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INTRODUCTION

At the height of the 1994-95 baseball strike, it seemed to many that baseball's labor battles were indeed spoiling America's national game.1 The

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Writing to The Denver Post, for example, Andre Fairchild framed the issue this way: "I have just three words for the outrageously overpaid professional baseball players: GREEDY, GREEDY, GREEDY!" FAX Forum, THE DENVER POST, Aug. 7, 1994, at H06, available in 1994 WL 8636433. At the time of the 1994 baseball strike, the contemporary
good old days, fans implored, were better. "The last time I attended a game, Al Kaline was playing. Today you can't afford the prices. I have seen the greatest: Greenberg, Williams, D'Maggio [sic] and Bob Feller." Baseball seemed "bound and determined to destroy what [had] taken 125 years to develop, what has brought so much enjoyment to millions of people of all ages ...." One fan summed it up quite

news media was replete with similar sentiment. Even the business writers got involved. Consider, for example, the Columbus Dispatch's "Instant Economist," who noted that it was "...hard to feel sorry for the millionaire owners and players who are behind it. At first glance, it looks like a simple case of greed run amuck, and it is." Ross LaRoe & John Charles Pool, Greed Is at Core of Baseball Strike, As Players, Owners Divvy Up Wealth, COLUMBUS DISPATCH, Aug. 27, 1994, at 2D, available in 1994 WL 7736173. To some members of the public, baseball's pursuit of dollars seemed to bespeak a moral breach: "Why single out baseball players as greedy, self-serving prima donnas, even if many of them are?... [Baseball players] surely don't stand alone, but they do reflect the gross obscenity of 'grabbing all you can get' with scant regard for anyone else.... Where in the world is our sense of values? What of equity and fairness?" Frank Broker, Don't Blame 'Heroes'; We Define Them by Worshipping Greed, MORNING NEWS TRIBUNE, (Tacoma), Washington, Sept. 3, 1994, at A10, available in 1994 WL 4625338. This article was in the "Religion" section.

When the dust settled, it was the players who bore the brunt of most of the public's antistrike sentiment. Thirty-two of the fifty-six fans who responded to a survey by the Lancaster (Pa) New Era blamed the players for the strike, while only seven blamed the owners. Commentary, LANCASTER NEW ERA, Lancaster, PA, Aug. 18, 1994, at C1, available in 1994 WL 7046994. Eleven fans blamed both the owners and the players. Callers to The Fresno Bee agreed: 67% sided with the owners in their dispute, while only seven respondents sided with the players. "Major league baseball players are the closest things to dirty, rotten scoundrels these days, according to a majority of BeeLine callers responding to a poll on the baseball strike." Telegraph, THE FRESNO BEE, Aug. 15, 1994, at A1, available in 1994 WL 8538997. As one Las Vegas baseball fan reportedly said: "The players are getting too much goddamn money." Marian Green & Jeff Scheid, Many Fans Fed Up at Season's Demise, THE LAS VEGAS REVIEW-JOURNAL, Sept. 15, 1994, at 1A, available in 1994 WL 4191243. A Cincinnati correspondent agreed, citing baseball's 7 work stoppages since 1972 to convince fans that baseball was no longer the "National Pastime," but just another entertainment product. Mark Purdy, Think of Reds as a Product, Not a Pastime, THE CINCINNATI ENQUIRER, Aug. 30, 1994, at B01, available in 1994 WL 6263645.


3 The sentiments of Lynn Thomas, Cypress, Texas in Letters to the Sports Editor, HOUSTON CHRONICLE, Sept. 11, 1994, at SPORTS 2, available in 1994 WL 4227145, who also bemoaned the fact that the game had been taken from the fans:

To quote Johnny Vander Meer from the book For the Love of the Game: The game has never belonged to the owners. It has never belonged to the ballplayers. It belongs to that guy who puts his money up on the window and says, 'How much does it cost to sit in the bleachers?' That is who owns baseball.
simply: "Years ago baseball was played for the sport of it. Now it seems that they are playing for the highest salary."\(^4\)

Unfortunately, our modern perception is that players during these earlier eras "were rewarded for their performance."\(^5\) These are the stars we today refer to as the "greats of baseball."\(^6\) It is they who played when baseball was "really a game."\(^7\)

There can be little doubt that Ty Cobb, Joe DiMaggio, Sandy Koufax, and Don Drysdale are names to which the phrase "greats of baseball" clearly applies, even though they played during different generations. Presumably, then, after outstanding seasons, these players should have "bettered" themselves as a result of the kind of performance that produced Hall of Fame statistics. Their season-after-season records suggest they would have little difficulty arriving at a new contract with their team.

Professionals agreed:

Ray Clark, general manager of The Marketing ARM, the Dallas division of the Memphis-based sports marketing firm Athletic Resource Management:

Baseball has failed to play off its history and what it's meant to America, said Mr. Clark. The result is that it is far less popular with younger generation, compared with basketball or football.


5 The apparent thoughts of Bob Foule of Fresno who reportedly indicated "I'd like to see them get back to basics-- getting paid for a job well done."" Telegraph, THE FRESNO BEE, Aug. 15, 1994, at A1, available in 1994 WL 8338997.

6 The words of Senator Leahy referring to the stars he recalled from days at Boston's Fenway Park. *Removing the Antitrust Exemption from Major League Baseball*, 141 CONG. REC. S5282 (Apr. 6, 1995) (statement of Sen. Leahy).

7 See Letters to the Editor, THE DETROIT NEWS, Aug. 13, 1994, at 12C, available in 1994 WL 5277195, where a fan wrote:

I grew up in Oakland a few miles from Forbes Field during the late '50s. It was quite a thrill to see the likes of Clemente, Maz, Virdon, Face, et al. playing baseball... I have since lost the love of the game. For today, it's not really a game, it's a business. A business that I don't understand.

*Id.*
Yet, at various points during their careers, Cobb, DiMaggio, Koufax and Drysdale all withheld their services as holdouts in labor disputes with their owners. While the dictionary definition of "hold-out" depicts a "person who withholds or delays cooperation or agreement," baseball historian Harold Seymour makes it clear that baseball's version of the uncooperative "holdout" connotes far more bitterness in the withholding of services than mere lack of cooperation. Review of the individual holdouts by Ty Cobb and Joe DiMaggio and the joint holdout by Sandy Koufax and Don Drysdale is instructive in showing how baseball dealt with acknowledged stars during several different generations.

While the individual stories of these holdouts are interesting in their own right, the import of their totality can only be seen in an historical context. The way in which major league baseball teams handled their holdouts was largely a reflection of the management style of Albert Spalding and William Hulbert, the founders of the National League. This management style continues through all three generations of these holdouts. Further, it extends into owners' dealings with the Major League Baseball Players' Association from its inception through the most recent strike. The holdouts, then, reflect a management style that has remained consistent through the history of professional baseball. It is a management style which helps explain the length and severity of the 1994-1995 baseball strike. It is a management style which, if not changed, is likely to continue to produce work stoppages at every future negotiation between owners and players.

THE HOLDOUTS
THE EARLY TWENTIETH CENTURY--TY COBB

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9 See HAROLD SEYMOUR, BASEBALL: THE GOLDEN AGE 174 (1971). One of the difficulties in understanding the actual issues confronting the enterprise of baseball is that money appears to be at the root of many disputes. In describing early holdouts, Seymour both demonstrates the bitterness of the baseball holdout and the fall into the money trap: A well-known pitcher, scoring a proffered $4000 salary representing an $800 raise, penciled a letter to his club owner in 1916 demanding $6000 and declaring that he wanted money, not the "glory" of pitching in the big leagues. He went on to express himself in terms worthy of a modern naturalistic novelist: "I see you want to give me a good fucking," but "I'll pick shit with the chickens before I'll play for any less.... Edward Grant, infielder and practicing attorney [said]: "you know ... as well as I that baseball is a business proposition. We are in it for what we can get out of it. As far as a raise goes of course that is what I want." Id. at 175.
Ty Cobb, whose major league career lasted from 1905-1928, and whose lifetime batting average of .366 constitutes the benchmark by which all other baseball players are judged, staged two significant holdouts.

After a relatively unspectacular, and brief, rookie season of 1905, in which he batted .240 with 36 hits in 150 at bats over 41 games, Ty Cobb's salary for 1906, his first full year in Detroit was between $1,500 and $1,800. Despite being the only under twenty-year-old who saw any significant major league action during the 1906 season, and despite substantial personal problems, Cobb responded with a team-

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10 See DAVID NEFT & RICHARD COHEN, THE SPORTS ENCYCLOPEDIA: BASEBALL, 94, 557 (13th ed. 1985). Cobb's lifetime average is .008 points higher than second place Rogers Hornsby and .010 higher than third place Joe Jackson. After those three, no player with at least 4000 at bats over at least 10 major league seasons has a career average above .350. See id. at 651. Cobb's total of 4,190 hits was surpassed by Pete Rose's 4,256, however, Rose took 14,053 plate appearances to accumulate those hits, while Cobb used only 11,436. See id. at 94, 557, 559.

11 See id. at 28.

12 Cobb was purchased by Detroit from Augusta in the "Sally" League for $750. See TY COBB & AL STUMP, MY LIFE IN BASEBALL: THE TRUE RECORD 22 (1961). During his rookie year of 1905, he was paid on the basis of a $1,500 per year contract, however, he only received the prorated share for the time he spent in Detroit. CHARLES ALEXANDER, TY COBB 32 (1984). In his autobiography, Cobb sets his 1906 salary at $1,800. COBB & STUMP, supra at 75. Biographer Alexander, however, indicates that the salary was $1,500. ALEXANDER, supra at 37.

13 See NEFT & COHEN, supra note 10, at 32-35 listing the rosters of the 1906 teams. Cobb's age is listed at 19. The only other 19 year old listed is Eddie Collins, who played in 6 games for the Philadelphia Athletics.

14 Just before being acquired from Augusta by Detroit in 1905, Cobb's father was killed in what Cobb described as a "gun accident." COBB & STUMP, supra note 12, at 52. Cobb's father was a professor and mathematics teacher in a number of Georgia towns. Id. at 32. He suspected his wife, Cobb's mother, of marital infidelity. After telling his wife he was going away for a few days, Cobb's father snuck back home and was killed trying to pry open his own bedroom window by a shotgun blast fired by Cobb's mother. A coroner's jury charged Cobb's mother with manslaughter. She was arrested and scheduled for trial in the spring of 1906. ALEXANDER, supra note 12, at 20-21. Trial was held in March, just prior to the 1906 season and Cobb's mother was acquitted of all criminal charges. See id. at 40-41.

In addition, after joining Detroit, Cobb faced substantial hazing by players on the team. He saw it as more than mere rookie hazing. In his words, what Cobb faced from Detroit veterans was done "with malevolent intent ... this feud was for keeps." Cobb wound up sleeping with a gun under his pillow. See COBB & STUMP, supra note 12, at 23-24. See also ALEXANDER, supra note 12, at 38-39 (who is unclear on whether the treatment was malevolent or appeared so because of Cobb's reaction to it).

Finally, shortly after joining Detroit, Cobb developed such severe tonsillitis that his tonsils had to be removed in sections. Afraid to report his condition to the team, Cobb chose
leading .316 batting average. Unfortunately, the Tigers finished in sixth place, 21 games behind league leading Chicago. Cobb, however, received a substantial raise for 1907, to $2,400. With a new manager, an assignment in left rather than center field, and prior personal problems under control, the twenty-year-old Cobb led the Tigers to the pennant and led the American League in average (.350), hits (212), runs batted in (119) and stolen bases (49). With this record, Cobb's self-assessment was: "After two years of working for Detroit at $1800 and $2400, I intended to be pushed around no longer."

Cobb rejected the proposed 1908 contract of $3,000 sent to him by Detroit owner Frank Navin. Word circulated that Cobb wanted $5,000 instead and a

a hotel doctor in Toledo to help him. That doctor removed Cobb's tonsils without anesthesia, in a series of operations. Thereafter, Cobb learned that the same doctor later checked himself into a hospital for the mentally impaired. See Alexander, supra note 12, at 41; Cobb & Stump, supra note 12, at 54-55.

15 Neft & Cohen, supra note 10, at 33. Cobb was the only Tiger to bat over .300. The team's batting average was only .242.

16 See id. at 32-33.

17 See Cobb & Stump, supra note 12, at 75; Alexander, supra note 12, at 49.

18 Hugh Jennings. See Alexander, supra note 12, at 49. Jennings attended Cornell law school (but did not graduate) and was admitted to practice law in Maryland and Pennsylvania. Id. at 50. He was elected to the Hall of Fame in 1945 by the Committee on Veterans. See Neft & Cohen, supra note 10, at 566.

19 Cobb was not considered a brilliant fielder. With 13 errors, Cobb had the lowest fielding average in the SALY league before being purchased by Detroit. Alexander, supra note 12, at 22. During his first year, Cobb cut in front of another outfielder causing the other to drop a fly ball. Cobb himself dropped three pop-ups in two games and was switched from center to left field. Id. at 35.

20 In March, 1906, Cobb's mother was acquitted of voluntary manslaughter for shooting Cobb's father. Id. at 41; see supra note 14.

21 Cobb was born December 18, 1886. See Cobb & Stump, supra note 12, at 32; Neft & Cohen, supra note 10, at 94.

22 Neft & Cohen, supra note 10, at 36. Detroit, however, lost the World Series to the Chicago Cubs 4-0 with Cobb batting a lowly .200. See id. at 39. "At twenty years and nine months, Ty Cobb was the youngest man ever to win a big league batting title." Geoffrey Ward & Ken Burns, Baseball: An Illustrated History 86 (1994).

23 Cobb & Stump, supra note 12, at 75. Cobb indicates that his league-leading performance in 1907 came when he was "19," see id., but that is clearly an error in calculation based on his admitted December, 1886 birth date. See supra note 21.

24 Alexander, supra note 12, at 63. There was some logic to Cobb's $5,000 demand. The World Series player's share from the 1907 World Series was $1,946 per player. When added to Cobb's $2,400 1907 salary, his total earnings for the year were $4,346. See id. at 61.
waiver of the club's right to reserve him. The public portion of Cobb's first major holdout shows the extent to which the team sought to control the contractual relationship:

First, Detroit claimed that it did not need Cobb because an outfield of Matty McIntyre, Davey Jones and "Wahoo" Sam Crawford would be the best in the American League.

Second, Detroit tried to place the blame for the impasse on Cobb, claiming he was being absurd, petty, ungrateful or was otherwise engaged in some similar

In sending a $3,000 offer to Cobb, Navin cited national economic problems in 1907. See id. at 64. The "Panic of 1907," as it was called, was partially blamed on increased enforcement by the Teddy Roosevelt administration of the nation's antitrust laws. Called the "rich man's panic," the economic downturn resulted in a 36% decline in the Dow Jones Industrial Average from March-November, 1907. Ultimately, the "panic's" most significant impact was on financial markets, and not on the nation's economy. It did produce proposals for a number of banking reforms, some of which formed the basis for later formation of the Federal Reserve System. See Panic Button Finally Triggers Reform, 1907, THE WALL STREET JOURNAL, Thurs. Feb. 16, 1989, available in 1989 WL-WSJ 481357.

Alexander indicates that Cobb made these demands. ALEXANDER, supra note 12, at 64. Cobb, himself, however, indicates that "down South, that winter, it reached the newspapers that I'd asked for $5000 and a three-year contract for 1908." COBB & STUMP, supra note 12, at 75. Cobb also indicates that "it was publicized" that he did not like the reserve rule. Id. Given Cobb's relatively junior status on the team, it seems unlikely he would have personally made his demands public; however, his biography makes no attempt to indicate the newspaper accounts were inaccurate, thus implying that he was the source of the information printed.

The three documents that made up the "reserve rule" during this era, (1) the standard player's contract, (2) the agreement whereby teams joined together to form a league, and (3) the rules of the national commission are best discussed in American League Baseball Club of Chicago v. Chase, 86 Misc. 441, 149 N.Y.S. 6 (Sup. Ct. 1914).

Cobb set out his rationale for these demands in his later autobiography:

If $5000 seems a meagre sum by modern standards to quibble over, keep in mind that Christy Mathewson was paid $6000 the year he won 37 games for the New York Giants, Cy Young never drew more than $3500 as the winningest pitcher of all time, Eddie Plank and Chief Bender worked for $4000 at their peak and Honus Wagner had to win five National League batting crowns before pushing his salary to $9000....

[A] .350 average and the fact that I'd established myself at low pay make it obvious that I wasn't acting in a fractious matter.

COBB & STUMP, supra note 12, at 76.

ALEXANDER, supra note 12, at 64; COBB & STUMP, supra note 12, at 76.
emotional overreaction.  

Third, Detroit pointed to the fact that virtually everyone else on the team had negotiated a 1908 contract in a friendly manner, "Why couldn't Cobb?"  

Fourth, Detroit claimed that Cobb's actions, if successful, would put the franchise on a slippery slope toward financial ruin. Cobb, therefore, was destroying effective team management.  

Fifth, Detroit attempted to get Cobb to rethink his position by using influential people to convince him to sign.  

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28 Detroit manager Hugh Jennings is said to have called Cobb's demand "absurd on its face." The Detroit Free Press reportedly indicated that Cobb had done well financially for his age and experience. Two Cobb teammates, who had a traveling vaudeville troupe during the off-season, incorporated into their act these words: "Why does Tyrus Cobb Tyrus?" ALEXANDER, supra note 12, at 64. In his autobiography, Cobb indicates that he considered giving up baseball, particularly since his family had never cared much for his playing:

Forget it, Tyrus, ... Navin has called you a fathead, a bluffer, a crab, dishonorable and a lot of other things. No Cobb has to take that from anyone....

My people were college-bred, they looked down on baseball as a low-life occupation and pleaded with me to chuck it all and enroll at a Southern university in medicine or law.

COBB & STUMP, supra note 12, at 76.

29 ALEXANDER, supra note 12, at 64. No other member of the team led the American league in any category, and only Sam Crawford, at .323, joined Cobb in batting over .300. See NEFT & COHEN, supra note 10, at 36. Crawford signed for 1908 for $4000. ALEXANDER, supra note 12, at 64.

30 As reported: "To allow him to bluff us would be to court a hold-up by every other player. It would disorganize our club in the future far more than Cobb's absence for a season could do. It puts a premium on being a crab ...." See COBB & STUMP, supra note 12, at 76. The same words are repeated in Alexander. See ALEXANDER, supra note 12, at 64.

31 According to Cobb, he was lured to Detroit by a telegram from a sportswriter indicating that if Cobb did not insist on a waiver of the reserve rule, the "question of salary will count little." Cobb read this to indicate the club would agree to $5000 if he compromised on his demand. When he did, the club responded that it had made no firm proposition to him and that he should come to Detroit to discuss his contract. See COBB & STUMP, supra note 12, at 77.

When he arrived in Detroit, Cobb held inconclusive meetings with Navin, and was then courted by former Detroit mayor George Codd and Michigan football coach Fielding Yost who urged Cobb to sign his contract. See id. at 78. See also ALEXANDER, supra note
Thereafter, Cobb signed a 1908 contract for $4,000 plus an $800 bonus if he batted over .300. He had "come within $200 of [his] demand, which was victory enough."32 Batting .300 or better was not much of a contingency for Cobb. He batted .324 in 1908, again leading the American League.33 He signed for the 1909 season at the same salary as 1908,34 and led the American League yet again in batting with an average of .377.35 Detroit appeared in its third consecutive World Series in 1909 and suffered its third straight defeat, losing to Pittsburgh four games to three.36 Detroit rewarded Cobb with a three year contract at $9,000 each year, putting him into the upper echelon of baseball stardom.37

12, at 65.

32 COBB & STUMP, supra note 12, at 81. There is disagreement on the way the negotiation was conducted. Cobb claims that after Navin refused Cobb's $5,000 for one year with no reserve clause offer, Cobb went back to Georgia and that Navin later offered $4,000 plus an $800 bonus if Cobb batted .300 and fielded .900. Id. at 80-81. Alexander indicates that Navin and Cobb came to agreement after two sessions on the same day. ALEXANDER, supra note 12, at 65.

33 See NEFT & COHEN, supra note 10, at 40.

34 ALEXANDER, supra note 12, at 75.

35 NEFT & COHEN, supra note 10, at 44. He also led the league in home runs, with 9, in steals, with 76, and runs-batted-in with 109. See id.

36 Id. at 47. The 1908 World Series was almost a repeat of the 1907 affair with the Chicago Cubs beating Detroit soundly, four games to one. Cobb batted .368. See id. at 43. The 1909 Tigers team thus fared better in winning three games. Cobb, however, batted only .231. See id. at 47.

37 See ALEXANDER, supra note 12, at 85 (noting that only Honus Wagner was making more money). It is interesting that Detroit should raise Cobb's salary just two short years after indicating that the club did not need him to have the best outfield in the American League. Compare supra note 28 and accompanying text. Or, does this make the point that resolution of Cobb's 1908 holdout was not about money--but about who was in charge in this employer/employee relationship?

In his autobiography, Cobb not only fails to mention a three-year contract, but seems to suggest an altogether different contract arrangement. First, Cobb indicates that before 1910, he had been earning about $4,500 per season. COBB & STUMP, supra note 12, at 103. This, of course, conflicts with Cobb's earlier agreement to the fact that his salary was $4,000 plus an $800 bonus for hitting above .300. Id. at 81. Cobb then indicates that after earning $4,500, he demanded a $10,000 salary and had to hold out for 14 days of the 1911 season in order to obtain it. Id. at 103. The record, however, indicates that Cobb played in 146 of Detroit's 154 games in 1911. NEFT & COHEN, supra note 10, at 52. Cobb says that during his holdout, Detroit had to play an infielder, Oscar Vitt, in Cobb's outfield spot and that the team "began to blow games left and right." Again, the record does not support Cobb's version. In 1911, Detroit began the year as a hot team." Id. Oscar Vitt's major league career ran from 1912-1919. See id. at 108. He first played for Detroit in 1912, appearing in 27 games as an outfielder, 24 games at third base, and 15 games at second base. Cobb played as an outfielder in 140 of Detroit's 153 games in 1912. Thus, Vitt played in the outfield for players
Cobb responded by repeating as American League batting champion in each of the years of the contract.\textsuperscript{38}

The 1910 batting championship was the most noteworthy. Automobile manufacturer Hugh Chalmers offered a new Chalmers "30" automobile to the batting champion. Napoleon Lajoie, who was no longer managing the Cleveland American League team, and Cobb engaged in a season-long struggle. By the final day, Lajoie needed to be virtually perfect at the plate in a doubleheader against the St. Louis Browns to catch Cobb's .384 average. Evidently, the St. Louis players took matters into their own hands, largely because of their universal dislike for Cobb. The Browns' manager instructed his third baseman to play at the edge of the outfield grass whenever Lajoie batted, enabling Lajoie to obtain six consecutive bunt singles and thus bat safely 8 times out of 9 for the day. Lajoie's ninth at-bat resulted in a fielder's choice, and one of the St. Louis coaches attempted to bribe the scorekeeper by offering a new suit if the scorekeeper would record a single for Lajoie. Following investigation, American League President Ban Johnson allowed Lajoie's 8-9 batting to stand, but closer examination of the season's batting championship still showed Cobb with an average of .384944 to Lajoie's .384084. Chalmers eventually awarded cars to both players. \textit{See id.} at 94-96; \textit{SEYMOUR, supra} note 9, at 285-86. Some sources, however, still credit Lajoie with the batting title. \textit{See NEFT & COHEN, supra} note 10, at 48-49 (showing Cobb at .382 and Lajoie at .383). These figures are likely based on research done in 1981 by \textit{The Sporting News} and the Society for American Baseball Research, which found that the original calculations had mistakenly credited Cobb with a two hits out of three at-bat performance in September in the second half of a doubleheader when, in fact, Detroit only played one game. Neither Major League Baseball nor the National Baseball Hall of Fame, however, have been willing to adjust the findings. \textit{See ALEXANDER, supra} note 12, at 96 n. 20.

