

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 86-5289

Harold Weisberg,
Appellant

CA 78-00322

v.

William H. Webster, Director,
Federal Bureau of Investigation, et al.

86-5290

Harold Weisberg,
Appellant

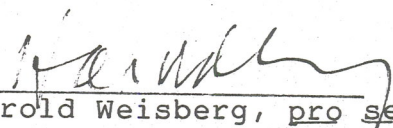
CA 78-00420

v.


Federal Bureau of Investigation, et al.

PLAINTIFF/APPELLANT'S MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE BRIEF

Plaintiff/Appellant Weisberg's brief is now due by August 1, 1986. Because the present condition of his health makes it impossible for him to prepare and file any brief by that time, he requests that the time permitted be extended to October 1, 1986. He sets forth his present health situation in the attached affidavit.


Harold Weisberg, pro se

I hereby certify that on this 11th day of July 1986 I have served a copy of this Motion and its attached affidavit upon Ms. Renee Wohlenhaus, Civil Division, Department of Justice, by mail.


Harold Weisberg, pro se

AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION
OF TIME IN WHICH TO FILE BRIEF

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff/appellant in this litigation. I have been a reporter, an investigative reporter and an intelligence analyst but I am not a lawyer.

1. About two and a half years after I filed these lawsuits in federal district court, I underwent arterial surgery in Georgetown University Hospital. In this surgery my left femoral artery, which had two obstructions in it, was bypassed with a teflon substitute for an artery extending from my torso to my left knee. This apparently successful surgery was followed by two complications, the second, in early 1981, not uncommonly fatal. The first of these complications came from blood clots which could be removed only between my knee and my ankle. This meant that there was an irremedial restriction in the supply of blood from the ankle down. So little blood reached my foot that my doctors believe that if the skin is broken it may not heal. This complication also resulted in further impairment in the return or venous circulation. In October 1975 I had been hospitalized for acute venous thrombosis in both legs and thighs, with the damage to the left leg and thigh extensive and irremedial except for vigorous exercise to enlarge the minor vessels. The first of these postoperative complications resulted in major limitations on what I am able to do and severe limitations were imposed by my doctors on what I may attempt to do. My ability to walk was reduced to at most a quarter-mile, usually with

difficulty and always with pain. I am directed by my doctors not to stand still and to keep my legs elevated when I am not walking. The second post-surgical complication was a total blockage of circulation on my left side. After that emergency surgery, my physical capabilities were further reduced.

2. On January 20 of this year I was hospitalized for a prostate operation. It was followed by still another venous thrombosis and further limitation of what I am able to do. I am not able to walk as well, as rapidly or as far and I must rest longer for recovery of the circulation of blood. Prior to this past January I was able to stand for brief periods of time but now I cannot stand still at all without the blood puddling in my foot and gradually upward from it because it is unable to return to the heart.

3. For a decade, from the time of my first hospitalization for venous thrombosis, my doctors instructed me to sit only with my legs elevated and not to sit for more than about 20 minutes without getting up and walking around. To type I have to sit sideways of the typewriter, with my heels resting on foam pads. My typing and my concentration on work are interrupted periodically when I must stop and walk around. Beginning on discharge from the hospital after the first post-surgical complication referred to above, on doctors' instructions I spend three hours daily in walking therapy at a local mall, which permits this before it opens for business when it is much safer for me because even a child running and striking my left foot can have serious consequences for me. The mall has a controlled

atmosphere, which my doctors want, and it permits me to sit and elevate my left leg when that becomes necessary. This necessity is indicated by what is known as claudication pain which comes from a lack of oxygen in the leg muscles. Three hours every morning except Sundays but including holidays I have this therapy. It consumes a major part of every morning even when I leave home as early as six a.m. for it.

4. This mall is only two miles or a seven-minute drive from my home. Since 1977, when an obstruction in my subclavian artery was diagnosed, I have been able to drive only for up to 20 minutes at a time and since then I have not been able to drive out of Frederick. I thus have not been able to drive to Washington since then. Every six weeks a local medical transportation service drives me to Washington for examination by my cardiovascular surgeon. The trip generally exhausts me for several days.

5. After my January surgery and that venous thrombosis, he detected new circulatory impairments for which he prescribed that, in addition to this daily walking therapy, I spend at least one hour and preferably two hours a day lying flat on my back with my legs elevated. When I do not spend two hours daily at this, I do spend an hour and a half.

