

NATIONAL ASSOCIATION OF BOND LAWYERS

ANNUAL MEETING

SEPTEMBER 17, 2008

REMARKS AS INCOMING PRESIDENT (William A. Holby)

Perhaps never before in the history of this great Association has an incoming President had so much material to work with in **crafting his opening remarks**. Two weeks of hysterical commentary from the Beijing Olympics were followed by two weeks of breathtaking rhetoric from our national political conventions in Denver and the Twin Cities. And if that wasn't enough, we have just experienced the opening of the college football season, where coaches offer riveting analysis, such as "If all our boys give 110%, we could be a purty good football team." So much material, so little time. As we head into a new year of NABL activities, I can only pledge to you that I am not simply going to be Foster Clark's second term.

2008 will undoubtedly be remembered as one of historic significance. It all began with the **subprime crisis**. While we're all experts now about the events that conspired to produce this massive breakdown in the mortgage industry, I remain convinced that at this time last year, most of us actually aspired to be subprime borrowers because, be honest ~ didn't you think that meant you were getting a better interest rate than everyone else? But that was then, and this is now. An official at a Fortune 100 company recently referred to her evolving job description as "Business as Unusual." Another said that subprime crisis has been like watching a train wreck in slow motion -- first the locomotive hit the wall, and now each car is crumpling into the one in front of it. Those train cars have included **Bear Stearns, most of the AAA monoline bond insurers, Fannie and Freddie...** Wonder who gets to be the caboose?

We now find ourselves in the midst of an unprecedented **credit crisis**, as our financial sector remains in turmoil. Have you considered the irony that only a year ago we were making no-docs mortgage loans to anyone who could fog a glass, and now there seems to be money available for anyone? The Wall Street Journal dubbed this "The Big Unwind", during which our system is unwinding the excessive leverage of the past half-decade... and there seems to be no silver bullet that government or the financial community can shoot to bring this to a quick end. The number of troubled U.S. banks is at the highest level in recent memory, and bank profits plunged 86 percent in the second quarter.

But wait, there's more. In late August, Alabama Governor Bob Riley met with bondholders and insurers of **Jefferson County**, the most populous county in his State, and negotiated yet another extension of its forbearance arrangements, allowing the County a few more weeks to work on a plan to keep mounting costs on \$3.2 billion of bonds from pushing the County into bankruptcy. I'm still trying to visualize a Governor sitting in a room with bond insurers and bondholders dickering over swap termination payments.

And let's not forget about **auction rate securities**. Brokerage firms have come under enormous pressure during the nationwide probe into firms that allegedly marketed the securities as "safe as cash", only to

abandon the \$330 billion market and strand thousands of investors who could no longer sell the securities at weekly and monthly biddings.

And then NABL'S **Director of Governmental Affairs** quit last month...

Lest any of us think that the Apocalypse is upon us, I have been reminded that we've been down these roads before ~ cue the video of the 1980's. It is axiomatic that bond lawyers, at least the older ones, respond to each new problem by saying, "Well, **at least it's not as bad as the 80's**". And indeed, the 80's are a good reminder of where we've been and how we've responded. Setting aside the Jimmy Carter malaise years and Prime Rates in the 20's, bond lawyers will remember the new wave of tax laws that became effective every January 1st, culminating with the 1986 Tax Act. Undaunted, NABL responded by sponsoring the Tax Implementation Workshop, helping members adjust to a new reality. We enhanced our outreach efforts, recognizing that our role would be served not with money or influence, but (in the words of a past president) with "probity, technical expertise, and avoidance of hyperbole." Well, two out of three ain't bad. The Supreme Court gave us *South Carolina v. Baker*, upholding the right of Congress to restrict the federal tax exemption on state and local bonds. Well, there's nothing like a public execution to focus one's attention, and the Baker case certainly focused NABL's attention on the need to look to the political process in DC if we were to protect the interests of state and local governments. The Anthony Commission, led by Cong. Beryl Anthony of Arkansas, was established for the purpose of educating Congress on the importance of ensuring that state and local governments could access the market for tax-exempt financing without undue burdens. In addition to an excellent report, the Commission made headway in creating a more receptive political environment simply due to the method used for communicating the importance of the municipal finance market.

