RECENT DEVELOPMENTS IN INFRASTRUCTURE AND REGULATED INDUSTRIES 2018
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I am pleased to introduce the 2018 edition of Recent Developments in Infrastructure and Regulated Industries. Following the lead of many of my predecessors, I will take this opportunity to reflect on events that have driven and will drive “recent developments.”

In 2009, President Obama stated, “Elections have consequences.” In a 1966 speech, Robert F. Kennedy quoted what he characterized as a Chinese curse: “May [you] live in interesting times.”¹ As I write this introduction in the early summer of 2018, I acknowledge that we are living in interesting times and that, in significant part, they are the consequence of the 2016 presidential election. In recent weeks and months, we have seen the prospect of the appointment of a second new justice to the Supreme Court by the President and a resulting shift to the right, while appointees in many federal agencies have taken actions to relax or reduce government regulation. Finally, our country’s diplomatic and foreign trade relations are front and center as a result of recent positions taken by the administration.

At this point, I am sure some of you are asking, “What does this have to do with the Infrastructure and Regulated Industries Section?” Many of these actions over the past year and a half have direct impacts on section members, on our clients, on areas followed by our various committees, and generally on practitioners in these areas. Thus, the section’s Environmental Committee and environmental practitioners have seen the United States withdraw from the Paris Climate Accord, have tracked efforts to repeal the Clean Power Plan, and have seen further steps to weaken the federal vehicle fuel efficiency (CAFE) standards. Members of our Communications Committee, FCC practitioners, and their clients have seen the reversal of the net neutrality rule, and members of our Nuclear, Electricity, and Renewable Energy Committees have seen support for nuclear and coal over renewables and other forms of electric generation. The members of our Antitrust and Finance, Merger, and Acquisitions Committees and practitioners in the area have observed changing antitrust enforcement while the Tax and Accounting Committee and its members are dealing with the 2017 Tax Cut Act. The State Regulatory Committee and clients and practitioners before state regulatory agencies have seen, and will likely continue to see, efforts by states that may differ from regulatory actions of federal agencies.

It is predictable that all of these and other developments will provide grist for IRIS committees in the future. My expectation is that our section members will continue to benefit from articles in Infrastructure and Recent Developments and webinars on many of these subjects.

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¹ Subsequently, there has been some debate as to whether it was in fact a Chinese curse, or something said originally by the brother of Great Britain’s Prime Minister Chamberlain in 1936.
During the past year, we have been celebrating the 100th anniversary of our section. At the beginning of the year, I suggested that our theme should be “Look Back and Look Forward” but I soon realized that a more positive theme was “Look Back and Move Forward.” We have made much progress this year, including the delivery of significant content to our members.

Five of our committees have written 100th anniversary essays, which have been published in Infrastructure. The committees (and authors) are Oil Pipelines (Steven Brose), Telecommunications (Chris Binnig and J. Tyson Covey), Nuclear Energy (Brad Fewell, Donald Ferraro, and Darani Reddick), State Regulatory (Charlie Read, Joe Seliga, Mitch Holzrichter, and Noelle Coates), and Electricity (Casey Wren, Mark Strain, and Everett Britt). We appreciate their efforts.

We have also presented three webinars this year including “Regulated Industry M&A Transactions,” “Current Developments in Grid Reliability,” and “Lessons Learned and Recent Developments in Integrating Electric Storage into Power Systems.” The panels have each featured experts in the respective areas. As we have previously announced, these webinars, which qualify for CLE credit in many states, are free to members of our section. While the development and presentation of a webinar requires efforts from a number of people, a resounding thank you goes out to Cathy McCarthy, who has been the moving force behind our webinars for several years and, I understand, has several more webinars in the planning stage. Thank you, Cathy.

Last October, we presented the Porter Award for service and leadership to the section to Dave Poe who has served the section and the ABA in many roles over many years. It was a well-deserved honor for Dave.

This spring our section lost one of its senior members, S. Eason Balch, Sr., who died at the age of 98½. Eason was a long time member of the section and a distinguished member of the Alabama Bar. In his tribute to Eason, which is included in this edition of Recent Developments, Stan Blanton, Chair of the Nuclear Committee and a former partner of Eason’s, recounts a number of interesting facts about Eason. He was hired by the firm that would eventually bear his name after he was approached by his law school dean (at the University of Virginia) who had received a letter from a senior partner in a Birmingham firm asking whether there were any Alabama natives among the third year class who might be interested in joining the firm. Eason was known both inside his firm and out as a master story teller and is the subject of some legends, including the claim that he cross-examined an expert witness-economist for 30 full hearing days. Finally, Stan quotes Eason as saying that writing a brief is like a dog trying to find a place to lie down—you have to circle around the area two or three times before you find just the right spot. This is advice that we could all benefit from. Eason will be missed by the section.

