1. NAME OF PROPERTY

Historic Name: Fort Smith

Other Name/Site Number: Fort Smith (First and Second Sites) and Judge Parker Courtroom

Designated a National Historic Landmark by the Secretary of the Interior, December 19, 1960.
Updated documentation and boundary change February 27, 2015.

2. LOCATION

Street & Number: 301 Parker Avenue Not for publication:

City/Town: Fort Smith Vicinity:

State: Arkansas County: Sebastian Code: 131 Zip Code: 72901

3. CLASSIFICATION

Ownership of Property	Category of Property
Private:	Building(s):
Public-Local:	District: X
Public-State:	Site:
Public-Federal: X	Structure:
	Object:

Number of Resources within Property

Contributing		Noncontributing	
buildings	2	buildings	1
sites	1	sites	0
structures	0	structures	10
objects	1	objects	4
Total	4	Total	15

Number of Contributing Resources Previously Listed in the National Register: 9

Name of Related Multiple Property Listing: N/A

4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby certify that this ____ nomination ____ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ____ meets ____ does not meet the National Register Criteria.

Signature of Certifying Official Date

State or Federal Agency and Bureau

In my opinion, the property ____ meets ____ does not meet the National Register criteria.

Signature of Commenting or Other Official Date

State or Federal Agency and Bureau

5. NATIONAL PARK SERVICE CERTIFICATION

I hereby certify that this property is:

___ Entered in the National Register
___ Determined eligible for the National Register
___ Determined not eligible for the National Register
___ Removed from the National Register
___ Other (explain): _____

Signature of Keeper Date of Action

6. FUNCTION OR USE

Historic: DEFENSE
GOVERNMENT

Sub: military facility
courthouse; correctional facility

Current: RECREATION AND CULTURE

Sub: museum

7. DESCRIPTION

ARCHITECTURAL CLASSIFICATION: Mid-19th Century/Greek Revival; Later Victorian/Italianate

Materials:
Foundation: Stone
Walls: Brick; Stone
Roof: Slate
Other: Wood

Summary

The Fort Smith National Historic Landmark (NHL), within the larger Fort Smith National Historic Site meets NHL Criterion 1 and Criterion 2. Fort Smith is of exceptional national significance under NHL Criterion 1 for the central role the First and Second Fort Smith facilities played in the development of the United States government's American Indian policy and the nation's westward expansion. Fort Smith is nationally significant under NHL Criterion 2 as the site of Judge Isaac C. Parker's storied judicial career as District Court Judge presiding over the U.S. District of Western Arkansas and the Indian Territory. Although there are some intact physical archeological remains, the integrity of the archeological resources varies. Based upon the research focus of the investigations to date the property has not yielded information of major scientific importance. Therefore, these remains contribute to our understanding of the First and Second Fort under NHL Criterion 1 but do not meet NHL Criterion 6. Fort Smith's period of significance begins with the construction of the First Fort in 1817 and ends in 1896 when the Federal Court for the Western District lost its jurisdiction in the Indian Territory. In 1961, Congress designated Fort Smith as a National Historic Site.

The Fort Smith National Historic Landmark documentation, as written in 1958, contains approximately 22 acres, including both the First Fort and Second Fort sites. That initial documentation, a two-page survey form, was prepared in 1958 as part of the National Survey of Historic Sites and Buildings. Fort Smith was designated a National Historic Landmark in 1960 based on that 1958 documentation, and it was the basis for creating the Fort Smith National Historic Site (NHS). The 1958 NHL document never specified boundaries, other than the statement that the nominated area included 22 acres and both fort sites. The 1958 NHL nomination is also silent on the matter of the period of significance. The "importance and description" section of the National Survey of Historic Sites and Buildings form describes and discusses the significance of the First Fort as a frontier outpost with the important role of preventing warfare between the Cherokee and the Osage, and with preventing westward moving settlers from encroaching on American Indian lands. There is little noted on the form about the appearance or significance of the Second Fort until Judge Parker's tenure began in 1875. While there is mention of Parker's twenty-one years in office, there is no specific date offered for the beginning or end of the period of significance. This update makes the NHL consistent with current documentation standards by providing a complete nomination that explains its national significance in U.S. history, provides a period of significance, defines an appropriate boundary, and provides a rationale for the boundary selected.

A National Register of Historic Places (NR) nomination was completed in 1986 to document the National Historic Site, pursuant to National Park Service requirements. The National Register nomination provides a detailed description of Fort Smith resources as they appeared at the time, and a discussion of Fort Smith's history and significance. However, the 1986 NR nomination like the 1958 NHL document had some confusion between the acreage and the boundary. This NHL documentation update determines appropriate boundaries for the NHL and calculates the acreage, in order to clear up the confusion from the previously listed acreages.

The Fort Smith National Historic Site contains 44.2 acres now in federal ownership.[1] The proposed boundary for the updated NHL generally follows the National Historic Site's boundaries but eliminates areas that have a low potential for the existence of above ground or below ground historic resources. The updated NHL contains 37 acres and is more fully delineated in the boundary description and justification section, and depicted on the attached map.

The 1986 National Register nomination lists Fort Smith's period of significance as ending in 1890 when Judge Parker's court moved to another location off the Fort Smith property. This National Historic Landmark update extends the period of significance to 1896, when the federal court lost its jurisdiction over Indian Territory.

[1] Fort Smith National Historic Site, Sebastian County, Arkansas, Segment 01, Drawn April, 1997, Redrawn February 7, 2011, Land Resources, Midwest Regional Office, Omaha, Nebraska.

Although the court was held elsewhere after 1890, the former courthouse at Fort Smith still functioned as an associated federal prison and headquarters for the U.S. Marshal Service and was still under the authority of Judge Isaac Parker.

The 1986 National Register of Historic Places nomination counts nine contributing resources and four non-contributing. This National Historic Landmark nomination update counts four contributing resources and fifteen non-contributing. Part of the discrepancy is in different methods of counting resources used in the 1980s versus currently. In the 1986 document the First Fort and Second Fort sites were counted separately and the Second Fort walls and foundations of the quartermaster building and officers' quarter buildings were also counted separately. In the current NHL update, these are all counted together as part of the single overarching archeological site with different, overlapping components that date to the period of significance. The current NHL nomination update also adds the Initial Point Marker as a contributing object. The resource count is enumerated at the end of this section and depicted on an accompanying map.

Describe Present and Historic Physical Appearance:

Introduction

Fort Smith National Historic Landmark on the Arkansas River at the Oklahoma border, embraces a colorful and dramatic history of westward expansion, American Indian removal, re-settlement, and law enforcement, spanning much of the nineteenth century. Fort Smith includes three distinct components, functionally and chronologically separate, but all rooted in federal occupation and use of the land: the First Fort, 1817-1839; the Second Fort, 1839-1871; and the Judicial Period, 1872-1896. The full period of significance extends from 1817 to 1896.

On a high bluff with a commanding view of the confluence of the Arkansas and Poteau Rivers, the First Fort Smith took shape in 1817 as a defensive outpost along the border of "Indian Country" west of the Mississippi River. The lands had recently been opened to re-settlement of Cherokee who removed under pressure from their traditional tribal lands in the East. Unfortunately, the newcomers clashed with the Osage who had long resided on the land along the Arkansas River that eventually became the Oklahoma Territory. The mission of the First Fort was peacekeeping among the American Indians in the adjacent territory. Additionally, the Fort Smith garrison was tasked with preventing white encroachment on the land and enforcing prohibition of the sale of merchandise, particularly whiskey, in Indian Territory.

Army Topographical Engineer, Major Stephen H. Long, selected the site for the new fort and created its design. Long led an expedition of the U.S. Rifle Regiment, Company A, commanded by Major William Bradford, with the assignment of finding a site for a fort near the Osage boundary along the Arkansas River. Major Long chose a natural landing place on the Arkansas River, at its confluence with the Poteau River, known as Belle Point. French fur traders exploring the Arkansas in the eighteenth century gave the name to this rocky prominence that juts out into the river.

Immediately, army riflemen set to work constructing the new fort following Major Long's plan. They built some temporary shelters first, and then turned their efforts to creating the fort. They cut trees from nearby forests, hewed and notched the logs, quarried, shaped and hauled stones for the fort's foundation and walls. Contemporaries described the fort's buildings and enclosure as being of log construction on stone foundations.

The importance of the First Fort faded as other outposts were established deeper into Indian Territory and westward expansion pushed ahead. The army eventually abandoned the First Fort and looters and decay decimated its buildings. In 1839, work began on a new Fort Smith, the Second Fort, located about 500 feet east of the first. The Second Fort's design was much more ambitious than the first with a twelve-foot-high, five-

sided stone wall defining it. A bastion marked each angle in the wall. As work on the Second Fort progressed over a seven-year period, the role of the new fort evolved from primarily defensive, to use as a major supply depot for the relocated American Indian population and for military outposts further to the west. The new fort included a Commissary and a Quartermaster Building constructed into the northern and western bastions (Bastion #1 and #2 respectively), plus two Officers' Quarters Buildings, one Barracks for enlisted men and a Commandant's Quarter.[2] Other support buildings such as stables, a laundry and quarters for laundresses completed the scene. After occupation during the Civil War by both Confederate and U.S. armies, the army abandoned the Second Fort in 1871.

Still under federal ownership, Fort Smith became the home of the U.S. District Court and jail for the Western District of Arkansas and the Indian Territory in 1872. So again, Fort Smith's mission changed. Fort Smith still stood on the border between the State of Arkansas and the American Indian nations on lands set aside as Indian Territory in what was to become the state of Oklahoma. American Indian reserves became a haven for outlaws and criminals avoiding capture and punishment in U.S. states and territories. Federal judges, most notably Judge Isaac C. Parker, tackled the problem of crime in Indian Territory. Utilizing a force of U.S. Marshals who hunted down and arrested outlaws, the court brought many to trial and sentenced some convicted criminals to death by hanging. Fort Smith during this last period transformed into a Jail and Courthouse, with courtroom and offices for the Judge, U.S. Marshals, their deputies and guards. During this time, with continuous pressure of westward expansion and increasing population, two railroads sliced through the Second Fort's walls, severing the Quartermaster Building from the rest of the fort. One of the railroads, the Missouri Pacific, crossed the Arkansas River here, heading west through Indian Territory. A Congressional Act of February 17, 1883, granted the railroad right-of-way. The period of significance for Fort Smith ends in 1896, when the U.S. District Court lost its jurisdiction over Indian Territory.

That same year Judge Isaac C. Parker died, and the fort's grounds were turned over to the City of Fort Smith. The following year the city dismantled the fort's stone walls, burned the gallows, and initiated construction to extend Second and Third Streets and Parker and Rogers Avenues through the old fort grounds. The Jail and Hospital (former Barracks/Courthouse) buildings remained in U.S. government hands until 1920. With the development of city streets through the fort property came the construction of industrial and warehouse buildings, conveniently located near the railroad and the river, and essentially obliterating the appearance of the fort.

There are no above ground remains of the First Fort, but an archeological remnant survives and has been partially excavated. Based on some of the archeological investigations that took place in the late 1950s, the National Park Service, after acquiring the site in 1961, created the interpretive stone foundation cap outlining the First Fort. According to Fort Smith National Historic Site personnel, stones for the foundation cap came from the immediate vicinity, either part of the original foundation or adjacent to the First Fort foundation. Areas not archeologically excavated, or disturbed by later development of the site are untouched and presumed to be somewhat intact below ground.

By the mid twentieth century, the City of Fort Smith recognized the historical value of the old Fort Smith sites and restored Judge Parker's Courtroom in 1957. The next year archeologists investigated the recently cleared site of the First Fort.

[2] The fort was oriented with Bastion #1 in the north angle, which later became the Commissary Building.; Bastion #2 was in the west angle, later the Quartermaster Building.; Bastion #3 was in the south angle, later the Magazine; Bastion #4, located in the southeast apex angle, was never completed; and Bastion #5, in the east angle, was also never completed. Bastion numbers will be used throughout the fort description, referencing the attached NPS "as built" site plan.

At the Second Fort site, there have been numerous archeological studies over the years, but they have been project-based, related to various installations or restorations of the fort's resources. Unlike the First Fort, there has been no single comprehensive archeological study of the Second Fort.

Congress authorized the Fort Smith National Historic Site in 1961 and in 1963 the First Fort's wall foundations were exposed, stabilized and capped.

Location and Setting

Fort Smith National Historic Landmark is located at the west edge of the City of Fort Smith, Arkansas on the Oklahoma border. Fort Smith, the second largest city in Arkansas has a population of about 86,000 (2010) and is the county seat of Sebastian County. The Fort Smith NHL is part of the historic downtown area of the city, which has spread south and east following a bend in the Arkansas River.

The Fort Smith National Historic Landmark is a historic district that includes the portion of the Fort Smith National Historic Site that encompasses the site of the First Fort and its immediate environs at Belle Point and the site of the Second Fort, located to the east of the First Fort site. Included with the nominated lands is the landing on the Arkansas River where today a ledge extends from a stone outcrop. The terrain rises abruptly from the river to a high bluff. The area adjacent to the river is known historically and currently as "Belle Point," which is the name given to a projecting rocky hill that defines the east bank of the Arkansas and Poteau rivers at their confluence. The Arkansas River bends around Belle Point as it flows east toward Little Rock and the Mississippi River. Two railroads, the Missouri Pacific and the St. Louis & San Francisco, both active, separate the First Fort site and the Second Fort. In fact, one railroad cut passes through the Second Fort wall just east of the Bastion #2 site (Quartermaster Building). The railroads have a major visual and physical effect on the landmark, dividing it in two. However, the railroads were constructed in the 1880s, during the period of significance for the NHL and are part of the Fort Smith story.

The First Fort survives as an archeological site. Excavations conducted in the 1950s revealed its location, dimensions and layout. Today the foundation remnant, capped at ground level, depicts the fort to visitors. Except for the old Courthouse (Barracks), Jail, and Commissary which are still standing, the Second Fort is also an archeological site. The Second Fort's wall was removed in 1897. The Officers' Quarters and Guard House had previously burned down. The majority of the current landscape is lawn with paved pathways through and around the fort sites. Scattered large deciduous trees, some native and some exotic, add to the scene. Numerous waysides offer access to interpretive information and scenic vistas. A landscaped parking lot occupies an area south of the Second Fort.

Historically the appearance of the landscape was quite different from today. According to contemporary accounts, when army units first arrived at Belle Point, the land was heavily wooded with several varieties of oak, hickory and cottonwood trees. Canebrakes occupied low ground along the rivers' edge. The forests soon disappeared, cut down to make room for the First Fort, and used for construction material and fuel. Soldiers cleared land for an 80-acre garden to feed the garrison. One correspondent noted in 1838 that "nearly all remaining timber on the land for near half a mile back" from Belle Point was cut down.[3]

When the Second Fort was built, the land on which it sat was graded and leveled, removing drainages and hillocks. Then, when the government turned the fort lands over to the City of Fort Smith in 1897, the city

[3] Edwin C. Bearss and Arrell M. Gibson, *Fort Smith, Little Gibraltar on the Arkansas* (Norman: University of Oklahoma Press, 1979), 55-57; Letter from William Whistler and John Stuart to the Secretary of War, as cited in Roger E. Coleman and Clyde D. Dollar, "Historic Landscape at the Fort Smith National Historic Site (1817-1896), Fort Smith, Arkansas" (NPS, 1984), 18-19; Coleman and Dollar (1984), 32.

extended streets through the fort grounds and warehouse and manufacturing buildings covered the landscape. A shanty town, known as Coke Hill grew atop Belle Point, long after the First Fort was gone.

Archeological Site: 1 contributing site (ASMIS # 03SB00079 and State Archeological Site):

The overall archeological site for Fort Smith counts as 1 contributing site and includes the First and Second Forts and their associated archeological resources. Description of the component features of each of the fort sites follows.

First Fort Site (LCS # HB-23A 00375; ASMIS # 03SB00079 and State Archeological Site):

Natural Features:

The First Fort site occupies a high bluff above the confluence of the Arkansas and Poteau Rivers known as Belle Point. At this spot, the east bank of the rivers at their confluence juts outward to the west, projecting into the rivers at their merge point. The location was an ideal spot to place a defensive fort set on the edge of the early nineteenth century Arkansas frontier. Today the site affords a very serene and scenic view up the Arkansas and Poteau Rivers. From the flat rock at the rivers' edge formed by quarrying activities during construction of the Second Fort Smith, the landscape rises to the east, fairly steeply to a relatively level area on the hilltop. Deciduous trees line the base of the slope, although not so densely as to obscure the view upriver. The river's level has changed, due to the McClellan-Kerr Arkansas River Navigation System constructed between 1963 and 1971. The flat rock that currently appears as a dock or landing would have been well above the water level in the nineteenth century. The rock outcrop at the rivers' edge also was the source for rock quarried to construct the forts.

Historic resources:

Historic resources associated with the First Fort lie beneath the ground. Archeological investigations took place in the 1950s and 1960s and revealed much of the footprint of the original fort from below ground foundation remnants. Construction on the fort began in 1817 and continued to 1822. Alterations occurred between 1822 and 1824. An extension of the First Fort to the east was proposed, but never constructed. Instead, additional troops made quarters on the open land to the east of the First Fort. The army abandoned the fort in 1824, but the fort continued in use intermittently for survey parties and as a depot for provisioning the relocating Choctaw and Cherokee until the Second Fort was ready for occupancy in 1846.

According to Major Long's plan for the fort, its walls were 132 feet square. The excavated remaining foundations reveal square blockhouses at the north and south corners of the square, as depicted in Long's plan. Another structure with a cellar was located near the west corner of the fort. The interior of the fort's walls was lined with rooms or buildings which shared in common the fort enclosure as their rear wall. These buildings included quarters, workshops, store rooms, a doctor's office and hospital, laundry, kitchen and dining areas. All faced onto the central open parade ground area. The fort's above-ground structure was wood, but descriptions and depictions are quite limited. Presumably some or all of the structures were of log construction. After the army abandoned the First Fort, looters and builders used materials from the old fort to construct other buildings, including some of those of the Second Fort.

In addition to the fort site, there were other buildings and structures that were part of the Belle Point complex. Some of the soldiers living at the fort built small houses outside the fort's walls for themselves and their families. Other buildings included a saw mill, American Indian office, commissary and several houses that private citizens built in proximity to the fort. The area may also have contained a cemetery or early burials.

Also on the Belle Point site, along the river is the quarry where builders procured stone for the Second Fort. The stone outcrop that defines Belle Point became the source of building stone. The effect of the quarrying activity may have formed the flat stone "deck" or ledge just above the water's edge at the rivers' confluence. Spikes driven into the stone may be remains from the stone quarry operation. Major Charles Thomas who managed the Second Fort construction project described the stone quarry as situated at the junction of the Arkansas and Poteau Rivers, beginning "on the edge of the Poteau River, extending round the point." Thomas went on to say that after the work was finished, with a little leveling, the quarry would become a public landing.[4] However, the current ledge or landing would have been well above the historic water level prior to the Arkansas River dam project.

In the early twentieth century, before the property became a National Historic Site, a shanty town known as Coke Hill occupied Belle Point, covering the site of the old First Fort. According to the web page of the Fort Smith Museum, Coke Hill, which dated back to the 1850s and existed through 1957, was inhabited by squatters residing on land that was part of the Choctaw and Cherokee reservation at the boundary of Arkansas. The residents lived in poverty on land that was never plotted or defined. In 1958, the City of Fort Smith relocated the residents and leveled Coke Hill. Thus, archeological remnants of Coke Hill are present and intermingled with artifacts from the First Fort site.

Second Fort Site (ASMIS # 03SB00079 and State Archeological Site):

Natural features and streetscape:

Although there was a brief reoccupation of the First Fort, a new fort took shape east of the first. As initially designed in 1839, by Colonel Joseph G. Totten and Sylvanus Thayer, the new fort sat about 500 feet east of the first on an area of leveled ground, still within view of the river. In addition to natural features is the cityscape that borders the second fort site on two sides and the railroad cuts along the west side. One rail line actually severs the fort, separating the site of the Quartermaster Building (Bastion #2) from the rest of the fort. The railroad forked just west of the fort with a Y intersection, one branch leading to a bridge that crossed the Arkansas River into Oklahoma. That bridge was removed in 1969.[5] Garrison Avenue, Rogers Avenue and Third Street are filled with commercial and governmental buildings dating from the late nineteenth and early twentieth centuries, part of Fort Smith's historic downtown. Garrison Avenue carries U.S. Route 64 across the Arkansas River into Oklahoma just north of the Second Fort site.

The natural landscape was extensively altered for construction of the Second Fort Smith. Major Charles Thomas, in charge of the construction project reported in detail about the grading and filling required to level and to elevate the hilltop where the Second Fort was to be constructed.[6] Stone for foundations and the fort's perimeter wall came from a quarry along the river at Belle Point. Thomas also set up a saw mill and brick yard at Belle Point to produce building materials for the Second Fort.

Historic Resources:

At one time, the Second Fort had as many as twenty-seven associated buildings and structures. Today there are only four left above ground. Remnants of the fort's stone wall at or above ground level are present in a very few places, but archeological evidence of the footings for the walls is partly intact, and the wall is also shown in historic photographs and drawings. The Commissary Building, which was constructed into Bastion #1 still

[4] Bearss and Gibson, Appendix D, 29-34.
[5] "Arkansas River Railroad Bridge," *Bridgehunter.com: Historic and Notable Bridges of the U.S*, accessed April 8, 2013, https://bridgehunter.com/bridge/ar-sebastian-mp-arkansas-river-bridge.
[6] Bearss and Gibson, Appendix D, 29-34.

stands, the enlisted men's Barracks, which became the U.S. District Courthouse and jail in 1872, and the 1888 Jail Wing also remain. The fort's Cistern, a partially subterranean stone structure also survives. Archeological investigations have identified the sites and footprints of the two Officers' Quarters buildings, Parade Ground perimeter road, Flagstaff location and well. The recreated footprint of the Guard House marks its estimated location. The National Park Service from the 1980s through the 2000s reconstructed some of the missing structures, including the Flagstaff and the 1886 Gallows. The locations of other buildings have been marked on the ground. Additionally, an interpretive garden enclosed with a white paling fence was created along the fort's northwest wall and northwest of the northern Officers' Quarters site.

Fort Walls:

The fort's stone walls with three of the five bastions are apparent today as a stone band at ground level, as a result of archeological investigation. Since the Second Fort's function became supply rather than defensive early in its construction period, the walls apparently were not fully built to the originally proposed height of twelve feet, although photographic and contemporary accounts reveal that at least some of the walls were constructed to their planned height. The walls at their full height had square openings, referred to as "look holes" just below the top. Along the interior was to have been an elevated catwalk or gallery for sentinels to traverse the interior side of the wall and peer out through the square openings.

The original fort wall was completely removed in 1897, after the property was turned over to the City of Fort Smith. Only a portion of the original above-ground wall at Bastion #1 enclosing the Commissary remains intact. Around 1983, when the 1886 Gallows was reconstructed, the National Park Service partially reconstructed the wall around Bastion #3 (Magazine), against which the historic gallows abutted. Segments of the wall's foundation survive as part of the archeological record. The remaining pieces of wall foundation were capped, creating a flat stone outline of the fort wall, three feet wide, at ground level to aid in interpretation of the site. The flat cap stones form a walkway to enhance interpretation by allowing visitors to walk the outline of the wall. The capped wall at ground level was installed in 1999 with stones purchased from outside the park and placed over the extant fort wall foundation remnants.

There are places where the course of the wall is interrupted, in the southeast section by the Nehi Royal Crown Bottling Plant, built in 1945, (now the NPS maintenance building) and the west section near the site of Bastion #2/Quartermaster Building where the railroad cut destroyed part of the southwest and northwest wall. The bottling plant's north corner cuts through the southeast wall section. Bastion #3, which housed a magazine and the gallows, was completely destroyed, with no known archeological remains, when Parker Avenue was cut through the fort site in 1897. Stone gateways, which are NPS constructions, mark the locations of entrances through the fort's walls. The stone gateways are noncontributing.

Foundations of Officers' Quarters Buildings (No LCS#; ASMIS # 03SB00079, and State Archeological Site):

Archeological investigation located the footprint of the two Officers' Quarters buildings. The National Park Service interprets the two residential buildings by defining their shape with a concrete pad and marking known features such as foundation outline, chimney bases and hearths, bearing wall locations and column bases for the double front and rear porches. In addition to the archeological evidence there is also a record of the appearance of these buildings in photographs and drawings from the historic period. Fire destroyed the two Officers' Quarters buildings in 1865 and 1870, respectively. In 1899, the Fort Smith Bottling Works was constructed on the site and removed in 1982. There was also a Commandant's Quarters, but no archeological evidence of it has been found. The current concrete pad and marked features were installed in 2000.

The historic appearance of the Officers' Quarters survives in photographs, drawings, and the archeological record. Constructed of brick, the buildings each spanned twelve bays with two window bays followed by two

door bays in rhythmic repetition across the façades at both the first and second stories. Double gallery porches had square brick columns and brick parapets finished the gable ends. There was a raised basement, similar to that of the Barracks building and according to architectural construction drawings, nine over six light sash and six panel doors surrounded by transoms and sidelights. The construction drawings show dormer windows, but historic photographs indicate that they were not present. Each building had paired inside gable end chimneys. There was a central pair of chimneys as well.

Several photographs in the Fort Smith NHS collection tell the story of the Officers' Quarters. One photograph, taken from outside the walls near Bastion #5, dates from before 1865, but after 1851 when the Barracks was rebuilt. It shows the Barracks, both Officers' Quarters, and the Quartermaster Building in the distance, as well as the Guard House. The image also shows the condition and degree of completion of the Second Fort's walls. Another historic photograph appears to have been taken shortly after 1865, and from the same angle. It shows the Barracks, the Quartermaster Building, and a ground floor remnant of the southern Officers' Quarters with a pile of rubble in front of it. The building burned in 1865 and the ruins of the building suggest that the photograph was taken shortly thereafter. In this later photograph, the fort's walls are covered with vines and vegetation, but intact. A 30-star American flag flies over the Parade Ground. The 30-star flag was used after Wisconsin became a state in 1848 and replaced by a 31-star flag in 1851 after California joined the Union. This, of course, does not mean that the Army was not continuing to fly an out-of-date flag at Fort Smith.

Cistern (LCS# HB-05 60300):

Located between the sites of the two Officers' Quarters buildings is a stone lined Cistern that supplied water for the Second Fort. It consists of a cylindrical shaft with a diameter of about 20 feet, and about 15 feet deep. A stone dome covers the shaft. At the top of the dome is a concrete-filled square former opening to the Cistern. Three poured concrete steps lead from ground level to the top of the Cistern's dome. The National Park Service filled the entire structure with sand and set soft cement over the top two feet to protect park visitors and yet maintain the structural integrity of the Cistern. The Cistern was covered by the Fort Smith Steam Bottling Works, constructed in 1899. Apparently the cistern survived largely intact. The bottling works was demolished in 1982.

Quartermaster Building Site (No LCS#; ASMIS# 03SB00079, and State Archeological Site):

In the fort's Bastion #2, opposite the Commissary Building, the army constructed a Quartermaster Building. Like the Commissary Building, it took on the shape of the bastion's rhomboid outline. Built upon the bastion walls, the Quartermaster Building was constructed of stone harvested from the unfinished soldiers' barracks B. Work on the Quartermaster Building was completed in 1846. By 1887, the St Louis & San Francisco Railroad cut through the fort's wall separating the Quartermaster Building from the rest of the fort. The Missouri Pacific Railroad passed on the west side of the Quartermaster Building leaving it in a median area between the two parallel sets of tracks. About 1930, the Kansas City Southern Railroad Company demolished the isolated Quartermaster Building. However, evidence of the building remains in the archeological record and historic photographs and engravings.

Like the Commissary, the Quartermaster Building was constructed with narrow courses of stone above the top of the bastion walls. The bastion part of the walls contrasts in that the stones were ashlar and had buttresses. Also like the Commissary, the original doors and windows were topped with brick radial arches and there was a brick cornice and parapet. At some point, two windows in the northwest gable end wall were closed with stone and a window added between them. Presumably this was done to accommodate added fireplaces and chimneys when the building was converted to a barracks in 1866-67. Currently the partial outline of the bastion continues to be visible on the ground.

Parade Ground:

An integral part of any fort is its Parade Ground. The Second Fort's Parade Ground is documented in written and photographic records as well as through archeological remains. When the City of Fort Smith extended Second Street through the old fort in 1897, it passed directly through the Parade Ground. However, archeological testing identified significant cultural remains from the Parade Ground after the section of Second Street was abandoned. According to photographs and contemporary descriptions, the Parade Ground was an elongated oval space defined by a driveway. The Parade Ground was created between the Officers' Quarters and the Barracks, with all of those buildings facing onto it. A large Flagstaff was in the center of the space.

Based on the archeological evidence as well as historic photographs and descriptions, the National Park Service recreated the Parade Ground and an elliptical walkway that replicates the perimeter driveway.

Well site:

A 1984 sidewalk replacement project on the east side of the Barracks/Courthouse building exposed an area of discolored soil that likely indicated the location of the post's Well. More than a foot of fill dirt had been deposited over the well site, possibly after 1898, according to a 1984 archeological report.

Flagstaff base:

Archeological investigations completed after the removal of Second Street for restoration of the fort site revealed the location of the fort's flagstaff. Second Street was extended through the Second Fort Site in 1897. Located near the middle of the Parade Ground, the original wood base of the flagstaff survived in good condition below ground.

Guard House Site:

The original Guard House was a one story, three bay brick building, matching the other Second Fort buildings in character. It had a central entrance with a door with two vertical panels and a four light transom, according to construction drawings. Windows had nine over nine light sash. The building had brick parapet gable walls with two interior chimneys. Four square brick columns supported a porch across the front (southwest) wall, which was constructed under the main roof span. The northwest gable end wall had a secondary entrance and three small windows which lit three cells on the interior. The interior had a central passageway with rooms in front for the officer of the guard and guard detail, and prison cells in the rear. Plan drawings indicate that there were two windows in the southeast gable end wall. There has been no archeological investigation, and its exact footprint thus is not determined.

Buildings:

Commissary Building (LCS # HB-04 00376): 1 contributing building

When the army decided that the Second Fort Smith's function would be as a supply depot rather than a defensive fortification, a Commissary was constructed into Bastion #1. Thus the Commissary Building took on the shape of the bastion, an uneven rhomboid with corners that are not square. The original plan was for this bastion to contain a blockhouse, but by 1845 the army realized that a supply storage facility fit the fort's role better. Likewise, a Quartermaster Building took shape in Bastion #2, but it was later demolished after railroad construction separated it from the rest of the fort. The Commissary operated as such until 1866 when it was converted to use as a barracks and officers' quarter. From 1872 to 1897 it served the U.S. District Court as offices, Judge Parker's chambers and as employee housing (the U.S. District Court relocated to Sixth Street in

1890, but employee housing continued at the Commissary Building until 1897). After the District Court left, the old Commissary became a warehouse until 1910 when the building was converted to a museum. The National Park Service restored the building in the 1980s to the period that it functioned as a Commissary.

Completed in 1846, the Commissary has undergone changes over time, but retains a high level of integrity. Its structural form, materials and design remain intact. The alterations that occurred, mostly relative to fenestration, reflect the changes in use of the building during its period of significance. The building is almost equal sided, measuring 48 feet by 50 feet, but has a distinctive rhomboid shape dictated by the angle of the bastion. It is a four-bay-wide, gable roofed building that is set directly on the walls of Bastion #1. The gable ends are the northwest and southeast façades. The bastion walls, which extend to approximately five feet above ground are buttressed and made of ashlar limestone. The remainder of the Commissary Building is constructed of coursed limestone, in narrower courses than the bastion masonry. The quoins, however, are ashlar cut. The Commissary also has brick detailing including a brick corbeled cornice, brick parapet and brick radial arches over the original windows and doors. The roofing material is slate, although the original material was likely wood shingle. The 1986 National Register of Historic Places nomination for Fort Smith indicates that a slate roof was added around 1857. Later, asbestos shingles replaced the slate, but the National Park Service installed a new slate roof during restoration of the building in the 1980s. The slate roof was replaced again after damage by a tornado in 1996. Two brick chimneys pierce the southwest slope of the roof, and one the northeast slope. The largest one with a brick corbeled top, extends from inside the northwest gable end, between the roof ridge and the southwest façade. Its companion also inside the northwest gable end is not as tall, but probably the two were matched originally. The third chimney is a small brick flue inside the southwest façade, just west of the entrance.

The exterior walls show evidence of how the building was changed over time, particularly with the addition or closure of doors and windows. All windows and doors with radial brick arches are part of the original 1846 construction. On the southwest wall, a door was created from a window at the second-floor level. The window's brick arch remains intact, but the door opening is wider and longer than the original window was. This was part of a series of alterations that occurred in 1866, when the army converted the Commissary and Quartermaster Buildings to barracks. Along with the entrance addition on the second floor of the southwest wall, two fireplaces were added to each story inside the northwest gable wall to provide heat for the new residential use of the building. Double tier porches were added to the southwest and northeast walls with exterior stairs to provide access to the second story doors. A portion of rough masonry in the southwest wall, west of the door marks the location where the fort wall was removed in 1897, leaving behind its jagged interior construction with tie rocks protruding from the bastion wall.

As part of the 1866 renovation campaign, second story windows in the northwest gable end were closed off to accommodate the added fireplaces and chimneys, and new windows to the outside of each of the original window locations were added. In the southeast gable wall, a new entrance was opened at the second story level between the two original window openings. An exterior stair and porch was added to serve the upper level entrance.

Prior to the 1866 alterations, in 1849 the south window in the southeast gable wall was converted to a door, and a stair constructed to it for access. The 1987 Historic Structure Report for the Commissary surmises that this change was made in 1849 after the Barracks burned and the displaced enlisted men moved into the Commissary and the Quartermaster Building temporarily.

The National Park Service replaced the sash in the first and second story windows with nine over nine light sash, replicating the original configuration. Attic level windows have six over six light replacement sash. The southeast façade retains its original window and door pattern with doors to the first and second story levels in

the third bay from the east corner. Above the upper door is the remnant of a winch beam. The doors in this wall are double width with two leaves, board and batten, double thickness.

The interior of the Commissary has two main floors and an attic. The National Park Service interprets the ground floor as a commissary store room. It has a stone floor of flat rectangular, randomly laid rock and is one large open space intended for storage of commissary supplies. The stone walls are exposed on the interior but finished with whitewash. Two large summer beams span the space end to end. Two square wood posts with chamfered edges support each beam and rest on stone bases. Originally a stair rose in the south corner, along the southeast end wall interior to reach the second floor. According to the Historic Structure Report for this building, this was the original stair location, but it was removed when the exterior south corner stair was created in 1849. The interior stair was reinstalled at various times in the building's history. Evidence of the original stairway appears in paint and whitewash lines along the stone southeast wall. Today a pull-down ladder stair gives access to the second floor but is not for visitor use.

The second floor retains its 1866 barracks configuration, with plastered walls and a partition running end to end near the southwesterly summer beam. Thus, the space divides into three rooms, one in the west corner with a fireplace, one in the east corner, and a large open space along the northeast side with doors in the northeast and southeast walls. There is a fireplace in the northwest end wall which does not have a mantel. The fireplace in the west corner room has a Greek Revival inspired mantelpiece, painted black, with a bracketed shelf and molded frieze panel. This room most likely served as Judge Isaac Parker's chamber. Both summer beams are exposed and each supported by two square chamfered posts. An intersecting beam extending through the northeast wall above the door supported the winch and pulley system for lifting goods to the second floor.

The original configuration of the Commissary second floor space, according to architectural evidence gathered for the Historic Structure Report, was a large open storage space with a room in the south corner serving as the commissary office. The office room had a stove for heat. The current flooring is tongue and groove wood, which overlies an earlier floor.

In the south corner of the second floor a metal staircase leads to the attic. The attic is a large open space with the original lift mechanism for the winch and pulley system housed in a post and purlin frame. A large wood wheel still turns freely to operate the lift.

Barracks/Courthouse/Jail/Jail Wing, (LCS # HB-01 00377): 1 contributing building

Construction on the enlisted men's Barracks at the Second Fort Smith began in 1838 and was completed by 1846. Soldiers occupied the two-story building for only three years before it was destroyed by fire in 1849. There were actually two barracks planned, but the second one was never completed. After the fire, the army rebuilt the Barracks from the surviving remnant of the original building, as a smaller one and a half story building. Completed by 1851, it served as a barracks for the army until 1871. In 1872 the former Barracks became the U.S. District Courthouse and jail. A new Jail Wing was built onto the southwest end of the Barracks/Courthouse in 1888. The court moved to a new building in the City of Fort Smith in 1890 and the old Barracks/Courthouse became primarily a jail facility housing the hospital, women's prison, and offices for the U.S. Marshal Service. In 1891 a second story was added to the former Barracks/Courthouse building. In 1896, the U.S. District Court lost jurisdiction over Indian Territory west of Arkansas, ending the judicial period of the building's history, as it pertains to Judge Parker's particular role in meting out justice in Indian Territory. The building continued use as a federal jail and as offices for the U.S. Marshals, but without the direct association with bringing justice to Indian Territory. In 1920 the building left federal ownership and became the property of the City of Fort Smith. In 1934, the City of Fort Smith converted the building to offices with extensive

remodeling, and then in 1957 the City restored Judge Parker's courtroom. After 1961, the National Park Service performed periodic stabilization, restoration, and rehabilitation work.

