

MEDIATING PROFESSIONAL ATHLETE CONTRACTS IN THE WAKE OF DARRELLE REVIS

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I. Introduction

It is a dream fostered on the playground at an early age that rarely comes true. The chance to become a professional athlete escapes the grasp of most that chase the dream. However, for Darrelle Revis, that dream came true. Revis was drafted in the first round of the 2007 National Football League (“NFL”) draft to the New York Jets. However, Revis quickly learned that with this great achievement came some serious drawbacks. Like most seemingly good situations, money clouded the simple dream of playing professional football every Sunday.

Darrelle Revis signed a rookie contract to cover six years for a specified amount each year and optional bonuses. Revis far exceeded most observers’ expectations, becoming one of, if not the most dominant player at his position after just a few seasons in the NFL. He established himself as an extraordinary talent after just a few seasons in the league and only halfway through his rookie contract. At that point, Revis demanded that his contract be renegotiated to be commensurate with the performance he was delivering for the Jets. His salary was above the league minimum, but was still just a fraction of what comparable players were making. Revis, at the advice of his agents, orchestrated a holdout before the season actually began in which he refused to participate in any practices until renegotiating his contract. In short, Revis was not

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playing a second until he saw more money on the table. Ultimately, the Jets and Revis signed a new deal before the season began, allowing him to return to the field.

This article discusses the conflict that arose in the summer of 2010 as the New York Jets and Darrelle Revis struggled to renegotiate his NFL contract. The two parties attempted to identify the specific interests involved and navigate the varied and complex problems arising throughout the ordeal. However, the length and magnitude of the dispute could likely have been truncated through consideration of other potential legal remedies and procedures, including mediation and arbitration. As the NFL moves forward, it is imperative to consider mediation as an alternative to avoiding and effectively resolving similar disputes in the future.

II. Defining the Dispute

A. A Brief Background of Darrelle Revis

After being a standout athlete at Aliquippa High School in Pennsylvania in both football and basketball, Darrelle Revis was given the opportunity to advance his abilities to the collegiate level.¹ At the University of Pittsburgh, he continued to dominate the competition on the football field. Revis received a great deal of attention and won several awards, including the 2006 ESPN College Football Play of the Year Award.²

Instead of continuing his college career, Revis opted to enter the NFL draft in 2007 after his junior season.³ His accomplishments caught the attention of the scouts for many teams.⁴ Entering the draft, Revis was one of the top cornerback prospects.⁵ On draft day, he was selected in the first round, fourteenth overall, by the New York Jets.⁶ Although the team was excited by the prospect of Revis joining the team, the statistics speak for themselves. Few players drafted

¹ *Darrelle Revis Profile*, PITTSBURGHPANTHERS.COM, http://www.pittsburghpanthers.com/sports/m-footbl/mtt/revis_darrelle00.html (last visited Feb. 15, 2011).

² *Revis Punt Return TD is ESPN's College Football Play of the Year*, PITTSBURGHPANTHERS.COM (Dec. 14, 2006), <http://www.pittsburghpanthers.com/sports/m-footbl/spec-rel/121406aa.html> (last visited Feb. 15, 2011).

³ Kevin Gorman, *Revis Declares for NFL Draft*, PITTSBURGH TRIBUNE-REVIEW (Jan. 10, 2007), http://www.pittsburghlive.com/x/pittsburghtrib/s_488013.html

⁴ Chuck Finder, *Pitt Football: Revis' 40 Times Impress Pro Scouts*, PITTSBURGH TRIBUNE-REVIEW (Mar. 17, 2007), <http://www.post-gazette.com/pg/07076/770278-233.stm>

⁵ 2007 NFL Draft Scout CB Rankings, NFL DRAFT SCOUT, *updated* Jan. 13, 2011, <http://www.nfldraftscout.com/ratings/players.php?genpos=CB&draftyear=2007&sortorder=tsxpos&order=ASC>

⁶ *Darrelle Revis Selected in the NFL Draft's First Round by the New York Jets*, PITTSBURGHPANTHERS.COM, Apr. 18, 2007, <http://www.pittsburghpanthers.com/sports/m-footbl/spec-rel/042807aaa.html> (last visited Feb. 15, 2011).

last long in the league, and even fewer become standout all-stars.⁷ Willing to give Revis a chance, the team signed Revis to a six year rookie contract.⁸

Revis ultimately started every game of the 2008 season, recording numerous tackles and interceptions. He continued to progress throughout the 2009 season, which earned him a spot on the AFC Pro Bowl Roster.⁹ After his third season in the National Football League, many football analysts, including his own coach Rex Ryan, believed that Revis was the best cornerback in the NFL.¹⁰ In fact, Revis received the second most votes for the defense player of the year in 2009.¹¹ It was after this season, that Darrelle Revis considered renegotiating his salary with the New York Jets.

B. The 2010 Contract Dispute

As the 2010 season approached, Darrelle Revis was scheduled to make one million dollars according to his original rookie contract.¹² However, Revis wanted to renegotiate and earn a salary which he believed reflective of his exceptional ability. Nnamdi Asomugha, considered by many to be the next best cornerback in the league after Revis, had just signed a three year, forty five million dollar contract with the Oakland Raiders.¹³ Revis, believing he was the best cornerback in the NFL, felt he deserved to be the highest paid player, and thus, the dispute was born.¹⁴

Revis asked the Jets for approximately sixteen million dollars a year guaranteed over the course of the next several years.¹⁵ The difference of fifteen million dollars a year between the

⁷ See Mike Freeman, *Raider's Russell Eats His Way Up Draft Bust List*, CBSSPORTS.COM (Apr. 26, 2010), <http://www.cbssports.com/columns/story/13302006/raiders-russell-eats-his-way-up-draft-bust-list>. (Even being projected as a top draft pick is no guarantee of success in the NFL).

⁸ Posting by Bassett, *Details Out on Darrelle Revis' Contract*, <http://www.thejetsblog.com/2007/08/17/details-out-on-darrelle-revis-contract/> (Aug. 17, 2007, 03:00 EST).

⁹ *2009 Pro Bowl Game Summary* NFL.COM (Feb. 8, 2009), available at http://www.nfl.com/liveupdate/gamecenter/54466/AFC_Gamebook.pdf (Pro Bowl is the NFL All-Star game). http://www.nfl.com/liveupdate/gamecenter/54466/AFC_Gamebook.pdf (last visited Feb. 15, 2011).

¹⁰ Sean Leahy, *Rex Ryan, Darrelle Revis Have a 'Great Talk,' Coach Says Jets CB Doesn't Need to Apologize*, USA TODAY (June 16, 2010), <http://content.usatoday.com/communities/thehuddle/post/2010/06/rex-ryan-darrelle-revis-have-a-great-talk-coach-says-jets-cb-doesnt-need-to-apologize/1> ("The coach has called Revis the best cornerback in the NFL.").

¹¹ Greg Bishop, *Woodson Beats Out Jets' Revis for Defensive Award*, THE FIFTH DOWN, (Jan. 12, 2010, 15:01 EST). <http://fifthdown.blogs.nytimes.com/2010/01/12/revis-loses-out-on-defensive-mvp/>

¹² Rich Cimini, *Revis Holding Out From Jets Camp*, ESPNNEWYORK.COM (Aug. 2, 2010), <http://sports.espn.go.com/new-york/nfl/news/story?id=5428018>

¹³ John Clayton, *Asomugha's \$45.3M Deal Richest For DB*, ESPN.COM (Feb. 19, 2009), <http://sports.espn.go.com/nfl/news/story?id=3919067>

¹⁴ John W. Burton, *Conflict-Dispute Distinction, 2* in CONFLICT: RESOLUTION AND PREVENTION (1990). (Disputes are perceived commonly as short-term disagreements that may be resolved by reference to external norms such as laws, treaties, customs or values).