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In what I expect will be a multiyear effort, the section has held the first of a series of receptions for young lawyers, in New York City and Dallas and, in
September, in Chicago. The purpose of these receptions is to introduce the section to younger practitioners. We are planning to hold additional receptions in cities where our members live and practice. The moving force behind these receptions and the organizer of the New York reception is Courtney McCormick. Bill Drexel and Kris Keys are organizing the Dallas and Chicago receptions.

I would also like to express my appreciation and that of the section to the following members who have contributed to our successes this year:

- Linda Randell, who is completing a two-year term as a member of and our liaison from the ABA Board of Governors;
- Steve Brose and Tom Gadsden, who are our delegates in the ABA House of Delegates;
- The committee chairs, vice-chairs, and their colleagues who have written committee reports which are posted on the IRIS website and are also writing reports for publication in *Recent Developments*;
- The members of the section council and especially the co-chairs of our Content, Membership, and Young Lawyers Teams;
- *Infrastructure* editors Casey Wren and Chuck Patrizia and the many authors who contributed articles to the four issues of *Infrastructure* that we have published this year;
- *Recent Developments* co-editors Millie Ronnlund and Daniel Poynor. Having edited *Recent Developments* for 12 years, I understand the effort involved in gathering and editing the submissions and publishing the book.

I also want to thank Navigant and our primary Navigant contacts, Debra Aron and Scott Carr, for Navigant’s ongoing sponsorship of the section. In addition to Navigant’s financial support, Debra, Scott, and their colleagues have provided substantive presentations at meetings and in webinars. We look forward to Scott’s presentation on artificial intelligence at our annual meeting in Chicago in August.

Thanks also to Wendy Smith, who has edited *Recent Developments* for 14 years and is now also editing *Infrastructure*. Wendy has been instrumental in getting the publications edited and published on a timely basis while maintaining her even temperament and good humor.

Our section director, Sue Koz, and her assistant, Patricia Honzik, are critical to the functioning of the section. Sue has recently celebrated her 30th anniversary with the ABA and has been our section director for 18 years. Several years ago, I attended an ABA meeting in Chicago where former section chairs were offering “best practices” tips to prospective section chairs. One of the suggestions from a former chair was “Do what Sue says.” Although the former chair was speaking of a different Sue, I found this to be very useful advice and will pass it along to my successor, Mark Darrell.
Mark, who is Senior Vice President, General Counsel & Chief Compliance Officer of Spire Inc., will become chair of the section as of the annual meeting on August 4, 2018. We appreciate Mark’s willingness to step into the role of chair-elect on short notice upon the resignation of the then chair-elect. I wish him the best of success and hope that he enjoys chairing the section as much as I have.

Peter V. Lacouture  
Chair, 2017–2018  
Infrastructural and Regulated Industries Section  
July 2018
A NOTE FROM THE EDITORS

Recent Developments in Infrastructure and Regulated Industries (2018) highlights judicial decisions, administrative rulings, and legislative actions for the year ended March 31, 2018, as well as a few important developments since then.

Recent Developments would not be possible without the efforts of the Chairs and Vice-Chairs and other members of the committees who, along with their colleagues and associates, wrote and contributed to the reports. We acknowledge the authors, editors, and contributors at the beginning of each report. Their detailed research, thoughtful analysis, and timely and concise reporting have resulted in a thorough report of the year’s activities affecting our section.

The editors also acknowledge with great appreciation the Chair of IRIS, Peter Lacouture of Robinson & Cole LLP, who provided invaluable support and advice throughout the process. We also thank Sue Koz, the IRIS Section Director, for her crucial contribution, as well as Lisa Ezell, paralegal with Balch & Bingham, who assisted us with reviewing and editing the annual reports. We are also extremely grateful to Wendy Smith, without whom none of this would be possible. We thank Wendy for her skill, guidance, and good humor during this process and give her full credit for the completion of this monumental task.

Millicent W. Ronnlund
Daniel J. Poynor
Editors-in-Chief
July 2018
On April 14, 2018, our profession, this Section, and the electric utility industry lost one of its greatest lawyers, leaders, thinkers, storytellers, and personalities when Samuel Eason Balch Sr. died peacefully at his home in Birmingham, Alabama. Eason’s 98 years and six months enriched the lives of all of us who had the great fortune to know him. His accomplishments were too many to name in this short remembrance, but above all he was what his generation would call a “class act.” His life embodied the principles that his generation held dear and a warmth, kindness, and grace that he shared with so many of us in this Section.

