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COVER STORY;

PVT. JOHN BENNETT IS THE ONLY U.S. SOLDIER EXECUTED FOR RAPE IN PEACETIME. ;

HE WAS MENTALLY TROUBLED AND BLACK. SIX WHITE MURDERERS WERE ALSO ON MILITARY DEATH ROW. THEY WERE SPARED.

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Rain always frightened him, and on the night he was hanged in a military prison in Kansas, a rolling prairie thunderstorm was kicking up outside. That was four decades ago. Pvt. **John Bennett** had just turned 26. He went to his death perhaps more terrified of the thunder and lightning than of the gaunt hangman waiting upon the gallows.

News of the hanging scarcely made the papers. Executions then, like today, were commonplace, so much so that his story has never been told. But he is the last member of the U.S. Armed Forces to be executed. And he is the only serviceman hanged for rape during peacetime.

America is once again examining the death penalty, spurred by the most damning evidence in history that innocents have been sentenced to die. Advances in DNA testing and other revelations have overturned scores of death sentences in recent years, raising fresh doubts about American criminal justice, especially for minorities, who make up the majority of death row prisoners.

As a result, the death penalty issue looms larger in presidential politics than it has for a generation. Both major party candidates favor death sentencing, and Republican nominee George W. Bush has given it special emphasis. He expresses confidence in his state's handling of capital cases and says that not one innocent man has been executed on his watch as governor of Texas.

The issue also has landed in the Oval Office, where President Clinton delayed by four months the federal government's first scheduled execution since 1963. Juan Raul Garza will now have until Dec. 12--a date notably after the presidential election--to seek clemency. Garza's attorneys say they will argue that the criminal justice system discriminates against minorities.

Amid the chatter, national opinion polls have found that while most Americans still favor death sentencing, the support is diminishing. Even its proponents question the role that race, mental illness, poverty, politics and the quality of legal representation play in death penalty cases. All those factors were present on that stormy night in April 1961 inside the U.S. Disciplinary Barracks at Ft. Leavenworth. Was the system broken back then? Has it been fixed since?

Bennett, a black man, was hanged for **raping** a white girl in Austria. During the six years between his trial and death, eight other soldiers were executed, all of them black. Six white prisoners were on death row during those years. Some had killed little girls or had killed more than once. None were executed. President Dwight Eisenhower commuted the sentences of four. Two were spared by the courts. Today, six soldiers are on military death row--four black, one Asian, one white.

Evidence in **Bennett's** case revealed mental defects in the young man and his family, defects that today would probably spare his life. He also almost certainly suffered from epilepsy, which his defenders cited as further evidence of mental illness. Even Dr. Karl Menninger, the country's preeminent psychiatrist, twice sought to save the life of this "undistinguished epileptic Negro soldier."

The court-martial was held in Austria. The trial lasted five days, with little defense. The jury deliberated just 25 minutes.

At the end, **Bennett** turned to President John F. Kennedy for mercy. But the new president was preoccupied. On **Bennett's** last day, Kennedy was embarrassed that the Russians had sent the first man into space, and he was giving the final go-ahead for the Bay of Pigs invasion. As the clock ticked down, the White House dispatched an **Army** captain to find the girl and her family. Some in the administration had decided that if the family wanted mercy, **Bennett** should be spared. Telegrams came flashing into the White House. They were from the girl and her parents. They wanted him to live.

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JOHN ARTHUR BENNETT WAS THE INDIGENT SON OF a Virginia sharecropper, a school dropout, handsome but unambitious, addicted early to whiskey and sex. He dreamed of a career as a baseball pitcher. He served in the **Army** as an ammunition handler and truck driver. Until December 1954, he had never been in trouble.

She was out Christmas shopping, attacked while crossing a meadow of light snow in the town of Seizenheim. Her name is Gertie. They came upon one another in the fading winter afternoon. He was 19; she was 11.