¹⁵ Cimini, *supra* note 12.

two sides proved to be an extraordinarily large gap. Each side felt their position was correct and at first neither side budged. Revis began renegotiating his contract with the Jets at the end of 2009 regular season, giving the parties months to work out a deal.¹⁶ Unfortunately, the two sides were unable to come to an agreement during the off-season. In August, Revis did not report to training camp, at which time he was contractually fined for each day he missed.¹⁷ As the season approached, both sides felt the urgency to work out a deal and get Revis back on the field.

Veteran players use time during training camp to get readjusted to playing football, meet new players, and learn new plays and schemes; Revis missed a month of training camp.¹⁸ As Revis missed those weeks, the Jets were forced to have younger and less extraordinary athletes fill Revis' position while waiting for the contract dispute to end.¹⁹ Many in the New York area were fearful that Revis would not return to the team at all, dashing any Super Bowl hopes the team may have had before the season even began.²⁰

Ultimately, Revis and the New York Jets agreed to a four year, forty six million dollar contract, with thirty million dollars guaranteed.²¹ The deal was reached just a few days prior to the start of the 2010 NFL season, giving Revis little time to get reacquainted with his teammates and get in shape for the regular season games.²²

C. Parties to the Dispute

Like most contracts, the typical NFL service contract is between a buyer and a seller. In this case, the buyer is the owner of the team, who buys the services of the athlete. In turn, the athlete is selling his services to the team. However, the athletes often retain sports agents to represent their interests in negotiations. The agents negotiate directly with the teams, allowing the player to focus their skills as an athlete. So while the contract is between the buyer and seller, the seller has an agent negotiating the price to sell his services. Together, the parties rely on each other to put forward a product that has become the most profitable sporting league in the United States.²³ Though the NFL is exciting and fun to watch on television, a tremendous

¹⁶ See Jenny Vrentas, *Jets, Darrelle Revis Agree to Terms on New Contract*, THE STAR-LEDGER (Sep. 6, 2010), http://www.nj.com/jets/index.ssf/2010/09/jets_darrelle_revis_agree_to_t.html

¹⁷ Cimini, *supra* note 12.

¹⁸ Martin Chase, *NFL Training Camp – This Is Where Football Begins*, EZINE ARTICLES (Apr. 17, 2007), <http://ezinearticles.com/?NFL-Training-Camp---This-Is-Where-Football-Begins&id=529182>

¹⁹ Manish Mehta, *Darrelle Revis Officially Holding Out From New York Jets Training Camp Amid Contract Dispute*, NEW YORK DAILY NEWS (Aug. 1, 2010),

[http://www.nydailynews.com/sports/football/jets/2010/08/01/2010-08-](http://www.nydailynews.com/sports/football/jets/2010/08/01/2010-08-01_darrelle_revis_officially_holding_out_from_new_york_jets_training_camp_amid_cont.html)

[01_darrelle_revis_officially_holding_out_from_new_york_jets_training_camp_amid_cont.html](http://www.nydailynews.com/sports/football/jets/2010/08/01/2010-08-01_darrelle_revis_officially_holding_out_from_new_york_jets_training_camp_amid_cont.html).

(However, this did present rookie Kyle Wilson with an opportunity to play with the team's best receivers. With Revis at camp, he likely would not be given the opportunity to play with the starters as a rookie).

²⁰ *Id.* ("Revis' absence could take the luster off the start of a season filled with promise.")

²¹ Vrentas, note 16.

²² *Id.*

²³ Kurt Badenshausen, Michael Ozanian, and Christina Settini, *The Business of Football*, Forbes.com (Sept. 3, 2007), available at http://www.forbes.com/2007/09/13/nfl-team-valuations-biz-07nfl_cz_kb_mo_cs_0913nfl_land.html. ("The NFL is the richest sports league in the world, with the average team worth some \$957 million.").

amount of work goes into the logistics of putting players on the field each and every Sunday of the fall.

1. The Owners

The owners of NFL teams provide the majority of the capital and financial risk involved in the NFL. Owners often hire a large staff of employees to help manage the team and the day-to-day operations of the team. Most notably, many owners employ a “general manager” or a “manager of player personnel” that directs, among other things, personnel matters. The manager is responsible for orchestrating trades, drafting new players, extending player contracts, and signing free agents.²⁴

The owners and staff bear the risk of signing players that do not live up to the expectations of their contracts. Those players have exceptional skills and athletic ability on paper,²⁵ but for one reason or another cannot find a way to translate that ability onto the field. Finding ways to evaluate player’s potential value can be one of the most difficult tasks for the ownership of a team. The owner and employees would look at a variety of factors to determine the value of the player and compare that value to the needs of the team. Often, athletes excel in high school and college, but simply cannot elevate their game to the next level. This could be due to the increased size and strength of professional athletes or past injuries to the player.

After several years of top-level amateur competition, there still exists tremendous uncertainty on what each individual player can actually bring to the team as a professional. Professional sports teams spend a tremendous amount of resources trying to determine what a player will add to their team. Once drafted, the team takes on the risk that the player may not prove as valuable as thought, or worse, could be plagued by injuries, keeping him sidelined and still unable to help the team.

In addition to all of these considerations of the player, each team in the NFL must stay below a specified salary cap. The salary cap is the maximum amount an NFL team can spend on its entire roster.²⁶ A team salary cap is not unique to the NFL.²⁷ The main goal of a salary cap is to maintain a fair level of competition between all teams in the league, despite the disparities in markets and profitability. For example, a team in New York City has a significantly larger economic base and population from which to build a fan base than a team in a smaller market like Jacksonville, Florida. Without a salary cap, the teams generating more money would have the ability to outbid the smaller market teams and control all the best players in the league. A salary cap has the effect of both leveling the playing field across the entire league, but also

²⁴ See, e.g., Larry Siddons, *Coach Ryan, General Manager Tannenbaum Sign Extensions with NFL’s Jets*, BLOOMBERG, (July 30, 2010), <http://www.bloomberg.com/news/2010-07-30/coach-ryan-general-manager-tannenbaum-sign-extensions-with-nfl-s-jets.html>

²⁵ This usually is in the form of statistics from pre-draft workouts or scouting camps.

²⁶ Al Lackner, *Salary Cap FAQ*, ASK THE COMMISH (Jan. 19, 2009), <http://www.askthecomish.com/salarycap/faq.asp>

²⁷ NBA, NHL, and even MLB all have salary caps, though each has specific nuances on how it is applied.

limiting the salaries of the individual athletes. The NFL salary cap amount is determined by the collective bargaining agreement between the player's association and the owners.²⁸

2. The Sports Agents

Sports agents play a critical role in getting new talent onto the playing field in the NFL. NFL hopefuls often sign with a sports agency to represent their interests prior to the draft. The player and agent sign a contract indicating that the agent will represent the player in exchange for three percent of the player's contracted value.²⁹ This amount cannot be negotiated up or down regardless of the skill of the agent due to the NFL Players' Association rules.³⁰

Once the athlete is drafted, the agent operates as the mouthpiece to formulate a contract with the team. The draft usually occurs in late April, a few months prior to when teams start their official training camp.³¹ This gives the agent and the team some time to negotiate a contract for the rookie athlete. In sum, the parties at the negotiating table are the owner or general manager of the team, the professional athlete, and the sports agent representing that athlete.

