ditko's Captain Atom, Dr. Strange, the Blue Beetle, all had half masks or none at all. In fact on Ditko's other young super-heroes like the Hawk and Dove, he does not give full facemasks, so the idea of a full covering mask is not a tell tale pattern with either man..."

Yes it is!

As we showed with the Chameleon and his prototypes, masks are imbedded in Steve Ditko's working psyche. And whilst not too many of his heroes may not have had **Spider-man** style masks, their villainous counterparts almost always did.

Captain Atom fought The Ghost, a character with an identical mask to **Spider-Man**, sans webbing.

The Dread Dormammu, **Dr Strange's** nefarious foe had a face, obscured by the Flames of Faltine.

Every single one of the revamped **Blue Beetle's** adversaries had either no face or a full face mask.

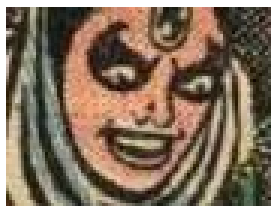
The Creeper's first foe in issue # 1 had a full-face mask hauntingly like **Spider-Man's**.

(Our point being made, we will not even bother pointing to the full face mask physiognomy of Ditko's most personal of righteous paragons, Mr A and The Question.) It is safe to say Steve Ditko was obsessed with full-face masks. They can justifiably be described as a continuing motif throughout his career. Even **The Hulk** briefly wore a full face mask when Ditko took over the character. (**Incredible Hulk #6**, March 1963)

The eyes have it.

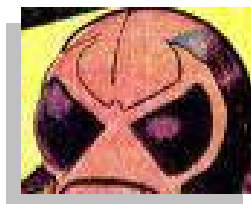
One mask detail points conclusively to Ditko as **Spider-Man's** mask creator.

Remember those "white pupil-less eyes" Jack Kirby claimed credit for? We know that to be wrong but what about the distinctive shape of Spider-Man eyes? They are like a comma turned on its side with heavy eye mascara applied with an upward flick. A search of Steve Ditko's early work shows this feature to be a dominant, almost obsessive part of his modus operandi.



The cover of **The Thing # 13** April 1954 (*one of Ditko's very earliest covers*) shows the first tentative use of this style. Inside "**Avery and the goblins**" page 6 shows more use of the eye style. The next issue, **The Thing #14** sees the eyes refined to perfection in the make up of the villainess, Gerda. This sideways "comma" eye becomes a standard in Ditko's repertoire.

Space Adventures #10, also 1954 features a robot with very **Spider-Man** like eyes. **Amazing Adult Fantasy** # 9 Feb, 1962, contains a Ditko drawn story called "**I came from the Black Void.**" Page 2 shows the now familiar eye design.



There is one final coating of drag queen size mascara over those comma-curved eyes before we move on. In **Amazing Adventures** # 1 (June 1961) **Marvel's** Silver Age dawned with the debut of **Doctor Doom**.



Inked by Steve Ditko, the now distinctive eyeliner was clearly visible over Jack Kirby's pencils. By issue two, Ditko had gone and so had those thick black curls. Throughout his career Ditko used this shape over and over again. Even **Captain Atom** had the same curled styling on his mask. Kirby's supposed white-eyed prototype, **The Vision** on the other hand did not have this distinctive styling.



Which leads us to an important point, remember Jack Kirby's quote in **The Nostalgia Journal**?

"The Silver Surfer is simple - the same with Spider-man's eyes, which

actually date back to the Vision ... I set the pattern for the eyes, which were kind of mystic."³⁹

We have already shown Kirby did not create blank eyes; in fact so far we have traced them as far back as the 1860's. Artists have always used blank eyes to convey mystic power or hypnotic possession. Kirby and the Prosecution miss the point. **The Vision** may well have had blank eyes. The **Silver Surfer** may well have had blank eyes. But Peter Parker did not! **Spider-Man's** mask was only a costume and to our knowledge, Jack Kirby never drew a blank-eye mask. This is why **Batman** was the real forerunner of **Spider-Man's** mask. Why do we say **Batman** and not the **Phantom** or the **Spectre**? The answer lies in Steve Ditko's history. As a child he was a huge **Batman** fan. His mother even made him a **Batman** costume (and his best friend a **Robin** one). Years later Ditko refined his comic book drawing skills under the tutelage of legendary **Batman** artist Jerry Robinson.

