The Nash Garcia Murder - Criminal Cause 16902:

United States v. William R. Felipe and Gabriel Felipe

An Honors Thesis (ID 499)

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Introduction

On Good Friday, 1952, New Mexico State Patrolman Nash Garcia was brutally murdered. Two Acoma Indian brothers, Willie and Gabriel Felipe, were subsequently arrested, charged, and convicted of the offense. Upon granting of a motion for a new trial and the entrance of guilty pleas by both defendants, earlier death sentences were changed to terms of life imprisonment. My advisor, Dr. Dennis Hoilman, became interested in the case of U.S. v. Felipe and Felipe after his discovery of its apparent treatment in some American Indian Short Stories - specifically, "The Killing of a State Cop" by Simon Ortiz, and "Tony's Story" by Leslie Silko. At Dr. Hoilman's suggestion, I did some preliminary research and, in so doing, became interested in the case. Through our research, initially intended to aid in the preparation of a paper which Dr. Hoilman presented at the Western Literature Conference on October 5, 1979, entitled "The Nash Garcia Case: A New Mexico Murder in Fact and Fiction," we discovered that, indeed, fact can be stranger than fiction - and more interesting. This case is interesting for a variety of reasons; not only is the case of the Felipe brothers unique in several of its particulars, but also it carries with it some interesting socio-political implications which merit further exploration. Through extensive research, we have learned a great deal about the
Garcia murder - we have obtained extensive court records, trial transcripts, newspaper clippings, and background information from a variety of sources, despite the fact that the incident took place over a quarter of a century ago in a location over 1300 miles from Muncie. But, although our knowledge of the case is now vast, the pursuit of each new lead seems to uncover another direction in which to proceed, another person to be contacted, or another resource to obtain. The Garcia murder raises many questions not easily answered; while it is hoped that such questions may one day be answered as a result of exhaustive research efforts, it shall be the purpose of this discourse to provide an overview of the case and its implications and an implicit outline of the research process to date. It is further hoped that the "product" which this paper represents can convey to the reader some sense of the fascination which the "process" of research has provided and is still providing to the author.

Before embarking upon a discussion of what I have nicknamed "The Felipe Files," I would like to acknowledge the efforts of everyone who has been so kind in assisting me in this project. Although it is not possible to list everyone who has donated his time and efforts to the case to date, the absence of any individual or organization from the following list in no way implies a lack of appreciation of the efforts of those involved. Thanks go to:

- The University of New Mexico Library in Albuquerque

for their early assistance in scanning and photocopying
newspaper articles related to the case, and to the Albuquerque Journal and Grants Beacon for directing us to several sources of information.

- The Interlibrary Loan Department of Bracken Library for the acquisition of relevant issues of the Santa Fe New Mexican and the Albuquerque Journal on microfilm from Eastern New Mexico University in Portales, New Mexico, and New Mexico State University in Albuquerque, respectively.

- The Muncie and Albuquerque FBI offices for their efforts in attempting to provide information to us, and to Mr. Frank Hall, local Federal Probation and Parole Officer, who located the defendants for us.

- Judy Zanotti and the New Mexico State Bar for the background information provided on some of the principals involved in the case.

- Mr. Gus Moeller for his interest and assistance in our efforts to explore the correctional history of the defendants.

- The Muncie Public Library for the use of their equipment in a pinch.

- The United States District Court, District of New Mexico, Mr. Jesse Casaus, Clerk, and especially attorney Bill Putnam, for their assistance in research as well as in the procurement of numerous documents vital to an understanding of the case.
- The Department of English and Ball State University for its general support and assistance.

And Special Thanks go to:

- Ms. Lisa Green, Mrs. Karen Taylor, English Annex, for all of her assistance, and especially to my advisor, Dr. Dennis R. Hoilman, Professor of English, whose inspiration, support, and guidance at all stages of this project have proved invaluable.
I. The Principals

Certainly, the plot of a story is one of its most significant attributes. But one aspect of any good story which cannot be overlooked is character. The "story" of the Nash Garcia murder, even though factual, contains several interesting principal "characters"; brief examination of those characters provides an interesting background for further discussion of the case.

The Victim

Nash Garcia was the thirty-eight year old New Mexico State Patrolman who died as a result of a shooting and brutal beating on Friday, April 11, 1952. An Albuquerque native, Garcia was survived by his wife, Martha, and three daughters, Yvonne, age 12, Yolanda, age 10, and Yvette, age 6. Garcia had been on the New Mexico State Police force for eight years preceding his murder. In fact, by 1948 he had risen to the rank of captain and was in charge of the Albuquerque Office. In 1950, Garcia was abruptly demoted to the rank of patrolman and transferred to the Grants area. Friends and relatives attributed the demotion to "politics" and petty "jealousy", however, unconfirmed reports recently obtained through conversations with U.S. District Court personnel in New Mexico, among other sources, indicate that Nash Garcia had a reputation as a real "tough cookie" and
that his demotion had been linked to previous trouble with the Indians. The contemporary press did not pursue this aspect of the story. Described on page one of the Albuquerque Journal of Tuesday, April 15, 1952 as "popular with his fellow officers and with the people of Grants," Garcia was accorded what Professor Lawrence J. Evers describes as a "hero's funeral."\(^1\) Thus far, it has been difficult to distinguish Garcia "the myth" from Garcia "the man," for this reason, the character of the victim remains enigmatic to date.

