

The Trial of the O.K. Corral

The shootout at the OK Corral may possibly be one of the most iconic 30 seconds in American history. This gunfight in October of 1881 left three men dead and 2 more wounded. The gunfight and the players in it have played a large role in American mythology and legend, that is this event and characters have been the subject of many different stories. Some of these stories have been blown out of proportion adding to the legend of the overall event. The characters in this event on both sides were essentially outlaws and both had reasoning for what happened on that day. The judicial process to follow however is less known throughout history, as the shootout itself has overshadowed it throughout time. The trial that came after the gunfight, proves that the officials and people of Tombstone were corrupt and had conflicts with each other, giving the town a certain lawlessness.

The Scene and Characters and Trial Introduction

The trial began on October 31, 1881 with charges being brought forth by Ike Clanton. The trial was held in the town of Tombstone and the charges pressed were against the Earps and Doc Holliday for murder. The sources that are used here are newspapers from the time period, most of which tell mainly of the Earps and Holliday's personalities and who they were before or after their

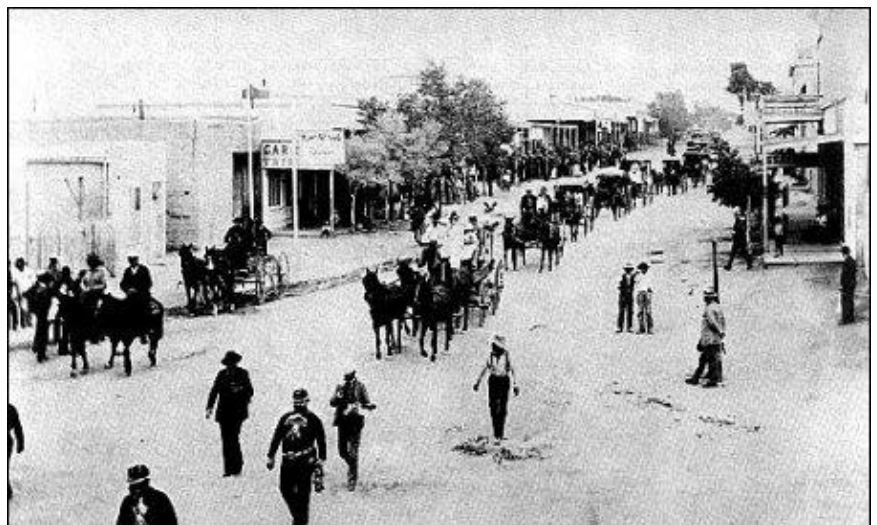


Image of Allen Street in Tombstone around the year of the gunfight at the O.K. Corral. Linder, Douglas. "The Earp Trial"

career at Tombstone. The main source that is used in the argument is the trial record, with various secondary sources to support this when needed. The setting is very important to the event itself. The town of Tombstone seems like any other western town of the era. It had its small shops, saloons, and cattle corrals.

The town also had a law enforcement agency, which will be discussed later on. This agency was the sheriff and his deputies, the police force, along with the United States Marshals¹. The characters in the story however are much more important than the setting. This is because each of them seems to have a personality that may have led to the shootout and ultimately the trial. The first character to examine is quite possibly the most famous of all of them. This person is Wyatt Earp, who was born in Illinois. There is much to be said about Wyatt Earp and most of the time no two authors have the same to say. One of the newspapers of the time when Earp was alive said the he was “fearless to terror and evil.”² This was written by a newspaper in Kansas, which shows that Earp’s fame was known not only in Tombstone. The newspaper also talked of his career in Tombstone, where they said Earp and his brothers “killed a lot of desperados that infested the place.”³ The fact that it is known that he killed many people shows

¹Cooley, Rita W. "The Office of United States Marshal." *The Western Political Quarterly* 12, no. 1 (1959): 123-140.

“The marshal was the original law enforcement officer in the federal system with civil, criminal, and administrative responsibilities. Initially, he had investigative duties which are today the prerogative of specialized services such as Postal Inspection, the Secret Service, the Federal Bureau of Investigation, the Alcohol Tax Unit, to name but a few.' Later, in the territories, the United States marshals were "the law" and it is probably in connection with lingering legendary accounts about such exciting activities that many persons think of the federal marshal today.” Taken from “The Office of United States Marshal”

² "Wyatt Earp as a Kansan The Fitzsimmons-Sharkey Referee a Man "With a Record"." *The Emporia Daily Gazette* (1896)

³ Ibid

also that he is not only fearless, but a cold man. Yes, he may have killed in the name of the law, but killing “a lot of desperados” is still killing. The reason that he is a “cold” man is that he is able to consistently kill. The same paper also mentions that the residents of Wichita, where the paper was published, thought that he was an honorable man. This also shows that the people of the city (they must have known that Earp had shot multiple men) probably believed that he had killed the people that he did in the name of the law. All of this is just one view-point on Earp however.

There are many others from the time that give more insight to the man that Wyatt Earp really was. One of these view points is very similar in the fact it discusses why Wyatt Earp killed. The interesting thing about it is the name of the article that was published in the *St Albans Daily Messenger*, “Last of the Bad Men.” This seems interesting, because in the article it discusses how Wyatt and his brothers along with Doc Holliday were seen as the last of the “real Western Shooters.” Along with this it discusses what many of the other papers and sources do, which states these men all shot in the name of the law. The fact that the article has the name that it does shows that these men probably did not *always* shoot in the name of the law.⁴ It could however, just mean that they were feared and respected men which upheld the law. With the knowledge of what happened at Tombstone, which will be discussed later, the term “bad” probably has more of a chance to mean that these men could kill for multiple reasons. This gives an overview of the person that Wyatt Earp was and how people of the time viewed him, however he was not the only player in the event.

