

Justice Appears Near for Jenkins In Sensitive Desertion Case

U.S. Army Sergeant, Accused of Fleeing in 1965
To North Korea, May Have Struck a Deal

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The desertion case against U.S. Army Sgt. Charles Robert Jenkins, accused of fleeing to North Korea in 1965 and aiding the enemy during his 39 years of living there, appears to be near its resolution. There are strong signs that Mr. Jenkins, seeking freedom or a nominal jail term, has struck a deal with U.S. government prosecutors. For such a deal, Sgt. Jenkins would likely use information about North Korea and possibly a guilty plea as bargaining chips.

A plea bargain could flush out earlier claims by Sgt. Jenkins and his wife that he defected in order to escape being sent to war in Vietnam, and account that could prove awkward to U.S. officials if Sgt. Jenkins goes unpunished at a time when American units are being pulled out of South Korea to serve in Iraq.

At the same time, the Far Eastern Economic Review has learned that the strength of the prosecution's case is in question after indications that important evidence previously cited by U.S. officials hasn't been located.

Sgt. Jenkins's journey to justice began in July, when North Korean authorities permitted him to travel with his two daughters to Indonesia to meet his Japanese wife. The family flew to Japan, where Sgt. Jenkins spent a month in a Tokyo hospital. Then, with a crisp military salute, the 64-year-old Sgt. Jenkins turned himself in to the U.S. Army at the Camp Zama base near Tokyo on Sept. 11.

Charges against Sgt. Jenkins were formally "referred" last month, according to a U.S. Army source based at Camp Zama. The referral of four charges, including desertion and aiding the enemy, is the last obstacle to the case going before a general court martial. The referral took place after a pretrial hearing was bypassed, according to individuals familiar with the case. Both defense counsel Capt. James Culp and prosecutor Capt. Seth Cohen said they couldn't comment on the case.

Legal analysts say the referral of charges without a pretrial hearing is a strong indication of the existence of a pretrial agreement that would involve a reduced sentence for Sgt. Jenkins in exchange for his cooperation.

"What is probably happening is that [the waiver of a pretrial hearing] is part of a pretrial agreement that has been negotiated and signed," says military attorney Patrick McLain. A retired marine major and military judge, Mr. McLain adds that he is "willing to bet" the plea bargain will excuse Sgt. Jenkins from a jail term. Nevertheless, any pretrial deal must be reviewed by the military court, and until then it could unravel.

An army spokesman in Japan, Maj. John Amberg, confirmed that the convening authority for Sgt. Jenkins's trial is Maj.-Gen. Elbert N. Perkins, commander of U.S. Army Japan. This means that the trial

will be held in Japan, another strong indication that a pretrial deal has been struck. By holding the proceedings in Japan, the defense and prosecutors couldn't compel civilian witnesses to attend. A contested trial would be held in the U.S. unless civilian witnesses agreed to travel to Japan, according to Maj. Amberg.

The full story of why and how Sgt. Jenkins entered North Korea is expected to emerge in the coming weeks. Under a plea bargain, legal analysts say, Sgt. Jenkins would be required to admit guilt to at least one of the charges and fully explain to a military judge why he is guilty.

This would be the first time Sgt. Jenkins has told the army why and how he disappeared in 1965 and explained his subsequent actions in North Korea. Sgt. Jenkins appeared in a North Korean propaganda film and allegedly urged U.S. soldiers to defect in loudspeaker broadcasts at the Demilitarized Zone.

Sgt. Jenkins has remained tight-lipped about the circumstances of his disappearance. In an exclusive interview with the Review in August, he said he wanted to turn himself in to the military, reunite his family and "clear my conscience.

In North Korea in 2002, Sgt. Jenkins and his wife, Hitomi Soga, told separate interviewers that his motive for crossing over to the North was to stay out of the Vietnam War.

In a little-noticed reference in an interview published in November 2002, Sgt. Jenkins told the Japanese weekly, Syukan Kin'yobi, that he "walked" into North Korea with the intention of avoiding Vietnam service.

"I served in the army, but when I was ordered to go to the Vietnam War, I refused," Sgt. Jenkins told the magazine. "Now I don't have any interest in war-related issues."

In an earlier meeting with Japanese diplomats in Pyongyang, Ms. Soga also claimed Sgt. Jenkins had told her that avoiding Vietnam service was his motive for going to North Korea.