The Defendants

The two Acoma (Pueblo) Indian brothers accused and subsequently convicted of the brutal slaying of Garcia were also rather puzzling characters. The older of the two, William R. "Willie" Felipe, was born in Acomita on the reservation on February 2, 1920, as evidenced by Federal records obtained through the FBI, and thus would have been thirty-two years old at the time of the incident, not thirty-one, as contemporary newspaper accounts reported. At Garcia's death, Willie reportedly lived in Acomita with his wife and their two children - a nine year old daughter and an infant son (Albuquerque Journal, Tuesday, April 15, p. 1). Gabriel, also born in Acomita, is believed to have been born in 1923 and was 28 years old at the time of Garcia's slaying. He reportedly lived in Acomita with his mother and stepfather, Mr. and Mrs. Mariano Vicente, at the time.\(^2\)

Both Willie and Gabriel were believed to be of extremely low intelligence, as evidenced by IQ tests which came out in trial, and both were widely known to have drinking problems. The defendants, particularly Willie, fit a pattern not uncommon for native Americans: Willie served in the Thirty-Seventh
Infantry in World War II and received the Bronze Star for "meritorious service" at Bougainville in the Solomon Islands. Yet after the war, Willie was discharged for inaptness as a truck driver (transcript, p. 407-9). Friends and relatives testified that both Willie and Gabriel began to drink after Willie's discharge from the service, and that both underwent personality changes as a result of their drinking (transcript, pp. 361-94, passim). Acoma Governor Albert Paytiamo indicated that the Felipe brothers were in frequent trouble with the tribal council court (Albuquerque Journal, Tuesday, April 15, 1952, p. 11). And, although conflicting testimony was offered into evidence at the trial and in subsequent examinations, several prominent psychiatrists and psychologists believed both brothers to be suffering from varying degrees of mental illness. Nonetheless, the Felipes were found competent to stand trial and culpable for any acts they might have committed - and stand trial they did, for the murder of Nash Garcia.

The Defense Attorneys

In the days before courts began hiring public defenders to represent indigent clients, it was nonetheless recognized that those accused of serious criminal offenses required legal representation. Common practice in 1952 was for the presiding judge to appoint (or "draft") counsel, who would then serve gratis, if the defendants were unable to afford any legal fees.
Although one might assume that counsel in such instances might tend to be less enthusiastic and less competent than counsel retained in the normal lawyer-client relationship, upon examination of the case of U.S. v. William R. and Gabriel Felipe, in many respects, one doubts that the Felipes could have done much better if private defense counsel had been hired (for Clarence Darrow was long dead, and Perry Mason was only a fictional character). Judge Carl Hatch appointed two prominent and capable Albuquerque attorneys to defend the Felipes, perhaps in an attempt to ensure a fair and orderly proceeding in the face of overwhelming public sentiment against the Indian brothers - if the murder had occurred half a century earlier, one wonders if they would have lived to be tried for the offense. Hatch appointed attorney Philip Dunleavy to defend Willie Felipe; A.T. Hannett was defense counsel for Gabriel. A separate attorney was appointed for each defendant as it was initially believed that there could be a conflict of interests in the two defenses; ultimately, defense counsel collaborated rather than severing their defenses.

Little is known about counsel for Willie Felipe. But Philip Dunleavy was once the Assistant Attorney General for the state of New Mexico (Santa Fe New Mexican, September 23, 1952, p. 1) and once practiced law in partnership with William T. O'Sullivan. Mr. Dunleavy, who was apparently in charge of the defense of the Felipe brothers, died in September of 1955.⁴
Gabriel Felipe's attorney, Arthur Thomas Hannett, was active in New Mexico politics and served as governor of the state from 1925-27. Born in New York in 1884, Hannett received his LL.B. from Syracuse University in 1910 and thereafter moved to New Mexico, where he resided until his death in Albuquerque in 1966. Governor Hannett once engaged in the practice of law as a partner in the firm of Mechem and Hannett (in 1952 Mechem was governor of the state) and later with the firm of Hannett, Hannett, and Cornish. Thus, it would appear that the Felipes obtained able defense counsel in the face of a difficult case for a most serious offense.

The U.S. Attorney (Prosecution)

U.S. v. William R. and Gabriel Felipe was the sort of case U.S. Attorneys dream of; it was seemingly an "open and shut" case, and since it centered around "one of the most heinous crimes in the history of New Mexico," the attention of the entire state was sure to be focused upon the trial in Santa Fe. Maurice Sanchez, a New Mexico native born in 1912, received his J.D. from Northwestern in 1939. Beginning his stint of employment with the Department of Justice in 1944 as Assistant U.S. Attorney, Sanchez was promoted to U.S. Attorney in 1951. The exposure received as a result of the Felipe brothers' trial apparently did not hurt Sanchez' political career, as his subsequent activities included service as ex-officio Mayor of Albuquerque from 1954-62 and service as judge of the New
Mexico District Court from 1973 until his recent retirement; Judge Sanchez currently resides in the Albuquerque area.6

