A HISTORIC ACQUITTAL RE-EXAMINED: WOULD THE EARPS AND DOC HOLLIDAY ESCAPE INDICTMENT UNDER THE MODERN GRAND JURY SYSTEM?

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ABSTRACT

This thesis examines the court proceeding that followed the infamous gunfight at the O.K. Corral in Tombstone, Arizona on October 26, 1881, and its likely outcome if prosecuted under modern jurisprudence. During a month-long proceeding, Wyatt, Virgil, and Morgan Earp, along with Wyatt’s close friend John Henry “Doc” Holliday, stood accused of murder in the deaths of William “Billy” Clanton, Frank McLaury, and Tom McLaury. Justice of the Peace Wells Spicer, applying the laws of the Territory of Arizona, determined after an evidentiary proceeding that there was no cause to believe the Defendants guilty, stating unequivocally that the killing of Clanton and the McLaury had been “fully justified.” An analysis of the evidence, modern jurisprudence, and the influence of cultural and political factors on the original decision leads to the conclusion that the outcome might be different today.
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PART I: BACKGROUND

Political Rivalries, a Love Triangle and a Compromised Confidential Informant

Tombstone Ordinance No. 9:

Section 1: It is hereby declared unlawful to carry in the hand or upon the person or otherwise any deadly weapon within the limits of said city of Tombstone, without first obtaining a permit in writing.

Section 2: This prohibition does not extend to persons immediately leaving or entering the city, who, with good faith, and within reasonable time are proceeding to deposit, or take from the place of deposit such deadly weapon.

Section 3: All fire-arms of every description, and bowie knives and forks, are included within the prohibition of this ordinance.

Tombstone Ordinance No. 7:

It shall be the duty of all policemen to arrest all parties found in the public streets within the city limits engaged in brawling, quarreling, etc., and all persons who shall be found in any disorderly act whereby a breach of the peace might be occasioned. ¹

On the afternoon of October 26, 1881, Tombstone City Marshal Virgil Earp called upon his brothers and fellow officers Morgan and Wyatt, as well as Wyatt’s close friend, John Henry “Doc” Holliday, to assist him in disarming a group of armed and disorderly men. The men were known colloquially as “cowboys.” Unlike the heroic figures depicted in television and western films, they earned a reputation not as stoic frontier heroes, but rather as robbers, cattle thieves, and bandits who preyed upon law-abiding citizens.² The

¹ Law2.umkc.edu/faculty/PROJECTS/FTRIALS/earp/ordinances.html
Earps and Holliday approached the men where they had gathered in a vacant lot just off Fremont Street and near Fly’s Boarding House. Depending on the conflicting eyewitness accounts, the cowboys either drew their weapons on the impromptu posse after Virgil ordered them to disarm, or the Earp/Holliday faction gunned down harmless men who were simply packing up to leave town. After thirty shots had been fired, the Earps and Holliday stood, Morgan and Doc were wounded, but victorious. The McLaurys and Billy Clanton lay dead, their side of the story mostly lost to history.

The lone survivor on the cowboy side, Joseph I. “Ike” Clanton, availed himself of a territorial law that permitted a private citizen to apply by affidavit for an arrest warrant. The Earps and Holliday, he claimed, had committed premeditated murder. In the ensuing month-long court proceeding, Justice of the Peace Wells Spicer was tasked with deciding whether the evidence justified holding the Defendants over for a jury trial. He heard testimony from thirty witnesses, including Virgil and Wyatt Earp. After considering the evidence, and even after briefly revoking bond for the Defendants during the early stages of the prosecution’s case (a decision he later reversed), Spicer ultimately exonerated all of them.

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2 Correspondence Governor Gasper to U.S. Marshal Dake, Nov. 28, 1881.

3 The “Gunfight at the Ok Corral” is a misnomer. The rear entrance to the O.K. Corral was actually a few doors east of the shootout, which occurred in a small space between Fly’s Boarding House and a building called the Harwood House. See Legend Map, Appendix. Used with permission of Allder, James.

4 Compiled Laws of the Territory of Arizona, 1864-1871, Section 85.

5 Compiled Laws of the Territory of Arizona, 1864-1871, Section 188.
The conflict between the cowboy faction and the Earps and Holliday had festered for almost a year before that fateful October afternoon. On the morning of the famed gunfight, Ike Clanton quarreled with the Earps and Holliday after an all-night poker game. Wyatt Earp and his brothers, all sworn lawmen, had relentlessly pursued the cowboys and their allies for their involvement in livestock theft, stagecoach robberies, and the murder of prior Tombstone Town Marshal, Fred White.

Wyatt had cut a secret deal with Ike Clanton to turn in three cowboy-affiliated men named Billy Leonard, Harry Head, and James Crane. They had allegedly killed a Wells Fargo stagecoach driver, Bud Philpot, during a robbery of the Benson stage (Turner 158). Wyatt hoped his capture of the fugitives would boost his candidacy for Cochise County sheriff, a position held by his political and romantic rival, Johnny Behan (Turner 156). Sheriff Behan, who lost his lover, Josephine Sarah “Sadie” Marcus, to Wyatt, infuriated Wyatt when he had failed to hold up his end of a bargain to appoint Wyatt undersheriff on the condition that Wyatt withdraw his own candidacy for office (Roberts 146). In addition, Behan was believed to be a cowboy sympathizer, a charge that appeared well founded when one of the captured stagecoach robbers simply walked

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6 Virgil Earp was the duly appointed city Marshal of Tombstone as of July 1881, and had previously been a deputy U.S. marshal. Wyatt Earp had also been a federal marshal and had been named acting Tombstone marshal in Virgil’s recent absence. Despite Virgil’s return, Wyatt stated that he was still “acting.” Morgan Earp was described as a “special policeman” who drew pay and wore a badge. Turner, Alford, Ed. The O.K. Corral Inquest, page 163.

7 Wyatt’s deal was to split the reward money with Clanton.

8 Behan had also, according to Wyatt, expressly promised to split proceeds from the collection of taxes (a sheriff function under territorial law) and, in further insult, refused to pay Earp for his expenses in tracking down the stagecoach robbers at Behan’s behest.
out of the jail while in the custody of the man Behan had appointed undersheriff instead of Wyatt (Roberts 145-146).

Behan and Earp were also political rivals in a larger sense (Turner 156).\(^9\) The Territory of Arizona itself leaned Democratic. Behan was a Democrat. The territorial governance, however, was Republican, as were Earp and his brothers (Tefertiller 175). Even the Tombstone newspapers’ coverage of the town’s events and the gunfight fell along partisan lines. The *Epitaph* came down strongly on the side of the Earps and local business interests. The *Nugget* consistently sided with Democratic and cowboy interests.\(^10\) Unsurprisingly, when Behan became a witness for the prosecution after the gunfight, he supported the version of events put forward by Ike Clanton.

When the men Clanton had agreed to inform on turned up dead, mooting any potential of splitting the reward money, it put the cowboy in a precarious position. The risk of being exposed as an informant may have seemed worth the trade-off when ample reward money was on the table. Once the prospect of a quick payout disappeared, Ike was in the unenviable position of not only being an informant, but also an unpaid one who might be exposed at any time. Ike eventually became suspicious, verging on paranoid, that Wyatt had confided his secret deal to others, including Doc Holliday.

\(^9\) In fact, Holliday also considered Behan an enemy after a gambling quarrel that may have involved Behan’s lover, Josephine Marcus. Roberts 170-171.

\(^10\) If it is true that the victors write the history, it is certainly borne out by the fact that extant copies of the *Epitaph*’s coverage of the events are easy to obtain, whereas copies of the *Nugget* mainly exist on microfilm at the University of Arizona.
Adding to the conflict was a cowboy-sponsored rumor that Holliday himself had actually been the shooter in the Benson stagecoach robbery.\footnote{Behan actually arrested Holliday for the Benson stagecoach robbery and murder in July 1881, but the District Attorney declined to prosecute, stating that not “the slightest evidence” showed Holliday’s guilt in the matter. Holliday’s arrest was spurred by the drunken allegations, later recanted, of his on-again, off-again lover, Kate Harony (Roberts 153-156). Ike Clanton also tried to implicate the Earps in similar illegal activity. His claims appear to have been completely baseless (Turner 120-121).}

During the twenty-four hours leading up to the shooting, Ike proceeded to confront and threaten Doc and Wyatt and to inform anyone who would listen that he intended to fight the Earps, anytime, anywhere. On the night of October 25, 1881, Ike had been up all night drinking and playing poker, all the while becoming increasingly agitated with the Earps and Holliday (Tefertiller and Morey). He showed up, armed, on Holliday’s doorstep demanding to fight on the morning of October 26, 1881. Holliday, never one to shirk from conflict, agreed to meet Ike, “if God lets me live long enough to put my clothes on…” (Roberts 186-187). In fact, the gunfight took place just outside Fly’s boarding house, where Doc lived with his companion, Kate Harony. This has lead some historians to speculate that the cowboys were lying in wait for the mercurial dentist and not simply preparing to leave town, as later claimed (Bork and Boyer 79; Turner 75).

Concerned friends awakened both Wyatt and Virgil Earp the night before the fight. Bartender Ned Boyle told Wyatt that Ike Clanton planned to cause trouble. Wyatt ignored him and went back to sleep. A deputy marshal named Andy Bronk awakened Virgil Earp at his home and repeated Ike’s threats. Virgil also returned to slumber.