⁴ “Last Of The Bad Men. The Celebrated Shooter the West are Nearly Gone.” *St. Albans Daily Messenger* (1897): 3-4.

Wyatt also had brothers that were involved in the shootout. They were part of the law enforcement of Tombstone at the time. Virgil Earp was chief of police⁵ and a deputy United States Marshal⁶. Morgan, the other Earp brother, was also a part of law enforcement as a deputy policeman. Virgil Earp was friends with and supported professional killers and the gamblers. This tended to be problematic, because much of Tombstone fell into the category of gamblers or professional killers. For example, Doc Holliday fell into this category and he was good enough friends with the Earps to be shooting on their side in the gun fight. Overall the Earps were what essentially seemed to be outlaws (anybody who has possibly shot and killed somebody for no reason, or associates with questionable activity) and this is some of what helped lead to the shootout. Not only could the Earps be seen as outlaws, but the opposing gang in the shootout was also essentially outlaws.

This opposing gang was the Clantons and McLaurys. They seem to be almost like the Earps, that is, they would be peaceful much of the time, but had the ability to kill for a small reason. The times when they were not peaceful were usually times in which they were being accused of a crime. This group of men all seemed to be on the same side and would help each other out, just as the Earps would for each other. This is because Ike Clanton, after a meeting with Wyatt Earp on the day of the shootout, is believed to have sent for help to protect him in

⁵ "Decision of Judge Wells Spicer after the Preliminary Hearing in the Earp-Holliday Case November 30, 1881." <http://www.law.umkc.edu/faculty/projects/ftrials/earp/spicerdecision.html> (accessed Jan. 20, 2011).

"Virgil Earp, who was chief of police of Tombstone and charged as such officer by the city ordinance with the duty of preserving the peace, and arresting, with or without warrant, all persons engaged in any disorderly act, whereby a breach of the peace might be occasioned, and to arrest and disarm all persons violating the city ordinance which declares it to be unlawful to carry on the person any deadly weapon within the city limits, without obtaining a permit in writing."

dealing with the Earps⁷. The event that came before the gunfight was Wyatt Earp disarming Ike Clanton for carrying deadly weapons through the streets, which was against Tombstone law. The Clantons and McLaurys through the shootout and events leading up to it prove that they are similar to the Earps. The main difference between them is that the Earps have become legendary at the hand of modern media along with the media from the late 1800's to the early and mid 1900's. The Clantons and McLaurys, as stated before, were essentially outlaws due to them being associated with many crimes. Due to this they are many times referred to as cowboys, because of them being associated with robberies of cattle and other such actions.

One of the last of the people that needs to look at is Doc Holliday. Holliday was also a deputy marshal for a time, just as the Earps were. He also was said to have killed many people all in the name of the law, but as we have seen in the previous descriptions this may not be true.⁸ As with the Earps, Holliday may have been seen to have killed in the name of the law, but it is really the context in which the reader sees the shooting. The fact that Holliday is mentioned in an article title "Last of the Bad Men" shows that he can be placed in the same category as the Earps, in that he was one of the shooters of the West. The article said Holliday had the "reputation of being a generally bad man and a desperado and along with this he also was very mild mannered and had many excellent qualities."⁹ This shows that Holliday was a man who did not shoot always for the sake of the law. The fact that he had many excellent qualities though shows that the people of his time truly respected him and like him. This is much the same story

⁷ Clum, John C. "It All Happened in Tombstone." *Arizona and the West* 1, no. 3 (1959): 232-247.

⁸ "Doc, Holliday's Career. Bat Masterson Tells Of Wonderful Stories In The SouthWest." *Kansas City Times* (1886): 3.

⁹ Roberts, Gary L. *Doc Holliday : the Life and Legend* . Hoboken NJ: John Wiley & Sons, 2006.

as Wyatt Earp and gives insight to the friendship between the two and possibly some of the reasoning of what happened in Tombstone on the day of the famous shootout.

The last character that needs to be examined is the sheriff John Behan. The sheriff is said to be an honorable man that exemplifies many attributes of a gentleman.¹⁰ The sheriff was a man who wanted to uphold the law at all costs. This can be seen through his testimony in the trial against the Earps and Doc Holliday. The sheriff shows that he is a very prominent man, not only in Tombstone, but abroad. This is because he has some high ranking acquaintances, which may have led him to get his position. This may be a stretch, as Behan was close friends with the Dunbars (a business man in Tombstone) who were from Maine and the Dunbars were close friends with the senator (who was also from Maine, just as the Dunbars). The fact that he beat out Wyatt Earp for the position of sheriff could be because of him being acquaintances with a senator, even though it was many degrees of separation between the two.¹¹ This is important, because Wyatt Earp was also in the running for sheriff, but Behan felt that he was going to get the job no matter what and is likely because of the friendship with the senator. The fact that he did beat out Earp for sheriff could also give some insight to why Behan's testimony is the way it is against Earp.

There are also other reasons that he may have developed the testimony against Earp to favor the Clantons and McLaurys. One of these reasons is the developing love triangle between Wyatt, Behan, and Josephine Marcus, who was to marry Behan. Marcus was said to be one of Wyatt's two Achilles heels, the other one being Doc Holliday for his reputation of being more of

¹⁰ "Old Tombstone", *Plain Dealer* (1894)

¹¹ Boyer, Glen G. "Postscripts to Historical Fiction about Wyatt Earp in Tombstone." *Arizona and the West* 18, no. 3 (1976): 217-236.

an outlaw.¹² The fact that the love triangle existed when Marcus was to marry Behan also may have been reasoning behind the testimony of Behan in favor of the Clantons and McLaurys.

