

THE 1994-95 BASEBALL STRIKE: A CASE STUDY IN MYOPIC SUBCONSCIOUS MACROCOSMIC RESPONSE TO CONFLICT

*Christopher J. Fisher**

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* B.A. Economics, University of Minnesota. J.D. Cum Laude, Hamline University School of Law, St. Paul, Minnesota. Mr. Fisher is currently practicing law at Donovan and Associates, Ltd. in the real estate and corporate business section.

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I. INTRODUCTION

Football has Joe Montana and Joe Namath, basketball has Michael Jordan and Kareem Abdul-Jabbar, hockey has Wayne Gretzky and Gordie Howe, but *America* has the game of baseball. So ingrained in America's self-image is baseball that Justice Blackmun was compelled to list eighty-eight of the most memorable baseball players in history in the introduction of the Supreme Court's decision in *Flood v. Kuhn*.¹ So ingrained in America is baseball that failing to learn the fundamentals of the game would require a lifelong effort to avoid all newspapers, television, radio, playgrounds and taverns, and that anyone who chose to take that path would still likely know what it means to idiomatically "strike out," "play in the big leagues," or "get to first base."² But to believe that baseball's grip on America is limited to one Justice's opinion and handful of colloquialisms is to sell baseball short. The game is as American as baseball, hot dogs and apple pie.

Our national pastime is not spared from the challenges and demands inherent in our free society. One such inherent challenge is conflict.³ History has only offered two conflicts monumental enough to eliminate the ultimate conclusion to the

1. 407 U.S. 258, 285-86 (1972).

2. Charles Yalbon, *On the Contribution of Baseball to American Legal Theory*, 104 *YALE L.J.* 227, 229 (Oct. 1994).

3. The term "inherent" is used, because a society implies relationships between people, no two alike, which, when mixed with the free flow of thoughts and ideas emulating from those people, necessarily yields differing thoughts. If you do not agree with the idea that no two people think alike, try it with three, then four, and so on until you find a comfortable number. Then, eliminate any free society with fewer people than that from the scope of this analysis.

The term "challenge" is used rather than 'flaw' or 'fault', because conflict is not a pejorative term. To me, challenge implies both opportunity and danger, and the purpose of this analysis is to focus on how to exploit the opportunities of challenge and avoid its dangers.

baseball season, the World Series. One of those conflicts was so powerful that it captivated the entire nation and indeed the world; so mighty that it filled the cover of every newspaper and magazine in America; so colossal that Americans kept vigilant watch on Japan hoping to save our own; so important that it required the attention of both Congress and the President; and so insidious that it divided America. That conflict, of course, was the baseball strike of 1994-95. Not even two world wars could match that.

Something has gone awry in baseball. The current conflict has inflicted wounds to *our* game which will be a long time healing. This analysis will explore the conflict, its dynamics and the relationships between parties, focusing on the lawyers and their conflicting roles in it. The Article will finish with a fresh approach aimed at resolution and how those principles might be applied in other arenas.

A. *The Conflict*

On August 12, 1994, the "rank and file" of the Major League Baseball Players Association ("MLBPA") began a strike which wiped out the remaining two months and the post-season of the 1994 baseball campaign, as well as spring training for the 1995 season.⁴ Many collective bargaining units experience conflict and discord around the time the labor contract expires. Baseball is no different. On the surface, the strike seems to be about money. The sticking point in the contract is that the owners want to write a salary cap into the new Basic Agreement which would limit each team's annual payroll. Not being a new or terribly complex issue, the players see that the clear effect of a salary cap is to artificially limit the amount of money they are paid. And since neither party seemed to be willing to compromise on the issue of a salary cap, the strike continued.

In a nutshell, that is the conflict. In fact, it seems to be a little too easy to go unsolved for an amount of time - and it is. As the analysis unfolds, various facts, threats, accusations and media plays will emerge, which will bring to light many of the reasons for the prolonged dispute.

4. The first month of spring training for the 1995 season was wiped out.

B. The "Players"

In order to get a better grip on the issue, it is important to look at who is involved in the conflict, and at what level. Then and only then can the relationships between the "players" be explored.

At the heart of the dispute are the baseball club owners and the Major League Baseball Players Association and its constituent members. The owners, of course, are a collective group of millionaires who have invested a significant amount of time and money into their clubs. A fair implication is that each of them would like to see a profit on their investment, and the most certain way of doing so is to field a successful baseball team.⁵

The MLBPA and its members are also a collective group of millionaires or near millionaires who have invested significant time and effort into becoming Major League quality baseball players. Each one of them would like to be paid for his services. As a group, they would like to be paid a wage that is not artificially limited by a salary cap.

Those are the players centrally involved in the conflict. Similar to most labor conflicts, each party has chosen a representative, outside of the underlying conflict, to carry out the negotiations. The owners' first representative was attorney Richard Ravitch, former head of the New York Metropolitan Transportation Authority and a 1989 candidate for New York City mayor.⁶ Ravitch was replaced as the owners' representative on January 1, 1995 by Jerry McMorris, an entrepreneurial trucking magnate and owner of the Colorado Rockies. Attorney and long-time baseball negotiator Donald Fehr represented the MLBPA in negotiations. Ravitch, McMorris and

5. Although there may be one or two owners who are in it for the love of the game, none of them jump right out and admit it. This makes sense, since if any knew that profit motivation was the driving force behind their ownership, they might easily be taken advantage of by the other owners.

The second proposition here - that the best way to make a profit is through a successful team - may seem like a bit of a leap. I offer no statistical evidence in support of this, but it seems economically palatable that if a team does well, then the more exposure they get, the more television revenue they get, the more fans come to the games, and the more concessions are sold.

6. Hal Bodley, *Ravitch Says Time is Right to Leave*, USA TODAY, Dec. 6, 1994, at 3C.

Fehr will each be subject to critical analysis of their ability to deal with this conflict later in the article.

A handful of peripheral players round out the parties to this conflict. First, federal mediator William Usery, Jr. was brought into the conflict by President Clinton to bring the warring sides to the bargaining table. Usery was a bright spot in an otherwise dim time for baseball. In part, this analysis will focus on Usery and his approach to conflict, and why it did not work in this situation.

Another peripheral player is the United States Congress. Interestingly, they may hold the trump card in this conflict. When the strike began, more than a few legislators discussed a bill that would eliminate baseball's long and storied antitrust exemption. For the owners, the result would have been devastating. Eliminating the exemption would have caused shock waves in baseball from the college draft to free agency. The role of the Congress was limited to idle threats, but they are nonetheless contributors to the overall mix of the conflict.

