

June 22, 2010

To: Members of ATOS
Fr: COL. (ret.) Michael W. Hartley, Chairman, ATOS
Craig Peterson, Vice Chairman, ATOS
Donna Parker, Board member, Publisher of *Theatre Organ*
Ken Double, President and CEO, ATOS
Re: Recent postings on ATOS Member Forum, TO-L, etc.

Dear fellow ATOS members and all interested in theatre organ:

In recent postings on the various websites and chatrooms devoted to theatre organ, several points were raised, charges leveled, and concerns expressed about the current management of ATOS, and the current direction the ATOS Board of Directors has chosen for the organization.

There was discussion among members of the Board that because much of what was raised, particularly in a 13-point message sent by former board member Don Near, had already been answered in postings of Board meeting minutes and in the pages of *Theatre Organ* and elsewhere, it might be best to simply leave well enough alone and not respond.

In fact, a later posting by Bob Michelson of Chandler, AZ provided much feedback either correcting or countering some of the assertions made in the initial posting.

Let us state at the outset that Don Near has served ATOS on the national level as a member of the board of directors from 2006-2009. He has served on the local chapter level in southern California for many years and has been a key factor in the success of the Orange County chapter. Don has been a leader in staging conventions and is set to help stage another one in 2012.

Don Near has stepped up to serve; given generously of his time, talent and resources; and we have no desire in this writing to make any personal attack on a man who has worked hard for the organization.

Yet, while we recognize and applaud Don's hard work on behalf of the membership, we are puzzled because while Don served on the Board of Directors during his three-year term, he voted for many of the actions he has questioned in his recent postings, all of which are documented in minutes of meetings posted and available online.

Our aim here is to respond to these concerns as specifically and factually as possible. In many cases, Don has offered an opinion or made claims without any detail. As is often the case, innuendo and misinformation can run rampant, and certainly misinformation does not become "fact" just because it is repeated over and over. We will respond here and offer the facts as borne out by recorded votes and minutes of meetings.

We offer the following point-by-point response to Don Near's post dated June 8, 2010:

1.) \$12,000 was paid to an individual member to produce a series of failed "Traveling Road Shows"---only one show was produced at a financial loss and no attempt was made to recoup funds.

On October 2, 2007, with Don Near's support, the Board unanimously directed Ken Double to develop a plan to produce the ATOS Touring Show with Steve LaManna as Producer. Under the contract between ATOS and the Producer, ATOS paid the Producer \$12,000 as an annual fee to contact venues and produce these shows.

Unfortunately, the results were not what we hoped, but there was no legal basis to ask for the money back. Although we would have preferred better results, the Producer did what the contract required him to do. Simply hoping that the events would have turned out better does not provide a basis for a return of the money.

The last "Touring Show" took place in September 2009 in Fergus Falls, MN. There are currently no such shows in the planning stages, and none will be presented for Board discussion unless there is underwriting and backing to guarantee success.

Why did we propose this idea over two years ago? Based on the successes of Rialtofest, there was reason to believe a well-staged, well-promoted "touring show" could assist local chapters, draw a more broad audience to the theatre organ, and possibly make some money while raising awareness.

We believe that this is basically a good idea in concept, but simply has not yet come to fruition as hoped.

2.) The ability of members to make personal recordings at ATOS conventions has been banned at the urging of directors who stand to benefit. An "official recording" was promised, yet a year later, still no CD.

This subject has been debated at length over many months. The assertion that the policy prohibiting recordings was urged by "directors who stand to benefit" is false. The policy was adopted unanimously by the Board (including Don Near who voted for the policy) and was later unanimously reconfirmed after obtaining outside, independent legal advice.

The law is clear. Because ATOS hosts and profits from convention events and was well aware that members were recording and distributing copyrighted material without permission, ATOS could be liable for copyright infringement. As we learned during lengthy deliberations on this subject, the penalties can be as high as \$150,000 per work infringed. With an average convention presenting 225 selections (15 selections per concert times 15 convention concerts), the liability could reach into the millions, putting ATOS out of business forever.

On July 3, 2008, the Board voted to ban recordings at conventions. On January 19, 2009, the Board voted to obtain a written opinion from an outside, independent legal expert, Mr. Whit Raynor. On March 3, 2009, following the report by our outside attorney, the Board immediately implemented the prohibition of recording at convention.

All votes were unanimous. Don Near voted “Yes” on all these issues.

