

# Violence and the Rights of African Americans in Civil War-Era Indiana

## The Case of James Hays

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In August 1859, an African-American man by the name of James Hays was attacked and brutally beaten by a small group of Franklin County white men, allegedly under the hire of George W. Kimble, Hays's employer. The intention of the beating was to drive Hays from the neighborhood, forcing him to join the substantial exodus of African Americans from Franklin County and indeed from the whole of rural southern Indiana.<sup>1</sup> While Hays did move his family just across the county line into Fayette County, he stood up to Kimble and his hired thugs, who faced not only criminal prosecution but were forced to reply to the civil action Hays filed against them.

In Indiana, African Americans were not welcome members of the social or political community. The few rights they held under the law

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<sup>1</sup>Bruce Bigelow, "The Cultural Geography of African Americans in Antebellum Indiana," *Black History News & Notes*, 88 (May 2002), 4–7.

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were constantly at risk of being denied by the racist practices of European-American residents. The scale of legal limits imposed on African Americans equaled or surpassed that of the neighboring states of Ohio and Illinois, although there is some evidence that many of the laws were not enforced. The best single measure of white feeling about African Americans occurred earlier in the 1850s, when Hoosiers voted on a referendum regarding the exclusion of blacks from the state. Five-sixths voted for it, and in Franklin County, as in most of the southern third of the state, the anti-black position gained over ninety percent of the vote. The story of Hays's beating, however, was more than a simple tale of racial violence; it also involved sexual, party, and class politics. As we will see, Kimble's determination to drive Hays from Franklin County was motivated primarily by Kimble's relationship with Hays's wife, Elizabeth. Further, Hays's ability to stand his ground derived from his unlikely alliance with local Democratic leaders who sought to use the case to embarrass Kimble, a leader of the county Republicans. Ultimately, Kimble's power to resist Hays's allegations rested not in his role in the Republican party nor even in his racial identity, but in the power that his wealth could buy. Yet to ignore the racial issue would be to overlook the central reason that Kimble chose violence and, perhaps more important, the reason that he was able to find others willing to do this deed. Taken together, these interwoven elements of James Hays's story highlight the complex interplay of race, politics, gender, and class in Indiana on the eve of the Civil War.<sup>2</sup>

That an antebellum Republican county leader would instigate violence against an African American might not surprise those who know the period well; yet the response to this particular act—Democrats coming to an African American's defense—certainly requires reconsideration

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<sup>2</sup>Many of the laws restricting African Americans in early Indiana are collected in Stephen Middleton, *The Black Laws in the Old Northwest: A Documentary History* (Westport, Conn., 1993). For votes, see Charles Kettleborough, *Constitution Making in Indiana: A Source Book of Constitutional Documents with Historical Introduction and Critical Notes*; Vol. 2, 1851–1916 (*Indiana Historical Collections*, Vol. 2; Indianapolis, 1916), 617–18. The classic work on the rights of African Americans in the North is Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago, 1961). A recent book that focuses on intellectual history is James Oliver Horton and Lois E. Horton, *In Hope of Liberty: Culture, Community, and Protest Among Northern Free Blacks, 1700–1860* (New York, 1997). Still useful for Indiana is Emma Lou Thornbrough, *The Negro in Indiana Before 1900: A Study of a Minority* (1957; Bloomington, Ind., 1993). Joan E. Cashin provides a short introduction to the history of African Americans in the region in “Black Families in the Old Northwest,” *Journal of the Early Republic*, 15 (Fall 1995), 448–75. Joanne Pope Melish's “The ‘Condition’ Debate and Racial Discourse in the Antebellum North,” *Journal of the Early Republic*, 19 (Winter 1999), 651–72, is a good introduction to racial attitudes in the North. For a history of

of the absolute quality of the racism often attributed to the Democratic party in this era.

To begin that process of rethinking such simple theses, this article examines closely the small mysteries of individual lives such as Kimble's and Hays's.<sup>3</sup> Much of what follows is cautious and tentative as a result of the gaps in the historical record. But some of the evidence is clear. Democrats for a time supported an African-American man. The evidence of sexual impropriety was sufficient grounds for divorce. And James Hays was beaten.

The beating Hays received was severe. According to the original newspaper account, he received blows "on the head, body, and limbs with clubs and other missiles," and his jaw was broken. He filed suit against Jacob Bickel, Joseph Wilson, James Brison, Jr., and George W. Kimble, and eventually named as witnesses brothers John Daniels, Jr., Peyton Daniels, Richard Daniels, and their mother, Sarah Daniels, among others. Bickel was singled out as the leader and most violent of the assailants. He had pretended to need Hays's help with a sick horse and under that pretense led him to a wooded area where the beating took place, with Bickel wielding the club that broke Hays's jaw:

Not satisfied with this, Bickle [sic] was with difficulty prevented from cutting off the old negro's head, and throwing his body into a log heap near by, to be consumed.