By the time Wyatt awoke at noon on October 26, other citizens informed Virgil and him that Ike Clanton was armed and making threats to kill the Earps on sight (Turner
Wyatt and Virgil went in search of Clanton, whom Virgil unceremoniously dispatched by “buffaloing” him\(^{12}\) before confiscating his rifle and six shooter and taking him before the magistrate to be fined for carrying guns in town in violation of the local ordinance. Even as he sat in the courtroom, Ike challenged the Earps to a fight. Morgan Earp, who had also been the target of prior cowboy threats, offered his own gun to Ike, but was prevented from handing it off by another deputy sheriff (Roberts 177; Guinn 210). Still undeterred, Ike continued to issue threats, including his now famous, “Fight is my racket” and “I only want four feet of ground to fight on!” (Turner 162; Roberts 187). Ironically, the small space off Fremont Street where the shootout occurred occupied about that amount of space.

After his release by the magistrate, Ike’s rage continued to simmer. Outside the courtroom, fellow cowboy Tom McLaury also allegedly threatened Wyatt. Wyatt responded by pistol whipping McLaury in the street. Earp then proceeded to a nearby store where he purchased a cigar (Turner 162). Perhaps this public humiliation was the last straw for the cowboys.

By this point, Frank McLaury and Ike’s younger brother, Billy Clanton, had arrived in town and received an amiable greeting by none other than Holliday (Tefertiller, *The Walk Down* 38; Guinn 213). They then met up with Billy Claiborne, another eyewitness to the fight and a defendant in a pending murder case out of Charleston (Roberts 190). They also learned of Earp’s pistol whipping of Ike and Tom (Guinn 211-\(^{12}\)

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\(^{12}\) This refers to the practice of hitting someone over the head with the butt of a gun (Turner 75).
Unfortunately for Billy and Frank, neither of them had been present for Ike’s shenanigans over the prior twenty-four hours, nor for Tom’s confrontation with Virgil earlier that day. They simply saw their wounded and humiliated brothers. When the confrontation took place a few hours later, it was unsurprising that Billy and Frank were the aggressors.

Wyatt saw Tom and Frank McLaury and Billy Clanton at the gun shop, loading cartridges into their belts shortly after their arrival and before the gunfight (Tefertiller 119). Although he was alone, Wyatt pulled Frank McLaury’s horse, which was on the sidewalk and blocking the store’s entrance, out of the way. By this time, Virgil Earp had become so concerned by the citizen warnings that he went to the Wells Fargo Office and picked up a ten-gauge shotgun, later wielded by Holliday (Roberts 190; Turner 200). He also saw Billy Clanton fill his belt with cartridges at the gun shop. Whether or not Tom McLaury was armed is still unknown, but eyewitness testimony suggested that he had the opportunity to arm himself, and, as will be discussed later, Justice Spicer found the matter irrelevant. Wyatt Earp maintained that Tom was armed during the gunfight and that a man named Wes Fuller picked up his weapon off the street after the fight (Turner 211-217; Tefertiller 158; Roberts 195).

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13 Both Ike and Tom sustained head wounds from the pistol whipping.

14 The gun shop proprietor refused to sell a gun to Ike Clanton, whose own weapon had been confiscated earlier that day.

15 Fuller was a witness for the prosecution. He testified that Billy Clanton threw up his hands and said “I don’t want to fight” after which the shooting started. He was adamant that the Earps had fired first (Turner 71).

16 Ike’s gun had been confiscated by Virgil Earp after his arrest and was checked at the Grand Hotel (Guinn 211).
Wyatt would testify at the Spicer hearing as to his state of mind in the hours before the fight: “I was tired of being threatened by Ike Clanton and his gang and believed from their movements that they intended to assassinate me the first chance they had, and I thought that if I had to fight for my life with them I had better make them face me in an open fight” (Turner 162).

Witnesses continued to report to the Earps that trouble was brewing. Eyewitness R.F. Coleman, who had seen Ike’s earlier arrest, warned both Sheriff Behan and Virgil Earp that the cowboys should be disarmed because they meant trouble. Eyewitness H.F. Sills, a Sante Fe Railroad engineer, who proved to be a pivotal defense witness, hailed Virgil Earp outside Hafford’s Saloon shortly before the gunfight. The Clanton gang, he informed Virgil, had just threatened to kill the Earps on sight. They were standing in front of the O.K. Corral. Sills was a new arrival in town, had no prior acquaintance with any of the participants and knew nothing of political factions in Tombstone (Turner 181-190). He was never heard from again after the trial, which led to much speculation that he was a “ringer” brought in to bolster the Earps’ case. This allegation has never been proven.

Virgil Earp then made the fateful call to take his brothers and Doc Holliday down Fourth Street to Fremont Street to disarm the cowboys. The inclusion of Holliday in the

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17 Behan made a half-hearted effort to persuade the cowboys to disarm. Frank McLaury replied that he would disarm only if the Marshals would do the same (Turner 137).

posse may have ultimately tilted the fight in the Earps’ favor. The erstwhile dentist, although slightly built and suffering from tuberculosis, had a reputation for marksmanship and steel under pressure. Fatalistic, and possessing a violent streak, Doc may have considered the affray as one of many ways to die young, a fate to which he was resigned in light of his chronic health issues, which made him “cynical, bitter and morose” (Roberts 94). Roberts notes, “He whistled quietly and nodded to the people he passed” (194).

Doc had no legitimate law enforcement credentials. Wyatt described their relationship as “friends,” stating that Holliday had “come to my rescue and saved my life” during his tenure as city marshal of Dodge City, Kansas. When questioned as to whether Holliday had a particular position or was deputized, on October 26, 1881, Virgil Earp simply said, “I called on him that day for assistance to help disarm the Clantons and McLaurys.” Part III of this thesis will address Holliday’s questionable status as a peace officer under modern jurisprudence.

Virgil Earp handed off the shotgun to Holliday so that Holliday could conceal it underneath his long coat. Earp did not wish to cause excitement by walking down the street with the weapon (Guinn 194).

Cochise County Sheriff Behan approached the Earp party before they reached the cowboys. Depending on whose version is believed, Behan either informed Virgil that he, Behan, had already disarmed the cowboys, or that he was in the process of doing so. Behan would later testify that he personally searched Tom McLaury and Ike Clanton and

19 See Morey, Blaze Away, Doc Holliday’s Role in the West’s Most Famous Gunfight.
found them to be unarmed. However, he did concede Tom may have been able to conceal a weapon (Turner 137, 147).

Virgil and Wyatt obviously interpreted Behan’s comments to mean that the cowboys had no weapons. Virgil moved his sidearm to a position that made a draw more difficult and held Doc’s walking stick in his right hand. Wyatt pocketed his six-shooter (Turner 137-138, 164, 193; Guinn 196). The Earp party pushed past Behan. They walked four abreast, with Doc in the “containment” 20 position on the far left. Just off the sidewalk near Fly’s boarding studio stood Ike Clanton, Billy Clanton, Tom McLaury, Frank McLaury, and Billy Claiborne (Teferiller and Morey; Guinn 198, 222-223).

Upon approaching the cowboys, the group saw that Frank McLaury and Billy still carried revolvers, despite Behan’s earlier assurance that the cowboys had no weapons (Roberts 200). 21 Rifles were visible on two of the horses present. Virgil testified that he called out, “Throw up your hands, boys, I want your guns” (Turner 193). What happened next depends entirely upon which witness is believed.

“Let Them Have It”: The Mysterious Nickel-Plated Revolver

The shooting began quickly and lasted only half a minute. Claiborne fled the scene immediately after Virgil’s command to disarm (Turner 165). The first two shots, most witnesses agreed, were fired almost simultaneously, and then, as many witnesses reported, the fighting became “general.” Wyatt Earp testified that he fixed his aim on

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20 The containment position on the far left of the group, essentially backup, gave Holliday the job of watching the Earps’ backs and preventing any interference from cowboy allies (Roberts 196; Morey Blaze Away).

21 Virgil and Behan quarreled about this later.
Frank McLaury, whom he knew to be a superb marksman and a dangerous man. The Earps maintained that after Virgil gave his command to disarm, Billy Clanton and Frank McLaury immediately drew their weapons. Frank McLaury said, “We will” as he grabbed his revolver (Guinn 197). Tom McLaury threw his hand to his right hip, opening his coat, and darted behind a horse. Virgil said, “Hold on, I don’t mean that” (Turner 164). Doc Holliday lifted the shotgun and pulled back the hammers of the ten gauge (Guinn 197).

Wyatt maintained that Billy Clanton shot at him and he almost simultaneously returned fire, aiming at Frank McLaury. After the first few shots had been fired, Ike Clanton, who had been spoiling for a fight all day, grabbed Wyatt’s left arm in a desperate plea, or as Ike would later testify, in a gallant effort to prevent Earp from shooting (Turner 95). Seeing that Clanton had no gun, Wyatt brushed him off and informed him that the fight had already commenced and he best “go to fighting or get away” (Turner 95). Ike ran away (Guinn 228).

Wyatt’s shot hit Frank McLaury in the stomach. McLaury was as dangerous as Wyatt had expected, because he continued to fire and hit his mark. Doc Holliday had a bead on Tom McLaury, who had taken partial refuge behind one of the two horses carrying a rifle scabbard (Turner 96). Holliday shot Tom McLaury in the chest.24

22 Prosecution witnesses also testified to Virgil making this statement. It can be argued that Virgil was actually warning his own party not to act hastily.

23 There were two horses present, both with Winchester rifles in scabbards, according to Ike Clanton. (Ike and Tom McLaury had come to town on a spring wagon and did not have saddle horses.)
Holliday famously bantered with a gravely wounded Frank McLaury. Bloody, defeated, and defiant, McLaury staggered to his feet and said, “I’ve got you now,” as he took aim at Holliday. As reported by the *Tombstone Daily Nugget*, Holliday blithely replied, “Blaze away. You’re a daisy if you have” (27 Oct. 1881). It was at this point that McLaury shot Holliday, grazing his hip, and Holliday shot the cowboy in the chest. Morgan Earp likely got off the killshot because his round then hit McLaury in the head (Tefertiller and Morey).

