

Michigan Lawyers in History

Elijah Brush

By Carrie Sharlow



The state of Michigan was built by the lumber and auto industries, agriculture, and the lawyers who lived, studied, and practiced here. The articles in this occasional series highlight some of those lawyers and judges and their continuing influence on this great state.

On July 29, 1805, at 11 a.m. at the house of James May, the Supreme Court of the Territory of Michigan met for the first time.¹ The following day, two attorneys were admitted to practice before the new court: Solomon Sibley and Elijah Brush. Both men had been living and practicing law in Detroit for approximately eight years while it was part of the Territory of Indiana, and both were important in creating an American community in what had been, during most of its first century of existence, French and then British. Sibley is perhaps better known as Detroit's first mayor,² but Brush has the honor of being Michigan's first attorney.³

Elijah was born in Bennington County, Vermont, in the early 1770s.⁴ His father, Nathaniel, was a colonel in the Vermont militia during the American Revolution⁵ and fought in several battles, including Saratoga. After the war, Nathaniel Brush was appointed judge of probate for the Bennington District.⁶

In the years after Elijah's birth, the Great Lakes area changed hands a number of times. Initially considered part of Canada, Michigan was tossed back and forth between the British and the French for several years before becoming a solidly British

possession. In the Treaty of Paris signifying the end of the Revolutionary War, the British conceded to the United States all claims to the vast wilderness that would become Illinois, Indiana, Michigan, Ohio, Wisconsin, and the part of Minnesota east of the Mississippi River. The U.S. organized that land under the Northwest Ordinance; passed by Congress in 1789, it promised the territory would be divided into smaller territories and, eventually, states.⁷

Elijah, who was later described as adventurous to the point of rashness, moved from Vermont to the untamed Northwest Territory.⁸ After studying law and earning a bachelor's degree from Dartmouth College in 1794, he crossed the Appalachian Mountains to practice law in the Ohio and Indiana territories.⁹ Despite giving up the land of the Northwest Territory, the British military delayed evacuating Detroit until 1796, after which American soldiers arrived to take possession. Elijah followed in 1798, becoming the first American attorney in what is now Michigan, but which was until 1805 part of the Northwest and then the Indiana territories.¹⁰

The fort evacuated by the British two years earlier was not the most impressive

location to begin a law practice. The village of Detroit consisted of 100 houses, several taverns and shops, and a church.¹¹ It was a melting pot of nationalities—British, Canadian, Dutch, German, and French¹²—among 500 inhabitants, with a couple thousand more in the surrounding area. There were teachers, merchants, militia members, and fur traders. All that was lacking was an American lawyer.¹³ Brush set up shop. He was “a good scholar and thorough lawyer.”¹⁴ More than that, he was well liked and soon gained a reputation of having a good character.¹⁵

He also made an extremely advantageous marriage. On February 17, 1802, Brush married Adelaide Askin.¹⁶ Adelaide's parents were who's who in early Detroit. Her father, John, was a Scotch-Irish-Brit who served in the British army before becoming a fur trader and merchant; he'd traveled as far north as Sault Ste. Marie and farmed at Mackinac before moving to Detroit.¹⁷ Her mother, Marie Archange, was a French socialite.¹⁸ The Askins were a large, close-knit family; there were at least nine Askin children, and only Adelaide married an American.¹⁹

John Askin respected his son-in-law's legal knowledge and character, and Brush

assisted him in a number of legal matters.²⁰ Eventually, the Askins moved across the Detroit River to Sandwich (now part of present-day Windsor) and the Brush family moved to the Askin farm, which they later purchased. When Adelaide's younger brother expressed an interest in the law, John Askin sent him to read law in Brush's office, believing his son-in-law had "professional knowledge at least equal to any [l]awyer [the British] have."²¹

By the time the Supreme Court of the Territory of Michigan first met, Brush had settled into the community. He served as the treasurer of the Detroit Fund and was later appointed treasurer for the entire territory. He'd been elected trustee for the group on the "corporation of the town of Detroit" in 1803 and later served as mayor.²²

Brush was a respected participant in the territory court system. From 1805 to 1812, "he appeared in at least 163 cases in the Supreme Court and in as many as 294 cases in the court for the District of Huron and Detroit."²³ There were cases regarding property seized by customs,²⁴ larceny,²⁵ trespassing,²⁶ debt,²⁷ and slavery.²⁸ In 1807, the territorial Supreme Court justices appointed him attorney general and commissioned him to serve as a justice of the peace for the Huron and Detroit districts.²⁹ That same year, Gov. William Hull recommended him as a replacement for Justice Frederick Bates on the territorial court.³⁰