The 1911 and 1912 batting titles were anticlimactic, in comparison. In 1911, Cobb batted .420, leading the league in runs (147), hits (248), doubles (47), triples (24), runs batted in (127), slugging percentage (.621), and stolen bases (83). "Shoeless" Joe Jackson of Cleveland finished second, batting a mere .408. \textit{NEFT & COHEN, supra} note 10, at 52. \textit{See also ALEXANDER, supra} note 12, at 101, also indicating that it was Cobb's highest average ever and that Cobb won another Chalmers automobile, this time for being chosen Most Valuable Player by a group of sportswriters. The practice of awarding an automobile for the batting champion was eliminated following the questionable ending to the 1910 race. \textit{See SEYMOUR, supra} note 9, at 286. In 1912, Cobb batted .410, leading the league in hits (227) and slugging percentage (.586). Jackson was again second, batting .395. \textit{See NEFT & COHEN, supra} note 10, at 52-53. \textit{See also ALEXANDER, supra} note 12, at 108-09.
For the '913 season, after six straight batting titles, Cobb wanted $15,000.\textsuperscript{39} By this time, Cobb was an established baseball star. Yet, in dealing with this second major holdout, Detroit adopted a multifaceted approach that was remarkably similar to the one employed in 1908.\textsuperscript{40}

First, Detroit took the position that Cobb was not an important member of the team. According to one team spokesperson, Cobb's "absence is really not as great a blow to the club as [Catcher Ed Sweeney's] was to the [New York] Highlanders last year."\textsuperscript{41} The view of the Detroit club was apparently expressed by The Sporting

\textsuperscript{39} This figure comes from two sources. See ALEXANDER, supra note 12, at 110; SEYMOUR, supra note 9, at 176. Cobb himself claimed that he sought $12,000, an amount close to what he ultimately received. See COBB & STUMP, supra note 12, at 104. Again, however, Cobb's own record is likely flawed. As noted by Seymour, a renowned baseball historian:

Cobb's emotional symptoms became increasingly pronounced with age. Stump, who moved in with him to collect information for Cobb's book, later wrote a magazine article vividly describing the last terrifying ten months of the former star's life. Cobb, racked with numerous serious diseases, subsisted on pills, medicines, and liquor, taking practically no food when he should have been dieting carefully. The book that Cobb dictated to Stump during this pathetic period, aside from being a maze of contradictions, was filled with attempts at self-justification ....

SEYMOUR, supra note 9, at 111. Because Cobb later indicates that Navin gave into Cobb's $12,000 demand, this seems like just such an attempt. COBB & STUMP, supra note 12, at 106.

\textsuperscript{40} Seymour indicates that Cobb held out as part of a "holdout clique" of four unsatisfied Detroit players, another of whom was Hall of Famer Sam Crawford. See SEYMOUR, supra note 9, at 176. All of these players, except Cobb, however, were signed by spring training. See id. Therefore, it would not seem that these members of the group can realistically be called "holdouts." Alexander indicates that Detroit management blamed Cobb for salary difficulties with Crawford and pitcher Jean Duboc, whose 1912 record was 17-10, the best on the Detroit team, but Alexander does not refer to the others as "holdouts." See ALEXANDER, supra note 12, at 111. See also NEFT & COHEN, supra note 10, at 57. Cobb does not mention the others at all.

That Cobb would hold out was forecast by Cobb himself at least a year before the 1913 holdout. In a January, 1912 newspaper article, Cobb refused to squelch rumors that he would seek a $50,000 three-year contract following the expiration of his existing contract at the end of the 1912 season. See $50,000: Ty Talks of 3-Yr. Contract, THE DETROIT NEWS, January 5, 1912, a: 22.

\textsuperscript{41} Ty Automatically Suspended When Fails to Report, THE DETROIT NEWS, April 11, 1913, at 30. The Highlanders were so named because their home ballpark set on one of the highest points on Manhattan island. By 1913, however, the team was termed the "Yankees" largely through the efforts of Jim Price, sports editor of The New York Press, who could not fit "Highlanders" into newspaper headlines. See FRANK GRAHAM, THE NEW YORK
News, which reportedly claimed in May, 1913: "Ty Cobb's most glorious years are behind him."

Second, Detroit tried to blame Cobb, claiming that he was responsible for the club's contract difficulties with other players. Detroit President Navin reportedly claimed that "Cobb is becoming a real threat....He may or may not belong on our team." Third, when the other holdouts signed, the club made it clear that Cobb was no different. Pointing out that Cobb had been offered more than any other non-manager player, the club reportedly indicated: "He will have to come to the office just as Crawford, Duboe and the other players with whom we have had salary difficulties."

Fourth, the club indicated that Cobb's actions, if successful, would result in potential financial disaster for the Detroit club.

Finally, when Detroit President Navin invited Cobb to Detroit to discuss his contract situation, Cobb was met by an old friend whose acting company was appearing in Detroit. This friend visited with Cobb after the initial meeting with Navin and chauffeured Cobb to the Tigers' offices where an agreement to pay Cobb $12,000 was reached.

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YANKEES 8, 16 (1947). Sweeney is not mentioned in Graham's history of the Yankees. See id. His holdout is not mentioned in Harold Seymour's discussion of turn of the century holdouts. Compare SEYMOUR, supra note 9, at 174-78.

42 See ALEXANDER, supra note 12, at 113.

43 Id. at 111. The players included hall of famer "Wahoo" Sam Crawford and at least two others. Harold Seymour equates this holdout with the later joint efforts of Sandy Koufax and Don Drysdale. See SEYMOUR, supra note 9, at 176.

44 COBB & STUMP, supra note 12, at 105.


46 ALEXANDER, supra note 12, at 111. The team's poor 1912 showing was blamed for a lack of resources to pay increased salaries. Cobb indicates that a Detroit writer, Hugh McKinnon, reportedly took issue with this in writing: "In Detroit, Navin is doing such a box-office that he upped Bennett Field from 11,000 to 14,000 capacity and currently is ripping out the old wooden stands and building a concrete single-decker seating 23,000." COBB & STUMP, supra note 12, at 105.

47 ALEXANDER, supra note 12, at 113. This holdout also produced one of the first Congressionally attempted inquiries of organized baseball. Cobb claims to have received a telegram from Senator Hoke Smith of Cobb's home state of Georgia seeking a copy of Cobb's contract, including the reserve clause, for investigation as to whether it violated federal law.
As had become his custom, Cobb won another batting title in 1913.\textsuperscript{48} He

\textit{See Cobb & Stump, supra} note 12, at 105. At least one member of Congress, also from Georgia, joined in the call for Congressional inquiry under the Sherman Anti-Trust Act and ultimately, a resolution was introduced calling upon Congress to appoint a seven-person commission to investigate the baseball trust. \textit{See Seymour, supra} note 9, at 176-77. Cobb believed that it was this threat of investigation that caused the Tigers to invite Cobb in for serious negotiations, which resulted in Cobb’s acceptance of a one-year $12,000 contract. \textit{Alexander, supra} note 12, at 112-13. Cobb claimed that he was only seeking $12,000 and that Navin capitulated in this demand. "If he hadn’t capitulated, I’d have sued the Detroit club and Organized Ball. With Hoke Smith’s Senatorial friends behind me, I couldn’t have lost." \textit{Cobb & Stump, supra} note 12, at 106. In historical hindsight, both Cobb’s claim and boast seem like revisionist history.

The baseball press, including The Sporting News, was steadfastly against any congressional investigation, claiming that Congress had far better things to do. \textit{See Seymour, supra} note 9, at 177.

When Cobb finally signed, he reportedly told the world: "This is my last holdout." \textit{Alexander, supra} note 12, at 113. Cobb later claimed that he was a holdout in 1914 after being offered $100,000 for three years with the then upstart Federal League. Cobb claimed that Detroit owner Navin was so concerned that Cobb would jump to the Federal League that telegrams to Cobb were intercepted and read by Navin. When Cobb found out, he constructed a somewhat elaborate ruse to get Navin to pay him $15,000 in a three year deal. \textit{See Cobb & Stump, supra} note 12, at 107-11. Alexander attributes this story to Cobb’s later falling out with Navin and claims that Cobb and Navin had agreed by November of 1913 to a $15,000 contract for Cobb in 1914 and that Cobb had released a letter praising Tiger management. \textit{Alexander, supra} note 12, at 116.

Cobb’s 1913 holdout was different from earlier ones in that it extended about two weeks into the season. As a result, his salary was prorated to $11,332.55. Because he missed the beginning of the season, Cobb had been declared ineligible by the American League and, before he was able to rejoin the Tigers, he was assessed a $50 fine and warned along with other players against such conduct in the future. \textit{See Alexander, supra} note 12, at 113. American League president Ban Johnson recognized, however, that Cobb was valuable to both the American League and baseball, and ordered his immediate reinstatement, despite possible later sanction by the then National Commission. \textit{See Ban Suspends Rule to Let Cobb Return, The Detroit News, April 27, 1913, at Sports 1.} Cobb was severely criticized by the baseball press for his holdout, with the prestigious Sporting News reportedly claiming that Cobb had done more than any other person to allow baseball’s attackers an opportunity to disparage the game. \textit{See Alexander, supra} note 12, at 113.

\textsuperscript{48} In 1913, Cobb started slowly, because of a cold, but had moved his batting average above .400 by the end of July, eventually overtaking Joe Jackson in September and winning the batting title .390 to Jackson’s .373. The season was not, however, one of Cobb’s best as he played only 122 games, his fewest since 1906 and his stolen base total of 51 was his lowest since 1908. Slugging average, where Cobb finished second to "Shoeless" Joe, was the only other offensive category in which Cobb was among the leaders. \textit{See Alexander, supra} note 12, at 115. \textit{See also Neft & Cohen, supra} note 10, at 61.
followed with similar performances in 1914, 1915, 1917, 1918, 1919, and 1921.49

THE DEPRESSION AND PREWAR YEARS--JOE DIMAGGIO

Joe DiMaggio was a perennial holdout.

Purchased by the Yankees in 1934 for $35,000 and five players from the Pacific Coast League's San Francisco Seals, DiMaggio came to the Yankees as something of a bargain. Stepping from a bus in 1933, DiMaggio had torn the cartilage in his knee. Most professional baseball observers agreed that a young player with a bad knee was not worth the risk and DiMaggio's injury apparently scared fifteen of the sixteen major league teams. Only the Yankees were willing to take a chance.50 The Yankees conditionally purchased DiMaggio's Seals' contract, but elected to have their 20 year old purchase remain with the Seals for the 1935 season, in order to insure themselves that DiMaggio's knee was ready for everyday play.51 DiMaggio proved that his injury was healed in his 1935 campaign with the Seals, playing in 172 games, batting .398 with 34 home runs. He was named the Pacific Coast League's Most Valuable Player, as the Seals won the PCL pennant.52

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49 See ALEXANDER, supra note 12, at 65, 72, 81, 85, 89, 129.
51 DURSO, supra note 50, at 42; He'll Know by His Knee, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 30; Yank Rookie Took Helping Brother's Job, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 31. At the beginning of the 1935 season, DiMaggio had only two years in professional baseball. In 1933, he had astounded the Pacific Coast League with a 61 game hitting streak as an 18-year-old. He also batted .340 in 187 games with 28 home runs and 169 runs-batted-in. He also put fans in the stands and, as a result, money in the coffers of the Seals. See DiMaggio Stops at 61, Mob Charges Scorer, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 25; Boy Ball Star Thrills Coast, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 27; RED SMITH, Quarterback and Outfielder, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 29. In 1934, because of a knee injury, DiMaggio played in only 143 games, batting .341.

In the event DiMaggio did not recover, the deal with the Yankees would terminate. See He'll Know by His Knee, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 30.
52 See DURSO, supra note 50, at 43. Even with his .398 batting average, he still lost the batting title by a point to Oscar Eckhardt. See Daniel's Dope, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 41. It must have been Eckhardt's "career" year, as his major league experience reveals that he played with the Boston Braves in 1932 and the Brooklyn Dodgers in 1936, appearing in a total of 24 major league games and amassing a lifetime batting average of .192. He also played professional football in 1928. See NEFT & COHEN, supra note 10, at 234.

One source indicated that DiMaggio's recovery was aided by discussions with Ty Cobb, who had suffered a severe knee injury in 1919. Cobb, who was friends with Seals'
The estimate of baseball writers was that DiMaggio had been paid $4,500 in his final year with the Seals, although there may have been some additional non-contract bonuses. "Pursuant to baseball law, the Yankees apparently gave Joe the required 25 per cent increase of $1,125 and sent him a contract for $5,625." Despite the fact that he was the property of the Yankees and could play in no other professional league, DiMaggio refused the Yankee offer and held out. "[T]he most ballyhooed rookie" in some time reportedly wanted at least $8,000. The Yankees president Charles Graham, had worn "the heaviest boots he could buy, and loaded the soles with lead strips" to wear during the off-season. See Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 34. He also started the following season wearing extra-heavy spikes, until his knee apparently healed. Cobb apparently suggested this cure to DiMaggio. Id. In his biography of Cobb, Charles Alexander indicates the knee injury took place in 1920, and does not mention Cobb's hunting in heavier boots. See Alexander, supra note 12, at 148-53.

There were other meetings between Cobb and DiMaggio. Prior to the 1937 campaign, DiMaggio received tutoring from Cobb on hitting, including advice to use a lighter bat later in the season. See DiMaggio to Follow Advice of Cobb and Shift Scheme of 1937 Campaign, in 1 The DiMaggio Albums, supra note 50, at 131.

While it would thus seem logical the pair would have discussed their apparent agreement on the "business" side of baseball, the evidence does not suggest they were friends. In fact Cobb is said to have criticized DiMaggio for letting "himself get out of shape in the off-season and consequently suffered more injuries than he should." Alexander, supra note 12, at 224. Cobb also did not include DiMaggio on his all-time all-star team, indicating that DiMaggio (as well as other modern stars "Stan Musial, Mickey Mantle, Ted Williams, Willie Mays and Duke Snider") would be unable to compete with the stars of his own generation. See Cobb & Stump, supra note 12, at 270.

Nonetheless, the comparison between Cobb's annual dealings with Detroit management and DiMaggio's dealings with the Yankees reveal some remarkable similarities. 3 See Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 44.

4 See Roger Birtwell, "Timid" DiMaggio Refuses to Sign Yankee Contract in 1 The DiMaggio Albums, supra note 50, at 44.

5 Id. The Yankees had already turned down a $35,000 profit for DiMaggio, when the Boston Red Sox offered to purchase the rights to sign him before he ever reported to the Yankees. Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 35.

In his biography, Joseph Durso indicates that DiMaggio was advised "to drive a hard bargain" by his brother Tom, who insisted on a payment of $8,500. Durso, supra note 50, at 69. This figure was confirmed at the end of the 1936 season before negotiations for 1937 began. See Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 119, (who reports this number as a record for first year players).

With customary reserve Pacific Coast League baseball writers tell me Joe DiMaggio is the best ball player ever developed out there. "Offhand I would say there is only one finer ball player alive, and his name is Charley Gehringer," says Tommy Laird, sports editor of the San Francisco News.
claimed DiMaggio had too many financial advisors. The Yankees also made it clear they wanted to satisfy their prospect, as they apparently came close to his demand even before spring training.

Despite intense media pressure, DiMaggio made a successful transition to

"Di Maggio is likely to kill an opposing infielder at any time," asserts Gene Coughlin, of the Los Angeles Post-Record.

"Di Maggio has the strongest and most accurate arm since Long Bob Meusel," testifies Bob Cronin, of the Los Angeles Illustrated Daily News.

"Di Maggio never makes a mistake on the bases," says Rudy Hickey, of the Sacramento Bee.

"You've seldom seen a more accomplished flychaser," reports Cliff Harrison, of the Seattle Star.

"Di Maggio plays ball with grim intensity," asserts Billy Stepp, of the Portland News-Telegram.


One must assume that DiMaggio's reported ability to kill an opposing infielder at will relates to the strength of his line drives.

Throughout his early career, the spelling of DiMaggio's last name varies. One story attempted to resolve the issue, without apparent success:

It's all settled now how to spell the name of Joe Di Maggio, sensational young hitter of the Seals. It has been printed "DeMaggio" and "de-Maggio," but it develops that both are wrong. The correct spelling is Di Maggio and that fact was only learned when [Seals] Vice-President Charley Graham was making arrangements to have Joe's name engraved on the gold watch presented to him for breaking the league's record for hitting in consecutive games.

Joe signed his contract as DeMaggio, but his older brother, who witnessed the signature, signed Di Maggio, so Graham asked Joe: "How do you really spell your name?"

"Spell it any old way," said Joe.

*It Should Be Di Maggio*, in 1 THE DiMAGGIO ALBUMS, supra note 50, at 23.

56 *Daniel's Dope*, in 1 THE DiMAGGIO ALBUMS, supra note 50, at 44.

57 See Di Maggio, *Outfield Recruit, Wires Acceptance of Terms to Yankees*, in 1 The DiMaggio Albums, supra note 50, at 45. DiMaggio was signed in time to be able to leave his West Coast home and drive to spring training in February of 1936 with established Yankees, Frank Crosetti and Tony Lazzeri. *Durso*, supra note 50, at 43. See also *Joe Di Maggio Going to Camp Ahead of Yanks*, in 1 THE DiMAGGIO ALBUMS, supra note 50, at 46.

58 See *Di Maggio Comes Up With Two Strikes on Him as Innocent Victim of Lavish Newspaper Ballyhoo*, in 1 THE DiMAGGIO ALBUMS, supra note 50, at 38 (in which the headline writer sums up the hype this way: "Fans Expect Recruit from Coast to Be Cobb,
the major leagues. In 1935, the Yankees, without Babe Ruth, had finished three full games behind American League, and eventual World Series winner Detroit. Yankee President "Colonel" Jacob Ruppert did not see the Ruth-less 1936 Yankees as doing any better.

Picked by their President to finish no better than a runner-up, the 1936 Yankees completed a spectacular season by beating the cross-town rival New York Giants four games to two in the World Series. Joe DiMaggio became not only the first rookie to start an all-star game, but he was called the "idol" necessary to replace Ruth and galvanize "the team into a championship band." Individually, DiMaggio batted .323 with 29 home runs and 125 runs batted in. He tied for the

Ruth, Jackson in One.".

59 The Yankees had given Ruth his unconditional release before the 1935 season. See Graham, supra note 41, at 203. Beginning in 1922, Ruth had earned at least $52,000 per year (a thousand dollars a week is what Ruth wanted) with the Yankees. Robert Smith, Babe Ruth's America 119-20 (1974). By 1934, however, with his skills on the wane, Ruth's salary had decreased to $35,000. Id. at 269. For 1935, the Yankees offered Ruth only a conditional contract, calling for payment of $25,000. Id. at 282. The contract was conditioned on Ruth proving during spring training that he could return to a shell of his former self. Graham, supra, note 41, at 201-02. Ruth signed with the Boston Braves for the 1935 season as player-coach. Id. at 202-04; Smith, supra at 282. At age 40, he hit just .181 in 28 games, with 13 hits (six of them home runs) in 72 at bats. Neft & Cohen, supra note 10, at 186.

60 Neft & Cohen, supra note 10, at 184, 187.

61 Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 119. Those who wrote about the Yankees in spring training agreed with this assessment. See id.

In fairness to Detroit, their 25 year-old star, Hank Greenberg, who batted .328 with 36 home runs and 170 RBI's in the 1935 championship season, was sidelined for most of the 1936 season, breaking his wrist and playing in only 12 games (he did have 16 RBI's in those 12 games, however). Neft & Cohen, supra note 10, at 184, 188.

62 See Neft & Cohen, supra note 10, at 191. DiMaggio collected another $6,430.55 as his share for winning the World Series. Durso, supra note 50, at 91.

63 See 18 Will Make Bow Tuesday in Star Game, in 1 The DiMaggio Albums, supra note 50, at 91. On the same page, the Official Score Card of the game shows DiMaggio starting in right field and batting third for the American League, while also showing National League rookie Stu Martin as a substitute on the National League roster. The game was not a pleasurable experience for DiMaggio. He went 0-5 in the game, hit into a double play in the first inning, missed a shoestring catch in the second inning that allowed one run to score and set up another run, and made the game's lone error in the fifth that set up the National League's winning run. See Pitching Carries N.L. All-Stars to First Triumph in 1 The DiMaggio Albums, supra note 50, at 92-94.

64 James Isaminger, Tips from the Sport Ticker, in 1 The DiMaggio Albums, supra note 50, at 97.
American League lead in triples with 15. Though a rookie, DiMaggio was touted as the player who made the Yankees a first place ballclub. He was, in most estimations, "a star after only one season."

Despite his success, DiMaggio was offered the then standard Yankee contract for the 1937 season—one equal to his 1936 salary. Sportswriters viewed this as only an opening gambit and assumed that the Yankees would ultimately pay DiMaggio $15,000 for his second season. DiMaggio held out for $17,500. Again, DiMaggio was said to be "ill-advised." Following a threat to all Yankee

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65 See Neft & Cohen, supra note 10, at 188. DiMaggio tied in triples with Yankee teammate Red Rolfe. Id. One source indicated that there was no contemporary research on the player with the best first-year average: "Before DiMaggio came along Rogers Hornsby and Al Simmons were considered the best right-handed hitters of recent years. Hornsby's first complete season in the majors was 1916. He played in 139 games for the Cardinals and batted .313. Simmons batted .308 in 1924, his first season with the Athletics." Edward T. Murphy, DiMaggio's Average Mounts, in 1 The DiMaggio Albums, supra note 50, at 99.

66 See Daniel's Dope, in 1 The DiMaggio Albums, supra note 50, at 119. This source also indicated that DiMaggio went back to California following the World Series with a three-year contract calling for payment of $15,000 for each of those years. See id.

67 DiMaggio Wins Over Skeptics in Rival League, in 1 The DiMaggio Albums, supra note 50, at 118.

68 See Yankees Renew Effort to Satisfy DiMaggio, in 1 The DiMaggio Albums, supra note 50, at 124. This source indicates that the Yankee practice was one that had developed a number of years before the 1937 season. See id.

69 Durso, supra note 50, at 94; DiMaggio's Unsigned Contract Lands Back in Yankee Office, in 1 The DiMaggio Albums, supra note 50, at 126. DiMaggio was not alone. The 1936 World Series victory apparently caused other Yankee stars to inflate their salary demands for 1937. Also holding out were pitchers Red Ruffing and Lefty Gomez, as well as outfielder Jake Powell. The most celebrated of the holdouts, however, was Lou Gehrig, who had been offered $31,000 to play in 1937, but wanted $50,000. "I yielded to the Colonel's [Yankee owner Colonel Jacob Ruppert] wishes during the depression years, and now that recovery is well on its way, as the past season's near-record attendance indicates, I feel I am only asking what I believe to be my value to the club." Five Revolters Warned To Get Into Line or Quit!, in 1 The DiMaggio Albums, supra note 50, at 128.