The Judge

The Judge in the trial for the murder of Nash Garcia was a colorful character in his own right. Carl A. Hatch, born in 1889 in Kansas, settled in New Mexico in 1916 after briefly practicing law in Oklahoma; he received LL.D. degrees from both Cumberland University and McMurray College. After an active career in politics which included service as the assistant attorney general for New Mexico in 1917 and 1918, as New Mexico District Judge for the Ninth Judicial District, 1923-29, as United States Senator from New Mexico from 1933-49, and finally, as United States District Court Judge for the District of New Mexico from 1949 until his retirement in 1962, Judge Hatch died in 1963.7

Understanding something about the backgrounds of the individuals involved in the case aids in understanding the case itself; unfortunately, there is much work yet to be done in researching the backgrounds of the principals in the case. It is especially hoped that leads into the backgrounds of the victim and the defendants prove to be helpful.
II. The Murder and the Press

(Much of the detailed information concerning the murder of Patrolman Garcia as well as important background information was provided by state newspapers such as the Albuquerque Journal and the Santa Fe New Mexican. An outline of the alleged facts in the case as reported by the "Fourth Estate" follows.)

Patrolman Nash Garcia, stationed in Grants, New Mexico, contacted State Police headquarters in Santa Fe for a routine license plate check about noon on Good Friday, April 11, 1952. Two p.m. in Grants that day marked the last time and place Garcia was seen alive.

On Sunday morning, April 13, 1952, State Police contacted Nash Garcia's wife, concerned that he had not made a call since Friday. Mrs. Garcia reported that she had not heard from her husband since Friday, but she had not become particularly concerned since his job occasionally kept him away from home. An extensive search was launched soon after this conversation.

Numerous state policemen, led by Chief Joe Roach, and hundreds of volunteers combed the rugged New Mexican countryside in the Grants area from both the ground and the air in search of the missing Garcia (Journal, 14 April 1952, p. 1). On the same day that the search for Garcia was announced in the Albuquerque Journal, the headlines flashed: "Edward Marso's Body Discovered," and the accompanying story revealed the
recent discovery of the shot and badly beaten body of a thirty year old refrigerator mechanic from Iowa who had been missing since his burned car was found in a canyon east of Albuquerque on February 7th. Although the headlining murder is almost overlooked in the commotion surrounding the search for a missing State Policeman, the circumstances of the Marso murder soon appeared to be portentous. However, later investigations proved that the Garcia and Marso murders were unrelated. 8

The headlines of a later April 14th newspaper, the *Santa Fe New Mexican*, scream: "State Police Officer Murdered," and below this headline: "Nash Garcia Ambushed." At 7:30 a.m. on Monday, April the 14th, 1952, the searchers found the remains of the thirty-eight year old Garcia's body in a remote area of the Acoma reservation on Sandstorm Mesa, which is about eighteen miles east of the town of Grants, New Mexico. What the searchers found were a few charred bits of bone which were left in Garcia's badly burned but still identifiable patrol car.

Because of the remoteness of the rugged area in which the remains of Garcia's body were found, the search might well have been fruitless had it not been directed to the site by a thirty-one year old [sic] Acoma Indian, Willie Felipe, who was implicated in the slaying.

Press accounts of April 15th further implicate Willie's brother Gabriel in Garcia's murder. In an unusual twist of fate, Gabriel was arrested by a cousin of the slain officer (*Albuquerque Journal*, April 15, 1952, p. 1). The story that
unfolded in the New Mexico press was a singularly gruesome one, and one which was related in its most minute details. In stories tantamount to public confessions, the press asserted that the two brothers, who had been drinking and deer hunting illegally, intentionally lured the unsuspecting Patrolman Garcia onto the Acoma reservation, led him into a remote area, and ambushed him with their 30-30 hunting rifles. When the wounded officer pleaded for mercy, the Indians mercilessly and brutally beat him to death. Willie later returned to the "scene of the crime" to attempt to destroy the evidence by burning the car with the officer's body inside. In addition to detailed accounts of the murder itself, concomitant "human interest" stories about Garcia's widow, family, and friends abounded in the press (Albuquerque Journal, Santa Fe New Mexican, April 15, 16, 17, 1952).

While it is not necessary nor expeditious to elaborate much further on contemporary press accounts of the murder for the purposes of this discourse, some sense of the flavor and character of the reporting might be gleaned from the following excerpt, taken from a story by Neil Addington entitled "Indian Describes Slaying," which appeared on the front page of the Albuquerque Journal, April 15, 1952:

"I don't know. We just did." Willie Felipe, confessed slayer of Nash Garcia of the State Police, muttered those words when asked the reason for the killing.

Felipe had already confessed the killing, and implicated his brother, Gabriel Felipe. He was being questioned further as he was driven back to Grants after leading a search party of more than 20 officers down the death road.
It was the same twisting, rough road winding among juniper shrubs and across the sandy mesa on which Garcia had chased Felipe and his brother Friday afternoon. It was the road on which Garcia was shot from ambush, beaten to death with rifle butts, and later burned to a pile of charred bones and ashes.

The tale of horror began unraveling in the cold dawn Monday morning. Seven State Police cars, loaded with grim, determined officers and Willie, left Grants bound for Black Mesa....

