

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

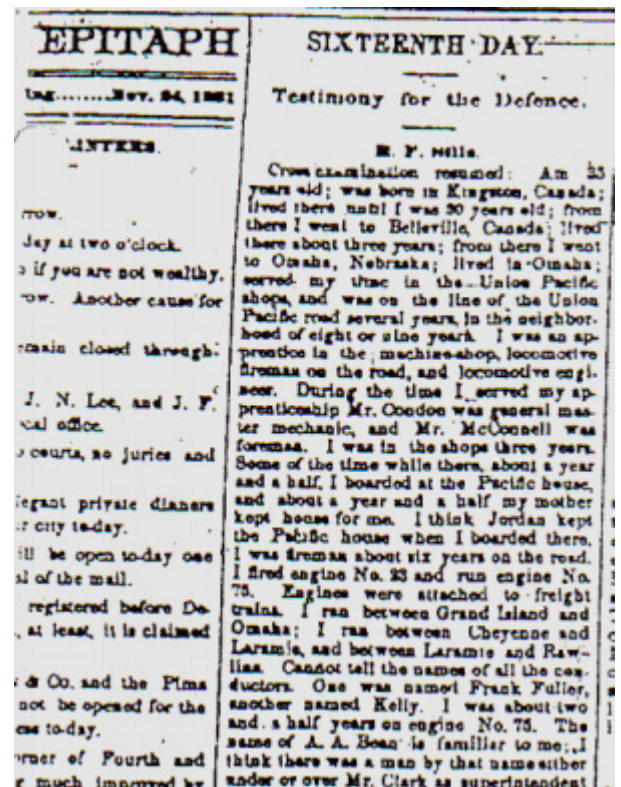
**DAILY EPITAPH**

**November 22, 1881**

**FIFTEENTH DAY**

**H. F. Sills<sup>1</sup>**

**Sworn for the defense:** My home is in Las Vegas, New Mexico.<sup>2</sup> By occupation I am a locomotive engineer.<sup>3</sup> I saw four or five men standing in front of the O. K. Corral on October 26<sup>th</sup>, about two o'clock in the afternoon, talking of some trouble they had had with Virgil Earp, and they made threats at the time that on meeting him they would kill him on sight.<sup>4</sup> Some one of the party spoke up at the time and said: "That they would kill the whole party of Earps when they met them."<sup>5</sup> I then walked up the street and made inquiry as to who Virgil Earp and the Earps were. A man on the street pointed out Virgil Earp to me and told me he was the city marshal. I went over and called him one side, and told him of the threats that I had overheard this party make. One of the men that made the threats had a bandage around his head at the time, and the day of the funeral he was pointed out to me as Isaac Clanton.<sup>6</sup> I recognized him as one of the party I had seen at the O. K. Corral.<sup>7</sup> A few minutes after I had spoken to the marshal. I saw him and<sup>8</sup> a party start down Fourth street. I followed them down as far as the post office. Then I got sight of the party that I had overheard making those threats. I thought there would be trouble and I crossed the street. I saw the marshal<sup>9</sup> go up and speak to this other party. I was not close enough to hear their conversation, but saw them pull out their revolvers immediately. The marshal had a cane in his right hand at the time. He threw<sup>10</sup> up his hand and spoke. I did not hear the words though. By that time Billy Clanton and Wyatt Earp had fired their guns off. The marshal then changed his cane from one hand to the other and pulled his revolver out. He seemed to be hurt<sup>11</sup> at the time, and fell down. He got up immediately and went to shooting. The shooting became general, and I stepped back in the hallway.<sup>12</sup> I afterward saw Billy Clanton, when he was dead, and recognized him as the one who had fired at the same time with<sup>13</sup> Wyatt Earp.



November 23, 1881

**FIFTEENTH DAY**

**H. F. Sills**

**CROSS-EXAMINATION**

I came to Tombstone October 25, on the stage or bullion wagon of Wells, Fargo & Co. Another passenger, the driver, and myself. I don't know as I would recognize them<sup>14</sup> if I would see them on the street now. For the first few days I was in town, I stopped at a lodging house, below the stage barn, on Allen street, until I was taken sick.<sup>15</sup> I don't know

