

## PRESIDENT'S COLUMN\*

It is a great honor (and also a little daunting) to become president of NABL and to follow so many distinguished predecessors. Luckily, in my years on the NABL board, I have had the good fortune to observe my immediate predecessors—Richard Chirls, Ted Hester, and Joe Johnson—and also to observe Dean Pope as immediate past president. Now that is a position to which we all aspire. I know that I, personally, aspire to it at this very moment. You should know that I will never be able to duplicate Dean's panache, Joe's wisdom, Ted's legislative judgment, or Richard's technical acumen. But I can tell you that, by their fine examples, I do feel better prepared for the year ahead.

I would like to use this occasion to share just a few thoughts about NABL and its mission. In doing so, I hope to reach not only you "usual suspects" who are gathered here this evening, but also the membership at large, who I hope to reach by publishing these remarks as my first "column" in *The Quarterly Newsletter*. If any of you here as a result are tempted to skip these remarks and to proceed directly to headier liquid refreshment, don't do it. My remarks will be short. And, if I were to compare them to a few good drinks, I would say they will be equally soporific.

While it is certainly a privilege for me to become your president, I think in many ways we all are privileged to practice in the area of public finance. Certainly our privilege may not seem as valuable as it once was (which you would know if you have been reading *The Bond Buyer* recently). But we still are engaged in a practice that is technically stimulating (if sometimes more stimulating than we'd like). And, we all have the special satisfaction that comes from working toward worthwhile ends. We help state and local governments provide needed public infrastructure. That infrastructure supports economic development, helps educate the nation's youth, and provides other very important public services. So our profession is one of which we can justifiably be proud.

NABL's members, as I say, help develop the nation's infrastructure. NABL, I believe, plays an important role in helping them do so. NABL's education programs certainly are second to none. And its committees provide very important advice on proposed laws and regulations, *i.e.*, the practical perspective of real world practitioners.

Before sharing some thoughts on the year ahead, I should tell you that Richard's remarks about NABL's accomplishments this past year were incomplete. He forgot to mention that, in leading NABL this past year, he initiated some invisible, but very important, organizational work. When he spoke to you last year, Richard called upon NABL members to volunteer for NABL-sponsored projects. He did more than talk, though. On his recommendation, the NABL board appointed a Membership and Activities Committee. The Committee has begun to explore some inventive measures to expand NABL's membership and to involve more of its members in NABL's activities. Under his direction, Karen Hedlund developed a set of Investment Guidelines. Richard also initiated a Guide to Committee Operations which was approved by the board this morning and, I think, will be instrumental in helping committee officers launch effective committee projects. Richard's organizational initiatives this past year may surprise some of you. Certainly his tax law expertise is well known (partly because his many speaking engagements give him ample opportunities to remind us), but his organizational efforts have been less public. In my view they are an equally important contribution to NABL and will serve NABL well in future years. For that, and your leadership in general this past year, Richard, thank you.

*[At this point, the members present interrupted to give Richard a well-deserved round of applause.]*

A number of you have asked me whether I will propose any special agenda as your president this year. The answer is yes and no. Yes, I do have an agenda, but no, it is not special: It consists mainly of doing the little, routine things that are required to achieve NABL's goals, *i.e.*, to support our common legal practices through educational activities and to improve the law.

In the area of education, which is NABL's most important mission, I hope we will continue to provide first-class, responsive seminars and publications at reasonable cost. We should certainly preserve the "mother of all seminars," the Bond Attorney's Workshop, exactly as it is. I urge you to thank Bill Conner for his skilled leadership this past year, and to remember Neil Arkuss in your prayers this next year. There is some work to be done on NABL seminars, though. We need to revitalize the Washington and Arbitrage Seminars, we need to explore new ways to reduce printing

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\* These remarks were delivered by President Fredric A. Weber at the Association's annual meeting on September 11, 1991.

expenses, and we need to continue to develop new faculty. In the last two years, the Education Committee has proposed some thoughtful solutions to these issues. Now we need to implement them.

In our efforts to improve the law, in my view there is much to be done in both the tax and securities law arenas.

In the tax arena, the last decade saw many new restrictions on the issuance of tax-exempt bonds, enacted in a largely successful attempt to curtail run-away growth. Certainly some of these restrictions are efficient: They limit volume without imposing disproportionate administrative expenses. Examples that come to my mind are (1) the volume cap, (2) the prohibitions against blind pool financings and hedge bonds, (3) the limitation on borrowings to fund reserve funds, and (4) the limitation on consecutive advance refundings. Other restrictions are inefficient, though: they impose significant administrative burdens on state and local governments with little compensating results. Examples are (1) the 5% unrelated use test, (2) the double-barreled imposition of both arbitrage rebate requirements and yield restrictions, (3) the near-useless Form 8038, and (4) the public approval requirement and its seldomly attended TEFRA hearings.

From my perspective, there are now at least two good reasons to hope that many of these restrictions will be made more efficient or repealed.

First, both congressional leaders and the Treasury Department have acknowledged that, in imposing some of these restrictions, they overstepped their bounds. Congressional leaders have introduced tax simplification legislation in our area, and the Treasury Department has embarked on a series of simplifying amendments to its arbitrage rebate regulations. To date, at least, both the degree and the pace of relief have been disappointing, given the very substantial administrative burdens that weigh on state and local governments. But at least relief from these burdens is being considered.

