PRESIDENT'S COLUMN

(The following remarks were delivered by M. Jane Dickey as she assumed the presidency of the Association on September 16, 1992.)

Does it seem to you as if today's scene contains an amazing—some would say alarming—number of Arkansans? I am even more astonished than you to find myself assuming the presidency of the National Association of Bond Lawyers. I am fortunate to have spent three years on the Association's Board of Directors under the fine leadership of the politically astute Ted Hester, who effected a revamping of our educational programs, the tax guru Richard Chirls, who revitalized our operating procedures so that our committees are at peak efficiency, and the renaissance bond lawyer Rick Weber, who guided a massive volume of technical comments on tax and securities matters. To follow in such footsteps is both a great honor and a daunting challenge. In assuming the duties of this office, I am grateful for the guidance that has been given by these fellow bond lawyers. Thank you all.

The National Association of Bond Lawyers exists to improve the law and solve common problems relating to state and municipal obligations. We make long-term gains toward achieving these goals only if we act according to the highest ethical standards, and the Association can be rightfully proud of all it has accomplished in assisting its members to adhere to such standards. This assistance is provided in three primary ways: through formation of statements of the professional standards of our legal practice, through the top-notch instructional programs for which our Association is best known, and through the comment projects we undertake on legislation, regulations, and other industry groups' initiatives.

Everyone is ethical in his or her own eyes. This fact tends to preclude us from looking critically at our own conduct and that of others in our profession. We all need help in gaining perspective so that we may resist this tendency toward smugness and self-righteousness in our own professional conduct. A useful tool in gaining this needed perspective was produced by the Association in 1983 when it adopted a report on the Function and Professional Responsibilities of Bond Counsel. Since that time the Model Rules of Professional Conduct were adopted by the American Bar Association, and under Rick Weber's leadership this past year your Board of Directors asked the Professional Responsibility Committee to take a new look at the Function and Professional Responsibilities project. We hope that activity will start this fall.

While we judge ourselves by our best intentions, it is clear that others judge us by our last, worst act. It is my belief that comparing one's actions in real situations against a written standard of ethical principles is valuable in fostering actual ethical performance, not just good intentions. We plan to work with enthusiasm on the Restatement of the Function and Professional Responsibilities of Bond Counsel.

This Association decided several years ago, however, that publishing a road map to reputable behavior for bond lawyers to use in the privacy of their offices is not enough to stake our claim to the high road. It is true that almost all of the ethical problems people point to are caused by a small minority. But to the extent the majority does not stand up and speak out, all are tainted. We will carry on the tradition of speaking when we know harm is being done.

NABL works toward its goals by fostering high standards of lawyering by its members; it also works toward its goals by assisting its members to be competent lawyers. Even before NABL was a gleam in the eyes of its founders, education was its mission. Those of us who were not present at the creation may not ever be able to fully appreciate the fierce independence of Bond Attorneys' Workshop, but I come as close as any Johnny-Come-Lately can to being a true believer in Workshop's philosophy of education: that this great privilege we share, that of being a bond lawyer, is conditioned not on one's birth or position in a prestigious law firm but on one's effort and ability. Workshop is the very antithesis of cliquishness. Becoming a bond lawyer has always involved a large element of apprenticeship; while most of us still enter the practice from within a firm with a long history of rendering bond approving opinions, more and more enter from less traditional avenues. Workshop provides a forum to meet and talk about the legal, practical, and ethical questions we face in our practices. It involves lots of us both in teaching and in learning. I am delighted that, with the legendary Neil Arkuss assuming the office of President-Elect, though I may be the first chair of Bond Attorneys' Workshop to become President of this Association, I will not be the last.

This commitment to education commenced by Bond Attorneys' Workshop permeates the Association today. We are fine-tuning the Washington Seminar, the Tax Seminar, and the Fundamentals Seminar to make them more responsive to the needs of our members and to open the roles of leading and teaching to a larger circle. We are working with the American Bar Association to update *Disclosure Roles of Counsel in State and Local Government Securities Offerings,* the so-called "Green Book." We are investigating the development of a tax source materials service. We are re-examining the Model Bond Opinion project in light of the American Bar Association's Silverado Accord on third-party legal opinions. We hope to stimulate scholarly writing in the field of municipal finance law through the establishment of The Carlson Prize.

Rule 1.1 of the Model Rules of Professional Conduct requires lawyers to undertake a representation only if they possess the requisite legal knowledge and skill to perform that work. The National Association of Bond Lawyers strives to give its members the educational opportunities they need to become and remain competent.

The third area in which this Association will continue to make contributions involves the governmental and industry groups operating in the municipal finance field. On the legislative front, the year just ended was one in which even modest hopes for simplification and an easing of some of the disincentives for the issuance of bonds were dashed. The person on Capitol Hill with the most thorough knowledge on the subject of tax-exempt bonds, one of Arkansas' own congressmen, Beryl Anthony, lost a runoff election and will not return to Congress. We cannot know what the legislative climate will be after November 3, but we can be ready with technical comments on enterprise zone bonds and suggestions for legislative initiatives for simplification in areas such as the private activity bond rules and increasing the small issuer arbitrage exemption limit. As our country's elected leaders make decisions which impact on the issuance of state and local government bonds, we must be prompt, thorough, and honest with our critique of the impact of these decisions on the issuers we represent. If we exaggerate or depreciate the consequences which will flow from a proposal we will undermine our effectiveness.