The building changed substantially during its period of significance, complicating the descriptive story of the Barracks. The Barracks front was originally the northwest façade, which faced onto the Parade Ground and toward the Officers' Quarters. After 1872 and the start of the judicial period, the Barracks, by then courthouse and jail, used the southeast façade as the principal entrance, orienting toward Third Street and Rogers Avenue.

As it appears today, the front of the Barracks/Courthouse building is still oriented to face southeast, toward Rogers Avenue. A concrete sidewalk leads to it from the Main Entrance off Rogers Avenue. The sidewalk forms a circle around the historic well site. The two and a half story, ten bay brick building rests on a raised stone foundation. The foundation walls are ashlar cut, in even courses. Dividing the foundation from the brick walls of the building is a stone belt course. The foundation wall stones have been painted white. Along the front of the building is a recessed brick-floored plaza enclosed with stone retaining walls. This plaza forms the outline of the full-width gallery porch that once continued from the building's roof line outward to shelter the entire façade wall along the southeast and northwest walls. There are ten openings across the front in the foundation wall, two sets of four bays with two central entrances side-by-side. Replicas of original iron bars secure the windows and doors, reflecting the prison era. All windows throughout the building have cut stone headers and sills.

Historically this building went from two and a half stories (pre-1849 fire) to one and a half stories (1851), and back to two and a half stories (1891). In the brick walls, the distinction in the periods of the brickwork is readily visible, with the 1891 second story appearing darker, and with a different bonding pattern. The older 1851 section is constructed in common bond with five courses of stretchers between header rows. The second story addition is also in common bond but with a seven stretcher to one header row ratio. The header rows have every other brick as a header as with Flemish Bond. The building has ten bays with two side by side central front doors. At the first story in the 1851 section, the windows at each end bay have been bricked in. This alteration probably occurred about the time that the second floor was added in 1891 and other modifications were made to the building. At that time, as well, the front and rear gallery porches were removed, and replaced with the current two-bay, shed-roofed Italianate entrance porches, accessed by the original set of ten cut stone steps. The current porches have wood posts and curved brackets. They are enclosed on the ends with a wood balustrade and railings along the steps. The earlier gallery porches had nine square brick columns along the front and rear walls. These were removed when the second story was added in 1891.

The current first and second story windows have two over two pane sash, and no iron bars. Iron bars appear to have been present after 1891, based on photographic documentation. The two central front doors each have seven panels, beneath a four light transom.

The brick end walls form parapets rising above the plane of the roof. Cut stone serves as coping, capping the parapets. The roofing material is slate shingles. A crest rail covers the roof peak. Two wood frame ventilator towers extend from the peak of the roof. They have louvered sides, hipped roofs and Italianate brackets. These appear to have been installed when the 1891 second floor was added. Pairs of brick chimneys with corbeled tops rise from inside the gable ends. They extend from the tops of the chimneys of the one-and-a-half-story section. The current roofing system and three chimneys date from 1996, replacements made after a tornado damaged the building.

The northeast end wall shows clearly the evolution of the building, with the outline of the parapet of the 1851 Barracks/Courthouse clearly visible. There are two windows at each story of the southeast end wall. The upper set formerly lit the attic of the 1851 building, and now illuminates the second floor of the 1891 addition. The

first story windows were added as part of the 1891 renovation campaign. Another alteration that appears to have occurred when the second story was added, based on photographic evidence, was the replacement of the nine over nine light windows in the 1851 building with more up-to-date two over two light windows.

As originally reconstructed after the 1849 fire, the one and a half story barracks was designed to hold a company of enlisted men (about 100). The basement contained two rooms, a kitchen and mess hall. The upper level consisted of two large rooms with opposing front and rear doors. The end bays of the southeast wall, now closed off, had access stairs to the basement from the interior. These appear later to have been converted to windows, based on photographic evidence. A brick structural interior wall separated the space into two mirrored halves.

Today the Barracks/Courthouse/Jail building houses the Fort Smith National Historic Site's museum, and on the second floor, offices for NPS staff. On the ground floor is the interpretive representation of the jail that was in the basement until the jail wing was constructed in 1888. The space also houses a staircase, elevator, and restrooms. The main floor is divided into two sections as it was originally. The northeast room depicts Judge Parker's courtroom, while the southwest room is a museum display area with several thematic presentations. Original tall turned Tuscan Doric columns support the open plan of the first-floor space. The columns have been returned to their original natural wood finish, although one has a curious incised depiction of a belt and buckle with slight stained coloration around its circumference, possibly from the barracks era. Window and door trim consists of symmetrically molded architraves with turned corner blocks. Penciled graffiti on the walls, the work of jurors, is showcased in places.

Mifflin E. Bell, Supervising Architect of the U.S. Treasury Department, designed the Fort Smith Jail Wing constructed in 1888. Prisoners were transferred there to reside in 1889, after numerous complaints about the unhealthy conditions in the basement prison of the former barracks/courthouse building. Prisoners and reformers dubbed the old jail "Hell on the Border."

The 1888 Jail is attached to the southwest gable end of the old Barracks/Courthouse building, maintaining the same ridge line. However, at the time that the Jail Wing was constructed, the old Barracks/Courthouse was still only one and a half stories. Constructed of brick, the 1888 Jail shows exuberance of design with extensive use of corbeling and stone decorative accents. The Jail is not as wide as the Barracks/Courthouse building, but about as long, although it has just six bays.

Cut stone forms the below ground foundation, but above ground the material is brick, painted white to match the white-painted foundation of the older Barracks/Courthouse building. A cut stone water table encircles the building separating the raised ground floor portion from the main wall area. Above this water table the brick masonry of the walls displays common bond laid in a ratio of five stretcher rows to each header row. The header rows are arranged with every other brick being a header, as with Flemish Bond and matching the 1891 second story on the Barracks/Courthouse building. Notable about the masonry is the use of brick corbeling and rock-faced and smooth stone trim and accents. The south and west corners each have brick corbeled quoins. Above the water table a brick corbel aligns with the lower edge of the window sills, and another at the top edge of the sill, forming a continuous horizontal band across the three exposed façades of the Jail. Another corbeled band follows the upper and lower edges of the window lintels. At the top of the southeast and northwest walls more corbeling creates a cornice and "modillions." Above this is a band of smooth stone molding which continues across the end wall forming a gable end pediment. Smoothly cut stone also caps the brick parapet end wall, completing the pediment. At the apex of the gable a square cut-stone ornament adorns the parapet peak.

The southeast and northwest walls each have six large windows, extending almost the entire height of the wall. Each has triple hung nine light sash secured with metal bars. The windows are trimmed with rock-faced grey

limestone accents, forming quoins, along with the lintels and sills. In addition to these long windows that lit the interior of the cell block, are two smaller windows at the north corner of the northwest façade. These windows illuminate an interior stairwell and are simple six over six light sash with stone lintels and sills.

The Jail building has three entrances in addition to the major interior entrance that led from the Courthouse directly into the Jail building. The main entrance from the exterior is in the southwest gable end wall and is the visitor entrance to Fort Smith National Historic Site, giving access to the information desk, book, and gift shop and to the museum spaces inside. The entrance feature, added in 2000, consists of a parapet entrance wall mimicking the buildings end wall with a doorway trimmed with rock-faced stone quoins and metal-barred doors. Outside the door is a concrete plaza with a low brick retaining wall with cut stone coping. The shape of the plaza is pentagonal, evoking the fort's wall. There are two other smaller service entrances opening into the ground level. One on the southeast wall's east corner has a fully articulated rock-faced stone surround with quoins and lintel. The other at the northwest wall's north corner has only a stone lintel. Evidence remains of bricked-over windows above the southeast entrance.

The Jail's roofing material is slate which was replaced in kind in 1983 and again in 1996 after a tornado damaged the building in April of that year. Chimneys rise from inside the southeast and northwest (long) walls, two on each side. They are all identical small square chimneys with exaggerated corbelling flaring outward at the tops. At the north and east corners, where the Jail wing joins the old Barracks/Courthouse building are two square ventilation towers. These stacks carry the same decorative masonry features used on the rest of the building with corbeled brick and stone banding. Hip roofed metal covers shelter the open tops of the vents. In addition, two wood frame ventilator towers extend from the peak of the roof. They have louvered sides, hipped roofs and Italianate brackets, and match the pair of ventilators on the 1891 addition to the Barracks/Courthouse building.

As originally constructed, the 1888 Jail Wing had three tiers or stories of cells running along the center line of the building, end to end. The floors of each tier of cells did not extend all the way to the side walls (southeast and northwest walls), leaving an open space between the walls and the three stories of cell blocks (see figure 13), likely a security feature. Thus, as constructed in 1888, the Jail Wing had a ground level raised basement, with three stories of cells above. These remained until the building ceased functioning as a jail in 1917. The cell blocks were removed in 1920, and the building was repurposed for the Fort Smith's Boy's Club. During the 1920s the Boy's Club made various changes, adding a gymnasium, library, game room, and workshop. The gymnasium occupied part of the second floor. There was no third floor over the gym area. In 1934 and 1941 additional and major changes were made. The ground and first floors were partitioned into offices while the gym was retained. The part of the second floor not occupied by the gym was used for locker rooms, and above, on the third floor adjacent to the two-story gym, was the library.

Currently, the Fort Smith National Historic Site Visitor Center occupies the ground floor of the Jail Wing. The rooms and spaces added by the Boy's Club in the 1920s-1940s have been removed. The first floor now contains museum displays, and the interior space above (the former second and third floors) is open to the roof. As part of the museum display, remnants of the original brick bearing walls that supported the cell blocks are exposed to suggest the appearance of the interior when the prison was functioning as such.

Maintenance Building: 1 noncontributing building

In 1945, the Nehi Royal Crown Bottling Plant was constructed along the east edge of the old fort site. The north corner of the brick industrial building cuts through a section of the fort's wall.

Structures:

Guard House Gazebo: 1 noncontributing structure

Historic photographs and original construction drawings show a brick Guard House located at the entrance gate from the Garrison Avenue and Second Street entrance. It burned in 1894 but may have remained in part until 1896. After the army left Fort Smith in 1871, the U.S. District Court used the building as a prison for women. Currently a concrete pad and brick outlined floor plan feature occupies the approximate site of the Guard House. On top of the concrete pad is a brick gazebo with brick parapet gables and four brick columns along each side. The open area inside contains benches and waysides explaining the appearance and history of the Guard House.

Gallows: 1 noncontributing structure

The current Gallows at Fort Smith dates from 1983 and is a reconstruction of the second gallows that was constructed in 1886. The original gallows was installed in 1873 shortly after Fort Smith became the site of the federal district court with jurisdiction over Indian Territory west of Arkansas. The structure was placed in Bastion #3, against the powder magazine. In 1886, the original gallows was replaced with a larger, sturdier structure sheltered with a shed roof. With the new gallows, up to eight people could be hanged at one time. It had a 16 foot x 20 foot platform with a 16 foot x 3 foot trapdoor that was hinged on each side so that it opened in the middle along its entire length. A post and beam truss held the nooses. At the back of the platform was the stone wall of the magazine that supported the shed roof. A vertical plank fence enclosed the gallows area.

During the mid-nineteenth century, federal law required that criminals convicted of murder or rape receive a mandatory death sentence. At the time, hanging was considered the most humane method of execution. For the first few years of the U.S. District Court era at Fort Smith, executions were public events, drawing crowds as large as 7,000 for an execution in 1876. By the early 1880s, public access was limited to fewer than thirty people, mostly doctors, reporters, and clergy, and the gallows yard was fenced to maintain the limit on spectators.

Throughout Fort Smith's judicial period, local and regional newspapers reported on executions at Fort Smith. Frequently newspapers noted that the crimes resulting in executions did not occur in Fort Smith or in Arkansas, but rather in Indian Territory. Reports alluded to the executions' damage to the city's reputation, creating the impression that Fort Smith was a lawless place. Finally, the executions ended after the court no longer had jurisdiction in Indian Territory. The fort property was turned over to the City of Fort Smith in 1897 which tore down and burned the gallows. At the same time, the fort walls were removed and the stones sold to members of the community.[7]

Memorial Gate (LCS# HB-06 60301): 1 noncontributing structure

Erected in 1930 by the Daughters of the American Revolution, this limestone commemorative gate uses original stones from the fort's walls. It marks the main entrance to the fort grounds from Rogers Avenue.

[7] Information in this section was derived from Eric L. Leonard, " 'An Almost Carnival Air…' : Telling the Story of the Gallows at Fort Smith, Arkansas; 1873-2001," A Thesis Submitted to the Graduate Faculty in partial fulfillment of the requirements of the degree of Master of Liberal Studies, University of Oklahoma, 2001, 20-22.

Secondary Entrance Gates: 3 noncontributing structures

In addition to the main Memorial Gate, there are three other entrances to the space within the second fort. These consist of small limestone portals made from original Second Fort stones at each place where an original entrance crossed the fort's wall.

Officers' Garden: 1 noncontributing site

An interpretive garden was developed in 2009 west of the north Officers' Quarter site. The garden is enclosed with a white paling fence with wood trellises at each entrance area. The garden is for interpretive purposes. Photographic evidence and eyewitness accounts note that there were small enclosures in front of the officers' quarters for grass and flowers. These would have been along the parade ground. The interpretive gardens are set behind the Officers' Quarters site, rather than in front.

Railroad Tracks: 2 noncontributing structures

By 1887 the St. Louis & San Francisco Railroad and the Missouri Pacific Railroad cut through the second fort wall and Bastion #2. The railroads are still active today.

Roads and Walkways: 1 noncontributing structure

To enhance visitor experience and for interpretive purposes, the National Park Service created a series of walkways and trails throughout the park both at the Belle Point First Fort site and at the Second Fort site. Some are recreational and others mark the location of historic features of the fort site. Park benches, interpretive signage, two gazebos, and the Trail of Tears overlook with a stone enclosure and benches overlooking the river are part of the trail/walkway system.

Objects:

Initial Point Marker/Choctaw Line (No LCS# assigned): 1 contributing object

Located in the median area between the railroads and at the north side of the Bastion #2 site is a square stone marker incised with the date, "1858" on its side and the compass points on its top. The marker identifies the starting point for the 1825 survey and 1857 resurvey of the Choctaw Line dividing Indian Territory from Arkansas. The 1857 resurvey corrected the original 1825 survey which was incorrectly measured by a few degrees, causing the line to run southwest instead of due south from the starting point to the Red River.

Flagstaff: 1 noncontributing object

With the location of the original flagstaff pinpointed through archeological investigation, the National Park Service replicated the flagstaff from photographic evidence and drawings in 1986. The current Flagstaff looks much like a ship's mast with extensive bracing and guy ropes. The wood Flagstaff is 100 feet tall with a lower section with a cross tree near its top, and then an upper piece or top mast that carries the large flag. The reconstructed Flagstaff is not in the location of the original flagstaff, so as not to disturb the intact original flagstaff base. Instead, it is situated slightly to the west by about 15 feet.

Stone Markers: 3 noncontributing objects

In 1936, the Noon Civics Club of Fort Smith placed three stone monuments with cast iron plaques, identifying the Commissary (LCS # Marker 1), Barracks (LCS # Marker 2) and Belle Point (LCS # Marker 3). The

Commissary Monument is made of grey limestone, rectangular with a central section holding the plaque. It is located just south of the commissary building. The Barracks Monument is of similar design, but constructed of sandstone and placed north of the building. The Belle Point Monument, located in Bastion #2 at the site of the Quartermaster Building, is also of stone, but carries the plaque in a recess with a radial arched top.

Other resources within the NHL boundary:

Cannon: Several reproduction cannon placed throughout the park to aid with interpretation of the fort site. (not counted)

Jail wagon: A wood reproduction jail wagon sits just outside the visitor entrance to the jail building and helps with interpretation of the fort and jail site. (not counted)

Supply wagon: A wood and canvas covered reproduction supply wagon is located adjacent to the Commissary building to help with site interpretation. (not counted)

Power lines: Two electrical power lines with their supporting poles and metal structures cross the fort site. (not counted)

Resource count:

1 contributing site (overall archeological site and both forts)
2 contributing buildings (Commissary, Barracks/Courthouse/Jail/Jail Wing)
1 contributing object (Initial Point Marker)

1 noncontributing building (NPS Maintenance Building)
9 noncontributing structures (Guard House Gazebo, Gallows, 4 gate structures, 2 railroad tracks, roads and walkways system)
1 noncontributing site (Officers' Garden)
4 noncontributing objects (3 markers and Flagstaff)

Assessment of Integrity:

Integrity refers to the ability of a property to convey its historic identity and evoke the essential qualities of its past appearance. Seven key aspects help to define a property's historic integrity: location, setting, design, materials, workmanship, feeling and association. Since the early 1960s, the National Park Service worked to restore existing and replace missing key features of Fort Smith. Reconstruction of original features that were lost but well-documented were part of the prevailing preservation practices during this era.

Location – Fort Smith retains integrity of location. The original site of the First Fort and the Second Fort has not changed. The distinctive location at Belle Point, the rocky promontory selected by Major Long for the fort site, a key definer of location, remains.

Setting – Many alterations of the fort's setting took place between 1817 and 1896, the National Historic Landmark's period of significance. These evolutionary changes, such as the quarrying of the Belle Point outcrop for materials for the Second Fort, are part of the fort's story. The National Park Service reversed other intrusive changes to the setting by removing buildings and streets that grew across the fort site during the early twentieth century. Other alterations of setting occurred through the change in course of the Arkansas River and its depth due to downstream damming.

Design – A sense of the historic design of the First and Second Forts remains through the excavated footprint of the First Fort and the Second Fort's wall and the Officers' Quarters. The remaining buildings (the Commissary, Barracks/Courthouse, and 1888 Jail Wing) are part of the form, plan, and structure of the Second Fort and its use in the judicial period. Likewise, the restored Second Fort's Parade Ground and Flagstaff contribute to the sense of the property's original design. Many design changes to the above ground buildings and structures occurred during the period of significance and represent the evolution of function and use of the fort over time. The National Park Service's restoration efforts and their interpretation of the resources also help to convey the three distinct periods of use.

Materials – Few above ground materials remain from the First Fort, aside from parts of its foundation walls, which were used to develop the exposed outline of the fort. Much of the First Fort's site has not been excavated, and archeological material is presumed to be present, however the integrity of these materials is unclear. The remaining above-ground and below ground features associated with the Second Fort retain substantial amounts of original material or added material from later in the period of significance.

Workmanship – While many components of the Fort Smith National Historic Landmark have been lost over time, largely during the period of significance, there are numerous construction details related in the archeological record, and as components of the standing buildings and structures that do survive. These include tool marks on cut or hammered stone walls, wood framing and interior woodwork, brick masonry, and historic graffiti on the walls of the Barracks/Courthouse/Jail building reflecting all three periods of use. The commissary building is particularly intact to its historic period.

Feeling and Association – As it appears today, Fort Smith evokes the feeling of and association with its nineteenth century history. The story is a complicated one, beginning with a defensive and peacekeeping role, evolving to a supply function, and finally to its judicial role attempting to maintain law and order in Indian Territory. The three stories are separate and distinct, but the surviving physical material plus added interpretive features work together to allow visitors to feel the impact of Indian Removal, the Trail of Tears, U.S. government policy with regard to Indian Territory, as well as the work of law enforcement meted out by the U.S. Marshals and the U.S. District Court under the hand of Judge Isaac Parker.

Archeological Integrity

Archeological integrity within the Fort Smith NHL site varies. In some areas archeological investigations have yielded important information about Fort Smith, such as locating the original flagstaff base in the Second Fort parade ground, or portions of the fort wall foundations. Thus, the archeological resources add to our understanding of Criterion 1 and are considered contributing resources to this NHL Criterion. In other areas, the archeological record has been destroyed by twentieth century development. The site's archeological integrity is uneven and not complete and does not appear, at this time and given the focus of the investigations to date, to provide nationally significant information as required to meet NHL Criterion 6.

8. STATEMENT OF SIGNIFICANCE

Certifying official has considered the significance of this property in relation to other properties:

Nationally: X Statewide:__ Locally:__

Applicable National Register Criteria:	A X B X C X D__
Criteria Considerations (Exceptions):	A__ B__ C__ D__ E__ F__ G__
NHL Criteria:	1 and 2
NHL Theme(s):	IV. Shaping the Political Landscape 1. parties, protests, and movements 2. governmental institutions 3. military institutions and activities VIII. Changing Role of the United States in the World Community 3. expansionism and imperialism 4. immigration and emigration policies
Areas of Significance:	Exploration/Settlement, Military, Politics/Government
Period(s) of Significance:	1817-1896
Significant Dates:	1817; 1836; 1872; 1875; 1883; 1896
Significant Person(s):	Judge Isaac C. Parker (1875-1896)
Cultural Affiliation:	N/A
Architect/Builder:	Maj. Stephen H. Long (First Fort Smith); Lt. Col. Joseph G. Totten and Sylvanus Thayer (Second Fort Smith); Mifflin E. Bell, Supervising Architect, Treas. Dept. 1883-1886 (Federal Prison addition); Willoughby J. Edbrooke, Supervising Architect, Treas. Dept. 1891-1892 (Federal Court alterations)
Historic Contexts:	X. Westward Expansion of the British Colonies and the United States, 1763-1898 C. Military-Aboriginal American Contact and Conflict 1. East of the Mississippi, 1763-1850s 2. The Southern Plains VII. Political and Military Affairs, 1865-1939 B. The Republican Era, 1877-1900

State Significance of Property, and Justify Criteria, Criteria Considerations, and Areas and Periods of Significance Noted Above.

Fort Smith (First and Second Sites) and Judge Parker Courtroom is of exceptional national significance under National Historic Landmark (NHL) Criterion 1 for the central role the Fort Smith facilities played in the development of the United States government's American Indian policy. The significance of Fort Smith is developed within the context of U.S. territorial expansion and settlement across the Appalachian Mountains to the Mississippi River and westward through the nineteenth century, encompassing the period of Indian Removal known as the "Trail of Tears" and federal judicial authority in Indian Territory.[8] The physical changes and use of the fort facilities over time, beginning with the First Fort Smith built in 1817 through the Second Fort Smith built 1838-1846 and its use as the U.S. District Court from 1871-1896, mirrored the evolution of federal policies governing American Indian status, both as individuals and as sovereign nations. Fort Smith first served to control Osage and Cherokee wars and to maintain the frontier line west of the Mississippi River. It was a way-station and supply depot during the 1831 removal of the Choctaw from Mississippi. Fort Smith garrisons patrolled, protected, and supplied the Indian Territory, and served as a supply depot for other forts as the frontier moved westward. Finally, Fort Smith served as the U.S. District Court for the District of Western Arkansas and the Indian Territory through the wild-west years as outlaws took advantage of the remote Indian Territory, and white (and black) settlers sought to break down the Indian Territory barrier.

Fort Smith is also of exceptional national significance under NHL Criterion 1 as the seat of the U.S. District Court of Western Arkansas and the Indian Territory beginning in 1871 to 1896 when jurisdiction within Indian Territory was terminated by Congress. The national significance of Fort Smith through the judicial period is expanded under NHL Criterion 2 as the site of all but the last two years of Judge Isaac C. Parker's twenty-one-year judicial career as District Court Judge presiding over the District of Western Arkansas and the Indian Territory. Judge Parker's strict and often controversial interpretation of federal law on the frontier, which resulted in eighty-six executions earning him the nickname "The Hanging Judge," sought to protect the rights of the American Indians living in Indian Territory while reigning in the outlaw abuses of the frontier. The tenure of Judge Parker in the Western District and the Indian Territory from 1875 to 1896 marked the taming of the "wild west" and unwittingly paved the way for the dismantling of the discrete Indian Territory and tribal sovereignty in favor of the new U.S. Territory of Oklahoma.

The Areas of Significance include: Exploration/Settlement, Military, and Politics/Government, which are developed through NHL Theme IV: Shaping the Political Landscape, subthemes 1) parties, protests, movements; 2) governmental institutions; and 3) military institutions and activities and through NHL Theme VIII: Changing Role of the United States in the World Community, subthemes 3) expansionism and imperialism, and 4) immigration and emigration policies.[9]

The period of national significance is 1817 to 1896 covering the three periods of nationally significant use, First Fort Smith, Second Fort Smith, and the U.S. District Court, ending when the court no longer held jurisdiction in Indian Territory.

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[8] "Indian Removal" began in the 1810s when the first group of eastern Cherokee removed to the territory west of the Mississippi River. The 1831 removal of the Mississippi Choctaw is referred to by the Choctaw today as their "Trail of Tears." The 1838-39 forced (i.e. military force) removal of the remaining eastern Cherokee, who did not agree to remove, is most commonly known as the "Trail of Tears" and is the subject of the Trail of Tears National Historic Trail. Other southeastern tribes forced to migrate west of the Mississippi to Indian Territory include the Chickasaw, Creek, and Seminole.

[9] "National Register Bulletin: How to Prepare National Historic Landmark Nominations," U.S. Dept. of the Interior, National Park Service, Cultural Resources, 1999, 58-60 and 81-83.

Summary Introduction: First and Second Fort Smith History and Context, "Advancing the Western Frontier and American Indian Removal: Politics and Policy," NHL Criterion 1

NHL Theme IV. "Shaping the Political Landscape" and NHL Theme VIII. "Changing Role of the U.S. in the World Community" (Historic Context Theme X. Westward Expansion of the British Colonies and the United States, 1763-1898, sub-theme C. Military-Aboriginal American Contact and Conflict, 1. East of the Mississippi, 1763-1850s and 2. The Southern Plains).[10]

The NHL Themes IV "Shaping the Political Landscape" and VIII "Changing Role of the U.S. in the World Community" are intertwined in their historical development as U.S. American Indian policy was crafted to support U.S. territorial expansion, international trade and diplomacy, and domestic political considerations. Beginning with colonial encounters between provincial governments, early settlers, and eastern tribes—some friendly, many not—but which resulted in the initial losses of traditional tribal lands, Euro-Americans repeatedly relied on federal policy and the military to resolve what boiled down to land issues with American Indian tribes. With the successful conclusion of the American Revolution, the new United States government quickly claimed its authority over the large territory west of the Appalachian Mountains acquired from Great Britain in the 1783 Treaty of Paris; this despite the claims of various state governments for expanding their own territories and despite the claims of American Indian nations who historically occupied those lands. The U.S. Constitution, ratified in 1788, placed the power to regulate commerce in the hands of the federal government, including "Commerce with Indian Tribes," establishing a permanent relationship of "federal authority over Indian matters."[11] The clause prompted a series of Trade and Intercourse Acts by Congress, beginning in 1790, that would attempt to regulate U.S.-tribal relations as solely a federal power to the exclusion of state governments and individuals. However, already locked into a pattern of establishing boundaries only to be repeatedly violated by land hungry non-American Indian settlers, speculators, and state governments, there was little incentive on the part of many Euro-Americans to adhere to treaties or regulations.

Thomas Jefferson's American Indian policy was reliant on the strong federal government role of trade and treaty-making. This policy served his purpose of U.S. land expansion to achieve his goal of an agrarian republic. Jefferson believed that "civilizing" the American Indian people—educating them in European-style agriculture—would reduce their need for expansive hunting areas, allowing the tribes to cede the much-coveted cotton-producing land in the southeast. Additionally, targeted land cessions would form protective barriers from adjoining British, French, and Spanish territories. Ultimately, Jefferson and his presidential successors, James Madison, James Monroe, John Quincy Adams, and in particular Andrew Jackson, viewed the vast and seemingly remote Louisiana Purchase territory as the solution, both from foreign meddling and as an American Indian "reserve."

Pressure to remove the "Indian Problem" from lands east of the Mississippi River grew following the War of 1812 as international trade, particularly trade in cotton, but also sugar, rice, and wheat, fueled the growing demand for agricultural land. Pressed by southeastern states in particular, "Indian Removal" began as a government policy with the migration in 1809 of a contingent of Cherokee from Georgia and Kentucky to

[10] "History and Prehistory in the National Park Service and National Historic Landmarks Program," History Division, National Park Service, Washington, D.C., 1987. This thematic framework, developed by the NPS in 1987, continued the tradition established in 1936 of U.S. history viewed within its political context, or the "stages of American progress" (NHL bulletin, 80). The thematic framework developed for the 1999 "How to Prepare Historic Landmark Nominations" (NHL bulletin) provides for a wider view of U.S. history within the social contexts of "people, time, and place." (see NHL bulletin, Appendix A, 79-83)

[11] U.S. Constitution, Article 1, Section 8, Clause 3. "CRS Annotated Constitution: Article 1, Commerce with Indians," *Legal Information Institute*, Cornell University Law School, accessed March 12, 2013, https://www.law.cornell.edu/constitution-conan/article-1. Judicial rulings on this federal power over the last two centuries continued to uphold this federal authority over what were sovereign nations (with whom the government entered into treaties), in fact placing American Indian tribes into a "semi-autonomous" category that has influenced federal policy throughout American history.

territory west of the Mississippi given to them by the federal government. Located in territory claimed by the Osage, the resulting tribal wars prompted establishment of Fort Smith in 1817 to quell the conflict. Beginning with Fort Smith, the U.S. government constructed a line of forts along the frontier west of the Mississippi demarcating what was thought would be the "Permanent Indian Barrier," though it was land already explored by government-sponsored expeditions, exploited by fur traders, and to a small extent settled by white (and black) farmers. Under the Indian Removal Act of 1830, championed by President Andrew Jackson, southeastern tribes—Choctaw, Chickasaw, Cherokee, Creek, and Seminole—were removed—eventually forcibly—to part of the Arkansas Territory later identified as "Indian Territory" along land and water routes now known as the "Trail of Tears."

U.S. territorial expansion did not stop as the frontier pressed westward, accelerating through the mid-nineteenth century. The United States military line of forts, initially placed to keep the peace among warring tribes, soon became an important tool in the protection of Indian Territory from white settler incursions, as well as protection for overland migrations to the gold, silver, and soil of California and other western lands. The Second Fort Smith (1838-1871), by then east of the frontier, served as an important supply depot for American Indians during removal and for other more-western forts, and as a gathering point for westward emigrant trains.

Summary Introduction: Fort Smith U.S. District Court Period History and Context, "U.S. District Court of Western Arkansas and the Indian Territory and the Judicial Career of Judge Isaac C. Parker," NHL Criteria 1 & 2

NHL Theme IV. Shaping the Political Landscape (Historic Context Theme VII. Political and Military Affairs, 1865-1939, sub-theme B. The Republican Era, 1877-1900)[12]

The U.S. District Court of Western Arkansas and the Indian Territory, over which Judge Isaac C. Parker presided for his entire twenty-one-year judicial career, was singular in American history for its size, over 74,000 square miles, and for its circumstance, encompassing the Indian Territory. Until 1896, the Indian Territory formed a sort of "no-man's land" where tribal courts had no jurisdiction over non-American Indian criminals. As an unofficial territory, Indian Territory had no federal or state court system of its own with jurisdiction over U.S. citizens (non-American Indians). To address this "anomaly," Indian Territory was overseen by the "outside" federal court system of Arkansas Territory, and after Arkansas statehood in 1836, by the U.S. District Court of Arkansas. The vast and remote Indian Territory became the refuge of the worst of America's frontier outlaws, particularly after the Civil War, adding greatly to its image of lawlessness.

From 1871 through 1896 the town of Fort Smith was the seat of the U.S. District Court of Western Arkansas and the Indian Territory. The fort itself, with its federal facilities already in place, became first the location of the district jail in 1871, and by 1872 housed the courtroom, offices, jail, and gallows of the District Court. Until moved to a "purpose-built" courthouse in 1890, Judge Isaac C. Parker's courtroom occupied the Fort Smith enlisted men's Barracks building while the Commissary building housed his private office. The federal jail, known by its inmates as "Hell on the Border," occupied the Barracks/Courthouse basement until 1888 when, at the request of Judge Parker, a state-of-the-art jail facility was constructed adjoining the old Barracks. The infamous gallows stood against the old fort wall and magazine, until it was abandoned in 1896 and burned by the citizens of Fort Smith in 1897. For twenty-four years, the Second Fort Smith was at the center of one of America's most remarkable federal court districts with one of the country's most noteworthy federal judges at its helm.

[12] "History and Prehistory in the National Park Service and National Historic Landmarks Program," History Division, National Park Service, Washington, D.C., 1987.

Judge Isaac C. Parker's judicial legacy, either good or bad depending upon interpretation, was his strict application of the law and swift execution of the sentences he handed down. Eighty-six men were hanged by order of Judge Parker. Though the death sentence for murder and rape was mandatory under federal law, contemporary newspapers decried Parker's seemingly numerous punishments on the gallows. Popular literature, beginning as early as 1898, and the movie screens of the mid-twentieth century emphasized that part of Judge Parker's story to the extent that he is remembered primarily as "The Hanging Judge." More scholarly histories and biographies have since painted a more complete image of the man and his impact on law in the West and U.S. American Indian policy through the second half of the nineteenth century.

Judge Parker sought to tame America's "wild west" in an effort to uphold the law and to protect the treaty-rights of American Indians. Ironically, his efforts resulted in the opposite effect as the technically unofficial Indian Territory was engulfed within the Territory of Oklahoma in 1890. Court reforms initiated by Congress, some stemming from Parker's rulings, resulted in the establishment of a court system within the Territory in 1896, the dissolution of tribal courts in 1898, and ultimately the creation of the State of Oklahoma in 1907.

History and Contexts

First and Second Fort Smith History and Context (NHL Criterion 1):

Advancing the Western Frontier and American Indian Removal: Politics and Policy

Introduction

Dr. Tom Holm, professor of American Indian Studies at the University of Arizona, observed in his book *The Great Confusion in Indian Affairs*:

> The relationships between indigenous peoples and colonizers usually proceed through a series of phases. First and foremost, the establishment of colonies disrupts Native societies and displaces people. More often than not, conflict follows, with a concomitant reassessment of the colonial policy of outright conquest. At that point, both colonizers and indigenous peoples begin to agree upon a policy of resetting territorial boundaries in order to maintain a degree of order…. But perhaps because the acquisition of land is, by definition, the colonizer's main preoccupation, boundaries are continually violated, leading to more, rather than less, disorder and violence.[13]

Holm suggests that "the idea of territoriality" fundamentally separated the European American culture from that of the American Indian and doomed the relationship through the colonial and early Republic periods to failure.[14] The Native "collective" ownership of land as their source of existence was in direct opposition to the European view of land as "a valuable asset," a view that intensified in the southeast through the first half of the nineteenth century as cotton production for European and American industrial markets became increasingly lucrative. "Civilizing" the American Indian population, described by Holm as the final phase in which the colonizer seeks to assimilate the indigenous group into the dominant culture, was a policy espoused by Thomas Jefferson in his 1783 *Notes on Virginia* and throughout his presidency. Though Jefferson apparently genuinely admired American Indian culture, his "civilization" policy was, in reality, a veiled attempt to obtain American Indian land and compliance by crushing the cultural cohesion of the tribes.[15] And though the five southeastern tribes—Choctaw, Chickasaw, Creek, Cherokee, and Seminole—known as "The Five Civilized Tribes" did

[13] Tom Holm, *The Great Confusion in Indian Affairs* (Austin: University of Texas Press, 2005), 1-2.
[14] Holm, 21.
[15] Anthony F. C. Wallace, *Jefferson and the Indians* (Cambridge, MA: The Belknap Press of Harvard University Press, 1999), 276.

adopt many European ways, in the end it was their mere presence on land coveted by whites that resulted in their forced removal west of the Mississippi River along the "Trail of Tears."

The history of U.S. American Indian policy is intimately intertwined with territorial expansion and its political implications both domestic and international. Mimicking the British colonial "Doctrine of Discovery," the rebellious Continental Congress, in the Articles of Confederation adopted in 1777, claimed the power to regulate American Indian trade and, more importantly, the vast territories occupied—and claimed—by American Indians. Beginning with the 1783 Treaty of Paris, the United States government took an active role in shaping the U.S. presence in the "world community" through acquisition of territory. Whether acquired as a buffer or asset, the march to expand the U.S. boundaries across the vast North American continent had an impact on American Indians at every step. Initially new territory was obtained to protect the nascent nation from foreign (British, French, or Spanish) threat or intervention. Much of the land also promised profitable agricultural development, particularly in the southeast where sugar, rice, and cotton production was quickly dominating international markets. Though acquired from foreign colonial powers, those territories were also claimed by the "First Americans" who occupied the land and considered themselves sovereign nations. U.S. American Indian policy was shaped to acknowledge tribal occupancy rights, and at the same time to control land acquisition through trade and treaty.

