legislative history, and a very clear definition,which if we interpret it in terms of the caselaw, requires us to give John Lennon the benefit of the doubt as to the meaning of marijuana.

Mr. Torrington: What is the meaning in your opinion?

Attorney: From your question, Mr. Torrington, I think you will admit it is unclear, and if that is the case, then should not that doubt benefit the accused?

Chairman: I would like to raise a question just on that point, and I was not going to ask it, but you have raised it. Is this a permissible way of arriving at the construction of a statute? Ordinarily when there is some ambiguity or doubt as to the meaning of a word or phrase in a statute, we can go to the legislative history, but you have gone beyond that. You have presented evidence, expert testimony. Now, is this permissible? Can we consider the testimony of an expert or others?

Attorney: Can I answer,the government did not object to it and it is part of the record which is before this Board.

Chairman: This may redound to your benefit, I don't know. There is another term in this Section 212(a)(23). Suppose the government brings an action against somebody it doesn't like, and it brings experts in to testify that this substance, which happens to be rose petals, or tea, fits within the

generally accepted definition of whatever the statutory term is. Is this permissible, and is this how legal questions of statutory construction are to be determined?

Attorney: I think it is relevant evidence, and I think unless it is ruled out of order, and that question arises, it must be considered by an appellate body.

Mr. Schiano: There was a statement by me at the hearing where I tried to bring the attention of the expert that we are dealing with statutory terms, to be interpreted accordingly, and we did offer legislative history as part of the interpretative process. Now counsel seeks to create doubt and ambiguity by claiming it did not contain those things, and that doesn't make it an error in the law, because it didn't contain all the harmful substances we wish to control.

It may be like the time when they asked Frank Costello why he wasn't at Appalachia, and he said neither was Leo Durocher, and this is not a prosecution. Mr. Lennon is an applicant in a sense, for admission, and must establish clearly that he is admissible, and doesn't come within 212(a)(23). He is not being deported, he is being denied relief as not having been found eligible for such relief.

Mr. Torrington: I should like to continue what I could not pursue further when I last questioned counsel with regard to the term "marijuana." Counsel wondered whether I was not going to admit certain things, but as a member of this tribunal it is not my function to make admissions.

However, it would appear to me, and I would like you to comment on this, that the general term marijuana by me would have to include a part of marijuana, namely the resin of marijuana, whether you call it cannabis or cannabis sativa, the resin seems to be the more potent part, which is found in <u>all</u> parts of marijuana.

Now why then do you feel that the general term, which would contain only resin, only in part, should exclude the more potent hallucinogenic parts of the plant, that part which does the actual damage?

Attorney: Very simply, and perhaps I can illustrate with an example. The general term is not a rose, the general term is a flower. Although a rose may have petals and leaves, it is still a flower. The general term is not marijuana, the general term is cannabis sativa (L). One of the parts of the plant produces a species called cannabis resin, which is the resinous part of the plant. The other part of it may produce what we know as marijuana. I am not doubting that other statutes may use this in other ways, but I doubt that there is any question that the general term is cannabis sativa with the (L) meaning Latin I understand.

Mr. Torrington: Would the general term be "rose", and the specific term be "rose petal", other than "flower"?

Attorney: I was using that example to point out, you have chosen that part of the example which really should be relegated to a specific part, and you have designated it as the general term. It is very easy to substitute for cannabis sativa, marijuana, and say one of the parts or species of marijuana is the hashish.

Mr. Torrington: Isn't that correct? Isn't hashish an extract from the more powerful part?

Attorney: Not of a marijuana plant.

Mr. Torrington: It is not?

Attorney: Of a species of the plant called cannabis resin from which two substances are derived; one is called marijuana and one is called hashish, or the resin.

Mr. Torrington: In other words it is your contention, I am trying to pin you down in a way, that Congress should have used the Latin word cannabis "Sativa", although not everyone knows Latin, rather than the common word "marijuana."

Attorney: That is what the hearing officer used in the Boston case which was cited as a precedent or a policy statement; and while I have been drawn into it I might point out that if the government can choose when it wishes to reach a decision and call it a precedent because it is published in the book, that they determine should have precedent value, and have another case and have its attorney come and say it is only one of 31 Judges, and we think that the Judge in New York is more enlightened, that is not a posture for a board of review on the law to take.

Particularly on the basis of what was said in the Varga case, where the question was, has the government adopted a certain view? And it was determined the Solicitor General or the General Counsel can enjoin Congress when he determines not to file an appeal, that is adopting the view below as the government view. We have something much stronger in this case, the government determined to file an appeal, and its General Counsel chose, knowing the full consequences, to withdraw the appeal.