Behan not only possibly had troubles with Wyatt, but also with Holliday.

These troubles with Holliday may have begun when Behan possibly got Holliday's mistress Kate Elder (who just had a fight with Holliday) drunk and making her confess to charges against Holliday. These charges that were being confessed to were for a stage robbery that occurred around three months before the shootout. This was because some of Holliday's old friends were the ones who were being arrested for the crime, and due to this people believed that Holliday "better have a good alibi." The fact of the matter was Holliday had ridden out of town and was nowhere near the scene of the crime.¹³ The fact that the sheriff takes advantage of the situation between Holliday and Elder shows his personality, in that he also tries, like the Earps, to benefit himself. Granted the sheriff tries to benefit himself in a non-violent matter, but it still shows that he too may have other motives for what he does. Along with Behan, the Earps also very likely had events like this. The Earps killing for their possible benefit carries more weight, than that of Sheriff Behan simply forcing the confession from Kate Elder to incriminate Holliday.

Building up to the Shootout

Along with the shootout itself, there were also the events leading up to it. These mostly consist of words being exchanged in a saloon in the days before the shootout or the arrest of Ike Clanton for carrying concealed weapons and trying to start a gunfight (words were said to be

¹² Ibid

¹³ Ibid

exchanged during the arrest and just before it).¹⁴ Even these events leading up are subject to much speculation about what really happened. The first known confrontation between the two sides was in the summer of 1880. There were some mules stolen from a nearby ranch and the Earps received a tip that the mules were on the McLaury ranch. When they rode there another cowboy agreed to return the mules the next day if no arrests were made. Instead of just returning the mules, Frank McLaury decided to act angrily. He published an article in a pro-cowboy newspaper, slandering Virgil Earp by saying that Virgil stole the mules himself and put them there.¹⁵ Another event was when the Earp brothers under the direction of Virgil Earp arrested Stilwell (one of Behan's deputies) and Spence for the crime of stage robbery. These men were friends of the



Image of the men who were killed in the O.K. Corral gunfight. Linder, Douglas. "The Earp Trial"

Clantons and McLaury, which caused these men to give threats against the Earps. Not only does this pertain to the Clantons and McLaury, but also to John Behan.¹⁶ With the arrest of a deputy sheriff, the *Tombstone Daily Epitaph* published that "there is too much good feeling between the sheriff department and the outlaws which infest this county."¹⁷ One of the threats

¹⁴ Linder, Douglas. 2005. <http://www.law.umkc.edu/faculty/projects/ftrials/earp/earphome.html> (accessed Jan. 20, 2011).

¹⁵ Lubet, Steven. *Murder in Tombstone: the Forgotten Trial of Wyatt Earp*. New Haven: Yale University Press, (2004), 27.

¹⁶ Ibid, 40.

¹⁷ Ibid, 41. And "YESTERDAY'S TRAGEDY." *Tombstone Daily Epitaph* (1881):

that was made by Ike Clanton to Holliday and Virgil Earp was “that they would clean the Earps out and Ike was thirsting for blood.”¹⁸

One last event that could be the most important happened between Ike Clanton and Wyatt Earp. This event involved Wyatt making an offer to Ike to turn in some of his once friends for a stage robbery. Wyatt did this so that Ike would get the money from the reward, while Wyatt would get the glory of arresting the criminals. This however did not happen, because the criminals during the summer all ended up dead before Ike could set the trap. With this Ike came into Tombstone and threatened the lives of the Earps and due to recent event the Earps knew that Ike was serious.¹⁹ All of these events are important lead up to the shootout. Not only do these events give rise to the shootout, but also shed light on some of the testimony from the two sides. The next step to examine the trial as a whole is to look at what happened the day of the shootout.

The Shootout Scenarios

As with everything in the judicial system there are two sides to each story. Each side to the story gives a different insight to what really happened, as the real truth may lie somewhere in the middle. The testimony of Ike Clanton (he was the only person in the gang of the Clantons and McLaurys to survive) gives insight to one scenario and the testimony of the Earps show a completely different side. The story that was published in the *Tombstone Daily Epitaph* gives one account of a bystander during the shootout, which will prove to be different than the testimony of Ike Clanton. The story in the newspaper tells that after exchanging a few words and Virgil Earp asking the Clantons and McLaurys to “give up their arms or throw up their arms,” following this there were words from Frank McLaury and shots broke out. After all the shooting

¹⁸ "YESTERDAY'S TRAGEDY." *Tombstone Daily Epitaph* (1881):

¹⁹ Ibid, 41.

was done sheriff Behan came to arrest the Earps and Holliday, the Clantons and McLaurys were disarmed, which had proved to be a false statement.²⁰ Wyatt Earp refused to be arrested.

