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Article Title: The Redemption of James Whitewater

Full Citation: David J Wishart, "The Redemption of James Whitewater," *Nebraska History* 82 (2001): 180-189

URL of article: <http://www.nebraskahistory.org/publish/publicat/history/full-text/NH2001Whitewater.pdf>

Date: 10/10/2012

Article Summary: Convicted on circumstantial evidence of the murder of two white travelers in 1871, the Indian James Whitewater spent more than seventeen years in the Nebraska State Penitentiary. He eventually won release when the governor pardoned him in recognition of his good conduct while incarcerated.

Cataloging Information:

Names: James Whitewater (Nee-Scaw), Solomon Pasco, Edward H Walter, Lewis Walter, Albert Green, Medicine Horse, Frank Helvey, John Wehn, "Irish" John Hughes, Samuel Janney, I Wayne Snowden

Nebraska Place Names: Jefferson County, Rock Creek Station, Otoe-Missouria Reservation, Fairbury, Pawnee City

Keywords: James Whitewater (Nee-Scaw), Albert Green, Nebraska State Penitentiary, Kansas-Nebraska Act of 1854, Medicine Horse, Samuel Janney

Photographs / Images: Penitentiary photo of James Whitewater (1872), Otoe-Missouria Agency about 1870 (sketch by Albert L Green), map of Otoe-Missouria Reservation and surrounding area, Albert L Green with Sally Lightfoot Green and two unidentified couples, Whitewater in the ceremonial dress of a councilman in 1891

THE REDEMPTION OF JAMES WHITEWATER

By David J. Wishart

A "Horrible Tragedy"¹

On the last night of their lives, July 4, 1871, Solomon Pasco and Edward H. Walter were camped near the headwaters of Indian Creek in Jefferson County, Nebraska, about four miles northeast of Rock Creek Station, and just off the northwestern corner of the Oto-Missouria Reservation. It was a common camping place, with abundant grass and water, for travelers on the road between Beatrice and Rock Creek Station, a road ranche and former Pony Express Station on the Overland Trail. Later, and for good reason, the place came to be known as "Dead Man's Hollow."²

Pasco and his family, like most early Nebraska settlers, had moved west in steps from the Midwest: in 1865 from Ohio to southern Illinois, then in the fall of 1870 by boat up the Missouri to Brownville.³ They then pushed twelve miles inland by covered wagon to Nemaha County, where Mrs. Pasco's father owned a farm, and spent the winter there. In the spring of 1871, Solomon journeyed down to Republic County, Kansas, where he took out a homestead. After clearing some land and putting in his crop (probably corn, the best "sod crop"), he headed back to Nemaha County to collect his family. On the way, he met a stranger, Edward Walter, who was returning home to Nebraska City from his new homestead near White Rock, Kansas. They had much in common and decided to share the journey. An hour or so from

Rock Creek Station, they pulled off the road, unharnessed their teams, and began cutting grass for the horses.⁴

The next morning, a young Rock Creek Station man named Lewis Wagner was walking on the Beatrice road when he saw two wagons, and horses grazing nearby on the prairie. Thinking he would get a ride to Beatrice, he approached the wagons. When he first saw the bodies on the ground, he thought the men were only sleeping, but it quickly became evident from the pools of blood that they were dead. Wagner hurried back to Rock Creek Station, gathered a group of men, and returned to the scene of the murder. There, as *The Beatrice Express* reported, "a fearful sight met their eyes." About ten feet from the road lay Pasco, "a man of about 50," his body "bathed in gore" from a bullet wound that ran through his head from his left ear to his right temple. He still had a bundle of grass in his arms. Ten feet away lay the body of Walter. He, too, had been shot in the head, the bullet passing through his left ear and out his right eye. A scythe he had been using when he was killed lay at his side. The Rock Creek Station men identified the bodies from the contents of their pockets. Pasco's wallet still had money in it, as well as a list of household items, written by his wife, which Pasco had intended to buy. The men, acting as coroner's jury, concluded that robbery had not been a motive for the crime, but that the victims had been surprised as they were cutting grass and had not been able to put up much of a fight. It seemed that they had been executed by someone who had hidden in the tall grass with the express

purpose of murdering them.⁵

The bodies were taken back to Fairbury and messengers dispatched to their families. It was hoped that the relatives would arrive in time to see their loved ones, but by Thursday night the bodies were in an advanced stage of decay, and so at midnight they were buried in a cemetery east of town.

The newspapers noted that Oto-Missourias had been passing along that road on their way home on the day of the murders, and some locals were already claiming that the Indians were the murderers. But it was the opinion of the Beatrice and Fairbury newspapers that the Oto-Missourias were an "inoffensive" people who would not have committed such an atrocity. Besides, the editors reasoned, using the stereotypical logic of the time, nothing was stolen, so it was unlikely to have been Indians.

Clouded Genealogies

It is difficult to cross all the years back to 1871 and try to know James Whitewater (Nee-Scaw), the man eventually convicted of the murders; it would have been difficult to grasp him even as a contemporary. To his contemporaries, like Albert Green, the kind-hearted but paternalistic Quaker who ran the Oto-Missouria agency from 1869 to 1873, Whitewater was "that notorious half-breed," a fated man stranded in the lonely empty space between Native American and European American societies.⁶ Such a "borderland" position is now claimed by mixed-bloods or crossbloods (no term is satisfactory; they are all "loaded labels") as a vantage point from which to gain insights into both cultures.⁷ But back

David J. Wishart is professor of geography at the University of Nebraska-Lincoln and editor of the Encyclopedia of the Great Plains soon to be published by the UNL Center for Great Plains Studies.

