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
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 MCCARTNEY
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
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

  - 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
THE REMEDY


- **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.C.T. 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
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
GRENVILLE BEARDSLEY
ATTORNEY GENERAL
WILLIAM L. GUILD
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
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 SOURCE S AS WELL AS DISCHARGES

• ATTORNEY GENERAL FAHNER SUES TO CONTROL SEEPAE 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?
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?
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
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