Report of the ICSOM Special Committee on Troubled Orchestras

At its winter meeting in New York City, the Governing Board of ICSOM devoted considerable discussion to the troubled state of the field. Troubled orchestras that have recently had to renegotiate their agreements include Rochester, St. Paul Chamber, and San Antonio. New Orleans has been cancelled indefinitely, and Syracuse shut down in March for the rest of the season. Columbus has been asked for major economic concessions for the remainder of its contract. There are ominous reports of a very large accumulated deficit in Cincinnati.

The Governing Board authorized the formation of a special sub-committee to examine this epidemic of financial problems. Named to the committee were Brad Buckley, ICSOM Chairperson; Frederick Zenone, ICSOM Chairperson Emeritus; Leonard Leibowitz, ICSOM Counsel; and William Roehl, ICSOM Labor Consultant. The following is their report. —Ed.

The special committee met February 21, 1992, in Washington, D.C., to discuss the financial difficulties many ICSOM orchestras are experiencing. These difficulties are genuine effects of the 1985 Tax Reform Act on giving; the shift in foundation support priorities from the arts to education; and the impact of the economic down-turn on:

1. individual philanthropy;
2. corporate and government support for the arts;
3. ticket sales dependent on individual disposable income.

However, not all institutions are “troubled,” and this is not an attempt to paint the entire industry with the same broad brush. There were a number of questions raised concerning what ICSOM and its member orchestras should be doing to weather the crisis in our industry.

Questions and Observations

Should orchestras cooperate or fight?

We must defend our rights and contracts vigorously, compromise where necessary, and cooperate where useful. There is certainly a preference for reason over muscle, but it is the right and willingness to strike that gives substance to collective bargaining. If strikes are economic in nature, we must know there is the potential to obtain the monies we are demanding. In assessing an orchestra’s economic condition, we must have hard facts that might force us to re-examine our use of the strike and to raise or lower our expectations.

Is there a panic reaction in the orchestras?

There certainly is a general uneasiness. This uneasiness escalates in orchestras where there are empty seats in the audience and where there is silence about less ambitious artistic and operational plans.

What should ICSOM be doing to educate and encourage orchestras to deal with trouble in constructive ways?

We should continue ICSOM’s mission as the support and information-gathering organization of the orchestras by sharing hard facts where we have them, distributing news information where available, and encouraging informed choices about expectations.

Access to information prior to a crisis may minimize the possibility of having to resort to economic force. Where needed, joint management/orchestra committees having exploratory meetings months ahead of actual negotiations could serve not only to exchange information, but to reduce tensions and avoid crisis bargaining. The early warning signs of trouble can be identified and ICSOM should contact orchestras exhibiting these signs.

We should change the negotiating workshop at the ICSOM conference. Instead of trying to teach orchestra musicians to be negotiators, we should be teaching the proper role of the committee in negotiations and in other areas.

What should orchestras do about cutbacks in federal, state, and local funding?

We must recognize that there are no quick-fix, short-range solutions to the fact that local, state, and federal agencies are facing cutbacks, and that our institutions are facing unkept monetary promises and the change in tax laws regarding philanthropy. The obvious answer is political change. Where possible, we should have action-oriented programs. We should create events and redefine ourselves as part of an emerging alliance with orchestra-related groups and coalitions in the labor community.

Bradford Buckley, ICSOM Chairperson
Frederick Zenone, ICSOM Chairperson Emeritus
Leonard Leibowitz, ICSOM Counsel
William Roehl, ICSOM Labor Consultant
Orchestra Players' Associations: Whose Business Is It?

Part 2

What are the underlying purposes of our regular expenses? How do we raise money to pay our expenses? What additional expenses might we incur if we go on strike? Do we intend to establish an internal strike fund? Do any of our activities generate a tax liability? Will we seek funding from the public or only from our orchestra members? If we publish a newsletter, will we direct it to our members, the public, or both? Should we incorporate?

In Part I of this story (Senza Sordino, December 1990), these questions and more were raised. All ICSOM orchestra musicians are members of a players' association, led by an orchestra committee and subject to the same laws and regulations as any other business. All orchestra players' associations, no matter how small, need to understand the business principles that govern their operation. This article is intended to help us evaluate our own situations and decide how best to put our associations on firm legal ground.

