

Posthumous Pardons Granted in American History

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Introduction

I am a psychologist and authority on developmental disabilities who frequently testifies in *Atkins v. Virginia* hearings where a claim of mental retardation has been raised as grounds for exemption from imposition of the death penalty. I recently participated in a successful effort to secure a posthumous pardon for Joe Arridy, a man with significant intellectual impairment, who was executed in 1939 at age 23, solely on the basis of what most consider a false and fabricated confession. In working with David A. Martinez, the Denver attorney who spearheaded the pardon effort, I produced two documents: an affidavit in which I analyzed the nature and extent of Arridy's intellectual incompetence (Greenspan, in press), and a historical compilation of all of the posthumous pardons granted in American history. The current paper is an updated and slightly expanded version of the latter document.

The need for a listing of posthumous pardons stems from the widespread belief that such pardons are rare and inappropriate. The list shows that while posthumous pardons are by no means common, they are becoming increasingly less rare. As for the question of appropriateness, I think that the case descriptions illustrate why restoring the good name of a dead person is often a desirable, indeed necessary, policy. As discussed in the concluding section, such relief is especially needed when the person died as the direct result of a miscarriage of justice.

Listing of Cases by Jurisdiction

Information about posthumous pardons has been gathered from internet and published sources. I believe that this list is all-inclusive, but it is possible that it is not. Any reader who knows of an overlooked posthumous pardon action is encouraged to contact the author. The following list is organized alphabetically according to governmental jurisdiction, with a paragraph devoted to describing each posthumous pardon action (which sometimes involved more than one pardoned person). In jurisdictions where more than one posthumous pardon action has occurred, they are presented in chronological order, beginning with the earliest case.

Arizona

In 1990, Governor Rose Mofford gave a posthumous pardon to Joseph L. Chacon, Alex S. Contreras, James Ellis, James Denny and Curtis Springfield. These were prison inmates (for offenses including aggravated assault, armed robbery and manslaughter) who served on a firefighting detail, and who lost their lives while fighting a major wild fire. The governor's proclamations indicated that these men, without thought for their own lives and safety, lost their lives "while fighting a forest fire in order to protect lives and property of the citizens of Arizona". The pardons, thus, were meant to honor these inmates for their bravery and sacrifice.

California

In 1996, Governor Pete Wilson granted a posthumous pardon to Jack Ryan, who served 25 years in prison for murder. The ground for the pardon was actual innocence. Ryan's innocence became known after one of his accusers admitted to committing perjury. Governor Wilson pardoned him despite a rule which stated individuals must submit their own clemency petition. As in other profiled cases, the governor acted on the basis of fairness rather than specific legal authority.

Colorado

In 2011, Governor Bill Ritter granted a posthumous pardon to Joe Arridy, who was executed in 1939 at the age of 23. Arridy, the son of Syrian immigrants, was a man with significant mental retardation, who walked off the grounds of a state school with some other residents and was later arrested for vagrancy in a rail yard. An overly zealous sheriff interrogated Arridy for the rape-murder of a 15-year-old girl, and secured a confession filled with inaccuracies. When another man was found to have committed the crime alone, the sheriff got Arridy to amend his confession to include the other man. Arridy's trial, in which his court-appointed attorney conceded his guilt and put on no defense, was conducted in a climate of public hysteria. That fact, along with Arridy's obvious legal incompetence and substantial evidence of innocence, was cited by the governor in his pardon proclamation.

Florida

In 2010, Governor Charlie Christ recommended, and the Florida Clemency Board granted, a pardon to Jim Morrison, the late frontman for the rock band “The Doors.” The pardon was for two misdemeanor convictions stemming from an incident in 1969. Performing at a concert in Miami, a drunken Morrison allegedly asked the audience “do you want to see my cock?” and then dropped his pants and simulated masturbation. Sentenced in 1970 to six months in jail for lewd behavior and profanity, Morrison died of a drug overdose while appealing the sentence.