Following the U.S. territorial expansion west of the Mississippi River with the Louisiana Purchase in 1803, American Indian tribal sovereignty dissolved into the "Trail of Tears," the policy of Indian Removal demanded by the southeastern states and championed by President Andrew Jackson in the 1830s. By the 1850s the larger eastern American Indian tribes had been removed to "Indian Country" west of the Mississippi, by then facing the onslaught of non-American Indian westward migrations as U.S. territory expanded to the Pacific Coast.

First Fort Smith: From Frontier Fort to Supply Depot, 1817-1829[16]

American Indian settlement west of the Mississippi was not a simple solution. Trouble soon began with white settler encroachments on the new Cherokee land. The settlers competed for bison, deer, bear, and beaver, animals that the tribe depended upon for subsistence and income. Cherokee hunters looked further west for game, themselves encroaching on Osage territory and provoking violence that escalated to intermittent warfare. Cherokee hunters did not hesitate to enter Osage territory at will. The territorial war between the Osage and the transplanted Cherokee was already many years old, and though the Cherokee blamed the Osage for past injustices, it had been observed by a member of an exploratory expedition:

> A large number of Cherokees now live on the south side of the Arkansa [sic], upon lands claimed by the Osages; and all the Cherokees of the Arkansa [sic] are in the habit of hunting and committing depredations upon the Osage hunting grounds.[17]

Among the worst of the Cherokee offenses against the Osage occurred in October of 1817. Known as the "Battle of Claremore's Mound," the "battle" amounted to more of a massacre. Through the summer of 1817, militant Western Cherokee leaders Talatuskey, Tick-e-Toke, The Bowls, and Black Fox had been recruiting warriors—from their own ranks but also from the eastern and other western tribes—to participate in their planned escalation of the territorial war between the Western Cherokee and the Osage. In October at the height of bison hunting season, the force of nearly seven hundred warriors reportedly including eleven white allies,

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[16] A detailed account of the history of Fort Smith can be found in Edwin C. Bearss and Arrell M. Gibson, *Fort Smith, Little Gibraltar on the Arkansas* (Norman: University of Oklahoma Press, 1979).

[17] See Edwin James, *An Account of an Expedition from Pittsburgh to the Rocky Mountains…* (London 1823), "AJ-144c: James, Expedition to Rocky Mountains (1819)," *American Journeys*, accessed April 16, 2013, https://content.wisconsinhistory.org/digital/collection/aj/id/17659, Wisconsin Historical Society Digital Library and Archives, 130.

invaded Osage territory. With most of the Osage warriors occupied in the hunt, the Cherokee army faced little resistance as they overwhelmed the village of Osage Chief Claremore. The Cherokee allies killed eighty-three old men, women, and children, and took one hundred children as prisoners, according to reports, losing only one of their own warriors (a Delaware) in the process.[18]

As early as 1814, the Cherokee-Osage territorial war in the region prompted Arkansas Cherokee Indian Agent William L. Lovely to request a military post to quell the violence. White settlers too, "of the Worst Character," wrote Lovely, were compounding the dangerous conditions along the Arkansas River.[19] Agent Lovely died before 1817, when the War Department finally moved to address his concerns. Just as the Cherokee-Osage war heated up in the west, more eastern Cherokee were moving to the Arkansas region. The Battle of Claremore's Mound solidified the U.S. government's resolve to pacify the region. On July 30, 1817, Acting Secretary of War Richard Graham directed General Andrew Jackson to prepare a company to garrison a military post, "to take all proper measures for the restoration of peace, and the preservation of harmony between the Osage and Cherokee tribes."[20]

Brigadier General Thomas A. Smith, commanding the Ninth Military District at Belle Fontaine on the Missouri River near St. Louis, assigned Major William Bradford in command of the planned fort. An exploratory party consisting of Bradford, Topographical Engineer Major Stephen H. Long, and a five-man crew, set out to find an appropriate site. They were accompanied by Bradford's Rifle Regiment, who brought with them "ordnance, commissary, and quartermaster supplies," as well as "two six-pound cannon mounted on carriage, two sets of harness for four-horse teams to pull the artillery, and more than half a ton of pig lead for casting bullets."[21] All were loaded onto a keelboat to make the trip up the Arkansas River according to Smith's orders:

> …ascend the Arkansaw [sic] river to the point where the Osage boundary line Strikes that river, with the advice of Major Long, select the best site to be found upon it near to that line and thereon erect as expeditiously as circumstances will permit a Stockade most sufficient for the comfortable accommodation of one company, with necessary quarters, Barracks, Store houses, Shops, Magazines, and Hospital, conformable to the plan furnished by Major Long, which he will adapt to the nature of the position.[22]

Major Long identified Belle Point, at the confluence of the Arkansas and Poteau Rivers, as the ideal location and provided Bradford with sketched building plans based upon his survey of the site. By January 1, 1818, Major Bradford reported the construction of "a hospital for the sick, a Store house for the Public, a Provision house for the contractor, and am about a hut for myself."[23]

The post was called Cantonment Smith, then Fort Smith, named for General Smith the commander of the Ninth Military District, and was constructed by Bradford's Riflemen using the detailed plan Major Long supplied. The

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[18] Edwin C. Bearss, *Fort Smith 1817-1824*, Part I (Fort Smith National Historic Site, October 1962), 24-27. Learning of the massacre upon his arrival in December 1817, Major Bradford reported the incident to his superior, General Andrew Jackson. Appalled by the savagery of the massacre, Bradford called the Cherokee attack "a species of barbarity and treachery unknown among the Indians of the most uncivilized kind…" and identified the white participants, "Isaacs, the Chissoms and Williams, Isaacks and King among them," as, "more savage than the Cherokees themselves." Bradford to Jackson, January 1, 1818, as cited in Bearss, *Fort Smith 1817-1824*, Part I, 25.

[19] Bearss and Gibson, 10.

[20] As cited in Bearss and Gibson, 13-14.

[21] Bearss and Gibson, 15.

[22] As cited in Bearss and Gibson, 15.

[23] Bradford to Jackson, January,1818 (Jackson Papers, Library of Congress), as cited in Bearss and Gibson, 19.

132 foot square log stockade had two corner blockhouses and a series of rooms or "buildings" lining the inside walls, facing the central parade ground and flag staff. Long's instructions were precise:

> Outword [sic] walls of the Garrison to be 10 ft. high & 8 in. thick, doors of Block Houses to be 10 inches thick. The first story to be 9 ft. from the floor, and the second story, 8 ft. The cupola or watch Tower upon top of the Blockhouse to be 8 feet square. The Garrison to be 132 feet out to out. The Block Houses to be 28 ft. sq. from out to out and situated in alternate angles of the Garrison with one corner of each intering [sic] 10 feet within the outside of the work. All other walls belonging to the Garrison to be 6 inches thick except those of the Magazine which are to be 3 feet thick, and above the Ground and three feet broad. The dimensions of the other buildings, from out to out to be as follows: –
>
> Commanding officers Quarters.....19 by 19 – 2 room
>
> Subaltern's & Surgeon's Quarters .....19 by 19 – 4 rooms
>
> Soldier's Quarters .....19 by 12 – 2 rooms
>
> Guard House & Missionary Quarters .....19 by 12 – 2 rooms
>
> Smith's & Wheelrights Shops.....15 by 15 – 2 rooms
>
> Provision House & Carpenter's Shop .....18 by 15 – 2 rooms
>
> Saddlers & Tailor's Shops .....12 by 15 – 2 rooms
>
> Suttler's, Clothing, Hospital Store & Hospital ....15 by 15 – 4 rooms
>
> Kitchens .....12 by 15 – 1 room
>
> Magazine 6 by 8 in clear.....12 by 16 – 1 room
>
> The whole work is to be surrounded by a Ditch, 6 ft. deep, 6 ft. broad at the bottom & 8 ft. at top. The inside or scarp of the ditch, to be riveted with stone, which is to be the foundation of the outward walls of the Garrison. The earth from the ditch to be employed in leveling the plane of the work and forming a Glassis. – The floor of all the building to be 18 inches above the foundation, and the rooms of all 18 ½ ft. from the Ground floor to the timber of the second floor. The main Gateway to be 10 feet wide, and the Gate itself 8 feet broad and 8 feet high.[24]

It was a military post design that had been in use since before the 1770s when Spencer Record documented forts in the Virginia frontier territory (later Kentucky).[25] Fort Osage, constructed in 1808 on the Missouri River, was also a log stockade structure with bastions, but being built as both garrison and American Indian factory post, its plan was more extensive.[26]

Fort Smith was positioned initially to keep the peace between the two tribes, but it was also to control illegal whiskey trade along the Arkansas River and to discourage white settlement within the tribal territories.[27] The sale of whiskey by the white traders to the American Indians, though illegal since the Trade and Intercourse Act of 1802, was to be an issue that the Fort Smith garrison grappled with on a daily basis. It was the purpose of the

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[24] "A Plan of the Garrison to be encited at Belle Point furnished to Maj. Wm Bradford by order of Brig. Gen., S. H. Long Major of Engineers" (reconstructed from Ross Document?) Map Drawer 1, Fort Smith National Historic Site archives, Fort Smith, AR.

[25] As cited in W. Stephen McBride, Kim Arbogast McBride, Greg Adamson, *Frontier Forts in West Virginia* (Charleston: West Virginia Division of Culture and History, 2003), 26.

[26] "Map of the Fort," *Fort Osage National Historic Landmark, Jackson County Parks & Rec.*

[27] Bearss and Gibson, 9-12.

Fort Smith riflemen under the command of Major Bradford, according to Dr. James, "to prevent the encroachments of white settlers upon the lands still held by the Indians."

> Some of the most fertile portions of the Arkansa [sic] territory are those about the Verdigrise, Skin Bayon [sic], Illinois, Six Bulls, &c.; in which some unauthorized settlements were heretofore made, but have recently been abandoned, in compliance with the requirements of the commandant at Fort Smith.[28]

As the idea of a "Permanent Indian Frontier", in which eastern American Indians could live ostensibly free of white intrusion as first suggested by Thomas Jefferson, took hold Fort Smith became the first of what was anticipated to be a line of military posts along this Indian Frontier west of the Mississippi River. This line was intimately associated with the evolving government policy of American Indian removal. To the north, Fort Snelling (Minnesota) (NHL, 1960) and Fort Atkinson (Nebraska) (NHL, 1961) were constructed in 1819. On the south end, Fort Jesup (Louisiana) (NHL, 1961) was constructed in 1822. These were followed in 1824 with Fort Gibson (NHL, 1960) and Fort Towson (both in Oklahoma), Fort Leavenworth (Kansas) (NHL, 1960) in 1827, and Fort Scott (Kansas) (NHL, 1964) and Fort Washita (Oklahoma) (NHL, 1965) in 1842 to fill in "defensive" holes.[29]

In May 1818, General Smith solicited Long's opinion on the matter of "what posts are necessary on the South western frontier of this territory to prevent illicit intercourse with the Indians, prevent intrusion on their lands, as well as to afford protection to our settlers along that frontier."[30] Citing his experience with the territory and the American Indians during his several exploratory expeditions, Long replied:

> …as a small and inefficient military force is invariably viewed with contempt by the Indians, and liable to be crushed in a moment when ever they see cause to exert their strength, it becomes essential to a well organized system of military operations to reduce the number of posts as much as the nature of the service will admit and concentrate the forces as much as possible at those points where annoyance is most to be apprehended.
>
> …I conceive it would be highly expedient to prohibit citizens of the United States, in future from settling beyond the range of our exterior posts, as a general principle, this remark is applicable to every part of our inland frontier…because the [Indians] in advancing upon our frontier settlements must then "leave a post in their rear" a circumstance that uniformly imposes a powerful restraint upon their operations. I would therefore recommend two posts only in this Quarter, one of which should be situated upon Red river above the American settlements, and the other on the Arkansas either at Belle Point, or higher up…[31]

Even just one year after the establishment of Fort Smith, the fluidity of the frontier line was already apparent in Long's recommendation. Fort Smith itself, and the planned line of forts, were just the latest line of military emplacements along the ever-shifting frontier edge, leaving behind earlier posts such as Fort Belle Fontaine near confluence of the Missouri and Mississippi Rivers and Arkansas Post on the Arkansas River. Many forts were established around a government factory store, like Fort Osage which replaced the factory at Belle

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[28] James, 38.

[29] *Soldier and Brave: Historic Places Associated with Indian Affairs and the Indian Wars in the Trans-Mississippi West*, Robert G. Ferris, Ed., online edition, https://eric.ed.gov/?id=ED104572, updated from National Survey of Historic Sites and Buildings, Theme XV: Westward Expansion and Extension of the National Boundaries, 1830-1898, Military and Indian Affairs (sub-theme), 1959; Earl Arthur Shoemaker, "The Permanent Indian Frontier: The Reason for Construction and Abandonment of Fort Scott, Kansas, During the Dragoon Era," (National Park Service, Midwest Region, 1986), 5.

[30] Long to Smith, May 12, 1818, Fort Smith National Historic Site archives, Fort Smith, AR.

[31] Long to Smith, May 12, 1818.

Fontaine.[32] The "Store House" at Fort Smith, that Bradford noted in his January 1818 report, was not a government factory for American Indian trade, but rather a "post store" which sold supplies—particularly whiskey, but also staples such as coffee, razors, clothing, and playing cards—to the fort's officers and enlisted men, as well as to nearby settlers and trappers.[33]

The line of forts along the Indian Frontier west of the Mississippi River reflected the maturing of U.S. American Indian removal policy. By the 1820s that policy was focused primarily on the five southeastern tribes—Chickasaw, Choctaw, Cherokee, Creek, and Seminole. The Five Civilized Tribes, so called because of their adoption of "civilization" in the form of Euro-American agriculture, education, religion, and government, continued to be entrenched on their remaining traditional lands in North Carolina, Tennessee, Georgia, Alabama, Mississippi, and in Spanish Florida. In 1822, Jedidiah Morse, a Congregationalist minister from Boston, completed a survey of the American Indians in the United States, reporting to the Secretary of War, John C. Calhoun, on his view of the strides toward civilization among the tribes. In particular Morse praised the Cherokee, Choctaw, and Chickasaw for their progress in agriculture—including slaves, livestock, and mills—and education.[34] However, Morse noted, "The rapid advance of the white population presses them on the east; and the Pacific Ocean hems them in on the west," implying that, even if removed west of the Mississippi, the American Indians would eventually have nowhere to go. "Where the white man puts down his foot, he never takes it up again," wrote Morse, quoting the "shrewd and correct remark of an Indian Chief" to drive his point home.[35]

At the same time, the Territory of Arkansas was carved from the Missouri Territory, releasing a wave of white settlers into the region, and white squatters onto adjoining American Indian land. Thomas Nuttall, traveling with Major Bradford's regiment as they ejected a group of squatters from Osage hunting ground, wrote that "These people…bear the worst moral character imaginable, being many of them renegadoes [sic] from justice…"[36]

Not all whites living in Indian Territory near Fort Smith were of the worst character. Many of the married members of the fort garrison brought their wives out to live with them on the frontier, including Major Bradford. Their cabins dotted the hills near the fort, some on the banks of the Arkansas and Poteau opposite the fort. In the spring of 1821, the relative quiet of the Cherokee-Osage dispute broke as a war party of Osage moved to attack Cherokee settlements. As they approached Fort Smith from the north, warriors entered a soldier's farmhouse and "drove the mother and children into a corner of the cabin, flashed cocked firearms, tomahawks, and knives in their faces, and threatened to kill and scalp them."[37] The Fort Smith garrison rebuffed the Osage party, by rolling out their two cannons, then "charged them with canister, and placed a gunner with lighted match by each piece."[38] Throughout spring and summer of 1821, increased patrols by the Fort Smith Riflemen diverted similar war parties of both Osage and Cherokee, though occasionally they slipped through. In September, a Cherokee party of three hundred warriors attacked an Osage hunting camp, killing mostly women and children.[39]

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[32] Robert Walter Frazer, *Forts of the West: Military Forts and Presidios, and Posts Commonly Called Forts West of the Mississippi to 1898* (Norman: University of Oklahoma Press, 1975), 69, 75-76.

[33] Bearss and Gibson, 31.

[34] Jedidiah Morse, *A Report to the Secretary of War of the United States, on Indian Affairs…* (1822), *Internet Archive, Open Library*, accessed April 4, 2013, https://archive.org/details/areporttosecret00ddgoog.

[35] Morse, *A Report…* (1822), 65-66.

[36] Thomas Nuttall, *A Journal of Travels into the Arkansa Territory During the Year 1819* (Philadelphia, PA: Thomas H. Palmer, 1821), 159, accessed April 30, 2013, https://books.google.com/books/about/A_Journal_of_Travels_Into_the_Arkansas_T.html?id=6lIVAAAAYAAJ&hl=en.

[37] Bearss and Gibson, 46.

[38] Ibid., 46. The Osage consider this historical episode to be a "bluff."

[39] Bearss and Gibson, 48-49.

The increasing violence prompted the War Department to immediately transfer the 7th U.S. Infantry Regiment, under the command of Colonel Mathew Arbuckle, from Fort Scott in Georgia to Fort Smith, increasing the garrison strength from one company of seventy officers and men to a battalion of two hundred and fifty men. The trip took several months with delays of passage and low water on the Arkansas. When they finally arrived in February 1822, Major Bradford was relieved of his Fort Smith command. After five years of construction, road building, regulating trade, and guarding the frontier, "Bradford had, through his tenacity and high sense of responsibility, created a nucleus for law, order, and the vanguard of a community and ultimate civilization."[40]

The new, substantially larger garrison required changes to the small fort. In March 1822, Colonel Arbuckle sent his request to enlarge the fort barracks and to expand the military reservation on which the fort stood. Secretary of War Calhoun's May response letter arrived with instructions that the "Barracks and Quarters be strong & comfortable, but plain, and erected at the least possible expense."[41] The "Contemplated plan of Enlargement" called for extending the sides of the fort from 132 feet square to 278 feet by 168 feet, with the necessary additional quarters, but no additional bastions. Whether or not Arbuckle built the new barracks within an enlarged stockade is not clear from any of the subsequent maps of the first Fort Smith. Archeological evidence indicates that the fort stockade was not enlarged and that the additional buildings were constructed outside of the original fort perimeter.[42] But even as the new barracks were under construction Colonel Arbuckle suggested to Acting Adjutant General Charles J. Nourse that the fort should be moved up the Arkansas River, "five or six miles above the mouth of the Verdigris," as white settlements at Belle Point were beginning to encroach on the Fort Smith military reservation.[43] The idea was not met with a positive response and the men of the 7th Infantry settled into their new quarters.

The year 1822 also brought with it an uneasy peace between the Cherokee and the Osage by the Treaty of Fort Smith.[44] The agreement was signed by six Cherokee Chiefs and sixteen Osage Chiefs, including Claremore, whose village was annihilated at the start of the Cherokee-Osage war in 1817. Among the signers representing the U.S. government were Territory of Arkansas Governor James Miller, Colonel Arbuckle and Captain Leftwich of Fort Smith, and the U.S. government Indian Agent for the Cherokee, David Brearly, and subagent for the Osage, Nathanial Philbrook. In addition to declaring a "perpetual peace and friendship" between the Cherokee and Osage, the treaty provided for the return of prisoners, shared hunting grounds, and safe passage through each other's tribal land. There was to be an end to acts of "private revenge," instead complaints were to be lodged with the Indian Agents for settlement, and murders were to be dealt with by the tribal Chiefs.[45] Significantly, Article 9th authorized the U.S. government to intervene "by force or otherwise" to ensure the Chiefs' compliance with murder investigations and justice, and Article 11th stipulated:

> It is distinctly understood by the Contracting parties, that when either Party [may] receive an injury from the other, and have made due complaint thereof as provide[d] by the 7th Art. of this Treaty, that the U.S. will interfere and cause justice to [be] done as far as practicable, should justice be delayed beyond Six Months.[46]

Though not all Cherokee ascribed to the 1822 Treaty of Fort Smith, particularly those influenced by militant leader Tick-e-Toke, it seemed that both Nations were committed to maintaining the peace. Governor Miller,

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[40] Bearss and Gibson, 53.

[41] Calhoun to Arbuckle, May 4, 1822, as cited in Bearss and Gibson, 57.

[42] See Jackson W. Moore, Jr., "The Archeology of Fort Smith I," August 1963, Fort Smith National Historic Site, archives, Fort Smith, AR.

[43] Edwin C. Bearss, *Fort Smith, 1817-1824* (October 1962), 64, Fort Smith National Historic Site archives, Fort Smith, AR.

[44] "Treaty Between the Cherokee and Osage, August 9, 1822," as cited in Vine Deloria, Jr. and Raymond J. DeMallie, *Documents of American Indian Diplomacy*, Vol. 1 (Norman: University of Oklahoma Press, 1999), 690-691.

[45] "Treaty Between the Cherokee and Osage, August 9, 1822," as cited in Deloria and DeMallie, Articles 7th and 8th, 690-691.

[46] "Treaty Between the Cherokee and Osage, August 9, 1822," as cited in Deloria and DeMallie, Article 11th, 691.

who previously had stated his belief that only the force of the U.S. Army would bring peace to the region, now felt confident enough to write to Secretary of War Calhoun that he foresaw "a permanent and peaceful settlement of the border war."[47]

With the relative calm resulting from the Cherokee-Osage territorial agreement, garrison life at the fort became a dull routine of drills and chores. During the summer season, both the hospital and graveyard filled with new occupants, many victims of the ailment commonly called "bilious fever." The guardhouse (jail) too was often full, primarily with deserters awaiting trial and "inebriated infantrymen."[48] Both were a symptom of the remote frontier assignment. Though rations included a small amount of daily whiskey, the growing civilian community adjoining the post was a constant source of temptation for the soldiers, and a source of illicit trade—particularly whiskey—with the tribes.

As Colonel Arbuckle had pointed out in the spring of 1822, Fort Smith at Belle Point was already no longer on the frontline of the Euro-American settlement frontier. The arrival of the first river steamboat to land at Belle Point in March 1822, punctuated this point by ushering in faster communications with the East—and an increasing tide of Euro-American emigrants. In 1824, the Arkansas Territory western boundary survey included both Cherokee and Choctaw land within its border, pushing Fort Smith to the east of the territorial frontier. Part of Lovely's Purchase (1816), bordering the Western Cherokee territory to the north and west was settled enough by white emigrants in 1820 to form Crawford County. To the south, within Choctaw territory, Miller County was also formed in 1820.[49] Continued agitation within the Osage hunting grounds by the Cherokee warrior band headed by Tick-e-Toke, put white settlers and travelers in danger, according to Colonel Arbuckle's reports to his superiors.[50] On April 13, 1824, the *Arkansas Gazette* reported the War Department's decision to abandon Fort Smith for a more-western location:

> The place selected for the future site of the garrison, is at the junction of the Verdigris with the Arkansas; about 80 miles above Fort Smith, and 50 below the Osage village, and is a few miles west of the proposed boundary of this Territory. It is said to be a fine, commanding, and healthy situation, and, if a competent force should be kept there, will be admirably calculated to give security to our western frontier.[51]

The report continued, saying that Osage subagent Nathanial Philbrook headed out from Fort Smith to the Osage village to try to bring in the murderers of Major Welborn's fur trader-trapper party, an incident which occurred the previous fall. Just a few days after the newspaper report, in April 1824, Philbrook himself was found murdered. Fort Smith historian Edwin Bearss noted: "Whoever the killers, the needless taking of Philbrook's life was a tragic and climactic demonstration of the need for a restraining force west of Fort Smith."[52]

The 7th Infantry left Fort Smith on April 9, 1824, and settled on a location on the Grand River (not the Verdigris as reported by the newspaper) where they began construction of a fort, later named Fort Gibson. By the end of the year, Fort Smith was abandoned completely and people in the neighboring Belle Point settlement began to unceremoniously remove any usable construction materials. Though lacking windows and doors as well as general maintenance, the fort did not remain abandoned for long. In 1825, the Choctaw Boundary Commission set up its headquarters in the decaying fort as they surveyed a new boundary line between Arkansas Territory

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[47] Bearss and Gibson, 61 and 65.
[48] Ibid., 84.
[49] Dianna Everett, "Indian Territory," *Encyclopedia of Oklahoma History & Culture*. https://www.okhistory.org/publications/enc/entry?entry=IN018
[50] Bearss and Gibson, 92-93.
[51] *Arkansas Gazette*, April 13, 1824, Fort Smith National Historical Site, archives.
[52] Bearss and Gibson, 94.

and the Choctaw lands.[53] The old line, established in 1820 by the Treaty of Doak's Stand, had been breached repeatedly by white settlers. The new treaty of 1825 moved the eastern boundary of the Choctaw land westward, but still leaving Fort Smith within the Choctaw territory, and agreed to remove white settlements:

> The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the Treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence, due south, to Red river: it being understood that this line shall constitute, and remain, the permanent boundary between the United States and the Choctaws; and the United States agreeing to remove such citizens as may be settled on the west side, to the east side of said line, and prevent future settlements from being made on the west thereof.[54]

Beginning in 1826, any Choctaw living on the ceded land were required to move west of the new line. Choctaw Agent William McClellan purchased supplies from the Mississippi Choctaw and shipped them to Fort Smith. There he set up his Western Choctaw Agency and supply depot to facilitate removal of the Arkansas Choctaw to their land west of the new boundary line.

At the same time that McClellan was setting up his Choctaw Agency in several of the fort buildings, Colonel Arbuckle gave two men, Colonel John Nicks and Captain John Rogers, now-civilian friends of Arbuckle, "charge of the public buildings, & were furnished with a public Ferry-boat, on the condition of their passing the Military free of expense."[55] The ferry crossing at Fort Smith, now firmly within Choctaw territory, became a point of controversy when McClellan authorized "half-blood" Choctaw Peter Folsom to operate a public ferry at the same location. Nicks and Rogers, who according to McClellan were also selling whiskey to nearby residents, both white and Native, complained to Colonel Arbuckle. Arbuckle denied McClellan's authority in the matter, pointing out that Fort Smith was "yet in the Charge of the Military, to be again occupied by Troops, or otherwise disposed of as the Government may instruct."[56] In his report to Quartermaster General Thomas S. Jesup on the matter, Arbuckle emphasized the potential importance of the post as a supply depot for future American Indian emigrations noting, "the Storehouses at Fort Smith will be found very conveniently situated for the reception of their supplies."[57] In the end the Commissioner of Indian Affairs Thomas L. McKenney, also within the War Department, instructed McClellan that he did not have authority over the ferry landing. Choctaw Agent McClellan moved his agency headquarters eighteen miles to the west at Pebble Springs (later known as Choctaw Agency and Skullyville), well within the Choctaw line and away from the whiskey plied by Nicks and Rogers at Fort Smith. However, McClellan continued to use the fort storehouses to store and distribute supplies to the Choctaw settlers now moving west of the Arkansas Territory/Choctaw line.[58]

Clearly, Fort Smith continued after 1824 as a useful government installation despite the absence of a military garrison. Its continued importance was guaranteed by several Congressional bills, enacted between 1825 and 1827, which authorized military road construction through the Arkansas Territory, "all focusing on Fort Smith":

> One ran east from Fort Smith to Little Rock; another extended west from Fort Smith to Cantonment [later Fort] Gibson; and a third was to be constructed from Fort Smith to Cantonment Towson. War Department planners observed that this federal highway system would improve United States defenses on the South western frontier, facilitate communications in that

[53] Bearss and Gibson, 98-99.
[54] "Treaty with the Choctaw, 1825," *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).
[55] Arbuckle to Jesup, February 26, 1827, as cited in Bearss and Gibson, 103.
[56] Arbuckle to McClellan, February 9, 1827, as cited in Bearss and Gibson, 101.
[57] Arbuckle to Jesup, February 26, 1827, as cited in Bearss and Gibson, 103.
[58] Bearss and Gibson, 103-104.

> region, encourage settlement and development in western Arkansas, and assist the federal government in relocating Eastern tribes in the Indian country west of Fort Smith.[59]

The implication that Fort Smith would be at the center of anticipated military and civilian activity belied its current decaying condition and the orders given to Choctaw Agent McClellan in 1828 to demolish the rotting fort buildings. But with the election of President Andrew Jackson in 1828, Indian Removal policy moved into the legislative realm and Fort Smith would again soon hum with activity.

"A trail of tears and death": Andrew Jackson and Indian Removal, 1830-1845

Prior to 1830, Indian Removal from the eastern tribal lands was espoused by federal government officials as a voluntary program, with the intention to "protect" the tribes from annihilation. In 1825, faced with extreme agitation in Georgia in particular, President James Monroe suggested that Congress take up the matter.[60] Congress ignored Monroe's suggestion and those of his successor John Quincy Adams. It was not until after the 1828 election of Andrew Jackson that implementation of a legislated policy of removal began.

With so much to gain by the acquisition of tribal land in the South, Andrew Jackson became synonymous with the drive to resolve the "Indian Problem" by removing all American Indians from southeastern tribal lands. After his election to the Presidency in 1828 Jackson immediately set about making Indian Removal as official U.S. policy. In his 1829 First Annual Message to Congress, President Jackson laid out his reasoning and proposal for Indian Removal, echoing the now-familiar dichotomy of land lust and honorable regret:

> Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for a while their once terrible names. Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. …the people of those States and of every State, actuated by feelings of justice and a regard for our national honor, submit to you the interesting question whether something can not be done, consistently with the rights of the States, to preserve this much-injured race.
>
> As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limit of any State or Territory now formed, to be guaranteed to the Indian tribes, as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes.[61]

Congress passed the Indian Removal Act in 1830, signed by President Jackson on May 28th, officially entitled "An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the Mississippi."[62] In his Second Annual Message to Congress in December 1830,

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[59] Bearss and Gibson, 104-105.
[60] Prucha, "Message of President Monroe on Indian Removal, January 27, 1825," 39.
[61] As cited in Prucha, "President Jackson on Indian Removal," 48.
[62] *Statutes at Large, 21st Congress, 1st Session*, Chapter 148, page 411, "A Century of Lawmaking for a New Nation: U.S.

Jackson proudly reported "Two important tribes have accepted the provision made for their removal at the last session of Congress, and it is believed that their example will induce the remaining tribes also to seek the same obvious advantages."[63] The "two important tribes" Jackson indicated had accepted the removal referred to the 1830 treaties with the Chickasaw and the Choctaw, both located within the State of Mississippi.

In January 1830, even before the passage of the federal Indian Removal Act, the State of Mississippi placed the Chickasaw and Choctaw lands under the jurisdiction of Mississippi state law, and Alabama followed suit in 1831, thus essentially nullifying any semblance of the independent status the American Indian nations had maintained.[64] In August 1830, the U.S. government negotiated a treaty with the Chickasaw, in which the tribe agreed to cede "all the lands owned and possessed by them" in exchange for an equal amount of land "West of the territory of Arkansaw [sic]."[65] Congress never ratified the treaty because the western land offered to them was in fact Choctaw land and the two tribes could not agree on the shared arrangement.[66] In 1832, finding themselves "oppressed in their present situation; by being made subject to the laws of the States in which they reside," the Chickasaw renegotiated the agreement. Chickasaw removal did not actually occur until 1837-38 after signing a treaty with the Choctaw to lease part of their western territory.[67]

The Choctaw treaty of September 1830, known as the Treaty of Dancing Rabbit Creek, also cited the impossibility of living under the laws of the State of Mississippi. The Choctaw Nation therefore ceded all of their land east of the Mississippi River in exchange for land west of the river:

> …beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825.[68]

The 1825 treaty cited was an amendment of the 1820 Treaty of Doaks Stand, originally negotiated by Andrew Jackson, in which the Choctaw were supposed to relocate to the "Quapaw Cession." Ten years later few had relocated. The Treaty of Dancing Rabbit Creek did result in the Choctaw removal—the first "Trail of Tears," or forced removals, with many to follow resulting in great hardship and death among the tribes.

By the terms of the 1830 Choctaw treaty, the removal of the people of the Choctaw Nation to their western territory was to take place in three waves from 1831 to 1833.[69] Poor planning instead resulted in what one of the Choctaw Chiefs described as "a trail of tears and death."[70] A delay to the anticipated November 1, 1831 start resulted in poor conditions on rain-soaked roads, shortages of rations, and finally harsh winter weather along the river and road routes, some leading to Fort Smith where they were resupplied. The three hundred Choctaw who

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Congressional Documents and Debates, 1774–1875," *American Memory*, accessed April 9, 2013, https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=004/llsl004.db&recNum=458.

[63] As cited on "Indian Removal Act," *Primary Documents in American History*, accessed April 9, 2013, https://guides.loc.gov/indian-removal-act.

[64] Green, 6-7; "Treaty with the Choctaw, 1830," *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).

[65] "Treaty with the Chickasaw: 1830, Unratified," *The Avalon Project*, Yale Law School.

[66] Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (Norman: University of Oklahoma Press, 1972 edition), 194.

[67] James Pate, "Chickasaw," *Encyclopedia of Oklahoma History & Culture*, https://www.okhistory.org/publications/enc/entry?entry=CH033.

[68] "Treaty with the Choctaw, 1830," *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).

[69] "Treaty with the Choctaw, 1830"

[70] Len Green, "Choctaw Removal Was Really a "Trail of Tears" (originally published in *Bishinik*, Nov. 1978, reprinted in *Bishinik*, Mar. 1995 as "Trail of Tears from Mississippi walked by our Choctaw ancestors"), *Mike Boucher's Web Page*, accessed April 10, 2013, http://mike-boucher.com/wordpress/?page_id=221. Green identified this quote as coming from the *Arkansas Gazette*.

accepted a ten-dollar bonus from the government for choosing to walk the westward route became hopelessly lost in a swamp by their ill-prepared guide. By the time they were located by a rescue team, many had died.[71] Of the approximately six thousand Choctaw who emigrated in the first wave, by April 1832, only about four thousand survived:

> Thus by April 1, 1832, all of the Choctaws who had remained alive through the first removal were located in their new homeland, as those who traveled the northern route settled principally not far from Fort Smith, calling their main town "skullyville."[72]

In all, perhaps as many as nine thousand Choctaw removed to their "new Nation" west of the Mississippi by 1834, while about seven thousand remained in Mississippi either in hiding or as citizens of the state.[73]

The removal of the Cherokee Nation from Georgia, Alabama, and Tennessee is perhaps the most associated with the term "Trail of Tears."[74] The Treaty of New Echota required that the eastern Cherokee, approximately 17,000 men, women, and children—of whom nearly 15,000 had signed in protest of the treaty—would remove to their seven-million-acre reservation west of the Mississippi River within two years. In 1838, seeing that the Cherokee had made little movement toward their removal, the U.S. Army began a systematic round-up of the people, placing them in camps preparatory to the trip west. Like the Chickasaw, many people died of disease during the wait, and like the Choctaw, weather conditions and inadequate planning took many more along the river and road trails. In all perhaps four thousand Cherokee lost their lives during the removal process of 1838-1839.[75]

By 1840, Jackson's removal plan was nearly completed, with the Seminole in Florida being the only remaining large group of American Indians left in the Southeast. The Seminole were actually an amalgam of refugee Creek from the Creek Wars and a significant number of African Americans, escaped slaves largely from the plantations of Georgia, Alabama, and Mississippi. Under the 1832 Treaty of Payne's Landing, the Seminole agreed to cede their Florida territory. This was not an exchange treaty however, as they were to join the Creek on their western land. The resulting protests in Florida dissolved into the Second Seminole War. The war dragged on until finally, in 1842, "the United States unilaterally declared it to be over and gave the surviving Seminoles permission to stay, supposedly temporarily, in Florida."[76] In all, approximately three thousand Seminole were transported to Creek territory west of the Mississippi.[77]

First Fort Smith: Indian Removal and the Belle Point Whiskey Sellers, 1830-1845

By 1830, the War Department's view of the usefulness of Fort Smith was changing. The commissary storehouses still standing among the remnants of the fort on Belle Point had proved their worth through the late

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[71] Green, "Choctaw Removal Was Really a "Trail of Tears," says only 60 of the 300 survived; Wallace 1993, 78-81, Wallace noted 265 people were rescued from the swam

[72] Green, "Choctaw Removal Was Really a "Trail of Tears." Skullyville was located approximately 15 miles southwest of Fort Smith between the Poteau and Arkansas Rivers along the Fort Smith to Fort Towson Road. It grew around the Choctaw Agency established by Major Armstrong in 1832, had access to a nearby Arkansas River landing, and several springs.

[73] Wallace 1993, 81.

[74] See "Trail of Tears National Historic Trail," *National Park Service*, https://www.nps.gov/trte/index.htm; also Thomason and Associates, "Historic and Historical Archaeological Resources of the Cherokee Trail of Tears," National Register of Historic Places, Multiple Property Documentation Form, 2003.

