

# Pardon Me, Governor

## Ernest Rathbun, William Harding, and the Politics of Justice

by Tom Morain

**E**rnest Rathbun of Ida Grove stood five feet five, weighed 144 pounds, had brown hair and brown eyes, a "good education," and no religious affiliation. In 1920 he was 24 years old and "intemperate," according to the Anamosa Men's Reformatory admission record for Prisoner #11796. Three years earlier, the 16th Judicial District Court in Ida County had sentenced Rathbun to life in prison for the rape of a local 17-year-old girl. The facts were plain enough. Some may have felt that life imprisonment was too harsh for a young man, but Iowa law mandated the sentence.

Back in 1917 there had been little interest in the case outside Ida County, and even there, Rathbun's name after the trial commanded only a tepid notoriety. Nevertheless, from such an unremarkable beginning grew a scandal that would spark a catfight within the Republican Party, lead to calls for the impeachment of the state's top two elected officials, and threaten to reinterpret the separation of powers as defined in the state constitution. Ernest Rathbun became the issue the enemies of Governor William L. Harding used to corner and vanquish the political foe they loved to hate.

Ernest Rathbun was the youngest of ten children born to William, Sr., and Jane Rathbun, prosperous Ida County farmers and stock raisers. Ernest compiled a disappointing record during a short service in the U.S. Army patrolling the Mexican border. Fellow soldiers remembered him as lazy, willing even to burn holes in his tent and set fire to his own uniform to get out of work. His refusal to do a day of K.P. earned him a five-day stint in the brig and a demotion to the rank of private. Among fellow soldiers, Rathbun's "boastful disregard for women's virtue" drew notice. Called back to Fort Des Moines in the spring of 1917, he avoided being sent to France and left the army just when other men his age were being drafted. He returned home to the family farm in Ida County.

Living at home, Rathbun continued to get into trouble. By fall he was under investigation by local au-

thorities for a possible sexual assault on a girl in a nearby town, but no charges had been filed. That case, however, was soon eclipsed by a more dramatic episode.

On November 4, 1917, Rathbun and his friend Ray O'Meara were cruising for trouble. They persuaded two teenaged Ida Grove girls to get into their car for what they promised would be a short drive in the country. When the car kept stopping along a secluded road, the 15-year-old girl bolted and started running back to town. Rathbun and O'Meara grabbed the 17-year-old and sexually assaulted her.

Although O'Meara was not tried for nearly a year, Rathbun faced judge and jury within weeks after the assault. Convicted on December 22, 1917, Rathbun received the life sentence in the Anamosa Men's Reformatory that Iowa law mandated. Rathbun's attorney, George Clark, immediately appealed the conviction, and Rathbun remained free on bail while the Supreme Court had the appeal under consideration.

**T**hough they would never meet, Ernest Rathbun and William Harding would soon figure dramatically in each other's lives. Like Rathbun, Harding was the son of northwest Iowa farmers. Born in 1875 in a dirt-floored farmhouse on the prairie in Osceola County, he completed rural school and one term at the normal school in Le Mars in nearby Plymouth County, enough education for a teaching certificate. He earned a law degree from the University of South Dakota and set up practice in Sioux City, where as an undergraduate student at Morningside, he dabbled in college journalism, worked for both daily newspapers in the city, and discovered his passion for politics. It was Sioux City that became the home and political base of William L. Harding, "Lloyd" to his family and "Bill" or "Big Bill" to friends and political associates. In 1906 he won the first of three terms in the Iowa House of Representatives. He was elected lieutenant governor in 1912 and re-elected in 1914.



**William L. Harding (left) was governor when the case of Ernest Rathbun (right) came before the courts—again and again and again—setting off bitter political battles.**

Two issues dominated William Harding's tenure as lieutenant governor. Harding was a leader of a coalition of rural and small-town legislators opposed to the creation of a state highway commission committed to building hard-surfaced highways. Farmers especially chafed at the threatened loss of control over the road system and resisted proposals that would increase their property tax bills. Urban legislators, supported by daily newspapers like the *Des Moines Register*, beat the drum to "get Iowa out of the mud" with highway construction.

