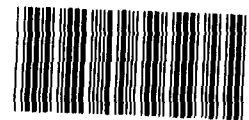


GAO

Testimony



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Retired Pay of Lieutenant Colonel Oliver North,  
USMC (Retired)

Statement of  
James F. Hinchman  
General Counsel

Before the  
Committee on the Judiciary  
United States Senate



046758/139771

Mr. Chairman and Members of the Committee:

I am here today at the Committee's request to discuss GAO's July 31 letter to the Department of the Navy concerning the retired pay of Lieutenant Colonel Oliver North, USMC (Retired).

As you are aware, earlier this year Colonel North was convicted in federal district court of three offenses, including violation of subsection (b) of 18 U.S.C. § 2071. This subsection provides that:

"Whoever, having the custody of any [government] record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States."

In July, at the time of Colonel North's sentencing, the General Counsel of the Navy wrote our Office asking whether in our view the Colonel must forfeit his retired pay as a result of his conviction of this offense. The Navy advised that it was suspending his pay as a retired officer while awaiting our views.

Our July 31 response concluded that there is serious doubt that a retired regular officer, like Colonel North, who has been convicted of violating subsection 2071(b) continues to be entitled to retired pay. The letter noted that it is the government's practice in such circumstances to deny payment, and that this is essentially the course on which the Navy had embarked in suspending Colonel North's pay.

The basis on which we reached this conclusion is straightforward. As the General Counsel of Navy pointed out in his letter, over one hundred years of legal precedent teaches us that retired regular officers continue to hold an office in their military service. They receive, not a pension for prior service, but reduced pay in return for current reduced responsibilities and obligations, including possible recall to active duty.

It seems clear that a retired regular officer convicted of violating subsection 2071(b) could not thereafter be recalled to active duty because of the bar on holding any office under the United States. Therefore, allowing such an officer to keep his retired pay requires somehow separating that pay from the responsibilities and obligations for which he receives it.

We find it extremely difficult to see any basis in the language or history of subsection 2071(b) for concluding that Congress intended this result which is so inconsistent with our basic understanding of the status of retired regular officers.

It is for this reason that we believe there is serious doubt as to Colonel North's continued entitlement to retired pay.

Colonel North, of course, has the right to challenge any denial of his pay by the Navy in the federal courts and obtain from them a conclusive determination of his entitlement to be paid as a retired regular officer of the Marine Corps.

Mr. Chairman, that concludes my prepared statement. I would be pleased to answer any questions you or other members of the Committee may have.