This story that was published in the *Tombstone Daily Epitaph* is much different from that of Ike Clanton, who brought murder charges against the Earps and Holliday for the slaying of his comrades. The story (testimony taken from the trial record) that Clanton gives, is that the Earps began shooting even after sheriff Behan passed them and asked them to stop as the Clantons and McLaurys were disarmed. Ike Clanton states that the Earps, knowing this, began the shooting, and even shot Billy Clanton when his hands were up. Ike also states that no shots were ever fired from any of the men who were with him, and that the Earps virtually slaughtered his companions. He mentions that there were never any unpleasant words with the Earps and that he never even saw Tom McLaury armed. The reason why Ike Clanton survived according to him was that he was able to retreat back into a building to get away from the firefight.²¹

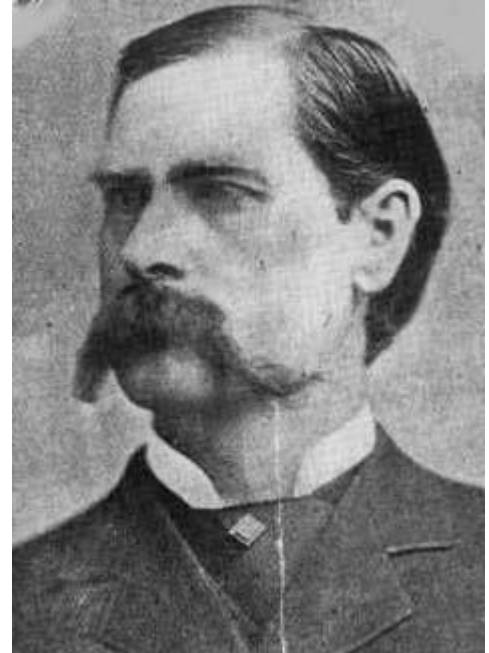


Image of Wyatt Earp. Linder, Douglas. "The Earp Trial"

With this testimony given by Ike Clanton it is easy to see the differing viewpoints start to develop. The testimony given by Wyatt Earp is very similar to that which was published in the newspaper. This could be because the article was written the day after the shootout and the

²⁰ "YESTERDAY'S TRAGEDY." *Tombstone Daily Epitaph* (1881):

²¹ Turner, Alford. "Testimony in the Preliminary Hearing in the Earp-Holliday Case, Before Judge Wells Spicer November 1881." <http://www.law.umkc.edu/faculty/projects/ftrials/earp/earptestimony.html> (accessed Jan. 20, 2011). The testimony here was provided by Ike Clanton

newspaper staff did not have any time to get the story from Clanton. Also, it was not until the day after when the coroner made his verdict on the shots on the bodies of the slain Clantons and McLaurys, that Ike Clanton brought any charges against the Earps and Holliday.²²

The Trial

Now that the leading events to the trial have been brought forth the next step is to examine the trial and why it matters. As stated previously, the trial lets the Earps literally get away with murder. This is important, because it is essentially proving that the west was a lawless society that many times was even run by outlaws and cowboys. After the coroner had filed his report, Ike Clanton, the only survivor on his side, filed charges of murder against the Earps and Holliday.

The first testimony to examine is that of the main players in the gunfight. Wyatt Earp testified on November 16, 1881. Here Earp describes the situation in which he offered Ike Clanton the reward for the capture of his one time friends who were thought to have robbed a stage. He mentions that he offered Ike \$3,600 in rewards for the capture of these men, if Wyatt could receive the glory in turn letting him win the position of sheriff.²³ This is very important to the understanding of the trial, because this action is essentially bribery on the part of Earp. Wyatt, being very open to telling about the deal, shows that he is going to be open throughout the trial as this information alone could be compromising to his reputation in the community. In his testimony Wyatt also says that "he would like to shoot Ike." After this he also said that he, Holliday, Virgil, and Morgan went to disarm the Clantons and McLaurys. This is because these

²² Linder, Douglas. "The Earp Trial: A Chronology."
<http://www.law.umkc.edu/faculty/projects/ftrials/earp/earpchronology.html> (accessed Jan. 20, 2011).

²³ Turner, Alford. "Statement of Wyatt S. Earp in the Preliminary Hearing in the Earp-Holliday Case, Heard before Judge Wells Spicer." 1992.<http://www.law.umkc.edu/faculty/projects/ftrials/earp/weartestimony.html> (accessed Jan. 20, 2011).

men were supposedly going through the streets carrying deadly weapons, which was against the law. The exact law reads "Ordinance No.9: "To Provide against Carrying of Deadly Weapons" (effective April 19, 1881). Section 1: "It is hereby declared to be unlawful for any person to carry deadly weapons, concealed or otherwise [except the same be carried openly in sight, and in the hand] within the limits of the City of Tombstone. 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 dirks, are included within the prohibition of this ordinance."²⁴

The reason that the Earps and Holliday went to disarm the Clantons and McLaurys is because they were simply trying to uphold the law, as was their job. The next thing, according to Wyatt, that happened was that the gunfight broke out.²⁵ Wyatt saying that he would like to shoot Ike also shows that Wyatt is going to be very open during the trial. This also shows the lawlessness of the society, as obviously Wyatt and his comrades attempted to shoot Ike even though they were on a mission solely to disarm. The only



Image of Sheriff Behan. Linder, Douglas. "The Earp Trial"

²⁴ "The Law in Tombstone Ordinances Relevant in the Preliminary Hearing in the Earp-Holliday Case, Heard before Judge Wells Spicer." <http://www.law.umkc.edu/faculty/projects/ftrials/earp/ordinances.html> (accessed Jan. 20, 2011).

²⁵ Turner, Alford. "Statement of Wyatt S. Earp in the Preliminary Hearing in the Earp-Holliday Case, Heard before Judge Wells Spicer."

reason that Ike survived is because he was able to retreat into a nearby building. In modern society Wyatt mentioning that he would like to shoot Ike would be enough to convict him of murder. The admission offered in the testimony by Earp not only would convict him of murder, but worse as mentioning that he wanted to shoot Ike therefore even starts to break into premeditated murder.