In later years when asked his biggest influence, Ditko always cited Robinson. **Batman** was not the only blank-eye masked hero Robinson drew. Back in the 1940's Robinson, along with fellow artist Mort Meskin, drew the blank-eye masked heroes, **Black Terror** and the **Fighting Yank** for **Nedor Publications**.

(For those who find coincidences relevant, Mort Meskin was one of the first people Steve Ditko inked and **Nedor Publications** also produced a character called **Doctor Strange!!!**)

Putting the boot in

"...Ditko felt that hard soles on the boots wouldn't be appropriate to a wall walking hero, and Kirby always draws the hard soles. These are interesting looks into how individual artists approach a creation, but in this specific case they are wrong factually, and conceptually. Just 2 years earlier, Kirby had created a spider character that was extremely agile, and could easily walk up silken lines..."

"...Spider Spry, of Fly fame, had "soft soled" booties that facilitated climbing. Looking at the actual record, it appears that Kirby almost always gave his nimble, agile type characters flexible footwear that would facilitate climbing and gripping. Besides Spider Spry; Toad, Cobra, and the Beast all had either soft soled shoes, or bare feet..."

Fact: Page six centre panel of the Spider Spry story clearly shows the hard soles on Spider Spry's boots.

Fact: The Toad was always shown by Kirby with hard-soled boots. **X Men** # 4 page 8 is the first clear look at Toad's boots and the hard soles are easily visible.

Fact: The Cobra did have soft soles but Don Heck originally drew the Cobra.

Fact: When Jack Kirby drew The Cobra, (**Journey into Mystery** 106) he gave him hard sole boots.



Jack Kirby did not seem to care about details such as the suitability of hard or soft soles. He drew whatever took his fancy at the time. Kirby hated to be tied down to details. He once cited his stint with **Classics Illustrated** as his least enjoyable work because of the insistence on all the details being spot on.

The logic of the Prosecution's point eludes us here; Toad, Cobra and Beast were all post **Spider-Man**. Spider Spry was a one off character for Kirby. The *only* meaningful wall climbing character Jack Kirby drew was **The Fly** and he had hard soled boots.

"...for in the first 3 Spider-Man stories, Spidey IS shown with hard soles on his feet, in fact rippled style hard soles similar to those found on the Fly.. "

Once again the big picture explains all. Let's go back to the facts of what Ditko actually said, **"...A clinging power, so he wouldn't have hard shoes or boots..."**⁴⁰

"Looking at the stars as they saw them", what would have been considered a hard shoe? Conversely what **wouldn't** be considered a hard sole?



The first question is any easy one to answer as the picture opposite from **Amazing Spider-Man** #12 shows. In Steve Ditko's mind a hard soles meant street wear, leather soled shoes and boots.

So what, back then, would be considered a non-hard sole shoe?

The picture opposite is of a pair of 1960's, soft, flexible, a rubber soled sport shoes. Compare the lines across the sole



with Ditko's early **Spider-Man** drawings.

The Converse Rubber Corporation invented the rubber soled boots in 1908.

Popularised by Charles H. Taylor of the Akron Firestones basketball team, the extended boot version became known as "All Star" boots.

During the Second World War "All Stars" were standard issue to soldiers (Steve Ditko served with the US Army). After the war they became footwear of choice to a new generation of kids.