Eason was born in Madison, Alabama, then a small farming community in North Alabama near Huntsville, on September 5, 1919. From his earliest years and continuing throughout his life, Eason found joy in work and being active. As a child, he milked cows and tended chickens on the family farm. Soon, he was “jerking soda” at the local drug store and delivering prescriptions, dry cleaning, and newspapers all over town. Eason’s work did not distract him from his studies, as he graduated as valedictorian of Madison High School in 1936 and headed to the University of Alabama. It will surprise no one who knew him that at the university Eason distinguished himself academically as well as socially. He was a fixture in a variety of campus fraternity and political activities.

Shortly after his graduation in 1941, Eason entered the U.S. Army but was rejected for officer’s training because he only weighed 111 pounds (that is not a misprint). Soon however, his industriousness, intellectual horsepower, and obvious leadership qualities showed through and he was accepted into Officer Training Corps and commissioned as a Second Lieutenant. It was at OTC in Richmond that he met the love of his life, the vivacious Elizabeth “Betsy” Brock. Eason and Betsy were married in 1943 and Eason soon shipped out to Europe as a Captain, and commanded an ordinance company, eventually commanding a captured Daimler Benz truck factory. Eason attained the rank of Major before leaving military service and began a legal career at the University of Virginia that would profoundly impact many lawyers that followed him, including yours truly.

As he neared graduation from UVa in 1948, his law school dean received a letter from William Logan Martin, the senior partner of a law firm called Martin, Turner and McWhorter in Birmingham. “Judge” Martin, the brother of Alabama Power Company President Thomas W. Martin and whose firm specialized in electric utility law, inquired of the dean whether there were any Alabama natives among the third year class who might be interested in joining the Firm. The dean showed the letter to Eason, who had never heard of the Firm, but was sufficiently in need of a position that he asked around and learned about the Firm and especially Judge

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M. Stanford Blanton (sblanton@balch.com) is a partner in the Birmingham, Alabama, office of Balch & Bingham LLP.
Martin’s background as a West Point graduate and his reputation as a leader of the Alabama bar. Eason joined the Firm as an associate in 1948 as the eleventh lawyer and in 1962, at the age of 42, became the Chairman and Managing Partner—a position he held until his retirement in 1988.

With his close friend and colleague Jack Bingham at his side, Eason not only led but built what eventually became Balch & Bingham into the full service Firm it is today. He had a keen eye for talent and a bold vision for what the Firm could be. Eason was a strong, courageous, and charismatic leader. He loved practicing law as much as anyone I have ever known. He loved his Firm, and he continued to be involved and active in our lives after his retirement. He loved visiting with the younger lawyers, telling them stories, and impressing upon all of us the importance of our clients and the importance of our work in helping them provide better lives for their customers and the communities they serve.

I marvel at the vision, the tenacity, and the determination Eason displayed as the leader of the Firm for 26 years. Maintaining a successful Firm can sometimes be frustrating. Building one from what we would now call a boutique electricity Firm into the Firm he retired from in 1988 requires an extraordinary leader. That is especially true when you consider that Eason was a very active practicing lawyer during his tenure as leader of the Firm. He was no full-time administrator. Among his most noteworthy accomplishments was leading the legal team in the licensing of the Joseph M. Farley Nuclear Plant, including litigating the now anachronistic antitrust conditions of the license. While some war stories might be judged as apocryphal, there is record evidence that Eason cross-examined one expert witness—an economist who has become known as “that poor SOB” over the years at Balch—for 30 full hearing days. An accomplished legislative counsel, Eason was also a fixture in Washington, D.C., throughout his career and served as Chairman of the Edison Electric Institute Legal Committee.

Of course, no remembrance of Eason would be complete without an acknowledgment of his affection for the Public Utility, Communications and Transportation Section, now the Infrastructure and Regulated Industries Section, of the American Bar Association. I have received many lovely notes from our membership remembering Eason’s love of life, his gregarious personality, and his wit. He was always “jam up, jelly tight, and sitting on ready,” “ambi-drinxterous,” and ready for fun.

I probably got to know Eason and Betsy after his retirement better than I did when he was running the Firm. As we travelled together to Section Council and EEI meetings during those years throughout the 1990s and 2000s, I came to the conclusion that I had never seen two people enjoy each other’s company more than Eason and Betsy Balch. She thought he was the funniest human she had ever met and he thought she was the most lovely. They both may have been right. Eason and Betsy were a model for a couple during a hectic legal career, and especially during retirement. Many of the notes I have received from our Section members invariably mention “Eason and Betsy” as if you can’t think of one without the other. In many ways that is absolutely true. I am sure they are having a wonderful reunion.
I heard Eason say once that writing a brief is like a dog trying to find a place to lie down—you have to circle around the area two or three times before you find just the right spot. Writing this has been a little like that for me but I hope I got somewhere close to the right spot in sharing my memories of Mr. Balch.

Rest in peace, Eason Balch. You were one of a kind.