Any analysis of the role of the press in the Garcia murder case must necessarily begin with the question of the prejudicial nature of the pervasive accounts of the murder in the New Mexican press. There is undoubtedly a much more subjective, sentimental air to the journalistic style of 1952 than one would likely find in the modern press, but it is difficult, if not impossible, to ascertain what effect the press might have had in the actual disposition of the case. It is interesting, but not surprising, to note that the press coverage of the murder appears to be directly and proportionally related to its interest value as "news"; accounts of the case grew increasingly brief and less frequent with the passage of time, to the point that its final disposition was noted in one relatively short story. It is also interesting to note some of the far-reaching ramifications the murder had; it was the subject of editorials on April 14, 15, 17, and 27. The case led to a crackdown in the enforcement of liquor laws with regard to the sale of liquor to Indians; however, in an ironic exercise of editorial discretion, the story reporting the final sentencing of the Felipes on March 3, 1953
in the Santa Fe New Mexican ("Felipe Pair Given Life in Prison") is juxtaposed with the story "Solons O.K. Liquor Sale to Indians." (How soon people forget!)

Whatever the effect of the press on the Nash Garcia murder case, it appears likely that, in a modern context of "gag rules" and rights of the accused, defense attorney Dunleavy's objection raised during jury selection (see discussion of trial) would have been sustained. But the press was only one facet of the case; a far more important and interesting aspect was the trial itself.
III. The Adjudication of the Case

In most cases, the crime of murder would be considered a crime against the state in which the crime is committed (unless the crime involves the crossing of state lines), and thus would be tried within the state judicial framework, but because of the unique circumstances surrounding the Garcia murder, the Felipe brothers found themselves in Judge Carl Hatch's United States District Court for the District of New Mexico, which is based in Albuquerque but which also has a term in the state capital of Santa Fe annually. The federal government assumed jurisdiction because the violation with which the defendants were charged fell under Title 18 of the U.S. Code, which is the statute governing American Indians. The relevant portions of the Code provide that the United States assumes jurisdiction for the crime of murder when committed in the "Indian Country"; Nash Garcia was believed to have been murdered well within the Acoma Pueblo. Although the brothers were not likely aware of it, they may have been fortunate to have been tried in federal court rather than within New Mexico's state judicial system. In theory and in general, the "higher up" one moves in the judicial hierarchy, the greater the degree of professionalism, experience, and consistency one can expect from the individuals comprising legal institutions. Given the public outrage and the highly
volatile nature of the issue, one must wonder if the trial could have proceeded in even as fair and orderly a fashion as it did had it been tried in a local trial court. By today's standards, the case of The United States v. William R. Felipe and Gabriel Felipe was handled expeditiously. The crime, trial, appeal, and final sentencing took place within a time span of only eleven months. A chronology of the relevant events in the case is as follows:

1952: April 18 - Indictment for murder filed; defendants ordered held without bond.

April 21 - Defendants arraigned, served with the indictment; further proceedings adjourned until April 23, so that counsel may be provided for the defendants.

April 22 - Philip Dunleavy, Esquire, appointed defense counsel by the Court.

April 23 - Defendants plead NOT GUILTY as charged.

April 25 - A.T. Hannett, Esquire, appointed as counsel for the defendant, Gabriel Felipe, due to possible conflict of interest between defendants. Counsel requests that case be tried during the September term in Santa Fe rather than the upcoming June term in Albuquerque.

[numerous motions, discovery filed in the interim periods]

Aug. 19 - Case set for trial at 9:30 a.m. Monday, September 22, 1952 in Santa Fe.

Sept. 22 - Trial convenes. Jury selection - seated and sworn at 4:00 p.m. Witnesses and interpreters called and duly sworn. Opening statements by counsel for the parties. (Note: The jury in this case is "admonished" but not sequestered.)

Sept. 23 - Trial proceeds until 4:50 p.m.

Sept. 24 - State "rests" at 11:20 a.m.; trial continued at 4:40 p.m.

Sept. 25 - Trial proceeds until 5:40 p.m.

Oct. 1 - Defense counsel file Motion for New Trial, or motion that verdict be reduced from first to second degree murder.

Oct. 16 - Order denying Motion for New Trial entered by Judge Hatch.

Oct. 17 - Defendants sentenced to death by electrocution on January 15, 1953.

Oct. 18 - Defendants ordered transported to the Medical Center for Federal Prisoners at Springfield, Missouri for mental observations and complete psychiatric examination, with a full report to be filed with the Court by December 15.


Dec. 26 - Medical reports on defendants from Springfield, Missouri, filed.

1953: Jan. 6 - Defendants file Motion for Order Setting Aside Verdict and Vacation of the Sentence, and Motion for New Trial; filing of Report of Neuropsychiatric Examination from Medical Center for Federal Prisoners in Springfield, Missouri.

Jan. 12 - Order remanding cause to the District Court for entertainment of motion for new trial and for the proceedings as the trial court deems appropriate.

Jan. 27 - Order Granting Motion for New Trial entered on basis of newly discovered evidence.


March 3 - Judge finds defendants sane; defendants enter plea of "GUILTY," sentenced to life imprisonment.

