

THE OLD SAGE OF THE ARKANSAW:

POLK CLINE

by M.H. Hoeflich¹

Had you happened to be walking down the main street of Larned in the 1890s, you might have seen a sign leading to the offices of the town's most singular attorney, G. Polk Cline. Had you been accused of a crime you would almost certainly have gone up the flight of stairs to the two rooms he used as his office.² When you entered, you would have seen a large room, with three big windows. The room was dominated by an enormous walnut desk; according to its owner it was 18 feet long. There were cabinets filled with the supplies necessary to a lawyer's life, a half dozen wooden chairs, an old iron safe, a wood stove, a coal bucket, and spittoons. The walls were filled with pictures of the occupants' heroes. There was Grant and Lincoln, as well as General Lee and old Jeff Davis, testimony to the lawyer's Southern origins.³ And, unusually, for the walls of a frontier lawyer's office, there were images of Robbie Burns and Sir Walter Scott, himself a lawyer, as well as Shakespeare, Dickens, and Twain. The second room was filled with books, what his daughter called "one of the finest libraries in Western Kansas," along with a second desk, hickory chairs, and a fine Turkish carpet on the floor. This was obviously the lawyer's favorite place. The lawyer in question, the self-styled "old Sage of the Arkansaw," was Polk Cline, one of the most eccentric and best read lawyers of his age in Kansas.

Had you walked upon the lawyer himself, you might well have been startled by his appearance. If you had happened upon him just back from court, you would have seen a somewhat odd apparition.⁴ Not a large man but one with a large presence. He had pierc-

ing eyes set in a narrow face. On his head would have been his favorite old "plug hat": what Lincoln called a stovepipe. He would have been wearing a formal, frock coat, but likely without a tie, since he never learned to tie one. If you'd look closely you might also have seen the pearl handled pistol he always kept tucked into his back trousers pocket. And, most odd of all, no shoes would have been on his feet, for he favored the barefoot look.

Polk Cline was born in 1851 in Davis County, Mo.⁵ He studied law in Missouri and in Des Moines, Iowa, and then crossed the border to settle a claim in Lacrosse, Kan., in Rush County. Not very long after he'd settled in Rush County, he relocated to the then small town of Larned. From 1886 until his death 50 years later, Polk Cline was a Larned man and a practicing lawyer there. He married in 1874 and had four children, two of whom died in childhood. Of the survivors, his daughter, Nellie Cline, became one of the first women lawyers in Kansas, practiced in partnership with her father until his death, was one of the first women elected to the Kansas Legislature, and was the first woman to argue a case before the Supreme Court of Kansas.⁶

Polk Cline stood out among his generation of Kansas lawyers. Life in Western Kansas in the early years was not so genteel as it is today. Lawyers were often poorly read, even in the law. But Polk Cline loved literature, loved



FOOTNOTES

1. I must thank my friend and Thursday lunch partner, Glee Smith, for his willingness to share his reminiscences of Larned, Cline, and the Western Kansas Bar with me. Without his help, I could not have written this essay.

2. The description that follows comes from Nellie Cline Steenson, *THE JAYHAWKERS. STORIES AND MEMORIES OF THE EARLY DAYS IN WESTERN KANSAS* (1967), pp. 82-83.

3. I.e., Missouri.

4. This description comes from Steenson, n.1, above, pp. 86-87 and from a photograph of Polk Cline at age 76 published in the *WICHITA BEACON*, Jan. 23, 1927, to accompany an article by Rolland Jacquart, *Polk Cline Yearns for Another Fight*. This article also includes a description of Polk Cline.

5. Biographical details about Polk Cline come from the *WICHITA BEACON* article cited above, n.3.; see also Roots Web, www.worldconnect.rootsweb.com.

6. See the article *Honor to Woman*, in the *TOPEKA JOURNAL* for April 3, 1918.

to write, and loved a good fight — at least in a courtroom. He was fond of quoting Shakespeare and Twain. He filled the columns of Kansas newspapers with his often biting-prose accounts of trials and legislative inanities. He was fond of saying that he became a lawyer not for the money, but for the fight.⁷ When his clients could not pay, he would represent them anyway, if he thought their case merited it. Above all, he was a criminal lawyer and many a scoundrel sought help from Polk Cline. He was enough of a character to attract the attention of journalists who loved to chronicle his exploits. And, in 1910, he self-published a collection of his own essays, reminiscences, and satires under the title, “Polk Cline’s Book.”⁸

To modern eyes and sensibilities, the stories Cline related about practice in Western Kansas during the “Gay Nineties,” may be a bit shocking. Certainly, the strict procedures and high ethical standards to which we have become accustomed today were not in force. And the painstaking research and learned legal arguments that now characterize litigation were equally alien to the lawyers and judges of Polk Cline’s era.