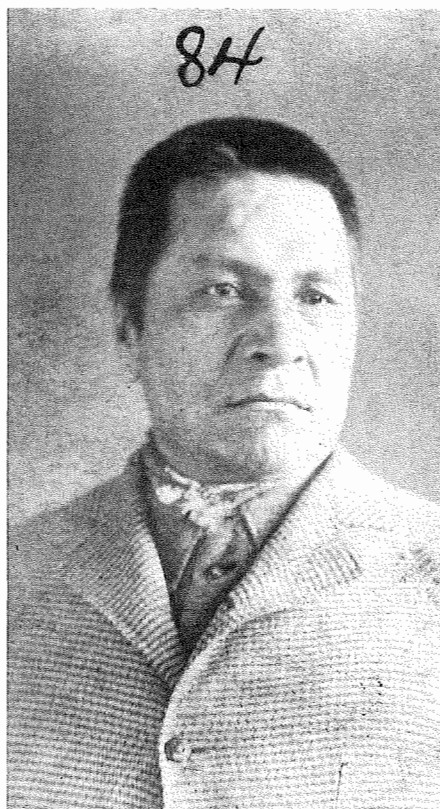
James Whitewater

then, there were no advantages to being a mixed-blood, only alienation from both the societies and, in Whitewater's case, at least, a bitter resentment that he could not contain.

The brief description of James Whitewater, prisoner number eighty-four, in the Nebraska State Penitentiary Records, reveals that he was twenty-six years old when he was incarcerated on April 24, 1872, five feet seven and a half inches tall, and of dark complexion. Beyond that, Whitewater's personal history is clouded.⁸

Charles Dawson, local historian of Jefferson County, writing in 1912, cast Whitewater as a "renegade Pawnee Indian" who had been forced to leave the Pawnee Reservation (after 1876 Nance County, Nebraska) because of "continued infractions of tribal law." In Dawson's account, Whitewater then took up residence on the Oto-Missouria Reservation. But that is unlikely: Why would a Caddoan-speaking Pawnee move in with Siouian-speaking Oto-Missourias?⁹

Albert Green, who, unlike Dawson, was there at the time, is a more reliable source. Green relates that Whitewater was a mixed-blood Oto who had spent his boyhood among the Ioways, probably on their reservation on the Big Nemaha River in the extreme southeastern corner of Nebraska and northeastern Kansas. At some point he attended the Presbyterian Mission school on the Omaha Reservation, where he learned to read and write English (he was one of only three Oto-Missourias who had that facility in the 1860s; the others were Battiste Barnaby and Battiste Deroine, also mixed-bloods). It was on the Ioway Reservation, according to Green, that Whitewater committed his first murder, the killing of another Indian, which, as was usual at the time, was settled by a gift of horses to the victim's relatives. Indians killing Indians was of no concern to the American authorities; nor for that matter, was Americans killing Indians: witness the massacre of Ponca men, women, and children by U.S. soldiers on the Niobrara River on December 3 and 4, 1863, and



Convicted in 1872 for the murder of Solomon Pasco and Edward Walter, James Whitewater (Nee-Scaw), the mixed-blood son of an Oto Indian chief, spent the next seventeen years as Prisoner 84 in the Nebraska State Penitentiary. He was pardoned on July 4, 1889, by Governor John M. Thayer. NSHS-RG2418-84

the half-hearted investigation, leading to no indictments, that followed.¹⁰

In Green's opinion, Whitewater's mixed-blood heritage explained his troubled life: "[h]is character was like a two-strand cord of which one strand was wholly good and the other wholly evil and both the product of heredity." But contrary to what a twenty-first century reader might expect this to mean (for our assumption is that nineteenth century Americans believed that Native Americans were uncivilized and brutal—and indeed many did), the good strand in Green's cord linked back to Whitewater's father, an Oto chief, and a long line of Oto ancestry, while the bad strand connected with "renegade white stock of

criminal tendencies and antecedents." Green, in fact, was representative of a number of educated observers of Native American-European American contact in frontier Nebraska who saw the Indians, with their close-knit families and supportive societies, as being far more civilized than the often rapacious settlers

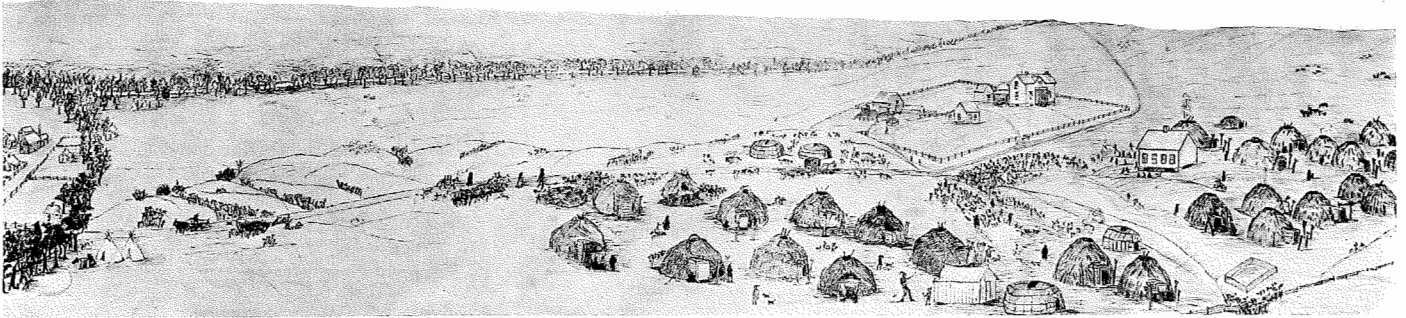
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who were crowding in around them. Whether Green's amateur psychology, attributing Whitewater's problems to his divided heritage, is correct is quite another matter, however.¹¹

Whitewater himself, in a letter written from the penitentiary in 1874, relates that he was the son of an Oto chief. And sure enough, on petitions sent by the Oto chiefs to the Commissioner of Indian Affairs in 1861, 1862, and 1865, demanding the dismissal of their corrupt agents, there appears the mark of "White Water." These seem to be the only occasions when Whitewater's father appears in the written historical record, but it is enough to establish that he was a chief. Of his mother's side, there is no record at all, beyond Green's claim that they were "white stock renegade." What the historical record does reveal, however, is that James Whitewater, born into Oto-Missouria society in 1846, grew up in a traumatic time of poverty, death, and inconceivably rapid change.¹²