Billy Clanton was shot twice, probably by Morgan. Even after being shot in his right wrist, Clanton continued to fight, switching gun hands and attempting to fire from his crumpled position. Morgan himself was shot through the shoulder, likely by Frank McLaury. Virgil was shot in the calf. Of the actual combatants, only Wyatt Earp came away from the gunfight without a single bullet wound.

Ike Clanton, Johnny Behan and others told an entirely different tale. According to them and other eyewitnesses (some of them friends of the cowboys), the Earp party was overheard to say, “You sons-of-bitches, you have been looking for a fight, and now you can have it!” (Turner 76, 87). More than one witness claimed to have heard either Morgan Earp or Doc Holliday to say, “Let them have it,” as they approached the scene. Witness Wesley Fuller insisted that Morgan and Doc fired first (Turner 72). Billy Claiborne echoed this claim (Turner 83). In the cowboys’ version, Tom McLaury and Ike Clanton were unarmed, and Billy Clanton and Frank McLaury raised their hands in

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25 The editor notes that Billy was an unreliable witness as to certain key events because he fled as soon as the shooting started.
surrender and only reached for their weapons after being fired upon (Turner 66). The cowboy faction argued that they were in the process of leaving town, which would have meant their possession of guns did not violate the Tombstone ordinance.

Behan testified that Billy Clanton pleaded for his life, that Billy told the Earp party that he did not want to fight. In a damning claim, he asserted that Tom McLaury threw open his coat not to draw a weapon, but to demonstrate that he was unarmed. “I have nothing” (Turner 138), McLaury told Virgil, according to Behan’s version. Behan had personally searched Ike Clanton and Tom McLaury for weapons before the fight, and he maintained that, to his knowledge, they were unarmed. Behan, like Fuller and Claiborne, insisted that the Earp party fired the first two shots (Martin 193).

Hungover, sleep deprived, and suffering a head wound, Clanton instigated most of the conflict and yet lived through it, leaving the others to suffer the consequences of his actions. He testified that as he fled to the landing of a nearby business, the rest of his party had their hands in the air when Morgan Earp and Doc Holliday opened fire (Turner 93-94). In Clanton’s view, the incident was nothing less than an assassination: “Well, sir, I cannot say that I was frightened when they first came there, because I had no idea they intended to murder the boys and me. But when I came to see them shooting the boys with their hands up, and knew I was disarmed, and while Wyatt Earp was trying to murder me, I knew I would be killed if I did not get away” (Turner 113). Remarkably, Clanton also

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26 As to Tom McLaury being unarmed, see, for example, the testimony of James Kehoe, a local butcher (Turner 69).
denied ever threatening the Earps earlier, despite nearly half a dozen witnesses testifying that he had (Turner 99).27

The cowboy version of events, although supported in some aspects by independent witnesses, had several inconsistencies and other downright implausible conclusions.28 One consistent theme in the cowboy (and later the prosecution) theory was that Holliday had been the first to fire—a nickel-plated revolver. Holliday was known to have one of these weapons and may indeed have carried one into the fight.29 But for the fight to have commenced in this fashion, Holliday would have had to have been capable of rotating the shotgun and the revolver, firing both multiple times, in the span of thirty seconds30 before finally finishing off Tom McLaury with the shotgun.31 In addition, the witnesses for the cowboy side had contradictory accounts of who Holliday actually shot at. Since Behan, Ike Clanton, and Billy Claiborne had fled to seek cover during the gunfight, their ability to observe the entire event was questionable.

27 Those witnesses included Wyatt Earp, Virgil Earp, Ned Boyle, H.F. Sills, and Julius Kelly.

28 Ike Clanton’s testimony contained some outlandish, and what has been deemed ludicrous, accusations about the Earp’s motivation to silence the cowboys in order to keep secret their own nefarious deeds, including profiting from the stagecoach robberies (Turner 120-121).

29 Only Billy Clanton’s and Frank McLaury’s revolvers were recovered and identified by serial numbers by the coroner, H.M. Matthews. Unscrupulous collectors have been known to claim false provenance on other weapons allegedly used during the shootout (Turner 135-136).

30 The fight lasted only an approximate half a minute (Tefertiller, Wyatt Earp 123).

31 The coroner’s report noted that Tom McLaury had twelve buckshot wounds (Turner 134).
Other cowboy claims eroded the prosecution’s theory. Ike Clanton testified that Morgan Earp shot Billy Clanton at close range, from “within two or three feet,” even as Billy still had his hands up (Turner 94). However, Billy Clanton had no powder burns nor marks on his clothes, and the injury to his wrist was inconsistent with his hands being in the air (“Opinion” 30 Nov. 1881) when he was shot. Additionally, witness Robert Hatch testified that Billy Clanton was attempting to fire his pistol even as he lay dying and demanding the someone fetch him more ammunition (Turner 178).

Shortly after the gunfight, the Cochise County Coroner, H.M. Matthews impaneled a group of citizens to conduct an inquest. The panel heard testimony from nine witnesses. After a brief deliberation, the panel concluded that Billy Clanton, Tom McLaury, and Frank McLaury came to their deaths from the effects of pistol and gunshot wounds inflicted by the Earps and Doc Holliday. This finding was met with scorn, because it did not address the justification or lack thereof for the deaths, but merely confirmed that the cowboys were dead. From being shot. By bullets. The *Tombstone Daily Nugget* snidely proclaimed in a headline, “Good to Know,” followed by the commentary, “We might have thought they had been struck by lightning or stung to death by horses” (30 Oct. 1881).

Under territorial law, Ike Clanton was permitted to make an affidavit for a warrant of arrest. Chapter 11, Section 85 of the Compiled Laws of the Territory of Arizona required the receiving magistrate to examine the complainant under oath as well as any witnesses. The evidence presented must set forth facts “tending to establish the commission of the offense and the guilt of the defendant.” If satisfied that a reasonable
basis existed that the defendant committed the crime, the statute required the magistrate to issue an arrest warrant (Ariz. Comp. Laws Ch. 11 Secs. 85-87).

The Territory of Arizona was hardly without law and order. Despite the harshness of life and death and the alarming frequency with which men took lives on the frontier, a robust legal system existed. Territorial law addressed, in detail, matters ranging from mining law, to animal cruelty, to criminal proceedings (Veil). The coroner’s inquest that followed the shootout was not happenstance. The compiled laws explicitly set out the requisite procedure.

In short order, Clanton received his warrant just as public sentiment began to turn against the Earps and Holliday. The Daily Epitaph continued to portray the shooting as justified and the Earps were hailed as “Dead Shots” in the San Francisco Exchange. But after the undertaker had propped the open coffins behind the parlor window with a sign that read, “Murdered in the Streets of Tombstone,” the bodies of Clanton and the McLaury brothers were borne through the streets on their way to the cemetery. The procession attracted a crowd of hundreds (Tefertiller 125-126).

Whether murder could be proven, however, was an entirely different question. Justice of the Peace Wells Spicer began his preliminary hearing on October 31, 1881. It lasted nearly a month.

PART II: THE SPICER HEARING

Evidence, Law, and Procedure

Wells Spicer became a member of the Iowa bar in 1853 (Williams). In 1856 he was elected a county judge. Later, he became a U.S. Commissioner in Utah and ultimately made his way to the Arizona territory in 1878. In 1880, Tombstone, which had
been in Pima County, was included in the newly formed Cochise County. Spicer joined the Arizona bar that same year. A former Republican delegate in Iowa, Spicer continued his political endeavors. They eventually led to his appointment as justice of the peace for the First District Court of the Arizona Territory, which included limited jurisdiction over federal criminal matters. Although he lacked jurisdiction to conduct murder trials, he had authority to conduct preliminary hearings on such charges (Williams).

Spicer excused Morgan Earp and Virgil Earp from attendance at the hearing because they were both home recuperating from their wounds. He set bail for Wyatt and Holliday at $10,000 each, which they promptly posted (Tefertiller 130).

The lead prosecutor was Lyttleton Price. Price, like Spicer and the Earps, was a Republican and had been a supporter of Marshal Virgil Earp. Perhaps to balance the team, a Democrat, former Confederate Officer, and cowboy attorney named Ben Goodrich was added (Lubet, The Forgotten trial of Wyatt Earp).

The most unusual member of the prosecution team was William McLaury, brother of Tom and Frank. He arrived in town in early November just after the shooting. McLaury’s thirst for vengeance for his brothers’ death bordered on bloodlust. He vowed to make the Earps pay, in court or out (Tefertiller 134-135; Johnson). He also financed a great deal of the prosecution’s case. As will be discussed later, McLaury’s emotional, and arguably irrational, insistence on pursuing a charge of premeditated murder may have doomed the prosecution from the start.

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32 The formation of Cochise County and its attendant need for government and elected officials, including sheriff, was also part of the evolution of animosity between Wyatt Earp and Johnny Behan because both men had political ambitions.
Wyatt Earp hired defense attorney Tom Fitch, a capable and wily litigator. Fitch was tasked with ending the inquiry at the preliminary hearing stage with a Republican judge rather than let Earp take his chances with a rural, Democratic, and possibly cowboy-friendly, jury (Williams). Thomas Drum represented Holliday (Roberts 206).

Although Spicer made an early attempt to close the proceedings, he soon relented and both local papers covered the proceeding in depth (Roberts 205-206). The prosecution’s case started out strong, with Sheriff Behan portraying the Earps and Holliday as cold-blooded killers that he tried to dissuade from confronting the cowboys. Early on, Spicer was persuaded to revoke bond on the strength of the prosecution’s case. He reversed this decision sixteen days later, after the defense mounted a strong attack on the prosecution’s witnesses and began calling their own witnesses (Tefertiller 136, 149).

