

## TALES OF THE OLD WEST

### Dueling Davids

Just as the rest of the nation in the late 1850s, California's Democratic Party was as deeply fractured over the issues that divided the country, states' rights and slavery. And nowhere was that more clearly revealed than in the relationship between United States Senator David C. Broderick and David S. Terry the former Chief Justice of California's Supreme Court. These two had been friends as they rose in the ranks of the Democratic Party to achieve lofty positions. But in 1859 the nation was heading for a Civil War and the Democrats were split between the Northerners and the Southerners.



Broderick, (photo at left) a staunch Northerner, was born in Washington D.C. in 1820, the son of Irish immigrant parents. His father had emigrated to America to help construct the Capitol building. The family would move to New York City, where young David Broderick would work as a stonecutter and a saloon keeper, positions far different than his dreams of important roles in the American political society. The only available entry into politics in New York was through the Tammany Hall political organization. Despite his best efforts, Broderick, challenged by lack of funds, was unable to gain entry into this corrupt gang of politicians. He embarked instead for the greener, golden pastures of California.

Broderick quickly achieved financial success in the Gold Rush era of California and used it to subsidize his political dreams. He served as state senator before quickly ascending to Lieutenant Governor and gaining political control of the state's most important city at the time, San Francisco. This was achieved within eight years of his arrival in California and one year after California achieved statehood.

Terry (Photo at right) was born in Kentucky in 1823 but was raised in Texas with family roots that reached back to the United States' colonial past. He proudly embraced his Southern heritage and never wavered in his affection toward the Antebellum South, even after he moved to California. In Texas he studied law in his Uncle's law office and easily passed the bar exam.



He lost his parents at a young age and turned to the Texas Rangers and fighting in the Mexican-American War as his path to fame. He focused his attention on becoming a model soldier and fighting the Mexicans as a way to control his anger. He became proficient in the use of both pistol and Bowie knife. After the war he too headed to the California Gold Rush.

Terry realized that the backbreaking work of searching for gold was not the way to make a decent living. So he opened a law office and began working his way through the Democratic Party until he secured a nomination to the California Supreme Court. Only two years later he became Chief Justice.

By 1859, Terry was out of a job and his future in politics were bleak. Convinced that Broderick and his fellow abolitionist ideologues had engineered his political demise, Terry turned angry, paranoid and toxically bitter.

At a Democratic convention in Sacramento Terry blasted the Northern Democrats and his former friend Broderick as "the personal chattels of a single individual whom they are ashamed of. They belong heart and soul, body and breeches to David C. Broderick.

At breakfast the next morning in a San Francisco hotel Broderick saw a newspaper story of Terry's speech. A friend of Terry's was at the same table and Broderick shouted out that Terry was "a miserable wretch." He said that he had thought that Terry was "the only honest man on the bench of a corrupt Supreme Court." He went on to say he was "taking it all back. He is just as corrupt as the others."

Terry's friend, Duncan Perley, hurried to tell the judge what Broderick had said. Rather than talk to each other they passed notes. Terry demanded a retraction and Broderick inquired as to

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what Terry found “offensive.” Terry then demanded “the satisfaction usual among gentlemen.” That required that they meet and shoot one another face-to-face at point-blank range.

For seconds Broderick identified J. C. McKibbin and a former sheriff named David Colton. Attorney Calhoun Benham and Colonel Thomas Hayes served as seconds for Terry. The four seconds met and set out the conditions of the duel. Each side would bring a pair of dueling pistols and at the site a flip of the coin would decide the weapons to be used. They chose to meet at the sand dunes near Lake Merced at 5:30 a.m. on September 12, 1859.

Both men were experts in the use of pistols but Broderick was a “quick shot,” “a fast man on the trigger.” Broderick’s seconds insisted that after the command “ready” that the duelists would fire between the count of one and two.

The duel had to be held outside the city limits of San Francisco as dueling was illegal. Everyone knew of the duel and all of the carriages were rented by people wishing to witness the event. A warrant was issued to arrest the combatants but the police chief could not obtain a hack to get him and his men to the event. They finally borrowed the Coroner’s buggy.

Terry’s group started before 2:00 a.m. and arrived at what they believed to be the site early. They waited for the other party for three hours in the cold foggy morning before Benham went looking for them. He found them, the police and a growing crowd in a ravine where they were waiting for the Terry party. Broderick and Terry were arrested and taken before a Justice of the Peace. The judge ruled that since no duel had taken place he could not hold them. A local newspaper, *The Bulletin*, predicted that the duel would occur in a day or two.

The seconds scheduled the duel for 7 a.m. the next morning at the same spot. They would then decide on a definite site. That night the Broderick party spent the night in a run-down inn on the beach where the beds were covered with sand fleas. And in the morning they had no place to eat and went to the duel on an empty stomachs and tired.