However, Wyatt was not convicted and this gives rise to many questions to why did the Earps did not get convicted. This may be because Wyatt and his brothers were law men and the Clantons and McLaurys were not. The Clantons and McLaurys were seen as cowboys and had committed crimes before and even were carrying a concealed weapon (which was against Tombstone law) in the days before the shootout.

The release of the Earps could even have come from Judge Spicer's sympathy for the Earps upholding the law and Sheriff Behan's lax efforts in some of the law enforcement. An account of this is when the Benson Tombstone stage coach was robbed. The Earps went on the trail for three days, eventually capturing Luther King for the robbery. The Earps then turned King over to Behan and his deputies to transport him back to Tombstone. While in Tombstone King was said to have escaped from the jailhouse while the deputy was not looking. To add to the situation the deputy left the jail door unlocked while an attorney was drawing up the sale of one of King's horses to a business partner of Behans. Ultimately there was a coincidental horse waiting behind the jailhouse making an easy escape for King.²⁶ This incident shows that Behan himself had his own interests in mind, even if they did not hold up the law.

Incidents like this may have lead Judge Spicer to sympathize with Wyatt and his comrades more, just as Behan sympathized with the man who robbed the stage coach. The

²⁶ Lubet, Steven *Murder in Tombstone*.

testimony given by Wyatt also mentions that the first shots were fired by William Clanton at Wyatt and Wyatt shooting at Frank McLaury, as he knew that McLaury was a good shot. This testimony also plays into the reasoning of self defense as Wyatt mentions that he saw the Clantons and McLaurys reach for their pistols when asked to “drop their arms.”²⁷

Another theory of why Judge Spicer ruled in favor of the Earps is because he truly believes that the Earps knew the Clantons and McLaurys were armed and shot out of self defense. This is just the testimony by Wyatt Earp and is just one side to what happened. The brother and U.S. Deputy Marshal Virgil Earp also gave testimony.

The testimony given by Virgil Earp also proves that he, his brothers, and Doc Holliday could be proven guilty. He testifies that he swore his brother Morgan in as a deputy policeman, as Virgil was the chief of police. Morgan was sworn in to assist Virgil on the night preceding the shootout, due to Ike Clanton getting in a verbal fight with Holliday in a saloon. This was done to help break the two apart and keep watch through the night, as both men had a history of fighting and violence. After this Ike also made many threats on Virgil and his brothers who he had helping him with his police duty that night. He also testifies that he saw William Clanton and Frank McLaury putting cartridges in their belts before the gunfight broke out. Virgil Earp testifies that during the gunfight, he fired four shots, one at Frank McLaury and the other three at William Clanton.²⁸

This testimony shows how the Earps wanted to uphold the law at all costs. Virgil breaking up Holliday and Ike Clanton in the saloon proves that he does not want violence,

²⁷ Turner, Alford “The Statement of Wyatt S. Earp”.

²⁸ Turner, Alford “Testimony in the Preliminary Hearing in the Earp-Holliday Case”. This testimony was given by Virgil Earp

because of the fact that Holliday and Clanton had histories of violence before. The gunfight breaking out also shows that Virgil did want to uphold the law, because he saw William Clanton and Frank McLaury loading rounds into their belt just before the shootout. This shows that he did believe that these two men were armed and had reason to shoot, if he felt that his own life could be in danger. Ordinance nine of Tombstone law in 1881 provides that no person shall carry deadly weapons except for in plain sight. This law is most likely designed to keep events such as this from happening or to keep people from being shot in cold blood. Virgil knowing that the two men were placing rounds in their belt is enough cause for him to believe the men were armed. This is because in Virgil's defense it is hard to believe that William Clanton or Frank McLaury would be putting ammunition in a position that is easily accessible if they did not have a weapon on them and plan to use it. The Earps and Holliday shooting in their own defense may also be a reason why Judge Spicer ruled in favor of the Earps and Holliday. To this point it seems as though the Earps deserve to be acquitted, but the testimony from Ike Clanton and Sheriff Behan prove differently. This is because they both provide a much different story from that which has been told by the two Earp brothers.

In his testimony, Ike Clanton makes many claims to the innocence of his comrades and the guilt of the Earps. One of these claims is that the Earps group started shooting after passing by Sheriff Behan, who had told them to stop as the Clantons and McLaurys were unarmed. He also states that there were no shots fired by any of the Clantons or McLaurys. Ike also mentions that Billy Clanton and Frank McLaury's hands were up when they were shot, being very different from Wyatt Earps testimony.²⁹ It is very easy to see already that this is a very different

²⁹ Turner, Alford "Testimony in the Preliminary Hearing in the Earp-Holliday Case". The testimony as given by Ike Clanton

story than that given by Virgil and Wyatt Earp. Ike Clanton saying that there were no shots fired from anybody in his group seems to be an outright lie. That is because Virgil Earp and Doc Holliday were hit in the gunfight and were able to keep shooting. This was seen in the *Tombstone Daily Epitaph*, with the eye witness account from R.F. Coleman, who will be mentioned later. If there were no shots fired by the Clantons or McLaurys these two men would not have been hit as it seems highly unlikely that they would be shooting at each other.

With this it already seems as though Ike Clanton may be telling a lie in order to have the Earps and Holliday convicted in vengeance for his comrades. Ike in his testimony goes on to say that he has never had any unpleasant words with the Earps in his life. Along with this he mentions the reward that was offered to him by Wyatt in return for Wyatt getting the glory of the capture of the robber.³⁰ This seems to be a very interesting turn of events, as already mentioned Ike Clanton has made threats against the lives of the Earps and was quarrelling in a Saloon with Doc Holliday. The testimony given by Ike Clanton seems to exaggerate the situation well into his favor. Ike is trying to prove that the Earps, who were working on the side of the law, were guilty of murder and bringing justice to himself. In his testimony, it seems as though Ike is lying and the Earps are surely going to be acquitted of the charges.