the name of the party who keeps the lodging house. I staid (sic) there about ten nights. I then went to the hospital. I remained there ever since. Am stopping there now. I walked from the hospital here. I don't know who the man was who I inquired of as to who the Earps were; it was just a man I met as I came up the street; I don't think that I should recognize that man if I should see him now, because there were a great many men on the street at the time. When I told Virgil Earp of the threats I had heard,<sup>16</sup> I told<sup>17</sup> him it was a party of armed men I had seen standing on the street, because I did not know them at the time. The party consisted of four men. I can't say that they were all armed because they were not so standing that I could see their arms.<sup>18</sup> I saw that some were armed. They had pistols plainly in sight.<sup>19</sup> I was within four or five steps of the party when I heard the threats.<sup>20</sup> Men were walking up and down the street,<sup>21</sup> and were standing fifteen or twenty steps back in the corral. One of the men I saw with arms was a youngish looking man; looked nineteen or twenty years old. I don't remember his clothes; didn't pay much attention. I don't know the color of his hair; he was<sup>22</sup> red complexioned in the face. I don't know whether he shaved<sup>23</sup> or not. I don't remember what kind of a hat he had. Another man had a moustache looked to be about thirty years old.<sup>24</sup> I think his hair was dark.<sup>25</sup> I'm not certain whether his face was shaved except his moustache, but I think it was. I paid no attention to his clothes. The first one described was the taller of the two, to the best of my knowledge. There were not two with bandages about their heads to the best of my knowledge, at least I only saw one. I didn't notice the color of the bandage.<sup>26</sup> The man with the bandage was of a complexion I cannot say, because he was standing with his back toward me. I did not see his face at that time. I first saw his face the day of the funeral. I can positively say that the man I saw at the funeral was the man I saw with a bandage around his head, in front of the O. K. Corral, by his conversation, by his talk, his voice.<sup>27</sup> I recognize him also by his appearance, by what I saw of him that day,<sup>28</sup> and by hearing him talk, with the other party in front of the O. K. Corral, and with other parties at the funeral.<sup>29</sup>

#### TOMBSTONE EPITAPH

November 24, 1881

#### SIXTEENTH DAY

#### Testimony for the Defense

H. F. Sills<sup>30</sup>

Crown examination resumed: Am 35<sup>31</sup> years old; was born in Kingston, Canada; lived there until I was 20 years old; from there I went to Belleville<sup>32</sup>, Canada; lived there about three years; from there I went to Omaha, Nebraska; lived in Omaha; served my time in the Union Pacific shops, and was on the line of the Union Pacific<sup>33</sup> road several years, in the neighborhood of eight or nine years. I was an apprentice in the machine shop, locomotive fireman on the road, and locomotive engineer. During the time I served my apprenticeship Mr. Congden was general mechanic,<sup>34</sup> and Mr. McConnell was foreman. I was in the shops three years. Some of the time while there, about a year and a half, I boarded at the Pacific House, and about a year and a half my mother kept house for me. I think Jordan kept the Pacific House when I boarded there. I was fireman about six years on the road.<sup>35</sup> I fired engine No. 23 and run engine No. 75. Engines were attached to freight trains.<sup>36</sup> I ran between Grand Island and Omaha; I ran between Cheyenne and Laramie and between Laramie and Rawlins<sup>37</sup>. Cannot tell the names of all the conductors.<sup>38</sup> One was named Frank Fuller; another named Kelly.<sup>39</sup> I was about two and a half years on engine No. 75. The name of A. A. Bean is familiar to me; I think there was a man by that name either over or under Mr. Clark; as superintendent or division superintendent. I knew of General Kimball, the general superintendent.<sup>40</sup> I did not know him personally.<sup>41</sup> When I left that road I went to Las Vegas, New Mexico. I have been in Las Vegas since last March. I left the Union Pacific road last January. I did not engage in any business from then until March.<sup>42</sup> Have been running a locomotive at Las Vegas since I have been there on the A. T. & S. F. R. R. from Las Vegas to Wallace, on a freight train.<sup>43</sup> A conductor named Jones ran one train, another named Billy Agnew.<sup>44</sup> I am still in the employ of the A. T. & S. F. R. R. I left there the 19<sup>th</sup> of last month. I went to Tucson, I had no business there;<sup>45</sup> from there I came here; I had no business here. I am going back to resume employment on the A. T. & S. F. R. R. between now and the 10<sup>th</sup> of next month. My wages on the road were four cents a mile. The division is 100 miles long. Engineers are paid by the mile.<sup>46</sup> I came here on October 25<sup>th</sup> on W. F. & Co.'s express wagon. There was another passenger beside the driver. I did not ask the driver his name. He was probably a middle-age man. He had whiskers on his face. I did not notice his eye.<sup>47</sup> I don't remember exactly the color of the horses; I think there was one white horse and one bobtail horse.<sup>48</sup> I think the white horse was between Benson and Charleston. I would not know the man I traveled with from Benson; he sat in front of me. I am positive