Fortunately for Hays, the others present were more restrained and "finally agreed to grant him his life, if he would . . . never return to this part of the state." Bickel evaded arrest but the other three defendants were

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two nearby black communities, see Stephen Vincent, *Southern Seed, Northern Soil: African-American Farm Communities in the Midwest, 1765–1900* (Bloomington, Ind., 1999). A close reading of race and the legal system that treats the complexities added by class and gender in the postbellum South is Mary Frances Berry, *The Pig Farmer's Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present* (New York, 1999), especially the title chapter. For race and violence in the antebellum North, see Thomas P. Slaughter, *Bloody Dawn: The Christiana Riot and Racial Violence in the Antebellum North* (New York, 1991).

<sup>3</sup>On the advantages and limits of this individualized approach, see Richard D. Brown, "Microhistory and the Post-Modern Challenge," *Journal of the Early Republic*, 23 (Spring 2003), 1–20, esp. 7–9 and 16–19; and Jill Lepore, "Historians Who Love Too Much: Reflections on Microhistory and Biography," *Journal of American History*, 88 (June 2001), 129–44, esp. 133.

incarcerated. The Daniels brothers, arrested at the same time, volunteered to testify against the others and were released.<sup>4</sup>

Hays was born in North Carolina and came to Indiana between 1846 and 1849. By 1850, he had married Elizabeth, also a North Carolina native, and their household included four children: Washington, Charles, Isham, and Caroline, all but Isham born in North Carolina as well.<sup>5</sup> Hays's occupation was laborer, but he claimed \$200 worth of real property in 1850.<sup>6</sup> He probably was doing better than many of his neighbors, white or black, however. In 1860 he reported that he had slaughtered \$225 worth of livestock (probably most of it hogs he allowed to roam the unfenced lands); his neighbors averaged less than \$90.<sup>7</sup> The Posey Township neighborhood in which the Hayses lived was relatively poor, with many landless residents, including six African-American families living nearby, most from North Carolina. This small community in southeastern Indiana stretched across the township line into western Laurel Township, where five more black families lived.<sup>8</sup>

This rural settlement clung to the steep hillsides of a country deeply notched by the branches of the Whitewater River and its smaller tributaries, such as Little Sanes Creek. At one point the surrounding hills rise 230 feet in the span of a quarter of a mile. It was not a landscape conducive to

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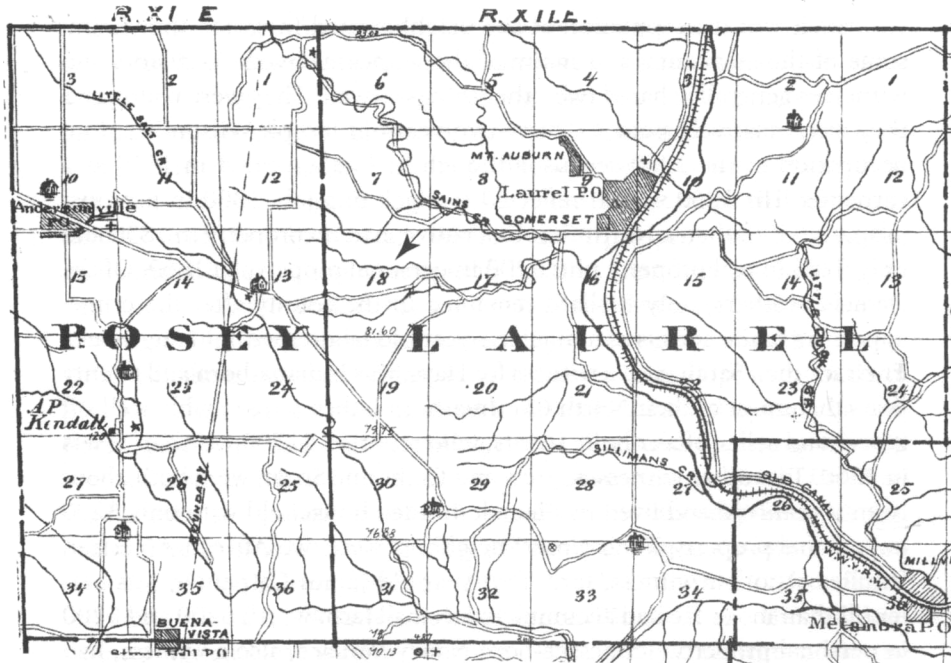
<sup>4</sup>Allegation for assault and battery, November 18, 1859, *Hays v. Kimble et al.*, Franklin County Circuit Court Civil Records, February 1861, Franklin County Courthouse, Brookville, Indiana (hereafter cited as *Hays v. Kimble et al.*); *Brookville Franklin Democrat*, August 26, 1859; Plaintiff's Subpoena list, February 7, 1860, *Hays v. Kimble et al.*; Petition, 17 February 1860, *Hays v. Kimble et al.*; Affidavit for continuance, August 14, 1860, *Hays v. Kimble et al.*

<sup>5</sup>U. S., Seventh Census, 1850, Population Schedules for Franklin County, Indiana, p. 404. Caroline is listed out of birth order, suggesting that she was not a child of the couple. There is the vaguest reason to suspect that only Isham was the child of both James and Elizabeth, as detailed below.

