

History on Trial

Episode 22

Trial at the O.K. Corral: *The Earp-Holliday Case*

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PROLOGUE

In the summer of 1881, Wyatt Earp, lawman, approached Ike Clanton, outlaw, with a proposition. This was highly unusual. Ike Clanton was affiliated with the Cowboys, a group of cattle rustlers and stagecoach robbers who operated in the dusty reaches of southeastern Arizona. Wyatt Earp, on the other hand, was a former Pima County deputy sheriff. His brother, Virgil, was city marshal for Tombstone, the mining boomtown situated in the heart of Cowboy country. The Earps were sworn enemies of the Cowboys. So what did Wyatt want with Ike?

As Wyatt would later explain it, he thought Ike could help make him sheriff.¹ Earlier that year, Tombstone had split off from Pima County to become the seat of the newly formed Cochise County. Wyatt had hoped to be appointed sheriff of Cochise County, but that honor had gone to Johnny Behan instead. Behan was thought to be sympathetic to the Cowboys – many in Tombstone were, for various reasons. But having a sheriff with connections to outlaws seemed wrong to many other Tombstoners, including Wyatt Earp. Since there would be a real election held for the sheriff position soon enough, Wyatt decided to run.²

He had an unorthodox campaign strategy. A few months earlier, in March of 1881, a stagecoach carrying a Wells Fargo money box was attacked by a group of bandits outside of Tombstone. In the course of the attempted robbery, the stagecoach driver and a passenger were killed. Wyatt and Virgil Earp had tracked down one of the robbers, a man named Luther King. King, in turn, had identified his accomplices: William Leonard, Harry Head, and James Crane – all known Cowboy affiliates. The Earp posse turned King over to Sheriff Behan so they could pursue the missing men, but they never found Leonard, Head, or Crane.³

Soon after, King managed to escape custody. The circumstances of his escape were *very* suspect - one of Behan's deputies left the prisoner unattended with the door unlocked, allowing King to slip out and mount the fresh horse that had very conveniently been left behind the jail.

¹ "[Statement of Wyatt S. Earp in the Preliminary Hearing in the Earp-Holliday Case](#)," November 16, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*.

² Steven Lubet, *Murder in Tombstone: The Forgotten Trial of Wyatt Earp* (New Haven: Yale University Press, 2004), 47-51. N.B. An electronic version was used; page numbers may vary by user settings.

³ Lubet, 53-54.

Many Tombstoners suspected that Behan had looked the other way, or maybe had even helped King.⁴ George Parsons, a Tombstone resident, wrote in his diary, quote “Some of our officials should be hanged. They’re a bad lot.”⁵

Wyatt wanted to play off these bad feelings in his own campaign for sheriff. And wouldn’t it be even better if he managed to capture the missing robbers – Leonard, Head, and Crane – too? That would show just how useless Behan was.

But to do that, Wyatt needed intel on the Cowboys. And where better to get that intel than from another Cowboy? Ike Clanton came from a Cowboy family – his little brother, Billy, and his father, Newman, who everyone called “Old Man”-- took part in Cowboy raids too.⁶ Ike might know where to find the missing robbers, so Wyatt came to him with an idea. Wells Fargo was offering a \$5,000 reward for the robbers’ capture; if Ike helped him find the men, Wyatt said, he’d give Ike the reward money.⁷

Ike, demonstrating that there’s no honor amongst Cowboys, had just one question: was the reward only good if the men were captured? What if they were killed? Wyatt telegraphed the Wells Fargo office to ask. Dead or alive, Wells Fargo confirmed. Ike and Wyatt struck a deal.⁸

Unfortunately for Wyatt’s campaign ambitions, and Ike’s financial dreams, Leonard, Head, and Crane all soon died in unrelated gun battles.⁹ But the deal the two men had struck that summer would, only months later, lead them both to a dusty lot behind the O.K. Corral, where an escalating Earp-Cowboy conflict erupted into one of the Wild West’s most infamous gunfights.

“The 26th of October, 1881,” wrote reporter Richard Rule in the Tombstone *Daily Nugget* the next day, “will always be marked as one of the crimson days in the annals of Tombstone, a day when blood flowed as water, and human life was held as a shuttlecock, a day always to be remembered as witnessing the bloodiest and deadliest street fight that has ever occurred in this place, or probably in the territories.”¹⁰

Rule was right. We remember the gunfight at the O.K. Corral. We can picture it; the long, black coats, the drooping mustaches, the fingers resting on triggers. The gunfight at the O.K. Corral has become a symbol of the Wild West, an illustration of how hard

⁴ Lubet, 53-54.

⁵ Lubet, 54.

⁶ Lubet, 31-32, 67.

⁷ Lubet, 57.

⁸ Lubet, 57.

⁹ Lubet, 57.

¹⁰ Richard Rule, [“A Desperate Street Fight,”](#) *Daily Nugget*, October 27, 1881.

men administered justice on the lawless frontier. But here's the funny thing about the gunfight at the O.K. Corral: it might have started in the streets, but it ended up in a courtroom.

Welcome to History on Trial. I'm your host, Mira Hayward. This week, the Earp-Holliday Case.

ACT I

The legend of the Earps began in July, 1840, when Nicholas Earp married Virginia Cooksey in Hartford, Kentucky. The couple would have eight children, including the three that we know best today: Virgil, Wyatt, and Morgan.¹¹ Nicholas was a short-tempered, ill-mannered, but energetic man.¹² He moved his family frequently – Virgil was born in Kentucky in 1843, Wyatt in Illinois in 1848, and Morgan in Iowa in 1851.¹³ This unsteady childhood bonded the Earp brothers; as adults, they often traveled and lived together.¹⁴

Throughout the 1860s and 70s, the brothers bounced across the West and Midwest, taking whatever jobs they could get, like driving stagecoaches, dealing in casinos, and building train tracks. Contrary to our idea of them today, law enforcement was not always the Earps' passion; when they did take police jobs, like when Wyatt and Morgan served as deputy town marshals in Wichita, it was usually only because of the steady paycheck provided.¹⁵ In fact, Wyatt, for most of his young adult life, had more of a penchant for breaking the law than for enforcing it. After the tragic death of his pregnant wife Urilla, in 1870, Wyatt went through a bit of a dark period. He was, at various times, arrested for horse theft, charged with running a floating brothel, and sued for keeping taxes he had collected for local schools for himself.¹⁶

But by the late 1870s, Wyatt had settled down, as had his brothers. Virgil and his common-law wife, Allie, were living in Prescott, Arizona, where he was serving as town constable – a job that mainly required him to serve subpoenas.¹⁷ Virgil encouraged Morgan – who was then mining in Montana – and Wyatt – a deputy marshal in Dodge City, Kansas – to join him in Arizona.¹⁸ Wyatt and Morgan were in. Wyatt's good friend, John Holliday, decided to come too. Doc Holliday, as he's better known, was a

¹¹ "[Nicholas Porter Earp](#)," *FamilySearch*.

