

9/07.14 The Case of Mary Clark
Knox County
Site: Knox County Court House, Vincennes
Researcher: S. Chandler Lighty

RESEARCH SUMMARY

It is generally assumed that Indiana was a free state and never had slavery. Most often cited for that assumption is the Northwest Ordinance of 1787, which prohibited slavery in the Northwest Territory and subsequently in the Indiana Territory. The historic reality, however, is that slavery and indentured servitude existed in Indiana while it was a territory, and both forms of bondage continued to exist after Indiana became a state in 1816. Two Indiana Supreme Court rulings in 1820 and 1821 declared that slavery and indentured servitude were impermissible according to the state constitution. Yet, even after these court decisions U.S. population censuses of Indiana continued to record slaves through 1840. The story of Mary (Bateman) Clark, a woman born into slavery in Kentucky, indentured in the Indiana Territory, and eventually freed in Indiana, is part of the history of Indiana's struggle against human bondage.

In the mid-eighteenth century, the French introduced the earliest black slaves into the region that became Indiana. The French also enslaved some American Indians, and other Indians captured and sold black slaves to the French settlements. When the British took control of the region in 1763, they did nothing to interfere with slavery.¹ A 1767 local census taken in Vincennes (Northwest Territory) recorded ten "Negro Slaves" and seventeen Indian slaves.²

The territory became Virginia's possession via conquest in 1779, and that state ceded "all the territory lying northwest of the Ohio river [*sic*]" to the United States in 1784.³ Three years later, the Second Continental Congress implemented the Northwest Ordinance, which outlined how the region should be governed. Article VI of the Ordinance stipulated, "There shall be neither slavery nor involuntary servitude in the said territory."⁴

Article VI troubled some pro-slavery residents of the Northwest Territory, and they appointed French trader Barthelemi Tardiveau as an agent to communicate their concerns with the Second Continental Congress.⁵ In July 1788, he expressed the pro-

slavery residents' dilemma in a congressional petition. "There is an Ordinance of Congress," he wrote, "which declares that Slavery Shall not take place in the Western territory. Many of the inhabitants of these districts have Slaves. If they wish to preserve their property, they must transport themselves to the Spanish Side of the Mississipi [*sic*]; but if they do, they Shall lose the lands granted them by Congress. One law tells them: leave the country, or ye Shall forfeit your negroes: the other Saith; Stay in the country, or your lands shall be taken from ye."⁶ Tardiveau's petition went to a congressional committee that included slave owner James Madison, the father of the U.S. Constitution. The committee resolved that the Ordinance "shall not be construed to deprive the Inhabitants ... of their Right and property in Negro or other Slaves which they were possessed of at the time of passing the said Ordinance, or in any manner to Manumit or Set free any such negroes or other persons under Servitude within any part of the s[ai]d Western territory."⁷ Despite this resolution, no official congressional debate or vote ever occurred, and the "ordinance remained both unaltered and unimplemented."⁸

Some territorial residents remained uneasy with Article VI, and wrote to Territorial Governor Arthur St. Clair for assurances.⁹ The governor opined, "[Article VI] was no more than the declaration of a principle which was to govern the legislature in all acts respecting that matter, and the courts of justice in their decisions upon cases arising after the date of the Ordinance . . . [Article VI] could have no retroactive operation whatever."¹⁰

In lieu of a congressional declaration, St. Clair's interpretation of Article VI tended to be the accepted view, and subsequent petitions to Congress in 1796, 1800, 1802, and 1807 from the Indiana Territory regarding Article VI no longer appealed for protection to keep extant slaves. Instead, the petitioners sought congressional alterations or repeals of Article VI that would allow admittance of new slaves into the territory.¹¹ Congressional responses to the petitions varied. The House of Representatives flatly refused the section of the 1796 petition that requested alteration of Article VI.¹² Congress took no action whatsoever on the "Petition of October 1, 1800."¹³ Congressional committees debated the 1802 "Petition of the Vincennes Convention"¹⁴ for four years, and delivered reports on the petition (both pro and con) to the House and Senate. The final congressional reports on the 1802 petition, presented on January 21 and

February 12, 1807 to the Senate and House, respectively, both advocated temporary suspension of Article VI.¹⁵ The following November, the Indiana Territory's General Assembly submitted a petition to Congress, which resolved that "it is expedient to suspend ... the sixth article."¹⁶ The U.S. Senate report on this petition countered, "It is not expedient at this time to suspend the sixth article of compact, for the government of the Territory."¹⁷ Congress never passed legislation to repeal, alter, or suspend Article VI.

Perhaps acknowledging Congress's indecisiveness, the Indiana Territory's government enacted laws to circumvent Article VI. Barred from importing slaves, the territorial government¹⁸ passed "A Law concerning Servants" in 1803. This law compelled any black or "mulatto" servant brought into the territory to fulfill his or her contract of servitude. It also outlined a master's obligation to meet his servants' needs, authorized punishments, and granted servants some limited legal recourse.¹⁹ In 1805, the territorial legislature approved "An Act concerning the introduction of Negroes and Mulattoes into this Territory," whereby slaves over the age of fifteen could be imported into the territory, provided that within thirty days of arriving, the owner and slave appeared before the court of common pleas clerk and entered into a contract of servitude.²⁰ The Indiana Territory's General Assembly reenacted both of these laws on September 17, 1807.²¹

According to historian Emma Lou Thornbrough, in the three years following the passage of "An Act concerning the introduction of Negroes and Mulattoes into this Territory," the Knox County Register of Negro Slaves recorded forty-six indentures made for fifty persons.²² By 1810, the recorded slave population in the Indiana Territory reached 237; 135 of whom were in Knox County,²³ which at that time encompassed most of the territory.²⁴ It cannot be determined whether the 1810 census recorded indentured servants as slaves or counted them among the 393 "others" [non-white, non-slave].²⁵ It is possible that the census recorded indentured servants in either category depending upon the circumstances. It is clear, however, that the number of humans held in bondage in Indiana had dramatically increased since the 1767 Vincennes census, and in spite of Article VI.