Nearby residents said that shortly before the **rape**, a man similar to **Bennett** stumbled wild-eyed into their homes, which he confused for an area brothel. He excitedly asked for an Austrian whore, a "Margie" or a "Frances."

Later, Doris Branham, wife of an **Army** sergeant, heard the victim at her door. "The little girl was in a disheveled condition and sounded desperate," Branham recalled. "She kept repeating herself. She said 'nigger.'" **Bennett** was arrested at the **Army** base theater. Records show he admitted to drinking gin, beer and cognac, and said that when he and a friend happened upon the girl, "my friend dared me to f - - - her." But **Bennett** claimed the sex was consensual, that "she appeared as though she wanted to go with me. I wish to state that I did not force her at all."

He was charged with rape. Prosecutors added a charge of attempted murder for leaving her behind in the meadow, but the charge was secondary to the **rape**. At his trial, Gertie was the final prosecution witness; she pointed him out from the stand.

Bennett's defense was brief and ineffective. His lawyer never mentioned his mental history. **Bennett** declined to testify. So the jury said death, and **Bennett** was ordered to the military prison at Ft. Leavenworth. By coincidence, one of the military policemen who saw **Bennett** before he was brought to the United States was William Maddox, a master sergeant with a specialty learned at the end of World War II: he had helped carry out the executions of Gen. Hideki Tojo and

other Japanese war criminals. Maddox, too, was sent to a post in Kansas, where the **Army** soon put his specialty to use. Maddox kept a record of his work, in a spiral notebook filled with details about the soldiers on death row: weight, height and length of necks. In an old box he stored his tools--handcuffs, ankle straps, tape, a collapsing board and plenty of rope. Repeatedly he was summoned to Ft. Leavenworth and the old prison power plant where a wooden gallows had been built.

The last time he would be called up there was to use his skills on a rainy night in the spring of 1961.*

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BEFORE **BENNETT** ARRIVED IN THE STATES, HIS FAMILY VISITED THE American Red Cross near their home in Chatham, Va. His mother, Ollie **Bennett**, told workers that John was her fourth child and that she had "nearly died when he was born," according to a Red Cross record of the conversations. After his birth, she had had "a fit" and was unconscious for a long time. John had been born in the spring. She "did not get out of the house until the next fall."

As her son grew, he began to "hear voices in his sleep," she said. He would rise from bed and try to follow the voices. Other times he suffered night terrors. He was still wetting the bed when he started school. He once fell from a cherry tree and for a long time complained of a headache. But what most frightened him were thunderstorms. Then he would rush off to a dark place to hide.

His father, Percy **Bennett**, was strong and hard-working, a farmhand and sometime carpenter. He only occasionally "switched" the boy. The boy's grandfather drank heavily and died in the state insane asylum. His great-uncle also drank and was institutionalized for mental problems. A first cousin committed suicide.

John never liked to be alone. "He played with the crowd until he got mad," his family told the Red Cross. He dropped out of school in the seventh grade and went to work alongside his father. He started drinking corn liquor at 13, and frequently got drunk on "aspirin and wine."

John volunteered for **Army** service and, once enlisted, the **Army** repeatedly conducted psychiatric evaluations because, according to service records, he told them he had "dizzy spells" several times a week and complained of lightheadedness, body weakness, headaches and stomach cramps. Sometimes he saw distorted color patterns, when everything seemed to turn blue. Whenever he felt a spell coming on, he either reached for the bottle or took to bed.

He was preoccupied with sex. He said he and his **Army** buddies often visited local Gasthuser in Austria to pick up women. He said he had begun to indulge in "sex play" around age 5 or 6. By the time he was 12 or 13, he had had sex with a girl. He would date a girl until they had sex, then lose interest in her. "He had no guilt or anxiety concerning this behavior," one doctor wrote.

Bennett said he suffered from epilepsy, too, beginning when he was 4 or 5. He would feel a sharp pain over his right ear and would black out. Sometimes, he said, he would begin "running around trying to hurt someone." But the **Army** seemed unconvinced. The neuropsychiatrists always seemed to conclude with "Psychiatric observation: No disease found."