March 16 - Appeal to 10th Circuit Court of Appeals ordered dismissed by Court of Appeals due to mootness.
The initial proceeding in the adjudication of the Felipe brothers' case was the arraignment, and after appointment of counsel, this step went according to plan: The defendants entered pleas of NOT GUILTY, which is standard in capital cases. An interesting sidelight to the preliminaries is that during the initial arraignment, Judge Hatch at one point questioned U.S. Attorney Sanchez about some particulars in the case, saying: "Well, I get my information from the newspapers ...," (transcript, p. 2) which should begin to answer the question of whether or not pre-trial press publicity had any effect on the proceedings. Nonetheless, it would appear from the transcripts that every reasonable effort was made to ensure a fair and orderly trial in terms of procedural matters - perhaps Judge Hatch feared that the decision in a highly publicized trial such as this stood a greater chance of being overturned upon appeal on the basis of technicalities than the decision in a trial for a lesser offense. Also, though one might expect less than enthusiastic and aggressive advocacy on behalf of indigent clients to be a problem in cases in which counsel cannot be compensated monetarily, this problem did not seem to materialize in the case of U.S. v. Felipe. Defense counsel, for whatever reasons, appeared genuinely motivated to give Willie and Gabriel Felipe what they believed to be the best defense available. When Judge Hatch expressed concern for the additional expense which would be incurred by counsel if the trial were postponed to allow additional time for research, Attorney Dunleavy
exhibited a ready willingness to incur any additional expense, passing it off as an "occupational hazard" (transcript, p. 10).

The trial itself had been postponed until September, and when the scheduled opening date of September 22, 1952 arrived, the focus of attention had shifted from Albuquerque to Santa Fe. When the trial opened, the parties had agreed to stipulate a few simple facts; these stipulations, while not seeming terribly crucial to the layman, actually saved a great deal of trial time, because things which could have been easily proved were admitted. The parties stipulated that:

1. The crime in question took place in Indian country;
2. That Nash Garcia was killed in Indian country on April 11, 1952;
3. And that certain military records would be admissible into evidence (transcript, pp. 18-47).

The better part of the first day of trial was exhausted in jury selection, which is an interesting process in its own right. The entire first panel was exhausted through challenges by the parties and discharges by Judge Hatch fairly early on, and several other groups of jurors were called throughout the day. Certain basic questions were asked of each juror in an attempt to ascertain his or her fitness to serve on the jury. Questions asked included such things as:

1. Have you read or heard anything about the case now before this Court?
2. Have you formed an opinion as to the possible innocence or guilt of these defendants, and if so, could you set aside that opinion in the face of the evidence and decide the case impartially?
3. Do or did you know the defendants or the victim?

4. Have you ever served in law enforcement or a related field?

5. Are you acquainted with any of the counsel involved in this case?

6. Do you have any feelings about Indians as a group which might influence your decision in this case?

7. Do you have any conscientious principles which would affect your ability to direct a verdict which might carry with it imposition of the death penalty?

[Note: At that time, a verdict of guilty automatically carried with it the death sentence in trials on the charge of first degree murder unless accompanied by the statement "without capital punishment" (transcript, p. 59).]

Numerous challenges were exercised by each side, but when the smoke finally cleared around 4:00 p.m. that afternoon, a jury was seated. The jury of twelve plus one alternate was composed of Anglo males from Santa Fe and Los Alamos counties:

Joe Creamer                  Charles Arthur Reynolds
Raymond James McCanna       Coke Johnson
Melvin Lee Estes             C.N. Ford
Clyde A. Hull                James L. Teare
W.T. Mundy                   Wolcott L. Russel
J.A. Brown                   Webb Young

with Frank Willard sworn as an alternate. It is interesting to note that, at one point, Mr. Dunleavy challenged all jurors who admitted having read about the Garcia murder in the papers for cause, stating that the a priori impressions formed by those jurors would be highly prejudicial to the defense; however, Judge Hatch overruled the challenge (transcript, p. 96). After opening statements by each party, the Judge admonished the jury, then adjourned the trial until Tuesday morning.
[Note: The reader might note that the jury was not sequestered; although seen in many an episode of "Perry Mason," in actuality, this practice is rarely used. Sequestering is impractical, expensive, and often just not necessary.]

The bulk of the remainder of the trial time was spent in presentation of the cases of the government and the defense. Beginning on the 23rd of September, 1952, Mr. Sanchez presented the case of the United States in Criminal Cause 16902: U.S. v. William R. and Gabriel Felipe; the government rested its case on the middle of the third day of trial. The defense presented its case for the next day and a half, presenting its final witness late in the day of the 25th. The final day of trial, the 26th of September, was spent in rebuttal by the government, final arguments, instructions by the Court, motions by the defense, and finally, jury deliberations.