The second issue was prohibition. The Republican Party was divided between those who favored stringent restrictions on the manufacture and sale of alcohol (the "drys") and those who advocated less control (the "wets"). Harding, the highest ranking "wet" Republican, was a prime target of attacks by prohibition advocates. Again, the *Register*, by now "dry" on the liquor question, found itself crossing swords with the Sioux City politician.

A personal incident further deepened the animosity between Harding and the *Des Moines Register*. Sati-rizing Harding's opposition to both highways and prohibition, the *Register's* popular political cartoonist J. N. "Ding" Darling drew a caricature of the hefty Harding as a fat bull-frog sitting in a puddle in a dirt road happily croaking: "Jug-O-Rum, Jug-O-Rum, Jug-O-Rum." The cartoon hit a nerve. Harding and his colleagues in the Iowa Senate resented the personal attack. Two weeks later, Governor George W. Clarke nominated *Register* publisher Gardner Cowles to serve on the State Board of Education, but when Cowles's name was brought

before the Senate for approval, the body dismissed it. Cowles asked Harding for his support, but Harding refused. According to Harding biographer John Evert Visser, "from that time forward, the *Register* publicized [Harding's] every miscue and criticized his every act."

In 1916 Harding announced his candidacy for governor. Political supporters from Sioux City's "Harding for Governor" club developed an efficient political network throughout northwest Iowa. Ben Salinger, Sr., an Iowa Supreme Court justice and experienced politico in Woodbury County, and Ben, Jr., chair of the Woodbury County Republicans, headed the organization. Ida Grove attorney Thad Snell was Harding's chief lieutenant in neighboring Ida County, where George Clark, Ernest Rathbun's attorney, was Republican county chairman.

Harding, the only "wet" candidate in the Republican primary, won the gubernatorial nomination over three rivals who divided the "dry" vote. In a bitter and convoluted general election that saw major defections among both parties over prohibition and roads, "wet" Republican Harding defeated his "dry" Democratic rival, E. T. Meredith of Des Moines.

To the victor belonged the spoils. As the new governor, Harding wasted no time in rewarding his election machine—the "kitchen cabinet" as it came to be known in the capital—with appointments to office. Many administrators appointed by previous Republican governors were replaced with Harding men. According to Visser, the group "became so brazen in their demands and their attempts to manipulate state affairs that the entire legislature soon erupted in open revolt." Antagonism against Harding, personal and political, ran deep. When an opportunity arose to embarrass, humiliate, or even impeach him, his opponents seized it with relish. The case of Ernest Rathbun became that opportunity.

**L**ate in 1918, a year after his rape conviction, Ernest Rathbun was still at liberty in Ida Grove awaiting the outcome of his appeal to the Iowa Supreme Court. It is doubtful that he was closely following events in the Iowa statehouse or the 1918 elections. He was, however, very interested in conversations with local politically well-connected Republican attorneys.

According to later testimony by Ernest's father and brother Will, the family was approached by Thad Snell about the possibility of securing a commutation of the life sentence after Ernest had served a year in Anamosa. Rathbun's own attorney, George Clark, made a more aggressive offer. For \$5,000, Clark promised to get Ernest

off completely, with no jail time at all. The Rathbuns agreed to Clark's terms.

What made Snell and Clark think that they could get the sentence reduced, or even eliminated, for a rapist convicted in one incident and under suspicion for another, who had not yet spent one day in jail? The answer to that question reveals much about the political climate of Harding's administration and political machine.

Again according to the senior Rathbun's sworn account, Clark told him he needed the money in cash in advance—"for the governor." That governor was completing a tough but successful campaign for re-election.

On November 5, Harding won a second term, defeating the Democrats' Claude Porter by only 14,000 votes. Harding drew only 51 percent of the votes cast for the two major-party candidates. During his first term, his infamous proclamation during the anti-German hysteria of World War I had outlawed any language in Iowa but English. Now in the 1918 election, Iowans who spoke German, Danish, Norwegian, or Dutch—and who had generally supported Harding in 1916 for his "wet" leanings—bolted the Republican ticket. Nevertheless, a victory is a victory, and Harding would continue as governor for at least two more years, a prospect that dismayed his opponents.