[75] "Stories: What Happened on the Trail of Tears," "Trail of Tears National Historic Trail," *National Park Service*, https://www.nps.gov/trte/index.htm; also Wallace 1993, 92-94; also Parker, Section E, 16-17, in Thomason 2003. About 1,000 Cherokee remained in North Carolina, officially recognized by the federal government in 1866 and now known as the Eastern Band of Cherokee Indians ("Trail of Tears National Historic Trail," NPS).

[76] Wallace 1993, 100.

[77] Ibid., 95-101.

1820s with the removal of Western Cherokee and Choctaw from the Arkansas Territory east of Fort Smith. Situated as it was on the navigable Arkansas River on the territorial dividing line, the fort was an obvious choice as a provisioning point for emigrating tribes, particularly the Choctaw, following the passage of the 1830 Indian Removal Act. Additionally, the illicit whiskey trade along the Arkansas River had been steadily increasing since 1828, according to Cephas Washburn, a missionary among the Western Cherokee.[78] It was Colonel Arbuckle and the 7th Infantry's responsibility, noted Secretary of War John H. Eaton, to regulate that trade, but as Arbuckle pointed out, the garrison was no longer located on the Arkansas River:

> The evil cannot be remedied, as respects the Cherokees and other Tribes on the Arkansas River, unless Fort Smith is again occupied by a Military force, and the Officer there in Command has full power to restrain the Indians, and those living with them, as well as our Citizens, from introducing liquer [sic] into the Indian Country.[79]

Arbuckle noted that "almost every Steam-Boat or Boat of any description which passes up the Arkansas, about Fort Smith" was loaded with whiskey bound for Indian Territory. However, it was the looming eastern Choctaw removal, not the whiskey trade that actually initiated the Fort Smith revival.

The following spring, in April 1831, Fort Smith was again occupied by a garrison, a detachment of the 7th Infantry from Fort Gibson under command of Lieutenant Gabriel Rains. The men were there to repair the aging fort structures and to prepare for the first wave of Choctaw emigrants. Captain John B. Clark was detailed from the 3rd U.S. Infantry to oversee the post repairs and acquire provisions. Wrote Captain Clark of the fort when he arrived:

> The buildings of the old Fort [are] in a much worse condition than I had anticipated, the floors, doors, and windows, are destroyed, and logs torn out of the body's of most of the [barracks], the sills and bottom logs in all are decaying rapidly, and the [buildings] sinking to the ground, the roofs are falling in on many, and much decayed on all.[80]

Using parts of demolished buildings to repair those still standing, the Fort Smith renovation was completed and provisions stocked in time for the first Choctaw arrivals in February 1832. More than a thousand Choctaw men, women, and children landed at Belle Point aboard keelboats after disembarking from the steamer *Reindeer* at Camp Pope near Little Rock. Perhaps another thousand arrived over the road from Camp Pope.[81] Major Francis Armstrong, the newly appointed Superintendent of Indian Affairs for the Choctaw Nation West of the Mississippi, was appalled by the ruthless traders and whiskey sellers who met the emigrants at Belle Point. Though many of the Choctaw "drew their supplies and equipment at Fort Smith and moved on west along the Arkansas and Canadian to open the wilderness and establish settlements," notes historian Edwin Bearss, "several hundred remained near Belle Point, and became the object of sustained exploitation by the local [white] population."[82]

The situation at Fort Smith involving illegal sales of "ardent spirits" to the Choctaw, a population growing with each wave of emigrants, reached a boiling point in 1833, following a failed court case that Lieutenant Rains brought against a Belle Point tavern-keeper. By General Order Number 7, the War Department instructed Colonel Arbuckle to assign additional men to the Fort Smith garrison to enforce the law, recently strengthened

[78] Washburn to McKenney, February 2, 1830, in Bearss and Gibson, 109-111.
[79] Arbuckle to Headquarters, Western Department, May 4, 1830, as cited in Bearss and Gibson, 111.
[80] Clark to Gibson, April 13, 1831, as cited in Bearss and Gibson, 112.
[81] Bearss and Gibson, 114.
[82] Bearss and Gibson, 116.

by Congress.[83] Captain John Stuart led the charge to eradicate the whiskey trade but found success only on the river, noting to the Secretary of War that the "Wagons, Pack horse, &c. along the numerous by roads and Paths which cross the Line into Indian Country" were all but impossible to police. Additionally, the local courts were of no help as "the Magistrates are all Elected by the Tag, rag, and bobtail population of the country, and they are for the most part, Ignorant men and feel them selves [sic] bound to comply in all cases with the will of the Majority whether that be Law or not."[84]

Captain Stuart also complained bitterly about the whiskey sold to his soldiers just outside the stockade at Fort Smith. Among the sellers was Captain John Rogers, who was now in possession of over 600 acres adjoining the fort at Belle Point. Rogers and others were actively petitioning the Arkansas Territory legislature to expand the garrison at Fort Smith, ostensibly for protection from the American Indians who were "committing depredations upon the Property of the Whites."[85] Rogers' real motivation, Stuart suspected, was the potential sale of his property to the federal government for fort expansion. An enlarged garrison would benefit the Belle Point settlement's traders as well as speculators like Rogers. Captain Stuart urged removal of the garrison from Fort Smith to a location further within Choctaw territory, both to remove the whiskey temptation from his men, and to enhance their ability to intercept the whiskey smugglers. In May 1834, Adjutant General Roger Jones instructed Stuart to move his troops out of Fort Smith to a new post location at Swallow Rock, to be called Fort Coffee.[86] Once again Fort Smith was abandoned to decay.

The State of Arkansas was admitted to the Union in June 1836. In July, Secretary of War Cass appointed Colonel Stephen W. Kearny, Captain Thomas F. Smith, and Captain Nathan Boone—known as the Kearny Commission—to survey a military road along the Arkansas/Missouri border from the Red River to the Mississippi River. They were to identify appropriate locations along the road to place a line of forts to defend the frontier. Their report, issued in December, recommended the preservation of Forts Gibson and Coffee, noting that Fort Coffee "combines, more advantages for a Mily. [military] Post, than any other points we have seen or heard of."[87] State of Arkansas representatives in Washington now poured on the pressure to once again revive Fort Smith, advocated by Rogers and the people around Belle Point for their protection, but more importantly as a valuable source of income. Rogers already had a plan to survey a town adjoining Fort Smith and offered to sell some of his land to expand the Military Reservation.[88] Colonel Arbuckle supported the notion and in 1832 strongly recommended to the Adjutant General that Fort Smith be fortified and used to store arms and ammunition.[89] Rogers claimed in a letter to Arkansas Senator William S. Fulton, dated October 1837, that Arbuckle believed Fort Smith "must again be occupied by a considerable force."[90]

Rogers' campaign finally found success in 1838, when Congress authorized Secretary of War Poinsett to "purchase a site for a fort at or near the western boundary of Arkansas."[91] Poinsett sought the opinion of Major Trueman Cross, then acting Quartermaster General, on an appropriate site. While Cross agreed that from a military point of view, Fort Coffee, just ten miles inside the Choctaw line was well-positioned, but in considering the demands of the Arkansas border residents, he advised the "site of Old Fort Smith…as the most

[83] Ibid., 120. The 1832 Act provided for the appointment of a Commissioner of Indian Affairs, still within the War Department, and also specifically stated "That no ardent spirits shall be hereafter introduced, under any pretense, into the Indian country. (Prucha, "Authorization of a Commissioner of Indian Affairs," 62)
[84] Stuart to Cass, May 1, 1833, as cited in Bearss and Gibson, 121.
[85] Stuart to Cass, October 21, 1833, as cited in Bearss and Gibson, 130.
[86] Bearss and Gibson, 136.
[87] Commissioners to Secretary of War, December 11, 1836, as cited in Bearss and Gibson, 148.
[88] Bearss and Gibson, 148-149.
[89] Bearss and Gibson, 138.
[90] Rogers to Fulton, October 13, 1837, as cited in Bearss and Gibson, 149.
[91] Joint Resolution of April 4, 1838, as cited in Bearss and Gibson, 151.

eligible position."[92] Three days after Cross' April 9th report reached Secretary Poinsett, Rogers had sealed a deal with the government, agreeing to sell approximately three hundred acres "adjoining the public reservation at Fort Smith."[93] The new fort would be constructed on the new acreage located within the Arkansas border. As Acting Quartermaster General, Cross assigned Captain Charles W. Thomas the task of constructing the new Fort Smith, giving general instructions for the fort plan:

> …works of defense [to] consist of a stone wall about twelve feet high, and from two to three feet thick enclosing an area of six hundred feet by four hundred feet, with a block house bastion, two stories high at each angle. The Barracks & quarters will not for the present exceed the extent required for the accommodation of four companies, two of which will probably be Dragoons, requiring stabling for their horses.[94]

Captain Thomas was given construction plans prepared by Lieutenant Colonel Joseph G. Totten, by then the Chief Engineer of the Army Corps of Engineers, and Colonel Sylvanus Thayer, also with the Corps and former Superintendent of West Point. Totten was already well-known for his engineering prowess in the construction of Fort Adams among others.[95] The defensive fort plans for the new Fort Smith were laid out on a detailed plan.[96]

The plan included both potential outlines—one pentagonal (with "redoubt") with five "Block House" bastions and the other one rectangular ("oblong") with four bastions—as well as the two potential locations for the "Stables." There were two large enlisted men's "Barracks," a "Commanding Officer's Quarters" flanked by two junior officers' "Quarters," a "Hospital" and adjoining building, and two "Quartermaster Subsistence Stores." The parade ground was shown as three hundred seventy feet in length and one hundred feet wide. Before leaving the East for his frontier assignment, Thomas hired thirty-nine tradesmen and sixteen laborers in Bangor, Maine to a one-year contract building the new Fort Smith. On the way, he purchased a steam engine to power a sawmill on-site. Thomas' mechanics quarried the stone from the rock-layered river bank at Belle Point for the perimeter walls and bastions and fired 200,000 bricks on the premises using local clay for the barracks. His workmen were housed in the once-more repaired old fort buildings, as well as several abandoned Belle Point settlement buildings.[97] Rogers' newly-platted town of Fort Smith was now located on the edge of the expanded military reservation.

In the meantime, the old fort was once again garrisoned by a detachment of the 7th Infantry, Company F under Captain Benjamin L.E. Bonneville, assigned to receive and store property moved from the soon to be abandoned Fort Coffee. In October 1838, the 7th Infantry, including Bonneville's Company F, were assigned to Florida to fight in the Second Seminole War. They were replaced at old Fort Smith by the two companies of the

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[92] Cross to Poinsett, April 9, 1838, as cited in Bearss and Gibson, 151.

[93] Deed, Rogers to United States, as cited in Bearss and Gibson, 152.

[94] Cross to Thomas, May 24, 1838, in Bearss and Gibson, 154.

[95] "Joseph Totten and the Third System," *Fort Adams and the Fort Adams Trust*.

[96] The defences [sic] to consist of a stone wall 14 feet high, 3 feet thick at the foundation gradually drawn in to 2 ½ feet at the top, with a light gallery extending along it 7 feet below the top of the wall which will be finished. It is to admit of a fire of small arms under cover through look holes. A block house bastion at each angle of the enclosure, to be built of stone two stories high & armed with four light guns or [unintelligible] howitzers. The barracks & quarters to be of stone, two stories high with basements for kitchen & other purposes. The dimensions are to be the same as those contemplated in the plan for Fort Gibson. The stables will also be of stone, one story and a half high, affording hay lofts above. Should the nature of the ground permit, the plan which contemplates a redoubt to be projected in one of the fronts, as a cover for the stables, will be adopted, in which case the inner wall laid on the plan will of course be superceded [sic] and the enclosure will be reduced to 400 feet of width on that side. But should the ground not admit of the redoubt, the oblong as laid down on the plan, with shed stable along the wall, will be adhered to. "Diagram of Post," National Archives Record Group 77, copy located in Fort Smith National Historic Site archives, Fort Smith, AR. This drawing is unattributed but probably was Totten and Thayer.

[97] Bearss and Gibson, 155-156.

3rd Infantry under Captain William G. Belknap, who had garrisoned Fort Coffee—now closed. The officers, unhappy with their rugged quarters, refused to detail men to help with the new fort construction, despite orders from the Quartermaster General. Belknap took the added step of separating himself and his men from the fort site, constructing log quarters nearby dubbed Cantonment Belknap.[98] Even as the new fort was under construction, the old fort garrison went about their duties patrolling the border, and more importantly, operating the fort as the primary supply depot for the more-western forts, including Forts Gibson, Wayne, Towson, Washita, Camps Holmes and Mason, and Cantonment Belknap, and provisioned troops on route to Western posts.[99]

By the spring of 1839, site and materials preparation for the new Fort Smith were complete and construction began. By July 1, 1839, the end of the contract year for most of Thomas' Maine laborers, foundations of the perimeter wall and four of the five bastions were complete and the walls constructed up to four feet.[100] It would be six more years before the fort was finished due to inadequate funding from Congress and by then it was greatly modified in scope and intended use. Few of the U.S. Army officers saw the military value in the fort placement at Belle Point and its masonry construction was unprecedented on the frontier. When Colonel Zachary Taylor was assigned in 1841 to command the Second Military Department, including Fort Smith, he described the stone and brick fort construction as "highly objectionable…. A more useless expenditure of money & labor was never made by this or any other people…. The sooner it is arrested the better."[101] Despite this opinion, the fort's construction was not arrested. Reports in 1842 indicated the perimeter wall was by then completed to its twelve foot height and included the "look holes," though the gallery from which troops were to defend the fort was apparently never constructed. In the 1845 construction season work progressed on the brick buildings, including the Commanding Officer's Quarters (never completed), the two Officers' Quarters, and one of the Barracks. Adjutant General Jesup personally inspected Fort Smith in the summer of 1845, leaving recommendations that one of the Officers' Quarters buildings be converted to a hospital and one bastion be converted to a storehouse.[102] Jesup noted that Fort Smith was "an important point for a depot of supplies for a force operating on that frontier as well as for the posts in advance on Red river, and Fort Gibson."[103] In fact two bastions were converted, one for commissary stores and the other for quartermaster stores, and one bastion became the magazine, the other two were never completed. These changes, from defensive fort design to supply depot, reflected Fort Smith's situation at the head of Arkansas River steamboat navigation, now well-east of the settlement and military frontier.

Indian Country and Westward Migrations, 1845-1858

The Indian Intercourse Act of 1834 defined the boundaries of "Indian Country" as, "…all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas [east half]," and also included several recognized reservations in the East.[104] Over the decade of the 1830s, thousands of eastern American Indians were removed to the Indian Country west of the Mississippi River. They

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[98] Ibid., 159-164.
[99] Ibid., 167.
[100] Ibid., 165.
[101] Taylor to Hitchcock, November 2, 1841, as cited in Bearss and Gibson, 168-169.
[102] Alexander to Jesup, October 3, 1842, Bearss and Gibson, 187 – Note: Though Fort Smith commander Captain Edmund Alexander reported that the perimeter walls were constructed to the planned twelve-foot height, historic photographs from as early as the 1860s or 70s indicate that not all of the wall length was that high. A newspaper description from 1865 reported that the walls were "an average height of nine feet…" (cited in Bearss and Gibson, 300). Alexander to Jesup, Oct. 2, 1845, Bearss and Gibson, 188.
[103] Jesup to Stanton, July 9, 1845, as cited in Bearss and Gibson, 189.
[104] "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," *Statutes at Large, 23rd Congress, 1st Session*, 729, "A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774–1875," *American Memory*, accessed April 17, 2013, https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=004/llsl004.db&recNum=776.

were not alone. Much of the land was already occupied by Osage, Wichita, Apache, Comanche, and Kiowa, among others. Additionally, tribes primarily from the northeast states and the former Northwest Territory had removed to the region decades earlier. A large area of Osage territory in Missouri and Arkansas Territory was ceded under pressure from the U.S. government in 1825 to accommodate the southeastern American Indian "migrants."[105]

Whites also began to settle in larger numbers west of the Mississippi, prompting the formation of the Arkansas Territory in 1819, the State of Missouri in 1821, and the State of Arkansas in 1836. Despite the best intentions claimed by the government's American Indian policy in Indian Country as U.S. territory expanded westward through the 1840s, soon a steady stream of emigrants would again whittle away at American Indian land. The millions of acres reserved to the various tribal governments were by 1854 reduced to the area now encompassed by the State of Oklahoma, then called "Indian Territory."[106] As had been the case east of the Mississippi River, the tribes would again be victims of the unrelenting advance of Euro-American—and some African American—pioneers, driven by the prospect of land, lumber, and precious metals.

It was this human tide that propelled the westward march of U.S. territorial expansion. The United States was in possession of a seemingly inexhaustible supply of land and resources, releasing a flood of dreamers and doers across the continent seeking their "Manifest Destiny." The vision of "land for the taking" induced a surprisingly large number of pioneering families to cross the continent through the middle of the nineteenth century. The discovery of gold in California in 1848 accelerated the rush westward to a near frenzy.

The overland routes of the 1840s and 1850s moved the emigrants directly through Indian Country, ushering in new interpretations of treaties signed just a few years earlier. The Great Plains Indians, both indigenous tribes and those recently removed from the East, were guaranteed free use of their lands, freedom from white encroachments, and given assurance the government would regulate white traders. As had been the case in the East, the government's resolve to honor treaty agreements would begin to fail in the face of expansion. Beginning in the 1840s, the primary emigrant wagon trails westward were the Oregon (Platte River) Trail to the north and the Santa Fe Trail to the south, from which many alternate routes and cut-offs evolved.

The southern overland route to California following the Santa Fe Trail was developed initially as a trade route, but with the discovery of gold in California in 1848, it became an active emigrant route as well. Emanating out of Independence, Missouri, the trail traversed through Kansas, crossing the Arkansas River at Fort Dodge before dipping south to Santa Fe. A southern alternate route known as the "California Road" began out of Fort Smith and nearby Van Buren following the Canadian River through Indian Territory on its route to Santa Fe. Blazed in 1839 by Josiah Gregg, this road originated as a trade route like the northern Santa Fe Trail.[107] No treaty agreement with the Choctaw or Creek for this road through their territory appears in the record.

The U.S. government did acquire agreements with other tribes for other overland routes, while at the same time securing the safety of both the emigrants and their tribal hosts. Over the previous decades, military post garrisons, like those at Fort Smith, had been actively removing white settlers from Indian Country. Now troops stationed at the old "barrier" forts, along with those at the new forts lining the overland routes, were tasked with

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[105] "Treaty with the Osage," *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).

[106] Dianna Everette, "Indian Territory," *Encyclopedia of Oklahoma History & Culture*, https://www.okhistory.org/publications/enc/entry?entry=IN018. The Kansas-Nebraska Act of 1854 formed the Kansas and Nebraska Territories, leaving the "unorganized" Indian Territory (later Oklahoma), to which the Plains Indians of Kansas and Nebraska were removed. The rest of the Louisiana Purchase lands were largely already divvied up into other territories: Wisconsin Territory in 1836; Iowa Territory in 1838; Minnesota Territory in 1849. Dakota Territory was formed in 1861.

[107] Stan Hoig, *Beyond the Frontier: Exploring the Indian Country* (Norman: University of Oklahoma Press, 1998), 192.

clearing roads and providing protection along the emigrant trails. During the 1849 travel season, groups traveling the southern Santa Fe route were promised military escorts from the Fort Smith garrison.[108]

Most Euro-Americans believed it was the white travelers who were in need of protection from the "wild savages," an image propagated by newspapers and rumor. Western history scholars Michael L. Tate and John D. Unruh, Jr. argue that statistically, it was in fact the American Indians who suffered more.[109] Thus, from the American Indian perspective, this period of intensive overland migration was viewed quite differently from the "Manifest Destiny" of white America. Based upon the stories handed down by Lakota (Sioux) Elders, says Tate, "Rather than viewing it as a heroic enterprise undertaken by intrepid and resourceful pioneers triumphing over all forms of adversity, they saw it by the end of the nineteenth century as the opening salvo against tribal sovereignty and cultural traditions."[110]

By the 1850s, it was not just emigrant wagons that crossed Indian Country over increasingly numerous routes. As the Pacific Coast and interior populations expanded, a growing demand for mail service induced Congress to establish several overland mail routes. In 1857, Postmaster General Aaron V. Brown, a Southerner from Tennessee, was assigned the task of determining the route and awarding the mail contract. The contract to operate the overland mail route was awarded to John Butterfield, an experienced stagecoach operator from Missouri. His Butterfield Overland Mail Company was in fact a consortium of several express mail services aimed at "breaking the monopoly of the Pacific Mail Steamship Company."[111]

Postmaster General Brown's circuitous southern mail route, known as the "oxbow route," began at two points on the Mississippi River, St. Louis, Missouri and Memphis, Tennessee, where the eastern railroads could drop the mail for delivery west of the Mississippi. Though Brown's original plan sent the routes to converge at Little Rock, Arkansas, they instead came together at the town of Fort Smith.[112] Dianna Everett, writing for the Oklahoma Historical Society, noted that "the Butterfield route followed a path first recommended [by] Capt. Randolph B. Marcy after his expedition from El Paso to Fort Smith in 1849":

> …. the westbound stage crossed into the Choctaw Nation from Fort Smith…went southwest through present Le Flore, Latimer, Pittsburg, Atoka, and Bryan counties to the Red River and used flatboats at Colbert's Ferry to cross over to Preston, Texas. From Geary's Station (present Atoka County) the route followed the older, well-traveled Texas Road. It entered the Chickasaw Nation briefly before it reached the Red River. The Indian Territory section of the Butterfield trail constituted 192 miles, over which it took approximately thirty-eight hours to pass through the Choctaw Nation.[113]

This seemingly substantial intrusion of Euro-American progress into Indian Territory was embraced by Choctaw and Chickasaw leaders, who legislated requirements for maintenance of the roads and the taxes and toll privileges to finance them, as well as granting mail station privileges. The Butterfield Overland Mail

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[108] Bearss and Gibson, 199-204.
[109] Michael L. Tate, *Indians and Emigrants: Encounters on the Overland Trails* (Norman: University of Oklahoma Press, 2006), x.
[110] Tate, xii.
[111] Snell, 25.
[112] Grant Foreman, "The California Overland Mail Route through Oklahoma," *Chronicles of Oklahoma*, Vol. 9, No. 3, September 1931 https://gateway.okhistory.org/explore/collections/CRNOK/browse/?start=0.
[113] Dianna Everett, "Butterfield Overland Mail," *Oklahoma Historical Society's Encyclopedia of Oklahoma History & Culture*, https://www.okhistory.org/publications/enc/entry?entry=BU019. Of Captain Marcy, Everett notes: "Captain R. B. Marcy, U. S. A., was commandant of an escort that accompanied a wagon train of California immigrants west from Fort Smith across the Indian Territory in 1849."

Company began operations in September 1858, its circuitous southern route taking as much as twenty-four days to complete.

The completed expansion of U.S. territory across the interior to the Pacific Coast prompted Congress to establish the Department of the Interior in 1849. With the relatively peaceful period of American Indian and Euro-American relations through the 1840s, Congress additionally moved the office of the Commissioner of Indian Affairs out of the War Department and into the Interior Department. However, the isolated Indian Country envisioned by Jefferson and Jackson was no longer viable as more and more non-American Indian settlers occupied the land, forming new territories—future states—west of the Mississippi.

Second Fort Smith: The Role of Commissary Supply Fort as the Frontier Moves West, 1846-1861

Just as the new Fort Smith was nearing completion, war broke out between the U.S. and Mexico over the U.S. annexation of Texas. Within one month of Congress' April 25, 1846 declaration of war, the Fort Smith garrison consisting of Companies D and F of the 6th Infantry moved from Cantonment Belknap into the completed brick Barracks and Officers' Quarters at Fort Smith. The fort was already alive with activity, historian Edwin Bearss notes, "the focus of the Southwestern frontier," as commissary and quartermaster supplies funneled through Fort Smith to the troops amassing in the Southwest.[114] The post's designation as supply depot came on the recommendation of Adjutant General Jesup following his 1845 inspection, just as trouble on the Mexican border was beginning to boil.

Through the summer of 1846, Fort Smith underwent a number of changes to accommodate its role in the Mexican War. Additional storehouses rose from the cleared sites where foundations for the second barracks building and the Commandant's Quarters had been removed. A stone magazine for ordnance was constructed in place of the southwest bastion (Bastion #3). Even still, notes Bearss, "Captain Edmund Alexander, the post quartermaster, was hard-pressed to supply the commissary stores, ordnance, and equipment requested by units moving through Fort Smith bound for the Rio Grande."[115] In July, the 6th Infantry garrisoned at the fort was moved to the Mexican front, replaced in August by a company of the 1st Dragoons. Two buildings with ninety-three stalls were constructed to stable the horses. The Dragoons were moved to the front in October and a battalion of Arkansas volunteers garrisoned the fort through the remainder of the war, which ended with the Mexican defeat in February 1848. In October 1848, Quartermaster General Jesup authorized construction of a brick office building and approved a request to build a post Guard House to deal with the "many temptations to the soldiers" in the adjoining town of Fort Smith.[116]

With the resolution of the Mexican-American War in 1848, the U.S. expanded into the Southwest with the acquisition of the California and New Mexico territories, as well as Texas. In response the War Department completed a reorganization of its military departments. Fort Smith, which had been part of the Second Military Department, was now designated the headquarters of the new Seventh Military Department, which also included Forts Gibson, Towson, and Washita. Colonel Mathew Arbuckle, who served as superintendent of the first Fort Smith from 1822 to 1824, would return to the new Fort Smith in command of the Seventh Military Department. The garrison at Fort Smith continued helping with the quartermaster's supplies and policing the illicit whiskey trade in Indian Territory.

The new western territories now open to settlement had perhaps a greater impact on Fort Smith after the war. The lush acreage of California was attractive enough to East Coast dreamers longing for land and opportunity, but with the discovery of gold in 1848, what might have been a slow stream of emigrants trickling across the

[114] Bearss and Gibson, 191.
[115] Ibid., 191.
[116] Ibid., 195-196.

plains to California became a rushing torrent in 1849. Always at the leading edge of opportunity, Fort Smith town founder John Rogers initiated a petition to the Arkansas legislature to ask Congress to "open a military road from Fort Smith to California by way of Santa Fe."[117] Senator Solon Borland took the request a step further when he wrote to Secretary of War William L. Marcy requesting military escorts from Fort Smith for the westbound emigrant trains. Marcy was enthusiastic about the opportunity for exploration, convinced by Senator Borland's argument for its "great importance to our country, alike in a military point of view, and as a means of developing, and making available, the true character and value of our new western acquisitions."[118] Already a group had formed preparing to take the southern Santa Fe route from Fort Smith along the Canadian River. Colonel Arbuckle was instructed to "organize a suitable party to accompany the expedition as far as Santa Fe," which would be accompanied also by Topographical Engineer Lieutenant James H. Simpson to map the new route.[119]

The military escort was a popular idea in the minds of prospective emigrants who feared American Indian attacks along the way. "They have more to fear from themselves…than from bands of hostile Indians," wrote department quartermaster Captain Lansing in April 1849.[120] As many as four hundred wagons were reported to have embarked on their journey at the town of Fort Smith during that April of 1849, with additional groups moving out through the rest of the spring and summer. A similar scene was repeated the following year and throughout the 1850s, moving as many as five thousand emigrants from the landing at Belle Point along Captain Marcy's Dona Ana Road to California.[121]

The role of the Fort Smith garrison in the westward migration diminished after the initial road exploration and escort duty of 1849. Significantly, the 1848 U.S. presidential election resulted in victory for former Second Military Department commanding officer General Zachary Taylor. Taylor, who had tried to dismantle the second Fort Smith before it was completed back in 1841, immediately took action to finish that task. In May of 1850, President Taylor's War Department issued General Order 19, directing Fort Smith to be abandoned and the military stores and garrison moved. Predictably, Fort Smith town residents petitioned the Arkansas congressional delegation to make sure "that the post of Fort Smith be kept up," not only for emigrant escorts, but "as a Military Depot, for the storing of supplies and munitions of war, for the new posts, now being established on the route to California, and Santa Fe."[122] "The public buildings, for Military Purposes, at this place," wrote *Fort Smith Herald* editor John F. Wheeler, "are the largest, and best buildings on the Western Frontier."

> There are two large, elegantly finished brick buildings, two stories high, 40 by 100 feet, covered with slate, a gallery on each side, two stories, supported with pillars of brick. A large building, which burned down in 1849, now nearly rebuilt, for soldiers' quarters, 65 by 60 feet, for two companies of men. The carpenter's work is all ready to put together, and the brick made for the brickwork. Two large two story stone buildings for Commissary, & Quarter Master's Stores, a brick guard house, and a stone magazine, all surrounded with a stone wall three feet thick. There are also two large stables on the public grounds, capable of containing 200 horses, besides out houses &c.[123]

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[117] Ibid., 200.
[118] Borland to Marcy, January 10, 1949, as cited in Bearss and Gibson, 201.
[119] Adjutant General to Arbuckle, January 22, 1849, as cited in Bearss and Gibson, 201.
[120] Lansing to Jesup, April 6, 1849, cited in Bearss and Gibson, 205.
[121] Bearss and Gibson, 207-208.
[122] *Fort Smith Herald*, June 29 and July 6, 1850, cited in Bearss and Gibson, 209-210.
[123] *Fort Smith Herald*, July 6, 1850, cited in Bearss and Gibson, 210.

Colonel Arbuckle agreed that the fort was too important as a supply depot and that it should be garrisoned "to preserve the buildings, keep up the fences, receive stores and supplies, and expedite transportation."[124] Though their pleas to save Fort Smith were not successful, the issue was resolved by President Taylor's untimely death on July 9, 1850. Colonel Arbuckle and a small garrison reoccupied Fort Smith on March 14, 1851. Arbuckle died shortly after his return, on June 11, 1851.[125]

For the next ten years, Fort Smith operated as the "mother post for the Southwest," Bearss notes, funneling "troops, orders, building plans, supplies, equipment, and ordnance" to the chain of forts that lined the migration routes westward: Fort Wayne (1838), Fort Washita (1842), Fort Arbuckle (1850), "a string of Texas posts"(1851), and Fort Cobb (1859).[126] Fort Smith's role on the border of Indian Territory was equally significant through the 1850s:

> Late-emigrating parties of Choctaws, Seminoles, and other Eastern Indians drew rations and supplies from his [the quartermaster] stores as they passed by way of Belle Point to the Indian nations west of Fort Smith. Each year, agents for the Five Civilized Tribes received substantial sums of federal money to distribute to their governments and private citizens. These funds, in specie and at times amounting to as much as $125,000, passed through Fort Smith; the quartermaster provided armed escorts to government officials transporting the money to Tahlequah, Doaksville, North Fork Town, and other Indian Territory towns. For several years, the quartermaster also provided both offices and quarters for the superintendent of Indian affairs, his staff, and their families until increased military use of the facilities at Fort Smith made it necessary for them to move off the posts in 1857.[127]

The increased military activity resulted, in part, from the tensions arising in Utah Territory over the Mormon settlements, tensions that culminated in 2,500 U.S. troops deployed to Utah to quell the rebellion fomenting there. That incident would soon be all but forgotten elsewhere in the United States as the political and economic divide between Northern and Southern states dissolved in civil war.

The Great Divide: Arkansas, Indian Territory, and Fort Smith in the American Civil War, 1861-1865

The sectional disagreement between North and South, free-states versus slave-states, was rife with ramifications across the western territories as populations expanded and sought statehood. The carefully maintained balance of power in Congress between slave and free-states was threatened with each new state admitted to the Union. Likewise, the free soil of the western territories and free-states were a great attraction to run-away slaves, further exacerbating the already divisive enforcement of the 1850 Fugitive Slave Act. The disagreement dissolved into civil war in 1861. Fort Smith, located in Arkansas, soon to be a state within the Confederacy, would take on new roles, shifting with the national division.

Following the November 1860 election of President Abraham Lincoln, on December 20 delegates to a special convention in South Carolina voted to secede from the Union. Thus began the American Civil War, the war between North and South.

Three months before the State of Arkansas' May 1861 vote in favor of secession, self-appointed militia groups began seizing federal supplies and ordnance stored at locations throughout the state. Though the U.S War Department planned to abandon Fort Smith as early as February 1861 as a result of the seizures, once again the

[124] Arbuckle to Jesup, August 4, 1850, cited in Bearss and Gibson, 211.
[125] Bearss and Gibson, 213.
[126] Ibid., 222.
[127] Ibid., 221.

citizens of Fort Smith engineered a reprise for the post. However, in April, following the fall of Fort Sumter in South Carolina, Arkansas Governor Henry M. Rector appointed former U.S. Senator Solon Borland in command of a force of five thousand Arkansas volunteers. Borland, who had been instrumental in promoting Fort Smith's role in the 1840s-50s western migrations, now set his sights on capturing the fort. Reports of Borland's approach on Arkansas River steamboats prompted Fort Smith commander Captain Samuel D. Sturgis to order the evacuation of the Fort Smith stores and garrison to Fort Washita. Several days later, on April 23, Fort Smith was occupied by three hundred Arkansas troops.[128] On May 6 Arkansas seceded from the Union and joined the Confederacy. Fort Smith would now serve as a Confederate post on the Arkansas River.

Fort Smith became the headquarters of the Confederate Army's Western Division. The fort continued its role as supply depot and communications center, much as it had under the U.S. War Department. It also served as headquarters for the Confederacy's Indian Commissioner, Albert Pike, appointed by the Confederate government to negotiate alliances with the Five Civilized Tribes.[129] Offering men, natural resources, important communication routes, and a large buffer of land between Union Kansas and Confederate Arkansas and Texas, the Indian Territory was a significant addition to the Confederate alliance.

Initially the storerooms at Fort Smith were well-stocked with supplies seized from U.S. government facilities and from New Orleans. By the summer of 1861, approximately two thousand Arkansas volunteers were amassed in and around Fort Smith where they received supplies and training as the "frontier army" of the Confederacy. Several offenses were launched from Fort Smith that first year, the first an unsuccessful attempt to intercept Captain Sturgis' retreat. The second was a successful foray into Union Missouri, in which the Arkansas men, along with troops from Missouri, Texas, and Louisiana, defeated Union troops in the Battle of Wilson's Creek and occupied the town of Springfield, Missouri.[130] It was the high-water mark for the Confederacy in western Arkansas, as shortly after their return to Fort Smith, Arkansas state troops voted unanimously *not* to join the Confederate Army. Supplies were already becoming thin and payment in Confederate script was unpopular. By early 1862, Union troops were moving south through Springfield, Missouri and preparing to invade Indian Territory. A decisive loss for the western Confederate troops in the March 7-8 Battle of Pea Ridge "sealed the doom of the Confederate cause in the West":

> Survivors falling back to Fort Smith deserted in great numbers, and many joined the Union army. Gloom permeated the border people, and never again would Confederate recruiters meet with much success in northwestern Arkansas.[131]

Throughout the rest of 1862 and into 1863, Confederate troops in western Arkansas struggled with diminishing supplies and manpower. Taking advantage of the disarray of Confederate frontier troops, in April 1863 Union Colonel William A. Phillips, under the command of Major General James G. Blunt, invaded Indian Territory and seized Fort Gibson, renaming it Fort Blunt. Confederate General William Steele, in command of the Fort Smith garrison, attempted to end the invasion by surrounding the reinforcements and supply train, planning a surprise attack on several fronts. When that plan failed, Steele set out to take back Fort Gibson (now Fort Blunt) by a direct assault, leaving a brigade under the command of General William L. Cabell at Fort Smith. Reports of

[128] Ibid., 238-242.
[129] Ibid., 245.
[130] Ibid., 248-249; *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (OR), Series I, Vol. III (Washington, D.C.: Government Printing Office, 1887), "Reports of Brig. Gen. Ben. McCulloch, C. S. Army, with orders and proclamation," August 10, 1861, 104-107.
[131] Bearss and Gibson, 256.

a fast approaching Union column prompted Cabell to evacuate Fort Smith on August 31, 1863. On September 1, U.S. troops quietly re-occupied Fort Smith.[132]

Writing from his new headquarters at Fort Smith on September 3, 1863, General Blunt reported that all but one hundred and fifty men of the two Creek Confederate regiments had deserted "and are secreted near their homes in the Creek Nation."[133] They were among a growing number of men, both from the Five Tribes and white Arkansans, who were abandoning the Southern cause due to the increasingly bleak outlook and a persistent lack of supplies. General Blunt's new Union Fort Smith garrison, on the other hand, was twenty-three hundred strong—including a regiment of United States Colored Infantry (U.S.C.I.)—and was well-supplied.