that I came here on that bullion wagon, on the 25<sup>th</sup> of October last.<sup>49</sup> I am as positive of that as any other fact that I testified to. I stayed in Benson half an hour. I don't think I would know the driver of the stage again if I were to see him.<sup>50</sup> I had no conversation with the lady who kept the lodging house where I stayed nine or ten days in Tombstone about the difficulties concerning which I have testified to. On the night of the 25<sup>th</sup> of October I stopped at this lodging house I speak of. When I went up to Virgil Earp the first time I did not see anything in his hand. The place I saw him was on the corner of Fourth and Allen streets; on the further side<sup>51</sup> of Fourth street this side of Allen street. I should judge it was about half an hour before the difficulty. I think there were four men at the corral. I saw no horses with them. I stayed three or four minutes.<sup>52</sup>

Q. Did you see any other persons as near the parties as yourself?

A. There were men walking up and down the street by them. I did not know the parties then.

Q. When did you next see the parties?

A. I saw them on Fremont street, between Third and Fourth streets, near the corner of Third, standing in a vacant lot.

Q. How many did you see there?

A. There were five men in the party when I first saw them on Fremont street, and one of them walked off.

I saw the Earps and Doc Holliday when they went down Fremont Street. A. I was walking right along behind them; I went as far as the post office<sup>53</sup> and crossed the street over to the court house.<sup>54</sup>

Q. Was that as near as you were during the actual difficulty? A. It was.

Q. Where are you working now, and for whom? A. At the present time I am on a lay-off from the Atchison and Topeka railroad, and stopping at the hospital at the recommendation of Dr. Goodfellow.<sup>55</sup>

Q. When and to whom did you first tell about the difficulty? A. The first I spoke to was Jim Earp.<sup>56</sup>

Q. Did you tell anyone at the hospital anything about the fight? A. I did not.<sup>57</sup>

Q. When did you first know that you were wanted as a witness in this case?

A. Friday or Saturday last.<sup>58</sup>

A. There was no one standing near to me at the court house.<sup>59</sup> I was standing near the building.<sup>60</sup>

Q. Where did the Earps and Holliday start from? A. From the corner of Fourth and Allen streets.

Q. Did you see or hear other parties at the time they started? A. I did not.

Q. When they started did you see a shotgun in any of their hands? A. I saw the marshal picked up a shotgun from beside the building and handed it to Holliday; Holliday put it under his coat and handed the marshal his cane and then started down Fourth street towards Fremont and down Fremont towards Third street.<sup>61</sup>

Q. During this time you were working in the machine shop and running on U. P. or A. T. & S. F. R. R had you a nickname? If so, what was it? A. I did; they called me "Curly."<sup>62</sup>

Q. Where do you lay off and where do you stop at in New Mexico? A. I lay off at Las Vegas and stop at my own house.

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<sup>1</sup>In the *Daily Epitaph* of November 20, 1881, Sills' name is reported to as F. F. Sills. In the November 24, 1881 *Daily Nugget*, the testimony is summarized with subheading *Cross-Examination of S. H. Sills* and he is also referred to as H. F. Sill. In *Turner* he is referred to as H. F. Sills. Modern writers have referred to him as H. F. Sills, but there is room for uncertainty as to the accuracy of his initials and last name as they have come down to the present. See Barra, Marks, Tefertiller.

<sup>2</sup>Efforts to find an address for Sills in Las Vegas, NM have thus far proved fruitless. As a railway worker, he may have lived in railway barracks, or simply rented a place for which there is no record. He does not appear to have been present in Las Vegas for any census. Researchers Bob Palmquist and Jeff Morey have found one piece of corroborating evidence however, for Sills' testimony. The LAS VEGAS (N.M.T.) OPTIC, dated Feb. 9, 1882, reported: "Engineer Sill, who formerly drove a locomotive on the Las Vegas division, is in California." To date this is the only post-Tombstone mention uncovered anywhere for Sills.

<sup>3</sup>The first two sentences are given differently in the *Turner* version of the testimony. Rather than Sills speaking his identification, Sills' identity is reported in the third person.

<sup>4</sup>In *Turner*, the statement and those that follow are given as responses to specific questions, whereas in the *Epitaph* version, his testimony appears to be in the form of a monologue. This causes several of the sentences to be rendered very differently in *Turner*.

<sup>5</sup>It was this lack of knowledge of the identity of the individuals in a highly divided town that made Sills' testimony so compelling. He appeared to lack any preconceived notions as to who was in the right in any dispute, and this apparent lack of bias was very important to Judge Spicer. It also explains why the Prosecution tried so hard to break his

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testimony, and why subsequent writers and historians who don't believe the Earp side of the story have had such doubts about whether Sills was actually who he claimed to be..