Anna Quindlen wrote in an op-ed piece in *The New York Times* last week that "[k]nowledge comes from discussion, not conclusion and exclusion." She was not writing about the regulatory process, but she could have been. At our Association's annual meeting three years ago, President Ted Hester announced that, following years of hostility and distrust, a truce was in the works between our organization and those who write regulations under the Internal Revenue Code. We may not be at the point at which I and other ordinary bond lawyers can perform transferred proceeds calculations, but we have moved from 1989's 243-page arbitrage rebate regulations to 1992's statement from Fred Goldberg, Assistant Secretary of the Treasury, that regulators "should make do with 'rough justice' and accept the fact that life is rather messy and theoretical purity doesn't work." I do not mean to suggest that civility and congeniality wrought this sea change, but they helped. Opening a dialogue with regulators influenced us to present our comments on proposals in a more dispassionate manner; perhaps it encouraged the regulators to consider our suggestions with less suspicion.

Today it is the area of securities law which needs less of the conclusion and exclusion of which Ms. Quindlen writes. We must pursue discussion about the issues of disclosure (both on initial offering and secondary market) without rancor and suspicion. We need to be more open to the possibility of benefits as well as to perils. As lawyers representing issuers, we tend to see potential liabilities, which are real and exist in multitude. There may never be workable safeguards to protect the typical issuer from increased exposure to securities fraud claims resulting from inaccurate or incomplete continuing disclosure. We can expect persistent disregard of a fact we will keep pointing out: that no one wants continuing disclosure enough to attach any economic value to it. What we can predict with certainty, however, is this: if we do not pursue with enthusiasm overtures for dialogue, we will miss an opportunity to develop a working relationship with parties who affect our practices and the affairs of our clients in a direct and important way.

To the extent the laws and regulations in our field are not workable, not administrable, to the extent that these laws and regulations cannot be comprehended by the average bond lawyer even with diligent study, and to the extent the government that promulgates these rules does not enforce them, we and our clients are invited to ignore the rules we do

not understand. While some may fear that simplification leads to abuse, the better argument is just the reverse.

My personal experience has been that ethical lawyering is a process rather than an event, a goal rather than an accomplishment. The National Association of Bond Lawyers has a proud history of helping me and you work toward this goal by promulgating standards of practice, increasing our knowledge of municipal finance law, and making contributions to the rational administration of tax and securities laws. I look forward to our year together.

PRESIDENT WEBER'S REMARKS

(These remarks were delivered by outgoing President Fredric A. Weber at the Association's annual meeting on September 16, 1992.)

Now that you know that the Association's financial condition is good, I will report on the Association's condition in other respects. It, too, is good. This past year the Association significantly advanced the purposes for which it was organized, thanks to the hard work of many people. I would like to recognize just a few of them tonight.

Education

One of the Association's principal missions is to provide high quality, low cost continuing education programs for members. This mission was especially successful this year, thanks to the dedicated work of Mae Nan Ellingson and Cliff Gerber, chair and vice-chair of the *Education Committee*, and thanks, too, to a great deal of hard work by the chairs, vice-chairs, and faculty for our individual workshops and seminars.

(I see that Mae Nan has been rewarded for her work by being nominated for a three-year sentence to the Association's Board of Directors. Luckily, no one had warned her of the possible consequences of her contribution to the Association.)

Lew Horne and Julie Ebert led a reinvigorated *Washington Seminar* this year. Thanks to their hard work and the well-timed release of proposed tax regulations, seminar attendance increased substantially over last year. This year the seminar also served as an effective outreach to practitioners who are members of racial or ethnic minorities, due in large part to a wise selection of topics and speakers.

This year's Fundamentals Seminar was led exceptionally well by Bill Gehrig and Mary Jo White. It continued to improve on awesomely successful prior editions. Our *Legal Assistants Committee*, led by Mary Lou Cassidy and Jan Ozer, contributed importantly to the program.

This year's *Seminar on Arbitrage and Other Tax Matters* was led by Dick Kornblith and Tim Wolfe. It, too, was substantially better attended than last year, and it provided the first real opportunity to discuss fully the federal income tax regulations proposed last winter. (After the great investment of time made by the faculty and registrants in discussing the proposed regs, in some ways it was too bad that the regs were revised the following week and, as revised, will last for only one year. Of course, in other ways, that is not bad at all.)

In sum, this year's educational events to date have been well-conceived and well-attended, and they effectively furthered the Association's educational mission.

Now we have begun what Neil Arkuss *guarantees* to be another great Bond Attorneys' Workshop. If it is not great, we all know to hold Neil and Susan Weeks personally accountable.

Improving the Law

A second important mission of the Association is to improve the law through coordinated effort. The Association worked diligently and with some success this year in improving both federal income tax and federal securities law.

Our *Legislative Action Committee*, led by Randy Hanna and Frank D'Ercole, made a valiant effort to organize and activate a legislative action network. Unfortunately, the haphazard way in which tax legislation was considered by Congress this year effectively delayed the full impact of their efforts.

Luckily, on the administrative side, opportunities for tax law change were better. There we were blessed, first, with agency personnel who understand the problems (and have the skill and energy to deal with them) and, second (at least since January), an Assistant Secretary of Tax Policy who really believes in simplification. Accordingly, our committees have been busy suggesting improvements to administrative tax policy and regulations.