Slaves and indentured servants were not the only newcomers into the territory. While aristocracy-minded Virginians were some of the major proponents for slavery's

expansion in the territory, they were the minority. Previously landless, Southern emigrants trying to escape “political, social, and economic discriminations” comprised the bulk of pioneers. Anti-slavery settlers from the North and East joined them to create a political bloc opposed to the pro-slavery legislation.²⁶ In 1807, when the Indiana Territory’s General Assembly petitioned Congress to suspend Article VI, the citizens of Clark County filed a counter petition, which stated in part, “it is a fact that a great number of citizens, in various parts of the United States, are preparing and many have actually emigrated to this Territory, to get free from a government which does tolerate slavery.”²⁷ This counter petition figured into the November 13, 1807 Senate report that recommended Article VI not be suspended.²⁸

On October 19, 1808 in the Indiana Territory’s House of Representatives, General Washington Johnston,²⁹ chairman of the select committee on petitions related to slavery³⁰ and representing a constituency of emancipation proponents,³¹ presented a report that argued against slavery’s continuation in Indiana on moral, political, and economic grounds.³² Regarding “An Act concerning the introduction of Negroes and Mulattoes into this Territory,” the report commented, “The most flagitious abuse is made of that Law, that Negroes brought here are commonly forced to bind themselves for a number of years, reaching or exceeding the natural Term of their lives ... [It] is not only involuntary servitude but downright slavery.”³³ Immediately after presentation of this report, the House introduced and passed a bill to repeal “An Act concerning the introduction of Negroes and Mulattoes into this Territory.” Five days later the bill failed to pass a first reading in the Legislative Council, the Indiana Territory’s upper house.³⁴ Twenty-six months later on December 14, 1810, the General Assembly succeeded in passing this bill into law.³⁵

Despite the law’s repeal, some residents failed to heed or obey, and continued to implement indentures as if the law was still in effect.³⁶ Such was the case with Mary Bateman. Mary Bateman³⁷ was born a slave, sometime around 1801,³⁸ possibly in Kentucky.³⁹ Little is known about Mary’s life because most early nineteenth-century Americans would have regarded her life, and the lives of most African-American women, as of little consequence. It is also likely, that since Mary was a slave, she probably had little if any education, which would have enabled her to preserve her own story.

Fortunately, the Knox County Circuit Court records do provide some biographical details. In 1814, a Knox County, Indiana Territory resident, Benjamin I. Harrison⁴⁰ purchased Mary in Kentucky. The following January, he brought her into the Indiana Territory where he “took upon and from her an Indenture of servitude for thirty years.”⁴¹

On June 29, 1816, eighteen months after the execution of Mary’s indenture, Indiana adopted its first state constitution. Article XI, Section 7 of the Constitution declared, “There shall be neither slavery nor involuntary servitude in this state ... Nor shall any indenture of any negro or mulatto hereafter made, and executed out of the bounds of this state be of any validity within the state.”⁴² Yet, the new Constitution did not instantly emancipate slaves and servants in Indiana. Four years after the Constitution’s implementation, the 1820 federal census counted 190 slaves in Indiana, which was only twenty percent less than the slave population reported in 1810.⁴³

On October 24, 1816, four months after the adoption of Indiana’s Constitution’s, Benjamin I. Harrison cancelled Mary Bateman’s indenture. General Washington Johnston, the same man who submitted the anti-slavery report to the Indiana Territory’s House in 1808, then paid Harrison \$350, and Mary indentured herself to Johnston as a house maid for twenty years.⁴⁴ While the order and process of this transaction is confusing, these were the facts as presented to the Knox County Circuit Court in 1821. Under territorial law, Harrison could have sold Mary’s indenture to Johnston outright without freeing her first.⁴⁵ Under the 1816 Constitution, it was necessary for Mary freely to indenture herself to Johnston, and this transaction created that appearance.

While it is not known for certain, Johnston’s recent widowing may have prompted the acquisition of Mary as a domestic, although he did remarry a short time later.⁴⁶ Mary was likely not the only servant in Johnston’s household. He had previously purchased the indenture of “a black man by the name of James” in 1813,⁴⁷ and the 1820 U.S. Census records three slaves in his possession.⁴⁸

According to Mary’s indenture with Johnston, she entered into the contract of her “own free will & accord.”⁴⁹ On the surface, the contract between Johnston and Mary was constitutionally legal, since the indenture *claimed* to be voluntary and its implementation took place within Indiana. However, legal challenges to human bondage in Indiana started several months after Mary’s second indenture.

