

THE ATTORNEY GENERAL AND THE RIVER:
A HISTORICAL PERSPECTIVE

ATTORNEY GENERAL LISA MADIGAN

JAMES MORGAN

SENIOR ASSISTANT ATTORNEY GENERAL

HOW THE ATTORNEY GENERAL'S PERSPECTIVE HAS CHANGED OVER THE YEARS

- A REVIEW OF
 - REPORTED DECISIONS
 - ATTORNEY GENERAL REPORTS
 - SOME INTERESTING TRIVIA
 - RECENT CASES

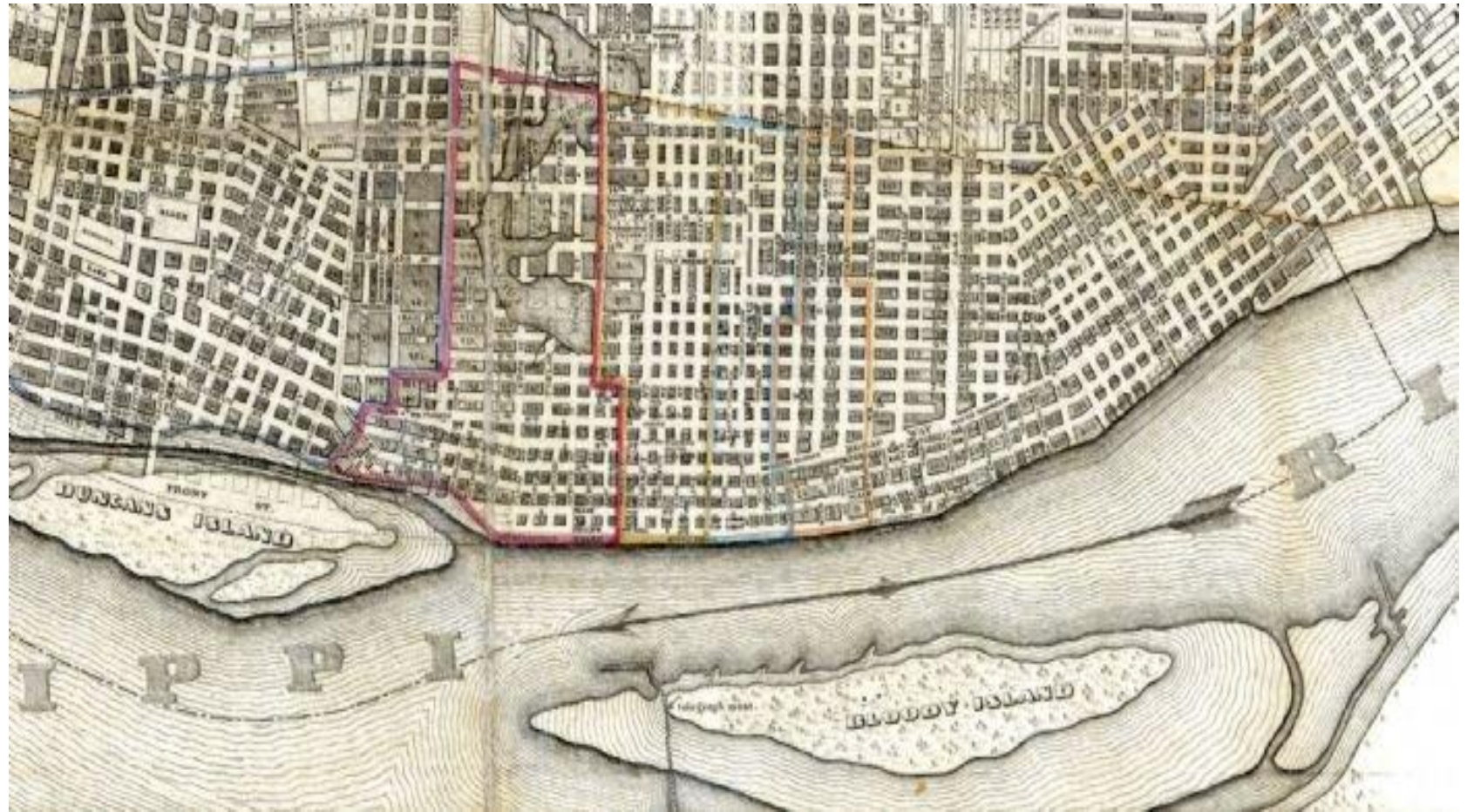
THE FLOW OF COMMERCE

- DEFENDING THE NAVIGABILITY OF THE RIVER AS A HIGHWAY FOR TRADE
- THE BATTLE FOR BLOODY ISLAND:
 - *PEOPLE OF THE STATE OF ILLINOIS V. CITY OF ST. LOUIS, 10 ILL. 341 (1848)*
- STEPPING INTO THE SHOES OF THE SOVEREIGN