¹² "[Wyatt Earp](#)," transcript, *American Experience*, PBS, January 25, 2010.

¹³ "[Virgil Walter Earp](#)," "[Wyatt Berry Stapp Earp](#)," and "[Morgan Seth Earp](#)," "*FamilySearch*."

¹⁴ "Wyatt Earp," *American Experience*, and Lubet, 19.

¹⁵ Lubet, 16-19.

¹⁶ Ron Soodalter, "[The Untold Story of Wyatt Earp in Missouri](#)," *Missouri Life Magazine*, January 31, 2023, and Andrew C. Isenberg, "[Was Wyatt Earp a Horse Thief?](#)" *True West Magazine*, July 9, 2013.

¹⁷ Lubet, 19 and Bill Lynam, "[The Facts of Virgil Earp's Connection to Prescott](#)," October 13, 2001.

¹⁸ Lubet, 19 and Lee A. Silva, "[The Mysterious Morgan Earp](#)," *HistoryNet*, January 16, 2018.

hard-drinking dentist with a quick temper and a bad case of tuberculosis. Most people didn't like him. But Doc had once saved Wyatt's life during a standoff, and the two had been fast friends ever since.¹⁹

On November 1st, 1879, Wyatt met up with Virgil and Allie in Prescott. The party then made their way to Tombstone, arriving on December 1st. Morgan came eight months later, in July 1880, and Doc several months after that.²⁰

The Earps had chosen Tombstone because of its legendary mines.²¹ In August, 1877, a man named Ed Schieffelin had found a vein of silver in the area. In a cheeky nod to a doubter who'd once told him he'd only find his death out there, Schieffelin dubbed his claim Tombstone.²² In November 1879, a month before Virgil and Wyatt arrived, Tombstone elected its first mayor and city council.²³

Like many Western mining towns, Tombstone was a rough place. Saloons and gambling halls lined the streets; after too many drinks, fights broke out over card games.²⁴ The town's location, only 30 miles from the Mexican border, made it a popular spot for bandits and cattle rustlers who stole goods in one country and sold them in another.²⁵ People called such criminals "cowboys" – the men who we'd call cowboys today were then called stockmen or cowhands.²⁶ By the late 1870s, people had started calling the rustlers and robbers who lived in Southeastern Arizona the capital-C "Cowboys." The Cowboys weren't an official gang - they were a loose group of outlaws who collaborated to part cattle from ranchers and money from stagecoaches.²⁷ Many of them came to Arizona from the former Confederacy, drawn to the territory by the promise of less government oversight.²⁸

Though the Cowboys could be violent, sometimes killing victims during their robberies, not everyone in Tombstone minded their presence.²⁹ Legal historian Steven Lubet, in his book *Murder in Tombstone*, calls the relationship between the Cowboys and the town, quote, "symbiotic, not flatly antagonistic...the Cowboys had many friends and supporters both in and around Tombstone. Butchers and other local

¹⁹ Lubet, 19-20, 42-44.

²⁰ Lubet, 20.

²¹ Lubet, 19, 24.

²² Eric Zotcavage, "[How prospector Ed Schieffelin found his Tombstone](#)," 3TV/CBS5, last updated March 4, 2019.

²³ Lubet, 21.

²⁴ Lubet, 21.

²⁵ Lubet, 22, 26.

²⁶ Lubet, 27.

²⁷ Lubet, 26-27, 32, 40.

²⁸ Lubet, 26, 32.

²⁹ Lubet, 27-29.

merchants...depended on Cowboys for cheap provisions, and saloon keepers enjoyed their freewheeling spending habits.”³⁰ Ranchers living outside of town, many of whom were ex-Confederate Democrats, also got on well with the Cowboys, who shared their political beliefs and backgrounds. Some of these ranchers even acted as middlemen for cattle the Cowboys stole in Mexico.³¹

But not everyone was so tolerant of the Cowboys. Many involved in the mining business – mine owners and engineers – as well as other businessmen, were concerned about the economic impact the Cowboys’ crime could have. These people mainly came from Northern states and were Republicans. They had less in common, politically and socioeconomically, with the Cowboys.³²

This latter group included the Earp brothers, who were now firmly invested in helping maintain law and order. They did so in both private employment – guarding Wells Fargo stagecoaches and acting as bouncers in saloons– and also in public roles. Before arriving in Tombstone, Virgil had been appointed a deputy U.S. marshal, making him the only federal authority in the region.³³

In the summer of 1880, an army lieutenant reached out to Virgil with a request. Six mules had been stolen from the Army’s base at Camp Rucker. Could Virgil track them down? Virgil agreed to look into the matter, taking Wyatt and Morgan along with him. The Earps got a tip to search the McLaury ranch outside of Tombstone. Two of the McLaury brothers, Frank and Tom, were known to collaborate with the Cowboys, hiding rustled livestock on their ranch. Sure enough, there were the mules. The McLaurys, unsurprisingly, were never big Earp fans after that.³⁴

Besides a little mule-rustling, relative peace reigned in Tombstone for much of 1880. Wyatt was appointed a deputy sheriff in Pima County, and he and Virgil collaborated with Tombstone’s town marshal, Fred White, to represent federal, county, and local law enforcement.³⁵

Then, on October 28th, a group of drunken Cowboys took to the streets of Tombstone and began firing their guns for fun. Town Marshal Fred White intervened - and got shot in the groin. White died four days later, and Virgil was appointed acting town marshal.³⁶

³⁰ Lubet, 32.

³¹ Lubet, 31-32.

³² Lubet, 31-32, 35.

³³ Lubet, 38, 23-25.

³⁴ Lubet, 31, 41.

³⁵ Lubet, 25, 42.

³⁶ Lubet, 44-45.

In response to this violence, the Tombstone town council passed a new ordinance, forbidding people from carrying weapons within city limits.³⁷ They hoped this would restore peace. But the violence was only beginning.

1881 saw a number of upheavals for the town. First, Tombstone and its surroundings split off from Pima County to form Cochise County. If this is sounding familiar, I talked about this in the prologue, but that was ages ago, so as a quick refresher: In February, Democrat and alleged Cowboy Sympathizer Johnny Behan becomes Cochise County Sheriff, much to Wyatt Earp's chagrin. In March, the fatal stage coach robbery takes place. After the Earps apprehend one of the robbers, he miraculously manages to slip out of Behan's custody. Wyatt Earp, fed up with Behan's incompetence, decides to run for sheriff. He makes a deal with Ike Clanton, Cowboy, to get intel on the other stagecoach robbers. Ike says yes, because a \$5,000 dollar reward is hard to refuse. The other robbers end up dying in unrelated gunfights, as outlaws tend to do, so nothing happens – except that the animosity between the Earps and Sheriff Behan grows and grows and grows.³⁸ I should mention here that at some point, Behan's fiancé, Josephine Marcus, leaves him – and eventually ends up with Wyatt Earp. So that also doesn't help relationships between the men.³⁹

That takes us to September, 1881. That month, acting Arizona Territory governor John Gosper, hears about the dysfunctional law enforcement situation in Tombstone and decides to see for himself. His report to Secretary of State James Blaine, written on September 20th, is concerning. In conversations with Johnny Behan and Virgil Earp, Gosper wrote, both men had accused the other of enabling the Cowboys. Without cooperation between the sheriff and the marshal, Gosper said, there was little chance of cracking down on crime in the region.⁴⁰

Gosper ended his report on an ominous note, quote: "Something must be done, and that right early, or very grave results will follow."⁴¹ Only a month later, his worst fears came true.