70 This advice was apparently "ill-given" to DiMaggio by his brother Tom. See Durso, supra note 50, at 94. The "ill-advised" statement was attributed to owner Ruppert in Five Revolters Warned To Get Into Line or Quit!, in 1 The DiMaggio Albums, supra note 50, at 128.

In another report, Yankee business manager Ed Barrow indicated that he had received a pleasant letter from DiMaggio and that the Yankees would have no difficulty satisfying their sophomore star. DiMaggio's Unsigned Contract Lands Back in Yankee Office, in 1 The DiMaggio Albums, supra note 50, at 126.
holdouts "to sign at a reasonable figure or suffer the consequences,"71 DiMaggio agreed to a 1937 contract the day before the first spring training exhibition game. DiMaggio's deal reportedly equalled the $15,000 the Yankees originally contemplated.72

Although injuries plagued him early in the season,73 DiMaggio was again a starter in the 1937 All-Star game.74 DiMaggio helped the Yankees capture another World Series championship,75 batting .346, second on the Yankees behind Lou Gehrig's .351. DiMaggio also hit a league-leading 46 home runs while compiling a

71 Five Revolvers Warned to Get Into Line or Quit!, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 128. While this statement is attributed to Colonel Ruppert, it would also appear that Ruppert was trying to walk softly in dealing with DiMaggio: "I can understand how a man and his employer can be a few thousand dollars apart on a single year's salary...." Id. The real threat was to Lou Gehrig, who had been offered $31,000, but wanted $50,000. Id. "But when a man asks $19,000 a year more, that's another thing." Id. Gehrig argued that the team had not needed a substitute at first base for 12 years with the result that the club was able to sell three first basemen for a reported $105,000. Id. "In the first place, it's none of Gehrig's business what I do with my ball players," was Ruppert's response. Id.

72 See DiMaggio in Fold at Record $15,000, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 129. The salary reportedly set a record for second-year players and made DiMaggio the highest paid Yankee outfielder. DiMaggio biographer Joseph Durso indicates that the $15,000 figure may only have been a public relations victory for the Yankees, because DiMaggio later suggested that he signed for a figure closer to his demand of $17,500. DURSO, The Last American Knight, supra note 50, at 94. This makes sense in light of the Yankees' difficulty in inking Gehrig to a 1937 deal.

It is Durso who reports that DiMaggio signed the day before the first exhibition game. Id. He did not play in any exhibition games until March 19. See Di Maggio to Follow Advice of Cobb and Shift Scheme of 1937 Campaign, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 131.

73 JOE DIAMAGGIO, Home Run Crown, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 121. ("From the day I reported to spring training ..., my arm bothered me. I couldn't throw without pain."). Originally it was thought the arm was just sore and would work itself out with warmer weather. Di Maggio Arm Causes Worry, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 135. Later, specialists determined that the problem was caused by enlarged tonsils. See Charles Segar, Di Maggio Faces Tonsil Operation, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 136; Decide to Operate On Joe DiMaggio, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 137. That operation was only partially successful as DiMaggio had further difficulty. See DiMaggio Arm Again Causing Yanks Concern, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 139. Thereafter, this ailment is not discussed.

74 See Two Plays in One Innings That Snuffed N.L. Chances, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 148. He was 1-3, with a single in the third inning that preceded Lou Gehrig's home run. Id. at 150-51.

75 See Yanks, With Gomez, Top the Giants, 4-2, and Capture Series, in 1 THE DIAMAGGIO ALBUMS, supra note 50, at 174.
league-leading slugging percentage of .673.\textsuperscript{76} In his first two years with the Yankees, DiMaggio amassed a .335 batting average with 421 hits in 1258 at bats during 289 games. He also hit 75 home runs and batted in 192 runs.\textsuperscript{77} By comparison, Gehrig, a non-starter his first two years with the Yankees, did not amass 1000 at bats until 1926.\textsuperscript{78}

In a poll of 247 baseball writers to pick an all-star team for the 1937 season, DiMaggio received 245 votes, more than any other player.\textsuperscript{79} Perhaps as a result of his outstanding 1937 season, DiMaggio did not expect any difficulties in negotiations with the Yankees for the 1938 season.\textsuperscript{80} While he had definite ideas about what he thought he was worth,\textsuperscript{81} DiMaggio reportedly believed "that his salary expectations

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\textsuperscript{76} Neft & Cohen, supra note 10, at 192.
\textsuperscript{77} Id. at 188, 192. In the three years prior to the arrival of DiMaggio, New York had not won the American League pennant, finishing second in all three years; to Washington in 1933 and to Detroit in 1934 and 1935. Id. at 176, 180, 184. The Yankees regained the American League pennant in DiMaggio's rookie year of 1936 and also won again in 1937. Id. at 188, 192.

Stan Musial came close to DiMaggio's incredible start. Musial played only 12 games in 1941, batting .426 (20 hits in 47 at bats). Id. at 210. In the next two seasons, Musial batted .315 in 1942 (147 hits in 467 at bats) and .357 in 1943 (220 hits in 617 at bats). Id. at 214, 218 (while leading the Cardinals to pennants in both 1942 and 1943). Musial, however, had only 24 home runs and 160 runs-batted-in during his first 3 seasons. Id. at 210, 214, 218 (combined numbers less than DiMaggio's totals for 1937 alone).

\textsuperscript{78} By then, he had been in the league four years and his numbers showed 1047 at bats, 308 hits, 39 home runs, 197 runs batted in. See id. at 188, 192, 196.

\textsuperscript{79} Two Experts Slight Di Mag, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 186. There was some surprise that two writers left DiMaggio off their ballot. He was voted "Player of the Year" by New York's baseball writers. DiMaggio Wants Big Increase but Withholds Demand Till Yanks Make Offer, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 189.

\textsuperscript{80} See Star Sees No Trouble In Arriving at Terms, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 190.

\textsuperscript{81} DiMaggio Wants Big Increase but Withholds Demand Till Yanks Make Offer, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 189. The title is actually misleading because the article does not mention DiMaggio's expectations. Rather, DiMaggio indicated that he did not want to publicly discuss salary figures in light of the fact that the Yankees had not yet sent out proposed 1938 contracts.

DiMaggio also attempted to deflect any comparison between his salary and that of Lou Gehrig. Asked whether he expected to get as much as Lou Gehrig is receiving or "somewhere near" Lou's reported $36,000, Joe replied:

'No. Lou's figure doesn't enter into this thing at all and frankly I don't even know what Gehrig is getting beyond what has been mentioned in the papers. That's really none of my business and my negotiations with
are so rational that even so shrewd an organization as [the Yankees] will lose no time in clinching the deal before Giuseppe has a chance to develop fancier notions.\footnote{82}

The first signs of acrimony surfaced following the Yankees' offer of $15,000, (DiMaggio's 1937 salary), and DiMaggio's counter-demand of $40,000. When DiMaggio went to meet with Yankee owner, Colonel Jacob Ruppert at the latter's brewery, he was kept waiting 45 minutes by both Ruppert and business manager Ed Barrow. The Yankees evidently raised their offer to $25,000. DiMaggio held firm at $40,000 and the meeting broke up after less than an hour.\footnote{83} It was also at this point that the Yankees took control of media reporting of the negotiations.\footnote{84}

Ruppert initially refused to reveal the Yankees' response to DiMaggio's demands in an apparent effort to maintain confidentiality, but then reportedly conceded: "I suppose there'll be no end of wild guessing among you fellows, so I might as well tell. It's $25,000, and I think that is a very fair salary."\footnote{85} Sources reportedly close to the negotiations also indicated that the Yankees and DiMaggio were only about $5,000 apart and that DiMaggio would not likely stage a lengthy

\footnote{82}{Star Sees No Trouble In Arriving at Terms, in 1 The DiMaggio Albums, supra note 50, at 190. DiMaggio pointed out that his arm was in good shape, that he had already achieved his playing weight, and that he thought he had a good chance to win baseball's triple crown—the batting, home run and runs-batted-in titles. Sports scribes estimated that DiMaggio would ask for a 1938 contract in the $25,000--$35,000 range. See Joe Williams, DiMaggio and Greenberg May Head The Holdouts, in 1 The DiMaggio Albums, supra note 50, at 187; DiMaggio On Way East, in 1 The DiMaggio Albums, supra note 50, at 188.}

\footnote{83}{See Ruppert's Conference With DiMaggio on Star's Contract Ends in a Stalemate, in 1 The DiMaggio Albums, supra note 50, at 191. It was apparently at this meeting that Yankee officials asked DiMaggio: "What would you say if I told you Lou Gehrig, who's been a star for fifteen years, doesn't make $40,000 himself?" DiMaggio's reported reply: "I'd say... that Gehrig is grossly underpaid." DURSO, supra note 50, at 94-95. Durso also reports that Gehrig's 1938 contract with the Yankees, at $39,000, was his highest: "Ruppert felt that going to $40,000 would sound too big and round and might trigger a volley of demands from other players." Id. at 95.}

\footnote{84}{DiMaggio told the press he had agreed with Colonel Ruppert to not discuss the negotiations. As a result, the press had to look to Yankee management for any information. "All I can say is that I have not signed and that their offer is quite a way off from what I think I'm worth," were DiMaggio's final words to the press. See Ruppert's Conference With DiMaggio on Star's Contract Ends in a Stalemate, in 1 The DiMaggio Albums, supra note 50, at 191.}

\footnote{85}{See Ruppert's Conference With DiMaggio on Star's Contract Ends in a Stalemate, in 1 The DiMaggio Albums, supra note 50, at 191.}
holdout.\textsuperscript{86} That optimism was apparently short-lived as DiMaggio left New York and returned home to San Francisco, taking no contract with him for consideration and no idea when, or if, there would be a further meeting.\textsuperscript{87}

In fact, there were no further meetings. Following the signing of Gehrig in mid-March, business manager Barrow apparently told Yankee manager Joe McCarthy to issue a statement reiterating that $25,000 was the Yankee's final offer to DiMaggio.\textsuperscript{88}

While the 1936 and 1937 holdout skirmishes between DiMaggio and the Yankees bore some resemblance, it was the Yankees' dealing with this 1938 DiMaggio holdout that bears a striking similarity to the Tigers' dealings with Ty Cobb almost a quarter of a century earlier.

As with Cobb, the Yankees claimed they did not need DiMaggio. When manager McCarthy announced that the Yankees were firm in their $25,000 offer, he also reportedly indicated: "'The Yankees can get along without DiMaggio.'" Yankee owner Colonel Ruppert reportedly echoed this sentiment: "'If DiMaggio isn't out there, we have Myril Hoag for center field.'"\textsuperscript{89}

Also similar to the reaction in Detroit was the belief in New York that DiMaggio was being absurd, petty or ungrateful. Newspaper columnist Joe Williams, after indicating that DiMaggio was likely to be one of 1938's holdouts, wrote: "Very few people are going to get maudlin over the plight of a hired man who is compelled to spend his winters in Florida or California sunshine, his summers in the open air playing a game--which in most cases amounts to the sum total of his ability ...."\textsuperscript{90} Yankee owner Ruppert told an inquiring reporter: "'I think you'd be satisfied with!'" the difference between what the Yankees offered and what DiMaggio

\textsuperscript{86} \textit{Id.} There is no statement from DiMaggio as to a potential holdout. It is certainly inferable that the sources close to DiMaggio were actually Yankee officials setting out to make their star look greedy because he did not return to the Yankee lineup until two weeks after the beginning of the regular season. \textit{See DURSO, supra} note 50, at 95.

\textsuperscript{87} \textit{Di Mag Owes All to Pal}, in \textit{1 THE DIMAGGIO ALBUMS, supra} note 50, at 193.

\textsuperscript{88} \textit{DURSO, supra} note 50, at 95.

\textsuperscript{89} \textit{Id.} at 95. Although Hoag did bat .352 during spring training, his career was hardly the equal of DiMaggio's. \textit{See id.} Hoag, who turned 30 in March before the beginning of the 1938 season, played in 1931-32 and 1934-38 with the Yankees; then with the St. Louis Browns, the Chicago White Sox and Cleveland Indians from 1939-1945. He was a career .271 hitter with 854 hits in 3147 at bats, with 28 career home runs and 401 runs-batted-in. \textit{NEFT & COHEN, supra} note 10, at 237.

\textsuperscript{90} Joe Williams, \textit{Di Maggio and Greenberg May Head The Holdouts}, in \textit{1 THE DIMAGGIO ALBUMS, supra} note 50, at 187.
demanded. 91 DiMaggio "was portrayed as a greedy, self-centered prima donna, and he was harpooned in the newspapers and jeered in the grandstand." 92

Third, the Yankees were able to capitalize on public sentiment that others had signed, and that, as a result, DiMaggio should also sign. Yankee teammates "felt that Joe would be well paid at $25,000." That "was a lot of dough. And, if anybody wanted to know a little more how they felt about it, they thought he should be at St. Petersburg with them getting into shape." 93 Even Rogers Hornsby, future hall of famer, and recently replaced manager of the St. Louis Cardinals, 94 indicated that $25,000 was enough for DiMaggio, who did not yet have the years of experience of comparable outfielders, such as the Cardinals' Joe Medwick. 95

Fourth, while the Yankees did not indicate that meeting DiMaggio's demands would leave the team in financial ruin, Yankee owner Colonel Ruppert indicated that he would not budge off the $25,000 offered to DiMaggio. That amount would apparently, according to Ruppert, "make you the highest-salaried third-year man in baseball history." 96 He had previously indicated that $40,000 was too high a salary to pay any player, even Yankee captain Lou Gehrig. "Ruppert felt that going to $40,000 sounded too big and round and might trigger a volley of demands from other players." 97

Finally, as with Cobb, it was a friend who ultimately brought the team and

91 John Drebingen, Ruppert's Conference With DiMaggio on Star's Contract Ends in a Stalemate, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 191.
92 DURSO, supra note 50, at 97. "Presidents go into eclipse. Kings have their thrones moved from under them. Great ballplayers pass on," Ruppert reportedly said. Id.
93 GRAHAM, supra note 41, at 237-38.
94 Hornsby had managed the Cardinals from 1933 through 1937. NEFT & COHEN, supra note 10, at 258.
95 See DURSO, supra note 50, at 96. DiMaggio and Medwick were often the subject of comparison. See Daniel's Dope, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 143. "Developments clustering around the All-Star game [of 1937] have given new impetus to an intriguing discussion the relative merits and Joe Di Maggio, of the Yankees, and Medwick, of the Cardinals. Giuseppe has made himself the greatest outfielder in the American League. Ducky Wucky has achieved a similar distinction in the National." Id.
96 See DURSO, supra note 50, at 95. One cartoon of the era portrays Colonel Ruppert sitting behind a desk as Tom Henrich, Joe DiMaggio, Bill Dickey and Lefty Gomez hand him apparently rolled and rejected contracts. The outside of the contracts say collectively, "We Want More Money," to which Colonel Ruppert responds: "Why don't you be nice like Selkirk What do you think I am A Millionaire?" See 1 THE DI MAGGIO ALBUMS, supra note 50, at 241. George Selkirk was a career Yankee, playing from 1934-1942. See NEFT & COHEN, supra note 10, at 245.
DiMaggio back together. While neither the Yankees nor DiMaggio were talking to each other, newspaper reports circulated that DiMaggio was being advised to hold out by boxing manager Joe Gould.97 Gould initially told Yankee business manager Barrow that his occupation was "managing fighters, not ball players," but after the DiMaggio holdout continued, Gould went back to Yankee management and asked if he could contact DiMaggio "and try to straighten him out?" Barrow reportedly replied, "No. We've made our last offer to him. But he's a friend of yours, and if you want to call him, I can't stop you."98

The following day, DiMaggio telegraphed the Yankees accepting their $25,000 offer. He indicated he would immediately report to New York. While this

97 See GRAHAM, supra note 41, at 240. See also DiMaggio Wants Big Increase but Withholds Demand Till Yanks Make Offer, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 189; Di Mag to See Braddock, in 1 THE DIMAGGIO ALBUMS, supra note 50, at 188. Gould managed James J. Braddock, who defeated Max Baer for the heavyweight boxing title in 1935 and lost it to Joe Louis in 1937. Gould lived at the Mayflower Hotel, near Central Park, where DiMaggio also lived. See DURSO, supra note 50, at 104.

98 GRAHAM, supra note 41, at 240-41. While Gould may not have technically been acting on behalf of the Yankees, his conversation with DiMaggio would not have given any such inclination:

"Well," Gould said, "I was just thinking if you don't open the season with them, every day you lose is going to have an effect on your future. You have a chance this year to break a lot of records, and put yourself in a position to demand the kind of dough you want. But you can't break any records in San Francisco."

There was silence on the San Francisco end.

"Are you there?" Gould asked.

"Yes," DiMaggio said. "I was just thinking. How's the weather in New York?"

"Swell. The weather is great, and everybody is steamed up about baseball."

"I'd like to be there," DiMaggio said suddenly.

"There's a lot of people around here who would like to see you," said Gould.

Id. at 241. DiMaggio repeats the substance of this account in his autobiography. See JOE DIMAGGIO, LUCKY TO BE A YANKEE 171 (1946).
capitulation on DiMaggio's part caused the press to speculate that DiMaggio would actually receive a signing bonus in addition to his salary, the Yankees made clear that DiMaggio had signed for $25,000, and that amount would not be paid until DiMaggio was ready to play.99

Despite his delay in reporting, 1938 again saw DiMaggio selected to the All Star team and again saw the Yankees win the World Series, this time for the then-unprecedented third straight time.100 DiMaggio, however, did not lead the league in any offensive categories.101

Perhaps as a result, DiMaggio signed a 1939 contract for the same salary he had received in 1938 and predicted a big year for 1939. He reported to spring training on time with only the hint of a holdout.102 Despite missing thirty-five games

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99 See Yankee Contract is Accepted by DiMaggio, in 1 The DiMaggio Albums, supra note 50, at 197. DiMaggio accepted $25,000, "less the time he has lost in reporting." Id. The decision on when DiMaggio was ready to play was left entirely to Yankee manager Joe McCarthy. Id.

100 See Precedent Backs Cubs in Series with Yanks, in 1 The DiMaggio Albums, supra note 50, at 220. The Yankees beat the Cubs 4 games to none. Yanks Win Series From Cubs by 4-0; Score, 8-3, in Final, in 1 The DiMaggio Albums, supra note 50, at 232. Yankee manager Joe McCarthy called the 1938 Yankee team the ""greatest ball club ever assembled." Again It's Dizzy Who Steals the Show, in 1 The DiMaggio Albums, supra note 50, at 234.

In addition to their regular salary, each Yankee collected $5,815 as additional compensation for winning the World Series. See Each Yankee's Full Share in Pool Worth $5,815, Record for 4 Games, in 1 The DiMaggio Albums, supra note 50, at 231.

101 DiMaggio batted .324, only a point above his rookie year, and considerably below his second-year average. This average was, however, good enough to lead the Yankees. He was also the team leader in home runs with 32, triples with 13, and runs-batted-in with 140. See Neft & Cohen, supra note 10, at 196. He was named as an All-Star on 241 of 249 sportswriters' ballots. Five Yanks, Ott Named on All-Star Team, in 1 The DiMaggio Albums, supra note 50, at 238.

102 See James P. Dawson, DiMaggio, Ruffing Reach Yanks' Camp, in 1 The DiMaggio Albums, supra note 50, at 240; Di Maggio Sees This His Big Season, in 1 The DiMaggio Albums, supra note 50, at 240. When DiMaggio appeared, only Frank Crosetti and Red Rolfe were missing from the Yankee training campgrounds.

The hint of holdout came earlier, when the press tried to stir controversy by reporting that DiMaggio might hold out for a return of the $1,850 that had been deducted from his 1938 salary for the period when he reported late and was unable to play. The story itself indicates it has little basis in fact. See Daniel, Yankee Chief Admits Offer Has Brought No Response, in 1 The DiMaggio Albums, supra note 50, at 239. This story would resurface in 1940: "Last season, Di Maggio received $25,000, under his contract, and an additional $2500, which was a refund of salary deducted while he was holding out in 1938.
following a muscle tear in April,\textsuperscript{103} DiMaggio again started for the American League in the All-Star game.\textsuperscript{104} By year-end, DiMaggio led the American League in batting with a .381 average,\textsuperscript{105} and was the acknowledged leader in the Yankees four game sweep of the Cincinnati Reds in the 1939 World Series.\textsuperscript{106} He received the "Golden Laurel Award" from the American Academy of Sport as the outstanding sports performer of 1939 and was named the Most Valuable Player in baseball by the Baseball Writers/Sporting News.\textsuperscript{107}

For the 1940 season, DiMaggio repeated his 1938 demand for $40,000, in part because of his batting championship and in part because the retirement of Lou

\begin{quote}
Giuseppe insisted his 1939 salary was $27,500 ...." Daniel, \textit{400 Mark Seen for Di Mag}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 291. The latter claim would appear to be the product of DiMaggio's pride rather than reality, as there are no other indices that he had actually received a raise in 1938.

Ed Barrow took over the Yankee presidency upon the death of prior president Colonel Jacob Ruppert in January, 1939. \textit{See Graham, supra} note 41, at 247-48.

\textsuperscript{103} See James P. Dawson, \textit{Yanks Off On Tour, Star in Hospital}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 244; Daniel, \textit{With Di Maggio Back, Yankees Present Power at the Gate as Well as Plate}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 244, 245. Word later surfaced that DiMaggio's injury was perhaps a renewal of an injury he had suffered "[f]ooling around on a lot behind his San Francisco seafoodery." Daniel, \textit{Di Maggio Wants $40,000}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 290.

\textsuperscript{104} \textsc{FREDERICK G. LIEB}, \textit{Victory Gives American League Five-to-Two Edge Over National In "Dream Game" Competition}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 254.

\textsuperscript{105} \textit{See Neft & Cohen}, supra note 10, at 200; John Drebingler, \textit{DiMaggio Annexed Batting Laurels}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 265.

\textsuperscript{106} \textit{See Di Maggio Standout in Series}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 280. Apparently, DiMaggio had an eye injury at the end of the season and complained that he could hardly see out of his left eye, but was not relieved of playing every day. \textit{See Durso, supra} note 50, at 111.

DiMaggio's leadership was needed because 1939 also marked the year that Lou Gehrig voluntarily removed himself from the Yankee lineup after 2,130 consecutive games. \textit{See Neft & Cohen}, supra note 10, at 200. On June 20, Gehrig was diagnosed with "Amyotrophic Lateral Sclerosis" by the Mayo Clinic. He died in June of 1941. \textit{Neft & Cohen}, supra note 10, at 235.

\textsuperscript{107} The "Golden Laurel Award" was presented at the World's Fair in New York. \textit{See Joe DiMaggio Named Winner of Academy Award for Sports}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 296. \textit{See also 22,051 On Hand To Honor Di Maggio}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 298. The \textit{Sporting News} award was presented at Yankee Stadium by New York Mayor Fiorello La Guardia. \textit{See 22,051 On Hand To Honor Di Maggio}, in 1 \textsc{The DiMaggio Albums}, supra note 50, at 298
Gehrig freed Yankee salary money.\textsuperscript{108} Yankee President Barrow did not budge off a $30,000 offer and DiMaggio eventually signed, reporting to the Yankee spring training camp about 10 days late, shortly before the first spring training game.\textsuperscript{109} For the fourth time in his five years with the Yankees, DiMaggio was injured and unable to play in the first game of the season.\textsuperscript{110} While he was again a starter in the All-Star game, DiMaggio's Yankees failed to repeat as American League champions, finishing third behind Detroit and Cleveland.\textsuperscript{111} Individually, however, DiMaggio again won the batting title, although his average dropped from 1939's .381 to a more modest

\textsuperscript{108} See Daniel, \textit{DiMaggio Wants $40,000}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 290. This article notes that it was not until Ruth retired that Gehrig began to be paid what he deserved. DiMaggio and his advisors apparently foresaw a similar result with the retirement of Gehrig.