3. The Professional Athletes

The National Football League would not be what it is today without the athletes. The athletes are the most visible aspect of the NFL. With this great visibility also comes a tremendous amount of behind the scenes work and, often times, injuries. Athletes lucky enough to play professional football rarely have lengthy careers. The average NFL career is only three and a half seasons.³² However, the length of time being able to play professional football depends more on the position of the player.³³ As stated above, once the player gets to the professional level, he has played thousands of hours of high level amateur football and has likely already incurred injuries.

Another point to consider for players is the difficulty of ascending to the NFL. The NFL draft is the marquee event for the nation's best football prospects. Yet, the draft accounts for only a fraction of collegiate players.³⁴ Only approximately 300 out of 9,000 college football

²⁸ Suketu Meta, *NFL Player Salaries*, BUZZLE.COM (Jan. 7, 2010), <http://www.buzzle.com/articles/nfl-player-salaries.html>

²⁹ JEFFREY STANDEN, *TAKING SPORTS SERIOUSLY* 139 (2009).

³⁰ *Id.*

³¹ *2008 NFL Training Camp Dates*, NFL.COM, <http://www.nfl.com/trainingcamp/story?id=09000d5d818b3258&template=with-video-with-comments&confirm=true> (last visited Feb. 15, 2011). (Rookies typically have to report to training camp a few days prior to veteran players, with the full camp starting in late July).

³² *NFL Hopeful FAQs*, NFL PLAYERS ASSOCIATION, <http://www.nflplayers.com/about-us/FAQs/NFL-Hopeful-FAQs/> (last visited Feb. 15, 2011).

³³ *Players' Position, Not Prior Injuries, Predict NFL Career Length*, AMERICAN COLLEGE OF SPORTS MEDICINE, May 28, 2009, <http://www.medicalnewstoday.com/articles/151701.php> (last visited Feb. 15, 2011).

³⁴ *NFL Hopeful FAQs*, *supra* note 32.

athletes are invited to NFL combine camps where team scouts evaluate potential draft picks.³⁵ Furthermore, only .2% of the 100,000 high school football athletes rise to the level of professional football.³⁶ In fact, many players who are fortunate enough to get drafted do not make game day rosters for teams. Instead, these players are either relegated to the “scout team” or practice squad, or are simply cut from the team at a later time.³⁷ Scout team players serve as the team’s opponents in practice to help get the team ready for games.³⁸ While not necessarily the most glamorous job, scout team players often play for the chance to earn a roster spot when or if one becomes available.³⁹ However, some, like Darrelle Revis, are truly exceptional athletes. Revis was able to walk on to the Jets practice field and instantly make an impact. However, before Revis could step onto the field, he first needed to sign a contract.

D. Interests of the Parties

With three different parties involved in the negotiation, it is helpful to consider their various interests. Typically, parties negotiate over positions, which is the end results the parties seek to obtain.⁴⁰ Positional negotiation is often inefficient, time consuming, and unsuccessful.⁴¹ Interests refer to the reasons for the parties’ underlying positions in bargaining.⁴² In order to decipher one’s interests, one simply needs to ask “why” in relation to their position.⁴³ This answer usually yields the interests of the party. Interests, unlike positions, are more flexible and yield different possible options and resolutions.⁴⁴ Interests also erode the idea that a negotiation needs to be a zero-sum game.

Once the interests of the parties are understood, one can identify the underlying sources of conflict leading to the dispute. By identifying these interests, one can see that professional service contracts are not simply about dollars and cents, but actually encompass much deeper issues.⁴⁵ Furthermore, identifying these interests will also establish common ground from which consensus can be built. For these reasons, it is important to look at each party’s individual interests prior to negotiation.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Kim Evans, *What is a Scout Team Player in Football Practice?*, EHOW.COM (July 14, 2010), http://www.ehow.com/about_6732250_scout-team-player-football-practice_.html

³⁹ *NFL Hopeful FAQs*, *supra* note 32; *NFL Player Salaries*, *supra* note 28. (Scout team players earn approximately \$88k per year compared to the average NFL player salary of \$770k per year without additional bonuses.).

⁴⁰ ROGER FISHER & WILLIAM URY, *GETTING TO YES 3* (Bruce Patton, ed.) (1991). (For example, a buyer starts at \$10, the seller counters at \$20, and the buyer increases to \$12; the seller offers \$18, and so on until an agreement is reached.).

⁴¹ *Id.* at 6.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*, at 48. (“The most powerful interests are basic human needs. . . [b]asic human needs include economic well-being.”).

1. The Owners

Team owners have various interests, but primarily, the owners of the league are heavily invested in their teams financially.⁴⁶ For example, the New York Jets owner Woody Johnson purchased the team in the year 2000 for \$635 million dollars.⁴⁷ The owners are often under pressure to “keep an eye on the bottom line” in minimizing costs while at the same time maximizing revenue.⁴⁸ After all, the purpose of every business venture is to make a return on investment.

Building a popular and profitable team for the least expense is a goal of every NFL owner. Player salaries are often the largest expense for a team.⁴⁹ However, players often enter long-term contracts with teams and sometimes sign multiple contracts with a team over the course of a career.⁵⁰ For this reason, it is important that the owner demonstrate appropriate respect for the athletes, while maintaining an adversarial position to ensure financial viability. As stated above, the owners’ spend tremendous resources on players in the hopes of receiving a return on their investment. Therefore, the owner has an interest in having athletes adhered to the contract once a deal is struck.

In addition to the financial concerns, the owner must work to keep the team popular within the given community. For the New York Jets, this task is especially difficult given that their market is shared with another NFL team, the New York Giants.⁵¹ In addition to television revenue, a major source of income comes directly from the fans themselves.⁵² Revenue from local fans is realized in the form of ticket sales, concession sales, and merchandise. In light of these interests, owners attempt to provide the best value to the fans through maximum entertainment at a minimal cost.

⁴⁶ Kevin Baumer and Dashiell Bennett, *What Every NFL Owner Paid for Their Team – And What It’s Worth Today*, BUSINESS INSIDER (Nov. 16, 2010), <http://www.businessinsider.com/how-much-did-nfl-owners-paid-for-their-teams-2010-10#>.

⁴⁷ *NFL Team Valuations, #6 New York Jets*, FORBES, available at http://www.forbes.com/lists/2010/30/football-valuations-10_New-York-Jets_304841.html. (The New York Jets team’s value is currently estimated at \$1.1 billion dollars as of 2010).

⁴⁸ See Sean Gregory, *Game Over: Should the NFL Show Players the Money?*, TIME (Jan. 21, 2011), available at <http://www.time.com/time/nation/article/0,8599,2043784,00.html>. (“The owners says that costs outpace the NFL’s revenue growth, which has been remarkable . . . [b]ut owners claim that since, in part, player compensation has doubled over the past decade . . . players need to take a smaller share of the growing revenue pie.”).

⁴⁹ *Id.* (New York Jets player expenses approximately \$160 million dollars).

⁵⁰ See Siddons, *supra* note 24.