On November 6, the day after the election, Clark traveled to Des Moines to meet with Harding about a pardon for his client Rathbun. The governor told Clark that he would do nothing without a recommendation from the presiding judge and prosecuting attorney. Clark returned to Ida Grove and discussed the case with those two officials. He asked for and received their recommendations to commute the sentence from life to a stated number of years to be determined by the governor. Clark never mentioned his plans to ask Harding for a full pardon. To the recommendations, he attached a carefully edited transcript of the district court proceedings. He also attached a statement from Rathbun himself, who declared that he was a citizen of good moral character and innocent of the rape charge, even though only a few weeks before, in the trial of his partner Ray O'Meara, he had testified to his guilt as a witness for the prosecution.

On November 11, the nation erupted in wild joy with news of the signing of the armistice that ended the fighting in Europe. The day after the celebrations, Clark returned to Des Moines to file the application for Rathbun's pardon. Harding was attending a governors' conference in Washington, D.C., so Clark left the papers with Charles Witt, the governor's private secretary.

On his first day back from Washington, never having seen Clark's materials before, Harding signed two

copies of a full pardon for Rathbun. The governor did not ask for a review of the case by the state board of parole, the usual procedure. Nor did he consult the attorney general's office or ask for any further advice from those who had prosecuted the case. (Ignoring Attorney General Horace Havner was no surprise. Havner and the governor were not even speaking to each other at the time because of their political animosities.) Harding sent two copies of the pardon to Clark, who gave one to Rathbun but told him to keep it secret for the time being. Clark showed the other to Ray O'Meara, Rathbun's partner in crime, and offered to get him a similar pardon for \$5,000.

Later investigations and circumstantial evidence painted a suspicious sequence of events surrounding the signing of the pardon. The *Des Moines Tribune* put together its own reading and laid it out succinctly.

Nov. 12.—[William] Rathbun secured \$2,000 from the bank in currency, four rolls of \$500 each. He swore he gave this money to Clark. On the evening of the same day Clark came to Des Moines.

Nov. 13.—Clark sees Charles Witt, the governor's private secretary, and returns to his home in the evening.

Nov. 14.—Telephone message from the governor's office to Snell at Ida Grove. On that evening Thad Snell left Ida Grove for Chicago.

Nov. 15.—Snell met the governor in Chicago. Governor left Chicago on that night for Des Moines.

Nov. 16.—Pardon of young Rathbun signed.

Nov. (blank date.)—Clark tries to make up receipts for the \$2,000 given by Rathbun to show that the money was paid on Nov. 18 instead of Nov. 12, but his bank books show Nov. 12.



Horace Havner, Iowa's attorney general, became a major actor in the Rathbun drama.

**M**eanwhile, because news of the pardon had been kept secret, the legal machinery surrounding Rathbun's conviction continued to turn. On December 6, the Iowa Supreme Court dismissed Rathbun's year-old appeal, supposedly

clearing the way for him to be taken into custody. But the following day Clark filed the governor's pardon in Ida Grove, making Rathbun a free man.

News of the pardon exploded like a bombshell. Attorney General Havner secured a copy of Rathbun's statement of innocence and good character included in Clark's formal appeal to Harding. The letter stated that Havner had approved the request for a commutation of sentence. Havner had not. He had never even been consulted and knew nothing about the application until he received news of the pardon. Convinced of Rathbun's guilt on the rape charge and eager to distance himself from the governor's action, Havner seized the political initiative. He engaged Judge J. L. Kennedy of Sioux City as a special investigator to "bring proceedings against any persons found to have been guilty of wrongful acts" in connection with the granting of the pardon. Havner already appealed to the "dry" wing of the Republican Party for his vigorous enforcement of prohibition. With his eye on the 1920 gubernatorial primary, he lost no time in anointing himself a crusader for justice and putting together a coalition of anti-Harding forces. Rathbun was the issue, but Harding was the target.