Growing Up in Hard Times

Whitewater probably was born into one of the four Oto-Missouria villages (there



The Otoe-Missouria Agency in about 1870, from a sketch by Agent Albert L. Green. Ravaged by alcohol, disease, and pressure to give up their traditional way of life, the Oto-Missourias sold their remaining land in 1854, retaining only a reservation on the Kansas-Nebraska boundary. The agency was located at present-day Barneston in southern Gage County. NSHS-RG2800-14

were four because internal strife had torn the society apart) that lined the south bank of the Platte River where it bends to flow its last forty miles into the Missouri. Those were pre-reservation days, the final unfettered decade in Oto-Missouria life before the Kansas-Nebraska Act of 1854 opened Nebraska territory to European and American settlers. Whitewater's people still lived in traditional ways, farming the river terraces near their earthlodge villages and leaving twice a year for extended bison hunts on the western Plains. This had been Oto territory for at least 150 years: The landscape was threaded with their trails, and generations of ancestors lay in the soil on the bluffs. Their relatives, the Missourias, joined them in 1798, after being pressured out of Missouri by the Sac and Fox and, beyond, by the westward march of European American settlement.

But ever since the first Spanish and French traders had pulled their boats up the Missouri River in the last decades of the eighteenth century, bringing guns, other metal products, blankets, beads, and alcohol to exchange for furs, Oto-Missouria life had been changing at an accelerating pace. The French and Spanish were replaced by American traders who established trading posts at nearby Bellevue, points of dissemination for disease and alcohol. Then, in the 1830s, came the Baptist missionary Moses

Merrill, who built his mission near their villages, and Indian agents who induced the Oto-Missourias to sell their lands (in 1830 and 1833) and pressured them, in vain, to give up the hunt and settle down to farming on individual allotments. Meanwhile, their population, never large, plunged to below 700 in the 1840s, as disease—smallpox, malaria, dysentery, influenza—and starvation became the dreadful ordinary routine of life. In December of 1843, for example, only three years before Whitewater's birth, they were reduced to eating the grass thatch on their lodges—eating their shelter!—to keep famine at bay. As is characteristic of societies caught in such a subsistence crisis, children died in disproportionately large numbers, so the very survival of James Whitewater through those dark years was exceptional.¹³

The Oto-Missouria sold their remaining ancestral land to the United States in 1854 (for 42.6 cents an acre), retaining only a 162,000-acre reservation straddling the Kansas-Nebraska boundary in southeastern Nebraska. It was good land. The Big Blue River wound through the eastern part of the reservation, its banks cloaked with timber, its waters teeming with fish. At first, at least, game was abundant, and the soils around the agency (at present-day Barneston) were capable of yielding good crops. But the Oto-Missouria agents were corrupt, or at best inefficient, and living conditions

continued to decline in the late 1850s and through the 1860s. Their bison hunts were no longer productive because the herds were depleted and conditions on the range, where Cheyennes and Lakotas threatened, were increasingly dangerous. Their harvests often failed, sometimes because of drought, which victimized settlers as well as Indians, but also because of apathy brought on by poverty and strife. In April of 1867, for example, around the time that James Whitewater resurfaced on the reservation, the Oto-Missourias ran out of food and were forced to scour the countryside for dead hogs and cattle that had perished during the harsh winter. Twenty-one Indians died that spring from eating tainted meat. Two years later, forty-eight children—a quarter of all the Oto-Missouria children—died from starvation and associated disease. Their numbers continued to dwindle, declining to 434 by 1870.¹⁴

The government's response to these appalling conditions was to push its assimilation policy, which aimed to settle each Oto-Missouria on a 160-acre allotment where, ostensibly, they would become self-sufficient and no longer a responsibility of the government. The remaining lands, after allotments were allocated, would be sold to settlers who, by the late 1860s, surrounded the reservation and coveted its fertile soils and thick stands of timber. Under this pressure, the Oto-Missourias divided into two

James Whitewater

groups, which Green's successor, agent Jesse Griest, called the "stable faction" and the "wild party." The former—perhaps two-thirds of the people—lived at the main village near the agency and paid at least lip-service to the government program. The latter, led by traditional chief Medicine Horse, lived in a smaller village of bark lodges about three miles from the agency near the mouth of Mission Creek, from where they opposed the agents' plans at every opportunity. When James Whitewater enters the historical record, he was living at Medicine Horse's village with his wife, Tah-sha-me, and their two young sons, Henry and Willie.¹⁵

Prelude to a Murder

The adult James Whitewater was not a man to be taken lightly; in fact, many of the Oto-Missourias were afraid of him. His only friends were his wife and his brother William. It was not just his reputation for violence, earned during his early years among the Ioways, that frightened people, but also his connections with the supernatural. He often could be seen walking alone through the woods at night, calling out to Wakonda, the all-powerful source of life. Such access to the spirit world could bring great power, but it also had an awesome and fearful dimension, and Whitewater was often tortured by terrifying visions and nightmares.

True to his divided heritage, Whitewater also embraced Christianity, and on Sundays he would walk over to the agency for services "with a Bible under his arm and a pious devotional look on his face." It seems that he had taken the pain of his people and the injustice of their dispossession on his own shoulders, and he drew from religion ecumenically for help in bearing the weight.¹⁶

But clearly it was the Native American traditions that he revered most. In the fall of 1870, Green learned that Whitewater was organizing a party of men for a raid on a distant tribe, perhaps the Cheyennes. Such raiding for horses, revenge, and glory was an essential traditional role of Indian men. For several

days the men had sequestered themselves in a tipi away from the village, where they prepared for the raid by chanting, drumming, and calling on Wakonda to favor their endeavors. Their plan was thwarted by Green who, with his appointed force of Indian police, descended on the camp and threatened to arrest Whitewater if he tried to leave the reservation. It is a measure of how traditional the Oto-Missourias were, even at this stage of their dispossession, that the chiefs decided that they would have to give the putative raiding party six horses because their preparations were so advanced and could not be reversed.¹⁷

prairie. But she was shot in the process, and so were the children. When she reached the agency, carrying one dead child, the other having dropped from her weakening grasp, she told her story, then died.