⁵¹ *NFL Team Valuations, supra* note 47. (“Local revenues divided by metro population with populations in two-team markets divided in half.”).

⁵² *Id.* (Forbes estimates the New York Jets earns eight dollars of revenue per fan.).

2. The Sports Agents

The agent's sole purpose in the negotiation is to represent his client, the player.⁵³ All NFL agents must first become certified by the National Football League Players' Association ("NFLPA") prior to representing the athlete.⁵⁴ In doing so, the NFLPA is able to restrict both the amount of agents representing all of the players as well as the terms by which the agents represent the players. In addition, all professional football players must become members of the union prior to any contract negotiation.⁵⁵

Perhaps most notably, an agent's compensation is capped at three percent of the player's contract value.⁵⁶ Rather than allowing a free market to determine the value of the agent's services, the player is unable to pay more for better representation.⁵⁷ A new player to the industry will be unable to distinguish the good agent from the bad on the basis of cost, counter-intuitive to free market ideals.⁵⁸ The agents are not required to compete as fiercely as in other sports-labor industries.⁵⁹ Therefore, the agent's income is determined entirely by the value of the player's contract. Since the agent's earnings are based solely off the size of the player's contract, it is usually in the agent's best interest to obtain the highest salary possible. Usually, this interest coincides with the athlete's interest to be compensated as greatly as possible for his unique skill set, although this is not always the case.⁶⁰

In addition to the reduction in competition, the NFLPA's agent regulatory scheme also creates an environment rife with ethical compromises.⁶¹ Since the profit margin on each contract is limited, the agent looking to maximize total profit for all clients is forced to spread herself thin, representing as many players as possible.⁶² The "volume sales" approach by the industry encourages minimum resources and effort expended for each contract.⁶³ Consequently, individual players bear the consequences of the potential ineffective representation.

However, one additional interest that arises through the three percent cap on agent earnings is that agents look to maintain long-term relationships with their clients. Without being able to offer more competitive services for less cost to the players, agents must look to

⁵³ Restatement (Second) of Agency § 1 (1974). ("Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other as so to act. . . [t]he one who is to act is the agent.").

⁵⁴ STANDEN, *supra* note 29, 139.

⁵⁵ *NFL Hopeful FAQs*, *supra* note 32. ("The NFL Players' Association represents all players in matters concerning wages, hours, and working conditions and protects their rights as football players.")

⁵⁶ STANDEN, *supra* note 29, 139. ("A uniform price ceiling prevents a player from paying more for better representation. Players can't pay for the best even if they want to.")

⁵⁷ *Id.*

⁵⁸ *Id.* at 140.

⁵⁹ *Id.* at 139. (Compare NFLP.A. agents to baseball player agents, who have very little restrictions and can spend enormous amounts of resources to deliver a superior product to their clients.)

⁶⁰ *See generally*, Robert Mnookin, *Why Negotiators Fail: An Exploration of Barriers to the Resolution of Conflict*, 8 OHIO ST. J. ON DISP. RESOL. 235 (1993) (discussing principal/agent problems in negotiations).

⁶¹ *Id.* at 140.

⁶² *Id.*

⁶³ *Id.*

alternative means to woo and maintain their clients.⁶⁴ The agent has both an interest in the substance of the contract, mainly a high value contract, and in maintaining a positive relationship with their client-athlete.⁶⁵

3. The Professional Athletes

As stated above, the players' interests focus primarily on basic human needs.⁶⁶ The athlete's career in the NFL will likely not be long; therefore, accumulating as much wealth as possible in a short amount of time is paramount.⁶⁷ It is through the agent's services that the player hopes to obtain this result. However, in addition to a high contract value, the athletes' positions reveal underlying interests. For example, interests like future stability and economic independence after a career in the NFL can be inferred from the high contract value.⁶⁸ The professional athletes are aware of the time limitation of their chosen profession and look to earn as much as possible before finishing their career.⁶⁹ Although owners are unlikely to agree to the player's position, they likely share the interests of long-term stability and excellent value in addition to a positive working relationship.⁷⁰

In addition to wealth maximization, the player also has an underlying desire to simply play the game.⁷¹ Balancing the business aspect of professional football against the game aspect of the NFL is often difficult. However, through the use of an agent, the player is able to delegate responsibility for managing his financial interests and thus focus on being the best player that he can be.

In this case, Darrelle Revis initially wanted to be the highest paid cornerback.⁷² In order to identify his underlying interests, one would need to ask "why" to this position.⁷³ Not surprisingly, professional athletes often carry with them large egos. Revis believed, as did many

⁶⁴ *Id.* at 139. ("Player agents [sell] players on less important goods, such as friendship or relationships.")

⁶⁵ FISHER & URY, *supra* note 40 at 18.

⁶⁶ *See, NFL Hopeful FAQs, supra*, note 32.

⁶⁷ *Id.*

⁶⁸ *See, FISHER & URY, supra* note 40 at 42. "Behind opposing positions lie shared and comparable interests, as well as conflicting ones."

⁶⁹ Manish Mehta, *Darrelle Revis Unhappy with Contract, Could Hold Out of New York Jets' Training Camp*, NEW YORK DAILY NEWS, June 10, 2010, available at

[http://www.nydailynews.com/sports/football/jets/2010/06/10/2010-06-](http://www.nydailynews.com/sports/football/jets/2010/06/10/2010-06-10_darrelle_revis_unhappy_with_contract_could_hold_out_of_new_york_jets_training_ca.html)

[10_darrelle_revis_unhappy_with_contract_could_hold_out_of_new_york_jets_training_ca.html](http://www.nydailynews.com/sports/football/jets/2010/06/10/2010-06-10_darrelle_revis_unhappy_with_contract_could_hold_out_of_new_york_jets_training_ca.html). "I don't know how long I'm going to play. I could have broken an ankle out there or tore a knee up and my career could have been over."

⁷⁰ *Id.*

⁷¹ Joel Thorman, *Antonio Cromartie Responds to Ray Lewis, Darnell Dockett on NFL Lockout Talks*, SB NATION, Jan. 27, 2011, <http://www.sbnation.com/nfl/2011/1/27/1959636/antonio-cromartie-ray-lewis-darnell-dockett-nfl-lockout>. "Money ain't nothing. Money can be here and gone. Us players, we want to go out and play football. It's something we've been doing and we love it and enjoy it. It's our livelihood."

⁷² Mehta, *supra*, note 69. (Revis admitted that "it's important for him to be the highest-paid player at his position.")

⁷³ FISHER & URY, *supra* note 40.

other analysts, that he was the best cornerback.⁷⁴ Therefore, it would follow that Revis should be paid the most compared to similar athletes. The underlying interest Revis hoped to address was being valued what he was worth.

The gap between Revis' position, a new sixteen million dollar per year contract, and the Jets' position, adhering to his original contract paying one million dollars, was a very wide gap and proved to be difficult to overcome. Yet, by focusing on the interests of the parties, the two were ultimately able to reach an agreement satisfying all parties, though not necessarily in the most efficient manner.

III. Action During the Dispute

Once a dispute occurs in a professional service contract, there are a few options that the parties can exercise prior to resolving the dispute. First, the professional athlete can simply stop performing. Of course, there are consequences for this course of action, many of which are dictated by the original terms of the contract. Second, the owner can stop paying the athlete. Lastly, one must consider the external pressures exerted on the various parties and the effect it can have on the negotiations.