One of Brush's most famous cases was *Denison v Tucker*,³¹ said to be the "first case to test the right to hold slaves in Michigan."³² The Denisons were the children of Brush's leased servants, Peter and Hannah. While

the parents had eventually been freed, the children were still slaves. Brush "argued at full length"³³ that the Northwest Territory "prohibited slavery"³⁴ and therefore all the Denisons were free, but Augustus Brevoort Woodward, the territorial Supreme Court chief justice, found for Tucker on the basis that the treaty under which the British abandoned the Northwest Territory guaranteed the property rights of British citizens remaining in the territory after the Americans took over. This guarantee, Woodward said, included slaves like the plaintiffs who were "born prior to the effective date of the Northwest Ordinance" in Detroit in 1793.³⁵ Soon after the ruling, the Denisons escaped to Canada, where Brush helped them get settled.³⁶

Not long thereafter, the War of 1812 erupted and Brush, like his father, would defend his country. His wife's family lived across the Detroit River in British territory, and several brothers-in-law were in the British Army.³⁷



1825, Territory of Michigan

Michigan State University Libraries—Map Library

[Brush] served as the treasurer of the Detroit Fund and was later appointed treasurer for the entire territory. He'd been elected trustee for the group on the "corporation of the town of Detroit" in 1803 and later served as mayor.

(Continued on the following page)

Brush was a respected participant in the territory court system. From 1805 to 1812, “he appeared in at least 163 cases in the Supreme Court and in as many as 294 cases in the court for the District of Huron and Detroit.”

On August 11, 1812, Brush wrote to John Askin, saying “I know not what may be the destiny of this country. My family are dear to my heart.”³⁸ Brush sent his family to stay with American friends for safety, though he did offer his father-in-law the option of sending for Adelaide and their children to stay with them.³⁹ Five days later, Detroit surrendered to the British; Brush was taken prisoner. Because of his family connection with the Askins,⁴⁰ he was released from custody and returned to Detroit. Unfortunately, his health took a turn for the worse and he died December 14, 1813, at the age of 42.⁴¹

Two years after his death, Detroit became a city; it still had fewer than 1,000 inhabitants, but it was on its way. So was Michigan’s bar. By 1815, there were 15 names on the Supreme Court’s rolls; the first was Elijah Brush. ■

Carrie Sharlow is an administrative assistant at the State Bar of Michigan.

Special thanks to David Chardavoyne for his assistance in review and revision.