The first habeas corpus suits involving African Americans⁵⁰ in Knox County appeared before the circuit court during the May 1817 term and continued to appear through 1820. Some of the freedom suits in this period included: *Julia, a mulatto girl v. Evan Shelby*; *Lucy, a Woman of Colour v. Isaac Shelby*; *Amy and Anderson, persons of Colour v. Leonard Crosby*; *Seal, a girl of colour v. Edward R. Sealy*; *Two Young Persons of Colour v. Green Depreist*; *Caty, a mulatto girl v. John Bte. Laplante*; *Peter, a person of Colour v. John Crosby*; *Sam, et al, persons of Colour, and three children of his v. Sarah Crosby*. In most of these cases, the circuit court took no action, other than to continue the cases to the next term.⁵¹ General Washington Johnston was the Presiding Judge of the Knox County Circuit Court from December 16, 1818 to April 1, 1819; the court where some of these habeas corpus cases appeared, and in most cases, he too continued them to the next term.⁵² In contrast, in 1818, the Mississippi Supreme Court ruled in *Harry and Others v. Decker & Hopkins* that a group of slaves taken from Indiana to be sold in the South were free because the Indiana Constitution prohibited slavery.⁵³

In July 1820, *State v. Hyacinth Lasselle*, a habeas corpus suit begun in the Knox County Circuit Court, appeared before the Indiana Supreme Court. The court declared the plaintiff, a slave woman named Polly Strong, free in accordance with the Indiana Constitution.⁵⁴ Polly Strong's attorney in the case was Amory Kinney, a Congregational clergyman's son from New England. Kinney moved to Indiana in 1819, and assumed Polly's case shortly thereafter.⁵⁵

On April 13, 1821 in the Knox County Circuit Court, several months after the landmark victory in Polly's case, Kinney filed a habeas corpus petition on behalf of Mary (Bateman) Clark⁵⁶ against General Washington Johnston. Kinney charged that Mary Clark "is holden [*sic*] as a slave ... by General W. Johnston without any just or Legal claim contrary to Law." The circuit court judges summoned Johnston to appear before the court the following day and answer the charges. Johnston came to court prepared; he produced a sworn copy of Mary's emancipation from Benjamin I. Harrison, as well as Mary's *voluntary* indenture to Johnston witnessed by the Justice of the Peace. After examining the evidence and hearing the arguments, the circuit court ruled that "Mary Clark a woman of colour be remanded back to the said Genl. W. Johnston her master and that she serve out the time mentioned in the Indenture which the Defendant holds on her."

The court also ordered Clark to reimburse Johnston the costs incurred in his defense. Immediately after the verdict, Kinney moved to appeal the decision to the Indiana Supreme Court, and the circuit court granted Kinney's motion.⁵⁷

On November 6, 1821, the Indiana Supreme Court⁵⁸ delivered its verdict. The court acknowledged that while the state constitution permitted indentures provided that they were voluntary, Clark's "application to the Circuit Court to be discharged from the custody of her master, establishes the fact that she is willing to serve no longer." The court ruled, "The fact then is, that the appellant is in a state of involuntary servitude; and we are bound by the constitution, the supreme law of the land, to discharge her therefrom [*sic*]." ⁵⁹ The court also ordered, "[T]he Judgment of the circuit court be reversed at the costs of the appellee [*sic*] [Johnston] . . . and [be given] of the said Johnson [*sic*] the costs by her [Mary Clark] in the prosecution of her appeal in this behalf expended."⁶⁰

After her emancipation, Mary Clark returned to Vincennes. She and her husband, Samuel, an active leader in Vincennes' Bethel A. M. E. church,⁶¹ raised a family.⁶² Mary's attorney, Amory Kinney was only thirty years old at the time the Indiana Supreme Court decided Mary Clark's case. Even though he successfully argued against human bondage on two occasions before Indiana's highest court, he probably did not feel his crusade was over, and he started an anti-slavery newspaper, *The Farmer's and Mechanics Journal*, in Vincennes on December 14, 1822. The following year the newspaper moved to Terre Haute, and Kinney followed in 1826. He resided in Terre Haute the rest of his life where he continued to practice law, judged for the circuit court and the court of common pleas, and served several terms in the Indiana House of Representatives. He died on November 20, 1859.⁶³ Mary's former owner, General Washington Johnston continued to serve in politics the rest of his life, including a term from 1822-1823 as Speaker of the Indiana House, the year after Clark's case ended. He died on October 26, 1833.⁶⁴

After *The Case of Mary Clark, a Woman of Color*, the illegality of slavery and indentured servitude was the legal precedent in Indiana, but in practice slavery continued. The U.S. Census officially counted only three slaves in the state in 1830.⁶⁵ However, according to late nineteenth-century Vincennes historian Henry S. Cauthorn, an 1830 census of Vincennes counted 32 slaves in the town.⁶⁶ The 1840 U.S. Census was the last

census to record any slaves in Indiana.⁶⁷ That same year Mary Clark died as a free woman in Vincennes. She was thirty-nine years old.⁶⁸

¹ Emma Lou Thornbrough, *The Negro in Indiana: A Study of a Minority* (Indianapolis, 1957), 1-5 (B070561).

² John D. Barnhart & Dorothy L. Riker, *Indiana to 1816: The Colonial Period* (Indianapolis, 1971), 164 (B070553). The census' repository is given in Clarence Walworth Alvord and Clarence Edwin Carter, *The New Regime, 1765-1767* (Springfield, IL, 1916), 469-70. *The New Regime* is available online at <http://books.google.com/books?id=pmUOAAAIAAJ&dq> (accessed January 28, 2008).