The Oto-Missouria chiefs filed a claim with the government, seeking reparations for the relatives of the victims, but the authorities in Washington would take no responsibility for the atrocity. The incident seems to have festered in Whitewater's mind, constantly reminding him of the broader injustices done to his people, and he was obsessed with putting the souls of the murdered family to rest

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Whitewater also was traditional in his belief that a blood-debt had to be repaid to ensure the peace of murdered kinfolk in the afterlife. It is here, Green suggests, that a motive for Whitewater's murders can be found. A few years before Green arrived at the reservation, a family of Otos had been slaughtered by marauding settlers. As was customary in the fall trapping season, the family—a man and his wife, several children, and a grandmother—had set up a tipi encampment near a stream on the western reaches of the reservation, where beaver and mink were abundant. They were unaware that only a few miles to the west, on the Little Blue, Cheyennes had recently raided and killed settlers. Any Indians were fair game for retribution. The family was preparing to retire for the night when rifle bullets tore through the tipi, killing all but the grandmother and two sleeping infants. She managed to get to the corral and, clutching the children, rode out of the woods onto the

by avenging their deaths. It is probably no coincidence that Whitewater's murders took place close to the scene of the earlier massacre.

On July 4, 1871, the day of the murders, Whitewater went into Fairbury for the Independence Day celebration. He and the other Oto-Missourias had just returned from a month-long bison hunt in the Republican River valley. They must have had some success: Frank Helvey, a former Jefferson County sheriff, had lent Whitewater a rifle for the hunt, and Whitewater was able to repay him with a bison hide and fresh meat.

After his arrest, Whitewater himself gave the details of what happened in Fairbury to Medicine Horse and the other chiefs. He first paid off a nine dollar debt at Thomas and Champlain's Farmer's Store and bought some goods that he left in the store, intending to collect them after the celebration. That's when things started to go wrong. Out in the town (it wasn't much of a town, only

having been founded in 1868) he met a man who invited him to a nearby house—a saloon, as it turned out. Whitewater does not name the proprietor, but it is evident from an editorial in *The Fairbury Gazette* that the establishment had been set up the previous winter by John Wehn. The saloon operated outside the law, but in plain sight, and had been the scene of many disturbances.¹⁸

After the murders Wehn was arrested and convicted of selling liquor to Indians, which even licensed saloon keepers were not allowed to do. He was sent to the Beatrice jail, guarded only by his father, and not surprisingly, he escaped on the way there and was at liberty when the editorial was written. There is no indication in the historical record that Wehn was ever penalized. Despite its aspirations to become a respectable town (the first churches had been established in 1870; the first newspaper even earlier), Fairbury, in its early years, was still a frontier experiment, waiting for the institutions of law and order to precipitate out.

Whitewater was treated to beer, then whiskey. By his own admission, he was “very drunk.” At some point, he returned to the store to pick up his goods and ended up in a violent argument with the proprietor. It was later claimed that he threatened to kill some white men in retaliation for specific slights and general injustices. Helvey then intervened and arranged for a wagoner, “Irish” John Hughes, to haul Whitewater out of town. Hughes dropped him off at Rock Creek Station, just south of his own homestead, and watched him head northeast on foot. That is all Whitewater could recall.

When his memory picked up again, it was early the next day and he was on Indian Creek. The quiver of arrows he had worn the previous day was still strapped across his chest. He rubbed his hand down his pants and saw blood, then realized his right hand was badly cut, his thumb almost severed. He joined some Indians heading home, reaching his lodge at nightfall. Tah-sha-me asked him how he had injured his

hand, but James could not remember.

The Arrest of James Whitewater

At the Oto agency, Albert Green had been fretting that the murders would immediately be attributed to the Indians, but as the days passed without trouble he convinced himself that “such a thing could not have been done by any of them.” His peace of mind was shattered on July 13, when Sheriff Silas Alexander arrived at the agency with a warrant for the arrest of James Whitewater. Green, “not doubting for a minute that Whitewater was innocent,” drove the sheriff over to Medicine Horse’s village. According to the newspaper account,

settlers, bringing “distrust and hardness, where before there had been confidence and cordiality,” and throwing the entire “Quaker Experiment” (to secure allotments for the Otos) into question. Green organized his police to scour the countryside for Whitewater and sent letters to neighboring agencies giving the fugitive’s description. Jefferson County added incentive by offering one hundred dollars for Whitewater’s capture and five hundred dollars for the conviction of the murderer, “whoever he may be.”²⁰

Like Green, Whitewater’s fellow Oto-Missourias were now persuaded that he had killed the settlers. On July 14 the chiefs put their signatures on a letter to

To his contemporaries, like Albert Green, the kind-hearted but paternalistic Quaker who ran the Oto-Missouria agency from 1869 to 1873, Whitewater was “that notorious half-breed,” a fated man stranded in the lonely empty space between Native American and European American societies.