Another group in this non-inclusive list of participants in the conflict are the agents of the baseball players. Their involvement in the conflict in the early stage was minimal, but they had much to do with what ignited the fire, as well as with stoking the fire once it started to burn.

Finally, other peripheral players to this conflict include the baseball fans, acting Commissioner Allan Selig and the absence of a full time Commissioner. Without discounting the importance of other peripheral parties to this conflict, time and space limitations prevent the exploration of each and every one.

II. WHERE BASEBALL WENT WRONG

A. *General Proposition*

Attempting to identify an exact moment in time, or a particular event which signified that something was going wrong with baseball and its ability to deal with conflict would lead an analyst into an inescapable trap. Ironically, it is into that same trap which baseball itself was lead.

The conflict in baseball was less about the conflicted issues themselves and more about the lack of effective methods of dealing with conflict. To wit, the "cause" of the conflict should

not be thought of as an event in time, like the imposition of a salary cap, but as a destructive process of dealing with conflict, which has simply become habit.⁷ This is not to suggest that the issue of the salary cap is not independently important, because it is. Instead, the salary cap is more like a trigger, which launches baseball into its familiar downwardly spiraling method of conflict resolution. Like an alcoholic quitting for a few months at a time, baseball cures its issue *du jour* without ever solving the underlying problem; and as a result, reverts to its old habit once tempted by a new issue.

B. *The Myopic Macrocsmic Response to Conflict*

Many labor conflicts, and certainly this particular one, suffer from the same defective and destructive outlook on conflict resolution: a myopic view of the conflict by some or all of the parties. Ironically, it is often lawyers, the very ones who are turned to for resolution, who help to narrow the parties' field of vision.

1. Effects of a myopic view.

In taking a narrow view, each party is likely to affect several of the variables in the conflict. The variables which are affected by any particular actor, assuming such a posture change, vary from conflict to conflict. For example, in this conflict, not only does the narrow view of the MLBPA affect the MLBPA itself, but it changes the nature of the relationship of the MLBPA to every other party involved. But it does not end there. It also has an effect on the environment in which the conflict is played out, the strategies and tactics that both the MLBPA and other parties use in their attempts at resolution, and the makeup of the audience.

This singular phenomenon, the myopic position assumed by several of the parties to this conflict, at best was a major contributing factor to the lack of resolution, and at worst, was *the* reason that the conflict was not solved.

2. Defining the myopic position.

With this analysis, I coin a new term: Subconscious Macro-

7. When I reference the personified "baseball" throughout this analysis, I am referencing *all* of the "players" with both their individual and collective roles.

cosmic Reaction to Conflict. This is the view or position in the above-referenced paragraph which gives rise to the alteration of the variables in a given conflict. It is the overall, macrocosmic perspective with which a party reacts to, and thus approaches conflict. A macrocosmic response is a reflex or reaction to a certain stimulus, in this case conflict, as opposed to a conscious methodology. It is this subconscious reaction which shapes the way a party deals with conflict. And in many conflicts, this one included, the subconscious reaction of a party who has in some way been challenged is to assume a myopic "view" or "position."⁸ Clearly, not every macrocosmic response to conflict is negative. But in the case of the parties to the baseball strike, it seems that each party's reaction to conflict is myopic, meaning that that party sees the conflict narrowly in some sense. Some reactions to conflict are narrow in the sense that all the party sees in conflict is a contest - a winner and a loser. Another type of myopia is to see conflict only as a chance to make a profit. Still others will have the narrow view that conflict serves only as an opportunity to grandstand. Part III of this Article will offer an alternative to a narrow reaction to conflict.

The difficulty in having a myopic reaction to conflict is that the macrocosmic position that any party to any conflict takes will go into shaping the microcosmic variables of the conflict. All too often, when parties study conflict, they look only at the microcosmic responses and try to change them directly.⁹ As a result, they may change a strategy (one of the variables in a conflict), but they have not changed the overall view of the situation. That is precisely why merely changing from, for example, a hard bargaining position to a soft bargaining position,

8. This only applies as the terms are used here. Later, I will discuss positional bargaining in the microcosmic sense.

9. A good analogy for changing microcosmic elements of a conflict, instead of the overarching macrocosmic view of a conflict in order to effectuate resolution, is a computer spreadsheet. Consider the value of a certain cell in the spreadsheet which is determined by a formula dependent on several data. If the number appearing in that cell is not the one you expected, you have two options. First, you can "force" the number in the cell to be the number you desire by bypassing the formula. That option alters the microcosmic element of a conflict. Second, you can alter the formula. That option alters the macrocosmic view of the conflict. The difference is that every time you subsequently use the former approach, you will have to force the result. With the latter, once the formula is corrected, it will remain corrected for each subsequent use.

although perhaps the best negotiation tactic in a given conflict, will not always lead to a resolution of the conflict.

So where did baseball go wrong?

Each party to the baseball conflict, with the exception of William Usery, Jr., personally fostered a macrocosmic position that was not conducive to resolving conflict. While each party had a different variation of myopic subconscious macrocosmic response to conflict, the collective effect was that there was no possible resolution.

3. The Macrocosmic Responses of the Central Parties

Myopia can affect parties at all levels of a conflict in different ways. The degree to which the parties central to the conflict are affected by their subconscious reflex to conflict is critical. In the baseball conflict, the two central parties, the MLBPA and the owners, each experienced a reaction to conflict which hindered resolution.

a. The MLBPA

The immediate and subconscious macrocosmic reaction to conflict by the MLBPA is that conflict means contest. As a result, any time a Basic Agreement is up for discussion, there will be a *contest* to see who wins and who loses, whether the players will come out better under the new agreement, or whether the owners will get the upper hand. This whole process takes place at a subconscious level. At the conscious level, the myopia manifests itself by profoundly affecting the way the MLBPA handles the microcosmic elements of the conflict.¹⁰

One such affected element is the strategy that the union elected to employ. In framing the conflict as a contest, the MLBPA took the position that any collective bargaining agreement proposed by the owners containing the words "salary cap" would be rejected. Brett Butler, one of the eight players on the union negotiating committee said: "There's got to be some positive dialogue. We've already said we're not going to agree to a salary cap. Let's clear the slate, try to get off on the right foot."¹¹ Breaking down Butler's comments sentence by

10. These elements are generally referred to as "variables of the conflict."

11. Steve Zipay, *Baseball Resumes Its Talks; Sides Civil; Nothing New Yet*, NEWS-DAY, Nov. 11, 1994, at A105.

sentence helps to show a picture of why it is so difficult to come to resolution when conflict is treated as a contest. The ideas that Butler was apparently trying to convey were: "We need to come to a compromise. We've made it clear that *we* have to win. Now that we have that straight, let's try to compromise." It sounds ridiculous when his statements are framed that way, but that is precisely the sort of attitude that grows out of the manner in which the players deal with conflict.