<sup>6</sup>There is no deed record of Hays owning property in Franklin County.

<sup>7</sup>U. S., Eighth Census, 1860, Agriculture Schedules for Fayette County, Indiana. The amount of livestock Hays slaughtered may have reflected his need to pick up and move. To understand the magnitude of his slaughter, keep in mind that his family, even before the separation, would have needed only about 1,600 pounds of meat, and \$225 would have represented more than 4,000 pounds. Indeed, converting everything to corn bushel equivalencies—an assumption that to meet their dietary needs, they bartered some of the meat for other foodstuffs—the Hays family would have produced approximately 183 bushels of corn more than they needed to eat, a marketable surplus that far surpassed many of their neighbors, especially those who were farmhands. See Jeremy Atack and Fred Bateman, *To Their Own Soil: Agriculture in the Antebellum North* (Ames, Iowa, 1987), 210, 293–94 n. 37.

<sup>8</sup>The largest population of African Americans in Franklin County lived in Salt Creek Township just south of Laurel and Posey, but it seems to have been a different community, with the bulk of the population originally from South Carolina, whereas the Laurel-Posey community had a strong North Carolina base.



Posey and Laurel Townships, Franklin County, Indiana, 1876

Little Sanes Creek is indicated by the arrow. The spelling "Sains" is used on some maps.

*Maps of Indiana Counties in 1876 . . .* (1876; Indianapolis, 1968).

the plow. Far below, the lands in the rich bottomland of the Whitewater were held by a small number of prosperous farmers. There, the adjoining communities of Laurel, Somerset, and Mt. Auburn had prospered with the coming of the Whitewater Canal in the 1840s, while the top of the ridge, which opened onto the vast Tipton Till Plain of central Indiana, also held good opportunities for agriculture. Not so the hills west of Laurel, the residents of which were, in the words of one of their defenders, "of that class that make a living by labor," probably traveling either to the bottomlands or to the plain to work on wealthier farms. It was these "Sanes Creekers," as they were known, who several years earlier had been "re-buked by the orderly and sober citizens of the township" after holding an anti-temperance meeting.<sup>9</sup>

<sup>9</sup>*Map of Fayette, Union and Franklin Cos., Indiana* (1867; Knightstown, Ind., 1999); "Letter from Thomas B. Adams, Sanes Creek, Indiana," *Brookville Indiana American*, May 25, 1855; and "Letter from Citizens," *ibid.*, March 24, 1855.

Such was the reputation of the neighborhood in which the victim, some of the assailants, and many of the witnesses lived. Assailants and witnesses generally shared two other things as well: They were young and they were relatively poor.<sup>10</sup> Thirty-two-year-old Joseph Wilson listed no occupation in the 1860 census, although he had appeared in 1850 as a carpenter. His 1860 wealth reflected the lack of a job: \$300 in personal property. His father, a North Carolina native, had no property in 1850 and only \$200 in real property plus \$200 in personal property in 1860. Of the Daniels brothers, only Richard remained in the county after the crime, appearing in the census as a nineteen-year-old laborer without any assets. Their mother, Sarah, also a witness for Hays, was Indiana-born and twenty years the junior of their North Carolina-born father, a reasonably well-off grocer and seller of alcoholic spirits, who reported \$1500 worth of assets in 1860. Two other witnesses, John and Catherine Spear, were both about twenty years old and lived in a female-headed household with only \$200 in personal property. Their closest neighbors were two African-American families. Another witness, forty-four-year-old James Carpenter, was better off than most. He had accumulated a small farm worth \$200 and \$200 in personal property. Tennessee-born Nancy Wallace, also a witness, had lived a life of deprivation with her husband, David, a native of Virginia, who, despite his sixty-one years, was still a farmhand with no property.<sup>11</sup> Witness Calvin Tucker, born in New York, had left the county by 1860; ten years earlier, at the age of twenty-five, he had owned no land but stood to inherit a great deal from his father.<sup>12</sup>

While the streak of southern origin ran through this group, it reflected the fact that this portion of Franklin County had more southerners than the rest of the county; Jacob Bickel, the most vicious of the assailants, was probably from a Pennsylvania family. Far more important than regional

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<sup>10</sup>Among the assailants, Jacob Bickel and James Brison, Jr., could not be found (having apparently skipped the county along with several of the Daniels brothers), which would explain why the case went forward against only Joseph Wilson and George Kimble and which confirms James Hays's assertion that material witness John Daniels, Jr., was also unable to be called. Only Joseph Wilson remained to represent the assailants. (A newspaper account gave the name as James Wilson, possibly the result of an erroneous transcription of the abbreviation for Joseph, "Jos.," since James was abbreviated "Jas.")