I believe that is a binding precedent on this Board, and at least is very persuasive, and the fact it took me a year to find it, and the government never chose to publish that among its Interims, which it chooses to be bound, I believe, is not the proper consideration. I think it should be considered as a precedent, or at least very persuasive evidence.

Mr. Torrington: One more question before I give counsel for the Service a chance to respond, which I hope will be my last question, and that is, is it your contention that if someone in this country is apprehended with a quantity of cannabis resin, and you also mentioned hashish, then he cannot be prosecuted under a statute making unlawful the possession of marijuana?

Attorney: I appreciate that question because it pinpoints the issue I wanted to make. Every statute has got its own frame of reference as to the meaning of its terms. The government brief indicated that in the smuggling statute the government very clearly sets out what Congress defined as marijuana. It specifically sets it out, as used in this section of law, and it says in the Food & Drug Act marijuana shall have the followingmeaning, and every government agency and Congress, every time it uses the term, has the right to define it or fail to define it any way it wishes.

It is this Board's function to find out what is the meaning of the term marijuana, not under a criminal statute that a man might be convicted in one of the 50 states or any kind of country abroad, but only under Section 212(a)(23) of the I&N Act; and there I believe my brief sets forth so clearly the meaning of the term, that John Lennon cannot be included in this.

Mr. Torrington: Thank you.

Chairman: Did you want to respond to any of this, because I had a question to ask Mr. Wildes, based on something he just said. Do I correctly understand you to take the position that a decision of an Immigration Judge can be binding on this Board?

Attorney: Are there not decisions of Immigration Judges published?

Chairman: There have been some, and they represent the views which the Service has adopted.

Attorney: What is a man to go by if you adopt it, what is the policy of the Immigration Service, we have them well represented here today from the office of General Counsel, with respect to the adoption of a policy? What is the effect of that when the Board is to reach a determination? I for one would like to know, because my understanding is that when the General Counsel decides to appeal or not to appeal, he does it not because he likes alien "A" or "B", but he does it because of the principle involved, and he is willing to have that principle heard again, when the next lawyer picks up the case and says my client fits within that.

Chairman: Perhaps I better explain, because this

might be germane to the opening statement I had made. The General Counsel is the attorney for one of the litigants before this Board, and we listen to him very respectfully, but we don't buy everything he tells us, and he may present to us a position of the Service and we may reject it.

All that happened in the case to which you referred was that an Immigration Judge rendered a decision and the trial attorney didn't like it and he took an appeal, and the General Counsel, as was his right, determined that appeal should not be prosecuted. But just as in the case of the Solicitor General, to whom you referred before, and I think not exactly correctly, determines to prosecute an appeal or not to prosecute, may be based on many considerations having little to do with the merits of the legal issue presented.

The Solicitor General may determine he will not authorize an appeal or will not seek certiorari in the Supreme Court, not because he agrees with the decision below, but because he thinks that this case is a very important vehicle to present that issue to the appellate body, or there may be other considerations.

It may be that the issue is shortly going to become moot because of other considerations, and this Board in its published opinions, has stated frequently I think, that merely because there is a decision by a lower tribunal, and I am speaking about courts now, doesn't mean we are bound by that, because we have nationwide jurisdiction. And merely because the Solicitor General has determined not to take an appeal, doesn't fix the law.

Where the Solicitor General, after reviewing the case, concludes that he will not take an appeal because the lwer court correctly decided the case, then we say that is good enough for us.

Attorney: What impresses me is the imperfection of the system which on the one hand has the General Counsel of the Service establishing a policy which may for instance, have to do with the bringing of certain cases which should not be brought. And then the Board sitting on those cases, helpless to do anything about it because, particularly after the institution of the proceedings, it binds it by the 4 corners of the record.

I am saying there is perhaps something imperfect about that, and there ought to be a standard by which the Board can guide itself, and an attorney can guide, and we just wonder what is the benefit then to the attorney for Basil Gray (phonetic) in Boston and the public in a determination made in his case, if this Board will not give it a binding effect?

And if apparently it will not even be considered because it is the only decision in the field, to have a kind of compelling or persuasive effect, it is the only issue we have on the issue. And it seems to me that before the Board reaches a different conclusion, it ought to consider <u>very</u> carefully whether that should not be done.

Chairman: That is not what you said before. Of course we will consider it carefully, we will consider any argument presented to us, but our charter makes our decision binding on the Immigration Judge and not the reverse. If there is nothing further we will take this under advisement.

Mr. Schiano: You articulated it much more clearly than I, on the same position.

Attorney: Thank you very much.