Despite confusing command changes at Fort Smith through 1864, a significant outer series of earthworks were constructed around the military reservation and town of Fort Smith. The fortifications ran from the Arkansas River to the Poteau River and included three "redoubts" or small forts located on prominent hills.[134]

No concerted Confederate attack on Fort Smith materialized, though harassment by partisans continued to wreak havoc on supply trains as well as local attempts at agricultural production. In the spring of 1865, as Fort Smith area citizens prepared their fields for cultivation under the protection of armed soldiers from Fort Smith, word came of the surrender of Confederate General Robert E. Lee at Appomattox. The war was over.

Reconstruction, Railroads, and the "Robbers' Roost," 1865-1871

Officially the war was over in April of 1865, but for the former Confederate states, including Arkansas and the Indian Territory, the impassioned ideologies that sparked the rebellion would not quickly disappear. It was a time to re-establish loyalty to the United States, both within state governments and by individual citizens. This applied also to the Five Civilized Tribes, whose pre-war treaties with the U.S. government were now considered by the government to be invalid and needed to be re-negotiated. Fort Smith played a large role as the host of the treaty conference in September 1865. Likewise, though the area around Fort Smith in western Arkansas had turned largely pro-Union by 1863, it was still within a former rebellion state that faced the process of Reconstruction, including military governance until a loyal state government could be established. More immediately, the Fort Smith garrison was responsible for the "demobilization" of Confederate troops, collecting arms and issuing paroles. They would also continue to police the pockets of renegade rebels causing trouble, many of whom took refuge in Indian Territory. By 1871, much of the obvious work was done, Union troops had mustered out of service and the Fort Smith garrison removed, ushering in a new era at the old fort.

On May 26, 1865, Confederate General Edmund Kirby Smith signed the surrender of troops and property under his command west of the Mississippi River. Soon hundreds of Confederate soldiers passed through Fort Smith, surrendering their arms and receiving their certificates of parole. The highest-ranking hold-out in the region was Cherokee leader and Confederate General, Stand Watie, who surrendered on June 23, 1865, at Doaksville, in

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[132] Ibid., 264-269.

[133] *OR*, Series I, Vol. XXII, Part 1, "Report of Maj. Gen. James G. Blunt, U. S. Army," September 3, 1863, 602.

[134] Bearss and Gibson, 270-280. Completed by the summer of 1864, Brigadier General John M. Thayer, then in command of the Army of the Frontier, described the fortifications in a letter to Department of Arkansas commander, Major General S. R. Curtis:

"The two main forts are on the Texas road, and one on the Van Buren road, and a large lunette mounting three guns in front of the convent, and one lunette with one gun to the left of that, are now about finished, and are strong, excellent works, with the various appurtenances complete, quarters, magazine, water, &c. A line of rifle-pits extends from the Arkansas to the Poteau, with an extensive abatis in front. I can hold the place against the whole of Kirby Smith's army, if I have plenty of supplies." *OR*, Series I, Vol. XXXIV, Part 4, letter Brig. Gen. John M. Thayer to Maj. Gen. S. R. Curtis, U. S. Army, "Hdqrs. Dist. of the Frontier, Dept. of Ark., Fort Smith, Ark., June [11], 1864," 318.

Indian Territory. Lower-ranking Confederate troops drizzled in through July and August. They were soon followed by Union troops, brought into Fort Smith to be mustered out of service in the U.S. Army.

With Watie's surrender, preparations began at Fort Smith for a "grand council," a conference to re-establish the Five Nations' "proper relationship with the United States."[135] The commission appointed by the President of the United States, Andrew Johnson, was headed by Commissioner of Indian Affairs Dennis N. Cooley. Noting the tribes' Confederate alliances as the catalyst to annulling their former treaties, Cooley and the U.S. delegation came prepared with new treaty terms that reflected punishment for the rebellion and again reduced tribal territory and sovereignty. The terms included a "permanent peace" with the U.S. and with other tribes, abolition of slavery and "their incorporation into the tribes on an equal footing," apportionment of land for northern plains tribes and ex-slaves to occupy, exclusion of whites "except officers, agents, and employees of the government, or of any internal improvement authorized by the government," and perhaps most significantly:

> It is the policy of the government, unless other arrangement be made, that all the nations and tribes in the Indian territory be formed into one consolidated government after the plan proposed by the Senate of the United States, in a bill for organizing the Indian territory.[136]

To the disappointment of Cooley, the tribal delegations left the Fort Smith conference only signing the pledge of peace and amity with the government and other tribes. Final treaties would have to be individually negotiated.

The 1866 Treaty with the Choctaw and Chickasaw presaged the Oklahoma Territory, in which Article 10 stated:

> …And it is further agreed that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of "governor of the Territory of Oklahoma," and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belong to an executive officer charged with the execution of the laws, which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.[137]

This stipulation was not included in the Cherokee and Creek treaties of 1866.[138] Those treaties, however, like the Choctaw/Chickasaw treaty did provide for the continuation of tribal governance while requiring those governments to accept U.S. law within the Territory, "…such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory…"[139] Additionally, all of the treaties included language allowing rights-of-way for the construction of railroads through Indian Territory.

The introduction of the railroads, particularly the trans-continental railroads through the Great Plains, was a transportation revolution that made agriculture there a viable economic option and released a new flood of settlers into the region. The breach of the so-called "Permanent Indian Frontier," which began with the

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[135] Bearss and Gibson, 305.
[136] Prucha, "Report of the President of the Southern Treaty Commission, October 30, 1865," 96-98.
[137] "Treaty with the Choctaw and Chickasaw, 1866." *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).
[138] "Treaty with the Cherokee, 1866." *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904); "Treaty with the Creeks, 1866." *Indian Affairs: Laws and Treaties*, Vol. II (Kappler, 1904).
[139] Ibid f.n. 225 and 226.

establishment of military posts like Fort Smith and continued through the 1840s and 1850s with roads and seemingly endless emigrant trains, did spell the beginning of the end for the Jefferson-Jackson vision of a discrete "Indian Country." The loss of land and sovereignty through the 1840s and 1850s was compounded by renewed interest in western settlement following the Civil War. The post-war treaties marked a significant change in the relationship between the tribes and the federal government. As the frontier land buffer around Indian Territory shrank ever smaller, a new period of government oversight would begin, replacing the role of the military fort with judicial courts.

After 1860, Fort Smith and the old line of forts that marked the 1820 Indian Frontier were now well back of the leading edge of pioneering settlements and the military installations that typically accompanied them. From 1865 through 1870, Fort Smith was central to Reconstruction enforcement in the western-tier counties of Arkansas. But in 1869 the War Department reduced its infantry regiments by nearly half, from forty-five to twenty-five. The Fort Smith garrison was transferred to Louisiana, leaving only a small detail to safeguard the public property. Once again, Fort Smith was on the chopping block. The fort was in reportedly shabby condition at the conclusion of the war, the Parade Ground ruined and one of the Officers' Quarters buildings burned to the ground in 1865. When the second Officers' Quarters building burned in 1870, the result of a flue fire, the final decision was made to permanently abandon the fort. In 1871, it was transferred to the Department of the Interior and inventoried and appraised for public sale. Remarkably, in yet another reprise, the property was not sold, but rather retained by the federal government for civil rather than military use.[140] Fort Smith would become a facility of the U.S. District Court of Western Arkansas and the Indian Territory, initially occupied by just the U.S. Marshal Service. In 1875 it became the site of Judge Isaac C. Parker's infamous courtroom, jail, and gallows.

Conclusion

The United States government policy toward American Indians followed a predictable course in its attempts to control land, trade, and interactions as Euro-American settlers spread across the continent through the first half of the nineteenth century. Since, as Dr. Tom Holm notes, "the acquisition of land is, by definition, the colonizer's main preoccupation," the U.S.-American Indian treaty system was flawed from the outset. American Indian nations who sought to retain their traditional lands east of the Mississippi River ultimately were forced to remove to the "Indian Country" west of the river.[141] Thomas Jefferson predicted in 1803 that this solution would last perhaps fifty years before population pressures would again require the seizure of tribal land.[142] His prediction was nearly exact, as western settlement following the American Civil War and the effects of the transcontinental railroad engulfed the Indian Territory through the second half of the nineteenth century.

Much of this history funneled through Fort Smith, the Belle Point vanguard of the Indian Frontier. Fort Smith played a critical role in the lives of American Indians, beginning with its initial function as a deterrent to inter-tribal warfare. Throughout the period of Eastern American Indian removal and re-settlement, Fort Smith was a center for supply and refuge, for enforcement and, perhaps, a place to seek justice. Fort Smith was also at the center of mid-nineteenth century Euro- and African-American emigration, building new roads and new lines of communication through Indian Territory. The growth of non-American Indian westward migration through the 1840s and 1850s, which grew into new territories and eventually states, accelerated the decline of the Indian Frontier. The failure of the Confederacy, officially supported by the Five Civilized Tribes during the American Civil War, further compounded previous losses of tribal land and sovereignty. All of the 1866 "Reconstruction treaties," initiated at the treaty conference held at Fort Smith in 1865, provided for the eventual introduction of federal courts located *in* Indian Territory. It was a provision viewed by many U.S. politicians as the most

[140] Bearss and Gibson, 311-313.
[141] Holm, 1-2.
[142] Wallace 1999, 224.

effective tool to undermine the tribal governments and a route to replace those governments with a territorial and, eventually, a state government.

Once again, the lure of land and political power would dominate U.S. American Indian policy. In the meantime, the U.S. District Court of Western Arkansas and the Indian Territory was moved to Fort Smith in 1871. Still an "outside" court but with jurisdiction over the entire territory, it would focus much of its energy on the "wild west" lawlessness that grew out of the Civil War and the perception of Indian Territory as a no-man's land where there was "no God west of Fort Smith."[143]

NHL Criteria 1 & 2: Fort Smith U.S. District Court Period History and Context

U.S. District Court of Western Arkansas and the Indian Territory and the Judicial Career of Judge Isaac C. Parker

Introduction

Judge Isaac C. Parker passed away on November 17, 1896, less than two months after his jurisdiction in Indian Territory was terminated by an Act of Congress. In a eulogy given at Judge Parker's funeral, Judge F. F. Bryant elegantly summarized the significance of Parker's judicial career at Fort Smith:

> [He] was eminently a man for the time and place, and seemed providentially called to the duty he performed…He was so thoroughly identified with that jurisdiction that it would seem that providence, having allotted him that work in life, with its cessation, called his servant unto himself….He was able, pure and fearless and the history of the jurisdiction…is his history. Its annals are his biography.[144]

Judge Parker dedicated his entire twenty-one year judicial career to the U.S. District Court of Western Arkansas and the Indian Territory. It was a vast district of over 74,000 square miles, singular in its jurisdiction over both the Congressionally-authorized U.S. Territory of Arkansas (west half) and over the expansive—and unofficial—Indian Territory.

The land known as Indian Territory, occupied primarily by the Five Civilized Tribes since their removal from their Eastern tribal lands in the 1830s, was not a designated U.S. Territory. Unlike designated U.S. territories, Indian Territory had no U.S. territorial government and no internal federal court system with jurisdiction over U.S. citizens (non-American Indians). Each of the Nations that occupied Indian Territory did have their own tribal governments and court systems, but the tribal courts were powerless over non-American Indian criminals. This "anomaly," as it was known, the need for a federal judicial presence in Indian Territory, was the basis for the assignment of the "outside" federal court system of Arkansas Territory beginning in 1834. After Arkansas statehood in 1836, Indian Territory came under the jurisdiction of the U.S. District Court of Arkansas.

For several decades the District Court in Little Rock, Arkansas seemed to view the wild and remote Indian Territory as an after-thought, a condition not lost on shady entrepreneurs eager to sell illegal whiskey to American Indians. White settlers too, jealous of the vast, seemingly unoccupied tribal lands, illegally claimed land within Indian Territory with little fear of federal enforcement. But most dramatically, it was the outlaws

[143] Bearss and Gibson, 314.
[144] As cited in Mary M. Stolberg, "Politician, Populist, Reformer: A Reexamination of 'Hanging Judge' Isaac C. Parker," *The Arkansas Historical Quarterly* 47, no. 1 (Spring 1988): 27.

from justice, from neighboring states and territories, who used Indian Territory as a refuge and as a base for their criminal—often extremely violent—activities.

In 1871, the U.S. District of Western Arkansas and the Indian Territory, still an "outside" court, was established and headquartered at Fort Smith. Judge Isaac C. Parker took the helm in 1875, where he famously—or infamously—grappled with the extreme conditions of Indian Territory. Parker remained at this post until his death in 1896, the same year that Congress removed Indian Territory from the jurisdiction of the Western Arkansas District. A believer in strict application of the law and swift execution of his sentences, from his courtroom in the old Fort Smith Barracks building Judge Parker meted out justice in more than 12,000 cases before the court. The eighty-six men hanged by order of Judge Parker faced a mandatory death sentence under federal law for their murder or rape convictions. Still, contemporary newspapers howled at the horror of the gallows executions. Portrayed in popular literature and later in twentieth century films as "The Hanging Judge," this became Judge Parker's legacy. Today, scholarly research identifies Judge Parker's true legacy and the impact of his rulings on U.S. American Indian policy and the U.S. legal system in the West through the second half of the nineteenth century.

"An Anomaly": United States Jurisprudence and Policy in Indian Territory, pre-1871

Indian Territory, that area within the larger "Indian Country" designated for the resettlement of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole commonly called the Five Civilized Tribes, was never without some kind of federal jurisdiction. Historian Jeffrey Burton places the "formal origins" of the geographical Indian Territory with the organization of Arkansas Territory in 1819. The delineation of the Arkansas Territory's western boundary at the 100th degree longitude thus marked the eastern boundary of Indian Territory.[145] The unofficial Indian Territory was then linked to the territorial federal court in Arkansas Territory, a link that was codified in the Trade and Intercourse Act of 1834.[146] Burton described the judicial arrangement:

> The United States courts also held common-law jurisdiction over Government property in any State or Territory and over United States citizens in any unorganized tract of country within the exterior boundaries of the United States of America. The whole of Indian Territory fell within this description.
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> …it was the task of federal courts to punish those [U.S. citizens] who broke the laws enacted for the protection of the American Indian and for the regulation of the Indian country. The most notable of these laws, and those most frequently broken, were the Indian Trade and Intercourse acts.[147]

When Arkansas Territory became a State in 1836, a single judge was appointed to the U.S. District Court of Arkansas, including within its jurisdiction all of Arkansas and the adjoining Indian Territory, covering millions of acres. With increasing non-American Indian encroachment into Indian Territory, this jurisdictional arrangement was no small task. In 1851 the U.S. District Court of Arkansas was divided, forming the Eastern District seated at Little Rock and the Western District seated at Van Buren, though both were still overseen by

[145] Jeffrey Burton, *Indian Territory and the United States, 1866-1906: Courts, Government, and the Movement for Oklahoma Statehood* (Norman: University of Oklahoma Press, 1995), 3. The larger "Indian Country" was defined in the 1834 U.S. Trade and Intercourse Act.

[146] Prucha, "Trade and Intercourse Act of 1834," Sec. 24, 67. "[Territorial] courts are Article IV U.S. district courts, so-called because under Article IV of the Constitution, 'Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.'"

[147] Burton, 46-47.

just one judge. The Western District included nine western Arkansas counties and "all that part of the Indian country lying within the present judicial district of Arkansas."[148]

As Burton points out, this extended federal judicial presence in the Indian Territory was "an anomaly," because Indian Territory did not, over time, organize as an official U.S. territory with a territorial government and a path to statehood. Rather the Indian Territory consisted of several "sovereign" American Indian nations, most prominently the Five Civilized Tribes, each with their own government and tribal court system and none with jurisdiction over U.S. citizens.[149] By 1851, the "outside" U.S. District Court of Arkansas had been in operation in Indian Territory for fifteen years. There were four other districts at the time with circuit court powers, but none were used to the degree that occurred in the Indian Territory (Western District of Arkansas), Burton notes, where "common-law jurisdiction" and "Indian regulatory provisions, accounted for at least seven-eighths of the judicial business…and it was only at Fort Smith that trials in capital cases were likely to occur."[150]

The U.S. District Court of Western Arkansas and the Indian Territory, an ineffectual and often corrupt system before, during, and immediately after the American Civil War, began to play a larger role in shaping the future Oklahoma Territory. Previously ignored by the court, Indian Territory after the war soon became a lightning rod for lawlessness, a situation that politicians would later use to justify new U.S. territory formation. The vastness of the territory, its anomalous position within the U.S. legal system, and its still-wild frontier status made Indian Territory an attractive refuge for outlaws—many of them refuse of the late war. This trend was reflected in the court's record of activity, according to historian Jeffrey Burton:

> Before the Civil War the officers of the Van Buren court had little need to enter the Indian country, and during the War years the court had maintained a shadowy existence, notable chiefly for the destruction of its records. In the immediate postwar years the costs of running the district began to mount…These sums were almost treble those of the neighboring Eastern District of Arkansas; but the disparity here and the increased expenditure of the Van Buren court itself could be explained by the court's increased activity. In 1867-1868, 81 warrants were issued from Van Buren, and in 1868-1869, 112 warrants.[151]

The Creek and Seminole lands ceded to the United States by the 1866 treaties, intended for the resettlement of formerly enslaved African Americans and relocated American Indians, would add fuel to the fire. The "unassigned lands," as they became known, and even parts of the assigned Indian Territory, attracted land hungry whites who either illegally squatted on the land or acquired a settlement permit, increasingly available through numerous channels. The ever-growing presence of non-American Indians in Indian Territory, whether to escape the law elsewhere or to claim land, significantly increased the burden on the District Court.

The Board of Indian Commissioners, appointed in 1869 by U.S. President Ulysses S. Grant, produced its report on the state of American Indian policy with the Department of the Interior. The report was scathing at times, noting "The history of the government connections with the Indians is a shameful record of broken treaties and unfulfilled promises," and that of "the border white man's connection…a sickening record of murder, outrage, robbery, and wrongs committed…" The Board went on to recommend the formation of an official Indian Territory, the abolishment of the treaty system, and the establishment of a U.S. court ("tribunal") system inside the territory for the "prompt punishment of crime, whether committed by white man, Indian, or negro."[152] The

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[148] As cited in Burton, 11.

[149] Burton, 12. Burton points out that there were several American Indian reservations in the East to which this federal court jurisdiction applied.

[150] Burton, 50.

[151] Burton, 53.

[152] In Prucha, "Report of the Board of Indian Commissioners, November 23, 1869," 130-131.

report was followed in 1870 by renewed calls in Congress to form the Oklahoma Territory, while leaders of the Five Tribes met in the Creek capital of Okmulgee to draft their own territorial constitution. But like the Congressional efforts to organize Oklahoma Territory, the tribal efforts failed. The jurisdictional anomaly of Indian Territory continued for years to come.

In 1871, the Western Arkansas court's jurisdiction was greatly enlarged to include seventeen counties in Arkansas, in addition to its (by then) eleven Arkansas counties and the Indian Territory. However, for the first time, the district would have its own appointed U.S. District Court Judge. At the same time, the District seat moved from Van Buren to Fort Smith.[153] Though seemingly detrimental, the extensive redistricting plan would in fact have a profound impact on the lawless "wild west" with the 1875 appointment of Missouri Representative Isaac C. Parker to the bench at Fort Smith as District Court Judge.

"No God West of Fort Smith": Jurisprudence in Indian Territory and Judge Isaac C. Parker, 1871-1896

> For a number of years these various races—red, black, white, and mixed—were coming into constant contact with no law actually functioning in case of disputes, except the law of the tooth and the talon. Mixed and mingled in this mass was a very large proportion of what Judge Parker was ultimately to term "criminal intruders."
>
> Harry P. Daily, President, Arkansas Bar Association, 1932

When the seat of the U.S. District Court of Western Arkansas and the Indian Territory moved to the town of Fort Smith in 1871 the turmoil within the political sphere of Arkansas had already begun to brew. Conditions within the Indian Territory were even worse. Already torn by the events of the Civil War, the outcome and the 1866 treaties placed the tribes in an even more untenable position. The guarantee of railroad rights-of-way became reality in 1871 as the Missouri, Kansas & Texas Railway (MK&T) began to lay tracks through Indian Territory. In a territory already riddled with renegades, the construction camps added to the list of trouble-makers, "brawling construction crews, a wide assortment of tinhorn gamblers, thieves, prostitutes, whisky sellers, and other hoodlums."[154] Most of these were U.S. citizens, or American Indians whose crimes were committed against U.S. citizens, all immune from prosecution by tribal courts. Historian Edwin Bearss noted, "The reputation of Indian Territory spread far and wide as 'Robbers' Roost' and 'Land of the Six-gun' and was epitomized in the tag 'There is no Sunday west of St. Louis—no God west of Fort Smith.'"[155]

Into this maelstrom of lawlessness, President Grant thrust William Story, a young (age 28) lawyer from Wisconsin. Grant appointed Story to serve as the first judge for the already vast and now newly expanded District of Western Arkansas and the Indian Territory. Arkansas was deeply divided politically following the Civil War and the Republican Party's very public conflict over Reconstruction policy was at the heart of the divide as it boiled over in 1872.[156] The appointment of Northern "carpetbagger" William Story to the Western Arkansas district bench fueled the growing conflict as Story's three-year tenure in Fort Smith ended with his resignation amid accusations of fraud and corruption.

Judge Story was not the only officer of the court accused in the growing scandal. Successive U.S. Marshals Britton and Roots, along with their deputy marshals, fraudulently billed the government for expenditures in the course of their court duties. An increase in violence in Indian Territory connected with the construction of the

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[153] Burton, 52.
[154] Bearss and Gibson, 314.
[155] Ibid.
[156] Roger H. Tuller, *"Let No Guilty Man Escape": A Judicial Biography of "Hanging Judge" Isaac C. Parker* (Norman: University of Oklahoma, 2001), 43. The conflict, known as the "Brooks-Baxter War," revolved around fraudulent gubernatorial elections, impeachment, and patronage, which became violent in 1872 and lasted into 1874. (see Tuller, 43-46)

MK&T was said to be their cover story.[157] For the November Court term of 1871, Judge Story reported thirty-seven indictments for murder. However, the records reveal that most of the thirty-seven were never arrested and five were given bail by Story and did not appear for their court date. Only one was convicted, but he jumped his bond prior to his execution. Judge Story's conviction rate of one out of thirty-seven, and none punished, did not add up to the "soaring" expenditures. Secret Service investigator, L. B. Whitney, who spent much of 1872 in Fort Smith gathering evidence against Judge Story and his marshals, wrote in his January 1873 report: "…the common sentiment there was that the United States district court was a stench in the nostrils of the community."[158]

When he arrived in the town of Fort Smith in 1871, Judge Story set up his courtroom in the second floor of a building owned by town founder John Rogers. While a detachment of the 6th Infantry still occupied Fort Smith to guard the all-but abandoned government buildings, U.S. Marshal Roots set up his jail in a log building still standing on the site of the first Fort Smith on Belle Point. It was here that Wyatt Earp, later hailed as an officer of the law in Kansas and Arizona, was incarcerated on the charge of horse theft in Indian Territory. Earp never faced trial in Judge Story's court as he escaped through the roof of the old log jail.[159] Shortly thereafter, Marshal Roots took over responsibility for Fort Smith when the guard detachment pulled out. With both of the Officer's Quarters buildings reduced to just foundations and rubble after fires in 1865 and 1870, Roots was permitted to occupy the Barracks building for the marshal's offices and move the jail to the stone-walled basement.

Judge Story's court convened on November 18, 1872, in the first-floor northeast room of the Barracks after a fire destroyed the Rogers building in town. A gallows was built within the fort walls in August 1873 in preparation for the execution of John Childers, a Cherokee "half-blood" convicted of murdering a white man in the Territory. The following year, in 1873, three Cherokee murderers were hanged on the gallows, Judge Story's last executions. Judge William Story resigned the bench in the spring of 1874 rather than face impeachment.[160] The vacancy was temporarily filled by Eastern Arkansas district Judge Henry J. Caldwell. In 1875, President Grant appointed Missouri lawyer and one-term U.S. Representative Isaac C. Parker. With Parker's arrival in Fort Smith in the fall of 1875, the court atmosphere quickly changed.

John Henry Wigmore, Professor of Law at Northwestern University Law School and editor of the 1899 publication *Greenleaf on Evidence*, declared Judge Isaac C. Parker "One of the Greatest of American Trial Judges." It was just three years after Judge Parker's death in 1896 at the age of fifty-eight. Harry P. Daily, President of the Arkansas Bar Association (ABA), quoted Wigmore at the start of his presentation on Judge Parker to the 1932 annual ABA gathering. Daily highlighted the uniqueness of the court's "vast territorial jurisdiction," saying, "Here was a territory greater in extent than the entire area of the State of Arkansas, over which a single court, presided over by a single judge, was to exercise all of the jurisdiction over crimes which is now [1932] exercised by the seventy-five, or more, district courts of the State of Oklahoma."[161] Judge Isaac C. Parker's achievements during his tenure in the District of Western Arkansas and the Indian Territory were thus remarkable, though controversial.

From his appointment to the bench in 1875 until the 1890 formation of Oklahoma Territory, which greatly reduced the size of Indian Territory, Judge Parker's District Court ruled on all civil and criminal cases involving

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[157] Burton, 54.

[158] As cited in Burton, 59.

[159] "Wyatt Earp," *American Experience*, Complete Program Transcript of PBS film production, January 25, 2010, accessed July 26, 2013, https://www.pbs.org/wgbh/americanexperience/films/wyatt/#transcript; see also Bearss and Gibson, 315.

[160] Bearss and Gibson, 315-320.

[161] Harry Daily, "Judge Isaac C. Parker, Address read by President Harry Daily at the Thirty-fifth Annual meeting [1932] of the Bar Association of Arkansas," *Chronicles of Oklahoma*, Vol. 11, No. 1, March 1933, citing "25 *Statutes at Large*, 655" and "26 *Statutes at Large*, 826." https://gateway.okhistory.org/explore/collections/CRNOK/browse/?start=0

Euro-Americans, African Americans, or American Indians—and crimes committed by adopted American Indians.[162] Even after 1890, Parker's court retained jurisdiction over all criminal cases involving a U.S. citizen in what remained of Indian Territory (by then just the Cherokee, Creek, and part of Choctaw Nations) until 1896 when all outside courts were removed. Parker's influence over Indian Territory through his court was undeniable. Upon publication of Daily's presentation in the Oklahoma Historical Society journal *Chronicles of Oklahoma* in 1933, the editors prefaced the article with a summation of the legacy of Judge Parker's twenty-one year (1875-1896) service as judge of the U.S. District Court of Western Arkansas and the Indian Territory:

> No man of his time exerted a greater civilizing influence on the domain that is now Oklahoma than Isaac C. Parker, who was appointed United States Judge at Fort Smith at a time when anomalous conditions prevailed in the Indian Territory. While his administration touched the affairs of Arkansas his wide jurisdiction over the whole Indian Territory engaged the greater part of his duties as judge and the functioning of his court was a potent influence in the regulation of affairs in what otherwise would have been in many ways a lawless section of country.[163]

But the very public and sensational coverage of the outlaws who passed through Parker's court, particularly the eighty-six executions that earned him the name "The Hanging Judge," had a profound influence on Indian Territory politically as well. The staggering number of cases heard in Judge Parker's court—more than 12,500 cases over twenty-one years—provided fuel for those in Congress and elsewhere who claimed the violence could not be controlled without a federal court system structured *inside* Indian Territory.[164] Perhaps unwittingly, Judge Parker's court fulfilled the political mission of those expansionists who, lacking the votes in Congress to organize the Oklahoma Territory in the 1870s and 1880s, sought to subdue the tribal governments through the federal court system and open the territory to non-American Indian settlement.

Despite this outcome, Judge Isaac C. Parker saw himself as an advocate for the American Indian. Parker viewed his legacy in that light, saying just a few days before his death:

> Perhaps things would have been different had the government given them [American Indians] the protection it promised in 1828. "Not only will we give you farms and homes in fee simple," it said, "but we will protect you in your rights. We will give you every protection against lawlessness; we will see that every refugee, every bandit, every murderer that comes into your country is put out." Not one of these pledges has ever been kept, except for the work that has been done by the United States courts having jurisdiction over this country.[165]

Still, Judge Parker was a man of the nineteenth century, the era of "Manifest Destiny" in the United States. His mission to "protect" American Indians was motivated by a paternal view and a "civilizing" influence. In his rulings on railroad rights of way through Indian Territory and extradition rights for the tribes, Parker ruled against the tribes' interests. But when it came to criminal law, Judge Parker believed the U.S. government and its representatives—specifically himself and the U.S. Marshals that operated within his district—were morally bound to uphold the law. Judge Parker's court was best known for its swift and certain prosecution and punishment of lawbreakers under his jurisdiction, whether U.S. citizens or American Indians.

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[162] Burton, 152. From 1871-1874 the court was headed by Judge William Story, and 1874-1875 by interim Judge Henry C. Caldwell.

[163] Daily, "Judge Isaac C. Parker, Address…," comment inserted by *Chronicles of Oklahoma* editors at the time of publication (1933), https://gateway.okhistory.org/explore/collections/CRNOK/browse/?start=0.

[164] John Demer, "Federal Court Furnishing Report," Fort Smith National Historic Site, 2005, 13; Demer reported that Judge Parker heard from 600 to 1,000 cases per year in his courtroom.

[165] As cited in Shirley, 202.

Judge Isaac C. Parker arrived in Fort Smith in May 1875 and prepared his private office in the old fort's stone commissary building.[166] Within days of his arrival in Fort Smith, Judge Parker opened his first court session in the former enlisted men's Barracks, first occupied as a court in 1872 by Judge Story. Described by U.S. Marshal Daniel Upham in 1876 as under-furnished and with a "badly worn" carpet, Parker's courtroom accommodated several hundred trials in his first year on the bench.[167] Most of those cases were petty criminals, "Bootleggers, whiskey peddlers, and thieves…mixed occasionally with bigamists, arsonists, and embezzlers," comprising more than seventy-five percent of Judge Parker's caseload.[168] The remaining nearly twenty-five percent of the trials, and a much larger percentage of court time, was spent prosecuting violent crimes, typically involving weapons and drunkenness. In 1887, a grand jury that Parker empaneled concluded that "whiskey and weapons" were at the root of nearly all of the crime in Indian Territory.[169]

The worst offenses, particularly rape and murder, were, according to one newspaper editor, all too common in Indian Territory: "Trials of the worst criminals would make sensational reading in the East, but pass as occurrences so common as to be wholly uninteresting to western readers."[170] Whether that was true or not, the number of violent crimes prosecuted was noteworthy. In his first term alone, Judge Parker heard eighteen murder cases. Of the fifteen men convicted, Parker condemned eight to death on the gallows. In November 1875, six of those men were hung together in a very public display, described by a New York newspaper headline as "A Warning to Outlaws in the Indian Territory."[171] That warning was reinforced in April 1876 when a second public hanging of five condemned men took place, with reportedly more than seven thousand people gathered to watch.[172] Despite the sensational coverage of these multiple executions, which earned him the title "The Hanging Judge," Judge Parker's death sentences were in fact mandated by federal law in cases of rape or murder.

The executions took place on the gallows constructed in 1873 against the old fort wall and magazine on the courthouse grounds. It was a large and permanent structure, capable of accommodating up to six condemned men.[173] A reporter in 1881 observed, "The ropes are so arranged as to give about six feet drop. A deep trench had been dug directly under the trap, so as to prevent the feet of the condemned from striking the ground."[174] Judge Parker ended the fully public executions in 1878 by enclosing the gallows yard with a tall fence, and by

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[166] Parker's wife Mary and their young son Charles came to Fort Smith later in 1875. A second son, James, was born several years later. Their home on North 13th Street in the town of Fort Smith was destroyed, along with Parker's personal papers, by a tornado in 1898. In 1907, the Fort Smith Carnegie Library was constructed on the site (Brodhead, 182).

[167] Demer, 28, citing Upham to Devens, July 24, 1876 (full text in Appendix E, 80); Tuller notes there were 91 criminal cases heard in the November 1875 term alone (58).

[168] Tuller, 54 and 9.

[169] Stolberg, 18.

[170] Ibid. 19.

[171] Tuller, 58.

[172] Bearss and Gibson, 323; though Bearss and Gibson note this execution included six condemned, the Fort Smith newspaper *The Independent*, Sept. 14, 1876, noted five men were hanged on April 21, 1876, and an additional four September 14, 1876.

[173] In September 1875 a newspaper reporter from St. Louis described the gallows in great detail: The structure is built of rough timbers. The crossbeam is a stout piece of hewed oak, supported on two upright posts, very strongly braced. The platform is about seven feet from the ground. The distance between the supporting posts is about twelve feet, giving nearly two feet space for the fall of each victim. The trap extends across the breadth of the platform, and consists of two pieces strongly hinged to the flooring of the platform…These are held in place when brought up by a stout beam of oak…To this beam about the middle is secured an iron trigger bar…secured by a knee in a strong iron lever about three feet long, well secured on the facing of the platform floor. By a movement of this lever back, the trigger bar which holds the trap in position is released and the doors drop down. On this door the condemned men will stand. Six ropes at this moment are tied over the beam, and six bags of sand of 200 pounds in weight each have been thrice dropped to test the further working of this awful enginery of death. As cited in Bearss and Gibson, 321-322.

[174] Eric Leonard, "1873 Gallows," citing the *Fort Smith Elevator*, Sept. 7, 1881, *Fort Smith National Historic Site*.

1881 restricted attendance to invitation only. In 1886, the old gallows structure, "upon which forty three men have been hung," was razed and replaced.[175]

This structure served its purpose for ten years, the scene of an additional forty-three executions under Judge Parker's order, until 1896 when the District Court of Western Arkansas no longer had jurisdiction in Indian Territory. In 1897, following the transfer of the fort property to the town of Fort Smith, the gallows was burned by order of the mayor, noted by one writer as "The Passing of the Old Government Suspender."[176]

Judge Isaac C. Parker's court, and the "old government suspender," accommodated a remarkable number of lawbreakers. Many of the worst offenders were desperadoes made famous in their time by the nineteenth century press and later by twentieth century films. It was a notable list of "Wild West" outlaws, many from other states or territories seeking refuge in the "no-man's land" of Indian Territory:

> Some of these outlaws, like the Daltons, Bill Powers, Dick Broadwell, and Henry Starr, were hard livers who turned to a life of outlawry with little effort. A few, like Jim Reed and Belle Starr, were products of the war.
>
> Others were like Ned Christie, Smoker Mankiller, John Billee, Blue Duck, and Cherokee Bill, whose wanton whim was shedding blood.
>
> Martin Joseph and Jason Labreu were rapists. And many were simply renegades and looters, like Bob Rogers, Jim French, the Cook gang, and the Rufus Buck outlaws.[177]

Judge Parker wrote in 1896 that most of these were "refugee criminals," noting, "It has been the custom for all these years that when a man committed a crime in an older state, and he could get away from the officers, he would run into the Indian country."[178]

The acreage covered by the Western District of Arkansas and the Indian Territory, over 74,000 square miles, made policing the large area an all-but impossible task. Parker's force in the field was the deputy U.S. Marshal Service. As many as two hundred deputy marshals served under Judge Parker, a diverse corps of independent men—including white, black, and American Indian—many of whom hailed from the Territory.[179] The U.S. Marshal, appointed by the President of the United States, oversaw the court and jail administration and the deputy corps. Because the territory covered was so vast, special instructions out of the Fort Smith Marshal's office noted that arrests could be made "with or without warrant":

> U.S. Deputy Marshals for the Western District of Arkansas may make arrest for: murder, manslaughter, assault with intent to kill or to maim, attempt to murder, arson, robbery, rape,

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[175] "The new gallows is put up in a more neat and substantial manner than the old one was. The platform is 16 x 20 feet, supported by solid oak columns 12 x 12 inches square; the cross beam is of solid oak 9 x 11 inches 16 feet in the clear and rests on two upright columns of oak sixteen feet high, and about 12 x 12 inches square. The beam is braced on top by heavy timbers, the ends of which rest on the upright columns. The trap door is sixteen feet long and three feet wide. The drop is fully six feet." Eric Leonard, "1873 Gallows," citing the *Fort Smith Weekly Elevator*, April 16, 1886, and "1886 Gallows," citing the *Fort Smith Weekly Elevator*, April 23, 1886, *Fort Smith National Historic Site*.

[176] Eric Leonard, "The Gallows: 1897-1957," *Fort Smith National Historic Site*.

[177] Glenn Shirley, *Law West of Fort Smith* (Lincoln: University of Nebraska Press, 1957), Preface, vii-ix.

[178] As cited in Stolberg, 19.

[179] Tuller, 51; "U.S. Marshals and Deputy Marshals for the Western District of Arkansas," *Fort Smith National Historic Site*, accessed Oct. 18, 2013, https://www.nps.gov/fosm/learn/historyculture/us-marshals-deputy-marshals-western-district-of-arkansas.htm.

