

Dr. Herbert Makovsky
Attorney At Law
With the Superior Court and
District Court of Appeal I and II
4 Holshof Street, Munich 8, Germany

Munich, November 5, 1949

To the High Commissioner of Bavaria
Pardon and Review Board
Tegernseerlandstrasse, Munich

In re: WENDEL, Leib
born April 7, 1924
residing at 14 Rotaplets Street
Munich 45
Case 16664
Dr. M/DA-

In the name of Leib Wendel I hereby appeal for

a Review, and, if necessary, Pardon
from a judgment of the Lower Military Court of Munich of September 9, 1948,
by which Leib Wendel was found guilty of a violation of VRStVO of November
26, 1941, paragraph 2 (1) and fined DM 1,000.00.

The review is requested on the following grounds:

The judgment was based on the fact that Wendel had in his possession, and admitted to have purchased, 78 bottles containing a beverage with an alcohol content of 10%. The court's decision was predicated upon the defendant's guilty plea. However, this guilty plea was in error: the defendant only intended to admit that he had purchased the 78 bottles containing the above beverage, but he did not intend to admit, nor did he ever realize, that he thereby might have committed an illegal act.

Admittedly, a judgment based upon the defendant's guilty plea cannot be revised by appeal, but his case may be reviewed in a plea for pardon.

Defendant was in violation of VRStVO only if he had acquired, without a rationing permit, merchandise which could only be purchased with such permit. However, the content of these bottles was never established beyond doubt. The Investigating Officer states that it was "a terrible stuff", containing 10% of flavored alcohol, but that it was no brandy or whiskey, and that he could not establish whether the merchandise was of German origin or imported. Furthermore, only alcohol which was allotted to the German trade was subject to such permit at that time; alcohol which had been imported into Germany prior to 1945 by private parties was exempt.

Therefore it never was established that the merchandise in question was subject to a permit. Still less proof was brought for the allegation that defendant acquired the bottles with the intention of reselling them in the black market.

If somebody blends and cuts some imported whiskey or alcohol which was in the hands of a private party before 1945 to such an extent that a beverage of only 10% alcohol content results from it; and he adds some artificial flavor; there will may result from it, with the words of the investigation, some terrible stuff. The buying and selling of such merchandise may be a matter of taste but it does not constitute a violation of the law.

In re: WENDEL, Leib
Case 16664

I herewith submit a certification of I R O, Area 7, dated October 10, 1949 to the effect that Leib Wendel has applied for immigration to the United States. However, the above judgment would render him ineligible.

I believe that the above facts do not constitute a crime serious enough to destroy a man's future. Leib Wendel is a chauffeur by profession. He has on account of his race and his antinazi convictions, gone through three years of Ghetto, one year of forced labor and one year of concentration camp.

I admit that detention in a concentration camp is no license for subsequent violations of the law. But it is questionable whether any illegal act was committed at all. Even if the Pardon Board should not concur fully with the opinion here expressed it may be assumed that the violation was of minor import and not in the nature of moral turpitude which would justify to prevent the defendant from starting a new life abroad.

I therefore repeat my

P L E A

to either reverse judgment of the Lower Court and find the defendant not guilty, or to abolish the sentence by action of Pardon in order to enable him to emigrate to the United States and to start a new life over there.

Please remit your decision to the undersigned.

Dr. Herbert Makovsky
Attorney at Law

This was transcribed by Felix Gelber
for the Council of Jewish Women of Los Angeles

(Felix Gelber)

Subscribed and sworn to before me

this _____ day of _____ 1955.

(Notary Public)