**ATTORNEY GENERAL
DAVID B. CAMPBELL**



BLOODY ISLAND



SOME INTERESTING TRIVIA

- HOW DID THE ISLAND GET ITS NAME?
- WHO ACTUALLY PROSECUTED THE CASE?

WHERE IS IT NOW?



ENHANCING NAVIGABILITY COMES AT A COST

- HUSE V. GLOVER, 119 U.S. 543, 7 S. CT. 313 (1886)
 - EARLIER DECISION, 15 F. 292
- COPPERAS CREEK LOCK AND DAM
 - COMPANION LOCK AND DAM AT HENRY
 - RAISE POOL LEVEL TO PROMOTE RIVER TRANSPORTATION
- CONSTITUTIONAL CHALLENGE TO TOLLS LEVIED TO PAY FOR CONSTRUCTION, OPERATION AND MAINTENANCE
 - RECOVERY OF COSTS INCURRED OR PROHIBITED TONNAGE DUTY

ATTORNEY GENERAL
JAMES M^CCARTNEY



SOME MORE INTERESTING TRIVIA

- COPPERAS CREEK DAM LOCATED WITHIN IDNR'S RICE LAKE STATE FISH AND WILDLIFE AREA
- WHAT WAS MR. HUSE'S BUSINESS?

CALCULATING THE OTHER COSTS OF THE COPPERAS CREEK LOCK AND DAM

- FLOODING-RELATED DAMAGES
- MORE THAN 20 REPORTED CASES
 - HEIRS OF ISAIAH JONES V. STATE OF ILLINOIS, 1 ILL. CT. CL. 112 (1892)
- BULK OF FIRST VOLUME OF COURT OF CLAIMS REPORTS DEVOTED TO THESE CASES
- INUNDATION VERSUS RETENTION

ATTORNEY GENERAL
GEORGE HUNT



DOWNSTATE VERSUS CHICAGO

- PEOPLE OF THE STATE OF ILLINOIS EX REL. LONGENECKER, STATE'S ATTORNEY, V. NELSON, ET AL., 133 ILL. 565, 27 N.E. 217 (1890)
- PROSECUTED BY ATTORNEY GENERAL HUNT
 - FROM EDGAR COUNTY
- HOW DOES A CONSTITUTIONAL OFFICER CHARGED WITH DEFENDING THE CONSTITUTIONALITY OF STATE STATUTES CHALLENGE THE CONSTITUTIONALITY OF A STATE STATUTE?
- CHALLENGE TO STATUTE CREATING CHICAGO SANITARY DISTRICT AND AUTHORIZING CONNECTION BETWEEN CHICAGO RIVER AND ILLINOIS RIVER
 - AND REMOVAL OF COPPERAS CREEK LOCK AND DAM

CHICAGO VERSUS DOWNSTATE

- CANAL COMMISSIONERS OF ILLINOIS V. VILLAGE OF EAST PEORIA, 179 ILL. 214, 53 N.E. 633 (1899)
- COMMISSIONERS CHALLENGED VILLAGE'S PROPOSED ALTERATION OF LOCAL STREAM
- DECISION TURNED ON THE AUTHORITY OF THE COMMISSIONERS TO SUE TO PROTECT NAVIGATION VERSUS THE ATTORNEY GENERAL'S AUTHORITY
- NO PARTICIPATION BY THE ATTORNEY GENERAL IN THE CASE
- FUTURE IMPLICATIONS

