



*Justice Baxter appeared as Justice Terry, with the Chief Justice as his client and wife, Sarah Althea Hill.*

PHOTOS: PAUL CLARK

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## *Telling the Tale of California's Most Colorful Justice*

FIVE JUSTICES DRESS UP IN A REPRIS OF A PROGRAM ON JUSTICE DAVID S. TERRY

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**F**IVE MEMBERS OF the California Supreme Court starred in a reprise of *Justice David S. Terry and Federalism: A Life and a Doctrine in Three Acts* before an audience of more than 700 lawyers and judges at the 2014 annual meetings of the State Bar and the California Judges Association in San Diego.

Chief Justice Tani Cantil-Sakauye, Associate Justices Marvin Baxter, Goodwin Liu, Carol Corrigan, and Ming Chin and U.S. District Court Judge Larry Burns played the various roles in the September 12, 2014, program, which was sponsored by the California Supreme Court Historical Society and the Northern District of California Historical Society.

Donning 19th-century costumes and props, the judicial cast entertained a sold-out audience with stories from the life and times of David S. Terry, California's most colorful Supreme Court justice. It was educational, too: The script by Society board member Richard Rahm told Justice Terry's tale through the lens of the evolution of federalism in California before and after the Civil War. Rahm and former State Senator Joe Dunn narrated the program against a backdrop of historical images.

*Justice Terry and Federalism* was first presented two years ago in San Francisco. It was later performed in Los Angeles and Fresno, each time with members of the state and federal judiciary reading various historical

parts. Justice Baxter also played the part of Justice Terry, his predecessor from the San Joaquin Valley, in the San Francisco and Fresno performances.

In San Diego, Justice Baxter persuaded four of his colleagues to join him as he reprised his role as David Terry. Justice Kathryn Werdegar, who appeared in each of the three previous performances, could not participate because of previously scheduled travels.

The program required the six judicial participants to play 19 different parts, necessitating several changes of costume in front of — and to the delight of — the audience.

**ACT I** of the program takes place shortly after Terry assumed the bench in 1856 when he was "arrested" by the notorious Vigilance Committee for stabbing one of its officers in the neck with a Bowie knife during a street melee. Although the Governor of California appealed to the U.S. Navy and Army to suppress the Vigilantes and to rescue Terry, they refused based on states-rights principles. True to the character of his Fresno predecessor, Justice Baxter, to the surprise of his colleagues — particularly Judge Burns, who was sitting next to him — reached into his breast pocket and brandished a foot-long Bowie knife (plastic, but realistic looking). The Vigilantes eventually released Terry when its officer recovered from his wounds. Terry became Chief Justice of California in

1857, but resigned to fight a duel with U.S. Senator David Broderick, one of his political enemies. Justice Chin, who played the part of Senator Broderick, slumped over the table when the audience learned that Terry had shot him dead.

**ACT II** takes place in 1884, when Terry represented Sarah Althea Hill (played by the Chief Justice) in a series of sensational state and federal trials and appeals involving her alleged marriage to U.S. Senator William Sharon (played by Justice Liu). Although the state and federal courts came to opposite conclusions, the state courts eventually acceded to the supremacy of federal jurisdiction. In each of the trials, Sharon, who had made millions from the Comstock Lode, claimed that Hill was his paid mistress, while Hill produced a written marriage contract, the authenticity of which was disputed. In the midst of the litigation, Terry and Hill were married. After the marriage, both were cited for contempt and jailed by U.S. Supreme Court Justice Stephen Field, who had been Terry's colleague on the California Supreme Court in the 1850s. Both Terry and Hill had pulled weapons — Terry a knife, Hill a pistol — against court personnel. One of the high points of the program came when the audience was told about Hill's bragging to the court about her gun skills, claiming she could "hit a four-bit piece nine times out of 10" — at which point the Chief Justice jumped up from her seat and demonstrated to the audience of judges and lawyers her own finger-on-the-trigger skills.

**ACT III** concerns the legal aftermath of Terry being shot dead by Deputy U.S. Marshal David Neagle (played by Justice Corrigan, using her best "cowboy" accent) when Terry assaulted U.S. Supreme Court Justice Field by punching him in the face while he was eating breakfast. Although Neagle was arrested by the county sheriff and charged with murder, the federal court in San Francisco discharged Neagle after a two-week habeas corpus trial, holding that the state could not prosecute because the marshal was acting within the course of his federal duties. The U.S. Supreme Court, with Field recusing himself, affirmed. ★



*Justice Baxter flashes his knife before U.S. District Judge Larry Burns.*



*The Chief Justice acting out Sarah Althea Hill's skills with a gun.*



*Justices Chin, Corrigan, and Liu helped tell Justice Terry's story.*