<sup>6</sup> The phrase "that made the threats" is missing from *Turner*. Virgil Earp had buffaloed Ike Clanton earlier in the day.

<sup>7</sup> The phrase "...I had seen at the O. K. Corral." is not in *Turner*.

<sup>8</sup> The words "him and..." are not present in *Turner*.

<sup>9</sup> The words "and party" follow marshal in *Turner*.

<sup>10</sup> This and other uses of the word "threwed" are changed to threw in *Turner*, perhaps indicating a troubling tendency for editing by Hayhurst or *Turner*.

<sup>11</sup> *Turner* has "hit" instead of "hurt."

<sup>12</sup> *Turner's* version adds the phrase "...along the side of the court house." at the end of the sentence.

<sup>13</sup> Instead of the word "with" the *Turner* version uses the word "at," perhaps a significant difference.

<sup>14</sup> In *Turner*, the phrase "I don't know as I could recognize them..." is rendered as "I could not recognize them..."

<sup>15</sup> Immediately preceding this sentence, *Turner* has Sills responding to the question: Where have you been since? with the response: "In Tombstone." Both Sills' illness and the hospital at which he stayed are unknown. Given speculation about his disappearance from recorded history following his stay in Tombstone, his disease may have been terminal.

<sup>16</sup> These words at the beginning of this sentence are missing from *Turner*: "When I told Virgil Earp of the threats I had heard,..."

<sup>17</sup> *Turner* adds the word "merely before the word "told."

<sup>18</sup> A problem for those analysts of the gunfight who believe Sills testified deliberately to favor the Earps, perhaps because he was a plant, is the question of why he did not use this question to indicate that Tom McLaury was armed. Although in his decision, Judge Spicer indicated the question of Tom's being armed was not germane to the issue of whether charges of murder should be brought against the lawmen, such a position was unpredictable at this point in the hearing.

<sup>19</sup> *Turner* renders this sentence as, "Of two, the pistols were in plain sight."

<sup>20</sup> *Turner's* version eliminates the words "...when I heard the threats." from the sentence.

<sup>21</sup> *Turner* has this phrase as, "There were men standing back in the corral, ..."

<sup>22</sup> *Turner* has "seemed to [be]" for "was..."

<sup>23</sup> *Turner* has "clean shaved..."

<sup>24</sup> The words "had a moustache" are not in this sentence in *Turner*.

<sup>25</sup> The words "I think..." are not in *Turner*.

<sup>26</sup> *Turner's* version adds the words, "...I only saw it hanging under his hat."

<sup>27</sup> *Turner* also adds the phrase, "by his appearance..."

<sup>28</sup> The phrase, "by what I saw of him that day..." is not found in *Turner*. Several of the sentences at the end of this portion of Sills' testimony are in a slightly different order in *Turner*.

<sup>29</sup> Here *Turner* adds: [COURT ADJOURNED TO MEET AT 9:00 O'CLOCK A. M. NOVEMBER 23, 1881]

<sup>30</sup> *Turner* introduces this section of cross-examination with: [WEDNESDAY, NOVEMBER 23, 188, COURT CONVENED AT 9:00 A. M.] [CROSS-EXAMINATION OF H. F. Sills resumed]

<sup>31</sup> *Turner* has Sills stating his age as 36. The *Nugget* agrees with the *Epitaph* as to his age being 35 years.

<sup>32</sup> *Turner* has this location as Canille, a non-existent place. In fact, Belleville, Ontario is less than a one hour's drive from Kingston today. The *Nugget* agrees with the *Epitaph* and has Sills stating Belleville.

<sup>33</sup> The *Nugget* omits the name "Union Pacific."

<sup>34</sup> The *Nugget* has Congden as "general master mechanic."

<sup>35</sup> The *Nugget* reports that before this statement, Sills was asked if he had any room mates at that house, and if so, who were they? The question was objected to as irrelevant and too remote. The objection was sustained. This is to be regretted by modern researchers, who might have pursued any such name.

<sup>36</sup> *Turner* renders these two sentences very differently, conflating them as follows: "I ran, as fireman, and as engineer, about six trains." The *Nugget* reports this response was to the question as to whether the engines were attached to freight or passenger trains.