An interesting aside; when Ditko worked on **The Fly** in later years (the cover of Red Circle's 1983 Fly reprints) he drew him with soft soles. Conversely when Kirby drew a pastiche of the Amazing Fantasy cover in the 1980's (**Jack Kirby Collector** #30 p3), he put conspicuously visible, hard soles on Spider-Man's feet.

"... in fact rippled style hard soles similar to those found on the Fly..."

Fact: Jack Kirby never drew rippled soles on The Fly.

When other artist's, post Kirby, started putting ripples on the Fly's boots they were nothing like Spider-Man's "soft" shoe.

"Lastly, it's been mentioned that Kirby could never draw the Spider-Man costume correctly, which would be strange if he created it."

We agree.

A quote of a quote and a conundrum

To finish off this part of our case, there is one thing the Prosecutions said we whole heartedly agree with.

“...If we can't rely on first-person testimony, what can we do? I think The Confessor, in Kurt Busiek's Astro City said it best, “Look at the facts, look at the patterns, and look for what doesn't fit. Base your deductions on that.”

Something in Jack Kirby case definitely didn't fit the facts or predicate the patterns. Back to the beginning and that Will Eisner interview.

(Eisner) “... **you brought it (Spider-Man) to Stan?**

(Kirby) “**That's right. ... We had ... a script called the Silver Spider. The Silver Spider was going into a magazine called Black Magic. Black Magic folded with Crestwood and we were left with the script. I believe I said this could be a thing called Spider-Man, see, a superhero character; I had a lot of faith in the superhero character, that they could be brought back very, very vigorously. They weren't being done at the time. I felt they could regenerate and I said Spider-Man would be a fine character to start with. But Joe had already moved on. So the idea was already there when I talked to Stan.**”⁴¹

We can say with certainty that the facts don't fit, so let's concentrate on the pattern.

Jack Kirby created or co-created one hell of a lot of characters. Captain America, The Vision, Manhunter, Boy Commandos, The Romance comic book genre, Fighting American, Bullseye, Boys Ranch, Sky Masters, Challengers of the Unknown, Fantastic Four, Hulk, Ant Man, Thor, X Men, The Inhumans, New Gods, Forever People, Demon, Kamandi, Captain Galaxy and Silver Star, to mention just a few. We won't even get into the top calibre of villains like Doctor Doom and Darksied. Yet Jack Kirby insisted all these paled in comparison to the **Silver Spider**. This rejected uninspired script is supposed to be the only thing that Jack Kirby was capable of coming up with to start his Silver Age of comics.

Not only does the pattern not fit, it is positively bizarre.

With no insult intended to Joe Simon and Jack Oleck, **The Silver Spider** was one of the weakest ideas to come from any top line creators. Factually, we know this to be the opinion of people working in the industry at the time as shown by Sid Jacobson's memo.

The mismatching pattern get worse.

Compare **The Fly** and the **Silver Spider's** origin and you will see the bulk of Jack Kirby's artwork matched almost panel for panel with Jack Oleck and CC Beck's original layouts, the worded caption's similarly match. This creates a problem for Kirby's creation claim. It meant that if Kirby did use the Silver Spider as a proposal presentation to Stan Lee, he did so knowing that proposal was already being published by a rival company. Worst still he knew that his friend and long time partner had the copyright to that character. The result of this deceit could well have meant a lawsuit for **Marvel** and the discrediting of Kirby's reputation. None of this fits with Jack Kirby's moral character or behaviour.

Then there is the mystery of the five pages Steve Ditko was given. They don't match the **Silver Spider** in any way shape or form. Talk about looking for what doesn't fit!

So what do we deduce from all that? Earlier we postulated that Kirby exaggerated the **Silver Spider** claim to give him some leverage with **Marvel**. Clearly, Kirby wasn't thinking through the ramifications of such a claim. It is a self defeating one and should be dismissed as any value to this case.



Part 3. The Case against Kirby and for Lee and Ditko

“Look at the facts, look at the patterns, and look for what doesn’t fit. Base your deductions on that.”