Unfortunately, the players' overall view is so bent towards winning the issue surrounding the words "salary cap." "After months of sticking out their tongues at each other over the term 'salary cap,' both sides have agreed that a luxury tax system would be philosophically acceptable to them."¹² Wake up! The luxury tax is the moral equivalent of a salary cap. It effectively punishes teams for every dollar spent on payroll over a certain amount.¹³ Of course, the MLBPA and the owners are worlds apart on what the tax should be, but the point is that something almost identical to a salary cap is philosophically acceptable to the players, but a cap is not.¹⁴ Sadly, by viewing the conflict as a contest with winners and losers, at least the compensation aspect of it became partly an argument over semantics.

Another effect of the MLBPA's myopia is a tactic which also affects the relationship between the parties. Donald Fehr, the MLBPA Chief Negotiator, and an attorney, often resorts to personal attacks on anyone who crosses his path. I posit that this too, has its roots in unconsciously "seeing" the conflict as a contest. For example, in response to an assertion by Richard Ravitch that the owners were willing to take a 50-50 revenue split, Fehr claimed that the split offered was really more like 56-44, claiming that Ravitch had misrepresented the actual numbers and that he did so because "maybe Richard feels bad

12. Thomas Boswell, *Beating the Game To a Pulp*, WASH. POST, Nov. 30, 1994, at B1.

13. The main difference is that the benefactors of the tax will be the 'small market' clubs who claim to be in such dire straits.

14. A skeptic reading of this analysis might suggest that they are not philosophically opposed to a luxury tax because they may believe that the rate will not be low enough to discourage overspending. In fact, several newspapers have reported that the MLBPA's desired rate is 1.6% of the average and that the owners' desired rate approaches 300%. Obviously we are talking about two very different things. But the fact remains that "luxury tax" is acceptable and "salary cap" is not. Perhaps the players' philosophy on a salary cap would be different if they had proposed a cap of \$10 billion?

he's not around and wants to get back in the headlines"¹⁵

A bright spot was that William Usery, Jr. has worked to create a more civil and communicative atmosphere in which Fehr can refrain from verbal assaults on the owners.¹⁶ But Fehr's confrontational tactics have probably already altered the relationship between the parties. It is precisely these types of tactics that drive parties apart, and which rely on one side "backing down" from its position in order to achieve resolution. The relationship becomes one of distrust very quickly. There may be wisdom in altering the relationship variable in the conflict in such a fashion as to pit the parties against each other personally, but only after they have taken that subconscious narrow view that the conflict is necessarily a contest. Lawyers like Fehr should be asking themselves if they are best serving their clients by fostering this narrow macrocosmic view of conflicts.

b. The Owners

The MLBPA is not alone in its narrow response to conflict. The owners suffer from the same macrocosmic response - conflict means contest. From the outset of the conflict, the owners took on the microcosmic position that a salary cap would be necessary for the continuation of their teams as viable economic entities.

Perhaps as a result of this myopic view of conflict, they either did not realize, or did not wish to see that the runaway salaries were a consequence of their own doing. Nobody was holding a gun to the heads of the owners and forcing them to pay a backup shortstop \$1.5 million. Their spending was simply out of control, and they allowed it to get away, not the players; therefore, the proposed salary cap seems to be a way of keeping their own spending under control. That notion is not suggested for the purpose of assigning blame, but rather because it demonstrates one of the manifestations of the myopic view of the owners.

By taking a macrocosmic position that conflict means con-

15. Tom Pedulla, *Ravitch: Union Misinformed Striking Players on Issues*, USA TODAY, Feb. 7, 1995.

16. Ross Newman, *Analysis: Baseball goes back to the bargaining table; Labor: Owners' tax plan might be viewed by union as a disguised salary cap*, L.A. TIMES, Nov. 17, 1994, at 2C.

test, the owners placed themselves in the position of having to defend every action they took and move they made. Being wrong about anything would somehow indicate a weakness in their position. As a result, they felt compelled to assign blame on the players, the agents, the fans, or whomever else they could conjure up, for the out-of-control salary structure.

It is abundantly clear that it is the owners' problem and they created it.¹⁷ Without anyone taking accountability for their actions for fear that they appear "wrong," the issue snowballs. Just as fast as the owners deny responsibility for runaway salaries, Fehr and the union purposely begin to make them look foolish to the media by mocking their lack of self-control. The conflict is again reduced to a shouting match, and no real negotiations are entered. For Ravitch, the former negotiator for the owners, the public debates were unfulfilling because they lacked real negotiation. "I wasn't upset by the public nature of it," Ravitch said, "I don't think there ha[ve] been 10 minutes of real negotiations yet in this process."¹⁸

Question: Why not just admit mistake and approach the conflict from an angle of solving a mutual problem that they have?

Answer: Because their habitual response to conflict is to have a contest with winners and losers, and as a result, they have been "forced" to make the cap. Hence, who is at fault for the way things have become is the issue.

The owners have, at times, shown flashes of brilliance in attempting to frame the conflict in a way more suitable to resolution. For example, when Ravitch became ineffective as a negotiator near the end of his contract with baseball, the owners opted not to renew his contract and relied instead on Jerry McMorris, owner of the Colorado Rockies, as their new point man.¹⁹ McMorris, the owner of the largest trucking company

17. I do not mean to suggest that every owner has displayed the same uncontrollable penchant for spending. However, while I do not have the data in front of me, I would venture to guess that every owner has, at one time or another, paid more money for a free agent than the actual value of the free agent to the team. At any rate, the point is that the owners have *collectively* caused this problem for themselves by generally paying players more than their economic value to the team.

18. *Ravitch to Leave Baseball Negotiations; material from Associated Press was used in this report*, BOSTON GLOBE, Dec. 6, 1994, at 65.

19. Claire Smith, *It's Down to the Wire; McMorris is at Plate*, N.Y. TIMES, Dec. 22, 1994, Section B, at 17.

in the Rocky Mountain region, has a sterling record in labor negotiations. In thirty-five years of operations, the notably strong International Brotherhood of Teamsters has never sanctioned a strike against McMorris's self-made, 5000 employee company.²⁰ McMorris approached the conflict from a different perspective. He is eternally optimistic, and is confident in his ability to lead a conflict to resolution. David Cone, Assistant American League Player Representative, characterized McMorris as approachable. Cone also admires him as "an owner who has the guts to speak his mind."²¹ Rockies Manager Don Baylor summed up McMorris by saying, "His attitude is, 'We can work it out.'" But McMorris was not as successful as the owners had hoped. When he became the chief negotiator, the owners rejected a mediated settlement and refused to submit the issues to binding arbitration.