<sup>37</sup> *Turner* has Rawlins as Rolling Springs, but in fact as "Rawlins." The *Nugget* also had it as Rolling Springs. There was no Rolling Springs in Wyoming. There was a Rock Springs on the Union line but that wasn't the town Sills mentioned and which someone translated into Rolling Springs. Why Rawlins? Cheyenne, Laramie, and Rawlins were all county seat towns with courthouses, creating heavy traffic for the trains. All three of the towns were important to the Post Office Department as they were known as classified post offices (rare in Wyoming Territory), meaning salaries were paid by the government and weren't based on the business generated. All three post offices dispensed money orders and Rawlins was a "brass lock registry exchange office," meaning it was an important point in the transfer of

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valuable articles. A final point is that Rawlins was a railroad division town. Thanks to researcher Wayne Collier for this information.

<sup>38</sup> The *Nugget* renders this response in language more likely to be spoken. Sills replies to the question as to who the conductors were on the train as, "It would be hard for me to tell." There is indication from the *Nugget* that a Defense objection to this question was not sustained.

<sup>39</sup> *Turner* has the words "I think" after Kelly.

<sup>40</sup> The *Nugget* has these sentence in response to a question as whether he knew on that road, A. A. Bean and Gen. Kimball.

<sup>41</sup> Clearly the Prosecution is trying to catch Sills in a contradiction, or in errors that would indicate he is not who he says he is. One can imagine the Prosecution lawyers checking his testimony by telegraph almost as soon as its given. Since it was never publically discredited, one can assume it was correct, else surely the Prosecution would have trumpeted anything in it that was untrue.

<sup>42</sup> This sentence is not in either *Turner* or the *Nugget*.

<sup>43</sup> This sentence does not appear in the *Epitaph* summary.

<sup>44</sup> This sentence, with the names Jones and Agnew, are missing from the *Epitaph* report.

<sup>45</sup> Conspiracy theorists wonder why he went to Tucson if he had no business there. The suspicion is that he went there to begin to work for Wells Fargo and spy on the cowboys. This would explain to such theorists his careful observations on the day of the gunfight, and his clearly pro-Earp testimony, testimony in conflict with other Prosecution witnesses.

<sup>46</sup> This sentence is missing from the *Epitaph* report.

<sup>47</sup> This sentence is missing from the *Epitaph*. One wonders who the Prosecution was thinking of, by asking if Sills noticed anything about his eye.

<sup>48</sup> See photograph in Sills article. Unless there was an identical team of horses, almost too coincidental to be credible, a reasonable conclusion is that this is the team of horses that brought Sills into Tombstone.

<sup>49</sup> *Turner* has it as the 26<sup>th</sup>.

<sup>50</sup> The *Turner* version has this sentence as, "I stayed in Benson about half an hour, I do not think I would know the driver again, who drove the wagon I came in on, although I have seen him here on the street and spoke to him." This seems somewhat of a contradictory answer.

<sup>51</sup> The *Nugget* has this as "corner" of Fourth Street.

<sup>52</sup> *Turner* and the *Nugget* both have Sills testifying "probably" three or four minutes.

<sup>53</sup> *Turner* has Sills testifying that he "...went down behind them as far as the post office."

<sup>54</sup> *Turner* has Sills testifying that he "I then crossed the street in front of what *I believe* is the courthouse.

<sup>55</sup> *Turner* has Sills testifying that "I am not working at all." The sentence referring to Tombstone's noted Doc Goodfellow does not appear in either *Turner* or the *Nugget*. The *Nugget* has him testifying that he went to the hospital on the "6<sup>th</sup> or 7<sup>th</sup> of this month."

<sup>56</sup> James Earp, brother of Virgil, Wyatt, and Morgan Earp. James did not participate in the gunfight. *Turner* and the *Nugget* have Sills' response as, "The first word I spoke of it to anybody was to Jim Earp *I believe*." Paula Mitchell Marks in *And Die in the West* writes that although the prosecution could not expose a chink in Sills' story or the unbiased stranger in town, his acknowledgement that "the first word" he spoke of his knowledge of the incident was to Jim Earp was "interesting."

<sup>57</sup> This interchange about Sills not telling anyone at the hospital about what happened is far less clear in *Turner*.

<sup>58</sup> *Turner* and the *Nugget* have Sills testifying "Thursday or Friday."

<sup>59</sup> The *Nugget* ends this Sills sentence with the words "when the shooting began."

<sup>60</sup> In response to a question not recorded, *Turner* has Sills responding instead: "I did not see any person on the side of the street I was on when the shooting was going on. I was standing close to the building and then stepped back into the hall when the shooting became general."

<sup>61</sup> Instead of, "Holliday put it under his coat and handed the marshal his cane and then started down Fourth street towards Fremont and down Fremont towards Third street."- *Turner* and the *Nugget* simply have Sills testifying, "Doc put it under his coat and the marshal took his cane."

<sup>62</sup> *Turner* and the *Nugget* have this nickname spelled as "Curley."