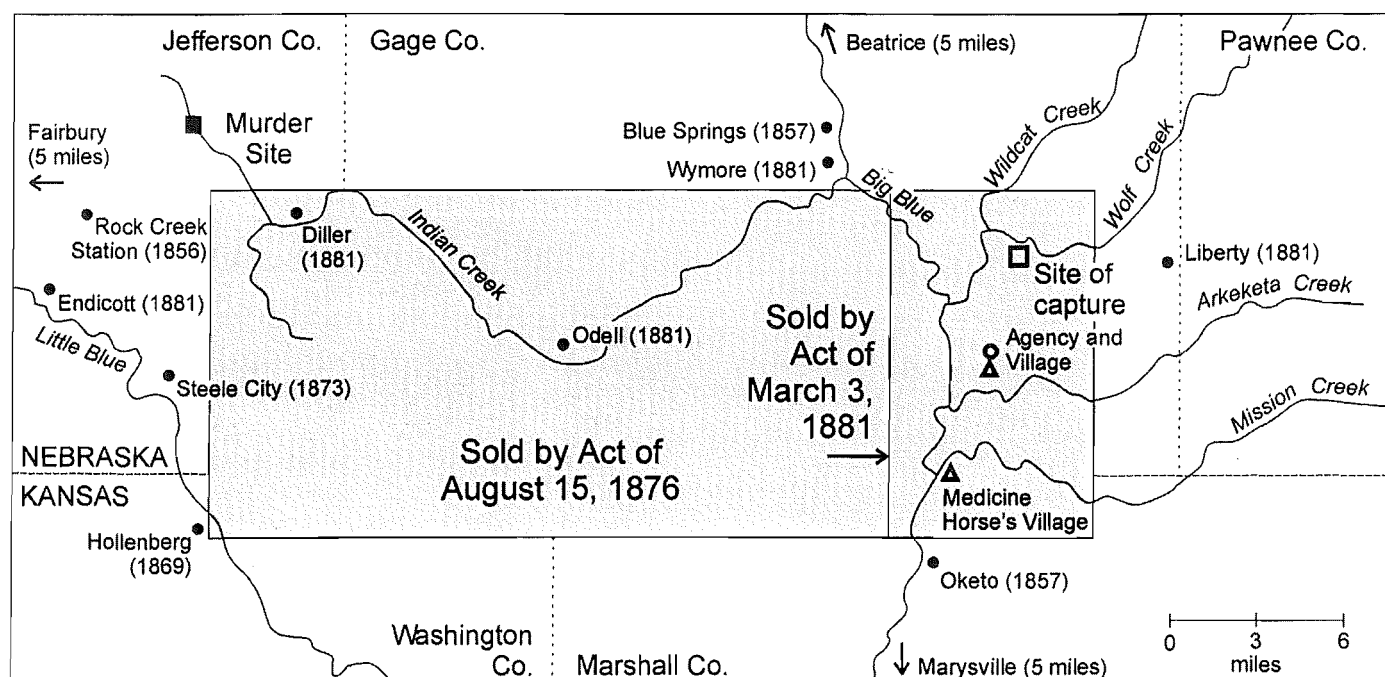
Whitewater immediately agreed to return to Fairbury for questioning, but Green presented a different story in a letter he wrote to his superior, Superintendent of Indian Affairs Samuel Janney, later that day. Green related that Whitewater was armed and “had the appearance of being a very dangerous man,” and it was only with great difficulty that he persuaded him to take a seat in the wagon. Medicine Horse rode with them, serving as Whitewater’s adviser.¹⁹

When they reached the agency, Whitewater asked permission to enter his aunt’s lodge to collect some possessions for the trip, and while the sheriff was getting a drink of water, he escaped across a cornfield and down into nearby ravines. Green now was convinced of Whitewater’s guilt. He was particularly concerned that, singlehandedly, Whitewater might have poisoned relationships between the Indians and the

The Fairbury Gazette expressing their regret at “the occurrence which has cast such a gloom over [the] community.” The letter probably was written by Green (in fact, it contains some of the same language used in his letter to Janney), and its purpose was to calm the settlers’ gathering resentment toward the Oto-Missourias, whom they suspected of harboring Whitewater.²¹

What happened during the next three days ensured that relationships between the settlers and the Indians would not be irreparably damaged by Whitewater’s actions, and it also shows how dependent the Oto-Missourias had become on Americans, who surrounded them and increasingly dictated the conditions of their lives. The “stable faction,” at least, encouraged by Albert Green, wished to prove to the settlers that they were worthy neighbors who deserved to retain their lands. As such,

James Whitewater



- | | | |
|--|--|-----------------------------|
| ■ Murder site | ○ Agency | □ Oto-Missouria Reservation |
| □ Approximate site of Whitewater's capture | ▲ Otoe Missouri Village | ----- State boundary |
| | • American Towns and Villages (with dates of founding) | County Boundary |

and believing Whitewater to be the murderer, they determined to capture him. However, there were at least two other possible motives for the Oto-Missourias' willingness to bring Whitewater to justice: First, they feared him, knowing his capacity for violence, and here was the opportunity to dispense with that problem; and second—and no small matter for a people whose per capita payments from the government for land they had sold in 1854 were seven dollars a year—there was the reward for delivering the suspect.

The Oto-Missourias scoured the reservation on July 14, 15, and 16, finding only the distinctive tracks of Whitewater's moccasins in widely scattered locations. On one occasion, they performed a ceremony to gain insight into his location and, based on a resulting vision, dispatched two riders to a bluff in the southern part of the reservation. The

riders returned, exhausted, their horses in a lather, and confirmed that they had found signs of Whitewater's presence on the bluff. Green accompanied the Indians to the bluff, where they found Whitewater's recently abandoned camp. They followed his tracks for a mile, before losing the trail.²²

Whitewater was finally captured by his own brother and two other Otos who followed Tah-sha-me as she carried food and a blanket to her husband. They found him hidden in dense timber along Wolf Creek, about five miles north of the agency. He was in a bad way: His wound was infected, and three nights of rain had left him cold and demoralized. Speaking to him kindly, William tried to talk him into surrender, but he was taken only after he was subdued and his feet and hands bound. Green described William as being "revolted" by his own actions, but driven by a "stern and

cruel duty" to deliver his brother to the authorities.²³

In his own account, James explained that he had fled only because he feared "being mobbed." He also maintained that he was not captured, but had given himself up because he was not guilty. And indeed, there would never be strong direct evidence to prove his guilt, only a bad reputation, his belligerent behavior in Fairbury, a day he could not account for, and his guilty reactions when captured.²⁴