There were two principal arguments against further increases in DiMaggio's salary. First, DiMaggio had never proved himself over an entire season, having been injured and out of the lineup in every previous season. \textit{See id.} This was a problem that would follow DiMaggio for some time. In 1941, Barrow claimed that DiMaggio's legs were not in shape and, as a result, he was not able to play through an entire season. \textit{See Daniel, Barrow Refuses to Meet Demands of Other Yanks}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 316. Even Ty Cobb would complain that DiMaggio did not spend enough time in conditioning during the off season with the result that he was too often injured. \textit{See ALEXANDER, supra} note 12, at 224. Second, even though the Yankees won their fourth straight World Series, fan interest was down. The Yankees drew fewer fans than the Brooklyn Dodgers, who finished third, and who had a smaller ball park and a lower payroll.

\textit{Daniel, DiMaggio Wants $40,000}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 290. Part of the blame, as was suggested by the press, lay at the feet of DiMaggio, who did not have the magnetic personality of either Ruth or players like Dizzy Dean. "The Babe, as you know, was paid off on his magnetism at the gate." DiMaggio, however, made news only with his bat. "[W]hen he isn't hitting those home runs he has no more fan appeal than a foul tip." SHIRLEY POVICH, \textit{DiMaggio Can Hit, But He Has No Color}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 152. The Yankees, led by DiMaggio, were "mechanical and dull. McCarthy pressed the DiMaggio button, people said, and he'd get a home run." DURSO, supra note 50, at 111-12.

\textsuperscript{109} See Daniel, \textit{DiMaggio Wants $40,000}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 290; \textit{Outfielder Gets Reported $30,000}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 291. The Yankees claimed this was a $5,000 raise from the $25,000 1938 and 1939 salaries, but DiMaggio claimed it was only a $2,500 raise from 1939.

\textsuperscript{110} See James P. Dawson, \textit{DiMaggio To Miss First Game Again}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 294; \textit{Joe Di Maggio In Only One Opener}, in 1 \textit{THE DiMAGGIO ALBUMS}, supra note 50, at 295.

\textsuperscript{111} See NEFF & COHEN, supra note 10, at 204. Detroit had the league's home run and runs-batted-in leader in Hank Greenberg and Cleveland had the league's premier pitcher in Bob Feller, who led the league in wins, games, games started, complete games, innings pitched, strike outs, shut outs and earned run average. \textit{See id.}
DiMaggio's perennial injuries hurt his contract negotiations for the 1941 season. He was offered an amount equal to his 1940 contract. Yankee President Barrow noted that DiMaggio had suffered game-missing injuries in most of his seasons. In 1940 "[w]hile DiMaggio was out, a lot of humpty-dumpty lefthanders knocked the Yankees over, and took the pennant from them, then and there." During a two month dispute that included holding out of the first four games of spring training, the Yankees increased their offer to $32,000, $34,000 and finally $35,000, a figure DiMaggio accepted. Even then, DiMaggio's injuries were

\[112\] See Daniel, Late Surge Won Di Maggio Hitting Title, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 312. DiMaggio beat out Luke Appling and Ted Williams, who finished at .348 and .344 respectively, with a late hitting rally in September. In one respect, DiMaggio surpassed his 1939 mark. In 1939, DiMaggio hit for only 310 total bases, while in 1940, he amassed 318 total bases. Total bases is the combination of all bases achieved (singles multiplied by 1; doubles by 2; triples by 3; home runs by 4). In 1940, DiMaggio amassed 111 singles, 28 doubles, 9 triples, and 31 home runs. NEFT & COHEN, supra note 10, at 204.

\[113\] Only One Yankee On Ruth's Team, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 312.

\[114\] Daniel, Barrow Refuses to Meet Demands of Other Yanks, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 316. There was confusion over how much DiMaggio had received in 1940 with this article stating the figure at $32,500, although the article also notes Barrow's statement that this amount "may be a bit high." The amount matters because if $32,500 is correct, then DiMaggio was actually offered less money for 1941. Later articles suggest that the initial Yankee offer was $30,000, an amount causing "high indignation" in DiMaggio. See Di Maggio Signs, $35,000, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 317. The most likely scenario is that the issue arises because of ongoing confusion over whether DiMaggio was ever compensated for the time he missed in 1938. See supra note 99 and accompanying text. It seems clear that DiMaggio received a $5,000 increase in 1940. This was clearly the view of president Barrow. .400 Mark Seen for Di Mag, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 291. If DiMaggio's 1938 and 1939 salaries were the same, as some articles reported, then the 1940 salary would have been $30,000. See supra note 102 and accompanying text. If, however, DiMaggio received the additional $2,500 he claimed in 1939, for the amount lost in 1938, then a $5,000 increase in 1940 would have placed his salary at $32,500. See id. It seems unlikely that the Yankees would have penalized DiMaggio $2,500 in offering a 1941 contract for winning the batting title at a lower average than in 1939, but events following the 1941 season would also suggest that virtually anything was possible in these negotiations. See infra notes 133-35 and accompanying text.

\[115\] See Di Maggio Signs, $35,000, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 317. The Yankees apparently released an ultimatum from Barrow to DiMaggio indicating that DiMaggio's holdout was "jeopardizing the comeback campaign of the Yankees," thus
mentioned: "This is Maggio's sixth season with the Yankees, and it is hoped it will be his first complete one."\textsuperscript{116}

DiMaggio did not play in all 156\textsuperscript{117} Yankee games in 1941. The 1941 campaign was, however, DiMaggio's "signature" season. Beginning on May 15 with a single that scored Phil Rizzuto,\textsuperscript{118} and continuing until July 17, when his streak was stopped by the Cleveland Indians, DiMaggio gathered at least one hit in 56 consecutive games.\textsuperscript{119} DiMaggio batted .408 during this period, with 16 doubles, 4 triples and 15 home runs among the 91 hits he amassed in 223 at bats.\textsuperscript{120} More important, DiMaggio propelled the Yankees. In fourth place by 5 1/2 games when the streak started, the Yankees won 41 and lost just 13 during the streak.\textsuperscript{121}

making DiMaggio appear to be selfish and petty. \textit{Id.}

DiMaggio biographer Joe Durso indicates that DiMaggio was paid $37,500 for the 1941 season.\textit{DURSO, supra note 50, at 146.}\textsuperscript{116}

\textit{Di Maggio Signs, $35,000, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 317.}\textsuperscript{117}

See Neft \& Cohen, \textit{supra} note 10, at 208 (listing the total number of games played by the team at 156). While only 154 games counted in the standings, a team could play more than that number for individual statistical purposes. For example, one of the additional games in 1941 took place on May 23 when the Yankees and Boston played to a 9-9 deadlock until the game was called by the umpires because of darkness. The game itself did not count in the standings, but individual statistics did count. It was the 9th game of DiMaggio's hitting streak. See \textit{DURSO, supra note 50, at 121.}\textsuperscript{118}

See \textit{DURSO, supra note 50, at 119.}\textsuperscript{119}

See Jack Smith, In \textit{Joe D streak halted at 56, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 355.} A virtual game-by-game account of 'the Streak' is contained in \textit{DURSO, supra note 50, at 115-38.} Durso calls DiMaggio 'the super-streak player of all time,' noting his 61 game hitting streak with the Seals in 1933, an 18 game hitting streak during his rookie Yankee season in 1936, a 23 game streak in 1937, and as a prelude to his 56 game record, DiMaggio hit in the final 19 games of the 1941 spring training and the first 8 games of the regular season, a 27 game streak. \textit{Id.} at 116-17. After he was stopped by the Indians, DiMaggio started another 16 game streak the following day, until he went 0-8 in a doubleheader against the St. Louis Browns in what was termed the Yankees 'worst day' of the season. \textit{Id.} at 129. See Herbert Goren, \textit{DiMaggio Fails As Do Yanks for Worst Day, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 366.}\textsuperscript{120}

\textit{DURSO. supra note 50, at 137-38.} During the same period, Ted Williams, who won the American League batting championship for the year with a .406 mark, batted .412. \textit{Id.} at 141-42.\textsuperscript{121}

Two games were ties that counted in the individual, but not team statistics. Bob Broeg, \textit{DiMag's Incredible Hitting Skein, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 364.} As noted by Dan Daniel:

While Di Maggio was on his streak the Yankees did some amazing hitting. They got homers in such cloisters, and with such profusion, as never before had been seen in the major leagues. Pitchers
DiMaggio's tracional injuries did not disturb the Yankees rush to victory. That DiMaggio wound up missing games in August with a turned ankle was seen as a benefit to both DiMaggio and the Yankees, as the Yankees wound up winning the American League by 17 games over the Boston Red Sox. The Yankees finished the season with a 4-1 defeat of the Brooklyn Dodgers in the World Series. In addition to the hitting streak that even contemporary writers acknowledged might never be broken, DiMaggio led the American League in runs-batted-in with 125, was named MVP of the American League, was again selected to the All-

turned in deeds of derring [sic] do, fielders went daffy, as a club which had been seven lengths behind the Indians dashed into an incredible lead in so short a time.

Dan Daniel, Daniel's Dope, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 362. After DiMaggio was confirmed to be out of the lineup for at least a week, media accounts indicated:

"There simply isn't anything to worry about.... The incident caused only a mild stir in the easy-going, free-wheeling New York camp, and the most important result may be merely to extend DiMaggio's unfortunate record of never having worked a full season.... The enforced rest of the star centerfielder may fit in with McCarthy's plays at that. The manager is taking it easy...."

Joe King, Di Mag Out for Week with Turned Ankle, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 369.

Even in August, Yankee manager Joe McCarthy was "letting the club coast," using replacement players so that stars could rest until the pennant chase a month later. Id.

See NEFT & COHEN, supra note 10, at 208. The Yankees clinched the American League pennant on September 4, the earliest date in the history of the American League. Dan Daniel, Di Maggio, Williams, Camilli Top All-America Selections for 1941, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 392.

John Drebinger, Yanks Win Series As Bonham Beats Dodgers, 3 to 1, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 388.

Dan Daniel, Daniel's Dope, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 362.

Joe DiMaggio First For Runs Batted In, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 398.

Edgar Brands, Joe DiMaggio Most Valuable in A.L., in 1 THE DI MAGGIO ALBUMS, supra note 50, at 394. DiMaggio beat Ted Williams and his .406 average-291 votes to 254. Pitcher Bob Feller was third with 174. This was the second time a .400 hitter had been outvoted for the most valuable award as Harry Heilmann of the Tigers, with a .403 average, had lost the MVP to Babe Ruth's 41 home runs in 1923. Many of the sportswriters apparently believed that Ruth and DiMaggio were greater team leaders than Williams or Heilmann. See Joe Williams, Yankee Party Put Seal on Di Maggio Value, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 395.

After his hitting streak ended, Yankee players staged a party for DiMaggio and gave him a present from the entire team, a feat unheard of in most writers' memories. See id.; DURSO, supra note 50, at 140.
America baseball team, and was voted the outstanding male athlete of the year over fellow baseball player Ted Williams and boxer Joe Louis.

DiMaggio would not speculate on what the Yankees would offer for 1942, particularly in light of World War II’s intervention in December, 1941, but baseball writers were not so reluctant. Even in August, 1941, following the streak and as the Yankees were cruising to the American League pennant, Bob Considine indicated that DiMaggio would be asking $80,000 for 1942. Considine rationalized that DiMaggio had proved his worth to the Yankees, both in igniting the team’s play and in putting fans into the stands. Contrary to the dreary public image previously seen of DiMaggio and the Yankees, Considine wrote that DiMaggio was "the one Yank the baseball public demands to read about, hear about, and see."

At the time the 1942 contracts were mailed, the Yankees gave nary a clue of what they were offering. As it turned out, the Yankees apparently deviated from their storied history of offering players the same contract as had been negotiated for in prior years. The team offered Joe DiMaggio $5,000 less than he had been paid in 1941.

In a press release, Yankee President Ed Barrow reportedly chastised DiMaggio for demanding "a big raise while American soldiers are making $21 a month." Despite his 1941 accomplishments, DiMaggio was seen as being petty, selfish, and now un-American in seeking a raise. Ultimately, DiMaggio held out.

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128 Dan Daniel, *DiMaggio, Williams, Camilli Top All-America Selections for 1941*, in 1 *The DiMaggio Albums*, supra note 50, at 392. DiMaggio was named the most valuable in either league, followed by Williams and the Dodgers’ Dolph Camilli. *Id.*

129 Orio Robertson, *Joe DiMaggio Year’s Outstanding Athlete*, in 1 *The DiMaggio Albums*, supra note 50, at 399. There was really no contest as DiMaggio received 157 votes, Williams 74 and Louis 64. During 1941, Louis successfully defended his heavyweight boxing title seven times. *See Durso, supra* note 50, at 146.

130 Dan Daniel, *DiMaggio Believes He Hasn’t Reached Peak—Thinks ’42 May Be His Big Season*, in 1 *The DiMaggio Albums*, supra note 50, at 396. Durso indicates that DiMaggio believed that $50,000 would have been a rational figure. *Durso, supra* note 50, at 147.


132 Ken Smith, *DiMaggio Pay Offer Decided On; Season Openers Set Apr. 14*, in 1 *The DiMaggio Albums*, supra note 50, at 412. "Just what figure was decided upon has been kept a secret. Even Joe doesn’t know, for he has had no preliminary consultation with Edward G. Barrow, Yankees’ president...." *Id.*

133 *Durso, supra* note 50, at 147.

134 *Id.*
until mid-March, when he agreed to a reported contract of $42,000, making him the second highest paid Yankee in history.\textsuperscript{135}

1942 was not the productive year DiMaggio had hoped for when he talked of overtaking Ted Williams for the American League batting championship.\textsuperscript{136} He played in the All-Star game,\textsuperscript{137} but his bat did not really begin to connect until July 4, when he began an 18 game hitting streak.\textsuperscript{138} The Yankees finished 9 games ahead of Boston for the American League crown,\textsuperscript{139} but lost to the Cardinals in the World Series.\textsuperscript{140} DiMaggio, who did not lead the American League in any offensive categories, batted .305 with 21 doubles, 13 triples, 21 home runs, and 114 runs-batted-in.\textsuperscript{141}

DiMaggio missed the 1943, 1944 and 1945 seasons serving in World War II. When he returned in 1946, the Yankees were under new ownership which "welcomed DiMaggio home with open arms and open checkbooks." While he would win the American League home run and runs-batted-in title in 1948,\textsuperscript{142} he won no more batting titles. He also staged no further holdouts. He became baseball's all time highest paid player in 1949, and ultimately became baseball's first $100,000 player.\textsuperscript{143}

\textbf{THE 1960'S--SANDY KOUFAX/ DON DRYSDALE}

\textsuperscript{135} Jack Smith, \textit{DiMag Ends Holdout, Accepts $42,000}, in 2 THE DI MAGGIO ALBUMS, 413 (R. Whittingham ed. 1989). DiMaggio was first offered $40,000, then $40,000 with some bonus provisions, and eventually $42,000.

\textsuperscript{136} See Dan Daniel, \textit{DiMaggio Aims to Regain Batting Laurels This Year}, in 2 THE DI MAGGIO ALBUMS, supra note 135, at 416.

\textsuperscript{137} See 2 THE DI MAGGIO ALBUMS, supra note 135, at 427.


\textsuperscript{139} NEFT & Cohen, supra note 10, at 212.

\textsuperscript{140} See 2 THE DI MAGGIO ALBUMS, supra note 135, at 445.

\textsuperscript{141} None of the contemporary articles even mentioned that for the first time in his career, DiMaggio played in all 154 games. Neft & Cohen, supra note 10, at 212.

\textsuperscript{142} See 2 THE DI MAGGIO ALBUMS, supra note 135, at 532.

\textsuperscript{143} John Drebinger, \textit{Di Maggio Reported All-Time Top-Salaried Player With $90,000 Contract}, in 2 THE DI MAGGIO ALBUMS, supra note 135, at 568. This article indicated that DiMaggio would make $90,000 for the 1949 season, although at least one writer thought DiMaggio was worth $100,000. John Hoffman, \textit{DiMag Worth 100 G's a Year}, in 2 THE DI MAGGIO ALBUMS, supra note 135, at 570. By 1950, when DiMaggio signed for $100,000, it was assumed that DiMaggio was already making that amount and that his 1950 contract was a renewal of the 1949 one. Dan Daniel, \textit{Jolter's $100,000 Tops Richest Club Payroll in Game's History}, in 2 THE DI MAGGIO ALBUMS, supra note 135, at 628.
By 1965, Sandy Koufax was simply the best pitcher in major league baseball. In that year, Koufax led the National League in innings pitched (336), complete games (27), wins (26), winning percentage (.765), strikeouts (382), and earned run average (2.04). On September 9, in the midst of a pennant race with the Giants, Koufax pitched his fourth no-hitter, a perfect game against the Chicago Cubs in which he struck out the last six batters. His efforts made Koufax only the second unanimous Cy Young award winner since the 1956 inception of the honor.

Perhaps the only pitcher capable of challenging Koufax's domination of the National League was his Dodger teammate, Don Drysdale. The 1962 Cy Young winner, Drysdale won 23 games in 1965 while leading the league in games started with 42.

These two dominating pitchers won 49 of the Dodgers' 97 victories in 1965, while suffering only 20 of the team's 65 losses. They accounted for 15 of the pitching staff's 23 shutouts. So dominating was this pitching duo that the Dodgers were able to win the pennant with a team batting average of .245, better than only the eighth, ninth, and last-placed teams in the National League.

As the 1965 Dodgers entered the World Series, they faced a formidable hitting team, the Minnesota Twins. The entire Dodger team had hit a total of 78 home runs during the season, while four Minnesota starters, Harmon Killebrew (25), Bob Allison (23), Don Mincher (22), and Jimmie Hall (20) combined for more.

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144 Neft & Cohen, supra note 10, at 369.
145 See id. at 366; Stanley Cohen, Dodgers: The First 100 Years (1990). The victory would leave the Dodgers 1/2 game behind the Giants. While the Dodgers would fall behind the Giants during the next week, the Dodgers began a 13-game win streak on September 15 that led to Koufax's pennant-clinching shutout on October 2. Id. at 156.
146 Neft & Cohen, supra note 10, at 662. Koufax had also been the first Cy Young award winner in 1963. He would again be unanimously selected in 1966. See id.
147 Id. From 1956 through 1966, this award was made to only one pitcher in baseball. Beginning in 1967, the award was made to one pitcher in each league. During the period when Drysdale won the award once and Koufax three times, then, they could realistically claim the title of "Best Pitcher in Baseball."
148 Id. at 369.
149 See id. at 369-70. Only eighth place Chicago at .238, ninth place Houston at .237 and last place New York at .221 were worse. Both Houston and the Mets were only in their fourth season in professional baseball. See id. at 351 (beginning in 1962).
150 Id. at 357, 369. In addition, Zoilo Versailles had hit 19 home runs and Tony Oliva had hit 16. These six starters, then, combined for 125 home runs, as against the entire Dodger team total of 78. On the positive side, the Dodgers did have speed, with Maury Wills accounting for more stolen bases (94) then the entire Twins team (92). See id.
 Nonetheless, the Series belonged to the Dodgers, who won all four games played in Los Angeles. Koufax posted two victories and an ERA of 0.38 in 24 innings.

Following the Dodger World Series victory, both Koufax and Drysdale assumed they would be in a favorable contract position for the 1966 year. As Don Drysdale explained it: Koufax "was paid $85,000 for the 1965 season and I got $80,000 and, considering the way things went, I guess you'd have to say we were in a pretty good bargaining position, even in an era when they didn't throw money around like they do now."

However, Koufax and Drysdale soon found that their bargaining position was not as good as they thought. When Koufax met with Dodger general manager Buzzie Bavasi, he was told his 1966 salary demands were out of line with the demands of Drysdale. When Drysdale met with Bavasi, he was told his salary demands were out of line with the demands of Koufax. It was over lunch that the pair determined that at the time Koufax talked with Bavasi, Drysdale had only briefly discussed the issue with the GM and at the time Drysdale talked to Bavasi, Koufax had not discussed salary with him at all. "It didn't take a rocket scientist to figure out ... Buzzie was trying to play us off against each other ...."

Drysdale's then-wife Ginger suggested the pair hold out together: "If [Dodger management] is going to compare the two of you, why don't you just walk in there together?" It was Koufax who also suggested that the pair deal with the Dodgers through an agent. something unheard of at the time.

151 See COHEN, supra note 145, at 157-58.
152 See NEFT & COHEN, supra note 10, at 366. Drysdale also won one of the games, as did Claude Osteen, who also won 15 regular season games. See id. at 369. Dodger pitching held the heavy-hitting Minnesota lineup to a team batting average of .195. See id. at 366.
154 Id. at 125.
155 Id.
156 SANDY KOUFAX, with ED LINN, 285-86 (1996). Koufax's desire to have the team recognize the player's right to be represented by an agent probably stemmed from a comment by Dodger owner Walter O'Malley following the 1963 season, one in which Koufax had 25 wins and 5 losses and an earned run average of 1.88. He won both the National League Cy Young award as the best pitcher and the National League Most Valuable Player award. He also won two World Series games against the Yankees. Id. at 278. He asked for a salary increase from the $35,000 he earned in 1963 to $75,000. The team offered $65,000 and after considerable wrangling in which Koufax was cast as ungrateful in the media, Koufax's 1964 salary was set at $70,000. When Koufax arrived at spring training, he told members of the
Koufax and Drysdale demanded $1 million over three years, to be divided by the duo as they saw fit. The Dodgers had offered both players one year salaries in the mid-$90,000 range. While there was initial silence from the Dodger organization to the players' demands, as spring training drew near, the pair met three times with Dodger General Manager Buzzie Bavasi. The final meeting evidently took place at the Hollywood Roosevelt Hotel, and reports of it differ. Koufax indicates no movement whatsoever in the Dodgers' position prior to spring training. Drysdale indicated the players came off their $1 million demand, but still wanted a three-year commitment, and that Dodger management was concerned with the dual nature of the players' holdout. Newspaper reports, undoubtedly generated by the press that he received word that O'Malley wanted to see him. O'Malley attempted to assuage Koufax's anger over having negotiations dragged through the press, reportedly indicating that Koufax just did not understand negotiations: "Ask your father," O'Malley said. "He understands these things." Koufax agreed: "You just may be right," I said. "Then you'll be willing to negotiate with a third party instead of with me the next time we have to sign a contract." He didn't say anything. *Id.* at 284.