Chairman: If there should come out any decision in the pending litigation, which would be effective insofar as our consideration of this case is concerned, I assume that you will both be quick to bring it to our attention.

Mr. Schiano: Thank you.

mb

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
and
Immigration and Naturalizati Servi-

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:

John Winston LENNON

DATE: ~~OCTOBER 29,~~ OCT. 31, 1973

FILE NO.: A17 595 321

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME:				RELATIONSHIP TO I&N LAW: ☐ PETITIONER ☐ BENEFICIARY ☐
ADDRESS: (APT NO.)	(NUMBER AND STREET)	(CITY)	(STATE)	(ZIP CODE)
NAME:				RELATIONSHIP TO I&N LAW: ☐ PETITIONER ☐ BENEFICIARY ☐
ADDRESS: (APT NO.)	(NUMBER AND STREET)	(CITY)	(STATE)	(ZIP CODE)

Check applicable item(s) below.

☐ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia _____ (Name of court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board: _____

☐ 3. I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

☐ 4. Others (Explain fully.) _____

Signature	Complete Address
NAME-Type or print: Leon Wildes, Esq.	Telephone number

Form G-28
(Rev. 4-15-71)N

GPO : 1971 OL—421—693

Board of Immigration Appeals

Memorandum for the File

In re: John Winston Lennon

File: A17 595 321

At 1:10 p.m. I telephoned Mr. Wildes at his New York office and read him the letter which I am sending him today. He stated he understood it clearly and would take it into account when he presents his oral argument.

MAR

Maurice A. Roberts
Chairman

October 30, 1973

File

October 30, 1973

In re: John Winston Lennon
File: A17 595 321

Leon Wildes, Esq.
515 Madison Avenue
New York, New York 10022

Dear Mr. Wildes:

This is in response to your letter dated October 26, 1973 concerning the above-captioned matter. I have conferred with the other Board members and this letter represents the Board's considered judgment.

Notwithstanding your statement as to the limited purpose of your intended appearance before the Board tomorrow, the Board has not altered the nature of the calendared oral argument. This case was calendared for oral argument on the merits of the appeal many months ago. In my telephone conversation with you on October 26, 1973, informing you that the Board had denied your request for a 60-day continuance, I expressly stated that the Board expected to hear oral argument on the merits on October 29, 1973. When I notified you later in the day that the Board had granted your subsequent request for a brief continuance and had set the case down for October 31, 1973, I stated explicitly that the Board had questions to ask with respect to the merits and expected the merits to be argued. At the oral argument, you will be free in addition to raise and argue a request for remand, or any other point you wish to present.

Whether or not you choose to argue the merits is a matter for your own judgment. However, the Board wants it clearly understood that in granting

you a brief continuance from October 29 to October 31, the Board did not acquiesce in your view that argument on the merits should be deferred to a future date. If you fail to argue the merits, you must understand that you take a calculated risk that no further opportunity may be available to argue the merits before the Board at some future time.

Since time will not permit transmittal of this letter to reach you before you arrive here tomorrow, I have telephoned you at your office in New York and have read you the contents of this letter.

Sincerely yours,

Maurice A. Roberts
Chairman

cc: Mr. Irving A. Appleman
Appellate Trial Attorney
I&N Service

Vincent A. Schiano, Esq.
Chief Trial Attorney
I&N Service
New York, New York

MAR:mhl

Board of Immigration Appeals

Memorandum for the File

In re: John Lennon

File: A17 595 321

Attorney Leon Wildes telephoned at 11:30 a.m. He stated that his primary concern at the present time is to have the Board withhold decision until the pending court litigation is concluded and he would like to have an opportunity to convince the Board that this should be done. He is unprepared to go ahead with the argument on Monday and cannot prepare over the coming weekend because he has made arrangements to go to an out-of-town barmitzvah. Insofar as concerns the merits, he does not plan to spend much time on oral argument as he will rely heavily on what has been stated in the briefs already filed. He requested that the oral argument be continued briefly, so that he can have an opportunity to collect his thoughts and communicate with his client, who is now on the west coast and whom he cannot reach. Mr. Wildes stated that in making determinations with respect to the course of appeal he should have an opportunity to consult his client.

Mr. Wildes stated that he would be available to present his oral argument on very short notice, in the event that there should be a cancellation in a week or so. As far as he is concerned, his presentation will take very little time. I pointed out that this Board might have many questions to ask, not only with respect to the merits but also with respect to the new material which he has only recently brought to our attention. I informed Mr. Wildes that I would put his request to the Board, after ascertaining the Service's position, and would let him know.