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THE PRISON CALLED THE "CASTLE" HAD BEEN BUILT WITH INMATE sweat and rocks quarried from the bluffs of the Missouri River. About 2,000 disgraced soldiers were inside, and the most notorious corner was Seven Base, the basement more commonly known as death row. Gray walls, gray floor, gray ceiling. Nineteen cells along the row, a last name posted above each door. Cell No. 20 was used as a shower. At the other end was a small room for religious services and another

for rug weaving--the only real industry for the men on death row.

The cell doors were double-locked and opened manually with an old brass key. They slid to the left. A bare lightbulb hung from the ceiling, on 24 hours a day. The air vent was high on the wall, the concrete floor covered by one of the new rugs. The cell was cramped, with a bed, locker, sink and commode. Shoes went under the bed, toiletries in the locker. No calendars or pictures on the wall. Standing at the cell door, the prisoner could slip his fingers through the grillwork and if his eyesight was good and the light was right, he might see through the barred window across the hallway to glimpse a patch of grass or, in winter, a line of snow.

The guards came down to Seven Base through its one door, painted green against all that gray. When called, the white men went through the green door and upstairs--to join the general prison population because their lives had been spared. Black men would pass through the green door too, but they went down a flight of stairs headed for a holding cell near the gallows at a place called Eight Base.

Among the blacks on death row with **Bennett**: Ernest Ransom, hanged in 1957 for killing a Korean guard and **raping** a 14-year-old Korean girl; Abraham Thomas, hanged in 1958 for killing two women and two soldiers in Germany; and John Day, hanged in 1959 for raping a Korean woman and killing her husband.

Among the six whites on death row, all of whom were spared: John F. Vigneault and Richard A. Hagelberger, who murdered two men in Germany during a robbery; Isaac Hurt, who killed a 5-year-old girl in Okinawa; and Maurice Schick, who choked to death the 8-year-old daughter of an **Army** colonel and was suspected of killing three other children. He was later freed. "I thought they were kidding," he would later recall in describing the day he left death row. "I was in shock. I went by each man and shook his hand. I was crying, really. Some of them had tears in their eyes, too. I told them, 'Hey, keep the faith, and God bless you.' "

Bennett was the only prisoner there for **rape**, the only one whose crime is not punishable by death today. His case dragged on; more psychiatric exams followed. He would change his story, once claiming someone else must have raped the girl. "I signed that statement because I was threatened with a pistol and because I was supposed to get a deal," he said. He said he still was having epileptic seizures, which sometimes left him briefly blind. When he was not stressed out, he said, "I like to be free like a bird." But he kept having this nightmare in which someone he could not recognize was trying to kill him.

And then, surprisingly, in February 1956, **Army** mental health examiners recommended against executing **Bennett**. "I do not feel that death is a suitable method for the disposition of a person who is mentally ill," wrote 1st Lt. John J. Bateman, the **Army** psychiatrist at the prison. "One must remember his pathological family constellation, the unhealthy sexual life which he was exposed to . . . the possible role of epilepsy, his sub-culture (Negro). . . ."

But six months later, the U.S. Court of Military Appeals disagreed. "Seldom if ever have we been faced with a record which revealed a more vicious offense, or an accused who had less to entitle him to any consideration." The court, and other military officials who ruled against him over the years, believed **Bennett** was either feigning mental troubles or attributed his strange behavior to his fear of being executed.

His mother wrote Eisenhower. "I do not think I can endure to live and see this sentence carried out." More letters to the White House came from family friends. About 40 letters came from Austrian citizens. Even his former **Army** commander, Capt. William Fuller, wrote the president. "Private **Bennett** is neither inherent-

ly criminal in instincts nor vicious by nature. I believe his crime was unpremeditated and directly traceable to immature mentality and alcohol-inflamed passion."

But Secretary of the **Army** Wilber M. Brucker and Atty. Gen. Herbert Brownell advised Eisenhower to allow the execution. On July 2, 1957, Eisenhower signed the death warrant. The execution was scheduled for Aug. 29.