The actual trying of the case began with the presentation of the government's case by Mr. Sanchez. Sanchez' general strategy appeared to be to attempt to establish premeditation and that the defendants' truck "lured" Garcia's patrol car onto the reservation, to outline details of the investigation and overwhelming evidence against the defendants, and to admit the signed confessions of each defendant into evidence. Sanchez further attempted to introduce a great deal of physical evidence into the trial, and he even used a motion picture to show the jury the scene of the crime. The U.S. Attorney called the defendants' own uncle, who testified that he had driven Willie back into the reservation on
Saturday April 12th - the time that Willie allegedly set fire to Garcia's car and body. The government closed its case with testimony from a Special FBI Agent, who further detailed particulars of the investigation. Raphael Pino, Dorothy Sarracino, Virginia Garcia, and Kenneth Hailstorm were all Acoma Indians called to establish the connection between Garcia's patrol car and the Felipe brothers' truck on the afternoon of April 11th and to attempt to illustrate that the brothers knowingly attempted to "lure" Garcia onto the reservation. Witnesses Clinton A. White Jr. and Richard Lewis of the New Mexico State Police discussed the arrest of Willie, the search for and the discovery of Garcia's body, and the investigation of the case in general. FBI agents Peter Duncan and James Durrett testified as to the role of the FBI in the case, and after some controversy, the confessions obtained from the defendants. Witnesses Hoover Wimberly, Martin Hudson, and Jack Salter, also of the New Mexico State Police, were used to establish the connection between certain physical details and evidence, the defendants, and the death of Garcia. Thomas J. Smith of the FBI narrated the film used by the government; Lorenzo Routzen, Willie's uncle, testified that his nephew went to a site in the vicinity of Garcia's murder on the night of the 12th, ostensibly to pick up a forgotten jacket. Finally, FBI Special Agent Cary Carleton tied together some of the "loose ends" for the United States. Sanchez was thwarted in some of his efforts by the defense - for example, Dunleavy and Hannett successfully blocked his attempt to call Garcia's widow to testify.
All in all, Sanchez did a fairly good job of proving that the defendants committed the crime, although the question of premeditation was not totally resolved. But given the conduct of the defense, the emphasis of the government's case seemed misplaced. In view of the fact that the defense for all intents and purposes stipulated that their clients killed Garcia [as more and more evidence was introduced], Sanchez' case, while convincing, seemed to be akin to "using a cannon to kill a flea." Still, when it comes to hindsight, we all have 20-20 vision. [This move by the defense was at least in part a strategy to block the admission of particularly gruesome and emotionally charged evidence - Sanchez emphasized the "heinous" nature of the crime as a part of his case and as a justification for the maximum sentence - and the move seems fairly successful.]

It is somewhat difficult to analyze the defense, which began presenting its case at midday on the 24th of September. Although the defense was operating from a particular bias, and although there are a couple of other angles in the case which perhaps should have been explored further (for example, motive), it is not really fair to second-guess two obviously highly competent attorneys from a vantage point of nearly thirty years' passage of time. It is apparent that counsel did anything and everything reasonably possible to attempt to obtain what was believed to be the most favorable adjudication of the case possible for their clients. Numerous objections were raised throughout the trial - some
of which met with a measure of success. At the close of the presentation of the case for the United States, the defense moved for a declaration of a mistrial on tripartite grounds:

1. Indians are wards of the government and thus are presumed incompetent by statute,

2. The U.S. Attorney based much of his case upon questionable and conflicting confessions,

3. And the admission of the confessions was a grave procedural error on the part of the Court because the "foundation for admissability" rules were not fully explored (transcript, pp. 349-52).

Although the motion was denied by Judge Hatch, one can hardly fault counsel for trying! Perhaps the defense might be best characterized by the term "shotgun approach" - counsel tried anything and everything they could think of at various stages of the trial, hoping to "hit" something somewhere. However, as the case against the Felipe brothers developed, the actual line of defense became fairly clear.

The prosecution had a relatively "ironclad" case, and the evidence was stacked against the Felipes. The best the defense seemed to feel could be gained for the Felipes was a reduction of the charge to second degree murder. Counsel formulated a "mental incapacity and deficiency" argument, not as a complete defense, but as evidence of incapacity for the premeditation requisite for conviction upon the charge of first degree murder. However, instead of acknowledging this fact at the outset of the trial, the "shotgun" approach allowed them to give up the "mile" an "inch" at a time. The actual defense of the Felipe brothers seemed designed to establish that the brothers:
1. Were of low intelligence and were culturally deprived,

2. Had drinking problems, and had been drinking heavily the day of Garcia's murder,

3. And were mentally deficient and disturbed, based upon expert testimony, and thus were incapable of the crime of first degree murder.

