



U.S. Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

SEP 20 2012

Prof. P.S. Ruckman, Jr.
Mr. Scott Henson,
c/o Prof. P.S. Ruckman, Jr.
Division of Social Sciences
Rock Valley College
3301 North Mulford Road
Rockford, IL 61114

Dear Messrs. Ruckman and Henson:

This responds to your letter of September 11, 2012, submitting to this office an application seeking a posthumous presidential pardon for William Sydney Porter, the late author better known as O. Henry, for Mr. Porter's 1898 conviction in the United States District Court for the Western District of Texas for bank embezzlement. In your letter, you note your "understand[ing] that it is the 'general policy' of the Department of Justice 'not to accept for processing applications for posthumous pardons for federal convictions.'" Nevertheless, you ask that your petition on behalf of Mr. Porter be "granted the status of 'exception' to the general rule." In this regard, you state that the pardon application "is *not at all* 'based on a claim of manifest injustice'" (emphasis in original), and that there is thus "little need for the 'historical record' to be 'scoured objectively and comprehensively to investigate such claims.'" Rather, you represent that the Porter pardon request is based on his "rehabilitation[] and post-prison life as a well-respected, law-abiding citizen," which you describe as "beyond dispute."

In 1985, the Office of the Pardon Attorney declined to process a previous request for a posthumous pardon for Mr. Porter, and I am not inclined to take a contrary position concerning your request. The well-settled policy of the Justice Department not to accept for processing applications for posthumous pardon is grounded in the belief that the time and efforts of clemency officials are better dedicated to the clemency requests of living persons, who can actually benefit from the President's mercy. I note that Professor Ruckman has previously expressed his support for this policy and has criticized the concept of posthumous pardoning. See, e.g., P.S. Ruckman, Jr., *New Mexico: Kid Dead. Pardon Idea Should Follow Suit*. PARDONPOWER BLOG (Dec. 26, 2010), <http://www.pardonpower.com>; P.S. Ruckman, Jr., *Clemency Experts on Obama, Jack Johnson*, PARDONPOWER BLOG (Oct. 24, 2009), <http://www.pardonpower.com>.

Although you have indicated that your request for pardon is not based upon a claim that Porter's conviction was unjust, the application as a whole – and particularly the description of

the offense contained therein – indicates that some writers have expressed the belief that there are strong reasons to doubt Porter’s guilt. Indeed, I note that Mr. Henson has previously opined publicly that Porter’s conviction “appears to suffer from . . . irreparable flaws” and that an argument can be made that it “represents a serious injustice.” Scott Henson, “*Might O. Henry Deserve a Posthumous Pardon for Actual Innocence?*”, GRITS FOR BREAKFAST BLOG (Dec. 16, 2011), <http://gritsforbreakfast.blogspot.com>. Based on your presentation, it appears that at least a portion of the public accepts the claim that Porter was wrongly convicted and would likely view a posthumous pardon as evidence of his innocence. Accordingly, notwithstanding your assertion that the pardon request is made solely on the basis of Porter’s rehabilitation, under these circumstances its processing would indeed require clemency authorities to undertake the difficult and time-consuming task of scouring the record of the more than 100-year-old conviction.

Moreover, even if the application did not present the issue of Porter’s guilt, in order to process the request it would be necessary for clemency authorities to review the historical record to attempt to find and piece together concrete evidence of the nature and extent of Porter’s post-conviction rehabilitation. A pardon is an expression of the President’s forgiveness, ordinarily granted in recognition of the applicant’s acceptance of responsibility for the crime and established good citizenship for a significant period of time after conviction. Although Porter’s writing is certainly praiseworthy, his literary works in and of themselves do not establish rehabilitation, and I note that you have been able to provide only limited additional information about his post-prison life.

Accordingly, my office will adhere to its well-settled policy and will not process your posthumous pardon application for Mr. Porter. I therefore return it to you herewith. I recognize that this is not the result for which you had hoped, but I trust that you will understand the reasons for my decision.

Sincerely,



Ronald L. Rodgers
Pardon Attorney

Enclosure