<sup>11</sup>In 1850, the Wallaces lived next door to Joseph Wilson, or rather, next to his father's household.

<sup>12</sup>Information on assailants and witnesses is from U. S., Seventh Census, 1850, Population Schedules for Franklin County, Indiana; and U. S., Eighth Census, 1860, Population Schedules for

origin was the fact that these persons were young and poor; while these two went hand in hand in an agricultural system where wealth was often a function of age, many of these young men had fewer prospects than some of their neighbors of benefiting from the assistance of fathers.<sup>13</sup> They were a community of farm laborers, finding work on the farms of their wealthier neighbors, much as James Hays did, but perhaps with even less success than Hays had found. Without great prospects of climbing the agricultural ladder, these young farm laborers found themselves dependent on the income and perhaps the will of the wealthier landowners.

Such a landowner was Hays's employer, George W. Kimble, who in 1860 was the second wealthiest man in Laurel Township, with assets of \$16,000. Emigrating from Maryland in 1816, he had first operated a mill in the Brookville area, later settling near Laurel and managing his 528 acres of land, much of it on a plateau above Little Sane's Creek. Employing his sons and poorer men like James Hays and his neighbors, Kimble found time to dabble in Whig party politics (serving as Franklin County recorder of deeds from 1834 to 1846) as well as in other civic affairs, including the ill-fated Richmond and Brookville canal and the Franklin County Agricultural Society. When the Whig Party disintegrated in the early 1850s, Kimble became a Republican, and he continued to play a leading role in the party, serving on the Laurel Township People's Party Committee of Vigilance in 1856. Although originating in the Know Nothing movement in 1854, the People's Party had by 1856 become the Republican Party in Indiana. The local party's platform, reflecting Franklin County's large German Catholic population, stated that parties organized against Catholic or the foreign-born "are neither justified by past history or future prospects of the country, nor in unison with the spirit of toleration and enlarged freedom which peculiarly distinguishes the American system of popular govt." Kimble put his efforts into living up to these sentiments, participating in a failed attempt to recruit a German Lutheran pastor to be the party's candidate for county treasurer. The overarching sentiment of the local party was strongly Republican, including its fear of

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Franklin County, Indiana. If the person reported in the 1860 census as Collins Tucker was really Calvin Tucker—same township, same wife's name, same birthplace, age one year off, wife's age two years off, wife's birthplace different—then in 1860 he was a shoemaker with \$400 of real property and \$100 of personal property.

<sup>13</sup>Jeremy Atack, "The Agricultural Ladder Revisited: A New Look at an Old Question with Some Data 1860," *Agricultural History*, 63 (Spring 1989), 1–25.

the “slave power”: “It is a question of whether the slave oligarchy shall rule, or whether the people-free people shall govern.”<sup>14</sup>

Opposition to the slave power, did not, however, equate to abolitionism, most certainly not in Franklin County.<sup>15</sup> In replying to Hays’s civil suit, Kimble and Wilson (Bickel and Brison having fled the county) argued on the basis of the U. S. Supreme Court’s *Dred Scott* decision that Hays had no standing to bring suit, based on the fact that he was “a pure Negro of pure African blood—that he was born and raised in the State of North Carolina—that his ancestors were of pure African blood and were brought to this country and sold as Negro slaves.”<sup>16</sup> Kimble and Wilson’s language thus echoed, almost to the word, John F. A. Sanford’s plea in abatement in the *Dred Scott* case. The Supreme Court had, in its 1857 decision, responded to such language by asserting that even if Scott were in fact free and recognized by a state as its citizen, he would still not be a citizen of the United States—and would therefore have no standing to bring suit in federal court. To buttress the point, Chief Justice Roger B. Taney provided evidence that even in the most anti-slavery of northern states, the citizenship rights of African Americans were limited.<sup>17</sup>

Kimble and Wilson likewise maintained that Hays had no standing to bring suit in state court because he was “not legally a citizen or inhabitant of this State and is not entitled to any right under the Constitution and laws of Indiana.” But they did not stop there. Before denying Hays’s allegations, they accused him of failing to register with the county clerk, as all African Americans were required to do in Indiana, adding that he

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<sup>14</sup>U. S., Eighth Census, 1860, Population Schedules for Franklin County, Indiana; U. S., Eighth Census, 1860, Agriculture Schedules for Franklin County, Indiana; August J. Reifel, *History of Franklin County, Indiana; Her Peoples, Industries, and Institutions* (1915; reprint, Evansville, Ind., 1971), 197, 204, 239, 259, 262, 934. For Republican party politics, see William E. Gienapp, *The Origins of the Republican Party, 1852–1856* (New York, 1987), 108–112, 284–86; and *Brookville Indiana American*, June 27, 1856. There are only scattered copies of Republican newspapers from Franklin County and the two neighboring counties for 1859 through 1861, which has made investigation of this case one-sided.