In an odd twist with remarkable timing, while ATOS convened in Cleveland, a jury in Minnesota awarded nearly \$2 million in damages against a single mom from Minneapolis for downloading music and providing it for her daughter. Currently, the Girl Scouts of America are facing a similar and very costly copyright infringement lawsuit. If a single mom in Minneapolis and the Girl Scouts of America can be sued by the copyright holders, ATOS would certainly be fair game.

ATOS acted, not because of any interest of a few board members, but for the interests of the organization as a whole and out of the necessity to operate within the law. It is certain that if ATOS had been sued for copyright infringement, the very individuals who criticize the recording ban would have been critical of a Board that did not protect the assets of the organization against these claims.

Thus, to characterize this policy as an effort by a few to benefit financially completely misses the point of the action taken by the Board.

The “official recording” of the Cleveland convention has been rife with problems, most of them stemming from unanticipated delays. We needed artist approval to move forward with production, and despite repeated efforts, two artists did not respond until late April, one finally bowing out altogether, requiring changes in the list of selections.

Year One in this effort has most certainly been a challenge. But, the Cleveland CD will be on sale in Seattle, and those who have purchased it will have it soon. Going forward, convention artist contracts allow ATOS permission to produce the commemorative recording, which will eliminate the delays we experienced this year. The Seattle recording is in good hands, and the problems we faced in Year One have been corrected.

3.) There has been wholesale re-writing of ATOS bylaws to suit the needs of board member's special interests and not the general membership.

This statement requires specifics, which were not provided.

The fact is that from 2004 to the present, there have been a total of only ten changes to the ATOS Bylaws. All ten changes have been documented in the minutes of meeting and are available on line.

Of the ten changes made, two occurred after Don Near completed his service on the Board. There were no changes to the bylaws in 2004 and 05.

Of the eight changes made during Don Near's tenure, Don voted "Yes" to six of them.

We do not believe this constitutes the stated "wholesale rewriting of the Bylaws", and of the changes made, Don Near voted for nearly all of them.

4.) I believe the Summer Youth Camp is unsustainable in its present form. We are spending about \$1200 per student, not the \$154.00 as has been reported in the Journal. Seated directors have been paid thousands of dollars to teach and run this camp.

This, too, has been discussed and debated. We reference the response from ATOS member, Mr. Michelson, whose independent investigation produced the following written in a post dated June 12, 2010:

"...the 2009 event had income of \$11,700.53 (scholarship donations and reg. fees) against expenses of \$14,317.81 - meaning the cost to the general fund was \$2,617.28. This represents .008 of the total yearly budget (\$346,762) - I can't think of a better investment."

The Summer Youth Camp is entering its fourth year. More than 35 individuals have attended, some more than once. As Mr. Chandler states, it *is a great investment.*

In the first two years of the camp, expenses such as van rentals for transportation, group meals like lunches delivered to a certain venue, and other general camp expenses *were handled by the instructors on their personal credit cards, later to be reimbursed by ATOS.*

That is not "paying thousands of dollars" to instructors—it is reimbursing legitimate expenses.

In terms of payments made to instructors, indeed, they are professionals providing a service and they are paid. And indeed, it so happens that two of our most successful teachers of theatre organ playing—Donna Parker and Jelani Eddington—are also Board members.

Each person who participates as an instructor at the Summer Camp, regardless of Board affiliation, is compensated fairly for their time and services. In the three years of the camp, and included for this fourth year upcoming, we enjoyed the services of many who have been compensated for their teaching skills, including Jeff Weiler, Lyn Larsen, Clark Wilson, Charlie Balogh, Lew Williams, Martin Ellis, Jonas Nordwall, Jelani Eddington and Donna Parker. Furthermore, there is an ongoing effort to continue to expand this talent pool for events going forward.

The teaching duties of the instructors during the week of the camp are substantial, and include

not just the 15-hour days of the camp, the lectures, the individual coaching sessions and student mentoring, but also the many hours of development, planning, and implementation of the teaching curriculum well in advance of the camp itself.

Beyond that, in terms of costs, we are involved in ongoing discussions for a sponsoring underwriter for the camp, which if successful will make the discussion of costs for the Summer Camp moot.

5.) Despite all the money and effort spent producing the Summer Camp, we had no applications for the Young Organist Competition this year. In my opinion, this denotes a complete failure of the program in its current form, only a source of income for certain individuals.

It is true that there will be no Young Theatre Organist Competition at this year's convention, and that is most unfortunate. Yet, we recall other recent competitions when there were just one or two individuals, or a very few who entered.