The answer to the puzzle of why McMorris, a negotiator with a positive response to conflict, could not bring resolution lies in an earlier proposition. Perhaps the ascension of McMorris, a negotiator with a seemingly resolution-conducive subconscious attitude,²² to the top spot was simply a band-aid that did not have the desired effect. That is, just because he does not share the myopia of the other owners and the MLBPA does not mean that he can effectuate a shift in the overall view that the owners have of conflict.²³

Before shifting to an analysis of the peripheral parties and their contributions to the conflict, I want to summarize what happened between the players and the owners. Here stand each of them, as collective groups, carrying the baggage of a contentious reaction to conflict, unable to come to a resolution. Unable, because their subconscious reactions to conflict are for

20. *Id.*

21. *Id.*

22. As opposed to the myopic view of looking at conflict as a contest, McMorris appears to look at conflict as an opportunity to restructure a relationship.

23. In fact, in Section III, I will suggest that healing conflict through a positive macrocosmic viewpoint is not possible in some situations. First, it is not possible when, as in this case, only a small ratio of the parties to the conflict have a resolution conducive subconscious reaction to conflict. In this conflict, we are talking about one owner out of 28 who has this viewpoint, although he probably carries more weight than 1/28th because of his position as chief negotiator. Second, it is not possible unless both sides of the conflict have developed this positive response to conflict. In this conflict, they clearly have not.

each to draw their lines, take up their positions and dig in.²⁴

Peter Gammons, one of America's foremost baseball writers (who was decidedly on the players' side in this conflict), summarized the conflict: "It's time to stop trying to be right, stop trying to inflict damage on the owners and get the players back on the field."²⁵

4. The Macrocosmic Response of the Peripheral Parties

Almost every conflict seems to involve parties other than the central figures. The baseball conflict is no different. A handful of these peripheral parties suffer from varying forms of "conflict myopia," which in turn affect the central parties. In the end, the relationship element of the main conflict is affected.

Not every peripheral party suffers from conflict myopia. Specifically, William Usery, Jr. does not. He has his own challenges to deal with, but myopia is not one of them. The analysis of his position will come first. Then, I will briefly analyze the positions of several peripheral parties who do suffer from varying myopic reactions to baseball's conflict.

a. William Usery, Jr.

On October 14, 1994, Labor Secretary Robert Reich, at the direction of President Clinton, appointed Usery, a highly respected federal mediator, to resolve the baseball dispute.²⁶ President Clinton reasoned that bringing Usery into the conflict would have a positive effect on the relationship between the parties.

As a mediator with decades of experience at the highest levels of conflict, Usery, in all likelihood, had a very resolution-conducive subconscious response to conflict in general.²⁷ Usery

24. What may be most insidious about the reaction is that it is subconscious. At the very instant either party senses a conflict, it is automatically triggered, not unlike a defense mechanism. I must confess I know very little about formal psychology, but this may, in fact, be just that.

25. Peter Gammons, *The Big Picture Escapes Small Minds*; BOSTON GLOBE, Feb. 12, 1995, at 83.

26. *Strike Chronology*, USA TODAY, Dec. 16, 1994, at 5C.

27. The whole idea of a subconscious reaction to a stimulus is hard to see. Obviously it is not an idea that is subject to proof, as the only evidence of its existence are the footprints it leaves behind.

Seeing footprints of an open, resolution - conducive reaction to conflict is nearly impossible - especially so, when the footprints belong to a mediator. Such a response to

seemed like a tough negotiator, not easily intimidated by the ferocity of the parties, the magnitude of the problem, or the bright media spotlight. The best evidence of that was that he was conspicuously absent from press conferences and newspapers. It was Usery's job to try to bring the parties to a collective state of mind that mimics what a positive response to conflict would have been like at the outset.²⁸

That is a job easier said than done. One baseball writer sympathized with Usery: "Don't you love these guys? Usery must want to stick his head into a trash can and scream. Why don't they just shoot spitballs at each other and pull hair?"²⁹ Usery faced a monumental task.

While Usery was not handicapped by a myopic view of conflict, he was shackled by President Clinton. The role of a mediator in a conflict is unique, as it is entirely dependant on both remaining objective and receptive. Moreover, it is the utter lack of power to force the parties to do anything that is the cornerstone of fostering open communication. Without that, any mediator would have a difficult time trying to convert myopic views into problem solving views. That is where President Clinton comes in. By asking Usery to make his own proposal, then threatening to use the power of government to impose it, President Clinton placed him in the position of being an arbitrator instead of a mediator.³⁰ At that point, Usery's effectiveness as a mediator was greatly diminished. Now he was the person responsible for making the decision, the grandstanding by the parties began, and real progress ceased. "All Clinton did [by suggesting that Usery's plan be implemented through government power] was put the battle back to the level at which each side is trying to defoliate the other."³¹

So, after four months of working with the parties without a

conflict would likely manifest itself in taking the conflict out of the media spotlight and focusing on the parties and their ultimate interests instead of their positions. As a result, while we cannot see evidence of Usery's reaction to conflict, a good bet is that it is conducive to resolution of the conflict. Accordingly, I make that assumption.

28. Note here that the recurring pattern of temporarily fixing the problem rears its ugly head again. When Usery is gone, they will return to their old ways.

29. Thomas Boswell, *Beating the Game To a Pulp*, WASH. POST, Nov. 30, 1994, at B1.

30. Gammons, *supra* note 28, at 83.

31. *Id.* Clinton had formally asked for binding arbitration, which the owners rejected, to try to deflect the responsibility to Congress. Then, the owners and the players teamed up and indoctrinated Labor Secretary Reich into their mudslinging, by both saying privately that Reich was an amateur in the realm of serious negotiation.

resolution,³² Usery was all but out of the picture, and the parties proceeded unguided by intervening and conciliatory influences. Any progress that Usery might have made in altering the outlook on conflict held by the owners and players was lost. On Usery's influence, Los Angeles Times staff writer Ross Newman wrote, "There is no indication a settlement is imminent, but Usery clearly had a persuasive impact, urging both sides to rethink their positions."³³ With Usery all but gone, there was one less peripheral party to the baseball conflict. Unfortunately and ironically, Usery was likely their best shot at healing the conflict. But the owners and the players were not without any peripheral parties just yet.

b. *The United States Congress*

It is a rare occasion when the legislators of the United States miss an opportunity to capitalize on a grandstanding opportunity. They have not missed here, and that is the backdrop against which their myopia is exposed.