> bribery, burglary, larceny, incest, adultery. These arrests may be made with or without warrant first issued and in the hand of the Deputy or the Chief Marshal.[180]

The danger was implied and very real, Judge Parker noted in an interview in 1896 at the end of his career, "in my court jurisdiction alone 65 Deputy Marshals were murdered in the discharge of their duty."[181] Over the years, deputy marshals brought thousands of accused criminals to Fort Smith for trial.

The Western District jail, located in the stone basement of the old fort Barracks—now District Courthouse—was aptly named "Hell on the Border" by its inmates. Measuring fifty-five feet by twenty-nine feet, with seven foot ceilings and stone floors, the two basement rooms that comprised the federal jail housed more than seventy inmates on an average day:

> Sanitation facilities consisted of buckets, emptied twice daily; confiscated whiskey barrels, sawn in half, served as bathtubs. When summer heat grew oppressive, guards soaked the flagstone floors, producing a steamy mist in the dank dungeon. Prisoners of all descriptions—men and women, old and young, sick and well, murderers and petty thieves—shared the dark, crowded space…[182]

A single Monday court session in July 1884, reported the Fort Smith *Weekly Elevator*, had the "Jail Rapidly Filling Up," with six men convicted of "introducing" or selling whiskey in Indian Territory and sentenced to thirty to sixty days in the Courthouse basement jail. Another man, Spencer Landrum was sentenced to one year in the Detroit prison.[183]

Judge Parker hailed the prison in Detroit as exemplary for its emphasis on reform during incarceration. Of the men he sent to Detroit, Parker noted in a letter to Attorney General Augustus Garland in 1885, "…they have come on their way home by way of Fort Smith to see me…and thank me for having sent them there, that it made men out of them."[184] Parker strongly suggested to Garland that reform should be central to the prison experience:

> The object of punishment is to revive, that in some case, almost extinct spark, to lift the man up, to stamp out his bad nature and wicked disposition, that his better and God given traits may assert themselves, and so govern and direct him that he becomes a good citizen, of use to himself and his fellow men.[185]

To that end, Judge Parker urged Garland to press Congress for funds to construct a proper U.S. prison at Fort Smith. Attorney General Garland, in his 1885 Annual Report to Congress, made the case for improvements saying, "What is commonly dignified by the title of the U.S. Jail…is in reality little better than a pen…the most miserable prison, probably in the whole country."[186]

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[180] As cited in "U.S. Marshals and Deputy Marshals for the Western District of Arkansas," *Fort Smith National Historic Site*, accessed Oct. 18, 2013, www.nps.gov/fosm/historyculture/us-marshals-deputy-marshals-western-district-of-arkansas.htm.

[181] As cited in Edwin Bearss, "Law Enforcement at Fort Smith, 1871-1896," http://npshistory.com/publications/fosm/law_enforcement.pdf.

[182] Tuller, 127; average population statistics in Burton, 69. In 1888, the *Fort Smith Elevator* reported 170 prisoners in the old jail, "the largest number ever," and females were housed in the former garrison guardhouse (Bearss and Gibson, 24-325).

[183] *Weekly Elevator*, July 18, 1884, Fort Smith National Historic Site archives.

[184] Parker to Garland, May 27, 1885, as cited in Stolberg, 23.

[185] Stolberg, 22-23.

[186] As cited in Stolberg, 15.

Congress finally appropriated the funds in 1886 and by 1888 the new U.S. Jail was completed adjoining the Courthouse. The new prison design approved by U.S. Treasury Supervising Architect Mifflin E. Bell, was a state-of-the-art three story brick building. The plans called for seventy-two cells (twenty-four to each floor), each equipped with a "Night Bucket Box" vented by two "foul air shafts." The iron and steel strap doors would operate simultaneously along a lever system and would be secured by either "Yale" padlocks or keyed deadbolts. In December 1887, Marshal John Carroll was authorized to order seventy-two "Double Iron Bedsteads" made by The Pauly Jail Building & Mfg. Co. of St. Louis, Missouri, along with mattresses, blankets, heating stoves, and other furnishings.[187] In February 1888, just one month prior to opening the new jail to occupation, Marshal Carroll suggested altering the sanitation plan:

> I find on an examination of the new jail, that the arrangement which puts a bucket in each of the seventy-two cells for the deposit of excrement, will be unsatisfactory, and in my opinion, if put to actual use, will develop a nuisance simply unendurable…
>
> I enclose herewith a proposition from Mr. J.A. Hoffman, who represents the R. Smith Water Works Plumbing Co., to put in four closets, one in each of the three corridors for the use of the prisoners, and one on the ground floor for the use of the guards.[188]

The expenditure was approved and the prisoners moved from the old jail to the new in March 1888.

Certainly not all of the men and women who passed through Judge Parker's court were white U.S. citizens, many were African Americans or American Indians, or a mix of any or all. The ethnic diversity in Indian Territory as reflected in the court proceedings under Judge Parker was a strong indicator of the increasing encroachment of non-American Indians in the Territory. In 1885, Parker testified before Congress that perhaps one-eighth of his caseload came from Arkansas, and the rest from Indian Territory.[189] Given that the federal court had jurisdiction only over crimes committed by or against U.S. citizens, it was clear that the vast Indian Territory was attracting significant numbers of non-American Indian settlers, both legal and illegal, along with the outlaws.[190]

The "Boomer Movement," led by Kansan David L. Payne, was an illegal movement to claim land within the "Ceded Lands" from the 1866 post-Civil War treaties. In 1880, more than one million acres remained "unassigned" to would-be relocated tribes or African American freedmen, as stipulated in the 1866 post-Civil War treaties. Payne and his followers claimed the "unassigned lands" were therefore technically public lands owned by the U.S. government, open to settlement under the Homestead Act. U.S. Attorney General Charles Devens responded to this threat in a letter to Fort Smith U.S. Marshal Daniel Upham, "It is the desire and the determination of the government to protect the Indians in their rights within the Territory and to resist and frustrate the beginning of all unlawful attempts to seize their lands."[191] In April, and again in July 1880, Payne and his "boomers" entered the territory and staked their claims. They were twice arrested by the army and removed. In his 1881 ruling on the government's case against Payne, Judge Parker wrote that under Article Three of the 1866 Seminole treaty the "land in controversy" was reserved for the settlement "of other Indians

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[187] Edwin Bearss, "Furnishing New Federal Jail and The 1888 Report on Marshal Carroll's Activities," Fort Smith Historical Society, Inc., *The Journal*, Vol. 3, No. 1, April 1979, 29-31.29-31.

[188] As cited in Bearss, "Furnishing New Federal Jail…" 31.

[189] Stolberg, 17.

[190] This was borne out by the census data: in 1870, over 59,000 American Indians comprised 87% of the population of Indian Territory, along with just over 6,000 African Americans and 2,400 whites; by 1890, in the much smaller Indian Territory remaining outside of the new Oklahoma Territory, 51,336 American Indians formed just 28% of the total population, with over 109,000 whites and over 18,000 blacks (Brodhead, 32).

[191] As cited in Stolberg, 20, f.n. 42.

and freedmen thereon," was therefore still technically within Indian Territory, and thus protected from non-American Indian settlement.[192]

Parker's bold ruling on the rights to American Indian land in the Territory came in the midst of significant pressure in Washington, D.C. to open the so-called Unassigned Lands to settlement and set the area on a path to official U.S. territorial status. While Judge Parker won praise from American Indians for his rulings on the "boomer" land disputes, they found him less supportive in cases involving railroad companies. As with his 1888 ruling in *Cherokee Nation v. Southern Kansas Railway*, Parker always asserted the rights of the U.S. government over the claims of the Nations.[193] Railroad companies viewed Indian Territory, along with the rest of the western half of the continental United States, as a valuable resource for branch lines, lucrative government land grants, and an expanded customer base. In 1883 Congress granted the St. Louis & San Francisco Railroad right of way through the Unassigned Lands. That same year, Congress reduced the Parker court's jurisdiction in Indian Territory by nearly half, cutting the Unassigned Lands from Parker's domain.[194] The pressure was mounting:

> During 1886 and 1887…the boomer cause gained new momentum when the Santa Fe Railway constructed a line that ran from Arkansas City, Kansas, directly through the heart of the Unassigned Lands to Gainesville, Texas. [William L.] Couch and followers such as Samuel Crocker, editor of the boomers' *Oklahoma War Chief* newspaper, began working on the political aspect of opening the region to settlement. The effort was joined by Rep. Sidney Clarke of Kansas and Sen. James B. Weaver of Iowa. In February 1889 these men pushed through an amendment to the Indian Appropriations Bill. Offered by Rep. William Springer of Illinois, the Springer Amendment allowed Pres. Benjamin Harrison to proclaim the Unassigned Lands subject to opening.[195]

By 1889 there were at least seven railroad lines passing through Indian Territory.[196] The San Francisco Railroad passed directly through the old Fort Smith reservation necessitating the removal of several wall sections, leaving the former Quartermaster Building isolated and abandoned.[197]

The year 1889 also marked a further reduction in the jurisdiction of Parker's court in Indian Territory. By the Organic Act of 1890, the Territory of Oklahoma included all of the former Indian Territory lands except those occupied by the Five Tribes and the Quapaw Agency. Out of this remnant of the once vast Indian Territory, the Parker court's jurisdiction was whittled down to just a quarter of the original expansive area.[198] At the same time, the District Court of Western Arkansas moved to a new courtroom venue. In 1890, a "purpose-built" courthouse, designed with court activities in mind, was constructed in the town of Fort Smith. Judge Parker's court no longer met in the old fort Barracks. The building, however, continued in use as an extension of the U.S. Jail, housing the jailer's office and kitchen. The roof was raised to accommodate a full second floor, used as the

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[192] George Washington McCrary, *Cases Argued and Determined in the Circuit Courts of the United States for the Eighth Judicial Circuit*, Vol. II (Chicago: Callaghan and Co., 1882), 292-306; Tuller, 111-113; see also Stolberg, 20-21.

[193] Tuller, 117-118.

[194] Burton, 121.

[195] Stan Hoig, "Boomer Movement," *Encyclopedia of Oklahoma History & Culture*, Oklahoma Historical Society, https://www.okhistory.org/publications/enc/entry?entry=BO011. See also Burton, 142-143.

[196] Tuller, 124.

[197] Roger E. Coleman and Clyde D. Dollar, "Historic Landscape at the Fort Smith National Historic Site (1817-1896), Fort Smith, Arkansas," National Park Service, Fort Smith National Historic Site, Fort Smith, Arkansas, 1984, 7.

[198] Burton, 152-153.

prison hospital.[199] Court-ordered executions also continued on the gallows, still located on the old fort grounds, though at a greatly reduced rate due to 1889 changes to the appeals apparatus in the Parker district.

For the first fourteen years on the District Court bench, Judge Parker held a unique status, in that his judgments could not be appealed to a higher court. Parker was judge in both the circuit and district courts for the region and thus would have ruled on appeals of his own judgments, effectively nullifying that option for defendants.[200] Daily noted in 1930, "When Judge Parker said that a man should hang, usually he was hanged," but that changed in 1889 when a Congressional Act provided for appeals to the U.S. Supreme Court.[201] The change, which was directed primarily at Judge Parker's court where most of the federal capital punishment cases were heard, had a significant impact on Parker's signature swift justice:

> From 1891 until 1897, forty-four death penalty cases were appealed from Parker's court – some of them two and three times. The Supreme Court upheld twelve of the convictions, but found reversible error in thirty of the cases and remanded them to the lower court for retrial. …In 1893 alone, appeals of criminal cases from the Western District of Arkansas accounted for four percent of the caseload of an already overburdened Supreme Court.[202]

In 1895 and 1896 Parker used the newspapers to vent his disagreement with several of the Supreme Court's reversals of his judgments, believing that the higher court could not possibly understand the intricacies of his western district. His very public argument with the Supreme Court decisions belied his actual support for the right of appeal. "I have no objection to appeal," said Parker in an 1896 interview, "I even favor abolition of the death penalty, provided there is a certainty of punishment, whatever the punishment may be…" It was the perception of uncertainty that he railed against, the shift in U.S. justice away from the swift punishment he saw as integral to taming the wild west, "…for in the uncertainty of punishment following crime lies the weakness of our halting justice."[203]

Judge Parker's public debate came at the same time that Congress removed Indian Territory entirely from the jurisdiction of the District Court of Western Arkansas. By an amendment attached to the Indian Appropriations bill in 1895, Congress created three new district courts located inside Indian Territory.[204] On September 1, 1896, as he lay in his sickbed while being interviewed by Ada Patterson with the *St. Louis Republic*, Judge Isaac C. Parker's twenty-one-year authority in Indian Territory came to an end. Thirty-seven days later, he passed away. He was buried in the nearby Fort Smith National Cemetery.

Though American Indians celebrated their liberation from the outside U.S. courts at Fort Smith and Paris, Texas in 1896, it was not really a day of deliverance as the new federal courts within Indian Territory took over. It was the first of a series of federal actions that would almost completely undermine tribal authority. Two years later, in 1898, Congress passed the Curtis Act, which "abolished tribal courts and declared Indian law unenforceable in federal courts."[205] The final blow to American Indian authority in the former "Indian country" came in 1907

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[199] Also, about this time, the jailor's office and residence were built and a third building west of gallows (Cultural Landscape Inventory (CLI), 1999). In 1894 the Guardhouse burned (Coleman and Dollar, 1984; CLI 1999).

[200] Burton, 197.

[201] Harry Daily, "Judge Isaac C. Parker, Address read by President Harry Daily at the Thirty-fifth Annual meeting [1932] of the Bar Association of Arkansas," *Chronicles of Oklahoma*, Vol. 11, No. 1, March 1933, citing "25 *Statutes at Large*, 655" and "26 *Statutes at Large*, 826," https://gateway.okhistory.org/explore/collections/CRNOK/browse/?start=0, Daily cited the Act of Feb. 6, 1889, and also an Act of Mar. 3, 1891. See also Tuller, 133-134.

[202] Michael J. Brodhead, *Isaac C. Parker: Federal Justice on the Frontier* (Norman: University of Oklahoma Press, 2003), 150.

[203] Tuller, 156; as cited in Shirley, 146.

[204] Burton, 216.

[205] Brodhead, 181.

when the State of Oklahoma, including the remnant Indian Territory occupied by the Five Tribes, was admitted to the Union.

Conclusion—Judge Isaac C. Parker: "The Hanging Judge" or the Right Man at the Right Time?

Judge Isaac C. Parker's legacy did not, in fact, hinge on the gallows trap doors. The eighty-six men executed during Judge Parker's twenty-one year judicial career constituted a very small percentage of the court's docket of more than 12,000 criminal prosecutions. "The statistics say little of his qualities, except his stamina," observed Burton, "On the whole, Parker was a much better servant than a bad system deserved."[206] Parker biographer Roger Tuller concluded, "Surely no federal judge exercised as much power as Isaac Parker,"

> …But Parker established a lasting reputation for himself and his court based on integrity and dedication to duty, and he fought lawlessness in his jurisdiction fiercely with all the resources available to him. The contradictions remained—an American Indian advocate who hastened the end of tribal sovereignty, an apostle of law who could not accept legal correction, a judge who handed down 161 capital sentences but claimed to oppose the death penalty—but ultimately Isaac Parker was a dedicated public servant, far more complex than suggested by the Hanging Judge image we remember.[207]

Parker found himself at the crux of a long history of U.S. expansionist policy that emboldened land-hungry citizens and undermined American Indian rights at every turn. He felt a duty to protect law abiding American Indians in the unruly no-man's land that Indian Territory had become, by swift and certain prosecution of violent outlaws, whiskey sellers, and illegal settlers. Despite his rulings that weakened tribal authority, "By and large," Brodhead notes, "the people of the territory respected and trusted him."[208] On the occasion of Parker's death, this statement was issued out of Indian Territory:

> The Indian people…have lost one of their staunchest friends and one of the ablest and most consistent defenders of their rights under the treaties with the United States. The good people of the Territory knew him to be an upright judge, a lawyer of towering ability, a citizen of the very highest standards, a gentleman of the most refined character, a friend of unswerving fidelity and an example to society.[209]

At his death, it was not the hangings that mourners recalled, but rather his dedication to the insurmountable job he was given. Recalling the words of Parker's colleague Judge F. F. Bryant: "[He] was eminently a man for the time and place… He was able, pure and fearless and the history of the jurisdiction…is his history. Its annals are his biography."[210]

Epilogue: Tribal Sovereignty Today and Fort Smith's Final Reprieve

Despite political efforts first to acculturate, then isolate, and finally to subjugate the American Indian nations, they did not disappear. Efforts to gloss over the historical effects of U.S. American Indian policy likewise could not eradicate American Indian history and culture. Dr. Anthony F.C. Wallace, Professor Emeritus of Anthropology at the University of Pennsylvania and scholar of American Indian culture, observed in his 1993 review of Andrew Jackson's American Indian policy:

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[206] Burton, 230.
[207] Tuller, 162-163.
[208] Brodhead, 182.
[209] As cited in Brodhead, 182.
[210] As cited in Mary M. Stolberg, 27.

> It is remarkable how little attention has been paid to the removal of the 1830s, and the events consequent upon it, by general historians of the United States. Despite the labors of a number of specialists in Indian history, the authors of textbooks and scholarly treatises that profess a national view have virtually ignored the Indian wars and removals of the post-colonial era. The Indians were big news in the seventeenth and eighteenth centuries…But the Native Americans appear only briefly as tiny blips on the screen of nineteenth-century history, unfriendly but fortunately feeble opponents of the manifest destiny that Jackson and his colleagues worked so ardently to fulfill, scarcely slowing the inevitable march of the redeemer nation to the Pacific.[211]

Through the late twentieth century the New Western History historians did begin to turn that perception around. Progress has been made in the national acknowledgement of the "Trail of Tears," a trail that really began with the first landing of European settlers on American shores. And the continued presence today of many of the American Indian nations themselves, Dr. Sarah Parker notes, "bears witness to their ability to survive under the very worst of circumstances." Speaking specifically of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole, Parker observes:

> Each of these nations established new capitals, tribal governments, schools, farms and businesses in Oklahoma. Today, Tahlequah, is the bustling capital of the Western Cherokee, where it is possible to get a Cherokee-English dictionary, to attend pow wows, stomp dances, and Baptist services. The Chickasaws established a capital at Tishomingo, the Choctaws in Tuskahoma, the Creeks in Okmulgee, and the Seminoles in Wewoka. All of these places have national museums, heritage centers, and on-going celebrations that draw native peoples and visitors from around the world—as many as seven million tourists annually.[212]

"Peoplehood was ultimately the reason underlying Native cultural resiliency," concludes Dr. Tom Holm in his book, *The Great Confusion in Indian Affairs*. The government's "vanishing policy," efforts to extinguish American Indian nationhood and culture over the past three centuries, failed because the people themselves never surrendered their cultural cohesion.

From its earliest crude log beginnings through its last years as the U.S. District Court facility, Fort Smith is inexorably tied to American Indian history and U.S. territorial expansion. Throughout the ebb and flow of that history, Fort Smith stood at the center of activity and then declined toward abandonment, only to be revived as new needs appeared. When the last remnant of Indian Territory was removed from the jurisdiction of the U.S. District Court of Western Arkansas in 1896, it appeared that once again old Fort Smith was destined to vanish. In 1897, the military reservation on which the former Second Fort Smith stood, excepting the 1888 Jail Wing and adjoining former Barracks/Courthouse building, was transferred to the City of Fort Smith. With the complete removal of the fort wall by 1900, the old garrison, once a bastion of expanding U.S. power, began to disappear beneath city streets and industrial warehouses. In 1920, the U.S. government donated the Barracks/Courthouse and Jail Wing to the City of Fort Smith. In 1925, the remaining property was transferred to the city as well. Isolated by the railroad cut, the former First Fort Smith site on Belle Point transformed into a shanty town known locally as Coke Hill. For all intents and purposes, old Fort Smith was nothing more than a memory, preserved by the Old Fort Museum Association, which occupied the Commissary building beginning in 1910.[213]

In 1957, old Fort Smith began its final reprieve through local fundraising and preservation efforts. The Courthouse was preserved and partly restored to commemorate the judicial career of Judge Isaac C. Parker. At

[211] Wallace 1993, 11.
[212] Parker, Section E, 17-18, in Thomason 2003.
[213] Coleman and Dollar, 1984, 7.

the same time the Fort Smith business community established a fund to purchase, archeologically investigate, and preserve the Belle Point, First Fort Smith property. Finally, in 1961 the Barracks/Courthouse and Jail Wing and Commissary building, along with eleven acres of land, including the first Fort Smith site, were donated to the National Park Service as Congress established the Fort Smith National Historic Site. Today (2013), the park encompasses 44 acres, with many of its historic features restored or reconstructed to aid in telling the extensive seventy-nine-year history of Fort Smith.

Nationally Significant Comparative Sites

Fort Smith is nationally significant as the site of the log frontier First Fort Smith built in 1817, one of a line of U.S. military forts marking the Indian Frontier, a line beyond which American Indians could supposedly live in peace without interference from white settlers. The earliest line of forts, Fort Snelling (Minnesota, 1819), Fort Atkinson (Nebraska, 1819), Fort Smith (1817), and Fort Jesup (Louisiana, 1822), grew to include Fort Gibson and Fort Towson (both in Oklahoma, 1824), Fort Leavenworth (Kansas in 1827), and Forts Scott (Kansas) and Washita (Oklahoma) in 1842. The later forts (Fort Scott and Fort Washita) were situated farther west as the Indian Barrier failed to hold back white settlement and Indian Removal from the East accelerated. The stone and brick Second Fort Smith, built 1838-1846 immediately adjoining the site of the First Fort Smith, came as a result of that extension westward. Second Fort Smith is nationally significant as a supply depot during the forced migration of the Five Civilized Tribes from the Southeast to Indian Territory west of the Mississippi River, known as the "Trail of Tears." It gains additional significance as a "mother" fort which supplied the growing line of westward forts that followed the emigration routes of settlers as the U.S. territorial boundary expanded to the Pacific Ocean.

Fort Smith is singular as the physical site of the U.S. District Court of Western Arkansas and the Indian Territory, a district covering 74,000 square miles including Indian Territory from 1871 through 1896, and as the site of the judicial career of Judge Isaac C. Parker, one of the most influential and infamous U.S. District Court judges of nineteenth century America. No other sites exist that represent this nationally significant association with both the U.S. District Court of Western Arkansas and the Indian Territory and the judicial career of Judge Isaac C. Parker.

Many of these associated nationally significant forts now stand as state and national parks, partially reconstructed or restored as necessary to convey their history. Viewed within the context of U.S. westward expansion and American Indian policy, as developed within the text of this Fort Smith documentation, these forts convey the remarkable expansive power of nineteenth century America, a power that proved culturally destructive for the American Indians that stood in the way.

With the exception of Ft Snelling, which has been subject to intensive archaeological excavation demonstrating a high degree of integrity, most of the fortification sites comparable to Fort Smith have had only limited investigations. Further, those investigations have been largely mission-oriented undertakings designed to acquire basic information about the configuration and structural evolution of the sites being examined. Few attempts have been made to ask nationally significant questions of the archeological record at those comparative sites, and accordingly it is difficult to make an informed judgment of their potential to yield data that would meet the high standards of NHL Criterion 6.

1) Fort Snelling, Minnesota, 1819-1825 (NHL, 1960)

This substantial stone and wood fort construction was started in 1819 and completed in 1825. Originally the Barracks and Officer's Quarters were constructed of hewn logs, later replaced in the 1840s with stone buildings. By the mid-twentieth century, only the original Georgian-style stone commanding officer's quarters (altered in

the 1840s), the 1846 Officer's Quarters, the Round Tower and Stone Battery, both part of the stone fortifications, were still standing.

Despite its slow deterioration after the turn of the twentieth century, Fort Snelling remained in service until 1946. In 1957-58, the site of Fort Snelling was archeologically investigated by the Minnesota Historical Society, revealing the remains of the stone fortifications. Archeology at Fort Snelling continued in the 1960s and beyond, after most of the property was transferred to the State of Minnesota. Over the next two decades, archeologists worked nearly year-round excavating the footprints of every building contained within the walls of the post, including a hospital, sutler's store, schoolhouse, and powder magazine, as well as numerous structures and features that once stood outside the fort's perimeter. Excavations were also carried out in conjunction with restoration of the four original buildings that still stood at Fort Snelling. It is estimated at over 53,000 sq ft. of the fort had been excavated by the early 1980s with over a half-million artifacts recovered.

Fort Snelling was listed as a National Historic Landmark in 1960 and it was established as a Minnesota State Park in 1961.

2) Fort Atkinson, Nebraska, 1819-1827 (National Historic Landmark, 1961)

The log Fort Atkinson was constructed atop Council Bluff overlooking the Missouri River in 1820, following the destruction of a temporary riverside Cantonment the year before. Prince Paul, Duke of Wuerttemberg, described the fort after a visit in 1822:

> ...I now saw the Council Bluff, one of the most picturesque points along the often all too monotonous banks of the great river. The good-looking white washed buildings of the fort could be seen at a considerable distance from almost any direction....
>
> The fort itself was a square structure. Its sides were each 200 American yards long. There were eight loghouses, two on each side. There were three gates leading into this fort. Each house consisted of ten rooms, and was 25 feet wide and 250 feet long. The roof of the houses sloped toward the interior court. The doors and windows opened upon this court. On the outside, each room has an embrasure or loophole.[214]

Fort Atkinson was placed in the heart of the fur trapping and trading country west of the Mississippi River. The garrison protected this vital economic activity against British interference as well as against American Indian attack. They oversaw control and treaties with a number of indigenous tribes including the "Ponca, Arikara, Mandan, Minataree, Oto, Missouri, Pawnee, Omaha, Crow and several clans of the Sioux."[215] In 1827, Fort Atkinson was abandoned by the military in favor of forts in more active settlement areas to the south and west. By 1850, little of the fort structure remained intact.

Archeological investigations began at the Fort Atkinson site in the 1950s under the direction of the Nebraska State Historical Society. In 1961, Fort Atkinson was listed as a National Historic Landmark and in 1963, it was acquired by the state and established as a State Historical Park. The reconstructed log fortification and buildings were completed in the 1980s and 1990s.

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[214] As cited in "History of Fort Atkinson," NEBRASKAland Magazine, 1987, "History," *Fort Atkinson*, accessed Dec. 6, 2013, https://www.fortatkinsononline.org/.

[215] "History of Fort Atkinson," 1987.

3) Fort Jesup, Louisiana, 1822 (National Historic Landmark, 1961)

Fort Jesup was constructed in 1822 to protect the international border between the United States' Louisiana territory and Mexico. It was the southern-most of the line of military posts erected to protect the U.S. western boundary and to keep the peace among settlers and American Indians west of the Mississippi River. The nearby Mexican territory, soon to become an independent Texas, was an early target of European and African American emigrants:

> Soldiers at Fort Jesup performed many duties which opened the frontier to American settlers: building roads, surveying the frontier, clearing the Red River and negotiating treaties. The garrison at Fort Jesup was also called on to control slave insurrections in Alexandria and to catch criminals trying to cross the border. The soldiers of Fort Jesup saw thousands of settlers move into the province of Texas and then watched Texas become independent of Mexican authority. In 1845, half of the U.S. Army traveled through the Fort Jesup area en route to war with Mexico.[216]

Fort Jesup was vacated by the U.S. War Department with the conclusion of the Mexican War in 1846, which extended the U.S. boundary to include territories of Texas and California. Over the following decades the property was sold and the fifty stone and log fort buildings all but disappeared:

> After the sale of the lots and buildings of Fort Jesup at the auctions of 1850, 1875, 1880, and 1885, the great stone and log garrison structures were torn down, removed or gradually deteriorated. By 1929, only one building remained, a kitchen. The roof and floor were nearly all gone, and the crumbling foundation threatened the collapse of the entire structure. Local interest in the history of Fort Jesup provided funds for the restoration of this building. In replacing the roof, hand riven cypress boards were used and the original handwrought hinges and nails reused. The old rock chimney was rebuilt and decaying members were replaced with hewn logs and sills were replaced where needed. A new floor of rough oak boards was laid and the stone foundation was also replaced. The extent of the park around this structure was 3 acres.[217]

In 1957, the State of Louisiana designated the Fort Jesup State Monument, including just over twenty acres of the former fort site and the restored kitchen. Since that time the park has reconstructed one of the Officer's Quarters for use as a visitor center.

4) Fort Gibson, Oklahoma, 1824 (National Historic Landmark, 1960)

Cantonment Gibson was originally established in 1824 by Col. Arbuckle of Fort Smith to aid in the mission to quell the warfare between the Osage and Western Cherokee tribes. In 1832, it was renamed Fort Gibson as its role expanded with the arrival of Southeastern tribes during the period of Indian Removal known as the "Trail of Tears." It was abandoned by the U.S. military in 1857, only to be reoccupied during the American Civil War by Union troops. After the war, the garrison at Fort Gibson helped to police the often wild Indian Territory as white settlers and railroads began to overtake the American Indian population. In 1890, with the establishment of the Territory of Oklahoma, Fort Gibson was abandoned by the army.

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[216] "Fort Jesup State Historic Site," *Louisiana State Parks*, https://www.lastateparks.com/historic-sites/fort-jesup-state-historic-site.

[217] Patricia Heintzelman, "Fort Jesup," National Register documentation, 1975.

The log fort was reconstructed in the 1930s as a Works Progress Administration project around the still extant 1840s stone barracks, magazine, hospital, and bakehouse. In 1960, the site was designated a National Historic Landmark and is now operated by the Oklahoma Historical Society.[218]

5) Fort Towson, Oklahoma, 1824 (National Register of Historic Places, 1970)

Fort Towson was established in Indian Territory in 1824, shortly after Fort Gibson, in anticipation of the removal of the Eastern Choctaw and Chickasaw to the territory west of the Mississippi River. Like the other garrisons along the U.S. frontier boundary, Fort Towson also served as protection against foreign intrusion along the Mexican (later Texas) border and later to protect emigrants along the westward settlement trails:

> Connected to the East by road, Fort Towson served as a gateway for settlers bound for Texas during the 1830s. Those passing through the area included Sam Houston, Davy Crockett, and Stephen F. Austin. When the Choctaw and Chickasaw were displaced from their lands in the Southeastern United States, the fort served as a point of dispersal upon their arrival in the west. The fort was also an important staging area for U.S. forces during the Mexican War of 1846.[219]

In 1856, Fort Towson was abandoned by the U.S. War Department as the frontier moved farther west. Confederate troops occupied the fort during the American Civil War, but following the war the fort was left to decay. By 1960, when the Oklahoma Historical Society took ownership of the site, little evidence of the fort walls and buildings remained on the surface. It was listed on the National Register of Historic Places in 1970.

6) Fort Leavenworth, Kansas, 1827 (National Historic Landmark, 1974)

In 1827, Col. Leavenworth was instructed to establish Cantonment Leavenworth near the mouth of the Little Platte River on the Missouri River in what would later be the Territory of Kansas:

> Colonel Leavenworth of the 3d Infantry, with four companies of his regiment will ascend the Missouri and when he reaches a point on its left bank near the mouth of Little Platte River and within a range of twenty miles above or below its confluence, he will select such position as in his judgment is best calculated for the site of a permanent cantonment. The spot being chosen, he will then construct with the troops of his command comfortable, though temporary quarters sufficient for the accommodation of four companies. This movement will be made as early as the convenience of the service will permit.[220]

The site chosen by Leavenworth was in fact twenty miles above the Little Platte, where the present-day Fort Leavenworth is still in active service. The post aided in Indian Removal, provided protection for traders and emigrants along the Santa Fe and Oregon Trails, supplied troops during the Mexican War and the Utah War, as well as during the American Civil War, and played a large role during the "Indian Wars" operations against the Western Plains American Indians. Fort Leavenworth remained in use through the twentieth century and continues today in active service.

The Fort Leavenworth Parade Ground, still intact today, has been in use since the fort's initial construction. The historic buildings associated with the early years of Fort Leavenworth that still stand today include: the stone and brick Quarters, built in 1834 known as the "Rookery," the Assistant Commandant's Quarters (built ca.

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[218] "Fort Gibson Historic Site – Fort Gibson, Oklahoma," *Explore Southern History.Com*, accessed Dec. 6, 2013, https://www.exploresouthernhistory.com/okfortgibson.html.

[219] "Fort Towson," *Oklahoma Historical Society*, accessed Dec. 6, 2013, https://www.okhistory.org/sites/forttowson?full.

[220] John W. Partin, "A Brief History of Fort Leavenworth 1827-1983," https://apps.dtic.mil/sti/pdfs/ADA437828.pdf.

1840), the brick Post Commander's Residence (ca. 1840), and numerous buildings from the second half of the nineteenth century. Fort Leavenworth was listed as a National Historic Landmark in 1974.[221]

7) Fort Scott, Kansas, 1842 (National Historic Site, 1978; National Historic Landmark, 1964)

Fort Scott was established in 1842, in the area that would soon become the Kansas Territory, "as a link in a north-south chain of Army posts, extending along a military road from Fort Snelling in Minnesota to Fort Towson in Oklahoma…" The garrison's purpose was, like the other forts, to maintain the line between white settlers and Indian Territory. By 1853 in Kansas, that line had disappeared, and the fort was abandoned by the military and soon became the seed of the town of Fort Scott. Fort Scott was re-occupied by Union forces during the American Civil War. Following the war, the U.S. Army permanently vacated the property and its buildings reverted to civilian use, many eventually demolished and replaced.

In 1978, Fort Scott was designated a National Historic Site, maintained by the National Park Service. At that time five buildings were still standing from the 1840s construction period, along with four buildings from a later period. Additionally, ten original buildings had been reconstructed and fifteen building sites had been identified.[222] The Fort Scott National Historic Site website notes that today (2013) the park includes "20 historic structures, a parade ground and five acres of restored tallgrass prairie."[223]

8) Fort Washita, Oklahoma, 1842 (National Historic Landmark, 1978)

Fort Washita, today located in Oklahoma, was established in 1842 in Indian Territory to protect the Choctaw and Chickasaw tribes recently removed to the territory from their traditional lands east of the Mississippi River. The transplanted nations faced threats from both the Southern Plains Indians and land-hungry white settlers throughout the 1840s and 1850s. Shortly after the attack on Fort Sumter in South Carolina, marking the start of the American Civil War, Fort Washita was vacated by the U.S. troops stationed there. Throughout the remainder of the war, the fort was occupied by Confederate troops. Fort Washita would never again be occupied by U.S. troops:

> After the war the Chickasaw Nation received the old post grounds and buildings from the federal government. The Colbert family, prominent Chickasaws, owned the property until it was acquired in 1962 by the Oklahoma Historical Society.[224]

At the time of the Oklahoma Historical Society purchase of the property, very little of the old fort structure was still standing:

> The original fortification was a massive expanse of over seven square miles containing far more than ninety buildings and sites. Of these, some 48 structures of various degrees of importance have been located and identified. However, there is very little above ground. For many structures all that remain are scattered stones. In other cases, such as the kitchen and the rows of bake ovens, sites are clearly marked and the foundations are quite evident. Other foundations are located throughout the Fort Washita Park and there are a constant number of visitors who use the facility. There are two cemeteries located at the post. The Post Cemetery located on the north side of the park and the confederate cemetery located on the west side on the road to

[221] Jerry L. Rogers, "Fort Leavenworth," National Historic Landmark documentation, 1973.
[222] David Arbogast, "Fort Scott Historic Site," National Register documentation, 1976.
[223] "Plan Your Visit," *Fort Scott National Historic Site Kansas*, accessed Dec. 6, 2013, https://www.nps.gov/fosc/planyourvisit/index.htm.
[224] "Fort Washita," *Oklahoma Historical Society*, accessed Dec. 6, 2013, https://www.chickasaw.net/Our-Nation/Locations/Fort-Washita.aspx?full.

> Government springs. When Fort Washita was abandoned in 1865, the bodies from the post cemetery were exhumed and reburied at Fort Gibson.…The original fort, because of its tremendous size was without stockade.[225]

Two stone Barracks buildings stood as ruins on the property. The South Barracks was restored by the Oklahoma Historical Society in 1976, but burned to the ground in 2010. Fort Washita was designated a National Historic Landmark in 1978.

[225] Joseph Scott-Mendinghall, "Fort Washita," National Historic Landmark documentation, 1976.

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Previous documentation on file (NPS):

__ Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
_X_ Previously Listed in the National Register.
__ Previously Determined Eligible by the National Register.
_X_ Designated a National Historic Landmark. (1960)
__ Recorded by Historic American Buildings Survey: #
__ Recorded by Historic American Engineering Record: #

Primary Location of Additional Data:

__ State Historic Preservation Office
__ Other State Agency
_X_ Federal Agency
__ Local Government
__ University
__ Other (Specify Repository):

10. GEOGRAPHICAL DATA

Acreage of Property: 37 acres

UTM References:	Zone	Easting	Northing
A	15	369760	3917420
B	15	370260	3917420
C	15	370240	3916760
D	15	369470	3916780

Verbal Boundary Description:

The proposed boundary for the updated National Historic Landmark documentation for Fort Smith National Historic Site for the most part follows the boundary of the National Historic Site but eliminates areas that contain non-contributing property with low potential for archeological material below ground.