6. In addition, I spend a not inconsiderable amount of time on other medical needs. Twice every week I go to a local medical laboratory for blood to be drawn and its prothrombin or clotting time measure and for other testings. (This week it is three trips there.) I see other doctors regularly. I drive my wife who also has trouble getting

around and sometimes cannot and who does not drive, to her medical appointments and to those of her mother, who is 96 years old.

7. My medical needs and obligations now take up almost a normal working day and the time I now have available for anything else is reduced by that much time every day.

8. For some years I have suffered from atherosclerosis, or hardening of the arteries, about which my doctors tell me nothing can be done. The circulation to my head is impaired from it. If I get up other than very slowly or bend, I get quite dizzy and a simple fall can be fatal to me. This is because I live on a high level of anticoagulant, which makes me a "bleeder." (The anticoagulant retards normal clotting.) I bleed subcutaneously sometimes without being aware of it from simple contacts. My doctors have warned me that an accident that might be insignificant for others can cause my death.

9. My medical records, including the records of all my surgeries prior to this year, are in the case record and are known to the defendants and defendants' counsel, who were provided with copies. So also are the numerous medical records for the period of the discovery now at issue, when I suffered a number of other and in themselves limiting illnesses.

10. The FBI and its counsel have been aware of my health and physical limitations for more than a decade. In fact, as far back as 1976 or 1977, when I was asked to consult with the FBI at its J. Edgar Hoover Building offices, it parked the car of my prior counsel in this litigation inside the building for that to be possible.

11. From about April 1981 I have been limited in my ability to use stairs. At best I have been able to use a flight of stairs only a few times a day since then and some days using stairs is too dangerous for me. But most of my records - and 100 percent of the records involved in this discovery - are and always have been in my basement. So also are most of the records of this litigation because I have no other place to keep them. Thus, as a practical matter - also known to the FBI and its counsel, some of whom have been here and seen for themselves - personal access to most of my files now and for years has ranged from extraordinarily difficult to impossible, varying from day to day.

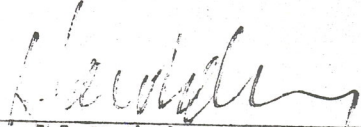
12. In addition to the limitations set forth in preceding paragraphs, I am not able to squat and that further restricts my present ability to use files or even to search them.

13. Beginning after my most recent surgery most filing has been a practical impossibility for me and there thus is an enormous clutter in my small office. I will have to be able to clear up much of this before I can begin any work other than typing that is not based on records. However, aside from the limitations described above, for the past several months I have been exhausted most of the time. The cause has not been diagnosed but there is now some experimentation with some of my medications in an effort to determine if this debilitation is caused by some of them. Although I sleep well and adequately, during the course of the day I not infrequently and involuntarily doze off while sitting. On those days I am supposed to take

a nap, but if I do another part of that day is not available for any kind of work at my desk.

14. For some years I have wanted to end this and another FOIA lawsuit under mutually acceptable conditions because of my health and the limitations it imposes upon me. Several years ago I offered to dismiss this case with prejudice before the district court and not refile it, subject to the preservation of the rights of others, and the FBI and its counsel rejected this offer out of hand, without ever consulting higher ups in the FBI or the Department of Justice. I made that offer before the FBI demanded what it styles "discovery." Earlier still, when I had an assistant, I voluntarily provided at least two full file drawers of the identical information and documentation the FBI pretends it needs under "discovery" - the very information it ignored when I provided so vast an amount. Throughout this litigation I also provided the information demanded as "discovery" in many lengthy, detailed and extensively documented affidavits - which the FBI also ignored. If the FBI had not ignored this great quantity of information and documentation provided before it demanded this alleged "discovery" and if it and the Department had not rejected what I believe was a more than fair offer to end this litigation several years ago, it would never have been before this Court and I would not now be required to request an extension of time in order to defend myself from what is much more significant than the three or more months of my Social Security checks which would be taken by the judgment that, without even pro forma denial-

and I emphasize without any single demurrer by the FBI or its counsel - was procured by undenied perjury, fraud and misrepresentation that I thoroughly documented with the FBI's own records disclosed to another requester after this litigation was first on appeal. In order to defend myself and for what I regard as public purposes I seek the requested extension of time for the reasons set forth herein.

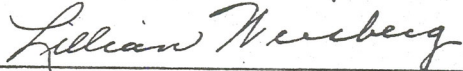

Harold Weisberg, pro se

FREDERICK COUNTY, MARYLAND

Before me this *11th* day of July 1986 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1990.




NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND