

Mr. Reg Brown
Wilmer, Cutler, Pickering, Hale and Dorr
1875 Pennsylvania Ave. N.W.
Washington, D.C. 20006

Dear Mr. Brown

This correspondence is in response to your letter of July 4, 2008 to the President and the Attorney General in which you endorse the posthumous pardon request of Mr. James Winters on behalf of his father, Charles Thompson Winters. I must inform you, however, that it is the general policy of the Department of Justice that requests for posthumous pardons for federal offenses not be processed for adjudication.

President Clinton was the only President to grant a posthumous pardon. He did so on February 19, 1999, in the case of Henry O. Flipper, the first African-American graduate of West Point. Since the advisory process in pardon matters is covered by the deliberative process and executive privileges, I am unable to discuss the circumstances surrounding President Clinton's decision in this matter. The President's remarks upon issuing the pardon, however, are a matter of public record and are available for your review at the following Web site <http://www.history.army.mil/topics/afam/WH-Pardon.htm>.

The Office of the Pardon Attorney, which has a small staff, assists the President in the exercise of the plenary power he enjoys with respect to clemency for federal offenses by processing clemency matters. As in Mr. Winters' case, many posthumous pardon requests would likely be based on a claim of manifest injustice, and given that decades have passed since the events and the historical record would have to be scoured to objectively and comprehensively investigate such applications, it is the Department's position that the limited resources which are available to process requests for Presidential clemency – now being submitted in record numbers – are best dedicated to requests submitted by persons who can truly benefit from a grant of the request. While you have attached several pages from a few sources of information regarding Mr. Winters' purported activities, a complete investigation of the case could not be based solely on those limited matters. Moreover, since the focus of posthumous pardons is, as previously stated, likely to be a claim of great injustice, the Department's policy also recognizes that requests for posthumous pardons are less likely to involve issues generally explored in routine pardon investigations (such as the recent, or ongoing, rehabilitative efforts of a defendant, for which investigative resources external to the Office of the Pardon Attorney actually exist), and therefore are less likely to derive benefit from the investigative techniques commonly used in the pardon process. Notwithstanding this policy, the President always retains the plenary power granted to him by the Constitution to pardon or commute sentences, and does so at his sole discretion, guided when he sees fit by the advice of the Pardon Attorney.

I hope that this letter explains our policy regarding posthumous pardons in a manner which is satisfactory to you. Additionally, I do appreciate you advocating the posthumous pardon request on Mr. Winters' behalf. Please let us know if we can be of further assistance.

Sincerely,

Ronald L. Rodgers
Pardon Attorney