ACT II

Late on the evening of October 25th, 1881, Ike Clanton and Tom McLaury arrived in Tombstone with a wagonload of beef to sell. Around midnight, Ike stopped by the Alhambra Saloon, where he ran into Doc Holliday. This meeting was no coincidence – Wyatt Earp had engineered it. In the months since Wyatt and Ike had made their deal,

³⁷ Lubet, 46.

³⁸ Lubet, 37-38, 47-51, 53-57.

³⁹ Lubet, 51-52.

⁴⁰ Lubet, 61.

⁴¹ Lubet, 61.

Ike had gotten increasingly nervous about word of his betrayal getting out. For some reason, Ike believed that Wyatt had told Doc Holliday about their discussions. Wyatt thought a conversation with Doc might reassure Ike. Why he thought this is a mystery – Doc Holliday was many things, but a soothing presence? Not one of them. He and Ike were both known for their quick tempers. Plus, there's nothing that says "I don't know about your secret business" like telling someone "I don't know about your secret business." The meeting quickly devolved, and Ike and Doc began threatening each other. Morgan Earp intervened and broke up the fight. Out on the street, Ike briefly got into it with Wyatt. Tempers eventually cooled enough for someone to suggest a poker game, so Ike, Tom, Virgil, Sheriff Behan, and maybe Morgan, Wyatt, and Doc, too – all sat down for a casual five-hour game at the Occidental Saloon.⁴²

Unfortunately – if unsurprisingly – hours of drinking and gambling did nothing to cool Ike off. Throughout the next morning, October 26th, Ike was seen drunkenly wandering through the streets of Tombstone waving a rifle and threatening the Earps and Doc Holliday. The gossip network in Tombstone worked fast – soon enough, word of Ike's behavior reached Virgil and Morgan. When they found Ike, Virgil seized Ike's rifle, and then employed a Western lawman's favorite technique for subduing a troublemaker – he clubbed Ike in the head with the butt of his revolver.⁴³ This was called "buffaloing," and though we'd probably call it police brutality today, buffaloing was looked upon as a sign of an officer's restraint – better than just shooting someone.⁴⁴

Then Virgil charged Ike with carrying a firearm within city limits – the ordinance that had been passed a year before in response to the shooting death of Town Marshal Fred White. After paying a twenty-five dollar fine and surrendering his weapons, Ike was released. Virgil deposited Ike's rifle and revolver at the Grand Hotel for Ike to pick up when he left town.⁴⁵

In the street, Wyatt ran into Tom McLaury, who was looking for Ike. Wyatt would later claim that Tom had a gun, but by most other accounts, Tom was unarmed. Exactly what happened then between Wyatt and Tom is unknown, but Wyatt ended up buffaloing Tom.⁴⁶

Just then, Ike's younger brother Billy, and Tom's older brother, Frank, arrived in town – both armed. Billy and Frank were furious to hear about what had happened to their brothers, whose heads were both bleeding from their buffaloings. Not long after, the Clantons and McLaurys were seen in Spangenburg's gun shop, where they bought

⁴² Lubet, 62-65.

⁴³ Lubet, 65.

⁴⁴ Lubet, 11.

⁴⁵ Lubet, 66.

⁴⁶ Lubet, 67, 188-189.

ammunition. Ike also tried to buy another gun, but Mr. Spangenburg refused. The group then headed to the O.K. Corral, for unknown reasons.⁴⁷

The Earps heard about the gun shop visit and grew concerned. Virgil went to the Wells Fargo office and borrowed a shotgun. But he left the Cowboys alone for now, hoping they would leave town of their own accord.⁴⁸

Meanwhile, Sheriff Behan – having just woken up from his post-poker nap – was apprised of the situation. Behan decided to approach the Cowboys and, per his later testimony, get them to disarm. He found the group in an alley that connected the back of the O.K. Corral to Fremont Street. Unfortunately, Frank McLaury refused to give up his gun, unless the Earps and Holliday also agreed to disarm. Billy Clanton also refused, saying he was planning to leave town. Ike Clanton and Tom McLaury both appeared to be unarmed; Behan patted Ike down and found nothing, but did not search Tom. Apparently satisfied with his own work, Behan went to update the Earps.⁴⁹

But Behan's efforts were too little, too late. While he'd been talking to the Cowboys, the Earps had learned that the Clantons and McLaurys had left the O.K. Corral and been spotted on Fremont Street. In stepping onto a public street, Billy and Frank had broken the ordinance against carrying weapons in town. In Virgil Earp's mind, this crossed the line. He decided that he needed to disarm the Cowboys. Doc Holliday then showed up and offered to come along. Wyatt brushed him off, saying "This is our fight," to which Doc replied, "That's a hell of a thing for you to say to me."⁵⁰ So Virgil decided to deputize Doc along with his brothers, and gave Doc the shotgun he'd borrowed before they set off. Partway down Fremont street, the Earps and Holliday ran into Sheriff Behan. He tried to stop them, saying "I am the sheriff of this county, and I am not going to allow any trouble if I can help it." When this was ignored, Behan pleaded, 'For God's sake, don't go down there or you will get murdered.' And then, for some reason, Behan inaccurately said, "I have disarmed them all."⁵¹

A minute later, the Earps and Holliday arrived at the vacant lot bordering Fremont Street where the Cowboys were. Besides the Clantons and McLaurys, another Cowboy named Billy Claiborne was hanging around, but he quickly faded away as the lawmen approached. Even from ten feet away, Virgil could see that Billy Clanton and Frank McLaury were armed. Virgil raised the walking stick he had in his right hand and called

⁴⁷ Lubet, 67-68.

⁴⁸ Lubet, 68.

⁴⁹ Lubet, 69-70.

⁵⁰ Lubet, 70-71.