The battle heated up. Republican Representative William Seth Finch of Ida County introduced a resolution in the Iowa House demanding an explanation of the pardon. He accompanied it with the signatures of 425 local citizens expressing their outrage. Harding's enemies in the press now smelled scandal. *Iowa Homestead* editor Jim Pierce, once Harding's friend but an avowed foe by 1918, called the pardon "Iowa's most flagrant miscarriage of justice." He contrasted the governor's pardon of Rathbun with the swift trials and public hangings of three African American soldiers at Camp Dodge found guilty of a similar crime. The *Des Moines Register* put a reporter on the story with orders to "get Harding" and provided front-page space to it almost daily for the next four months.

Havner joined forces with Ida county attorney Charles Macomber. Macomber had announced his intention to convene a grand jury

to throw out the pardon and send Rathbun to jail. The jury began hearings on February 17, and the *Des Moines Register* gave it front-page billing. Though the proceedings were secret, the list of witnesses called was public, and the *Register* spared no effort to inform its readers of what was going on. The victim of the assault was called to tell her story once again. So were Rathbun's father, attorney, and other local residents associated with the crime.

**A**nd so was William L. Harding himself, the author of the pardon. As governor, Harding could have claimed immunity from testifying, but he wanted the opportunity to defend himself against the attacks that Havner and the media were pouring down upon him. He could have claimed that he had been deceived by Clark's application for the pardon. Instead, he chose not to back down.

Announcing his intention to testify before the grand jury, Harding set out for Ida Grove, but his health was not up to the trip. He was seriously ill with an ear infection. When his train reached Carroll, he was admitted to the hospital where he remained in serious condition

for five days. Overweight, exhausted and under severe strain, he was also diagnosed with diabetes, a condition that would plague him for the rest of his life.

On February 20, with the governor still in the hospital, Havner made a bold move. "Havner Revokes Rathbun Pardon," the *Register's* front page screamed. With no directive from the chief executive who had issued the document, the attorney general declared the pardon void. He ordered the Ida County sheriff to take Rathbun into custody.

Harding was furious. "I am the governor; Havner is not," he growled to reporters from his hospital bed. "I grant pardons; he doesn't."

George Clark, Rathbun's attorney, responded immediately. To counter Havner's order for Rathbun's arrest, Clark filed a *habeas corpus* petition, demanding the judge to explain why his

## GOVERNOR UNABLE TO TESTIFY BEFORE IDA COUNTY JURORS

"Has Serious Infection of  
Parotid Gland of Left Ear,"  
Says Doctor.

NURSE SAYS ITS MUMPS

State Agent Saunders Arrives  
on Hand Car, Lou Salinger's  
Partner Called by Executive.

pardoned client was in jail. Since both Havner's order and Clark's petition centered on the validity of Rathbun's pardon, the judge joined the two actions into one case.

On the morning of February 24, Harding rose from his hospital bed in Carroll and headed northwest to Ida Grove. There, he went directly to the courthouse, where he reviewed records of a previous assault charge against Rathbun that had been dismissed upon his 1917 conviction and life sentence. In the afternoon the governor testified to the grand jury for an hour under Havner's examination. Exhausted, he retired to a hotel and went to bed.

That evening, in a private session, Attorney General Havner put the squeeze on Rathbun. He informed Rathbun that the grand jury had voted six indictments, including bribery, obstruction of justice, and conspiracy against Rathbun, his father and brother, his friend Ray O'Meara, another friend involved in the previous assault charge, and Rathbun's attorney George Clark.

Here was Havner's deal: If Rathbun renounced his pardon and pled guilty to a perjury charge, Havner would arrange to drop all other indictments. If not, Havner would see that Rathbun's father and brother also went to prison. Rathbun conceded to Havner's terms.

At 8 p.m., after most of the press and spectators had left for the night, the judge called district court back into session. Rathbun was there with his father, brother Will, and attorney George Clark. There were no arguments before the judge; both sides had agreed to the

script. The judge ruled that the pardon was void on two counts. First, Rathbun had submitted false statements in his appeal to the governor, and the pardon obtained by fraud was void. Second, the governor had not followed the rules that directed the board of parole to review all requests for pardon.