³ *Constitution Making in Indiana*, ed. Charles Kettleborough, Vol. 1 (1916; reprint, Indianapolis, 1971), 9-15 (B070838). The book is also available online at <http://indiamond6.ulib.iupui.edu/u/?ISC,1897> (accessed January 28, 2008).

⁴ Northwest Ordinance of 1787, <http://www.ourdocuments.gov/doc.php?flash=true&doc=8#> (accessed January 14, 2008) (B070725).

For excellent legal and historical analyses of Article VI of the Northwest Ordinance of 1787, and its enforcement or non-enforcement, see Paul Finkelman's articles: "Slavery and the Northwest Ordinance: A Study in Ambiguity," *Journal of the Early Republic*, 6 (1986): 343-70 (B070551); "Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9 (1989): 21-51 (B070563). These articles are also included in Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 2d ed. (Armonk, NY, 2001).

⁵ Howard C. Rice, *Barthélemi Tardiveau: A French Trader in the West* (Baltimore, 1938), 8 (B070839).

⁶ "Memorial by Barthelemi Tardiveau, July 8, 1788," in *Kaskaskia Records, 1778-1790*, Charles W. Alvord, ed. (Springfield, IL, 1909), 485-88 (B070740). This book is available online at <http://books.google.com/books?id=9WYOAAAIAAJ&dq> (accessed January 28, 2008).

⁷ *Journals of the Continental Congress, 1774-1789*, Vol. 34, ed. Roscoe R. Hill (Washington, 1937), 540-542 (B070840). This volume is accessible online at <http://memory.loc.gov/ammem/amlaw/lwjc.html> (accessed January 28, 2008).

⁸ Finkelman, "Evading the Ordinance," 24 (B070563).

⁹ Barthélemi Tardiveau was among St. Clair's correspondents on this matter. See "Bartholomew Tardiveau to Governor St. Clair," in *The St. Clair Papers*, ed. William Henry Smith (Cincinnati, 1882), 2: 117-19 (B070743). This book is available online at <http://books.google.com/books?id=5WgFAAAAQAAJ&dq> (accessed January 28, 2008).

¹⁰ "Governor St. Clair to Luke Decker," in *The St. Clair Papers*, 2: 318-19 (B070743).

¹¹ Jacob Piatt Dunn, “Slavery Petitions and Papers,” in *Indiana Historical Society Publications*, Vol. 2 (Indianapolis, 1895), 447-52, 455-61, 461-73, 515-17 (B070741). This book is available online; at the time IHB accessed it, the “Slavery Petitions and Papers” section of the book did not have an URL. If accessed, the user will need to scroll or use the page search box to reach the desired part of the book. See <http://books.google.com/books?id=adot7e8DR4EC> (accessed January 31, 2008).

¹² *Ibid.*, 453 (B070741). The House largely recommended against alteration of Article VI because the petitioners were only four in number. The House reasoned that these four petitioners did not have the authority to speak for the rest of the territory’s inhabitants.

¹³ *Ibid.*, 461 (B070741). Dunn noted, “No report was made on this petition. It was laid on the table when presented, and no further action was taken.”

¹⁴ *Ibid.*, 461-69 (B070741). This petition requested that Article VI “be suspended for the Term of Ten Years and then to be again in force, but the slaves brought into the Territory during the Continuance of this Suspension and their progeny, may be considered and continued in the same state of Servitude, as if they had remained in those parts of the United States where Slavery is permitted.”

¹⁵ *Ibid.*, 470-83, 494-97, 507-10 (B070741).

¹⁶ *Ibid.*, 515-17 (B070741).

¹⁷ *Ibid.*, 521 (B070741).

¹⁸ At this time the Indiana Territorial government was non-representative. It consisted of Governor William Henry Harrison, and three territorial judges: Henry Vanderburgh, John Griffin, and Thomas T. Davis. This was the territorial government from 1800 to 1805, at which point it transitioned to a semi-representative form of government with nine popularly elected representatives. For further reading, see chapters nine and ten of Barnhart and Riker’s *Indiana to 1816* (B070553).

¹⁹ “A Law concerning Servants,” in *Laws of the Indiana Territory, 1801-1809*, ed. Francis S. Philbrick (1930; reprint, Indianapolis, 1931), 42-46 (B070614). This book is also available online at <http://indiamond6.ulib.iupui.edu/u/?ISC,12163> (accessed January 29, 2008).

Regarding servants’ legal recourse, the law stated that all Indiana county courts must “at all times receive the complaints of servants ... against their masters or mistresses, alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging.” Conversely, the same section of the law outlined owners’ legal recourse against servants who deserted. The law also allowed servants who acquired money or goods, through service or gift, to retain the money or goods for their own use. Also notable is that that law obligated a master to care for a servant who became permanently lame or chronically sick until the contract’s time of service expired.

²⁰ “An Act concerning the introduction of Negroes and Mulattoes into this Territory,” in *Laws of the Indiana Territory, 1801-1809*, ed. Philbrick, 136-39 (B070615).

²¹ *Laws of the Indiana Territory, 1801-1809*, ed. Philbrick, 463-467 (B070617), 523-26 (B070618).

