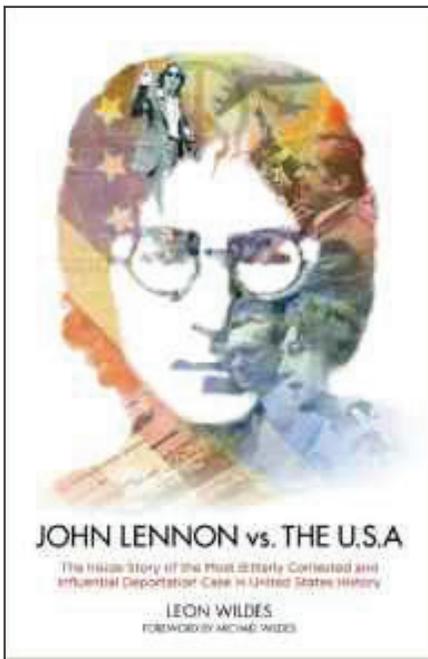


bills to passage. That should be done. Reform of the state secrets privilege requires action by both the judicial and legislative branches. Upon taking office, President Barack Obama stated that the George W. Bush administration had “over-used” the state secrets privilege. The promised reforms adopted by the Obama administration have proven to be largely a continuation of practices and attitudes followed by the Bush administration. ©

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John Lennon vs. The USA: The Inside Story of the Most Bitterly Contested and Influential Deportation Case in United States History

By Leon Wildes

American Bar Association, Chicago, IL, 2016.

384 pages, \$35.

Reviewed by R. Mark Frey

The recent publication of noted immigration attorney Leon Wildes' *John Lennon vs. The USA* brings back vivid memories of an era marked by conflict in matters involving war and national security, civil rights, law and order, and the Silent Majority. In some ways, these matters are eerily similar to today's concerns with ISIS/ISIL, Black Lives Matter, and Donald Trump's presidential campaign call to Make America Great Again.

In the 1960s, John Lennon, as a member of the Beatles, unleashed a creative force in music that reverberates to this day. Following the breakup of the Beatles in 1970, Lennon continued his influence, with solo projects and populist-flavored political activism, speaking out against the war in Vietnam and advocating for civil rights. That activism created consternation and alarm on the part of President Richard Nixon as he geared up for his 1972 reelection, fearful of the youth vote after the 1971 ratification of the 26th Amendment giving 18-year-olds the vote for the first time.

In gearing up, Nixon actively sought to eliminate possible threats to his reelection, including those he or his staff feared Lennon presented with his activism and influence among young people. How exactly was the effort against Lennon carried out? The federal government used the Immigration and Naturalization Service (INS) to effectuate the deportation of Lennon and his wife, Yoko Ono, relying on his drug conviction as the basis. Both Lennon and Ono were legally in the United States seeking to locate and gain court-granted custody of Yoko's daughter, Kyoko, from her former husband, Tony Cox. They had successfully entered the United States with visitor visas and a waiver of John's 1968 marijuana (actually cannabis resin) conviction in Great Britain. This was all well and good until Lennon and Ono faced the end of their stay in January 1971 without having resolved the custody matter involving Kyoko. They needed more time in the United States.

At that point, immigration attorney Leon Wildes was called upon to render legal advice. The couple's initial meeting with Wildes, on Jan. 14, 1971, led to a brief assessment of their case as well as a promise to explore further prospects. Wildes advised the couple to seek an extension of their visitor stay, given the unresolved matter involving custody of Yoko's daughter, Kyoko, and also permanent residence on the basis of a type of visa available to those with ex-

ceptional abilities in the arts or sciences and who would “substantially benefit prospectively the ... cultural interests of the United States.”

Wildes, noting that “It's a game of chess ... and there are a number of moves we'd have to make,” outlined his strategy for Lennon and Ono, arguing that relevant U.S. immigration law, while addressing narcotics and marijuana in the context of admissibility, did not contemplate cannabis resin in the mix. He stressed, as well, that *no mens rea* (knowledge) element was required in the United Kingdom for Lennon's drug conviction, observing that in the United States it was required for a lasting immigration effect. Lastly, Wildes intended to pursue rumors and complaints that certain members of the police in the United Kingdom had planted drugs on the premises of certain high profile individuals there.

Lennon and Ono agreed to the strategy, and it soon became apparent that something was amiss as Wildes attempted to obtain a simple extension of their visitor stay, but encountered much resistance and their eventual placement in deportation proceedings. The U.S. government wanted Lennon and Ono out of the country, the quicker the better, leading Wildes to ask why this case was being treated so differently from others he had worked on over the years. Through tenacious effort, Wildes was able to keep Lennon and Ono in the United States through years-long litigation before the Board of Immigration Appeals and in the federal courts. The litigation had much to do with the issues presented in their deportation hearing and also with information coming to light through requests under the Freedom of Information Act. In fact, Wildes found orders from high up in the Nixon administration to get rid of Lennon and Ono. They were not processed as were others within the immigration legal system but were selectively targeted for removal from the United States, all on account of Lennon's views and exercise of his free speech rights. As the Court of Appeals for the Second Circuit noted in its decision issued on Oct. 8, 1975, “The courts will not condone selective deportation based upon secret political grounds.”

At the same time, through the Freedom of Information Act, Wildes discovered a process that could have benefitted Lennon and Ono. It allowed for prioritization of certain individuals' removal in the most

difficult immigration cases. The process, known then as non-priority status, allowed some without any hope for relief from deportation to remain in the United States on humanitarian grounds. In other words, their deportation order was placed at the bottom of the bureaucratic pile. Decisions made under this process were made within the immigration bureaucracy on a subjective basis unbeknownst to the affected parties. It seemed odd to Wildes that this process was hidden from view.

As a result of Lennon and Ono's experience with the U.S. immigration legal system, this process, later known as deferred action and prosecutorial discretion, has become more formalized and available for application on a case-by-case basis, gaining attention today as the inspiration for President Barack Obama's Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

This fascinating book is many things at once: a political thriller reporting on the

nefarious operations of the Nixon administration; a discussion of legal and constitutional issues in a key immigration case; a memoir by one of our most venerated immigration attorneys, "finally putting it all down" about his work with John Lennon and Yoko Ono; and a comprehensive overview of the case in all of its aspects, including an explication of a little known mechanism that the immigration service uses to prioritize the removal of people based on humanitarian considerations.

Leon Wildes, ever the teacher and consummate attorney, observed, "John Lennon left a legal legacy that still represents a huge contribution to the practice of my profession. In the field of immigration law today, no one has done more for people under deportation than my old friend John. Whether you call it non-priority status, deferred action, or prosecutorial discretion, as it's become known more recently, this remains the only remedy available in many of the most difficult immigration cases."

Well said, Mr. Wildes, well said.¹ ☺

Endnote

¹See also Shoba Sivaprasad Wadhia's, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases*, a fine companion to this book. My review of that book appeared in the October 2016 issue of *The Federal Lawyer*.

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