The subconscious reaction that legislators have in almost every situation revolves around a question that instinctively goes through their heads: "What will I look like in the eyes of the voters when this conflict is over?" This is not an entirely ignoble question, since they are charged with representing their constituency. It does raise the interesting political question of whether they should be representing their constituents' beliefs or best interests, their own beliefs or best interests, or something different. Fortunately for me, that issue is far outside the reach of this topic. But that is the blueprint of their myopic view of the baseball conflict - a reflex to do whatever will make them look best. And who will not love you if you try to save the national pastime?

The myopia of Congress affected several variables of the main conflict. It altered the relationships between the parties to a certain extent, the game being played, and to a great extent, the strategies and tactics of the main parties.

The legislators found their way into the baseball conflict because they held a trump card that would beat any ace the own-

32. We will never know how much *real* progress Usery made. Although there was not much progress on the actual issues of the conflict themselves, I would venture a guess that there was progress made in molding the views of the parties.

33. Newman, *supra* note 19, at 2C.

ers may have had up their sleeve. Only the legislature, and maybe the Supreme Court, has the power to repeal baseball's antitrust exemption, which, without going into exhaustive detail, would essentially eliminate the owners' ability to institute their own labor standards as a collective group. Instead, the players would then be in a position to use the court system to fight any unilateral imposition of labor standards. The bottom line is that it would be a serious blow to owners if the antitrust exemption were repealed.³⁴

Senators Orrin Hatch of Utah, Daniel Patrick Moynihan of New York and Bob Graham of Florida introduced legislation in Congress in mid-February designed to partially remove the exemption baseball owners have held since 1922.³⁵ With the timing of this bill, it is difficult to come to any other conclusion than, while the bill may not be an all-around bad thing, it was clearly introduced at an opportune time so that voters might look at their legislator and say to themselves: "My Congressman is trying to save baseball."

Of course, this situation changes the relationship between the central parties. All of a sudden, the MLBPA may find itself in a much more powerful position in negotiation. As a result, it may be able to better afford to wait and see if the bill has necessary support to pass - an obvious effect that the legislation had on the tactics. But it does not end there. Even the "game" of the conflict has changed. Instead of the MLBPA talking to the owners about salary caps and luxury taxes, Donald Fehr has begun talking about cartels to a Senate subcommittee.³⁶

34. Under the current system, the owners, in essence, can collectively decide what their labor standards will be. They are not subject to any sort of approval by the union, except to the extent that they have to come to some sort of collective bargaining agreement. There are other implications of lifting the exemption that make it an extremely attractive proposition to the players. Lifting the exemption would cause problems for owners with respect to minor leagues and major league players with less than four years of service, who play under the old reserve system, where whatever team the player is under contract with always has exclusive rights to the player for the subsequent season. Under that system, if a player decided to sit out for a year in order to free himself of his team and the contract, he would be 'blacklisted' and no team would sign him. The result of the reserve system is that those players are not free to move about the league and sign with whatever team they want. Without the antitrust exemption, every player in baseball would be a free agent. Historically, that has meant much larger paydays, and a gravitation to the large markets with big television revenue.

35. *Major League Baseball; Update*, THE SPORTS NETWORK, Feb. 15, 1995.

36. Clark C. Griffith, *In baseball strike, government should keep to the dugout*, MINNEAPOLIS STAR-TRIBUNE, Mar. 4, 1995 at 17A.

This has created a further gap between the parties and has reshaped the "game."

The irony is that despite the legislature pulling the sides apart, Fehr told the media that he would recommend that the players end the strike and return to work if Congress approved the bill.³⁷ Clearly, it is not because the sides will have come together, but because the MLBPA would feel that it had won. Clark Griffith, a lawyer and former Minnesota Twins Vice President pointed out the double irony that: "the baseball labor dispute is over a mandatory subject of collective bargaining: cost of labor. Antitrust has nothing to do with it. Claiming that management has an advantage gets [the MLBPA] the sympathy of those who act in their favor. Furthermore, . . . union solidarity is enhanced."³⁸ So even though the role of the legislators really had nothing to do with the central conflict,³⁹ they held the key to end the strike.

The myopic reaction by legislators - to seize any opportunity to look good - came at the expense of the baseball players, owners and fans. As Griffith wrote in a response to an editorial in the Minneapolis Star-Tribune which promoted lifting the exemption: "I know from experience that interference in these labor negotiations simply prolongs the process and does nothing to resolve the issue. Presidential intervention has already derailed negotiations and ended a dispute that might very well have been settled if he and others had not intervened."⁴⁰

Again, we see that lawyers, in this case in their roles as legislators, have actually extended conflict, a notion that does not sit well with me as one of a new breed of lawyers who has a different outlook on conflict and lawyers' roles in it. If one of the few non-lawyer legislators had his way, Congress would have removed itself from the situation while still addressing

37. *Id.*

38. *Id.*

39. It should be noted that earlier in the conflict, some legislators suggested a congressional mandate that the parties submit to binding arbitration, while others suggested that they mandate an end to the work stoppage - much like an essential employee situation. That never came to fruition, so I have not addressed it in detail. It did, however, change both the game and strategies for a time during the dispute, and was also grounded in the myopic views of some legislators to try to make themselves look good in the public eye.

40. Griffith, *supra* note 39, at 17A.

the antitrust issue. Senator Alan Simpson of Wyoming commented on the antitrust exemption testimony of acting baseball commissioner Selig: "Please spare me that you have to have this or that for baseball to survive. It's pure humbug. Babble." Simpson later told Fehr that he would support the repeal of antitrust, but not before the strike was settled.⁴¹ "This is not your court of last resort . . . I ain't doing nothing now."⁴²

c. *Baseball Agents*

Player agents are also peripheral parties to the conflict. Again, the agents are a group of mostly lawyers who have taken a particular stance with respect to baseball, directly bearing on the main conflict. Their role differs because they have less to do with a solution to the salary problem than with how the problem began.

As lawyers, on a very conscious level, their goal is to serve their clients. They have served them so well by garnering multi-million dollar deals for mediocre players that baseball has been sent into a tailspin, and the very players they represent missed their first paycheck. What should the role of these lawyers be? What is *their* conflict?

Their conflict is that they have a myopic view - not necessarily of the baseball conflict - but of what baseball players are to them. To the agents, the players mean money. From a philosophical level, there is a point at which the ability of the agents to extract more and more money out of the owners becomes detrimental to the client, for example, in a strike. In this case, they crossed the line long ago. Their conflict lies in the fact that they are generally compensated based on a percentage of the value of the contract.⁴³ That means that it is always in the best financial interest of the agents to get as much as they can out of the owners. But we have seen that this is not always in the best interest of their clients. The salary structure in baseball has reached a critical state. Selig estimated that if baseball played out the 1995 season under the

41. Mike Dodd, *Selig: Some clubs could fold; Lock out by owners not ruled out yet if players end strike*, USA TODAY, Feb. 16, 1995, at 6C.