The defense initially called members of the brothers' families: Mrs. Pablita Vicente (mother), Mariano Vicente (stepfather), Angelina Vicente (stepsister), and Mrs. William R. Felipe. Their testimony was apparently designed to demonstrate that the brothers had a drinking problem and that one of the manifestations of this problem was violent, irrational behavior. Attorney Stanley A. Clark of the VA attempted to testify as to the military and mental records of Bert Felipe, but his testimony was blocked by the objections of Sanchez. (The defense intended to imply that insanity ran in the Felipe family by introducing the records of an older sibling of Willie and Gabriel.) The testimony of Willie revealed that he had received the Bronze Star for meritorious service in the infantry at Bougainville, Solomon Islands, during World War II; yet when he re-enlisted after the war and became a truck driver, the Army determined Willie was of extremely low intelligence and discharged him for "inaptness" (transcript, pp. 395-426 passim). Dr. John A. Salazar, clinical psychologist, and Dr. George L. Ross, psychiatrist, then provided expert testimony as to the mental capacities and deficiencies of the Felipes. However, in the rebuttal
stage of the trial, U.S. Attorney Sanchez called two psychiatrists of his own, Drs. A.B. Stewart and James R. Prest, who testified that Willie and Gabriel were mentally competent and capable of murder in the first degree (transcript, pp. 580-627). As attorney Dunleavy pointed out in the pre-trial conference: "Where psychiatrists are involved, one guy will swear the guy is as smart as hell, and the other will say he is a Mongolian idiot" (transcript, p. 44). Thus, the issue of mental competence was not fully resolved by testimony for either side. Finally, the defense called the defendants, in the hope that they could testify in behalf of themselves. Although it usually seems essential that the defendant(s) testify in cases of this magnitude, this tactic posed some problems for Dunleavy and Hannett in the case of the Garcia murder. Not only did Sanchez cause severe problems for the defense through cross-examination, but also, on direct examination, the defendants damaged the case that their counsel had worked so carefully to build for them. The outcome of the trial notwithstanding, this observer would tend to accept the argument of mental deficiency on the part of the defendants. Although it at times appeared that the defendants were actually quite cognizant of what was going on around them and only "playing dumb" out of shrewdness, all things considered, they could not have done a much better job of destroying their already slim chances of avoiding the death penalty if they had been witnesses for the government.
After the defense rested and the government rebuttal was complete, final arguments were offered by the parties. Out of a purely personal interest, I find it a great shame that final arguments were not made a part of the record - it would have been interesting to see the head-to-head rhetorical confrontation between Dunleavy and Sanchez. After final arguments of the 26th of September, 1952, Judge Hatch provided the jury with rather detailed instruction. After entertaining but denying some last-minute defense motions, Hatch permitted the jury in the case to begin deliberations; it was shortly after 3:00 p.m. Within less than two hours, the jury had returned its verdict: at 4:49 p.m., the jury returned and submitted its verdict as per jury foreman Coke Johnson. The verdict read as follows:

We the jury, duly empaneled and sworn to try the issues in the above-entitled cause, do find the defendant William R. Felipe, and the defendant Gabriel Felipe Guilty of murder in the first degree as charged in the indictment. Signed, Coke Johnson, foreman.10

A polling of the jury confirmed the verdict, and there was no mistake about the absence of a recommendation for clemency. The jury was discharged, and the prisoners were committed into the custody of United States marshalls. On October 1, the defense filed a Motion for New Trial, or in the alternative, a Change of Verdict in terms of a reduction of the offense to second degree murder. On October 13, Judge Hatch overruled said Motion, and on October 17, 1952, William R. Felipe and Gabriel Felipe were sentenced to die in the electric chair on January 15, 1953, for the murder of Nash
Garcia. On October 20, Notice of Appeal was filed with the Court. After this date, the resolution of the matter hinged upon the report of the Federal Criminal Medical Center in Springfield, Missouri. After a preliminary finding of mental competence by the board of psychiatric examiners at Springfield, the Federal Hospital's report dated December 26, 1952, became the basis for a Motion for New Trial filed by counsel for the defense on January 6, 1953. The report of December 26 was based upon new findings elicited with the assistance of eminent psychiatrist and cultural anthropologist Dr. George Devereux. Although the limited scope of this discourse regretfully does not allow for a full discussion of Dr. Devereux's fascinating psychiatric report on the defendants Willie and Gabriel Felipe, it might be pointed out that Devereux not only demonstrated that the defendants were of low intelligence, but also that they were suffering from severe psychoses and neuroses, in varying degrees. Devereux pointed out that such conditions were not easily diagnosed unless the examiner had a strong background in American Indian culture; for example, it was not the defendants' belief in superstition and witchcraft which allowed for their diagnoses as mentally ill - for such belief in witchcraft was the norm for Acoma culture - but the aberrant manifestation of such beliefs, which only a highly trained psychiatrist could diagnose. The "witchcraft" angle of the case was one explored by Leslie Silko in her short story entitled "Tony's Story."
On the basis of the new evidence, the Court entertained the Motion for New Trial, after the case had been remanded on procedural grounds from the Tenth Circuit Court of Appeals in Denver. In what was obviously a negotiated arrangement (popularly known as a "plea bargain"), Hatch granted the motion, the defendants changed their pleas to "Guilty," and Hatch subsequently sentenced them to life imprisonment. Interestingly enough, the judge never accepted the insanity partial defense; in fact, he filed a detailed memorandum which, while not legally binding on correctional authorities, set out in great detail why the defendants should spend the rest of their natural lives in prison. Thus ended the adjudication of the case of the murder of Nash Garcia: Criminal Docket 16902, United States v. William R. Felipe and Gabriel Felipe.
IV. Commentary: Issues and Implications

The Nash Garcia murder case poses some rather interesting questions. While such issues cannot be fully addressed here, it might be appropriate to raise a few of these issues and their implications for consideration.