The reenactment did not substantively alter these laws. The revision of the laws, which the First General Assembly proposed, “amounted to little more than a compilation of earlier acts,” Barnhart and Riker, *Indiana to 1816*, 351 (B070553).

²² Thornbrough, *The Negro in Indiana*, 10 (B070561).

²³ U. S. Census Bureau, *Aggregate Amount of Each Description of Persons within the United States of America, and the Territories thereof, Agreeably to Actual Enumeration Made According to Law, in the Year 1810* (Washington, 1811), 86 (B070735). The Indiana Territory’s free white population at this time was 23,890. Slave enumeration for the Territory’s other counties included Dearborn – zero, Clark – eighty-one, and Harrison – twenty-one.

²⁴ George Pence and Nellie C. Armstrong, *Indiana Boundaries: Territory, State, and County* (1933; reprint, Indianapolis, 1967), 526-27 (B070843). This book is available online at <http://indiamond6.ulib.iupui.edu/u/?ISC,760> (accessed January 28, 2008).

From March 1, 1809 to January 1, 1811, Knox County’s western border was most of the present-day Indiana-Illinois boundary. Its northern border was several miles south of the present-day Indiana-Michigan border. Its southern border was the Ohio River to about the present-day, easternmost Crawford and Perry County, Indiana border. At this point Knox County’s eastern border began and went due north, until it made an acute angle and joined the East Fork of the White River. Knox County’s eastern border followed the East Fork of the White River on a northeasterly trajectory to the Indiana-Ohio border where it again went due north.

²⁵ U. S. Census Bureau, *Aggregate Amount of Each Description of Persons...1810*, 86 (B070735).

²⁶ John D. Barnhart, “The Democratization of Indiana Territory,” *Indiana Magazine of History*, 43 (1947), 8-12 (B070554).

²⁷ Dunn, “Slavery Petitions and Papers,” 518-20 (B070741).

²⁸ *Ibid.*, 521 (B070741). The Senate report stated, “The citizens of Clark county, in their remonstrance, express their sense of the impropriety of the measure, and solicit the Congress of the United States not to act on the subject so as to permit the introduction of slaves into the Territory; at least until their population shall entitle them to form a constitution and State Government.” The Senate committee, “after duly considering the matter,” resolved that Article VI not be suspended.

²⁹ General was his given first name and not a title.

For a good biographical overview of General Washington Johnston's public service see the entry in *A Biographical Directory of the Indiana General Assembly*, eds. Rebecca Shepherd, *et al.* (Indianapolis, 1980), 1: 209 (B070555). A fuller treatment of Johnston's public and private life can be found in *Journals of the General Assembly of Indiana Territory, 1805-1815*, eds. Gayle Thornbrough and Dorothy Riker (Indianapolis, 1950), 987-91 (B070616). *Journals of the General Assembly* is also available online at <http://indiamond6.ulib.iupui.edu/u/?ISC,8019> (accessed January 28, 2008).

There are two celebratory biographical articles about General Washington Johnston: George R. Wilson, "General Washington Johnston," *Indiana Magazine of History*, 20 (1924): 122-53 (B070556); Curtis G. Shake, "General Washington Johnston; an Early Opponent of Slavery," *The Builder* (July 1929): 199-204 (B070628). However, neither author critically examines Johnston; the former article relies almost entirely on secondary sources, and the latter shows very little primary source research into Johnston's life.

³⁰ *Journals of the General Assembly of Indiana Territory 1805-1815*, 988 (B070616).

According to Jacob Piatt Dunn, *Indiana: A Redemption from Slavery* (Boston, 1888), 368-369 (B070627), the committee also included John Messinger and Luke Decker. Messinger and Decker were both pro-slavery. Brief biographical sketches of the respective men can be found in *Laws of the Indiana Territory, 1801-1809*, ed. Philbrick, ccl-ccli (B070614) and *Journals of the General Assembly of Indiana Territory 1805-1815*, 964-66 (B070616).

Dunn's *Indiana: A Redemption from Slavery* is online at <http://books.google.com/books?id=GHYdAAAAMAAJ&dq> (accessed January 28, 2008).

³¹ "For the Western Sun," *Vincennes Western Sun*, June 24, 1809 (B070623). In this article, Johnston wrote, "My election [to the Indiana Territory's House of Representatives] ... was owing to the support which I received principally and *politically* from the *friends of emancipation* and measurably from individual *friendship* – the first class may rest assured, that the *good of the Territory* Shall be the *heaven* to which my *course* as a Legislator shall be defined; and the Second will please to accept, this publicly [*sic*], of my humble acknowledgments." (Italics in original).

³² *Journals of the General Assembly of Indiana Territory 1805-1815*, 232-38 (B070616). Also in Dunn, "Slavery Petitions and Papers," 522-27 (B070741).

Regarding this report, Dunn in *Indiana: A Redemption from Slavery*, 371 (B070627) wrote, "[It] is entitled to rank among the ablest, if not as the ablest of state papers ever produced in Indiana." Elsewhere, Dunn pointed out the parallels between this report and Thomas Jefferson's *Notes on Virginia*; see Dunn, *Indiana and the Indianans* (Chicago, 1919), 1: 257-258 (B070629). The first volume of *Indiana and the Indianans* is available online at http://books.google.com/books?id=_1iqwWom9wIC&dq (accessed February 1, 2008).