I checked with Ginny Boyd, who informed me that this case can be set down for Tuesday, November 6 (which is election day) or at a date not long thereafter by rescheduling some other cases. I informed Mr. Appleman of Mr. Wildes' request. He stated that the Service's position, for the record, is that it opposes any continuances, even a brief one requested by Mr. Wildes. I requested the Board members to convene after 2:00 p.m. to consider this latest request.

MAR

Maurice A. Roberts
Chairman

October 26, 1973

Board of Immigration Appeals

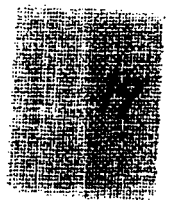
Memorandum for the File

In re: John Lennon

File: A17 595 321

The Board convened at 2:00 p.m. to consider Attorney Wildes' latest request for a continuance. It was ascertained from Ginny Boyd that Wednesday, October 31 is now available. I checked with Trial Attorney Vincent Schiano in New York, who told me he will be available on that date. The Board concluded that oral argument should be scheduled for Wednesday, October 31 at 2:00 p.m.

I telephoned Mr. Wildes and informed him that oral argument has been scheduled for October 31 at 2:00 p.m. He stated that this was very satisfactory and he will be there.



Maurice A. Roberts
Chairman

October 26, 1973

Board of Immigration Appeals

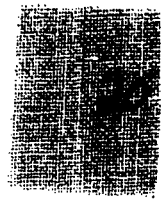
Memorandum for the File

In re: John Lennon

File: A17 595 321

The letter dated October 23, 1973, with enclosures, from Mr. Wildes was received at the Board late yesterday afternoon and I immediately circulated the material to the Board members. We conferred this morning on Mr. Wildes' telephonic request for a 60-day continuance of oral argument. The Board concluded that the request should be denied. At oral argument, counsel will be expected to proceed on the merits, but he may also bring up the new matters advanced in support of his request for continuance.

I telephoned Mr. Wildes and informed him of the Board'd decision. He expressed a sense of shock, stating that he had never anticipated that his request for a continuance would be denied. He is not sure that he will appear for oral argument. I pointed out to him that this is a matter for his judgment as counsel, but suggested that, if he decides not to appear, he should notify the Board at once, to avoid needless expenditures of time and effort here and in the Service. Mr. Wildes stated that he would call me back later in the day in this regard.



Maurice A. Roberts
Chairman

October 26, 1973

October 26, 1973

Leon Wildes, Esquire
515 Madison Avenue
New York, New York 10022

John Winston O. LENNON
A17 595 321

Dear Mr. Wildes:

October 31, 1973*

**

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*reset and confirmed telephonically.
**additional time granted both sides.
cc: Vincent A. Schiano, Esq.
Trial Attorney
Irving Appleman, Esq.
Appellate Trial Attorney
Robin Ann Colin, Esq., NYCLU

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3468

CABLE ADDRESS
"LEONWILDES," N. Y.

October 26, 1973

Board of Immigration Appeals
521 12th Street, N.W.
Washington, D.C. 20530
Attention: Mr. Maurice Roberts, Chairman

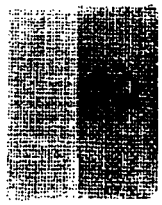
Re: LENNON, John Winston Ono
A17 597 321

Dear Sir:

This will confirm our recent telephone conversations, commencing on Tuesday morning, October 22nd, at which time I requested a continuance for a period of approximately 60 days of the oral argument in the above case. The request was made in view of the extraordinary recent developments in the case, none of which were apparently known to the Board prior to my telephone call. On the same date, I forwarded, as agreed, copies of the relevant documents including the summonses and complaints which have been filed in two actions in the U.S. District Court for the Southern District of New York. Today, I received your telephonic reply denying a continuance and I indicated that under the circumstances I was not prepared to attend and argue the case on the merits and would not be present at the oral argument, scheduled for Monday, October 29, 1973.

The Board has now granted me permission to appear on Wednesday, October 31, 1973 to state my position and make my request for whatever relief I desire.

I wish to confirm my position as stated, that although I desire oral argument on the merits, I am not in a position to do so at this time, and that my appearance is solely for the purpose of making a special request of the Board to defer its determination of the merits of the case until the record on appeal is properly completed, or for other appropriate relief consistent with my position that the thresh-hold issue of prejudgment must be disposed of prior to the Board's reaching a determination on the merits of the case.



The purpose of this letter is to eliminate any misapprehension as to the limited purpose of my appearance before the Board this coming Wednesday afternoon.

I thank you for your courtesy in allowing my appearance as stated above.