⁵¹ Lubet, 71-72.

out, “Boys, throw up your hands, I want your guns.” And then realizing he might be misinterpreted, he added, “Hold! I don’t want that.” But it was too late.⁵²

What happened next is still debated. Some said that the Cowboys tried to surrender. Others said that the Cowboys shot first. Either way, in seconds, shots were flying. Frank McLaury took a bullet in the side. Morgan Earp was hit in the shoulder. Tom McLaury turned towards his horse – either to grab the rifle hanging off its saddle, or to run– and Doc Holliday hit him with a load of buckshot. Frank McLaury took aim at Doc and missed; Morgan and Doc shot back, killing thirty-two-year-old Frank on the spot. Billy Clanton took shots to his chest and wrist, but still managed to shoot Virgil’s leg, before taking another bullet to the stomach. All of this happened in less than thirty seconds.⁵³

Despite all the shots fired – more than thirty– Wyatt and Ike emerged unhurt. Wyatt, by some stroke of luck; Ike, because he ran away. Virgil had a nasty leg wound. Morgan had a chipped vertebra from the bullet that had passed through one shoulder and out the other. Nineteen-year-old Billy Clanton and twenty-eight-year-old Tom McLaury both died within the hour.⁵⁴

Johnny Behan, trying to assert some control, approached Wyatt and told him he was under arrest for murder. Wyatt was speechless. “I won’t be arrested,” he said. “You deceived me Johnny, you told me they were not armed.” He told Behan he would answer for what he had done, and that he wouldn’t leave town, but that he wouldn’t be arrested. Behind him, the gathering crowd voiced their support. “There is no hurry in arresting this man,” hotel owner Sylvester Comstock declared. “He done just right in killing them, and the people will uphold them.” Behan backed off.⁵⁵

That day, it seemed that Comstock was right: the people would uphold the Earps and Holliday’s actions. Newspaper accounts of the shooting, based on eyewitness accounts, all favored the lawmen. Ike Clanton and his younger brother Phin were taken into protective custody because it was rumored that people wanted to lynch them.⁵⁶

But this support would not last long. Frank, Tom, and Billy’s bodies were displayed in open caskets on the street; someone placed a sign above them that read “Murdered in the Streets of Tombstone.” Two thousand people showed up for the men’s funeral. Whispers grew louder: were the killings really justified?⁵⁷

⁵² Lubet, 72.

⁵³ Lubet, 72-73.

⁵⁴ Lubet, 73-74.

⁵⁵ Lubet, 75.

⁵⁶ Lubet, 75-77.

⁵⁷ Lubet, 78-80.

And then, on October 28th, the coroner's inquest began. Arizona law only required a coroner's inquest only in cases where a death was suspected to be caused by crime, a troubling sign for the Earps.⁵⁸ Still, they likely believed that the testimony would support them. But the first witness, Sheriff Behan, quickly dashed their hopes. Behan claimed that, after Virgil asked for the Cowboys' guns, Billy Clanton had cried out "Don't shoot me! I don't want to fight," and Tom McLaury had said "I have got nothing," pulling his coat back to show he was unarmed.⁵⁹ Even as the men were surrendering, Behan said, the Earp party had started shooting. Behan also claimed that Virgil had not been, quote, "acting in an official capacity," painting the shootout as the result of a private feud. Ike Clanton and Billy Claiborne corroborated Behan's story. More damningly, several neutral witnesses also testified about the Earps and Holliday shooting quickly after asking the Clantons and McLaurys to surrender.⁶⁰

By the end of the two day inquest, many Tombstoners had become openly critical of the Earps' actions. Though coroner Henry Matthews released an ambiguous verdict, finding only that Billy Clanton and the McLaurys had died as a result of being shot, everyone knew the story would not end there.⁶¹ And indeed, the day after the coroner's verdict, Ike Clanton filed first-degree murder charges against John "Doc" Holliday and Virgil, Wyatt, and Morgan Earp.⁶² The case would now be sent before Justice of the Peace Wells Spicer for a preliminary hearing. If Spicer found that a crime had indeed been committed, and that there was sufficient cause to find the Earps and Holliday guilty of said crime, they could find themselves on trial for their lives.

Act III

Tombstone's first courthouse had burned in a fire earlier in the year, so the preliminary hearing took place in the court's temporary home in the Mining Exchange Building, just down the block from the shootout site.⁶³ Wells Spicer, the Justice of the Peace, presided. A true multi-hyphenate Westerner, the fifty-year old Spicer was a lawyer, prospector, and a journalist.⁶⁴

Preliminary hearings were usually brief affairs, consisting of a straightforward presentation of evidence to a judge, who would then rule if a grand jury should hear the case. But this hearing would last for nearly a month and closely resemble a real trial. Why? Well, given the nomadic existence of many frontier settlers, there was no

⁵⁸ Lubet, 80.

⁵⁹ Lubet, 81.

⁶⁰ Lubet, 82-87.

⁶¹ Lubet, 87-90, 93.

⁶² Lubet, 90.

⁶³ "[Tombstone Courthouse State Park](#)," Tombstone Chamber of Commerce, 2024.

⁶⁴ Lubet, 99-103.

guarantee that a witness would stick around for a trial. Arizona law allowed for sworn testimony given in preliminary hearings to be read aloud at trial, should the witness have moved on. So lawyers on both sides were incentivized to get testimony recorded now.⁶⁵

The prosecution and defense also had their own reasons to believe a prolonged preliminary hearing could benefit their cases. In the past, Tombstone prosecutors had held back evidence that they wanted to save for trial from preliminary hearings, and seen their cases dismissed. And the defense probably believed that they would have a better shot with Judge Spicer, a Republican, than with a Cochise County grand jury, which would likely contain many Democrats and Cowboy sympathizers.⁶⁶

Attorney Tom Fitch led the defense. Fitch was a fascinating character. During his long and varied career, the forty-three year old Fitch had worked as a reporter, a political organizer, and a lawyer – and had also served a term in Congress as a representative from Nevada. Fitch technically only represented the Earps; lawyer T.J. Drum represented Doc Holliday, but Fitch structured the defense and likely conducted most of the examinations.⁶⁷

The prosecution had no such unifying force. District Attorney Lyttleton Price, a thirty-three year old lawyer, was technically in charge. But friends of the Clantons and McLaurys, skeptical of the Republican Price, fundraised to hire another prosecutor: Ben Goodrich. Goodrich was a Confederate veteran and staunch Democrat, and he may have helped Ike Clanton file the murder charges.⁶⁸

There was a third prosecutor too, who arrived on the third day of the hearing, and shaped the case more than either Goodrich or Price. His name was Will McLaury and he was Frank and Tom McLaury's oldest brother. Thirty-six year old Will was an attorney in Texas; upon hearing of his brothers' deaths, he had gone immediately to Arizona and asked to join the prosecution.⁶⁹ From the start, Will's intent was clear: he wanted the Earps and Holliday dead. "This thing has a tendency to arouse all the devil there is in me," he wrote to his law partner. "I could kill them."⁷⁰ Will made it clear to his co-counsels that he was uninterested in any charge less than first-degree murder, and the death sentence that accompanied it.