So, fully edified by the slings and arrows of these outrageous fortunes, something nonetheless seems a **bit daunting about the coming year**. Call me paranoid, but Fannie and Freddie ran up a tab of \$5 trillion and have been put in the penalty box until Congress decides what to do with them. A trillion here and a trillion there, and pretty soon you're talking about real money. I confess also to being a bit queasy about the rest of the financial sector. They are referring to this as a "credit crisis", which I believe means that no one has any money to lend. That is actually not good news in our particular line of work. And then there's an election coming up. I know, elections are a dime a dozen, but people who know about these things say that this is an important election, and I believe 'em. And did I mention our DGA quit?

And so we head into new year borrowing a phrase used by a Hill staffer who, when asked what was on his agenda, said that he was "**event driven**." Translated, that means "I have no earthly idea." More charitably, that means that no matter how much planning you do, most of the time you will find yourself reacting to something totally out of control.

Take for instance the **auction rate mess**. I do not believe I heard Foster mention anything about auction rate securities during his State of the Union last year. I guess he and his fellow NABL board leaders must have been asleep at the switch, because no one apparently connected the dots from subprime, to bond insurers and liquidity crises, to failed auctions. What I do remember, however, is that when it hit the fan, our fearless leader put us all in a room with flip charts and colored markers, and said, "Okay, you guys are supposed to be so smart... what are we going to do about this?" And we did something -- we prepared and distributed a Q&A document that laid out everything we knew about the issues at that time. After we identified the problems, we suggested some steps that needed to be taken to begin

solving them. Then we worked with our friends in government (who performed exceptionally well) to come up with some fixes. It was still a mess, but at least we helped create a way forward.

Many of us still remember fondly the Bond Buyer headline last year, suggesting that NABL was going to fix the **subprime crisis**. While we may not have solved the crisis, NABL was either at the table or behind the scenes offering solutions for those in government who were charged with finding an answer to the woes in the mortgage market. Four months after Foster addressed us at this meeting on the topic, the President of the United States urged Congress, in the real State of the Union Address, quote, "to allow state housing agencies to issue tax-free bonds to help homeowners refinance their mortgages." NABL's long-shot ideas last October found their way into Treasury proposals in December.

I suspect we may find ourselves back at this type of business again this year. No one really wants to be the one who drives into New Orleans after Katrina hits, but there is certainly a sense that the storm winds will continue to blow, and that there will be some repair work to be done. We will have our agenda and project lists, but we will also expect the unexpected. When that happens, **we will do what NABL has always done** ~ we will use our intellect, our integrity, and our ingenuity to solve problems.

It's been two years since the Department of Justice made headlines with its investigations into **GIC bid rigging**. Eventually that will resurface, and when it does, we need to learn what happened and why, and offer insights into the lessons learned. Similarly, the Jefferson County situation continues to unfold in the press each day, but the time will come when a resolution is reached, or a bankruptcy is filed. Just as the unpleasantness of San Diego has borne the fruit of best practices, Jefferson County will also yield insights into the functioning of our market. We will have fallen short in our mission if we do not unpack those experiences for the benefit of our members and their clients.

And let's not forget our obligation to correct misperceptions of what is actually happening in our industry. Our friend Amy Dunbar once noted that much of her ten year career as our DGA was spent working with industry groups to beat back the era of "**bad bond press makes bad bond law**." I thought of that recently when my wife and I were sitting in a hotel room reading the newspaper and a headline caught her eye: "Bonds 'a dark corner' of market" She looked at me and said, "that's not your kind of bonds, is it?". Unfortunately, it was. Reporting on auction rate bonds, the writer commented unflatteringly, that the bond market is vastly different than, and not nearly as transparent as, the stock market. As he put it, "It's still a dark corner of the financial markets." A week later, the New York Times ran an expose entitled "Muni Bonds' No-Tell Habits". The writer observed that the municipal bond market is a place where disclosure is pretty much voluntary, and that investors in municipal bonds receive "only spotty financial reports." The article concludes with the following: "It's hard to believe that a market this deep and actively traded would put up with this sort of thing. The right of investors to know material facts on a timely basis is the foundation of a fair market, enabling them and their advisers to take rational actions to protect their financial interests. Right now, it seems, those interests are dangerously unprotected."