DOWNSTREAM VERSUS CHICAGO

- STATE OF MISSOURI V. STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO, 180 U.S. 208, 21 S. CT. 331 (1901)
- ORIGINAL ACTION IN UNITED STATES SUPREME COURT
- DIVERSION OF CHICAGO SEWAGE INTO ILLINOIS RIVER THREATENED PUBLIC HEALTH IN MISSOURI
- ILLINOIS COULD NOT DISTANCE ITSELF FROM THE ACTIONS OF ITS STATUTORY CREATION
- ILLINOIS DEFENDED BY ATTORNEY GENERAL AKIN
- CASE ALLOWED TO PROCEED TO TRIAL. DEFENSE CONDUCTED BY ATTORNEYS GENERAL HAMLIN AND STEAD

ATTORNEY GENERAL
EDWARD C. AKIN



**ATTORNEY GENERAL
HOWLAND J. HAMLIN**



**ATTORNEY GENERAL
WILLIAM H. STEAD**



OUTCOME OF THE TRIAL

- WHERE WAS THE COURTROOM?
- STATE OF MISSOURI V. STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO, 200 U.S. 496, 26 S. CT. 268 (1906)
- WHAT COURTS RECOGNIZE AS A PUBLIC NUISANCE KEEPS PACE WITH ADVANCES IN SCIENTIFIC KNOWLEDGE
- “NOT IN MY BACKYARD” WON’T WORK IF YOU HAVEN’T KEPT YOUR BACKYARD CLEAN
- DILUTION RECOGNIZED AS ACCEPTABLE SOLUTION
- INJUNCTION DENIED

UNEXPECTED BENEFIT FROM EFFECT OF DIVERSION

- DIVERSION GENERATED A NUMBER OF LAWSUITS SEEKING DAMAGES FOR FLOODING ATTRIBUTABLE TO THE DIVERSION
- AVOIDING INSULT BEING ADDED TO INJURY: SCHULTE V. WARREN, 218 ILL. 108, 75 N.E. 783 (1905)
- RECOGNIZED STATE'S RIGHT TO OWNERSHIP OF WILDLIFE AND WILD FOWL UNDER THE COMMON LAW
- RELIED UPON TODAY AS FOUNDATION FOR RECOVERY OF DAMAGE TO WILDLIFE, WILD FOWL, AND AQUATIC LIFE FROM HUMAN ACTION
- PROPERTY NOW PART OF CHAUTAUQUA NATIONAL WILDLIFE REFUGE

BACK TO NAVIGATION?

- PEOPLE OF THE STATE OF ILLINOIS, EX REL., DENEEN, GOVERNOR, V. ECONOMY LIGHT & POWER CO., 241 ILL. 290, 89 N.E. 760 (1909)
- CHALLENGE TO PROPOSED HYDROELECTRIC DAM ON DES PLAINES RIVER AS IMPEDIMENT TO NAVIGATION
 - EFFECT OF POOLING FLOW FROM CHICAGO
- RELUCTANTLY PROSECUTED BY ATTORNEY GENERAL STEAD
 - ATTORNEY GENERAL'S BIENNIAL REPORT 1908
- INJUNCTION DENIED: DES PLAINES RIVER NOT NAVIGABLE
- WHAT A DIFFERENCE A NAME MAKES
 - UNITED STATES OF AMERICA V. ECONOMY LIGHT & POWER, 256 U.S. 113, 41 S. CT. 409

NAVIGATION VERSUS DRAINAGE

- PEOPLE OF THE STATE OF ILLINOIS, EX REL., STEAD, ATTORNEY GENERAL, V. SPRING LAKE DRAINAGE AND LEVEE DISTRICT, 253 ILL. 479, 97 N.E. 1042 (1912)
- CHALLENGE TO THE DRAINAGE DISTRICT'S CONSTRUCTION OF EMBANKMENT ACROSS THE NATURAL OUTLET OF SPRING LAKE
- RECOGNIZED THE POWER OF THE ATTORNEY GENERAL TO SUE TO PROTECT NAVIGABILITY OF WATERWAY AND TO SETTLE LITIGATION
- SEMINAL DECISION ON ENFORCEMENT OF SETTLEMENTS
- SITE NOW PART OF SPRING LAKE STATE FISH & WILDLIFE AREA