Limited by the confines they set themselves, the Prosecution relentlessly hammered their square peg into a round hole and yelled “viola!” The smoking gun turned out to be firing blanks. The mathematical odds of their coincidences wound back faster than a crooked car dealer’s mileage clock. Their dark mysteries were solved by the cold light of day. But what about the anti-Kirby claims?

The things they didn’t tell you

All three parties agree Jack Kirby was involved in a version of **Spider-Man** but exactly how close was that version to **Amazing Fantasy # 15**?

As a freelancer, was Jack Kirby paid for supplying a Spiderman proposal?

Does an invoice, receipt or tax record for the proposal exist?

Were design sketches made of Kirby’s costume?

If so, where are they?

What did the costume look like?

What powers did Kirby give his Spiderman?

How did he get them?

What was Kirby’s plot?

How old was Kirby’s Spiderman.

Did he go high school?

Did he get bullied there?

Did Jack Kirby name Peter Parker, Aunt May, Uncle Ben and Aunt May?

Did Uncle Ben die in his version?

Did Kirby submit full or, as Steve Ditko states, a partially penciled story?

If it was a full version, where is the rest of it?

These are fundamental questions that any claimant could, should, in fact for the sake of those he was accusing, was obligated to answer. Yet Jack Kirby remained silent on all these questions. His interviews about **Spider-Man** over the years were littered with vague generalities and out and out distortions. The only specific information Jack Kirby offered to support his claim was that he invented the name “Spiderman” and that he designed the costume. Both these statements are at odds with the known facts. It’s this refusal to give specific detail that most damns Jack Kirby’s claims.

All work and no play make Jack a dull boy

Stan Lee created a corporate image of a happy Bullpen care freely, chitchatting, and cheerily churning out comics. Albeit unconsciously, the Prosecution has perpetuated that pretty picture, they describe an alternate universe where Jack Kirby is leisurely doling out plots to Stan Lee for every comic book character Marvel produced. The truth is far more brutal. The year of 1962 was a punishing one for Jack Kirby. He produced;

- 1,158 pages of published comic book art (a career high).
- 88 separate comic books (another career high)

In the August of 1962 (**Spider-Man**’s debut month) Jack Kirby produced

- 86 pages of published art
- 79 pages of stories and 7 covers

These featured in **Amazing Fantasy #15** (cover), **Love Romances #101**, **Rawhide Kid #29**, **Strange Tales #99**, **Tales of Suspense #32**, **Tales to Astonish #34** and last but definitely not least **Journey into Mystery #83**, the origin of **Thor**.

To put all that into context, Kirby’s career average was only;

- 31 pages a month
- 4.3 covers a month
- 376 pages per year

(Those page totals do not include rejected pages, redraws, and page layouts for other artists.)

In 1962 Jack Kirby tripled his average output! Just pause to think about the implications of that for a minute...three times his normal work load. And Kirby was fast normally regarded as fast! As we have seen witnesses testify, to achieve these kinds of figures, Kirby worked from full scripts. Kirby's writer, Larry Lieber recalled,

"...Kirby was so fast he could draw faster than I was writing! Stan would say to me, Jack needs another script!"⁴²

The Evidence is telling us short cuts and speed was definitely the order of the day. On top of all that there are character design sheets. Thor, Loki Odin, Heimdall, Hulk, Bruce Banner, Betty and General Ross, Ant Man, Doctor Doom, Puppet Master, Alicia and Iron Man⁴³ all debuted in 1962. And of course, it does not include those five rejected pages for Spider-Man (more if Kirby produced a full story). Top it all up with the fact that **The Incredible Hulk** was revamped four times in 1962! In addition to all that, the Prosecution would have you believe Jack Kirby created and plotted **The Fantastic Four, Thor, and Hulk**, all the monster stories in **Tales of Suspense, Strange Tales, Journey into Mystery** and **Tales to Astonish**. Not to mention **Gunsmoke Western, Kid Colt Outlaw, Two Gun Kid** and **Rawhide Kid** or the romance stories in **Love Romances** and **Teen-age Romance**.