If this stuff is true, then **let's do our part** in helping to bring light to this dark corner of the market. To the extent it is hyperbole, then we need to be prepared to describe how and why the system works. I suspect there is room for both responses. Chairman Cox will furnish ample opportunity for our participation in the months ahead, as he continues to call for municipal market reforms. While we must leave the policy-making to the public servants who have been charged with that responsibility, the

evolution of these disclosure practices will undoubtedly continue in the years ahead. We intend to be a part of the process that results in this massive, \$2.6 trillion market to function smoothly and efficiently.

A few final notes. We really do have an agenda this year, with plans to accomplish some important work. For example, while many of our members have instant access to late breaking news from the Hill and from the financial sector, many more do not, and depend on the regular **communications** NABL provides reporting both what is happening and interpreting what it means. A couple of NABL stalwarts, Carol Lew and Julie Ebert, are leading a project to study how we might enhance communications with our members -- rethinking our NABLNET Alerts, our Quarterly Newsletter, our website, and our various other means of interacting with our 3,000 plus members to assure that we are getting you what you need, when you need it. If you receive an internet survey from us on these communications issues, please take a few minutes to respond.

Over the last few years, we have become increasingly aware of the need to keep our major seminar offerings fresh, and the need to have clear distinctions in the information, faculty and scope of our "**big three**" seminars: Fundamentals, BAW and the Tax & Securities Law Institute. The response to the work of our Education Committee and seminar leadership has been extremely encouraging. In addition, we will continue to supplement these offerings with timely teleconferences and other techniques that allow us to get experts - either from within our ranks, or from government or other trade associations -- in front of our members to assist them in advising their clients and conducting their practices, especially during such challenging times.

And of course two of our most ambitious publication projects, the Third Edition of "Disclosure Roles of Counsel" and a treatise entitled "Interest Rate Swaps for the General Bond Practitioner", should be available in the coming year and will immediately become must-have resources on our members' bookshelves.

A little green book sits on my shelf, entitled Fundamentals of Municipal Bonds, published in 1959. Chapter 4 is entitled simply, "The Municipal Bond Attorney", and was penned by David M. Wood, of Wood, King & Dawson, in 1946. After dutifully reporting on railroad bond failures of the 1800's, he offered the following **assessment of our profession**:

*"In order to assure investors in public securities that the bonds were legally issued, the dealers in municipal bonds began the practice of employing lawyers of outstanding reputation in the field of municipal law and of the highest reputation for integrity to examine the proceedings under which the bonds were authorized to be issued, and to render an opinion as to the validity of the bonds. The experiment succeeded. It was found that the investing public had confidence in the ability and integrity of these lawyers, and would purchase bonds, the validity of which they had approved. It will be noted, therefore, that the municipal bond attorney had his origin in the necessity of assuring the investing public that the bonds offered for investment were valid obligations, and that is still the sole reason for his existence."*

It never hurts to be reminded that we are known as the "**legal architects**" of America's infrastructure. NABL has the privilege of serving our market as trusted advisor, an honest broker of technical expertise. We are the "go-to" people in this bright cornerstone of the capital markets, whether drafting the Katrina disaster relief legislation to assist in the reconstruction of the ravaged Gulf Coast, working with Treasury and the SEC to help state and local issuers around the country to escape

from the suddenly illiquid auction rate market, or searching for ways to make low-cost mortgage money available to home buyers. This is what we do. Or, in case any of our NAN members are here, I should say, "That's how we roll."

Let me close with a few **personal comments**. Our wonderful friend and great leader Carol Lew is now moving into life as a Has Been, and Foster has put the finishing touches on a truly great year as our President. As all of you know, the true perk that comes with NABL volunteer service is the establishment of friendships that outlast service on a panel, a committee or the Board. I am truly thankful for these two great friends.

And now, returning to the script, I thank you all for your attendance today and would ask if there are any questions or other business? There being no further business or questions, I will entertain a motion that the meeting be adjourned.