Beginning on the west curb line of Third Street with the Fort Smith NHS boundary, then following the west curb line in a southerly direction to meet the Fort Smith NHS boundary on the south side of Rogers Avenue and continuing with the Fort Smith NHS boundary to the north side of Parker Avenue near the south corner of the Fort Smith NHS maintenance building; then departing from the Fort Smith NHS boundary and following the northeast edge of Parker Avenue in a northwesterly direction, to and across a sidewalk; then following the north edge of the curvilinear sidewalk in a westerly direction to and around a gazebo and continuing on to meet the railroad right-of-way, to exclude from the NHL boundary this gazebo and a parking area; then following the railroad right-of-way south to meet the Fort Smith NHS boundary on the west edge of Third Street; then continuing west with the Fort Smith NHS boundary to the west railroad right-of-way line; then departing from the Fort Smith NHS boundary and continuing west to rejoin the Fort Smith NHS boundary at the edge of the Poteau River; then continuing in a northerly direction with the Fort Smith NHS boundary to a point in the Arkansas River at Garrison Street; then turning with the Fort Smith NHS boundary in a southeasterly direction to the point of crossing of an overhead power line; then turning from the Fort Smith NHS boundary and following the power line in a southwesterly direction, to and across the Choctaw Line; then turning south along the west line of parcel 10-120 to meet the west side of the railroad cut; then proceeding in a northeasterly direction to a point opposite the southwestern boundary of parcel 01-146; then turning to the southeast, crossing the railroad and following the parcel line to meet the Fort Smith NHS boundary at the west edge of Second Street; then following the Fort Smith NHS boundary line to the place of beginning, containing approximately 37 acres. This boundary is depicted on the accompanying maps.

Boundary Justification:

The boundary was selected to include the sites of both the First Fort and Second Fort, buildings, and surrounding lands that contribute to the historical associations of the Fort Smith National Historical Landmark. Areas that do not retain integrity or contain non-historic buildings and structures, with little possibility of archeological or above-ground integrity have been eliminated from the NHL boundary.

11. FORM PREPARED BY

Name/Title: Paula S. Reed, Ph.D., architectural historian; Edie Wallace, M.A., historian

Address: Paula S. Reed & Associates, Inc.
1 W. Franklin St., Suite 201
Hagerstown, MD 21740

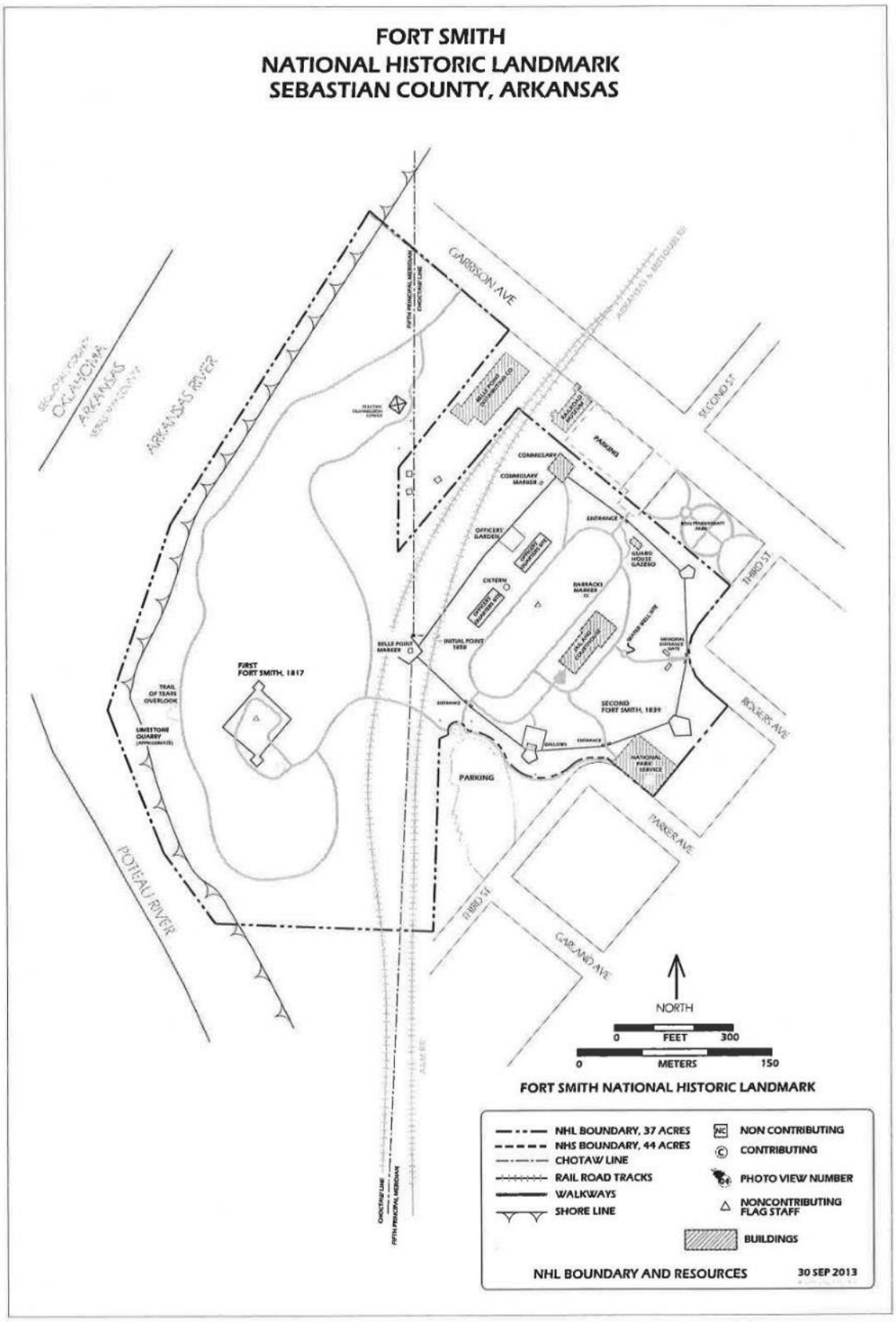
Telephone: 301-739-2070

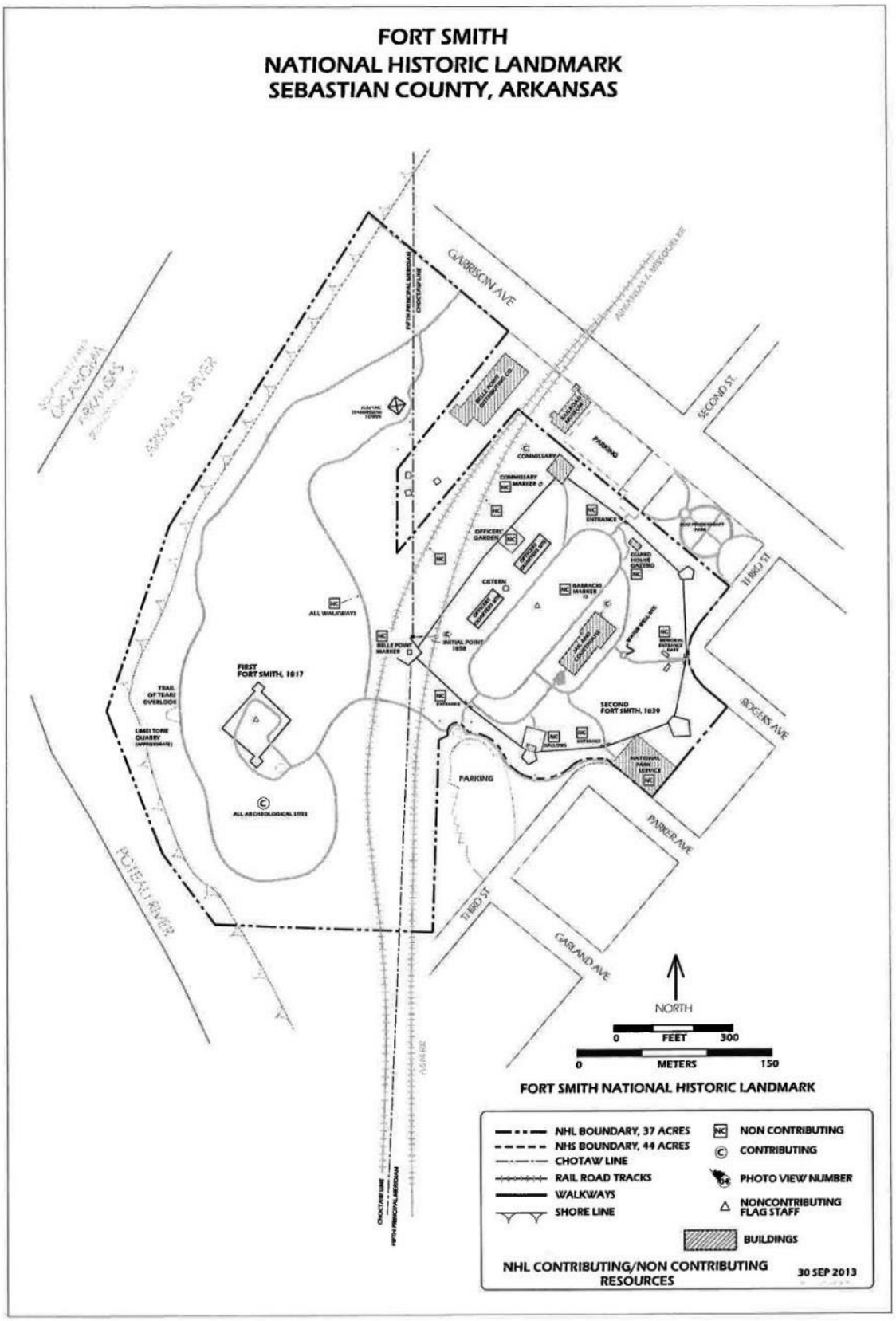
Date:

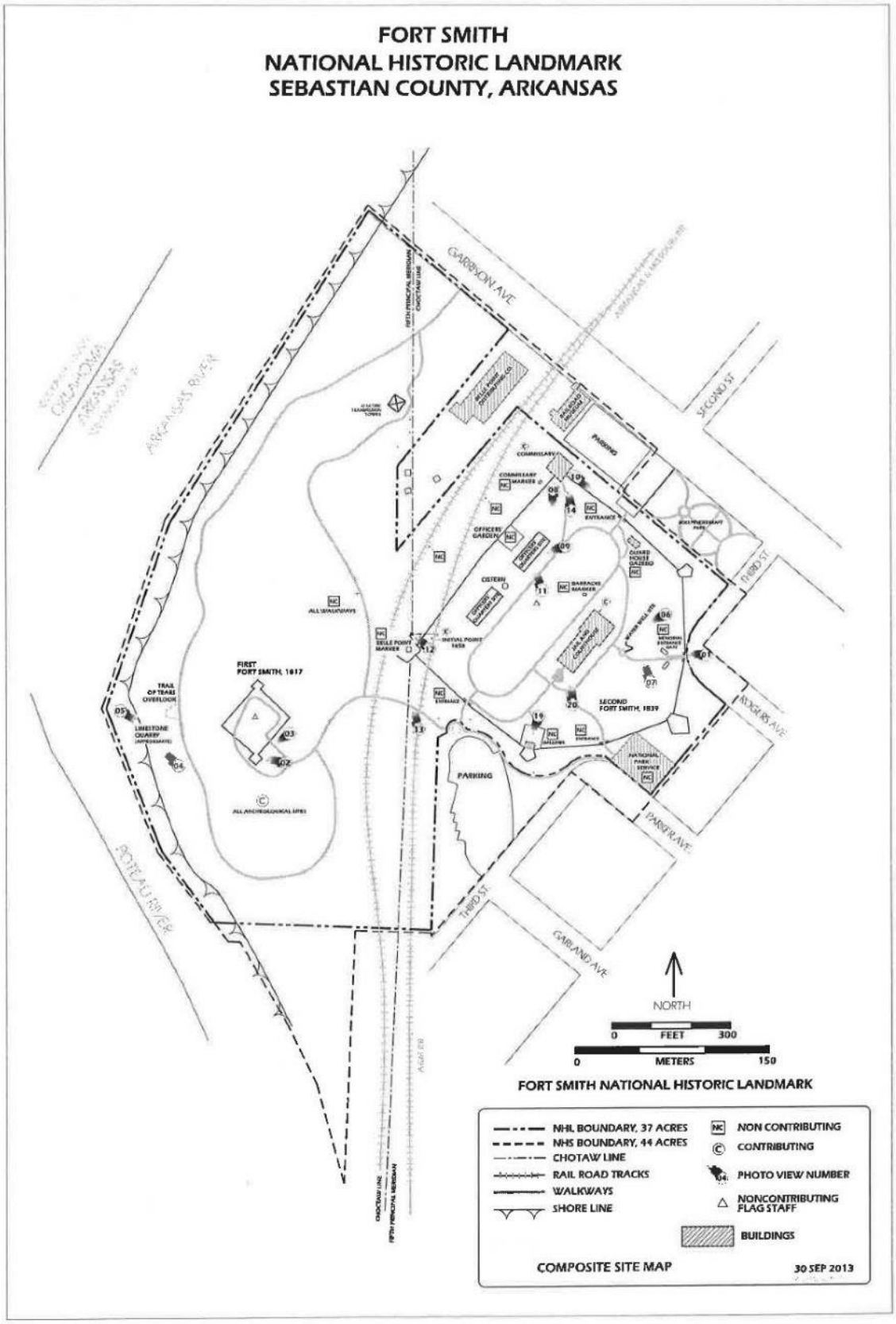
Edited by: Patty Henry and Erika Martin Seibert
National Park Service
National Historic Landmarks Program
1849 C St. NW (2280)
Washington, DC 20240

Telephone: (202) 354-2216 and (202) 354-2217

NATIONAL HISTORIC LANDMARKS PROGRAM


FORT SMITH
NATIONAL HISTORIC LANDMARK
SEBASTIAN COUNTY, ARKANSAS
GARRISON AVE
SECOND ST
THIRD ST
ROGERS AVE
PARKER AVE
GARLAND AVE
ARKANSAS
OKLAHOMA
ARKANSAS RIVER
POTEAU RIVER
FIRST FORT SMITH, 1817
SECOND FORT SMITH, 1839
TRAIL OF TEARS OVERLOOK
LIMESTONE QUARRY
BELLE POINT MARKER
INITIAL POINT 1818
CISTERN
OFFICERS' GARDEN
COMMISSARY
COMMISSARY MARKER
ENTRANCE
GUARD HOUSE GAZEBO
BARRACKS MARKER
PARKING
NATIONAL PARK SERVICE
NORTH
0 FEET 300
0 METERS 150
FORT SMITH NATIONAL HISTORIC LANDMARK
NHL BOUNDARY, 37 ACRES
NHS BOUNDARY, 44 ACRES
CHOTAW LINE
RAIL ROAD TRACKS
WALKWAYS
SHORE LINE
NON CONTRIBUTING
CONTRIBUTING
PHOTO VIEW NUMBER
NONCONTRIBUTING FLAG STAFF
BUILDINGS
NHL BOUNDARY AND RESOURCES
30 SEP 2013


FORT SMITH
NATIONAL HISTORIC LANDMARK
SEBASTIAN COUNTY, ARKANSAS
GARRISON AVE
SECOND ST.
THIRD ST.
ROGERS AVE
PARKER AVE
GARLAND AVE
ARKANSAS RIVER
POTEAU RIVER
PARADE
COMMISSARY
COMMISSARY MARKER
ENTRANCE
OFFICERS GARDEN
CISTERN
BARRACKS MARKER
GUARD HOUSE GALLOWS
ALL WALKWAYS
SELLE POINT MARKER
INITIAL POINT 1858
FIRST FORT SMITH, 1817
TRAIL OF TEARS OVERLOOK
LIMESTONE QUARRY
ALL ARCHEOLOGICAL SITES
SECOND FORT SMITH, 1839
NATIONAL PARK SERVICE
PARKING
NORTH
0 FEET 300
0 METERS 150
FORT SMITH NATIONAL HISTORIC LANDMARK
NHL BOUNDARY, 37 ACRES
NHS BOUNDARY, 44 ACRES
CHOTAW LINE
RAIL ROAD TRACKS
WALKWAYS
SHORE LINE
NON CONTRIBUTING
CONTRIBUTING
PHOTO VIEW NUMBER
NONCONTRIBUTING FLAG STAFF
BUILDINGS
NHL CONTRIBUTING/NON CONTRIBUTING RESOURCES
30 SEP 2013


FORT SMITH
NATIONAL HISTORIC LANDMARK
SEBASTIAN COUNTY, ARKANSAS
GARRISON AVE
SECOND ST
THIRD ST
ROGERS AVE
PARK AVE
GARLAND AVE
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TRAIL OF TEARS OVERLOOK
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0 FEET 300
0 METERS 150
FORT SMITH NATIONAL HISTORIC LANDMARK
NHL BOUNDARY, 37 ACRES
NHS BOUNDARY, 44 ACRES
CHOTAW LINE
RAIL ROAD TRACKS
WALKWAYS
SHORE LINE
NON CONTRIBUTING
CONTRIBUTING
PHOTO VIEW NUMBER
NONCONTRIBUTING FLAG STAFF
BUILDINGS
COMPOSITE SITE MAP
30 SEP 2013

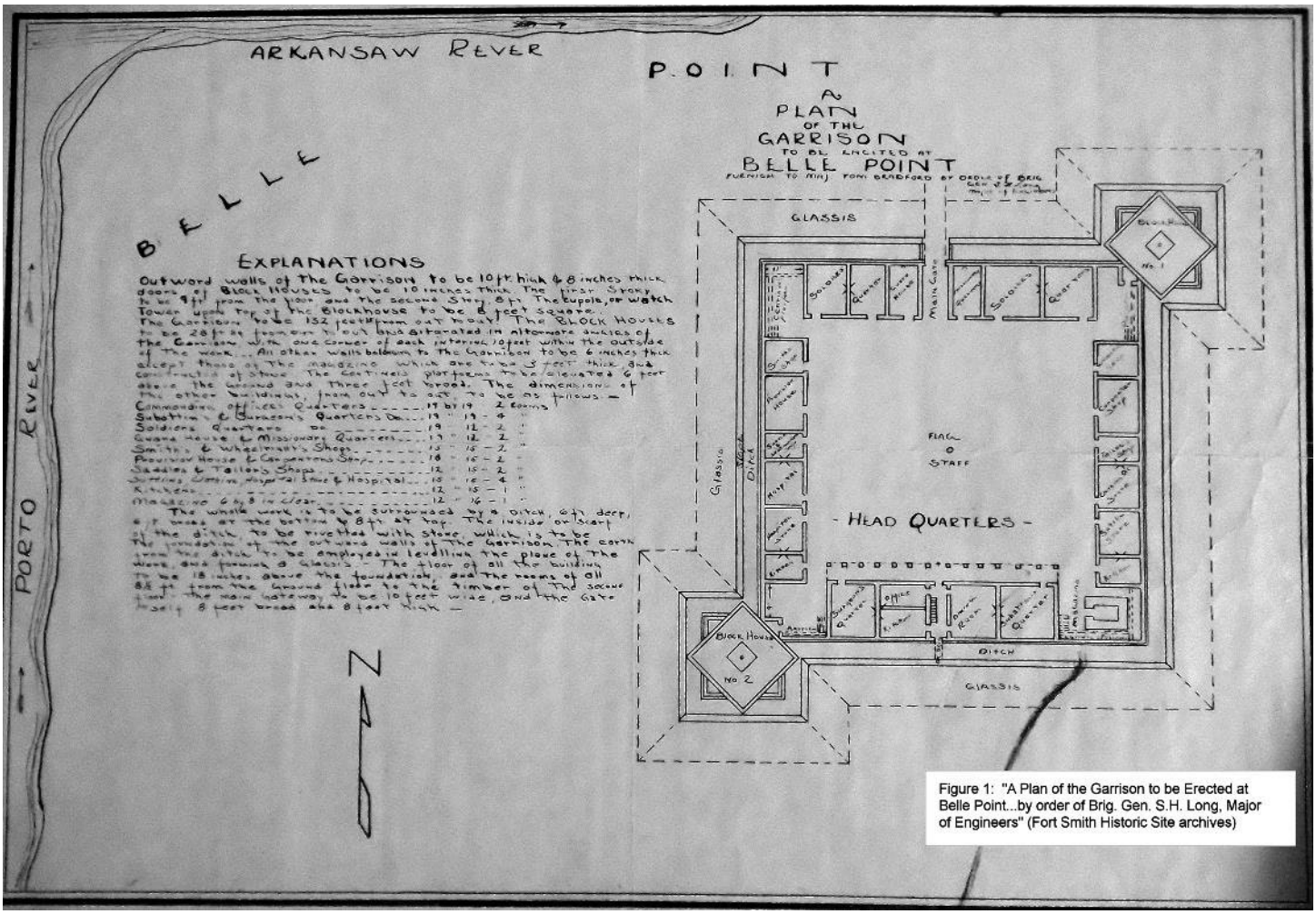

Figure 1: "A Plan of the Garrison to be Erected at Belle Point…by order of Brig. Gen. S.H. Long, Major of Engineers" (Fort Smith Historic Site archives)

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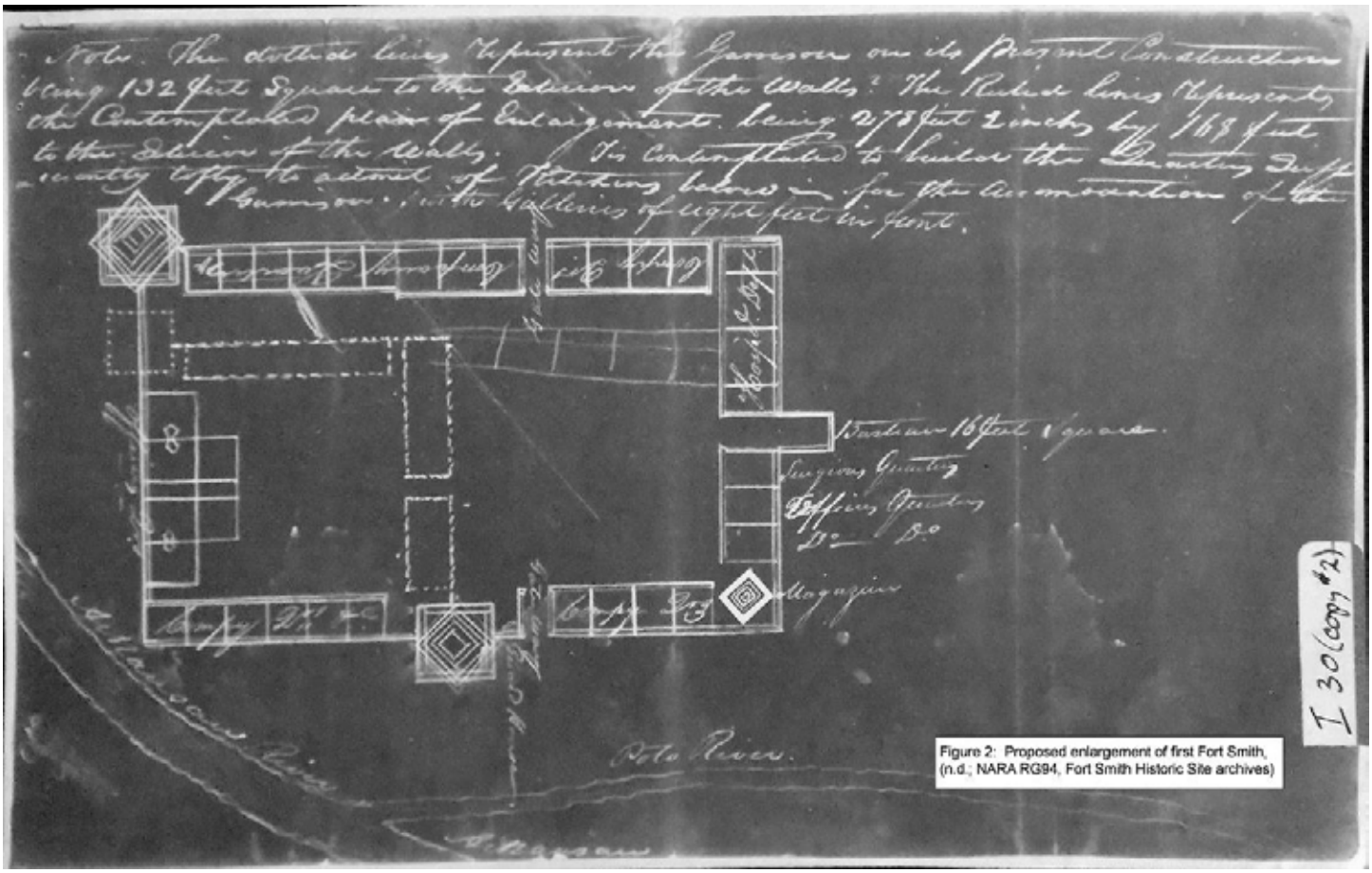

Figure 2: Proposed enlargement of first Fort Smith. (n.d.; NARA RG94, Fort Smith Historic Site archives)

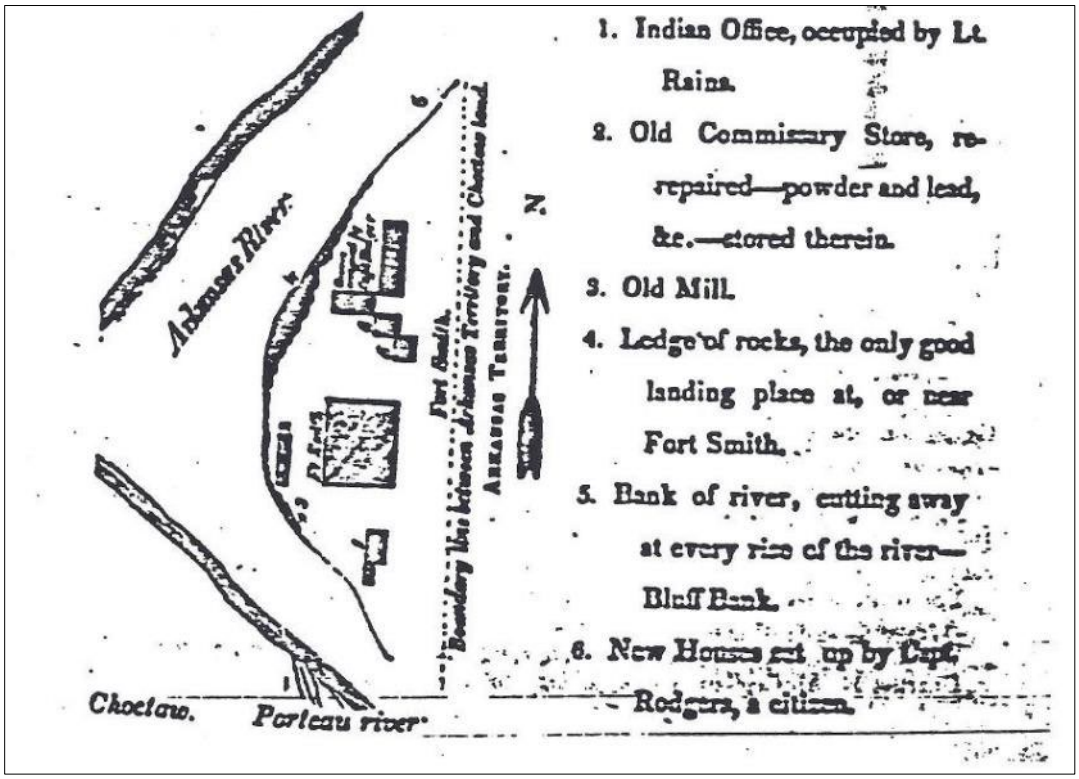

Figure 3: 1832, "Map of Belle Point constructed by Lt. Rains." (Coleman and Dollar 1984, p. 40)

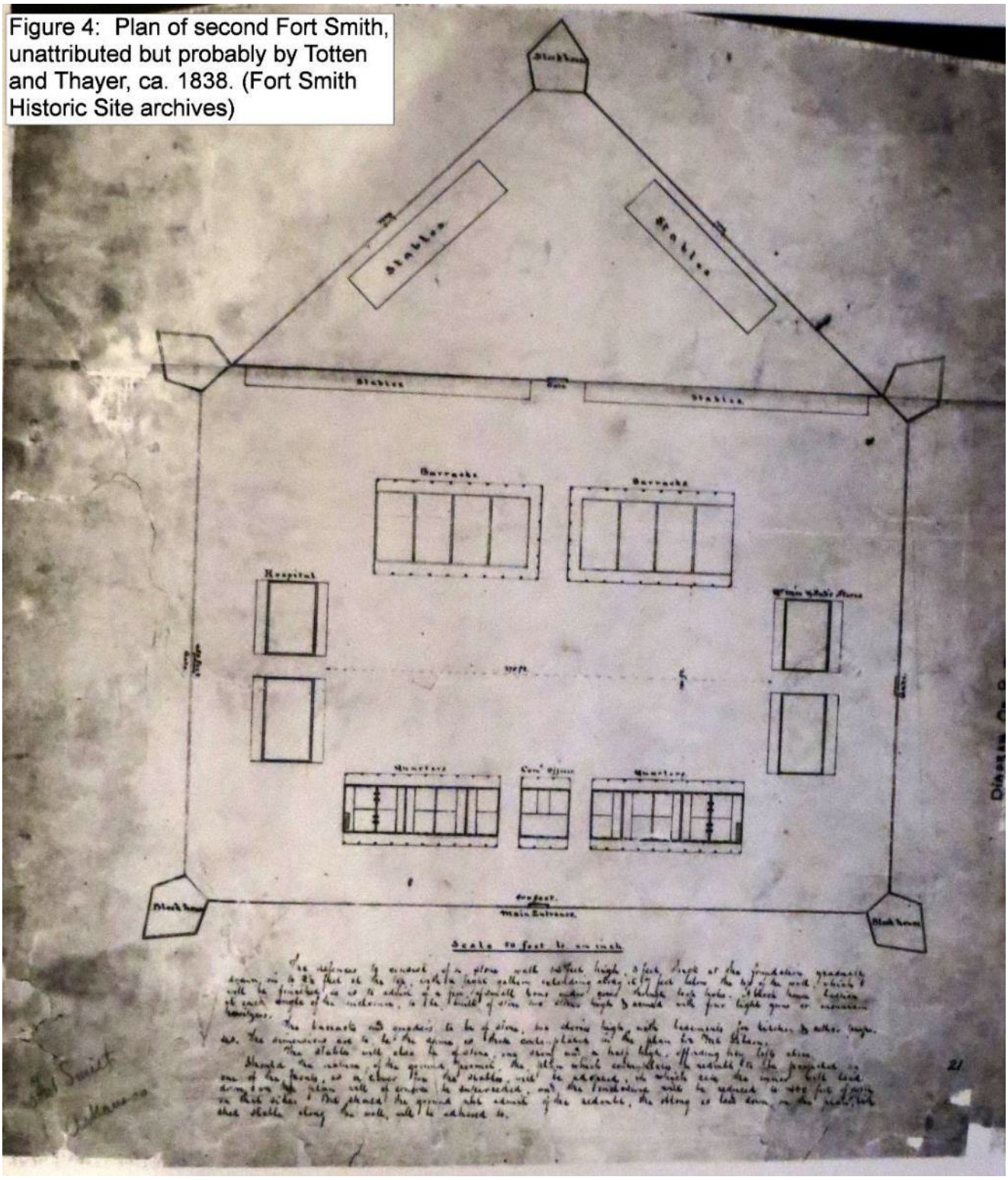

Figure 4: Plan of second Fort Smith, unattributed but probably by Totten and Thayer, ca. 1838. (Fort Smith Historic Site archives)

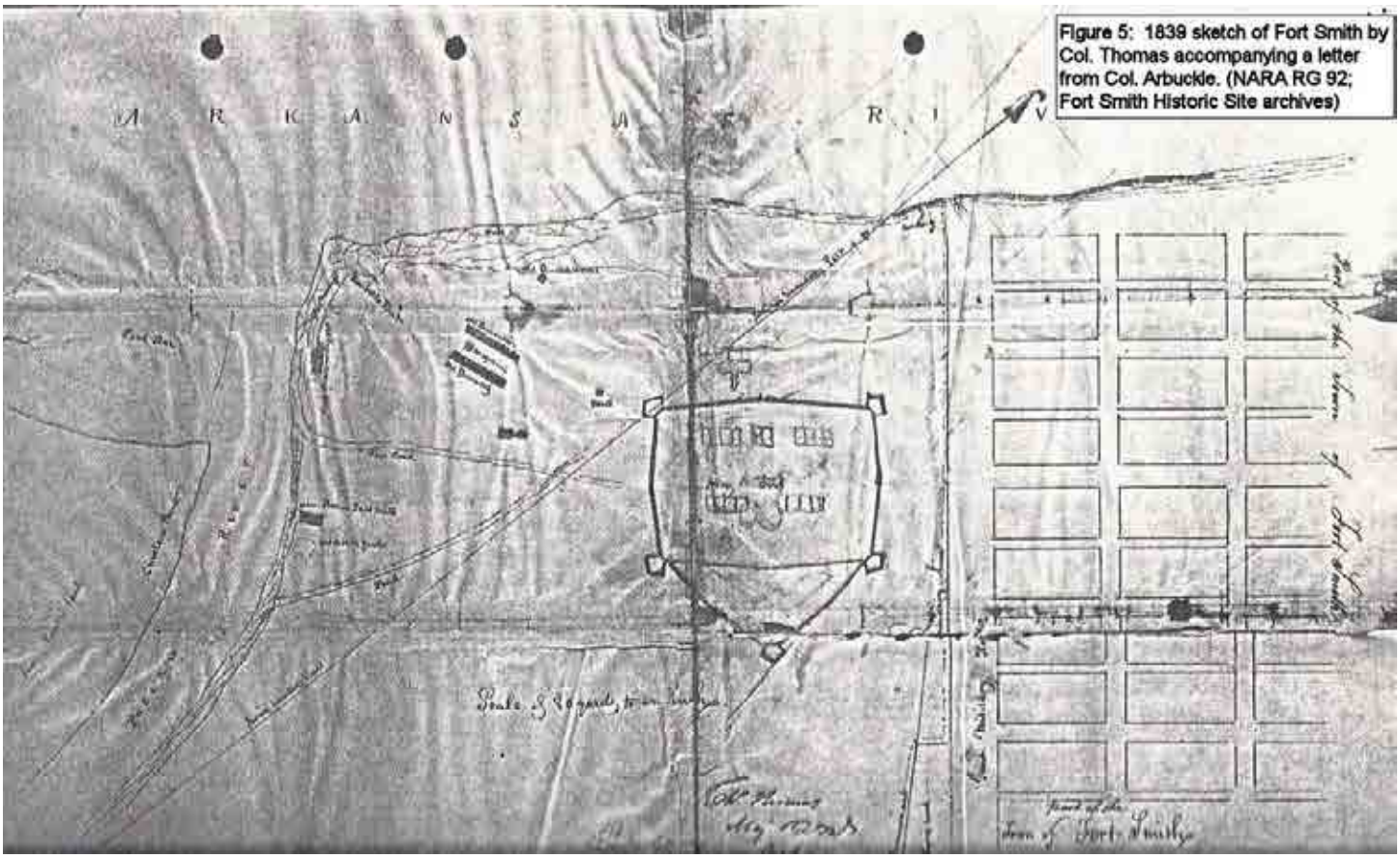

Figure 5: 1839 sketch of Fort Smith by Col. Thomas accompanying a letter from Col. Arbuckle. (NARA RG 92; Fort Smith Historic Site archives)