The testimony by Sheriff Behan meets somewhere in the middle of the Earps and of Ike Clanton's but still is leaning more toward Ike Clanton's. On the day of the gunfight, Behan told the Earps to go disarm the gang that was coming into town. He says that he saw the McLaurys throw up their hands and that the first two shots then came from the Earp party, with the next three coming from the same side. He mentions that there was only a second between warning and the shots beginning, with the first shot overall coming from Holliday's pistol. Behan also

³⁰ Ibid

mentions that he is getting this account of what happened from the ground as he was protecting himself.³¹ These statements by Behan begin to show the Earps' guilt as it is giving some corroborating evidence with Ike Clanton. The corroboration here is the time between warning and the first shots being fired and who fired first. Behan mentioning that he saw the McLaurys throw up their hands plays into the testimony given by Ike Clanton because he mentions the same thing. The statements however by Behan could be flawed as he was getting his information from lying on the ground, which provides that he may not have been able to see the fight as clearly as the other witnesses.

Behan also testified that he had heard no threats by the Clantons or McLaurys toward the Earps. He also states that he was satisfied with the disarmament of the cowboy. Behan mentions that he did have a conversation with Wyatt Earp about deceiving Wyatt about the disarmament of the Ike Clanton's gang.³² This is because Wyatt was going to be arrested after the fight by Behan and Wyatt told Behan that he was deceived, because the Clantons and McLaurys were not disarmed. Behan being satisfied with the gang being disarmed and the Earps continuing toward them could stem from the Earps previous knowledge of Behan being a lax law enforcer.

The sheriff may also sway his testimony to the favor of Ike Clanton due to the sheriff's previous experiences with the Earps in the capture of King for the robbery of the stage coach. It is intriguing to think of why Sheriff Behan would not sway his testimony to favor the Earp party, who was there to uphold the law. This is because the Earps, even though they were not sheriffs, were still law men and wanted not only good for themselves, but good for their community. The

³¹ Turner, Alford "Testimony in the Preliminary Hearing in the Earp-Holliday Case". The testimony given by Sheriff John Behan

³² Ibid

Clantons and McLaurys, if it was true, were carrying concealed weapons through the street and knew it was against Tombstone law. Sheriff Behan also knew this and if they in fact were armed, could further prove the laxness of Behan's law enforcement.

The reasoning for Behan not swaying his testimony to favor the Earps could come from the escalating affair between Wyatt Earp and the woman who was to marry Behan, Josephine Marcus. Not only did this affair start a love triangle, but Josephine eventually came to be known (presumably through marriage) Josephine Marcus Earp.³³ This seems to be good reason for Behan to not make his testimony favor the Earp party. This is because if Wyatt betrayed Behan by taking his lover from him, what reason did Sheriff Behan have to support Wyatt and his comrades? Behan indeed gave a very important testimony, possibly even exploiting some of the guilt that the Earp party had. This had to make Ike Clanton feel very good as the testimony by Behan supported him and his gang of cowboys more than even Ike could have hoped.

One of the most important testimonies to examine is that of William Claiborne (Billy the Kid), who was an eyewitness to the gunfight. In his testimony Claiborne lays out the scene very effectively. "He did so in such a descriptive manner, that Judge Wells Spicer would have no problem imagining the exact scene. After his testimony it seemed as though the prosecution (against the Earps and Holliday) was in complete command."³⁴ Claiborne testified that he saw the first shots fired by the Earp party. He also said that he heard Virgil Earp come down the street saying that the Clantons and McLaurys were looking for a fight and now they have got it. He said that the first shots of the fight came from Doc Holliday's pistol.

³³ Boyer, Glen G "Postscripts to Historical Fiction".

³⁴ Lubet, Steven *Murder in Tombstone* (111-117).

The turning point in his testimony that could be in the Earps favor is when he mentioned that he had spent nights at the Clantons and the McLaurys ranch. He said that he likes them as much as his other acquaintances and which starts to show bias to the Clantons and McLaurys. However, he did mention that he had no problem with any of the Earps.³⁵ This testimony by Claiborne adds to the corroboration proving the Earps guilt.

The similarities from Claiborne, Behan, and Ike Clanton make it seem that the Earps surely would be proven guilty in the decision made by Judge Spicer. If the prosecution felt comfortable before calling Claiborne to testify it must have been ecstatic after he testified.

The main points of all of the testimony were told best in the *Tombstone Daily Epitaph* the day following the trial. R.F. Coleman, who was an eyewitness, recounted the most important parts of the gunfight. He did this without putting any blame on either side. He simply said that “Tom McLaury fell first, but raised and fired again before he died. Bill Clanton fell next, and rose to fire again. Frank McLaury ran a few rounds and fell. Morgan Earp was shot through and fell. Doc Holliday was hit in the left hip but kept on firing. Virgil Earp was hit in the third or fourth fire, in the leg which staggered him but he kept up his effective work. Wyatt Earp stood up and fired in rapid succession, as cool as a cucumber, and was not hit. Doc Holliday was as calm as though at target practice and fired rapidly.”³⁶ This is a key part to the testimony on either side and when called to the stand to testify at the trial, Coleman said the gunfight was “pretty near correct as published.”³⁷

³⁵Turner, Alford "Testimony in the Preliminary Hearing in the Earp-Holliday Case". The testimony given by William "Billy the Kid" Claiborne

³⁶ "YESTERDAY'S TRAGEDY." *Tombstone Daily Epitaph* (1881):

³⁷ Lubet, Steven *Murder in Tombstone* (64).