What followed was surely one of the strangest spectacles in Nebraska's frontier history. On the morning of the eighteenth, Green and a shackled Whitewater set out in a wagon, heading for Fairbury via Beatrice. Flanking them were a dozen Indian policemen dressed in cavalry uniforms (probably old Civil War outfits) and carrying a large United States flag. Following was a long procession of

mounted chiefs and warriors, all dressed in their ceremonial best. They halted in Beatrice for the night, with James kept under close guard by the Indian police. Green took time to write to Janney, expressing his fears for James's safety, but they nevertheless proceeded the following morning. As the cavalcade approached Fairbury, the Indians began to chant a song, an invocation to Wakonda, asking Him to "incline the hearts of the Fairbury people to treat them kindly." And so they did. As the Oto-Missouria police placed their flag in the center of the Fairbury courthouse square, with Whitewater bound beneath it, the women of Fairbury prepared a feast of roast beef and coffee for the Indians and their agent. The Indians were given their hundred-dollar reward, and Whitewater's hearing was set for 9 P.M. the following day, Thursday, July 20.²⁵

Circumstantial Justice

As darkness fell, however, and the respectable townsfolk returned to their homes, Green again became concerned that Whitewater would fall victim to a lynch mob. He observed that a "class of men were appearing in the village from the country around . . . rough looking characters, such as are ever found on our frontiers." Green feared that Whitewater would not survive through the night to make it to his examination. Consequently, he persuaded Whitewater to "stand committed without examination." This would have been the result in any case, Green explained to Janney. So the examination was waived and the sheriff started with Whitewater for Pawnee City, where he would await trial, "safe from the vindictive passions of a lawless mob."²⁶

As it turned out, he would await trial for nine months in the Pawnee City jail, the delay caused by procedural problems. There was the issue of venue: Green was determined to have the trial removed from Fairbury, where he believed that "prejudice would drown justice," to Gage County or Pawnee County, and this indecision over location may have



Albert L. Green, agent of the Oto-Missouria Agency from 1869 to 1873 (seated, with Sally Lightfoot Green and two unidentified couples). Although he eventually was persuaded that Whitewater was guilty of the murders, Green was sympathetic to this troubled man stranded between Native American and European American societies, and worked to ensure that he received a fair trial, and that the incident did not damage relations between the settlers and the Indians. NSHS-RG2800-17

caused delays. Then there was the matter of engaging counsel for the defense and extracting money for expenses from the Indian Office bureaucracy. Green's initial recommendation was J. B. Weston of Beatrice, a "very able man" who seemed to be "in full sympathy with Indians." But eventually, for reasons that are not clear (perhaps Weston would not do the job for \$250, the sum allocated), G. M. Humphrey of Pawnee City was hired.²⁷

Finally, there was the question of legal jurisdiction—should the trial be held in federal or state court? That was

an ambiguous sovereignty issue, though the situation had been clarified by a recent Nebraska precedent also involving the murder of a non-Indian by an Indian. In 1869 four Pawnees had been found guilty in federal district court of murdering a Polk County settler whose body had been found on an island in the Platte River twenty miles from the Pawnee Reservation. The decision was overturned on the grounds that the state, not the federal government, had jurisdiction over crimes committed by Indians off their reservations. It is strange then, that

Champion S. Chase, the Omaha lawyer who had defended the Pawnees (incompetently, it might be added), advised Green that the state had no jurisdiction in the Whitewater case. He was wrong, and it was in state court that Whitewater was tried.²⁸

The nine-month delay had one beneficial effect, as Green explained to the new superintendent of Indian affairs, Barclay White, in his report of the trial: "The excitement in regard to the murder had so far subsided at the date of trial that a change of venue was not deemed desirable, it being found possible to impanel an unprejudiced and impartial jury." The newspaper account of the trial (court records have not survived), which took place in the packed Fairbury schoolhouse on April 22, 1872, also claims that a fair jury was impaneled, but only after many prospective jurors were dismissed. James Whitewater pleaded not guilty to two counts of murder.²⁹

The trial was remarkable for its brevity. J. Y. Byers of Fairbury testified that he saw Whitewater drunk on July 4 in Fairbury, and that he was threatening to kill someone; John Hughes recalled how he had given the intoxicated Whitewater a ride out of town and set him off in the direction of the reservation; and Lewis Wagner described how he had found the murdered men. As the newspaper account noted, none of this information was new. Nor did the examination of William Whitewater, Albert Green, Medicine Horse, and other Oto-Missourias reveal new facts. Indeed, the Indians were reluctant to say anything, causing defense counsel Humphrey to object that the prosecution was shaping their silence by posing leading questions. Finally, the agency "doctress," Phoebe Oliver, testified that while she was treating Whitewater's hand wound on the night after his arrest, he confided that "he supposed he did it." However, Miss Oliver did not know what "it" referred to—the wound or the murder. The defense called no witnesses, so the cause of the wound (no doubt many thought it had come from Walter's scythe,

the last action of a dying man) and Whitewater's long absence from the reservation were unexplained.