Once an athlete feels that his or her contract is unacceptable, they have a few different options to pursue which mainly depend on what stage of employment they are currently involved. For the athlete without a contract, refusing to sign an agreement until a satisfactory one is reached is common and gives all parties maximum flexibility in continued negotiations and pursuit of other options. However for the athlete currently under a contract with a team, the options are simple: either play through the remainder of the contract or immediately stop performance of the contract. In ceasing performance, the athlete is breaching his contract.⁷⁵

In the American professional sports market, this type of activity is called a contract "holdout."⁷⁶ By holding out, the athlete is demonstrating his frustration with the agreement before him and deliberately refusing to compete or practice until the disagreement is resolved. A contract holdout can have greater financial consequences than playing through a disputed contract. Nevertheless, an athlete playing through a "bad" contract creates other problems, such as tarnishing the athlete's relationship with the team and incurring a bruised ego, both of which could potentially have on-the-field consequences. Hence, it is imperative that an athlete weigh their options and consider the implications of their actions once he or she has a disagreement with the existing contract.

There can be many different ramifications for the athlete once they decide to holdout. The decision to holdout of a contract comes with an element of risk. The athlete and agent must

⁷⁴ NFL.com Staff, *Mayock: Revis is the Best 'Pure Cornerback' in NFL*, NFL NETWORK (Jan. 21, 2010), <http://blogs.nfl.com/2010/01/21/mayock-revis-is-best-pure-cornerback-in-nfl/>. ("Revis grades out at the highest level in every single category.").

⁷⁵ RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981).

⁷⁶ BLACK'S LAW DICTIONARY 588 (7th ed. 2000). ("2. To refuse to yield or submit; to stand firm <Womack held out for a higher salary and better benefits>.")

weigh the potential costs⁷⁷ associated with the holdout against the probability of successfully negotiating a new contract with the amount potentially gained.⁷⁸ Obviously, this is a matter of concern only for the athlete who is currently under a contract with a team, as was the case with Revis.

In addition to performing a cost-benefit analysis, the athlete must also consider their own willingness to engage in risk. A party facing a risk can be categorized as risk-averse, risk-neutral, or risk-seeking.⁷⁹ In Revis' situation, the millions more dollars per year in salary combined with the affirmation of his value to the team far outweighed the several hundred thousand dollars in fines incurred. He was willing to give up a guaranteed \$1 million dollar contract to gamble that the owner would renegotiate and agree to a higher guaranteed salary. Revis and his agent, when looking at the market of similar athletes, could see that he was both far undervalued and unmatched in skill.⁸⁰ It could be argued that Revis was actually risk-neutral in deciding to holdout of his contract in evaluating himself based upon objective criteria.

The athlete and agent must also consider intangible ramifications. A player who holds out of a contract may be seen as not being a team player or only in it for the money.⁸¹ Furthermore, fans and media alike often criticize athletes for focusing too much on the business aspect of professional football rather than the sport aspect. The media can add pressure to the parties through reporting information and placing "spin" on these reports.⁸² To combat the media's role in the negotiations, Revis' agents and the Jets eventually agreed to a media blackout.⁸³ Unfortunately, this led the media to try to seek information from other sources, including the athlete's family⁸⁴ and did little to curb speculation about the ongoing negotiations.⁸⁵

⁷⁷ Rich Cimini, *Darrelle Revis Ends Holdout with Jets*, ESPNNEWYORK.COM (Sept. 6, 2010), <http://sports.espn.go.com/new-york/nfl/news/story?id=5538132>. (Revis was subject to \$578,305 in fines during the entire holdout period).

⁷⁸ *Id.* (However, in Revis' case, it is not certain whether Revis actually paid the fines incurred during his holdout or whether that cost was absorbed by the new contract or whether the Jets waived the fines altogether. "[General Manager Mike] Tannenbaum wouldn't say if Revis will be responsible for paying the fines. He called it an internal issue, adding Revis and [Coach Rex] Ryan would discuss how to handle it.")

⁷⁹ Mike Shor, *Risk and Certainty Equivalence Applet*, GAMETHEORY.NET (2006) <http://www.gametheory.net/mike/applets/Risk/>.

⁸⁰ See Mayock, *supra*, note 74 and accompanying text.

⁸¹ *C.f.* Posting of John B, *The Big Questions on Revis' Holdout*, GangGreenNation.com, <http://www.ganggreennation.com/2010/8/1/1600121/the-big-questions-on-revis-holdout> (Aug. 1, 2010, 6:40 EDT), ("[The other players] will probably have empathy with Darrelle as they realize they could one day be in the same position.")

⁸² See, Andy Kent, *Darrelle Revis Holdout Growing More Disastrous for Jets*, AOL NEWS (Sept. 3, 2010), <http://aolnews.com/2010/09/03/jets-and-darrelle-revis-headed-for-ugly-divorce/>.

⁸³ Rich Cimini, *'Hard Knocks' Downplays Darrelle Revis*, ESPNNEWYORK.COM (Aug. 19, 2010), <http://sports.espn.go.com/new-york/nfl/news/story?id=5475588>.

⁸⁴ Sean Leahy, *Grandmother: Jets Aren't Being Fair to Holdout Darrelle Revis*, USA TODAY (Sept. 2, 2010), available at <http://content.usatoday.com/communities/thehuddle/post/2010/09/grandmother-jets->

In addition to the media, one must consider the political and legal environment in which the negotiations occur. Specifically, the legal system itself can have an impact on negotiations and bargaining outside the courtroom.⁸⁶ Furthermore, uncertainty looms large over negotiations, especially where the future environment is unclear.⁸⁷ One must also consider the cost of the negotiations themselves, as these meetings cost both time and money to all parties.⁸⁸

Family can also play a critical role in adding external pressure to the negotiations. For Revis, his uncle, Sean Gilbert, also had been an NFL athlete and when he felt he was not being paid enough, he held out of his 1997 contract.⁸⁹ After his holdout, Gilbert received a new contract nearly ten times greater than the previous contract.⁹⁰ However, Revis' mother told reporters that her family had endured "death threats" during her son's 36-day holdout.⁹¹

Lastly, one must consider the history between the parties when considering other less tangible externalities. For Revis, this was not his first contract holdout, but he in fact held out of his initial contract for twenty days, waiting for the Jets to agree to a better deal.⁹² Obviously, these external pressures place added stress on the athlete and his agent to reach a deal in a timely manner.

Compared to the professional athlete, the NFL owners' options are limited when an athlete decides to hold out of a contract. The owner may stand to recoup some monetary value in

arent-being-fair-to-holdout-darrelle-revis/1; Joe Cipolla, *Darrelle Revis Reports: How Sports Writing is on Par with National Inquirer*, Sept. 3, 2010, BLEACHERREPORT.COM, <http://bleacherreport.com/articles/450284-darrelle-revis-reports-how-sports-writing-is-on-par-with-the-national-inquirer>. ("Since the media blackout, news about Revis has become such a hot commodity that Jets' beat writer Rich Cimini interviewed Revis' grandmother.")

⁸⁵ *Id.* ("The media circus surrounding Darrelle Revis' holdout is starting to border on hack journalism. Are we, as writers, becoming so desperate to break the news that Revis is signing that we'll resort to pure unsubstantiated opinions and/or use information from not even close to reliable sources as fact?")

