

## *The Many (Mis)Adventures of Chief Justice David Terry*

BY CECILIA RASMUSSEN

California has had twenty-seven chief justices – and perhaps one of them, David Smith Terry, should have spent more time in prison than on the bench.

Born in Kentucky in 1823, Terry later moved with his family to Texas. In 1847, he took what was already a shoot-first style to the Texas Rangers. There he fought in the Mexican-American War to defend United States claims to Texas, under the command of “Old Rough ‘n’ Ready,” future President Zachary Taylor. In addition, Terry studied law and passed the bar in Galveston, answering the only question put to him: “Do you know the price of a dish of oysters?” He did – and bought oysters and whiskey for his examiners.

In 1849, at age twenty-six, he was a powerfully built and physically imposing young man of six feet, three inches when he and twenty other former Rangers – along with a few of Terry’s slaves – went west to the California gold fields. Like so many successful ’49ers, he found his fortune not in mining but in business – as a crafty lawyer in Stockton.

California’s new constitution, drawn up in 1849, included an anti-slavery provision, something Terry had tried to prevent as a delegate to the constitutional convention. When his firebrand speeches failed to sway the debate, he lobbied to split California in half, one pro-slavery, the other free.

His violent courtroom manner and hair-trigger temper made his reputation as a man not to be trifled with. When a San Francisco scandal sheet offended him in print, he beat up the editor and was fined three hundred dollars. (Stabbing a litigant in court brought him a fine of fifty dollars.)

In 1855, with the help of pro-slavery forces, he was elected a state Supreme Court justice as a Democrat. By then, San Francisco’s anti-slavery civic leaders had had their fill of Terry and his cohorts. They formed the city’s Vigilance Committee, which chose its targets in secret – and Terry was one of them. In a continuation of a series of skirmishes in San Francisco, Terry and his fellow Southerners were heading toward the state armory when Vigilance Committee members intercepted them. In the brawl, Terry stabbed committee leader Sterling Hopkins through the neck.

During Terry’s twenty-five-day trial in the vigilantes’ court, he contended that he had “merely



resented an insult and defended my own life.” He was found guilty of assault and resisting an officer, and was imprisoned briefly, but was released because Hopkins lived. The Vigilance Committee ordered Terry banished from the state, but that punishment was never enforced.

In spite of public contempt, Terry resumed his seat on the Supreme Court. In 1857, Chief Justice Hugh J. Murray died, leaving Terry the most senior justice. He was thus elevated to Chief Justice. Terry’s former seat was taken by an anti-slavery Democrat, Stephen J. Field, of whom Terry later said contemptuously: “There is no man living who could give a better reason for a wrong decision than Field.”

In September 1859, Terry locked horns with anti-slavery United States Senator David C. Broderick, which led to the state’s most celebrated “affair of honor.” For Terry to remain on the bench, he had to be nominated for reelection, but the Democratic Convention refused to do so. He blamed Broderick, who then called Terry an “ingrate.” “I have said that I consider Terry the only honest man on the Supreme Bench, but I now take it all back,” Broderick boomed in an angry voice to a group of friends. Broderick’s remarks were relayed to Terry, and the duel was set.

In the nineteenth century, California was not just a place of casual violence; it was the site of more fatal duels than any place else in the nation. Although duels were viewed by some as a gentlemanly way of resolving disputes, newspaper editorials across the state had, as early as 1852, denounced the practice as “irrational and barbarous.”

On that September morning, Terry wrote out his resignation, took off his court robes and met Broderick at 6:45 a.m. at the appointed place, “a beautiful ravine” in San Mateo. Terry won the coin toss, so his dueling pistols were used. Both had hair-triggers. Terry had practiced with them; Broderick had not. The two marked off ten paces, turned and fired. Broderick’s gun went off prematurely, with the bullet digging into the ground. A split-second later, Terry fired, hitting Broderick in the chest. He died three days later.

Terry was charged with murder, but a change of venue to Marin County gave him a friendly judge who dismissed the case. Public revulsion ruined any chance of Terry returning to the

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Court, however. He resumed his private law practice in Stockton until 1863, when he joined the Confederate army, fighting at the Battle of Chickamauga. Then, with the war over and the matter of slavery decided, he returned to California in 1868 to a prosperous law career and more scandal.

In 1884, as a private attorney, Terry pitted himself against another powerful politician, William Sharon, a millionaire widower and former senator from Nevada. Terry represented Sarah Althea Hill in a nationally publicized trial where she claimed she was secretly Sharon's wife. Sharon insisted that he had merely paid Hill five hundred dollars a month to live with him. She sued to validate the marriage, in order to obtain a divorce and gain half of his \$30 million estate. Sharon fought the suit to his dying day, with his heirs picking up the struggle in 1885 in order to protect the family fortune. Terry won one round in state court but lost another in federal court.

In the meantime, being a recent widower, he married Hill. She was twenty-five years his junior and had her own reputation for high-handed violence. In 1888, on a train, Hill insulted a federal judge involved in her divorce suit. When he didn't respond, she grabbed him by his gray hair and shook him violently. Later that year, in another hearing on her suit, Hill initiated a dust-up with Terry's former California Supreme Court colleague, Stephen J.

Field, now a justice on the United States Supreme Court. Field, whose involvement in the suit stemmed from his circuit duties, was accused by Hill of being "bought." When marshals tried to remove her, Terry fought with them. Field sent the husband and wife to jail and Terry swore vengeance.

On August 14, 1889, en route to yet another court hearing, the Terrys boarded a train in Fresno. Field and his bodyguard, U.S. Marshal David Neagle, happened to be aboard. The Terrys, Field and Neagle all got off at a stop for breakfast. Field was sitting down to eat when Terry paced behind him, glaring at the back of his head. Suddenly, Terry punched him. "Stop! Stop! I am an officer!" yelled Neagle. He pulled his gun. When Terry punched the justice again, Neagle fired twice into Terry's chest, killing him. The U.S. Supreme Court ruled that California lacked jurisdiction to prosecute Neagle because the killing had taken place in the course of Neagle's official duties as a federal officer.

After Terry's death, Hill lost her divorce case and went mad. She was committed to the state hospital for the insane in Stockton, where she spent the last forty-five years of her life.

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