Association and Committee Activities

We should begin by analyzing our current and proposed activities and determining their legal and tax ramifications. The activities of most players' associations fall under one or more of these categories:

1. Labor representation: negotiations, musician advocacy, contract enforcement;
2. Member benefits: strike fund, hardship loan fund, informational seminars (music medicine, yoga, pension, etc.);
3. Education: newsletter, concerts; speakers' bureau; seminars to educate orchestra members, symphony board and staff, and/or the general public;
4. Social/recreational events: parties, picnics, sports teams;
5. Charity: emergency assistance to members or to other orchestras in need; gifts to United Way, scholarship funds, or other charities.

Each of these activities prompts a relationship between the orchestra musicians and other parties: the local union, the symphony board and staff, the media, the general public, and other orchestras. To the extent that they generate income and expenses, these activities define our business.

Types Of Organization And Tax Exemption

Depending on the nature of activities, there may be advantages to operating as a tax-exempt organization. To gain tax-exempt status, we must conform our purposes and activities to those allowable for one of the exempt organizations described in Section 501 of the Internal Revenue Code. Unfortunately, no single type of organization described in Section 501 incorporates all of the activities known to have been engaged in by players' associations. It is possible to achieve tax exemption by structuring the organization around its most important activities. Here are some options to consider.

501(c)(3): Organizations Formed for Scientific, Literary, Educational, Charitable, or Religious Purposes

Everyone wants to qualify for 501(c)(3) status because only under that section is it possible to receive tax-deductible contribu-
One element common to all organizations described in Section 501 is that they must be non-profit. That is, they must serve a public purpose, not just a profit motive; no earnings may be distributed to stockholders or inure to the benefit of any individual. This does not preclude making a profit; it only means that profits may not be distributed outside the organization. “War chests” may be built, if they are eventually spent to further the purposes upon which the tax exemption is based.

Symphony players and their money can be organized as an association, corporation, trust, or foundation. As long as there is an acceptable organizing document (articles, charter, or trust indenture) and bylaws governing daily operations, any of these entities can be non-profit and tax-exempt. In the absence of such organizing documents, however, an unincorporated association is a for-profit, taxable entity. It might be more expensive to operate as a taxable entity, and there is more risk to individual orchestra members if problems arise. This situation may be acceptable, as long as the members understand how their activities generate liabilities and responsibilities within the for-profit system.

Conclusions

There is no one “right” way to organize our business. The best way for each orchestra should be determined by that orchestra’s own goals, needs, and resources. A multi-faceted orchestra players’ association might involve three arms—a 501(c)(5) organization to handle basic labor-related operations, a 501(c)(3) to present concerts and public educational programs, and a 501(c)(9) VEBA to administer strike funds and other benefit programs. Such a constellation could provide legitimacy and tax exemption for virtually all normal association functions, but would require excellent recordkeeping and administrative skills.

For those who feel overwhelmed, the good news is that it is possible to operate as a 501(c)(5) tax-exempt organization without formally filing for recognition of exemption with the IRS.

However, this requires functioning in accordance with the requirements of Section 501, and keeping accurate records to prove it. Organizations must file the proper informational tax returns with the IRS if annual revenue normally exceeds $25,000, whether or not they have received formal recognition of exemption. There may also be U.S. Department of Labor and state returns and forms required, depending on the laws of the state and the subsection of Section 501 involved. Penalties may be assessed for failure to follow all the rules.

Most players’ associations with annual revenue under $25,000 probably don’t need to seek formal recognition of exemption, but every orchestra committee, no matter how limited its budget or level of activity, must organize its business and engage in sound business practices in order to be prepared for all possibilities. It is easy to be complacent, because the tax and legal issues raised in this article don’t usually surface until a strike or other crisis comes. But come they do, and we are wise to be prepared.

Marsha Schweitzer, bassoonist
Honolulu Symphony
Senza Sordino Assistant Editor

**DO’S & DON’T’S**

**DO** apply for your organization’s own federal identification number (EIN). Your bank will require it to open or maintain an account. A federal ID number is easy to get; the catch is that once you have it, it is easy for the IRS and your state government to track you down.