Koufax did not insist that the Dodgers negotiate only with the agent, because neither he nor Drysdale thought it "inconsistent and self-defeating" to foreclose negotiation. Rather, they both indicated that Hayes was available to assist in the negotiation process. *Id.* at 286. The use of Koufax's attorney Bill Hayes as agent came from a conflict of interest. Drysdale's attorney was, at the time of the joint holdout representing O'Malley in another matter. *Id.* at 285-86. Drysdale credits Hayes with understanding the nature of personal service contract labor disputes and therefore easing the emotional difficulties for both Koufax and Drysdale. See DRYSDALE, supra note 153, at 127-28. *Id.* at 126; KOUFAX, supra note 156, at 285. They also indicated that if the club chose to deal individually with the players, neither would sign without the knowledge of the other. *Id.*

DRYSDALE, supra note 153, at 125. Part of the problem was that both Drysdale and Koufax were pushing what was, at the time, the magic $100,000 barrier. *Id.* Six-figure salaries had, up to that time, been limited to the true greats of the game. Drysdale mentions the ones he knew about: Mays, Musial, Mantle, Williams, and "[m]aybe Hank Aaron was in there, too." *Id.* at 126. No pitcher had made that much.

*Id.;* KOUFAX, supra note 156, at 286-87. Koufax indicates that it was not his intention to force the Dodgers to deal with an agent. Rather, he told Bavasi that lawyer Bill Hayes was available for a meeting if the Dodgers' wanted one. KOUFAX, supra note 156, at 286.

See DRYSDALE, supra note 153, at 126.

KOUFAX, supra note 156, at 287.

DRYSDALE, supra note 153, at 126. He indicates the players immediately dropped their demand to a three-year figure closer to $900,000. KOUFAX, supra note 156, at 287. Koufax notes that, from his perspective, a three-year deal was not that critical because he knew his arm was bad. *Id.* Koufax also notes, however, that "to all practical purposes, Don and I were both really on three-year contracts from the year before." *Id.*
Dodger organization,\(^{163}\) indicated a result totally different. According to the *Los Angeles Times*, Koufax and Drysdale held fast to their $1 million demand, despite being offered what was termed "record" amounts approximating $120,000. Dodger General Manager Buzzy Bavasi reportedly told the press: "I am not embarrassed by the figures. Had Sandy and Don accepted them, they would be making more money than any two players on one team ever received."\(^{164}\)

As the newspapers correctly reported, neither Koufax nor Drysdale boarded the Dodger plane heading to the team's Vero Beach, Florida spring training site and, when spring training began, the two became holdouts.\(^{165}\)

In dealing with their dual holdouts, the Dodgers treated Koufax and Drysdale in much the same fashion as Detroit had done with Ty Cobb and the Yankees had done with Joe DiMaggio. The team first claimed it did not need its two superstar pitchers. In the one telephone conversation the players had with Dodger owner Walter O'Malley, Koufax and Drysdale were both told that the Mets were interested in them and were then wished good luck in their acting careers.\(^{166}\) Dodger General

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1963, the Dodgers had provided both Koufax and Drysdale with contracts for the 1964 and 1965 seasons at the same salary as paid in 1963. *Id.* The contracts were given to the players, already signed by the team, so they needed only the players' signature to become official. *Id.* In addition, the contracts provided the player could renegotiate each year. *Id.* Dodger chronicler Stanley Cohen agrees that the club "was adamant in its refusal to make any concessions." COHEN, *supra* note 145, at 159.

\(^{163}\) Koufax and Drysdale refused to allow their bargaining to "degenerate into a name-calling contest" in the press. *See* KOFAKX, *supra* note 156, at 286. *See also* DRYSDALE, *supra* note 153, at 127. Koufax had already experienced the difficulty of negotiation in the newspaper. *See* KOFAKX, *supra* note 156, at 284-86.


\(^{165}\) *See* id.

\(^{166}\) *See* KOFAKX, *supra* note 156, at 288. As Koufax indicates, the threat of trade to the Mets "was apparently supposed to make our blood run cold." *Id.* The Mets, in the four seasons since their 1962 start, had won a total of 194 games while losing a total of 452. They had never finished closer than 40 games off the pace of the National league champions and had been at least 13 games below the 9th place team in the ten-team National League. *See* NEFT & COHEN, *supra* note 10, at 355, 360, 365, 370. The desire to be rid of Koufax and Drysdale was, however, a one-way street. When the players asked if they could try to strike a deal with the California Angels, O'Malley indicated that the players were free to talk to the Angels' management, but then reportedly advised: "Of course, we have rules in baseball that prohibit you from doing such a thing." DRYSDALE, *supra* note 153, at 128.

Koufax's lawyer, and the two players' "agent," Bill Hayes, had arranged both movie and television roles for the pair. *See* KOFAKX, *supra* note 156, at 287-88; Koufax and Drysdale Fall Into Line, *The N.Y. Herald Tribune*, March 31, 1966, at 26 (mentioning the
Manager Bavasi also let the players know where they stood, reportedly telling the press: "Granted, Sandy and Don have great value to the team, but again so do Ron Fairly, Maury Wills, John Roseboro, and a lot of others."

Next, the team laid blame for the impasse at the feet of the players. Bavasi first told the press that he'd offered the pair salaries "that 99% of all the ballplayers would like to make ...." Bavasi then told the remaining Dodgers, in a closed-door meeting at the beginning of spring training, that if the Dodgers met the demands of Koufax and Drysdale, "I'd have to tear up all your contracts and give you new ones to make things equitable." As Koufax noted in dealing with a similar situation the previous year, "[i]t was just out of consideration for my teammates they had to turn me down .... [t]hat made me picayune, selfish, and inconsiderate." As Don Drysdale pointed out: "Sandy and I read about how greedy we were, how unfair we were being to the rest of the team, and so on."

Third, the Dodgers pointed to the fact that other players were satisfied with their Dodger offers. The Los Angeles Times reported that Dodger outfielder Ron Fairly told the team: "I'd like to sign for the difference between what [Koufax and

players' contract to play police officers in a Paramount production, as well as make an appearance on a Frank Sinatra television show).

Koufax also tells of receiving a letter from GM Bavasi following rejection of the "final" Dodger offer. The letter indicated that "it was absolutely essential to retire us according to the proper administrative procedure. We could go on the voluntary retired list, the suspended list, the ineligible list, or a hundred or so other lists.... We were, of course, touched to find out there were so many ways for us not to play baseball." KOUFAX, supra note 156, at 288-89.

167 Koufax, Drysdale Spurn Record Offer by Dodgers, THE L.A. TIMES, February 25, 1966, at SPORTS 8. Ridicule was also a part of this prong of the Dodgers' defense. The team placed enlarged photographs of the two players above their spring training administration building. GM Bavasi then "knelt and assumed a praying position in front of them for the benefit of photographers." Id.

168 Id.

169 Sandy, Drysdale Must Sign One-Year Pacts, THE L.A. TIMES, February 28, 1966, at SPORTS 1. The Dodgers' GM had reportedly told the Times the same thing earlier, indicating that if he granted three-year deals to his two pitchers, he'd have to do the same thing for other players: "'Otherwise, I couldn't look those other players in the face.'" Koufax, Drysdale Spurn Record Offer by Dodgers, THE L.A. TIMES, February 25, 1966, at SPORTS 1, 4.

170 KOUFAX, supra note 156, at 281.

171 DRYSDALE, supra note 153, at 127. Drysdale also indicates that editorial cartoonists had "a field day" with the players' holdout. See id. at 127-28.
Drysdale] want, and what you offered 'em, Buzzie."

Fourth, the team claimed the Koufax/Drysdale demand would cause economic harm to the team. The Dodger offer was, according to Bavasi, "more money than any two players on one team ever received." It was Dodger policy to offer one year contracts and "no amount of pressure will make me meet their demands," because doing so would require renegotiation with other players. In one of their pre-spring training meetings, Bavasi told the players: "Look fellas, ... I've got a budget to keep here and there are certain things I'm allowed to do." Thereafter, according to Drysdale, the Dodgers maintained a straight "party line." "[T]he Dodgers' franchise had a salary structure to maintain, and that we were being unreasonable, and so forth."

Finally, the team tried to influence the players' decision by use of influential personalities. Don Drysdale points out: "[W]e'd get calls from guys like [long-time Dodger teammate] Johnny Podres, asking us what we were doing and kind of urging us to come on down to Florida." Former Dodger-turned actor Chuck Connors also became involved, urging Drysdale to meet Bavasi when the latter returned to Los Angeles toward the close of spring training.

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172 Koufax, Drysdale Spurn Record Offer by Dodgers, THE L.A. TIMES, February 25, 1966, at SPORTS 1, 4. Ron Fairly would later change his tune when he became the player representative for the Dodgers. When he became executive director of the players' association, and major league owners refused to release salary information, Marvin Miller asked the player representatives to obtain the salaries of all players on their team. When Dodger representative Fairly appeared at Miller's office, Miller indicates he was "upset. Buzzie Bavasi ... told me that after Koufax, Drysdale, and Wills, I was the highest paid Dodger.... Do you know where I rank?... Eighth!" MARVIN MILLER, A WHOLE DIFFERENT BALL GAME 156-57 (First Fireside ed. 1992). When Fairly had wanted to discuss his salary with the Dodgers, he too had been told that additional salary would jeopardize the team's salary scale. Id.

173 Sandy, Drysdale Must Sign One-Year Pacts, THE L.A. TIMES, February 28, 1966, at SPORTS 1. "What happens if one of them, through illness or injury, only pitches 20 innings next season? The club is left holding the bag...." Koufax, Drysdale Spurn Record Offer by Dodgers, THE L.A. TIMES, at SPORTS 1, 4.

174 DRYSDALE, supra note 153, at 126. Compare the similar statements made to outfielder Ron Fairly discussed supra note 172.

175 DRYSDALE, supra note 153, at 127.

176 Id. at 128, 130. Drysdale indicates that he could not prove that these calls originated from Dodger management. Through the press, however, Bavasi maintained that he would not get in touch with the players: "Asked when next they'll call him or he'll call them, Bavasi said: 'I have no idea. We'll play this by ear on a day-to-day basis.'" Sandy, Drysdale Must Sign One-Year Pacts, THE L.A. TIMES, February 28, 1966, at SPORTS 1.
How, and why, this dispute was resolved remains somewhat unclear. Drysdale indicates that a resolution was reached only after the pair threatened to file suit under a California statute which forbade enforcement of any personal services contract "beyond seven years from the commencement of service under it." Koufax, however, maintained that a lawsuit was never a serious possibility. Ultimately, both sides agreed not to disclose the dollar numbers that made up the final settlement, although Drysdale seemed disinclined to follow that agreement.\footnote{See Drysdale, supra note 153, at 129.}

\footnote{See Cal. Lab. Code Ann. §2855 (West 1997). The law was one that had been continually in force since 1872. Although the law did not support injunctive relief, it had been used to prevent at least one movie studio from enforcing a personal services contract against one of its stars. DeHaviland v. Warner Bros. Pictures., 153 P.2d 983 (Cal. Ct. App.2d Dist., Dec. 8, 1944).}

[Koufax/Drysdale lawyer] Bill [Hayes] and his friends unearthed this statute late in March and somewhere along the line, Mervin LeRoy, a prominent film producer who was a friend of Mr. O'Malley, got wind that Hayes had been checking into the personal-services contract issue.... And I think Mr. O'Malley must have realized we were on to something, because it wasn't a week after Bill Hayes made his discovery that our holdout ended. I'm convinced that was the major reason why the Dodgers moved, because we knew they had found out about Bill Hayes's little discovery.

\textbf{Drysdale, supra note 153, at 129-30.} Drysdale makes it clear, however, that he and Koufax were prepared to sue for free agency.

The likely success of such a suit cannot be measured. At the same time as the Koufax/Drysdale holdout, the Milwaukee Braves were attempting to move to Atlanta. \textit{Compare Braves Ordered to Play in Atlanta by Federal Judge}, The L.A. Times, February 25, 1966, at SPORTS 1; \textit{Baseball Trial Begins Today in Milwaukee}, The L.A. Times, February 28, 1966, at SPORTS 4. In State v. Milwaukee Braves, Inc., 144 N.W.2d 1 (Wis. 1966), \textit{cert. denied}, 385 U.S. 990 (1966), the Wisconsin Supreme Court ruled that baseball's unique exemption from federal antitrust law amounted to federal preemption preventing use of state antitrust law to prohibit the Braves move from Milwaukee to Atlanta. It seems logical that a similar argument could have been made under the negative aspect of the federal commerce clause if Koufax and Drysdale had actually sued: presumably that argument would have been that state usurpation of baseball "reserve" rule would be an impermissible intrusion upon an activity uniquely within interstate commerce.

This argument would have been interesting in light of baseball's argument, three year's later, that baseball was not an "interstate" activity. See Flood v. Kuhn, 407 U.S. 258 (1972).

\footnote{"Part of the agreement was that neither side would make the exact figure public, and this is an agreement I must honor." Koufax, supra note 156, at 290. It also seems clear that Koufax really wanted to discuss the matter.}

"Nobody knows the whole story," .... "You go through a month of people calling you names and for a month, no one talks to you. They just sit and expect us to sign because it's a typical baseball negotiation."
Various reports indicated that Koufax signed for $115,000,181 $120,000,182 and $130,000,183 while Drysdale signed for $90,000,184 $105,000,185 and $110,000.186

1966 was Sandy Koufax's last year in the majors. He led the pennant winning Dodgers with a 27-9 record and led the National League in wins, strikeouts (317), earned-run-average (1.73), and tied the league-lead in shutouts (5).187 Drysdale had a mediocre season, finishing with a 13-16 record. He was also 0-2 in the 1966 World Series.188

UNDERSTANDING THE HOLDOUTS:
THE LEGACY OF ALBERT SPALDING

Throughout the discussions of the two major holdouts by Cobb, the multiple holdouts by DiMaggio and the single holdout by Koufax and Drysdale, there is absolutely no discussion of the merits of the players' demands based on prior performance.

I know that what we're fighting for is right. But if we knew what was going to happen, I don't really think we'd do it again....

Dollars is all it's ever been. A month ago I told them we weren't interested in a three-year contract. As for the package, in their first offer they said Don and I could split $185,000 any way we liked."

Koufax and Drysdale Fall Into Line, N.Y. HERALD TRIBUNE, March 31, 1966, at 26. 180 See DRYSDALE, supra note 153, at 130 ("We talked about my getting $115,000 for the season and Sandy getting $125,000."). Later, Drysdale would be more specific, indicating these were the numbers that were accepted. See Interview with Don Drysdale, SAN JOSE MERCURY NEWS, May 20, 1990, at 6.

182 Koufax and Drysdale Fall Into Line, N.Y. HERALD TRIBUNE, March 31, 1966, at 26; COHEN, supra note 145, at 159.
183 CHARLES ALEXANDER, OUR GAME 261 (Owl Book ed. 1992) (indicating this to be a $60,000 raise for Koufax).
184 Id. (indicating this to be a $60,000 raise for Drysdale).
185 COHEN, supra note 145, at 159; MITCHELL, supra note 181, at 169.
187 See NEFT & COHEN, supra note 10, at 374, 548, 550, 552. Arthritis in his pitching arm took an increasing toll on Koufax as the season wore on. The Dodgers lost in the World Series to Baltimore four games to none and Koufax appeared in only 1 game. Id. at 371.

188 Id. at 371, 374. In 1968, however, Drysdale would throw 58 2/3 consecutive scoreless innings, a major league record. See id. at 381.
The stories of the holdouts by Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale thus lead to one overriding question: "Why?" What business sense does it make for the Detroit Tigers, the New York Yankees or the Los Angeles Dodgers to zealously defend against raises for their stars on grounds other than merit?\textsuperscript{189}

The answer to this question lies deep in baseball's heritage.

It was when National League co-founder Albert Spalding declared himself a "free agent" and left his Boston team in the failing player-controlled National Association of Professional Base Ball Players and moved to Chicago that the strategy owners would later use against their Hall of Fame holdouts was developed. Spalding believed the National Association was failing because of mismanagement by the player-operators. "Professional baseball," he said in 1875, "should be controlled by businessmen who would be in charge of conducting the details of managing men, administering discipline, arranging schedules, and finding ways and means of financing a team."\textsuperscript{190} When Spalding teamed with Chicago businessman William Hulbert to form the National League of Professional Base Ball Clubs, the operative words were "league" rather than "association," and "club" rather than "player."\textsuperscript{191} In his own biography of the game, Spalding expanded upon baseball's operating principles: "[L]ike every other form of business enterprise, Base Ball depends for results upon two interdependent divisions, the one to have absolute control and direction of the system, and the other to engage--always under the executive branch--in the actual work of production."\textsuperscript{192}

More than simply a management style, Spalding's theory of "absolute control" was an article of faith. Consider Spalding's language in dealing with

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\textsuperscript{189} Compare the sentiments of Don Wollett, a 50-year labor lawyer and emeritus professor from the McGeorge School of Law, who was "astonished" when baseball owners refused "to make a scheduled $7.8 million payment to the players' pension fund" during the months leading up to the 1994 strike. "'You just don't add fuel to the other side's fire, you don't make them gratuitously angry.'" Dan McGrath, \textit{Baseball Strike Perplexes Even an Expert}, \textsc{The Sacramento Bee}, Aug. 12, 1994, at A2, available in 1994 WL 5234102.

\textsuperscript{190} ALEXANDER, \textit{supra} note 183, at 23, 26. For more on Spalding's career, as well as the organization and operation of the NAPBBP, see James R. Devine, \textit{Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case-Study in Owner-Player Relations}, 5 \textsc{Marq. Sports L.J.} 1, 8-10 (1994).

\textsuperscript{191} ALEXANDER, \textit{supra} note 183, at 26-27. Hulbert was elected to baseball's Hall of Fame, by the old-timers' committee in 1995.

\textsuperscript{192} ALBERT SPALDING, \textit{BASE BALL: AMERICA'S NATIONAL GAME} 169-70 (S. Coombs & Bob West eds. 1991). These statements were made in reaction to player demand that the "reserve rule" should be either eliminated or changed to better enable player movement.
organized baseball's labor dispute with John Ward's Brotherhood of Professional Players. Calling the dispute a "War," Spalding, chair of the "War Committee" of the National League, wrote: "No general ever planned [a] campaign or conserved his forces with more painstaking care than did the commanders of the League and Brotherhood warriors." At the conclusion of the dispute, Spalding viewed himself as a latter day Grant at Appomattox, reportedly demanding "absolute surrender," from the rival league. "Not to be outdone" by his hero Grant, however, Spalding was willing to permit players to rejoin the fold of major league baseball, perhaps on the theory that vanquished players would be subservient ones.

It was Spalding's view that formation of the National League saved baseball from the "slough of corruption and disgrace," by taking control of the game from its players, who had made no effort to control "contract-breaking, dissipation, and disgrace." By forming the league, the owner/management class created exhibitions more worthy of public confidence and trust. "It is to this organization that the player of to-day owes the dignity of his profession and the munificent salary he is guaranteed." Players' perceived efforts at ongoing reform were labeled by Spalding as "selfish and malicious."

From Spalding's time forward through the generations represented by the holdouts of Ty Cobb, Joe DiMaggio and Sandy Koufax/Don Drysdale, there is one overriding principle governing the actions of owners. It is that Albert Spalding's belief in the twin concepts of absolute control and absolute surrender permeate all owner-player interaction. This is why Detroit, New York, and Los Angeles adopted a common multifaceted strategy in dealing with the players. By claiming the player was unimportant, by blaming the player, by comparing salaries among players in a way that would cause players to fall into disharmony with each other, by claiming financial ruin, and by calling upon influential friends, owners asserted superiority which translated into absolute control.

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193 The Brotherhood of Professional Baseball Players was founded in 1885 as a fraternal order of baseball players, but became a labor-oriented organization following owner decision to impose a $2,000 salary cap following the 1885 season. See, e.g., ALEXANDER, Our Game 53 (1991); DAVID PIETRUSZA, MAJOR LEAGUES 99 (1991); ROBERT SMITH, BASEBALL 391 (1st rev. ed. 1970). For a more complete history of this league, see Devine, supra note 190, at 18-29.

194 SPALDING, supra note 192, at 182, 179. "It was announced at the beginning that it was to be a fight to the death, and it was carried to a finish along these lines. In place of powder and shell, printers' ink and bluff formed the ammunition used by both sides." Id. at 179.

195 Id. at 181-82.

196 Id. at 173.
Absolute control merged with absolute surrender when owners sought not only victory, but the kind of unconditional surrender demanded by Spalding in his "war" with the Players' League. Consider the manifestation of this policy in the Yankee dealings with DiMaggio in 1938.

Yankee owner Jacob Ruppert normally celebrated Yankee signings. In dealing with Joe DiMaggio's 1938 contract, however, the Colonel went out of his way to assure the press that the Yankees were in total command of this labor situation:

"'Here's your contract, Joe DiMaggio,' said Col. Ruppert icily, "Now go ahead and sign it."

"Giuseppe signed without a word, and handed the papers back to the Colonel."

"'Now go ahead and play ball, Joe DiMaggio,' ordered the Colonel like a stern country judge. "Do your best. I hope you have a great year."

"'Thanks,' said Joe. "I'll do my best."

"Someone asked if Joe was getting a bonus for signing."

"'Joe DiMaggio,' barked the Colonel, "are you getting any bonus for this?"

"'No bonus,' gulped Joe."

"'That's right,' continued the Colonel. "And furthermore Joe DiMaggio will not get a cent of pay until he starts to play ball."

Joe In Fold, But Not Forgiven, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 199.

The notion that DiMaggio was in the Yankee dog house was for public consumption only. During the holdout, the Yankees turned down the St. Louis Browns offer of $150,000 cash for the rights to sign DiMaggio. See Believe It or Not, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 196.

At other times, owners demand for absolute surrender showed itself as a total unwillingness to compromise at anything less than victory. So fearful were the Dodgers of the implications of the joint holdout of Sandy Koufax and Don Drysdale, for example, that Dodger GM Bavasi was quoted as saying that he would never again deal with players in a
Absolute Control/Absolute Surrender
and the Players' Association

Albert Spalding's operating manifesto of absolute control and unconditional surrender did not end with the formation of the Players' Association and the February, 1968 signing of major league baseball's first collective bargaining agreement.198

In fact, a strong argument exists that the policy of absolute control and absolute surrender was instrumental in the formation of the Players' Association.

Like Yankee superstar DiMaggio before him, Mickey Mantle had contract trouble with the Yankees from the outset of his career. Originally offered $5,000, Mantle received $7,500 from the Yankees for his rookie season, but only as a result of manager Casey Stengel's insistence.199 After a 1955 year in which Mantle led the American League in triples, home runs and slugging average,200 Mantle decided it was time "to make the big quantum leap," to $35,000. He settled for $32,500, "just to get away from Yankee general manager George Weiss.

With his enlarged salary in 1956, Mantle won the triple crown, leading the league in home runs (52), runs-batted-in (130), and batting average (.353). He also led the league in runs and slugging average and was named the American League MVP.201 When he sought to double his salary, to $65,000, for 1957, Mantle's reasoning was simple: Ted Williams, Stan Musial and Willie Mays were all making around $100,000 and Mantle had a better year than any of them. To Yankee general manager Weiss, however, the issue was a different one: "Mickey, you're twenty-five

package situation. Dodger owner O'Malley was reportedly equally explicit: "If we allowed this [joint] entry business to take hold, it would lead to practices not possible to tolerate." JOHN HELYAR, LORDS OF THE REALM 24 (1994).

Similarly, when Ty Cobb held out with others in 1913, all of the American League owners became involved "lest the general level of salaries be forced upward should those two players succeed in winning salaries appreciably higher than the top ones being paid at the time." See SEYMOJR, supra note 9, at 176. Discussed by owners was the public impact of a tough anti-Cobb stance by Tiger management. Id. Seymour also points out that a joint salary holdout would be a concern to other owners. Id.