<sup>15</sup>Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (1967; Urbana, Ill., 2002); and Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York, 1970). See also Gienapp, *Origins of the Republican Party*.

<sup>16</sup>Answer of defendants, February 16, 1860, *Hays v. Kimble et al.*

<sup>17</sup>*Dred Scott v. Sandford*, 19 How. 393 (1857), 400, 412–16. (Sanford’s name was misspelled in the original papers filed with the Supreme Court.) The standard work on the *Dred Scott* decision is Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York, 1978). Chief Justice Taney certainly here was thinking of Massachusetts and a handful of



was therefore in the state illegally and could not sue. Strangely, although Hays actually had been one of the first of a few and only African Americans in the county to comply with this onerous law, his demurrer made no mention of it. Instead, he replied that “the defendants’ answer does not state facts sufficient to constitute a good defense to plaintiff’s cause of action.”<sup>18</sup>

The defense’s use of the *Dred Scott* decision caught the attention of the local Democratic newspaper, which had reported the original beating under the headline of “Disgraceful.” Southern Indiana Democrats were primarily supporters of Stephen A. Douglas and thus were uncomfortable with *Dred Scott*, although they remained thoroughgoing racists in their defense of a white-ruled America.<sup>19</sup> The *Franklin Democrat* endorsed the argument of Hays’s counsels—leading local Democrats—that “our constitution intended to afford protections to every branch of the human family,” for the state constitution seemed to afford remedies in law to everyone, not merely citizens.<sup>20</sup> The newspaper nevertheless took pains to distinguish its stance from that of the radical abolitionists:

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other states that had given broader citizenship rights to African Americans, and he was working to cut off any possibility that blacks from these states might be considered citizens of the United States. Taney did not offer examples of how northern states prevented free blacks from filing lawsuits; after all, even slaveholding Missouri had permitted *Dred Scott* to sue within its state courts.

<sup>18</sup>Answer of defendants, February 16, 1860, *Hays v. Kimble et al.*; Register of Negroes and Mulattoes in Franklin County [Indiana], 1852, photocopy (Genealogy Division, Indiana State Library, Indianapolis); and Demurrer, February 17, 1860, *Hays v. Kimble et al.*

<sup>19</sup>In the election of 1860, Franklin County had 2,192 votes for Douglas compared to only 47 for Breckenridge; Lincoln received 1,695 and Bell only 7 votes. Exactly half (184) of Laurel Township voters cast their ballots for Douglas, with Lincoln gaining 177, while Posey was the star Republican township in Franklin County, with Lincoln (126) getting twice the votes of Douglas (63) and Breckenridge receiving eleven. *Brookville Franklin Democrat*, November 9, 1860.

The racism of Franklin County Democrats became more evident as the Civil War progressed. See, for example, the *Brookville Franklin Democrat*, April 17, 1863: “If to think a poor man is good as a rich one, if to value a white man more than a negro, makes one a copperhead, then, *oh, but I’m a Copper*.” See also August 7, 1863, and October 31, 1862.

<sup>20</sup>One of Hays’s original attorneys, D. D. Jones, served as chair of the Democratic county convention in 1860, and the other, Henry Berry, would become the clerk of the circuit court on the Democratic ticket. Hays obtained new counsels, one of whom, Cyrus Kilgore, had been a candidate for the Democratic nomination for recorder at the same convention. Kilgore’s partner, U. V. Kyger, however, would in 1861 become editor of a new Republican newspaper in Franklin County. Kimble’s attorneys were prominent Republican leaders George Holland and C. C. Brinkley. See Franklin County, Indiana, Circuit Court Order Book 13 (1857–1862), 295–296 (February 15–16, 1860), and 416 (February 5, 1861), Franklin County Courthouse, Brookville, Indiana; John W. Miller, *Indiana Newspaper Bibliography* (Indianapolis, 1982), 119; and *Brookville Franklin Democrat*, June 1, 1860.

We confess that we do not sympathize, as abolitionists do, with the colored population; but, at the same time, think it unjust to allow white men to oppress negroes with impunity. The points in this case will be given, if a trial be had, which will show that to deny the right of the plaintiff would be a moral outrage.<sup>21</sup>

The trial was never held, but many of these points would be raised in a second lawsuit, much to the delight of the *Franklin Democrat* in its campaign to embarrass Kimble.