UPSTREAM VERSUS CHICAGO

- STATE OF WISCONSIN, ET AL., V. STATE OF ILLINOIS, ET AL., AND STATE OF MISSOURI, ET AL., INTERVENORS, 278 U.S. 367, 49 S. CT. 163 (1929)
 - STATES OF NEW YORK AND MICHIGAN FILED THEIR OWN LAWSUITS WHICH WERE THEN CONSOLIDATED
- CHALLENGE TO DIVERSION OF LAKE MICHIGAN, THREATENED REDUCTION OF LAKE LEVELS
- DEFENDED BY ATTORNEY GENERAL BRUNDAGE, THEN ATTORNEY GENERAL CARLSTROM
- STATES OF MISSOURI, KENTUCKY, TENNESSEE AND LOUISIANA INTERVENED IN DEFENSE OF DIVERSION
- COURT FINDS DIVERSION EXCEEDED LIMITS; MATTER REFERRED TO SPECIAL MASTER TO DETERMINE REMEDY

**ATTORNEY GENERAL
EDWARD J. BRUNDAGE**



**ATTORNEY GENERAL
OSCAR E. CARLSTROM**



THE REMEDY

- STATE OF WISCONSIN, ET AL., V. STATE OF ILLINOIS, ET AL., AND STATE OF MISSOURI, ET AL., INTERVENORS, 281 U.S. 179, 50 S. CT. 266 (1930)
- STEP-WISE REDUCTION TO ALLOW FOR CONSTRUCTION OF SEWAGE TREATMENT PLANTS OVER 8 YEARS
- NO REQUIREMENT THAT TREATED FLOWS BE RETURNED TO LAKE MICHIGAN
- ILLINOIS PAYS THE PIPER FOR “PERSISTING IN UNJUSTIFIABLE ACTS”

FIRST MAJOR EFFORT TO STOP WATER POLLUTION

- STATE OF ILLINOIS V. STATE OF INDIANA, ET AL., 64 S.CT. 32
- ATTORNEY GENERAL BARRETT SUES INDIANA AND CITIES OF HAMMOND, EAST CHICAGO, GARY, AND WHITING TO REDUCE DISCHARGES OF POLLUTION INTO LAKE MICHIGAN.
- 20 INDUSTRIES ADDED LATER INCLUDING STANDARD OIL, SHELL OIL, REPUBLIC STEEL, INLAND STEEL, AND SINCLAIR REFINING.
- SETTLEMENTS REACHED BY ATTORNEYS GENERAL BARRETT AND ELLIOTT WITH ALL PARTIES REQUIRING INSTALLATION OF WASTEWATER TREATMENT FACILITIES AT COSTS RANGING FROM \$75,000 TO \$3,500,000.
- ATTORNEY GENERAL'S REPORT FOR 1947-48; FINAL REPORT FROM SPECIAL MASTER 340 U.S. 869

**ATTORNEY GENERAL
GEORGE F. BARRETT**



ATTORNEY GENERAL
IVAN A. ELLIOTT



DIVERSION DRAWS MORE ATTENTION

- ATTORNEYS GENERAL CASTLE, BEARDSLEY, GUILD, AND CLARK DEFEND AGAINST FURTHER CHALLENGES
 - FURTHER REDUCTIONS
 - ADDITIONAL TREATMENT
 - RETURN OF TREATED FLOWS TO THE LAKE
- ILLINOIS SEEKS MORE WATER
- SUPREME COURT STAYS THE COURSE

ATTORNEY GENERAL
LATHAM CASTLE



ATTORNEY GENERAL
GRENVILLE BEARDSLEY



ATTORNEY GENERAL
WILLIAM L. GUILD



**ATTORNEY GENERAL
WILLIAM G. CLARK**



MOBILIZING TO BATTLE POLLUTION

- 1963: ATTORNEY GENERAL CLARK CREATES DIVISION OF STREAM POLLUTION
- ENFORCES STATE SANITARY WATER BOARD ACT (ILL. REV. STAT. 1963, CH. 19, PAR. 145.1) AND AIR POLLUTION ACT OF 1963 (ILL. REV. STAT. 1963, CH. 111 ½, PAR. 211)
- GOAL WAS TO “COLLECT AND CORRECT”
- ATTORNEY GENERAL’S REPORT 1964

FURTHER EXPANSION OF THE EFFORT

- ATTORNEY GENERAL SCOTT CONDUCTS CASE-BY-CASE STUDY OF ALL PRIOR ANTI-POLLUTION ACTIONS
- LEFT MAJOR SOURCES UNAFFECTED
- POLLUTION ABATEMENT ENFORCEMENT ACT
- ESTABLISHED POLLUTION CONTROL DIVISION
- ADDITIONAL LAWSUITS AGAINST LAKE MICHIGAN POLLUTERS
- ENFORCEMENT ACTIONS IN COURTS THROUGHOUT THE STATE