Bennett's family was horrified. They hurried down to the Danville, Va., law offices of J.L. Williams, who had worked on NAACP civil rights cases and agreed to take on the **Bennett** defense. The first step was for **Bennett** to address the president personally. And so, bending over three lined sheets of paper and with the guidance of his counselor, **Bennett** wrote in clear, cursive prose:

"I have tried very hard in every way to be a good citizen of the United States. . . . I tried hard to represent and defend my country as a soldier at home and abroad. I cannot understand why the court sentenced me to death. After all even the Old Testament only says, 'An eye for an eye.' So even if I had been the one who did **rape** her , if the girl was not killed, neither should I be.

". . . Mr. President, I beg you, please don't kill me."

The president was unmoved. **Bennett** was taken to Eight Base. He was a week away from the gallows.

But then **Bennett's** attorney went into federal court in Topeka and won an emergency stay, arguing that **Bennett** should have been tried by the Austrian courts. In October, U.S. District Judge Delmas C. Hill heard the case. This time **Bennett** spoke. He talked fast and nervously, and sometimes he stammered, speaking in a southern Virginia drawl that only his father and sister sitting in the back could understand. He confused "scene" for "scenery" and "was" for "were." The lawyers repeatedly asked him to slow down. The judge admonished him, "Speak just as plain as you can."

Bennett said he felt he had been railroaded. "The commanding officer stated that the **Army** would try me and make an example out of me for the benefit of the rest of the troops in Austria to show them that they could not overrun the Austrian population and get away with it," he said. He also claimed to have been elsewhere when the crime occurred. "I could not be at two places at the same time," he said. "I were at the movie."

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THE YEAR 1958 BEGAN WITH JUDGE HILL'S RULING: DENIED. WITH NEW appeals underway, **Bennett** worked at weaving rugs. He complained more about headaches and blackout spells. He lost weight. "He finds himself talking to himself and wonders if he's going crazy," one examiner reported.

Williams turned to the U.S. Court of Appeals in Denver. He could not afford to go to Colorado to attend to the appeal. So he pursued the case by phone and letter. He argued that the confession had been "wrung" from **Bennett** by a military police officer holding a pistol and another officer who threatened him to get him to sign the letters J.A.B. at the bottom of the page. He said Austria, not the United States, should punish **Bennett**.

In May 1959, a three-judge panel of the appellate court ruled: Denied.

Williams planned to appeal higher, to the U.S. Supreme Court. But his effort stalled when the \$ 3.95 check he sent to cover some of the court costs bounced.

The 5th **Army** set the execution for March 10, 1960. **Bennett** was moved to Eight Base. Just three weeks before the date, an **Army** mental health review board recommended commuting his sentence to life. "Had this man received a diagnosis of epilepsy at the time of his trial, it may have had a significant effect on

the deliberations and decisions of the court," the board said.

With three days left, Williams was still working on a clemency petition for the White House. With two days left, **Bennett** sent a telegram to Eisenhower. "I pray to God and to you that my life be spared."

With one day left, **Bennett** telephoned Menninger, the Topeka psychiatrist and an opponent of the death penalty. Menninger telegraphed Eisenhower, saying he wanted to examine **Bennett** and study the new **Army** findings about epilepsy. "It is particularly immoral and medieval to execute a man known to be suffering from a brain disease for which he is in no way responsible," Menninger wrote.

No word came back. Maddox was at the prison. **Bennett** ordered his last meal. Then Williams filed an appeal with the federal court in Topeka, raising the fresh concerns over epilepsy. The court postponed the execution. **Bennett** was back on Seven Base. He was smiling. "Man, it's great to be home again."

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ON MARCH 23, MENNINGER TESTIFIED BEFORE JUDGE ARTHUR STANLEY Jr. in Topeka. "Ordinarily a man who has epileptic seizures doesn't know anything about the outside world at the time he has the seizures," he said.