42. *Id.*

43. Telephone interview with Tim Madson, Esq. of Abdo & Abdo, P.A., a Minneapolis law firm specializing in representation of entertainment and sports figures, Oct. 1994.

same salary rules that existed in 1994, a "significant number" of clubs would probably not make it through the season financially.⁴⁴

The agents then, not actual parties to this particular conflict, have made choices about how they would deal with their own conflict, and the resulting legacy is the strike of 1994. Of course, the agents could not have acted without willing owners, but some responsibility does rest with that group of lawyers who sometimes choose the dollar over the long term well being of their clients.

C. Conclusion on Where Baseball Went Wrong

We have seen now, how a number of parties to this conflict experienced a subconscious reflex to conflict, and how that reflex has manifested itself. At the beginning of this section, the question "Where did baseball go wrong?" was posed. The answer lies in those varying reactions to conflict which each of the parties have experienced. Any given conflict can be seen as a chemistry experiment. In this experiment, when you put all of the reactions to conflict of the various parties into a vial and mix them up, the resulting concoction is not resolution. That is not surprising, since only one party, Usery, had a positive effect on the mixture. Now that we know where baseball went wrong, it is time to explore what a lawyer's role in conflict should be.

III. ACHIEVING POSITIVE AND EFFECTIVE CONFLICT RESOLUTION

To bring the chemistry analogy full circle, the goal is to put the reactions of every party involved into the vial and have the resulting mixture be resolution. Certainly, this is a process easier said than done, especially considering the depth of the myopic reaction to conflict. With that caveat in mind, I propose that the most healthy and effective way of dealing with conflict is to train yourself⁴⁵ to react to conflict in a macrocosmic sense, conducive to healing the conflict rather than just fixing it. Further, the specific reaction that will yield that re-

44. Dodd, *supra* note 44, at 6C. This contention is disputed by Fehr, who said that Ravitch repeatedly said that none of the clubs were in danger of bankruptcy.

45. "Yourself" may refer to a person, a group of people or an entire union.

sult is a reaction that conflict is a challenge, containing both an opportunity component and a danger component.

A. *Healing Conflicts*

Whether a conflict is healed or fixed can be an important distinction. Some would propose that this is only important when the parties are in a position that they will have continued relations. I am more inclined to believe that it goes one step further. Healing conflict is important to *all* parties in *all* conflicts.

In Part II above, several instances were cited that were examples of fixing a conflict.⁴⁶ Fixing a conflict happens when the parties get to the point in negotiations that they are able to finally come to resolution in spite of their myopia. Such a resolution might come about as a result of a mediator who pushed the parties into a position that they would have been into at the onset of the conflict had their reaction to conflict not been myopic for one reason or another. On the other hand, it might have come about simply from fatigue, because one party could simply not continue the conflict economically, or because a judge made a decision about who was right and who was wrong.

One common thread runs between each way of fixing a conflict. Although fixed and seemingly gone, the conflict is not *really* gone. The underlying features which aggravated the conflict, which I have called myopic macrocosmic responses, are still there. And until one makes a conscious effort to change those subconscious responses, that person will aggravate each subsequent conflict they encounter. Moreover, just fixing the problem is not intellectually satisfying. It can leave an empty feeling: a feeling like there is something more to be done with respect to the conflict. Then, the conscious mind kicks in and assures you that the conflict has been resolved, so there is nothing left to do. But that is not the whole picture, because without more than fixing, the conflict has not truly been resolved. Finally, the problem of fixing rather than healing is magnified when the same parties have to deal with con-

46. I very purposely referred to both 'fixing conflict' and 'healing conflict' as 'resolving conflict' up to this point in the article in order to not get into the issue prematurely. Any subsequent reference to resolving the conflict should be taken neutrally - not necessarily meaning either fixing or healing it.

flicts involving each other regularly. This is true from conflict in marriage to conflict in labor law, and is certainly true in the case of the baseball strike. The problems with fixing are the same, and they become habitual. As a result, in the baseball conflict of 1994-95, both the owners and the players hit the conflict with a full head of steam, each with their own myopic view, and each intent on winning, just as they had in 1981, 1985 and 1990. Only this time, they are having trouble even fixing it. Although the players have returned to the playing field, the contract disputes remain.

People should look to heal their conflicts. In healing a conflict, the parties will come to resolution in a way that each of them feels that the others were cognizant of their interests, approached the challenge with honesty and integrity, and had an opportunity to be heard. The effects of doing these simple things are enormous.⁴⁷ Once the interests of the parties ("We are concerned that our teams are losing money and would like to find some way to limit spending.") are on the table rather than the positions of the parties ("We demand a salary cap."), solutions acceptable to both parties can often be reached. When a resolution is reached that way, and when the conflict at hand is done, it is done. The next time the parties have a conflict, instead of rehashing fault and placing blame for who got them there, or for what they did wrong last time that resulted in the conflict this time, the parties can simply move past that and on to resolving the new conflict. Even when no resolution is reached, at least the parties have been forthright, honest, open, and have listened to each other. It is hard to hold animosity towards someone with whom you have just shared that experience. Healing not only makes resolution easier, but when resolution cannot be reached, it allows for healing the conflict while agreeing to disagree.

B. The Expansive Macrocosmic Response to Conflict

Healing conflict instead of fixing conflict makes intuitive

47. This does not mean that every party will come out happy or even satisfied with the solution. What it does mean is that each party necessarily approached the conflict with a real desire to listen and to be heard. Often, that is what conflict is really about. If the parties had approached the issue from an interest-based level rather than throwing legal arguments back and forth for years, it seems reasonable that there might have been a quick and healthy resolution.

sense. The difficult part is not understanding the logic of healing conflict, it is actually doing it. In order to be in a position to heal conflict, the immediate reaction to a conflicted situation must be to see it as a challenge. Challenge has both an opportunity component and a danger component. This type of reaction to conflict is an expansive subconscious macrocosmic reaction to conflict.

A conflict cannot truly be healed unless the conflict is approached by parties who have an expansive rather than a myopic view. Once the parties have taken up their myopic positions, it is too late. Beginning to heal conflicts begins with a change to the macrocosmic response to the conflict stimulus. Maybe the biggest problem is that the whole series of behaviors is based on a subconscious reaction, not a conscious action. It is not something that you can switch on and off. It is a reaction to a certain set of stimuli that has become ingrained into every human personality.