This year, there were many students who were eligible to compete, but chose not to for a variety of personal or professional reasons. We hasten to add that in many of our other youth programs (such as the Youth Representative To The Board and the George Wright Memorial Fellowship), we had a combined total of five applicants many of whom had previously participated in the Summer Camp.

The Summer Camp has been and continues to be the most effective and successful vehicle at bringing young people to the theatre organ. The Board is firmly committed to continuing this program and will not abandon our young organists and enthusiasts just because we didn't have enough entrants in one of our programs one year.

(Personal note from Ken Double: I attended a camp for the first time last year, spending two days in Phoenix. I recommend just such a visit to anyone who thinks theatre organ is "dead." There is nothing to compare with the exuberance of youth, and being in Phoenix last summer was one of the most rewarding experiences in my history with the theatre organ, dating to 1968.)

6.) If the CEO contract is renewed, almost \$250,000 will have been paid directly out of the ATOS treasury to a member whose only job was to raise funds. Promises that this was to have been a self-funded position were broken, there are little tangible results, and the organization has been operated at a deficit.

First and foremost, under the job description for President and CEO, there are many functions well beyond simply raising funds. On February 8, 2009 and with Don Near's full support, the Board unanimously voted to create this executive position with the following duties:

“Fund Raising, Grant Development, Sponsorship Partnerships, Membership Development, marketing and Promotions, Public Relations, Visibility, Direct Follow -

up to Committee Initiatives, Promotion of Individual Chapter Interaction, or any other responsibilities deemed appropriate by the ATOS Board of Directors.”

Again, Don Near voted “Yes” to this motion.

It is true that when the position was first developed, the discussion focused on Ken Double raising money immediately to pay for the position. That process did get underway, and four gifts were generated almost immediately aimed at funding the position.

The economic downturn changed the face of fund-raising and gift-giving. The focus changed from immediate short-term gifts, to long-term estate planning gifts.

To state the point in terms that “promises were broken” is simply not true.

Don Near was involved with the Executive Committee at the time the position was discussed, developed and implemented. Following the economic downturn, there was further Board discussion, of which Don was a part, about the position going forward, including specific concerns that if the President/CEO were fundraising purely to provide the resources necessary for the position, potential donors might sense a conflict of interest. The decision during deliberations last summer was to focus on major gifts and development, and Estate Planning gifts.

There are four such long term estate planning gifts that have been recorded. One from Col. Jack Moelmann, is on the record. Three others have been given anonymously. Those include a gift of \$10,000 along with two others that do not specify an amount, but instead reflect a percentage of an investment fund providing these individuals income. Those documents are on record with ATOS Secretary, Bob Evans. Under normal market conditions, those gifts would generate a minimum of \$400,000.

There are serious current discussions involving four other individuals who we anticipate will make a commitment soon. There are ongoing discussions with trusts and endowment entities with serious resources and serious interest in the theatre organ and ATOS.

Meanwhile, dozens upon dozens of individuals have been approached; the Annual Drive was begun; and other efforts are in the planning stages, put forth by the Fund Raising Committee.

Including the Estate Planning gifts pledged, funds generated by the Annual Drive, funds given when the position was first approved, and the most recent gift of \$1,000 provided by a donor through the Fidelity Endowment of Cincinnati on June 1, 2010, a conservative, minimum estimate of **\$500,000** has been given or pledged since Ken Double began his fund raising efforts two years ago. With the recent market recovery, it is likely that the value of these efforts is even greater.

While it has been acknowledged publicly that there was no direct contact with Mr. Double and Mr. Kenelm Lufkin whose generous donation of \$900,000 greatly impacted the future of ATOS, the gift was generated under the current ATOS leadership.

Beyond these gifts, programs such as Theatre Organ Radio, the new effort with Turner Classic Movies, in-person visits with more than 30 individual chapters, the Allen Organ/DVD video lessons program now underway, the efforts to begin production of specific video programming for national distribution and local chapter benefit, collegiate scholarship programs, completion of the Strategic Plan (to be unveiled in Seattle) and more are programs in place since the position of President/CEO was established.

7.) Secrecy - many items are now handled by the executive committee with no board authority, outside oversight and without the ability for members to attend meetings.

The Board has delegated to the Executive Committee, through its published Bylaws and Policies, the authority to take certain actions. Even with this stated authority, the Executive Committee has taken very few actions separate from the Board, and those few actions that have been taken have been fully disclosed to the Board and are referenced in the minutes of Board meetings, all of which are available online.

Beyond that statement, it is difficult to respond further as no specific instances were cited in Don's statement.