**DO** keep complete and accurate records. Write down the source, amount, and purpose of each income item, and also the payee, amount, and purpose of each expense payment. Keep a formal set of books and prepare financial statements at least annually.

**DO** get competent legal and tax advice. The quality of our business is directly related to the quality of the professional advice we receive.

**DO** use your brains. Ultimately *you*: orchestra members, committee, and officers—not your lawyer, accountant, or union—are responsible for your actions.

**DON’T** allow your personal social security number or any ID number not belonging to your association to be used by your association.

**DON’T** commingle personal, union, or symphony funds with players’ association funds.

**DON’T** start an internal strike fund or other savings/benefit program in which musicians have a retained or reversionary interest until you have assessed the tax liabilities to both the players’ association and the individual musicians.

**DON’T** lie, cheat, or bury your head in the sand to avoid paying taxes. Learn how to avoid taxes legally by properly organizing your business.

**“Good Recordkeeping” means keeping the following documents, accurate and up-to-date, at your fingertips:**

- organizational charter and bylaws
- minutes of meetings and policy statements
- financial statements, journals, and ledgers
- annual state and federal reports and returns
- bank statements and cancelled checks
- contracts
- insurance policies
- evidences of ownership (stock certificates, deeds)
- depreciation schedules
Acoustical Shields and Orchestra Musicians

As orchestra musicians, we produce sounds for a living—sounds designed to move, excite, touch, or otherwise affect our audience. In particular the ones that excite the audience can cause discomfort and even pain to our ears, since we sit at, or immediately in front of, the source. Shields placed to deflect direct sound from our ears help solve this problem, and a number of orchestras use them effectively. We Pittsburgh Symphony double-reed players sit directly in front of the trumpets, with the trombones behind them. Since we currently use no sound shields (except plexiglass screens around the trap set and electric bass in pops concerts), we decided to do some investigating. We did an informal survey of our colleagues across the country asking what, if any, shields they use, and how effectively the shields work. We gathered this information to inform our management about this particular angle of solving the sound-level problem in our orchestra. In this article, I present a summary of our findings. Thanks to those who answered our many questions.

Plexiglass Sheets

Of the small group of orchestras we contacted, those using sound shields include Buffalo, Detroit, New York, Philadelphia, St. Louis, and San Francisco. Besides Pittsburgh, those who don’t use shields include Chicago, Cleveland, and Los Angeles. There are many varieties of sound shields, most involving plexiglass sheets mounted in different ways. (Stage crews seem particularly adept at building and rigging up the shields.) By far, the most commonly used plexiglass shields consist of an 18-inch square or an angled piece with three sides, attached to a chair back by means of an adjustable rod with clamps or straps. Other options include a square piece mounted on an easily adjustable Manhasset-type music stand with the music rack removed, or two- or three-foot sheets that stand on the floor on wooden or plexiglass feet.

Buffalo Baffle

Some years ago, violist Bernie Fleshler of the Buffalo Philharmonic realized the advantage of having a shield very close to one’s head, so he developed the Acoustishield. (The patent hangs on his wall.) Attached to a chair via straps, the Buffalo Baffle (as many people have nicknamed it) originally consisted of a three-sided, cloth-covered shield with a thin lead insert that very effectively deadened sound. Since people behind the baffle started having visibility problems, Bernie switched to a double layer of plexiglass with dead air space in between. The Niagara Frontier Vocational Rehabilitation Center (a charitable organization) manufactures the Acoustishield. Contact Jim Schulte at 100 Leroy Ave., Buffalo, NY 14214, phone (716) 833-3231. Acoustishields currently sell for $95. The San Francisco Symphony stage crew has developed a similar shield with greater adjustability, and their players consider it quite effective. Their stage crew will answer questions about the design. Apparently, one can greatly increase shield effectiveness by experimenting to find just the right placement.

Sound Arguments

Players report that shields and similar barriers quite successfully deflect the most painful “direct hit” types of sound, though the general level might remain very loud. One English hornist notes that she no longer needs earplugs, and that when she leaves the safety of her shield to lean over to pick up her swab, she suddenly notices how loud the music really is.

Since shields are highly effective, why don’t more orchestras use them?