199 See MICKEY MANTLE & HERB GLUCK, THE MICK 143 (Doubleday ed. 1985). Thereafter, Mantle had difficulties each year. "The next year, I got $10,000 after hitting .311. From there I went to $12,500, then up to $17,000; a little bit more each year, paid reluctantly." Id.
200 See NEFT & COHEN, supra note 10, at 302.
201 Id. at 306, 570.
years old--a baby. How much will you want ten years from now if I keep doubling your salary?" Weiss showed Mantle a series of detective reports indicating things such as: "Mickey Mantle and Billy Martin left the St. Moritz Hotel at 6:00 p.m. Came in at 3:47 a.m." Weiss then reportedly said to Mantle: "I wouldn't want this to get into [Mantle's wife] Merlyn's hands."\footnote{204}

While Mantle eventually got his $65,000, through Yankee owner Del Webb,\footnote{203} the scars left by his negotiating experiences with the Yankees were deep.

In 1969, the fledgling Major League Baseball Players' Association sought concessions from owners on the players' pension funds and recommended that players not sign contracts for the upcoming year until negotiations on the issue were resolved. For a new labor organization, obtaining support from established, respected players was critical. When Yankee union player representative Steve Hamilton approached Mickey Mantle about supporting the group that refused to sign contracts, Hamilton was told that the issue would not affect Mantle, because he had decided to retire. Hamilton then learned that Mantle had not yet publicly announced this decision and asked: "Would Mickey delay announcing his retirement and give [the union] permission to include his name with all the players who agreed not to sign contracts? Mantle had only one question: Would it help the players and the Association?"\footnote{204} Assured that it would, Mantle immediately responded: "Then hell yes, ... [u]se my name."\footnote{205}

The impact of the holdouts of Cobb, DiMaggio, and Koufax/Drysdale, then is the continuity those holdouts provide between the original management philosophy of Albert Spalding and the creation of the current structure of the game. It cannot be a coincidence that a player like Mickey Mantle was willing to help the Players' Association after years of personal torment in dealing with Yankee management.

\footnote{202} MANTLE & GLUCK, supra note 199, at 144-45. Weiss also indicated that Mantle could be traded to Cleveland for Rocky Colavito and Herb Score. Mantle indicated that he recalled a conversation with Babe Ruth's widow Claire, who told Mantle: Get what you can while you're on top.... Babe was pushing to take over as Yankee manager, knowing he'd only have another year or two left as a player. When it came down to dollars, Mickey, they handed him the pink slip. Two lousy lines notifying him that he was unconditionally released.  

Id. at 146.  
\footnote{203} See id. at 147.  
\footnote{204} MILLER, supra note 172, at 100.  
\footnote{205} Id.
The "unconditional surrender" posture of owners did not abate with the advent of the Players' Association. Prior to the 1972 strike, despite the

Prior to the 1994-95 players strike, work stoppages occurred in baseball at every previous negotiation of a basic agreement between owners and players. A brief history of these work stoppages, as well as the collusion decision of the middle 1980's includes:

1972 Strike--At the beginning of 1972 negotiations toward a new agreement, baseball players' association leader Marvin Miller sought additional contributions from owners toward the players' pension plan. The additional funds were to come from surpluses in the existing pension fund. Despite the fact that the increase would cost the owners virtually no new out-of-pocket money, owners refused any additional contribution. See HELYAR, supra note 197, at 110. See also ALEXANDER, supra note 183, at 280-81; LOWENFISH, supra note 198, at 215. The owners also revoked a previously offered increase in health-insurance benefits.

The resulting strike lasted from March 31 until April 13 and resulted in nine lost season days and the cancellation of 86 games. The owners agreed to provide significant increases in the benefit plans of the players. See MİLLER, supra note 172, at 221-22.

1976 Lockout--In 1976, an arbitrator's decision made Andy Messersmith and Dave McNally free agents after playing out a "reserve" year. See National & American League Prof. Baseball Clubs v. Major League Baseball Players' Assn., 66 Lab. Arb. 101 (1976). The effect of this ruling by arbitrator Seitz was to make all players free agents after playing one year without a contract. The players called the ruling "one and one"--one year under the existing contract and one year under a renewed contract. See HELYAR, supra note 197, at 172. Virtually complete contract freedom would seem to be the ultimate victory for the players. And the ultimate disaster for the owners. As a result, the owners locked the players out of spring training until a new labor agreement on the issue was reached. The lockout lasted 17 days, ending on March 17. MILLER, supra note 172, at 264. Owners lifted the lockout when they realized they were bringing players closer together, rather than driving them apart, as had been hoped. Ultimately, owners and players agreed to preserve some of what owners believed was the prior reserve system. HELYAR, supra note 197, at 197. See infra note 206 and accompanying text. Players would become free agents after six years.

1980 Strike--By the 1980 negotiations, two issues dominated. The first issue was salary arbitration. Owners wanted to eliminate salary arbitration in favor of salary maximums for players not eligible for free agency. LOWENFISH, supra note 198, at 225. This system had originally been the idea of the owners. Owners had discovered that higher salaries for free agents caused higher salary arbitration awards when arbitrators were able to use free agent salaries for comparison. See id. at 234-35. Proposed by owners was a maximum salary of $153,000 for a six-year player, a figure that was lower than what many six-year veterans were already making. Id. at 226.

The second, and clearly more troubling issue was "compensation:" owners wanted free agency modified so that teams losing a player to free agency would be entitled to receive a player from the team signing the free agent. HELYAR, supra note 197, at 222-23. The plan originally proposed by the owners provided for compensation only for "premier" players,
with owners' negotiator Ray Grebey indicating that, in 1980, only three free agents would have qualified. *Id* at 223. Following the setting of a May 22, 1980 strike deadline, little progress towards a settlement was achieved until players refused to board planes to travel to games scheduled after May 22. *Id* at 224, 227-28. Thereafter, all but one of the major issues were resolved in a closed-door meeting by negotiators Ray Grebey and Marvin Miller. On the remaining issue, free agent compensation, the parties agreed to disagree. Instead of prolonging negotiations, an owner-player committee was formed and asked to report by January 1, 1981. If the report's recommendations were not accepted, the owners were authorized to impose their proposal allowing each team to protect fifteen players, with a team losing a free agent to select any remaining player. The players had the right to reject this imposed plan by striking after June 1, 1981. *See id* at 228. In his book, Marvin Miller indicates that the offer to settle all issues except free agent compensation, and to submit that issue to a joint committee was his idea and had been put on the bargaining table at least a week before it was adopted. *See Miller, supra* note 172, at 290-91. Controversy surrounded this "settlement" almost from the start. Owner-negotiator Grebey apparently believed the ability to implement their last proposal gave the owners a significant concession from the players. He issued a press release indicating that the owners' proposal "becomes a part of the Basic Agreement" for the 1981 season "and it cannot be removed without agreement of the two sides." *Helyar, supra* note 197, at 229.

The reality, of course, was that the "settlement" merely kept alive the owners' legal right to impose their last offer once impasse (created by reasonable failure to agree with the potential resolution of the joint committee) was reached. For a modern context, *see* Brown v. Pro Football, Inc., 116 S. Ct. 2116, 2121 (1996). The joint study committee failed to reach agreement, with the two owner representatives writing one report and the two player representatives writing a second report. The failure has been blamed on personal disagreements between owner-negotiator Grebey and players' association chief Marvin Miller. *See Helyar, supra* note 197, at 258. The strike lasted fifty days and caused the elimination of 713 games. *Neft & Cohen, supra* note 10, at 485 ("seven weeks and a day"). *See also Alexander, supra* note 183, at 315. Another author, however, indicates by chapter title that the strike lasted for 51 days. *See Lowenfish, supra* note 198, at 225-48. All agree that the strike began on June 12 and ended on July 29. When it was over, the players received service credit for the time missed during the strike. This was an important issue, because both free agency and salary arbitration was based on the actual amount of time served at the major league level. *See Helyar, supra* note 197, at 283.

1985 Strike--The 1985 baseball contract talks were protracted and resulted in a two-day strike. Both sides, however, pushed by new commissioner, Peter Ueberroth, were able to reach compromise without the polarization that had accompanied earlier years' negotiations. Helyar seems to suggest that Ueberroth stumbled into assisting in resolution of the dispute. A neophyte in the area of labor negotiations, Ueberroth called negotiators on the morning of the second day and told them to resolve the dispute immediately or he would take negotiations away from the parties and place the issue into binding arbitration. The resulting settlement provided for an increase of $33 million into the players' pension fund (the owners had offered $15 million and the players had demanded $60 million); three years service before a player would be eligible for arbitration and no salary cap on arbitration
fact that owners had recognized the Players' Association as the exclusive bargaining agent for the players and had agreed to allow players to use agents in their individual contract negotiations, one baseball executive summed up the feelings of others in saying "there isn't going to be any baseball for a long, long time. The owners simply increases. See id. at 327-29.

Collusion of 1985-1988--Following the 1985 settlement, Commissioner Ueberroth increased pressure on owners to settle their financial difficulties by themselves. In discussions with owners, he discouraged player contracts that lasted more than 2 years, as well as the signing of most free agents. See id. at 332-33. At owners' meetings, Ueberroth asked direct questions of individual owners about players signed to large free agent contracts who had failed to perform to heightened expectations. Owners quickly adapted to the Ueberroth message of "fiscal responsibility." By 1986, few owners wanted to sign any free agent. See id. at 333-40. Soon, owners openly discussed potential free agents, disclosing to the other clubs whether they actually wished to keep a particular player. See id. at 346-47. "To outsiders the signal might be as cryptic as that of a third base coach. But to insiders it was crystal clear: hands off or have at him." Id. Collective discussion about players designed to discourage the signing of free agents violated the Basic Agreement between players and owners. That agreement made the free agent system a matter of individual rights and forbade both players and owners from acting "in concert" regarding those rights. In a series of rulings on grievances filed by the Players' Association, owners were found to have violated this provision of the Basic Agreement and assessed substantial damages as a consequence. For an excellent discussion of these decisions, see Comment, A Critical Perspective of Baseball's Collusion Decisions, 1 SETON HALL SPORTS L.J. 109 (1991).

When collusion was lifted, resultant free agent signings caused salaries to skyrocket, several above the $3 million mark. See HELYAR, supra note 197, at 413 (discussing individual player cases).

1990 Lockout--Negotiations for 1990 reflected collusion and its aftermath. Owners, now facing substantial post-collusion salaries, wanted both a salary cap and a performance-based system for payment to younger players. See id. at 414. Under this system, Will Clark, the then third-year first baseman for the San Francisco Giants, would earn a salary of approximately 1/2 of the $3.75 million a year for which he had already signed an agreement with the Giants. Id. The players wanted a return of salary arbitration after two rather than three years. See id. at 414-15. The resulting lack of agreement caused the owners to lock players out after February 15 for a period of 32 days. Id. at 414, 416. See also NEFT & COHEN, supra note 10, at 564. Owners, through new commissioner Fay Vincent, quickly took both the salary cap and performance-based pay off the table. Helyar does not say so, but it seems clear from many of the owners' reaction to Vincent's decision to remove these issues from the negotiation that this may have been the real beginning of the end for Vincent's term as commissioner. See HELYAR, supra note 197, at 417-18. Players refused to back down on reducing the time for salary arbitration. The players received a partial reduction in service time needed before a player was eligible for salary arbitration.

207 LOWENFISH, supra note 198, at 211.
aren't going to le: Marvin Miller run over them anymore."\(^{208}\)

In 1980, this posture became even more pronounced when owners indicated that failure to restructure the relationship by eliminating salary arbitration and providing compensation for free agents would cause a financial catastrophe.\(^{209}\)

While the issues of salary arbitration and compensation sounded like money issues, the actual controversy involved "unconditional surrender." Braves owner Ted Turner, for example, reportedly indicated that Marvin Miller should be run "out of town once and for all."\(^{210}\)

As a result, by the time owners and players got to the bargaining table on the "compensation" issue, the familiar signs of "absolute control" had clearly manifested themselves. According to Miller, the owners "started out giving us Rod Carew and Vida Blue as examples of ... premier free agents.... Now their eleventh-hour proposal includes hitters with .222 averages and pitchers with earned-run averages above six."\(^{211}\) When Marvin Miller asked that umpires be required to postpone games more quickly when bad weather threatened in order to avoid potential injury to the players, the owners refused.\(^{212}\) "Absolute control" was the order of the day and owners would concede nothing.\(^{213}\)

For owners, the vindictive nature of "absolute control" created a non-human view of the player. When teams lost players to free agency, wrote owner representatives Frank Cashen, General Manager of the Mets, and Harry Dalton, General

\(^{208}\) HELYAR, supra note 197, at 112. It was clear that anti-Miller feeling subsumed any discussion of mere monetary issues. Id.

\(^{209}\) These negotiations were conducted during a period of labor "give-backs." See id. at 223. Baseball owners were apparently interested in tapping into this labor climate and were "determined" to win some give-backs. LOWENFISH, supra note 198, at 225.

Commissioner Bowie Kuhn reportedly indicated at the 1980 winter meetings: "The prospect of staggering losses for our clubs is an emphatically real prospect." See HELYAR, supra note 197, at 263. Several owners forecasted bankruptcy for some major league clubs. Id. Owners would not, however, open their books to player financial scrutiny. Id. This decision was upheld by the federal court. Silverman v. Major League Baseball Player Rel. Comm., 516 F.Supp. 588 (S.D.N.Y. 1981).

\(^{210}\) HELYAR, supra note 197, at 263.

\(^{211}\) Id. at 224-25.

\(^{212}\) Id. at 227.

\(^{213}\) See MILLER, supra note 172, at 193. Miller recites an instance in 1970 when a former Yankee pitcher asked owners, in jest, if they would be willing to rescind the player's obligation to the reserve rule when the player reached age 65, and was told that they would not. See id.
Manager of the Angels, the team was "'losing an asset.'" The player was no more than a piece of the game over which owners exerted "absolute control," and any contrary argument rekindled owner desire for "unconditional surrender."214 As Reds' president Bob Howsam reportedly put it, these issues were "a direct challenge to the [owner's] manhood, a challenge to which they could respond in only one way. Damn right they'd draw a line in the sand."215

The 1980 lockout did not produce a better package for the owners, and perhaps as a result, by 1985, owners still railed about the overall financial health of the game. Prior to the 1985 negotiations, players demanded to see the owners' books. New baseball commissioner Peter Ueberroth "ordered" the owners to turn over their books to the Players' Association who, in turn, turned them over to a Stanford economist. Predictably, while the owners claimed the baseball enterprise was losing money, the players' economist found otherwise.

The desire for absolute control and unconditional surrender was clearly seen when owners rejected these findings and began a period of collusion following these

214 See HELYAR, supra note 197, at 258-59. "'Ownership of property is consistent with the principles of our society; ownership of people is not,'" wrote players Sal Bando and Bob Boone, although Helyar suggests that the players' report was actually written by current players' association executive director Don Fehr. Id. at 258.

Owners imposed their plan on February 20 and it was immediately rejected by the players' association. See ALEXANDER, supra note 183, at 314. In the face of an impending strike following owner imposition of their compensation plan, Baltimore owner Edward Bennett Williams attempted to pacify other owners by telling them they should not renew an attempt to resurrect the reserve system, reportedly telling anyone who would listen that this was "'the wrong issue.'" See HELYAR, supra note 197, at 262.

215 HELYAR, supra note 197, at 261-62. There was some suggestion that the owners tried to raise an issue familiar to the holdouts: financial ruin. Marvin Miller attempted to obtain financial records from the clubs through court action, claiming that a statement by Commissioner Bowie Kuhn that teams would suffer "'staggering losses'" without the owners' plan placed the issue of economic condition into the negotiations. This was ultimately rejected by the federal court, thereby clearing the way for the June 12, 1981 strike. See id. at 262-64. See also Silverman v. Major League Player Rel. Comm., 516 F.Supp. 588 (S.D.N.Y. 1981).

Evidently, even the nation's labor leaders became confused when dealing with major league baseball. After the strike started, Labor Secretary Ray Donovan became involved and, according to Helyar, "earnestly implore[d] everyone to think of the national pastime. Baseball was important to this great nation." HELYAR, supra note 197, at 277-78. When player Phil Garner told the Secretary that, to the players, the matter was one of conscience, Donovan reportedly indicated "'Conscience has nothing to do with it, ... [i]t's business.'" By this time, Garner had figured out the issue and knew that, more than business, to the players, free agency "was a cause." Id.
negotiations. In fact, free agents during that period became the modern-day "holdouts," and received the same treatment as their earlier counterparts. Tim Raines, whose .334 batting average led the National League, found no teams interested in his service.\textsuperscript{216} Kirk Gibson, one home run shy of being a 30 home run/30 stolen bases outfielder for the Detroit Tigers in 1985 and who would fall two home runs shy of the same feat in 1986,\textsuperscript{217} heard a refrain familiar to players like Ty Cobb, Joe DiMaggio, Sandy Koufax, and Don Drysdale. Rather than sign the free agent Gibson to a 1986 contract, three major league clubs indicated they were "better off" without Gibson. The New York Yankees platooned Dan Pasqua (16 home runs/2 steals) and Gary Roenicke (3 home runs/1 steal), the Cardinals opted for Jim Lindeman (1 home run/1 steal),\textsuperscript{218} and the Angels elected to use Ruppert Jones (17 home runs/10 steals).\textsuperscript{219}

While owners deceived themselves into legitimatizing their exercise in the name of fiscal responsibility,\textsuperscript{220} the exercise of that responsibility was a reassertion of "absolute control" by the owners.\textsuperscript{221} With this reassertion of control came a

\textsuperscript{216} Id. at 345-46. Although Raines played in eight games for the Montreal Expos in 1980, his major league career really began in 1981 when he batted .304 and stole 71 bases (leading the National League) in just 82 games. In 1982, Raines average slipped to .277 when he played in 156 games, but his 78 steals again led the National League. In 1983, Raines batted .298 and again led the league in steals with 90. He also led the league in runs with 133. In 1984, he batted .309 and led the league in doubles with 38 and in steals with 75. In 1985, Raines did not lead the league in any categories; however, he did bat .320 with 70 steals. See Neft & Cohen, supra note 10, at 482, 490, 500, 508, 517, 523. Raines eventually settled for a $100,000 raise from Montreal, his existing team. See Helyar, supra note 197, at 351.


\textsuperscript{218} Lindeman actually only played 19 games for the Cardinals, and only 1 in the outfield. Id. at 532.

\textsuperscript{219} Compare Helyar, supra note 197, at 336, with Neft & Cohen, supra note 10, at 528-30, 532. Of the three teams, only the Angels successfully competed for a division title, losing to eventual World Series loser Boston. Jones batted .176 with no home runs in the championship series. Neft & Cohen, supra note 10, at 535.

\textsuperscript{220} Then Atlanta Braves president Stan Kasten, who had previously held a similar position with the National Basketball Association Hawks, was surprised at the contrast between NBA executive meetings and those of major league baseball. At basketball meetings, "trade talk dwelt on how players would help teams. 'In baseball all anybody wanted to talk about was salaries and money.'" Helyar, supra note 197, at 347.

\textsuperscript{221} Boston catcher Rich Gedman is an example. Gedman had been named to the American League all-star team in 1986. Id. at 350. At age 26, he caught 134 games for the American League champion Red Sox, batting .258 with 16 home runs. See Neft & Cohen, supra note 10, at 528. For 1987, Gedman looked for a contract with the Red Sox that would
return to the idea that it was the player who was being unreasonable in seeking additional compensation for superior performance. After Rich Gedman, a 1986 all-star catcher for the Boston Red Sox, received no significant free agent offers for the 1987 year, he re-signed with the Red Sox. Boston owner Haywood Sullivan reportedly told Gedman that 'he'd let down all the little people who have been your fans.' He'd been greedy; he'd been a dupe of the union; he 'should have had second thoughts about becoming a test case.'

**Players' Reaction to Absolute Control**

Certainly, since the advent of the Players' Association, the perception is that the players have gotten the better of the negotiations with the owners. Unrecognized, however, is the fact that the players have done a better job in understanding the true nature of the relationship with the owners and adapting to Spalding's legacy of "absolute control" and "absolute surrender."

pay him comparably to other first-line catchers, around $1.2 million. The best he could get from Boston was a three year deal for $900,000 per year. HELYAR, supra note 197, at 350:

On January 9, [1987,] the Red Sox sent out a crystal-clear signal on Rich Gedman: a memo to every team on interoffice teletype, detailing the failed negotiations and concluding:

'The Red Sox will continue to make every effort to sign Gedman.'

Still, the catcher was hopeful he'd get a deal. In late January, he and [his agent] flew west to meet the A's....

Oakland couldn't match Boston's $900,000 offer, ... but was open to a one-year deal that allowed Gedman to go free-agent thereafter. Baseball rules allowed players to become free agents just once every five years. But clubs allowed, if they wished, waive the so-called repeater rights....

A few days later [the A's called] to scotch the deal. They had talked to [owner agent] Barry Rona, who was dead-set against waiving repeater rights. The team was still free to do it, ... but they were a small-market franchise ... and didn't want to buck the big boys in New York on this one....

On the heels of that, Houston GM Dick Wagner called ... and said he was about to make a "big offer" on Rich Gedman. It turned out to be a rather modest one--a two year contract at under $750,000 per, with an option for a third year. Gedman declined and went home to await more offers, which did not come.

*Id.* at 351-52.

222 *Id.* at 359-60. Gedman felt the loss to his personal dignity for exercising his labor rights: "'You felt like you came back like a beaten dog,' he said." *Id.* at 359.
Following the 1890 demise of the player-controlled "Players' League," for example, its organizer, and member of the Hall of Fame, John M. Ward, is said to have observed that the baseball player "is not a sporting man. He is hired to do certain work, and do it well."  

Ty Cobb, Joe DiMaggio, Sandy Koufax and Don Drysdale all saw themselves as businessmen in their dealings with owners.

Ty Cobb certainly considered himself a businessman: "If I don't ask for and get recognition now, I'll have shown myself a poor businessman and [the Detroit owner] will have me over a barrel in our future dealings."  

Joe DiMaggio expressed similar sentiments in reaction to fan jeers following one of his holdouts: "All I was trying to do ... was to get as much as I could. Is that so terrible? I had a great season and some of my friends said I ought to be worth $40,000 to a team like the Yankees."  

Sandy Koufax was "perfectly aware that you can't expect any great outpouring of sympathy while you are explaining why you won't take the $100,000.... But I also realize that it's just a salary, not an honor."  

When owners exercised absolute control over players through the reserve clause, Koufax also recognized that "you have only one alternative to signing at the owner's figure: not signing." The fact that players did not quit prior to free agency, although portrayed by sports page cartoons as indicative of the ballplayers' "country boy" mentality, was not because of want of business acumen. It was, instead, a product of an oppressive system.

With the advent of the Players' Association, the players came out from under the reserve rule, but their recognition of their subservient role in the owner/player

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224 Cobb & Stump, supra note 12, at 75. Cobb was an incredibly intelligent investor, both during and following his career. At the end of his life, despite the fact that he never earned more than $85,000 a year in baseball salary, Cobb was worth approximately $12.1 million. He was one of the early investors in Coca Cola and eventually owned 24,000 shares of the company. See Stump, A Money Player. Ty Cobb was a Peach When It Came To Investments, Too. L.A. Times, July 12, 1991, at SPORTS, 1.
225 Durso, supra note 50, at 97.
226 Koufax, supra note 156, at 270.
227 Id. at 269.
228 Id. at 269-70.
relationship remained at the forefront of the negotiations. In the beginning, this came as something of a shock to their newly hired labor leaders.