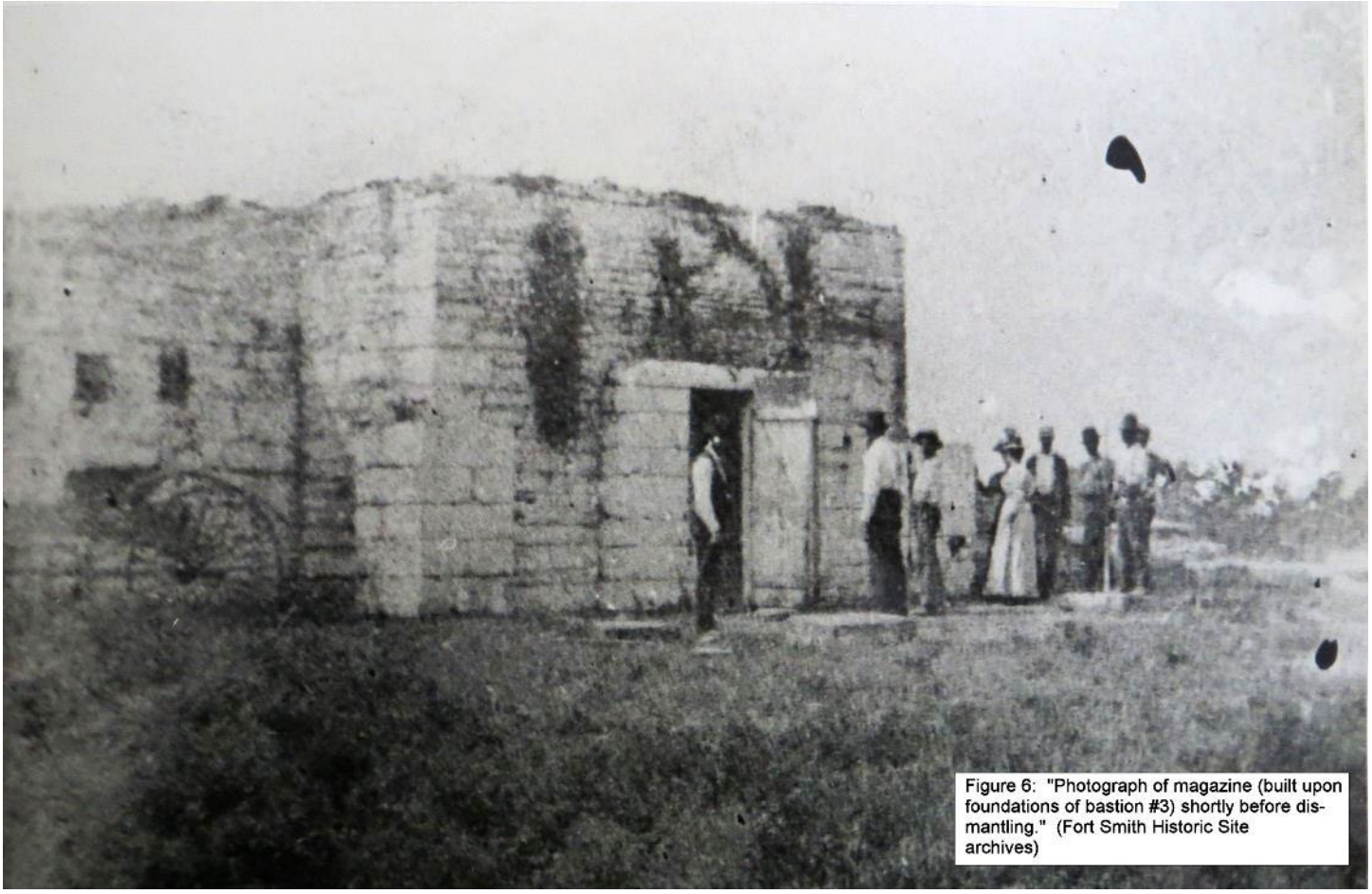

Figure 6: “Photograph of magazine (built upon foundations of bastion #3) shortly before dismantling.” (Fort Smith Historic Site archives)

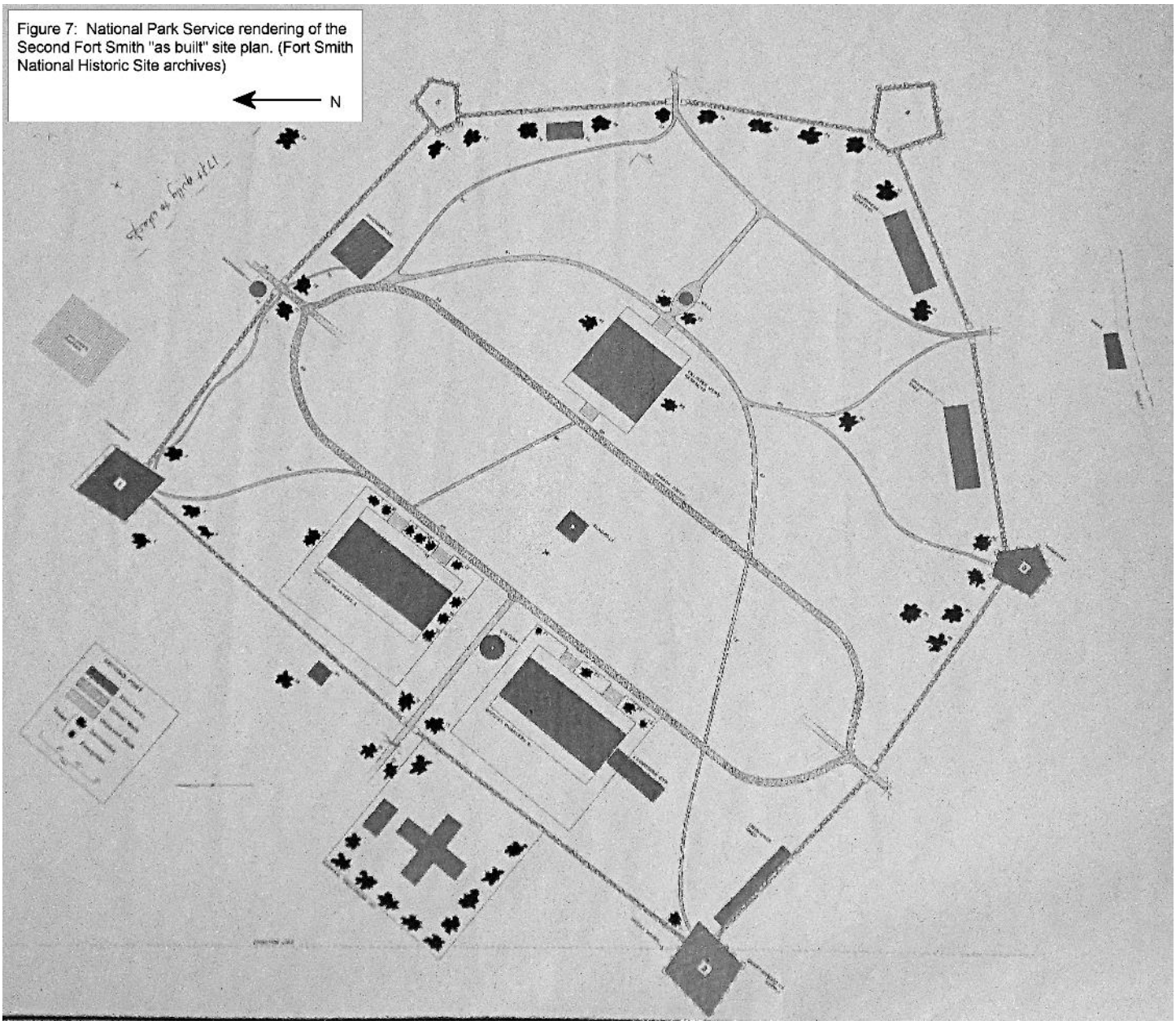

Figure 7: National Park Service rendering of the Second Fort Smith “as built” site plan. (Fort Smith Historic Site archives)

Figure 7a: Pre-1865 photograph of Fort Smith, “as built,” showing the Barracks (1), both Officer’s Quarters bldgs. (2 & 3), the Guard House (4), fort wall and unfinished Bastion #5 (5), and Quartermaster Bldg. (6). (Fort Smith Historic Site archives)

Figure 8: February 1865 plan of the Fort Smith fortifications. (NARA RG77; Fort Smith Historic Site archives)

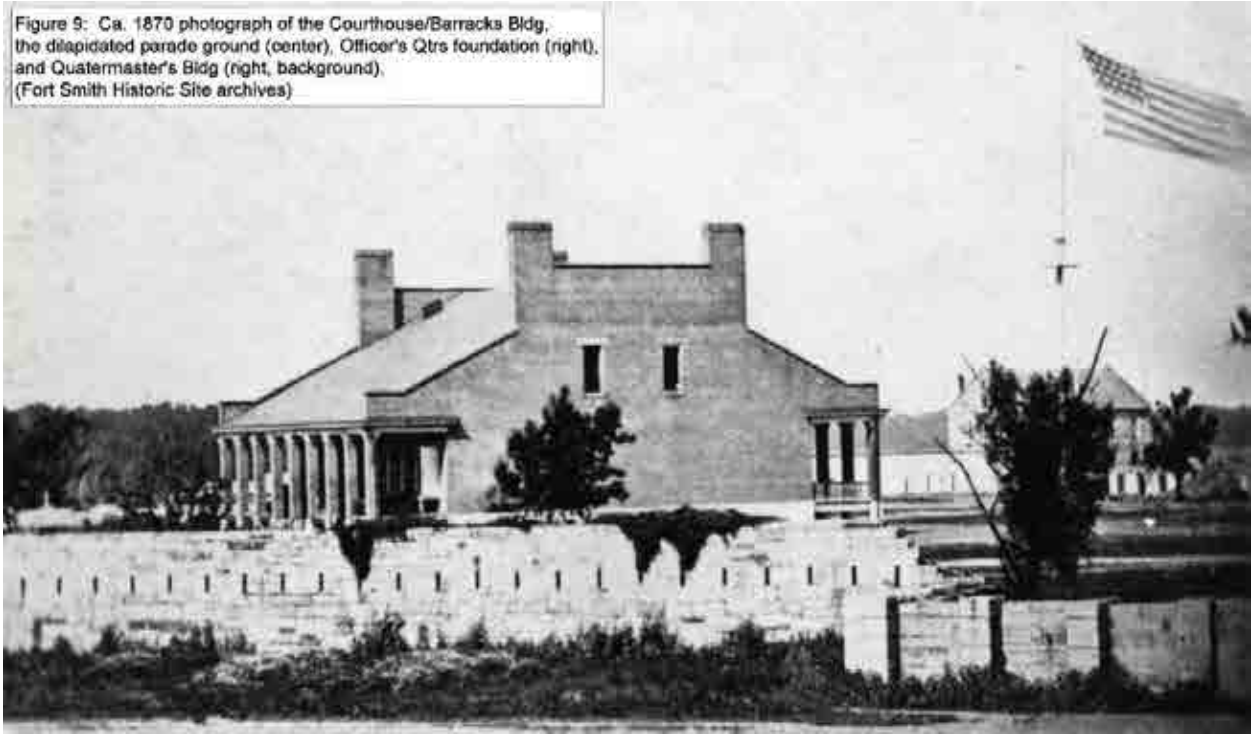

Figure 9: Ca. 1870 photograph of the Courthouse/Barracks Bldg. the dilapidated parade ground (center), Officer's Qtrs. foundation (right), and Quartermaster's Bldg. (right, background). (Fort Smith Historic Site archives)

Figure 10: Pre-1888 "Remains of the 'Old Fort' showing enclosed gallows (left), Courthouse/Barracks Bldg., Officer's Qtrs. foundation (right), and Quartermaster's Bldg. (right, background). (Fort Smith Historic Site archives)

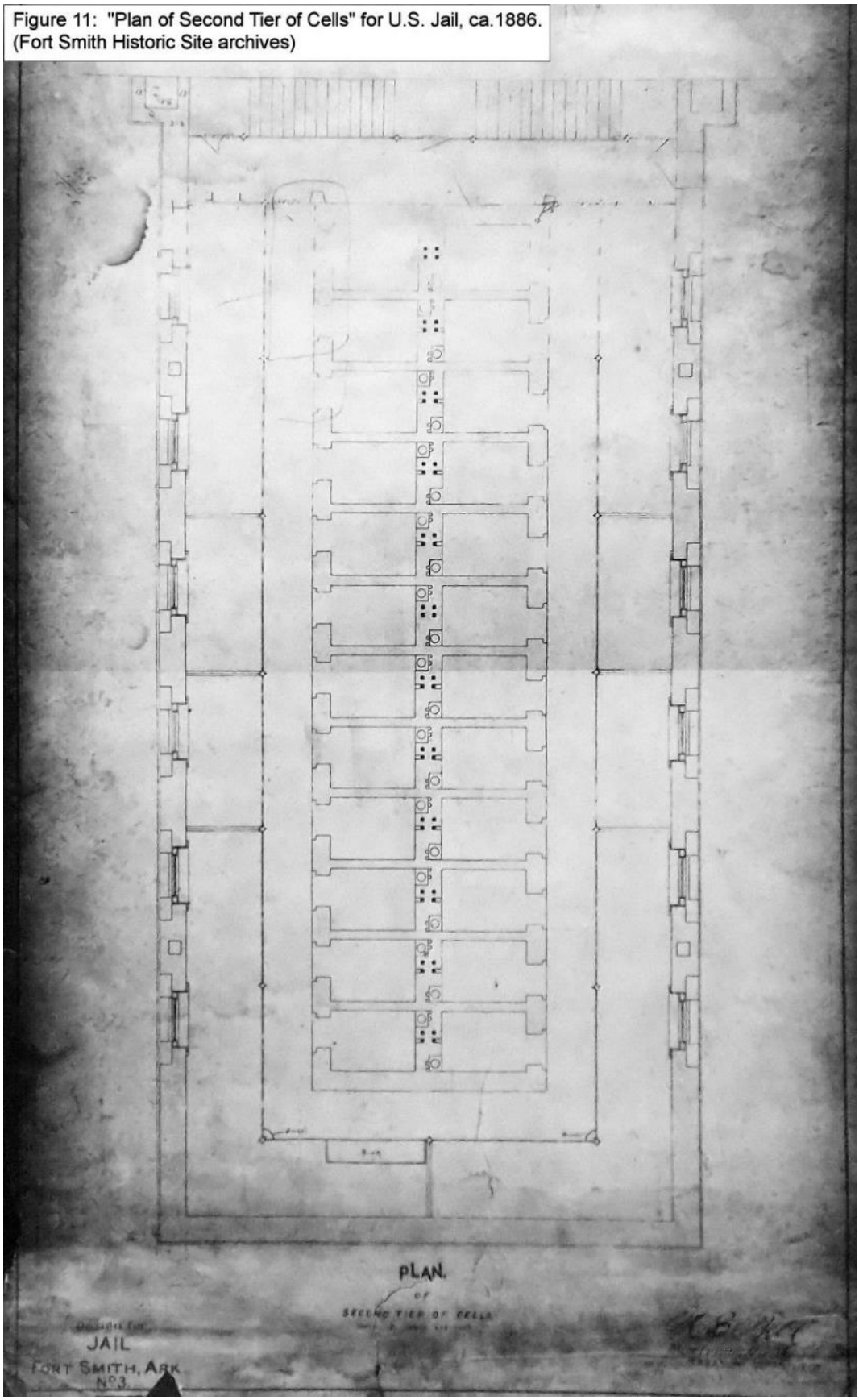

Figure 11: “Plan of Second Tier of Cells” for U.S. Jail, ca 1886. (Fort Smith Historic Site archives)

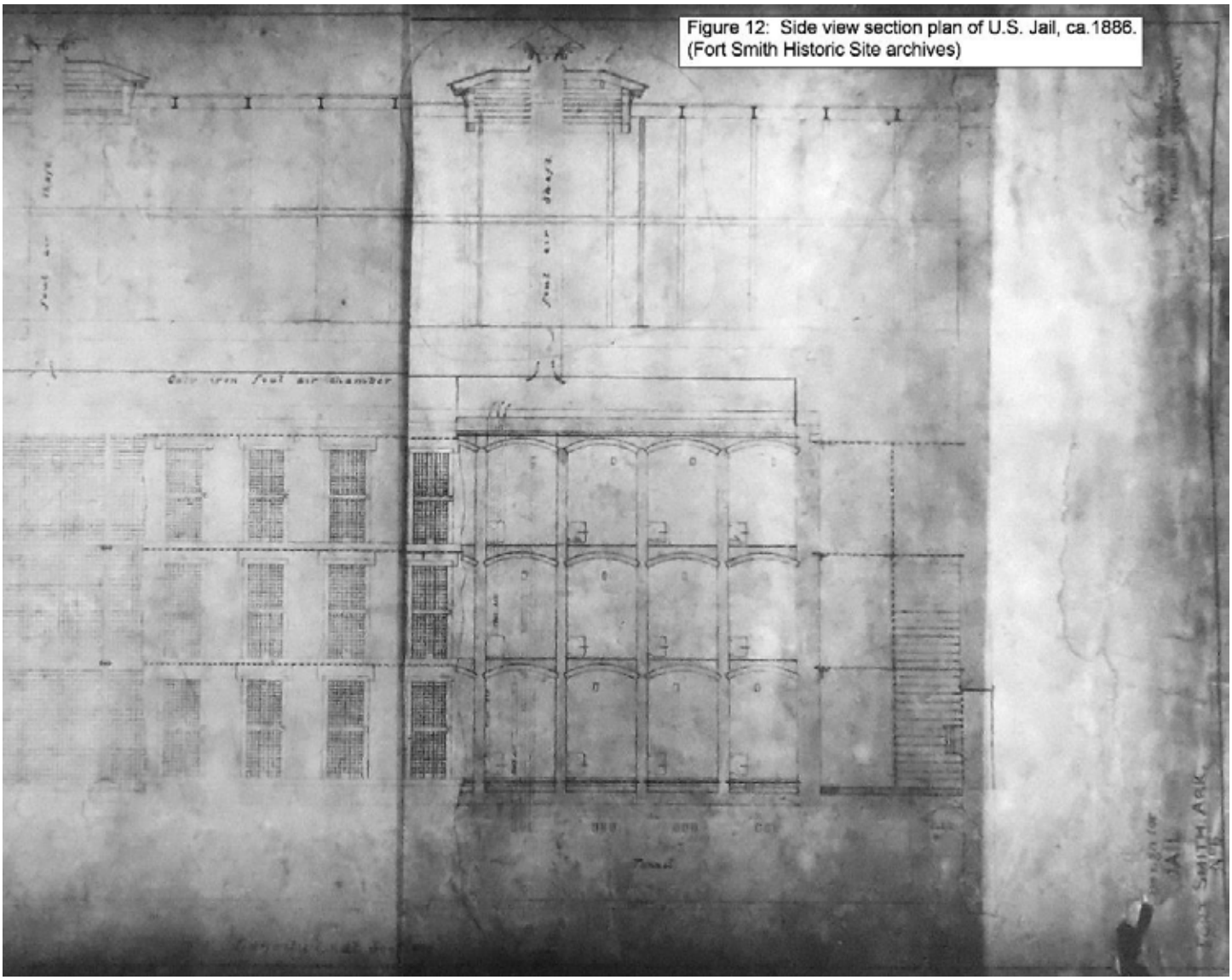

Figure 12: Side View Section plan of U.S. Jail, ca. 1886. (Fort Smith Historic Site archives)

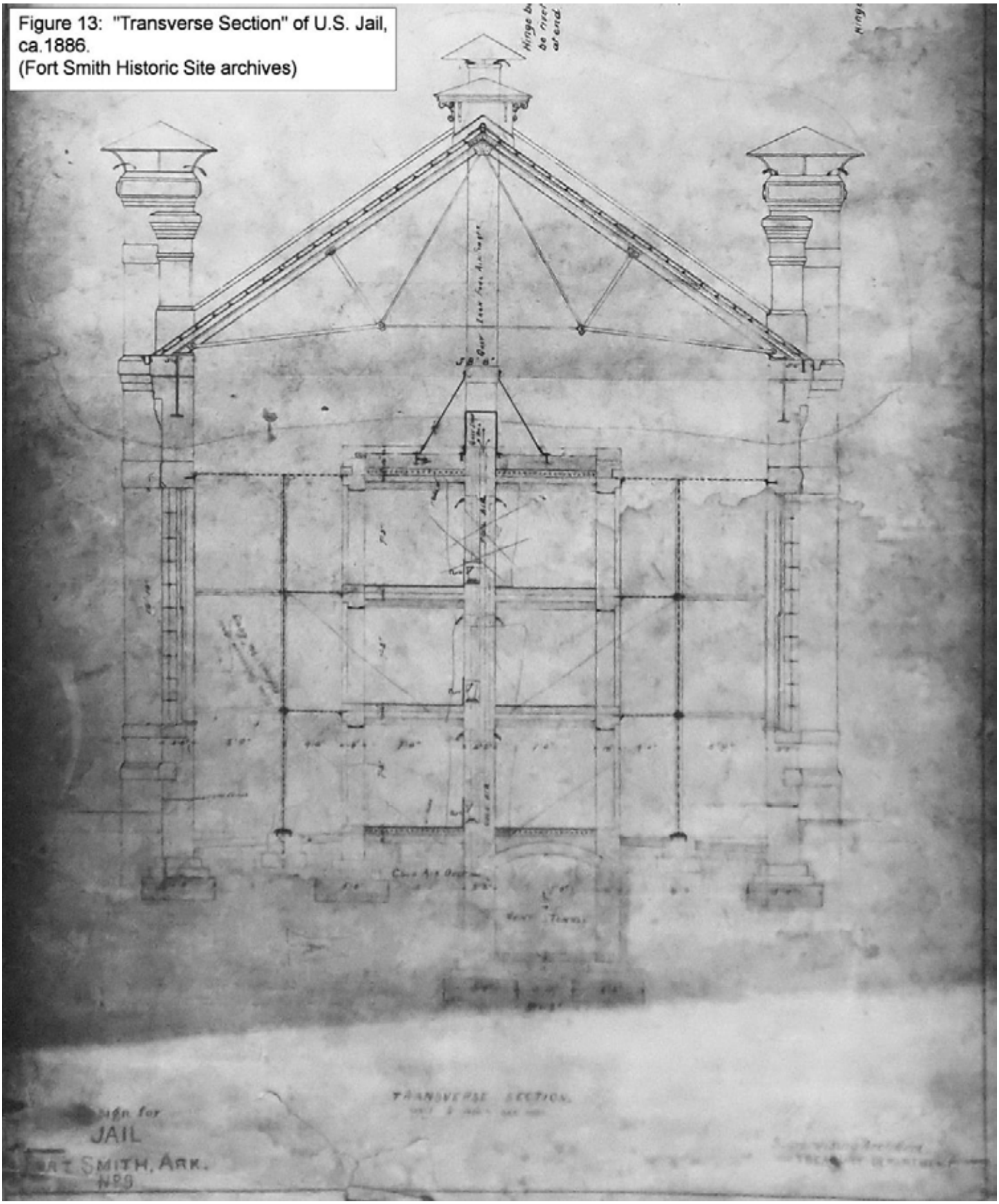

Figure 13: “Transverse Section” of U.S. Jail, ca. 1886. (Fort Smith Historic Site archives)

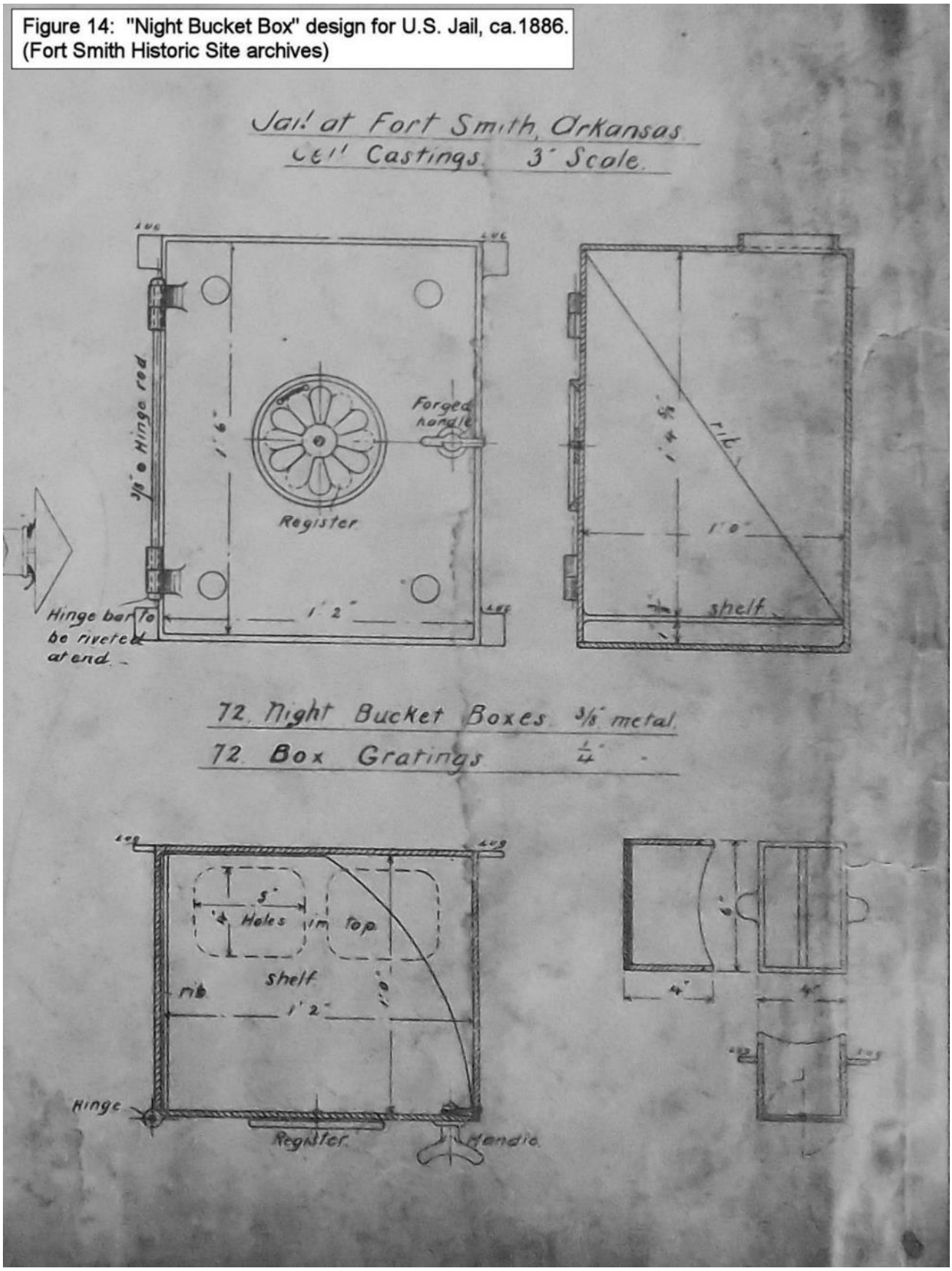

Figure 14: "Night Bucket Box" design for U.S. Jail, ca. 1886. (Fort Smith Historic Site archives)

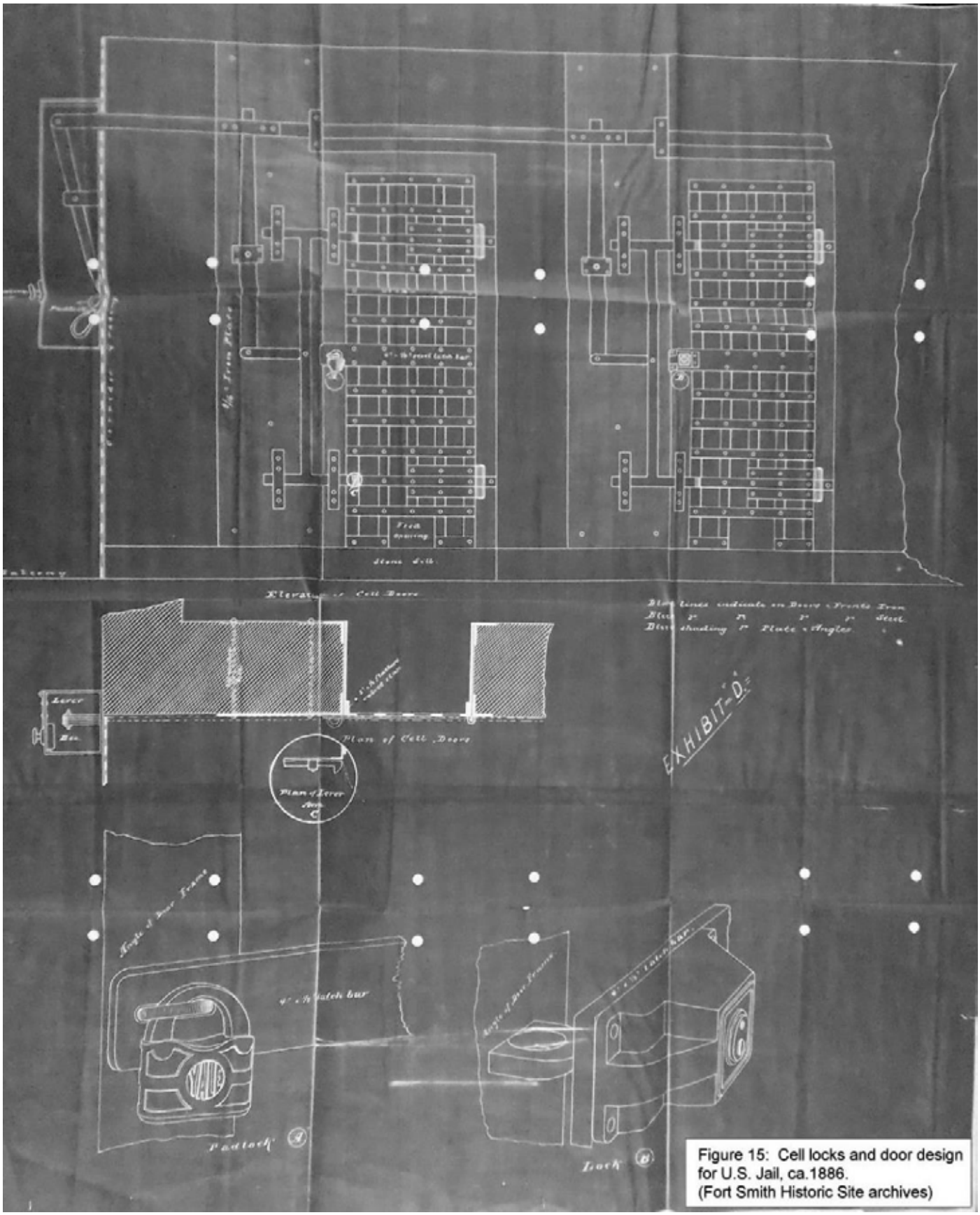

Figure 15: Cell locks and door design for U.S. Jail, ca. 1886. (Fort Smith Historic Site archives)

Figure 16: 1887 “bird’s eye view” of Fort Smith. (Fort Smith Historic Site archives)

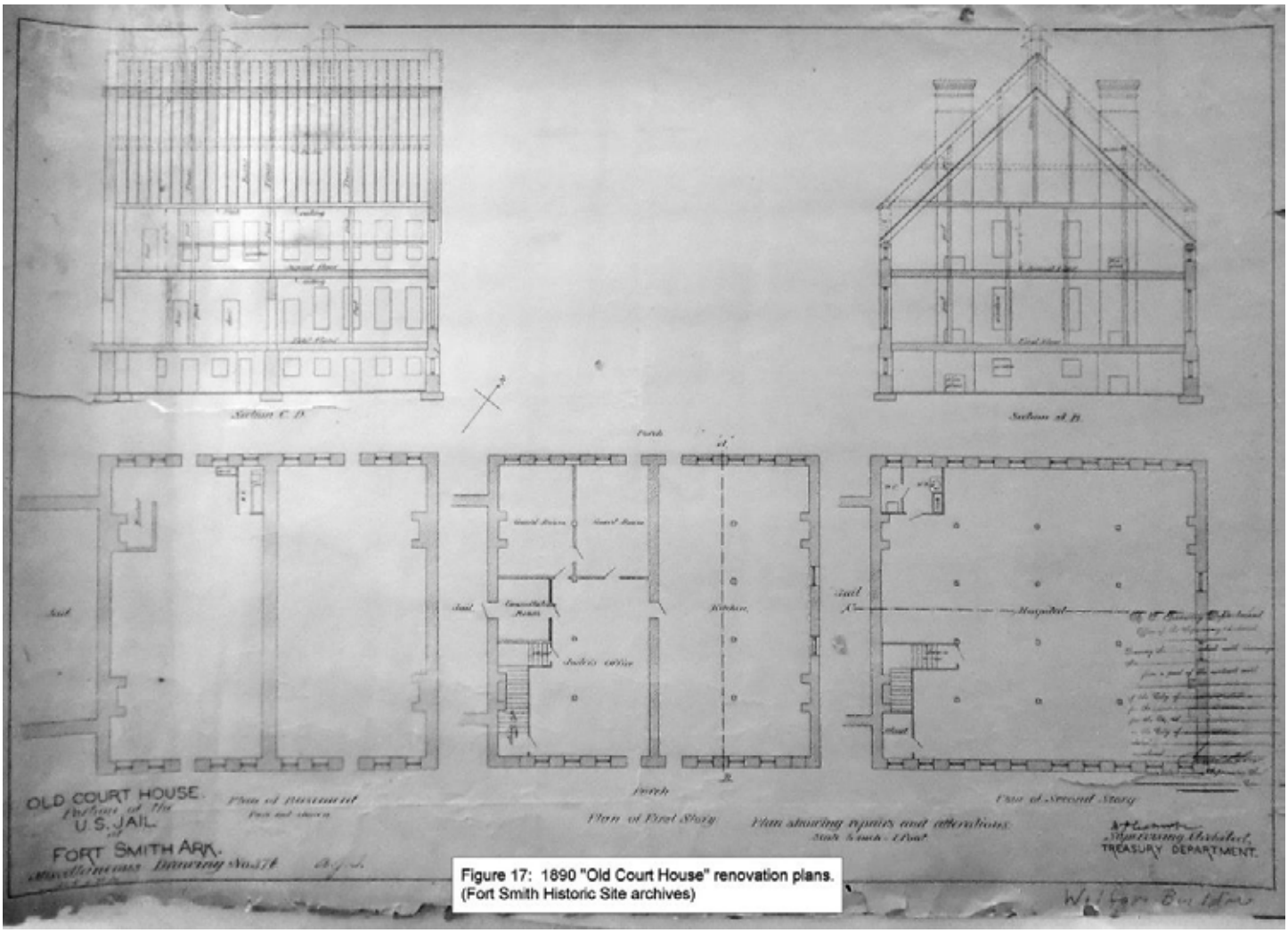

Figure 17: 1890 “Old Court House” renovation plans. (Fort Smith Historic Site archives)

Figure 18: 1897 photograph of the "U.S. Jail" at Fort Smith. (Fort Smith Historic Site archives)

Figure 18: 1897 photograph of the “U.S. Jail” at Fort Smith. (Fort Smith Historic Site archives)

Figure 19: Judge Isaac C. Parker, ca. 1875. (Fort Smith Historic Site)

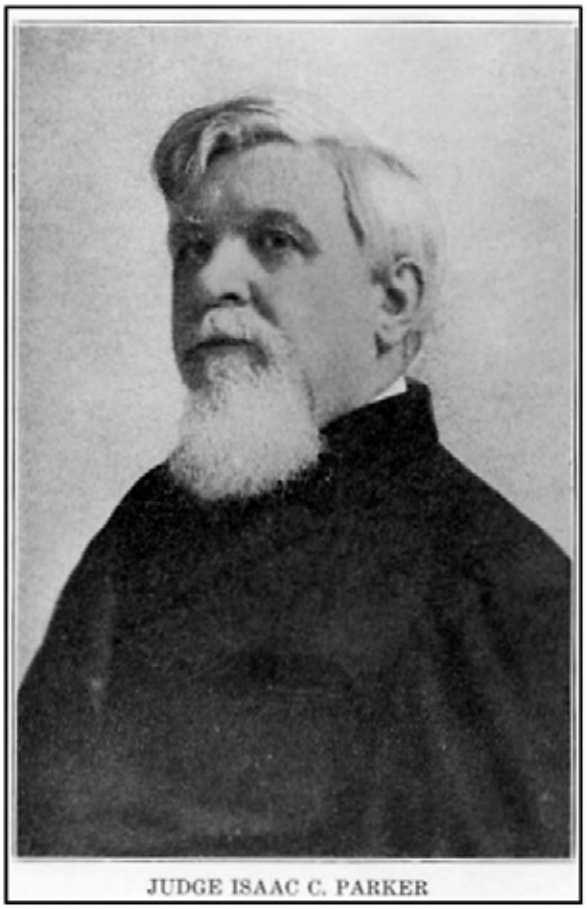

Figure 20: Judge Isaac C. Parker, ca. 1896. (Oklahoma Historical Society)

FORT SMITH, Fort Smith, Arkansas
Memorial Gate, Courthouse and Jail
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
South Bastion, First Fort Site
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Rock ledge looking northwest
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Second Fort Smith looking north
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Second Fort Smith looking south
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Jail and Courthouse and well site looking southwest
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Judge Parker's Courtroom in Courthouse
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Original Ground Floor Jail in Courthouse
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
1888 Jail interior
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Commissary looking north
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Commissary ground floor
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Second Fort Wall outline
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Officer's Quarters Site and Officer's Garden
Photo by Edie Wallace, October 2012

FORT SMITH, Fort Smith, Arkansas
Reconstructed Gallows
Photo by Edie Wallace, October 2012