Meanwhile, Terry spent the night in a comfortable farmhouse nearby and had an excellent breakfast before he went off to seek his fate.

Witnesses said that Broderick looked pale and tired and was obviously nervous. Terry seemed to be quite calm.

The men were reportedly evenly matched but Broderick was favored to come out of the duel alive. One newspaper, *The Morning Call*, said that Terry was “a first rate shot,” but reported that at a recent shooting gallery Broderick “fired two hundred shots at the usual distance and plunked the mark every time.”

As the final arrangements were being made Terry reportedly said “I don’t know. Broderick fires quick. If he doesn’t kill me, I shall hurt him.”

Both men were accompanied by a doctor. Broderick’s man, Dr Ferdinand Loehr, was very skittish and wandered about clutching his bag of instruments with a saw sticking out one end of the bag. Dr. William Hammond, Terry’s physician, spread his coat on the ground and sat down to wait.

It seemed that it took hours to finalize all the arrangements but finally all was settled and the duel was starting. Broderick won the coin flip to decide the position and chose to have the sun at his back. The next coin flip was won by Terry and he chose the weapons and that choice might have been the deciding factor in the duel. He chose the long, French dueling pistol held by his second. It had a foot-long barrel and an oddly shaped grip and stock.

There was to be another coin flip to decide who would select the pistol to be used. Terry objected that the pistols were identical. Both pistols were inspected by Benham for Terry and by McKibbin and a gunsmith for Broderick. Then the time-consuming chore of loading the weapons. Each side loading his own pistol. And the duelists went to their positions.

There was still one more chore to accomplish. To ensure that neither duelist was wearing armor McKibbin searched Terry and Benham searched Broderick. Broderick’s second patted and poked a little bit while Benham did a thorough search of Broderick. He ran his hands up and down the sides and under his coat. He even checked the lapels and under the lower waist. And Broderick was fuming and swearing.

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Terry was standing with the muzzle pointed to the ground. Broderick's pistol was slightly raised and he had to be told to lower it. Finally the delays were finished and Dave Colton, Broderick's sheriff friend, was selected to give the dueling commands.

Colton glanced around at the crowd that was chattering rather loudly and they became silent. "Gentlemen, are you ready?"

Terry nodded.

Broderick appeared to be trying to get the feel of the heavy weapon.

Finally he nodded, "Ready."

"Fire! One." Broderick's pistol fired and kicked up sand about nine feet in front of him.

Terry's shot was a second later.

Broderick shuddered violently and his hands flew up before he dropped to his knees and slowly to the ground on his back. He braced his fall with one hand as severe pain spread across his face.

Terry lowered his pistol and started to walk away. A second shouted, "Hold your position."

Broderick's seconds hurried to his side while the doctor had no idea as to what he should be doing. Seeing this the disgusted seconds called to Dr. Hammond for help. He applied a compress to the wound. Someone gave the Senator a shot of brandy. Benham came to look at the wound over the doctor's shoulder. He returned to Terry and told him that it looked serious and that he should leave.

Friends of Broderick loaded him into a wagon and carried him to a friend's house. He complained of a severe pain and a great weight upon his chest. He was put to bed and more doctors called. The physicians stayed with him over night and said that he would survive. Two days later he was dead.

His funeral, which reportedly drew 25,000 people, was the biggest event in San Francisco history up to that time. As evidenced by the size of the funeral his death aroused strong public feelings. He had been the political leader of a large Irish community.

Terry was arrested for murder and Bernard Lagoarde, Broderick's gunsmith, claimed that the gun that Broderick had used had a hair trigger and that the mere raising of the weapon would cause it to discharge.

Terry was granted a change of venue and the trial was moved across the bay and the judge was reported to be a Terry man. When the ferry with the Broderick witnesses was late the judge dismissed the case.

He went on to fight for the Confederacy during the Civil War and would never hold political office again. When Terry was nominated for California Attorney General in 1879, news outlets such as the *New York Times* and the *Sacramento Daily Union* condemned him, claiming that his past actions failed to "recommend him to the suffrages of an intelligent, loyal and civilized people."

In 1889, the elderly but still hot-tempered Terry encountered Stephen J. Field, a member of the federal Supreme Court and an old personal enemy. Terry greeted the justice with a slap to the face, an act to which Field's bodyguard responded in kind — with a bullet to the chest.

Terry died instantly.

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Broderick was buried under a monument erected by the state in Lone Mountain Cemetery in San Francisco. In 1942 he was reinterred at Cypress Lawn Memorial Park in Colma, California.



David S. Terry is buried at Stockton Rural Cemetery in Stockton.



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Artist concept of the duel



Dueling site as it appears today. The marker on the right is where Broderick died.