In dealing with the 1972 negotiations, the players were less concerned with the technical, contract issue then with the deeper issues of control. Whenever Miller suggested strategic retreat, the players responded in the voice of Reggie Jackson: "No, no, no, ... We can't do that." Although the players set a strike date for Miller, a spring training strike seemed unwise. Miller knew that baseball players were not paid during the off-season and thus needed the season to begin to start paychecks. In addition, the Players' Association had no strike fund. Finally, the Players' Association, still new at labor negotiation, had only "learned to walk; but it wasn't yet ready to walk into battle." As a result, Miller's long labor background suggested avoiding a strike. The players, however, knew the issue was about union-busting and did not believe they could back down. In fact, their statement following a strike-authorization made no mention of the pension fund/contract issue: "We will not permit the owners to breach our union. Accordingly, as of March 31, the Major League Baseball Players Association is on strike."  

Similarly in 1990, many older players believed a return to salary arbitration after two, rather than three years, was exclusively a money issue and did not warrant a delay in the season. By this time, however, players' union leadership was well versed on the underlying issue. Players' Association executive Donald Fehr, along with retired union-chief Marvin Miller, convinced the players that the issue was one of absolute control.

When we negotiated salary arbitration in 1973, it was the first big breakthrough for the players' union," said Miller. "Before then, the owners told the players what they would get. It didn't matter if you were a marginal player or Joe DiMaggio. If you didn't like it, all you could do was find a new line of work. Jimmie Foxx won the American League Triple Crown one year and was forced to take a pay cut the following year.  

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229 HELYAR, supra note 197, at 114. Similarly, in the mind of owners' negotiator John Gaherin, the dispute was equally unripe for a full-fledged labor confrontation. "We're just talking about money here,' he told the' baseball owners. Id. at 112.

230 Id. at 115-16. Proof that the strike was over power can be seen by the actions of the parties once the strike started. A Philadelphia Phillie executive reportedly told player representatives: "If you get rid of Marvin [Miller], we could work this out ourselves.... Let's go back to the way it was." See id. at 118.

231 Id. at 422.
Whatever else the players did, according to Miller, they had to stick together because the issue was not simply salary arbitration.\footnote{232}

**OWNERS' REACTION TO ABSOLUTE CONTROL**

Throughout their dealings with the players, owners have followed Spalding's legacy of absolute control and absolute surrender.

For example, Spalding wrote that just because the players were the actual entertainment "'producers'" did not mean that they should actually manage the entertainment itself. "I do not believe then, nor do I believe now, that these contentions by the players were based upon safe or sane business theory."\footnote{233} It was this starting point that led Spalding to his conclusion that baseball needed two independent divisions--player/employees and owner/managers.\footnote{234} Since Spalding, owners have refused to recognize the contributions of players to the baseball enterprise. This refusal has overlooked the demonstrated ability of the players to generate revenue. Consider the careers of Ty Cobb, Joe DiMaggio and Sandy Koufax/Don Drysdale, for example.

Ty Cobb was clearly a drawing card for Detroit. It was estimated that Cobb was "personally responsible for putting $30,000 into the Detroit ball club's treasury over the course of the season." Even in the years when the Tigers were defeated in the World Series, the team was a financial success, drawing over 500,000 fans into a small ballpark.\footnote{235} In fact, Detroit owner Navin was said to be one of only two baseball owners to become wealthy on their baseball income alone. With Cobb, the Detroit team was worth a reported $650,000.\footnote{236}

Joe DiMaggio was credited with significantly increasing attendance at Yankee Stadium from prior years.\footnote{237} As noted by one sportswriter, "DiMaggio is rapidly becoming one of the standout drawing cards of the league.... When you have

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\footnote{232}{Id. at 423.}

\footnote{233}{SPALDING, supra note 192, at 169. For further discussion of Spalding's view of player-run leagues, see id. at 115-18.}

\footnote{234}{Id. at 169-70.}

\footnote{235}{ALEXANDER, supra note 12, at 85. Only the Philadelphia Athletics and the New York Highlanders, playing in larger facilities, drew more fans.}

\footnote{236}{Id. at 108. The other owner who became wealthy from baseball income alone was Charles Comiskey of the Chicago White Sox. It was estimated that "Navin had made as much as $365,000 with the Detroit franchise ...." Id.}

\footnote{237}{See Joe DiMaggio Big Factor in 200,000 Gain Over 1935, in 1 THE DiMAGGIO ALBUMS, supra note 50, at 84.}
an ace Italian like DiMaggio, ... you have a magnet that means a steady flow of gold into the exchequer of a club." While Yankee management was cautious in not attaching too much significance to DiMaggio's drawing power so as to avoid contracts dispute with their young star,\(^{238}\) the effect of DiMaggio on attendance was readily seen following his rookie year when the Yankees contracted for construction of an addition to Yankee Stadium. "When Babe Ruth ... quit to go to the Braves it was believed the old attendance records never would be approached in the Bronx park. But with the amazing development of DiMaggio last summer, the old marks were threatened.\(^{239}\)

Don Drysdale was told that when he pitched, Dodger attendance increased by some 3,000 patrons and that when Sandy Koufax pitched, attendance was up by 8,000 fans.\(^{240}\) In 1965, the year before their joint holdout, Koufax started 41 games and Drysdale started 42.\(^{241}\) "If you say that each fan spent an average of $4.50 on a ticket, parking and food, that would mean $36,000 extra every time Sandy pitched and $13,000 every time I went to the mound."\(^{242}\)

In the post-Messersmith-McNally era, owners made similar financial arguments. It was claimed that unrestricted free agency would drive baseball to financial ruin. From 1976-1980 average player's salaries increased from $52,300 to $143,756, thus highlighting owner concern. At the same time, however, attendance increased 39% and total team revenues went up 66%.\(^{243}\)

Similarly in the post-collusion period leading up to the 1990 contract negotiations, owner claims of financial ruin led to owner demands for a salary cap and a performance-based salary system for young players. At the same time, however, owners signed television agreements doubling each club's yearly television revenue to $14 million. Further, 1989 operating profits for the game itself were

\(^{238}\) Id. Yankee business manager Ed Barrow explained that while DiMaggio had helped the club a lot, the club itself was quite good and likely to win the American League Pennant. Id. A comparison of the 1935 and 1936 Yankee teams, however, does not show much difference in them, outside of DiMaggio. See Neft & Cohen, supra note 10, at 184, 188.

\(^{239}\) CONTRACT LET FOR ENLARGING YANK STADIUM, in 1 THE DI MAGGIO ALBUMS, supra note 50, at 123.

\(^{240}\) DRYSDALE, supra note 153, at 134.

\(^{241}\) NEFT & COHEN, supra note 10, at 369.

\(^{242}\) DRYSDALE, supra note 153, at 134. With 41 starts for Koufax and 42 for Drysdale, this amount would total more than $2 million per year for the starts of the two Dodger stars.

\(^{243}\) HELYAR, supra note 197, at 221.
estimated at $214 million. Again, owner poverty claims had shown themselves to be disguised assertions of the familiar refrain of absolute control.

Instead of recognizing the contribution of its stars, owners consistently argued that these players were not essential to the team. The arguments were as specious as had been Detroit's, New York's and Los Angeles' arguments in dealing with Cobb, DiMaggio, and Koufax and Drysdale, respectively. The statements that the teams do not need these Hall of Fame players is not an expression relative to the quality of baseball produced by them. It is, instead, a manifestation of Spalding's view that the owner/management division must exercise absolute control over the baseball product.

Demand for absolute control has also caused owners to miss efforts by players to forge a partnership with management.

During A.G. Spalding's war with the Brotherhood, for example, when John Ward conceded the need for some form of reserve during the Player's League revolt of 1889, Spalding took this concession as an admission that the players' claims of bondage under that reserve clause were "meaningless and absurd."

Sandy Koufax did not see his actions as challenging the ability of a baseball

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244 Id. at 413. The post-collusion period had produced multi-million dollar player signings as a matter of routine, causing Red Sox General Manager Lou Gorman to call the process "insanity." See id.

245 Consider the claim that Cobb was not as valuable to Detroit as catcher Ed Sweeney was to New York. Sweeney played from 1908-1915 with the New York Highlanders, batting a lifetime .232 with 427 hits in 1841 at bats. That is just 3763 hits less than Cobb's major league total. See NEFT & COHEN, supra note 10, at 94, 107. During the years 1908-1912, while Cobb was winning the yearly batting title, Sweeney batted .146, .267, .200, .231, and .268. Sweeney finished his career in 1919 playing 15 games and batting .095 with Pittsburgh in the National League. Id. at 90. Similar statistical comparisons reveal the utter absurdity of Detroit's claim that Matty McIntyre was an adequate replacement for Ty Cobb, see supra note 28 and accompanying text, that Myril Hoag was an adequate replacement for Joe DiMaggio; see supra note 89 and accompanying text, and that infielders Ron Fairly and Maury Wills and catcher John Roseboro were just as important to the Dodgers as pitchers Sandy Koufax and Don Drysdale. See supra note 167 and accompanying text.

246 Compare SPALDING, supra note 192, at 169-70.

247 See id. at 174-75.
team to "reserve" a player. "I think baseball needs the reserve clause." Drysdale felt sorry for Dodger owner Walter O'Malley. He "was one of the most powerful and respected owners, and I'm sure he didn't care for the fact that we held out as long as we did. I'm also sure ... that he probably took some grief from other owners for allowing not one, but two of his pitchers to crack that $100,000-a-year barrier." In the post-collective bargaining context, the failure to recognize the opportunity for partnership has worked against the owners. Instead of recognizing the desire of the players for a partnership, owners have continued to espouse the twin philosophies of absolute control and absolute surrender.

The 1976 Lockout is a perfect example. While the unlimited free agency granted to Andy Messersmith and Dave McNally appeared to be the ultimate facial victory for the players, they did not see it that way. Marvin Miller and the players saw unlimited, unqualified free agency as a two-edged sword. Free agency for so many players each year could flood the market for players, thus driving down the value of each player.

The aim of Miller and the leaders of the Players' Association "was to make free agency a vehicle that would drive the whole pay scale. 'In any industry, if you took your most talented people and let them set the salary structure it would make everybody higher,' said Phil Garner of the A's. 'We wanted to let the very best players establish the scale.'"

The players therefore demanded free agency after six years. For those players with less than six years experience, the players would continue salary arbitration. Players were confident that those in salary arbitration would have the free agent's high salaries to use comparatively, thereby likely increasing the arbitrating players' salary.

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248 KOUFAX, supra note 156, at 291. "[W]e were trying to find a way to live more comfortably inside" the reserve rule. Id. He indicates that discussion of a lawsuit was but an "academic" one, "even at the end." Id.

249 DRYSDALE, supra note 153, at 132.

250 HELVYR, supra note 197, at 172.

251 Id. "If you made it to six, the odds were very high you'd make it to ten. Your very best players were the only ones who made it to six," said Garner. Id. Limited free agency, for those who were at the top of the skill level would ultimately avoid flooding the market. See id.

252 Id. at 151-53.

253 Id. at 172-73.
When the issue was settled at the player's figure, owners thought that because Arbitrator Peter "Seitz [in Messersmith-McNally] had denuded the old reserve system; [owner negotiator] Gaherin had done a hell of a job to negotiate a new limited one." The owners had preserved as much "absolute control" as they thought they could preserve. Because the players knew that total free agency would ultimately work to their disadvantage, they were willing to allow the owners to deceive themselves. Phil Garner reportedly summarized player sentiment: "'You're trying not to grin and you're trying to say 'Aw, Christ, this is going to kill us.' Meanwhile, inside, your going, 'Yes! Yes! Yes!'"254

ALBERT SPALDING, THE HOLDOUTS AND THE 1994 CONTRACT NEGOTIATIONS

Prior to the beginning of the 1994 negotiations, owners agreed among themselves to a revenue-sharing plan whereby clubs in smaller markets would receive a share of the profits of larger market teams. Under the proposal, approximately one-third of the major league teams would receive revenue, one-third would pay from their profits and one-third would be unaffected. The plan, however, was tied to players agreeing to a salary cap for each team.255 Under the owners' plan, baseball teams and players would split all baseball revenue on a 50/50 basis.256 Specifically,

254 Id. at 196. Even when told, owners have showed, in the past, an unwillingness to listen. During negotiations leading to the 1984 contract, Astros third baseman Phil Garner reportedly tried to explain the business of baseball to Astros owner John McMullen, who wanted major concessions from the players in free agency and salary arbitration: "'John, what you're failing to see is that the players' union has made its gains over a period of twenty years .... Why don't you project yourself out ten years from now and figure where you want to be?" Id. at 327. Garner also attempted to tell McMullen that salary arbitration was the real owners' problem, because free agency was an issue upon which the players would not budge. At this point, McMullen reportedly called Garner "a goddamned Communist." Id.

255 Small market clubs claimed they could not compete for free agents because the club's revenues were depressed by the absence of large broadcasting income. See Ronald Blum, Owners OK Plan on Revenue, THE ARIZONA REPUBLIC, Jan. 19, 1994, at E1, available in 1994 WL 6414537.

256 See Ross Newhan, Talk of a New Proposal Appears to Lead to Another Dead End Baseball: Montgomery, Myers Say Ravitch Offered One. Union Says No and, for Once, Selig Agrees, THE L.A. TIMES, Aug. 9, 1994, at SPORTS 6; PART-C; Sports Desk, available in 1994 WL 2333154. Because this proposal included all of the industry's revenue, it presumably included the amount players earned by licensing of baseball cards and related materials, an amount that totaled $175 million at the time of the strike and which had been set aside as a strike fund for the players by the association. See Steve Zipay, Life Without Baseball, A Striking Similarity the Issues a Guide to Key Elements of the Looming Strike, NEWSDAY, Aug. 7, 1994, at SPORTS 11, available in 1994 WL 7419545.

At the time of the strike, player compensation amounted to 58% of the revenue of the teams. See Baseball's Antitrust Exemption: Hearings on H.R. 4994 Before the Subcomm.
the owners were willing to guarantee the players a total of at least $1 billion per year for seven years for player salaries. The amount would grow, dependent on the growth of revenues for the industry. The owners claimed that at the recent growth rate of 14%, average major league salaries would grow from $1.2 million to $2.6 million per year.\textsuperscript{257} In addition, owners sought a reduction in free agent eligibility from six years to four, wanted the current club to have the right of first refusal for free agents with four and five years experience, and wanted an elimination of salary arbitration.\textsuperscript{258}

From the players perspective, there were several flaws. Average salaries at the time of the strike were already $1.2 million.\textsuperscript{259} The $1 billion figure was guaranteed only so long as industry revenue remained steady or increased.\textsuperscript{260} Finally, and most important, while the proposal required that teams have a required minimum payroll, they also mandated that no team exceed a maximum payroll.\textsuperscript{261} For the union and its members: "The purpose of a salary cap is that the players agree to accept less than the owners feel their value is .... That's the idea of a salary cap. That's a very, very difficult proposition to follow."\textsuperscript{10262}

Neither side deviated from their position and the players' strike began on


\textsuperscript{257} ALLAN H. "BUD" SELIG, Don't Blame the Owners, USA TODAY, Aug. 5, 1994, at NEWS 12A, available in 1994 WL 11095655.


\textsuperscript{259} KEN ROSENTHAL, Owners Started Labor War, and Only They Can Finish it, THE BALTIMORE SUN, Aug. 11, 1994, at SPORTS 1C, available in 1994 WL 6913185.


\textsuperscript{261} Under the proposal, total industry revenue would be divided in half and then divided by the total number of major league teams to arrive at an "average" club payroll. Teams would be required to have a payroll that fell between 84% (the floor) and 110% of that average. See Issues Dividing Owners, Players, USA TODAY, Aug. 3, 1994, at SPORTS 3C, available in 1994 WL 11083093. Teams whose individual revenues did not allow it to meet the payroll average would be eligible to receive money from a central fund. Those teams would remain eligible to receive funds until their payrolls were 14% above the floor. See Joe Strauss, Salary Cap Proposal Leaves Fehr Skeptical, ATLANTA CONSTITUTION, Jan. 20, 1994, at SPORTS D3, available in 1994 WL 4470559.

If a team were sold, any monies obtained from the fund would have to be repaid.

\textit{See id.}

\textsuperscript{262} Id.
August 12, 1993.  

Review of management strategy during the 1994-95 strike shows that owner activity had changed very little from the time of A.G. Spalding. The philosophy of absolute control developed by Spalding and used by owners in their dealings with holdouts Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale was as present in these most recent negotiations as it had been in all prior ones.

First, during the 1994-95 negotiations, owners claimed they did not need the players. Shortly after the 1994 strike began, owners began discussing "replacement players" as an option. Games with replacement players would still be "professional baseball," one baseball executive stated. Owners believed that if the season started "with replacements, a large percentage of fans still will attend games and watch on television." Following the cancellation of the World Series and the threat to the 1995 spring training, owner call for replacements became more strident: "America has spoken consistently and said: "Give us replacement players rather than let these guys remain on strike," Atlanta Braves President Stan Kasten said. According to owners, "the game must go on," no matter how weak "the product might turn out to be." "There has to be a continuity to baseball." Thus, despite a New York...
Times/CNN poll showing that of people who said they attended major league baseball, 51% indicated they would not pay to see replacement players, owners continued to advocate the use of replacements, "because they have the right to go on doing business." On March 30, 1995, owners voted 26-2 to authorize the use of replacements during the regular season.

Second, during the 1994-95 negotiations, owners argued that the players were being petty, greedy and ungrateful. According to spokespersons for the owners, it was the players who refused to bargain, and despite one of the most exciting seasons ever, it was the players who decided to shut down the game of baseball. The revenue that was lost was the fault of the players: "As a result of the player strike, the revenues from the playoffs and World Series ... were irretrievably lost." It was the owners who were trying to "preserve baseball as a family sport." Players may have had feelings similar to Sandy Koufax, who was led to feel that he was betraying his teammates, when they read acting-Commissioner Selig's statements apologizing for the frustration of fans, and sharing their anguish: "But as I have told our fans, I would be more hurt, more frustrated and, frankly, embarrassed if the Clubs had reacted to the Union's threat to shut down the World Series as we had in the past fulfilling the need to play," is the way it was put by acting commissioner Selig. Mark Maske, Relief Is All Too Comic: Replacements Are a Far Cry from Major Leaguers, THE WASHINGTON POST, February 26, 1995, at SPORTS D11.

266 Id.
272 Id. Compare SPALDING, supra note 192, at 176 (noting that it was the owners who "perpetuated" the game "into the most glorious and honorable sport on the green earth.").
273 See supra note 170 and accompanying text.
Third, owners tried to capitalize on their perception that public opinion would view the players as being "over-compensated" for "playing a game." As acting-commissioner Bud Selig told a United States Senate committee: "[N]o one is asking the players to be under-compensated. We guaranteed the players would receive at least as much as they are receiving today and to have their salaries grow as industry revenues grow." Selig told Congress that removal of the judicially created antitrust exemption for baseball would grant privileges to "750 Major League Baseball players, who make an average $1.2 million ... privileges that truck drivers, machinists or any other union employee does not have." In an editorial page column in USA TODAY, Selig sounded like a modern A.G. Spalding, who noted the "very serious problems" faced by baseball off the field. "That is why the 28 clubs made their financial records available to the players' union and put together a comprehensive economic plan designed to restore economic sanity and competitive balance to the game."

Fourth, during the 1994-95 negotiations, owners continued to claim that a failure by the players to agree to concessions would lead to the financial ruin of the baseball enterprise. "[T]here are too many teams in small or medium size markets...

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277 Allan H. 'Bud' Selig, Don't Blame the Owners, USA TODAY, Aug. 5, 1994, at 12A, available in 1994 WL 11095655. Spalding saw the National League organized "to rescue the game from its slough of corruption and disgrace." SPALDING, supra note 192, at 173. Compare the language of A.G. Spalding, indicating that the game of baseball will continue to "progress onward and upward, despite the efforts of certain overpaid players." Id. at 176.

278 Even before 1994 negotiations began, owners knew their financial position had changed. The 1989 mega-deal that produced $1.5 billion in television revenue from CBS and ESPN had come to an end at the close of the 1993 season. Because both networks had lost substantial sums, the "money train from the networks [came] to a screeching halt." Terry Blount, Baseball's Burning Questions/Change in the Air as CBS, ESPN Squirm, HOUSTON CHRONICLE, February 28, 1993, at SPORTS 2. Reports showed that CBS had lost approximately $250 million on the deal, while ESPN had lost $100 million. Id. The losses...
who are in grave difficulty," is the way acting commissioner Selig put the issue in April, 1994. He chastised "professors who write books" claiming that owners were crying wolf. As for those who claimed the industry was flourishing, "they must be in a different business than I am in. I am telling you the trauma, the heartache." Selig was asked specifically: "What evidence can owners provide for the need to change?" Selig's response was that economics had already "profoundly affected the game on the field" in places like Pittsburgh and San Diego. In testimony before

were blamed on a combination of paying too high a price, continuing sporadic coverage by CBS which caused a ratings drop, and declining viewer interest in baseball, caused by a younger generation's preference for other televised sports, particularly basketball. See id.; Peter Gammons, Baseball Needs to Get Down to a Business in a Hurry, BOSTON GLOBE, Jan. 29, 1993, at SPORTS 66, available in 1993 WL 6578204.

In a new six-year agreement, major league owners received no "up front TV rights payment." Instead, baseball entered into a partnership with the NBC and ABC television networks for the marketing and promotion of major league baseball advertising. Tony DeMarco, Network Deal Will Be Costly for Baseball. Owners Expect TV Revenues to Fall As Much As 50 Percent Next Season if the Joint Venture with ABC and NBC Is Approved, THE FORT WORTH STAR-TELEGRAM, May 10, 1993, at SPORTS 1, available in 1993 WL 9266382. Part of the agreement anticipated formation of an aggressive marketing company financed by the two networks and major league baseball. Id. Under the joint venture, owners made an initial $10 million investment in the enterprise. When advertising sales were generated, baseball received 87.5% of the first $160 million of net sales, 33.3% of the next $30 million in net sales and 80% thereafter. Murray Chass, Baseball's New TV Deal a Slight to Fans and Players, COURIER-J. (Louisville, Ky.), May 13, 1993, at SPORTS 1D, available in 1993 WL 6228334.

In addition, baseball anticipated a further agreement with the ESPN television network that would be worth about $50 million and a national radio agreement worth about $5 million. Ronald Blum, Broadcasting Revenue to be Slashed in Half Next Season, THE BATON ROUGE ADVOCATE, May 11, 1993, at SPORTS 5D, available in 1993 WL 7079850.

At the last minute, CBS attempted to renew a television deal with major league baseball by offering a $120 million a year package that included playoffs, but also included a profit sharing incentive for profits above $150 million. "[B]ut since they argued they couldn't reach $150 million, we didn't think that was sincere. This is why it didn't take long to dismiss their offer," according to Chicago White Sox owner Eddie Einhorn. Rudy Martzke & Michael Hiestand, Einhorn Surprised by Reaction to Deal, USA TODAY, May 19, 1993, at SPORTS 3C, available in 1993 WL 6709091.