8.) The board decided that \$82,500 a year paid to a member to raise money still wasn't enough, so an additional \$5,000 was authorized for a professional grant writer to obtain funds for the archives. But nothing got done.

This statement is incorrect. Kathy P. Riley is an experienced grant writer from Sarasota, FL. She came highly recommended by an ATOS member, John Fischer, who has worked successfully with her in the many arts-oriented programs with which John is involved. She is paid on a per-project basis.

Kathy Riley has written grant proposals for three projects, not just one. She has distributed these proposals to dozens of granting organizations across the country. For some of these organizations, leadership convenes only once a year to distribute grant monies. It will be August, September, October and beyond before we hear about our efforts to generate dollars.

In addition, Ms. Riley has also been contacted by two ATOS chapters about writing specific grants for their projects.

This is professional, experienced guidance in an area that ATOS needs all of the assistance it can muster. And it is available to the national leadership and to the local chapters as well.

To claim that “nothing got done” is simply not true. The work has begun and is ongoing at both the national and local level. She has been paid \$4250 to date.

9.) Basic information such as bank balances and year to date profit and loss statements are unknown or the information is withheld at board meetings.

The ATOS Board takes this claim very seriously, as we are firmly committed to full and complete transparency in all areas of our operations, particularly concerning our finances. This is why we published 10 pages of our financial information in the September/October 2009 issue of *Theatre Organ*. This is also why we published the Treasurer’s report for the 2008-2009 fiscal year on our website. The current Treasurer’s report completing fiscal year 2009-2010 which ended April 30, 2010 will be posted online and available at the convention. Online posting of all 2010 committee reports will be done as soon as they are approved at the Board meeting in Seattle.

To our knowledge, no previous Board has ever posted its reports online, and the posting of minutes, bylaws, and policies online began in 2006.

We also recognize that transparency is an ongoing process, and we will continue to do everything we reasonably can to ensure that this information is made available. Sometimes, financial information is difficult to process and can result in unanswered questions. If members have questions about any of this information, they should always feel free to ask those questions. We will answer your questions as completely and thoroughly as we possibly can.

Stemming from issues and questions raised during the Annual Membership Meeting in Cleveland, ATOS Chairman COL. Mike Hartley reiterated his commitment to transparency, openness and clarity.

Chairman Hartley has also made some changes in how we handle our accounting practices. Our accounting is now handled through Quickbooks. The Financial Review Committee, of which Don Near served as its first Chairman, conducted an independent study of ATOS’ financial reporting and practices. Further, the first full independent audit has been completed and will be presented to the membership in Seattle, and posted online and later published in the Journal.

Of significance is the report made to the membership and to the Board during deliberations in Cleveland. Don told the Board that he and the committee were “**pleased to report that the record keeping practices of the treasurer were sound and thorough.**” Later in his statement, which is available for review in the June 30, 2009 annual Board meeting minutes, Don reported his committee was, “**pleased with the handling of ATOS finances.**”

Chairman Hartley’s message and goal has been consistent, i.e. report to the membership. At his urging, a new accounting system is in place, a Financial Review Committee was created and with two Board members and two independent members and Don Near as its first chairman, conducted a review of the treasurer’s conduct and efforts, and a full and independent audit is now complete.

10.) This spring, the board voted to give away the entire contents of the ATOS Archive and Library to an outside organization, thereby dishonoring those who have given material to the ATOS over the years. Our heritage and most valuable asset has been given away. Negotiations are now ongoing with Oklahoma University to take over our history and one of our greatest assets, with little or no apparent guarantees as to when or if anything will ever be done with it.

The issue of the Archive has generated a most interesting and lively discussion. Who could have ever guessed that the Archive and Library could generate the massive amount of discussion, e-mails and interest when in fact during its 11 year stay in Joliet prior to May 1, 2010, there were very few requests for archival materials?

It is not our intent to trivialize a matter that has obviously struck a chord for many of our members. It is our intent to state facts. Don's comments fall victim to the same trap as so many comments written on this subject: they were made with no knowledge of the facts or of the negotiations with the University.

While indeed the Board appointed a committee chaired by Allen Miller and Bob Evans, and the board has voted to follow the committee's recommendation that pending an approved, negotiated contract, ATOS will donate its Archive and Library to the University of Oklahoma, the negotiation and the process is ongoing. Furthermore, based on the noted concerns and many suggestions forwarded to the Board from the membership, the ATOS proposal, agreed to in principle by both sides, incorporates protections deemed crucial to the long term interests of our Archive and organization.

Additionally, there is no intention to dishonor any of our donors. To the contrary, by moving the material into a professionally-operated and experienced environment, we will do more to honor those gifts than we could do with keeping these materials where they were.