⁸⁶ Robert Mnookin & Lewis Kornhausert, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L. J. 950, 950 (1979).

⁸⁷ *Id.* at 969. See, Bell, *infra* note 136 and accompanying text.

⁸⁸ *Id.* at 971.

⁸⁹ Manish Mehta, *Rex Ryan Acknowledges That Sean Gilbert Has Played A Role In Revis Holdout*, NY DAILY NEWS.COM, (August 3, 2010 12:32 PM), <http://www.nydailynews.com/blogs/jets/2010/08/rex-ryan-acknowledges-that-sea.html> (Gilbert actually held out of the entire 1997 NFL season).

⁹⁰ *Id.*; Rich Cimini, *Revis: Cry 'uncle' or follow uncle's lead?*, ESPNNEWYORK.COM, (7/12/2010 10:42 AM ET), http://espn.go.com/blog/new-york/jets/post/_/id/668/will-revis-cry-uncle-or-follow-his-uncles-lead, (Gilbert did not sign with the same team, the Washington Redskins, but rather allowed his contract to lapse in its final year after the year long holdout and signed a new contract with the Carolina Panthers).

⁹¹ Sean Leahy, *Darrelle Revis' Mother Explains 'Death Threats' Family Got During Jets CB's Holdout*, USA TODAY (Sept. 8, 2010), available at <http://content.usatoday.com/communities/thehuddle/post/2010/09/darrelle-revis-mother-explains-death-threats-family-got-during-jets-cbs-holdout/1>.

⁹² *Pitt's Darrelle Revis Sign with New York Jets*, KDKA.COM (Aug. 15, 2007), available at <http://www.webcitation.org/5tKX0knKh>. (Initially, Revis wanted a five year deal, but the Jets preferred a six year contract. At the time, this was the longest holdout by a New York Jet player since 1996).

the form of penalties, as discussed above, by suing the athlete for a breach of contract.⁹³ In addition to penalties, the owner may be able to recover expected profit from the contract, less the expenses of the player's salary, although this would be difficult to prove.⁹⁴ The owner can attempt to recover additional losses sustained due to the athlete's breach, so long as they flow naturally and foreseeably from the athlete's breach and the athlete was aware of the injury the breach would cause the owner.⁹⁵

Despite a binding contract, an owner cannot force the athlete to play against his will during the dispute. Courts have the power to demand specific performance but only in rare circumstances.⁹⁶ However, specific performance is rarely granted in a situation involving one selling professional services.⁹⁷ As a result, the owner will be unable to reclaim the athletic services from the athlete until an agreement is reached.

This situation is especially troublesome for an owner who loses the services of a truly exceptional athlete for which no adequate alternative or substitute is available. While under contract and holding out, the owner-player relationship mirrors a bilateral monopoly.⁹⁸ In this situation, the athlete is unable to "sell" his services to another owner or team until released from his current contract. The owner is unable to "buy" or replace the athlete's services because no alternative exists, save for an inferior athlete. The only way to break this bilateral monopoly is for the parties to come to an agreement,⁹⁹ and in this case, the sooner the better.

IV. The Process of Resolving a Salary Dispute

Once it is clear that a dispute exists, both parties must consider possible strategies to obtain the outcome they desire. By focusing on interests instead of positions, it is easier to formulate possible options to resolve the dispute. For example, Darrelle Revis wanted to be recognized as the best cornerback in the National Football League. The end result and position

⁹³ See Gregory *supra*, note 49 and accompanying text.

⁹⁴ RESTATEMENT (SECOND) OF CONTRACTS § 347 (1981) (Expectation damages are the standard method of recovery in breach of contract cases).

⁹⁵ See, Hadley v. Baxendale, 156 Eng. Rep. 145 (1854). (consequential damages resulting from the breach of a contract is only recoverable where the losses are a natural consequence of the breach and the buyer brings the circumstances which would generate the loss to the seller's attention prior to the contract.)

⁹⁶ Courts only enforce specific performance, an equitable remedy, where a remedy at law would inadequately compensate the plaintiff. See, New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc., 291 F.2d 471 (5th Cir. 1961). See also, U.S. CONST. amend. XIII (1865) (prohibiting slavery and involuntary servitude).

⁹⁷ Restatement (Second) of Contracts, § 345(b). (1981) (reasons against specific performance in professional service contracts include invasion of personal liberty, impossibility of enforcement, impossibility of supervision, violation of public policy, and the availability of a more adequate remedy at law in the form of damages).

⁹⁸ BLACK'S LAW DICTIONARY 819 (7th ed. 2000). ("A hypothetical market condition in which there is only one buyer and one seller, resulting in transactional delays because either party can hold out for a better deal without fearing that the other party will turn to a third party.").

⁹⁹ ANDREA KUPFER SCHNEIDER & CHRISTOPHER HONEYMAN, THE NEGOTIATOR'S FIELDBOOK 253 (2006). ("Relative bargaining power depends upon which party finds the status quo more acceptable.").

of being paid the highest among all cornerbacks would certainly meet this interest, but perhaps there exist other possible alternatives that could meet both parties' interests. In light of these alternatives, the parties must explore possible mechanisms to arrive at a mutual agreement.

A. Reformation or New Contract

At the conclusion of the 2009 NFL season, Revis was clearly unhappy with his contract. Both parties assumed a deal would be reached during the seemingly long off-season. However, when no deal was reached and Revis began to miss training camp, practices, and pre-season games, the parties began to intensify their discussions to try to reach a deal.¹⁰⁰ To change Revis' contract, the parties would either have to both agree to form a new agreement, dismissing the old one, or find a way to reform the original agreement.

Generally, there are only two ways in which courts allow a contract to be reformed. The parties would have to show either a mistake¹⁰¹ or a misrepresentation of writing.¹⁰² A misrepresentation in writing occurs where the written agreement is not in conformity with the actual intentions of the parties in a material matter.¹⁰³ A mistake in the contract can be shown either through a mutual mistake or where one party is mistaken and the other party is engaged in fraud or unfair dealing.¹⁰⁴

In either situation, the parties here would be hard pressed to persuade a court that they were mistaken or duped when signing the original agreement. The ownership of the team had spent tremendous resources evaluating Revis and his abilities. Meanwhile, Revis had procured the services of a professional agent who deals solely in matters of this kind. For these reasons, a court would not reform the agreement, especially when the sole basis of the disagreement is monetary.

Unable to reform the contract, the parties are instead forced to arrive at a new contractual agreement if their relationship is to continue at all. Negotiation is the most common mechanism for parties to try to reach an agreement after a dispute has occurred. However, two other processes, arbitration and mediation, have become popular methods of resolving business disputes and could possibly help resolve professional athlete contract disputes.

B. Negotiation

Once the parties determine that a new agreement is required, they often try to negotiate an agreement quickly and simply. In a traditional negotiation setting, the various parties gather to discuss the dispute. The professional athlete, through his agent, advances his position while the owner advances his position. In this way, negotiations can often get bogged down where

¹⁰⁰ Jenny Vrentas, *Contract Dispute Between Jets, Darrelle Revis, Intensifies in Public Eye*, THE STAR-LEDGER (Aug. 10, 2010), available at

http://www.nj.com/jets/index.ssf/2010/08/some_details_of_meeting_betwee.html.

¹⁰¹ RESTATEMENT (SECOND) OF CONTRACTS § 155 (1981).

¹⁰² *Id.* at § 166.