Since shields offer such potential to alleviate the problem of loud music, I was surprised to learn that some of the bigger orchestras don’t use them. Someagements resist the use of shields, often citing reasons such as the baffles’ visual obtrusiveness to the audience, and their hindrance of sound projection. In cities where shields are used, not one non-musician audience member I know of has noticed the shields, due no doubt to their clear plexiglass construction. I find it hard to imagine the common smaller shelters having any effect on the sound in a large, cavernous, modern concert hall, especially if the orchestra uses risers. If you get other arguments, use your own ingenuity to counter them. (The magic words “Occupational Safety and Health Administration” have helped in at least one case.) Enlightened management not only tolerate sound shields, but provide them (at least in the above-mentioned “user” orchestras).

The pain and discomfort caused by some of the sounds we make as part of our job offer ample reason to demand palliative measures such as sound shields. In addition, scientific studies have proven varying levels of noise-induced hearing loss among orchestra musicians. The most recent of these, a study of some members of the Chicago Symphony, was written up in the June 1991 Journal of the Acoustical Society of America. The article, though highly technical, contains an extensive bibliography of many previous studies and can serve as a starting place for further reading. While scientists cite heredity, previous injury, and disease among the factors that affect musicians’ hearing, the evidence shows that orchestra sound levels also contribute to hearing loss. Our survey found that players in nearly all sections of the orchestra, not just oboes and bassoons, use sound shields. Maybe you should, too.

David Sogg, bassoonist
Pittsburgh Symphony
Which Ear Plugs to Use
by John Chong, M.D., and Marshall Chasin, Audiologist

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Source of Auditory Damage</th>
<th>Recommended Ear Plug</th>
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<tbody>
<tr>
<td>Reeded woodwinds</td>
<td>Brass section to rear</td>
<td>ER-15 (Vented/tuned)</td>
</tr>
<tr>
<td>Flutes</td>
<td>Flutes (105 dB SPL)</td>
<td>ER-15 (Vented/tuned)</td>
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<tr>
<td>Small strings</td>
<td>Small strings (110 dB SPL)</td>
<td>ER-15</td>
</tr>
<tr>
<td>Large strings</td>
<td>Brass section</td>
<td>Vented/tuned</td>
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<tr>
<td>Brass</td>
<td>Brass section</td>
<td>Vented/tuned</td>
</tr>
<tr>
<td>Percussion</td>
<td>Percussion (high hats)</td>
<td>ER-20/Hi-Fi</td>
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<tr>
<td>Vocalists</td>
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<td>(solo)</td>
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<td>(non-solo)</td>
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<tr>
<td>Amplified instruments</td>
<td>Amplifiers</td>
<td>ER-15</td>
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</tbody>
</table>

Most forms of ear protection cause bass notes to be attenuated only slightly, whereas the higher-pitched harmonics are dramatically reduced in loudness. This can be disastrous for a musician, and the ER-15 earplug was designed to address the problem. These custom-made earplugs from Etymotic Research [see *Senza Sordino*, June 1988] have an attenuator button which causes the attenuation at the ear drum to be equal for the lower-frequency fundamental energy and the higher-frequency harmonic structure. The musical structure is therefore maintained. The earplugs merely reduce the loudness from a damaging to a non-damaging level.

Another approach is the vented/tuned earplug, which uses a tuned cavity in the custom-made plug. Depending on the size of the vent or cavity, the lower and middle frequencies can be passed through the earplug unaffected. The higher-frequency damaging energy, such as that found with a trumpet to the rear, is lessened. This protection is quite useful for those musicians situated in locations with "damaging" instruments nearby. Such plugs are quite useful for the cello, string bass, harp, brass, and some woodwinds.

Musicians should see an audiologist, who can make the proper selection and verify that the chosen earplug is optimal.

*Marshall Chasin, Audiologist
Centre for Human Performance & Health Promotion
Hamilton, Ontario*

A flat response attenuator attempts to maintain the normal sound quality of instruments and voices but at reduced volume. Two approaches are the ER-20 (shown above) and the ER-15, which uses a custom earmold. By contrast, typical hearing protectors tend to result in a muffled or hollow sound quality.
"Playing (less) Hurt" © Conference: Hearing

(The "Playing (less) Hurt" © conference which took place in Florida last month featured experts addressing a variety of performing arts medicine topics. We hope to summarize their presentations in a future issue.—Ed.)