⁶⁵ Lubet, 94, 97-98.

⁶⁶ Lubet, 94-97.

⁶⁷ Lubet, 104-107.

⁶⁸ Lubet, 92, 107-109.

⁶⁹ "[William Rowland McLaury](#)," *FindAGrave*, and Lubet, 109-110, 136, 155-157.

⁷⁰ Lubet, 155.

Before Will McLaury's arrival on November 4th, the prosecution case had proceeded sedately. Coroner Henry Matthews detailed the wounds on the dead men's bodies. Billy Allen, a friend of the McLaurys and Clantons, testified that Frank McLaury had told him he planned to get his brother out of town, not fight the Earps. Sheriff Johnny Behan repeated his story from the inquest, in which Tom McLaury and Billy Clanton had tried to surrender. Martha King, a housewife, described seeing the Earps as they walked towards the gunfight, and hearing one of the brothers tell Doc Holliday, quote, "let them have it." Andrew Mehan, a saloonkeeper, testified that Tom McLaury had turned in his pistol – per Tombstone law– in the early afternoon of the 26th, supporting the idea that he'd been unarmed during the gunfight. Billy Claiborne, the Cowboy who'd been with the McLaurys and Clantons at the gunfight, claimed that the Earps and Holliday had approached with their guns drawn, ready for a fight.⁷¹

None of this looked good for the defendants. The prosecution's presentation made it look like they had acted hastily, out of anger - that they had provoked the gunfight and shot unarmed men. But the prosecution hadn't provided much evidence for premeditation, which was needed to prove first-degree murder. And that was a problem for Will McLaury, who wasn't going to be satisfied with a lesser charge.⁷²

Fortunately, the prosecution's next witness, Ike Clanton, was prepared to provide the defendants with a motive for murder. It came out, surprisingly, during his cross-examination, on Saturday, November 12th. Earlier, Ike had testified that his fight with the Earps and Doc the night before the gunfight had been unprovoked; Tom Fitch pushed him on this, asking if it had anything to do with the deal that Ike had made with Wyatt to turn on Leonard, Head, and Crane, the stagecoach robbers.⁷³

Ike admitted that there was a deal - but it wasn't a deal to capture the robbers - it was something much more nefarious: Wyatt Earp, Ike claimed, had offered him \$6,000 dollars to, quote "help put up a job to kill Crane, Leonard and Head." Why would Wyatt want the men dead? Because, Ike said, the Earps and Doc Holliday had worked on the stage coach robbery with them. "[Wyatt] was afraid," Ike continued, "[that] some of them would be caught and would squeal on him."⁷⁴ Tom Fitch was stunned. Where had this story come from? It was baffling, and hard for most people to believe.

The prosecution, however, doubled down. On redirect, the prosecutor asked Ike for more details. Ike took the invitation and ran with it, now claiming that all three Earp brothers had admitted directly to him their involvement in the robbery, and that Doc

⁷¹ Lubet, 113-136, 157-158, 160-168.

⁷² Lubet, 169, 171.

⁷³ Lubet, 177-180.

⁷⁴ "[Testimony of Joseph I. "Ike" Clanton](#)," November 9-15, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*.

Holliday had openly confessed to firing the shot that killed the driver. Ike described his horror at what the men were telling him, saying, quote “I was not going to have anything to do with helping to capture Bill Leonard, Crane, and Harry Head.” *Capture* them - not *kill* them. Ike caught his slip of the tongue and quickly corrected himself, but not quickly enough for it to escape Tom Fitch’s notice; Fitch asked for a note to be made in the record, and Spicer obliged, writing, quote, “At the time of stating the above sentence, the witness first said, ‘capture,’ and then corrected it to ‘kill.’”⁷⁵

But Ike wasn’t deterred by this revealing mistake. As the redirect examination continued, Ike – apparently with full support of the prosecution – now tied this deal back to the gunfight, saying that after Leonard, Crane, and Head died, he believed the Earps and Holliday would kill him for what he knew. Ike thought the gunfight had actually been an attempted assassination.⁷⁶

What prompted Ike Clanton to tell this story, so blatantly an invention? Maybe alcohol, one historian has suggested, or cocaine, says another, which Ike might have been taking for headaches.⁷⁷ Steven Lubet believes that Will McLaury, desperate to prove first degree murder, might have encouraged Ike to provide a motive. On re-cross, Tom Fitch got Ike to admit that he had shared this story with the prosecution before he told it.⁷⁸ Whatever Ike’s reasons, his impact on the hearing was enormous.

On November 16th, the defense began their presentation. Tom Fitch recognized the unique dimensions of this case. “In most cases,” Steven Lubet writes, “it is undisputed that a crime has occurred, and the question is whether the defendant committed it. The Earps’ trial, however, was very nearly the reverse. There was no doubt that the Earps killed the three Cowboys, but the question was whether it amounted to a crime. Criminality, not commission, was the ultimate issue for the court.”⁷⁹ The defense planned to answer the question of criminality by focusing on character: by defining the Earps as lawmen and casting the dead men as dangerous criminals who posed a threat to Tombstone.⁸⁰

To that end, the defense’s first witness was Wyatt Earp himself. This was sure to be a dramatic moment in the hearing, but what Tom Fitch did after calling Wyatt made it even more riveting: he declared that Wyatt would not be undergoing a direct or cross-examination. Instead, he would be presenting a narrative statement. Under Arizona law, defendants were allowed to do this. This law was a remnant of the time -

⁷⁵ Lubet, 180-182.

⁷⁶ Lubet, 182.

⁷⁷ Lubet, 184.

⁷⁸ Lubet, 183-187.

⁷⁹ Lubet, 191.

⁸⁰ Lubet, 196, 203.

not long gone - when defendants were not allowed to testify in their own defense – something we talked about in more depth in the Lincoln Lawyer episode.⁸¹ However, defendants usually spoke off the cuff – and Wyatt Earp would not be doing that. Instead, he began to read from a prepared statement. The prosecution objected, but Judge Spicer ruled that, quote “the statute was very broad [and] the defendant could make any statement he pleased whether previously prepared or not.”⁸²

And so Wyatt read. His statement was wide-ranging, and suspiciously articulate, presenting a long history of the Clanton and McLaury brothers’ association with the Cowboys, and their various criminal activities. He called Ike Clanton’s testimony, quote, “a tissue of lies from beginning to end.” He said he believed Tom McLaury to have been armed. And he expressed the personal fear and responsibility he felt, saying “I believed then, and believe now, from the acts I have stated and the threats I have related...made by Tom McLaury, Frank McLaury, and Ike Clanton, that these men... had formed a conspiracy to murder my brothers...Doc Holliday and myself. I believe I would have been legally and morally justified in shooting any of them on sight, but I did not do so, nor attempt to do so...I went as a part of my duty and under the direction of my brother, the marshal; 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.”⁸³

Virgil Earp also testified. The format was the more traditional direct and cross examination, but the setting was unusual: Virgil, still recovering from his wounds, gave his testimony from his sickbed.⁸⁴ His story aligned with Wyatt’s, although he focused more on the law enforcement aspects of the day, explaining that he had deputized his brothers and Doc Holliday to help him disarm the Clantons and McLaurys. Virgil also described all the threats the Cowboys had made towards him, including a new piece of evidence: not long before the gunfight, a man Virgil did not know approached him and told Virgil that he’d just seen a group of men gathered by the O.K. Corral. All the men were armed, he said, and he’d heard one of them say, quote, “Be sure to get Earp, the Marshal” and another reply “We will kill them all!”⁸⁵

The defense now produced the man who had told Virgil this story. His name was H.F. Sills. He was a railway worker visiting Tombstone on October 26th when he happened to

⁸¹ Lubet, 195, 206-208.