ENDNOTES

- Blume, ed, *Transactions of the Supreme Court of the Territory of Michigan, 1805–1814, Vol 1* (Ann Arbor: University of Michigan Press, 1935), pp 345, ix <<https://catalog.hathitrust.org/Record/010427479>>. All websites cited in this article were accessed September 18, 2018.
- Wikipedia, *Solomon Sibley* <https://en.wikipedia.org/wiki/Solomon_Sibley>.
- Chardavoyne, *Michigan Supreme Court Historical Reference Guide* (East Lansing: Mich State Univ Press, 2d ed, 2015), p 24.
- The date of his birth is uncertain. Some sources (e.g., Wikipedia) specify May 10, 1773, but without indicating an authority, while others state 1772 or merely before the outbreak of the Revolution.
- Ancestry.com, *Sons of the American Revolution Membership Application for Herbert Sherman Brush III* (accessed by author on June 5, 2018).
- Jacobson, *Detroit River Connections: Historical & Biographical Sketches of the Eastern Great Lakes Border Region* (Baltimore: Clearfield Company, Inc., 1994), p 60.
- Wikipedia, *Northwest Territory* <https://en.wikipedia.org/wiki/Northwest_Territory> or Carlisle, *Wayne County Historical & Pioneer Society: Chronography of Notable Events in the History of the Northwest Territory and Wayne County: Period Embraced, 1531–1890* (Detroit: O.S. Guley, Bornman & Co., Printers, 1890).
- In Memoriam: Edmund Askin Brush: Died July 10, 1877*, p 14.
- General Catalogue of Dartmouth College and the Associates Schools, 1769–1900* (Hanover: University Press, 1900), p 128; *The Semi-Centennial of the Admission of the State of Michigan Into the Union* (Detroit: Detroit Free Press Printing Company, 1886), p 108; *Transactions of the Supreme Court of the Territory of Michigan, 1805–1814*, p 41.
- The Semi-Centennial of the Admission of the State of Michigan*, pp 41, 108.
- Detroit Historical Society, *Early American Detroit (1787–1820)* <<https://detroithistorical.org/learn/timeline-detroit/early-american-detroit-1787-1820>>.
- Burton, *Corporation of the Town of Detroit: Act of Incorporation and Journal of the Board of Trustees 1802–1805* (Detroit: Burton Historical Collection, Detroit Public Library, 1922), p v <<https://archive.org/stream/corporationoftow00detroit#page/n5>>.
- The key word is “American.” Walter Roe, an Englishman who lived in Canada, practiced before the “Court of Common Pleas” in the District of Hesse, which included Detroit. He’s listed as beginning in 1789 and “was the only professional man who practised in that Court during the five years of its existence.” (Riddell, *The Legal Profession in Upper Canada in Its Early Periods* (Toronto: Law Society of Upper Canada, 1916), p 169).
- Detroit River Connections*, p 14.
- Quaife, ed, *The John Askin Papers, Volume II: 1796–1820* (Detroit: Detroit Library Comm, 1931), pp 370–371 <<https://scholar.uwindsor.ca/swoda-windsor-region/14/>>.
- Detroit River Connections*, p 58.
- Quaife, ed, *The John Askin Papers, Volume I: 1747–1795* (Detroit: Detroit Library Comm, 1928), p 6 <<https://hdl.handle.net/2027/uc1.b3350262>>.
- Miles, *The Dawn of Detroit: A Chronicle of Slavery and Freedom in the City of the Straits* (New York: The New Press, 2017).
- The John Askin Papers, Volume I: 1747–1795*, pp 12–15.
- Detroit River Connections*, p 61.
- The John Askin Papers, Volume II: 1796–1820*, p 546.
- Corporation of the Town of Detroit*, p 32.
- Id.* at 41.
- United States v Boards, Planks and Shingles Claimed by Bissell & Fitch*, 1 Blume Sup Ct Trans 315 (1805).
- United States v Henry Hudson*, 4 Blume Sup Ct Trans 201 (1805).
- Robert Smart v Jean Baptiste Beaugrand*, 1 Blume Sup Ct Trans 55 (1806).
- United States v Charles Curry*, 1 Blume Sup Ct Trans 318 (1807).
- In re Elizabeth Denison*, 1 Blume Sup Ct Trans 86 (1807).
- Transactions of the Supreme Court of the Territory of Michigan, 1805–1814*, pp 10, 30.
- Michigan Historical Comm, *Michigan Historical Collections Vol 40: Documents Relating to Detroit and Vicinity, 1805–1813* (Lansing: 1929), p 106 <<http://name.umdl.umich.edu/0534625.0040.001>>.
- In re Elizabeth Denison*.
- Bingham, *Early History of Michigan with Biographies of State Officers, Members of Congress, Judges and Legislators* (Lansing: Thorp & Godfrey, 1888), p 134 <<http://name.umdl.umich.edu/BAD6021.0001.001>>.
- Transactions of the Supreme Court of the Territory of Michigan, 1805–1814*, p 381.
- Historic Elmwood Cemetery & Foundation, *Biographies, Elizabeth Denison Forth “Lisette”* <<https://elmwoodhistoriccemetery.org/biographies/elizabeth-lisette-denison/>>.
- Id.*
- Shamus, *Freed Slave Turned Pay as a Domestic Into Real Estate*, Detroit Free Press (July 25, 2017), p 7A.
- The John Askin Papers, Volume I: 1747–1795*, p 12.
- The John Askin Papers, Volume II: 1796–1820*, p 729.
- Id.*
- Farmer, *History of Detroit and Wayne County and Early Michigan: A Chronological Cyclopaedia of Past and Present* (Detroit: Silas Farmer & Co., 1890), p 1031 <<https://archive.org/details/historydetroit03farmgoog>>.
- Burton, ed, *Governor and Judges Journal—Proceedings of the Land Board of Detroit* (1915), pp 166–167 <<https://archive.org/details/governorjudgesjo00burtoft>>.