Then came **Bennett**. This time he spoke coherently. He described the mental instability in his family--his grandfather in the asylum, the cousin who hanged himself from an upstairs ceiling. He spoke of his own demons, the night terrors, the fall from the tree, the dizziness. "All my life," he said.

Q: "When did you have your last spell?" asked **Army** attorney Lt. Col. Peter S. Wondolowski.

A: "I would say, a slight spell I had, to my knowledge, was the night before last."

Q: "Did you have one spell that night?"

A: ". . . They are subject to coming at any time. They might last a little while, they might last a long time, or they might be repeating themselves five or six times or more, see."

The court ruled against him in June, but kept the stay of execution in place and invited further appeal. In January 1961, three days before Kennedy became president, the appellate court refused to hear the appeal. A third date of execution was set, April 13.

The new White House inner circle struggled with the case. Lee White, assistant special counsel to the president, put together a memo for Kennedy. It noted:

* "President Truman the last Democratic president did not permit a single military execution during his administration."

* "NAACP lawyers represented **Bennett** . . . so the civil rights question is present in some degree."

* "Since President Eisenhower already refused to grant clemency, the possibility of an unpleasant comparison should be noted."

* "This is not a case of a life for a life--the victim survived. But the crime was a heinous one."

* "Unless one is opposed to capital punishment (and I am), this is a case in which the man's life should be taken."

Handwritten notes White made at the time show he was deeply conflicted over the advice he gave to Kennedy and his own personal beliefs. During **Bennett's** years on death row, "all negroes" were executed, he wrote. The **rape** victim "was back

in school three weeks after the crime, is healthy, and many Austrians join those who have petitioned for clemency. Although originally I recommended that there was no reason for upsetting the death sentence, in view of these considerations I recommend commutation to life imprisonment."

For **Bennett** and his lawyer, commutation was their last hope. It did not seem unrealistic. Kennedy was far different from his predecessor. He was a Catholic, a liberal, a supporter of civil rights who, in the campaign, had helped free Martin Luther King Jr. from a Southern jail.

On March 31, Williams filed a petition for clemency. To support his theory about epilepsy, he included quotes from witnesses who said **Bennett** had a "wild look" or "a wild glance," even "a blank stare" before and after the crime. That same day, **Bennett** wrote to the new president: "My time is getting very short. . . . Will you, President Kennedy, in the name of justice and mercy, review my case and consider sparing my life?"

THE DAYS WERE ROLLING BY QUICKLY.

April 5: According to transcripts from the Kennedy presidential library, White spoke in the late morning with **Army** Gen. Alan B. Todd. "The President's decision was that he was not opposed," White said. "This is to be held closely, but he said he would not have any strong feelings that there should not be capital punishment in certain cases. He read the memo and said, 'I just don't want to get into this one.' In fact, he was saying that he was not going to upset the scheduled execution."

"Fine," Todd said.

But White wanted more research. He asked Todd to find out whether other soldiers had been hanged for **rape** during peacetime. And then there was the race question. Specifically, were only black soldiers executed during **Bennett's** half-dozen years on death row? "The last thing I would want to do is let this boy out because he is colored," White said. "But I think we ought to know that." Finally he asked Todd to determine how the girl and her family felt.

Todd dispatched an **Army** captain to locate Gertie and her parents. In the late afternoon he told White that no other soldiers had been hanged for rape during peacetime.

"That's significant," White responded.

And then the race question. "All of those executed were Negro," Todd said.

"Gosh, terrible," White said. ". . . I assume Negro soldiers are more difficult because of education, and have leanings toward getting into trouble."

"That's true," Todd agreed. "But it's something that without hard-and-fast statistics you just can't talk about."

And what to do when they hear from Gertie and her family?

Todd: "I think if the girl comes in favorable to them, it might favor clemency."

White: "You think we should wait?"

Todd: "Yes."

April 6: A series of telegrams from Seizenheim, Austria, reached the White House. All three urged mercy.

