

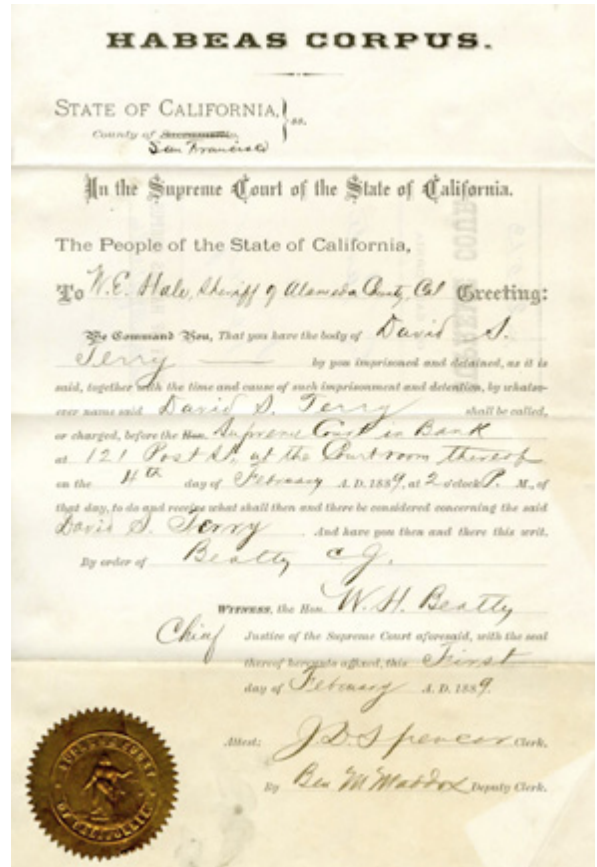
David S. Terry's Writ of Habeas Corpus

BY SEBASTIAN A. NELSON*

DAVID S. TERRY (1823–1889) has been called “California’s most colorful Supreme Court justice.”¹ He may have also been the most volatile justice. The events of Terry’s life, from his famous duel with Senator David C. Broderick in 1859 to his death at the hands of a U. S. marshal in 1889, are familiar to students of California history and to readers of this newsletter.² Perhaps less well known is Terry’s assault on John Franks, another U. S. Marshal, on September 3, 1888, in a San Francisco Federal courtroom as a result of a long-running dispute involving the silver millionaire William Sharon and Terry’s wife, Sara Althea Hill. (Terry knocked out some of Franks’ teeth and tried to stab him with a bowie knife.) Terry was immediately sentenced to six months in jail for contempt of court by the trial judge, U.S. Supreme Court Justice Stephen Field. This sentence triggered creation of arguably the most unusual Supreme Court document in the collections of the California State Archives (a division of the Secretary of State’s Office): a writ of habeas corpus signed by William H. Beatty, the fifteenth Chief Justice of California, regarding Terry, the fourth Chief Justice of California.

Several months after his arrival in the Alameda County Jail, Terry filed a handwritten petition for a writ of habeas corpus with the Supreme Court of California in which he claimed that he was “illegally imprisoned and restrained of his liberty by W. E. Hale, sheriff of Alameda County.” Terry argued that federal law entitled all prisoners, including himself, to deduct five days from their sentences for every calendar month of good behavior. Chief Justice Beatty agreed with Terry that good behavior entitled him to be released about a month early, and on February 1, 1889, Beatty commanded Sheriff Hale to have Terry brought to San Francisco on February 4. According to the case file, which survives at the State Archives, Sheriff Hale answered the writ by writing that he was bound to keep Terry in custody until he had served his entire six-month sentence. Hale continued, stating “that the said writ of habeas corpus has been issued by this Honorable Court under a misapprehension of the facts of this case.”

The U.S. District Court for the Northern District of California quickly weighed in on the matter by ruling that no credits would be allowed to Terry. “Is Mr. Terry, adjudged guilty of contempt of Court, a prisoner convicted of any



Writ of Habeas Corpus, signed by Chief Justice William H. Beatty — part of the case file Ex party David S. Terry (1889), WPA No. 7391, Supreme Court of California Records.

CALIFORNIA STATE ARCHIVES,
OFFICE OF THE SECRETARY OF STATE, SACRAMENTO

offense against the laws of the United States, . . . ?” asked Circuit Judge Lorenzo Sawyer in his decision.

In this case the judgment was rendered summarily by the Court upon its own observation of what took place before it. . . .

Some of the acts performed, it is true, constitute specific offenses against the general criminal statutes of the United States for which the prisoner may yet be indicted, tried, convicted and punished. And indictments are, in fact, pending for those statutory offenses. Should the prisoner be convicted and imprisoned for those offenses he would undoubtedly be entitled to any credits that might be allowed to parties in his condition.

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Terry's anger toward Justice Field, his former colleague on the California Supreme Court and the man who sent him to the Alameda County Jail, was no secret. One newspaper account recalled a conversation between Terry and a friend:

When he called on him in Oakland jail last December Terry said: "When I get out of here I will horsewhip Judge Field. He will not dare return to California, but the world is not large enough to hide him from me."

"But," said his friend, "if you do that Field will resent it. He won't stand any such thing."

"If he resent it," said Terry, "I'll kill him."³

Less than a year after his writ of habeas corpus was issued, Terry would be dead, shot by Field's bodyguard,

U.S. Marshal David Neagle, when he attempted to assault Field. Although Terry failed to win early release, this curious document remains at the State Archives as evidence of the final year of California's most violent Supreme Court justice. ★

ENDNOTES

1. "Telling the Tale of California's Most Colorful Justice," *CSCHS Newsletter*, Fall/Winter 2014, 20–21, <http://www.cschs.org/wp-content/uploads/2014/05/2014-Newsletter-Fall-Most-Colorful-Justice.pdf>.
2. For a closer look at Terry's life story, see Richard H. Rahm, "Chief Justice David S. Terry and the Language of Federalism," *California Legal History* 9 (2014): 119; "Chief Justice David S. Terry and Federalism: A Life and a Doctrine in Three Acts," *CSCHS Newsletter*, Fall/Winter 2012, 2–7 <http://www.cschs.org/wp-content/uploads/2014/07/David-Terry-2012-Newsletter-Article.pdf>; and "Telling the Tale of California's Most Colorful Justice," 20–21.
3. "Terry's Threats," *Daily Alta California*, Aug. 15, 1889.