Very truly yours,

LEON WILDES

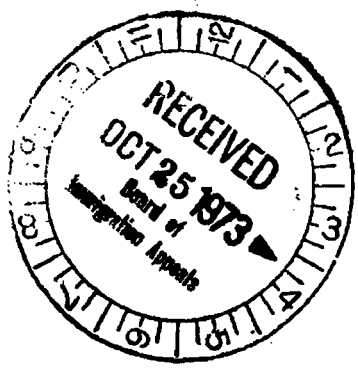
LW/ts
cc: Vincent A. Schiano, Chief Trial Attorney

cc: Appellate Trial Attorney, Washington, D.C.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3468

CABLE ADDRESS
"LEONWILDES," N. Y.



October 23, 1973

Board of Immigration Appeals
521 12th Street, N.W.
Washington, D.C. 20530
Attention: Mr. Maurice Roberts, Chairman

Re: John Winston Ono LENNON
A17 597 321

Dear Mr. Roberts:

This will confirm my telephone conversation with you of this morning in which I requested a 60 days continuance of oral argument in connection with the appeal regarding the proceedings of the above-named.

Enclosed herein please find motion papers dated August 1, 1973, September 20, 1973 and October 17, 1973 submitted to the Immigration Judge, as well as the Immigration Judge's reply dated September 12, 1973.

Also enclosed are two actions filed with the United States District Court, SDNY - Lennon v. Richardson et al filed on October 17, 1973 and Lennon v. Bork et al, being filed on October 24, 1973.

Thank you for your attention to this matter.

Very truly yours,

LEON WILDES

LW/ts
Encls.
Certified Mail: Return Receipt Requested

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022

PLaza 5-3468

CABLE ADDRESS
"LEONWILDES," N. Y.

October 17, 1973

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007
Attention: Hon. Ira Fieldsteel,
Immigration Judge

Re: John Winston Ono LENNON
A17 597 321

Dear Sir:

In further support of my motion dated August 1, 1973 in the above-captioned matter, as supplemented by my letter of September 20, 1973 requesting your immediate ruling thereon, I respectfully wish to add to my request for relief that the deportation proceedings herein be reopened for an evidentiary hearing upon the issue of the prejudgment involved in this case.

As you will recall, I have at various stages of the case claimed prejudgment with respect to a number of the procedures and practices followed by the government, including the unexplained refusal to entertain any and all extension applications; the failure to adjudicate third preference petitions until the proceedings were temporarily restrained through judicial intervention; the unprecedented institution of deportation proceedings in a case fraught with serious humanitarian considerations following the extraordinary and precipitous procedure of retroactive termination of voluntary departure time; the denial of my client's due process right to prepare and present an available defense to the deportation proceedings through the failure to furnish information to which he is entitled under the Freedom of Information Act and the denial of his request to depose knowledgeable government officials as to the practice of the Service in other similar cases; and numerous other acts on the part of the government, each of which bespoke prejudgment, and which, in sum, amounted to a gross denial of due process and a deprivation of constitutionally protected rights.

In my opinion, my client is entitled to an evidentiary hearing on the issue of such prejudgment which, upon information and belief may

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have resulted from wiretaps, surveillance or other illegal acts on the part of the government. I attach hereto as new evidence a copy of what appears to be a government memorandum whose contents blatently call for such prejudgment on the part of the Service, apparently the product of another government agency. Additionally, at such reopened hearing, my client would offer testimony as to other evidence of possible wiretaps and of the specific type of surveillance mentioned in the attached memorandum which have occurred since it was rumored he was scheduled to appear at an anti Vietnam War demonstration at the 1972 Republican National Convention.

The gross denial of due process which may have occurred should, by now, be perfectly obvious. The government knew in advance that the precipitous revocation of voluntary departure time and institution of deportation proceedings in this case would cut off a number of options which were available to my client to permit him to continue his numerous personal and business matters in the United States in one of several available legal nonimmigrant statuses; the institution of proceedings relegated him to an application for permanent residence which was likewise known by the government to be one which could be administratively rejected. The Immigration Service was either a knowing participant or an unwitting accomplice in this apparent plot.

There is ample legal authority for the reopening of a case to take testimony concerning such alleged illegal action not reflected in the record on the issue of prejudgment. Accardi v. Shaughnessy, 347 U.S.260 (1954). Buffalino v. Kennedy 323 F.2d 738 (C.A.D.C.1966) and for the conduct of a full evidentiary hearing on such issue. As you know, such a hearing was ordered by the Court to be held before the Immigration Judge in the Buffalino case. In the face of such an obvious possible miscarriage of justice, there should be no need for us to request the remand of the case for an evidentiary hearing before the Board of Immigration Appeals or a court.