One of the first questions one calls to mind upon looking retrospectively at this case centers around the "fair trial" issue. Although the conduct of the matter appeared to be orderly and just in terms of 1952 standards, how might it be viewed today? Did the state-wide press coverage, which was unquestionably prejudicial in flavor, impair the defendants' rights to a fair trial? Would the confessions be admissible today in view of Miranda and other rulings of that ilk? What effect did translation have upon the proceedings? How accurate was the translation - did the interpreters tend to paraphrase and condense for clarity while in actuality misrepresenting certain aspects of the testimony? Just how valid was the psychiatric testimony on the question of insanity in view of subsequent developments in the field? Were the defendants tried by a "jury of their peers" - which is a right safeguarded by the Constitution? Were the defendants able to "aid in their own defense?" These are just a few of the questions one might ask in view of the record.
The Garcia murder case also reflects several social issues which may merit closer scrutiny. The circumstances of Willie Felipe are not unique - the pattern is that of the Indian who is stripped of his own culture but not totally assimilated into the "white man's world"; he loses personal motivation and self-esteem, quite often turning to alcohol and thus ultimate self-destruction. And, although defense counsel for the Felipes was certainly competent, what effect did the social biases of Dunleavy and Hannett have on the conduct of the defense? For example, did their paternalistic attitude - their view of the brothers as poor, ignorant, irresponsible children ("boys") - limit their responses to the suit brought against their clients? Why was the question of motive left largely unexplored? Would the shift in the societal outlook on the problem of alcoholism have any bearing upon the case? (Although alcohol is never and has never been successfully used as a "license" to commit murder - it is not accepted as temporary insanity - it often is used as evidence of incapacity for premeditation, particularly now that alcoholism is viewed as a disease.)

One problem that plagues my view of the social considerations in the Felipe case is one of "parameters." While there is no question that society bears some degree of responsibility for the plight of the American Indian, are there not also certain standards of human decency and morality which might be considered fairly universal? It disturbs me that, in my discussions of the case with interested friends and acquaintances, the initial response to my presentation of an outline of the facts and issues
is almost invariably an assumption of innocence on the part of the defendants. No sooner do I mention the fact that the two defendants were Acoma Indians than someone interrupts, saying something like: "Oh. That explains it. They didn't do it, did they?" While it is good and proper to have a "social conscience," it is not wise to allow the "pendulum" to swing back past the limits of reason. There may have been some mitigating circumstances involved, but one cannot overlook the fact that New Mexico State Patrolman Nash Garcia was quite brutally murdered - almost undoubtedly by the defendants.

The case and the response to it also reflects some broader social implications, such as the status of the relationship between the white man and the Indian in general; it further alludes to the friction between Mexican Americans and Indians in the Southwest, particularly as treated in the abovementioned short stories. These are just a few of the many reasons why study of the case has been interesting and provocative. While we hope to explore some of the issues raised herein further as our research continues, it must be lamented that, for a variety of reasons, much of such continued treatment will remain forever within the realm of speculation. But when addressing such an interesting and complex a subject as the case of the Nash Garcia murder, qualified speculation seems a legitimate endeavor.
V. Epilogue

To satisfy the curiosity of the reader, it might be mentioned that the defendants Willie and Gabriel Felipe are still living; Gabriel was released from Federal prison at Leavenworth Kansas on December 6th, 1971, while Willie was released from La Tuna in Texas on February 12th, 1973. Both are currently on parole and are residing in the Albuquerque area; efforts are being made to discover more about the fortunes of the brothers since their incarceration upon conviction.

In addition to the fact that the Garcia murder case has become a part of Pueblo Indian folklore, as evidenced by its treatment in Southwestern Indian literature, it has been the focus of other scholarly study. Most specifically, Professor Lawrence J. Evers of the University of Arizona has done extensive work on the historical perspective the presentation of the case represents. And while Professor Evers has gained access to certain resource material, through inadvertence of the federal judiciary in an era of more lenient policy, which is unavailable to us, we hope to transcend the scope and focus of his research in our continuing work with the case. In reflecting upon this paper and its implications for future work, one might view the entire project as chiefly an exercise in "creative research," albeit an interesting one. But additionally, it might be hoped
that study of this small slice of history might enable us to answer some of the questions raised above, and in so doing, perhaps lend additional insight into our society and the human condition in some small way. For even as we study history, we inexorably proceed to write it.
Endnotes

1Lawrence J. Evers, "The Killing of a New Mexican State Trooper: Ways of Telling a Historical Event," apparently unpublished, supplied to Dr. Hoilman by Professor Evers (written circa 1976?), p. 6.

Evers, p. 2.

3United States of America v. William R. Felipe and Gabriel Felipe: Transcript of All Open Court Proceedings, United States District Court for the District of New Mexico, Criminal Docket No. 16902, pp. 400-1. (Hereinafter cited within the text as follows: transcript, p. ___.)

4Information from correspondence with Ms. Judy Zanotti of the State Bar of New Mexico, dated April 1, 1980.

5Information supplied by Ms. Zanotti, from Who's Who in New Mexico, 1937.


7Information supplied by Ms. Zanotti, from Who's Who in New Mexico, 1952.

8Primarily from Albuquerque Journal accounts of April 27th, 28th, and 29th, 1952.

9From a copy of the original docket sheet, supplied by the United States District Court for the District of New Mexico.

10From the docket sheet: p. 11 as numbered by hand.

11Psychiatric report, filed as part of a Motion for New Trial by the defense, file-stamped January 6th, 1953.


13From a copy of the original order of the Tenth Circuit Court of Appeals, entered January 8th, 1953, supplied by the Office of the Clerk in Denver. Also confirmed through various conversations with attorney Bill Putnam, United States District Court for the District of New Mexico.

14Copy of a special Memorandum filed by Judge Hatch on March 3rd, 1953, supplied by the United States District Court for the District of New Mexico.