⁸² Lubet, 196.

⁸³ “[Statement of Wyatt S. Earp](#),” November 16, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*.

⁸⁴ Lubet, 220.

⁸⁵ “[Testimony of Virgil Earp](#),” November 19-22, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*.

overhear the Clantons and McLaurys talking about the Earps.⁸⁶ Sills asked someone to point him to Virgil so he could pass on what he'd heard. He did not know who the Clantons or McLaurys were, at the time, but at Frank, Tom, and Billy's funeral, Sills had recognized Ike Clanton as one of the men making threats before the gunfight.⁸⁷ Sills' status as a complete outsider gave his testimony weight. And he was not the only one to testify for the defense about threats made by Ike Clanton - Ned Boyle, a bartender, described Ike Clanton saying, quote, "as soon as the Earps and Doc Holliday showed themselves on the street, the ball would open- they would have to fight."⁸⁸ Julius Kelley, a saloon owner, and Rezin J. Campbell, the clerk of the county board of supervisors, also heard Ike make threats.⁸⁹

The defense also presented several gunfight eyewitnesses who rebutted the prosecution's version of events. H.F. Sills claimed that the Cowboys drew their guns as soon as Virgil started speaking to them.⁹⁰ Addie Borland, a dressmaker, said that she hadn't seen any of the Cowboys putting their hands up in surrender. Borland also pushed back on Sheriff Behan's claim that the Earps and Holliday had fired all of the first shots, saying that everyone began shooting simultaneously.⁹¹

Bourland wasn't the only witness to raise issues with Behan's testimony. The defense had a surprise witness - Winfield Scott Williams, an assistant district attorney under Lyttleton Price. Williams did not seem pleased to be there - it must have been awkward, undermining your boss's case - but he appeared nonetheless.⁹² When Tom Fitch had cross examined Sheriff Behan, he'd asked Behan if he had visited Virgil Earp the night after the gunfight, and told Virgil that he had seen one of the McLaury boys draw his pistol immediately after Virgil asked for their surrender. Behan had denied saying this.⁹³ But Winfield Williams had also been at Virgil's house that night, and now, on the stand, he testified that Behan had indeed said this to Virgil.⁹⁴ It was a serious blow to Behan's credibility.

⁸⁶ Lubet, 229.

⁸⁷ Mark Dworkin, "[The Spicer Hearing Testimony of H.F. Sills as it appeared in the Tombstone Daily Epitaph. A detailed comparison with the Tombstone Nugget and the Turner version](#)," via *Famous Trials*.

⁸⁸ "[Testimony of E.F. Boyle](#)," November 23, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*.

⁸⁹ "[Testimony of R.J. Campbell](#)," November 23, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*, and Lubet, 232.

⁹⁰ Dworkin, "The Spicer Hearing Testimony of H.F. Sills."

⁹¹ "[Testimony of Addie Bourland](#)," November 28, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*, and Lubet, 240-244.

⁹² Lubet, 238.

⁹³ "[Testimony of Sheriff John H. Behan](#)," November 14, 1881, from *The O.K. Corral Inquest*, edited by Alford Turner (1992), via *Famous Trials*, and Lubet, 129-130.

⁹⁴ Lubet, 239.

On November 29th, the preliminary hearing ended. Both sides waived the right to closing arguments, for unknown reasons. It was now up to Judge Wells Spicer to review the evidence and decide whether to move the case forward to a grand jury. Spicer said he would announce his decision at 2:00PM the next day.⁹⁵

If Spicer found there was sufficient cause – a pretty low bar– to believe that the Earps and Holliday were guilty of first-degree murder, he could send the case to the grand jury. If he didn't find sufficient cause for this charge, he could recommend a lesser charge, like second-degree murder or manslaughter, or he could dismiss the charges altogether.⁹⁶

At 2:00 o'clock on Wednesday, November 30th, 1881, the parties met once more in the Mining Exchange Building to hear Judge Spicer's decision. Though Spicer had produced his decision quickly, that didn't mean it was short – the text ran for more than 3,000 words. The length reflected the prolonged hearing, Spicer said, explaining, quote: "I have given over four weeks of patient attention to the hearing of evidence in this case, and at least four-fifths of my waking hours have been devoted...to an earnest study of the evidence before me."⁹⁷ Based on that study, he had found that, quote, "There [was] no sufficient cause to believe the [defendants] guilty of the offense mentioned within [and] I order them to be released."⁹⁸

ACT IV

Early in his opinion, Judge Spicer declared that there was a factor in the case that, quote, "divest[ed] the subsequent approach of the defendants toward the deceased of all presumption of malice or of illegality."⁹⁹ That factor was the defendants' roles in law enforcement: Virgil Earp as town marshal, and the rest, as his deputies. When the defendants, Spicer continued, quote, "marched down Fremont Street to the scene of the subsequent homicide, they were going where it was their right and duty to go."¹⁰⁰

Of course, police officers can and do wrongfully kill people. But Spicer did not think that had happened in this case; he believed that the defendants had acted from necessity, to, quote "save themselves from certain death."¹⁰¹ "In view of all the facts and circumstances of the case," Spicer found, "[...]I cannot resist the conclusion that the defendants were

⁹⁵ Lubet, 246.

⁹⁶ Lubet, 247.

⁹⁷ "[Decision of Judge Wells Spicer after the Preliminary Hearing in the Earp-Holliday Case](#)," November 30, 1881, via *Famous Trials*.

⁹⁸ "Decision of Judge Wells Spicer."

⁹⁹ "Decision of Judge Wells Spicer."

¹⁰⁰ "Decision of Judge Wells Spicer."