Gertie's father: "I know how hard it is for the parents when their own child is so close to the verge of death; it may be just as hard for the parents and relatives of the convicted **Bennett**."

Gertie's mother: "My daughter has been ruined physically and mentally for her

entire life. I suffer terribly with my only child. **Bennett's** death cannot give us back her health and therefore I do not object to a milder sentence."

And Gertie, now 17: "I consent to a commutation of the sentence since even his execution could not eradicate what has happened. But in the event the convicted should ever be released from prison, I request that as long as he lives he never be permitted to return to Europe again."

April 7: Todd and White discussed their answer from Austria. "If you decide to do anything," Todd said, "it's a good idea not to wait until the last minute. It's pretty brutal to do it that way."

White agreed. He said he would take it up with the president.

The record shows that Kennedy made a decision that day. But the answer was not immediately made known. **Bennett** would be told first.

April 8: Shortly after 9 p.m., **Bennett** received a sealed envelope from the White House. Opening it, he read two short paragraphs. It bore White's signature. "I want you to know that the points raised . . . were carefully and thoroughly considered by the President. . . . It was the President's decision that he should not change the sentence."

Bennett was moved to Eight Base.

April 10: **Bennett** turned 26. Guards gave him a large white birthday cake. Menninger sent a telegram to the president. "It distresses me to add to the president's concerns but I importune him now on behalf of an undistinguished epileptic Negro soldier. . . . He telephoned me yesterday from the death row begging me to wire you. . . . It is unworthy of even military justice to hang an epileptic man for a non-seditious, non-murderous offense."

April 11: White answered Menninger. The hanging would proceed. **Bennett's** lawyer was at home in Virginia. "I don't know where else to turn," he said.

Maddox appeared at **Bennett's** cell. The hangman took his measurements. Weight, 175 pounds. Height, 5 feet, 9 inches. Overall drop rate, 9 feet, 4 inches. He walked to the power plant to test the gallows. He took a 210-pound railroad tie and left it hanging for half an hour, "to keep the rope good and tight and stretched."

April 12: **Bennett** sent a telegram to Kennedy. "Will you please in the name of God and mercy spare my life?"

Kennedy's personal secretary, Evelyn Lincoln, would later say that April 12 "was an exceedingly busy day for the president." Cosmonaut Yuri Gagarin of the Soviet Union had been launched into space that morning, humiliating the United States. The president met with West German Chancellor Konrad Adenauer, and lunched with the West German delegation. He held an afternoon press conference. There was a lengthy evening meeting over final details for the Bay of Pigs invasion of Cuba.

White responded to **Bennett** by telegram. Everything "remains unchanged."

In Kansas the descending night brought rain clouds and large bursts of thunder and lightning. By 6 p.m. **Bennett** had eaten his final meal of shrimp with cocktail sauce, hot rolls, cake, peaches, milk and coffee. He showered for five minutes, then slipped on a greenish-brown Class A uniform that had no decoration or insignia. He seemed incredibly subdued. He shook the hand of a prison social worker and said, "I hope I can go like a man." He knelt with a prison chaplain. He smoked a cigarette.

Inside the power plant the lightning flashed by the windows. Everyone noticed **Bennett's** eyes, unfocused, darting, frightened. He tried to take in the room, making out the guards, the witnesses, the base commander, Maddox, too, now high

upon the scaffold. They were the same wild, confused eyes of six years ago.
"Pray for me," he said.

April 13: At five minutes past midnight the trapdoor sprang open. The sound was loud and startling, like a clap of thunder.

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GRAPHIC: PHOTO: (Cover, no caption) PHOTOGRAPHER: Tom White PHOTO: (Page 2, no caption) PHOTO: Hours before he was executed, **Bennett** pleaded with President Kennedy for mercy. PHOTO: An Austrian officer in the field where **Bennett raped** an 11-year-old. PHOTO: Global events of April 12, 1961, occupied Kennedy. The White House reply to **Bennett:** The president's "decision . . . remains unchanged."

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