Fitch’s cross examination of Ike Clanton was especially withering. Clanton contradicted himself, spun wild tales about the Earps’ alleged illegal activities, and could not provide a single logical explanation for why Wyatt Earp did not simply gun him down when he had the chance, especially if he had intended to murder Ike all along.

Likewise, the prosecution, for want of a theory of the case, never could string together a compelling narrative as to why the Earps and Holliday would choose, on that particular afternoon, to gun down unarmed men. And, if that had been their intention, why would Virgil and Wyatt have pocketed their sidearms, making it more difficult to get off a quick shot?33

Virgil Earp’s confrontation with Behan after the shooting also belied any intent to simply ambush the cowboys. Virgil Earp, once satisfied that the cowboys had disarmed, as per Behan’s assurances, was apoplectic after the fact that the cowboys were actually “heeled,” that is, armed, and ending up drawing first. He confronted Behan angrily about the lie (Turner 193; Roberts 200).

Motive is not a legal element of murder. The prosecution need only prove that the defendant killed unlawfully, not why he killed. Nonetheless, jurists and jurors instinctively look for some reason why someone would premeditatedly take a life. Add in the element of a law enforcement officer performing his duty and being met with armed resistance, and the prosecution’s narrative becomes even less palatable. Ike Clanton and murder-defendant-under-indictment Billy Claiborne would hardly be considered star witnesses in any century. But the prosecution did have the testimony of a well-liked sheriff and other “neutral” citizens. Interestingly, Fitch did not press Behan about his romantic rivalry with Wyatt over Josephine Marcus. The subject matter may have been too indiscreet for the Victorian era, but surely would be a subject of cross examination today because it would further prove Behan’s bias against Wyatt.

They also had the testimony of Martha King. She had been in Bauer’s butcher shop at the time of the shooting. She testified that she heard one of the men in the Earp party say, “Let them have it!” to which Holliday replied, “All right.” Frightened, she ran to the back of the shop.

Neither side called other potential eyewitnesses, and some accounts are therefore lost to history. These included Holliday’s companion Kate Harony. She was, at best, an
unpredictable ally. She despised the Earps and briefly took up with cowboy Johnny Ringo during Holliday’s incarceration (Guinn 251; Roberts 154-156).

The prosecution never regained its early momentum. Eyewitness H.F. Sills, an independent witness if ever there were one, heard the cowboys making threats against the Earps near the O.K. Corral. He saw the cowboys draw their weapons, saw Virgil holding up the walking stick, and saw Billy Clanton shoot first. The prosecution tried and failed to find contradictions or potential bias in his testimony (Turner 188-190; Tefertiller 148). And it bolstered Wyatt Earp’s prepared statement, one that Spicer permitted into evidence over objection, and which did not subject Wyatt to cross examination.

An 1881 amendment to the territorial laws provided that a defendant in a criminal proceeding could make a statement (with or without oath) addressing five specific areas: The defendant’s name and age, where he was born, his residence and how long he has resided there, his business or profession, and, lastly, “Give any explanations you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation” (Acts and Resolutions 1881, Secs. 133, 135).

Attorney Fitch persuaded Judge Spicer that not only should Earp be permitted to make such a statement, he should be permitted to read prepared remarks (Tefertiller 142).

Earp’s prepared statement squarely hit upon pivotal factual and legal issues. He emphasized that the cowboys had been threatening him for nearly a year. He also wove in a narrative designed to demonstrate justifiable homicide by stating, “I did not intend to fight unless it became necessary in self-defense and in the performance of official duty. When Billy Clanton and Frank McLaury drew their pistols, I knew it was a fight for life,
and I drew in defense of my own life and the lives of my brothers and Doc Holliday.”

In his statement, Earp not only made an eloquent case for his reasonable fear for his own safety and the safety of others, he cited his official law enforcement capacity and that of his brothers and Holliday. He essentially handed Spicer an affirmative defense of justifiable homicide.

Earp’s legal team also produced two affidavits of his good character signed by sixty-two citizens of Dodge City and Wichita, Kansas. Spicer admitted them over objection (Williams).

Under the territorial law, murder was defined as the unlawful killing of a human being, with malice aforethought, either express or implied (Comp. Laws Ch. 11, Sec. 19). Justifiable homicide was defined as the “killing of a human being in necessary self defense or in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony…” (Comp. Laws Ch. 11, Sec. 29).

Attorney Fitch undoubtedly had Chapter 11, sections 30-32 of the territorial laws in mind when he assisted Earp in crafting his statement. These sections provide:

A bare fear of any of these offenses… shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person…

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34 In addition to the trial “transcript” edited by Turner, the text of Earp’s full statement is also available online through the University of Missouri at Kansas City’s Law School. law2umkc.edu/faculty/projects/ltrials/earp/earptestimony.html. For an explanation of how the transcript of the proceedings has been stored and preserved over the years, see Turner 1-16.

35 Interestingly, Earp also said, “I believe I would have been legally and morally justified in shooting any of them on sight.” (Turner 165).
…It must appear that the danger was so urgent and pressing that, in order to save his own life or prevent his receiving great bodily harm the killing of the other was absolutely necessary; and it must appear, also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant.

Although Spicer did not explicitly address Doc Holliday’s justification for what amounted to a police-involved shooting during a misdemeanor incident, he may have perused the remainder of Chapter 11, Section 32 of the territorial laws.

If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, and by reason of such resistance he or she be killed, the officer or private so killing shall be justified; provided that such officer or private person … shall have used all reasonable efforts to take the accused without success and… there was no prospect of being able to prevent injury from such resistance, and the escape of such person.

The latter section does not fit squarely with Holliday’s involvement in the cowboys’ botched “arrest.” They were not technically under arrest, nor were they escaping custody, nor was Holliday aiding law enforcement in attempting service of process, which would have afforded him lawful authority under Chapter 10, Section 94.

The territorial laws, however, did give some more general gravitas to a private person acting in the capacity of law enforcement. And Holliday, who did not testify, had Virgil Earp confirm that he, as town marshal, called upon Holliday for assistance.

A provision relating to the improper use of deadly weapons in Chapter 10 of the compiled laws provided that: “It shall be the duty of all sheriffs, deputy sheriffs, constables and all private citizens to see that the provisions of this act are enforced, by
informing on all persons violating its provisions, by having them arrested and brought before the proper officer for trial and punishment.” It would have been a stretch to apply this section to Holliday’s actions on October 26, 1881, but it does demonstrate that private citizens were afforded authority to participate in law enforcement activities. Chapter 11, Sections 104 and 119 of the compiled laws also had provisions that allowed a private citizen to make misdemeanor and felony arrests.

It was not altogether clear that Virgil Earp intended to arrest anyone outside the O.K. Corral, or serve any type of legal process, with or without the help of a private citizen. His stated intention was consistently to disarm the cowboys, who were armed and making threats within with city limits. In his opinion, Spicer never touched upon whether Holliday enjoyed the legal status of a peace officer. Morgan Earp never testified and, because he was killed only four months later, he never had the opportunity to preserve his side of the gunfight in writing (Tefertiller 199-201).

**Judicial Overreach?**

For the most part, Spicer appeared to follow the letter of the law in promptly convening the hearing and in ensuring the Defendants had counsel and were afforded due process. One incident, however, stands out as singularly inappropriate by modern judicial conduct standards.

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36 This is especially true since Tom McLaury may have been unarmed when Doc gunned him down, and Frank McLaury was already mortally wounded when Doc and Morgan Earp finished him off. Frank McLaury had, however, shot Doc, Morgan and probably Virgil before finally being felled. This provision can also be interpreted to apply not to physical engagement of defendants, but only to the provision of information.
Addie Bourland was a dressmaker. Her shop on Fremont Street stood across from Fly’s boarding house. From her window, she saw the Clanton party standing and the Earp party approaching. According to her testimony, Doc Holliday ("a man with a long coat on") walked up to one of the cowboys who was holding a horse and put a pistol to his stomach. Holliday then stepped back a few feet and the firing commenced (Turner 207). She described Holliday’s weapon as a “very large pistol,” but not nickel-plated.37 She did not know who fired first.

Even with the inconsistency as to Holliday’s weapon, Bourland’s testimony hurt the defense, for it portrayed Holliday as the aggressor. Judge Spicer visited Bourland at her home during the noon court recess and spoke with her privately because he believed she knew more than she had testified. He re-called her as a witness in the afternoon. Over strenuous prosecution objection, Spicer questioned Bourland a second time. In her afternoon testimony, Bourland stated that she did not see the cowboys with their hands up. Critically, she also said that all parties seemed to be firing on both sides.

The prosecution questioned Bourland about her lunchtime conversation with Spicer. She stated that Spicer had asked her a few questions, including whether the cowboys had their hands up, and whether she would have been able to see it if they had. Bourland was convinced that she would not have overlooked the sight of the cowboys with their hands in the air (Tefertiller 151).

37 It may be that Bourland actually saw the barrel of Holliday’s shotgun and mistook it for a pistol. It is improbable that the thin and tubercular Holliday could have physically switched out a pistol and shotgun during the fight (Tefertiller 150-151).
Bourland’s testimony undercut the prosecution theory of surrendering and/or unarmed men. After a few more defense witnesses, the prosecution did not call any rebuttal witnesses and rested without argument.

