

JUSTICE DENIED: RESTORE OLIVER NORTH'S PENSION

As a result of one of his recent controversial felony convictions, Lieutenant Colonel Oliver North has been stripped of his Marine Corps pension. In light of his years of outstanding service as a Marine, including combat leadership in Vietnam, this punishment is excessive and unjust. North's pension should be restored, and can be, by an act of Congress that would override other laws. This would not affect North's punishment or prejudice the process of appeals from the verdict against North. Nor would it weaken the deterrent power of the law in other cases. What it would accomplish is simple: justice.

The Automatic Forfeit. One of the three criminal counts of which Oliver North was recently convicted charged him with destroying federal documents. Title 18, Section 2071 (b) of the United States Code says that any federal officer who destroys, mutilates or falsifies federal documents shall be subject to fine and imprisonment, "and shall forfeit his office and be disqualified from holding any office under the United States." The pension of a retired Marine officer is deemed to be an "office" which is forfeited on conviction.

The policy embodied in the statute is, in principle, a wise one. Federal employees must be deterred from destroying or falsifying information for personal or partisan political purposes. However, Oliver North has testified that, in shredding documents and undertaking other acts of concealment, he believed that he was legally authorized by the administration he served.

Whether North was correct in believing that his activities were legally authorized or not is a question that will continue to engage not only constitutional lawyers and scholars but historians for years. In the meantime, however, North and his family must suffer a severe financial loss as the result of the automatic operation of a criminal law which in all likelihood was never intended to punish individual federal officers caught in struggles between Congress and their superiors over the direction of American foreign policy.

The Jury and the Judge. The automatic forfeiture of North's pension is particularly disturbing, because it prevents either judges or juries from varying the punishment to fit the crime. The jury in North's trial showed a capacity to make subtle moral distinctions that impressed all observers. Not only did the jury find North not guilty of the major counts of obstructing congressional and presidential inquiries, they acquitted him of charges that he had enriched himself by defrauding

the Nicaraguan Democratic Resistance and the U.S. Internal Revenue Service. North was found innocent of almost all the charges brought against him.

North was deemed guilty only of destroying National Security Council documents, and of accepting an "illegal gratuity" in the form of a \$13,800 security fence that he allowed to be built around his home to protect his family against possible terrorist attacks. The jury evidently believed North was following orders, and acting in what he believed to be the best interest of the United States, in carrying out the other activities with which he was charged. The lenient sentence that the judge imposed suggests that he agreed with the jury.

Neither judge nor jury, however, is allowed to show understanding or leniency in the case of North's pension. Neither judge nor jury can alter the automatic forfeiture provision.

But Congress can pass a special act to restore the pension, notwithstanding any other federal law to the contrary. By making an exception to the law in the form of a special statute, Congress can signal its intent to any potentially criminal federal officers that the punishment shall otherwise stand as firm as the policy behind it.

Paying What Is Owed. The restoration of North's pension would not affect a possible reversal of one or more of North's convictions on appeal. Nor would restoration of the pension prevent George Bush from pardoning North after the final outcome of the appeals process. Even more important, Congress, which is at its lowest ebb of popularity in decades, can demonstrate that it is capable of the impartiality and statesmanship which it accused the administration which North served of lacking.

North is paying for his violations of the law by community service. The taxpayers have already paid their own price for the trial of North: more than \$40 million dollars, spent by the government in investigating him. It is inhumane that North should be denied his reward for his many years of dedicated and honorable service to his country, in battlefields as well as in public office. To do so is for the nation to renege on its obligation to North as an American fighting man. In uniform and on battlefields under enemy fire, North — as millions of other Americans — earned his military pension. It should be paid to him.

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