

Retro Ramblings

By: Douglas Love, Grand Trustee

Dueling has been a part of the human experience since at least the Middle Ages if not before. Starting as the medieval trial by combat, dueling as a method to establish the guilt or innocence of a person or to defend their, or another party's "honor", has a long and checkered history. One of the earliest recorded trials by combat occurred in 630 in the Kingdom of the Lombards in Northern Italy. Trial by combat was first sanctioned in France by Louis the Pious in 803, and in the Holy Roman Empire by Otto The Great in 967. It had long existed in Saxon, Burgundian, Frankish, and Lombard legal codes and well as Irish Brehon law.

Beginning in the 1100's, trial by combat was gradually replaced by trial by jury and the two coexisted for some time. In 1215, article 29 of the Magna Carta guaranteed the right to a trial by jury in England, yet the last judicial combats were fought long after. France's last trial by combat was in 1386, Italy had trial by combat as late as 1560, and it wasn't until 1819 that Great Britain abolished wager by battle. By the 17th century, trial by combat was a relic of a more "superstitious and barbarous time" to paraphrase Edmund Burke.

Dueling to settle private disputes and "affairs of honor" had always been considered quasi-legal at best, even if it was not directly outlawed. Here in what would become the United States, the first duel was fought in 1621 in Massachusetts Bay, not long after the founding of the colony. The idea of a duel resolve alleged slights and insults had become ingrained in European upper middle class and aristocratic culture for some time, but here in the United States, it took on a new dimension. Not only was dueling a method to settle "affairs of honor" but often political disputes were resolved via the duel. The most famous of these was the duel in which Vice-President Aaron Burr killed Alexander Hamilton at Weehawken on July 11, 1804, which later was immortalized in a famous "Got Milk" commercial. There were others, including a duel between Button Gwinnett, signer of the Declaration of Independence, and Lachlan McIntosh in 1777, in which Gwinnett was fatally wounded; a duel in 1806 between future president Andrew Jackson and Charles Dickinson, Dickinson was killed and Jackson became the only US president to have killed a man in a duel; a duel in 1820 between Stephen Decatur and James Barron, in which Decatur, hero of the Wars against the Barbary Pirates and the War of 1812, was killed, and a duel between Henry Clay and John Randolph of Roanoke in 1826 among others.

Here in California, the most famous and the last "notable duel in the United States", took place between Chief Justice of the California Supreme Court David S. Terry and US Senator David C. Broderick on September 13, 1859 near Lake Merced, just outside of San Francisco. This duel, which for all intents and purposes was the last political duel in the United States would have consequences not just for California, but for the United States as a whole.

David C. Broderick was born in Washington DC in 1820. He was the son of an Irish stonecutter who immigrated to the United States to work on the US Capitol building. In 1823, Broderick's parents moved to New York City and after attending public school, the young Broderick became involved in politics joining the Democratic Party and becoming active in the Tammany Society. In 1846 he was the Democratic Candidate for New York's 5th congressional district and lost. Broderick headed west in 1849 and 1850 found him in San Francisco where he worked as an assayer and smelter of gold. He reportedly also minted ten dollar gold coins which contained only eight dollars worth of gold, keeping the difference to finance his political aspirations.

Broderick quickly became involved in the nascent Democratic Party in California, serving as a state Senator from 1850 to 1852 and as the Acting Lieutenant Governor from 1851 to 1852. He was then elected United States Senator from California and served from 1857 until his death in 1859. While he was active in politics in California, Broderick was aligned with the “Free Soil”, anti-slavery faction of the Democratic Party. He also brought Tammany Hall style corruption to San Francisco and while he was acting Lieutenant Governor, he was San Francisco’s political boss.

David S. Terry was born in 1823 in Kentucky and in 1831 moved to Texas and then California in 1849. Terry read law while in California, was admitted to the bar, and then became active in Democratic Party politics. In 1855 Terry became involved in his first high profile case, representing Maria Encarnacion Ortega de Sanchez who was being cheated out of the proceeds from the operation and partial sale of Rancho Llano de Tesquisquita and Rancho Lomerias Muertas, two land grants totaling over 49,000 acres that she had inherited from her husband. Also in August, 1855, Terry was elected to finish the remaining term of California Supreme Court Justice Alexander Well, who died suddenly and was reelected to a full term in November. In 1857, he was appointed Chief Justice of the state Supreme Court. Terry was a political ally of Broderick even though Terry was a member of the pro-slavery faction of the California Democratic Party.

In 1856, Terry stabbed Sterling Hopkins, a member of the San Francisco Committee of Vigilance. He was released by the committee. In 1859, Terry sought another term on the state Supreme Court but the state Democratic Party nominated Warner Cope instead. Terry blamed his former friend and ally Broderick for failing to secure the nomination. He then proceeded to make some very caustic remarks about Broderick, which led to the duel.

Broderick and Terry met to fight their duel in a ravine, just south of Lake Merced. Broderick’s pistol discharged early and Terry fired his at the Senator. At first, Terry thought that he had only wounded Broderick, but Broderick died three days later at the home of Leonidas Haskell, which still stands as Quarters 3 in Fort Mason. Terry was charged with murder but acquitted in 1860. He then moved to Texas and joined the 8th Texas Cavalry, fought in the Civil War for the Confederacy and became commander of the 37th Texas Cavalry by war’s end. He was involved in a scandal involving his wife Sarah in the 1880’s and was killed attacking a judge who had ruled against her.

Broderick, became a martyr upon his death. He was seen as someone who died for the cause of abolition. Thousands attended his funeral and Broderick Street was named in his honor. California became one of the few states to pass a law specifically outlawing dueling. Terry and the pro-slavery Democrats were accused of assassination, thus further cementing California’s place in the “free soil” camp. In 1872, California made it illegal to duel in the state with punishments of up to four years in state prison. The laws prohibiting dueling in California were repealed as “obsolete” by AB 3326 in 1994.

Getting There: From 414 Mason Street. Get on I-80W from 4th Street. Take US 101S and I 280S to Exit 49. Turn right onto John Daily Blvd. Take John Daily Blvd to Lake Merced Drive. Turn right onto Lake Merced Drive. Turn right onto S. Lake Merced Hills. The site is at the end of Lake Merced Hills.