**The Decision**

Spicer issued his opinion in the afternoon the following day, November 30, 1881. Many felt that his decision was a forgone conclusion in light of the strong defense case, and Spicer’s pro defense evidentiary rulings in the latter portion of the trial (Tefertiller 148-149; *Daily Nugget* 1 Dec. 1881). In his opinion, Spicer states that he considered only conceded facts or facts established by a “large preponderance” of the evidence (“Opinion” 30 Nov. 1881). This excluded consideration of Clanton’s more outlandish claims about Holliday’s stage coach robbery involvement as well as the prosecution’s claims that the cowboys had their hands up in surrender (Tefertiller 152).

Spicer’s opinion offers more than an analysis of frontier justice. It provides a glimpse into an era in which law and order prevailed only by the slimmest of margins in the cow towns and mining camps that had sprung up in the territories.

Spicer began his opinion by acknowledging the public’s interest in the case. He then meticulously set out the events leading to the dispute, focusing on Ike Clanton’s arrest earlier in the day and the threats that were exchanged between Clanton and Wyatt Earp.

[Clanton,] the prosecuting witness in this case, was about the streets and in several saloons of Tombstone, armed with revolver and Winchester rifle, declaring publicly that the Earp brothers and Holliday had insulted him the night before when he was unarmed, and now he was armed and intended to shoot them or fight them on sight (“Opinion” 30 Nov. 1881).
Having established that Clanton had made threats and that the Earps were aware of the threats, Spicer then noted that Virgil Earp was the duly qualified chief of police and entrusted with the duty to enforcing the no carry city ordinance. He then noted that Morgan Earp was likewise a law enforcement officer. The opinion recounts the “buffaloing” of Ike Clanton. Spicer dismissively added that “whether this blow was necessary is not material here to determine” (“Opinion” 30 Nov. 1881).

After recounting the exchange in which Wyatt struck Tom McLaury with a pistol, Spicer then turned to the critical decision by Virgil Earp to gather his brothers and Holliday to confront the cowboys: “I am of the opinion that the defendant Virgil Earp, as chief of police [in calling on his brothers and Holliday for assistance] committed an injudicious and censurable act.”

Yet, Spicer continued, this must be considered in light of the conditions of affairs incident to frontier country, the lawlessness and disregard for human life; the existences of a law-defying element in [our] midst; the fear and feeling of insecurity that has existed; the supposed prevalence of bad, desperate and reckless men who have been a terror to the country and kept away capital and enterprise and consider the many threats that have been made against the Earps, I can attach no criminality to his unwise act (“Opinion” 30 Nov. 1881).

Having made his ruling, with a wrist slap to Virgil, Spicer then spends several more pages explaining the legal basis for exonerating the Defendants.

First, after the altercations with Virgil and Wyatt Earp, and after Billy Clanton and Frank McLaury arrived in town, the cowboys proceeded to purchase ammunition. Being armed, they then crossed the street to the O.K. Corral and passed through Fremont Street for an unknown purpose. Spicer acknowledged that the cowboys maintained they
were leaving town, while the Defendants believed they were mustering for the purpose of an attack or resistance to being disarmed.38

The opinion then turns to Virgil Earp’s state of mind during the altercation, with Spicer concluding that Virgil “honestly believed… that their purpose was, if not to attempt the death of himself and his brothers, at least to resist with force and arms” (“Opinion” 30 Nov. 1881). Virgil’s belief was well founded, in Spicer’s view, in light of information Virgil had received from witnesses such as H.F. Sills.

The judge then posed a rhetorical question: “Was it for Virgil Earp as chief of police to abandon his clear duty as an officer because its performance was likely to be fraught with danger?” Put another way, had the Marshal not attempted to disarm the cowboys, would history have deemed him cowardly and incompetent if the cowboys had taken an innocent life that day?

Spicer answered his own question by absolving the Defendants of any “malice aforethought” as they approached the cowboys.

The Defendants, the judges wrote, were going where they had to go, doing what they had a right and a duty to do, and armed as was their right and duty.

But did at least two of the deceased surrender, or attempt to surrender? Spicer acknowledged that “witnesses of credibility” did testify that at least two of the men yielded to the Virgil Earp’s command. But other witnesses of credibility testified that Billy Clanton and Frank McLaury met the demand by drawing their pistols. The

38 The “just leaving town” argument is still debated. But Ike Clanton and Tom McLaury had not yet hitched their wagon. Frank McLaury and Billy Clanton had just arrived and not even unsaddled their horses, although it is true that McLaury had legitimate business to conduct in town (Roberts 194-195; Guinn 238; Tefertiller 120).
discharge of firearms, in Spicer’s view, was, from both sides, “almost instantaneous” (“Opinion” 30 Nov. 1881).

As to Tom McLaury, Spicer conceded that it was unknown whether or not he was armed. However, Spicer dismissed the question as irrelevant. The Clantons and McLaurys, he reasoned, had between them at least two six shooters in hand and two rifles on their horses. If Tom McLaury were one of an armed party who were in the act of giving armed resistance, and he got shot in the melee, then whether or not he was actually armed didn’t “criminate” the Defendants one way or the other (“Opinion” 30 Nov. 1881).

Obviously, Billy Clanton and Frank McLaury were armed, and in fact wounded Morgan Earp and Virgil Earp, noted Spicer. On this sticky issue of the alleged cowboy “surrender,” Spicer determined that he would give the most credibility to those witnesses who were unacquainted with the parties, and who observed the conflict from a short distance. These persons, Spicer believed, were more likely to have an accurate recall than those who were mingled up in, or running away from, the affray. His analysis therefore largely discounted Billy Claiborne, Ike Canton, and John Behan.

Instead, Addie Bourland’s and H.F. Sills’ testimonies came front and center in Spicer’s decision to exonerate the Earps and Holliday. Spicer came to the factual conclusion that Wyatt’s Earp’s testimony was corroborated, and that the demand for surrender was met with Billy Clanton and Frank McLaury drawing or making motions to draw their weapons. As noted earlier, Spicer also found that the physical evidence did not support the “hands up in surrender” theory. Both Tom McLaury and Billy Clanton’s wounds were inconsistent with this assertion. Spicer also dismissed out of hand Ike
Clanton’s claims that the Earps and Holliday wanted him dead to cover up their own crimes.

In an interesting development, Spicer relied on Sheriff John Behan’s testimony to support his decision. Although Behan had portrayed the Earps and Holliday in the worst possible light, Spicer primarily focused on one portion of Behan’s testimony, in which Behan described Frank McLaury’s “demur” to the sheriff’s order to turn over his weapon (Turner 137) just before the fight started. The fact that Frank McLaury refused to give up his guns, to the county sheriff no less, unless the city marshal gave up his, seemed to particularly rankle Judge Spicer.

The proposition that these “desperate, reckless and lawless men” who “banded together for mutual support and living by felonious and predatory pursuits,” who would “parade the streets armed with repeating rifles and six shooters and demand that the chief of police and his assistant should be disarmed,” wrote Spicer, was “monstrous and startling.” Spicer’s conclusions also portrayed Sheriff Behan as ineffectual and lacking courage.

In concluding his factual findings, Judge Spicer noted that the deceased, far from being victims of a wanton ambush, had stood their ground and voluntarily engaged in mutual combat (“Opinion” 30 Nov. 1881). He rejected the prosecution’s theory that the Earps shot first in criminal haste. Spicer actually praised the Earps for acting wisely in their own self-defense, stating, “They saw at once the dire necessity of giving the first shots, to save themselves from certain death!”
Spicer ruled that the Defendants were “fully justified in committing these homicides—that is a necessary act, done in the discharge of an official duty.” He applied the same legal standard as that employed by a grand jury in reaching this conclusion.

“The Grand Jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment, will, if unexplained or uncontradicted, warrant a conviction by the trial jury” (Comp. Laws, Ch. 11, Sec. 188). In other words, Spicer had to evaluate the evidence as though he were passing on the legitimacy of a trial jury’s verdict. If the evidence was insufficient to sustain a guilty verdict, then the Earps and Holliday were free men. If, in his estimation, there was not sufficient cause to believe the defendants guilty, then he was duty bound to release them.

And thus, to the victors went the right side of history: Brave lawmen stared down outlaws and would-be murderers and lived to tell the tale. Or so the judge said. The long walk down Fremont Street has been recreated innumerable times in movies and television, and spawned any number of “slow walk” sequences in which heroes and heroines coolly stride toward battle. Figures like Doc Holliday and Wyatt Earp have come to represent that quintessentially American era known as the Old West. The rugged lawman and the antihero, quick to violence, never backing down from a fight, but always defending the weak—this archetype endures.

But might their legal fate be different today? The remainder of this thesis examines the application of modern jurisprudence and cultural factors to the facts of the gunfight, concluding that the O.K. Corral Defendants would be more likely to face indictment in a 21st-century federal courtroom; however, a state grand jury might well reach the same conclusion as Judge Spicer.
PART III: PROBABLE CAUSE VS. LIKELIHOOD OF CONVICTION

19th-Century Law Enforcement in a 21st-Century Courtroom

The Federal System

Under the modern Federal Rules of Criminal Procedure, the prosecution must seek an indictment by a grand jury to charge a felony unless the defendant waives the procedure (Fed. R. Crim. Pro. 7). Unlike the 1881 proceeding, neither the Earps, nor Holliday, nor their attorneys, would have the right today to be present when the prosecution presents its case to the grand jury. There is no constitutional requirement that the prosecution present exculpatory evidence (U.S. v. Williams). The grand jury may, however, within its discretion, hear from the target of the indictment if the target requests; however, the grand jury is not the ultimate decider of guilt or innocence, and a grand jury proceeding is not adversarial (Model Grand Jury Charge 20; U.S. v. Calandra). Any attempt of a defendant outside this process to communicate with or influence a grand jury would subject him to criminal penalties (18 USCA §1504).