¹⁰¹ "Decision of Judge Wells Spicer."

fully justified in committing these homicides-that it is a necessary act, done in the discharge of an official duty.”¹⁰²

What circumstances did Spicer mean? He defined them as, quote “the conditions of affairs incident to a frontier country; the lawlessness and disregard for human life; the existence 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... the many threats that have been made against the Earps.”¹⁰³

This description matches almost exactly the narrative that the defense advanced: that the Earps were virtuous lawmen fighting an uphill battle against the lawlessness inherent to a frontier society. Steven Lubet argues that this narrative is the reason that the defense emerged victorious. Not necessarily because of this particular narrative’s virtues, but because they *had* a narrative at all. “In Tombstone,” Lubet writes, “the prosecutors lost primarily because they failed to present a coherent theory of their case.”¹⁰⁴ The prosecution presented many ideas - that the Earps had acted out of anger, that it was an attempted assassination, and so on – but their theories often contradicted each other, and never came together.¹⁰⁵ That’s a problem in a trial, which is, ultimately, in Lubet’s words, quote “a contest of ideas in which each side tries to present a comprehensive reconstruction of past events, combining facts and law in a way that leads to a logical result.”¹⁰⁶

Judge Spicer’s decision had not entirely let the Earps and Holliday off the hook. He chastised Virgil for enlisting Wyatt and Doc to help disarm the Cowboys, saying that in light of Doc and Wyatt’s contentious history with Ike Clanton, bringing them along was a, quote, “injudicious and censurable act.”¹⁰⁷ He also left a thread dangling for future cases, acknowledging that the grand jury could still consider the charges if they wished.¹⁰⁸ Ultimately, though, the grand jury declined to pursue the case.¹⁰⁹

This was certainly a relief for the Earps and Doc Holliday. But not everyone was pleased. Clara Brown, a Tombstone resident, wrote, quote, “There being two strong parties in the camp, of course this verdict is satisfactory to but one of them. The other accepts it with a very bad grace, and a smouldering fire exists, which is liable to burst forth at some

¹⁰² “Decision of Judge Wells Spicer.”

¹⁰³ “Decision of Judge Wells Spicer.”

¹⁰⁴ Lubet, 259.

¹⁰⁵ Lubet, 190.

¹⁰⁶ Lubet, 259.

¹⁰⁷ “Decision of Judge Wells Spicer.”

¹⁰⁸ “Decision of Judge Wells Spicer.”

¹⁰⁹ Lubet, 277.

unexpected moment. If the Earps were not men of great courage, they would hardly dare remain in Tombstone.”¹¹⁰

It did not take long for that fire to burst forth. Late on the night of December 28th, less than a month after the hearing, Virgil Earp was attacked in the streets and shot twice. Miraculously, the shotgun blasts did not kill him, but they ravaged his left arm, which he would never be able to use again. Ike Clanton’s hat was found at the site of the ambush. Some people also suspected that Will McLaury was involved, but he was already back in Texas, heartbroken by the hearing’s outcome.¹¹¹

The morning after the attack on Virgil, Wyatt telegraphed Arizona’s federal marshal, Crawley Dake, and asked Dake to make him a U.S. Marshal and give him the power to appoint deputies. “Local authorities are doing nothing,” Wyatt wrote, “The lives of other citizens are threatened.” Dake agreed and made Wyatt a marshal.¹¹²

Four months later, on March 18th, 1882, as Morgan and Wyatt Earp were playing billiards at Campbell and Hatch’s Saloon, two gunshots ripped through the window. One bullet skimmed over Wyatt’s head and embedded in the wall. But the second bullet hit true, slicing through Morgan Earp’s spine. Morgan fell to the ground and never stood again. He lived for an hour more, as Virgil and Wyatt did their best to make their little brother comfortable. At one point, they tried to help Morgan up. “Don’t boys, don’t. I can’t stand it,” Morgan said, “I have played my last game of pool.”¹¹³ Shortly before midnight, Morgan Earp died, aged 30.¹¹⁴

Virgil and his wife left Tombstone to accompany Morgan’s body on the train to Colton, California, where Morgan’s wife and the Earp parents lived.¹¹⁵

A coroner’s jury investigated Morgan’s death, and identified a number of suspects, but Wyatt Earp was not interested in a court’s justice. He raised a posse, using his marshal status to deputize eleven men including his brother Warren and Doc Holliday. Between March 20th and March 24th, in what would come to be known as the Earp Vendetta Ride, the posse killed three Cowboy affiliates: Frank Stilwell, Florentino “Indian Charlie” Cruz, and Curly Bill Brocius.¹¹⁶ This time, there was no ambiguity about Wyatt Earp’s actions: though Wyatt would claim he’d been within his rights as a U.S. Marshal, this was murder, plain and simple. Johnny Behan formed a posse of his own to chase

¹¹⁰ Lubet, 277.

¹¹¹ Lubet, 279-281.

¹¹² Lubet, 281.

¹¹³ Lubet, 286.

¹¹⁴ Lubet, 286.

¹¹⁵ Lubet, 286.

¹¹⁶ Lubet, 286-290.

down Wyatt and his compatriots, but they fled. Wyatt and Doc ended up in Colorado, and the governor there denied Arizona's extradition requests.¹¹⁷

But death still stalked the men of Tombstone. The first to go was Judge Wells Spicer. After the hearing, he'd received death threats, but nothing came of them. He did not run for the Justice of Peace position again, and turned to prospecting. When a mine he'd invested heavily in failed in early 1887, the now 56-year-old Spicer disappeared; it is thought that he wandered into the desert to die.¹¹⁸

Six months later, Ike Clanton ran into a detective who was investigating him in association with cattle rustling and murder. Ever reactive, Ike drew his gun; but the detective shot first. Ike Clanton died on June 1st, 1887, aged 39.¹¹⁹

Doc Holliday was next. The tuberculosis that had driven him West, in search of better air, ate steadily away at him. His illness, however, didn't stop him from drinking, gambling, or shooting; in 1884, he shot a man named Billy Allen in Leadville, Colorado, over a \$5 debt Holliday owed. Allen miraculously survived, and Holliday miraculously got away with claiming self-defense at trial, though Allen had been unarmed and Holliday had essentially ambushed him.¹²⁰ Despite a talent for escaping from the law, Holliday could not escape his illness; tuberculosis killed the thirty-six-year-old Holliday on November 8th, 1887.¹²¹

Virgil Earp stayed in California after delivering Morgan's body. He spent the rest of his life moving from job to job, just as he always had, including stints in law enforcement, mining, and saloon operation. On October 19th, 1905, Virgil Earp died, aged 62, from pneumonia.¹²²

Johnny Behan left Tombstone in 1886. He would go on to hold a variety of other law enforcement and government positions, but usually left them under a dark cloud, accused of embezzling money or other misconduct. Behan died in Tucson on June 7th, 1912, aged 67.

Virgil was the leader of the Earps on the fateful day in Tombstone, but it is Wyatt whose name is best remembered. This is probably because Wyatt lived the longest – and had a bestselling biography written about him. Wyatt married Josephine Marcus, Johnny

¹¹⁷ Lubet, 289, 291-292.

¹¹⁸ Lubet, 279 and Elaine Young, "[Wells W. Spicer](#)," Washing County Historical Society.