Shocked, Rathbun's father jumped up. "Your honor, please, I object to

## HAVNER COMES OUT IN EMPHATIC REPLY TO HARDING ATTACK

Governor Told Him to "Keep  
His Nose Out" When He  
Sought to Give Advice.

RAISES VERACITY ISSUE

Denounces Certain Statements  
in Chief Executive's Speech  
As False.

the proceedings. I don't want the pardon of my boy revoked. It is being done against my wishes." The judge silenced him and proceeded to interrogate Ernest.

Judge: "Do you understand that this proceeding cancels your pardon, or the pardon granted to you by the Governor, and that the proceeding takes it away from you and you get no rights under it?"

E. Rathbun: "Yes, sir."

Judge: "Is it satisfactory to you to have that done?"

E. Rathbun: "Yes, sir."

Rathbun also pleaded guilty to one count of perjury that brought him a ten-year sentence to be served concurrently with his life sentence for rape. He gave up his copy of the pardon. The document was duly marked "Canceled," and the defendant was taken into custody. To spare his father and brother prison sentences for their involvement on his behalf, Rathbun had consented to a life sentence in the Anamosa Reformatory, plus the concurrent ten years.

Harding heard the news as he lay sick in his hotel bed. He returned to Des Moines the following day. The grand jury continued its probe for a few more days. Ida County bankers were called in to help trace the money that the Rathbuns had paid to Clark. In the end, however, the grand jury returned only one indictment, Rathbun's perjury charge. Although they dropped criminal charges against Clark, they recommended that he be disbarred. The judge appointed a committee of attorneys, including county attorney Macomber, to oversee those proceedings.

Rathbun's pardon was gone and he was once again bound for jail. When he boarded the train for Anamosa in the custody of the sheriff, a huge crowd turned out to watch him depart. Very few were sorry to see him go.

As the controversy in Ida Grove died down, fireworks flared up within the walls of the state capitol. Havner's aggressiveness had infuriated Harding, who was left under suspicion of taking a bribe for the pardon. Judge Kennedy, as Havner's special investigator,

## RATHBUN LEAVES TO ENTER PRISON

Crowd Turns Out at Ida Grove  
Depot to Witness His  
Departure.

JURY STILL IN SESSION

Financial Transactions in Con-  
nection With Case Now Be-  
ing Investigated.

RATHBUN SR. SWEARS HE GAVE  
CLARK \$5,000 FOR GOVERNOR

was angry at Havner for quashing indictments against Clark and others. Harding's foes had tasted blood and were hungry for the kill. The *Register* immediately called the Ida Grove deal "a compromise by which the rapist takes the blame for everything, those who participated in his crooked effort to escape are relieved of worry, and the real question which all Iowa wants solved is left untouched."

The question, as the *Register* spelled it out, was "why Governor Harding, a lawyer, a politician always given to considering effects, a man with perhaps more legislative and executive experience than any other man doing business at the state house, broke the customs of the governor's office and the statutes of Iowa in order to keep Ernest Rathbun from serving a day in the penitentiary."

The other question was, of course, who ended up with the \$5,000.

Harding tried to take the offensive. Addressing the legislature, he offered his own version, which convinced no one, and used the occasion to open an attack against Havner's heavy-handed methods. Knowing that an investigation was certain, Harding demanded that the legislature either charge him with bribery or clear his name.

In three weeks of intensive testimony, the special investigative committee could find no evidence that Harding had accepted any money for the pardon. In the process, however, the proceedings treated the public to a rare glimpse of operating procedures within Harding's political organization and administration. George Clark could not account for what he did with the Rathbun money. In sworn testimony before a legislative panel, reported verbatim in the *Register*, Clark maintained that he used \$1,333 of Rathbun's money to pay off a debt to Thad Snell for previous legal work, not for Snell's trip to Chicago. In his testimony, Snell claimed the money was what Clark owed him for losses at the poker table. Harding's personal secretary Charles Witt, trying unsuccessfully to explain how large sums of money went in and out of his possession, revealed his connections with questionable professional wrestling promoters. Every day the newspapers disclosed the latest chapter in the political soap opera. As the hearings dragged on, the strain took its toll on Harding's fragile health. He lost 39 pounds during the spring of 1919.