Federal Rule of Criminal Procedure 6 sets forth the grand jury procedures. It provides that the proceedings are confidential and closed to the public (Model Grand Jury Charge 33). Judge Spicer bowed to intense public pressure to open the 1881 proceedings, which is the main reason why there is any extant record at all of the testimony (Nugget 3 Nov. 1881). The secrecy of the modern grand jury, by contrast, would prevent the public and press from hearing the evidence.

The decision to indict, and on what charge, rests solely with the Office of the United States Attorney. An aggrieved survivor such as Ike Clanton would have no private
right to obtain an arrest warrant by simply filing an affidavit. A vengeful relative such as Will McLaury would have little to no chance of joining a prosecution team due to modern notions of conflict of interest. Certainly the prosecution would not be privately financed.

Spicer applied the burden of proof on the prosecutors to show the likelihood of a conviction at trial. Today’s federal grand jury receives instruction:

…it is not necessary that you find that individual guilty beyond a reasonable doubt. You are not a trial jury and your task is not to decide the guilt or innocence of the person charged. Your task is to determine whether the government’s evidence as presented to you is sufficient to cause you to conclude that there is probable cause to believe that the person being investigated committed the offense charged. To put it another way, you should vote to indict where the evidence presented to you is sufficiently strong to warrant a reasonable person’s belief that the person being investigated is probably guilty of the offense charged (Model Grand Jury Charge 25; emphasis added).

Out of a minimum panel of sixteen grand jurors, at least twelve must vote to indict under Rule 6. Because the prosecution is the only side presented, the charging authority has sole discretion in determining what evidence the grand jurors hear or not. The prosecution has no duty to present exculpatory evidence (U.S. v. Williams). Wyatt and Virgil Earp would have no opportunity to present their eloquent, clearly well-rehearsed recollections of the gunfight. And the prosecutor would be able to present hearsay evidence (Model Grand Jury Charge 22).

Federal cases have addressed the prosecution’s ethical duty, if any, to ensure the quality and reliability of the evidence in the grand jury proceeding. Generally speaking, though, the validity of an indictment is not affected by the character of the evidence (U.S. v. Calandra). It is debatable whether the prosecution even has a duty to prevent the panel
from hearing perjured testimony (People v. Becerra 1064, 1070). Although the court in United States v. Basurto held that due process required dismissal of an indictment that had been secured by perjury, this decision has been met with “mixed reviews” (People v. Becerra 1072). Subsequent opinions have held that dismissal is only appropriate if the conduct was “flagrant” and the perjured testimony was knowingly presented (People v. Becerra).\(^\text{39}\)

Because the prosecution has sole discretion to seek an indictment, the grand jury would hear carefully selected evidence that supports the prosecution’s theory of the case. A defendant has no subsequent right to challenge an indictment unless the grand jury panel contained an unqualified member, such as a non-citizen, or felon (United States v. Calandra). Witnesses such as John Behan could offer unimpeached testimony. The lurid political squabbles and love triangle would have to wait for the jury trial unless the panel asked the right questions or another witness raised the issue. The panel itself can ask questions and issue witness subpoenas, and would have wide latitude in whom to compel to appear, even if the prosecution did not intend to call them (Blair v. U.S.). If the panel knew about the existence of other witnesses, perhaps a witness such as H.F. Sills or Addie Bourland would be heard and considered. Even so, the grand jury would be duty-bound to indict upon a showing of probable cause.

It should be noted that, despite the lack of duty to do so, the Department of Justice states that its internal policy requires disclosure of substantial exculpatory evidence that directly negates guilt to the grand jury, if the prosecutor is personally aware of it. What

\[^{39}\text{See also U.S. v. Udziela, 671 F. 2d 995 (7th Cir. 1982); U.S. v. Harmon 833 F. 3d 1199 (9th Cir. 2016).}\]
this means in actual practice is unknown and a prosecutor’s failure to abide by this policy would not require dismissal of an indictment.\(^{40}\)

In 2013, the American Bar Association petitioned the Judicial Conference of the United States to amend the model charge. The current charge on the probable cause standard tells the grand jury that it “should vote to indict” if the evidence is sufficient. The rejected change would have instructed the panel that it “may vote to indict only” if the evidence warrants. The Conference declined to adopt the proposed change and thus, there is no “jury pardon” mechanism (ABA Washington letter Apr. 2014).

Aside from the standard of proof differences, modern jurisprudence would not suborn the court’s direct questioning of witnesses outside of the courtroom. The unusual incident with Judge Spicer and Addie Bourland would be unthinkable under the Rules of Judicial Conduct. Canon 4 expressly prohibits *ex parte* communication. Judges are not even present during grand jury proceedings.\(^{41}\) Addie Bourland’s second round of testimony, which was favorable to the Earps, would not occur today.

Another significant distinction involves the grand jury’s limited ability to consider affirmative defenses. If probable cause exists for the offense, the panel has a duty to indict. The 1881 decision, in contrast, passed on the defense of justifiable homicide because the Defendants had an opportunity to present the issue through cross examination and witnesses.


\(^{41}\) Spicer also committed another potentially censurable act by sending a scathing letter to the newspaper after the verdict in which he defended his decision (*Tombstone Epitaph*, 13 Dec. 1881).
The federal crime of first-degree murder requires that the prosecution prove that
1) The defendant unlawfully killed the victim; 2) the defendant killed the victim with
malice aforethought; 3) the killing was premeditated; and 4) the killing occurred within
the jurisdiction.

“To kill with malice aforethought means to kill either deliberately and
intentionally or recklessly with extreme disregard for human life” (Model Jury
Instructions Sec. 8.107). The element of premeditation requires either planning or
deliberation. The prosecution need not demonstrate any particular amount of time, so
long as it is sufficient for the defendant to form the intent to kill (Model Jury Instructions
Sec. 8.107).

The federal self-defense jury instruction is not dissimilar to that employed by
Judge Spicer.

The defendant has offered evidence of having acted in self-defense. Use of
force is justified when a person reasonably believes that it is necessary for
the defense of oneself or another against the immediate use of unlawful
force. However, a person must use no more force than appears reasonably
necessary under the circumstances. Force likely to cause death or great
bodily harm is justified only if a person reasonably believes that such
force is necessary to prevent death or great bodily harm (Model Jury
Instructions Sec. 6.8).

Federal courts have developed a robust body of case law on self-defense since the 19th
century. In a series of cases over several decades, the Supreme Court rejected the notion
that a person acting under the threat of imminent peril must somehow detach to come to a

\[\text{For a more detailed discussion on the evolution of the federal common law, see}
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\[\text{David Kopel, How the United States Supreme Court Confronted a Hanging Judge in the}
\]
\[\text{Nineteenth Century and Taught Some Lessons for Jurisprudence in the Twenty-First, 27}
\]
\[\text{American Journal of Criminal Law 293 (2000).}\]
reasoned decision on how to react (Allen v. United States). From these decisions comes an oft quoted maxim that “detached reflection cannot be demanded in the presence of an uplifted knife” (Brown v. United States). This sentiment echoes Judge Spicer’s conclusion that the Earps shot only to avoid certain death.

In a grand jury proceeding, of course, the defendant produces no evidence supporting an affirmative defense. The prosecution’s case, is usually, by operation of law, “unexplained or uncontradicted.” If the grand jury returns an indictment, defendants have the opportunity to present exculpatory evidence at the subsequent trial. At that stage, the trial jury determines whether the defendants have been proven guilty or not.

It would be within the grand jury prosecutor’s discretion to omit evidence unfavorable to its case such as Ike Clanton’s threats, Virgil Earp’s attempt to diffuse the situation, or any of the myriad facts that Spicer relied on in exonerating the O.K. Corral Defendants. A prosecutor with hand-picked witnesses and no duty to present exculpatory evidence has far better odds of obtaining an indictment than did Lyttleton Price in 1881.

The tide may be turning, however, to a Spicer-esque proceeding. In the highly publicized police-involved shooting in Ferguson, Missouri, the state prosecutor chose to present all of its evidence to the grand jury in 2014 and not just hand-selected testimony that favored indictment of the officer. The grand jury declined to indict (Welty). Whether this practice will become more common in other state or federal courts is unknown, but it has been argued that presenting “all” of the evidence in context is a more fair exercise of prosecutorial discretion. Additionally, if the proposed amendment to permit a so-called jury pardon is ultimately adopted, a grand jury may be convinced of probable cause, but
nonetheless have discretion not to indict. This small change in wording would provide the grand jury with substantially more discretion.

Any indictment obtained today on the O.K. Corral evidence may not necessarily be for premeditated murder. Even if one believes that the Earp side shot first, or that some of the cowboys were unarmed, it must be conceded that the shooting was more likely the result of flaring tempers and misjudgment rather than cold-blooded murder.

Will McLaury’s rabid insistence on pursuing a first-degree murder charge doomed the case from the start (Guinn 246). A United States Attorney weighing his options today may lean toward either seeking indictment for second-degree murder, or voluntary or involuntary manslaughter (18 U.S.C. Sec. 1111 and 1112; Model Jury Instructions Sec. 8.108, 109, 110). Either of these lesser charges would provide an opportunity to find the defendants culpable without accepting an untenable narrative that the Earps simply woke up and decided to kill the Clanton/McLaury party on sight. Without the influence of a vengeful relative, the prosecution would be far more likely to successfully indict at least Morgan Earp and Doc Holliday. A neutral prosecutor today could make a compelling argument that the Clantons and McLauryys were belligerent, to be sure, but not an actual threat, and that Morgan Earp and Holliday simply overreacted to the situation and fired impulsively.