The jury retired at 9 P.M. and brought in a verdict of guilty on both counts at midnight. The following afternoon Whitewater was brought into court to be sentenced. Asked by the judge why sentence should not be pronounced, James spent an hour relating, "in a desultory manner," what little he recalled of the two days. When the sentence, life imprisonment in the state penitentiary, was pronounced, he showed no emotion. The newspaper editor and Albert Green viewed the trial as "fair and impartial," though surely both could see a contradiction when they concluded, in Green's words, that "although the evidence was entirely circumstantial, there can be no doubt of his guilt." Whitewater was admitted into the newly built state penitentiary two days later; he would spend the next seventeen years there.³⁰

The Redemption of James Whitewater

Almost a year after Whitewater's incarceration, Albert Green received a poignant letter from the prisoner, written in idiosyncratic English, complete with the "thees" and "thys" of Quaker expression. In it, Whitewater thanked Green for helping his wife and his "Poor little Boy," then announced his complete adherence to the Bible, and his rejection of "the Indian Way." He could "see no other way to save this wicked world." The Indians were wrong, Whitewater argued, in believing that they all go to one place after death; he was convinced, from reading the Bible, that the dead go to one of two places: the righteous to heaven, the wicked to hell. With the fervor of a convert and the desperation of a convict, he offered Green the following vow: "If God is so merciful as to let me out of prison, I promise Him that I will talk to the Poor Indian all the time if I live and got them to Serve Jesus and I pray to God to help me keep my promise."³¹

In the eyes of some, then and now, no one is more deserving of forgiveness

than a repentant sinner, and James Whitewater's case was taken up by Christian sympathizers. Significantly, it does not seem that Green was among them. Dr. I. Wayne Snowden of the American Sunday School Association championed the cause. In February 1874 Snowden had a letter from Whitewater published in the Lincoln *Daily State Journal*. In it he asked Snowden to urge the government to send missionaries to the Nebraska Indians; he was convinced that, once exposed to their teachings and the Bible, "they will leave their old fashion." Snowden was so persuaded by Whitewater's sincerity that he organized a petition drive for his release.³²

But all the piety in the world could not convince all Nebraskans that Whitewater deserved to go free, as demonstrated by a sarcastic *Beatrice Express* editorial written in response to Snowden's campaign. The writer sets the tone in the first sentence, calling Whitewater "the bright particular star of the penitentiary," who had been incarcerated for the "trifling error of blowing the brains out of two white men." He mocks Snowden for contending that Whitewater was "so completely sublimated and etherialized [*sic*] as to render him unfit to break stone," and maintains that among his own people Whitewater's "saintly qualities" shone most brightly "just after he had knocked a brother Indian down." The writer concludes by imagining the scene of Whitewater at the penitentiary, preaching repentance and sobriety in front of Snowden and the assembled prisoners, his hand on the Bible—"the very hand that was cut with the scythe in that death struggle with the murdered white men."³³

Whitewater's repentance, real or designed, did not get him out of prison, at least not until 1889. That year, the Nebraska State Legislature unanimously passed an act allowing the governor, at his discretion, on the Fourth of July each year, to pardon two penitentiary inmates who had been jailed for ten years or more and whose conduct while incarcerated merited such mercy. The first inmates to benefit from this act



True to his divided heritage, Whitewater embraced both Christianity and the spiritual world of the Oto-Missourias. After his release from prison in 1889 he joined the tribe in Oklahoma and is said to have continued evangelizing. This photograph, dated 1891, showing him in the ceremonial dress of a councilman, suggests he also continued to revere his native traditions. National Anthropological Archives, Smithsonian Institution/3855-A

were Black Hawk, an Omaha who had served nineteen years for murder, and James Whitewater, who had not seen the world outside the penitentiary walls for seventeen years and six months. On Independence Day 1889, at 3:30 in the afternoon, fifty-four-year-old James Whitewater walked through the penitentiary gates and “rolled in the grass from joy.”³⁴

There is no doubt that his adherence to Christianity had influenced the decision to release him. By one account he had read the Bible thirty-five times; by another, he was so well versed in the

On Independence Day 1889, at 3:30 in the afternoon, fifty-four-year-old James Whitewater walked through the penitentiary gates and “rolled in the grass from joy.”

scriptures “that clergymen might consult him on difficult matters.” The redeemed James Whitewater had been forgiven, at least by the press: the *Daily Nebraska State Journal* wished him well and hoped that the “world will be kinder to him than when he was a youth.”³⁵

But the world was dramatically changed. Tah-sha-me had died in 1887, and the Oto-Missourias had quit Nebraska.³⁶ They had given in to pressure from settlers, and to their own deteriorating circumstances, sold their reservation in two steps (1876 and 1881), and followed the Poncas and Pawnees south to Indian Territory. Perhaps it was this diminishing presence of Native Americans in eastern Nebraska by the 1880s (of the original eastern Nebraska Indians, only the Omaha would retain their reservation) that made Governor John Milton Thayer so willing to use his first two pardons for Indians. They were no longer a barrier or a threat to Nebraskans, and perhaps

James Whitewater

something was seen to be owed—at least to assuage guilt—for their tragic dispossession, which had endowed the wealth of the country to Americans.

James Whitewater spent the night at the Depot Hotel at the Lincoln railroad station in the company of his two sons. After a short visit to Preston, Nebraska, on the Sac and Fox reservation, he stepped onto the train to Indian Territory and out of the pages of Nebraska history.³⁶

And almost out of the pages of history altogether. The only evidence of his later life that has come to light is the general statement by Dawson that Whitewater continued to evangelize the Indians of Oklahoma and died around 1900, and a single photograph, taken in 1891, which shows Whitewater in ceremonial dress as a councilman and delegate. It seems that the Oto-Missourias, too, had been willing to accept his atonement and pardon him for his crime.³⁷

Notes

¹ "Horrible Tragedy: Two Men Murdered," *The Fairbury Gazette*, July 8, 1871.

² Charles Dawson, *Pioneer Tales of the Oregon Trail and of Jefferson County*. (Topeka: Crane and Co., 1912), Vol. 1, 231. The specific location is in Pleasant Township (Township 2 North, Range 4 East, Section 8). An undated map in the Nebraska State Historical Society (M78258 J 35) gives many of the local settlement details.

³ Pasco family information was kindly provided by Lois Pasco of Lincoln, Nebraska.

⁴ Dawson, *Pioneer Tales*, 230.

⁵ "A Terrible Tragedy: Two Men Murdered in Jefferson County," *The Beatrice Express*, July 8, 1871.