In April, the House Judiciary Committee voted 17-14 to recommend that the House bring impeachment proceedings against the governor. A minority report recommended a censure, claiming that the governor was guilty of hasty action in granting the pardon.

Tired of the scandal and satisfied that Harding had

**Waterloo Courier:** In the end the present state house storm will leave in the minds of a great many Iowans a lack of real respect for both Mr. Harding and Mr. Havner, and a well grounded opinion that the state will be well rid of two liabilities when their terms of office expire.

**Mount Ayr Journal:** Mere "tut, tuts" from the governor will not satisfy folks who want the mystery of the Rathbun pardon cleared up.

**Oelwein Iowan:** Governor Harding can well wish he had never had anything to do with politics. He gained the governorship through misgivings of many that voted for him and he will leave Des Moines discredited in the public mind.

**Marshalltown Times Republican:** Practically every daily newspaper in the United States carried front page news display of the Rathbun affidavit suggesting bribery of Iowa's governor, such is the distinction to which Harding has brought the fair name of our state.

**Davenport Democrat:** But the state of Iowa has a right to know the truth about the Rathbun pardon, and to have the scandal cleared up. There is need of a housecleaning in Des Moines—one such as the Democrat was recommending last fall, when almost a majority of the people of Iowa agreed with it.

The *Des Moines Register* opposed William Harding and his political stances even before he became governor. Then, as the Rathbun case began to unfold, the *Register* relentlessly kept the story alive in its own editions (see headlines on previous pages), quoting lengthy testimony from the trials and editorial opinions from other Iowa newspapers (above).

no political future, the full House pulled back on the impeachment and accepted instead the minority report for censure on a 70–34 vote. Almost yielding to a “plague on both your houses” position, the legislature narrowly defeated by 53–49 a motion to censure Attorney General Havner as well, for his role with the Ida Grove grand jury.

With Rathbun in prison, the investigation completed, Harding disgraced, and Havner chastened, public interest in the case quickly subsided.

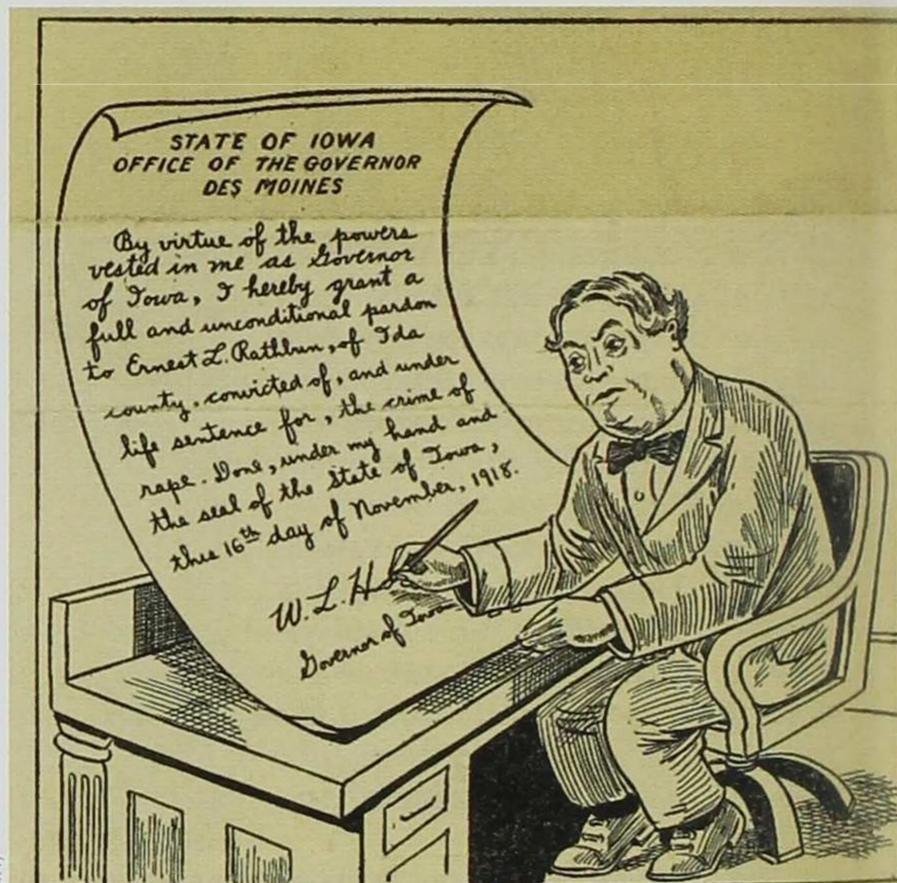
**N**ot everyone, however, lost interest in the fate of Ernest Rathbun. Ernest Rathbun certainly did not. He was in prison and he wanted out. After a year in Anamosa, he filed a second writ of *habeas corpus*, this time in the 18th Judicial District Court in Linn County, once again claiming that he was being illegally detained on the rape charge for which he had been pardoned by the governor. His petition argued that the district court in Ida County that sentenced him lacked the “jurisdiction and authority . . . to set aside or cancel such pardon.”

