

## CALIFORNIA'S VIOLENT CHIEF JUSTICE

By John S. Caragozian

Unsurprisingly, Californians in the 1850s were armed with guns or knives, shot or stabbed one another, and fought fatal duels. It might be surprising, however, that one man, David Terry, engaged in all these activities and even more surprising that he was chief justice of the California Supreme Court.

Terry was born in 1823 in Kentucky, but raised in Texas, claiming to have fought in Texas's 1836 war of independence at age 13. Ten years later, Terry was a Texas militia lieutenant in the U.S.-Mexico war. He also studied law with an uncle and was admitted to the Texas bar. See A. Russell Buchanan, "David S. Terry of California: Dueling Judge," at 7 (1956).

In 1849, Terry emigrated to California, first working as a miner and, a year later, practicing law in Stockton. He was a pro-slavery Democrat and, in 1855, was elected to the California Supreme Court. Richard Rahm, "Chief Justice David S. Terry and the Language of Federalism," 9 California Legal History 119, 122 (2014).

Meanwhile, San Francisco's municipal government had become deeply corrupt. In 1856, San Francisco businessmen revolted and formed a 6,000-member Vigilance Committee, arming themselves with artillery and rifles. They also "tried" and lynched four accused murderers at their fortified headquarters at San Francisco's Sacramento and Front Streets (next to today's Embarcadero Center).

The Vigilance Committee's popular sergeant at arms Sterling Hopkins tried to arrest an opponent who had insulted the Committee. Terry, newly elected to the Supreme Court and also a Committee opponent, was present. Terry drew his Bowie knife — which he habitually carried — and gravely wounded Hopkins in the neck. A 1,500-person mob assembled to lynch Terry, but he survived by surrendering himself to the Committee. *Id.*, at 127-28.

While imprisoned at the Committee's headquarters, Terry wrote to the U.S. Navy in San Francisco Bay, seeking to be rescued, but the Navy refused to interfere "with the domestic troubles of the States...."

Fortunately, Hopkins recovered from his wound. The Vigilance Committee formally tried Terry for the attack and, after lengthy deliberations, found Terry guilty of resisting the Committee and of assault. The Committee then released Terry, his punishment being seven weeks of time served. See Buchanan, *supra*, at 38-69. Shortly thereafter, the Committee voluntarily disbanded.

In 1857, Terry became Chief Justice of the California Supreme Court.

Two years later, Terry and California's anti-slavery U.S. Senator David Broderick became enemies. At first, they sparred verbally, but Terry eventually challenged Broderick to a duel, and

Broderick accepted, stipulating to pistols as weapons. On Sept. 11, 1859, Terry resigned as chief justice. The following morning, Terry and Broderick met just outside the San Francisco County line at Lake Merced, but the San Francisco police chief prevented the duel by arresting the two would-be duelists for disturbing the peace. With no duel, however, a judge released the two, and they reappeared to duel the next morning. Broderick shot first, but missed; Terry's shot hit Broderick, who died two days later. *See Rahm, supra*, at 136-37. (The site, next to today's San Francisco Golf Club, is preserved and marked where the two duelists stood.)

Terry was charged with the crime of dueling in San Mateo and San Francisco counties, though Terry successfully transferred the latter venue to Marin County. In the summer of 1860, after various procedural delays, the Marin charges were dismissed, and the San Mateo judge ordered a not guilty verdict.

Nonetheless, the duel caused Terry to become unpopular, and his law practice — to which he had returned after resigning as chief justice — suffered. Terry's outspoken Southern sympathies further eroded his popularity.

During the Civil War, Terry returned to Texas, serving as a colonel in a Texas regiment of the Confederate army. He was wounded, but recovered and resumed active duty.

After the war, Terry, along with other Confederate veterans, fled to Mexico, but, in 1869, moved back to California, opening law offices in Fresno, San Francisco, and Stockton.

In 1878, he was a delegate to California's constitutional convention. Terry successfully introduced a provision into the proposed new constitution to bar corporations from employing Chinese. Buchanan, *supra*, at 185-86. (This constitution was ratified in 1879 — and, with amendments, remains our current state constitution — but a federal court struck down the anti-Chinese provision as a 14th Amendment violation. *In re Parrot*, 1 F. 481 (C.C.D.Cal. 1880).)