This publication never mentions explicitly who shot first, just who made the shots and who was falling dead in the street. This is important, because it offers minimal help to the prosecution or to the defense, but does prove that both sides were armed (which through logic could be seen earlier in the trial). This is because the “first shot” is one of the essential points in proving who was guilty as it seems logical throughout the trial that both sides would be armed despite some of the testimony. The only thing mentioned in the newspaper article that could give any help to the prosecution is telling who R.F. Coleman saw fall first. One of the McLaurys falling first could show that the Earp party fired the first shots with the cowboys being disarmed (proving the prosecution to be correct) therefore proving the testimony that was provided and proving the Earp party guilty.

Tom McLaury falling first could show that one of the men in the Earp party believed that Tom was a skilled shooter and believed that he was still armed and wanted to kill any of the Earps or Holliday. With the testimony the way it is, making the first shot come from the gun of Holliday or from the Earp party, it is hard to see how the Earps will not be proven guilty. The account by Coleman lets Judge Spicer really see what a bystander saw and an account that lends minimal bias to the argument of either the prosecution or the defense. This leads to possibly one of the most important statements made in all of the trial.

This came from P.H. Fellehy who not only saw some of the gunfight, but knew of the feud developing between the Earps and the Clantons and McLaurys. Fellehy said he had heard Virgil Earp say “those men have made their threats. I will not arrest them, but kill them on sight.”³⁸ This statement must have been not only devastating to the defense of the Earps, but the Earps themselves. This is because this statement goes back to the thought of premeditated

³⁸ Ibid

murder by Wyatt, only this time it could be on the side of Virgil. Virgil saying that he “will not arrest them, but kill them” shows that he already has in his mind that he will shoot first and ask questions later. This however got him and his party into a world of trouble, with a first degree murder charge looming over their heads. This statement would seem to make it almost impossible for Judge Spicer not to convict at least one of the Earps on the charge of murder. The final decision however was in the hands of Judge Wells Spicer.

The Decision

Judge Wells Spicer gave his decision on the charges of murder against the Earp party on November 30, 1881. This came just over one month after the iconic gunfight that would forever be etched in the pages of history. The decision would ultimately prove the town was run by a corrupt sheriff, due to his actions in lax law enforcement or his desire to do what would benefit him even if it did not uphold the law. Judge Spicer’s decision would also prove that Tombstone was run by what seem to be outlaws who would rather shoot first than get all of the information.



Image of Judge Wells Spicer.
Linder, Douglas. “The Earp
Trial”

Most of the knowledge of what happened was found in the newspaper coverage of the ruling or on the basis of the accounts written by sources other than newspapers and the testimony provided. Much of what is used was published in the town’s major newspaper, the *Tombstone*

Daily Epitaph.³⁹ The decision has been the topic of much debate not only directly following it, but even up into the recent years.

The final decision rendered Wyatt Earp and Doc Holliday not guilty. Judge Spicer's decision however is much more complicated than simply labeling the men not guilty, as it goes through many different stages within itself to get to the final product. The decision by saying that "Virgil Earp, who was chief of police of Tombstone and charged as such officer by the city ordinance with the duty of preserving the peace, and arresting, with or without warrant, all persons engaged in any disorderly act, whereby a breach of the peace might be occasioned, and to arrest and disarm all persons violating the city ordinance which declares it to be unlawful to carry on the person any deadly weapon within the city limits, without obtaining a permit in writing."⁴⁰ This was said near the opening of Judge Spicer's ruling and was immediately showing that he was going to rule in favor of the Earp party. The other key elements of the ruling came from the proving of corpus delicti, but not proving the felonious intent of the Earps. This was a major breakthrough for the defense, because the prosecution claimed that the Earps acted with criminal haste and committed a triple homicide with felonious intent. This all came before Judge Spicer made one of his final statements declaring the Earps not guilty and in his belief that a grand jury would find no more evidence that could in fact prove the guilt of the Earp party.⁴¹ This ruling officially proved that the Earp party was free from any guilt Ike Clanton thought they might have from the day of the shootout.

³⁹ Roberts, Gary L. "The Gunfight at O. K. Corral: The Wells Spicer Decision: 1881." *Montana: The Magazine of Western History*, 1970, 62-74.

⁴⁰ "Decision of Judge Wells Spicer after the Preliminary Hearing in the Earp-Holliday Case November 30, 1881." <http://www.law.umkc.edu/faculty/projects/ftrials/earp/spicerdecision.html> (accessed Jan. 20, 2011).

⁴¹ Ibid

The ruling however, has been the topic of debate for many historians (through the means of articles and books) and the people around the time of the decision who were not historians. These people often were the common people of the time who did not support the decision or the Earps and Holliday. This is because the Earp party seemed to be guilty, but Judge Spicer had a different idea. The debate and general talk over the ruling was not always done in a kind respectable matter. This can be seen no better than the opinions article written by a miner after the ruling. The article is as follows, “To Wells Spicer, if you will take my advice, you will take your departure for a more general clime as I don’t think this one (is) healthy for you much longer. As you are liable to get a hole through your coat at any moment. If people like you are allowed to dispense justice over our territory, the sooner you depart from us the better for yourself and for the community at large. You may make light of this, but it is only a matter of time, you will get it sooner or later. So with those gentle hints I will conclude.”⁴² This is a very powerful letter that was written to the editor of the *Tombstone Daily Epitaph*. The person that wrote the letter obviously believed that the Earps were guilty and the language he uses shows that he is not the only one that believed this. The “hints as mention in the letter to the editor never had any fruits, as there were no attempts ever made to take the life of Judge Wells Spicer.”⁴³

The reasoning for the threats being made is not as simple as they look. This is because there are many loyalties and other motives that have since been uncovered. One of the main reasons that is thought to have lead Spicer to his decision is the loyalties that he had with the Republican Party. The Republicans prided themselves on being “the law and order party” which

⁴² Roberts, Gary L “The Gunfight at the O.K. Corral: The Wells Spicer Decision”.