This time the judge sided with Rathbun! Judge F. F. Dawley ruled that the judicial branch of government had no power to protect the governor against deceptive information and that the duty to scrutinize and evaluate the merits of the evidence rested solely with the executive. He sustained the *habeas corpus* petition and ordered the Anamosa warden to free Rathbun.

On his “release,” however, Rathbun was immediately re-arrested and taken to the State Penitentiary at Fort Madison to continue serving the ten-year sentence for perjury. Havner’s office announced that it would appeal Judge Dawley’s ruling. Once again the Iowa Supreme Court found itself reviewing Rathbun’s bizarre case.

In December 1922, almost two years after Judge Dawley had “reinstated” the pardon, the supreme court reversed Dawley’s decision. Following the path first articulated by Attorney General Havner and the district court judge in Ida County, the majority ruled that because Rathbun had committed fraud in his application for pardon, the district court was within its authority to declare that pardon void.

Furthermore, it declared that the district court in Linn County had no authority to review the earlier district court decision. Under *habeas corpus*, the law states that a prisoner can bring a petition only once. If he loses, he cannot file a similar petition with another court, “becoming a mendicant,” the majority wrote, “wandering from court to court, and judge to judge, over the state,



How a Self-Confessed Ida County Rapist Escaped Paying Any Penalty for the Same Crime.

Harding signs Rathbun’s pardon in this drawing from a broadside (circa 1920). The broadside contrasts Harding’s “pardon of the unpardonable crime [rape]” with the swift conviction and hanging of three African American soldiers charged with sexual assault at Camp Dodge in 1918.

until, perchance, he may obtain a favorable decision.” And finally, the majority declared, Rathbun had voluntarily given up his pardon in Ida Grove with full understanding of his action. He could not later ask to have it reinstated.

Writing the minority decision, Justice Truman S. Stevens dissented vigorously. The power to pardon belongs to the governor, Stevens asserted, just as do his powers to veto legislation, appoint officers, and command the militia. Stevens dismissed the claim that the governor needs to be protected by the courts. Of course, a petitioner for a pardon will do everything possible to marshal the evidence to make the best case. But the governor is capable of making the evaluation. Stevens wrote: “The reasons which influence him to a pardon may not be such as would command the approval of the court, or the prosecutor, or members of the public at large. It is sufficient that he is satisfied therewith. His is the prerogative and his the responsibility.”

But Stevens failed to persuade his fellow justices. The majority prevailed, and Rathbun was once again under a life sentence for rape and for the remainder of a ten-year sentence for perjury.

That should have been the last chapter in the saga of Ernest Rathbun. It was not. The supreme court’s decision raised a storm of controversy among Iowa lawyers, and the court agreed to rehear the case.

