



THE CALIFORNIA SUPREME COURT

# Historical Society

NEWSLETTER • FALL/WINTER 2012



A contemporary depiction of the 1856 struggle between David Terry (CENTER, DARK SUIT), then an Associate Justice of the California Supreme Court, and members of the San Francisco Committee of Vigilance. FULL STORY AT PAGES 2-7.

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*The program was held in the Milton Marks Auditorium within the Ronald M. George State Office Complex, a part of San Francisco's historic Civic Center. Richard Rahm, the principal author of the program script (and a member of both the California Supreme Court Historical Society and the Northern District of California Historical Society) is at the podium on the right. The other narrator, District Judge James Ware, stands at the podium on the left. The speakers are (LEFT TO RIGHT) Superior Court Judge Barry Goode, District Judge Yvonne Gonzalez Rogers, Senior District Judge Thelton Henderson, District Judge William Alsup, Associate Justice Marvin Baxter, and Associate Justice Kathryn Werdegar.*

PHOTOS ON PAGES 2, 3, 4 & 6 BY WILLIAM PORTER

## CHIEF JUSTICE DAVID S. TERRY AND FEDERALISM: A LIFE AND A DOCTRINE IN THREE ACTS

An all-star cast of seven judges informed and entertained a packed house in San Francisco with a program of dramatic readings sponsored jointly by the California Supreme Court Historical Society and the Northern District of California Historical Society. The program, entitled "CHIEF JUSTICE DAVID S. TERRY AND FEDERALISM: A LIFE AND A DOCTRINE IN THREE ACTS," was presented in the Milton Marks Auditorium within the Ronald M. George State Office Complex located in San Francisco's historic Civic Center on the evening of October 15.

David Terry served on the California Supreme Court from 1855 to 1859, two of those years as Chief Justice. He was a formidable man and is, without doubt, the most colorful, controversial, and violent figure ever to have served on the Court. The events of his turbulent life dramatically illustrate the interplay between state and federal authority in late nineteenth-century California.

The "actors" in the program included Justice Marvin Baxter and Justice Kathryn Werdegar of the California Supreme Court and Judge Barry Goode of the Contra Costa County Superior Court; the state court judges were joined by four federal court judges from the Northern District of California: Senior District Judge Thelton Henderson, and District Judges William Alsup, Yvonne Gonzalez Rogers, and James Ware.

Judge Ware was one of two narrators; his resonant voice powerfully carried the narrative forward while conveying emotions ranging from delight to dismay, depending on the events recounted. The other narrator was Richard Rahm, an attorney at the San Francisco office of the Littler law firm (and a member of both historical societies). Rahm conceived the idea for the program, conferred with UC Berkeley Professor (and Society director) Harry Scheiber about its scope and focus, wrote the script, and compiled dozens of historical images that were projected on a screen



TOP

*Judge Ware, with his resonant voice, dramatic flair, and subtle inflections, made an effective Narrator.*  
SEATED ARE, LEFT TO RIGHT: Judge Goode, Judge Gonzalez Rogers, and Judge Henderson.

BOTTOM

*Justice Werdegarr, with her feather boa, gave a persuasive portrayal of Sarah Althea Hill, the cagey “ingénue” at the heart of the litigation that led to Terry’s death. Judge Alsop and Justice Baxter are an appreciative audience.*

during the readings. A small selection of these photographs and drawings is reproduced at pages 4, 5 and 7.

The other judges each played more than one role. For example, Justice Baxter took the part of Justice Terry, as well as that of William Herrin, who served as Special Counsel for the federal government in the habeas corpus proceedings held in federal court for the release of David Neagle, a U.S. Marshal who shot and killed Justice Terry in order to protect U.S. Supreme Court Justice Stephen Field from Terry’s violent assault. Justice Werdegarr played Sarah Althea Hill (a young woman whose lawsuit

against wealthy U.S. Senator William Sharon played out in both state and federal court and became the proximate cause of David Terry’s animosity toward Field and, ultimately, his death). She also took the part of U.S. Supreme Court Justice Samuel Miller, whose majority opinion upheld Circuit Judge Lorenzo Sawyer’s decision in the habeas proceedings, immunizing Marshal Neagle from the State of California’s effort to try him for murder. And Judge Goode played U.S. Senator David Broderick (killed by Terry in a duel), Circuit Judges Sawyer and Deady, and U.S. Navy Commander Boutwell.