It is generally believed that General Washington Johnston was this report's author. However, the central role Johnston would play in the *Case of Mary Clark* (see text and note 44), his do-nothing decisions as presiding judge of the 1st Circuit Court while African Americans' habeas corpus suits were before him (see text and note 52), and the fact that he owned slaves (see text and notes 47 and 48) should suggest serious questions as to whether he was the actual author. It is also curious why the three men on this committee who were pro-slavery, either in practice or politics, would write this lauded anti-slavery report. Although Dunn tends to celebrate Johnston as much as Johnston's biographers Wilson and Shake, Dunn still provides some valuable commentary on the report's presentation. The committee Johnston chaired received fifteen petitions, eleven of which were against slavery. Dunn commented, "The pro-slavery people had never suspected the strength of the opposition until now." He added, "Whether Johnston still had hopes of an election to Congress, or merely looked forward in a general way to a political future in Indiana, is difficult to say, but that he faced about on the slavery question is certain," *Indiana: Redemption from Slavery*, 370 (B070627).

No source has been located in which Johnston claimed authorship, but another man did. Anti-slavery advocate and Vincennes Land Office Receiver, John Badollet in a private epistle to prominent Pennsylvania politician Albert Gallatin dated March 7, 1809 wrote, "I drew the Petition against Slavery & hastily the report of the Committee of the House of Rep. on the same," in *The Correspondence of John Badollet and Albert Gallatin, 1804-1836*, ed. Gayle Thornbrough (Indianapolis, 1963), 104-105. There is at least some secondary source evidence to corroborate part of this: Dunn stated that Johnston's committee received an anti-slavery petition from John Badollet and others on October 14, 1808, see *Indiana: Redemption from Slavery*, 370 (B070627). It has not been determined for certain whether or not Badollet actually wrote the report of October 19, but because of his strong, personal anti-slavery views, he would at least be a more likely author than Johnston would.

³³ *Journals of the General Assembly of Indiana Territory 1805-1815*, 234 (B070616).

³⁴ *Journals of the General Assembly of Indiana Territory 1805-1815*, 238 (B070616).

Six days after the House passed the bill to repeal "An Act concerning the introduction of Negroes and Mulattoes into this Territory," the General Assembly passed legislation to amend "An Act concerning Servants, and for other purposes," which outlined punishments for persons who allowed servants to assemble on premises for reviling; see *Laws of the Indiana Territory, 1801-1809*, ed. Philbrick, 657-58 (B070620). This action is an example of how both houses of the General Assembly vacillated at this time.

³⁵ *Laws of the Indiana Territory 1809-1816*, eds. Louis B. Ewbank and Dorothy L. Riker (Indianapolis, 1934), 138-139 (B070621). This book is accessible online at <http://indiamond6.ulib.iupui.edu/u/?ISC,10178> (accessed January 28, 2008).

The 1809 passage of "An Act for dividing the Indiana Territory into two separate governments," which created the Illinois Territory out of the Indiana Territory, removed a great obstacle for the passage of "An Act to repeal an act entitled 'An act for the

introduction of negroes and mulattoes into this territory, and for other purposes.” The former act is located in *Constitution Making in Indiana*, ed. Kettleborough, 1: 54-56 (B070838). Paul Finkelman commented on the 1809 Act’s significance: “The political separation of Indiana and Illinois allowed the two areas to treat slavery according to the wishes of the settlers in each place. A substantial amount of support for bondage had always come from Randolph and St. Clair counties, which were now part of Illinois. Thus, with the division of the territory the supporters of slavery in Indiana lost many allies.” Finkelman, “Evading the Ordinance,” 39 (B070563).

³⁶ For examples of indentures made in Indiana after 1810 see: “Two Indentures of Negroes,” *Indiana Magazine of History* 7 (1911):133-35 (B070622); *History of Gibson County, Indiana* (Edwardsville, IL, 1884), 78 (B070865).

³⁷ While Clark is her surname in all the court records, her marriage record makes it clear that her maiden name was Bateman. She married Samuel Clark in Knox County on July 12, 1817. Indiana State Library Genealogy Database: Marriages through 1850, http://208.119.135.17/db/in_marriages_display.asp?ID=51300 (accessed December 26, 2007) (B070612).

³⁸ “A list of interments in the public Burial ground 1840,” Borough of Vincennes Minute Book 7, Vincennes Clerk/Treasurer’s Office Vault, 378 (B070795). This record gives Mary (Bateman) Clark’s age as 39 at the time of her death on August 24, 1840.

³⁹ This is an inference only, and derives from the fact that Benjamin I. Harrison purchased her in Kentucky. See documentation cited in note 41.

⁴⁰ Research has uncovered little about Benjamin I. Harrison. He married Susan Racine on July 21, 1814 in Knox County, Indiana [Territory], http://208.119.135.17/db/in_marriages_1850/marriages_display.asp?ID=123503 (accessed January 25, 2008) (B070886). According to George E. Greene’s *History of Old Vincennes and Knox County Indiana* (Chicago, 1911), 491 (B070887), the citizens of Vincennes elected Harrison as a borough trustee in 1814. Although Indiana Territorial Governor William Henry Harrison had a brother Benjamin, no blood relation has been established between Benjamin I. Harrison and the governor.