Phew! The mathematics, not to mention the logic, simply does not add up. Remember that quote? "Look at the facts, look at the patterns, and look for what doesn't fit. Base your deductions on that."



We recall to the witness box **The Shield** (who climbed up walls) and his trusty sidekick **Dusty** (who fought The Vulture). Here is their final testimony.

Ladies and gentlemen of the jury, we tender into evidence the cover of the **Avengers # 11** and the splash page of **Pep Comics # 25** for your consideration.

There is no doubting Jack Kirby's greatness in the comic book field. But that genius should not be confused with omnipotence. Sometimes, even Jack Kirby didn't create everything he drew.



Enter the Stanman

What about Stan Lee? How does his creation claim balance out against the weight of the facts? Kirby's case, as we have shown, was straight forward. Virtually none of his claims match the facts or the patterns. His case simply flies in the face of logic. Stan Lee, on the other hand, is where things get very complicated. Lee does himself no favours. His memory is poor and rather than leaving blank spaces he tells tall tales. Some are based on a kernel of truth; some are pure comic book fantasy. Sorting the wheat from the chaff is a difficult task. But as we saw with the Living Eraser, what sometimes appears to be a case for Kirby turns into an unexpected lift for Lee when researched fully. Let's cut through Stan Lee's tall timber and look for some The Confessor's "facts and patterns". Jack Kirby said he originated all the characters and wrote all the stories. Stan Lee says he originated all the characters and wrote all the stories. We need to go back to basics to find the facts.

What was the working arrangement at **Marvel** in those formative years? We don't have to guess, there is plenty of evidence. Steve Ditko described Stan Lee's working method. **"Briefly ... Stan provided the plot ideas. There would be a discussion to clear up anything, consider options ... I would then ... pencil the visual story ... provide a rough panel dialogue, merely as a guide for Stan. We would go over the pencilled ... pages and I would explain any deviations ... Stan would provide finished dialogue for the characters ideas, consistency and continuity. Once lettered, I would ink the pages."**⁴⁴

With minor variations, the same working method was described by all the other early **Marvel** artists, John Romita, Don Heck, Gene Colan, Marie Severin, John Buscema, Herb Trimpe and Larry Lieber. When interviewed by Jim Amash, Joe Sinnott explained,

“In those days, he’d (Stan Lee) just send me a script and I’d draw it ... it wasn’t a big deal you know.”⁴⁵

More importantly, the only physical evidence that exists from those early days supports this method of working. A synopsis for the first Fantastic Four book still exists. It shows that Stan Lee did in fact originate the initial ideas. The synopsis differs from the published story indicating that Jack Kirby had a vital input to the finished product in exactly the same way Ditko described his working relationship with Lee.

Base on the facts we can say; Stan Lee initiated the synopsis for Spider-Man.

Stan Lee claimed a fascination for the name “spider” through his adolescent pulp fiction reading. As we showed you previously, this is backed up by Lee’s modus operandi. Here are some more interesting “coincidences” about **The Spider**.



In 1938, actor Warren Hull played **The Spider** in a film called **The Spider’s Web**. The **Spider’s** costume bares more than a passing resemblance to Ditko’s final design. Another interesting factoid about **The Spider** is that he wore a spider ring. Steve Ditko says Stan Lee told him the original Lee/Kirby **Spider-Man** wore a ring. As the picture opposite shows, that ring is almost identical to the logo on **Spider-Man’s** back (that headless insect the Prosecution claimed was so unique to Jack Kirby!).



Spider/Spider-Man comparisons don’t end there. In the film serialization, **The Spider’s Web** (Columbia 1938), **The Spider** fights a nefarious nemesis called wait for it ...
...The Octopus!!!