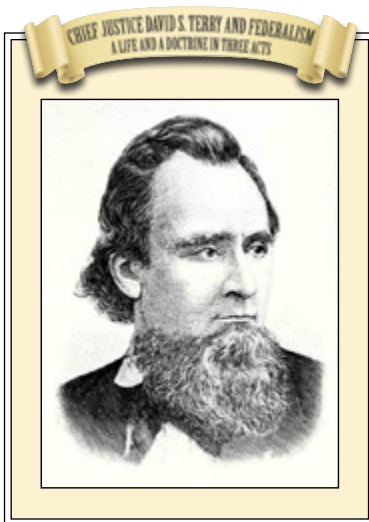




All the judges displayed extraordinary dramatic talents. In several cases they made effective use of props. Justice Baxter, for example, while portraying Judge Terry, wore a beard and from time to time displayed a formidable Bowie knife. (Although similar in appearance to that which Terry customarily carried, Justice Baxter's knife was less lethal — being made of hard rubber rather than cold steel.) Judge Goode sported a floppy nineteenth-century bow tie that he had fabricated himself. And Justice Werdegear flourished a feather boa as she gave a persuasive performance as the wily “ingénue” Sarah Althea Hill.

Judge Gonzalez Rogers, while taking the part of a journalist interrogating many of the principal actors in the drama, took “notes” in a reporter's notepad. Judge Henderson donned a policeman's helmet as he delivered U.S. Marshal J.C. Franks' account of the courtroom brawl during which he and several others struggled to subdue Justice Terry and separate him from his Bowie knife. Judge Alsup needed no props to provide a convincing portrayal of General William Tecumseh Sherman, an ally of Terry in opposing the Vigilantes of 1856; his authoritative voice was sufficient to convey Sherman's soldierly discipline.

The large audience was fully engaged throughout the 90-minute performance,



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*The participants gathered in the “Green Room” before the program began. LEFT TO RIGHT: District Judge Yvonne Gonzalez Rogers, Associate Justice Kathryn Werdegear, Society board member Ray McDevitt, Associate Justice Marvin Baxter, District Judge William Alsup, Senior District Judge Thelton Henderson, Superior Court Judge Barry Goode, and District Judge James Ware.*

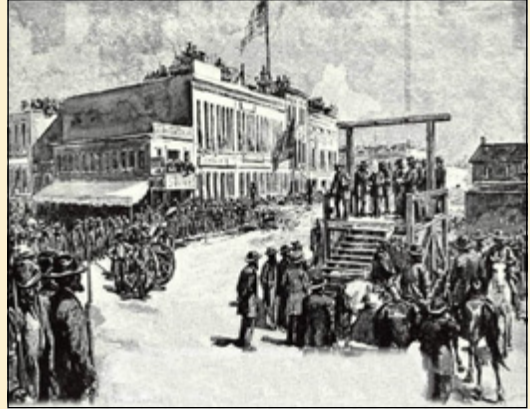
*Justice Baxter in character as David Terry, replete with derby, cravat and beard. The tape was deployed as a last-minute emergency measure when the adhesive furnished with the beard proved ineffective.*

*David Terry was born in Kentucky in 1823, moved to his grandmother's plantation in Texas when he was 11, and claimed to have fought in the Texas War of Independence from Mexico when he was 13. He later served with the Texas Rangers during the war between the United States and Mexico, studied law in his uncle's office, and moved to California in 1849. He briefly tried his hand at mining but soon opened a law office in Stockton. Six years later, at the age of 33, he was elected to the California Supreme Court, running on the nativist “Know Nothing” Party ticket.*

ABOVE (DAVID TERRY PORTRAIT), FACING PAGE AND PAGE 7 IMAGES:

A SELECTION FROM THE DOZENS OF HISTORICAL DRAWINGS AND PHOTOGRAPHS THAT WERE USED, IN A SLIDESHOW THROUGHOUT THE PROGRAM, TO ILLUSTRATE THE EVENTS AND PEOPLE IN TERRY'S LIFE.