In the same court term in which James Hays filed suit against George Kimble and the others, he also filed suit to divorce his wife, Elizabeth Hays, on the grounds, the *Franklin Democrat* reported, of adultery with a white man:

The unenviable position in which we find an old citizen of this county placed in this transaction, is very humiliating to those who have heretofore associated with him on terms of intimacy. If the statements are true, and they bear truth on their face . . . we regard it as unparalleled for brutishness and degradation. A regard for the feelings of the relatives of this man is our excuse for not naming him out. Their hearts are already lacerated and crushed at the recital of these outrages upon their feelings, and we have no desire to reopen the torn and bleeding wounds again.

Appearing on the page opposite the report of Hays's case against Kimble, the report of adulterous amalgamation was likely linked by many readers to the assault on Hays.<sup>22</sup> Certainly the language served to inspire gossip and to motivate readers to seek out the details that the newspaper was too sensitive to publish. Non-political local news was rare in the *Franklin Democrat*, and the presence of this case in the newspaper's pages underscored both its prominence and its probable connection to local politics.

The first trial in the divorce case ended in a hung jury with ten of the twelve members voting to find Elizabeth Hays guilty of adultery. The case was re-tried in the next term, and this time the divorce was granted. The *Franklin Democrat* listed five divorces granted by the court that term, the first being "James Hays vs. Elizabeth Hays (colored)—adultery with a white man," and in another column pointed to the list as evidence of the sad

<sup>21</sup>Brookville *Franklin Democrat*, February 24, 1860.

<sup>22</sup>Ibid.

798. James Hays vs. Diver,  
 Objection Hays. vs. Diver,  
 Answer the parties by their  
 Attorney and the Plaintiff now files  
 his Answer to the second paragraph  
 of the defendant's answer herein as follows  
 (now insert) Motion (insert) the Court  
 maintain its ruling of the Court to  
 deny said answer object and rights are  
 filed (now insert) and the said Plaintiff  
 now files his reply herein as follows  
 (now insert)

Hays Divorce Proceedings  
 Civil Order Book 13, Franklin Circuit Court.  
 Courtesy Franklin County Court Clerk's Office

state of contemporary society.<sup>23</sup> The editors' coy treatment of the case pointed to their continued effort to embarrass Kimble and the Republican party without transgressing propriety and embarrassing Kimble's wife, Mary.

By the summer of 1860, before the divorce case had been settled, James Hays had moved himself and five of the children to the next county. Isham (Isenn) remained in the household of another African-American family, and only a George W. (ashington?) Hays, about twenty and the only adult child, lived with his mother in a house two houses away from Kimble.<sup>24</sup>

<sup>23</sup>Ibid, March 2, 1860, and August 17, 1860.

<sup>24</sup>U. S., Eighth Census, 1860, Population Schedules for Franklin County, Indiana, pp. 131, 168. The Isham of the 1850 census and the Isenn of the 1860 census are apparently the same person, his name misspelled in the latter case. The question of whether the Washington Hays of the 1850 census was the George W. Hays of the 1860 census cannot be resolved. (There is no record of what the "W." in George W. Kimble represented.) But if they denoted the same person, the "new" name would suggest that Elizabeth Hays and George W. Kimble had a relationship going back twenty years, perhaps to before James and Elizabeth Hays were married. Although the 1850 census listed Washington's birthplace as North Carolina, the 1860 census gave George W.'s as Indiana, while the other two older children, now in a different household, still gave North Carolina as their birthplace.



Franklin County Courthouse, circa 1872. The courthouse was the site of the three concurrent legal actions: James Hays's divorce proceedings against his wife, the grand jury investigation of the men who beat him, and the civil case against them and Kimble, accused of instigating the assaults.

*Atlas of Franklin Co., Indiana* (Chicago, 1872).

Missing from the newspaper accounts was any sense of who Elizabeth Hays was or why she committed adultery.<sup>25</sup> That the first trial ended in a hung jury would suggest she fought the divorce, perhaps to save her marriage but maybe just to get back her children. Despite Indiana's reputation in the late nineteenth century as a place for easy divorces, the burden

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<sup>25</sup>Unfortunately, court papers for cases finished in the August 1860 term of the court, including records of the divorce case and the grand jury's activities, are missing.

of proof still rested with the plaintiff, in this case James Hays.<sup>26</sup> Given that Hays was Kimble's employee, Kimble may well have coerced Elizabeth, but if so, then James's reaction to his wife's actions seems harsh. Another possibility would also reflect poorly on James. Elizabeth may have sought protection from an abusive husband. Kimble, with his Maryland background, would have found the role of protector in keeping with the paternalism of the master class. Alternatively, Elizabeth may have seen in Kimble a chance for a better life than that of the wife of a farmhand. Or perhaps there was real affection in the relationship.