This motion is timely. Much of the evidence which forms the basis of this motion to reopen was not available at the time of the original proceedings. Elementary fairness also requires that notice be taken of the fact that earlier suspicions as to illegal activities on the part of the government were hardly believable until the Senate Watergate hearings brought to light the occurrence of similar illegal activities being performed by various governmental agencies. Certainly the respondent should not be prejudiced by the fact that the government may have succeeded in covering up its il-

legal activities or that they were not discovered or believed at an earlier date. Moreover, the evidence to be offered at such reopened hearing both by respondent and by the various government agencies involved is clearly material to the issue of prejudgment and is fully authorized by statute,18 U.S.C. 3504.

It is submitted that the Immigration Judge may, and in the interest of justice, should, rule upon this motion to grant the requested relief since no decision has been rendered by the Board of Immigration Appeals on the appeal herein. In addition, the record of appeal is necessarily incomplete as it now stands and the evidence which will be adduced at the requested evidentiary hearing is a necessary part of the record before the Board of Immigration Appeals and will, at the very least, complete the record and permit the respondent to brief this essential defense as part of his appeal. The Board, when it considers the full appeal, will thus have a complete record before it. The issue to be determined is threshhold in nature and no appeal could properly be considered complete without it.

The action taken by the government in my client's case, as you know, has been likened to that taken in Charlie Chaplin's; it now unfortunately appears more like that taken in Daniel Ellsberg's. There should be no necessity to take this case through further appellate procedures without first discovering the true facts about the government's alleged illegal acts in this case and determining the fundamental issue of prejudgment. Such a hearing is required by statute, 18 U.S.C.3504 and by the case law, Accardi v. Shaughnessy, supra; Buffalino v. Kennedy, supra.

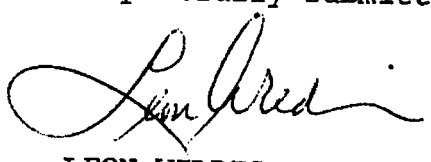
It should be pointed out finally that the limited reopening of proceedings for the purposes stated above would cause no injury whatsoever to the government which has thus far expressed no opposition to this motion, while the failure to reopen proceedings might perpetuate outrageous illegal government activity and prejudgment resulting in a serious denial of my client's civil and constitutional rights. What respondent requests simply and plainly, and what he is entitled to under the applicable statute, is that the government show that it has not acted improperly nor prejudiced the various applications, by disclaiming all such wrongdoing in an adversary proceeding.

WHEREFORE, respondent respectfully requests that the deportation proceedings be reopened for the purpose of conducting an evidentiary

hearing for the purposes stated above, and,

IT IS FURTHER REQUESTED that the Immigration Judge permit oral argument with respect to this motion and set a date and time for such oral argument as soon as reasonably possible.

Respectfully submitted,



LEON WILDES
Attorney for Respondent
515 Madison Avenue
New York, New York 10022

cc: Sol Marks, District Director
Immigration and Naturalization Service

cc: Vincent A. Schiano, Esq., Chief Trial Attorney
Immigration and Naturalization Service

Board of Immigration Appeals

Memorandum for the File

In re: John Lennon

File: A17 595 321

Attorney Leon Wildes telephoned from New York at noon and requested a continuance of oral argument, now scheduled for October 29, 1973. He stated that in August of this year, after the record on appeal had been forwarded to the Board, he ascertained that there was possible wrongdoing on the part of the Government in the deportation proceedings. He then made a request to Immigration Judge Fieldsteel for disclosure under 18 U.S.C. 3504. The immigration judge felt that he did not have jurisdiction to hear such a motion. Mr. Wildes therefore contacted trial attorney Schiano and asked him to declare whether the Government had engaged in illegal electronic surveillance. Mr. Schiano refused to give him a responsive answer. Mr. Wildes recently asked Immigration Judge Fieldsteel to expand the record to include the foregoing matters.

Mr. Wildes has also tried to get records from the Service of how other "non-priority" cases have been treated. He never received a response from the Service and has been informed that if he wishes this information he will have to proceed under the Freedom of Information Act.

Mr. Wildes stated that he has a copy of a memorandum indicating that the case has been prejudiced from the start; that at the time the Republican National Convention was scheduled from San Diego in 1972, instructions were sent to the Immigration Service that the respondent and his wife were not to receive any relief. Mr. Wildes stated that the Government was under the impression that the respondent and his wife had planned to join demonstrators at the Convention

in an anti-Viet Nam war demonstration, a fact which the respondent and his wife deny. As a result, the Government had determined that the respondent and his wife should be ousted as quickly as possible and that instructions to that effect were given to the Immigration Service. Mr. Wildes intends to bring these allegations out by evidence, to show prejudgment. He also intends to adduce evidence of illegal electronic surveillance and he is filing a court action under the Freedom of Information Act today.