Census records demonstrate that Benjamin Harrison was a popular name, but they do not aid in tracking a specific one. In 1810, 1820, 1830, and 1840 there were 15, 28, 41, and 44 Benjamin Harrisons recorded in the censuses, respectively. Even though the Harrison in question had a distinctive middle initial, no Benjamin I. Harrison is recorded before the 1900 U. S. Census. In 1820, the first census after Indiana statehood, there was no record of any Benjamin Harrison, as a head of household, within the state.

⁴¹ *Mary Clark a woman of Color v. G W Johnston*, May 7, 1821 (Knox County, Indiana Circuit Court), <http://www.in.gov/judiciary/citc/lessons/blackford/petition.pdf> (accessed December 11, 2007) (B070592). Transcript of this document is available at

<http://www.in.gov/judiciary/citc/lessons/blackford/petition-transcript.pdf> (accessed December 11, 2007).

If Mary's age at time of death is accurate (see note 38), Mary was at most fourteen years old when Harrison brought her into the Indiana Territory. In accordance with "An Act concerning the introduction of Negroes and Mullattoes [*sic*] into this Territory" (B070618) under which Harrison indentured her, she should have only been bound until she was thirty-two. Section 5 of that law stipulated that any servant under fifteen years of age brought into the territory would be bound until the servant arrived at the age thirty-five for males, or thirty-two for females.

Although it is entirely speculation, Harrison may have waited until January 1815 to bring Mary into the territory so that she could pass for fifteen, either by documentation or appearance; that allowed Harrison to execute an indenture with her for thirty years, as opposed to losing her service after seventeen years.

⁴² *Constitution of 1816*, <http://www.in.gov/history/5951.htm> (accessed January 23, 2008) (B070726). Once this URL is accessed, Article XI can be found by clicking the corresponding link at the bottom of the page.

⁴³ Historical Census Browser, <http://fisher.lib.virginia.edu/collections/stats/histcensus/> (accessed December 28, 2007) (B070610). Search 1820 county level results for Indiana. The 1810 census results are cited above in note 23.

⁴⁴ *Mary Clark a woman of Color v. G W Johnston*, May 7, 1821 (B070592).

⁴⁵ *Laws of the Indiana Territory 1801-1809*, ed. Philbrick, 540-41 (B070619). "An Act concerning Executions" passed on September 17, 1807. The law stated, "That the time of service of such negroes or mulattoes, may be sold on execution against the master in the same manner as personal estate, immediately from which sale, the said negroes or mulattoes, shall serve the purchaser or purchasers for the residue of their time of service."

⁴⁶ *Journals of the General Assembly of Indiana Territory*, 991 (B070616). Josette Johnston died on September 8, 1816. Johnston remarried Elizabeth Harvey on January 7, 1817.

⁴⁷ Clark County, Indiana Deed Records, Vol. 7 (August 8, 1812-May 3, 1814), 611 (B070852). On microfilm at the Indiana State Library.

The entry read, in part, "On the 16th December 1813, I [General Washington Johnston] purchased of Major John Harrison a black man by the name of James (by and with his voluntary consent Acknowledged according to Law) who had Indentured himself to the said Harrison on the 25th May 1809 For thirty two years And with the said James^s consent now remove him to Knox County, I. T."

⁴⁸ U.S. Bureau of the Census. *Fourth Census (1820)*, Vincennes, Knox County, Indiana, p. 83, <http://content.ancestrylibrary.com/Browse/view.aspx?dbid=7734&path=Indiana.Knox.Vincennes.2> (accessed January 29, 2008) (B070853). The census described the

slaves as two males aged forty-five and upwards, and one female aged forty-five and upwards. From the census data alone, one cannot determine if these were slaves Johnston purchased himself, or if they were part of his second wife's estate.

⁴⁹ *Mary Clark a woman of Color v. G W Johnston*, May 7, 1821 (B070592).

⁵⁰ It is not clear whether the plaintiffs in these cases were slaves or indentured servants.

⁵¹ Thornbrough, *Negro in Indiana*, 25, n. 30 (B070561); Knox County Order Book of the Circuit Court Vol. B May 1817-1820 and Knox County Minutes of the Circuit Court 1816-1818, both Knox County records are on microfilm at the Indiana State Library.

⁵² *Journals of the General Assembly of Indiana Territory*, 987 (B070616). Johnston served as Presiding Judge of the First Circuit from December 16, 1818 to April 1, 1819. His signature appears on some of the pages with the habeas corpus suits in the Knox County Court records, see *Julia a mulatto girl vs. Evan Shelby*, in Knox County Order Book of the Circuit Court, 1817-1820, 269 (B070644).

⁵³ R. J. Walker, "Harry and Others vs. Decker & Hopkins," in *Reports of Cases, Adjudged in the Supreme Court of Mississippi* (Natchez, 1834), 36-43 (B070611). Pages are available digitally at <http://www.rootsweb.com/~archcrtc/MS/1834/toc.html> (accessed February 1, 2008).

⁵⁴ "Bound for Freedom: the Case of Polly Strong," <http://www.in.gov/judiciary/citc/special/bound-for-freedom/index.html> (accessed January 3, 2008) (B070645). This Indiana Supreme Court site has all of the key primary sources in this case, along with transcripts, available for download.

⁵⁵ For a good biographical overview of Amory Kinney's public service see the entry in *A Biographical Directory of the Indiana General Assembly*, eds. Rebecca Shepherd, et al. (Indianapolis, 1980), 1: 223 (B070555).