The idea of real affection would have been particularly disturbing to the Democratic leaders of Franklin County, who had become obsessively preoccupied with the sexual issue to the exclusion of the assault. This fixation was more than mere prurient sensationalism on the part of northern Democrats, because sexual mixing lay at the heart of their fears of the Republican program. Amalgamation of the races would blur the lines that distinguished those who could embrace liberty—white men—from those who were by their very nature marked as a lesser people incapable of liberty. Just days before the Hays beating, African-American abolitionist Frances Ellen Watkins had spoken in Franklin County. The *Franklin Democrat* praised her style but damned her message: "She is a true Republican on the nigger question." Especially troubling to the editors was the rumor that she had become angry "at not being sat at the first table at the Valley House."<sup>27</sup> The demand by blacks for such equal treatment was considered by Democrats to be among the gravest dangers posed by Republican control. To be able to point to an active local Republican who was sexually intimate with an African-American woman gave credence to Democratic racist demagoguery that the Republicans intended to destroy the distinctions between the races.

Yet Kimble's willingness to use violence without fear of retaliation

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<sup>26</sup>Norma Basch says that "Indiana developed grounds and procedures so elastic as to become the first divorce mill of the nineteenth century." Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley, Calif., 1999), 8. Basch notes (p. 93) an interesting debate between Horace Greeley and one of the authors of the Indiana divorce law, Robert Dale Owen, in the *New York Herald* in April and May of 1860.

<sup>27</sup>*Brookville Franklin Democrat*, August 12, 1859. While a notable abolitionist before the war, Watkins, under the name Frances Ellen Watkins Harper, became even more famous after the war in reform circles and as a literary figure. On the issue of racial mixing, see Leonard L. Richards, "Gentlemen of Property and Standing": *Anti-Abolition Mobs in Jacksonian America* (New York, 1970), 44–45. See also Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century* (Ithaca, N. Y., 1983), esp. chapters 5 and 6; and David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (London, 1991).

underscored the point that even Republicans embraced the privileges of race. And Kimble may well have benefited from notions of white male equality when he recruited his thugs to drive Hays from the county. Hays was, after all, more successful in some ways than his assailants were—a fact that may have contributed to Jacob Bickel's extreme violence against him. It seems unlikely that these men were unaware of Kimble's sexual liaisons with Elizabeth Hays, so their willingness to help Kimble procure a permanent relationship with Elizabeth also points to a white, male perception of African-American women as sexual servants of white men.<sup>28</sup> Although Democrats feared that Republicans threatened the equality of all white men, elite whites like Kimble had sometimes found in such a doctrine a useful means of forming alliances with poorer whites like James Hays's assailants.<sup>29</sup>

James Hays's first attempt to divorce Elizabeth had ended in failure when many of the witnesses ignored their subpoenas and remained home, failing to testify. These same individuals were called as witnesses in the criminal case, and here again they simply failed to show. The results were a hung jury in the divorce case, no trial in the civil case, and no decision by the grand jury in the criminal matter. An angry grand jury indicted five of the witnesses—James Carpenter, Nancy Wallace, Calvin Tucker, Catharine Spear, and Sarah Daniels—for “failing and refusing to obey the process of subpoena and to appear before the Grand Jury of Franklin County.” In the August term, Spear and Daniels were discharged from the indictment and given a dollar a day plus mileage for attending the court and apparently testifying in the divorce suit, making possible its completion. It is perhaps permissible to speculate that these two female witnesses, both of them related to men who continued to evade testifying, were

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<sup>28</sup>It may be telling that several of the assailants had southern roots. The historical literature on this subject focuses on the South and slavery. See Brenda Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York, 1996); Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill, N. C., 1992); and Deborah Gray White, *Ar'n't I a Woman?: Female Slaves in the Plantation South* (New York, 1985).

<sup>29</sup>The history of these kinds of relationships dates from the colonial period, as evidenced in Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975); and Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, N. C., 1996). This bonding on the basis of white manhood seems to emanate from the poorer classes as a claim of their equality with all white men, as evidenced by Roediger's *Wages of Whiteness*. Stephanie McCurry's *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York, 1995) demonstrates that this claim was not always to the liking of elites. These works make it clear that the rising egalitarianism of white manhood forced