Georgia

In 1986, the Georgia Board of Pardons and Paroles granted Leo Frank a posthumous pardon. However, the pardon was not based on actual innocence but on the fact that his lynching, fueled by anti-Semitism, deprived him of his further right to appeal. Frank was convicted of murdering Mary Phagan, a 13-year-old employee of a factory Frank managed. His housekeeper placed him at home at the time of the murder. He was convicted with the help of Jim Conley, who was arrested two days after Frank was arrested. Conley was arrested after he was seen washing blood off his shirt, and he also admitted to writing two notes that were found near the victim’s body. This information was kept from the Grand Jury that indicted Frank. Frank’s sentence was commuted to a life sentence after a review of the evidence and letters from the trial judge who was having second thoughts. On

August 17, 1915 Frank was kidnapped from the Prison Hospital and lynched by a mob of 25 men.

In 2005, the state of Georgia granted a posthumous pardon to Lena Baker, a Black woman who was executed in 1945 for killing a white man whom she was hired to take of. Baker, the only woman to die in Georgia's electric chair, claimed that the man had enslaved her and threatened her life. A jury of all white men convicted her after a one day trial.

Illinois

In 1893, Governor John P. Altgeld pardoned Albert Parsons, August Spies, Adolph Fischer, and George Engel, who were hanged for their participation in the May 1886 Haymarket Square riot. He also pardoned Louis Lingg, who committed suicide in his cell. The riot started as a demonstration for an eight-hour work-day, and was peaceful until the police charged the crowd. Someone who has never been identified set off a bomb and some police officers were killed, most by friendly fire. The condemned men were never tied to the crime and there was apparent government tampering with the jury selection process. A new governor decided it was a miscarriage of justice, and granted a pardon to all who were convicted, including some who had been given lengthy sentences. The Haymarket affair is commemorated in the Federal holiday of Labor Day, which started on May 1 as May Day and later was moved to September.

Maryland

In 1994, Governor William Donald Schaefer granted a posthumous pardon to Jerome S. Cardin, who was convicted of stealing from the bank which he co-owned. Cardin only served one year in prison and was released due to his failing health. Governor Schaefer pardoned Cardin based on “his lifetime of philanthropic service, time served in prison, and payment of \$10 million in restitution.”

In 2001, Governor Parris Glendening granted a posthumous pardon to John Snowden, a Black ice wagon merchant who was hanged in 1919, for the rape and murder of the wife of a prominent white businessman. The execution of Snowden, who professed his innocence all the way to the gallows, was called by many black leaders a “legal lynching”. Two key trial witnesses recanted their testimony, and 11 of the 12 jurors wrote letters asking the governor to commute the sentence. Eight decades after Snowden’s execution, Governor Glendening pardoned him stating that the execution “may well have been a miscarriage of justice”.

Massachusetts

In 1977, Governor Michael Dukakis granted a quasi-posthumous pardon (he said he would if had the authority, but wasn’t sure he did, but everyone should treat the statement as a pardon). The recipients of the quasi-pardon were two Italian immigrant anarchists: Nicola Sacco and Bartolomew Vanzetti. They were executed in 1927 for the robbery and murder of the paymaster and a guard at a shoe factory.

This was a notoriously controversial verdict, which was protested internationally and by many famous Americans, including later Supreme Court Justice Felix Frankfurter. Although the guilt or innocence of the defendants is still in dispute, there are few who today consider them to have received a fair trial.

Montana

In 2006, Governor Brian Schweitzer, whose grandparents emigrated to America from Germany, granted posthumous pardons to 75 men and 3 women who were mostly also of German descent. They were convicted (some to lengthy prison terms) under a state sedition statute enacted during World War One to punish people who were not considered sufficiently patriotic.

Nebraska

In 1987, Governor Bob Kerrey granted a posthumous pardon to William Jackson Marion, on the 100th anniversary of his hanging. Marion was convicted and executed for the murder of a man who had disappeared but who turned up alive after Marion was executed.