⁴³ Ibid

had not only the mayor of the town, but also Virgil Earp.⁴⁴ The Earp party on the day of the shooting were priding themselves on upholding the law, where may not have been elsewhere upheld by John Behan. The opposition to the Republicans came from people associated with the Sheriff Behan, who were supported by the majority of the people who read the *Nugget*. (a seemingly tabloid newspaper published in Tombstone)⁴⁵ This was a paper that was read more widely by the miners and cowboys who were in more supportive of the Clantons and McLaurys. This further complicates the decision that was made by Spicer, because it turns it into political favoritism. This begins to show why people like the miner who wrote the letter to the editor of the *Tombstone Daily Epitaph* was angry. This is because people like the miner feel that justice was not carried out as people who were similar to them were shot down in the street. These people may also have sided with Clanton or Behan, therefore reacting the way they did.

The fact that there could have been even the slightest knowledge of the bias of Spicer raises the question of why there was not a jury called in to settle the case? Judge Spicer may not have found any more evidence that could prove the guilt of the Earp party, but would a jury (Judge Spicer had the option of calling on a Grand Jury) think differently? In the judicial system that exists today the hearing would not only have to have a jury, but it would be done in the usual selection manner. This being that there could be no conflict of interest or bias from the members of the jury. The possibility that there was even the slightest bit of favoritism due to the Earps being members of the Republican Party begins to uncover how corrupt the town really was.

Not only did the Judge rule in favor of the Earp party, but did Sheriff Behan have loyalties to the Clantons and McLaurys? This question arises from looking at who was

⁴⁴ Ibid

⁴⁵ Boyer, Glen G "Postscripts to Historical Fiction".

supportive of whom. The fact that the Republican Party was in favor of “law and order” shows that there was a problem in the town of people in positions of power actually upholding the law. This was seen as stated before from events such as the robber escaping from jail on the possible premise of favoring a deal that was being made by the sheriff and his friends.

The other side to the story and what can give some credibility to Wells Spicer on his upholding of justice comes from him taking into account the tirades of Ike Clanton in the streets of Tombstone and in the Saloons.⁴⁶ This shows that Spicer looked beyond just what happened in the gunfight and thought about the arguments that Ike had with the Earps and Holliday and others, along with the threats he made on the lives of these men. He also had to take into account that Ike had been arrested and disarmed of weapons just shortly before the gunfight. This makes it easier to believe that Wells Spicer thought that the Earp party could truly believe that the Clantons and McLaurys were armed on the moment that the shootout happened. It would be hard to believe that judicial rulings like this only happened in the town of Tombstone.

The ruling of Judge Spicer offers insight to the corruptibility of the law and selection of the people that enforce it. The fact is, if the people of the town elect or appoint people that they know have a history of lax enforcement or people that have shot people before and have friends that have done the same they can most certainly expect what happened at the O.K. Corral.

Historical Significance

All of the corruption however is not taking away from the simple fact that the Earp party did shoot and kill members of the Clantons and McLaurys. The only real explanation of why the Earp party was not convicted is because of the common bond that they had with the judge that was hearing the case. This is not only law and order, but also Judge Spicer and the Earps being

⁴⁶ Lubet, Steven *Murder in Tombstone*.

members of the same political party. The town had its fair share of corruption and it would be hard to believe that this was not the case in many western towns just getting their starts. The proof that the town was run by either outlaws and shooters or corrupt officials lies in the documentation of the trial and the analysis of it by the later secondary sources.

The whole town seems to be at a division and does not help in the judicial process. All sides in the division seem to be either an outlaw or corrupt and it makes it hard to understand how a town that is run by the leadership as presented could survive. One of the reasons is the legend that lies behind the gunfight and even the town itself. This is because if justice was to be handed down in a manner such as this, it is hard to see how more fights similar to what happened at the O.K. Corral did not happen anymore. It is also hard to understand that after reading a letter (by the miner, to the editor of the *Tombstone Daily Epitaph*) that has such harshness to it and almost explicitly sends a death threat to a judge that nobody went looking to find who wrote the letter or the life of the judge was not taken. This is because the letter made it seem as though many people were angry about the ruling as they did have the right to be as it seemed. The letter itself makes the town and possibly the west as a whole seem lawless, as something written of that nature should not have even been published as it offered threats on the life of a public official. The event as a whole offers insight to the law that the town of Tombstone employed and the law that the west in general almost certainly employed.

Conclusion

The gunfight at the O.K. Corral lead to a trial that proved that the law enforcement of the town did not work together and had corruption on the inside of the judicial system and law enforcement as a whole. The people involved all have their own personality traits that caused the gunfight to happen and the ruling in the trial to come down. Overall, it has been proven that

Tombstone had its flaws and many of these lie in the corruption of public officials and the election or appointing of shooters which in turn were essentially outlaws. These flaws have provided historians with material to debate for many years as the trial has proved that justice was probably not upheld to the fullest extent.

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