In the serial’s sequel, (**The Spider Returns**, Columbia, 1941) **The Spider** fights a master spy who tries to steal government secrets (ala Chameleon in ASM # 1). The costumed spy went under the alias, The Gargoyle; a name Lee used a few months prior to **Spider-man** in the first issue of the **Incredible Hulk**, 1962, adding further weight to his inspiration claim. But lets get back to the Chameleon comparisons. **The Spider Magazine** (1939) featured a story called “**The Spider and the Faceless One**”. In this web of intrigue, **The Spider** comes face to face with a fiendish foe that “**had no face of his own but disguised himself with the tortured faces of a thousand victims.**”⁴⁶ There’s even a battle with the escaping

villain in an aircraft, once again foreshadowing **ASM # 1**. As you see, Jack Kirby does not corner the market in obscure coincidences.

Based on the facts; The Spider was indeed a very likely inspiration for Spider-Man.

Forgetting flights of fancy let’s follow the Confessor’s credo of facts and patterns and reconstruct the “crime”.

Stan Lee wrote a synopsis for a new hero called **Spider-Man**.
(We know this the way he worked)

He based it on **The Spider**.
(This is credible)

Jack Kirby uses the synopsis as a guide only, re-creating **Spider-Man** in his own style.
(We know this the way he worked)

Stan Lee doesn’t like Kirby’s treatment and passes the synopsis to Ditko.
(All three parties agree on this statement)

And that's it! The facts fit, the pattern fits, all this fuss over nothing much at all!

(Here's an interesting fact that might be stretching things a bit too far but who knows? Stan Lee was a car fanatic. His first major purchase in life was a big old Packard. As soon as he could afford one, he bought a Rolls Royce. Stan Lee loves cars! Bearing this fact in mind we checked to see if any famous cars were released in 1962. Guess what we found? Alfa Romeo introduced two legendary sports models in 1962, the Giulia **Spider** and **Spider** Veloce.)

Finally, an unwitting character witness, Roy Thomas said Stan Lee,
"...was a man who knew what he wanted and knew how to inspire others to give it to him."⁴⁷

It's a clever quote that neatly it sums up both Stan and this debate.

We know Stan Lee gave his artists a great deal of freedom. That freedom was, however, conditional to them producing the kind of stories he specifically wanted. Deviations like Kirby's Coal Tiger or Kirby's Spider-Man were not accepted.

Ayn Man

Last but definitely not least is Steve Ditko's role in all this.

How **Spider-Man**'s creation was divided up between Ditko and Lee is a long and complex topic best saved for another day. What concerns us here is Jack Kirby's claim that Steve Ditko falsely took the credit for **Spider-Man**'s costume.

Confessor time again! We have already dealt with the facts (Eric Stanton witnessing Ditko design the costume, Ditko's modus operandi of the individual elements of the costume, Jack Kirby's confession and Ditko's iron clad principles). Now let's look for the pattern.

Was it unheard of for Steve Ditko to take over a Kirby drawn character in those early days of Marvel?

When the **Incredible Hulk** failed to shift from the newsstands in sufficient numbers, Stan Lee called on Ditko to help save the comic book. Too late to rescue the title, it sales apparently picked up enough for the character to be revived, this time with Ditko at the helm.

Was it unheard of for Steve Ditko to redesign a Kirby character in those early days of Marvel?

In their "case for Kirby", the Prosecution named Doctor Droom (Amazing Adventures) as a prototype for **Doctor Strange**. If this is true we can clearly see that Steve Ditko's costume design for the good Doctor, owes nothing to Jack Kirby's Droom's original. Another example of Ditko being called in to lift a Kirby character was Iron Man. Although Jack Kirby and Don Heck rightfully receive all the artistic credit for Iron Man, It is Ditko's version that defined the costume. Despite having undergone dozens of costume changes, all artists post Ditko, based their versions on his design. It remains today the definitive Iron Man costume.

In the case of **Spider-Man**'s costume, the "dress" pattern fits Steve Ditko like a glove.