Biographical material for Kinney is limited, but other biographical sketches can be found in the Indiana Biography Series at Indiana State Library, Vol. 7, 80-81 (B070625), and H. W. Beckwith, *History of Vigo and Parke Counties* (Chicago, 1880), 166-69 (B070877).

⁵⁶ She married Samuel Clark in 1817, see note 37.

⁵⁷ *Mary Clark a woman of Color v. G W Johnston*, May 7, 1821 (B070592).

⁵⁸ At this time, the Indiana Supreme Court consisted of Isaac Blackford, Jesse L. Holman, and James Scott. For a biographical sketch of Blackford, see *A Biographical Directory of the Indiana General Assembly*, eds. Rebecca Shepherd, et al. (Indianapolis, 1980), 1: 27. For biographical sketches of Holman and Scott, see *Journals of the General Assembly of Indiana Territory*, 984-85, 1011-12, respectively.

⁵⁹ *Case of Mary Clark, a Woman of Color*, 1 Blackford (1821), <http://www.in.gov/judiciary/citc/lessons/railroad/mary-clark.pdf> (accessed June 10, 2008) (B070593).

⁶⁰ Indiana Supreme Court Order Book A, microfilm, Indiana State Archives, 360 (B070884). This handwritten clerk's document contains some information which the published case in 1 Blackford (B070593) does not.

It is important to note, the court did *not* award Clark damages from the suit. The court only ordered that Johnston's estate pay the costs Clark incurred by the appeal. These costs would have likely been Amory Kinney's attorney fees, and the Indiana Supreme Court clerk's and judges' fees.

The Supreme Court clerk ordered the Sheriff of Harrison County to collect \$18.74½ from Johnston on December 1, 1821, <http://www.in.gov/judiciary/cite/lessons/blackford/sc-order-1.pdf> (accessed December 11, 2007) (B070594). The sheriff replied to the court that no personal property or real estate belonging to Johnston could be found in the county, <http://www.in.gov/judiciary/citc/lessons/blackford/harrison-reply-2.pdf> (accessed December 11, 2007) (B070598). On February 26, 1822, the Supreme Court clerk again ordered the Sheriff of Harrison County to collect from Johnston's estate, although this time the figure was \$24.44½, <http://www.in.gov/judiciary/citc/lessons/blackford/sc-order-2.pdf> (accessed December 11, 2007) (B070596). The sheriff returned this order too, and again stated that no personal property or real estate belonging to Johnston could be found in the county, <http://www.in.gov/judiciary/citc/lessons/blackford/harrison-reply-1.pdf> (accessed December 11, 2007) (B070595).

It is not known why the court sought Johnston's property in Harrison County since he presumably lived in Knox County. Although, he likely owned real estate in Harrison County, see *Journals of the General Assembly*, 990 (B070616), he was Speaker of the House in Corydon (Harrison County) at the time the Supreme Court clerk issued the orders to the sheriff. A search of Knox County Sheriff Records did not yield any Supreme Court orders or responses regarding collection efforts against Johnston in that county; see Richard King, e-mail message to IHB, January 23, 2008 (B070890).

On March 26, 1822, Johnston paid Amory Kinney ten dollars on account of his attorney fees in the case <http://www.in.gov/judiciary/citc/lessons/blackford/knox-receipt.pdf> (Accessed December 11, 2007) (B070597).

No record has been located that indicates if Johnston paid the balance due to the court.

⁶¹ William H. Stewart, *Annual Report of the African Methodist Episcopal Church, Vincennes, Indiana* (Vincennes, 1890), 32-36 (B070565). Samuel Clark served variously as a church steward and trustee from 1841 to 1869.

⁶² U.S. Bureau of the Census, *Fifth Census* (1830), Vincennes, Knox County, Indiana, p. 274, <http://content.ancestrylibrary.com/Browse/view.aspx?dbid=8058&path=Indiana.Knox.Not+Stated.75> (B070885). This census recorded Samuel Clark as a head of household and described all the members of the household as "Freed Colored Persons."

The household included three children under ten (two boys and one girl), one female between ten and twenty-three, one female between twenty-four and thirty-five (presumably Mary Clark), one male between thirty-six and fifty-four (presumably Samuel Clark), one female between thirty-six and fifty-four, and two males over one hundred years of age.

According to Stewart's *Annual Report of the African Methodist Episcopal Church, Vincennes*, 40 (B070565), Samuel and Mary Clark had twelve children. However, this source is not without errors.

⁶³ *A Biographical Directory of the Indiana General Assembly*, 1: 223 (B070555); John W. Miller, *Indiana Newspaper Bibliography* (Indianapolis, 1982), 210, 465, 466 (B070630).

⁶⁴ *A Biographical Directory of the Indiana General Assembly*, 1: 209 (B070555)

⁶⁵ Historical Census browser (B070610). Search 1830 county level results. The census recorded the slaves in Orange, Warrick, and Decatur counties.

⁶⁶ Henry S. Cauthorn, *A Brief Sketch of the Past, Present and Prospects of Vincennes* (Vincennes, 1884), 23 (B070558).

⁶⁷ Historical Census browser (B070610). Search 1840 county level results. The census recorded two slaves in Rush County and one in Putnam County.

⁶⁸ Borough of Vincennes Minute Book 7, Vincennes Clerk/Treasurer's Office Vault, 378 (B070795).