¹⁰³ SAMUEL WILLISTON, LAW OF CONTRACTS 3, § 1647 (1922)

¹⁰⁴ *Id.* at § 2214.

parties' initial positions are widely separated. Furthermore, external factors play a large role in the negotiations.¹⁰⁵

For Revis and the New York Jets, contract negotiations began May 13, 2010, several months before the upcoming NFL season.¹⁰⁶ Both sides were initially optimistic that a deal would be reached prior to the beginning of the new season.¹⁰⁷ However, negotiations eventually broke down as both sides seemed unable or unwilling to negotiate further.¹⁰⁸ Once the momentum for reaching an agreement dwindles, the process begins to stutter and agreement becomes less and less likely. This process can break down ever further when one or both parties engage in "dirty tricks" during negotiations.¹⁰⁹ At this point, for an agreement to be reached, one side would be required to make tremendous concessions or find alternative ways of bringing the parties back towards an agreement. Simply put, once it reaches this point, the probability of an agreement being reached is bleak.

C. Arbitration

Arbitration is a process by which the various parties present facts through evidence supporting their position to a third party neutral.¹¹⁰ Once the evidence is presented by both sides, the arbitrator makes a decision. The decision can be for either party or for a value somewhere in the middle. Arbitration can be binding or non-binding and often helps the parties see what the dispute would look like in a courtroom setting, except without the judge or a jury present.

Currently, Major League Baseball uses a binding arbitration procedure for certain types of contract disputes.¹¹¹ Under MLB rules, certain athletes qualify for binding arbitration. During the arbitration, the athlete, through his agent, presents evidence as to why he should earn a certain salary.¹¹² The owner then presents evidence as to why the player should earn a

¹⁰⁵ See *supra* notes 81–92 and accompanying text.

¹⁰⁶ Manish Mehta, *Jets Begin Contract Negotiations with All-Pro Cornerback Darrelle Revis*, THE STAR-LEDGER (May 13, 2010), available at http://www.nj.com/jets/index.ssf/2010/05/jets_begin_contract_renegotiat.html

¹⁰⁷ *Id.*

¹⁰⁸ Adam Caplan, *Revis, Jets Reach Impasse Over Contract*, FOX SPORTS (Aug. 10, 2010), available at <http://msn.foxsports.com/nfl/story/Darrelle-Revis-and-New-York-Jets-deadlocked-in-contract-negotiations>

¹⁰⁹ FISHER & URY, *supra* note 40 at 132–42. (noting these tactics could include phony facts, ambiguous authority, personal attacks, threats, refusing to negotiate, escalating demands, and a calculated delay); See also, Robert Mnookin, Scott Peppet & Andrew Tulumello, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES, 24 (2000).

¹¹⁰ *International Online Training Program on Intractable Conflict*, Conflict Research Consortium, UNIVERSITY OF COLORADO, available at <http://www.colorado.edu/conflict/peace/treatment/arbitrat.htm>.

¹¹¹ See, *Baseball Free Agent Dispute Resolution*, <http://www.baseballarbitration.com/adr.html> (last visited Feb. 16, 2011).

¹¹² See generally, Eldon Ham and Jeffrey Malach, *Hardball Free Agency – The Unintended Consequence of Salary Arbitration in Major League Baseball*, 1 HARV. J. SPORTS & ENT. L. 63 (2010) (discussing a more detailed analysis and discussion of Major League Baseball arbitration and its potential flaws); PETER A. CARFAGNA, SPORTS AND THE LAW 77–80 (West 2009) (discussing baseball arbitration with legal statutes and case law).

different, usually lesser, salary.¹¹³ The panel of arbitrators starts with two possible outcomes, ultimately picking one of them based on which is closest to the player's value.¹¹⁴

Arbitration can be extremely effective in resolving disputes outside of a judicial forum. Arbitration is often quicker and cheaper than traditional litigation and the results can be kept private.¹¹⁵ However, arbitration lacks many qualities found in mediation and negotiation. Specifically, arbitration does not allow the parties to explore many alternatives or other options. Nonetheless, arbitration is widely used internationally to resolve disputes and is now becoming mandatory prior to many court proceedings.¹¹⁶

Mandatory binding arbitration would have prevented Darrelle Revis from holding out of his contract prior to the start of the NFL season. However, Revis could have likely ended up with an unfavorable result, leading to further resentment against the New York Jets and greater frustration overall. Furthermore, the arbitration contract would be a temporary fix to the problem, giving Revis a one year contract and then allowing him to enter free agency and search for another contract the following year.¹¹⁷ Neither party wanted Revis to be a free agent after one season, regardless of the salary.¹¹⁸

D. Mediation

Mediation involves a process similar to negotiation, but has one critical difference: a third party neutral.¹¹⁹ The third party tries to help the disputing parties reach a mutually agreeable resolution.¹²⁰ Having a neutral party in the room provides many advantages. First, a neutral party insures everyone is playing fairly. A neutral party also quells the discomfort and uneasiness parties may have. The neutral can even remove distrust felt between the parties. Most importantly, the neutral can take on a variety of roles to help encourage the parties to reach a resolution.

The mediator can serve as a facilitator. Facilitative mediation was the original style of mediation developed in the 1960's and 1970's.¹²¹ In the role of a facilitator, the mediator brings

¹¹³ *Id.*

¹¹⁴ *Snap-On Inc. v. Ortiz*, 2001 WL 34030755 (N.D. Ill.). (“Baseball arbitration is so-called because it is used in baseball: An arbitrator starts with two possible outcomes, one from each side, and must choose on or the other and nothing in between.”).

¹¹⁵ CONFLICT RESEARCH CONSORTIUM *supra*, note 110.

¹¹⁶ *Id.*

¹¹⁷ Following the MLB style salary arbitration rules.

¹¹⁸ *See, Revis Ends Holdout*, *supra* note 77. (“[This agreement] is what we hope will be an entire career of Darrelle as a Jet, for him to retire as a Jet and for him hopefully to go on to the Hall of Fame as a Jet.” Quote from Mike Tannenbaum, General Manager, New York Jets, in a conference call with reporters after reaching an agreement).

¹¹⁹ BLACK'S LAW DICTIONARY 797 (7th ed. 2000).

¹²⁰ *Id.*

¹²¹ Zena Zumeta, *Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation*, MEDIATE.COM (September 2000), <http://www.mediate.com/articles/zumeta.cfm> (last visited Feb. 15, 2011).

the parties together and keeps the process running smoothly.¹²² The mediator does not judge the positions or interests of either party, but asks questions of the parties to help explore their interests.¹²³ In this situation, the mediator is in control of the process, and the parties are in control of the outcome.¹²⁴ This type of mediation is particularly useful in highly specialized areas because the mediator is not required to have strong substantive knowledge to facilitate the discussion.¹²⁵

The mediator can also serve an evaluative function. In evaluative mediation, the mediator listens to both parties and candidly evaluates the strengths and weaknesses of each party.¹²⁶ The evaluative mediation process is similar to a judicial settlement conference. The mediator here is more focused on the legal rights of the parties and predicts the likely outcome of the dispute in a judicial setting.¹²⁷ Where parties are so antagonistic that face-to-face meetings become difficult, the mediator will often shuttle back and forth between the parties conveying messages.¹²⁸ The evaluative mediator is in control of both the process and the outcome and influences the resolution based on his or her own idea of legal and equitable fairness.¹²⁹

Lastly, the mediator can serve a transformative function. The transformative mediator meets with the parties together and focuses on recognizing each other's interests with a goal of forgiveness or reconciliation in mind.¹³⁰ Together, the parties determine both the process of resolving the dispute and the outcome of the dispute, made possible through mutual recognition.¹³¹ This mediation process is similar to facilitative mediation, but focuses more on mending the relationship between the parties, with an agreement as a by-product.