In Larned in the 1890s the railroads were the largest corporate presence, and Cline had little use for them in politics or in the courts. He described one railroad, the Missouri Pacific, as:

... duly authorized and empowered to control the courts, govern by injunction, oppress the people, and deprive the laboring man of his absolute inherent rights. It has neither soul nor conscience. Is without body parts or passions. To it the everlasting bonfire has no terrors ... These remarks are general and apply to all corporations.⁹

He called Atchison, Topeka, and Santa Fe (AT&SF) the “octopus” and the “enemy of the working man,” and the “sum of all villainies.” He alleged that the AT&SF:

... owned operated and controlled a road through [Larned] ... built and operated for the sole and express purpose of giving judges, members of the [L]egislature, Public officials, and prominent men free transportation, to the great chagrin of the common people ...

If Polk Cline disliked railroads and other large corporations, he saved his greatest hatred and contempt for judges whom he thought to be incompetent or corrupt. At the head of his list he placed Judge Sim. W. Vandivert. Much of Cline’s book is devoted to excoriating the malfeasances of Judge Vandivert, a judge of the 16th Judicial Circuit and resident of Kinsley, Kan. So hot did his hatred burn that in 1897 Polk Cline published a pamphlet of 14 pages with the title, “Speech of Col. G.P. Cline, One of the Leading Attorneys of Western Kansas, in Support of the Dethronement of Judge Vandivert.”¹⁰

Unfortunately for Judge Vandivert, very little remains of his life, other than Cline’s denunciations. According to Cline,

Vandivert was a scoundrel on the order of Jesse James or the Dalton gang. He is accused of conspiring with corrupt attorneys and larcenous businessmen to defraud the innocent citizens of Pawnee County. According to Polk Cline, Vandivert was nothing less than the Devil in judicial robes. Certainly, we know that Cline believed that he and his clients had been unfairly treated in Vandivert’s court. And one newspaper article, from the Buffalo Courier of Nov. 4, 1895, suggests that Vandivert was capable of unusual acts. According to the article, two men murdered the mayor of Kinsley. A lynch mob was organized and was about to hang the two murderers. Vandivert interrupted the hanging and told the crowd that they should turn over the two men to the sheriff and that, if they did, he promised that he “would guarantee their conviction and sentence them to death and that he would then go before the governor and ask that he allow them to be executed ...”¹¹ While these actions show Judge Vandivert’s dedication to the legal process, they don’t demonstrate a great commitment to a fair trial.

Although Polk Cline had serious reservations about certain members of the Kansas judiciary, his faith in the legal profession and the legal system remained unshaken throughout his life:

The lawyer in full practice has neither religion nor politics except as a matter of form. He has no admiration for the “pomp of glorious war,” and never “seeks the bubble reputation at the cannon’s mouth.” But notwithstanding all that he is a very essential element in our civilization. He is the exponent of the bulwark and palladium of our liberties. The judiciary is the chief anchor of our government. With an upright judiciary the country is safe.¹²

While we may admire Polk Cline’s views in the abstract, it is also clear from his writings that his view of legal ethics and trial practice differed from our own. In describing the role of a trial attorney, he wrote:

A well-tryed law-suit is like a well regulated play. The manager of a theatrical troupe never puts his play upon the stage until each actor can play his part. The same is true of the successful lawyer. Witnesses often require information before they can testify. If the eminent counsel will see that they are properly instructed as to the facts of the case, and their personal knowledge thereof, he may expect good service. He must also be able to affiliate with the jury. They are sometimes hungry and always thirsty. These details must be looked after. A friendly and sympathetic audience is another important factor. If he neglects all these things he may expect to march to defeat with the courage of invincible ignorance.¹³

7. WICHITA BEACON article, cited n.3, above.

8. Polk Cline, POLK CLINE’S BOOK (1910) [hereafter “The Book”]. Today this is a rare volume. Polk Cline might be amused to learn that his book now sells for nearly \$200 per copy.

9. The Book, p. 32.

10. Polk Cline, SPEECH OF COL. G.P. CLINE, ONE OF THE LEADING

ATTORNEYS OF WESTERN KANSAS, IN SUPPORT OF THE DETHRONEMENT OF JUDGE VANDIVERT (1897).