Second, in proposing new regulations, the Treasury Department recently has followed a very responsible path: it has solicited information from informed practitioners before proposing regulations and has provided an opportunity for public comment before giving the regulations effect. More importantly, judging by recent actions on the reimbursement regulations, it is giving serious consideration to the comments it receives. Whatever we may think about the proposed rebate regulations in substance, we have to applaud the responsible way

in which they have been proposed, and we have to recognize the increased importance of our advice on regulatory issues.

In the year ahead, I hope that our Arbitrage and Rebate and General Tax Matters Committees will continue to advocate meaningful "simplification" of our tax laws (without permitting artificial increases in volume). I also hope that they will work with Congress and the Treasury Department to assure that "simplification" does not result in new, unintended inefficiencies.

In the securities law arena, I hope that our Securities Law and Disclosure Committee will continue to participate in the current debates about establishing a voluntary, secondary market continuing disclosure system. Voluntary continuing disclosure, it seems to me, is a good thing, if it remains voluntary and if purchasers benefit from continuing disclosure sufficiently to offer pricing concessions when they purchase new issues. If issuers are sufficiently rewarded in pricing to offset expected costs, I'm sure they will agree to make continuing disclosure to the marketplace. If they are not sufficiently rewarded, in my view we should all ask whether the benefits of post-issuance disclosure really justify the corresponding administrative expense and exposure to liability.

I do believe that, in both the tax and securities law arenas, acting together through NABL we *can* have a real impact on the shape of the law, if we keep two things in mind.

First, we should restrict ourselves to the issues on which we can speak with credibility. In my view, it is not for NABL to say whether there should be more or less tax-exempt financing, or whether there should be more or less secondary market disclosure, even though we may each have our own views on these issues. Issues like these are better debated by others. What we *can* discuss, persuasively and authoritatively, I believe, is the extent to which regulations impose excessive administrative burdens, expose issuers and other market participants to undue liability, or otherwise result in adverse collateral consequences which too seldom are taken into account when new regulation is considered.

Second, we must not hesitate to express our honest views about regulation. We must remain rational and polite, of course, and we must be sensitive to the practical as well as the ideal. But when regulatory relief emerges too slowly, or stops too short of the ideal, we must say so, even at the risk of offending (in the short run) those who we wish to

persuade. If we don't speak frankly, then token concessions eventually will be confused with real progress by the regulators and by us alike.

As lawyers, we have an ethical duty to "improve the law." I believe that duty can be fulfilled if we work to make public finance regulation more efficient. Admittedly, "efficiency" is not a very exciting rally cry. When applied to public finance laws, though, it *is*, in my view, important to our nation's future. Every dollar we spend to comply with legal regulation is one less dollar available to rebuild the nation's infrastructure. At the same time, the regulations that require these expenses are not productive. They merely allocate existing resources rather than creating new ones. In my view, if we tolerate inefficient regulation in these areas, as a nation we will spend too much of our resources in unproductive ways, we will have fewer resources to go around, and we will find it more and more difficult to compete in the world marketplace.

On this year's membership application and renewal forms, you were each asked to enlist in the work of one or more of NABL's committees. Many of you did so. Your names will be provided to committee chairs and vice-chairs, and many of you may be called upon for help in the year ahead. If you did not do so, there is still time to enlist. Like Richard last year, I urge you to become involved, to support NABL and the work of its committees, and by doing so to fulfill your ethical duties to improve the law. I believe that, together, we can have a significant effect on this very important area of legal practice.

I look forward to working with each of you in the year ahead.

Fredric A. Weber

## **PRESIDENT CHIRLS' REMARKS\***

### **Introduction**

The annual presentation by the outgoing President traditionally is an opportunity to reflect on the activities and accomplishments of the Association during the past year.

The list of contributors to the Association is long and I will try to squeeze in as many names as I can

\* These remarks were delivered by outgoing President Richard Chirls at the Thirteenth Annual Meeting on September 11, 1991.

in a few short minutes. Throughout the year I have written to many of our members expressing my thanks on behalf of the Association.

### **Seminars**

There is no doubt that NABL's education program is the cornerstone of the organization. Thanks to the leadership of Steve Edwards, Chairman of the Education Committee, our seminars came off with nary a hitch. What I am most pleased with is the manner in which these seminars have continued to develop to meet the needs of our members.

The Washington Seminar was chaired by Jeff Green. Together with Bill Henn, Jeff included in the program a very successful ethics panel that reflects a continuing and expanding focus of Association activities.

The Fundamentals Seminar, chaired by Mae Nan Ellingson, experienced continued growth in attendance and saw a largely new faculty significantly improve the published course materials.

Cliff Gerber chaired the Arbitrage Seminar and nicely coordinated the faculty's reaction to the reimbursement regulations—which, as had been feared, were published only a few days in advance of the program.

Wally McBride and Stan Keller ably chaired the IRS and SEC seminars, respectively.

Many Association members also served as panelists at the GFOA Disclosure seminars which NABL joined in co-sponsoring.

Of course, here we are again at the Bond Attorneys' Workshop (to steal Steve Edwards' phrase—the "Capistrano of bond lawyers"). Bill Conner has coordinated a terrific program for us.

I will also mention that the Board, led by Drew Kintzinger and Steve Edwards, adopted new procedural policies for the operations of the Robert Hilderbrand Fund which will enhance the opportunities for IRS, Treasury and SEC personnel to join us in attending NABL seminars and thereby to learn bond law properly—as we see it.

### **Committees**

Our Association relies heavily on our Committee structure.

The Securities Committee, chaired by Stan Keller, had a busy year. The Committee sparked some necessary controversy by its comments regarding