The Earps and Holliday essentially threw in their lots together during the Spicer hearing, and Spicer’s opinion did not distinguish the degree of culpability among the four defendants. But for his mild rebuke of Virgil, the Defendants were treated interchangeably. Modern grand juries, to the contrary, are expressly instructed to consider probable cause for each defendant separately, even if multiple persons are charged.
Because Doc Holliday and Morgan Earp were portrayed as the most likely initial shooters by the prosecution (not to mention the “Let them have it” comment, supporting premeditation), a 21st-century grand jury could well find that the Wyatt and Virgil were hapless victims of their trigger-happy comrades.

Because the Territory of Arizona had no other state criminal procedural laws, Justice of the Peace Spicer applied the compiled laws previously discussed. Had the shooting occurred in modern day Cochise County, however, charges could be sought in state court. Although Virgil and Wyatt Earp had both previously acted in the dual capacity of federal law enforcement, on October 26, 1881, they were deputized city marshals enforcing a local ordinance.

The current state laws of Arizona would provide a more hospitable venue for the Earps and Holliday than the 21st-century federal court.

*Arizona State Procedures*

Chapter 21 governs Arizona’s grand jury procedures. Like the federal system, the standard for indictment is the existence of probable cause that the defendant committed the crime. Unlike the federal system, however, Arizona procedure addresses evidence presented on a defendant’s behalf. Section 21-412 states that the grand jury is “under no duty to hear [the evidence] but may do so.” Like a federal grand jury, an Arizona panel can insist on receiving additional witnesses or evidence.

A significant difference between state and federal practice in Arizona is that Arizona law requires prosecutors to inform the grand jury of favorable defense evidence (Bashir v. Pineda). Additionally, the panel must be informed if a defendant requests to present evidence (Trebus v. Davis).
State law provides for a much broader basis to challenge an indictment than that allowed in federal court. The Arizona Supreme Court has held that grand jury proceedings may be challenged for denial of substantial procedural rights and that defendants are entitled to a fair and impartial presentation of evidence during the grand jury proceeding (Crimmins v. Superior Court).

Arizona resident Thomas Crimmins successfully challenged his indictment for kidnapping and assault, alleging that the prosecution did not provide the grand jury with the state’s citizen arrest statute, and, along with inaccurate testimony by law enforcement, this omission warranted an entirely new probable cause determination (Crimmins v. Superior Court). Crimmins had returned home to find his home burglarized. Suspecting that a teenage neighbor was the culprit, he proceeded to the boy’s home, then tracked him to a local arcade. When he located the youth, Crimmins saw that one of the boy’s companions was wearing headphones similar to a pair stolen from his home. Crimmins detained the boy and retrieved the headphones. He forced another young man into his vehicle and proceeded to question him about the burglary. He allegedly locked the young man in his vehicle while continuing to verify information about the burglary with the original teenage suspect. At some point, the youth locked in his car escaped and fled. Crimmins was later arrested after this youth reported to his parents that he had been detained and questioned by Crimmins.

The court noted that the burglary and kidnapping investigation were intertwined but that the grand jury was not properly informed of these facts. In fact, the state’s only witness, a law enforcement officer, testified that the alleged kidnapping victim had no involvement in the burglary, when other evidence suggested he did (Crimmins v.
Superior Court. One of the grand jurors specifically asked whether a burglary had taken place and when, and how long Crimmins had detained the youth.

Moreover, the court noted it was clear from Crimmins’ phone call to police that he believed he had effectuated a citizen’s arrest.43 The concurring opinion in Crimmins urged the court to go even further, noting compelling reasons for preserving the independence of the grand jury by requiring the prosecution to make a fair presentation. Because “crucial issues of fact” existed as to whether Crimmins legally effectuated a citizen’s arrest (thus negating any intent to kidnap), the grand jury should have been fully informed (Crimmins v. Superior Court).44

Because Arizona today has broader requirements for presentation of grand jury evidence, the Earps may yet have their opportunity to argue that they were executing a lawful duty. Criminal Code section 13-402 provides that: “…Conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.” This section also covers a “reasonable person” who believes that “…such conduct is required or authorized to assist a peace officer in the performance of such officer’s duties, notwithstanding that the officer exceeded the officer’s legal authority.”

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43 Arizona Criminal Code Section 13-3884 provides that a private person may make an arrest “when a felony has in fact been committed and he has reasonable ground to believe the person to be arrested has committed it.” The person effectuating the arrest must inform the arrestee of his intent to place him in custody (Arizona Criminal Code, Sec. 13-3889).

44 Judge Feldman also noted the American Bar Association’s standards relating to prosecution functions require each prosecutor to “give due deference to the grand jury’s status as in independent legal body.” The grand jury, thus, is not an arm of the prosecution.
Recall Virgil Earp’s terse statement that he called upon Doc Holliday for assistance on October 26, 1881 in disarming the cowboys. This provision of 21st-century Arizona law may well exculpate Holliday for the ensuing events.\textsuperscript{45}

Criminal code section 13-410 contains the substantive law in Arizona as to use of deadly physical force in law enforcement and, similar to the territorial code, provides that such force is justified if the officer believes it is necessary to “defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force” (Ariz. Criminal Code Sec. 13-410(C)(1)).

The code provides further justification for deadly force if, “through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay” (Ariz. Crim. Code Sec. 13-410(C)(2)(c)).

Recall Ike Clanton and Tom McLaury’s threats to the Earps only hours before the gunfight, and Frank McLaury’s reputation as a dangerous man. If Ike Clanton indeed considered fighting to be his “racket,” as he’d boasted on the day of the gunfight, the Arizona grand jury would be entitled to know.

The code also provides that a peace officer may threaten deadly force to the extent he reasonably believes it is necessary to protect himself against another’s potential use of physical force or deadly physical force (Ariz. Crim. Code Sec. 13-410(D)). Remnants of frontier life still appear in Arizona law, which has an additional provision allowing for

\textsuperscript{45} Section 13-410 (B) also provides a potential haven for Holliday if the grand jury believed he used deadly physical force because he reasonably believed that the suspect(s) was resisting the discharge of a legal duty with physical force or the apparent capacity to use deadly physical force.

The elements of first-degree murder in Arizona require that the defendant had a premeditated intent to kill after having time to reflect. A defendant does not commit premeditated murder if the intent to kill is sudden or in the heat of passion (Ariz. Stat. Ch. 11, Sec. 13-1101). A more cautious prosecutor handling the O.K. Corral case may choose to pursue an indictment for negligent homicide or manslaughter, which only require a killing upon a “sudden quarrel or heat of passion” and after the victim adequately provoked the defendant (Ariz. Stat. Ch. 11, Sec. 13-1102, 1103).

Arizona state law is substantially more favorable to defendants facing indictment. A defendant’s request to appear and testify before the grand jury triggers a duty by the prosecutor to inform the panel (Black v. Coker). An indictment may be set aside if the prosecutor fails to inform the grand jury of clearly exculpatory evidence provided by the defendant (Bashir v. Pineda).

In modern-day Arizona, as in 1881, the Earps and Holliday would therefore have a legal right to have the grand jury consider evidence favorable to them, which may increase their chances of escaping indictment. Even though both federal and Arizona state grand juries use probable cause as their threshold for indictment, if a prosecutor is duty-bound to present exculpatory evidence, arguably, the burden of proof is much higher than mere probable cause. Once the panel hears the proverbial “rest of the story,” it becomes harder to distinguish the existence of probable cause from the ultimate issue of guilt or innocence.
PART IV: OTHER FACTORS

A Different Standard for Law Enforcement?

Judge Wells Spicer in 1881 wove the imminent threat of lawlessness throughout his opinion. He wrote of the “condition of affairs incident to a frontier country.” He lay responsibility for the lawlessness and terror of Tombstone squarely at the feet of the defiant cowboys. He concluded that the armed and defiant men had accepted the wager of battle, and that they had succumbed to the law “only in death” (“Opinion” 30 Nov. 1881).

Newspaper coverage of the trial proclaimed the Earps’ actions at the O.K. Corral as necessary for the very defense of civilization. The importance of law and order in the decision to acquit the Marshals and Holliday cannot be overlooked. The Territory of Arizona was new. Tombstone, in 1881, was slated to be the next San Francisco, a boom town on its way up (Roberts 123; Monahan 85, 94). With the influx of miners and ranchers hoping to strike it rich, the town had grown exponentially. Stores in town offered the finest clothes, furnishings, and food. Tombstone even had an ice cream parlor (Guinn 75–76). Its upward trajectory would not continue if the lawless cowboy element ran rampant. Charging the Earps and Holliday with murder would lead to a public spectacle. A potential conviction represented a huge blow to the government’s ability to reign in the rampant criminal activity.

As the Epitaph noted, “The feeling among the best class of our citizens is that the Marshal was entirely justified in his efforts to disarm these men, and that being fired
upon they had to defend themselves, which they did most bravely.”\textsuperscript{46} Other accounts of the gunfight seemed practically gleeful regarding the cowboy deaths.\textsuperscript{47}

Elected officials and business interests viewed the cowboy faction as low-class outlaws. They saw the Spicer verdict as a victory for law and order, an absolute vindication of the Earps. United States Marshal Dake wrote in glowing terms to the territorial governor that he had some of the “best and bravest men” in his employ and reported that Behan’s efforts to arrest and discredit the Earps and their “assistant” had wholly failed (Dake correspondence 3 Dec. 1881). His remarks were in reply to correspondence from the governor, who viewed the cowboy element as a “thoroughly abandoned class of men” who took advantage of the “favorable state of affairs,” referring to their friendly association with, and protection by, local law enforcement and government officials, in particular John Behan. The acting governor even recommended removing the county sheriff from office (Correspondence from Gosper to Dake 28 Nov. 1881). The culture of the 19th-century West is manifested in the Spicer hearing.