outraged by what George Kimble had done to his wife, thus prompting them to provide testimony enabling James Hays to win his divorce suit. In the same session, Calvin Tucker and James Carpenter were found guilty of evading a subpoena, not in the grand jury investigation nor in Hays's civil action against Kimble, but in the divorce suit. Kimble posted Tucker and Carpenter's replevin bond for the costs incurred in evading the subpoena, a fact suggesting that Kimble may have been behind all of the absences. The other male witnesses (Nancy Wallace disappeared from the record) continued to avoid efforts to round them up, forcing Hays to ask for a continuance in his civil action: "He has been informed and believes that Geo. W. Kimble, one of the above defendants, has induced and hired the said witnesses to absent themselves so that service of subpoena could not be had upon them to appear as witnesses," read the affidavit for continuance. John Daniels, Jr., apparently had moved to Iowa. The other sons of Sarah Daniels, Peyton and Richard, evidently eluded subpoena servers, as did Catharine Spear's brother, John. The continuance was granted, but Hays appeared before the court again in 1861 to ask for another continuance. John Daniels, Jr., was still not available. The continuance was denied, and Hays, defeated, moved for dismissal of his civil suit. Moreover, the grand jury never returned an indictment in the criminal case. Thus the outcome of the three legal cases was that Hays won his divorce but nothing more.<sup>30</sup>

Without the testimony of white men, James Hays was unable to pursue his suit because he was barred by Indiana law from testifying himself in a case to which whites were a party. While Hays's statements may have provided the basis for the original indictment by the justice of the peace,

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elites to make concessions to ordinary white men in order to consolidate some aspects of power over women and racial minorities (and ultimately, I would argue, over ordinary white men). The applicability of these studies for the North is suggested by Roediger's *Wages of Whiteness*, but see also James Brewer Stewart, "The Emergence of Racial Modernity and the Rise of the White North, 1790–1840," with replies by Jean R. Soderlund, James Oliver Horton, and Ronald Walters, *Journal of the Early Republic*, 18 (Spring 1998), 181–236; Roediger, "The Pursuit of Whiteness: Property, Terror, and Expansion, 1790–1860," *Journal of the Early Republic*, 19 (Winter 1999), 579–600; Jon Gjerde, "'Here in America there is neither king nor tyrant': European Encounters with Race, 'Freedom,' and Their European Pasts," *Journal of the Early Republic*, 19 (Winter 1999), 673–90; and Stewart, "Modernizing 'Difference': The Political Meanings of Color in the Free States, 1776–1840," *Journal of the Early Republic*, 19 (Winter 1999), 691–712.

<sup>30</sup>Subpoena list, February 7, 1860, *Hays v. Kimble et al.*; Petition, February 17, 1860, *Hays v. Kimble et al.*; Affidavit for continuance, August 14, 1860, *Hays v. Kimble et al.*; [Franklin County, Indiana, Circuit Court] Order Book 13 (1857–1862), 318 (February 22, 1860), 379–380 (August 14, 1860), and 439 (February 7, 1861); Affidavit for Continuance, August 14, 1860, *Hays v. Kimble et al.*; and Affidavit for Continuance, February 5, 1861, *Hays v. Kimble et al.*

they could not be used in court. Therefore, he needed the assistance of the Daniels brothers who had assaulted him. Of course, as hearsay, Hays's testimony probably would have been insufficient to find Kimble guilty, but Joseph Wilson might have been forced to pay for his sins. Despite the obvious lack of justice in the case, Hays's Democratic defenders never accused Kimble of corrupting the system. They were too enmeshed in the system of white privilege and indeed were the authors of the very measure that had prevented Hays from testifying against Kimble and Wilson.<sup>31</sup>

Hays proved powerless to protect his person; what legal power he did have came from the involvement of Franklin County Democrats, and their interests focused more on embarrassing Kimble and the Republican Party than on helping Hays. The only arena in which Hays prevailed was in divorcing his wife. In this conflict between members of the same race, male privilege won, despite Elizabeth's relationship with a powerful white man. Even with assistance from whites, neither Elizabeth nor James Hays could transcend the traditional racial and gender structures of society. The defendants' decision to base their defense on the *Dred Scott* ruling reflected more than just legal opportunism; in their willingness to wage violence against James Hays, as in their confidence in evading its legal consequences, Kimble and his thugs had proven that Hays "had no rights which the white man was bound to respect."<sup>32</sup>



<sup>31</sup>Middleton, *Black Laws*, 246; Thornbrough, *Negro in Indiana*, 123.

<sup>32</sup>*Dred Scott v. Sandford*, 407. Some have argued that Taney has been unfairly attacked for this choice of words, noting that his specific point was that at the time of the writing of the Constitution, peoples of African descent had no such rights. This assertion itself was incorrect, as Justice Benjamin R. Curtis remarked in dissent. But Fehrenbacher answers the claims that Taney was unfairly attacked by pointing out that Taney's purpose in putting forward this assertion was to argue that under the Constitution, without any new amendments extending rights, African Americans could have no more rights in 1857 than they held in 1789. Fehrenbacher, *Dred Scott Case*, 348.