⁶ Albert L. Green, "Nee-Scaw (White-Water): The Fugitive. A True Story of the Blue River Valley," Box 1, Folder 1, Albert Lamborn Green Papers, RG2800, Nebraska State Historical Society (hereafter NSHS). Also, Albert L. Green, "Narrative of Major Albert Lamborn Green," in H. J. Dobbs, *History of Gage County, Nebraska* (Lincoln: Western Publishing and Engraving Company, 1918), 97–109.

⁷ See, for example, Louis Owens, *Mixedblood Messages: Literature, Film, Family, Place* (Norman: University of Oklahoma Press, 1998) and Gerald Vizenor and A. Robert Lee, *Postindian Conversations* (Lincoln: University of Nebraska Press, 1999).

⁸ *State Penitentiary and State Reformatory Records: Descriptive Record of Inmates*, Department of Correctional Services, Film RG86, NSHS.

⁹ Dawson, *Pioneer Tales*, Vol. 1, 230–32.

¹⁰ David J. Wishart, *An Unspeakable Sadness: The Dispossession of the Nebraska Indians* (Lincoln: University of Nebraska Press, 1994), 151–2.

¹¹ Green, "Nee-Scaw (White-Water)," 1. Among the sympathetic observers of the Nebraska Indians were Moses Turner, editor of *The Platte Journal* (Columbus), and Wilhelm Dineson, a settler in Platte County. Both regretted the injustices being visited on the Pawnees. Wishart, *An Unspeakable Sadness*, 194.

¹² "A Voice from the Penitentiary," *Daily State Journal* (Lincoln), Feb. 25, 1874; Petitions, Otoe chiefs to commissioner of Indian affairs, Jan. 12, 1861, June 11, 1862; petition, Otoe Chiefs to President Lincoln, Mar. 17, 1865, Letters Received by the Office of Indian Affairs, 1824–81, Records of the Bureau of Indian Affairs, Record Group 75, National Archives and Records Administration (microfilm at NSHS as RG653, Roll 10), hereafter cited as Otoe Agency Letters and the NSHS roll number.

¹³ David Miller, "Report," in *Annual Report of the Commissioner of Indian Affairs, 1843*. Senate Executive Document 1, 28th Cong. 1st Sess. SN431, 398–404. The background information in this section is drawn from Wishart, *An Unspeakable Sadness*, 88–90, 111–117, 165–74.

¹⁴ Samuel Janney to Ely Parker, June 5, 1869, Otoe Agency Letters, Roll 11. Also, Wishart, *An Unspeakable Sadness*, 165–74.

¹⁵ Green, "Nee-Scaw (White-Water)," 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*; Green, "Narrative of Major Albert Lamborn Green," in Dobbs, *History of Gage County*, 97–8.

¹⁸ "The Capture of Jim Whitewater: His Story," *The Beatrice Express*, July 29, 1871; "Selling Liquor to Indians," *The Fairbury Gazette*, July 15, 1871.

¹⁹ Albert Green to Samuel Janney, July 13, 1871, Letters Received, by the Northern Superintendency of Indian Affairs, 1861–1876 (National Archives Microfilm Publication M1166, Roll 8), Letters Received by the Office of Indian Affairs, 1824–81, Records of the Bureau of Indian Affairs, record Group 75, National Archives and Records

Administration (microfilm at NSHS as RG5008, Roll 135; "The Arrest of Whitewater," *The Fairbury Gazette*, July 15, 1871.

²⁰ Green to Janney, July 13, 1871; *The Fairbury Gazette*, July 22, 1871.

²¹ "From the Indian Reservation," *ibid.*, July 15, 1871.

²² Green, "Nee-Scaw (White-Water)," 5–6.

²³ *Ibid.*, 6.

²⁴ *The Beatrice Express*, July 29, 1871.

²⁵ Green, "Nee-Scaw (White-Water)," 6–7; Green, "Narrative of Major Albert Lamborn Green"; Green to Janney, July 22, 1871, RG508, Roll 135.

²⁶ Green to Janney, July 22, 1871.

²⁷ *Ibid.*, July 18, 1871, Sept. 6, 1871.

²⁸ David J. Wishart, "The Death of Edward McMurtrey," *Great Plains Quarterly*, 19 (Winter 1999): 5–22; Green to Janney, Aug. 10, 1871. It may be that Chase believed the murders actually had taken place on the reservation, as Green initially did. That would make a stronger case for federal jurisdiction, though not an irrefutable one. Note that James Whitewater's mixed-blood status did not change his position before the law: A mixed-blood who is a member of a tribe and lives on a reservation is viewed as an Indian for purposes of criminal jurisdiction. See Felix S. Cohen *Handbook of Federal Indian Law* (Washington D.C.: Gov. Printing Office, 1942), 4.

²⁹ Albert Green to Barclay White, Apr. 23, 1872, Otoe Agency Letters, RG508, Roll 12; "The Whitewater Trial," *The Fairbury Gazette*, Apr. 27, 1872.

³⁰ Green to White, Apr. 23, 1872.

³¹ James Whitewater to Albert Green, Mar. 16, 1873, Box 3, Folder 5, Green Papers. It is not clear why Whitewater refers only to one boy.

³² "A Voice from the Penitentiary," *Daily State Journal*, Feb. 25, 1874.

³³ *The Beatrice Express*, Mar. 12, 1874.

³⁴ *Laws, Joint Resolutions and Memorials Passed by the Legislative Assembly of the State of Nebraska, Twenty-First Session, 1889* (Omaha: Henry Gibson, 1889), 387; "The Pardoned Indians," *Daily Nebraska State Journal*, July 6, 1889.

³⁵ *Daily Nebraska State Journal*, July 4, July 6, 1889.

³⁶ "The Pardoned Indians," *Daily Nebraska State Journal*, July 5, 1889.

³⁷ Dawson, *Pioneer Tales*, 232.