New York

In 2003 Governor George Pataki granted a posthumous pardon to famous comedian Lenny Bruce for an obscenity conviction. During a performance in 1964, Bruce used more than 100 “obscene” words, for which he was later convicted on a

misdemeanor obscenity charge. Bruce died of a drug overdose in 1966 before he could get his appeal to court.

Oklahoma

In 1966, Governor Frank Keating granted a posthumous pardon to J.B. Stradford, a Black businessman who was convicted of inciting a riot that killed an estimated 250 people and destroyed a large section of Tulsa, Oklahoma in 1921. One of the most notorious race riots in American history, the incident was triggered by whites who were rampaging over a rumored sexual assault by a Black man of a white woman. By many accounts, Stratford, who later became an attorney, was actually a peacemaker who was attempting to stop a lynching.

Pennsylvania

In 1979, Governor Milton Shapp granted a posthumous pardon to Jack Kehoe, who was executed in 1878 for the murder of a mine foreman. The claim was that Kehoe, an elected official, was the leader of the Molly Maguires, a secret society of Irish immigrant coal miners who used terrorist tactics to protest sizeable wage cuts by coal mine operators in northeastern Pennsylvania. The execution of Kehoe, the last of 20 reputed members of the Maguires to be executed, was intended to set an example. A 1970 movie titled *The Molly Maguires*, with Sean Connery playing Kehoe, undoubtedly helped to bring attention to Kehoe's cause. A pardon was granted with the support of the parole board and the district attorney

who stated that the “trial was conducted in an atmosphere of religious, social, and ethnic tension.” They stated the execution of Kehoe was “a miscarriage of justice.”

South Carolina

In 2009, the South Carolina Parole and Pardons Board unanimously granted a posthumous pardon to Thomas and Meeks Griffin, two African-American brothers who were executed in 1915 for a crime of which they are now believed to be innocent. They were convicted on the basis of testimony by another African-American man who is now considered to have been the actual murderer of John Lewis, a 73-year-old Confederate war veteran. An especially controversial aspect of the Griffins’ 1913 conviction is that their lawyer was given only one day to prepare for trial, a fact that the South Carolina high court later ruled was insignificant to the outcome of the case.

Texas

In 2010, Texas Gov. Rick Perry pardoned Tim Cole, a man who died in prison in 1999 of complications of asthma at age 39 for the 1985 rape of a Texas Tech University student. The pardon was issued after DNA evidence showed that the actual offender was Jerry Wayne Johnson, an already-imprisoned serial rapist who had written several letters to court officials as early as 1995 confessing the crime. As a result of this case, the Texas legislature passed the Tim Cole act, which

mandates very generous compensation for each year that someone is wrongly imprisoned.

United States

In 1975, President Gerald Ford granted a posthumous amnesty pardon to Confederate General Robert E. Lee, restoring full citizenship rights that had been removed as a result of his military leadership of the Southern secession. This pardon is different from others covered here, in that Lee never was subjected to a judicial proceeding (he was granted a parole by Union General Ulysses S. Grant) and was never incarcerated. Furthermore, President Andrew Johnson provided two amnesties covering all Confederate soldiers, although Lee's application for restoration of citizenship (which required him to swear an oath of allegiance) was apparently never acted upon because of an administrative oversight.

In 1999, President Bill Clinton granted a posthumous pardon to Lt. Henry O. Flipper, the first African-American cadet to graduate from West Point. Lt. Flipper was the Acting Commissary officer at Ft. Davis, Texas, supervising the accounting and payments from persons buying goods from the Army. In 1881, he discovered a deficiency of approximately \$2,400 in the funds entrusted to him. Lt. Flipper did not report the missing funds because he intended to make up the deficit himself. Although acquitted of a charge of embezzlement, Lt. Flipper was dishonorably discharged, a punishment which an Army review panel in 1977 decided was

“overly harsh and unjust.” Attorneys for Lt. Flipper’s descendants attacked the long-standing White House policy of not awarding posthumous presidential pardons. They argued that the modern legal standard for granting a pardon is whether the totality of circumstances in granting the pardon will promote public welfare. They also argued that State governors had granted posthumous pardons, and that the President’s power was at least as expansive. Finally, they rebutted the argument that a posthumous pardon would cause many more requests, by asserting that in states that have granted such posthumous pardons, very few additional requests were made.