Under the circumstances, Mr. Wildes feels that it would be premature to argue the case on the merits next Monday, as the record is incomplete. He has tried to get in touch with the District Director at New York to seek consent to a continuance, but Mr. Marks is unavailable. Mr. Schiano is also away from the office. Mr. Wildes contacted Mr. Schiano at home and was informed that Mr. Schiano will abide by whatever decision the Board comes to. Mr. Wildes asked for a continuance of about 60 days, in the thought that in the interim the situation would be crystalized.

I informed Mr. Wildes that none of the information he had brought to my attention is reflected in the record now before the Board. If he has any documentation which the Board should consider in support of his motion for a continuance, he should see to it that it reaches the Board by the fastest means possible. I told Mr. Wildes that I would have to ascertain the Service's position with respect to the requested continuance and would have to refer the question to the Board before I could advise him and this could not possibly be done today. I promised to telephone him the Board's decision on the requested continuance as soon as possible.

I informed Mr. Appleman of the foregoing and asked him to advise me of the Service's position with respect to the requested continuance.

Maurice A. Roberts
Chairman

October 23, 1973

October 24, 1973

Memo For File

Subject: JOHN LENNON, A17 597 321

Mr. Schiano called back to advise that he had in his possession a copy of action filed by Mr. Wildes.

The action seeks to:

(1) Enjoin the Board from rendering a decision until admissions, denials and or hearings are forthcoming.

(2) A court hearing to determine illegal action by government.

(3) A court hearing on the basis of prejudgement.

(4) A court hearing on the basis of rights violated.

Mr. Schiano stated that this action has been filed.

Mr. Appleman stated that he would talk with Mr. Isenstein regarding the case and get back to him.

Oct. 24, 1973

I advised Mr. Isenstein, Acting General Counsel, of all developments to date. He said he would call NYC. Service opposes any continuances.

Oct. 24, 1973

Told Chairman of above background and that we opposed any continuance.

I.A. Appleman

CC: Board of Immigration Appeals

October 23, 1973

Memo For File

Subject: JOHN LENNON, A17 597 321

Mr. Appleman called Mr. Schiano, TA, NYC today to obtain information on the Lennon case.

He stated that Mr. Wildes, attorney for the alien had called Chairman, BIA requesting a continuance, of oral argument rescheduled for next Monday, Oct. 29, 1973; that the attorney claims that he has in his possession a letter from a government agency that shows discrimination against the alien.

Mr. Appleman asked Mr. Schiano what was behind the claim for a continuance and how Mr. Schiano felt about the request. Mr. Schiano said that he did not know all of the details but he was under the impression that Mr. Wildes has asked to review some other cases of the I&N Service not relating to the immediate case and his request was denied, and because of action concerning his court case Mr. Wildes feels it would be premature to go on with the hearing on the Lennon case scheduled for Monday, Oct. 29, 1973 until the outcome of the court case; that Mr. Wildes also had a motion to reopen pending. Mr. Schiano told Mr. Appleman that he was against any continuance on Lennon.

He also advised that he would contact him when he found out some more information.

CC: Board of Immigration Appeals

I.A. Appleman

September 5, 1973

Leon Wildes, Esquire
515 Madison Avenue
New York, New York 10022

John Winston LEEMON
A17 595 321

Dear Mr. Wildes:

October 29, 1973*

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*rescheduled and confirmed telephonically.
**additional time granted to both sides.
cc: Vincent A. Schiano
Trial Attorney
Appellate Appointeeship
Irving Appleman, Esq.
Appellate Trial Attorney

UNITED STATES DEPARTMENT OF
IMMIGRATION AND NATURALIZATION
BUREAU OF IMMIGRATION APPEALS

- x

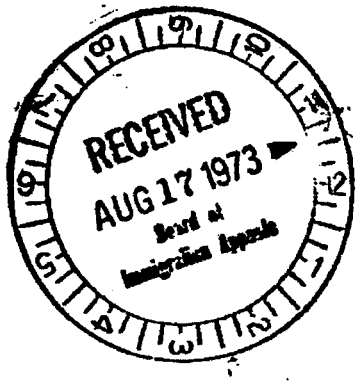
In Re :

Deportation Proceedings Against :

JOHN LENNON, A17 595 321 :

Appellant. :

- x



APPELLANT'S MEMORANDUM OF LAW

of counsel

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UNITED STATES DEPARTMENT OF
IMMIGRATION AND NATURALIZATION
BUREAU OF IMMIGRATION APPEALS

In Re
Deportation Proceedings Against
JOHN LENNON, A17 595 321 Appellant

APPELLANT'S MEMORANDUM OF LAW

Interest of Amicus Curiae

The New York Civil Liberties Union is an organization established to protect Constitutional rights. We believe that the matter of deportation proceedings against John Lennon presents important issues of due process and equal protection under the Fifth Amendment as well as a serious First Amendment question involving the right of American citizens to receive artistic communications free of governmental interference.