280 Id.

281 Id.

282 Id. He indicated that the economic message was an unpleasant one. "'We are an industry that has undergone enormous change. The old system doesn't work any more.'" Id. There were, however, no numeric specifics. Similarly, in response to direct questioning
Congress, Selig indicated that the percentage of revenue devoted to player salaries had increased from 48% in 1991 to 58% in 1994. The impact of this figure, according to Selig, was most profound in cities with lowest revenues. The result was that the teams in these cities could not be competitive. "Our economic problems had become so serious that in many of our cities the "competitive hope" that is the very essence of our game was being eroded."  

Selig and owner negotiator Richard Ravitch also claimed that at least 19 major league teams were losing money, including such storied franchises as the Los Angeles Dodgers and the Chicago White Sox. Selig, in fact, initially indicated this number might be too low with the possibility that another one or two teams could be added to the list. Ultimately, Selig reduced his figures, claiming that only 12-14 teams would lose money, adding that this number could not be debated.

Finally, during the 1994-95 strike, owners attempted to use a third party to strengthen their claim. On October 14, 1994, President Clinton appointed former labor secretary William Usery to mediate the baseball dispute. Acting commissioner Selig was quick to jump on the Usery bandwagon, reportedly calling the


285 See Usery to Mediate Baseball Strike?, THE STAR-LEDGER (Newark, N.J.), Oct. 14, 1994, at ( ), available in 1994 WL 7907748. This was not the first federal intervention into the strike. The Federal Mediation and Conciliation Service had entered the talks the day following the August 12 strike, but were unable to forge any agreement. Id. In September, the head of the FMCS had urged the White House to appoint someone like former President Jimmy Carter or former Secretary of State George Schultz to arbitrate the dispute, a suggestion that was rejected by the White House. White House Won’t Take Ball for Arbitration Pitch, BUFFALO NEWS, Sept. 7, 1994, at SPORTS D2, available in 1994 WL 4991915.
appointment "a very constructive step."\textsuperscript{286} Owners' representatives sought to use the appointment of a third-party mediator as a tool to shape public opinion: National League president, Leonard Coleman, admittedly not involved in the negotiations, was confident a deal could be reached if the parties would just return to the bargaining table. Similarly, American League president Gene Budig said it was time to "forget the events of the past. Both sides need to put the train back on the track."\textsuperscript{287} After a month of negotiations supervised by Usery, owners came forward with a new proposal, built around what was termed a "luxury tax" imposed against teams whose payrolls exceeded a certain figure.\textsuperscript{288} Under the owners' proposal, any team with a payroll above the average of the two leagues would be subject to the tax, which was on a graduated scale, but with rates that exceeded 100%.\textsuperscript{289} Players then responded with a payroll tax proposal ranging from 5-7%, with richer teams paying more.\textsuperscript{290} The players also sought to share in cable television revenues,\textsuperscript{291} but offered to create a multi-million dollar fund to promote baseball on an international level.\textsuperscript{292} Owners quickly rejected this counterproposal and made a final offer of a two-tiered tax system that would involve a payroll tax with an initial 4.64% rate, but would also

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\textsuperscript{286} Alan Truex, Veteran Labor Mediator Summoned by Clinton, \textit{Houston Chronicle}, Oct. 15, 1994, at SPORTS 6, available in 1994 WL 4596969. Union leader Fehr was far more reserved: "Negotiations need to resume ... I think it's safe to say that we can use all the constructive help we can get." \textit{Id. See also} Jerome Holtzman, Usery Enters Power Struggle with No Power, \textit{Chicago Tribune}, Oct. 19, 1994, at SPORTS 5, available in 1994 WL 12154960. Holtzman also reported that the players were opposed to the appointment and were unwilling to give up their refusal to permit a salary cap. \textit{Id.}

At the time of Usery's appointment, it was believed that several owners were weakening on the insistence on a salary cap and were, instead, leaning toward a more union-friendly luxury tax. \textit{See White House Won't Take Ball for Arbitration Pitch, Buffalo News,} Sept. 7, 1994, at SPORTS D2, available in 1994 WL 4991915.

\textsuperscript{287} Alan Truex, Veteran Labor Mediator Summoned by Clinton, \textit{Houston Chronicle}, Oct. 15, 1994, at SPORTS 6, available in 1994 WL 4596969. Again, the players were more cautious.

\textsuperscript{288} \textit{See Strike Chronology, USA Today, Dec. 16, 1994, at SPORTS 5C, available in 1994 WL 11077054. The owners proposal actually reacted to a players' proposal placed on the table prior to the appointment of Usery. In that proposal, players had proposed a 1.6% tax on both the revenues from the 16 teams with the highest revenues and on the 16 highest payrolls. Don Burke, Owners Put Tax in 102-Page Offer, The Star-Ledger (Newark, N.J.), Nov. 18, 1994, at ( ), available in 1994 WL 9380264.}

\textsuperscript{289} Hal Bodley, Latest Proposal Merely a Starting Point, \textit{USA Today, Nov. 18, 1994, at SPORTS 3C, available in 1994 WL 11073959.}


\textsuperscript{291} \textit{Id.}

include a punitive luxury tax for teams with a payroll 12% higher than the average. At the urging of Usery, players countered with a modified proposal containing a secondary luxury tax, which would not activate until teams exceeded a payroll of $64 million. Thereafter, owners declared the talks at an impasse and imposed the salary cap system they had originally proposed, despite the prior urgings of mediator Usery to not break off collective bargaining.

Upon the owners' declaration of impasse, players sought relief from the National Labor Relations Board, which eventually took owners to court to prevent imposition of the salary cap. While this lawsuit was pending, President Clinton became actively involved, inviting players, owners, and mediator Usery to a White House meeting at which time Usery proposed a solution to the strike. Usery's plan called for adoption of the owners' original revenue sharing plan, funded in part by a luxury tax at a rate of 50% over the 1994 major league team salary of $41 million. Seeking to capitalize on Usery's standing, acting commissioner Selig called the proposal "a step in the right direction and a fair and reasonable solution to this dispute." The union rejected the proposal entirely, and at one point, a union lawyer made the suggestion that Usery had become "senile."

It was at this point that owners were able to use Usery's actions to their

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294 Id.


297 See Ross Newman, Players May Send Mediator to Showers. L.A. TIMES, Feb. 8, 1995, at SPORTS 1. For 1995, the first year of the deal, the luxury tax would be 25% of the salary amounts above the average. Geoff Calkins, Strike Solution Remains Elusive: Baseball Divided by Greed, Hatred, SUN SENTINEL (FL), February 9, 1995.

298 Ross Newman, Players May Send Mediator to Showers, L.A. TIMES, Feb. 8, 1995, at SPORTS 1. For the context of union lawyer Eugene Orza's remark, see infra note 321 and accompanying text. Selig's statements favoring the proposal were made despite the fact that Usery had reached a figure between that suggested by the owners and that suggested by the union. When Usery was appointed, one owner had been quoted as saying: "He better not try to cut the baby in half." Jerome Holtzman, Usery Enters Power Struggle with No Power, CHICAGO TRIBUNE, Oct. 19, 1994, at SPORTS 5, available in 1994 WL 12154960.
public relations advantage. Commissioner Selig told the United States Congress that owners were prepared to accept Usery's recommendations but that the union had "denounce[ed] his suggestions and attack[ed] him personally." According to Selig, the owners were not at fault because they had "bargained in good faith using the services of the most respected mediator in the country ...." \(^{299}\)

**Placing 1994-1995 Owner/Player Actions in Historical Context**

In a very thoughtful article, Christopher J. Fisher called the 1994-95 baseball strike a "myopic subconscious macrocosmic response to conflict," because both players and owners reacted subconsciously to the stimulus of conflict by taking a narrow view of the dispute. \(^{300}\) According to Fisher, both owners and players reacted to the owners' salary cap proposal as a contest to be won or lost. \(^{301}\)

Fisher has, of course, correctly analyzed the subconscious reaction of both sides to baseball's labor dispute. But, as the legacy of Albert Spalding, and the holdouts of Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale demonstrate, the reaction of modern players and owners was inevitable. This reaction has been a part of each previous labor dispute since the inception of baseball.

As has occurred since Spalding's founding of modern baseball, owners downplayed their need for players in the production of the game. The claim by owners in 1994 that "replacements" would satisfy the need for professional baseball was as specious a claim as Myril Hoag being an adequate replacement for Joe DiMaggio. As was true when dealing with the fan appeal and drawing power of Ty Cobb and Joe DiMaggio, owners in 1994 ignored the ability of the players to put fans in stadium seats. One economist, looking at Barry Bonds $7.3 million salary, for example, found that, in 1992, the year before Bonds went to San Francisco, the Giants attracted only 1.6 million fans. The next year, with Bonds, the Giants attracted 2.6 million fans. "With average ticket prices ... around $10, and with the


\(^{301}\) Id. at 374-75, 376-77.
average fan spending another $10 on parking, food, drinks and ... trinkets, the extra 1 million fans increased the Giants' take by $20 million." A.G. Spalding had previously dismissed the players view "that the people who patronized Base Ball pad to see them play" by claiming this view was not "based upon safe or sane business theory." The owners' call for replacements was simply a return to Spalding's theory.

Similarly, the 1994 owners missed at least two opportunities to become partners with their players. First, during the period prior to the 1994-95 strike, one of the ways baseball hoped to increase fan interest and thereby create additional advertising revenue for its new television partnership with ABC/NBC was by expanding the playoff system. Despite the obvious interrelationship between the new television deal and an expanded playoff system, baseball owners negotiated a

302 Andrew Zimbalist, Field of schemes. Baseball strike looms--But Over Rights, Not Greed, THE SAN DIEGO UNION-TRIBUNE, Aug. 2, 1994, at B7, available in 1994 WL 5430416. The author notes that Bonds was not totally responsible for all of the increased attendance, but argues that "he played a leading role." Id. Zimbalist also notes that some players do not live up to the expectations created by their high-priced contracts, but finds that some players outperform their salary. "That's life in the business world," he claims. Id.

Another economist pointed to the purchase price of franchises, calling that figure "the correct measure of the industry." Dan McGrath, Baseball Strike Perplexes Even an Expert, SACRAMENTO BEE, Aug. 12, 1994, at A2, available in 1994 WL 5234102. Prior to the 1994 strike, the Baltimore Orioles sold for $173 million, although the value of that sale was elevated because of the construction of a new stadium. "Bob Lurie got $100 million for the Giants 16 years after paying $8 million for them." Id.

303 SPALDING, supra note 192, at 169.

304 See David Greising & Mark Landler, Baseball: Something For Everybody--to Hate--Fewer Telecasts, Less Money, Angry Fans, Suspicious Players, BUSINESS WEEK, May 24, 1993, at 40, available in 1993 WL 2142024. Although indicating that the agreement would add a round of "wild card" playoffs to the existing format whereby the two division winners from each league played each other, there was to be only one "wild card" team in the new scheme. See id. Baseball would expand from two divisions to three in each league and add a fourth team in each league to the playoffs. See Larry Whiteside, Baseball Expands Playoffs. Plan Is for 8 Teams to Qualify in 1994, THE BOSTON GLOBE, June 18, 1993, at SPORTS 33, available in 1993 WL 6597938. All of the playoff games except the World Series would be broadcast by the two networks only on a regional basis. See Ronald Blum, Baseball Approves Controversial TV Pact, THE ARIZONA REPUBLIC, May 29, 1993, at SPORTS E3, available in 1993 WL 8187213. Baseball thus hoped that regionalization of the television market coupled with an expanded playoff system would boost ratings to the levels of regionally televised college football. Greising & Landler, supra at 40. According to ABC Sports President Dennis Swanson, "Regionalization is designed to create a better telecast .... We'll be able to show action out of both games. If we get a blowout in one game, we've got the other game there." Blum, supra at SPORTS E3.
television agreement with no input from the players. Owners agreed to this new agreement despite the provision in the basic agreement between owners and players requiring player approval of an expanded playoff system. To show that they, rather than the players were in absolute control, owners went so far as to agree to the television deal even in the event the Players' Association did not approve. Although acting-commissioner Selig noted that the television deal was an essential part of baseball’s future, and further suggested a "reasoned, mature effort by" both players and owners, the television deal was negotiated without consensus. Instead, the television contract was, according to Fehr, "another example of the owners' belief that they have the unilateral right to do anything they want, with no regard for our opinion."
Second, during the negotiations leading up through the strike and into the 1995 season, owner claims that player demands would cause financial ruin did not materialize with respect to the data available to the players. When owners could not prove their losses, Union Chief Donald Fehr was able to call their claims "preposterous," and allege that owner refusal to release the names of the teams substantiated his argument: "Ravitch knows that if he revealed the 19 teams, people would laugh at him ...." Union negotiators also pointed to "industry revenue of $1.8 billion and

(N.C.), May 12, 1993, at SPORTS C5, available in 1993 WL 7537208. The players, of course, were not stupid. Using the best projections, owners anticipated this new agreement would result in a 50% reduction in the amount of money owners received under the prior agreement. It was anticipated that media revenue would decline from $401 million to about $200 million. Considering that two additional teams would be sharing in revenue because of the expansion Colorado Rockies and Florida Marlins, this meant that individual team revenue from media coverage of baseball was expected to decline from $15.4 million to about $7.1 million per year. Ronald Blum, Broadcasting Revenue to be Slashed in Half Next Season, THE BATON ROUGE ADVOCATE, May 11, 1993, at SPORTS 5D, available in 1993 WL 7079850. Obviously, such a reduction in revenue was seen by some owners as having a serious impact on player salaries. "We have a problem.... Everybody's going to have a problem" were the sentiments of Philadelphia Phillie owner Bill Giles. Id. It was anticipated that teams in smaller markets would be particularly hurt by the reduction. DeMarco, supra note 278, at SPORTS 1. It was simply impossible to quantify the extent of the affect on salary until more was known about the television revenues. See Phil Rogers, Baseball Agrees to TV Deal. Contract with ABC, NBC Would Add Playoff Round, THE DALLAS MORNING NEWS, May 9, 1993, at SPORTS 1A, available in 1993 WL 8801126. What was clear to San Diego Padres owner Tom Werner was that his team "will be taking a dramatic hit." Tony DeMarco, Baseball Owners Overwhelmingly Approve TV Contract, SAN DIEGO UNION & TRIBUNE, May 29, 1993, at SPORTS D3, available in 1993 WL 7493030.

Even teams that anticipated a new television deal were concerned. Minnesota general manager Andy McPhail noted that the reduction was close to what he anticipated, but still thought the reduction would have a "pretty significant impact on us." Blum, supra note 304, at SPORTS E3. Other teams, however, did not believe they would be significantly harmed. Atlanta Braves president Stan Kasten reportedly said: "We anticipated a sharp reduction in TV, so we'll be OK." Id. Other owners did not seem terribly concerned. Calling the reduction "a reality check for the players and the union," White Sox owner Jerry Reinsdorf was not upset about decreased revenues: "I'm not depressed about it, ... because if we got more, it would go to the players, anyway." Holtzman, supra note 286, at SPORTS C5. Players understood that "lower revenues generally lead to lower salaries." As a result, they saw themselves being asked "to play more games for less money." Finnigan, supra note 305, at SPORTS C9. At the same time, they had not been consulted regarding the structure of this arrangement.

projected attendance again of more than 70 million." In addition, Selig acknowledged that the Baseball Network, the partnership between baseball and ABC/NBC had been a success. He could not answer whether this meant that the projected deficit in media revenue would be lessened. Finally, from 1991-1993, small market teams had been successful on the field. During that period, the National League's division leaders were Atlanta, Pittsburgh, and Philadelphia. At the time the strike shut down the 1994 season, Montreal, Cincinnati, and Los Angeles were leading the three National League divisions. In the American League, division leaders from 1991-1993 were Toronto, Minnesota, Oakland and Chicago. New York, Chicago, and Texas were the American League leaders at the time of the strike. While New York, Chicago, and Los Angeles are clearly "large" market teams, the remainder of these leaders are from either middle or small market teams, with Minnesota, Montreal, and Pittsburgh clearly falling in the latter group. In short, the facts and figures did not support owner claims of financial ruin. Rather, the data supported a claim by one magazine which reportedly concluded that only five teams would be unable to compete in a free market.

In perhaps a rare moment of frankness, acting commissioner Selig indicated the real reason for owner desire for the economic reforms proposed by owners in the 1994 negotiations, including the salary cap: "[A salary cap] establishes order. We don't have order right now." Although he was not asked, Selig went on to explain what order meant. Owners, said Selig, will "know each year what they have to work with." Throughout the negotiations, owner strategy was to "put a drag on player salaries." Any proposal placed on the negotiating table was required to "address cost certainty," and "result in the reduction of player costs from 58 percent to 50 percent of revenue." Under one of the owners' "luxury tax" proposals, for example, a team with a $34 million payroll would pay no tax. If the team then added a $5 million player to their payroll, the team would pay tax of $3.9 million, thus

311 Id.
312 Rogers, supra note 309, at SPORTS DAY 1B.
315 Rogers, supra note 279, at 18B.
316 Id.
costing the team $8.9 million to sign this one player.\textsuperscript{319} To avoid this tax, owners were provided charts which showed them how to adjust their payroll to avoid any tax.\textsuperscript{320}

From the owners' perspective, the 1994-95 debate over finances was familiar. Owners sought, in the manner of A.G. Spalding, to reassert control over the players and the game.

As had been true in earlier negotiations, players understood the real issue. As a result, player reaction to owner attempts to limit salaries was predictably hostile. Thus, when mediator Usery proposed a luxury tax of 50\%, players saw only that it contained the very kind of cost-containment mechanism sought by the owners in their attempt to assert absolute control and compel absolute surrender from the players. When union leader Donald Fehr "asked Usery to explain the economic impact" of the suggested solution, Usery was unable to do so. "I asked him at one point within the nearest $100 million what economic effect his plan would have and he couldn't tell us," Fehr said. "Fehr indicated that Usery's plan ""was easily the most one sided"" he had seen and added ""[t]here was no realistic hope we would pay serious attention to it."\textsuperscript{321} More than simply a "myopic subconscious macrocosmic response" to this conflict, Fehr's reaction saw in Usery's plan a willingness to succumb to owner desire for absolute control. This was, of course, unacceptable to the players.

CONCLUSION

John Wells, of the Federal Mediation and Conciliation Service, attempted to mediate the 1994-95 baseball strike before the appointment of Robert Usery. "'It was clearly one of the most frustrating professional experiences of my career','" is how he summarized the exercise. Wells detected virtually no interest by either side in a negotiated compromise. "'I just couldn't believe these enormously bright, talented,

\textsuperscript{319} Tax Plan Would Offer Incentive to Limit Salaries, The Courier-J. (Louisville, Ky.), Nov. 19, 1994, at SPORTS 4B, available in 1994 WL 10921227. This figure is based on a tax of 1\% on each $500,000 above the base figure of $34 million. After $39 million, this tax would increase to 1\% for each $250,000.


\textsuperscript{321} Newhart, supra note 297, at SPORTS 1. It was at this point that union-lawyer Eugene Orza "responded to Usery's inability to answer a question by saying, 'What do you mean you can't answer? Should I explain to the players that it was proposed by a senile old man? He didn't answer.'" Orza also apologized for this remark. \textit{Id.}
and experienced people would let this happen."  Presidential mediator Usery agreed, indicating that he had "never seen such hostility or mistrust between management and labor."

What these labor leaders failed to understand, in their valiant attempts to resolve this particular baseball labor dispute, was the very essence of baseball. "Time," according to Roger Angell, "is the unique, unchangeable feature of baseball....[b]aseball's time is seamless and invisible, a bubble within which players move at exactly the same pace and rhythms as all their predecessors." Just as this linear nature separates baseball from "the swirl and blur of hockey and basketball," it also separates baseball's employer-employee relationships from other labor endeavors. Unless it is understood that the real issues in baseball's current labor strife are as old as the National League itself, the true nature of baseball's labor "wars" cannot be understood.

In 1875, Albert Spalding started baseball "time", in Angell's words, when he founded the National League. Overlooked by many, however, is that Spalding also punched baseball's first labor time clock with his vision of absolute separation between labor and management. Ever since, baseball management has been guided by Spalding's set of "baseball values," values that include "monopoly, the reserve clause, and other policies that enhanced the owners' profits and control of the

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322 Rick Bozich, Hardball Mediator Struck Out This Time, THE COURIER-J. (Louisville, Ky.), Oct. 1, 1994, at SPORTS 1B, available in 1994 WL 10927667. National frustration over the baseball strike was so great that it threatens to cause agreement among House majority leader Newt Gingrich, President Clinton, and Senate majority leader, Presidential-candidate-to-be Bob Dole. "I think this is just an absurdly destructive behavior that they're both engaged in," Gingrich is reported to have stated as the conflict threatened 1995 spring training. Geoff Calkins, Strike Solution Remains Elusive: Baseball Divided by Greed, Hatred, SUN SENTINEL, Feb. 9, 1995, at SPORTS 10C.

The President agreed, reportedly telling owners and players that it was time to put aside the "rancor and cynicism that are shadowing the American ideal of baseball." Mark Maske & Frank Swoboda, President Puts Pressure on Baseball: Feb. 6 Deadline Set for Strike Resolution, THE WASHINGTON POST, Jan. 27, 1995, at A1. There was not, however, total accord between Mr. Clinton and Mr. Gingrich. When the President's efforts at mediation failed, Gingrich declined the President's suggestion that Congress adopt legislation compelling an arbitrated settlement of the dispute, reportedly calling Congressional intervention, "a very bad idea." Calkins, supra note 322, at SPORTS 10C.

323 Newhan, supra note 297, at SPORTS 1.
325 Id. at 351. In baseball, "[s]omething happens and then something else happens, and then the next man comes up and digs in at the plate. Here's the pitch, and here, after a pause, is the next." Id.
These baseball values were at the center of negotiations with Ty Cobb during the early years of the twentieth century, at the forefront of the Yankees' dealings with Joe DiMaggio from the years of the Great Depression to the advent of World War II, and shaped the issue for the Dodgers in dealing with the joint holdout of Sandy Koufax and Don Drysdale. The same values have also been the focus of the modern collective bargaining negotiations that produced eight work stoppages between 1972 and 1990. They continued at work in the events leading up to the 1994-95 strike and negotiations which followed.

When Argell writes that "[b]aseball ... mannerisms ... fade stubbornly," 327 he writes not only of our memory of the game, but of the issues that face those who today collectively bargain about it. In that bargaining, Spalding's twin doctrines of absolute control and absolute surrender were clearly present. It is thus interesting to note that when owners ratified a new baseball agreement in November, 1996, Angels General Manager Bill Bavasi indicated that the agreement would "lead to a partnership that will last a long time and produce great things." 328 When players accepted this agreement, owners' negotiator Randy Levine indicated that "owners and players have a chance to work in a real partnership. And that's good for baseball." 329

While such a partnership would indeed be good for baseball, just such a partnership has been uniformly rejected by baseball management since 1875. It has been rejected not because of any failure of collective bargaining or because of any fault in the labor laws that today govern the owner/player relationship. Rather, it has been rejected because it is the legacy of Albert Spalding to today's owners. For a true partnership to exist, owners must reject this legacy and the nearly 125 years of owner adherence to it. Only through rejection of Spalding's Legacy can baseball truly resolve its ongoing labor disputes.

326 NEIL J. SULLIVAN, THE MINORS 43 (1990). "In time, an antitrust exemption and the financing of stadiums through public treasuries would be added to the list of 'values'..." Id. at 43-44.
327 Angell, supra note 324, at 351.