The three types of mediation all have their individual benefits and drawbacks. Facilitative mediation allows the parties to reach an agreement on their own accord but with the help of a third party. Evaluative mediation can quickly assess the strengths and weaknesses of each party's position and interests but would be best situated for a purely legal dispute. Transformative mediation allows parties to repair stressed or broken relationships while resolving their dispute.

In the typical NFL contract dispute, a facilitative mediation would best serve the needs of the parties. The Revis contract dispute did not involve legal technicalities or other complex legal issues. Indeed, the most difficult part of the Revis contract negotiation may have been getting the parties back to the table after the initial negotiations broke down. Simply being able to keep

¹²² *The Role of the Mediator*, Alternative Dispute Resolution and Conflict Prevention, <http://www.cdc.gov/od/adr/training/quiz07.htm> (last visited Feb. 25, 2011).

¹²³ Zumeta, *supra*, note 121.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS* 180 (3rd ed. 2003) (also referred to as "shuttle diplomacy.").

¹²⁹ Zumeta, *supra* note 121.

¹³⁰ MOORE, *supra* note 128 at 340.

¹³¹ Zumeta, *supra* note 121.

the parties together, working on a solution, better serves the parties' needs than evaluating the strengths and weaknesses of each party's position, as would be the case in either arbitration or evaluative mediation. As discussed above, the various parties each have a wide array of interests and external pressures, making it difficult for the parties themselves to navigate an agreement.¹³² Having a neutral third party would help keep the negotiations on the right course towards agreement.

Furthermore, these parties are working towards having a long-term relationship for the next several years, perhaps longer. After all, that is one reason why Revis renegotiated his contract. The facilitative mediator would further be able to help the parties identify and sort the myriad external pressures and influences while arriving at a resolution. Focusing on specific issues and helping the parties identify interests, rather than positions, would help the parties explore various alternatives and options¹³³, which would ultimately lead to a resolution of the dispute. In this case, the mediator would have likely found Revis' underlying interest in being valued to the organization as a tremendous athlete far quicker than the months of negotiation between the two sides. The facilitative mediator would further remove the process from adversarial towards collaborative, allowing the parties to reach an amicable agreement. For these reasons, the NFL, as well as athlete, agents, and owners, should consider facilitative mediation as a means to resolve contract disputes.

V. CONCLUSION

Ultimately, an agreement was reached between Darrelle Revis and the New York Jets. The initial negotiations lasted several months and seemed to produce little in terms of results. Both parties battled internal and external pressures to reach a resolution amicable to everyone. The agreement was reached just prior to the start of the regular season through an extraordinary effort from New York Jets head coach Rex Ryan and owner Woody Johnson.¹³⁴ The Jets were able to keep Revis on the team, paying him considerably more than his previous contract, but less than Revis initially wanted. Revis currently does not hold the highest salary for his position, but he did receive thirty two million dollars in guaranteed salary of the course of his new contract, compared to the twenty million dollar salary, only one million of which was guaranteed in the prior contract.¹³⁵ Most importantly, through the process of the negotiation, the Jets were able to demonstrate their need and respect for Revis and his abilities.

The New York Jets and Revis likely could have saved themselves a tremendous amount of stress, anxiety, time, and money through the use of a neutral third party. Baseball-style salary arbitration deals nearly entirely with dollars and cents, lacking additional interests that certainly played a part in the Revis dispute. Similarly, an evaluative mediator would help the parties gain

¹³² See *supra* notes 40–74 and accompanying text.

¹³³ MOORE, *supra* note 128 at 273–90.

¹³⁴ Vrentas *supra* note 16. (Ryan and Johnson both flew from New Jersey to South Florida to meet with Revis face to face while General Manager Mike Tannanbaum remained in New Jersey considering other options).

¹³⁵ Mark Maske, *Darrelle Revis Agrees to New Contract with the Jets*, THE WASHINGTON POST (Sep. 6, 2010), <http://views.washingtonpost.com/theleague/nflnewsfeed/2010/09/darrelle-revis-agrees-to-new-contract-with-jets.html>.

perspective on their various positions, but would lose control over the end process. From the months of negotiation, it appears paramount that the parties engaged in professional sports salary contracts must have control over the outcome of the resolution.

After considering the various processes above, a facilitative mediator would serve as the most effective way to limit the additional problems that accompany a professional athlete's contract dispute. The parties retain control over the outcome of the dispute, while allowing a neutral third party to help them negotiate and gain understanding of each other's interests. Furthermore, a facilitative mediator will ensure the parties are able to amicably come to the table, disregarding as many of the external pressures as possible. Ensuring an agreeable resolution to the dispute is even more vital in situations, like this, where the parties will need to continue their relationship to benefit one another for years to come.

Currently, the National Football League Players' Association and the owners of the NFL teams are in the process of constructing a new collective bargaining agreement.¹³⁶ The NFL Player's Union and the NFL have explored non-binding mediation as a means to bridge the gap during the dispute and help arrive at a resolution during the current collective bargaining impasse.¹³⁷ One item to consider should be to include in all player contracts, the requirement of facilitative mediation in the event of a salary dispute while the player is currently under contract.

In the future, mandatory mediation would reduce the stress and tension arising from salary disputes, but would also eliminate the uncertainty from player holdouts as well as the raucous media attention. Furthermore, the parties would have a procedure in place to begin resolution of the dispute, ultimately leading to a faster and more amicable agreement. Having this mechanism would avoid asking "what is next?" when the parties reach disagreement. The NFL has already shown acceptance of this form of dispute resolution by engaging in mediation to facilitate the 2011 labor agreement.¹³⁸

For Darrelle Revis, the dispute was resolved through an extraordinary effort of the parties to get him back on the field despite earning a salary less than the highest paid player at his position. It appears that the New York Jets were able to prove to Revis his tremendous worth to the franchise, demonstrating that this dispute was in fact about much more than just salary. Although mediation was not employed in this dispute, one can perceive the benefits of keeping the parties to a dispute at the table and talking to each other. Contract disputes like this one serve as a pesky reminder of the business-like nature of the NFL. Resolving these disputes that distract from the end-product will better serve the players, owners, and fans of the game.

¹³⁶ Jarrett Bell, *Could Super Bowl Be Last NFL Action Before Lockout Emerges?*, USA TODAY (Feb. 4, 2011), available at http://www.usatoday.com/sports/football/nfl/2011-02-03-nfl-labor-cover-super-bowl_N.htm.

¹³⁷ Sam Farmer, *NFL Owners, Players Extend Collective Bargaining Talks by a Week*, THE LOS ANGELES TIMES (Mar. 4, 2011), available at <http://articles.latimes.com/2011/mar/04/sports/la-sp-nfl-labor-20110305>.

¹³⁸ Judy Battista, *Judge Orders N.F.L. and Players Back to Mediation*, THE NEW YORK TIMES (Apr. 11, 2011), available at <http://www.nytimes.com/2011/04/12/sports/football/12nfl.html>.