Dr. Robert Sataloff, Professor of Otolaryngology at Thomas Jefferson University in Philadelphia—baritone, conductor, and faculty member at the Curtis Institute—surprised us with the following statistic: hearing loss is the #1 occupational disease in the U.S. Seven to ten million people suffer from this disorder, more than all other occupational injuries put together.

The first hearing protection laws were not implemented until the mid-1980’s, and there still are no standards for the intermittent noise exposure to which orchestral musicians are subjected. Continuous levels of 90 DBA during an 8-hour day, over a period of months or years, will result in hearing loss. In an orchestra, the flute or piccolo may reach 112 DBA, the trumpet and trombone 114 DBA, the horn 106, and the violin over 100 DBA.

Workers’ compensation laws do contain “loss of livelihood” clauses for injuries sustained at the workplace, but not for hearing loss. The eligibility criteria recently changed to include being able to hear speech, which would affect whether or not a person could earn a living. Hearing loss is first evident at four octaves above middle C, resulting in some pitch distortions. This is obviously not speech frequency, but could seriously affect a musician’s job performance. Present laws do not cover musicians whose livelihood is threatened by any hearing loss.

Most noise-induced hearing loss is symmetric, i.e., occurring in both ears. Musicians’ hearing loss is an exception, as stage or instrument placement can result in asymmetric hearing loss.

Improved ear protection devices have been developed. Most commercially available earplugs cut out more high frequency than low frequency. Due to this lack of balanced attenuation, the sound is unclear or muffled. Another problem is the occlusion effect, in which an instrument or singer’s voice causes so much vibration that it colors the sound of the player’s instrument, making it too loud or causing vibrations from the reed, jaw, or lips which can obliterate sounds from other instruments.

The ER-15 musician’s earplug attenuates to a uniform 15DB, allowing the user to hear accurately in high fidelity or in proper spectral balance without changing the frequency distribution. These earplugs need to be properly fitted by an audiologist.


Dr. Sataloff advised practicing in an acoustically-treated room and at a softer dynamic. He encouraged the use of barriers and risers, since increased distance from the sound source is an advantage. It is prudent to use ear protection during practice, especially for violinists’ left ears. Avoid extreme sound levels at all times, including those from headphones. Musicians who are very congested should avoid traveling by air, as serious ear damage can result. No performance is worth permanent hearing loss. When travel is unavoidable, Dr. Sataloff recommended seeing an audiologist prior to the flight, to drain fluid build-up. He urged us to demand programs for early monitoring and to be vigilant about noise standards.

Janet Horvath
"Playing (less) Hurt" © Conference Series Director
Associate Principal Cello, Minnesota Orchestra

Injured Musician Seeks Information

Due to degenerative joint disease, Detroit Symphony violinist Richard Margitza is facing the prospect of surgery to replace the joints in his left hand. He is urgently seeking information from any string player who has had this surgery. Contact him at:

4826 Woodworth
Dearborn, MI 48126
(313) 582-9211
Solitude Of A Role Model

I’m a French horn player in the Los Angeles Philharmonic. In fact, I’m the first black French horn player ever hired by a major symphony orchestra in America. But black people don’t come to hear me play.

My parents were working-class people, and I grew up poor and happy in Asbury Park, New Jersey, with six brothers and sisters. My mother played piano by ear and my father played jazz trumpet on the side.

In high school, I began studying French horn, an instrument I chose because of its beautiful sound. I studied music at the New England Conservatory in Boston, and at 22, I was hired by the Los Angeles Philharmonic. That was 21 years ago, and still, black people don’t come to hear me play. Have I chosen the wrong career? What’s the sense of it all? Why be a pioneer with no wagon train behind you?

I would venture to say that I could be a good role model for a young black kid. But I could also be a symbol of confusion.

Children seeing only one or a few blacks in a 100-piece symphony orchestra won’t necessarily believe that they can do the same. Moreover, that attitude is reinforced by black adults who never attend symphony concerts. Parents are the first role models.