The spark that led to the formation of the 1856 Committee of Vigilance was the murder, by San Francisco Supervisor James Casey, of a crusading newspaper editor, James King. King's paper had printed a story claiming (correctly) that Casey had served time in New York's Sing Sing prison before coming to San Francisco. When King refused to print a retraction, Casey shot him to death on the street. The Vigilantes seized Casey from the jail, along with Charles Cora, a gambler who had previously killed a U.S. Marshal but whose trial had ended in a hung jury. Both men were given brief trials and then executed by hanging from the roof of the Vigilantes' headquarters at Fort Vigilance. The image to the right shows a subsequent hanging by the Vigilantes.



The Vigilantes called their headquarters Fort Vigilance. It was more commonly known as "Fort Gunnybags" because of the wall of sand-filled gunnysacks that was built to protect it. William Tecumseh Sherman, who was later to gain fame as a general in the Civil War, was a banker in San Francisco in 1856. He was placed in charge of the State Militia, and given the impossible task of controlling the far larger and better armed Vigilantes. Sherman described Fort Gunnybags as "a perfect citadel, with cannon above and below, a perfect arsenal of muskets within, and detention cells with steel bars. On the roof they installed a firehouse bell so they could summon their members."



Terry was opposed to the Vigilantes, aligning himself with a loosely-organized group called the "Law and Order Party." Along with others from that group, Terry became embroiled in a street battle with some Vigilantes. Here he is shown stabbing Sterling Hopkins, one of the Vigilante leaders, with the Bowie knife he customarily carried. He was arrested by the Vigilantes, imprisoned in Fort Vigilance and tried. When Hopkins miraculously recovered after emergency surgery to repair a severed artery in his neck, Terry was freed.



After the Know-Nothing Party dissolved, Terry rejoined the pro-slavery "Chivalry" wing of the California Democratic Party, which was led by U.S. Senator William Gwin, a southerner like Terry. The anti-slavery Democrats, largely from the north, were led by U.S. Senator David Broderick, originally from New York. The struggle between the factions was bitter, as the nation drifted toward civil war. In 1859, Terry challenged Broderick to a duel, ostensibly because he had refused to withdraw some remarks that Terry found offensive. Terry resigned as Chief Justice the day before the duel. After killing Broderick, he left the state, eventually serving as an officer in the Confederate Army during the Civil War.







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*Judge Alsup looks with alarm at the Bowie knife flourished by Justice Baxter.*

*(It was made of hard rubber, not cold steel.)*

*Judge Gonzalez Rogers as an inquiring reporter and Judge Henderson as U.S. Senator William Sharon. San Francisco Superior Court Judge J.F. Sullivan, after presiding at the first divorce trial, described Sharon as “a man of uncounted wealth, possessed of strong animal passions that, from excessive indulgence, had become unaccustomed to restraint.”*

*Judge Goode portraying federal Circuit Judge Matthew Deady, who bolstered his ruling favoring Senator Sharon by observing that “the sin of incontinence in a man is compatible with the virtue of integrity, while in the case of a woman, common opinion is otherwise” — and that “other things being equal, property and position are in themselves some certain guaranty of truth in their possessor.”*

*Justice Werdegard, with her feather boa, gave a persuasive portrayal of Sarah Althea Hill, the cagey “ingénue” at the heart of the litigation that led to Terry’s death.*

showing their enthusiastic appreciation by giving the judges a standing ovation.

The Society’s first collaboration with the Northern District of California Historical Society was judged by all involved to have been a grand success. The foregoing account reveals that the program was entertaining. It was also informative, using events and excerpts from court decisions to illustrate the evolution of federal authority between 1850 and 1890, an evolution evident in judicial doctrine but underlain by the Civil War and the new technologies (the railroads and the telegraph) that linked California to the cities of the Eastern Seaboard.