Making change even more difficult is that it is hard for a person who has a myopic macrocosmic view to recognize it in themselves. That is because the microcosmic actions they are taking in the conflict may make perfect sense — from the myopic point of view. Donald Fehr may be engaging in absolutely appropriate tactics for someone playing the game he is playing — a conflict is a contest. My guess is that it is only visible from the outside. That means that someone else has to take the responsibility of educating those who have a myopic view.

One ingredient seems to be missing from the analysis. How does someone actually go about creating his or her own expansive macrocosmic view once he or she has been alerted to the problem? There is no correct answer for that question. Changing a psychological reflex is really changing a person's 'being'. Your innate psychological reflexes and responses make up much of who you are. So it is not a matter of simply changing an outlook on something — it is really changing the way you are. Worst of all, no one can tell anyone else *how* to change the reflex. It is a process that needs to be completed within, because changing a way of being requires serious introspective criticism coupled with a desire to change. On introspection, each person must determine what it will take to change and if the desire is strong enough to accomplish it. But there is a

place for outside guidance in bringing a person up to that point. That is where lawyers can fit into the system.

C. The Role of Lawyers in Conflict

1. Pre-Conflict

In 1996, an insightful lawyer either beginning, in the middle of, or nearing the end of his practice will realize what is happening in the world around him, and how important healing conflict and creating an expansive reaction within is. The lawyer will also realize that his role in the world is changing, and that to be successful, it will not be enough to simply fix the conflict.

The first thing lawyers should understand is that we do not have the power to change the macrocosmic views of our clients. What we can do is educate them about the concepts I have described above and make them aware that there is an alternative to viewing conflict as a contest. It is incumbent on lawyers to frame conflict in a different light. A conflict is a challenge. It is an opportunity to reshape a relationship between two or more parties with respect to a particular issue. In reshaping that issue, the interests of every party to the conflict can often be met, at least to some degree. That is the opportunity component. Conflict also has a danger component. It feels risky for a party to a conflict to give up the idea that they have to be 'right'. It almost feels like taking a blind leap. Lawyers in particular have a tough time letting go of the notion of right and wrong. In that sense, law school has done us all a disservice. In law school, there is always a winner and a loser, innocent and guilty, right and wrong; and each of those things tends to cloud the opportunity component, most of the time, to the point that it cannot be seen at all.

Good lawyers will educate their clients on how to best maximize the opportunity component of conflict, while helping them survive the danger component.

In short, it is our job to give our clients the tools to change their macrocosmic response to conflict. We can bring the symptoms to light, show the destructive nature of a myopic view, and focus on the positive effects of an expansive view, but we cannot change their reactions for them. That is their part of the bargain.

2. Mid-Conflict

This whole analysis begs the question: "What can we do for *this* conflict, right now?" The obvious answer is to begin educating our clients. But this does not help them in this instance. Unfortunately, I do not believe there is a good solution once embroiled in a conflict, with two parties each holding their own myopic views. When I first began conceiving this theory, I thought the answer would be that a lawyer would be able to go into a situation and show people how to deal with conflict in a positive way. After much thought, I have come to the realization that the macrocosmic reaction to conflict runs far too deep within each person or organization to be able to effectuate change just by jumping into a conflict and handing them this paper. Additionally, I have come to the conclusion that a true healing of the conflict cannot happen unless each party involved in the conflict has approached the conflict with a view that is more expansive than narrow. This makes sense, because almost invariably, if a party approaching a conflict with a win-lose outlook sees that the other side is meeting its interests too, then the win-lose party feels like it has lost. The myopic mind cannot fathom that there is not really some finite amount of "winnings" which is distributed to the contestants as a result of the conflict. As long as that is true, there can be no true healing of the conflict, since at least one party goes away a "loser."

Since I do not believe that anything can be done about myopia mid-conflict, I am resigned to advocating a fixing of the conflict through education about conflict myopia. Perhaps a neutral party should be called in to bring the opposing sides to that sort of "artificial" place that they might have been in if they did not have a myopic view from the beginning. That way, at least there would be a chance at resolution. Then, after the resolution of the conflict, it ought to be the responsibility of the parties' legal counsel to help them find that expansive view.⁴⁸ At first, it seems strange that a lawyer would have a role in a conflict *after* it has been resolved. But to

48. This would not be too much of a stretch in a corporate setting because of the likelihood that the lawyers and the party would have continuing conflict. In individual cases, where the lawyer is representing a client, the likelihood of continued contact between a lawyer and a client is much lower. It would seem strange for a lawyer to spend several hours with the client after the incident is concluded. It would take a fundamental

me, it seems like another part of a lawyer's ethical duty to act in the best interest of the client in a legal matter.

IV. APPLICATION OF CONFLICT THEORY TO THE BASEBALL STRIKE

The remaining issue is how this analysis could be applied to the baseball strike of 1994-95. Sadly, the answer is that there is not much that anyone can do about it — this time.

If I were the Commissioner of baseball, assuming baseball had a Commissioner, I would see it as my obligation to bring someone trained in conflict resolution into the situation to educate the parties about their conflict myopia, in the hopes of emulating the effects of the parties having taken on an expansive view of the conflict from the beginning. In connection with that, I would require that they cease taking *positions* on issues and begin conveying what their real *interests* are. Positional bargaining hurts. It is neither conducive to resolution nor expansive in any way. Once a position is taken, it is extremely hard to back down without losing face. As a result, the conflict grows bigger and bigger. "Bad guys always elevate their mistakes into a matter of high principle. How else can they turn a mere mess into a real disaster?"⁴⁹ That is what has happened with the salary cap issue. So instead of taking the diametrically opposed positions of, "no settlement without a salary cap" and "no settlement with a salary cap," the owners and players, respectively, would be required to convey what they really want. Presumably, the owners want to do whatever is possible to turn a profit; on the other hand, the players want to be justly compensated for their services.⁵⁰ Using interests as the

shift in the legal profession to decide that representation is not concluded until the lawyer and client have this "conflict education" conference.

49. Zipay, *supra* note 14, at A105.

50. Interestingly, they claim that what they really want is freedom to contract with whomever they want at whatever salary they can get. Note that they are not really asking for total freedom. In fact, if I were Commissioner and the players came to me asking for total freedom, I would give them just that - total freedom. I would recommend to the owners that they drop the salary cap, the reserve clause and everything else they want. The players could go into the market and contract with owners for as much as they could get. But all of this would be predicated on one condition - a truly free market - where the players bargain individually with the owners, not as a union. Of course, the players would reject that idea, but that is the hypocrisy of their position. What the players are really asking for is not to have total freedom, but to have a limited freedom which allows them to manipulate the labor market.

starting point for negotiations, I would hope to have the conflict fixed, maybe even through a creative solution that none of us has yet thought of, in a relative short time frame. Of course, it is impossible to predict what would happen in negotiations after the parties have heard each other's real interests, but it would almost certainly induce a more creative and meaningful dialogue between them.