In 2008, President George W. Bush granted a posthumous pardon to Charles Winters, a Florida resident who served eighteen months in prison for smuggling three surplus B-17 bombers to the brand new state of Israel, in violation of the Neutrality Act of 1939. Winters, a Christian with war-time service as a civilian purchasing agent for the military, used his connections to supply Israel, without compensation, planes considered critical to the beleaguered country’s survival. In 1961, Winters (nicknamed the “godfather of the Israeli air force”), was honored by the Israeli government, and his ashes were buried in Jerusalem after his death in 1984. The posthumous pardon , supported by prominent American Jews including *Schindler’s List* director Steven Spielberg, reflected the changed nature of the

relationship between the U.S. and Israel, and the fact that Winters' co-conspirator, who actually masterminded the scheme, did not receive any jail time.

Conclusion

On at least 20 occasions in American history, posthumous pardons, involving 107 individuals, 12 of them executed, have been granted. The reasons for these pardons can be placed in the following somewhat overlapping categories: (a) proven or very likely innocence (Joe Arridy in Colorado; Tim Cole in Texas; the Griffin brothers in South Carolina; William Jackson Marion in Nebraska; J.B. Stradford in Oklahoma; Jack Ryan in California; John Snowden in Maryland); (b) biased and unfair trial or post-trial proceedings (Arridy; the Griffin brothers; Jack Kehoe in Pennsylvania; Sacco and Vanzetti in Massachusetts; the Haymarket Square protesters in Illinois; Leo Frank and Lena Baker in Georgia); (c) changed political, moral or legal climate (Lenny Bruce in New York; Jim Morrison in Florida; the German immigrants in Montana; Charles Wright, in Federal jurisdiction); (d) reward for exemplary character (the firefighters in Arizona; Jerome S. Cardin in Maryland); and (f) excessive sentence (Henry O. Flipper in Federal/ military jurisdiction).

There seems to be an accelerating rate of posthumous pardons, likely reflecting a growing understanding from recent cases that innocent people are frequently convicted, and sometimes executed, often as a result of unfair and

biased trial processes or prosecutorial and police misconduct (Cohen, 2003; Drizin & Leo, 2004; Huff, Rattner & Sagarin, 1996). The accelerated rate also likely reflects the fact that as posthumous pardons become more common, advocates for a particular candidate are likely to feel encouraged. As a rule, these campaigns are on behalf of individuals who are deeply deserving, which is why the recent unsuccessful campaign to pardon the 19th century New Mexico desperado “Billy the Kid” (William H. Bonney, also known as Henry McCarty) was especially problematic. That is because the outlaw killed two lawmen subsequent to escaping from jail, after the Territorial governor supposedly reneged on a promise to pardon him if he testified before a Grand Jury. The feeling among opponents of that petition was that posthumous pardons should be reserved for clearly deserving and sympathetic cases and Billy, despite his celebrity, hardly qualified as such.

Pardons to living people are symbolic, in that the main benefit to the recipient is the restoration of honor (Moore, 1997). Pardons to dead people are doubly symbolic, in that the recipients are no longer around to feel honored. Such symbolism is important, however, in demonstrating that we live in a society which is willing to make amends for grievously unjust governmental acts. Of all of those acts, the ones most clearly deserving of symbolic reversal are cases where an innocent person was executed, usually as a result of a deeply flawed, and often racially biased, judicial process.

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