**ATTORNEY GENERAL
WILLIAM J. SCOTT**



A NEW THREAT IDENTIFIED

- THERMAL POLLUTION FROM NUCLEAR POWER PLANTS
- ONCE THROUGH COOLING PLANS
- ACTIONS BEFORE THE POLLUTION CONTROL BOARD
- ACTIONS BEFORE THE NUCLEAR REGULATORY COMMISSION

PROTECTING THE RIVER FROM DEVELOPMENT

- INVOKING THE ATTORNEY GENERAL'S CHARITABLE TRUST POWERS
 - CITY OF ALTON V. UNKNOWN HEIRS, 424 N.E.2D 1155, 95 ILL.APP. 3D 1072
 - PROMENADE VERSUS HIGHWAY

- INVOKING THE ATTORNEY GENERAL'S PUBLIC TRUST POWERS
 - PEOPLE OF THE STATE OF ILLINOIS, EX REL., SCOTT V. HOFFMAN, 425 F. SUPP. 71
 - RESTORING THE MACKINAW RIVER

CONTROL OF SOURCES AS WELL AS DISCHARGES

- ATTORNEY GENERAL FAHNER SUES TO CONTROL SEEPAGE FROM MONSANTO'S RIVERSEDGE LANDFILL IN SAUGET
- FIRST EFFORT TO CONTROL POLLUTION FROM DISPOSAL SITE AFFECTING RIVER RATHER THAN A DIRECT DISCHARGE
- WHAT WAS ATTORNEY GENERAL FAHNER'S LONGEST LASTING CONTRIBUTION TO ENVIRONMENTAL PROTECTION?

ATTORNEY GENERAL
TYRONE C. FAHNER



BALANCING NAVIGATION AGAINST OTHER INTERESTS

- **PROPOSED BARGE FLEETING AREAS IMPACT OTHER INTERESTS:**
 - SCENIC VALUES
 - PUBLIC WATER SUPPLY INTAKES
 - MUSSEL BEDS
 - EAGLE ROOSTING AREAS
- **ATTORNEY GENERAL HARTIGAN DEFENDS ILLINOIS EPA DENIAL OF 401 CERTIFICATION FOR BARGE FLEETING AREA ON CHOTEAU ISLAND; NATIONAL MARINE SERVICE V. EPA, 120 ILL. APP. 3D 198 (1984)**
- **BARGE FLEETING BOOKENDS ON THE GREAT RIVER ROAD?**
 - ATTORNEY GENERAL HARTIGAN JOINS CHALLENGE TO PERMIT ISSUED BY CORPS OF ENGINEERS FOR BARGE FLEETING AREA AT GRAFTON
 - RIVER ROAD ALLIANCE V. U.S. ARMY CORPS OF ENGINEERS, 764 F. 2D 445
 - WHAT DOES THIS DECISION HAVE THAT MOST DECISIONS DO NOT?

ATTORNEY GENERAL
NEIL F. HARTIGAN



RENEWING THE BATTLE TO PROTECT OTHER INTERESTS

- PARTICIPATION IN CORPS' POOL-WIDE BARGE FLEETING AREA STUDY
- ILLINOIS RIVER PERMIT APPLICATIONS
- VAN ABBEMA V. FORNELL, 807 F.2D 633
- OHIO AND MISSISSIPPI RIVER PERMIT APPLICATIONS
- CONTINUED EFFORTS TO REDUCE POLLUTION

CRIMINAL PROSECUTION

- ATTORNEY GENERAL RYAN BRINGS FIRST CRIMINAL PROSECUTION
- AMERICAN RIVERS TRANSPORT, LASALLE COUNTY
- CATCH AND RELEASE STAKEOUT OF PUMP AND RELEASE VIOLATIONS

ATTORNEY GENERAL
JIM RYAN



KEEPING THE WATERS FLOWING

- ATTORNEY GENERAL MADIGAN'S ROLE IN:
- ASIAN CARP LITIGATION
- BIRDS POINT LEVEE
- CONTINUED REDUCTION OF POLLUTION
- NATURAL RESOURCE DAMAGE RESTORATION

**ATTORNEY GENERAL
LISA MADIGAN**



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