Although the days of the Wild West and daily shootouts in the streets have long since passed, police-involved shootings continue to receive a similar analysis. To paraphrase the rhetorical question posed by Judge Spicer: What is an officer to do when, in the execution of a legal duty, he meets armed resistance? And, if the armed resistance

\textsuperscript{46} Epitaph, October 27, 1881. Buried in popular culture history is the Daily Nugget’s conclusion from October 27, 1881 that the cowboys “have generally conducted themselves in a quiet and orderly manner when in Tombstone.”

\textsuperscript{47} The Sacramento Record-Union reported that the cowboys had been “thirsting for gore and refused to be pacified” on October 27, 1881. On the same date, the Daily Exchange crowed that the deaths of the cowboys in the street was “among the happiest events Tombstone has witnessed.”
comes from a criminal or someone associating with criminals, is it not that person’s own fault should he met his demise? It may be victim blaming at its highest level, but mustering sympathy for those who choose to live by the sword is no easy task.

Take away the six shooters and the handlebar mustaches; the attempt to disarm the cowboys in 1881 is no different legally than any number of modern police-involved shootings in which the prosecution claims excessive force and law enforcement claims justifiable homicide. Tom McLaury may have been unarmed, and Ike Clanton may have begged Wyatt Earp to stop shooting, but, as Wyatt Earp said, “The fight has commenced.”

*From the O.K. Corral to Ferguson*

Ferguson Missouri Police Officer Darren Wilson fought for control of his gun with Michael Brown. Wilson shot Brown as Brown charged toward him. Or, the unarmed 18 year old Brown had his hands raised in surrender when Officer Wilson shot him. A 2014 grand jury heard these conflicting accounts, along with forensic and expert testimony, and declined to indict Officer Wilson. The autopsy and pathology reports found evidence supporting Officer Wilson’s version of events. Brown’s family, however, remained convinced that eyewitnesses had seen the officer shoot an unarmed youth who posed no threat (Washington Post, 23 Oct. 2014).

In Charlotte, North Carolina, Officer Bentley Vinson shot and killed an armed subject named Keith Lamont Scott. Scott had refused multiple orders to drop his handgun, which he had purchased illegally and was prohibited from carrying because he was a convicted felon. Or, Scott, suffering from a traumatic brain injury, was unarmed
and carried only a book in his hand when he was fatally shot (New York Times, 25 September 2016).

As discussed previously, the Ferguson grand jury heard all of the evidence and did not return an indictment. In the Charlotte case, the prosecutor declined charges outright without sending the case to a grand jury (Charlotte Observer, 30 November 2016).

The facts and legal arguments in these modern cases bear striking similarity to those from the 1881 O.K. Corral gunfight. Were the cowboys unarmed victims of police brutality or were they armed thugs who defied lawful commands? Were their hands up in surrender or in preparation to fight? Which eyewitness is to be believed, especially when many were friends, family members, or associates of the parties involved? Just as in 1881, the answers usually depend on who is telling the story, and the climate of the culture.

Second guessing peace officers on the front lines who make snap life and death decisions is not a business most jurors, or jurists, wish to be in; hence, the Missouri prosecutor’s 2014 decision to put all the evidence in the hands of the grand jury after the death of Michael Brown. For the Earps and Holliday, this trend would be welcome were they facing indictment today. Critics of this approach, which would likely include Ike Clanton and Will McLaury, would argue that it saturates the grand jury with enough information for them to act as a de facto trial jury and decide guilt or innocence instead of simply determining probable cause.

Practically speaking, citizens rely on peace officers to maintain a sense of security in homes and on the streets. It will never be an easy proposition for any prosecutor, in
any court, to convince twelve citizens that an officer in a shootout with an armed suspect was unjustified in firing his weapon. In that regard, little has changed since 1881.

But the advent of camera phones, dashboard cameras and body cameras have affected the type of evidence a modern grand jury may consider.\textsuperscript{48} Had this technology been available in 1881, we might know with certainty whether the cowboys had their hands up in surrender. The existence of documentary evidence may be critical where the evidence otherwise would involve the alleged actions of a dead criminal suspect weighed against the word of a sworn peace officer.

Advancements in physical and social science forensic evidence have also altered the way in which modern jurors should evaluate evidence. The certainty of an eyewitness testifying may not carry the same weight it did even a few decades ago. To a modern juror, who has expectations of expert scientific testimony, a mere mortal recounting his recollections has less persuasive luster. Forensic evidence may be able to tell today whether Tom McLaury fired a gun, whether Billy Clanton was actually shot at close range, and the likely trajectories of the rounds that were fired.

One can only speculate as to what result a modern grand jury or even jury would ultimately reach in the 1881 O.K. Corral case, even with more objective evidence. Certainly, Virgil Earp’s actions leading up to the fight indicate the he intended to disarm, not to kill. He even gave up his own rifle to avoid causing alarm on the walk down Fremont Street. Wyatt also pocketed his revolver. The prosecution portrayed Morgan

\textsuperscript{48} For example, a police officer in Chicago was indicted for murder and the shooting was captured on video. www.chicagotribune.com/news/local/breaking/ct-chicago-police-officer-indicted-met-20160916-story.html
Earp and Doc Holliday as the primary aggressors, and even though there were significant flaws in their theory, it is a plausible scenario. Wyatt Earp always maintained he and Billy Clanton shot almost simultaneously after the cowboys drew their weapons in defiance of Virgil’s order.

A 21st century prosecutor saddled with unlikeable, armed, victims, may grasp for the low hanging fruit and seek indictments on lesser charges only against Doc, who was not even a peace officer, and Morgan, who did not have the same stature and respect enjoyed by his brothers. Under the probable cause standard, and applying the modern rules of evidence, procedure, and judicial conduct, it seems more likely that Morgan and Doc, at a minimum, would be bound over for trial. Under the trial jury’s standard of reasonable doubt, however, the prosecution’s case would likely fail again.

PART V: CONCLUSION

The Enduring Legend of the Old West Lawman

The 1881 gunfight at the O.K. Corral is an iconic American moment that has come to define the triumph of the lawman over the outlaw, the taming of the West, and, in a sense, American frontier justice. The subsequent court proceeding has often been treated as a mere footnote to the story, omitted for artistic reasons in many films depicting the gunfight. But the Spicer hearing also established an important legal legacy in and of itself. Even though the Earps were popular figures in Tombstone, they were still arrested and held to account. Witnesses had their day in court. The law was applied. Ultimately, the Earps and Doc Holliday won and therefore got to write the history.
Whether they would enjoy the same fate today is questionable in light of modern legal standards.

Many of the O.K. Corral figures came to ignominious ends. Tombstone itself never became the next San Francisco. When the mines went under, the town and its once-thriving businesses followed suit (Bailey 195, 205-208). Ike Clanton was killed by a detective in 1887 following a crime spree (Tefertiller 268). Doc Holliday died alone of tuberculosis in Colorado in 1887 after a string of bad luck and several run-ins with the law in various states (Roberts 370; Brand 33). Morgan Earp was shot dead on March 18, 1882, probably by cowboys (Guinn 274). Virgil Earp was gravely wounded by a gunshot shortly after the O.K. Corral but survived (Guinn 264). Billy Claiborne was gunned down on the streets of Tombstone in 1883 (Tefertiller 267). John Behan, disgraced and widely regarded as corrupt, lost his job as sheriff in 1883. He eventually became a warden at Yuma prison (Tefertiller 192-193, 266-267). And Judge Spicer himself wandered out into the desert in 1887, bankrupt and morose, and was never seen again.49

Only Wyatt Earp remained relatively unscathed, although he never worked in law enforcement again. He died in Los Angeles in 1929 at the age of 80 (Tefertiller 327, 329).

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49 As reported by the *Arizona Daily Star*, April 13, 1887. See also, Lynn R. Bailey, *A Tale of the Unkilled: The Life, Times, and Writings of Wells W. Spicer*. 
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Legend Map:

Allder, James.
TOMBSTONE, AZ.
A highlighted selection of notable locations figuring into events surrounding the infamous October, 1881 Street Fight.
Placement and dimensions are approximate.

3'rd Street

Allen Street

4'th Street

Fremont Street

5'th Street
NOTE: The darkened structures depicted were not the only buildings residing on these blocks; in fact, these blocks were heavily congested with additional structures. The author has merely chosen to highlight only those of general relevance.

1. Addie Bourland’s House
2. Alhambra Saloon & Lunch Counter
3. Assay Office
4. Aztec Rooming House
5. Barron’s Barber Shop
6. Bauer’s Meat Market
7. Campbell & Hatch Saloon and Billiard Parlor
8. Can Can Restaurant
9. Cosmopolitan Hotel
10. Court of Judge Albert O. Wallace
11. Dunbar’s Corral (Dexter Livery & Feed Stable)
12. Eagle Meat Market a.k.a. Everhardt’s Butcher Shop
14. Fly’s Boarding House, Fly’s Photographic Studio
15. G. F. Spangenberg’s Gunsmith Shop
16. Golden Eagle Brewery Saloon
17. Grand Hotel
18. Hafford’s Saloon (Corner) / Brown’s Hotel (2’nd Fl.)
19. Harwood House
20. Mining Exchange Bldg. (Site of Wells Spicer Hearing)
21. Occidental Saloon
22. Office of the “Tombstone Epitaph” Newspaper
23. O.K. Corral (Entrance)
24. O.K. Corral Driveway/Exit
25. Oriental Saloon
26. Papago Cash Store
27. Post Office
28. Sampling Room Saloon & Bowling Alley
29. Site (Alleyway) of Ike Clanton’s Arrest
30. Telegraph Pole where Tom McLaury fell
31. Vacant Lot (Site of the Street Fight)
32. Water Main (which Morgan Earp tripped over)