Finally, and most importantly, I would commission a panel of lawyers and psychologists to develop and implement a model of conflict education which would train both the MLBPA and the owners to react to conflict expansively, with a macrocosmic view that conflict, particularly in the form of Basic Agreement negotiations, is really a challenge, in which the parties have an opportunity to restructure their relationship in a way that satisfies some, if not all, of their interests. Further, I would require that any lawyer who becomes involved in any baseball conflict, whether in the collective bargaining setting, as an agent, as an arbitrator, or as a legal representative in an arbitration, be certified. Attaining that certification would entail passing a course on educating clients about conflict.

The hope of this system would be that through education, baseball would take on a whole new being, a new outlook on conflict, whereby the tragic history of the 1994-95 baseball strike would never, never repeat itself.

V. ADDENDUM

The body of this article was written in late February and early March of 1995. At the time it was originally submitted, the conflict was not resolved, a federal judge was considering a claim of the MLBPA through the National Labor Relations Board ("NLRB") that the owners had engaged in an unfair labor practice, and the replacement players had yet to take the field. Much has changed since the writing of this Article, and now I have an opportunity to sit back and ponder the efficacy of my propositions and what the parties to the conflict achieved. As it turns out, I could have hardly scripted a better "conclusion" to the strike of 1994-1995 myself, at least as far as proving my theory goes.

Earlier in the Article, I addressed the issue of what could be done about a conflict, during the dispute, when the parties have a myopic macrocosmic response to it. The conclusion was

that the conflict would be resolved through fixing, rather than healing. In the case of the baseball strike, the ultimate fix to the conflict took place in the Manhattan courtroom of U.S. Federal District Judge Sonia Sotomayor.

A. *The Court's Action*

On March 31, 1995, Judge Sotomayor issued an injunction against the owners, forcing them to restore the terms of the old contract or face damages. As the gavel fell, the MLBPA gained instant leverage. Under federal labor law, the imposition of unilateral changes in any terms of a contract, which are mandatory subjects of collective bargaining, is an unfair labor practice as long as the parties have not reached impasse with respect to those terms.⁵¹ Attorneys for the NLRB reviewed the facts of the case in late March and decided that no impasse had been reached on free agency and arbitration, and that the owners' unilateral action in these areas constituted an unfair labor practice.⁵² The NLRB filed suit and the court granted the injunction. In the aftermath, the old collective bargaining agreement was reinstated, the players unconditionally ended their strike, and the owners, fearing damages of up to \$5,000,000.00 per day in the event of any further unfair labor practices, agreed to begin the 1995 season.⁵³

B. *The Results*

The only thing that most analysts agree on is that there were "winners" and/or "losers" in the strike. I disagree. Without declaring a winner or a loser, the results of the 1994-1995 strike are both sickening and poetically just.

1. Irony #1

The owners did not technically get what they sought. They wanted a salary cap. The first irony is that the 232 day strike cost the owners \$700 million - a diametric opposition to their goal.⁵⁴ Further, the system that baseball has been operating

51. See generally 29 U.S.C. §158 (1995).

52. Frank Swoboda, *Counting on the Courts to Call the Plays*, WASH. POST, Apr. 9, 1995, at H01.

53. *Id.*

54. Kenneth A. Kovach, *Point-Counterpoint*, WASH. POST, Apr. 9, 1995, at D03.

under since the mid-1980's remains in place, and the players are able to seek their best price on the free agent market.

2. Irony #2

The players got what they sought. They wanted a free market for free agents. The second irony is that a free market is exactly what the free agents are finding, only the owners have decided to begin exercising financial self discipline. At least fifteen free agents who earned over \$1,600,000.00 in 1994 have taken pay cuts exceeding 50%.⁵⁵ Free agent infielder Randy Velarde, whose 1994 salary was \$1,050,000.00, did not receive an offer over \$200,000.00. Velarde said he expected a cut, but that is leaving nothing but the toes. "If this is (a union) victory, I'd hate to see what defeat looks like."⁵⁶ As of April 8, nearly 200 free agents, including a handful of former all-stars, remained unsigned and relegated to working out in a free agent training camp in Homestead, Florida.⁵⁷ Carlos Benitez, a baseball fan in Homestead, put it all in perspective: "Some of these guys are in for a shock. Benito Santiago made \$3,700,000.00 last year. He just got offered \$200,000.00 by the Red Sox. He pays more than that for a car."⁵⁸ Only one scout showed up for the first workout.⁵⁹ Welcome to your free market.

C. *The Resolution of the Conflict*

In the early stages of this Article, I posited that because this conflict was between two parties who each had their own unique myopic macrocosmic response to conflict, the conflict would be fixed, rather than healed, in reaching resolution. Nothing underscores my theory more clearly than the fact that it was the court, not collective bargaining, that ended this particular facet of the ongoing conflict between the players and owners - the ultimate fix. And it is not over yet. Nothing is keeping the players from striking again this season, and noth-

55. Steve Marantz, *Reality Check*, THE SPORTING NEWS, Apr. 17, 1995, at 12.

56. Thomas Boswell, *Falling Stock Hits Free Agents Hard*, WASH. POST, Apr. 8, 1995, at C01.

57. *Id.*

58. *Id.*

59. *Id.*

ing is keeping the owners from locking the players out based on an issue at impasse - the salary cap.

Someone needs to begin to train these parties to react differently to conflict. The parties need to be able to see the opportunities inherent in their conflict instead of continuing to act out of the fear of the risks in the conflict. This is where we, as lawyers, come into the picture. As I have suggested, lawyers, up to this point, have done little else than to help the parties act on their fears instead of on their opportunities. Now it is time for us to take the responsibility to train our clients to respond to conflict by finding the opportunity component and utilizing it.

The most frustrating aspect of this whole analysis is that I have no answers as to how lawyers can accomplish this shift in thinking. For me, I will begin by attempting to fashion my own expansive macrocosmic response to conflict with the hopes of passing that skill to my clients. Lawyers have a duty to their clients of competent representation. Incompetence begins with ignorance. In this new era, lawyers - first as people and second as counselors - can ill afford to be ignorant of the dynamics of conflict. To do so would be to violate our own code of ethics. Frank Swoboda wrote: "In the end, it was the lawyers - America's favorite bad guys - who saved the 1995 baseball season."⁶⁰ Mr. Swoboda, as a lawyer in the new era, will never forget that we played a major role in putting it in jeopardy.

60. Swoboda, *supra* note 53, at H01.