The negotiations ongoing with OU involve a partnership in which **ATOS will be directly involved with oversight of the materials** in the Archive and Library.

And, in listening to the concerns of the members, careful consideration has been taken to protect the materials, and guarantee return to ATOS should the situation change at OU.

There is a review and update of the process being presented both on the website and at the Seattle convention. The negotiations are ongoing, and no final decision has been voted on by the Board. The statements in Point 10 are fraught with misinformation and incorrect assumptions.

11.) Censorship - all journal items are now reviewed by the publisher for content. Letters to the editor have been rejected or rewrites demanded to conform to the wishes of the board of directors. A recent CD review was rejected because the publisher didn't approve of the title. Jeff Weiler, our former award-winning editor, has resigned and withdrawn from ATOS in protest.

The journal should be reviewed for content by both the Editor (now editors Mike Bryant and Don Feeley) and the publisher. A "Letter to the Editor" written by John Ledwon was sent back to John with a suggestion that some factual errors be corrected first. (This occurred while Doug

Powers was still in the position of Publisher).

The CD review in question references a title incorporating the phrase “organ cows.” This phrase is viewed by some as humorous, and quite derogatory by others. The current Publisher, Donna Parker, felt that because many viewed this phrase to be insulting and derogatory, it was appropriate not to include the CD in the Journal for review.

The Publisher and the Editors have the responsibility and the authority to make certain editorial judgments, which has always been the standard practice for those responsible for producing the Journal.

With regard to Jeff Weiler’s resignation and departure from ATOS, it is indeed unfortunate. At a time when the Journal sorely needed serious attention, Jeff Weiler stepped up and provided a great service to ATOS, raising the standards of the Journal remarkably. At the same time, Jeff told the ATOS Board that he felt it was in his best interests and those of the organization that he resign, and the Board respected his decision.

12.) The ATOS election process is questionable. Ken Double, with no executive authority, had access to election tallies prior to the end of the election. He called Jack Moelmann to offer congratulations on what turned out to be a very close race days prior to the polls closing.

Ken Double’s response: Don Near is referencing the 2009 election in which Jack Moelmann was elected to the Board. It is correct that I had discussions with those tallying the ballots. A few days before April 15, 2009, I had reason to talk with Jack Moelmann and indeed indicated to him it **appeared** he would be elected. I simply reported what I heard.

Election information should be kept confidential from everyone until the ballots have been counted by the tellers and their report provided to the Chairman and the Secretary. In the most recent election (2010), no results were discussed prior to their official announcement by the tellers.

13.) This board stifles the voice of the loyal opposition. If you are not attending the convention, I urge you to make your concerns known directly to your board liaison contact as listed on the atos.org website, HYPERLINK “<http://www.atos.org>” www.atos.org.

Like points 3 and 7, responding is difficult without details that have not been provided. Often, Board discussions become heated as individuals have strong feelings about certain topics. But in conducting the meetings, Chairman Hartley makes every effort to poll each and every Board member for input on every discussion. As minutes will reflect (all of which from 2006 to present are online), votes are usually unanimous, but sometimes votes are close, and sometimes votes are lopsided with one or two opposed to a motion or a position.

Those who oppose can get frustrated as their philosophy or stand on an issue is not the prevailing one. But differences of opinion will continue as long as there is a diverse Board of 13 Directors voting on issues affecting ATOS.

Finally, Don writes of potential threats of legal action and verbal attacks, and nothing could be farther from the truth. In this response we have stated the facts, most of which reflect information available in minutes of board meetings. From dissent and discussion come ideas and trains of thought. From argument comes compromise. From differing viewpoints comes the concept of “I hadn’t thought of it that way.”

We know many of the issues we face in ATOS are difficult, with a broad spectrum of positions to be considered. But ultimately, the Board must make a decision. That is what the membership expects the Board to do: lead, act, and move us forward as an organization.

Don’s letter was not the first, nor will it be the last, challenging the leadership of ATOS. It is his right to speak out, and we respect that right. It is the right of all the membership to be heard in the various forums available. It is our hope that the challenges and questions are based on the facts of the particular matter in question.

And as the leadership of ATOS, it is our right and duty to respond, especially when (as in this case) claims are presented that do not reflect the full truth.

We look forward to healthy discussion on many topics while in Seattle, and look forward to seeing many of the membership at the convention.

Sincerely,

The ATOS Board of Directors
COL (ret.) Michael W. Hartley, Chairman
Ken Double, President/CEO