At the same time, Terry supported some progressive causes. For example, at the 1878 convention, he supported women's rights and, the following year, advised Clara Foltz in her successful lawsuit for admission to Hastings Law School. *See Barbara Babcock, "Woman Lawyer: The Trials of Clara Foltz,"* 35-40, 46-47 (2011). (An earlier column, "[Clara Foltz: pioneer lawyer for women, criminal defendants and all Californians](#)," Daily Journal, Nov. 8, 2022, described Foltz's accomplishments in greater detail.)

In 1884, Terry took on his most famous case, representing 34-year-old Sarah Althea Hill in litigation against Nevada's wealthy, 63-year-old U.S. Senator William Sharon. Sharon, who owned and was living at San Francisco's Palace Hotel, paid Hill \$500 per month (\$15,000 today) to sleep with him. When Sharon attempted to discontinue the arrangement, Hill sued for divorce and alimony, claiming that she and Sharon had been secretly wed, per a hand-written marriage contract.

This litigation generated 10 California Supreme Court decisions, 10 federal circuit court decisions, and two U.S. Supreme Court decisions. The first state court divorce trial in 1884 took

six months, heard 111 witnesses, and was attended by hundreds of social, business, and government leaders. After deliberating for an additional three months, the state judge found “frightful perjury,” including by Hill, but ruled that a valid marriage had occurred and awarded monthly alimony of \$2,500 and attorneys’ fees of \$55,000 (respectively, \$76,000 and \$1.7 million today). Sharon moved for a new trial and appealed. See Rahm, *supra*, at 138-41.

Separately, in 1885, Sharon sued in federal court for a declaration that Hill’s marriage contract was a forgery. After another six-month trial, the court ruled (a) the California trial court decision was not *res judicata*, because no decision was final, and (b) on the merits, the contract was forged, and no marriage had occurred. *Sharon v. Hill*, 26 F. 337 (C.C.D.Cal. 1885).

Over the following five years, federal and state courts continued on their separate paths until the California Supreme Court finally acceded to the federal decision that no marriage existed and, therefore, Hill was entitled to neither alimony nor fees. *Sharon v. Sharon*, 84 Cal. 424 (1890).

During the litigation, Sharon died, and, in 1886, putative widow Hill and Terry wed. Terry was thereafter defending his client’s and wife’s honor.

In 1888, Hill and Terry were back in federal court in San Francisco, with U.S. Supreme Court justice Stephen Field, on circuit, presiding over a three-judge panel. (Coincidentally, Field and Terry had been on the California Supreme Court together in 1857 and 1858.) While Field was ruling against Hill, Hill jumped up and accused Field of being “paid for this decision.” When Field ordered marshals to remove Hill from the courtroom, Terry attacked a marshal and knocked out one of his teeth. Marshals eventually subdued Hill and Terry and seized Hill’s pistol and Terry’s Bowie knife. The same day, Field summarily jailed Hill and Terry for contempt, and Terry served six months. Rahm, *supra*, at 149.

Unchastened, Terry further threatened Field, so U.S. deputy marshal David Neagle was assigned as Field’s bodyguard. In 1889, Field and Neagle were on a train from Los Angeles to San Francisco. At Fresno, Hill and Terry boarded the same train. When the train stopped for breakfast near Stockton, Field and Neagle seated themselves at the restaurant. Terry then walked up behind Field and twice punched him in the face. Neagle, apparently believing that Terry would escalate the attack with his Bowie knife, shot and killed Terry.

Terry, however, turned out to have been unarmed, and state authorities arrested Neagle for murder. Neagle sought habeas corpus relief on the ground that he was acting under federal law and not amenable to state prosecution. The federal trial court agreed. *In re Neagle*, 39 F. 833 (C.C.N.D.Cal. 1889). Upon Neagle’s release, Field — who was in the courtroom (and probably had drafted the habeas petition) — jumped to his feet, shook Neagle’s hand, and presented him with a gold watch engraved with thanks for Neagle’s “courage and fidelity.” Rahm, *supra* at 155.

The U.S. Supreme Court in a 6-2 decision (with Field recused) affirmed the trial court, broadly immunizing federal agents from state law when acting pursuant to their duties. *See In re Neagle*, 135 U.S.1 (1890).

Terry was buried at Stockton Rural Cemetery (which still exists). Hill outlived Terry by 48 years, but was institutionalized for 45 of those years with severe mental illness, probably schizophrenia. She died on Valentine's Day, 1937, and is buried next to Terry. To this day, historians and lawyers debate whether Hill and Sharon had been married.

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