

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5058

September Term, 19 83

CA 78-00322

Harold Weisberg,  
Appellant  
v.

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

And Consolidated Case No. 84-5059

No. 84-5201  
Harold Weisberg and James H. Lesar,  
Appellants  
v.

CA 78-00322

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

No. 84-5202  
Harold Weisberg and James H. Lesar,  
Appellants  
v.

CA 78-00420

United States Court of Appeals  
for the District of Columbia Circuit

Federal Bureau of Investigation, et al.

FILED APR 18 1984

## ORDER

GEORGE A. FISHER  
CLERK

It is ORDERED, sua sponte, that the above captioned cases are consolidated.

For the Court:  
George A. Fisher, Clerk

By: *Daniel M. Cathey*  
Daniel M. Cathey  
First Deputy Clerk

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5058

Harold Weisberg

v.

William H. Webster

And consolidated case no. 84-5201

September Term, 19

United States Court of Appeals  
For The District of Columbia Circuit

FILED FEB 20 1985

GEORGE A. FISHER  
CLERK

BEFORE: Robinson, Chief Judge, Wright, Tamm, Wald, Mikva, Edwards,  
Ginsburg, Bork, Scalia and Starr, Circuit Judges

## O R D E R

Upon consideration of Appellant's Suggestion for Rehearing en banc, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to the Suggestion, it is

ORDERED, by the Court en banc, that the Petition for leave to file a supplement to the Suggestion is denied and, the Suggestion having been circulated to the full Court and no member having requested the taking of a vote thereon, it is

FURTHER ORDERED, by the Court en banc, that Appellant's Suggestion for Rehearing en banc is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

The district court's quotation of Lockwood v Bowles (page 9) is altered in a manner consistent with abuse of discretion and the indulgence of prejudice against Weisberg and bias in favor of the defendants. This is fortified by examination of both the facts in that case, which are not in any way like those in this litigation, and the exceptions cited in that decision, which are relevant in this litigation. In the district court's version, the decision says, "Fraud, inter parties, without more [is not] a fraud upon the court." The "ironclad" formulation of this quotation, "is not," is unfaithful to what, without apparent need, is replaced, "should not be." This means that under some conditions it could be. Bearing on this, Lockwood states "that intrinsic fraud is discoverable through the ordinary processes of the trial itself, such as the right to cross-examine - a right forfeited by defendants in the instant case." (page 630) Weisberg did ~~not~~ <sup>not</sup> forfeit this right - he was denied it by the district court, which he did petition for a trial only to receive no answer, or have his petition ignored.

"In the instant action," Lockwood states at page 629, "plaintiffs have been greatly prejudiced by defendants' fourteen year~~x~~ delay," but Weisberg acted as rapidly as he considered proper and possible, without any delay. During that 14 years almost all the witnesses died and the new evidence was largely an affidavits by an admitted incompetent - who had been available before she became incompetent. Lockwood says that the conditions in that case made granting relief under the conditions existing in that case is inequitable but posits the possibility of relief "where no such conditions have arisen - no such equities intervened - mere lapse of time that is not so excessive as to warrant a presumption of their existence ought not bar relief where actual fraud has been committed" (Citing 36 App. D.C.315(1911))

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For The District of Columbia Circuit

FILED FEB 20 1985

GEORGE A. FISHER  
CLERK

BEFORE: Wald and Scalia, Circuit Judges, and Wilkey, Senior  
Circuit Judge

## O R D E R

Upon consideration of the Petition for Rehearing of Appellant Weisberg, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to petition already filed it is

ORDERED, by the Court, that the Clerk is directed to file the supplement of Appellant Weisberg and it is

FURTHER ORDERED, by the Court, that the aforesaid Petition for Rehearing is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

Senior Circuit Judge Wilkey did not participate in this Order.

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GEORGE A. FISHER  
CLERK

BEFORE: Robinson, Chief Judge, Wright, Tamm, Wald, Mikva, Edwards,  
Ginsburg, Bork, Scalia and Starr, Circuit Judges

## O R D E R

Upon consideration of Appellant's Suggestion for Rehearing en banc, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to the Suggestion, it is

ORDERED, by the Court en banc, that the Petition for leave to file a supplement to the Suggestion is denied and, the Suggestion having been circulated to the full Court and no member having requested the taking of a vote thereon, it is

FURTHER ORDERED, by the Court en banc, that Appellant's Suggestion for Rehearing en banc is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

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GEORGE A. FISHER  
CLERK

BEFORE: Wald and Scalia, Circuit Judges, and Wilkey, Senior  
Circuit Judge

O R D E R

Upon consideration of the Petition for Rehearing of Appellant Weisberg, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to petition already filed it is

ORDERED, by the Court, that the Clerk is directed to file the supplement of Appellant Weisberg and it is

FURTHER ORDERED, by the Court, that the aforesaid Petition for Rehearing is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

Senior Circuit Judge Wilkey did not participate in this Order.

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GEORGE A. FISHER  
CLERK

BEFORE: Robinson, Chief Judge, Wright, Tamm, Wald, Mikva, Edwards,  
Ginsburg, Bork, Scalia and Starr, Circuit Judges

## O R D E R

Upon consideration of Appellant's Suggestion for Rehearing en banc, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to the Suggestion, it is

ORDERED, by the Court en banc, that the Petition for leave to file a supplement to the Suggestion is denied and, the Suggestion having been circulated to the full Court and no member having requested the taking of a vote thereon, it is

FURTHER ORDERED, by the Court en banc, that Appellant's Suggestion for Rehearing en banc is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

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GEORGE A. FISHER  
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BEFORE: Wald and Scalia, Circuit Judges, and Wilkey, Senior  
Circuit Judge

## O R D E R

Upon consideration of the Petition for Rehearing of Appellant Weisberg, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to petition already filed it is

ORDERED, by the Court, that the Clerk is directed to file the supplement of Appellant Weisberg and it is

FURTHER ORDERED, by the Court, that the aforesaid Petition for Rehearing is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk

Senior Circuit Judge Wilkey did not participate in this Order.



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GEORGE A. FISHER  
CLERK

BEFORE: Robinson, Chief Judge, Wright, Tamm, Wald, Mikva, Edwards,  
Ginsburg, Bork, Scalia and Starr, Circuit Judges

## O R D E R

Upon consideration of Appellant's Suggestion for Rehearing en banc, filed January 11, 1985, and of the Petition of Appellant for permission to proceed out of order and add to the Suggestion, it is

ORDERED, by the Court en banc, that the Petition for leave to file a supplement to the Suggestion is denied and, the Suggestion having been circulated to the full Court and no member having requested the taking of a vote thereon, it is

FURTHER ORDERED, by the Court en banc, that Appellant's Suggestion for Rehearing en banc is denied.

FOR THE COURT  
GEORGE A. FISHER, CLERK

BY: *Robert A. Bonner*  
Robert A. Bonner  
Chief Deputy Clerk