Part 4. The Summation

Using the facts and patterns at our disposal, we can now piece history together.

Martin Goodman, publisher of **Marvel Comics**, orders Stan Lee to start publishing superhero stories. Lee, looking for ideas remembers his childhood Pulp hero, **The Spider**. In keeping with the times he envisages the character actually having the powers of a spider. He writes, as is his custom, a synopsis and hands it to Jack Kirby. As is *his* custom, Kirby changes the story*. Lee doesn't like Kirby's changes and hands all the original material to Steve Ditko. These two men then produce Spider-Man's first appearance in **Amazing Fantasy # 15**.

*This pure speculation on our part and we know we promised not to speculate but sometimes it's just plain fun ...

From Steve Ditko's description of Jack Kirby's five pages we know Jack Kirby didn't use the Silver Spider or The Fly as a template for Spider-Man, so just what was Jack Kirby's version? As we already stated, it was unlikely Kirby would have stolen his ex partner currently published comic book character (The Fly). Commonsense tells us Kirby would not have copied something as bad as the Silver Spider. There was, however, another, unused, character from the Simon and Kirby workshop. His name was Night Fighter and we know he scaled buildings. This, to our mind, is the most likely source for Kirby's version. Adding support to this idea is Jack Kirby's claim that his Spider-Man costume came from an unused Simon/Kirby character that progressed as far cover mock ups. The Night Fighter did indeed reach cover mock up stage. Another piece that fits is the fact that Night Fighter carried a gun. Ditko describes Kirby's teenager entering a scientist's house (and presumably Laboratory). Before the copyright laws changed you will remember Kirby said he was trying to convince Stan Lee to revive Captain America. This was could well have been Kirby's inspiration for his young hero's transformation, a scientist administering a super serum. Unlike the rest of our case this is purely guesswork on our part. There are no real facts to support it but the pattern does fit.

It is incumbent on the claimant in any court case to prove their claim. As we have shown this is far from the case here. And in cases such as this status quo is always upheld.

Jack Kirby's claims cannot be backed up by the facts. As we have shown Stan Lee's and Steve Ditko's can. There is no dispute that Jack Kirby was involved in a version of **Spider-Man** but failed or copied concepts earn the right to a footnote, not a full blown credit. **Spider-Man** belongs to Stan Lee and Steve Ditko alone. They created all the unique elements in **Spider-Man** and have the right to hold their head high with pride over their creation.

Our case is proven, beyond all reasonable doubt

The Prosecution's is not.

The existing credits are correct and just.

Jack Kirby was involved in version of **Spider-Man** but that version was not used.

The early **Spider-Man** stories contained no crucial ideas that were original to Jack Kirby.

Finally, there is not enough evidence to seriously challenge the credits as they currently stand.

The defence rests.

Thank you

A few explanations and notes.

To ease confusion I have used the term Marvel to cover the periods also known as Timely and Atlas. The idea of framing our research as a faux court case came from a comment from the Prosecution (Stan Taylor).

"...I will await for the lawyers for the defense of Lee/Ditko to give their summations as to how to account for all these coincidences ..."

Finally we would like to thank a few people:

Philip Railsback for urging, suggesting and correcting.

Nick Caputo for confirming some difficult details.

All the sources quoted in the footnotes. (Every one of them worth scouring EBay for!!)

The members of the Kirby and Ditko lists at Yahoogroups.com.

Stan Taylor (the Prosecution), even though we've argued his finding in this particular case we still bow to his knowledge and desire for recording as accurately as possible the history of American comic books.

Stan Lee, Steve Ditko and Jack Kirby for all their creations.

This article was written and researched by dusty miller.

Feel free to take and use anything original to me from it. It would be nice for my ego to credit me if you do!

Footnotes

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45 Jack Kirby Collector # 36 2002
46 The Spider Magazine: The Spider and The Faceless One by Grant Stockbridge
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