11. This article may be found, in abstract, on www.newspaperabstracts.com.

12. The Book, p. 193.

13. The Book, p. 92.

Nonetheless, some degree of professional skill was required to practice law, even on the western frontier:

Having all the players now on the stage, the comedy beings. Milt was the first violin. As he knew no more about the law than he did about the facts it soon became evident that the learned judge was losing patience. After the court had borne with him something like an hour, Milt was called to order and the dignitary on the bench addressed him thus: "Young man, do you expect to make a livin' in this country by practicing law?" To this Milt promptly answered, but he was making for the door all the while, "Not before such a g----- court as this."¹⁴

And Polk Cline was certainly not above helping out his friends when he could, as illustrated by what he called "Cline's Complementaries":

Now Posterity may require some explanation as to what is meant by a "complimentary ticket." As the firm representing the defendant in this case had the leading practice, it necessarily follows that they had some cases they were sure of winning. In a case of great emergency, or in a particular case, all the friends of the counsel as well as their clients, were duly subpoenaed on some case which he knew nothing about, but was sure to get his fee. The witnesses all understood it and referred to these subpoenas as "Cline's Complimentaries."¹⁵

In the end, Polk Cline had a realistic, if jaundiced view of the law as it was practiced in his day, a view he expressed when he said that one account of a trial in which he had a part showed:

... [T]hat the supreme court was wrong when it announced the infamous doctrine that "a lawsuit is not a game of chance, to be won or lost by sharp practices and shuffling devices, and all kinds of bull-doing and pettifoggery."¹⁶

Law on the western frontier of Kansas was not so refined as it is today and Cline's memoirs are an excellent source for a true life view of the law of his time. A perfect close to this brief history of Polk Cline and his times is the story he tells of young, eastern gentleman who made the mistake of coming to Kinsley in 1887 to set up a law office. He "was a Harvard graduate" and he "posted [his diploma] in conspicuous place to be gazed on by all" who entered his office. "He retained his eastern manners, expressed himself in classical language, and studiously avoided all kinds of slang, provincialism, profanity, and vulgarity" [as opposed to Polk Cline who gloried in all of

these]. Soon after he settled at Kinsley he was retained to try a criminal case, of horse theft — or so he thought. He defended his client to his utmost. Unfortunately:

He quoted history, recited poetry, and even entered the realms of philosophy. But as he clothed his ideas in language devoid of profanity, slang, and provincialisms, it was as incomprehensible to that mob as the parables of "our blessed Saviour" when speaking to a lot of wharf rats and fishermen.¹⁷

The case went from bad to worse and soon the crowd began to mutter about a hanging. At this point, the defendant managed to slip away unseen. The crowd grew enraged and began to call for the eastern lawyer to take his client's place in the noose they now carried. The poor lawyer, scared for his very life, ran screaming from the courtroom, abandoned his office and all his things, and caught the next train out of town never to return. When he was gone all the crowd, including the lawyers divided up his goods to take as souvenirs. Only years later, did the poor lawyer learn that the entire trial was a sham, designed to frighten him and amuse the crowd. One gathers that like Queen Victoria, he was not amused. But he never did return to Kansas.¹⁸

The days of sham trials, drunken juries, and "complimentaries" are long gone now in Kansas. And that's, no doubt, a good thing. But is also a good thing to be reminded of those days and of our colorful professional ancestors every once in a while, for in these days surely "giants walked the earth" here in Kansas. ■

About the Author

Michael H. Hoeflich has a B.A. and M.A. from Haverford College, M.A. from Cambridge University, and a J.D. from Yale Law School. He has taught at the University of Illinois, Syracuse University, and the University of Kansas. He also served as dean of the College of Law at Syracuse University for six years and as dean of the School of Law at the University of Kansas for six years. He stepped down from the deanship at KU on July 1, 2000. He is currently the John H. & John M. Kane Distinguished Professor of Law at the University of Kansas. He has published six books and more than 60 major articles. He teaches and writes in the areas of legal history, legal ethics, contract law, and technology law, among others.

14. The Book, p. 337.
 15. The Book, pp. 95-96.
 16. The Book, p. 81.
 17. The Book, p. 118.
 18. The Book, pp. 120-121. Interestingly, Kos Harris, a Wichita contemporary of Cline's, relates that a similar incident occurred in the early days of the Wichita Bar.

Could this have been a common practice when eastern lawyers moved to Western Kansas? See, Kos Harris, "A Lawyer's Reviews of the Times When Wichita was in the Gristle," in H.O. Bentley, HISTORY OF WICHITA AND SEDGEWICK COUNTY, KANSAS (1910), pp. 132-166.



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