According to a record of an interview with the Japanese diplomatic mission, published by the Kyodo News Agency in October 2002, Ms. Soga disclosed details of how she was stuffed in a sack and kidnapped from her village by North Korean agents in 1978. Brought to North Korea to train spies in Japanese language and customs, Ms. Soga met and Sgt. married Jenkins in 1980.

Kyodo reported Ms. Soga as telling the mission that Sgt. Jenkins didn't want to serve in Vietnam. Eight months after Sgt. Jenkins crossed into North Korea in 1965, his unit -- the First Cavalry Division -- was sent to Vietnam.

Sgt. Jenkins's former company commander, Darrell Best, a retired lieutenant-colonel, says he was aware at the time of Sgt. Jenkins's disappearance that the division was being prepared for Vietnam service. "We pretty well knew that the division had been organized as a counter-insurgency division," he says. "I knew when I went to Korea."

If Sgt. Jenkins stands by the claim that he left his unit to avoid the Vietnam War, he would be admitting "intent to avoid hazardous duty or to shirk important service" -- one of three grounds for charges of desertion cited in the U.S. Manual for Courts-Martial.

The U.S. government has been anxious to see Sgt. Jenkins prosecuted since he was permitted to leave North Korea in July to send a signal that it is tough on desertion. But the Jenkins case is emotion-charged in Japan. Sympathy for Ms. Soga over her kidnapping and marriage to Sgt. Jenkins runs high among the
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Japanese public. Prime Minister Junichiro Koizumi has personally asked President Bush to treat Sgt. Jenkins leniently.

The diplomatic pressure from Japan, an important U.S. ally in the Pacific and in the conflict in Iraq, is a factor encouraging the military to strike a deal with Sgt. Jenkins to ensure the case comes to a quick end. "I think politically what [the U.S. military] wants is to have this go away," says Washington-based military attorney David Sheldon.

Moreover, the prosecution case may be facing problems. It has long been assumed that one of the keys to the prosecution would be four letters allegedly left behind by Sgt. Jenkins in 1965 declaring that he intended to desert. But in response to a Freedom of Information Act request by Sgt. Jenkins's nephew, the army admitted in March that it was unable to find the letters in its archives.

A letter from the army's Office of General Counsel to the nephew, James Hyman, states that a thorough search of the archives "did not locate any records responsive to your request for four notes left behind by your uncle."

Mr. Hyman says he doesn't believe the letters existed. "If you are going to base somebody's desertion on four so-called letters, you would make sure you would keep those records," Mr. Hyman says. "Why did the letters get missing, if there were any letters at all?"

Without the letters, the prosecution would be forced to rely heavily on the nearly 40-year-old recollections of ageing members of Sgt. Jenkins's unit. Mr. Best, Sgt. Jenkins's former company commander, says he personally doubts that Sgt. Jenkins's motive for desertion was to stay out of Vietnam.

Since Sgt. Jenkins's voluntary surrender to the military, he has been on active duty, wearing a uniform and reporting for duty as an administrative assistant. He has been living on the army base with Ms. Soga and daughters Mika, 21, and Brinda, 19. The aim of any plea bargain negotiated by his defense attorney, Capt. Culp, would be to ensure Sgt. Jenkins is either released or that he serves only minimal jail time.

There is strong pressure from Japan seeking to ensure that Sgt. Jenkins can remain in the country with his wife and his daughters. "It seems that he is being treated in a very fair, humane manner, and we hope the legal procedure will lead to a situation where the Jenkins-Soga family can live in Japan as they wish," says a high-ranking Japanese official close to the case.

But at the very least, after Sgt. Jenkins emerged from North Korea, traveling to Japan via Indonesia, he may have ensured a guilty verdict on one charge. By failing to turn himself in for more than 30 days after leaving North Korea, he may have been technically absent without leave. The Manual for Courts-Martial states that a bad-conduct or dishonorable discharge and a maximum jail term of one year could be imposed for this offence.

Sgt. Jenkins hopes that enough time has passed for military authorities to view his time in North Korea as punishment enough for any offence he may have committed. The U.S. has offered clemency to thousands of returning Vietnam deserters and draft-dodgers. Despite the notoriety surrounding the case, a publicly contrite Sgt. Jenkins will be seeking similar treatment.