In my 21 years as a symphony musician, I have heard many black people say, “You’re in a field where there aren’t many of us. You’re special.” But these are the very people who never come to hear the symphony. Does this mean that my work is to be enjoyed by black people only from a distance? That I can never have the pleasure of playing for my own people? Are they only interested in my achievement and not my music? I would like to be able to share musical works I have loved and studied for years. If only I could show the people I grew up with what I was working towards all those years they put up with my practicing. “What in hell is he blowing that horn for?” they must have thought to themselves. “He’s always blowing that horn. What’s he all about?”

When black people are in the audience, I feel that they are part of my extended family — those who watched me grow and remembered how much I used to practice. Now I have a chance to play for them and finally show them that I was serious then and that I’m dead serious now.

Sadly, after meeting some of the few blacks who do attend my concerts, I found they had no connection whatsoever with those people back home. All too often, they saw me as a symbol — the only one. I must be special. I must have had an extra special environment when I was growing up. I couldn’t have had “The Black Experience.”

Many of these people believe that this is the only possible way a black American, especially a black male, could wind up playing in a symphony orchestra. To take it further, they truly believe I should be proud that I’m the only one (actually there are four black musicians in the Philharmonic) and that I should want to keep it that way.

The idea that certain groups should do certain things exclusively is archaic. I have always hated the only one concept. It supports the racist notion that there are maybe one or two blacks who are capable of doing anything in the white world, and the rest of us are worthless. It sets blacks up for that large pat on the head from condescending whites. Nonetheless, I must sadly admit that some blacks live for such notice.

Because of this madness, I appeal to black people: Come hear me play! Even if you’ve never been to a symphony concert in your life, come! I’ll explain it all to you. It’s just music. I really want to see and meet more black people at my concerts. You pay city and county taxes which support the arts and the Philharmonic.

I want to meet more black people who grew up like I did — ghetto kids, ghetto adults, people who know what it’s like to grow up with nothing but dope and hope. I want to play for people who have seen others killed in the streets, for people whose mothers were chambermaids like mine. How well I remember those horrid white uniforms, and her greying temples reflecting so much worry and fatigue.

So, please come hear me play. I want to meet you. Invite me to your homes for barbecue. Even you gang members, put down your weapons, cease your violence, and come hear a concert. We need you there. I guarantee we won’t be wearing colors that will offend you.

Middle-class black folks, where are you? The black elite, what about you? You can afford to fill the most expensive seats. I’ll meet you at intermission for a drink. Bring your beautiful, spoiled, pampered, fiery sons and daughters — black princes and princesses of every hue. I want to meet you all.

Bob Watt
Assistant Principal French Horn, L.A. Philharmonic

This article originally appeared in L.A. Accents and in the winter issue of Symphonium.
1991-92 Wage Chart of ICSOM Orchestras: Correction

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<tr>
<th>Orchestra</th>
<th>Weeks</th>
<th>Annual Minimum Salary</th>
<th>Max Seniority (35-yr Cap)</th>
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Please note the above correction to the Senza Sordino 1991-92 Wage Chart (February 1992).

Please note new address for ICSOM Emeritus Program Administrator:

Abe Torchinsky
77 W. Germantown Pike #1028
Plymouth Meeting, PA 19462
(215) 277-3981

Keith Robinson: In Memoriam

Musicians across the country were saddened to learn of the passing of Keith Robinson. A bass player with the Houston Symphony from 1948 to 1974, Keith was a perennial committee chairman and contract negotiator. He was a member of the board of Local 65-699 for many years and a founder of the Musicians Federal Credit Union.

Keith worked to establish an orchestra committee and fought hard for the musicians' right to ratify contracts. Without his leadership and inspired guidance, much of our present contract would not exist. Keith was one of those rare people with which every orchestra and city should be blessed. He leaves a void not soon to be filled and a memory not soon to be erased.

Red Pastorek, bassist
Houston Symphony

Worth Noting

- 1992 marks the 30th anniversary of the founding of ICSOM. The 30th conference will be held in Vail, CO, from August 19-23. Speakers and topics will be announced in the June issue of Senza Sordino.

- Timothy McClimon, vice-president of arts and culture of the AT&T Foundation, cited a 1991 survey done of AT&T customers that showed the arts ranked last among funding priorities. Customers felt AT&T funding should be directed at education or educational projects.

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