Thanks are due to Justices Baxter and Werdegard and to Judge Goode for their outstanding performances and the time and energy that made them possible.

Contributions made by three others should also be recognized, each of whom served on the joint federal-state steering committee that over the course of four months planned all the details for the event: Society Vice President John Carigozian; Society Board member Ray McDevitt; and Don Warner, who teaches a course in California Legal History at Loyola of Los Angeles Law School. John coordinated all communications between the steering committee and the state court participants. Don, whose article on the 1856 Committee of Vigilance was, coincidentally, recently published in the 2011 edition of the Society’s journal, *California Legal History* (vol. 6, pages 403–441), helped locate relevant drawings and photos at the Huntington Library. And Ray assisted in editing the draft script, publicizing the event at Bay Area law schools, arranging for a videographer to record the program, and working with the staff of the Ronald M. George State Office Complex to ensure the auditorium was set up for the rehearsal and the program itself. ★

Sarah Althea Hill, an attractive young Southerner, was a party to two of the most notorious trials in San Francisco history, one held in state court and the other in federal court. Both involved her claim to have been secretly married to U.S. Senator William Sharon, one of the richest men in the United States. Sen. Sharon maintained that she had merely been his mistress. By the time this litigation began in 1883, Terry had returned to California, rebuilt a thriving law practice, avoided duels and rehabilitated himself politically. He was first hired as one of Sarah's lawyers and within a short time became her husband.



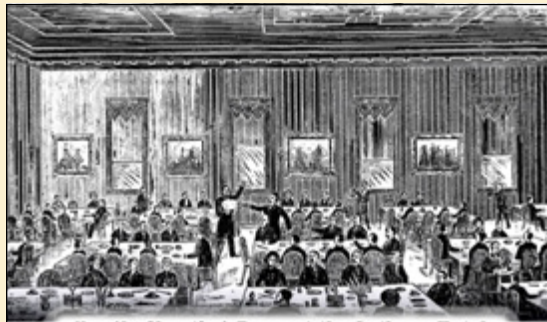
Sarah Althea Hill

Although Sarah initially prevailed in the state court proceedings, she fared badly in federal court. In 1888, U.S. Supreme Court Justice Stephen Field (sitting as a circuit judge) was reading the circuit court's decision, favorable to Sen. Sharon and adverse to Sarah. Sarah suddenly stood up in the courtroom and challenged Field, shouting that he had been bought and asking how much the Sharon interests had paid him. Field ordered her to sit down and, when she refused, ordered her removed from the courtroom. Terry attacked the Deputy Marshal who was trying to escort Sarah to the hallway, hitting him in the face and knocking out some of his teeth. As shown here, Terry drew his Bowie knife; it took several men to restrain and disarm him. Field then sentenced Sarah to 30 days in jail for contempt of court; he gave Terry a six month sentence.



Terry Drawing His Bowie Knife in the Circuit Court

After being sentenced, both Sarah and Terry issued threats against Justice Field, Sarah announcing that she would shoot him. As a result, David Neagle, a Deputy U.S. Marshal, was assigned as Field's bodyguard when he returned to California the following year as circuit judge. In August 1889, Field was traveling by train from Los Angeles to San Francisco on circuit court business. Neagle noticed that both Terry and Sarah boarded the train in the Central Valley. When the train stopped at the small town of Lathrop, passengers went to the dining room in the station. Terry assaulted Field while he was eating breakfast. Neagle then shot and killed Terry.



Neagle Shooting Terry at the Lathrop Hotel

Neagle was arrested and San Joaquin County authorities began proceedings to charge him with murder. The federal circuit court ordered him released after a habeas corpus hearing in San Francisco. In 1890 the United States Supreme Court, in a 6-2 decision, affirmed the circuit court, holding that a U.S. Marshal, acting in the course and scope of his federal duties, was immune from prosecution by a state. Justice Field (shown here in the front row, second from the right) recused himself from the case.



U.S. Supreme Court 1890