Copy sent to AG

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I. THE FUNDAMENTAL REQUIREMENTS OF DUE PROCESS APPLY TO DEPORTATION PROCEEDINGS AND HAVE NOT BEEN MET IN THIS PROCEEDING

It is fundamental to the American system of justice that a reviewing court carefully examine the full record of a deportation proceeding to assure that due process is being afforded the alien. See Rowoldt v. Perfetto, 355 U.S. 115 (1957); concurring opinion of Frankfurter, J. in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1950). Convictions of aliens which have been obtained in a manner violative of our basic due process standards have been subject to further inquiry in courts in which such convictions have been challenged. See Marino v. Holton, 227 F.2d 886 (7th Cir. 1955), cert. den. 350 U.S. 1006; State v. Gilman, 291 A.2d 425 (1972).

The standard of United States law is used as a guideline "to avoid divergent and anomalous results which would follow from an application of varying systems of

foreign law.", Giammario v. Hurney, 311 F.2d 285 (3rd Cir. 1962). In deportation proceedings involving foreign convictions for alleged misdemeanors, such crimes have been assessed and evaluated in accordance with the standards of United States law. Giammario v. Hurney, supra. United States' standards of law and justice are also used in evaluating foreign convictions for crimes of moral turpitude. See Mercer v. Lence, 96 F.2d 122 (10th Cir. 1938), cert. den. 305 U.S. 611; U.S. ex rel.Ciarello v. Reimer, 32 F. Supp. 797 (DCNY, 1940). In such cases, courts look into the inherent nature of the crime, the facts charged in the indictment upon which the alien was convicted, the charge, plea, verdict and sentence. U.S. ex rel. Teper v. Miller, 87 F. Supp. 285 (DCNY, 1949)

The circumstances surrounding the conviction of John Lennon for possession of marijuana raise fundamental questions as to the validity of the conviction and the weight to be given it.

The record reflects that Lennon had recently

moved into an apartment owned by the Apple Record Company and often used by other persons. Without explanation or legal warrant, the police, headed by the notorious Constable Norman Pilcher, entered the apartment, searched it and discovered in a closet small quantities of marijuana in three different containers including a binoculars case.

The arrest and the discovery of the marijuana in the apartment are clouded by the questionable conduct of Constable Pilcher, who developed for himself a record and reputation for arresting famous musicians. Mr. Pilcher is to be tried for his illegal activity on the force in the fall of 1973.

The validity of the conviction of Lennon is also in question, because of the pressures on him at the time to enter a plea and terminate the proceeding. The plea was entered on a charge

of possession, pursuant to a statute which had no requirement of scienter. While there is ambiguity as to the English proceeding, there seems to be some indication that the violation was technical and that Lennon may well have been advised that ignorance of the substance's existence was not a defense.

These facts raise the most basic questions of due process. Evaluated in accordance with the standards of this country, Giammario, supra, a conviction obtained by illegal police work, an illegal entry and search, under a criminal statute requiring no criminal mens rea, cannot provide a basis for exclusion of an individual otherwise fully qualified for alien-resident status.

The immigration judge, quite correctly, did review the question of the validity of the conviction involved. As will be shown, however, his conclusions were

not supported by the law he cites.

Although theoretically the onus of reevaluating the guilt or innocence of appellant and the extenuating circumstances pertinent thereto has not been placed on the courts, practically speaking the courts are not precluded from reexamining such matters:

> "As Judge Magruder pointed out in that case [Pino v. Nichols] Congress did not place the burden upon the courts to consider extenuating circumstances. However, if the circumstances in the instant case are as petitioner alleges, the Attorney General may wish to give whatever consideration is possible to them. Indeed, at oral argument counsel for respondent stated that such consideration will be given to petitioner."
> Giammario v. Hurney, supra at 287

The Appeal Board is mandated here to review the appellant's conviction in accordance with a fundamental due process standard for the following reasons: the general practice of reviewing foreign convictions noted by the court in Giammario, supra, the legal support