¹¹⁹ "[The Death of Ike Clanton](#)," *True West Magazine*, November 11, 2020.

¹²⁰ Marshall Trimble, "[What Happened in the Billy Allen–'Doc' Holliday Fight Over \\$5?](#)" *True West Magazine*, May 4, 2018.

¹²¹ Lubet, 295.

¹²² Lubet, 295.

Behan's former fiancé, in 1888; the two stayed together until his death.¹²³ Like Virgil, he worked a variety of jobs across the West, before eventually settling down in Los Angeles. There, he befriended many early Hollywood cowboy actors and even consulted on several Westerns. Wyatt Earp died on January 13th, 1929, aged 80.¹²⁴

Two years before his death, Wyatt's eventual biographer, Stuart Lake, asked Wyatt about the gunfight. "For my handling of the situation at Tombstone, I have no regrets," Wyatt said, "If the outlaws and their friends and allies imagined that they could intimidate or exterminate the Earps by a process of murder, and then hide behind alibis and the technicalities of the law, they simply missed their guess."¹²⁵

But were the Cowboys the ones who benefited most from the technicalities of the law? In the Tombstone hearing, no lawyer more ably exploited the law than defense counsel Tom Fitch. He used an outdated – but still active – provision in Arizona law to allow Wyatt Earp to present a meticulously crafted statement *and* avoid cross-examination. Fitch realized that Judge Spicer was more likely to be sympathetic to his clients than a grand or trial jury, and subsequently presented a thorough trial case at what was really just a preliminary hearing. It's not hard to imagine a scenario in which the Earps and Holliday were convicted of involuntary manslaughter. Arizona law at the time defined involuntary manslaughter as an unlawful killing, committed either during an unlawful act, or, quote, "[during] a lawful act without due caution or circumspection."¹²⁶ Did Virgil Earp show due caution when he brought Wyatt and Doc, who had been fighting with the Clantons and McLaurys all day, to try to disarm the Cowboys? Was giving Doc Holliday a shotgun an especially circumspect move?

Whatever the answer to those questions, none of them would ever be explored in a jury trial, thanks to Tom Fitch's clever lawyering; thanks, most of all, to the power of the *story* he told. Though the Tombstone hearing has largely faded from memory, the narrative of lawmen vs. outlaw that the defense crafted at the hearing is one that has been repeated over and over again, in books and tv shows and movies. And despite, at first glance, seeming to be about good versus evil, it's really a narrative where the distance between "lawman" and "outlaw" is much shorter than you'd think.

That's the story of the Earp-Holliday case. Stay with me after the break for the account of the time Wyatt Earp played judge – to disastrous results.

¹²³ Lubet, 52.

¹²⁴ Lubet, 296-299.

¹²⁵ Stuart N. Lake, *Wyatt Earp: Frontier Marshal* (Boston & New York: Houghton Mifflin, 1931), 373.

¹²⁶ Lubet, 267.

EPILOGUE

Before Tombstone, before the O.K. Corral, before any of it, Wyatt Earp worked on the railroad. In the late 1860s, Wyatt had helped build tracks for the Union Pacific.¹²⁷ In the railroad camps, men liked to put on boxing matches, so Wyatt learned to box, which he was good enough at, and then he learned to referee, which he was very good at. He'd officiate matches and manage the money.¹²⁸

Wyatt was a skilled referee. But officiating a casual boxing match in a railroad camp in Wyoming is very different than officiating the heavyweight title match in front of thousands in San Francisco. That's why, when organizers asked Wyatt to officiate the fight between Tom Sharkey and Bob Fitzsimmons, he hesitated. The fight would be conducted under the Marquess of Queensberry rules, which Wyatt wasn't sure he was familiar enough with. It was 1896 and Wyatt, now 48, was managing race horses - and deeply in debt. He hadn't been officials' first choice, but it was now the day of the fight, December 2nd, and Sharkey and Fitzsimmons's teams hadn't been able to agree on anyone else. Wyatt's name came up, perhaps thanks to a journalist. With the fight only hours away and 10,000 tickets sold, the organizers pushed Wyatt to accept; eventually he said yes.¹²⁹

Unfortunately, Wyatt's inexperience would have dire consequences. Things got off to a shaky start even before the opening bell, when Wyatt entered the ring with a pistol under his jacket. Classic Wyatt. Officials quickly confiscated the gun. But after that, things settled down. Fitzsimmons, a quick, shrewd boxer, seemed to have an edge over the stronger but slower Sharkey. No surprise there – Fitzsimmons was the favorite. In the 8th round, Fitzsimmons delivered a hard uppercut to Sharkey's chest, sending Sharkey to the ground. For a moment it seemed that Fitzsimmons had knocked Sharkey out, but then Sharkey began holding his groin and crying that he'd been hit below the belt.¹³⁰ Wyatt ran over to Sharkey and examined him, then called a foul and declared Sharkey the winner of the match. Perhaps anticipating the controversy of this call, Wyatt then made a fast exit.¹³¹

Allegations immediately followed that the match had been fixed. Fitzsimmons and his manager filed charges, claiming there had been a conspiracy between Sharkey's team and Wyatt. After two weeks of testimony, the court dismissed the case, saying that the

¹²⁷ "Wyatt Earp," *American Experience*.

¹²⁸ Allan Barra, "[When Referee Wyatt Earp Laid Down the Law](#)," *The New York Times*, November 26, 1995.

¹²⁹ Kieran Mulvaney, "[The fight, the foul and the lawman](#)," ESPN, October 26, 2013.

¹³⁰ Sean Crose, "[The Fight That Haunted Wyatt Earp](#)," *The Fight City*, December 2, 2023.

¹³¹ Barra, "Referee Wyatt Earp."

boxing match was illegal and thus not something they would rule on.¹³² There is no concrete evidence that Wyatt was involved in any fix, but the match would haunt him for the rest of his life – to most Americans in the early 20th century, Wyatt Earp was better known as the man who had cost Bob Fitzsimmons his title, than as the man who'd cost multiple men their lives.¹³³

Thank you for listening to History on Trial. If you enjoyed this episode, please consider leaving a rating or review; it can help new listeners find the show! To see images of the people and places in this episode, check out our Instagram @historyontrial. My main sources for this episode were Steven Lubet's book *Murder in Tombstone: The Forgotten Trial of Wyatt Earp* and transcripts from the hearing, published on Douglas O. Linder's wonderful *Famous Trials* website, hosted by the University of Missouri–Kansas City School of Law. For a full bibliography as well as a transcript of this episode with citations, please visit our website, historyontrialpodcast.com

¹³² Les Carpenter, "[The forgotten story of...Wyatt Earp and the 'fixed' heavyweight title fight](#)," *The Guardian*, July 22, 2015.

¹³³ Mulvaney, "The fight, the foul, and the lawman."