**W**hat happened between that decision and the rehearing the next December must have seemed miraculous to a miscreant like Rathbun. In October 1923, Rathbun completed serving his perjury sentence. His original ten years had been reduced for good behavior and "honor time." Thus, the only charge keeping Rathbun in prison was his life sentence for rape. However, when the supreme court agreed to rehear the attorney general's appeal, the Linn County court ruling declaring that Rathbun's pardon was valid was in effect once again, pending the supreme court's decision. That meant that the state had no grounds to hold Rathbun in prison, and he was released.

Thus, Rathbun found himself a free man while the supreme court debated the legal issues. The attorney general's office was understandably leery that Rathbun could be trusted to stick around to find out what the supreme court decided. The office filed an appeal to take Rathbun back into custody to prevent his disappearance. But it was already too late. Within a week, reports were circulating that Rathbun had left the state, possibly heading to Canada. In fact, because he was not under bond and had a "valid" pardon, there was some question whether he could be extradited even if he was located.

In December, history repeated itself: the supreme court once again heard the case and once again declared Rathbun's pardon void on the same grounds it had employed the year before. For the third time, Iowa courts ruled that judges have the power to invalidate a governor's pardon with or without the governor's consent. But this time there was one enormous difference: Ernest Rathbun was gone, and no one knew his whereabouts.

None of the principal players in the Rathbun saga emerged with enhanced public stature. Attorney General Horace Havner ran for governor the following spring but lost to Nathan Kendall in a four-way Republican primary. Lawyer George Clark faced a disbarment hearing for his role in the Rathbun proceedings, but the

presiding judge allowed him to continue to practice. (Years later, ironically, Clark landed a job with the state attorney general's office assigned to the State Highway Commission.) Ray O'Meara, Rathbun's partner in the assault, had his life sentence commuted in 1933 and was released from Fort Madison a few months later.

"Big Bill" Harding never ran for political office after his term as governor ended in 1921. The Republican National Committee used his impressive speaking talents to campaign for Republican presidential candidates in surrounding states, but not in Iowa. In the early 1930s, Harding considered running for the U.S. Senate but knew he could not win with the Rathbun cloud of scandal still hovering. He appealed to *Des Moines Register* editor Harvey Ingham to re-examine the charges that he had accepted a bribe in granting the pardon, but Ingham refused. Harding died in 1934.

And Ernest Rathbun, whose "boastful disregard for women's virtue" had started the whole affair? Ironically, the last known reference to Ernest Rathbun connects him once again with the office of the governor of Iowa. It was not William Harding this time, but Governor John Hammill, seven years after the 1923 supreme court ruling.

It is hard to imagine that William Harding ever wanted to see Rathbun again, but John Hammill did. On August 19, 1930, Hammill signed a proclamation offering "a reward of FIVE HUNDRED DOLLARS for the apprehension of the said ERNEST RATHBUN and his arrest and delivery to the Warden of the Men's Reformatory at Anamosa, Iowa, to be dealt with in accordance with the law."

No one ever collected the reward money. ❖

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#### NOTE ON SOURCES

I was first introduced to the Ernest Rathbun case by Jim Reagh, a Graceland University student and volunteer at the State Archives, who explored its legal but not political implications in a history paper at Graceland.

The archivists at the State Historical Society of Iowa (Des Moines), especially Sharon Avery and Jeffrey Dawson, tracked down prison records. David Harris, long-time friend and retired Iowa Supreme Court justice from Jefferson, provided some historical background on legal proceedings of the era. Another good friend, district court judge Timothy Finn of Ames, offered several suggestions and improved my legal terminology. Still another friend, Jerry Gorden from the Gold Star Museum at Camp

Dodge, researched Rathbun's army records. My son Michael Morain tightened both the prose and the logic.

The Rathbun and Harding saga was extensively covered in the *Des Moines Register*, *Des Moines Tribune*, and *Sioux City Tribune*. For more on Harding, see John Evert Visser's somewhat sympathetic study of Harding in "William Lloyd Harding and the Republican Party in Iowa, 1906-1920" (Ph.D. thesis, University of Iowa, 1957); and Nancy Derr, "The Babel Proclamation," *Palimpsest* (July/August 1979), reprinted in *Iowa Heritage Illustrated* (Summer and Fall 2004).

*Iowa Heritage Illustrated* production files hold the research behind this article.